

**COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

Chelsea Becker,) No. F _____
Petitioner,)
v.) Trial Court No. 19CM-5304
Superior Court of Kings County,) (Kings County)
Respondent)

**EXHIBITS IN SUPPORT OF
PETITION FOR WRIT OF PROHIBITION,
APPLICATION FOR IMMEDIATE STAY OF PROCEEDINGS
AND MEMORANDUM OF POINTS AND AUTHORITIES**

Following order denying demurrer/nonstatutory motion to dismiss for
charges not statutorily cognizable or constitutional under Penal Code § 187
From the Superior Court for Kings County,
Hon. Robert S. Burns, Tel: (559) 582-1010

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EXHIBIT 1

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7 D.A.#: 0124901

8 Attorney for Plaintiff

FILED

OCT 31 2019

MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

DEPUTY

SUMNER ALBERT-KYSER

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF KINGS**

9 THE PEOPLE OF THE STATE OF CALIFORNIA
10 Plaintiff,

11 vs.

12 CHELSEA CHEYENNE BECKER
13 AKA CHELSEA BECKER
14 Defendant

No. **19CM-5304**

COMPLAINT

15 The undersigned, verifying upon information and belief, complains that in the County of Kings,
16 State of California, the defendant did commit the following crime(s):

17 **Count 1**

18 On or between January 1, 2019 and September 10, 2019, in the County of Kings, State of
19 California, the crime of Murder Of Human/Fetus in violation of PC187(a), a **Felony**, was committed in
20 that the said defendant, **CHELSEA CHEYENNE BECKER**, did unlawfully, and with malice
21 aforethought murder a human/fetus.

22 **NOTICE:** The above offense is a serious felony within the meaning of Penal Code Section
23 1192.7(c) and a violent felony within the meaning of Penal Code Section 667.5(c).

24 **NOTICE:** Conviction of this offense will require you to provide specimens and samples
25 pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime.

26 **Bail: NO BAIL**

27 **////**

28 Complaint

1 I DECLARE UNDER PENALTY OF PERJURY BASED UPON INFORMATION AND
2 BELIEF THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT
3 CONSISTS OF 1 COUNT(S).

4
5 **BASED UPON THE ABOVE ENTITLED CHARGES, THE PEOPLE HEREBY**
6 **REQUEST BAIL IN THE AMOUNT OF NO BAIL.**

7
8 Executed on October 31, 2019 at Hanford, California.

9 KEITH L. FAGUNDES
DISTRICT ATTORNEY

10 Melissa D'Morias

11 MELISSA R D'MORIAS
12 DEPUTY DISTRICT ATTORNEY

13
14 Agency: HPD - Hanford Police Dept.
COMPLAINT PROCESSED BY: MRD/mrd

15 **DISCOVERY REQUEST**

16 Pursuant to Penal Code Section, 1054.5(b), the People are hereby informally requesting that defendant's
17 counsel provide discovery to the People as required by Penal Code Section 1054.3.

EXHIBIT 2

January 27, 2020

To whom it may concern:

We are both physicians with board certifications in obstetrics and gynecology and addiction medicine.¹ The case of Ms. Becker has come to our attention,² and we are gravely concerned that medical misinformation may be the reason she is currently in jail, including the unsupported assumption that substance use disorders should be treated as dangerous criminal activities and/or the unfounded supposition that methamphetamine use causes stillbirths. As we explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, the “assumption that women who use drugs are impaired in their ability to mother displays a complex and deep bias in our society.”

Ms. Becker’s arrest also seems to assume that pregnant women can guarantee healthy birth outcomes and therefore may be held criminally responsible if they do not. That is simply not true. Increasingly, research shows that pregnancy outcomes have far more to do with economic, social and environmental conditions experienced in the course of one’s life, rather than anything one does or does not do while pregnant.³

Substance use disorders are medical conditions, not dangerous crimes.

¹ See <https://www.vcuhealth.org/for-providers/education/virginia-opioid-addiction-echo/virginia-opioid-addiction-echo-our-team>; <https://profiles.ucsf.edu/tricia.wright>.

² Anna North, *She had a stillborn baby. Now she’s being charged with murder*, Vox, Nov. 8, 2019, <https://www.vox.com/identities/2019/11/8/20954980/stillbirth-miscarriage-murder-abortion-chelsea-becker-news>.

³ See World Health Organization, *Social Determinants of Health*, 2017, http://www.who.int/social_determinants/sdh_definition/en/ (“social determinants of health are the conditions in which people are born, grow, live, work and age.”); Kim Krisberg, American Public Health Association, *Transforming Public Health Works: Targeting Causes of Health Disparities*, 46 *The Nation’s Health*, July 2016 (“at least 50% of health outcomes are due to the social determinants . . .”).

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Most people stop using drugs when they become pregnant, but some can't. And people who can't stop using a drug during pregnancy, most likely have an addiction – a statement that is supported by position papers from both the American Society of Addiction Medicine and the American Congress of Obstetrician Gynecologists.⁴ Medical experts have long recognized that “addiction is a chronic illness” not a “moral weakness” and it is best addressed through healthcare not incarceration.⁵ Pregnant women with substance use disorders care about the health of their pregnancies, as do women with other chronic health conditions such as epilepsy, diabetes, hypertension, asthma, etc. The supposition that women with addiction are willfully harming their fetuses and don't care about their children is absurd and in complete conflict with established medical science. The hypothesis that threat of arrest positively influences maternal behavior and improves birth outcomes is contradicted by decades of empirical evidence.

Professional medical society recommendations are universal in their support of treatment for individuals with addiction and in their opposition to incarceration.⁶ Published data confirm that criminal prosecution has not reduced the rate of substance use or misuse in the United States.⁷ Nor does the risk of prosecution serve to dissuade people, including pregnant women, from using

⁴ American Society of Addiction Medicine Public Policy Statement on Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids (2017), https://www.asam.org/docs/default-source/public-policy-statements/substance-use-misuse-and-use-disorders-during-and-following-pregnancy.pdf?sfvrsn=644978c2_4; Committee on Obstetric Practice, The American College of Obstetricians and Gynecologists, Committee Opinion Number 711: Opioid Use and Opioid Use Disorder in Pregnancy (2017, Reaffirmed 2019).

⁵ Jillian Hardee, *Science Says: Addiction is a Chronic Disease, Not a Moral Failing*, University of Michigan Health News (May, 2017), <https://healthblog.uofmhealth.org/brain-health/science-says-addiction-a-chronic-disease-not-a-moral-failing>.

⁶ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction – Issues in Care and Prevention* (2009); American Academy of Family Physicians, Position Statement, *Substance Abuse and Addiction: Pregnant Women, Substance Use and Abuse by* (2014); American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid use in Pregnancy* (2017).

⁷ Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, 68 Social Research 835 (2001).

drugs.⁸ Punitive policies at the state level related to substance use during pregnancy are not associated with any reduction in use (or improvement in birth outcomes) at the population level.⁹

Methamphetamine use and pregnancy

There is a commonly held misconception that any amount of substance use, including methamphetamine, is uniquely and fatally dangerous to a pregnant woman and her baby. That is simply not true.¹⁰ As we have explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, “Although much remains unknown about the effects of in utero methamphetamine exposure, no consistent teratological effects on the developing human fetus have been identified.”¹¹

Stillbirths impact tens of thousands of women each year ¹²

Pregnancy loss in the United States is common and the causes often unknown.¹³ At least 20 percent of all pregnancies end in miscarriages and stillbirths, whether or not a person smokes cigarettes, drinks alcohol, or uses criminalized substances.¹⁴ Yet this prosecution suggests that any

⁸ Association of Women’s Health Obstetrics and Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders*, 19 JOGNN 93, 93 (2015) (“the threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse”), available at [https://nwhjournal.org/article/S1751-4851\(15\)30046-5/pdf](https://nwhjournal.org/article/S1751-4851(15)30046-5/pdf).

⁹ *Id.*; see also Sara Roberts et al., *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 Maternal and Child Health Journal 333 (2011).

¹⁰ Mishka Terplan & Tricia Wright, *The Effects of Cocaine and Amphetamine Use during Pregnancy on the Newborn: Myth versus Reality*, 30 Journal of Addictive Diseases 1, (2011). See also American College of Obstetricians and Gynecologists, *Information About Methamphetamine Use In Pregnancy* (March 2006); Center for the Evaluation of Risks to Human Reproduction, *Report of the NTP-DEHR Expert Panel on the Reproductive and Developmental Toxicity of Amphetamine and Methamphetamine* 163, 174 (2015); Silver, et al., *Workup of Stillbirth: A Review of the Evidence*, 196 Amer. J. Obstetrics & Gynecology, 433, 438 (May 2007). See also American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, *Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician- Gynecologist* (2011, reaffirmed 2014) (“Drug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus. Incarceration and the threat of incarceration have proven to be ineffective in reducing the incidence of alcohol or drug abuse ...The use of the legal system to address perinatal alcohol and substance abuse is inappropriate.”)

¹¹ *Id.*; see also Tricia Wright et al., *Methamphetamines and Pregnancy Outcomes*, 9 Journal of Addiction Medicine 111 (2015).

¹² See R.L. Goldenberg et al., *Stillbirth: A Review*, 16 Journal of Maternal-Fetal & Neonatal Medicine 79, 79 (2004) (“in the year 2000, there were nearly 27,000 of these events.”)

¹³ Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 American Journal of Obstetrics and Gynecology 1923, 1925 (March 2005) (the majority of late stillbirths are unexplained).

¹⁴ *Id.*

apparent stillbirth may be considered a crime and investigated in California as such. This would require a dramatic expansion of the role of police and prosecutors in pregnancy and birth outcomes. It would result in intrusions into a family's grief through interrogation of those who have experienced a pregnancy loss as well as potential privacy violations through the examination and dissemination of pregnant and post-partum women's medical records.

Public Health Impact

As physicians, we agree with every major medical and public health association, including the American Medical Association and the National Perinatal Association, that substance use is a health issue best addressed through health care, and that a criminal justice approach has negative consequences.¹⁵ Criminalizing and incarcerating women related to substance use completely inverts the principles of public health and medical practice and can be of dire consequence to maternal and fetal health, as fear of criminal prosecution deters people from obtaining prenatal and other health care.¹⁶

Therefore, we write to support Ms. Becker's request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mishka Terplan', is written over a horizontal line.

Dr. Mishka Terplan, M.D., M.Ph.

¹⁵ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction-Issues in Care and Prevention* (2009) (“Transplacental drug transfer should not be subject to criminal sanctions or civil liability”); National Perinatal Association, Position Statement, *Substance Abuse Among Pregnant Women* (2012).

¹⁶ See e.g., American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid Use in Pregnancy* (2017); American Public Health Association, Policy Statement No. 9020, *Illicit Drug Use by Pregnant Women*, 8 Am. J. Pub. Health 240 (1990); American Nurses Association, Position Statement, *Non-Punitive Alcohol and Drug Treatment for Pregnant and Breast-feeding Women and their Exposed Children* (2011).

A handwritten signature in black ink, appearing to read "Tricia Wright", is centered at the top of the page. The signature is written in a cursive, flowing style.

Dr. Tricia Wright, MD, MS
University of California, San Francisco School of Medicine

EXHIBIT 3



HANFORD POLICE DEPARTMENT

425 NORTH IRWIN STREET HANFORD, CA 93230 559-585-2540

SUPPLEMENT 8 - Cell Phone Pings

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H1904793

FACTS:

I spoke with Kings County CPS Social Worker Leslie Rivera-Gutierrez on 10-30-19. Social Worker Rivera-Gutierrez told me she had recent contact with Chelsea Becker over the phone and in person. Social Worker Rivera-Gutierrez said Chelsea had given her the phone number to contact her of 559-670-8678 on 10-29-19. Social Worker Rivera-Gutierrez expressed concerns over Chelsea not staying at a consistent location and being very hard to contact.

On 10-31-19, the Kings County District Attorney's Office filed the charge of California Penal Code 187 (a) upon Chelsea Becker. On 10-31-19, Kings County Superior Court Judge Robert S. Burns signed a warrant of arrest on Chelsea Becker for the felony charge of PC 187(a) with the bail amount of \$5,000,000.

On 11-1-19, I re-contacted Kings County CPS Social Worker Leslie Rivera-Gutierrez. Social Worker Rivera-Gutierrez stated Chelsea was scheduled to come to a meeting at the Kings County CPS Office at 0900 hours. As of the time of this search warrant, Chelsea failed to arrive at the CPS Office. Social Worker Rivera-Gutierrez provided me another phone number in which Chelsea contacted her by text message stating she would be coming to the CPS Office later in the day on this date which was 559-670-9447.

On 11-1-19, Officers of the Hanford Police Department checked 2 different previously known locations for Chelsea but have not been able to locate her. This included her mother's residence of 11155 Hume Avenue in Hanford and 852 E. Grangeville Blvd. #28, which was the location she was at when she went into labor with the stillborn.

On 11-1-19, I utilized the *NPAC IVR* system to locate the telephone service/carrier provider for the requested cell phone numbers. The *NPAC IVR* system is a tool used by the Hanford Police Department which identifies the carrier/service provider of a telephone number. The service provider identified for the two requested phone number is Cingular. I know based on previous experience that AT&T is the custodian of records for Cingular.

On 11-1-19, I authored a search warrant for live pings in regards to the phone numbers of 559-670-9447 and 559-670-8678. Kings County Superior Court Judge Jennifer Giuliani reviewed and signed the search warrant. The signed search warrant was electronically sent to AT&T.

Officers received pings in the area of 11096 S. 10th Avenue in Hanford. Officers went to the residence and contacted multiple individuals. One of the individuals contacted was Marissa Montano. Marissa said Chelsea had been at the residence in the last few days but was not currently there. A search of the residence was completed due to Marissa being subject to search and seizure. Fidel Gomez and Michelle Carrillo were arrested due to warrants and transported to the Kings County Jail. Fidel admitted to the phone number of 559-670-8678 being his and said he didn't know where Chelsea was.

Officers also received pings in the area of 23611 Excelsior Avenue in Riverdale. Through the subscriber information, the phone was believed to belong to Tanner Marshall who was found to be on supervised release and subject to search and seizure. Officers contacted Tanner Marshall at his residence. Tanner

Prepared By:

1472 COTTA, JARRED

☐ BODY CAMERA RECORDED

Date:

11/06/2019

Approved By:

1404 FREINER, GREGORY

Date:

11/07/2019

CONTROLLED DOCUMENT FOR OFFICIAL USE ONLY



HANFORD POLICE DEPARTMENT

Page 30

425 NORTH IRWIN STREET HANFORD, CA 93230 559-585-2540

SUPPLEMENT 8 - Cell Phone Pings

H1904793

Marshall allowed a search of his residence and admitted Chelsea Becker had used his phone earlier at his day at his residence. Tanner said he had met Becker at the Palace, brought her to his home and then took her back a few hours later. Tanner said his phone number was (559) 670-9447

Copies of the search warrant and the search warrant inventory have been sent by mail to the persons owning the phone numbers. A copy of the search warrant and inventory has been attached to this report.

RECOMMENDATION:

Please forward this report to the Kings County DA's Office for review.

END OF REPORT

CONTROLLED DOCUMENT FOR OFFICIAL USE ONLY

Prepared By:
1472 COTTA, JARRED
☐ BODY CAMERA RECORDED

Date:
11/06/2019

Approved By:
1404 FREINER, GREGORY

Date:
11/07/2019

EXHIBIT 4

1 JACQUELINE GOODMAN
Attorney at Law
2 SBN: 172308
THE GOODMAN LAW BUILDING
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Fullerton, California 92832
4 Telephone: 714.879.5770

Date: January 31, 2020
Dept: 6
Time: 8:15 a.m.

5 Attorney for Defendant CHELSEA BECKER
6
7

8 IN THE SUPERIOR COURT OF THE COUNTY OF KINGS
9 STATE OF CALIFORNIA, HANFORD COURTHOUSE
10

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 *Plaintiffs,*

14 vs.

15 CHELSEA BECKER,

16 *Defendant.*
17
18

Case No. 19CM-5304

NOTICE AND MOTION FOR
REDUCTION OF BAIL; MEMORANDUM
OF POINTS AND AUTHORITIES;
EXHIBIT IN SUPPORT THEREOF.

19 **TO: THE DISTRICT ATTORNEY OF KINGS COUNTY AND/OR HIS**
20 **REPRESENTATIVE(S):**

21 **PLEASE TAKE NOTICE** that on January 31, 2020, at the hour of 8:30 a.m., or as soon
22 thereafter as counsel may be heard in the courtroom of Department 6 of the above-entitled court,
23 the defendant will move for an order reducing bail.

24 The motion will be made on the grounds that the defendant is entitled to bail in a reasonable
25 amount under Article I, § 12 of the California Constitution, and the Eighth Amendment to the
26 United States Constitution.

27 The motion will be based on this notice of motion, the memorandum of points and authorities

28 ///

1 served and filed herewith, on all papers and records on file in this action, and on such oral and
2 documentary evidence as may be presented at the hearing of this motion.

3 Dated: January 29, 2020

Respectfully submitted,

6
7 JACQUELINE GOODMAN, ESQ.
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant, Chelsea Becker, submits the following points and authorities in support of her motion for an order reducing bail:

I.

STATEMENT OF FACTS

On September 10, 2019, Ms. Becker's pregnancy ended in a stillborn birth. In a prosecution based on an unusual and highly controversial theory, the prosecution has charged Ms. Becker with the murder of her fetus which, they claim, resulted from her drug use during pregnancy. This was the fourth child born to Ms. Becker while addicted, and the only stillbirth.

II.

STATEMENT OF THE CASE

Chelsea Becker was arrested on November 6, 2019. Later that day, Ms. Becker was arraigned and entered a plea of "not guilty" to one count of a violation of *Penal Code* §187 [Murder], a felony. On December 19, 2019, current counsel was substituted in place of the public defender. Ms. Becker's bail was set far above schedule at \$3,000,000.00 and she has been in pre-trial custody since her arrest.

III.

**THE DEFENDANT HAS A CONSTITUTIONAL AND STATUTORY
RIGHT TO A REASONABLE BAIL**

Article I, § 12 of the California Constitution establishes a defendant's state right to be released prior to trial on reasonable bail. The due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution guarantee compliance with state-created procedural rights. *Hicks v. Oklahoma*, (1980) 447 U.S. 343. Bail may not be set to achieve an invalid state interest or in an amount that is excessive in relation to the interests sought to be protected. *Galen v. County of Los Angeles*, (9th Cir. 2007) 477 F.3d 652 at 659-660.

Article I, § 12, of the California Constitution also prohibits the imposition of excessive bail and sets forth the factors a court shall take into consideration in fixing the amount of required bail. For all non-capital murder offenses, bail is a matter of right. Cal. Const. art. I, §12; *Penal Code*

1 §1271. The offense with which the defendant is charged is not a crime for which bail is prohibited
2 under the state Constitution. As such, excessive bail may not be required. Cal. Const. art. I, § 12.

3 *Penal Code* § 1275 sets forth the factors the court must consider in setting bail: (1) the
4 protection of the public, (2) the seriousness of the offense charged, (3) the previous criminal record
5 of the defendant, and (4) the probability of his or her appearing at trial or hearing of the case.

6 In considering the seriousness of the offense charged, the court must consider: (1) the alleged
7 injury to the victim, (2) alleged threats to the victim or witnesses, (3) alleged use of firearms or
8 other deadly weapons in the commission of the charged crime, and (4) any alleged use or
9 possession of a controlled substance by the defendant. The code requires that “public safety shall
10 be the primary consideration.” *Penal Code* § 1275(a).

11 While murder is a serious charge, the underlying facts-- a pregnant mother unintentionally
12 losing her baby—make out no crime at all in this state, let alone a serious one. Ms. Becker has no
13 significant criminal history, and has ties to the community which make her a good “flight risk.”

14 *Penal Code* §1270.1 provides that before any person who is arrested for a serious or violent
15 felony may be released on bail in an amount which deviates from the schedule of bail for the
16 offense, a hearing must be held in open court. Since Ms. Becker is charged with murder [*Penal*
17 *Code* §187], a violent felony, the statute requires the court to consider: (1) Ms. Becker’s past record
18 of failures to appear, (2) the maximum potential sentence that could be imposed, and (3) the danger
19 that may be posed to other persons if the defendant is released.

20 California law weighs in favor of granting Ms. Becker’s request and reducing bail to a
21 reasonable amount. Ms. Becker’s past record of appearances at court and compliance with its
22 orders indicates her ability and intention to appear in court as ordered. In addition, the evidence of
23 her guilt is by no means strong. Ms. Becker is charged with murder based on the claim that her
24 drug use caused a pregnancy loss. This is based on a common misconception that drug use causes
25 pregnancy loss, or that babies can be born “addicted.” (See Exhibit A.) Neither pregnancy nor drug
26 use nor the dual status of being pregnant and addicted, are crimes proscribed by the state of
27 California; nor are they indicative of a danger posed to others. [Cal. Health & Safety Code D. 10,
28 Uniform Controlled Substances Act (proscribes varied conduct in relation to controlled substances

1 including: possessing; transporting; and selling controlled substances, *but not* the past use of a
2 controlled substance).]

3 In fact, the defendant will be filing a motion to dismiss to provide substantial support as to the
4 invalidity and unconstitutionality of the charges against her. *See Jaurigue v. People*, No. 18988,
5 slip op. (Cal. Super. Ct. Aug. 21, 1992) (dismissed fetal homicide charges against a woman who
6 experienced a stillbirth, alleged to have been a result of drug use, finding statute could not be used
7 to prosecute pregnant woman for the loss of her own pregnancy), writ denied, (Cal. App. 1992);
8 *People v. Jones*, No. 93-5, Transcript of Record (Cal. J. Ct. Siskiyou County July 28, 1993)
9 (finding murder statute could not be used to prosecute defendant after newborn's death for alleged
10 drug use and pregnancy); Sue Holtby et al., *Gender issues in California's perinatal substance*
11 *abuse policy*, 27 Contemporary Drug Problems 77, 89 (2000) (Since the late 1980s California's
12 legislature has addressed issues related to pregnancy and substance use, debated the need for
13 criminal penalties, and chosen not to amend the law to include criminal sanctions against
14 "substance-using mothers"). *See also Reyes v. Superior Court*, 75 Cal. App. 3d 214 (Cal. Ct. App.
15 1977) (child endangerment statute cannot be used to prosecute woman for alleged actions while
16 pregnant). *See also Gallo v. Acuna*, 929 P.2d 596, 611 (Cal. 1997) (addressing "core due process
17 requirement of adequate notice" as when no person "may be required at peril of life, liberty or
18 property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what
19 the State commands or forbids" (internal citations and quotations omitted).

20 Finally, Ms. Becker poses no danger to anyone in the community, including non-existent but
21 potential fetuses, by virtue of her release. (*See* Exhibit A [physician's letter discussing pregnancy
22 risks] and Section IV, *infra*.)

23 IV.

24 SETTING A PROHIBITIVELY HIGH BAIL WOULD VIOLATE THE DEFENDANT'S 25 RIGHTS UNDER THE EIGHTH AMENDMENT TO THE CONSTITUTION

26 The "cruel and unusual punishment" clause of the Eighth Amendment to the United States
27 Constitution has been specifically held applicable to the states through the Fourteenth Amendment.
28 *Robinson v. California*, (1962) 370 U.S. 660. The Supreme Court has assumed the excessive bail

1 clause of the Eight Amendment is also applicable to the states through the Fourteenth Amendment.
2 *Schilb v. Kuebel*, (1971) 404 U.S. 357 at 365 (stating that “[b]ail is basic to our system of law and
3 the Eighth Amendment’s proscription of excessive bail has been assumed to have application to the
4 States through the Fourteenth Amendment”); *see also Barker v. McCollan* (1979) 443 U.S. 137 at
5 144 n.3 (expressing agreement with *Schilb*).

6 Conclusory statements regarding public safety considerations cannot be a basis for requiring a
7 suspect to post an unreasonably high bail to keep him or her in custody. *In re Christie* (2d Dist.
8 2001) 92 Cal.App.4th 1105 at 1109, as modified, (Nov. 13, 2001) (“the court may neither deny bail
9 nor set it in a sum that is the functional equivalent of no bail”). Although the United States
10 Supreme Court has found that the concept of “preventive detention” does not violate the United
11 States Constitution, preventive detention only permits the denial of bail to those specifically
12 deemed dangerous upon release. *U.S. v. Salerno*, (1987) 481 U.S. 739.

13 Here, no evidence has been proffered to suggest Ms. Becker would be dangerous upon
14 release. Experiencing a substance use disorder, a health condition, does not pose a risk of danger to
15 any person if she is released. *Cal. Health & Safety Code* § 11757.51, Alcohol and Drug Affected
16 Mothers and Infants (“the appropriate response to” drug affected mothers and infants is
17 “prevention, through expanded resources for recovery from alcohol and other drug dependency.
18 The only sure effective means of protecting the health of these infants is to provide the services
19 needed by mothers to address a problem that is addictive, not chosen.”) Nor can the experience of a
20 pregnancy or pregnancy loss rationally deem Ms. Becker to be a dangerous person. In fact,
21 according to the Centers for Disease Control and Prevention (CDC), in California there are 2,465
22 stillbirths each year.” Linda Childers, *California Health Report* (July 16, 2019).

23 Further, even if this court mistakenly believed that detention should be used to prevent the
24 possibility of Ms. Becker becoming pregnant, case law prevents the court from issuing such an
25 order. Even after a conviction, when a “trial court has very wide discretion in setting the conditions
26 of probation . . . its discretion is not boundless.” *People v. Dominguez*, 256 Cal.App.2d 623, 626
27 (Cal. Ct. App. 1967) (Struck probation condition that defendant will not become pregnant while
28 unmarried, finding the appellant “is entitled to her freedom on probation”). Even conditions issued

1 for the purpose of public safety “are circumscribed by constitutional safeguards” including the
2 fundamental right to procreate. *People v. Pointer*, 151 Cal.App.3d 1128, 1129 (Cal. Ct. App. 1984)
3 (appeals court reversed portion of sentencing order that prevented defendant, after felony child
4 endangerment conviction, from conceiving during probationary period).

5 V.

6 **IN DETERMINING A REASONABLE BAIL, THE COURT MUST CONSIDER THE**
7 **DEFENDANT’S FINANCIAL ABILITY**

8 A “court may neither deny bail nor set it in a sum that is the functional equivalent of no bail.”
9 *In re Christie*, (2d Dist. 2001) 92 Cal. App. 4th 1105, as modified, Nov. 13, 2001. Similarly, in
10 *People v. Remijio*, (2d Dist. 1968) 259 Cal. App. 2d 12, the appellate court found error in setting
11 bail on appeal in an amount beyond the defendant’s ability to pay. The United States Supreme
12 Court has consistently rejected a disparate system of bail, which requires those unable to post high
13 bail to remain in custody, while allowing the wealthy to obtain their freedom no matter how
14 dangerous they may be. In *Stack v. Boyle*, (1951) 342 U.S. 1, the court held that when bail is
15 available, it must be fixed only in that amount necessary to guarantee the defendant’s appearance at
16 trial. Any higher amount is excessive under the Eighth Amendment. To set bail in an amount so
17 high as to effectively deny bail, based on the defendant’s actual means, is prohibited by our state
18 and federal constitutions. This principle was recently reaffirmed by the California Supreme Court
19 in *In re Humphrey* (2018) 19 Cal.App.5th 1006.

20 “[W]hen the Court’s concern is protection of the public rather than flight, imposition of money
21 bail in an amount exceeding the defendant’s ability to pay unjustifiably relieves the Court of the
22 obligation to inquire whether less restrictive alternatives to detention could adequately protect
23 public or victim safety and, if necessary, explain the reasons detention is required.” *In re*
24 *Humphrey*, *supra*. The *Humphrey* Court reasoned that since the defendant was unable to afford
25 cash bail, the court was required to consider reasonable, less restrictive alternatives that could be
26 implemented instead of cash bail in light of the defendant’s financial condition. The *Humphrey*
27 court allowed the defendant to be released on his own recognizance with an ankle monitor,
28 reducing the concern for public safety, due to his ties to the community and his inability to pay the

1 costs of monetary bail.

2 Here, there is no evidence to suggest that Ms. Becker would pose a danger to the public if
3 released on bail. Ms. Becker and her family are of limited financial means. Ms. Becker is
4 unemployed and, in fact, qualified for the services of the public defender. Setting her bail at the
5 current amount of \$3 million is tantamount to preventive detention.

6 **VI.**

7 **DUE PROCESS REQUIRES THE BURDEN OF PROOF**
8 **CONCERNING THE DEFENDANT'S REAPPEARANCE**
9 **BE BORNE BY THE PROSECUTION.**

10 In *Van Atta v. Scott*, (CA 1980) 27 Cal. 3d 424 at 444, the California Supreme Court examined
11 the procedural due process requirements related to the burden of proof on the issue of the
12 defendant's likelihood of appearance in court. The court stated that "due process requires the
13 burden of proof concerning the detainee's likelihood of appearing for future court proceedings be
14 borne by the prosecution."

15 The risk a defendant might flee if bail is posted must be more than the defendant's incentive or
16 ability to flee. Federal precedent requires more than an "incentive" or "motive" or even "ability" to
17 flee in finding the defendant is a flight risk. In *U.S. ex rel Rubenstein v. Mulcahy*, (C.C.A. 2d Cir.
18 1946) 155 F.2d 1002, the appellate court explained that "ability to flee [...] does not necessarily
19 indicate a purpose to flee." See also *U.S. v. Friedman*, (3d Cir. 1988) 837 F.2d 156 ("[W]e have
20 required more than evidence of the commission of a serious crime and the fact of a potentially long
21 sentence to support a finding of risk of flight; *U.S. v. Himler*, (3d Cir. 1986) 797 F.2d 156 (pretrial
22 detention unwarranted where no direct evidence suggested defendant would flee from prosecution);
23 *Government of Virgin Islands v. Leycock*, (3d Cir. 1982) 678 F.2d 467 (mere opportunity for flight
24 is insufficient for pretrial detention); *U.S. v. Chen*, (N.D. Cal. 1992) 820 F. Supp. 1205 (mere
25 opportunity or incentive to flee is insufficient to deny pretrial release)).

26 Ms. Becker has strong ties to the community, including children and all of her immediate
27 family and friends in Kings County, and virtually no ties outside of California. There is no basis for
28 concern that she would flee the jurisdiction.

1 Further, even if the Court has been presented with evidence that there is a risk the defendant
2 might flee, the Court must consider other less restrictive alternatives, such as the surrender of the
3 defendant's passport or electronic monitoring. See *In re Mehdizadeh*, (2d Dist. 2003) 105 Cal. App.
4 4th 995, as modified on denial of reh'g, (Feb 2003) ("Even if the defendant poses a flight risk,
5 incarceration should be avoided if there is a less restrictive alternative."). Similarly, in *In re*
6 *Newchurch*, 807 F.2d 404 (5th Cir. 1986), the court cautioned that due process "requires the
7 government, when it deprives an individual of liberty, to fetter his freedom in the least restrictive
8 manner."

9 VII.

10 CONCLUSION

11 Chelsea Becker is charged with murder based on the loss of her own pregnancy, a theory
12 which has been rejected by our courts and legislature. She poses no risk of danger to the
13 community by virtue of her release, nor any significant flight risk. Nevertheless, to allay any fears
14 concerning risk of flight or danger, less restrictive alternatives such as electronic monitoring exist,
15 and the constitution requires they be employed if necessary, and that bail be reduced to an amount
16 commensurate with her ability to pay.

17 Dated: January 29, 2020

Respectfully submitted,

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20 JACQUELINE GOODMAN
Attorney for Defendant
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EXHIBIT A

January 27, 2020

To whom it may concern:

We are both physicians with board certifications in obstetrics and gynecology and addiction medicine.¹ The case of Ms. Becker has come to our attention,² and we are gravely concerned that medical misinformation may be the reason she is currently in jail, including the unsupported assumption that substance use disorders should be treated as dangerous criminal activities and/or the unfounded supposition that methamphetamine use causes stillbirths. As we explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, the “assumption that women who use drugs are impaired in their ability to mother displays a complex and deep bias in our society.”

Ms. Becker’s arrest also seems to assume that pregnant women can guarantee healthy birth outcomes and therefore may be held criminally responsible if they do not. That is simply not true. Increasingly, research shows that pregnancy outcomes have far more to do with economic, social and environmental conditions experienced in the course of one’s life, rather than anything one does or does not do while pregnant.³

Substance use disorders are medical conditions, not dangerous crimes.

¹ See <https://www.vcuhealth.org/for-providers/education/virginia-opioid-addiction-echo/virginia-opioid-addiction-echo-our-team>; <https://profiles.ucsf.edu/tricia.wright>.

² Anna North, *She had a stillborn baby. Now she’s being charged with murder*, Vox, Nov. 8, 2019, <https://www.vox.com/identities/2019/11/8/20954980/stillbirth-miscarriage-murder-abortion-chelsea-becker-news>.

³ See World Health Organization, *Social Determinants of Health*, 2017, http://www.who.int/social_determinants/sdh_definition/en/ (“social determinants of health are the conditions in which people are born, grow, live, work and age.”); Kim Krisberg, American Public Health Association, *Transforming Public Health Works: Targeting Causes of Health Disparities*, 46 *The Nation’s Health*, July 2016 (“at least 50% of health outcomes are due to the social determinants . . .”).

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Most people stop using drugs when they become pregnant, but some can't. And people who can't stop using a drug during pregnancy, most likely have an addiction – a statement that is supported by position papers from both the American Society of Addiction Medicine and the American Congress of Obstetrician Gynecologists.⁴ Medical experts have long recognized that “addiction is a chronic illness” not a “moral weakness” and it is best addressed through healthcare not incarceration.⁵ Pregnant women with substance use disorders care about the health of their pregnancies, as do women with other chronic health conditions such as epilepsy, diabetes, hypertension, asthma, etc. The supposition that women with addiction are willfully harming their fetuses and don't care about their children is absurd and in complete conflict with established medical science. The hypothesis that threat of arrest positively influences maternal behavior and improves birth outcomes is contradicted by decades of empirical evidence.

Professional medical society recommendations are universal in their support of treatment for individuals with addiction and in their opposition to incarceration.⁶ Published data confirm that criminal prosecution has not reduced the rate of substance use or misuse in the United States.⁷ Nor does the risk of prosecution serve to dissuade people, including pregnant women, from using

⁴ American Society of Addiction Medicine Public Policy Statement on Substance Use, Misuse, and Use Disorders During and Following Pregnancy, with an Emphasis on Opioids (2017), https://www.asam.org/docs/default-source/public-policy-statements/substance-use-misuse-and-use-disorders-during-and-following-pregnancy.pdf?sfvrsn=644978c2_4; Committee on Obstetric Practice, The American College of Obstetricians and Gynecologists, Committee Opinion Number 711: Opioid Use and Opioid Use Disorder in Pregnancy (2017, Reaffirmed 2019).

⁵ Jillian Hardee, *Science Says: Addiction is a Chronic Disease, Not a Moral Failing*, University of Michigan Health News (May, 2017), <https://healthblog.uofmhealth.org/brain-health/science-says-addiction-a-chronic-disease-not-a-moral-failing>.

⁶ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction – Issues in Care and Prevention* (2009); American Academy of Family Physicians, Position Statement, *Substance Abuse and Addiction: Pregnant Women, Substance Use and Abuse* by (2014); American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid use in Pregnancy* (2017).

⁷ Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, 68 Social Research 835 (2001).

drugs.⁸ Punitive policies at the state level related to substance use during pregnancy are not associated with any reduction in use (or improvement in birth outcomes) at the population level.⁹

Methamphetamine use and pregnancy

There is a commonly held misconception that any amount of substance use, including methamphetamine, is uniquely and fatally dangerous to a pregnant woman and her baby. That is simply not true.¹⁰ As we have explained in *The Effects of Cocaine and Amphetamine Use During Pregnancy on the Newborn: Myth versus Reality*, “Although much remains unknown about the effects of in utero methamphetamine exposure, no consistent teratological effects on the developing human fetus have been identified.”¹¹

Stillbirths impact tens of thousands of women each year¹²

Pregnancy loss in the United States is common and the causes often unknown.¹³ At least 20 percent of all pregnancies end in miscarriages and stillbirths, whether or not a person smokes cigarettes, drinks alcohol, or uses criminalized substances.¹⁴ Yet this prosecution suggests that any

⁸ Association of Women’s Health Obstetrics and Neonatal Nurses, *Criminalization of Pregnant Women with Substance Use Disorders*, 19 JOGNN 93, 93 (2015) (“the threat of incarceration has been shown to be an ineffective strategy for reducing the incidence of substance abuse”), available at [https://nwhjournal.org/article/S1751-4851\(15\)30046-5/pdf](https://nwhjournal.org/article/S1751-4851(15)30046-5/pdf).

⁹ *Id.*; see also Sara Roberts et al., *Complex Calculations: How Drug Use During Pregnancy Becomes a Barrier to Prenatal Care*, 15 Maternal and Child Health Journal 333 (2011).

¹⁰ Mishka Terplan & Tricia Wright, *The Effects of Cocaine and Amphetamine Use during Pregnancy on the Newborn: Myth versus Reality*, 30 Journal of Addictive Diseases 1, (2011). See also American College of Obstetricians and Gynecologists, *Information About Methamphetamine Use In Pregnancy* (March 2006); Center for the Evaluation of Risks to Human Reproduction, *Report of the NTP-DEHR Expert Panel on the Reproductive and Developmental Toxicity of Amphetamine and Methamphetamine* 163, 174 (2015); Silver, et al., *Workup of Stillbirth: A Review of the Evidence*, 196 Amer. J. Obstetrics & Gynecology, 433, 438 (May 2007). See also American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women, *Committee Opinion 473, Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician- Gynecologist* (2011, reaffirmed 2014) (“Drug enforcement policies that deter women from seeking prenatal care are contrary to the welfare of the mother and fetus. Incarceration and the threat of incarceration have proven to be ineffective in reducing the incidence of alcohol or drug abuse ...The use of the legal system to address perinatal alcohol and substance abuse is inappropriate.”)

¹¹ *Id.*; see also Tricia Wright et al., *Methamphetamines and Pregnancy Outcomes*, 9 Journal of Addiction Medicine 111 (2015).

¹² See R.L. Goldenberg et al., *Stillbirth: A Review*, 16 Journal of Maternal-Fetal & Neonatal Medicine 79, 79 (2004) (“in the year 2000, there were nearly 27,000 of these events.”)

¹³ Ruth C. Fretts, *Etiology and Prevention of Stillbirth*, 193 American Journal of Obstetrics and Gynecology 1923, 1925 (March 2005) (the majority of late stillbirths are unexplained).

¹⁴ *Id.*

apparent stillbirth may be considered a crime and investigated in California as such. This would require a dramatic expansion of the role of police and prosecutors in pregnancy and birth outcomes. It would result in intrusions into a family's grief through interrogation of those who have experienced a pregnancy loss as well as potential privacy violations through the examination and dissemination of pregnant and post-partum women's medical records.

Public Health Impact

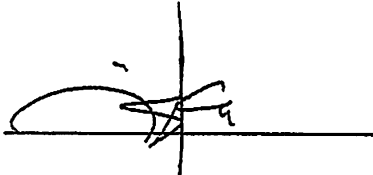
As physicians, we agree with every major medical and public health association, including the American Medical Association and the National Perinatal Association, that substance use is a health issue best addressed through health care, and that a criminal justice approach has negative consequences.¹⁵ Criminalizing and incarcerating women related to substance use completely inverts the principles of public health and medical practice and can be of dire consequence to maternal and fetal health, as fear of criminal prosecution deters people from obtaining prenatal and other health care.¹⁶

¹⁵ See e.g., American Medical Association, Policy Statement – H-420.962, *Perinatal Addiction-Issues in Care and Prevention* (2009) (“Transplacental drug transfer should not be subject to criminal sanctions or civil liability”); National Perinatal Association, Position Statement, *Substance Abuse Among Pregnant Women* (2012).

¹⁶ See e.g., American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, *A Public Health Response to Opioid Use in Pregnancy* (2017); American Public Health Association, Policy Statement No. 9020, *Illicit Drug Use by Pregnant Women*, 8 Am. J. Pub. Health 240 (1990); American Nurses Association, Position Statement, *Non-Punitive Alcohol and Drug Treatment for Pregnant and Breast-feeding Women and their Exposed Children* (2011).

Therefore, we write to support Ms. Becker's request.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Terplan', written over a horizontal line.

Dr. Mishka Terplan, M.D., M.Ph.

A handwritten signature in black ink, appearing to read 'Tricia Wright', written in a cursive style.

Dr. Tricia Wright, MD, MS
University of California, San Francisco School of Medicine

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KINGS, KINGS COUNTY JUDICIAL DISTRICT
HONORABLE ROBERT SHANE BURNS, Judge
DEPARTMENT 6

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,) No. 19CM-5304
vs.)
CHELSEA CHEYENNE BECKER,)
Defendant.)
-----)

Hanford, California

February 20, 2020

REPORTER'S TRANSCRIPT

of

BAIL REVIEW HEARING

**WARNING!! PURSUANT TO CALIFORNIA GOVERNMENT
CODE SECTION 69954, NO PARTY OR PERSON SHALL PROVIDE
OR SELL A COPY OR COPIES OF A COURT REPORTER'S
TRANSCRIPT TO ANY OTHER PARTY OR PERSON.**

REPORTED BY:
CHERI FIKE, CSR #6200, RMR, CRR

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 KEITH FAGUNDES
4 District Attorney, Kings County
5 BY: MELISSA D'MORIAS, Deputy D.A.
6 1400 West Lacey Blvd.
7 Hanford, California 93230

8 FOR THE DEFENDANT:

9 JACQUELINE GOODMAN RUBIO, Esq.
10 Attorney at Law

11 ---oOo---

12 BE IT REMEMBERED, that the above-entitled
13 matter came on regularly for hearing in the Superior
14 Court of California, County of Kings, Kings County
15 Judicial District, Department 6, before the HONORABLE
16 ROBERT SHANE BURNS, Judge, on February 20, 2020.

17 The People of the State of California were
18 represented by MELISSA D'MORIAS, Esq., Deputy District
19 Attorney for the County of Kings, State of California.

20 The Defendant, CHELSEA CHEYENNE BECKER,
21 was personally present in court and was represented by
22 counsel, JACQUELINE GOODMAN RUBIO, Esq., Attorney at
23 Law.

24 ---oOo---

1 WHEREUPON, the following proceedings were
2 had and testimony given, to wit:

3 ---oOo---

4 THE COURT: Call People versus Chelsea
5 Becker.

6 (The defendant enters the courtroom.)

7 THE COURT: All right. The record will
8 reflect Miss Becker has entered the courtroom.

9 Good morning, Miss Becker.

10 THE DEFENDANT: Good morning, your Honor.

11 THE COURT: She's here with her attorney,
12 Ms. Goodman Rubio, the People are represented by Ms.
13 D'Morias. It's here for a bail review and pretrial.
14 I have had a chance to take a look at the report from
15 the Probation Department for the bail review, as well
16 as the motion filed by the defense.

17 Ms. Goodman Rubio, did you want to be heard
18 any further?

19 MS. GOODMAN RUBIO: Yes, I mean, I guess --
20 look, I trust that the Court has read my motion and I
21 don't want to belabor the point, but this is deserving
22 of at least a mention that the theory on which the
23 People hold Miss Becker is a rather controversial one
24 and certainly a novel one as she's being charged with
25 the murder of her own unborn fetus, and without
26 getting into all of the merits of that charge, it
27 bears on the issue of the bail motion to the extent
28 that the Court is able to take into account the

1 likelihood of conviction in addition to all of the
2 other factors, and most notably the flight risk and
3 danger to the community. But on both of those the
4 flight risk and the danger to the community, still
5 Miss Becker is a -- she's a good flight risk, she's
6 never to my knowledge had any sort of history of
7 failures to appear; in fact, she has been actively
8 involved in court proceedings with respect to her
9 other children. She's had four births.

10 As to danger to the community by virtue of
11 this charge, one would have to believe that preventive
12 detention was necessary in order to prevent her future
13 pregnancy I suppose since she's charged with a crime
14 against her own fetus. And that is proscribed by
15 the -- by the Constitution. One has a right to
16 procreate, and even as a condition of probation in
17 cases of child endangerment the courts have been
18 unable to give any sort of term of probation that
19 would prohibit one from procreating or having future
20 births.

21 So based on those issues, and I think I
22 misstated this motion, I was mistakenly under the
23 impression that Miss Becker is being held on three
24 million dollars bail, it is, in fact, five million
25 dollars bail which is effectively a denial of bail
26 under the circumstances of her own financial condition
27 and so I would urge the Court to consider a reduction
28 of bail. Thank you.

1 THE COURT: Thank you.

2 Ms. D'Morias.

3 MS. D'MORIAS: Your Honor, the People will
4 submit on the probation report. Given whatever
5 constitutional matters that the merits of the law
6 consider for purposes of the bail review, the Court is
7 to assume the charges are true. Miss Becker does have
8 a criminal history which does include an arrest for a
9 245(a)(1), as well as 11550. At this point --

10 THE COURT: Does it include a conviction?
11 I'm not interested in arrests, I'm interested in
12 convictions. Arrests don't mean anything. A
13 conviction means something.

14 As I read the report it says there was a
15 felony 245(a)(1) she was convicted of and an 11550 she
16 was convicted of. Now you're telling me that those
17 aren't convictions, they're only arrests?

18 MS. D'MORIAS: Your Honor, as I was going on
19 to say it resulted in arrest, she was on felony
20 probation for the 245(a)(1), she does have a strike
21 conviction, which does indicate she poses a risk to
22 the community, as well as a flight risk. The People
23 would argue that the bail as set is appropriate.

24 THE COURT: Anything else?

25 MS. D'MORIAS: No.

26 THE COURT: At this time the Court's going
27 to reduce bail to two million dollars. How did you
28 want to proceed on the pretrial?

1 MS. GOODMAN RUBIO: Your Honor, I will be
2 asking for a future pretrial.

3 THE COURT: Do you want to set a prelim? Do
4 you just want a pretrial/prelim setting?

5 MS. GOODMAN RUBIO: Perhaps both, if the
6 Court would allow.

7 THE COURT: When did you want your prelim?

8 MS. GOODMAN RUBIO: Does the Court set
9 preliminary hearings on Fridays?

10 THE COURT: No.

11 MS. GOODMAN RUBIO: Then I would be
12 requesting May.

13 THE COURT: May? Why May?

14 MS. GOODMAN RUBIO: It's a complicated case,
15 there's --

16 THE COURT: Not what you just told me. You
17 told me that it's constitutionally prohibited from
18 prosecuting her. If that's the case, let's get going.

19 MS. GOODMAN RUBIO: I'd like to bring a
20 motion on that issue, but with respect to the
21 preliminary hearing --

22 THE COURT: Today is February 20th.

23 MS. GOODMAN RUBIO: Would the Court allow a
24 pretrial on April 24th?

25 THE COURT: Why are we going so far out?

26 MS. GOODMAN RUBIO: Well, one of the reasons
27 is that --

28 THE COURT: Typically -- if we're not doing

1 statutory time, I typically set it within about 30
2 days, not 60 or 90.

3 MS. GOODMAN RUBIO: There is another --
4 possibly another counsel who is coming from New
5 Hampshire who had requested the 24th of April for that
6 pretrial, and I --

7 THE COURT: How is that my problem?

8 MS. GOODMAN RUBIO: I'm telling the Court
9 that that -- he may be asking to associate in, but if
10 the Court does not want to set the 24th, I'll set an
11 earlier date.

12 With respect to the preliminary hearing, if
13 we go to preliminary hearing, there will be some
14 medical evidence and experts that we employed so I
15 want to make sure that they are up to speed and we
16 don't --

17 THE COURT: We started this in November. We
18 arraigned her on November 6th, today is February 20th,
19 correct? So three months ago we started the process,
20 that was plenty of time to start contacting experts,
21 talk to experts, get dates and get work for experts.

22 MS. GOODMAN RUBIO: I was --

23 THE COURT: If you want a pretrial/prelim
24 setting, you know, in a couple of weeks so you can
25 contact everybody and get dates so we can set a prelim
26 within a reasonable period of time, I'm fine with
27 that. We can come back on March 2nd if you like for
28 that purpose. I'm not inclined to simply put it out

1 six months or nine months or what have you.

2 MS. GOODMAN RUBIO: All right. Two
3 questions then, if I may, and I apologize for all of
4 this, I didn't realize that the Court was going to
5 want these dates, my calendar is such that I would be
6 available March 31st, if that's agreeable with the
7 Court, for a pretrial.

8 THE BAILIFF: A court holiday.

9 THE COURT: It's a court holiday.

10 MS. GOODMAN RUBIO: Oh, that's why it's
11 clear.

12 THE COURT: That's why it's wide open for
13 you.

14 MS. GOODMAN RUBIO: I apologize. In that
15 case, let's see, the 30th.

16 THE COURT: Of March?

17 MS. GOODMAN RUBIO: Of March. And I
18 realize -- I was not the original lawyer on the case
19 so we've been working very hard to make sure that we
20 don't delay unnecessarily in this case. If the
21 Court would set a pretrial on a Friday, I'm happy to
22 come back on the 20th, which is sooner.

23 THE COURT: The 20th of?

24 MS. GOODMAN RUBIO: March.

25 THE COURT: March. All right. We'll set it
26 for preliminary hearing on March 30th at 1:30 in the
27 afternoon in this Department. We'll set it for March
28 20th at 8:15 for pretrial. I will order Miss Becker

1 back for each of those dates and times.

2 MS. GOODMAN RUBIO: Thank you.

3 THE COURT: You're welcome. Anything
4 further from either side?

5 MS. D'MORIAS: No, your Honor.

6 MS. GOODMAN RUBIO: No, your Honor.

7 THE COURT: Miss Becker, good luck to you.
8 We'll see you back then.

9 THE DEFENDANT: Thank you.

10 (Matter concluded.)

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4 I, CHERI FIKE, a Certified Shorthand
5 Reporter, DO HEREBY CERTIFY:

6 That the foregoing and annexed pages
7 constitute a full, true, and correct transcript of the
8 proceedings had and testimony given in the hearing of
9 the matter entitled as upon the first page hereof.

10
11 Dated: March 31, 2020

12
13
14 /s/ CHERI FIKE, CSR

15 _____
16 Official Reporter Pro Tempore #6200
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EXHIBIT 6

JACQUELINE GOODMAN
Attorney at Law
SBN: 172308
THE GOODMAN LAW BUILDING
712 N. Harbor Blvd.
Fullerton, California 92832
Telephone: 714.879.5770

Date: April 13, 2020
Dept: 6
Time: 8:30 a.m.

Attorney for Defendant CHELSEA BECKER

IN THE SUPERIOR COURT OF THE COUNTY OF KINGS
STATE OF CALIFORNIA, HANDFORD COURTHOUSE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs,

vs.

CHELSEA BECKER,

Defendant.

Case No. 19CM-5304

SUPPLEMENTAL NOTICE AND
MOTION FOR O.R. RELEASE OR
REDUCTION OF BAIL IN LIGHT OF
COVID-19 PANDEMIC AND
CONSEQUENT STATE OF PUBLIC
HEALTH EMERGENCY

**TO: THE DISTRICT ATTORNEY OF KINGS COUNTY AND/OR HIS
REPRESENTATIVE(S):**

PLEASE TAKE NOTICE that on March 30, 2020, at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard in Department 6 of the above-entitled court, the defendant will a request a review and order for release on the defendant's own recognizance (O.R.), or, in the alternative, reduction of bail in light of the COVID-19 pandemic and consequent state of public health emergency.

This motion is made on the grounds that changed circumstances exist to warrant review, and that under the circumstances, including the Chief Justice of the California Supreme Court's directive for courts to take action to reduce the number of inmates in the jail and an inmate in the Orange

1 County jail testing positive for COVID-19, the danger to the public by virtue of defendant's
2 continued incarceration justify such relief within the meaning of the Eighth Amendment of the United
3 States Constitution and of Article 1, §12 of the California Constitution, and the California Penal
4 Code. This motion is made on the further ground that Ms. Becker is being held on charges of murder
5 with respect to the still birth of her own fetus, for which no such crime exists under California law.
6 This motion is based on the attached points and authorities, any testimony or evidence adduced at
7 the hearing on this motion, and all the previously submitted arguments and authority in support of
8 Ms. Becker's prior request for an order reducing bail, which defendant hereby incorporates by
9 reference as though it had been fully set forth herein.

10 Dated: April 1, 2020

Respectfully submitted,

11
12 /s/ _____
13 JACQUELINE GOODMAN
14 Attorney for Defendant
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On the heels of other directives of increasing specificity and urgency, on March 20, 2020,
4 California Supreme Court Chief Justice Tani Cantil-Sakauye issued a statement directing trial court
5 leaders to consider several measures that would reduce the threat of the COVID-19 illness to the
6 justice system, including lowering bail amounts — in some cases to zero — and considering the early
7 release for some inmates. They include, but are not limited to: identifying detainees with less than
8 60 days in custody to permit early release with or without supervision or community-based treatment,
9 lowering bail amounts significantly for the duration of the coronavirus emergency, taking into
10 consideration a defendant’s existing health conditions and conditions existing at the anticipated place
11 of confinement when setting conditions of custody, and reconsidering what violations of community
12 supervision like probation would warrant a quick return to jail, known as “flash incarceration,” to
13 “drastically reduce or eliminate its use during the current health crisis.” This case is brought before
14 this court for review because this defendant is one of those above for whom the Supreme Court has
15 called for a reconsideration.

16 Defendant, CHELSEA BECKER, submits the following points and authorities in support of
17 a request for a review and order for release on the defendant’s own recognizance (O.R.), or, in the
18 alternative, reduction of bail in light of the COVID-19 pandemic and consequent state of public
19 health emergency.

20 **STATEMENT OF FACTS**

21 Chelsea Becker is charged with one count of a violation of *Penal Code* §187 [Murder], a
22 felony. The accused has been incarcerated in the Kings County jail on \$5,000,000.00 bail. The state
23 of emergency and attempts to stem the spread of the worldwide pandemic of COVID-19 constitute
24 changed circumstances warranting this bail review, and pretrial release of the accused, as it is now
25 in the interest of public safety to do so.

26 ///

27 ///

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I.

**RELEASE ON REASONABLE BAIL IS A
CONSTITUTIONALLY-PROTECTED RIGHT**

The Supreme Court long ago declared in *Hudson v. Parker*, 156 U.S. 277, 15 S. Ct. 450, 39 L. Ed. 424 (1895) the "statutes of the United States have been framed upon the theory that a person accused of crime shall not, until he has been finally adjudged guilty in the court of last resort, be absolutely compelled to undergo imprisonment or punishment, but may be admitted to bail." (See also *Stack v. Boyle*, 342 U.S. 1, 72 S. Ct. 1, 96 L. Ed. 3 (1951) (pretrial release "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"))).

Article I, §12, of the California Constitution which establishes a person's right to obtain release on bail from pretrial custody, prohibits the imposition of "excessive bail." The "cruel and unusual punishment" clause of the Eighth Amendment to the United States Constitution has been specifically held applicable to the states through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962). The Supreme Court has assumed the excessive bail clause of the Eight Amendment is also applicable to the states through the Fourteenth Amendment. See *Schilb v. Kuebel*, 404 U.S. 357, 365, 92 S. Ct. 479, 30 L. Ed. 2d 502 (1971) (stating that "(b)ail is basic to our system of law and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment"). The offense with which the defendant is charged is not a crime for which bail is prohibited under the state Constitution. Accordingly, the defendant is statutorily entitled to a reasonable bail "as a matter of right" (*Pen. Code*, §1271).

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II.

**THE COURT SHOULD RELEASE THE ACCUSED
ON HER O.R. UNLESS THE COURT FINDS THE ACCUSED
IS ABLE BUT UNWILLING TO PAY THE BAIL, OR THAT
NO LESS RESTRICTIVE MEANS ARE AVAILABLE TO ENSURE REAPPEARANCE.**

If the Court is not permitted to deny bail, due process requires the Court to release the accused on her own recognizance, unless the Court “finds either that the defendant has the financial ability but failed to pay the amount of bail the Court finds reasonably necessary to ensure her appearance at future court proceedings; or that the defendant is unable to pay that amount and no less restrictive nonfinancial conditions of release would be sufficient to Protect the victim and the community.” (*In re Humphrey* (review granted May 24, 2018, S247278; superseded opinion at 19Cal.App.5th 1006)).

The accused remains in custody under these potentially life-threatening conditions, not out of an unwillingness to pay the bail as set, but out of a financial inability. Less restrictive means of ensuring appearance at future proceedings are available, including a wide range of conditions.

III.

**CHANGED CIRCUMSTANCES EXIST TO WARRANT REVIEW
AND WHICH STRONGLY FAVOR PRE-TRIAL O.R. RELEASE
OR A REDUCTION OF BAIL TO AN AMOUNT THE ACCUSED CAN AFFORD**

Although the accused’s bail is now set at the amount listed in the bail schedule of this county, maintained pursuant to *Penal Code* §1275(c), the trial court has discretion to reduce the bail under unusual circumstances. *Ibid.* Such circumstances exist in this case in light of Gov. Newsom’s declaration of a public health emergency in California, and President Trump’s declaration of a national emergency in the entire United States, as a result of the rampant, uncontrolled spread of the novel coronavirus, COVID-19.

We are in the throes of a deadly worldwide pandemic. Make no mistake, COVID 19 is here. It is likely already in our crowded and largely unsanitary detention facilities. It has a substantial incubation period and testing in the U.S. has been, for all practical purposes, nonexistent. Infected people who appear healthy today and who will still feel fine next week are spreading the virus

1 wherever they go right now.

2 Suffering around the world offers a glimpse of what awaits if drastic action is delayed (and
3 maybe even if it isn't). Epidemiologists worldwide are in unanimous agreement: the only way to
4 prevent a disaster of potentially biblical proportions is to begin extreme social distancing at the first
5 sign of outbreak.

6 On March 19, 2020, Gov. Newsom ordered all 40 million Californians to shelter in place,
7 with only few exceptions. Across California, health officials had confirmed 675 cases of COVID-19
8 and 16 deaths. In his request for the federal government immediately to deploy the Navy Mercy
9 Hospital Ship to the port of Los Angeles to address the coming overwhelming of southland hospitals,
10 the governor stated:

11 **“We project that roughly 56 percent of our population**
12 **–25.5 million people– will be infected with the virus**
13 **over an eight-week period.”**

14 **IV.**

15 **PROTECTION OF THE PUBLIC UNDER THESE CIRCUMSTANCES REQUIRE VISION**
16 **AND A NEW PERSPECTIVE ON WHAT PUBLIC SAFETY MEANS TODAY.**

17 The protection of the public and the safety of the victim are the primary considerations in
18 determining the proper amount of bail. Cal Const art I, §28(f)(3); *Penal Code* §1275(a).

19 Consideration of "danger to the community" should include the very real, potentially
20 catastrophic danger to the community that is posed by the spread of the virus among the incarcerated,
21 many of whom will soon be released.

22 In the case at bar, the defendant's offenses are bailable offenses.

23 With confirmed cases that indicate community spread, the time is now to take action to protect
24 vulnerable populations and the community at large.

25 When coronavirus suddenly exploded in China's prisons, there were reports of more than 500
26 cases spreading across five facilities in three provinces. In Iran, 54,000 inmates were temporarily
27 released back into the country amid virus fears.

28 ///

V.**DEFENDANT POSES NO SIGNIFICANT RISK OF FLIGHT**

Chelsea Becker has extensive ties to the community which render her a good "flight risk". In addition, the fact that the defendant has retained private counsel to defend her against the pending charges strongly suggests her intention to remain and face the charges against her at trial.

CONCLUSION

For all of the foregoing reasons and authority, the Court is hereby requested to release the accused O.R., or reduce bail; and/or that conditions of release be modified as needed in light of the state of emergency.

Dated: April 1, 2020

Respectfully submitted,

/s/

JACQUELINE GOODMAN

Attorney for Defendant

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PROOF OF SERVICE

COUNTY OF _____)
)
STATE OF CALIFORNIA)

I, _____, declare as follows:

I am a citizen of the United States and a resident of the County of _____;
I am over the age of eighteen years and am not a party to this action. My business address is
_____.

On _____, I served the within SUPPLEMENTAL NOTICE AND MOTION
FOR O.R. RELEASE OR REDUCTION OF BAIL IN LIGHT OF COVID-19 PANDEMIC AND
CONSEQUENT STATE OF PUBLIC HEALTH EMERGENCY on the parties below in said action
by personally delivering a true and correct copy to:

County of Kings District Attorney's Office
1400 West Lacey Blvd.
Hanford, CA 93230

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

Executed this (date) _____ at (city) _____, California.

Declarant

EXHIBIT 7

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

In re

CHELSEA BECKER,

On Habeas Corpus.

F081075

(Kings Super. Ct. No. 19CM-5304)

ORDER

BY THE COURT:*

The “Petition for Writ of Habeas Corpus,” filed on April 27, 2020, is denied without prejudice as premature.



Levy, A.P.J.

* Before Levy, A.P.J., Detjen, J. and Meehan, J.

EXHIBIT 8

1 SUPERIOR COURT OF CALIFORNIA
 2 COUNTY OF KINGS, KINGS COUNTY JUDICIAL DISTRICT
 3 HONORABLE ROBERT SHANE BURNS, Judge
 4 DEPARTMENT 6

5 THE PEOPLE OF THE STATE)
 6 OF CALIFORNIA,)
 7 Plaintiff,) No. 19CM-5304
 8 vs.)
 9 CHELSEA CHEYENNE BECKER,)
 10 Defendant.)
 -----)

11 Hanford, California

May 20, 2020

12
13
14
15 REPORTER'S TRANSCRIPT

16 of

17 BAIL REVIEW
 18
 19
 20
 21

22 **WARNING!! PURSUANT TO CALIFORNIA GOVERNMENT**
 23 **CODE SECTION 69954, NO PARTY OR PERSON SHALL PROVIDE**
 24 **OR SELL A COPY OR COPIES OF A COURT REPORTER'S**
 25 **TRANSCRIPT TO ANY OTHER PARTY OR PERSON.**

26
 27 REPORTED BY:
 28 CHERI FIKE, CSR #6200, RMR, CRR

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF:

3 KEITH FAGUNDES
4 District Attorney, Kings County
5 BY: MELISSA D'MORIAS, Deputy D.A.
6 1400 West Lacey Blvd.
7 Hanford, California 93230

8 FOR THE DEFENDANT:

9 JACQUELINE BELEN GOODMAN, Esq.
10 ROGER TAYLOR NUTTALL, Esq.
11 DANIEL ARSHACK, Esq.
12 Attorneys at Law

13 ---oOo---

14 BE IT REMEMBERED, that the above-entitled
15 matter came on regularly for hearing in the Superior
16 Court of California, County of Kings, Kings County
17 Judicial District, Department 6, before the HONORABLE
18 ROBERT SHANE BURNS, Judge, on May 20, 2020.

19 The People of the State of California were
20 represented by MELISSA D'MORIAS, Esq., Deputy District
21 Attorney for the County of Kings, State of California.

22 The Defendant, ELISHA MARIE SOCKEY, was
23 present in court via video conference, and was
24 represented by counsel, JACQUELINE BELEN GOODMAN,
25 Esq., ROGER TAYLOR NUTTALL, Esq., and DANIEL ARSHACK,
26 Esq. Attorneys at Law.

27 ---oOo---

1 WHEREUPON, the following proceedings were
2 had and testimony given, to wit:

3 ---oOo---

4 THE COURT: All right. The record will
5 reflect Miss Becker is appearing by video conference
6 at this point in time.

7 Good morning, Miss Becker.

8 THE DEFENDANT: Hi.

9 THE COURT: Miss Becker, I think we talked
10 to you about this before. You have a right to be
11 present in the courtroom during these proceedings, but
12 we would like to conduct them by video conference
13 because of the COVID-19 virus; is that all right with
14 you?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. So with that, we
17 have appearing for Miss Becker Miss Goodman and we
18 have Mr. Nuttall who's associated counsel.
19 Mr. Arshack is also appearing by video conference,
20 although he is not appearing for Miss Becker at this
21 time as he has not been granted pro hac vice status as
22 of yet. And we have Ms. D'Morias appearing for the
23 People at this time.

24 So, Counsel, we're on for a number of
25 things, why don't we take care of the pro hac vice
26 first, since that seems to me to be the most expedient
27 and that would give us some clarity as to Mr. Arshack.

28 This was originally on February 20th, I

1 believe it was, and the Court denied it because of a
2 number of what appeared to me to be procedural defects
3 in the application, nothing of real substance. I was
4 hoping those would be cleared up by the next time so
5 that we would allow Mr. Arshack to appear pro hac
6 vice. However, I noticed again the verified
7 application by Mr. Arshack requests permission from
8 this Court for him to appear before the California
9 Supreme Court. I am a lonely country Superior Court
10 and I do not have the ability to allow Mr. Arshack to
11 appear before the California Supreme Court, and, in
12 fact, under Rule 9.40, which governs the pro hac vice,
13 it simply states that the Supreme Court has the
14 ability without granting pro hac vice to allow people
15 to appear in front of them.

16 So while I appreciate the invitation to let
17 me order him to appear in front of the Supreme Court,
18 I'm going to decline that invitation at this time.
19 Again, his declaration says he has attached a proof of
20 payment to the State Bar of the fee required by
21 California Rule of Court 9.40 and the State Bar. I
22 don't doubt that except for it's not attached to
23 anything filed with the Court. It's not attached to
24 his verified declaration or application and it's not
25 attached to any of the documents for which proof of
26 services have been provided.

27 MR. ARSHACK: Judge, although I'm not
28 admitted, may I just --

1 THE COURT: You cannot interrupt me and you
2 can let me finish.

3 MR. ARSHACK: I'm sorry, I thought you were.

4 THE COURT: No.

5 MR. ARSHACK: I'm sorry.

6 THE COURT: While the proof of service at
7 this time now appears to be timely, it still suffers
8 from all the remaining defects that were pointed out
9 on February 20th when it was declined. Again, the
10 proof of service does not contain the business address
11 or residence address of the person mailing the proof
12 of service as required by California Rule of Court
13 9.40 which references California Code of Civil
14 Procedure Section 1013(a). Again, the proof of
15 service does not contain a statement that the posting
16 on the envelope or the postage on the envelope was
17 fully paid, and, again, it indicates the proof of
18 payment to the State Bar was mailed, but again, as
19 indicated earlier, nothing of that was filed with the
20 Court to show proof of payment.

21 These all seem to me to be minor issues, but
22 they are required by the statute, and it seems to me
23 that they can be easily corrected, but this is the
24 second time we're here and they have not been
25 corrected.

26 Ms. Goodman?

27 MS. GOODMAN: Your Honor, I will take it
28 upon myself to make sure that the filing is corrected

1 next time, if the Court is not inclined to the grant
2 the request for pro hac vice admission. And I
3 wonder --

4 THE COURT: I'm not inclined at this time.
5 I am inclined to grant it once those -- because I
6 don't think the State Bar cares and I don't care, but
7 I think I'm required to follow the statutes and the
8 law, and those all seem to me to be -- to be honest
9 with you, I'm not sure why they're in there, but they
10 are. But once they're complied with I would
11 anticipate granting Mr. Arshack pro hac vice status in
12 this case, but I do need those to be complied with, if
13 that makes sense.

14 MS. GOODMAN: Yes, thank you.

15 THE COURT: Mr. Arshack, did you want to --
16 you started to say something earlier, but I was trying
17 to still talk. It's a little hard with the face
18 covering because you can't see what somebody is doing,
19 so I apologize for that, but did you want to be heard
20 on something else, Mr. Arshack?

21 MR. ARSHACK: Only, Judge, that I'm
22 confident that what you are looking at is the original
23 pro hac vice motion that was filed with the errors
24 that you noted. On April 14th Mr. Nuttall's office
25 submitted a revised application with all of those
26 errors corrected. And I'm --

27 THE COURT: The revised application I have
28 is the exact same application as before, all that's

1 happened is the date was crossed out and the new date
2 written in. Otherwise, it's the exact same materials.

3 MR. ARSHACK: All right.

4 THE COURT: And my guess is, if I recall, on
5 February 20th I believe somebody stood in for Miss
6 Goodman, if I'm remembering correctly, and I have a
7 feeling that probably the message relayed was simply
8 that it was denied without prejudice because you
9 didn't give enough notice. Because the main problem
10 last time, what I thought was the significant problem,
11 was the statute requires 16 days notice plus -- or 16
12 court days notice plus 5 calendar days if it's mailed.
13 It was clearly mailed, but it was mailed ten days --
14 ten calendar days prior to the hearing so there was no
15 way that sufficient notice could have been given to
16 the State Bar if they wanted to respond. I didn't
17 expect that they would, but there wasn't sufficient
18 notice, so I have a feeling that was the message
19 relayed because this was clearly timely and they were
20 given plenty of time to respond. So I have a feeling
21 that was the message relayed as opposed to these other
22 defects within the pleading itself, if that makes
23 sense to you.

24 MR. ARSHACK: What you're saying makes
25 sense. What I'm aware of is that we actually got the
26 transcript of that date, we made a list of all of the
27 errors, we corrected all of the errors and -- and I
28 don't -- I don't know if you can tell from what you're

1 looking at, Judge, if that's what was mailed to the
2 Court for filing on April 14th or not. If it is, then
3 there is a mixup at our end. If it wasn't received by
4 the Court some days after April 14th, then there is a
5 corrected one in the courthouse somewhere.

6 THE COURT: Unfortunately we're at a third
7 the staff so the one I received looks like it was May
8 I think 8 -- let's see here, where did it go? The one
9 I have is April 17th and it appears to be the same one
10 as the one before just with some dates crossed out.

11 MR. ARSHACK: I completely believe you and
12 there must have been an error at our end. We'll get
13 the corrected one to you.

14 THE COURT: You know, I looked at it at 5:00
15 this morning so maybe I messed it up, but it looked to
16 me like it was the same one just with some dates
17 crossed out.

18 MR. ARSHACK: If it had all those errors
19 still in it, it's definitely not the right one. We
20 prepared a corrected one, and we'll get that to you
21 immediately.

22 THE COURT: What I'm saying is maybe I
23 looked at the wrong one.

24 MR. ARSHACK: Oh, well, I hope you did.

25 THE COURT: I don't know that I have time
26 this morning to take a look at it --

27 MR. ARSHACK: Your Honor, since I haven't
28 been admitted yet I wasn't -- I wasn't anticipating

1 arguing this morning.

2 THE COURT: Okay.

3 MR. ARSHACK: And so I'm sure that
4 Mr. Nuttall and Ms. Goodman can carry on without me.

5 THE COURT: Well, let me do this, so Ms.
6 D'Morias, I'm assuming you have no objection, I'm not
7 sure you really have standing to object, but I'm
8 assuming you have no objection.

9 So, Ms. Goodman, Mr. Nuttall, what I'd like
10 to do is let me double check to make sure I didn't
11 read the wrong one. It was literally 5:00 a.m. when I
12 was looking at it this morning trying to get ready
13 because I've had some administrative duties take up a
14 lot of my time unfortunately and that was when I had a
15 chance to look at this. So let me make sure I didn't
16 look at the wrong pleading because that is entirely
17 possible.

18 And if so, Ms. D'Morias, do you have any
19 objection if -- I'm pretty sure I have emails for Ms.
20 Goodman and Mr. Nuttall, if I can go ahead and if it
21 looks like all those things are corrected, I have no
22 objection to allowing Mr. Arshack to be pro hoc vice,
23 maybe I can just issue an out-of-court minute order
24 and email that to all the parties. Ms. D'Morias, do
25 you have any objection to that?

26 MS. D'MORIAS: No, your Honor. I'm
27 actually -- I'm looking for the application myself to
28 see --

1 THE COURT: Mr. Arshack may be correct. I
2 may have simply read the wrong document.

3 Ms. Goodman, do you have any objection to
4 proceeding that way?

5 MS. GOODMAN: No, your Honor.

6 THE COURT: Mr. Nuttall, do you have any
7 objection to proceeding that way?

8 MR. NUTTALL: No, no objection, Judge.

9 THE COURT: Okay. So then what I'll do is
10 when we're finished with this, I'll go back through
11 and make sure I didn't just reread the old one rather
12 than looking at the correct one, because I was going
13 through there rather quickly, and issue that order.
14 If not, on our next hearing date -- regardless today
15 we'll get an email out to you saying whether it's
16 granted or not granted. If you don't hear from us
17 today, then you'll know you need to make those
18 corrections, and then when we come back next time,
19 I'll already tell you, Mr. Arshack, you can be
20 prepared to argue on that date because it will be
21 granted. I just need the procedural aspects taken
22 care of to be able to do that. Does that make sense
23 to everyone?

24 MR. ARSHACK: Absolutely.

25 THE COURT: Okay. All right. With that
26 then, what do the parties want to move on to next?

27 MS. D'MORIAS: Your Honor, as to the issue
28 of the demurrer, I understand it was refiled by Ms.

1 Goodman's office, unfortunately, however, for some
2 reason I realized I didn't get that, so I need a brief
3 continuance to respond to the demurrer as it stands
4 right now.

5 THE COURT: Ms. Goodman?

6 MS. GOODMAN: Your Honor, when my office
7 didn't receive an opposition from the People --

8 THE COURT: I was a little surprised by that
9 too.

10 MS. GOODMAN: Right.

11 MS. D'MORIAS: It doesn't make sense I would
12 respond to the bail motion and not the demurrer.

13 THE COURT: It does not. I was like, hmm.

14 MS. GOODMAN: We checked on the opposition,
15 particularly because Ms. D'Morias had said that she
16 had planned on filing an opposition to it previously.
17 So by the time we were able to connect, Ms. D'Morias
18 and I, it was not enough time for her to file an
19 opposition.

20 We did locate the original proof of service,
21 Mr. Nuttall has an original copy, and they were all
22 filed at the same time, so why the People didn't
23 receive it, I don't know, but I don't disbelieve Ms.
24 D'Morias obviously, and so I assume that the Court is
25 going to give her time to prepare an opposition.

26 THE COURT: Well, unless you're prejudiced
27 by that. Right now my inclination -- I was surprised
28 I didn't see one. I see a proof of service, a valid

1 proof of service that meets all the statutory
2 requirements for the motions, so I was ready to
3 proceed. I was a little surprised I didn't see a
4 response from the People. Unless you feel you're
5 going to be prejudiced by a short continuance, my
6 inclination is to give her a short continuance to
7 respond. If you believe you've got some prejudice,
8 I'm interested in hearing what that would be, and if I
9 agree with you that a continuance would prejudice you
10 somehow, then we can go ahead and proceed today and
11 Ms. D'Morias will have to do the best that she can.

12 You know, the first sort of stumbling block
13 is that there's already a not guilty plea entered and
14 under California law it's too late for a demurrer, but
15 I do agree with your *Jenkins* citation that says the
16 Court does have the ability, it says with good cause,
17 to allow the withdrawal of the not guilty plea entered
18 so that the Court can hear a demurrer. I'm not sure
19 what the good cause is, but it would seem to me that
20 because of the change in attorneys, whether it's good
21 cause or not, it certainly would be fair to allow the
22 withdrawal so that new counsel who didn't enter the
23 not guilty plea has a chance to address the demurrer
24 issue, if that makes sense to everybody.

25 MS. GOODMAN: It does, and that is my
26 argument. We would be requesting leave to withdraw
27 the plea for the purpose of the Court determining the
28 demurrer, but if the Court -- and for the reason that

1 we were not the original attorney who entered the not
2 guilty plea, and so once we came on within a very
3 short time we had filed the demurrer. But if -- and
4 as well --

5 THE COURT: I think I struck it the first
6 time.

7 MS. GOODMAN: I'm sorry?

8 THE COURT: I think I struck it the first
9 time because it violated 526(g). There was like 90
10 pages and we have a local Rule of Court that says 10
11 days unless you get leave to amend. Even the current
12 ones are a few pages over, but I don't care about
13 that, they're not 90. I have 12, which is fine.

14 MS. GOODMAN: Yes, your Honor. We had
15 actually -- I didn't mean to interrupt you.

16 THE COURT: That's okay.

17 MS. GOODMAN: Yes, the attachments were
18 potentially authorities for the Court's reference if
19 it wanted it. I realize that's a lot of information,
20 and in the digital age we were hoping to give the
21 Court that courtesy, but I realize that we ran afoul
22 of your rules.

23 So, in any event, if the Court were inclined
24 to allow us to hear this as a demurrer, I think that
25 would be in the interests of justice and, you know,
26 favor judicial economy in the sense that we would be
27 allowed to potentially have a disposition on the
28 actual issues at the earliest stage.

1 The prejudice that the Court asked about I
2 wasn't expecting you to, your Honor, and I would be
3 remiss if I didn't mention that Miss Becker is in
4 custody, and so I could never say that there's no
5 prejudice by virtue of a delay when my client is in
6 custody, and that's made all the more serious by the
7 current state of the pandemic. However, I also
8 realize that counsel -- it's a serious case and I
9 think that the Court is probably going to want to
10 allow counsel to properly brief her opposition, and we
11 would be requesting then to reply -- to have an
12 opportunity to reply to her opposition. And so I'm
13 not lodging an opposition, but I can't quite say
14 there's no prejudice.

15 THE COURT: I guess what you're saying is
16 the prejudice is custody time, but that's not legal
17 prejudice, which is what I was inquiring about.

18 MS. GOODMAN: It's not prejudice to the
19 disposition of the merits of the demurrer, your Honor,
20 no.

21 THE COURT: And that's what I was referring
22 to, so...

23 All right. Ms. D'Morias, how much time do
24 you think it's going to take you to respond to the --
25 it's more than a demurrer, it's the demurrer and then
26 there's also a non-statutory motion to dismiss citing,
27 I think, a number of different constitutional grounds.
28 How long do you think it's going to take -- have you

1 had a chance to -- have you got a copy of it just yet?

2 MS. D'MORIAS: Yeah, I have a copy of it.
3 It was emailed to me by counsels. I've started
4 working on that as well. As I think about it, I had
5 told Ms. Goodman a week, but that doesn't really give
6 her much time to respond, so I can file my opposition,
7 or my reply, within a week.

8 THE COURT: How about if you have yours
9 filed in a week, and then -- who's going to respond,
10 Ms. Goodman, Mr. Nuttall, Mr. Arshack?

11 MS. GOODMAN: I will.

12 THE COURT: You will respond, Ms. Goodman.
13 How long do you think it's going to take you to
14 respond to that?

15 MS. GOODMAN: I would imagine not very long
16 at all. A couple of days.

17 THE COURT: So how about if we have Ms.
18 D'Morias has her opposition filed by the 27th, if you
19 have your response filed either by the 29th or the
20 1st, and then we can set it for a hearing later that
21 week, maybe the 4th.

22 MS. GOODMAN: That would be perfect, your
23 Honor. If we can have till the 1st for our response,
24 our reply brief, and another hearing on June 4th.

25 THE COURT: All right. Does that work for
26 you, Ms. D'Morias?

27 MS. D'MORIAS: It does, your Honor.

28 THE COURT: Will that work for you,

1 Mr. Nuttall?

2 MR. NUTTALL: Yes, your Honor.

3 THE COURT: Mr. Arshack, will that work for
4 you? I think we muted you, Mr. Arshack, I apologize.

5 MR. ARSHACK: Yes. That's perfect, thank
6 you very much.

7 THE COURT: Okay, so then we'll go ahead and
8 we'll set those motions on that schedule and we'll set
9 it for the 4th at 8:15 to be heard at that point in
10 time.

11 Now, counsel, I don't mind having multiple
12 attorneys. Mr. Nuttall has practiced in front of me
13 before, he's been here multiple times. What I do
14 want, though, is an assignment of attorneys for a
15 topic. I don't want three different arguments on the
16 same point from three different people. So I think
17 that's reasonable, so please kind of parcel out what
18 it is each person is going to tackle and then let me
19 just deal with that individual on that subject and
20 kind of move from there. Does that make sense to
21 everybody? Ms. Goodman?

22 MS. GOODMAN: Yes, your Honor.

23 THE COURT: Mr. Nuttall?

24 MR. NUTTALL: Yes, your Honor.

25 THE COURT: Mr. Arshack?

26 MR. ARSHACK: Works for me, Judge, thank
27 you.

28 THE COURT: Okay. All right. So I think

1 that leaves us with the request for bail is all that's
2 left, correct?

3 MS. D'MORIAS: That's my understanding.

4 THE COURT: And are we ready to proceed on
5 that, Ms. Goodman?

6 MS. GOODMAN: Yes, your Honor, and for the
7 argument I believe Mr. Nuttall will be appearing.

8 THE COURT: All right. Ms. D'Morias, are
9 you ready to proceed on that?

10 MS. D'MORIAS: Yes, your Honor.

11 THE COURT: All right. Mr. Nuttall, would
12 you like to be heard as to the bail review or request
13 to lower bail? I guess the first place I would like
14 to start out is I've already reduced bail once, and it
15 appears to me that your position is the pandemic is
16 the change of circumstance, and I guess if I could
17 focus you, my issue is this, I'm not sure how that's a
18 change of circumstance legally; and secondly, the
19 moving papers seem to refer to the number of -- to a
20 positive case in Orange County and Los Angeles County,
21 and as far as I'm aware, we haven't had a single case
22 in our jail in Kings County. That's one of the
23 reasons why we're doing the videoconferencing is so
24 that we don't expose the inmates when they're brought
25 over here and then create a scenario within our jail.

26 So in Kings County in terms of the State of
27 California is one of the ones that has probably one of
28 the fewest numbers of COVID-19 cases. Although we

1 have been on the rise the last three weeks, I would
2 note that, but we're still I think at 400 total for
3 the entire county.

4 Mr. Nuttall?

5 MR. NUTTALL: Yes, thank you, your Honor.

6 First of all, let me just say that we did
7 file a reply, which I'm assuming you've seen.

8 THE COURT: I have, I saw your original
9 motion, the People's opposition and your reply.
10 That's how I was -- that's what I was referencing. It
11 looks to me like your change of circumstance argument
12 is the COVID-19. That seems to be the main thrust of
13 the argument.

14 MR. NUTTALL: That is a significant change
15 of circumstance that we would -- we would ask the
16 Court to consider. May I, however, respond to certain
17 aspects of the People's opposition prior to addressing
18 that?

19 THE COURT: Sure, go ahead.

20 MR. NUTTALL: First of all, and I'm not
21 going to repeat all of that which is in the reply,
22 your Honor, response, to the Court, but the People
23 seem to believe that Marsy's Law is applicable to this
24 case. And in that particular regard I would like to
25 point out that neither Marsy's Law, nor any other
26 section of the California Constitution, defines a
27 victim to include fetuses. The California
28 Constitution simply does not define the term person to

1 include a fetus or an unborn person. In that regard,
2 and I'm not going to belabor this too much, but it's
3 important to point out that Penal Code Section 187
4 makes it clear the legislature's intention to include
5 fetuses, it uses the word fetus, not human being, not
6 person, not victim. Specifically murder, consistent
7 with the legislative intent, murder is the allegation
8 of the unlawful killing of a human being or a fetus.
9 As such, the applicability of Marsy's Law to this
10 issue is nil. And so I would ask the Court to
11 consider that in terms of the issue attendant to bail
12 and not apply the mandate of Marsy's Law to it. The
13 point of it is, is that Marsy's Law in and of itself
14 has significant emotional appeal, but provides no
15 legal authority for keeping Miss Becker in custody.
16 Again, the legislation just does not authorize that
17 consideration.

18 Going just a bit further to the -- to the
19 matters attendant to the prosecution's opposition,
20 under Section C on page 3 of the opposition 1275 is
21 quoted, and I'll just reference the fact that in terms
22 of Chelsea Becker's previous criminal record the fact
23 is that as noted in our reply she was not convicted in
24 juvenile court of a felony, nor was she convicted of a
25 strike offense. We pointed out that her conviction
26 was a misdemeanor for all purposes under the
27 circumstances exhibited on her rap sheet whereby her
28 juvenile misdemeanor sentence was to 12 months of

1 probation which was terminated with no violation 12
2 months after the commencement of the case, and that,
3 without belaboring it, is in our brief as set forth
4 where it addresses her having been -- her having been
5 declared to be a ward of the Court and whereby she was
6 granted probation.

7 I'm not going to belabor the fact again
8 that's set forth that she simply pursuant to *Humphrey*
9 is simply unable to even consider or address the
10 amount of jail that's been set.

11 And the final analysis with respect to the
12 COVID-19 pandemic protection, the bottom line as I see
13 it here is we do indeed -- we do indeed have a real
14 danger in our society, which according to the
15 literature is necessarily --

16 (Video screen went blank.)

17 THE COURT: What happened?

18 All right, sorry about that, Mr. Nuttall. I
19 apologize about that, I want to let you know I did not
20 turn you off. I think you simply crashed the system.

21 MR. NUTTALL: I think you just heard enough
22 from me.

23 THE COURT: So the last thing I heard,
24 Mr. Nuttall, was you were referring to the literature
25 is necessary and then Armageddon hit and we lost all
26 ability to communicate. So do you know where you were
27 at? Would you like some readback? What would you
28 like to do?

1 MR. NUTTALL: Perhaps it could be read back.
2 I just don't remember where I left off.

3 THE COURT: Sure, no, I get that.

4 Cheri, can you read back maybe his last
5 three sentences, please.

6 (Record read.)

7 THE COURT: That is where you went off.

8 MR. NUTTALL: Okay. I suppose the bottom
9 line here is that we know that -- we know that the
10 impact of not attending to matters of social
11 distancing, et cetera, have possible ramifications,
12 and the literature is and we're seeing it regularly on
13 line that in prisons and in jails the prospect of
14 contamination is increased. The bottom line being is
15 that one who is in custody has no real choice as to
16 how to -- how to determine and effectuate their own
17 personal social distancing. And the bottom line here
18 is that one's freedom, in this case Chelsea Becker's
19 freedom, outside of the jail simply would allow for
20 her to make her own personal determination so as to
21 actuate her own level of social distancing so as to
22 serve as a precaution against ever being afflicted
23 with the virus.

24 Now, I stated in the reply or pointed out
25 that Chelsea is asthmatic and thereby is potentially
26 more susceptible to the virus. I have to point out,
27 because this is the -- our awareness and I -- I
28 believe that I said something to this effect in the

1 reply, and I'm not suggesting for a moment that Ms.
2 D'Morias, who I know very well, would in any way
3 mislead the Court, but Miss Becker has informed us
4 that one woman in her pod is being isolated due to the
5 COVID-19 and she has been informed by another prisoner
6 in the jail that a guard had informed that prisoner
7 that 22 people were being quarantined for the same
8 reason within the Kings County Jail.

9 Now, here again, this is what we've been
10 told based upon what Miss Becker has been told. We,
11 of course, don't know -- I can't say that that is a
12 fact, but it certainly bears looking into in the
13 context of the prosecution's contention that we have
14 presented no argument indicating that the release of
15 Miss Becker would possibly isolate her from COVID-19.
16 Indeed, if that is the case in the Kings County Jail,
17 there does exist an argument whereby her potential
18 release would enable her to effectuate her own level
19 of social distancing so as to protect her life. And
20 I'll submit it on that, Judge.

21 THE COURT: Mr. Nuttall, I do have one
22 question for you. I don't see it in the bail review
23 report prepared for today's date, and I am recalling,
24 and I don't know if I'm remembering this because of
25 conversations we've had in the courtroom regarding
26 this case or if it was part of the declaration for the
27 affidavit for the warrant of arrest because I believe
28 I signed that warrant, but I am recalling that at the

1 beginning of the case Miss Becker fled the law
2 enforcement authorities as they were trying to contact
3 her. Am I remembering that incorrectly?

4 MR. NUTTALL: I'm not sure I understand the
5 question.

6 THE COURT: I believe she fled when the
7 authorities were originally trying to bring her in on
8 these charges, and that ultimately they had been
9 speaking to her and then she fled and then they had to
10 seek an arrest warrant and it took them a while to
11 track her down on the arrest warrant is what I recall,
12 and I want to make sure that I'm not remembering that
13 incorrectly.

14 MR. NUTTALL: No, she -- she had no failures
15 to appear.

16 THE COURT: I'm not talking about a failure
17 to appear. I'm talking about the initial arrest. So
18 as I -- and, again, what I'm remembering, and I want
19 to make sure I'm not remembering it incorrectly, is
20 that originally the investigation started because of
21 notification from the hospital that officers had spoke
22 to Miss Becker and she was willing to communicate with
23 them, and then once they were ready to proceed on the
24 case, when they tried to communicate with her that
25 communication stopped, and when they went to try to
26 find her she was not at her residence anymore and was
27 essentially moving from location to location until she
28 was tracked down, and it appeared to me that that

1 indicated flight from the authorities after their
2 initial contact with her regarding the death of the
3 fetus. Or the lack of viability of the fetus after
4 the birth.

5 So do you know enough about the underlying
6 facts to address that issue? I realize you're just
7 substituting in, that's why I'm asking.

8 MR. NUTTALL: I have no awareness of
9 anything factual that's related to that.

10 THE COURT: Okay, Ms. Goodman, I know I said
11 I only want to hear from one person on an issue. I'm
12 going to break my rule immediately because I'm going
13 to guess you have a better grasp on that factually
14 because you've had the case longer than Mr. Nuttall
15 has. Am I remembering this incorrectly or --

16 MS. GOODMAN: I believe -- well, I would --
17 this is the difficulty of appearing by video
18 conference because I'd like to confer with my client,
19 but my understanding --

20 THE COURT: Well, we have the ability for
21 you to do that.

22 MS. GOODMAN: And I'm sorry, but in any
23 event, to give the Court an answer --

24 THE COURT: Hold on one second. Hold on a
25 second. We do have the ability for you to communicate
26 with her confidentially. We can put you in what's
27 called a breakout room and you can talk to her, we
28 won't be able to see or hear it, and then when you're

1 done talking you can come back in and we can pick it
2 up from there; would you like to do that?

3 MS. GOODMAN: If I could briefly just to
4 confirm my understanding of the facts, yes.

5 THE COURT: Sure, sure. Why don't you go
6 ahead and move Ms. Goodman and Miss Becker into a
7 breakout room and then when you're done you'll have
8 the ability to come back in and we can pick it up from
9 there. In the meantime I'm going to stare at
10 Mr. Arshack and Mr. Nuttall and see if I get one of
11 them to blink.

12 Mr. Arshack, once your pro hac vice is
13 granted, do you ever anticipate coming to California
14 or are you going to appear by phone each time?

15 MR. ARSHACK: Assuming that we are able to
16 travel and --

17 THE COURT: No, that's a good point.

18 MR. ARSHACK: I'm happy to travel, I do that
19 a lot in my work and I look forward to appearing
20 directly before you, Judge.

21 THE COURT: The reason I bring it up is if
22 you end up coming out here a couple of warnings. We
23 have horrible air, and in the summertime, we're
24 already warming up, we will typically be over a
25 hundred degrees every day. Unlike New York it is a
26 dry heat, not humid, so that's not so bad, but it is
27 still just slightly north of hell in terms of the
28 temperature.

1 But, if you come out here, I'm going to
2 suggest you're going to want to go to Superior Dairy.
3 It is a local ice-cream place that's been around for a
4 hundred years and it's fantastic. I think Roger
5 Nuttall can vouch for that. I guarantee you he's been
6 there once or twice in his tenure.

7 MR. ARSHACK: Well, the entirety of the
8 notes that I've taken today are Superior Dairy.

9 THE COURT: I like that. You gleaned what
10 is important, I like that.

11 MR. NUTTALL: It's well-known, isn't it,
12 Judge?

13 THE COURT: Absolutely, absolutely.

14 MR. NUTTALL: I was taken there when I was a
15 little kid a long time ago.

16 THE COURT: There's people that take the
17 train to Hanford just to go there. They'll take the
18 train from Bakersfield and a little bit south and a
19 little farther north just to go to Superior Dairy. We
20 used to have a fantastic French restaurant, which was
21 kind of misleading because the name of the restaurant
22 was Imperial Dynasty so everybody thought it was
23 Chinese food, but it was French food and it literally
24 had a Michelin Star and people would travel all over
25 from the United States to have seven course meals
26 there. And the real star of that particular
27 restaurant was his wine cellar. He had just a
28 phenomenal wine collection.

1 But the tragedy of that is he has -- the
2 owner decided to retire and it was a traditional
3 Chinese family. His daughter is a chef that has
4 trained in San Francisco, and because she wasn't a boy
5 he didn't think it was appropriate for her to take
6 over the restaurant so he just closed it. And she's
7 owned her own couple restaurants and she's a fantastic
8 cook and a really nice lady. But it's a little sad
9 that that went that way. But those are our two
10 highlights culinary-wise, ice-cream and French food
11 that came out of a Chinese restaurant.

12 MR. ARSHACK: And, Judge, as long as we're
13 just killing a little time, when we spoke earlier
14 about my pro hac vice motion --

15 THE COURT: Yes, sir.

16 MR. ARSHACK: -- I noted that Ms. D'Morias
17 was looking at the papers that she had. I think I saw
18 her doing that with regard to the pro hac vice motion,
19 and if what she was looking at if she would look at
20 page four, line four, I think she will see that it
21 says Superior Court, not Supreme Court, and if it
22 doesn't, then the wrong item was sent.

23 THE COURT: Then if it does, then I probably
24 read the wrong one.

25 MS. D'MORIAS: The application that I am
26 looking at page four, line four, "Do hereby apply for
27 pro hoc vice admission to appear before the California
28 Superior Court on behalf of Chelsea Becker in the

1 above-entitled action." I don't believe --

2 THE COURT: It sounds like I must have --

3 MR. ARSHACK: That's what it should say.

4 THE COURT: Yeah.

5 MR. ARSHACK: And I'm thinking that the
6 review at 5:30 this morning didn't -- didn't pick up
7 that particular document.

8 THE COURT: Yeah, I'm guessing -- I
9 appreciate you pointing out I made an error in front
10 of everybody, thank you, Mr. Arshack, it's helpful.

11 MR. ARSHACK: Thank you both.

12 THE COURT: It looks to me like I probably
13 read the wrong document. So when we finish up here
14 today I'll take a look at that and I would anticipate
15 just issuing an out-of-court order granting the --

16 MR. ARSHACK: I appreciate that, thank you,
17 Judge.

18 THE COURT: You're welcome. It looks like
19 we have Miss Becker and Ms. Goodman back.

20 Ms. Goodman, can you address that issue for
21 me, please.

22 MS. GOODMAN: Yes, thank you, your Honor. I
23 was a little worried about making my way back from the
24 breakout room.

25 Miss Becker has no failures to appear to my
26 knowledge. I found none in the record either. What
27 happened with respect to the way this case got to be
28 and the way she found herself in custody was initially

1 Miss Becker didn't have her own phone and she was
2 homeless at the time of this event. She was staying
3 with various friends and stuff and her mother had
4 custody of one of her children. And so one day in
5 September Miss Becker -- I believe it was September
6 10th, Miss Becker borrowed a friend's phone, called
7 her mother and her mother advised Miss Becker that the
8 authorities were at the house, the police were there.
9 So Miss Becker actually went to the house to meet the
10 authorities and there she submitted to an interview,
11 obviously indicating a lack of flight risk.

12 There was no warrant, she didn't know about
13 any warrant and she was not contacted again, had no
14 information until one day a friend with whom she had
15 been staying noted that they had seen her case in the
16 media. I think on television there was some
17 information about that. That was actually the day
18 before she was arrested. So when that happened she
19 began to think that she might get a lawyer and had to
20 turn herself in. She had literally a number of hours
21 before -- before she was arrested, I believe that was
22 on November 6th.

23 So she indicates that she had no knowledge
24 of the police wanting to arrest her. There was no
25 warrant even obtained until I believe October 31st,
26 and there appears to be no effort, or at least no
27 effort that Miss Becker would have been aware of on
28 the part of the authorities to make contact with her

1 until that media story. But what I think is important
2 is that initially when she realized the authorities
3 were at her mother's house, she voluntarily went
4 there, spoke with them.

5 THE COURT: It's the period after that that
6 I'm concerned with. Because what I'm recalling from
7 the arrest warrant was that when they interviewed her,
8 that was contained in the arrest warrant which was
9 issued at the end of October, but as I recall it was
10 issued the end of October because subsequent efforts
11 to contact Miss Becker were fruitless and it appeared
12 that she was avoiding their contact.

13 MS. GOODMAN: It may have been that -- I
14 don't know exactly what efforts were made by the
15 authorities, what connection they made from that --
16 what information they gleaned from their initial
17 meeting with her, but I think it is significant that
18 she didn't leave the jurisdiction and she at least,
19 I'm informed and believe, remained living with the
20 friends that she had been living with before. It
21 wasn't as if she had a stable residence at the time
22 and then she fled and that would give indication that
23 she intended to avoid the prosecution or avoid
24 standing charges. Instead, she was already in that
25 position where she had been homeless, and so as a
26 transient at the time she went and had a meeting with
27 the police and then continued in the same lifestyle in
28 the same area in Hanford so -- in Kings County.

1 She never made any attempt to flee Kings
2 County, and when she heard about -- and there's no
3 information that she knew that the police were looking
4 for her later until the day before her arrest when she
5 was making arrangements to get to the police. She
6 didn't attempt to flee when the police came to her to
7 arrest her. Her arrest was effectuated peacefully and
8 without incident. And so I would -- I would disagree
9 with any characterization that she's a flight risk.
10 In fact, I think the evidence is quite the contrary,
11 your Honor.

12 THE COURT: All right, thank you, Ms.
13 Goodman.

14 Ms. D'Morias, did you want to be heard?

15 MS. D'MORIAS: Yes, your Honor. And
16 actually, I'm looking at the police reports regarding
17 the arrest of Miss Becker. They did have to go to
18 several places to look for her and she was actually
19 arrested in Visalia, she was outside Kings County
20 jurisdiction, so they spent a few days looking for
21 her. And at the time that she was arrested she was
22 found to be in possession of a bindle of
23 methamphetamine. So the People would say that the
24 issue of a flight risk, as well as continued
25 criminality, are of concern so we would ask the Court
26 to have the bail remain as set --

27 MS. GOODMAN: I'm sorry.

28 MS. D'MORIAS: -- and ask --

1 THE COURT: Let her finish, Ms. Goodman, and
2 then you can respond.

3 MS. D'MORIAS: As to the COVID-19 issues, I
4 would note there have been no reported instances of
5 COVID-19 within the jail. What tends to happen,
6 especially among small populations, I believe there's
7 rumor and gossip. But as far as the official status,
8 I note that the Sheriff has indicated there's been no
9 instances of COVID-19 in the jail. At this point it
10 seems to be safer to be in custody than it does to be
11 out of custody, so I don't believe that's sufficient
12 basis for the bail issue to change.

13 THE COURT: Okay.

14 MS. GOODMAN: I just wanted to make one
15 correction if I could, your Honor.

16 THE COURT: Sure.

17 MS. GOODMAN: I did misspeak, I'm sorry,
18 that I thought -- Visalia is where I actually stay
19 when I appear in front of your court, your Honor, and
20 I think it's about a 20-minute drive from where I
21 stay, so I misspoke if Visalia is not in Kings County.
22 She was in the area, though. And I don't know if
23 Mr. Nuttall was taking the reply argument.

24 THE COURT: Mr. Nuttall, did you have
25 anything else you wanted to add, sir? This is exactly
26 what I didn't want to do, but I created this
27 situation. Mr. Nuttall, do you have anything further
28 you wanted to add?

1 MR. NUTTALL: No, your Honor.

2 THE COURT: No? Okay. So I would point out
3 a couple of things: One, whatever Miss Becker may
4 have heard, the current procedure in the jail is that
5 everybody that comes into the facility is immediately
6 quarantined for 14 days so that they do not have
7 contact with the other inmates, that is what the
8 quarantine procedure is. The inmates are checked for
9 symptoms of illness, not just COVID-19, but just
10 illness in general is my understanding from the
11 Sheriff before any movements occur, and if anybody has
12 any sort of a symptom, then they remain in quarantine
13 and they're not allowed to enter the general
14 population.

15 And as of the last time I spoke to the
16 Sheriff, and we speak frequently, we were speaking
17 daily, but things are sort of settling out so not
18 quite so often anymore, there have been no positive
19 COVID-19 results within the jail facility in Kings
20 County, and the Sheriff has indicated to me if one
21 does occur, he would notify the Court, although not
22 tell me who the person was, which is perfectly fine.
23 But we have received no notification of any positive
24 tests within the jail and that is borne out in the
25 bail review report from Probation that when they
26 checked that was still the status.

27 I would note that in our County as of April
28 20th we had a total of 32 positive tests in the

1 county, but as of May 18th we had 412 positive tests
2 within the county, so that number was steeply rising
3 over the last month. However, more than 200 of those
4 cases all came out of a single location, the Central
5 Valley Meat Packing Company, which suggests that that
6 is really the unsafe place to be. The rest of the
7 county doesn't seem to have the same sort of rampant
8 COVID-19 spread that you've seen in other counties.

9 Almost all of our transmissions have been
10 from close contact, there were very few community
11 transmissions, so I tend to agree with Ms. D'Morias
12 that the safer place right now is the jail as opposed
13 to the community, but not a whole lot more because
14 we're not having a lot of community transmissions to
15 begin with, they're from close contacts with
16 individuals who have already had the virus. So it
17 really doesn't appear to me to be a change of
18 circumstance, but even assuming that it is, I'm not
19 persuaded by anything today to get me to change my
20 previous order reducing the bail from the countywide
21 bail schedule which it was originally set at to
22 substantially less than the countywide bail schedule.
23 So the request for bail reduction is denied at this
24 time.

25 With that, I think that takes care of
26 everything today and we have our briefing schedule for
27 the parties and our court date set for the next
28 hearing on the demurrer and the non-statutory grounds

1 for dismissal of the charges.

2 Is there anything else that I missed,
3 Ms. Goodman?

4 MS. GOODMAN: No, your Honor.

5 THE COURT: Mr. Nuttall?

6 MR. NUTTALL: Your Honor, just one thing,
7 and I apologize, I neglected to advise the Court and
8 counsel that an associate attorney in our office,
9 Alexandria DeLaFuente, is here and appearing with me
10 today, and I apologize for not advising everybody of
11 that and I apologize to her for not noting that.

12 THE COURT: Thank you, Mr. Nuttall, I
13 appreciate that.

14 Mr. Arshack, I know you're not before me
15 yet, but as a friend of the Court, is there anything
16 else we need to take up?

17 MR. ARSHACK: I did just have a question. I
18 have not only written down Superior Dairy, but I've
19 also written down the dates for the briefing on the
20 demurrer, but do we have a next hearing date on that
21 issue on the demurrer?

22 THE COURT: Yes, I thought I set that for
23 the 4th, if I remember correctly, June 4th.

24 MR. ARSHACK: Excellent, thank you very
25 much.

26 THE COURT: All right. That will be at
27 8:15.

28 MR. ARSHACK: That's it for me, thank you.

1 THE COURT: Ms. D'Morias, do you have
2 anything else?

3 MS. D'MORIAS: No, your Honor.

4 THE COURT: All right, so then we'll see
5 everybody back here on the 4th and we'll get our
6 briefings done ahead of time.

7 Miss Becker, do you have any questions for
8 me about what's taken place today?

9 THE DEFENDANT: Not at this time, your
10 Honor.

11 THE COURT: All right. Miss Becker, you
12 stay safe and healthy. We'll see you back here on the
13 4th.

14 Counsel, you all do the same and we'll see
15 you on June 4th.

16 THE DEFENDANT: Thank you.

17 MR. ARSHACK: Thank you, Judge.

18 THE COURT: You are welcome.

19 (Matter concluded.)

20 ---oOo---

---oOo---

I, CHERI FIKE, a Certified Shorthand
Reporter, DO HEREBY CERTIFY:

That the foregoing and annexed pages
constitute a full, true, and correct transcript of the
proceedings had and testimony given in the hearing of
the matter entitled as upon the first page hereof.

Dated: June 6, 2020

/s/ CHERI FIKE, CSR

Official Reporter Pro Tempore #6200

EXHIBIT 9

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Date: May 20, 2020
Dept: 6
Time: 8:45 a.m.

APR 02 2020

MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
DEPUTY

6
7 IN THE SUPERIOR COURT OF THE COUNTY OF KINGS
8 STATE OF CALIFORNIA, HANFORD COURTHOUSE

9 THE PEOPLE OF THE STATE OF
10 CALIFORNIA,

11 *Plaintiffs,*

12 vs.

13 CHELSEA BECKER,

14 *Defendant.*

Case No. 19CM-5304

NOTICE OF DEMURRER AND
DEMURRER TO COMPLAINT;
NONSTATUTORY MOTION TO
DISMISS; MEMORANDUM OF POINTS
AND AUTHORITIES.

15 TO: THE DISTRICT ATTORNEY OF KINGS COUNTY AND/OR HIS
16 REPRESENTATIVE(S):

17 PLEASE TAKE NOTICE that on May 20, 2020, at 8:45 a.m. or as soon thereafter as
18 counsel may be heard in Department 6 of the above-entitled court, defendant Chelsea Becker will
19 move to withdraw her previously entered not guilty plea for the purpose of demurring to the
20 complaint. If the Court determines that the insurmountable legal defects in the prosecution's case
21 are not a proper basis for demurrer, Ms. Becker will, in the alternative, make a nonstatutory motion
to dismiss the complaint.

2 The demurrer (or, in the alternative, the nonstatutory motion to dismiss) will be based on
3 this notice and memorandum of points and authorities, all papers and records on file in this action,
4 and such oral and documentary evidence and argument as may be presented at the hearing.

5 Dated: April 1, 2020

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES**Statement of the Case**

The Kings County District Attorney is prosecuting Chelsea Becker for murder on the theory that her stillbirth resulted from her use of a controlled substance during her pregnancy. A complaint charging one count of murder under Penal Code § 187 was filed on October 31, 2019. Ms. Becker entered a plea of not guilty at her first court appearance, on November 6, 2019. A preliminary hearing is currently calendared for March 30, 2020.

Introduction and Summary of Argument

Penal Code section 187 does not permit a murder prosecution against a woman based on the loss of her pregnancy. A mother experiencing a stillbirth - even after allegedly using a controlled substance - is not criminal under any California statute, and is certainly not murder under § 187. Indeed, as will be discussed, every misguided effort to judicially expand California criminal statutes to permit prosecution of women for the outcome of their pregnancies has been rebuffed by California's appellate courts. § 187 permits a murder prosecution where the victim is a fetus, but also clearly states that it cannot be used to prosecute the "mother of the fetus." (§ 187, subd. (b)(3).) The demurrer should be sustained because the complaint is defective on its face.¹

The prosecution's interpretation of § 187 is contrary to its clear language and the Legislature's intent. Finally, extending § 187 to these facts would require this Court to exceed its authority by judicially rewriting the statute. Courts do not have the power to create new criminal laws; by reading § 187 so as to render Ms. Becker's alleged conduct murder, this Court would be doing just that. Further, such expansion of the law violates state and federal constitutional rights.

Consistent with the recommendations of every leading medical organization, including the American Academy of Pediatrics and the American Medical Association, the Legislature has specifically chosen not to address the health issue of pregnancy and drug use through criminal laws.²

¹ All further undesignated section references are to the Penal Code.

² See American Academy of Pediatrics, Committee on Substance Use and Prevention, Policy Statement, A Public Health Response to Opioid Use in Pregnancy (2017) ["The American Academy of Pediatrics (AAP) first published recommendations on substance-exposed infants in 1990 . . . and reaffirms [in 2017] its position that punitive measures taken toward pregnant women are not in the best interest of the health of the mother-infant dyad."]; American College of Obstetricians and Gynecologists, Position Statement, *Decriminalization of Self-Induced Abortion* (2017) [ACOG "opposes the prosecution of a pregnant woman for conduct alleged to have harmed her fetus"]; American Medical Association, Policy Statement - H-420.962, *Perinatal Addiction - Issues in Care and Prevention* (last modified 2016) ["Transplacental drug transfer should not be subject to criminal sanctions or civil liability"]; Report of American Medical Association Board of Trustees, *Legal Interventions During Pregnancy*, 264 JAMA 2663, 2667 (1990); Health & Safety

This Court should decline the prosecution's invitation to usurp the legislative function and judicially expand § 187 in a way the Legislature has *expressly* rejected.

Moreover, such an expansion would have been unforeseeable to Ms. Becker.

Argument

I. Demurrer Lies to Attack the Defective Complaint.

Demurrer is permitted at any "time as may be allowed to the defendant for that purpose." (§ 1003.) Demurrer lies if the accusatory pleading states facts that "do not constitute a public offense," and/or "contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to prosecution." (§ 1004.) The constitutionality of a statute may be attacked by demurrer. (*People v. Heitzman* (1994) 9 Cal.4th 189, 196; *People v. Lockhead Shipbuilding* (1973) 35 Cal.App.3d 776, 779.)

Here, the complaint alleges "Murder of a Human Fetus in violation of PC 187(a), a Felony," based on the factual allegation that Ms. Becker, unlawfully and with malice aforethought, "murder[ed] a human fetus." (Complaint, p. 1.) However, the complaint fails to make legal or factual allegations relevant to § 187, subdivision (b), which states in pertinent part, "This section shall not apply to any person who commits an act that results in the death of a fetus if. . . The act was solicited, aided, abetted, or consented to by the mother of the fetus." There is no dispute that Ms. Becker is a charged with murdering her own fetus. The prosecution has not – and cannot – make either legal or factual contentions that overcome § 187, subdivision (b)(3), rendering the complaint facially deficient.

A court may allow a defendant to withdraw a not guilty plea for the purposes of interposing a demurrer and must exercise its discretion in ruling on such a request. (*People v. Superior Court (Jennings)* (1986) 183 Cal.App.3d 636, 641.) Here, leave should be granted because consideration of the demurrer will permit resolution of a dispositive and strictly legal question at the earliest possible stage of proceedings, potentially sparing Ms. Becker from unwarranted continued pretrial detention and risks from Corona virus and potentially avoiding the waste of judicial resources.

II. In the Alternative, this Court May Grant A Nonstatutory Motion to Dismiss.

If this Court, for any reason, determines that it cannot address the uncorrectable legal

Code § 11757.51 [the Legislature finds and declares that "the appropriate response to" drug affected mothers and infants is "prevention, through expanded resources for recovery from alcohol and other drug dependency. The only sure effective means of protecting the health of these infants is to provide the services needed by mothers to address a problem that is addictive, not chosen."]

infirmity of this prosecution by sustaining Ms. Becker’s demurrer, it may, in the alternative, grant a nonstatutory motion to dismiss. “Use of the nonstatutory or pretrial motion to dismiss has been sanctioned by our Supreme Court . . . A pretrial nonstatutory motion to dismiss is now accepted as an appropriate vehicle to raise a variety of defects.” (*Stanton v. Superior Court* (1987) 193 Cal.App.3d 265, 271, citing *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 294, fn. 4.)

Where, as here, constitutional rights are implicated, the propriety of such a motion is even more compelling. “[...] we have no doubt in light of the constitutional nature of the issue as to the trial court’s authority to entertain such a claim.” (*People v. Duncan* (2000) 78 Cal.App.4th 765, 772, quoting *Murgia, supra*, 15 Cal.3d at p. 294, fn. 4.)³ “A nonstatutory pretrial motion to dismiss the indictment or information has been recognized as a proper method to raise various defects in the institution or prosecution of a case.” (5 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Trial, § 404, p. 573.) It has been held that a nonstatutory motion to dismiss can serve the same function as a demurrer. (See *McKay v. County of Riverside* (1959) 175 Cal.App.2d 247, 248-249; *Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 299.)

III. § 187 Does Not Permit A Murder Prosecution Based On The Tragic Outcome of Ms. Becker’s Pregnancy.

A. The plain language of § 187 excludes the conduct of pregnant women.

§ 187 defines murder as “the unlawful killing of a human being, or a fetus, with malice aforethought.” However, the statute also explicitly states that it does not apply to “any person who commits an act that results in the death of a fetus if ... (3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.” (§ 187, subd. (b).) Even if Ms. Becker’s alleged drug use in some way contributed to her experiencing a stillbirth (a theory unsupported by medical science and research⁴), this prosecution is barred by the plain language of § 187. Because the complaint does not (and could not) make the contentions necessary when the alleged murder victim is a fetus, the demurrer should be sustained.

B. The Legislature did not intend for § 187 to permit murder prosecution when a woman loses her pregnancy.

Even if this Court somehow finds the statute’s plain language ambiguous, it may “look to legislative history in aid of ascertaining legislative intent...” (*Ibid.*) Such review of § 187’s legislative history confirms the Legislature did not intend to permit what the prosecution is

³ In addition, Kings County Local Rule 526 contemplates pre-trial “motions of a constitutional dimension” without any particular statutory basis. (Local Rule 526, ¶ A.)

⁴ See Letter of Mishka Terplan M.D., M.Ph., and Tricia Wright, M.D., M.S. attached as Appendix A to Defendant’s Motion to Reduce Bail filed in this case on January 29, 2020

attempting here.

In 1970, § 187 was amended in response to the California Supreme Court's decision in *Keeler v. Superior Court* (1970) 2 Cal. 3d 61. In *Keeler*, a man attacked a pregnant woman, causing the woman to experience a stillbirth. The Supreme Court held that the state's homicide law did not reach fetuses and could therefore not be used to prosecute the man. In response, the Legislature amended § 187 to permit murder prosecution for the killing of a fetus. (*People v. Davis* (1994) 7 Cal.4th 797, 829.) But, critically, the Legislature also clarified that a pregnant woman could not *herself* be charged with murdering her fetus after having an abortion, or based on *any* of her own acts or omissions while pregnant. (§ 187, subd. (b).)

Lest there be any doubt about the Legislature's intent, the primary author of the amendment, State Assemblyman W. Craig Biddle, executed an affidavit in 1990 <https://tinyurl.com/uo6j8mh> for use in *People v. Jaurequi*, San Benito County No. 23611, Transcript of Record (Aug. 21, 1992) <https://tinyurl.com/rsnyrvl> which "explained to the legislature: [that the amendment was intended] to make punishable as murder *a third party's* willful assault on a pregnant woman resulting in the death of her fetus. That was the *sole intent* of AB 816. *No Legislator ever suggested that this legislation, as it was finally adopted, could be used to make punishable as murder conduct by a pregnant woman that resulted in the death of her fetus.*" (Biddle Affidavit ¶ 4, emphasis added).

Accordingly, efforts to misuse § 187 (and other statutes⁵) to criminalize conduct just because the actor is a pregnant woman have consistently been rejected. California courts have consistently rejected the theory of criminal liability put forth by the prosecution here. See *People v. Jones*, No. 93-5, Transcript of Record (Siskiyou County, July 28, 1993) <https://tinyurl.com/wc4xb3x> [murder statute could not be used against defendant after her newborn's death for alleged methamphetamine use while pregnant]; *People v. Jaurequi*, op cit. [dismissing fetal homicide charges against a woman who experienced a stillbirth alleged to have resulted from drug use; statute could not be used to prosecute pregnant woman for the loss of her own pregnancy]; *People v. Moten* (1991) 229 Cal.App.3d 1318, 1325-1326 [murder conviction reversed; evidence of defendant's drug use while pregnant was inadmissible]; *People v. Tucker*, Santa Barbara County No. 147092 (June 1973) [pregnant woman who shot herself in the abdomen and lost the pregnancy was charged with murder;

⁵ See *Reyes v. Superior Court* (1977) 75 Cal.App.3d 214, 218-219, [defendant could not be prosecuted under § 273a for prenatally exposing twins to heroin; the word "child" in the statute was not intended to include fetuses since there is an obvious difference between a child and a fetus, and such an interpretation would violate due process principle of construing ambiguous statutes favorably to the accused].

§ 187 could not be used to prosecute the woman for her own actions].)⁶

This court should, like *every* other court that has confronted this issue, recognize and give effect to the Legislature's determination that women are not subject to murder charges based on the outcomes of their pregnancy.

C. Allowing the charges to proceed would result in absurd and unjust consequences contrary to § 187 and the Legislature's clear intent.

Permitting this prosecution would also result in absurd and unjust consequences. "Absurd or unjust results will never be ascribed to the Legislature and . . . [t]he courts will be astute to avoid such results." (*Benson v. Kwikset Corp.* (2007) 152 Cal. App. 4th 1254, 1285, quoting *People v. Ventura Refining* (1928) 204 Cal. 286, 292.)

Leading medical organizations as well as peer reviewed research studies confirm that judicial expansion of the criminal law such as what is proposed here would lead to the absurd consequence of endangering rather than protecting maternal, fetal, and child health.⁷ Efforts to prosecute women in situations such as this one have repeatedly been shown to deter pregnant women from seeking prenatal care and treatment because of a fear of criminal prosecution.⁸ The prosecution's purported effort to protect fetal health would actually, and absurdly, increase risks to fetal health.

IV. The Proposed Judicial Expansion of § 187 Would Be Unconstitutional.

If this Court were to become the first court to conclude that the Legislature *did*

⁶ See also Becca Wilson, *Cal Abortion Brings Prolonged Ordeal*, SANTA BARBARA NEWS & REV., May 3, 1974.

⁷ See also Faherty, L.J., et al., *Association of Punitive and Reporting State Policies Related to Substance Use in Pregnancy with Rates of Neonatal Abstinence Syndrome*, 2 JAMA NETW. OPEN, e 1914078 (2019)

⁸ Major health authorities oppose such prosecutions, emphasizing instead the importance of confidentiality, access to prenatal health, and non-coercive access to appropriate drug treatment when needed. See e.g., Am. Acad. of Pediatrics, Comm. on Substance Abuse, *Drug Exposed Infants*, 86 Pediatrics 639, 641 (1990); Am. Med. Ass'n, *Policy H-420.970: Treatment Versus Criminalization: Physician Role in Drug Addiction During Pregnancy* (1990); *reaff'd* 2010 [resolving "that the AMA oppose[s] legislation which criminalizes maternal drug addiction."]; Am. Coll. of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Committee Opinion 473: Substance Abuse Reporting and Pregnancy: The Role of the Obstetrician-Gynecologist*, 117 Obstetrics & Gynecology 200 (2011). This position was reiterated by the American Academy of Pediatrics statement in 2015 where it emphasized that non-punitive, family-centered treatment is the most effective approach to substance use disorders in pregnancy. Press Release, Am. Acad. Pediatrics, *Leading Medical, Children's and Women's Health Groups Support Legislation to Help Reduce Number of Newborns Exposed to Opioids* (Mar. 20, 2015). And see, *Ferguson v. City of Charleston* (2001) 532 U.S. 67, 84 n. 23 [121 S. Ct. 1281] [noting that amici reported "a near consensus in the medical community" that state programs to identify crimes by pregnant patients "harm, rather than advance, the cause of prenatal health by discouraging women who use drugs from seeking prenatal care."].

intend § 187 to treat women who experience pregnancy loss as murderers, then this Court would have to confront the constitutionality of the law as so construed. It is hornbook law that unconstitutional statutes may not be given effect. Furthermore, to the extent § 187 could be deemed ambiguous, courts construe legislation in harmony with the Constitution if possible. (*Shealer v. City of Lody* (1944) 23 Cal.2d 647, 653 [if “a statute is susceptible of two constructions, one of which will render it constitutional and the other unconstitutional in whole or in part, or raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it valid in its entirety...”].) Permitting this prosecution would violate the ex post facto, due process, privacy, and equal protection provisions of the state and federal constitutions.

A. Judicially expanding § 187 to reach Ms. Becker would constitute *ex post facto* punishment, violate the right to due process, and render the statute impermissibly vague.

No California statute declares and gives notice that a pregnant woman’s actions, inactions or circumstances prior to giving birth can constitute murder of her own fetus. To the contrary, § 187 plainly states that the “mother of the fetus” *cannot* be prosecuted for murder based on her own acts. (§ 187, subd. (b).) A novel reading of § 187 that allows pregnant women to be prosecuted for murder after their own pregnancy loss would violate the state and federal constitutional prohibitions against ex post facto laws. (Cal. Const., art 1, § 9; *People v. White* (2017) 2 Cal.5th 349, 385 [“an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates in the same manner as an *ex post facto* law.”]; *Bouie v. City of Columbia* (1964) 378 U.S. 347, 353.)

In addition, this interpretation would violate the notice requirement of due process, making the statute unconstitutionally vague. A statute violates due process if it “fail[s] to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits.” (*City of Chicago v. Morales* (1999) 527 U.S. 41, 56.) “The basic premise of the void-for-vagueness doctrine is that no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. Thus, a criminal statute must be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt.” (*In re Andre Purdue* (2013) 221 Cal.App.4th 1070, 1077, internal citations and punctuation omitted; see also *City of Chicago v. Morales* (1999) 527 U.S. 41, 58 [“the fair notice requirement's purpose is to enable the ordinary citizen to conform his or her conduct to the law”]; *People v. Jordan* (1971) 19 Cal. App.3d 362, 369 [“[W]here the accusatory pleading is attacked by a demurrer for failure to comply with constitutional requirements of notice and a consideration of the pleading and

transcript leads to a conclusion uncertainty puts the accused to a material disadvantage, the court acts within its discretion by sustaining the demurrer...”].)

Other state courts have held that prosecutions of pregnant women under similar statutes violate the right to due process.⁹ If this Court were to adopt such an expansive interpretation of § 187, it would also render the statute impermissibly vague. (*See Connally v. General Constr. Co.* (1926) 269 U.S. 385, 391 [“a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.”]) In *Commonwealth v. Welch*, 864 S.W.2d 280, 283 (Ky. 1993),¹⁰ the Supreme Court of Kentucky reviewed the decisions of several states and found:

All of these cases address statutes similar in effect to the present one, and all conclude that, properly construed, the statutes involved do not intend to punish as criminal conduct . . . [actions of] an expectant mother . . . All of these cases point out in one way or another that to construe the statute involved otherwise makes it impermissibly vague[...].

Welch further explained:

If the statutes at issue are applied to women’s conduct during pregnancy, they could have an unlimited scope and create an indefinite number of new ‘crimes.’ ... In short, the District Attorney’s interpretation of the statutes, if validated, might lead to a ‘slippery slope’ whereby the law could be construed as covering the full range of a pregnant woman’s behavior—a plainly unconstitutional result that would, among other things, render the statutes void for vagueness.

(*Id.* at p. 282, internal citations omitted.)

Judicially rewriting § 187 to make it applicable to the circumstances of this case would run afoul of the state and federal constitutional guarantees of notice and due process, would render the statute void for vagueness, and would constitute unconstitutional ex post facto punishment.

B. Judicially expanding § 187 to reach Ms. Becker would violate her right to privacy and the prohibition against cruel and unusual punishment.

The fundamental right to privacy is protected by the 14th Amendment of the U.S. Constitution, protecting the right to be “free from unwarranted governmental intrusion into matters so

⁹ See e.g. *Reinesto v. Super. Ct.*, 894 P.2d 733, 736 (Ariz. Ct. App. 1995) (criminal charges against woman who ingested heroin while pregnant violated due process right); *State v. Luster*, 419 S.E.2d 32, 33 (Ga. Ct. App. 1992) (“no [person] shall be held criminally responsible for conduct which he [or she] could not reasonably understand to be proscribed.”)(internal citations omitted)

¹⁰ The Supreme Court of Kentucky held the offense of criminal child abuse did not extend to defendant’s pregnancy and use of drugs.

1 fundamentally affecting a person as the decision whether to bear or beget a child.” (*Cleveland Bd.*
2 *of Edu. v. LaFleur* (1974) 414 U.S. 632, 639.) This right also protects women from measures that
3 penalize the decision to carry a pregnancy to term. (*Planned Parenthood v. Casey* (1992) 505 U.S.
4 833, 859.) Ms. Becker *could* have legally aborted her pregnancy (§ 187, subd. (b)); expanding § 187
5 to subject her to a murder prosecution because she opted not to and then experienced a stillbirth
6 clearly constitutes a severe criminal penalty arising from the decision to continue her pregnancy to
7 term. Obviously, penalizing an attempt to continue a pregnancy to term would not withstand
8 constitutional review.

9 There are no compelling or even rational state interests in prosecuting women for crimes
10 because they continued a pregnancy and allegedly did or did not do something that might have caused
11 a stillbirth or might theoretically have prevented one. (*See Washington v. Glucksberg* (1997) 521
12 U.S. 702, 721 [the “Fourteenth Amendment forbids the government to infringe [...] fundamental
13 liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored
14 to serve a compelling state interest...”].)

15 The prosecution contends that Ms. Becker was addicted to methamphetamine. In *Robinson*
16 *v. California* (1962) 370 U.S. 660 the U.S. Supreme Court held that a California law which made the
17 status of narcotic addiction a criminal offense inflicted cruel and unusual punishment in violation of
18 both the 8th and 14th Amendments. Ms. Becker’s alleged status as an addict cannot be the basis for a
19 criminal prosecution.

20 The State’s prosecution of Ms. Becker unconstitutionally infringes upon her fundamental
21 liberty interest and right to privacy, is not narrowly tailored to serve any compelling state interest,
22 and constitutes cruel and unusual punishment.

23 **C. The expansion of § 187 would violate Equal Protection by creating a**
24 **crime that can only apply to women.**

25 While men and women can both be prosecuted for murder under § 187, only women can
26 (according to the prosecution’s theory in this case) be prosecuted for the outcome of their own
27 pregnancies. Furthermore, California does not criminalize the private *past* use of controlled
28 substances. (*See People v. Jones* (1987) 189 Cal.App.3d 398, 405 [Health and Safety Code § 11550
only criminalizes current ongoing drug use].) Expanding § 187 to permit murder prosecutions
against women who are pregnant and used a controlled substance in the past would create a new
crime that could never apply to men. A reading of § 187 that permits such prosecution would
obviously impose a greater burden on women than men. It would fail to achieve any legitimate state
interest because, as discussed above, such a law would undermine public health and increase risks to

maternal, fetal and child health. Therefore, the State's proposed interpretation of § 187 unconstitutionally discriminates based on gender and violates the federally and state protected right to equal protection of the laws. (U.S. Const., 14th Amend.; Cal. Const., art. 1, §7.)

Conclusion

For the foregoing reasons, Ms. Becker asks this Court to sustain her demurrer to the complaint, or, in the alternative, to grant her nonstatutory motion to dismiss the complaint, and discharge her from further prosecution.

Dated: April 23, 2020

Respectfully submitted,

JACQUELINE GOODMAN
Attorney for Defendant

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I, _____, declare as follows:

On _____, I served the within NOTICE OF MOTION TO DEMUR and MEMORANDUM
OF POINTS AND AUTHORITIES on the parties below in said action by personal delivery to:

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

Executed this (date) _____, at (city) _____, California.

PROOF OF SERVICE

EXHIBIT 10

CONFORMED COPY
ORIGINAL FILED ON

MAY 26 2020

MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
DEPUTY

RECEIVED

MAY 26 2020

District Attorney

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF KINGS
11 CENTRAL DIVISION
12

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 vs.

17 CHELSEA CHEYENNE BECKER

18 AKA CHELSEA BECKER

19 Defendant

Case No.: 19CM-5304

POINTS AND AUTHORITIES IN SUPPORT OF
OPPOSITION TO DEMURRER AND MOTION
TO DISMISS

20 TO: THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT, AND TO THE
21 DEFENDANT AND HER ATTORNEY OF RECORD HEREIN:

22 The People of the State of California, by and through their attorney, the District Attorney for the
23 County of Kings (hereinafter referred to as "Plaintiff"), hereby oppose Chelsea Becker's Notice of
24 Demurrer and Demurrer to Complaint; Nonstatutory Motion to Dismiss (hereinafter, "Motion") in the
25 above-captioned case. This opposition to Demurrer and Motion to Dismiss is based on the attached
26 Points and Authorities contained herein (hereinafter referred to as "Opposition"), as well as documents,
27 pleadings, and papers filed in this case and such other written and oral evidence as will be presented in
28 court.

///

I.
STATEMENT OF FACTS

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

The Coroner's report attached hereto as Exhibit 1, revealed Zachariah Joseph Campos' cause of death was "Acute Methamphetamine Toxicity." It also revealed a level of .02 grams % blood ethyl alcohol. Dr. Zhang, who performed the autopsy, noted that Zachariah weighed 5.12 pounds, was 19" long and "[w]as a 36 week [full term] gestational fetus who died in his mother's womb on 09/19/2019." Blood work conducted on the Defendant "showed positive for methamphetamine." (Exhibit 1 at p. 1.) Dr. Zhang told Hanford Police that Zachariah's methamphetamine levels were very high and toxic. He further stated that toxic ranges are measured for an adult; and while he did not believe any published studies measured blood methamphetamine ranges for a fetus, toxicity levels for a fetus would be much lower than for an adult.

Defendant's mother told Hanford Police that Defendant admitted to using methamphetamine during this pregnancy as she had during her three previous pregnancies. She also heard from a friend that her daughter used heroin weeks before the stillborn birth. Defendant's mother further disclosed that two of Defendant's other children tested positive for methamphetamine at birth and were adopted out of Defendant's care as newborns. Defendant herself admitted to Hanford Police Detective, Jared Cotta, that she did use methamphetamine while pregnant this time, but claimed she had stopped because of the pregnancy. Defendant gave conflicting stories to Detective Cotta about when she supposedly stopped using methamphetamine. There is no evidence that Defendant took any actions whatsoever to abort the fetus.

1 Defendant's mother told the Hanford Police Officer, "I didn't even see a tear fall from her eye,
2 not one." Defendant's mother also talked about two of Defendant's children testing positive for
3 methamphetamine at birth and that they were adopted out of Defendant's custody as newborns.

4 II.

5 ARGUMENT

6 **A. Defendant provides no authority that proscribes charging a female with murder**
7 **based on her acts or omissions while pregnant.**

8 Defendant conveniently omits the plain meaning of the language of Penal Code section 187(b)(3)
9 and provides no legal authority from the California Supreme Court or the Fifth District Court of Appeal
10 that proscribes Plaintiff from filing murder charges against a female who used toxic amounts of
11 methamphetamine causing the still birth of her full-term child who had toxic amounts of
12 methamphetamine in his system. Penal Code section 187 reads as follows:

13 (a) Murder is the unlawful killing of a human being, or a fetus,
14 with malice aforethought.

15 (b) This section shall not apply to any person who commits an act
16 that results in the death of a fetus if any of the following apply:

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

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

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

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

1 Cal. Penal Code § 187.

2 Defendant argues, “There is not one appellate case in California affirming the charge of Penal
3 Code section 187(a) against a woman based on her pregnancy outcome.” (Motion at p. 24.) Notably,
4 Defendant has not provided any authority that Penal Code section 187(b)(3) does not apply. Defendant
5 conveniently omits the fact that she failed to provide one California appellate case that supports her
6 proposition that a female who carries a child full term while using toxic amounts of methamphetamine is
7 immune from criminal prosecution for the murder of her stillborn child. Instead, as support for her
8 position, Defendant provides no appellate authority and instead cites obscure superior court cases. (See
9 *People v. Jaurigue* No. 18988, slip. Op. (Cal. Sup. Ct. August 21, 1992) <https://tinyurl.com/rsnyrl>.)

10 **B. The Plaintiff can charge Defendant with murder for her actions or omissions during**
11 **pregnancy.**

12 California jurisprudence has experienced an evolution in how courts and the Legislature have
13 treated death to a fetus. In *Keeler v. Superior Court* (1970) 2 Cal.3d 619, the court held the unlawful
14 killing of a human being did not apply to the murder of a fetus. The Legislature, in turn, amended Penal
15 Code section 187(a) to include the unlawful killing of a fetus with the exception of resulting from a
16 lawful abortion pursuant to Penal Code section 187(b). (Stats.1970, ch. 1311, § 1, p. 2440.) In *People v.*
17 *Dennis* (1994) 17 Cal.4th 468, 511, the court ruled the defendant was not entitled to a jury instruction on
18 manslaughter as a lesser included offense of murder, since there is no crime of manslaughter of a fetus.
19 The California Supreme court opined in *People v. Davis* (1994) 7 Cal. 4th 797, 803, 809-810, that the
20 Legislature treated the fetus with the same protections as human life except where a mother’s privacy
21 interests are at stake as they are when a woman seeks to have an abortion. The court further ruled,
22 “[V]iability is not an element of fetal homicide under section 187, subdivision (a),” but the state must
23 demonstrate “that the fetus has progressed beyond the embryonic stage of seven to eight weeks.” (*Id.* at
24 pp. 814-815.); *People v. Valdez* (2005) 126 Cal.App.4th 575, 579 [the court held that terminally ill
25 fetuses, like terminally ill born persons, do not provide a defense or leniency to a murder charge. The
26 court reasoned that murder is applied when victims are terminally ill because murder is, at its simplest
27 definition, the shortening of a life, and that this must be applied to fetuses since they are part of Penal
28 Code section 187].

1 Consequently, Penal Code section 187(a) applies given that the Defendant gave birth to the fully
2 viable fetus, Zachariah, in his thirty-sixth week.

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

6 “If there is no ambiguity in a statute, we must presume the drafters mean what they wrote and the
7 plain meaning of the words prevail.” “ ‘ “Where the statute is clear, courts will not ‘interpret away clear
8 language in favor of an ambiguity that does not exist.’ ” ’ ” (*People v. Raybon* (2019) citing *People v.*
9 *Harris* (2006) 145 Cal.App.4th 1456, 1463 and *People v. Coronado* (1995) 12 Cal.4th 145, 151, 48.)
10 “When a word is not defined by statute, we normally construe it in accord with its ordinary or natural
11 meaning.” See *Perrin v. United States*, 444 U.S. 37, 42, 100 S.Ct. 311, 314, 62 L.Ed.2d 199 (1979)
12 (words not defined in statute should be given ordinary or common meaning). Accord, post, at 2061 (“In
13 the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning”).
14 (*Smith v. U.S.* (1993) 508 U.S. 223, 228-229.) In the U.S. Supreme Court decision, *Smith v. United*
15 *States, supra*, the Court considered whether a defendant who offered to barter a gun for drugs had “used”
16 the gun in the course of the drug purchase under a statutory penalty-enhancement provision. Writing for
17 the majority, Justice O'Connor, based her construction of “use” on definitions from two dictionaries.
18 Justice O'Connor concluded that her reading of the statute was the most “reasonable” ordinary meaning
19 because it fit the definition in her chosen dictionaries.

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

25 The operative words in Penal Code section (b)(3) are *solicited, aided, abetted* or *consented to*.
26 These words are modified by the phrase “by the mother of the fetus.” Webster's defines “solicit” as “1a:
27 to make petition to: ENTREAT b. to approach with a request or plea 2: to urge (as one’s cause)
28 strongly 3a: to entice or lure especially into evil b: to proposition (someone) especially as or in the

1 character of a prostitute 4: to try to obtain by usually urgent requests or pleas solicited donations.”
2 (Webster’s 10th Collegiate Dict. (1993) p. 1118, col. 2.) Each of the contextual definitions of “solicit”
3 contemplates two or more people involved — the solicitant and recipient(s) of the solicitation. It strains
4 credulity to adopt Defendant’s argument that the “mother of the fetus” solicited *herself*. Given that
5 Penal Code section (b) (3) is disjunctive we must examine the definition of “aided.”

6 Webster’s defines “aid” as “2 a: the act of helping b: help given: ASSISTANCE : *specif* :
7 tangible means of assistance (as money or supplies) 3 a: an assisting person or group — compare AIDE
8 b: something by which assistance is given: an assisting device.” (Webster’s 10th Collegiate Dict. (1993)
9 p. 24, col. 2.) The contexts set forth in Webster’s definition do not contemplate a person “aiding”
10 oneself. Nor can Defendant find support in Webster’s definition of “abet.”

11 Webster’s defines “abet” as “1: to actively second and encourage (as an activity or plan):
12 FORWARD : 2: to assist or support in the achievement of a purpose <*abetted* the thief in his getaway>.”
13 (Webster’s 10th Collegiate Dict. (1993) p. 2, col. 2.) Again, Webster does not define *abetting* oneself in
14 any context. Finally, Defendant can find no support in Webster’s definition of “consent.”

15 Webster’s defines “consent” as “1: compliance in or approval of what is done or proposed by
16 another: ACQUIESCENCE <he shall have power, by and with the advice and ~ of the Senate to make
17 treaties — *U.S. Constitution*> 2: agreement as to action or opinion.” (Webster’s 10th Collegiate Dict.
18 (1993) p. 246, col. 1.)

19 Defendant contorts the ordinary or common meaning of the operative words in Penal Code
20 section (b)(3) *solicited, aided, abetted* or *consented to* as defined by Webster’s. Defendant cannot rely
21 on any context employed by Webster’s as support for her argument that she *solicited, aided, abetted* or
22 *consented to herself* to abort her child.

23 **C. Penal Code section 187(a) applies to a female whose child dies as a result of her drug**
24 **use during pregnancy.**

25 Defendant’s arguments render Penal Code sections 187(a) and 187(b)(3) inapposite for all
26 purposes. Under Defendant’s tortured interpretation, Penal Code section 187(a) can never apply, under
27 any circumstance, to a pregnant female because the Defendant believes a pregnant female can solicit,
28 aid, abet or consent to *herself* and can do whatever she wants to her fetus even if her conduct does not

1 comport with an exclusion listed in Penal Code section 187(b)(3). Applying Defendant's contention,
2 there is no need for Penal Code section 187(b)(3). Defendant's irrational logic completely undermines
3 and eviscerates the Legislature's inclusion of Penal Code section 187(b)(3).

4 Penal Code section 187(b)(3) does not carve out an exception for a pregnant woman who stabs
5 herself in the stomach and kills her viable fetus or, in this case, choses to carry the child full term, and
6 chooses to use toxic quantities of methamphetamine throughout her pregnancy and shortly before birth.
7 According to Defendant, she may kill her fetus without *any* of the exceptions set forth in (b)(3).

8 Defendant never wanted to abort her child which is precisely why she named the child,
9 Zachariah. Consequently, she and she alone caused Zachariah Joseph Campos' death by ingesting toxic
10 quantities of methamphetamine during her pregnancy with notice and knowledge of the deleterious
11 consequences to her newborn child, in light of two or her prior children that were born with
12 methamphetamine in their systems.

13 **D. Other jurisdictions that prosecute pregnant women who kill their fetuses recognize**
14 **the need for consequences for using drugs during one's pregnancy.**

15 Defendant raises the same arguments as those in *Whitner v. South Carolina* (1977) 492 S.E.2d
16 777, 786, where the court upheld the conviction of a pregnant drug user. The court recognized that, "It
17 strains belief for Whitner to argue that using crack cocaine during pregnancy is encompassed within the
18 constitutionally recognized right of privacy. Use of crack cocaine is illegal, period. No one here argues
19 that laws criminalizing the use of crack cocaine are themselves unconstitutional. If the State wishes to
20 impose additional criminal penalties on pregnant women who engage in this already illegal conduct
21 because of the effect the conduct has on the viable fetus, it may do so. We do not see how the fact of
22 pregnancy elevates the use of crack cocaine to the lofty status of a fundamental right."

23 Similarly, in *State v. McKnight* (2003) 576 S.E.2d 173; 352 S.C. 635, a South Carolina jury
24 convicted Regina McKnight of homicide by child abuse for the stillborn birth of her child by using crack
25 cocaine during her pregnancy and the South Carolina Supreme Court upheld the mother's homicide
26 conviction. The Supreme Court of South Carolina held: The: (1) issue of whether cocaine caused the
27 stillbirth of defendant's child was for the jury; (2) issue of whether defendant had requisite criminal
28 intent was for the jury; (3) defendant was on notice that her conduct in ingesting cocaine while pregnant

1 was proscribed, and thus, prosecution did not violate due process; (4) prosecution did not violate
2 defendant's right to privacy; (5) sentence of 20 years in prison was not cruel and unusual punishment;
3 and (6) urine sample taken from defendant in hospital did not violate her Fourth Amendment rights.
4 (*Id.*) The United States Supreme Court declined to review the South Carolina Supreme Court's
5 decision. (Certiorari Denied Oct. 6, 2003).

6 **E. Prosecuting Defendant for the murder of her fetus does not deny Defendant any of**
7 **her substantial rights.**

8 Defendant argues her nonstatutory motion to dismiss should be granted on the grounds that: (a)
9 she did not receive fair notice the conduct was a crime; (b) prosecuting her for fetal murder infringes on
10 her privacy right; and (c) prosecution would constitute ex post facto punishment. That is not the case.

11 **1. Penal Code section 187 gives Defendant fair notice that ingesting**
12 **methamphetamine during pregnancy is proscribed.**

13 The Due Process Clause prohibits the government from taking one's life, liberty or property
14 under a criminal law so vague that it fails to give an ordinary person fair notice of the conduct that law
15 punishes, "invite[ing] arbitrary enforcement." (*Johnson v. United States* (2015) 135 S. Ct. 2551, 2553.)
16 It is well documented within the realm of public knowledge that a mother's methamphetamine use can
17 cause serious harm or death to a viable unborn child. (See e.g. Lagasse LL, et al. *Prenatal*
18 *Methamphetamine Exposure and Childhood Behavior Problems at 3 and 5 Years of Age*, J Pediatr. 2012
19 Apr; 129(4): 681-688; Nguyen DL, Smith M, Lagasse LL, et al. *Intrauterine Growth of Infants Exposed*
20 *to Prenatal Methamphetamine: Results From the Infant Development, Environment, and Lifestyle Study*,
21 J Pediatr. 2010 Aug; 157(2):337-9.) Clearly the Defendant endangered the life and health of her child as
22 evidenced by the fact that the full-term fetus died as a result of Acute Methamphetamine Toxicity. The
23 murder statute expressly includes a fetus with the only exceptions relating to *medical abortions*. Thus,
24 Defendant cannot claim she lacked fair notice that her conduct constituted fetal murder.

25 **2. Prosecution does not burden Defendant's right to privacy.**

26 The United States Constitution protects women from certain measures that penalize them for
27 choosing to carry their pregnancies to term. (*Cleveland Bd. Of Educ. V. LaFleur* (1974) 414 U.S. 632,
28 639-640 [striking down a mandatory maternity leave policy].) However, the Defendant misapprehends

1 the fundamentally different nature of her own interests and those of the government as compared to
2 cases such as *LaFleur, supra*. The United States Supreme Court has repeatedly held that states have a
3 compelling interest in the life of a fetus. (See e.g. *Roe v. Wade* (1973) 410 U.S. 113, 150); *Planned*
4 *Parenthood v. Casey* (1992) 505 U.S. 833, 835-840; *Whitner, supra*, 328 S.C. at p. 17; *McKnight, supra*,
5 352 S.C. at p. 652.) That interest is especially compelling beyond the period for which a mother may
6 get an abortion. (See *Whitner, supra*, 328 S.C. at pp. 13, 17, *referencing Wade, supra*, 410 U.S. 113;
7 *Casey, supra*, 505 U.S. 833.) Further, that interest takes precedence over any rights the mother may
8 have as soon as the fetus is viable or when a woman can no longer obtain an abortion. (See Miller, *Fetal*
9 *Neglect and State Intervention: Preventing Another Attleboro Cult Baby Death* (2001) 8 Cardozo
10 Women's L. J. 71; see also *Fetal Rights and the Prosecution of Women for Using Drugs During*
11 *Pregnancy* (2000) 48 Drake L. Rev. 741.)

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

21 No evidence exists that prosecuting the Defendant under Penal Code section 187 would impose a
22 burden at all. Methamphetamine use is illegal. The law simply seeks to impose additional criminal
23 penalties on pregnant women who engage in this *already illegal conduct* because of the effect the
24 conduct has on the viable fetus. No evidence exists that it had a chilling effect on her illegal conduct
25 since the Defendant enjoyed the exact same freedom to use methamphetamine during her pregnancy as
26 she enjoyed before her pregnancy. As such, prosecution for fetal murder does not restrict Defendant's
27 freedom in any way that was not already restricted (i.e. illegal drug use), and imposing an additional
28 penalty when a pregnant woman with a viable fetus engages in the already proscribed behavior does not

1 burden a woman's privacy rights. Rather, the additional penalty simply recognizes that a third party (the
2 viable fetus) is harmed by the behavior.

3 **3. Prosecution does not constitute ex post facto punishment.**

4 The cruel and unusual punishment clause requires that a sentence is not grossly out of proportion
5 with the severity of the crime. (*Solem v. Helm* (1983) 463 U.S. 277; see also *People v. Dennis* (1998)
6 17 Cal. 4th 468, 511.) The question is whether the penalty 'is so disproportionate to the crime for which
7 it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.' (*Dennis*,
8 *supra*, 17 Cal. 4th at p. 511 quoting *in re Lynch* (1972) 8 Cal.3d 410, 424; *People v. Frierson* (1979) 25
9 Cal. 3d 142, 183.) The court considers the: (a) severity of offense; (b) harshness of penalty; (c)
10 sentences imposed on others in the same jurisdiction; and (d) sentences imposed in different
11 jurisdictions. (*Helm, supra*, 463 U.S. at p. 278; *People v. Valdez* (2005) 126 Cal. App. 4th 575, 581.)

12 Here, the offense is severe since murder is the most serious crime and carries a steep penalty
13 with a possible indefinite term. The fetus is afforded the same protection as any other victim under the
14 statute, so the penalty is no harsher than that imposed upon any other person charged with murder. The
15 penalty is exactly the same. (See Penal Code section 187; see also *Helm, supra*, 463 U.S. at pp. 278-
16 279; *Valdez, supra*, 126 Cal. App. 4th at pp. 581-582.)

17 **III.**

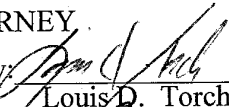
18 **CONCLUSION**

19 WHEREFORE, Plaintiff respectfully requests that the Motion be denied.

20 DATED: May 26, 2020

21 Respectfully submitted,

22 KEITH L. FAGUNDES
23 DISTRICT ATTORNEY

24 By: 
Louis D. Torch
Assistant District Attorney

25 By: 
Michelle Kubick
26 Deputy District Attorney
27
28

EXHIBIT 1

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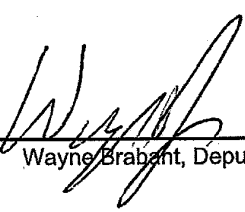
Kings County Sheriff-Coroner

Office of the Coroner
1470 North Drive, Hanford California 93230

Zachariah Joseph Campos

Coroner Case Number: 2019-00265

CLASSIFICATION	MANNER OF DEATH: Homicide		SUB MANNER OF DEATH: Overdose - Illicits		DEPUTY CORONER: Wayne Brabant		
	TYPE OF MEDICAL EXAMINATION: Autopsy				DATE OF DEATH: 09/10/2019	TIME OF DEATH: 0302	
DECEDENT PERSONAL DATA	AGE:	SEX: Male	DATE OF BIRTH: 09/10/2019	PLACE OF BIRTH: Hanford, California, USA		HEIGHT: 19"	WEIGHT: 5.12
	RACE: White	MARITAL STATUS: Never Married	HAIR: Brown	EYES: Dark	SSN:		
	SCARS, MARKS, TATTOOS: None						
PLACE OF DEATH	PLACE: Adventist Medical Center			COUNTY: Kings			
	ADDRESS: 115 Mall Drive			CITY: Hanford	STATE: California		
CAUSE OF DEATH	IMMEDIATE CAUSE: Intrauterine Fetal Demise DUE TO: Acute Methamphetamine Toxicity DUE TO: DUE TO:						
SIGNIFICANT CONDITIONS	None						
INJURY INFORMATION	PLACE OF INJURY: Unknown		INJURY AT WORK: No	DATE OF INJURY: Unknown	TIME OF INJURY: Unknown	ESTIMATED:	
	ADDRESS OF INJURY: Unknown			CITY: Hanford	STATE: California		
	INJURY DESCRIPTION: Mother ingested methamphetamine while pregnant.						
IDENTIFICATION	IDENTIFICATION METHOD: Hospital Identification			IDENTIFIED BY: Deputy Putnam			
NOTIFIED	NAME: Becker, Chelsea			RELATIONSHIP: Mother			
	NOTIFIED BY: Dr. Singleton	HOW NOTIFIED: In Person		DATE: 09/10/2019	TIME: 0302		
REPORTED BY	DEATH REPORTED BY: AMC staff to Deputy Putnam			AGENCY: Adventist Medical Center	DATE: 09/10/2019	Time: 0426	
ADDITIONAL INFORMATION	FUNERAL HOME: People's Funeral Chapel						


Wayne Brabant, Deputy Coroner



Kings County Sheriff-Coroner

Office of the Coroner
1470 North Drive, Hanford California 93230

Decedent: **Campos, Zachariah Joseph**

Coroner Case Number: **2019-00265**

Narrative

Recording Deputy: **Wayne Brabant**

Entered Date: **10/17/2019**

Narrative:

Zachariah Campos was a 36 week gestational fetus who died in his mother's womb on 09/10/2019. The mother, Chelsea Becker is a 25 year old female who was admitted to the Adventist Medical Center Birthing Center-Hanford for vaginal bleeding. An ultrasound was done on Chelsea and it was determined the fetus showed no signs of life. At 0302 hours, Chelsea gave birth to Zachariah. During the normal course of treatment blood work was done on Chelsea. It should be noted Chelsea's blood work showed positive for methamphetamine. Hanford Police investigated the fetal demise and learned of the methamphetamine use during there investigation. For further information refer to the Hanford Police Department's report(s).

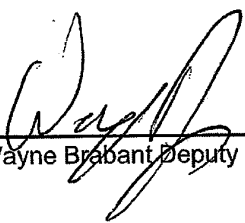
Deputy B.Putnam responded as per his coroner duties. JK Mortuary Service also responded and transported Zachariah to the Kings County Coroner's Office for further investigation.

On 09/10/2019 at about 0930 hours, Forensic Pathologist Dr. Jue-Rhong Zhang performed an autopsy on Zachariah and toxicology samples were taken. On 10/01/2019 our office received the final autopsy report including the toxicology results. Based on the autopsy, toxicology and investigation I signed the fetal demise certificate listing the cause and manner of death.

Supplemental Entered By:

Supplemental Entered Date:

Supplemental Text:


Wayne Brabant Deputy Coroner

Page 1 of 1

GARY A. WALTER, M.D., DIRECTOR
BURR HARTMAN, D.O., Ph.D.
JUE-RONG ZHANG, M.D., Ph.D.
CONSULTANTS IN PATHOLOGY
Web Site: www.microcorre.com

MICROCORRE DIAGNOSTIC LABORATORY
Diagnostic Correlation for the Practicing Physician
email: lab@microcorre.com

559.686.4000
FAX – 559.686.9432
890 CHERRY ST., TULARE, CA 93274

Decedent:

BECKER, Baby Boy

Age: 0
Sex: Male

Accession #:

A19-000260

Prosecutor:

Jue-Rong Zhang, M.D., Ph.D.

Autopsy Location:

Kings County Morgue

Responsible Party:

Kings County Coroner

Expired Date: 09/10/2019

Expired Time: 3:02AM

Autopsy Date: 09/11/2019

Autopsy Time: 9:30AM

Reported Date: 10/01/2019

FINAL AUTOPSY REPORT

CAUSE OF DEATH:

INTRAUTERINE FETAL DEMISE (MINUTES)
ACUTE METHAMPHETAMINE TOXICITY (MINUTES)

JZ /ima 09/11/2019



Jue-Rong Zhang, M.D., Ph.D.

TOXICOLOGY:

Specimen:

Chest Blood and Vitreous Humor Samples

Complete Drug Screen:

Ethyl Alcohol and Methamphetamine detected.
No other common acidic, neutral or basic drugs detected.

Blood Ethyl Alcohol = 0.02 grams%

Vitreous Ethyl Alcohol = Negative

d-Methamphetamine = 1.18 mg/L

d-Amphetamine = 0.11 mg/L

Blood Methamphetamine Ranges

Effective Level: (0.01 – 0.05 mg/L)

Potentially Toxic: (0.2 - 5 mg/L)

Blood Amphetamine Ranges

Effective Level: (0.02 – 0.15 mg/L)

Potentially Toxic: (0.2 mg/L)

GROSS FINDINGS:**INTRODUCTION:**

I performed an autopsy on a body identified as Baby Boy Becker, age 0 (intrauterine demise, 36 weeks), **Kings County Coroner's case (19.0265)** done at the Kings County Morgue in Hanford, California on September 11, 2019. The autopsy began at 0930 hours. Witnesses include Chief Deputy Coroner Shawn McRae and Detective Wayne Brabant of the Kings County Sheriff Coroner's Office. During the course of the autopsy, blood and vitreous humor were obtained for toxicologic examination. From the anatomic findings and pertinent history, I ascribe the death to intrauterine fetal demise (minutes) due to, or as a consequence of acute methamphetamine toxicity (minutes).

NOTES AND PROCEDURES:

1. The body is described in the standard anatomical position. Reference is to this position only.
2. Where necessary, injuries are numbered for reference. This is arbitrary and does not correspond to any order in which they may have been incurred. All the injuries are antemortem, unless otherwise specified.
3. The term "anatomic" is used as a specification to indicate correspondence with the description as set forth in the textbooks of Gross Anatomy. It denotes freedom from significant, visible, or morbid alteration.

RECENT MEDICAL ARTIFACTS NOTED AT AUTOPSY:

None.

IDENTIFYING MARKS:

None.

EXTERNAL EXAMINATION:

The body is that of a well-developed, well-nourished, Caucasian fetus appearing consistent with recorded age of 36 weeks gestation. The body is examined in the unembalmed state. There is moderate rigor mortis and livor mortis. The hair is brown and normal in amount and distribution for age. The eyes are unremarkable. The oral cavity is unremarkable. The nose, ears and neck are without gross abnormalities. The thorax is symmetrical and of normal anteroposterior diameter. The abdomen is flat and without gross abnormalities. The external genitalia are those of a normal male fetus. The extremities appear normal in development and structure.

EXTERNAL EVIDENCE OF TRAUMA:

There is no external evidence of trauma.

INCISIONS:

The body is opened with the usual Y-shaped incision. The skeletal muscle is red, homogeneous and of normal bulk. The peritoneal cavity is without adhesions and the organs are normally situated. The peritoneal surfaces are smooth and glistening. The domes of the diaphragm arch normally. The pleural cavities are without significant fluid or adhesions and the pleural surfaces are smooth and glistening. The mediastinum appears normal without displacement. The pericardial sac is intact and without significant fluid or adhesions.

HEART:

The heart weighs 20 grams and is of normal shape and position. The epicardial surface is smooth and glistening and contains moderate fat. Upon sectioning, the myocardium is firm, tan-brown and homogeneous throughout. The endocardium is smooth and glistening without mural thrombi or thickening. The cardiac chambers are all of normal size and the ventricular walls of normal thickness. The papillary muscles appear normal and the chordae tendineae are thin and delicate. The valves appear normally formed and are soft and delicate. The coronary ostia are patent and the coronary arteries are normal in number and distribution. No calcific atherosclerosis noted within the coronary artery system. The pulmonary trunk and main pulmonary arteries are free of emboli or atherosclerotic plaques. The aorta is free of significant atherosclerotic change.

Patient Name: BECKER, Baby Boy

Accession #:

A19-000260.

LUNGS:

The right lung weighs 33 grams and the left lung weighs 23 grams. The lungs appear fully expanded. Their pleural surfaces are smooth and glistening with petechiae. The lungs are composed of the usual lobes and fissures. Upon sectioning, the lung parenchyma exhibits petechiae.

LIVER:

The liver weighs 170 grams. The capsule is intact, smooth and glistening. The cut surface reveals a firm tan-brown parenchyma with a normal lobular architecture without appreciable fibrosis, nodularity or other gross lesions. The gallbladder is normal in location and shape and contains moderate bile. The wall is thin and pliable. No stones or other gross lesions are present.

KIDNEYS:

The right kidney weighs 16 grams and the left kidney weighs 12 grams. The capsules appear normal stripping with ease. Upon sectioning, the cortices are tan-brown with a distinct corticomedullary junction. No gross lesions are seen.

SPLEEN:

The spleen weighs 13 grams. The capsule is intact, smooth and glistening. The cut surface reveals a soft dark red parenchyma with normally sized Malpighian corpuscles and no gross lesions.

THYMUS:

The thymus weighs 9 grams. Upon cross sectioning, no gross abnormalities are identified.

JZ/ima 09/11/2019

MICROSCOPIC EXAMINATION:

HEART: No histological abnormalities identified.

LUNGS: Scattered severe congestion identified.

LIVER: Normal histology with congestion.

KIDNEYS: Normal histology with congestion.

SPLEEN: Normal histology with congestion.

THYMUS: No histological abnormalities identified.

Patient Name: BECKER, Baby Boy

Accession #:

A19-000260.



Case Name:
Becker,

TOXICOLOGY NUMBER: CVT-19-9030

Specimen Description: Baby Boy
20 ml chest blood (1 bottle) & 0.10 ml vitreous humor each labeled "Becker, Baby Boy; KCCO; 19-0265; Kings; drawn by W Brabant; 09/11/2019; (bld) 0954 hrs; (vit) 1005 hrs"

Delivered by RNC

Date 13-Sep-19

Received by Bill Posey

Date 13-Sep-19

Request: Complete Drug Screen

Agency Case # 19-0265

Requesting Agency
Kings County Coroner's Office
Attn: Acct's Payable
1470 North Drive
Hanford CA 93230

Report To
Kings County Coroner's Office
Attn: Records
1470 North Drive
Hanford CA 93230

RESULTS

Specimen: Chest Blood and Vitreous Humor Samples

Complete Drug Screen: Ethyl Alcohol and Methamphetamine detected.
No other common acidic, neutral or basic drugs detected.

Blood Ethyl Alcohol = 0.02 grams%

Vitreous Ethyl Alcohol = Negative

d-Methamphetamine = 1.18 mg/L

d-Amphetamine = 0.11 mg/L

Blood Methamphetamine Ranges
Effective Level: (0.01 - 0.05 mg/L)
Potentially Toxic: (0.2 - 5 mg/L)

Blood Amphetamine Ranges
Effective Level: (0.02 - 0.15 mg/L)
Potentially Toxic: (0.2 mg/L)

A handwritten signature in black ink, appearing to read "B. L. Posey", is written over a horizontal line.

B. L. Posey

September 19, 2019

B.L. POSEY
S.N. KIMBLE
Directors

1580 Tollhouse Road
Clovis, California 93611
Phone (559) 323-9940
Fax (559) 323-7502

Patient Name: BECKER, Baby Boy

Accession #:

A19-000260.

20

KCCO# 19-0265

DATE: 9-11-19 TIME: _____

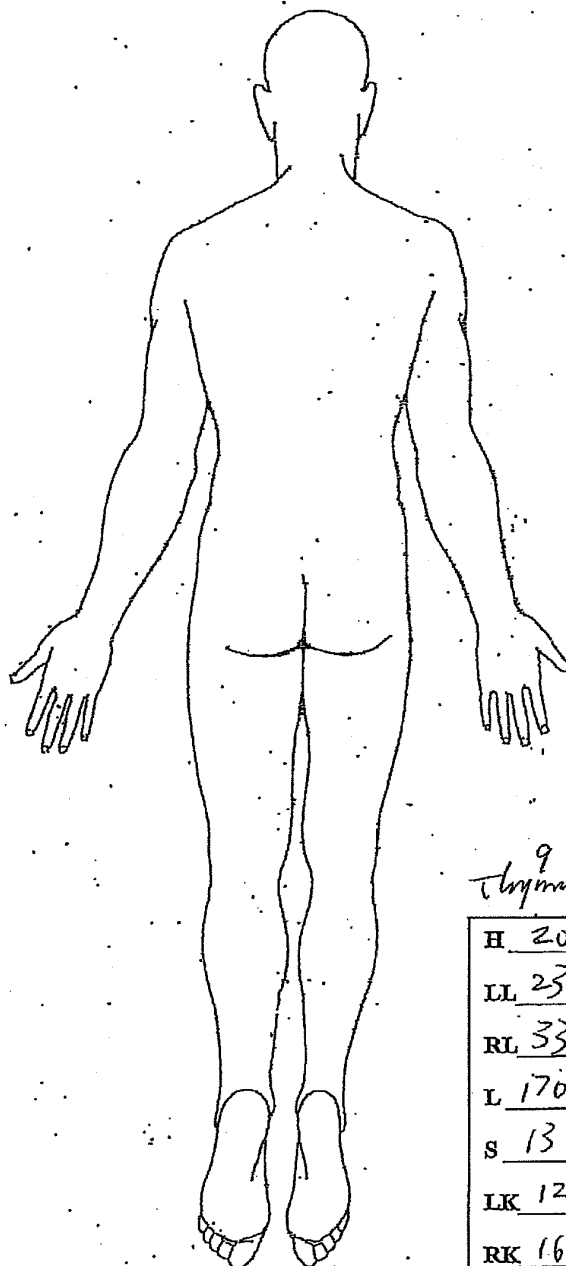
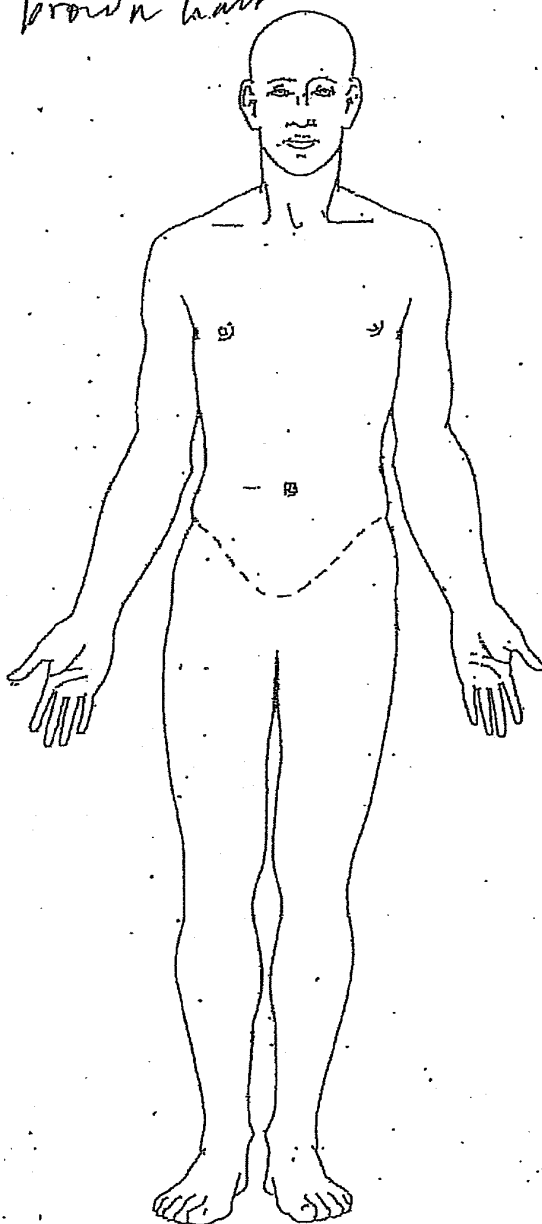
DEPARTMENT OF KINGS COUNTY CORONER

Name: Baby Boy Becker Age: 0

DOD: 9-10-19 TOD: 0302

Case Agent: Brabant

white
brown hair



9
Thymus

H 20

LL 23

RL 33

L 170

S 13

LK 12

RK 16

B _____

Signature

M.D.

1 031-0124901

2 PROOF OF SERVICE -- 1013 C.C.P.
3 STATE OF CALIFORNIA, COUNTY OF KINGS

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

8 On 5/26/2020 I served the within **Points and Authorities in Support of Opposition to Demurrer and Motion
9 to Dismiss** on the defense attorney in said action by following the ordinary business practices of the County of
10 Kings District Attorney's Office as follows:

11 JACQUELINE GOODMAN
12 ATTORNEY AT LAW
13 712 N. Harbor Blvd.
14 Fullerton, CA92832

15 ☒ **(BY MAIL)** I am "readily familiar" with the County of Kings' practice of collection and processing
16 correspondence for mailing with the United States Postal Service.

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

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

21 ☐ **(BY FAX)** I caused such document to be sent, via Facsimile (FAX) Telecommunication transmission, to the
22 offices of the addressee(s) at the following number(s): Enter Fax # (if applicable)

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

25 ☐ **(BY INTER-OFFICE MAIL)** I am "readily familiar" with the County of Kings' practice of collection and
26 processing correspondence for mailing within the Government Center.

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

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

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

Executed on May 26, 2020 at Hanford, California.

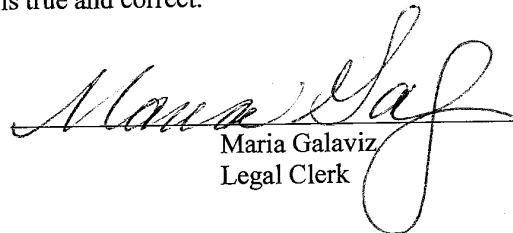

Maria Galaviz
Legal Clerk

EXHIBIT 11

DANIEL ARSHACK NY BAR #DA2026
Arshack, Hajek & Lehrman
1790 Broadway, Suite 710
New York, NY 10019
Telephone: 212.582.6500

JACQUELINE GOODMAN #172308
Attorney at Law
THE GOODMAN LAW BUILDING
712 N. Harbor Blvd.
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Telephone: 714.879.5770

ROGER T. NUTTALL #42500
NUTTALL & COLEMAN
2333 Merced Street
Fresno, CA 93721
Telephone: 559.233.2900

Attorneys for Defendant, Chelsea Becker

IN THE SUPERIOR COURT OF THE COUNTY OF KINGS
STATE OF CALIFORNIA, HANFORD COURTHOUSE

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs,

vs.

CHELSEA BECKER,

Defendant.

Case No. 19CM-5304

**REPLY IN SUPPORT OF NOTICE OF
DEMURRER AND DEMURRER TO
COMPLAINT FOR NONSTATUTORY
MOTION TO DISMISS**

DATE: June 4, 2020

TIME: 8:15 a.m.

DEPT: 6

**TO THE HONORABLE ROBERT SHANE BURNS, JUDGE OF THE ABOVE-ENTITLED
COURT; AND TO THE DISTRICT ATTORNEY OF KINGS COUNTY AND/OR HIS
REPRESENTATIVE(S):**

Defendant Chelsea Becker, through undersigned counsel, replies in support of her Demurrer to Complaint and Nonstatutory Motion to Dismiss. In its opposition to that motion, the prosecution seeks to have this Court judicially expand the reach of *Penal Code* § 187 beyond its plain language

1 and constitutional confines, and in complete disregard of the clear intent of the legislature in enacting
2 PC 187(b)(3), to permit the prosecution of women for experiencing a pregnancy loss as a result of
3 their volitional conduct while pregnant. The prosecution's invitation to this Court, in response to
4 what it might perceive to be a reflection of community standards, to judicially legislate a new
5 expansion of PC 187 (b)(3), for the first time in California, should be rejected, and this case should
6 be dismissed.

7 **1. Lack of published appellate authority has no bearing where the plain language of the
8 statute controls.**

9 The prosecution argues that the defendant "provides no legal authority from the California
10 Supreme Court or the Fifth District Court of Appeal that proscribes Plaintiff from filing" the present
11 charges. Response at 2. That is neither correct nor controlling. Moreover, as can be seen below, *every*
12 court that has considered this issue has rejected the prosecution's position. Their complaint is little
13 more than a distraction, however, as it is the statute itself which proscribes the prosecution of Ms.
14 Becker for the loss of her own pregnancy. The prosecution does not provide a single case that has
15 ever permitted the prosecution of a woman for her pregnancy loss, because there are none. This is
16 because the plain statutory language (and underlying legislative history) that California courts have
17 repeatedly and without exception affirmed that California law does not permit the prosecution of a
18 woman for the demise of her own pregnancy. That these issues have not yet been published at the
19 appellate level does not give the prosecutor license to file and sustain charges beyond those
20 contemplated by the Legislature. In any event, it should likewise be pointed out that all of the cases
21 cited by the prosecution involve, predictably and consistent with the legislative intent explained
22 below, *third party* attacks on pregnant women resulting in pregnancy loss. Not, as here, a prosecution
23 of a pregnant woman for her own pregnancy loss.

24 Furthermore, *every* trial court of this state which has considered the application of PC 187 to
25 situations similar to the one at bar have dismissed the charge as being outside of the scope of PC 187.
26 For example, both *Jaurigue v. People*, San Benito County No. 23611, Transcript of Record (Aug.
27 21, 1992) writ denied, (Cal. App. 1992) <https://tinyurl.com/rsnyrvl> and *People v. Jones*, No. 93-5,
28 Transcript of Record (Cal. J. Ct. Siskiyou County July 28, 1993) <https://tinyurl.com/wc4xb3x>, while
not precedential, present instances in which peers of this Court have considered and rejected the
theories espoused by the prosecution in this case. In *Jaurigue*, the trial court dismissed fetal homicide
charges against a woman who, like Ms. Becker, experienced a stillbirth that was alleged to have been
the result of drug use, and held that P.C. § 187 could not be used to prosecute a woman for the loss

1 of her own pregnancy. Transcript of Record <https://tinyurl.com/rsnyrvl>. Similarly, in *People v.*
2 *Jones*, Siskiyou County Judge Kosel found that the legislative history underpinning P.C. § 187
3 clearly proscribed the prosecution of a mother for the death of her newborn, which was also alleged
4 to have resulted from drug exposure in utero. *Jones*, No. 93-5, Transcript of Record, at 4-6.
5 <https://tinyurl.com/wc4xb3x>. In sustaining demurrer, the court considered the clear legislative intent
6 and reasoned that the “legislature is the policymaking body and not the courts. My job is to interpret
7 the law, not to make it.” *Id.* 5:27-6:1. The same is true of the Court in the present matter.

8 In addition, the prosecution claims that no California appellate case exists which “supports
9 the proposition that a female who carries a child full term while using toxic amounts of
10 methamphetamine is immune from criminal prosecution for the murder of her stillborn child.” But
11 such a case does exist, albeit unpublished: *People v. Olsen* (July 20, 2004, No. C043059)
12 ___Cal.App.4th___ [2004 Cal. App. Unpub. LEXIS 6774, at *1] [2004 WL 1616294]. We ask that
13 the court take judicial notice of the unpublished decision pursuant to California Evidence Code
14 Sections 451 (a), 452 (a), (d) and 453. Like every other California court that has confronted the issue,
15 the *Olsen* court rejected the use of P.C. § 187 to prosecute a woman for demise of her pregnancy and
16 explained that a:

17 “homicide of a fetus” is punishable as murder (*People v. Dennis* (1998) 17 Cal.4th
18 468, 506 [no lesser offense of manslaughter of a fetus exists]), unless the “act
19 was solicited, aided, abetted, or consented to by the mother of the fetus.” (§
20 187, subds. (a), (b)(3).) Thus, a third party can commit this crime (see *People v.*
21 *Dennis*, supra, at p. 506), but a birth mother, who necessarily would consent to her
22 own volitional actions, cannot.

23 *Olsen* constitutes an example, although without precedential authority, of an appellate court holding
24 that the plain language of P.C. 187(b)(3) precludes the prosecution of a woman for her volitional acts
25 before the pregnancy ends. This court should be aware that, indeed, other courts and an appellate
26 court has addressed this precise issue. The fact cannot and should not be ignored that *every single*
27 *case* which has construed P.C. 187 has found it inapplicable to a pregnant woman’s volitional
28 behavior during pregnancy, in accordance with the plain language of the statute.

II. The prosecution’s statutory construction would lead to absurd results contrary to legislative intent.

26 In construing the statute, the court must “begin with the plain, commonsense meaning of the
27 language used by the Legislature. If the language is unambiguous, the plain meaning controls.”
28 *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 519 [128 Cal.
Rptr. 3d 658, 257 P.3d 81]). The court may, however, “reject a literal construction that is contrary to

1 the legislative intent apparent in the statute or that would lead to absurd results.” *Simpson Strong-Tie*
2 *Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 27 [109 Cal. Rptr. 3d 329, 230 P.3d 1117].

3 The State wrongly proposes that a “literal” construction permits this prosecution. It does not.
4 The plain language of P.C. § 187 proscribes prosecution of a pregnant woman for the death of her
5 fetus for any reason, exempting “any person who commits an act that results in the death of a fetus if
6 ... [t]he act was solicited, aided, abetted, or consented to by the mother of the fetus.” *Id.* Contrary to
7 the assertions of the prosecution, this exemption is *not* limited to so-called “lawful” or “medical”
8 abortions conducted in a clinical setting or within a particular time period. *See* Response at 4, 7.
9 Nothing in the language of the statute nor in the legislative history suggests such a limitation.¹
10 Rather, the exemption is without limitation and necessarily applies to a pregnant woman’s alleged
11 volitional conduct, e.g. conduct in which the pregnant woman has consensually engaged. This is
12 because a pregnant woman who has committed a volitional act, by definition, has consented to the
13 commission of that act. The legislative history unequivocally comports with such a commonsense
14 interpretation.

15 In 1970, P.C. § 187 was amended in response to the California Supreme Court’s decision in
16 *Keeler v. Superior Court* (1970) 2 Cal. 3d 61. In *Keeler*, a man attacked a pregnant woman, causing
17 the woman to experience a stillbirth. *Keeler* held that the state’s homicide law did not reach fetuses
18 and could therefore not be used to prosecute the man. In response, the Legislature amended Section
19 187 to permit murder prosecution of a person, other than the pregnant woman, for the killing of a
20 fetus. *People v. Davis* (1994) 7 Cal.4th 797, 829. But, critically, the Legislature clarified that a
21 pregnant woman could not herself be charged with murdering her fetus for any of her own acts or
22 omissions while pregnant. Cal. Pen. Code § 187(b).

23 Our motion addressed, and the prosecution understandably ignored, the legislative intent of
24 the 1970 amendment enacting PC 187 (b) (3). As noted in our motion, the primary author of the
25

26 ¹ The legislature is clearly able to use specific language to describe limitations in the application of
27 statutes that relate to pregnancy, birth defects, abortion, fetuses, stillbirth, miscarriage and perinatal
28 issues. *See*, Cal. Health & Safety Code § 104560 – (perinatal); Cal. Health & Safety Code §
103825 (1995) (birth defects, stillbirths, and miscarriages); Cal. Health & Safety Code § 103830
(birth defects, stillbirths or miscarriages); Cal. Health & Safety Code § 103840 (birth defects,
stillbirths or miscarriages); Cal. Health & Safety Code § 103040.1 (stillbirth); Cal. Health & Safety
Code § 103850 (birth defects, stillbirth, or miscarriage); Cal. Educ. Code § 87766 (1990)
(pregnancy, miscarriage, childbirth); Cal. Educ. Code § 44965 (pregnancy, miscarriage,
childbirth); Cal. Food & Agric. Code § 13123 (abortions, birth defects, stillbirths and
resorptions); Cal. Penal Code § 1108 (abortion)

1 amendment, State Assemblyman W. Craig Biddle, executed an affidavit in 1990 available at
2 <https://tinyurl.com/u06j8mh> for use in *People v. Jauregui*, *supra*, which explained that the
3 amendment was intended:

4 to make punishable as murder *a third party's* willful assault on a pregnant woman
5 resulting in the death of her fetus. That was *the sole intent* of AB 816. [It was never
6 intended] to make punishable as murder conduct by a pregnant woman that resulted
7 in the death of her fetus. (Emphasis added).

8 In *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692,
9 700 [170 Cal.Rptr. 817, 621 P.2d 856] the court held that a legislator's statement is entitled to
10 consideration, when it is a reiteration of legislative discussion and events leading to adoption of
11 proposed amendments. *Marriage of Bouquet* (1976) 16 Cal.3d 583, 590 [128 Cal.Rptr. 427, 546
12 P.2d 1371; *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d, at p. 284 (dis. opn. by
13 Sullivan, J.); *Rich v. State Board of Optometry*, *supra*, 235 Cal.App.2d, at p. 603; see also *Stanton v.*
14 *Panish* (1980) 28 Cal.3d 107, 114 [167 Cal.Rptr. 584, 615 P.2d 1372] [declaration of chairman of
15 Cal. Const. Revision Com. considered insofar as it chronicled events leading to proposed
16 amendment].

17 Since the late 1980s, California's legislature has repeatedly considered this very issue and
18 robustly debated the need for criminal penalties in response to the issue of drug use and pregnancy
19 and deliberately decided against enacting criminal sanctions against "substance-using mothers."
20 Proposals to create crimes in relationship to pregnancy and drug use as well as efforts to expand the
21 scope of criminal laws to include fetuses have been made and rejected. *See Sue Holtby et al., Gender*
22 *issues in California's perinatal substance abuse policy* (2000) 27 *Contemporary Drug Problems* 77,
23 89.

24 Ignoring this history, the State's suggested judicial expansion of PC 187 would invariably
25 lead to absurd results so as to render it unconstitutionally void for vagueness. The prosecution makes
26 two principle arguments, both of which lack merit: (1) that the statutory terms "solicited, aided,
27 abetted, or consented to by the mother of the fetus" operate to *exclude* rather than include the mother
28 of the fetus from statutory protection and (2) that, in order for a woman to be exempt for her own
conduct in terminating her pregnancy, she would have had to have done so pursuant to *another*
exemption apart from P.C. § 187(b)(3). *See Response at 7-8.* But this strained construction is nowhere
in the statute or legislative history. In other words, according to the prosecution, a pregnant woman
would have had to terminate the pregnancy in compliance with the Therapeutic Abortion Act or

1 would have to hold a physician's and surgeon's certificate, and be medically certain that the birth of
2 the fetus would result in her own death in order to avoid prosecution for murder should her own
3 volitional conduct cause fetal demise. *See id.*; *see also* P.C. § 187(b)(1-2). This is simply not the law.

4 This interpretation strains credulity not only because of its inherent absurdity but also because
5 it contradicts the plain language of the statute. Section 187(b) reads that the definition of murder
6 "shall not apply to any person who commits an act that results in the death of a fetus if *any of the*
7 *following* apply..." and goes on to list three separate and disjunctive exemptions. (Emphasis added).
8 There is no requirement that *all* of the exemptions are met. Rather, the exemption applying to any
9 person whose "act was solicited, aided, abetted, or consented to by the mother of the fetus" stands
10 on its own and necessarily includes the mother herself who cannot help but consent to her own
11 volitional acts. P.C. § 187(b)(3).

12 This stand-alone exemption means that a woman may terminate her own pregnancy - or solicit
13 another to terminate her pregnancy - by any means and at any point, without being subject to
14 prosecution for murder. Despite the prosecution's unsupported insistence that a pregnant woman who
15 terminates her pregnancy by stabbing herself can be prosecuted, *see* Response at 6, documented cases
16 of similar tragic circumstances demonstrate otherwise. *See People v. Tucker*, No. 147092 (Cal. Santa
17 Barbara-Goteta Mun.Ct. June 1973) presenting the virtually identical tragic circumstance. In 1973,
18 Claudia Tucker shot herself and killed her fetus after her husband threatened to leave her if she had
19 another child. Judge Arnold Gowans dismissed the murder charge pursuant to PC 187(b)(3). The
20 district attorney unsuccessfully appealed the dismissal. *See*, <https://tinyurl.com/yax2uoux>

21 While such circumstances present an extreme and tragic example of the exemption's scope,
22 the State's suggested judicial expansion of the statute's reach would itself lead to a number of
23 extreme and absurd instances in which a woman could be prosecuted for the loss of her own
24 pregnancy. For example, under the prosecution's suggested interpretation, a woman could be
25 prosecuted for murder if she engaged in the illegal act of driving without a seatbelt and injured herself
26 in an accident that resulted in fetal demise *See, People v Jorgensen*, 2015 NY Slip Op 07699 [26
27 N.Y.3d 85, 19 N.Y.S.3d 814, 41 N.E.3d 778] (conviction reversed, case dismissed). The same is true
28 of a woman who chooses to continue smoking cigarettes, ski or engage in other risky behaviors late
in her pregnancy. *See, Kilmon v. State*, 394 Md. 168, 177-78, 905 A.2d 306, 311-12 (Ct.App.2006).
If those behaviors were to lead to an injury that ended her pregnancy, she would be subject to
prosecution for murder. By the same token, the prosecution's construction invites absurd results

1 where a third party aided or abetted the pregnant woman. These examples are seemingly endless
2 under the State's tortured interpretation of the statute.

3 A statute that would disallow prosecution of a woman for asking another to terminate her
4 pregnancy, while permitting prosecution of that woman for seeking to terminate the pregnancy
5 herself, would lead to absurd results, run contrary to intent of the statute, and vastly expand the fetal
6 homicide statute in a manner that "impermissibly delegates basic policy matters to policemen, judges,
7 and juries for resolution on an *ad hoc* and subjective basis," thereby exposing any woman
8 experiencing a negative pregnancy outcome to "arbitrary and discriminatory application" of the
9 statute and potential criminal prosecution. *See People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090,
10 1116 [60 Cal.Rptr.2d 277, 929 P.2d 596] (quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104,
11 109).

12 **III. The Rule of Lenity Requires that the Statute be Construed in favor of the accused.**

13 The prosecution's interpretation of the present statute is diametrically opposed to the plain
14 language of the statute and the clear legislative history as well as our shared historical experience.
15 However, assuming *arguendo* that it is just one of two reasonable interpretations of the statute, "the
16 rule of lenity requires courts to resolve doubts as to the meaning of a statute in a criminal defendant's
17 favor." *People v. Yearwood* (2013) 213 Cal.App.4th 161, 177 [151 Cal.Rptr.3d 901] (quoting *People*
18 *v. Avery* (2002) 27 Cal.4th 49, 57 [115 Cal. Rptr. 2d 403, 38 P.3d 1]). Therefore, to the extent that
19 this Court believes that the prosecution's creative but unconstitutional statutory construction has
20 merit, the rule of lenity is a "a tie-breaking principle" requiring that the tie be broken in favor of the
21 accused. *People v. Manzo* (2012) 53 Cal.4th 880, 883 [138 Cal.Rptr.3d 16, 270 P.3d 711] (quoting
22 *Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1102, n. 30 [103 Cal. Rptr. 3d 767, 222 P.3d 214].)

23 **IV. State's reliance on judicially created common law in South Carolina is inapposite.**

24 The prosecution urges the Court to adopt the reasoning and holdings of two outlier cases from
25 South Carolina which held that a woman may be held criminally liable in relationship to her own
26 pregnancy. The State fails, however, to advise the Court that South Carolina is one of only two
27 jurisdictions in the United States where such liability is imposed.² The State also fails to inform this
28 Court that "the overwhelming majority of the jurisdictions confronted with the prosecution of a

² South Carolina is one of only two states in the United States that has judicially expanded any state criminal law to permit prosecution of women for their alleged actions while pregnant. *See* (Ex parte Hope Elisabeth Ankrom Petition for Writ of Certiorari (Ala. 2013) 152 So.3d 397.)

1 mother for prenatal conduct causing harm to the subsequently born child, refuse to permit such
2 prosecutions.” *State v. Louk* (2016) 237 W.Va. 200, 207 [786 S.E.2d 219, 226].³

3 In addition, the outlier South Carolina cases are inapposite from the present for the critical reason
4 that the South Carolina Supreme Court, unlike California, has the power to create common law
5 crimes. This power, expressed as the Court’s “right and duty to develop common law crimes,” was
6 explicitly exercised in *State v. Horne* (1984) 282 S.C. 444, 447 [319 S.E.2d 703, 704] and provided
7 the unique basis for South Carolina’s aberrant decisions in *Whitner* and *State v. McKnight* (2003) 352
8 S.C. 635. See also, *Whitner* at 492 S.E.2d 782, 783 explaining that South Carolina’s body of case law
9 “is radically different” from the law of other states.”

10 Even without this difference, the *Whitner* decision lacks the credibility to underpin any
11 decision made by this Court. Even South Carolina’s Justice Moore, dissenting in *Whitner*,
12 characterized the decision’s improper “judicial activism” and admonished the court that it:

13 should not invade what is clearly the sole province of the legislative branch. At the
14 very least, the legislature’s failed attempts to enact a statute regulating a pregnant
15 woman’s conduct indicate the complexity of this issue. While the majority opinion is
16 perhaps an argument for what the law should be, it is for the General Assembly, and
17 not this Court, to make that determination by means of a clearly drawn statute. With
18 today’s decision, the majority not only ignores legislative intent but embarks on a
19 course of judicial activism rejected by every other court to address the issue.

20 *Whitner*, 328 S.C. at 21, 492 S.E.2d at 787 (Moore, J., dissenting). This Court should reject the
21 prosecution’s invitation to engage in judicial expansion and thereby invade the sole province of the
22 legislature. See, 58 Cal. Jur. 3d Statutes § 171, 17 Ca Jur Criminal Law: Core Aspects § 17 (3)

23 **V. The Opposition fails to assuage constitutional concerns raised by this prosecution.**

24 **A. Defendant did not receive fair notice that experiencing a stillbirth could lead to 25 prosecution for murder.**

26 The prosecution embraces an *ipsi dixit* argument that fails both as a matter of logic and of
27 law in attempting to argue that P.C. §187 provides notice consistent with due process that a woman
28 could be prosecuted for murder for experiencing a stillbirth as a result of drug use during her
pregnancy. The State makes the unsupported statement that it is “within the realm of public
knowledge that a mother’s methamphetamine use can cause serious harm or death to a viable unborn
child” and that Defendant “clearly” should have known of such harm because she ultimately lost her
pregnancy. This argument first fails on account of its circular nature. Even disregarding its logical

³ The Supreme Court of Appeals of West Virginia collected cases from these jurisdictions, and the list is
expansive. In the interest of brevity and judicial economy, Defendant has not copied that enlightening string
citation here but refers the Court to *Louk* (2016) 237 W.Va. 200, 207-208.

1 fallacy, however, while this statement might provide notice of the purported negative effects of drug
2 use during pregnancy, it does *nothing* to provide notice that such drug use could subject a person to
3 prosecution for murder under the California Penal Code. Moreover, neither of the State's cited
4 articles supports the State's claim regarding causation and there is simply no scientific/medical basis
5 for the argument. See, Terplan-Wright letter, <https://tinyurl.com/y9djet57>

6 Similarly, the State's assertion that the "murder statute expressly includes a fetus with the
7 only exceptions relating to *medical abortions*," (Opposition at p7 --emphasis in original) is false. As
8 explained *supra*, nothing in the statute limits or qualifies the exemption for pregnant women or those
9 assisting them in any way or requires that they lose their pregnancy in pursuit of a "medical abortion."
10 Rather, the only notice given by the statute itself, the lawmakers who wrote it, and every court that
11 has applied it in this state and nearly every other is that a pregnant woman cannot be prosecuted for
12 her own volitional conduct in relation to her pregnancy outcome. Moreover, the cases cited by the
13 State to support its misuse of the law in this case (*Keeler*, *Davis*, and *Valdez*) provide no notice to a
14 pregnant woman because all involve the correct legislatively-intended use of the law to prosecute
15 *third parties* who attack a pregnant woman *not* the woman herself. This prosecution, should it
16 continue, will constitute the first and only time that a court in California has considered this issue
17 and permitted such a prosecution to proceed. Such an interpretation would constitute a clear violation
18 of Ms. Becker's right to fair notice and due process and the statute, as applied, would be rendered
19 void for vagueness.

20 **B. State's argument that prosecution would not violate Defendant's right to privacy is not**
21 **rooted in constitutional law.**

22 Finally, the State argues that its prosecution does not infringe on Ms. Becker's fundamental
23 right to privacy because it seeks to prosecute Ms. Becker for the loss of her "viable" fetus and because
24 "methamphetamine use is illegal,"⁴ so that this prosecution imposes no additional "burden at all" on
25 Ms. Becker. The viability argument is without merit. That the present prosecution is based on conduct
26 alleged to have occurred after "such time allowed for an abortion" had passed and is therefore outside
27 of the protections of the Fourteenth Amendment has no basis in fact, statute, or constitutional law. It
28 is for this reason that the prosecution has failed to offer *any* relevant or binding authority to support

⁴ California, notably, does not criminalize addiction or the past use of drugs. Rather, the Cal. Health & Safety Code D. 10, Uniform Controlled Substances Act proscribes the *current* use, possession, transportation and the sale of controlled substances, *but not* the past use of a controlled substance. See (*People v. Mendoza* (1977) 76 Cal.App.3d Supp. 5, 10 [143 Cal.Rptr. 404].) Therefore, to the extent that the State alleges that Ms. Becker has, in the past, used methamphetamines, such is not, itself unlawful.

1 its proposition that the state may criminalize a pregnant woman's conduct "as soon as the fetus is
2 viable or when a woman can no longer obtain an abortion." Opposition at 8⁵

3 Apart from its being fully untethered from the law, the prosecution's argument makes little
4 practical sense. The prosecution would have it so that Ms. Becker's addiction was perfectly lawful
5 during her first and second trimesters - even if it led to miscarriage - but criminal in her third, after
6 the ill-defined moment of "viability." The prosecutor could lobby for such a law, but the current
7 statute imposes no such limitations. Such an imagined law would attempt to define the moment at
8 which certain conduct converts itself from lawful to murderous during a woman's pregnancy but its
9 application would necessarily be left to prosecutorial discretion and discrimination. No such
10 application of such a statute nor certainly of the existing statute, therefore, could be narrowly tailored
11 to a compelling state interest and would instead violate Ms. Becker's constitutional right to privacy.

12 VI. Conclusion

13 In its opposition the prosecution does little more than affirm that, despite the overwhelming
14 body of law, the express legislative intent, and the plain language of P.C. § 187, it would have this
15 Court exceed its authority and judicially expand the reach of California's murder statute to render
16 that statute unconstitutionally void for vagueness and violative of Ms. Becker's constitutional rights
17 to due process and privacy. The Court must reject this invitation and apply the law as it is written.
18 PC Section 187 categorically exempts pregnant women from criminal liability for their birth
19 outcomes. For these reasons and those stated in Ms. Becker's motion, she respectfully urges the Court
20 to dismiss this case with prejudice.

21 Dated: June 1, 2020.

22 Respectfully submitted,

23 
24 DANIEL ARSHACK, ESQ.

25 
26 JACQUELINE GOODMAN, ESQ.

27 
28 ROGER V. NUTTALL

29 ⁵ Notably, the only case that cites the two law review articles on which the State relies is *McKnight*, 352 S.C.
30 635, which, as explained *supra*, is among only a handful of state cases recognized as extreme minority
31 outliers, the reasoning of which has been roundly rejected by the majority of jurisdictions. Also, it is
32 important to point out that *McKnight* is also distinguished by the fact that the same court vacated her
33 conviction on post-conviction proceedings because the state failed to prove that drug use caused the
34 stillbirth. See (*Louk* 237 W.Va. at 207-208.)

PROOF OF SERVICE

STATE OF CALIFORNIA,)
COUNTY OF FRESNO.) ss.

I am employed in the County of Fresno, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 2333 Merced Street, Fresno, California 93721.

On **June 1, 2020**, I served the foregoing document described as **REPLY IN SUPPORT OF NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT AND NONSTATUTORY MOTION TO DISMISS** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

MELISSA D'MORIAS, ESQ.
Deputy District Attorney
Kings County District Attorney's Office
1400 W. Lacey Blvd
Hanford, CA 93230
Email: Melissa.D'Morias@co.kings.ca.us

☒ BY EMAIL

I transmitted a true copy via electronic mail (email) of said document(s) to the person(s) listed herein.

☐ BY MAIL

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. Postal Service on that same day with postage thereon fully prepaid at Fresno, California, in the ordinary course of business.

☒ BY PERSONAL SERVICE

I delivered such envelope by hand to the offices of the addressees.

Executed on June 1, 2020, at Fresno, California.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


DENISHA MURRAY

PROOF OF SERVICE

EXHIBIT 12

SUPERIOR COURT OF CALIFORNIA
COUNTY OF KINGS, KINGS COUNTY JUDICIAL DISTRICT
HONORABLE ROBERT S. BURNS, Judge
DEPARTMENT 6

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
Plaintiff,) No. 19CM-5304
vs.) **AMENDED**
CHELSEA BECKER,)
Defendant.)
-----)

Hanford, California June 4, 2020.

REPORTER'S TRANSCRIPT

of

DEMURRER

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TO ANY PARTY OR PERSON.**

TIA ZWETSLOOT
C.S.R. #13263

1 ---oOo---

2 BE IT REMEMBERED, that the above-entitled
3 matter came on regularly for demurrer in the Superior
4 Court of California, County of Kings, Kings County
5 Judicial District, Department 6, before the HONORABLE
6 ROBERT S. BURNS, Judge, on June 4, 2020.

7 The People of the State of California were
8 represented by MELISSA D'MORIAS, Esq., Deputy District
9 Attorney for the County of Kings, State of California.

10 The Defendant, CHELSEA BECKER, was
11 personally present in court and was represented by her
12 counsel, JACQUELINE GOODMAN, Esq., ROGER NUTTALL,
13 Esq., DAN ARSHACK, Esq., Attorney at Law.

14 ---oOo---

1 WHEREUPON, the following proceedings were
2 had and testimony given, to wit:

3 ---oOo---

4 THE COURT: Ms. Goodman is present with her
5 counsel -- Ms. Becker is present with her counsel
6 Ms. Goodman and Mr. Arshack. It is here for demurrer
7 as to the pleadings.

8 Is everybody ready to proceed?

9 MS. GOODMAN: Yes, your Honor.

10 MS. D'MORIAS: Yes, your Honor.

11 THE COURT: I guess my starting place is,
12 Ms. D'Morias, you will need to address why I shouldn't
13 strike your pleadings for exceeding the ten-page limit
14 under 526(g) of the local rule. I looked at the
15 minute order and I didn't see where the Court gave
16 leave to amend. But I thought I remember in the back
17 of my head we had that conversation, but I may be
18 misremembering that.

19 MS. D'MORIAS: My reply, your Honor, that
20 was submitted, or my opposition?

21 THE COURT: It was 19 pages or 20 pages. I
22 read the first ten and I stopped.

23 MS. D'MORIAS: No, your Honor, the points
24 and authorities in support of opposition to demurrer
25 and motion to dismiss, I have ten pages that I filed.

26 THE COURT: And you attached another nine or
27 ten pages to it. If you read local 526(g) it includes
28 the attachments to it.

1 MS. D'MORIAS: I am not aware of any
2 attachments that I submitted.

3 THE COURT: I had attached to it autopsy
4 reports and the such.

5 MS. D'MORIAS: I am not asking the Court to
6 consider those.

7 THE COURT: Just the first ten pages?

8 MS. D'MORIAS: Just the first ten pages of
9 my argument. I was unaware.

10 THE COURT: That is what I reviewed was the
11 first ten pages.

12 With that then, Mr. Arshack, did you want to
13 be heard as to your demurrer? I had read both sides
14 moving papers to the response and the reply.

15 MR. ARSHACK: I do, Judge. Thank you for
16 the opportunity, and I will to the best of my ability
17 not repeat everything that is in our moving papers.

18 THE COURT: Okay.

19 MR. ARSHACK: I appreciate the fact that you
20 have spent the time with them.

21 Judge, we're here to address the
22 applicability of Penal Code Section 187 to a case in
23 which the central fact is Ms. Becker having delivered
24 a stillborn fetus. In the absence of that fact I
25 think we could all agree there would be no case.

26 In California there has never been a crime
27 associated with delivering a stillborn fetus. And
28 although the prosecution suggests that the still birth

1 was caused by the act of Ms. Becker's voluntarily,
2 volitional, and consensual ingestion of a controlled
3 substance. Penal Code 187(b)(3) by its own plain
4 terms precludes the prosecution of a woman for the
5 consensual acts in which she may engage while
6 pregnant. And as I will discuss if there is any
7 reason to wonder if 187(b)(3) applies to this case,
8 the legislative history makes it completely clear that
9 in fact it is precluded.

10 But, Judge, before we go into that I wanted
11 to just start by acknowledging what I know to be the
12 heartfelt desire of the Kings County prosecutor to
13 protect fetuses and pregnant women. In communications
14 he has had with a number of members of the public, he
15 has established that fact. What we know though is
16 that based on the research and publications of every
17 major medical organization in the state and nationally
18 is that prosecuting a woman for the result of their
19 pregnancy or for their acts while pregnant does
20 nothing to protect women or their fetuses. In fact,
21 it achieves just the opposite, it endangers them.

22 Judge, I know you say you read the papers,
23 and I appreciate that, and I am -- I would like to
24 underscore that you take the time to read the material
25 attached at footnote two of our moving papers. There
26 is no research from any professional organization that
27 addresses drug use by pregnant women that suggests
28 that prosecuting women for their behavior while

1 pregnant protects fetuses. The threat of prosecution
2 though drives women away from the help and support
3 they need, and in some cases compels women to
4 terminate their pregnancies out of fear of
5 prosecution. Many prosecutors across this state and
6 across the country have realized the truth of this
7 fact, and embraced alternatives to prosecution that
8 can support women by addressing substance abuse
9 without chasing them into the shadows.

10 So let's look at Penal Code 187, and how and
11 why it was amended in 1970. The Court is familiar
12 with the Keeler case that involved a violent attack by
13 a man against a pregnant woman. He punched and kicked
14 her in her stomach, and killed the fetus. He was
15 prosecuted, and the case against him was dismissed
16 because the Court found that the homicide statute
17 didn't protect fetuses from being murdered. And so
18 the statute was amended to include fetuses by then
19 republican speaker of the assembly Craig Biddle who to
20 proposed and passed Penal Code 187 and revised Penal
21 Code 187 that included Penal Code 187(b)(3). And
22 Penal Code 187(b)(3) as we know besides a simple
23 reading of the plain language of the statute, that it
24 was intended to preclude prosecution of women for
25 their behavior while pregnant that resulted in the
26 death of their fetus. We know this for certain, and I
27 will get to in a moment why we know this for certain.

28 In 1992 the Jarique case that was available

1 in our papers and by a link in our papers involving
2 cases identical to this is a woman who used
3 methamphetamine while pregnant. Submitted to the
4 Court an affidavit, the Biddle affidavit, which you
5 also have, Judge, which explained that the amendment
6 was intended to make punishable as murder quote, "A
7 third party's willful assault on a pregnant woman
8 resulting in the death of her fetus." Judge, Craig
9 Biddle put in his affidavit that that was the sole
10 intent of Assembly Bill 816, which was the amendment
11 of Penal Code 187. And he explained that it was never
12 intended to make punishable as murder conduct by a
13 pregnant woman that resulted in the death of her
14 fetus.

15 The Jarique court acknowledging the intent,
16 and understanding the intent of Penal Code Section
17 187(b)(3), and it's clear preclusion of women from
18 prosecution from murder of a fetus for acts in which
19 they engage during their pregnancy dismissed the case.
20 And, Judge, despite the fact that the legislature drew
21 a bright line precluding exactly this kind of
22 prosecution on several occasions over the years
23 prosecutors, and here we are, have nonetheless made
24 efforts to prosecute women for the outcomes of their
25 pregnancy. After Jarique, the Jones case also noted
26 in our papers with facts identical to the Jarique case
27 was likewise dismissed for the same reason.

28 In another case the Court stated that a

1 homicide of a fetus is punishable as murder unless the
2 act was solicited, aided, abetted, or consented to by
3 the mother of the fetus. Thus said that Court, a
4 third party can commit this crime, but a birth mother
5 who necessarily would consent to her own volitional
6 actions cannot.

7 We asked in our papers that the Court take
8 judicial notice of People v. Olsen. And although of
9 course unpublished decisions we understand have no
10 precedential value. We noted because the prosecution
11 suggested that there are no appellate cases that
12 address this issue, and of course Olsen was an
13 appellate case. Every single case cited by the
14 prosecution on this issue relates to cases in which
15 third parties have murdered the fetus of a pregnant
16 woman. No cases in California have ever prosecuted a
17 woman for the death of her own stillborn infant.
18 There is a universe of difference between prosecuting
19 people who have abused women and killed their fetuses,
20 and prosecuting a pregnant woman due to her pregnancy
21 outcome. Moreover as I will elaborate in a moment.
22 The California legislature has declared the problem of
23 substance abuse disorder as an addictive problem, not
24 a chosen course.

25 No court in California has ever permitted
26 the prosecution of a woman under PC 187 who sustained
27 their pregnancy loss regardless of her acts while
28 pregnant. Some courts in other states have been

1 presented with that. There is the Jorgensen case
2 actually in New York involving a woman who was charged
3 with a homicide of her fetus because she broke the law
4 by driving without a seatbelt on and had gotten in an
5 accident, and her fetus died.

6 Likewise in Maryland there was a case of a
7 woman, the Killmon case in Maryland that involved a
8 woman who went skiing while pregnant, had an accident
9 and her fetus died. Both of those cases were
10 dismissed. And, you know, we can come up with any
11 number of other situations in which a prosecutor in
12 California or elsewhere might be inclined to try to
13 protect a fetus by prosecuting a woman after having
14 sustained a still birth. It could be someone who -- a
15 pregnant woman who illegally skateboarded on the
16 street while pregnant. A woman who gambled illegally
17 while pregnant and suffered a still birth. There is a
18 number of scenarios that a person might come up with.
19 But the fact is, the only scenario that the prosecutor
20 has suggested would be one where a woman tried to stab
21 herself in her abdomen in order to kill her fetus, is
22 a horrible fact pattern put forward by them. But in
23 fact just such a tragic case has occurred in
24 California, it is *People v. Tucker*, those are noted in
25 our paper as well. And there again under those
26 terrible circumstances even then the Court said, look,
27 we understand this is a tragic circumstance. In
28 *People v. Tucker* the boyfriend of the pregnant woman

1 said he was going to leave her unless she got rid of
2 the baby, and she shot herself in the abdomen killing
3 the baby, and was prosecuted for murder. But the
4 Court there for the same reason as we're asking you
5 here dismissed the case, because PC 187(b)(3)
6 precludes it.

7 So what the prosecution is asking you to do
8 is precisely the opposite of what the legislature
9 intended. And precisely what the Court in the Davis
10 case cited by the prosecution admonished the lower
11 courts not to do. California courts cannot
12 independently expand the reach of criminal laws in
13 California, legislatures do that. And that is because
14 as you well know, Judge, California is a code state as
15 opposed to South Carolina, the state held by the
16 prosecution in their opposition has a shining example
17 of judicial activism which is a common law state. In
18 South Carolina the judiciary is free to, and often
19 does expand laws and interprets them as they see fit.

20 Since the late 1980's over and over the
21 California legislature has considered and rejected
22 exactly the kind of expansion in the law wished for by
23 the prosecutors in this case. And they have
24 uniformly, as you no doubt are aware, rejected those
25 offers to expand criminal liability for women who use
26 drugs while pregnant.

27 Subsequent to the 1970 amendment of PC 187,
28 the legislature has addressed the issue of substance

1 abuse during pregnancy, and whether or not that should
2 be sanctioned under Section 187, or by some other
3 criminal prescription. In 1987 Senate Bill 1074 would
4 put forward to expand the definition of child
5 endangerment to cover substance abuse during
6 pregnancy, and the legislature rejected that.

7 Then in 1989 Senator Seymour put forth
8 Senate Bill 1465, which attempted to expand the
9 substance abuse during pregnancy prohibition to
10 include manslaughter. That too was rejected by the
11 legislature.

12 And finally in 1991 in Assembly Bill 650, an
13 attempt was made by the legislature to just put
14 forward a misdemeanor statute that would make
15 substance abuse during pregnancy a crime, a
16 misdemeanor. That was also rejected by the
17 legislature.

18 So what we know from that is that the
19 legislature clearly knows how to address the issues
20 raised by the prosecution in this case, and they have
21 clearly and consistently elected not to do it. And,
22 it is not for any court to do so now. Permitting this
23 sort of unconstitutional enlargement to the statute
24 sought by the prosecution would render it void for
25 vagueness and violative of Ms. Becker's due process
26 rights since no court in California has ever committed
27 the expansion in this law. The very legislature who
28 promulgated the amendment explained the intention

1 behind PC 187(b)(3) was for it to preclude the
2 prosecution of people in Ms. Becker's position, and
3 apply it only to third persons who attack pregnant
4 women. There has never been any reason for Ms. Becker
5 to have known, or could have known that her conduct
6 would subject her to prosecution under the murder
7 statute PC 187. Any expansion of the statute, what
8 this Court might be inclined to order, would be an
9 unconditional ex post facto law as applied to her.

10 Judge, I want to end by acknowledging that
11 the legislature in 2004 specifically said about how to
12 effectively treat alcohol/drug effected mothers and
13 infants. And there is a segment in the Health and
14 Safety Code chapter two, it is Section 11757.51. It
15 is fairly long, and you will be happy to know I am not
16 going to read the whole thing. But what it does,
17 Judge, is address the legislature's intention in how
18 to protect drug addicted mothers and their fetuses,
19 and it goes through a process of saying this is a big
20 problem. And then it says the -- part C, "The
21 appropriate response to this crisis of alcohol and
22 drug affected infants and mothers is prevention to
23 expanded resources for recovery from alcohol and other
24 drug dependency." They say the only sure effective
25 means of protecting the health of these infants is to
26 provide the services needed by mothers to address a
27 problem that is addicted and not chosen. It bears
28 repeating. They found that this problem is an

1 addicted problem, and not a chosen problem.

2 So I am happy to answer any questions the
3 Court might find. I think our papers are -- I hope
4 our papers are persuasive and clear. But with that I
5 thank you for the time of expressing my thoughts to
6 you.

7 THE COURT: I want to be sure I am clear,
8 when you're referring to the Tucker case, you're
9 referring to the Santa Barbara Superior Court case,
10 not an appellate case, correct?

11 MR. ARSHACK: That is correct, it was
12 dismissed and never appealed.

13 THE COURT: No need to appeal, because the
14 action of the superior court judge in that case --

15 MR. ARSHACK: I think I have to -- yeah,
16 that is correct, that one was never appealed. The
17 Olsen case was appealed, and the appeal was dismissed.

18 THE COURT: All right, thank you.

19 Ms. D'Morias, did you want to be heard?
20 You're on mute, Ms. D'Morias.

21 MS. D'MORIAS: Yes, I will reply.

22 THE COURT: I did consider not telling you.

23 MS. D'MORIAS: I know. I don't miss you,
24 your Honor.

25 THE COURT: Nobody does.

26 MS. D'MORIAS: In regards to 187(b)(3) --
27 the People's position in regards to whether it is a
28 barred prosecute a mother for the death of her fetus,

1 I note the language states that a mother may -- a
2 mother may not be held accountable if she aids and
3 abets, solicits or consents to the act. And the
4 position of the exception in the statute itself (b)(3)
5 where it falls under the exception of (b)(2) regarding
6 a physician who informs an abortion under the abortion
7 act, my understanding is in the plain reading of that
8 is a mother who attempts to commit an abortion herself
9 cannot be held liable. The fact that this was an act
10 at the same time as (b)(2), plainly reads that the
11 purpose of the statute was to prevent a mother from
12 being prosecuted from seeking an abortion. It does
13 not simply state that a mother cannot be prosecuted
14 ever. If that were the case the People would argue
15 that B would clearly state a mother cannot be
16 prosecuted, leave it at that. But the language -- the
17 additional language of aided and abetted, solicited or
18 consented to carves out the exception in its plain
19 meaning.

20 I will move on to the fact that no case has
21 ever been prosecuted in the State of California, or an
22 appellate case hasn't been heard on either doesn't
23 necessarily bar prosecution. It means that this is an
24 issue to be addressed by the Court, and at this point
25 we need to look at the law and try the case, and see
26 what law can be developed. Criminal prosecution to
27 address the issue of drug addiction is something that
28 this Court is very familiar with, as well as all over

1 the State of California. If criminal prosecution was
2 barred or not effective in treating addiction, then we
3 wouldn't have drug laws in the first place. A person
4 who is addicted to alcohol commits a DUI and kills
5 someone is still held criminally liable. A mother who
6 has been -- who has given birth to three children
7 positive for methamphetamine and heroin, and continues
8 to use causing the death of her child who was a full
9 term child, and the cause of that death is high levels
10 of methamphetamine, should be held just as liable.

11 We're not dealing with a case where
12 Ms. Becker was not aware of the circumstances of her
13 methamphetamine use. We're dealing with a case in
14 which she was notified, she was counseled, she was put
15 through drug programs. She was given every attempt
16 that this State could offer to prevent this problem,
17 and continued to use drugs. There is a public policy
18 concern to prevent children or fetuses from -- for
19 someone to protect the fetus, for the state to protect
20 the fetus, as well as preventing children from being
21 removed from the parents, which is what we dealt with
22 here, which Ms. Becker has shown she is no longer in
23 the custody of due to her drug use.

24 The public policy concern is to protect
25 children, and to protect fetuses, and we have
26 attempted to do that by giving Ms. Becker the
27 opportunity to treat her drug addiction issues. The
28 plain language of the statute does not prohibit a

1 mother from ever being prosecuted under 187. The
2 plain language of the statute is to protect a mother
3 who seeks a lawful abortion, and to protect and to
4 perform those, and that is our position.

5 THE COURT: Thank you, Ms. D'Morias.

6 MR. ARSHACK: Can I reply, Judge?

7 THE COURT: Thank you, Ms. D'Morias.

8 Mr. Arshack, since you're the moving parties
9 I give you the last word. Did you want to respond
10 anything?

11 MR. ARSHACK: Very briefly, Judge. The
12 prosecutor makes a creative effort at statutory
13 construction that is not supported by any law or
14 accepted method of evaluating statutes. The fact is
15 187(b)(3) identifies three methods by which a person
16 can be precluded from prosecution for behavior that
17 results in the death of a fetus. There is no
18 connection between 187(b)(2) and 187(b)(3). It
19 doesn't say and, it doesn't say or, they are just
20 three independent methods.

21 There is no language in 187(b)(3) that says
22 that the act must be related to obtaining an abortion.
23 It merely states as Craig Biddle said it was meant to
24 state, that the women's volitional behavior while
25 pregnant is not subject to prosecution.

26 THE COURT: If they are not related then --
27 hold on. If they're not related, then (b)(2) isn't
28 necessary, correct?

1 MR. ARSHACK: Can you say that again?

2 THE COURT: If (b)(1)(b)(2) and (b)(3) are
3 not related, there is no need for (b)(2). (B)(1) says
4 if it is an abortion pursuant to the Therapeutic
5 Abortion Act, it cannot be prosecuted. If that is the
6 case, you don't need a (b)(2) protecting physicians
7 and surgeons who have certificates from participating
8 in an abortion, because they can't be prosecuted under
9 (b)(1). If it was done pursuant to the act, it would
10 seem to me that that appears that they are read
11 together, not that they're read separately, otherwise
12 (b)(2) would be superfluous. And you're not to read
13 statutes to make language superfluous, correct?

14 MR. ARSHACK: I understand what you are
15 saying, Judge, and I am sorry for cutting you off,
16 because I can't see your mouth moving.

17 THE COURT: It is a little difficult with
18 the video.

19 MR. ARSHACK: There is any number of
20 circumstances in which a medical professional, not a
21 subject to the prescription of what is outlined in
22 187(b)(1) could act independently to assist a woman in
23 obtaining an abortion that is -- who would be
24 precluded from prosecution by virtue of (b)(2). And
25 there is nothing in (b)(2) or (b)(1) that suggests
26 that a women's behavior as defined in (b)(3) is
27 limited only to her behavior relevant to an abortion.
28 And that is what every court that has addressed this

1 issue in California has concluded.

2 THE COURT: All right.

3 MR. ARSHACK: And I might also add that the
4 -- as I have said, the legislature in looking at
5 potential amendments to legislation that would result
6 in the prosecutor's ability to prosecute for exactly
7 the conduct that they want this case to -- they want
8 Ms. Becker to be prosecuted for. The legislature has
9 over and over said, no, we don't support that sort of
10 law.

11 That is all I need to say on that, Judge. I
12 think it is clear on face, and we ask that you dismiss
13 this.

14 THE COURT: Grant the demurrer?

15 MR. ARSHACK: The demurrer, yes.

16 THE COURT: Thank you, sir.

17 All right, I note to the extent some of the
18 arguments talked about, whether or not prosecution
19 promotes the safety of the mother of the fetus, or
20 whether there are better methods providing resources
21 and other things, that really isn't the subject of a
22 demurrer, that is a policy decision for the
23 legislature to make, not for the Court. The Court's
24 job is to simply review the law as it is written, and
25 to the best it can interpret how that law is to be
26 applied. And it is really the legislature's job to
27 decide whether or not it is more effective or more
28 rational approach to provide treatment as opposed to

1 punishment, regardless of what I think might be the
2 most appropriate method or rational way to deal with
3 the issue. So that is really not before the Court.

4 In terms of Mr. Biddle, his declaration in
5 my mind tells me what he is thinking, but he is not
6 the only vote that passed the law. And I don't know
7 that it truly speaks for the entire legislature body.
8 So while it is evidence of some thought process, it
9 probably certainly was probably part of the debate.
10 It is not the ending point of that particular
11 analysis.

12 I don't see that either side has cited a
13 single California appellate case or citable authority
14 that specifically deals with whether or not Penal Code
15 Section 187 applies to the mother of a fetus. I
16 believe the defense cited People versus Moten, which
17 is a Fifth District Court of Appeals case, 229
18 Cal.App.3d, 1318, but that case really is not very
19 enlightening. That dealt with a baby that was born
20 healthy and died eight weeks later. The death was due
21 to malnutrition and dehydration, and it was
22 uncontroverted at the trial that the defendant's
23 prenatal drug use did not contribute to the child's
24 death. And that court simply held that it was error
25 to allow evidence of prenatal drug use during the
26 trial as it was irrelevant to the cause of death. And
27 therefore its prejudicial effect far outweighed its
28 probative value, and I don't disagree with that at

1 all. When I look at the plain language of Penal Code
2 Section 187, it does not appear to me to exclude its
3 application to the mother of fetus. It appears to me
4 that (b)(1), (b)(2) and (b)(3) are intended to be read
5 in connection with each other.

6 A makes it murder for the unlawful killing
7 of a human being or a fetus.

8 (B)(1) states that the murder of a fetus
9 does not apply to a procedure under the Therapeutic
10 Abortion Act, which would seem to me to be designed to
11 protect the mother for obtaining a lawful abortion.

12 (B)(2) says that it does not apply to a
13 doctor or a surgeon performing those acts if they have
14 a certification as a doctor or surgeon. That appears
15 to be placed there to protect the doctors who are
16 performing the procedure.

17 And (b)(3) appears to me to be there to
18 protect the medical personnel who assist the doctor
19 during the course of that procedure who themselves are
20 not doctors, and do not hold surgeon certificates such
21 as nurses and the such.

22 So reading it it appears to me that the
23 exception under the B section of Penal Code Section
24 187 is designed to protect the therapeutic abortion
25 that is sought, which is a constitutional right under
26 Roe versus Wade and Planned Parenthood versus Kacee.
27 Nowhere in the statute does it say that the statute
28 does not apply to the mother of a fetus. Which if

1 that was the intent of the legislature, they could
2 have easily done so.

3 And in fact, one of the citations that the
4 defense gave when I looked it up it referenced a
5 Georgia statute. And I looked at the Georgia statute,
6 and it specifically says nothing in the code section
7 shall be construed to permit the prosecution of any
8 woman with respect to her unborn child. That is a
9 very clear and correct indication that they did not
10 apply their statute to apply to the mother at all.
11 And that type of language is completely absent from
12 the California statute. The argument that applying
13 the statute to the mother would violate *expo facto*
14 laws relies on the assertion that the Penal Code
15 Section plain language states that a woman cannot be
16 prosecuted based upon her own actions. And as I
17 stated I don't read the statute that way. I think it
18 limits it much more significantly than that.

19 The argument that the application of the
20 statute constitutes a due process violation because it
21 does not provide notice to the defendant, again,
22 relies on the characterization that the statute's
23 plain language excludes a mother from its application,
24 and I don't read it that it excludes the mother in all
25 circumstances. It looks to me like it excludes the
26 mother if she sought and retained a therapeutic
27 abortion.

28 The argument that that application of the

1 statute violates the defendant's right to privacy is
2 also incorrect. Both Roe versus Wade and Planned
3 Parenthood versus Kacee specifically says that that
4 right to privacy is not unbridled, and that they both
5 specifically hold that the State has a legitimate and
6 important interest in potential life. Allows the
7 State to impose regulations to protect that life once
8 the fetus has become viable. Including the
9 prosecution of abortions necessary, except when those
10 statutes allow for the necessary abortions to preserve
11 the mother's life or health.

12 In short as stated in those decisions, the
13 mother's right to privacy is not absolute, and the
14 state has a legitimate interest in protecting the
15 potential life of a fetus.

16 There are citations by the defense in the
17 pleadings, again, the indications that do not appear
18 to me to have a bearing on the application of
19 California murder statute. The reference to Renthro
20 versus Superior Court, which is an Arizona case. And
21 Common Law versus Welch, which is a Kentucky case
22 involve facts that are significantly different from
23 those presented here. Those involve cases where a
24 mother of a child was prosecuted for child abuse when
25 their child was born positive for a controlled
26 substance, and went through withdrawals because of
27 that exposure. Both those cases are consistent with
28 California law and Roe versus Wade, where they say

1 that a fetus is not a person, so it was outside the
2 scope of the statute. And that any conduct by the
3 mother had to have occurred while the child was a
4 fetus, and therefore was also outside the statute.

5 Cite to State versus Luster, which was a
6 Georgia appellate court case, which simply indicates
7 that a child being born positive for cocaine does not
8 support a charge for distributing cocaine to that
9 child, a rather absurd novel approach by the
10 prosecutor in that case. And, again, because the
11 statute involves delivering or furnishing to another
12 person, and the fetus is not a person.

13 The reason 187 was amended after the Keeler
14 decision, was because California law recognizes a
15 fetus is not a person, and they created a new crime of
16 the fetus side to go along with homicide. It appears
17 to me by its plain language that California Penal Code
18 Section 187 does apply to a fetus, and does not appear
19 to me that the equal protection arguments apply. That
20 argument is that it creates a crime that can only
21 apply to women is wrong. The crime is a homicide of a
22 fetus, not drug use by pregnancy of a mother. Drug
23 use is simply one way to commit that homicide, but is
24 not the only way, and therefore the statute would
25 apply to more than just the mother. So at this time
26 the Court is going to deny the demurrer.

27 With that, counsel, how did you want to
28 proceed? Do you want to enter a not guilty plea,

1 enter a denial, reserve all motions at this time? I
2 think I allowed you to withdraw the not guilty plea so
3 we could pursue the demurrer.

4 What would you like to do at this time,
5 Ms. Goodman?

6 MS. GOODMAN: Yes, your Honor, at the outset
7 of the argument, but should the Court have allowed us
8 to withdraw the not guilty plea, we would like to
9 enter that at this time. Deny the special
10 allegations, enter a not guilty plea, and set the
11 matter for preliminary examination.

12 THE COURT: We'll note the not guilty plea.
13 And how about -- what is your time estimate on the
14 prelim?

15 MS. D'MORIAS: I would say for the People to
16 present our evidence it would be one full afternoon,
17 your Honor.

18 THE COURT: Ms. Goodman?

19 MS. GOODMAN: I would imagine the total
20 preliminary hearing would have a time estimate of a
21 day. Probably a five-hour estimate I think based on
22 my conversations with Ms. D'Morias to date.

23 THE COURT: I think under the current rules
24 it is 30 days. I am not sure I have five hours for
25 you in 30 days. I have --

26 MS. GOODMAN: Is it possible, your Honor,
27 for counsel and I to confer in terms of that day? We
28 probably should have done that before getting on the

1 phone.

2 THE COURT: Here is my suggestion, and I
3 haven't done the math, but I think you're still within
4 the 30 days, because I think it would have -- since we
5 withdrew the guilty plea, essentially did the
6 arraignment, it is 30 days from today's date. I have
7 one prelim on the 29th at 1:30, and right now I don't
8 have any on the afternoon of the 30th yet. If
9 everyone is willing to waive the one session rule, I
10 could set it for the 29th. And then if we don't
11 finish it on that day, I will block out the 30th and
12 we would have the rest of the afternoon on the 30th,
13 which actually I think would be within the 30 days.
14 But with a waiver of the one session rule we can get
15 it done.

16 MS. GOODMAN: I am wondering, Mr. Arshack --
17 we have counsel coming in from New York, and given the
18 quarantine it may be counsel prefers to go out
19 farther, and I would like to know whether that is --

20 THE COURT: Do you guys want to put it over
21 for a very short period for you to confirm to see when
22 you would like to do it, and come back and set dates
23 that work for everyone's schedule?

24 MR. ARSHACK: I support that idea. And my
25 question that I was going to ask you, Judge, is if we
26 waive the 30-day rule, can we push it over into July?

27 THE COURT: Sure. So the normal rule is a
28 prelim within ten days, no later than 60 days. With

1 the emergency it is now 30 and 60. If she wants to
2 enter a time waiver, give up the 30 and 60, we can
3 pick whatever dates you guys want.

4 Does that make sense?

5 MR. ARSHACK: Oh, yeah, thank you.

6 THE COURT: Ms. Goodman?

7 MS. GOODMAN: Yes. I wonder if -- I am
8 sorry to throw a wrench in it, I got distracted. What
9 if we set a pretrial for the setting date, and we
10 might want to set a pretrial a little bit sooner. And
11 Ms. D'Morias, Mr. Arshack, and Mr. Nuttall and I can
12 talk about the actual logistics of the preliminary
13 hearing so we could set a date that is realistic.

14 THE COURT: That is what we were just
15 discussing. It would require a time waiver from
16 Ms. Becker, and then we would set it for a setting
17 date fairly quickly so you guys can work out logistics
18 of doing an actual prelim.

19 MS. GOODMAN: That is my request, and I
20 believe Ms. Becker is in agreement.

21 Is that correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Ms. D'Morias?

24 MS. D'MORIAS: I was going to advise counsel
25 that the investigating officer in this matter is
26 unavailable the first week of July, but we can work
27 around that when we discuss --

28 THE COURT: You can work that out in your

1 logistics conversation.

2 So, Ms. Becker, the law is a little bit
3 influx in terms of the time of when prelim is. Right
4 now it says you have a right to a prelim within ten
5 days of your arraignment. Because of the emergency
6 rules with the Covid virus they say within 30 days.
7 Do you want to enter a time waiver. Come back here on
8 a date we pick with your attorneys so they could talk?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: We'll note the time waiver.
11 When did you want to come back for your pretrial,
12 prelim setting?

13 MR. ARSHACK: I am flexible, whatever works.

14 THE COURT: I am assuming you're appearing
15 by video on that date, but probably need to be present
16 for the prelim, Mr. Arshack, is that correct?

17 MR. ARSHACK: I will appear by video for the
18 pretrial setting date.

19 MS. GOODMAN: My suggestion would be June
20 10th or the 15th.

21 MS. D'MORIAS: Either are fine with me.

22 THE COURT: Let's do the 15th.

23 Mr. Nuttall, it is June 15th.

24 MR. NUTTALL: Yes, that will be --

25 THE COURT: That will work. So, Ms.
26 Goodman, set it for June 15th at 8:15 in this
27 Department.

28 Do you have anything else, Ms. Goodman?

1 MS. GOODMAN: No, not at this time, thank
2 you, your Honor.

3 THE COURT: Mr. Nuttall, do you have
4 anything else?

5 MR. ARSHACK: I have one other thing.

6 THE COURT: Mr. Nuttall, do you have
7 anything else? I am going to take that as a no.

8 Mr. Arshack?

9 MR. ARSHACK: I did have one other thing. I
10 heard from our client yesterday that she has received
11 some papers, some legal papers served on her by the
12 prosecutor, and she had some questions about them.
13 And since I have not seen them, I wrote to the
14 prosecutor and asked if she would mind sending them to
15 me so we could advise our client concerning them.

16 MS. D'MORIAS: Mr. Arshack, I am in the
17 process of -- they are coming via USPS mail, and I
18 e-mailed them to you. They are the 827 petitions, I
19 discussed them with Ms. Goodman previously. I am
20 required to personally serve Ms. Becker, that is why
21 she received a copy of that, and I e-mailed a copy to
22 all counsel.

23 MR. ARSHACK: Just FYI, our intention is
24 until we see them and can confer with her, we won't
25 respond to them.

26 MS. D'MORIAS: And they won't be filed until
27 ten days from now, because there has to be that
28 ten-day period, they are the copies I sent.

1 THE COURT: The 827 petition is the
2 California mechanism to look into juvenile filings.

3 MR. ARSHACK: Got it, Yep.

4 THE COURT: All right, anything further from
5 either side?

6 MS. D'MORIAS: No, your Honor.

7 THE COURT: That will be the order.

8 Ms. Becker, good luck to you. Stay safe and
9 healthy, and see you back here on I think we said the
10 15th.

11 (Matter concluded.)

12 ---oOo---

1 ---oOo---

2
3 I, TIA A. ZWETSLOOT, a Certified Shorthand
4 Reporter, DO HEREBY CERTIFY:

5 That the foregoing and annexed pages
6 constitute a full, true, and correct transcript of the
7 proceedings had and testimony given in the hearing of
8 the matter entitled as upon the first page hereof.

9 Dated: June 7, 2020

10
11 /S/ TIA ZWETSLOOT

12 ~~Official Court Reporter Pro Tempore #13263~~
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EXHIBIT 13

000311

1 ROBERT PINTO
2 San Benito County Public Defender
3 345 Fifth Street, #6
4 Hollister, CA 95023
5 Telephone: (408) 637-8897

6 ANN BRICK
7 MARGARET C. CROSBY
8 American Civil Liberties Union
9 Foundation of Northern California, Inc.
10 1663 Mission Street, Suite 460
11 San Francisco, CA 94103
12 Telephone: (415) 621-2493

13 JUDITH GANZ
14 1256 Market Street
15 San Francisco, CA 94102
16 Telephone: (415) 864-3131

17 Attorneys for Defendant
18 ROSEANN JUARIGUE

19 IN THE JUSTICE COURT OF SAN BENITO COUNTY JUDICIAL DISTRICT
20 COUNTY OF SAN BENITO, STATE OF CALIFORNIA

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiff,

24 v.

25 ROSEANN MERCEDES JAUREQUI,

26 Defendant.

Cr. No. 23611

DECLARATION OF W. CRAIG
BIDDLE

27 1. In June 1970 I was a member of the Assembly of the California Legislature
28 and was the primary author of the amendments to Penal Code Section 187 creating

1 the crime of fetal murder. The impetus for those amendments was the California
2 Supreme Court's decision in Keeler v. Superior Court, 2 Cal. 3d 619 (1970). In
3 Keeler, the Court overturned the murder conviction of a man who brutally assaulted
4 his estranged pregnant wife in order to destroy the fetus she was carrying. Although
5 the woman survived the attack, the fetus did not. The Court overturned Keeler's
6 murder conviction on the ground that a fetus is not a human being within the
7 meaning of the California murder statute, Penal Code Section 187.
8

9 2. Shortly after the Supreme Court issued its opinion in Keeler, I introduced
10 legislation in the Assembly to amend Penal Code Section 187 so that Keeler's acts
11 would be punishable as murder. That legislation was introduced in the form of an
12 amendment to a pending bill, AB 816.
13

14 3. During the legislative process, AB 816 was amended in a number of
15 respects. These amendments included provisions to exempt from the bill's
16 application any abortion performed pursuant to the State's Therapeutic Abortion Act
17 (Health and Safety Code §25950, et seq.), any abortion performed by a physician or
18 surgeon where the life of the mother was at risk, and any act resulting in the death of
19 the fetus where that act was solicited, aided, abetted, or consented to by the mother
20 of the fetus. As explained when these amendments were presented, this latter
21 exception would include illegal abortions obtained by a pregnant woman. While such
22 illegal abortions would, at the time, still be punishable under the state's consensual
23 abortion law (Penal Code § 275), they would not be punishable as murder.
24

25 4. I agreed to all of the amendments to the bill because none of them
26 undermined the purpose of my legislation as that purpose was explained to the
27 Legislature: to make punishable as murder a third party's willful assault on a
28

1 pregnant woman resulting in the death of her fetus. That was the sole intent of AB
2 816. No legislator ever suggested that this legislation, as it was finally adopted, could
3 be used to make punishable as murder conduct by a pregnant woman that resulted in
4 the death of her fetus.

5 I declare under penalty of perjury that the foregoing is true and correct and
6 that this Declaration was executed in Sacramento, California on April 23, 1992.
7

8 *W. Craig Biddle*
9 W. Craig Biddle

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11 jaurigro/biddledoc
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EXHIBIT 14

Case Information

19CM-5304 | The People of the State of California vs. Chelsea Cheyenne Becker

Case Number

19CM-5304

File Date

10/31/2019

Court

Hanford - Criminal

Case Type

Felony

Judicial Officer

Burns, Robert Shane

Case Status

Open

Party

Plaintiff

The People of the State of California

Defendant

Becker, Chelsea Cheyenne

Aliases

AKA Becker, Chelsea

DOB

XX/XX/XXXX

Active Attorneys ▼

Attorney

NUTTALL, ROGER TAYLOR

Retained

Lead Attorney

Goodman, Jacqueline Belen

Retained

Attorney

Arshack, Daniel

Retained

Inactive Attorneys ▼

Pro Se

Judicial Officer
Burns, Robert Shane

Hearing Time
8:15 AM

Result
Continued - By Party

06/04/2020 Defendant in Custody

06/04/2020 Minute Order

06/11/2020 Transcript

06/12/2020 Amended Minute Order

06/15/2020 Pretrial Conference and Preliminary Hearing Setting ▼

Judicial Officer
Burns, Robert Shane

Hearing Time
8:15 AM

Result
Continued - By Party

06/15/2020 Defendant in Custody

06/15/2020 Minute Order

06/16/2020 Pretrial Conference and Preliminary Hearing Setting ▼

Judicial Officer
Burns, Robert Shane

Hearing Time
8:15 AM

Cancel Reason
Clerical Error

08/26/2020 Pretrial Conference and Preliminary Hearing Setting ▼

Judicial Officer
Burns, Robert Shane

Hearing Time
8:15 AM

EXHIBIT 15

BARRY MARSHALL LESTER

Business Address Brown Center for the Study of Children at Risk
Brown, Alpert Medical School
Women & Infants Hospital of Rhode Island
101 Dudley Street, Providence, RI 02905

I am a Child and Developmental Psychologist, Professor of Psychiatry and Professor of Pediatrics at the Alpert Medical School of Brown University and Founding Director of the Center for the Study of Children at Risk at Brown Medical School and Women and Infants Hospital. I have a PhD in Developmental Psychology and Psychophysiology from Michigan State University and did a postdoctoral fellowship in Pediatrics at Harvard Medical School. I have been doing research on developmental processes in children at risk for 50 years.

I been provided with and have reviewed a document filed in the Kings County case of State of California v. Chelsea Becker Case No.: 19CM-5304 entitled, *Points and Authorities In Support of Opposition to Demurrer and Motion to Dismiss* filed by the Office of the Kings County District Attorney. Page 7 of that document states in pertinent (highlighted) part:

The Due Process Clause prohibits the government from taking one's life, liberty or property under a criminal law so vague that it fails to give an ordinary person fair notice of the conduct that law punishes, "invite[ing] arbitrary enforcement." (Johnson v. United States (2015) 135 S. Ct. 2551, 2553.) ***It is well documented within the realm of public knowledge that a mother's methamphetamine use can cause serious harm or death to a viable unborn child. (See e.g. Lagasse LL, et al. Prenatal Methamphetamine Exposure and Childhood Behavior Problems at 3 and 5 Years of Age, J Pediatr. Apr; 129(4): 681-688; Nguyen DL, Smith M, Lagasse LL, et al. Intrauterine Growth of Infants Exposed to Prenatal Methamphetamine: Results From the Infant Development, Environment, and Lifestyle Study, J Pediatr. 2010 Aug; 157(2):337-9.)*** Clearly the Defendant endangered the life and health of her child as evidenced by the fact that the full-term fetus died as a result of Acute Methamphetamine Toxicity.

I was the senior author of both of the studies cited by the prosecutor in their papers filed in the case noted above.

Our studies were about intrauterine growth and behavior problems in children with prenatal methamphetamine exposure. We did *not* study "death" nor did we characterize any possible harm as "serious." In any event, as researchers publishing in peer reviewed medical journals, we would not assume that any research published in those journals would provide notice generally to pregnant women of anything.

Finally, whatever the side effects of maternal ingestion of methamphetamine during pregnancy, we have no reason to believe that criminalizing that behavior will help pregnant women with substance use disorder avoid any side effect of their drug to the infant. Indeed, such a punitive response to what is basically a medical/health issue has been shown to simply cause pregnant women with substance use disorder to avoid prenatal care and avoid seeking help for fear of arrest and prosecution and loss of their child to child protective services officers.

I am submitting this affidavit because the work that was presented in both of those papers does not, in any way, stand for the proposition put forth by the prosecutor. The work cited does *not* suggest that prenatal methamphetamine use “can cause serious harm or death to a viable unborn child.”

There simply is no definitive science that ties prenatal methamphetamine exposure to serious harm or death of a viable unborn child. It simply is not a fact. It is deeply troubling to me, in this day and age, given what we know about how to effectively address substance use disorder in pregnant women that a woman with a substance use disorder should be charged with murder based on her alleged use of methamphetamine while pregnant.

I have had an opportunity to read the Terplan-Wright letter which I understand has also been presented to the court in this matter. The physicians who drafted that letter are leaders in the field of the effect of and the appropriate response to pregnant women who have substance use disorder.

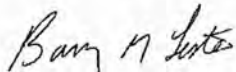
The extensive literature cited in their letter and their conclusion in their letter that, “Although much remains unknown about the effects of in utero methamphetamine exposure, no consistent teratological effects on the developing human fetus have been identified” is accurate and a concise summary of the current knowledge concerning prenatal use of methamphetamine on a fetus.

The prosecutor’s statement in their filing is simply wrong and is certainly not supported by my work nor by any recognized expert.

I would ask that the prosecutor submit a correction to her filing indicating her withdrawal of any reliance on my research papers she cited for a position which is both factually wrong and completely inconsistent with my research.

The foregoing is true to the best of my knowledge and belief and I hereby swear to the accuracy of it under penalty of perjury

Respectfully Submitted:



Barry Marshall Lester, PhD.

On this the 1st day of July, 2020 came Barry Marshall Lester, Ph D. known to me, via remote video access due to COVID 19 restrictions, subscribed his name hereto.



Notary DANIEL N. ARSHACK
NOTARY PUBLIC, STATE OF NEW YORK
COMMISSION # 02AR4984258
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES: 07/15/2022

EXHIBIT 16

Donald C. Derauf, MD
200 First Street SW
Rochester, MN 55905

June 26, 2020

Dear Sirs and Madams,

I am a board-certified general pediatrician with additional subspecialty and board certification in child abuse pediatrics. I received my medical degree from the University of Minnesota in 1987. I completed pediatric residency training from 1987-1990 at the University of Hawaii. I was an assistant and then associate professor of pediatrics at the University of Hawaii from 1991-2010. From 2011 to the present I have been a consultant and associate professor of pediatrics at the Mayo Clinic in Rochester, Minnesota. My clinical work, teaching and research focuses on the evaluation and care of children impacted by abuse and neglect, including the issue of prenatal drug exposure. My full CV is attached.

I have had an opportunity to read a document filed in the Kings County case of State of California v. Chelsea Becker Case No.: 19CM-5304 entitled "Points and Authorities in Support of Opposition to Demurrer and Motion to Dismiss" prepared by the prosecutor for Kings County.

In particular, I focused on the section on page 7 of that document which reads:

The Due Process Clause prohibits the government from taking one's life, liberty or property under a criminal law so vague that it fails to give an ordinary person fair notice of the conduct that law punishes, "invite[ing] arbitrary enforcement." (Johnson v. United States (2015) 135 S. Ct. 2551, 2553.) It is well documented within the realm of public knowledge that a mother's methamphetamine use can cause serious harm or death to a viable unborn child. (See e.g. Lagasse LL, et al. Prenatal Methamphetamine Exposure and Childhood Behavior Problems at 3 and 5 Years of Age, J Pediatr. Apr; 129(4): 681-688; Nguyen DL, Smith M, Lagasse LL, et al. Intrauterine Growth of Infants Exposed to Prenatal Methamphetamine: Results From the Infant Development, Environment, and Lifestyle Study, J Pediatr. 2010 Aug; 157(2):337-9.) Clearly the Defendant endangered the life and health of her child as evidenced by the fact that the full-term fetus died as a result of Acute Methamphetamine Toxicity. (emphasis added)

The two research papers cited above were written based upon data collected as part of the National Institutes of Health-funded *Infant Development, Environment, and Lifestyle (IDEAL) Study*, which was the largest prospective, multicenter longitudinal controlled study of prenatal methamphetamine exposure and child health and developmental outcomes. I was a co-investigator on this multi-year study and also the lead researcher at the Hawaii site, one of four sites across the U.S. where research subjects were recruited. I was also one of the authors of both of these two studies cited by the prosecutor in their papers filed in the case noted above.

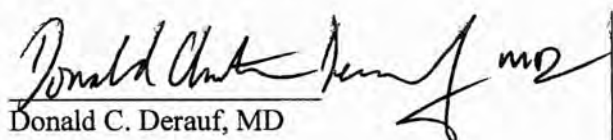
I am submitting this affidavit as I would like to make sure that the content and conclusions of the two papers cited above are accurately represented. The first paper by Lagasse LL et al (2012) describes and compares *child behavioral* outcomes at 3 and 5 years of age among subjects whose mothers used methamphetamine during pregnancy and a socioeconomically

matched but unexposed comparison group. The second paper by Nguyen D et al (2010) describes and compares the *somatic growth* outcomes assessed at birth of infants who had prenatal methamphetamine exposure and an unexposed comparison group

In neither paper do we, the authors, make any statements or conclusions to suggest that *"a mother's methamphetamine use can cause serious harm or death to a viable unbornchild"*.

The foregoing is true to the best of my knowledge and belief and I hereby swear to the accuracy of it under penalty of perjury.

Respectfully Submitted:


Donald C. Derauf, MD

On this the 26th day of June, 2020 came Donald C. Derauf, MD, known to me, via remote video access due to COVID 19 restrictions and subscribed his name hereto.



Notary

DANIEL N. ARSHACK
NOTARY PUBLIC, STATE OF NEW YORK
COMMISSION # 02AR4984258
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES: 07/15/2022

PROOF OF SERVICE

STATE OF CALIFORNIA,)
COUNTY OF FRESNO.)

I am employed in the County of Fresno, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is: 2333 Merced Street, Fresno, California 93721.

On July 1, 2020, I served the foregoing document described as:
PETITION FOR WRIT OF PROHIBITION, EXHIBITS TO PETITION FOR WRIT OF PROHIBITION, on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Xavier Becerra
California Attorney General's Office
Post Office Box 944255
Sacramento, California 94244

☒ Electronic Service

Melissa D'Morias
Deputy District Attorney
COUNTY OF KINGS
1400 W. Lacey Blvd., Bldg. 4
Hanford, CA 93230

Clerk of the Court,
Kings County Superior Court
1640 Kings County Dr.
Hanford, CA 93230

Hon. Robert Shane Burns, Judge
Kings County Superior Court
1649 Kings County Dr.
Hanford, California 93230

☒ [U.S. MAIL]

☒ {State} I declare under penalty of perjury, under the laws of the State

of California the above is true and correct. EXECUTED on July 1, 2020, at
Fresno, California.

/s/ Bryan Murray

BRYAN MURRAY