COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In Re Chelsea Becker,	)	No. F_____
Petitioner,	)	
	)	Trial Court No. 19CM-5304
	)	(Kings County)
On Habeas Corpus	)	

RENEWED PETITION FOR WRIT OF HABEAS CORPUS
(Application for Immediate Release)

Following order denying own recognizance release and setting $2,000,000 money bail (Pen. Code §§ 1270, 1271, 1275, 1319, *et seq*.)
by Hon. Robert S. Burns

DANIEL N. ARSHACK
(NY BAR# DA-2036)
(Admitted *Pro Hac Vice* 5/22/20)
Consulting Attorney to the National Advocates for Pregnant Women
ARSHACK, HAJEK & LEHRMAN, PLLC
1790 Broadway, Suite 710
New York, New York, 10019
Tel: (212) 582-6500

SAMANTHA LEE (SBN: #315464)
NATIONAL ADVOCATES FOR PREGNANT WOMEN
575 8th Avenue, 7th Floor
New York, New York 10018
Tel: (212)255-9253

JACQUELINE GOODMAN (SBN: 172308)
THE GOODMAN LAW BUILDING
712 N. Harbor Blvd.
Fullerton, California 92832
Tel: (714) 879-5770

*ROGER T. NUTTALL (SBN 42500)
NUTTALL & COLEMAN
2333 Merced Street
Fresno, California 93721
Tel: (559) 233-2900

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FIFTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 42500 NAME: ROGER T. NUTTALL FIRM NAME: LAW OFFICES OF NUTTALL & COLEMAN STREET ADDRESS: 2333 MERCED STREET CITY: FRESNO STATE: CA ZIP CODE: 93721 TELEPHONE NO.: (559) 233-2900 FAX NO.: (559) 485-3852 E-MAIL ADDRESS: bryan@nuttallcoleman.com ATTORNEY FOR (*name*): PETITIONER	SUPERIOR COURT CASE NUMBER: 19CM-5304
APPELLANT/ CHELSEA BECKER PETITIONER: RESPONDENT/ KINGS COUNTY SUPERIOR COURT REAL PARTY IN INTEREST: PEOPLE OF THE STATE OF CALIFORNIA	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): PETITIONER, CHELSEA BECKER

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

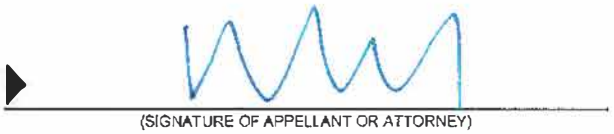
Full name of interested entity or person	Nature of interest (*Explain*):
(1) JACQUELINE GOODMAN	ATTORNEY FOR PETITIONER/DEFENDANT
(2) ROGER T. NUTTALL	ATTORNEY FOR PETITIONER/DEFENDANT
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: July 6, 2020

ROGER T. NUTTALL
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

ISSUES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner, Chelsea Becker, by and through her attorneys of record, Roger T. Nuttall, Jacqueline Goodman and Daniel N. Arshack, hereby renews[1] her petition to this Court for a Writ of Habeas Corpus related to a $2,000.000 bail imposed on her on February 20, 2020 and which remained unchanged at a subsequent bail hearing on May 20, 2020 in the Kings County Superior Court in Trial Court No. 19CM-5304. The Petition requests the Court to release Ms. Becker on her own recognizance since the conduct alleged in the Complaint filed in this matter is not a crime in California and because the State's allegations of fact, upon which the Superior Court apparently relied to establish a $2,000,000 bail, were shown to be demonstrably false, contrary to the actual facts and evidence and not in compliance with statutory mandates.

This Petition presents pure issues of law which were first raised in a bail hearing before the Superior Court held on February 20, 2020, subsequently in another bail hearing on May 20, 2020 and again during a hearing on a Demurrer motion on June 4, 2020. Those purely legal and constitutional issues, discussed below,[2] relate to the prosecution's lack of

---

[1] The initial Writ of Habeas Corpus in this matter was filed on April 27, 2020 and was "denied without prejudice as premature" on May 7, 2020. See, Order, (Ex. 1) Now that the May 20, 2020 hearing on bail has been had and the bail has remained unchanged and the Superior Court has, on June 4, 2020, denied Ms. Becker's demurrer, Ms. Becker's Habeas Corpus application is no longer premature.

[2] The lack of legal authority to bring the instant charges against Ms. Becker is also more fully discussed in the accompanying Writ of Prohibition (Fifth Appellate District Case No. F081341) relating to the Superior Court's June 4, 2020 denial of the Ms. Becker's Demurrer. It is Ms. Becker's position that if the Writ of Prohibition issues, she should still receive the relief sought by this Writ due to the delay which would necessarily accompany the implementation of the Writ of Prohibition. Likewise, if the Writ of

legal authority to bring murder charges against Ms. Becker given the limitations, as set forth in Pen. Code, § 187(b)(3), including the preclusion of charging the "mother of a fetus" with murder of her own fetus based on her volitional consensual conduct and the effect that lack of authority should have had on the imposition of any bail. Likewise, that lack of a legal basis to charge Ms. Becker with murder at all, goes to the heart of the "seriousness of the charge" element of the bail determination. Clearly, if the demurrer is granted, Ms. Becker should be promptly release from jail.

We address, below, the inapplicability of Pen. Code, § 187 to Ms. Becker pursuant to the plain language of Pen. Code, § 187(b)(3), the legislative intent of the drafters of the 1970 amendment to Pen. Code, § 187, the absurd and clearly legislatively unintended consequences which would flow from the adoption of the Superior Court's unlawful expansion of the statue, and the state legislature's rejection of several subsequent proffered and rejected amendments to the Penal Code which could have accomplished, if they had been enacted, what the prosecutor seeks to accomplish in this case by judicial fiat.

As noted, Petitioner has also filed a Writ of Prohibition (*see,* Fifth Appellate District Case No. F081341) exclusively addressing the serious error associated with the Superior Court's denial of Ms. Becker's Demurrer on June 4, 2020. Although the two issues, [bail and denial of the demurrer] are interrelated, in order to avoid duplicative filings and not wanting to encumber the record, consistent with 2020 California Rules of Court Rule 8.200 which holds that "[…]as part of its brief, a party may join in or adopt by reference all or part of a brief in the same or a related appeal" Ms.

Prohibition does not issue, Ms. Becker should, nonetheless, be released in her own recognizance there being no rational or legal basis for the bail decision, divorced as it was from the actual facts of Ms. Becker's history and this case, to keep her in jail on $2,000,000 bail.

Becker does adopt and incorporate by reference herein the entire Writ of Prohibition (Fifth Appellate District Case No. F081341) including but not limited to all of the legal arguments, authority, references and material contained within it.

Further, as is also described below, given the exigencies of the COVID-19 crisis, the Superior Court's unwillingness to address the obvious dangers of incarcerating Ms. Becker on $2,000,000 bail necessitates this Petition.

This verified Petition sets forth the following facts and causes of action for issuance of said writ:

A. The Restraint Complained Of

Petitioner is the person who is the defendant in *People v. Becker*, Kings County Trial Court No. 19CM-5304 and who is now unlawfully confined and who has lost her liberty pursuant to an excessive and illegal pre-trial bail which was imposed upon her. Sheriff David Robinson has legal custody of Petitioner at the Kings County Jail, 1570 Kings County Drive Hanford, CA 93230.

B. General Allegations Concerning the Construction of the Pleadings and Prior Proceedings in this Matter

Petitioner alleges that the facts herein are subject to any and all rights which Petitioner may have to enhance and/or amend this Petition following further investigation, discovery and evidentiary hearings in support of her claims for relief.

A Petition for Writ of Habeas Corpus is the only appropriate remedy to Petitioner's illegal incarceration as she has no adequate remedy available at law.

WHEREFORE, petitioner respectfully prays that this Court:

1. Issue a Writ of Habeas Corpus and release Petitioner on her own recognizance; and/or

2. Issue an Order to Show Cause so as to inquire into the legality of the restriction on Petitioner's liberty, and Order the Superior Court to release Petitioner; and

3. Grant Petitioner whatever further relief this Court deems appropriate and in the interest of justice.

Date: July 6, 2020

Respectfully submitted,

/s/Roger T. Nuttall

ROGER T. NUTTALL (SBN 42500)
NUTTALL & COLEMAN
2333 Merced Street
Fresno, California 93721
Tel: (559) 233-2900

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

I. STATEMENT OF FACTS AND PROCEDURE

A. Factual Background

Chelsea Becker is one of nearly a million Americans who each year experience miscarriages and stillbirths, and one of thousands who experience stillbirths (pregnancy losses after 20 weeks) each year in California. Ms. Becker is also one of millions of people who struggle with a drug dependency problem and economic indigency. Prior to her incarceration, she provided what support she could to her mother who cared for her youngest child.[3] These facts are not in dispute.

Following three earlier live and completely healthy births, on September 10, 2019, Petitioner's last pregnancy ended in a stillbirth. On November 5, 2019 Ms. Becker was arrested for the crime of murder of her fetus. This claim not only lacks scientific basis (*See e.g.*, Terplan and Wright letter (Ex. 3))[4] it is also, as articulated below and in the accompanying Writ of Prohibition (Fifth Appellate District Case No. F081341), without any basis in law.

B. Charge and Arrest

On September 10, 2019, Ms. Becker left the hospital where she had gone for help and where she had experienced the stillbirth. Later that day, after, unbeknownst to her, her medical records and those of her stillborn son had been distributed to the police, the police contacted Petitioner and asked that she come meet with them. She did not flee. She voluntarily went to meet with the police. *See* Excerpt from Hanford Police Report #1 (Ex. 4). From that date until her arrest, Ms. Becker had no further contact with the police and had no reason to believe that they sought her arrest.

---

[3] Petitioner has three children resulting from previous pregnancies. Until the investigation which resulted in her arrest in this matter, her mother, Jennifer Elaine Hernandez cared for her youngest one. *See* Declaration of Jennifer Elaine Hernandez (Ex. 2).

[4] Also attached as Exhibit 1 to Petitioners First Motion for Reduction of Bail (Ex. 7)

On October 31, 2019, the Kings County District Attorney charged Petitioner with one count of Murder of a Human Fetus, a felony, in violation of California Penal Code §187(a), alleging that Petitioner "unlawfully and with malice aforethought murder[ed]" her own fetus by ingesting drugs (Criminal Complaint (Ex. 5)) and thereby terminated her own pregnancy. The District Attorney lodged the charge despite the statute's explicit provision that the law may not be used to prosecute "any *person* who commits an *act* that results in the death of the fetus if … [t]he act was solicited, aided, abetted, or *consented to by the mother of the fetus*." Cal. Pen. Code § 187(b)(3) (emphasis added). Here, the "act" alleged was the volitional, voluntary and consensual ingestion of methamphetamine, which Ms. Becker, a "person" and "the mother of the fetus", consumed consistent with her history of a substance use disorder.

Also on October 31, 2019 after the complaint was issued, Kings County Superior Court Judge Robert S. Burns signed a warrant of arrest for Ms. Becker and issued a bail amount of $5,000,000.[5] *See,* Hanford Police Department, Supplement 8 Report (Nov. 6, 2019) (Ex. 6). Petitioner made no effort to flee when approached by the police and was arrested on November 5, 2019 and booked into the Kings County Jail on November 6, 2019. *Id.* Unable to afford *any* bail, Ms. Becker has remained in custody since that date.

C. First Motion for Reduction of Bail

On December 19, 2019, current counsel, Jacqueline Goodman, substituted in place of the public defender and, on January 31, 2020, filed her first motion to reduce Petitioner's bail. First Motion for Reduction of Bail (Ex. 7). No opposing papers were filed. At a hearing held on February

[5] This amount was in accordance with the Felony Bail Schedule for Kings County in effect at the time.

20, 2020, the prosecution provided and the court relied upon misleading and facially inaccurate allegations of fact regarding Ms. Becker's criminal history. The prosecution presented and the court relied on an erroneous probation bail report (*See*, Ex. 8) which falsely informed the court that Ms. Becker had a felony conviction for Pen. Code, § 245(a)(1) assault with a deadly weapon and that she had a "strike" as a result of that conviction. Further, the report falsely stated that Ms. Becker had failed to appear on the same day on which an arrest warrant was issued, a date on which there was not, nor could there have been scheduled, a hearing or otherwise mandatory appearance in court. In addition, the prosecutor made the false allegation that Ms. Becker was somehow a flight risk, again relying only on the erroneous probation report of a failure to appear *on the same day as the arrest warrant was issued*. Bail Hearing Transcript, February 20, 2020 at 5:10-23 (Ex. 9). The Superior Court, contrary to the provisions of Penal Code § 1275, without articulating *any* particular reasoning or analysis reduced Petitioner's bail from $5,000,000 to $2,000,000. *Id.* at 5:26-27. This reduction in bail functioned as a distinction without a difference and, because it maintained a bail well beyond the indigent Petitioner's (or virtually anyone's) financial means, did nothing to alter her circumstance.

D. Spread of COVID-19 and Second Motion for Reduction of Bail

Petitioner languishes in jail awaiting this court's consideration as to whether she can be charged with murder for the loss of her own pregnancy, despite the fact that the plain language of the statue prohibits its use in this case, and despite the fact that every court that has considered whether Pen. Code, § 187 may be used against the "mother of the fetus" has rejected the misuse of the law in this way.

At every court hearing in this matter since the outbreak of COVID 19, the Court has informed the litigants in the courtroom that there are no *reported* cases of COVID-19 in the Kings County Jail. Petitioner has no

reason to doubt the accuracy of that statement. Sadly however, the fact that no reported cases have been announced, has no relationship to the possibility or likelihood that COVID 19 case have and will proliferate within the Kings County Jail. It is well known that an individual can be infected with COVID 19 and remain asymptomatic. Despite being asymptomatic, the infected individual is still infectious. That is why testing is so important. Given the risk of asymptomatic transmission, quarantine should be paired with testing of everyone in the facility. COVID-19 has a prolonged incubation period: Signs of infection may not emerge until as many as 14 days after exposure. For many people, symptoms may never emerge. CDC guidance on May 20, 2020 https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html . The CDC reports that up to 1/3 of people infected with COVID-19 will exhibit no symptoms, while others will show only mild signs of illness. *Id.* As a result, untold numbers are likely carrying a potentially fatal, easily transmitted disease but are unaware of their condition—or the infection risk they present to everyone in their community. see Gandhi, Yokoe, and Havlir, *Asymptomatic Transmission, the Achilles' Heel of Current Strategies to Control Covid-19*, N.E. Journal of Medicine, May 28, 2020 ,N Engl J Med 2020; 382:2158-2160 https://www.nejm.org/doi/full/10.1056/NEJMe2009758.

Since November 5, 2019 the Petitioner has been held prisoner in an environment that we now know grows more dangerous and more precarious by the day. As this Court is aware, as of June 22, 2020 the COVID 19 pandemic has infected over 2,275,645 Americans and killed more than 119,923. Cases in the U.S., CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html (accessed on June 22, 2020). This includes 178,054 Californians infected as of June 22, 2020, 5,515 of whom have

succumbed and died as a result of the disease. https://COVID19.ca.gov/ (accessed on June 22, 2020). As of May17, 2020 there were just 78,839 cases in California and just 399 identified cases of COVID 19 in Kings County. The increase of California cases by over 50% in one month is astounding and deeply troubling.

As has become common knowledge, the spread of the disease can be slowed only by social distancing, frequent hand-washing and isolation. Kings County, where Ms. Becker is being held, as of June 17, 2020, reported 1,870 identified cases of COVID 19. Fifty-five percent of the 1,020 community cases occurred in Hanford, the location of the Kings County Jail. Of the 1,870 cases, fully 55% (1020) have been identified in the state correctional facility in Avenal. https://www.countyofkings.com/departments/health-welfare/public-health/coronavirus-disease-2019-covid-19 (as of June 17, 2020) This increase in one month is also astounding. [6]

Jails and prisons are particularly susceptible to the spread of COVID-19 because of the tight quarters, lack of personal protective equipment, and near impossibility of social distancing. This occurs because the tools to reduce spread and infection by the COVID 19 virus are largely unavailable in a detention setting, placing inmates and detention facility staff at an increased risk for a disease that has already killed more than 119,923 Americans. As of mid-April, hundreds of people within California's jails and prisons had already been affected by the virus. See The Los Angeles Times (April 13, 2020), https://www.latimes.com/california/story/2020-04-

[6] The Kings Count numbers above became obsolete the day after they were inserted in this Petition. As of June 30, 2020 Kings County, reported 2,266 identified cases of COVID 19. Forty-four percent of the 1,128 community cases occurred in Hanford, the location of the Kings County Jail. Of the 2,266 cases, fully 50% (1,138) have been identified in the state correctional facility in Avenal.

13/more-inmates-jailers-testing-positive-as-coronavirus-continues-to-spread-through-jails (describing the number of inmates, police, jail and prison staff members who have become infected or are quarantined as a result of the virus). At least two Sheriff's deputies in California have already died from the virus as of the date of this filing. *Id.*

So, since the COVID 19 outbreak began, what testing has the Kings County Jail engaged in in light of these sobering and terrifying statistics? *They have tested two (2) prisoners and have no records of testing any staff.* See, Kings County COVID 19 Testing Records (Ex. 10).

Based on the forgoing and what is known about the transmission of the COVID 19 virus there is simply no way that Petitioner, or any prisoner or any staff at the Kings County Jail facility is safe, despite the Superior Court's assurances to the contrary at the May 20, 2020 bail hearing. *See*, 34:11-12 (Ex. 17).

It was because of this rapid and ongoing spread of the disease that Petitioner filed her 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 March 26, 2020.(Ex. 11) Originally this emergency bail motion was set for hearing on April 10, 2020, but on March 30, 2020 the trial court continued the bail hearing on the supplemental emergency motion for fifty days, until May 20, 2020. Because of the ongoing risk associated with being held without compliance with CDC guidelines, counsel for Petitioner, on April 1, 2020 attempted to refile the motion requesting an earlier hearing date of April 13, 2020, but it was learned that the court had instructed the court clerk to reject the motion since the hearing had already been adjourned to May 20, 2020, effectively denying the motion without permitting it to be filed. Thereafter, on April 10, 2020, Petitioner, through the office of recently associated counsel, Roger T. Nuttall, again attempted to file a Motion to Advance the Bail

Hearing (Ex. 12). In this instance, the court declined to permit the filing of the motion based upon the court having considered the papers to not have been formatted correctly. *See* Letter from Superior Court (Apr. 17, 2020) (rejecting the effort to file the motion to advance the hearing) (Ex. 13). With due respect, such a delay in permitting a hearing in light of the speed at which the virus has infected populations of cities, countries and particularly penal facilities, represents/is the functional equivalent of the denial of the relief sought.

On May 20, 2020 the Superior court held a hearing on the renewed bail motion.[7] Prior to that hearing, the court received the Prosecutor's Opposition to the Renewed Bail Motion (Ex. 15.) and Ms. Becker's Reply (Ex. 16) which provided the court with Ms. Becker's Rap Sheet (attached as Exhibit 1[8] to Ms. Becker's Reply (Ex. 16) which demonstrated that, contrary to what had been claimed by the prosecution in February and relied upon by the court in setting a $2,000,000 bail, Ms. Becker had *never* been convicted of a felony. During the hearing on that motion, the court was informed <u>again</u> of the verifiable errors in the probation report upon which it had relied to set the bail of $2,000,000. Those significant errors included that Ms. Becker had been convicted of a felony (she has not), that she had a "strike" offense on her record (she does not) and that she failed to appear when required by any court (she has never failed to appear). Despite these uncontroverted errors and despite the rising number of COVID 19 cases, the Superior Court refused to change the bail from the unattainable $2,000,000. *See*, Transcript of May 20,2020 Bail Hearing 34:9-24 (Ex. 17).

---

[7] The court also addressed the Motion for Admission Pro Hac Vice of Daniel Arshack. That motion was granted in a supplemental Minute Order (Ex. 14)

[8] Despite multiple requests, the prosecution did not provide the defense with Ms. Becker's RAP Sheet until May 7, 2020.

The Superior Court did not, at any point, consider Ms. Becker's patent inability to post bail nor did it address her indigence which was verified by an affidavit of indigence submitted to the court *See*. Affidavit of Indigence Exhibit 2 attached to Reply (Ex. 16).

On May 22, 2020, two days *after* the May 20, 2020, Bail hearing, Ms. Becker finally received her own juvenile records. They demonstrate what she already knew to be true and had advised the Superior Court: Ms. Becker was *never* convicted of a felony. As a juvenile, she pled to a misdemeanor and successfully served a year of probation. Becker Juvenile Records Part 1:21, 23,33,57 and Part 2:33 (Ex. 18 filed in separate confidential volume).

Every day that Petitioner spends incarcerated on the basis of a charge which does not apply to her and in a facility that risks her health, is a violation of her statutory and constitutional rights under the Fourteenth and Eighth Amendments, Article 1, of the California Constitution, and the California Penal Code.

Despite being charged with conduct that does not constitute an offense and being held on the basis of a criminal history that did not occur, as a result of the massive bail set in her case, Petitioner has remained in custody since her November 5, 2019 arrest. She seeks immediate relief in the form of a Writ of Habeas Corpus ordering her release or an alternative resolution that comports with the actual facts of this matter and complies with the California and United States Constitutions as well as the laws of California.

E. Demurrer Motion

Petitioner submitted her Notice of Demurrer, Demurrer To Complaint and Non-Statutory Motion to Dismiss, thereby moving the trial court to dismiss the charge against her for its facial insufficiency on April 2, 2020. Notice of Demurrer and Demurrer of Complaint; Non-Statutory Motion to Dismiss (Apr. 2, 2020) (Ex. 19). The prosecution provided an Opposition to the Demurrer on May (Ex. 20) and Ms. Becker submitted her Reply to the

Opposition (Ex. 21). The matter was heard on June 4, 2020 and the Superior Court denied the demurrer. *See* Transcript of June 4 hearing on Demurrer (Ex. 22).

II. Contention

A bail of $2,000,000 is excessive where the charge is itself contrary to the plain language of the statute charged and unconstitutional as applied by the Superior Court. In the event this Court deems the prosecution to be consistent with the statute and constitutional, it would still be unconstitutional as a matter of due process notice, however, to use it in an unprecedented manner *for the first time against this Petitioner*. Similarly unlawful is the trial court's failure to consider Petitioner's ability to pay the amount ordered. Excessive bail functions as no bail and is a violation of due process and equal protection. The court's continued reliance on palpably false information contained in the probation report and its failure to amend those errors by reducing bail is unjust, inequitable and violative of the relevant provisions of Pen. Code, § 1275. Finally, the rapid expansion of the COVID 19 pandemic, particularly in penal facilities and especially in Kings County, should militate in favor of releasing those who pose no risk to the community, have insignificant non-violent and non-felonious criminal records and certainly those charged with conduct, like Ms. Becker, which are not recognized as a penal offense in California.

III. Other Petitions

The initial Writ of Habeas Corpus was "dismissed without prejudice as premature (Ex. 1). Besides the Writ of Prohibition referenced above, which does not address Ms. Becker's bail or bail conditions, no other Petition has been made, by or on the behalf of Ms. Becker, relating to her bail condition.

IV. Jurisdiction and Timeliness

The parties directly affected by the instant proceeding now pending in respondent court are Petitioner, by and through undersigned counsel, Jacqueline Goodman, Roger T. Nuttall, Daniel Arshack and Samantha Lee; Respondent, the Superior Court of the County of Kings, State of California; and the People, real party in interest, by its counsel, the District Attorney of Kings County. The parties have been served with a copy of this petition pursuant to Code of Civil Procedure section 1107.

All of the proceedings about which this petition is concerned have occurred within the territorial jurisdiction of respondent court and of the Superior Court of the State of California in and for Kings County, California.

The writ is taken without substantial delay, and is therefore, timely filed.

V. No Adequate Remedy at Law

Petitioner has no other speedy or adequate remedy at law. She is presently in custody unable to post a $2,000,000 money bail, and habeas relief lies as to bail review. *In re McSherry* (2003) 112 Cal.App.4th 856, 859. The standard of review on questions of law is de novo. *In re Taylor* (2015) 60 Cal. 4th 1019, 1035 ("[W]hen the application of law to fact is predominantly legal, such as when it implicates constitutional rights and the exercise of judgment about the values underlying legal principles, [the appellate] court's review is de novo."). The Court may grant the writ without an evidentiary hearing if the established facts justify relief. *McSherry*, 112 Cal.App.4th at 859.

Petitioner asks that a Writ of Habeas Corpus be issued by this Court vacating the trial court's order, and ordering Petitioner released from

custody in this case, or remanding to the lower court for an expedited immediate hearing with instructions that the court inquire into, and make findings regarding Petitioner's ability to pay the amount ordered, the danger presented to Petitioner by the COVID-19 pandemic, as well as those constitutionally and statutorily mandated factors explained below, so that the trial court may set a financial condition of release that does not operate to detain Petitioner and/or release petitioner on her own recognizance with appropriate non-financial conditions of release.

Dated: July 6, 2020

Respectfully Submitted,

/s/Roger T. Nuttall

ROGER T. NUTTALL (SBN 42500)
NUTTALL & COLEMAN
2333 Merced Street
Fresno, California 93721
Tel: (559) 233-2900

VERIFICATION

I, ROGER T. NUTTALL, declare as follows:

I have read and reviewed the foregoing "Petition for Writ of Habeas Corpus" of Petitioner Chelsea Becker and know its contents. I am an attorney for Petitioner in this action. The matters stated in the Petition are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true.

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

This declaration was executed on July 6, 2020 at Fresno, California.

/s/Roger T. Nuttall
ROGER T. NUTTALL

INTRODUCTION

The right to bail is a fundamental tenet of our state and federal justice system, meant to protect the accused's liberty interest and presumption of innocence, while also satisfying the state's interest in protecting public safety and ensuring the accused's presence at trial. "This traditional right to freedom before conviction permits the unhampered preparation of a defense and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." *Stack v. Boyle* (1951) 342 U.S. 1, 4. This protection is rendered similarly meaningless where, as here, bail is set purposefully and prohibitively high and without consideration of the unique circumstances applicable to the accused and, in particular in the present case, the lack of legal viability of the charge against her.

The prosecution and respondent contend that Petitioner should be held on a $2,000,000 bail on a charge of murder based on the allegation that she experienced a stillbirth allegedly caused by something she did while pregnant (in this case, used drugs) or did not do (achieve total abstinence from drug use). California does not, as a matter of law, criminalize a woman for the loss of her pregnancy. Neither pregnancy nor a substance use disorder nor the dual status of being pregnant and suffering from a substance use disorder are crimes in California, nor are they indicative of a danger posed to others. However, it is upon this theory that the District Attorney for Kings County charged Petitioner with murder, and upon this theory that the Superior Court has ordered her detention in the absence of a $2,000,000 bail. Neither Ms. Becker nor her family has the

financial means to secure the $2,000,000 bail or any thing more than a minimal amount.[9]

Setting bail at this level means that Ms. Becker, despite the bail having been set based on false allegations of her criminal record and her court appearance history, will remain incarcerated for a non-existent crime at a time when detained individuals are at a heightened risk of contracting COVID-19 and suffering severe health consequences. Petitioner now sits in jail needlessly, on account of only her indigency, the state's failure to provide the court with accurate information about Ms. Becker and its decision to bring a prosecution that is itself statutorily unauthorized and while the court proceeds on a law that is now facially unconstitutional due to a judicial expansion of the law. This situation is only exacerbated by the fact that detention facilities in Kings County and throughout the state and country have become particularly fertile ground for the ongoing COVID-19 pandemic. As a result of the Superior Court's orders, it is now not only Petitioner's freedom that is needlessly in jeopardy, but also her life.

This misguided prosecution is based on misconceptions of law, fact and science, and as such, is unlawful. Petitioner's continued detention warrants a writ to secure her release.

AUTHORITIES AND ARGUMENT

I. The Trial Court's imposition of a $2,000,000 bail is excessive and violates Ms. Becker's constitutional and statutory rights to a reasonable bail.

Article I, § 12 of the California Constitution guarantees the accused's right to be released prior to trial on reasonable bail. This right is subject to

[9] There could not have remained any doubt in the Court's mind concerning the indigency of Ms. Becker, on May 20 , 2020 when the court heard the argument on the renewed bail motion because attached as Exhibit 2 to the Ms. Becker's Reply was an Affidavit of Indigency (Ex. 16).

three exceptions: (1) capital crimes; (2) felony offenses involving acts of violence where the court has found, "upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others;" and (3) felony offenses where the court has found, also "on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released." *Id.* None of these exceptions apply to Ms. Becker, and she maintains her right to release on bail.

The trial court's order that Ms. Becker be held subject to $2,000,000, however, constitutes the functional equivalent of denial of bail and violates Article I, § 12 of the California Constitution as well as California's statutory guarantee of bail *"as a matter of right"* for all non-capital offenses. Cal. Pen. Code §1271 (emphasis added). The reduction of her bail from $5,000,000 to $2,000,000 was unusually confounding and was an intentionally and effectively meaningless order by the court, which recognized that Ms. Becker could never secure the funds to satisfy such a bail.[10]

A court must take into consideration four factors when setting, reducing, or denying bail: "[1] protection of the public, [2] the seriousness of the offense charged, [3] the previous criminal record of the defendant, and [4] the probability of his or her appearing at trial or at a hearing of the case." Cal. Pen. Code § 1275(a)(1). Public safety shall remain "the primary consideration." *Id.*; *see also* Cal. Pen. Code § 1271. The Superior Court failed, however, to take into consideration *any* of these factors at any stage, and instead, set a bail amount that is obviously excessive and without regard for Petitioner's individual circumstances.

[10] That the Court refused to so much as reference Ms. Becker's inability to pay supports the fact that the bail decision was not guided by the law, but rather was a foregone conclusion not founded on fact or law.

A. The Superior Court failed to consider that Petitioner does not present a threat to the public.

While public safety should be the "primary consideration" Pen. Code, § 1275, underpinning any bail order, the Superior Court failed to assess the legal basis of the allegations against Ms. Becker in order to recognize that, even if true, they did not render her a threat to public safety. Petitioner is charged because she experienced a stillbirth which she allegedly caused by using a controlled substance. Neither a substance use disorder, nor the los of her own pregnancy, supports a finding that Petitioner presents a threat to *public* safety.

Petitioner's *past* use of a controlled substance does not render her a threat to the public or, by itself, constitute a crime. The Cal. Health & Safety Code § D. 10, Uniform Controlled Substances Act proscribes varied conduct in relation to controlled substances including *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] ("The use proscribed by section 11550 is a current use, not some use in the past."). The prosecution would have Ms. Becker liable for this charge for being pregnant and using any amount of a controlled substance. The prosecution has firmly embraced outlier South Carolina's status as 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 California has never adopted that view. This is because addiction itself, or substance use disorder, is not a crime, but is rather a medical condition characterized by "a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems." Am. Psychiatric Ass'n,

Diagnostic and Statistical Manual of Mental Disorders 481, 483 (5th ed. 2013). Pretrial detention based solely on one's *past* use of a controlled substance is impermissible as a matter of law.[11]

Similarly, the experience of pregnancy loss cannot rationally be used to deem Petitioner a dangerous person. The experience of pregnancy loss and stillbirth is dishearteningly common. *See* Hoyert DL, Gregory ECW, *Cause of Fetal Death: Data from the Fetal Death Report, 2014* (Oct. 2016) Nat'l Vital Stat. Rep., vol 65 no 7 (In the United States, about 1 in 100 pregnancies result in stillbirth.); *see also* Childers, Linda, In Effort to Decrease California's Stillbirth Rate, Advocates Encourage Pregnant Women to Count Baby's Kicks (July 16, 2019) CALIFORNIA HEALTH REPORT ("According to the Centers for Disease Control and Prevention (CDC), California loses 2,465 babies a year to stillbirth."). However, even assuming that Ms. Becker caused her pregnancy to end through drug use[12] - an allegation without scientific basis (*see,* (Ex. 3)), - such does not warrant

[11] Even assuming that Ms. Becker had, at one time, a controlled substance in her possession, or might have such a substance in her possession in the future, that possession cannot rationally constitute the basis for a $2,000,000 bail. Rather, the Kings County Bail Schedule, recommends only $5,000 bail for the possession of a controlled substance, a mere fraction of the $2,000,000 imposed.

[12] In the February 20, 2020 hearing on this matter, Hearing Transcript (Ex 9), the prosecution urged the court to maintain a $5,000,000 bail on the basis that, "for purposes of the bail review, the [c]ourt [was] to assume the charges are true." Hearing Transcript at pp. 5:6-7. Presumably, the court was asked to, and did, assume that Ms. Becker intentionally, voluntarily, volitionally and consensually used methamphetamine to terminate her own pregnancy. This is *precisely* the conduct of a "mother of the fetus" that Penal Code 187(b)(3) defines as NOT subject to criminal liability under Penal Code 187(a). Moreover, neither Pen. Code § 1275 nor any relevant case law asks the court to "assume that the charges are true" for the purposes of setting bail. The presumption of innocence attaches to defendants at every stage of the criminal process until a judge or jury determines otherwise.

a finding that she presents a threat to the public.

Rather, the court would have to accept the idea that Petitioner must present as a threat to future hypothetical pregnancies and was detained on that basis. The prosecutor actually stated as much in her Opposition to the renewed bail motion at 4:15 -17 (Ex. 15):

> [*H]er sentence is nowhere near timed* out and she is young *with a high risk of repeating her crime*. Accordingly, her release would compromise public safety - the primary consideration at a bail review hearing - and the court must deny her request.

(emphasis added). The State candidly articulated its belief that bail should be imposed *as an alternative* to an actual finding of guilt and a sentence. Presumably, therefore, the State would be appeased and would agree to the release for an older woman, alleged to have committed the same act, but who was unlikely to conceive again, or a woman who consents to sterilization as a condition of release. The prosecution's position - that Petitioner must remain incarcerated pretrial so that she is precluded from conceiving a child - is simply deplorable and no court should countenance it.

Apart from its lack of principle, such a detention or condition of probation, however, is itself unlawful as an infringement on Petitioner's fundamental right to procreate. *Skinner v. Oklahoma* (1942) 316 U.S. 535, 541 (procreation is "one of the basic civil rights of man" and is "fundamental to the very existence and survival of the race"); *People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139 [199 Cal.Rptr. 357] (reversing portion of sentencing order that prevented defendant, after felony child endangerment conviction, from conceiving during probationary period); *see also People v. Dominguez* (1967) 256 Cal.App.2d 623, 629 [64 Cal.Rptr. 290] (striking a probation condition that the defendant not become pregnant

because she was "entitled to her freedom on probation unless it [was] revoked for lawful reasons"). There is "no question that [the Superior Court's order of detention to prevent Petitioner becoming pregnant] infringes the exercise of a fundamental right to privacy protected by both the federal and state constitutions." *Pointer*, 151 Cal.App.3d at 1139.

No reasonable person could conclude that Petitioner presents a threat to anyone and a $2,000,000 bail cannot rationally or constitutionally restrict Ms. Becker's liberty interest under the auspices of protecting either herself, any future pregnancy or any members of the public.

B. In considering the seriousness of the charge, the Superior Court failed to consider the lack of prosecutorial authority to bring a charge against Petitioner which is not statutorily permitted.

There is no rational way to consider the seriousness of the charge, as required by Pen. Code,§ 1275, against Ms. Becker without also considering the nature of the underlying allegations and, ultimately, the unlawfulness and unconstitutionality of the charge itself.[13] Throughout its ill-conceived prosecution, the State has sought to walk a strange line - one that demonstrates a number of fundamental fallacies underlying its charge. While alleging that Ms. Becker did, "with malice aforethought," cause the death of her fetus, the State simultaneously argues that "[t]here is no evidence that [Ms. Becker] took any actions whatsoever to abort the fetus." Opposition to Demurrer 2:27, 6:8 (Ex. 20); (maintaining that Petitioner "never wanted to abort her child which is precisely why she named the child, Zachariah."). The State's attempt to walk the line between "murder" of one's own fetus and *abortion* of that fetus - which constitutes an

[13] While this issue is addressed in greater depth in the concurrently filed Writ of Prohibition (Fifth Appellate District Case No. F081341), incorporated herein by reference, the fact that Ms. Becker is being held for a crime that is not cognizable under either California statute or constitutional jurisprudence is central to the bail issue and is therefore briefly summarized here.

uncontroverted matter of protected privacy - has shone a light on the unjust and unlawful absurdity that characterizes the present prosecution. The State seeks to hold Ms. Becker *pretrial* on the theory that she *did not* intend to terminate her pregnancy through her dependence on a controlled substance and should therefore not only be subject to prosecution but also incarcerated in pretrial detention. Petitioner relies and incorporates herein by reference, the accompanying Writ of Prohibition (Fifth Appellate District Case No. F081341) for a full examination of the failure of law and logic outlined above.

There has never been one appellate case, published or unpublished in California affirming the charge of murder under Penal Code 187(a) against a woman for her loss of her fetus based on her own conduct while pregnant. Every trial level court case that has considered this issue has dismissed such ill-conceived prosecutions for the very reasons described herein and in the Writ of Prohibition (Fifth Appellate District Case No. F081341). Despite this uniform approach to and dismissal of such cases, it is clear that the Superior Court in this case considered *only* the fact of a stillbirth as the "seriousness of the behavior" in order to justify an excessive bail amount. This, despite the fact that having a stillbirth does not constitute a crime in California. The accompanying Writ of Prohibition fully discusses the catalogue of California cases uniformly finding that Pen. Code, § 187, its plain language, its legislative history and the Rule of Lenity which do not permit the prosecution of a woman for her own behavior which allegedly results in a pregnancy loss.

1. Superior Court failed to take into consideration plain language of Pen. Code § 187(b) and legislative history in assessing "seriousness" of charge and setting bail.

California's murder statute is clear and unambiguous in excluding the prosecution of a pregnant woman for the death of her fetus. It states that the crime of murder "shall not apply to *any person* [such as Ms.

Becker]who commits *an act* [such as ingesting drugs] *that results in the death of a fetus* if … [t]he act was solicited, *aided, abetted, or consented to by the mother of the fetus*." Pen. Code, § 187(b)(3) Clearly, under the prosecution's theory, Ms. Becker consented to the ingestion of a controlled substance. Even assuming that Petitioner's drug use led to stillbirth - an allegation lacking *any* scientific validity - prosecution of Petitioner, the mother, for a violation of Section 187(a) is prohibited as a matter of law. *See,* Section 187(b)(3)

The Superior Court failed to so much as acknowledge the language of the statute in its continued order to detain Petitioner subject to $2,000,000 bail. When construing the statute, the court must "begin with the plain, commonsense meaning of the language used by the Legislature. If the language is unambiguous, the plain meaning controls." *People v. Rodriguez* (2012) 55 Cal.4th 1125, 1131 [150 Cal.Rptr.3d 533, 290 P.3d 1143] (quoting *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 the legislative intent apparent in the statute or that would lead to absurd results[.]" *Id.* (quoting *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 27 [109 Cal. Rptr. 3d 329, 230 P.3d 1117]). The lower court concluded that the Legislature meant, without saying so, that Petitioner is subject to prosecution because she allegedly committed an act *herself*, rather than "solicited, aided, abetted, or consented" to *another person's commission of the act*, which is simply *not* what the statute says.

Even assuming that the terms of Section 187(b) are not themselves clear, the legislative intent to address only address *third party violence against* women and to exclude women from prosecution for the outcomes of their pregnancies including ending or attempting to end their own pregnancies is writ large.

In 1970, the legislature amended Penal Code § 187 in response to the California Supreme Court's decision in *Keeler v. Superior Court* (1970) 2 Cal. 3d 61. In *Keeler*, a man brutally 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 Section 187 to permit murder prosecution of third persons for the killing of a fetus. *People v. Davis* (1994) 7 Cal.4th 797, 829. But, critically, the Legislature clarified that a pregnant woman *herself* could not herself be charged with murdering her fetus based on her own acts while pregnant. Section 187(b).[14]

Lest there be any doubt about the Legislature's intent, the primary author of the amendment to Section 187, State Assemblyman W. Craig Biddle, executed an affidavit in 1990 (Ex. 23) which stated:

> [T]he purpose of my legislation as that purpose was explained to the Legislature: 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 (Ex. 10) (emphasis added).

California's legislature has repeatedly considered, debated and rejected the need for criminal penalties as a mechanism for responding to the issue of pregnancy and drug use.[15] It has repeatedly declined to amend

---

[14] The prosecution's argument would render truly absurd results. For instance, under the Superior Court's construction, if a pregnant woman asked her husband to give her a medication which resulted in the death of a fetus and he did, the husband would be excluded from the operation of the statute but according to the prosecution, the woman could be prosecuted for murder.

[15] *See*, Sue Holtby et al., *Gender issues in California's perinatal substance abuse policy* (2000) 27 Contemporary Drug Problems 77, 89; *see also,*

the law to include criminal sanctions for the use of controlled substances by pregnant women. In 1987, S.B. 1070, 1987-88 Leg. Reg. Sess. (Cal. 1987) (sponsored by Senator Ed Royce) was put forward to expand the definition of child endangerment to cover substance abuse during pregnancy. The legislature rejected that proposed statute. Then, Senator John Seymour in 1989, sponsored S.B. 1465, 1989-90 Leg. Reg. Sess. (Cal. 1989) which attempted to define a pregnant woman's controlled substance use during pregnancy resulting in pregnancy loss as manslaughter. That too was rejected by the legislature. In 1991, in A.B. 650, (1990-91 Leg. Reg. Sess. (Cal. 1991) the legislature considered an effort to enact statute that would make substance abuse during pregnancy that had a subsequent effect on an after-born child a misdemeanor. This also was rejected by the legislature. In 1996, Assemblyman Phil Hawkins, proposed A.B. 2614, 1995-96 Leg. Reg. Sess.(Cal. 1996) criminalizing "fetal child neglect." Again, the effort to criminalize a woman's conduct with regard to her own pregnancy was rejected.

The legislature clearly knows how to address the issues raised by the prosecution in this case and they have consistently elected not to. It is not for any Court do so now. To permit the continued detention of Ms. Becker would be to fly in the face of repeated legislative decisions *not* to criminalize and incarcerate women for their conduct while pregnant.

2. California courts have uniformly rejected prosecutions like the one underpinning Petitioner's pretrial detention as unlawful.

Our courts have repeatedly affirmed that California law does not permit the prosecution of a pregnant woman for the outcome of their pregnancies under any California criminal law. *See, e.g. Jaurigue v. People Transcript*

Laura L. Gomez, *Misconceiving Mothers –Legislators, Prosecutors and the Politics of Prenatal Drug Exposure,* (1997) Temple University Press 27-32.

of proceedings (Cal. Super. Ct. Aug. 21, 1992) https://tinyurl.com/rsnyrvl (p. 51-54 - dismissed fetal homicide charges against a woman who experienced a stillbirth, alleged to have been a result of drug use, finding statute could not be used to prosecute pregnant woman for own pregnancy loss), writ denied, (Cal. App. 1992); *People v. Jones*, No. 93-5, Transcript of Record (Cal. J. Ct. Siskiyou County July 28, 1993) https://tinyurl.com/wc4xb3x (finding murder statute could not be used to prosecute defendant after newborn's death for alleged drug use during pregnancy) *People v. Tucker*, No. 147092 (Cal. Santa Barbara-Goteta Mun. Ct. June 1973). (In 1973, Claudia Tucker, shot herself, causing a stillbirth after her husband threatened to leave her if she had another child. Ms. Tucker's attorneys filed a demurrer and Judge Arnold Gowans dismissed the murder charge. The District attorney unsuccessfully appealed the dismissal.) https://tinyurl.com/yax2uoux;[16] *see also Reyes v. Court* (1977) 75 Cal.App.3d 214 [141 Cal.Rptr. 912] (child endangerment statute cannot be used to prosecute woman for alleged actions while pregnant).

Rather than acknowledge the uniformity in the manner in which courts at various levels address and rightfully dismiss prosecutions like the one against Ms. Becker, the prosecution instead claimed below that no California appellate case exists which "supports the proposition that a female who carries a child full term while using toxic amounts of methamphetamine is immune from criminal prosecution for the murder of

[16] (These unpublished trial level cases are identified here not as authority, but as examples of consistency among all lower courts to have considered this issue, with all rejecting P.C. 187(b)(3) as a basis for holding women criminally liable for murder for experiencing pregnancy losses *regardless* of the cause. Providing the Court with access to these cases does not run afoul of California Rules of court 8.1115(a) because these cases are not unpublished decisions of either the Court of Appeal or of the Superior Court Appellate Division)

her stillborn child." Opposition to Demurrer 3:4-7 (Ex. 20). But such a case does exist, albeit unpublished: *People v. Olsen* (July 20, 2004, No. C043059) ___Cal.App.4th___ [2004 Cal. App. Unpub. LEXIS 6774, at *1] [2004 WL 1616294]. Due to the prosecutor's erroneous claim, Petioner asked the Superior Court, and she asks this court, to take judicial notice of this unpublished decision pursuant to California Evidence Code Sections 451(a), 452(a), (d) and 453. Like every other California court that has confronted the issue, the *Olsen* court rejected the use of P.C. § 187 to prosecute a woman for demise of her pregnancy and explained that :

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

Olsen constitutes an example, although without precedential authority, of an appellate court holding that the plain language of P.C. 187(b)(3) precludes the prosecution of a woman for her volitional acts before the pregnancy ends. The fact cannot and should not be ignored that every single case that has construed P.C. 187 in Califorina has found it inapplicable to a pregnant woman's volitional and thereby consensual behavior during pregnancy, in accordance with the plain language of the statute. There is simply no precedent that would justify Petitioner's prosecution, let alone justify her continued incarceration without meaningful access to bail or release.

3. The Superior Court's statutory construction judicially expands statute and invites absurd results.

This question is presented: Where the plain language of the statute and the legislative history demonstrate the clear meaning of the statute, can

the court create a contrary, novel and never applied re-construction of the statute and apply it for the first time against a defendant? The answer is a resounding "No." The rules of statutory construction relevant to the Pen. Code § 187 which prohibit the Superior Court's expansion and contraction of the statute are fully described in the Writ of Prohibition (Fifth Appellate District Case No. F081341) which is incorporated herein by reference.

The Superior Court's novel interpretation, and consequent order of detention, vastly expands the fetal homicide statute and judicially creates a new fetal homicide statute in a manner that would "impermissibly delegate basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis," thereby exposing any woman experiencing a negative pregnancy outcome to "arbitrary and discriminatory application" of the statute and potential criminal prosecution. *See People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116 [60 Cal.Rptr.2d 277, 929 P.2d 596] (quoting *Grayned v. City of Rockford* (1972) 408 U.S. 104, 109); *see also Gore*, 49 Cal.4th at 27 (courts should not apply a literal interpretation of the statute that would lead to absurd results) .[17] For example, under the prosecution's suggested interpretation, a woman could be prosecuted for murder if she engaged in the illegal act of driving without a seatbelt and injured herself in an accident that resulted in fetal demise. *See e.g.*, *People v Jorgensen*, 2015 NY Slip Op 07699 [26 N.Y.3d 85, 19 N.Y.S.3d 814, 41 N.E.3d 778] (conviction reversed, case dismissed). The same is true of a woman who chooses to continue smoking cigarettes, ski or engage in other

[17] Application of Section 187(a) to the present facts would not only expand it beyond its constitutional bounds and render it void for vagueness as well, such an expansion would also violate Ms. Becker's fundamental right to privacy under the Fourteenth Amendment, as articulated in more detail in Ms. Becker's Writ for Prohibition (Fifth Appellate District Case No. F081341) incorporated herein by reference.

consensual, volitional and voluntary behaviors late in her pregnancy. *See, Kilmon v. State*, 394 Md. 168, 177-78, 905 A.2d 306, 311-12 (Ct.App.2006) (loss of a fetus following use of cocaine is not a crime.). The Superior Court suggests that if those consensual and volitional behaviors were to lead to an injury that ended her pregnancy, the woman would be subject to prosecution for murder. The scenarios under which a woman might be prosecuted for actions or inactions during pregnancy are virtually limitless under the State's tortured interpretation of the statute.

That the charge under which Petitioner is currently detained is patently precluded by the very statute by which she is held to answer, renders the question of whether the charged offense is "serious" a paradoxical one. While murder is, of course, "serious" as a matter of law, *see* Cal. Pen. Code § 1275(c); *see also* § 1192.7(c), a review of the complaint, (Ex. 5), demonstrates the lack of any legal basis for the present prosecution. The Superior Court should not have stopped its inquiry of seriousness – crediting it with making such an inquiry at all - simply at the term "murder," but rather should have considered the prosecutor's clear lack of authority to bring this prosecution *vel non*. Failure to consider the nature of the charge itself in assessing its seriousness renders the resultant bail amount excessive and unlawful.

C. The State misstated Petitioner's criminal record, and the Superior Court relied upon those misstatements in setting bail.

In addition to public safety and the seriousness of the charge, the court must also consider "the previous criminal record of the defendant" when setting or altering bail. Cal. Pen. Code § 1275(a). Petitioner advised the Superior Court in her motion to reduce bail that Ms. Becker "has no significant criminal history." Notice and Motion for Reduction of Bail (Jan. 31, 2020) at 4. (Ex. 7) However, without setting forth any particular analysis, the lower court apparently opted to rely, in error, upon

uncorroborated misstatements made by the prosecutor regarding Petitioner's record. During the bail review hearing, the prosecutor stated that Petitioner, as a juvenile, had "a strike conviction" and, as a juvenile, had served felony probation for violation of Pen. Code § 245(a)(1), and that the conviction "does indicate she poses a risk to the community, as well as a flight risk." February 20, 2020 Bail Hearing Transcript at 5:19-22. (Ex. 9) Those statements were patently false. Indeed as stated above, the RAP sheet, attached as Exhibit 1 to to Ms. Becker's Reply (Ex. 16) and Ms. Becker's own juvenile records Part 1:21,23,33,57 and Part 2:33 (Ex. 18) demonstrate that the court ignored the hard facts and instead relied on a patently false representation to set an unreasonable and unachievable bail. Equally troubling was its refusal to address those errors during the May 20, 2020 hearing after the true facts were made clear.

The exchange between the prosecutor and court during the February 20, 2020 hearing was a confusing one and provides little by way of clarification. The exchange referenced the Bail Review Report (Ex. 8) which indicates a criminal history involving some sort of interaction with Cal. Pen. Code § 245(a)(1) and Health & Saf. Code, § 11550, but fails to provide any information pertaining to those statutes. It does not provide the year or approximate date of those offenses, whether they resulted in arrests or convictions, or any facts surrounding the incidents Without these facts, it should have been impossible to rely on the report as elucidating the Petitioner's criminal record so as to make a determination in the interest of public safety, as required by Penal Code §§ 1275(a) and 1319. Nonetheless, the prosecutor's attempts at clarification, and false statement that Ms. Becker did, indeed, have a "strike conviction" were, and remain, unsupported by fact. Petitioner sought to clarify any misunderstanding by presenting her uncontroverted "rap sheet" at the May 20, 2020 bail hearing, but to no avail.

The Superior Court, however, having been presented with Ms. Becker's rap sheet, demurred and persisted in erroneously relying on a demonstrably false record. Indeed, on May 22, 2020, Ms. Becker finally received her own juvenile records which make it perfectly clear at Part 1:21,23,33,57 and Part 2:33 (Ex. 18) that her juvenile charge was reduced to a misdemeanor and she successfully served 18 months of probation.

As stated in her original motion for bail reduction and confirmed by her rap sheet and belatedly produced juvenile records, Petitioner *does not* have a criminal record that would indicate either a threat to public safety or that she presents a flight risk. Petitioner *does not* have a strike conviction. Rather, the reference to Penal Code 245(a)(1) stems from an incident in July 2010, when Petitioner was only sixteen years old. She got into an argument with her mother and hit her with her hand. Petitioner's mother called the police and Petitioner was charged with Pen. Code, § 245(a)(1) as a juvenile in juvenile court. She entered into a plea agreement by which she pled to a misdemeanor and was sentenced to probation for two years, and was released from probation early after 18 months. *See* Declaration of Jennifer Elaine Hernandez (Ex. 2), RAP sheet attached to (Ex. 16) and Juvenile Records (Ex. 18) .

Even the investigating detective's report which was provided to the court describes the minimal criminal record of Ms. Becker as being comprised of only misdemeanor convictions under the Health and Safety Code § 11550 consistent with someone struggling with a drug dependency problem. There is *no* reference to any Penal Code 245(a)(1) conviction. *See* Investigator's Report of Criminal History excerpt (Ex 24).

In any event, contrary to the prosecutor's erroneous statements and the Superior Court's erroneous conclusion, Ms. Becker has *no* felony history[18] and no strike conviction. Petitioner's criminal record provides *no* basis for concluding that she presents as a threat to public safety, let alone a threat so grave as to require a bail amount functionally equivalent to a detention order.

D. Petitioner does not present as a flight risk, and $2,000,000 is unconstitutionally excessive to ensure her presence in court.

Like the factors articulated *supra*, there is no indication in the bail hearing transcripts (Ex. 9 and 17) that the Superior Court meaningfully considered "the probability of [Petitioner] appearing at trial or at a hearing of the case," as mandated by Cal. Pen. Code § 1275(a). Had the court made a meaningful inquiry, however, it would have determined that the probability of Petitioner's appearance was and remains high, and that bail of $2,000,000 far exceeds any condition necessary to ensure her presence in court.

In this country, the accused maintains, even after arrest, a "strong interest in liberty." *United States v. Salerno* (1987) 481 U.S. 739, 750. Because that liberty interest is fundamental, pretrial release should be the norm, "and detention prior to trial or without trial is the carefully limited exception." *Id.* at 755. As a result, conditions of release must be narrowly tailored to meet the government's interest. Where the government "has admitted that its only interest is in preventing flight, bail must be set by a

[18] Ms. Becker's misdemeanor controlled substance charge under Health & Saf. Code, § 11550 is certainly not a "strike conviction" and is part and parcel of having a substance use disorder. It in no way justifies the bail ordered.

court at a sum designed to ensure that goal, and no more." *Id.* at 754.[19] In this case, bail of $2,000,000 far exceeds any amount necessary to ensure Ms. Becker's presence at trial. Indeed, there is no evidence that indicates that Ms. Becker presents *any* risk of flight.

During the bail review hearing, the prosecutor stated that Ms. Becker's criminal history, "does indicate she poses a risk to the community, as well as a flight risk," February 20, 2020 Bail Hearing Transcript 5:21-22.(Ex. 9) This statement had no basis in fact, and is, instead, a conclusory statement that any person with a criminal record of any sort must, ipso facto, present as a flight risk. Ms. Becker has no history of failing to appear. The Bail Review Report (Ex. 8), erroneously states that, "[o]n October 31, 2019, the defendant failed to appear to Court and a Warrant of Arrest was issued in the amount of $5,000,000.00." Although an arrest warrant *was* issued on October 31, 2019, the warrant was *not* issued for a failure to appear and, indeed, Ms. Becker had no court hearing scheduled on that date. Rather, October 31, 2019 was the date that the

---

[19] Experts indicate that meeting this goal rarely requires detention. Rather than willfully fleeing justice, most nonappearance is the result of mundane and easily remedied factors including inadequate notice of court dates, the need to work, and a lack of childcare or transportation. *See, e.g.*, Lauryn P. Gouldin, *Defining Flight Risk*, 85 U. CHI. L. REV. 677, 729–35 (2018) (distinguishing" low-cost nonappearance," versus "true flight [from the jurisdiction of arrest]" and "local absconding"). These factors can be addressed by a number of initiatives and conditions of release that aim to maintain the liberty interest of the accused while ensuring their presence in court. Brice Cooke et. al., Univ. of Chicago Crime Lab, Using Behavioral Science to Improve Criminal Justice Outcomes: Preventing Failures to Appear in Court (2018) (rigorous controlled study finding that redesign of court-date notice form and text message reminders decreased nonappearance by 36%); Jason Tashea, *Text- Message Reminders Are a Cheap and Effective Way to Reduce Pretrial Detention*, ABA JOURNAL (July 17, 2018); *see also* Samuel R. Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 YALE L.J. 1344 (2014) (electronic monitoring is sufficient to prevent flight).

Kings County District Attorney first filed its criminal complaint against Petitioner and asked the court to issue a warrant for her arrest on that basis. Criminal Complaint (Ex. 5); Hanford Police Department Supplement 8 Report (Nov. 7, 2019) (Ex. 6) ("On 10-31-19, Kings County Superior Court Judge Robert S. Burns signed a warrant of arrest for Chelsea Becker for the felony charge of Pen. Code, § 187(a) with the bail amount of $5,000,000."). Petitioner was arrested one week later, on November 5, 2019, without incident, and has been held on millions of dollars bail since that date. Any statement that she ever failed to appear in court is simply false.

During the May 20, 2020 bail hearing the court attempted to suggest a novel theory that Ms. Becker had been eluding the police after the October 31, 2019 arrest warrant was issued. But the slim reed supporting the notion that Ms. Becker had *ever* attempted to elude the police was clearly not based on any fact or evidence and, after hearing from counsel, that notion also collapsed. May 20, 2020 hearing transcript 22:21 – 25: 11 and 28:18 – 32: 23 (Ex. 17). [20] Despite that, no bail reduction was ordered. Neither the transcripts of the February 20, 2020 hearing nor the May 20, 2020 hearing reveal *any* valid basis to keep Ms. Becker in jail on a bail of $2,000,000. The transcripts only reveal that the court consistently relied on inaccurate material to come to a bail decision and fully neglected to address the fact that Ms. Becker's conduct, as charged in the complaint, is not a crime in California.

Rather, Ms. Becker has strong ties to the community, including children and all of her immediate family and friends in Kings County, and virtually no ties outside of California. *See* Bail Review Report (at 3:12-14) (Ex 8). Her biological father, with whom Chelsea lived in 2012–2013, died in 2016; Declaration of Jennifer Elaine Hernandez (Ex. 2). That she has

[20] The Court's decision is found at 33:2- 34:24 (Ex. 17)

obtained pro-bono private counsel in the present matter further decreases the likelihood of nonappearance.

II. The Superior Court's $2,000,000 is the functional equivalent of a preventive detention order and violates principles of equal protection and due process.

Article I, § 12 of the California Constitution prohibits any bail that is "excessive." This prohibition is in line with the historical purpose of bail. As explained by United States Supreme Court Justice Jackson,

> [t]he practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense.

Stack v. Boyle (1951) 342 U.S. 1, 7-8 (conc. op. of Jackson, J.); *see also Gerstein v. Pugh* (1975) 420 U.S. 103, 114, 123 ("Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships."). The right to release is understandably "conditioned upon the accused's giving adequate assurance that [s]he will stand trial and submit to sentence if found guilty." *Stack*, 342 U.S. at 4. However, "[b]ail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment." *Id.* at 5; *Schilb v. Kuebel*, (1971) 404 U.S. 357, 365 (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").

Similarly, a bail order patently beyond and without regard for the accused's ability to pay violates principles of due process and equal

protection. The Superior Court's $2,000,000 bail order not only violates these federal constitutional protections, but also violates the California Constitution's guarantee that bail not be "excessive." Cal Const, Art. I § 12 ("Excessive bail may not be required.").

The Superior Court violated the letter and spirit of each of these protections when, instead of carefully considering the circumstances of Petitioner, her case, her history, the viability of the charge against her and her ability to pay, it followed a perfunctory path of least resistance - one that ineluctably and unconstitutionally led to an unsupportable $2,000,000 bail which is nothing less than pretrial detention.

A. The Trial Court's failure to consider Ms. Becker's ability to pay the $2,000,000 bail violated her right to due process and equal protection under the law, rendering her detention unlawful

California courts have recently considered whether a court must take into account, in setting bail, the accused's ability to pay, lest the accused is remanded for no distinguishing reason other than her poverty. *See In re Humphrey* (2018) 233 Cal.Rptr.3d 129 [417 P.3d 769] (granting review of the question of whether "principles of constitutional due process and equal protection require consideration of a criminal defendant's ability to pay in setting or reviewing the amount of monetary bail."). The Court of Appeals recently held that, "[i]n setting money bail," a court must "consider the defendant's ability to pay and refrain from setting an amount so beyond the defendant's means as to result in detention." *In re Humphrey* (2018) 19 Cal.App.5th 1006, 1037 [228 Cal.Rptr.3d 513] (pending review) (*hereinafter* "*Humphrey*") (*review granted In re Humphrey*, 233 Cal. Rptr. 3d 129). "If the court finds that it must impose money bail in excess of the defendant's ability to pay, it must consider whether there are any less restrictive alternatives that would ensure his or her future court

appearances." *In re White* (2018) 21 Cal.App.5th 18, 32, n. 8 [229 Cal.Rptr.3d 827] (relying on *Humphrey*).

In *Humphrey*, this Court held that a bail amount of $350,000 in a first degree residential robbery case, set without consideration of the defendant's ability to pay, ran afoul of the due process and equal protection guarantees of the Fourteenth Amendment. (2018) 19 Cal.App.5th 1006 [228 Cal.Rptr.3d 513] (pending review). Pursuant to the Court's holding, currently under review, a judicial officer setting bail must (1) consider the defendant's ability to pay, and (2) if it "concludes that an amount of bail the defendant is unable to pay is required to ensure his or her future court appearances, it may impose that amount only upon a determination by clear and convincing evidence that no less restrictive alternative will satisfy that purpose." *Id.* at 1037. The Court reasoned that "the clear and convincing standard of proof is the appropriate standard because an arrestee's pretrial liberty interest, protected under the due process clause, is 'a fundamental interest second only to life itself in terms of constitutional importance.'" *Id.* (quoting *Van Atta v. Scott* (1980) 27 Cal.3d 424, 435 [166 Cal. Rptr. 149, 613 P.2d 210]); *see also*, Cal. Pen. Code § 1319.

In the present case, the court neither considered Ms. Becker's inability to post the bail ordered despite the Affidavit of Indigency attached as Exhibit 2 to (Ex. 16) provided to the court nor did the court consider *any* less restrictive means to ensure her appearance. *See generally* February 20 and May 20, 2020 Bail Review Hearing Transcripts (Ex. 9 and 17). Like the court in *Humphrey*, "[d]ue to its failure to make these inquiries, the trial court did not know whether the [financial] obligation it imposed would serve the legitimate purposes of bail or impermissibly punish petitioner for [her] poverty." *Humphrey*, 19 Cal. App. 5th at 1031 *(pending review*). And like in *Humphrey*, where a wealthier person would be released under

otherwise identical circumstances, Petitioner's indigence has resulted in her pretrial incarceration on account of no distinguishing factor but her poverty.

As a result, Petitioner has been deprived of her liberty interest for over six months. Petitioner anticipates that the state will argue that $2,000,000 could not have been excessive because it was below the $5,000,000 listed on the Schedule of Bail for Kings County. This argument simply misses the point: that blind rubber stamping of bail amounts based on a schedule, by definition, fails to take into consideration anything other than the charge lodged by the State. Most obviously, it fails to take into account that a wealthy person charged with murder may walk free and consult with her attorneys in advance of trial, while an indigent one must remain in custody. It similarly fails to consider the individual circumstances of the accused, her history, and ties to the community. And most importantly, for this case, such perfunctory adoption of a scheduled bail fails to take into account the obvious illegality of the charge on which the accused is being held. As in *Humphrey*, 19 Cal.App.5th at 1044 (*pending review*),

> this case demonstrates [that] unquestioning reliance upon the bail schedule without consideration of a defendant's ability to pay, as well as other individualized factors bearing upon his or her dangerousness and/or risk of flight, runs afoul of the requirements of due process for a decision that may result in pretrial detention.

Like the lower court in *Humphrey*, the Superior Court in this matter demonstrated a patent disregard for all but the statutory section pursuant to which the prosecution has brought its charge against Ms. Becker.

Perhaps even more compelling than the similarities to the circumstances in *Humphrey*, are the differences. In that case, the lower court set bail for the petitioner on the basis that he had three serious prior offenses and, in the case at bar, was alleged to have entered the home of an

elderly victim and burgled the home while the victim was present. *Id.* at 1042 n. 19. Those unquestionably constitute a crime. *See* Pen. Code § 211 (first degree residential robbery); Pen. Code § 459 ((first degree residential burglary). The circumstances in *Humphrey* are in stark contrast both to the allegations in the present matter - which themselves fail to amount to a violation of *any* provision of California law - and to Petitioner's lack of significant criminal record. Unlike the petitioner in *Humphrey*, Petitioner has no significant criminal history. Where the Humphrey court was presented with conduct which threatened an elderly person in his home, there has been no allegation, let alone evidence, that Petitioner is a threat to anyone. In spite of these differences, Petitioner is being held on bail of almost *six times* the amount held to be unconstitutionally high in *Humphrey*.

Bail set at $2,000,000 clearly functions as a remand order for anyone and everyone except the wealthiest defendants. For Ms. Becker, it functions entirely as a denial of bail, contrary to the requirements of Article I, § 12 of the California Constitution and the due process and equal protection guarantees of the Fourteenth Amendment.

III. The Superior Court has denied Petitioner her procedural and substantive due process rights by refusing to consider the increasing impact of the COVID-19 pandemic.

Because of the Superior Court's unlawful bail order, Petitioner remains incarcerated as COVID-19 continues to gain momentum in Kings County and in the United States threatening vulnerable populations throughout the country. Among those most vulnerable are those incarcerated or working in jails and prisons. In one California jail, at least 80 inmates and 55 employees have tested positive for the virus, and two veteran deputies have died as a result of contracting it. Winton, Richard, "*More inmates, jailers testing positive as coronavirus spreads in Southland*," The Los Angeles

Times (April 13, 2020), https://www.latimes.com/california/story/2020-04-13/more-inmates-jailers-testing-positive-as-coronavirus-continues-to-spread-through-jails. Jails and prisons are particularly susceptible to the spread of COVID-19 because of the tight quarters, lack of personal protective equipment, and near impossibility of social distancing. Bluntly stated, America's

> correctional facilities are frequently crowded and unsanitary, filled with an aging population of often impoverished people with a history of poor health care, many of whom suffer from respiratory problems and heart conditions. Practices urged elsewhere to slow the spread of the virus — avoiding crowds, frequent handwashing, disinfecting clothing — are nearly impossible to carry out inside.

Williams, Timothy, Weiser, Benjamin, Rashbaum, William K, "Jails are Petri Dishes': Inmates Freed as the Virus Spreads Behind Bars"; *The New York Times* (Mar. 30, 2020). https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html. Because of this impossibility, the virus spreads quickly in detention facilities and places the lives of inmates, staff, and even those outside of the facility at risk. *See, e.g.,* 73% Of Inmates At An Ohio Prison Test Positive For Coronavirus, NPR (Apr. 20, 2020) (at least 73% of inmates at one detention facility in Ohio tested positive for the virus) https://www.npr.org/sections/coronavirus-live-updates/2020/04/20/838943211/73-of-inmates-at-an-ohio-prison-test-positive-for-coronavirus. While some jails are releasing inmates in order to stem outbreaks, critics say it is not happening quickly enough to save lives and resources. *Id*. As a result, Ms. Becker remains, unjustifiably, in an environment ideal for the virus to thrive and spread.

The Chief Justice of the California Supreme Court has recognized the "unprecedented" nature of the danger confronting those incarcerated in

California. The Justice issued an advisory to the state's 58 Superior Courts on March 20, 2020 recommending that they consider early release for county jail and juvenile hall inmates who have fewer than 60 days remaining on their sentences. *See* Letter to Presiding Judges and Court Executive Officers of the California Courts (Mar. 20, 2020) (Ex. 25). While Petitioner is not directly covered by the letter, that she is not dangerous and is serving time *pretrial* rather than in the form of a sentence upon conviction weighs even more heavily in favor of her immediate release to preserve her own health and that of those around her.

Despite the near universally accepted need to quickly address the spread of the virus, the Superior Court in this matter has utterly failed to recognize and address the risk that attends Ms. Becker's continued detention and instead, incredibly, suggests that the crowded and inescapable confines of jail is "the safer place for her[.]" 34:11-12 (Ex. 17) [21] The delay and subsequent failure to address this fast moving, constantly changing, and ultimately unforgiving pandemic can prove deadly. As stated in Petitioner's initial and renewed bail motions immediate release is necessary in order to ensure Ms. Becker's continued health, because there was no factual basis to hold her on bail, because the Superior court has not complied with elements of Pen. Code, § 1275 and because her alleged conduct does not constitute a crime in California.

Petitioner's federal and state constitutional rights to due process under the law and renders her continued pretrial detention unlawful.

[21] Given the fact that symptomatic cases of COVID 19 amount to up to 1/3 of all cases and since there are *no records of any testing of the staff* at Kings County Jail and *a grand total of two (2) tests of prisoners* (Ex. 10), it can scarcely be said that Ms. Becker is safest in jail.

CONCLUSION

In order to sustain the liberty interest guaranteed under the Fourteenth Amendment, pretrial detention must be the exception rather than the rule. The Superior Court in the present case, however, has treated the issuance of a bail amount as a perfunctory process without regard for the individual circumstances of the accused and in violation of her statutory and state and federal constitutional rights. The Superior Court's failure to consider the patent illegality of the charge against Petitioner as well as her inability to post the bail ordered renders its order unlawful.

The bottom line is that this already unlawful detention is seriously exacerbated by the health crisis that now confronts us all. Where, as here, release does not threaten the safety of the public, where petitioner does not have the criminal record which was asserted by the prosecution in open court, where petitioner has never failed to appear in court despite the erroneous bail review report to the contrary upon which the court relied, here there was never any effort to elude the police and where the Petitioner has been charged with conduct that is not a crime in California, Petitioner should not have to risk her own life, to say nothing of her liberty, as a result of the failures of the lower court. Petitioner respectfully seeks a writ ordering her immediate release or an alternative resolution that comports with the actual facts of this matter and complies with the California and United States Constitutions and laws of California.

Dated: July 6, 2020

Respectfully submitted,

/s/ Roger T. Nuttall

ROGER T. NUTTALL (SBN 42500)
NUTTALL & COLEMAN
2333 Merced Street,
Fresno, California 93721
Tel: (559) 233-2900

CERTIFICATE OF WORD COUNT

I, Roger T. Nuttall, co-counsel for Chelsea Becker, petitioner and defendant, do hereby certify and verify, pursuant to the California Rules of Court, rule 8.204(c)(1), that the word processing program used to generate this brief indicates that the word count for this document (Petition for Writ of Habeas Corpus Memorandum of Points and Authorities and Application for Immediate Release) is 13,285 words, excluding the tables, this certificate, and any attachment permitted under rule 8.486(b)(1).

I declare that the foregoing is true and correct to the best of my knowledge and belief at the time of making this verification.
EXECUTED on July 6, 2020, under penalty of perjury under the laws of the State of California, in Fresno, California.

/s/ Roger T. Nuttall
ROGER T. NUTTALL

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 6, 2020**, I served the foregoing document described as: **PETITION FOR WRIT OF HABEAS CORPUS, EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS, EXHIBIT 18 TO THE PETITION FOR WRIT OF HABEAS CORPUS** 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

[X] 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

[X] [U.S. MAIL]
[X] {State} I declare under penalty of perjury, under the laws of the State of California the above is true and correct.

EXECUTED on July6, 2020, at Fresno, California.

/s/ Bryan Murray

BRYAN MURRAY