ARIZONA COURT OF APPEALS

DIVISION ONE

ROBERT JOSE ROBLES, *Petitioner*, v. HON. GLENN ALLEN, HON. MARY COLLINS CRONIN, and HON. JENNIFER RYAN-TOUHILL, Judges of the Superior Court of the State of Arizona, in and for the County of Maricopa, *Respondents*, and THE STATE OF ARIZONA, *ex rel.* Allister Adel, District Attorney for Maricopa County, *Real Party in Interest*.	Court of Appeals Division One No. 1_____ Maricopa County Superior Court No. CR2020-118417-001

PETITION FOR SPECIAL ACTION

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Petitioner Robert Robles has been in a Maricopa County jail cell for nearly four months. He is awaiting trial and has not been convicted of any crime. He would be released if he could make the payment needed to satisfy the $50,000 bond that was ordered as a condition of his release. Because he cannot afford that amount, he will remain in a jail cell until his trial. By allowing pretrial release only upon the payment of an amount that is beyond Robles's means, the state is achieving circuitously what Arizona law and the U.S. Constitution forbids it to achieve explicitly: pretrial detention without the substantive findings and procedural safeguards required by law.

An unaffordable condition of pretrial release is an order of pretrial detention. As Nevada's Supreme Court recently explained, "When bail is set in an amount the defendant cannot afford . . . it deprives the defendant of his or her liberty and all its attendant benefits, despite the fact that he or she has not been convicted and is presumed innocent." *Valdez-Jimenez v. Eighth Judicial Dist. Court*, 460 P.3d 976, 980 (Nev. 2020). An arrestee's pretrial detention is constitutionally permissible only if it satisfies the substantive and procedural requirements of the Due Process Clause. *See Simpson v. Miller*, 241 Ariz. 341, 347 ¶ 21 (2017).

None of those requirements was satisfied here. Respondents (the "Superior Court") did not find that Robles could pay to secure a $50,000 bond, and the record is clear that he cannot. And the Superior Court did not make any findings to justify

Robles's detention until trial as required by the U.S. and Arizona Constitutions and Arizona law. Therefore, this Court should order Robles's release subject to the non-monetary conditions stated in the Superior Court's release order or, in the alternative, vacate the Superior Court's order and remand for the Superior Court to conduct a bail hearing that satisfies the U.S. Constitution and Arizona law.

JURISDICTION

This Court has jurisdiction because Robles has no adequate remedy by appeal. Any issues involving his pretrial detention or conditions of release will become moot once his trial begins. *See* Ariz. R.P. Spec. Act. 1(a); *see also Mendez v. Robertson*, 202 Ariz. 128, 129 ¶ 1 (Ct. App. 2002) ("[S]pecial action is [a] method for obtaining appellate review of criminal interlocutory order[.]").

Robles's claim—that the Superior Court illegally imposed unaffordable money bail without satisfying the substantive and procedural requirements of the federal and state constitutions and other applicable law—is reviewable by special action. *See* Ariz. R.P. Spec. Act. 3(b). Furthermore, the legal issues presented in this case are of first impression and statewide importance, and arise frequently in other cases throughout Arizona. Review by special action is therefore appropriate. *See Stubblefield v. Trombino*, 197 Ariz. 382, 383 ¶ 2 (Ct. App. 2000) (special action jurisdiction appropriate when error likely to recur).

ISSUES PRESENTED

Whether the Superior Court's order setting unaffordable money bail violated Arizona law.

Whether requiring unaffordable money bail absent a finding that the unaffordable money bail was necessary to assure reasonably the defendant's appearance or public safety violates the U.S. and Arizona Constitutions.

Whether the procedures of an adversarial hearing, appointment of counsel, clear-and-convincing-evidence standard of proof, and findings made on the record must be provided before a defendant is required to pay an unaffordable money-bail amount as a condition of his release.

BACKGROUND

A. Factual and Procedural Background

Robert Robles was arrested on May 9, 2020, and charged with criminal damage, burglary, and the attempted kidnapping of a minor. *See* APP.012; APP.049–51. The same day, Robles appeared *pro se* before the Superior Court for an initial appearance proceeding. *See* APP.003–09. At that hearing, the Maricopa County attorney requested a $50,000 money-bail amount "[g]iven the nature of the offenses" and concern for the minor's family. *Id.* at 3–4. The Superior Court granted the request, stating only that "at this time, I do agree with the county attorney that a $50,000 bond is appropriate in this case." *Id.* at 4. The Superior Court offered no

other explanation for the $50,000 money-bail amount. The Superior Court made no finding that Robles—who qualifies for the services of a public defender—could pay to secure a $50,000 bond. Nevertheless, the Superior Court also ordered other conditions of release in the event that Robles somehow manages to pay: Robles would be subject to electronic monitoring, a curfew, a prohibition on having contact with alleged victims, witnesses, or any minors who are not his children, and supervision by the Pretrial Services Agency. *Id.* at 4–5; *see also* APP.010–11.

On July 1, 2020, Robles filed a motion for pretrial release. Robles argued that his continued detention because he was unable to pay the $50,000 money-bail amount was unconstitutional, and that his continued detention on that basis was also dangerous during the COVID-19 pandemic. APP.052–64. The State opposed. APP.065–71. The court summarily denied Robles's motion in a minute entry, without explanation. APP.072. The court did not hold a hearing, make any findings on the record, or issue a written opinion before denying Robles's motion.

Robles would be released immediately if he could pay to secure a $50,000 bond. Because he cannot pay, he remains in jail.

B. <u>Historical Background</u>

As a matter of history and law, the term "bail" means, and has always meant, *release* before trial. Although the phrase "the Defendant is held on $10,000 bail" has been commonplace in recent years, it is a contradiction: As a historical matter,

being "held on bail" was impossible. *See* U.S. Department of Justice—National Institute for Corrections, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* 1 (Sept. 2014), https://perma.cc/WQ6B-HK6Y.

For hundreds of years, under the common law in this country and in England, "bail" has meant a robust practice of securing the maximum possible liberty to arrestees until such time that they have been convicted of a crime by a jury of their peers. Since well before the Magna Carta, bail has been understood as a device to *free* defendants prior to their trial proceedings. *See* Brief Amicus Curiae of the CATO Institute Supporting Plaintiff-Appellee at 2–12, *Walker v. City of Calhoun*, 682 F. App'x 721 (11th Cir. 2017) (No. 17-13139), 2017 WL 5614549, at *2–12, https://perma.cc/FE3F-54Z6. Forty-eight states (including Arizona) have protected, by constitution or statute, a right to bail "by sufficient sureties, except for capital offenses when the proof is evident or the presumption great." Matthew J. Hegreness, *America's Fundamental and Vanishing Right to Bail*, 55 Ariz. L. Rev. 909, 916 (2013).

"Money bail" is merely one form of conditional release. *See generally Holland v. Rosen*, 895 F.3d 272, 290 (3d Cir. 2018) (discussing history of bail as "a means of achieving pretrial release from custody conditioned on adequate assurances"). Money bail is the practice of requiring an individual to forfeit money

or property if the person does not appear for trial. Money bail can be either "secured" or "unsecured." A secured money-bail condition requires a person to deposit money before the person is released. An unsecured condition permits a person to be released without depositing any money in exchange for the promise to pay a designated amount if the person later fails to appear.

As criminal-justice systems across the country became flooded with cases in the second half of the twentieth century, jurisdictions departed from the original understanding of bail as a mechanism of pretrial release. Instead, courts with increasingly crowded dockets routinely jailed people solely because they were unable to pay money-bail amounts set without the lengthy and robust proceedings that had been required by law for pretrial detention. The routine use of unaffordable secured money bail without regard to ability to pay resulted in a "crisis." *See United States v. Salerno*, 481 U.S. 739, 742 (1987) (describing "a bail crisis in the federal courts"); Caleb Foote, *The Coming Constitutional Crisis in Bail: I*, 113 U. Pa. L. Rev. 959, 960 (1965). Two evils of the secured-money-bail system provoked the crisis: It imperiled public safety by allowing potentially dangerous defendants to be released without any intentional consideration of their dangerousness, and it worked an "invidious discrimination" against people who were too poor to pay by detaining them in jail pending trial. *See, e.g.*, *Williams v. Illinois*, 399 U.S. 235, 242 (1970).

In the 1960s, Attorney General Robert Kennedy led a successful movement to reform bail in the federal courts. As Kennedy explained:

> [B]ail has become a vehicle for systematic injustice. Every year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They are not yet proven guilty. They may be no more likely to flee than you or I. But, nonetheless, most of them must stay in jail because, to be blunt, they cannot afford to pay for their freedom. . . . Plainly our bail system has changed what is a constitutional right into an expensive privilege.

Testimony on Bail Legislation before the Senate Judiciary Committee, at 1–3 (Aug. 4, 1964).[1] One of the results of the bail-reform movement was the virtual elimination of money bail in the District of Columbia and in the federal courts. Another result was the Bail Reform Act, which "assure[d] that all persons, regardless of their financial status, [would] not needlessly be detained pending their appearance to answer charges . . . when detention serves neither the ends of justice nor the public interest." The Bail Reform Act of 1966, Pub. L. No. 89-465, § 2, 80 Stat. 214, 214 (repealed 1984). In 1984, Congress updated the Bail Reform Act as part of the Comprehensive Crime Control Act. *See* 18 U.S.C. §§ 3141–3150.

The Bail Reform Act required that "[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person." 18 U.S.C. § 3142(c)(2). In *Salerno*, the U.S. Supreme Court upheld the federal pretrial

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[1] *Available at* https://perma.cc/8C9C-TPZ8.

detention scheme. *Salerno* explained that an individual's interest in pretrial liberty is "fundamental" and that a person's pretrial detention under federal law was permitted only if the court was satisfied, after a "full-blown adversary hearing," that no condition or combination of conditions could reasonably assure the safety of the community. *Salerno*, 481 U.S. at 750.

In state courts, however, the use of secured money bail, often imposed without rigorous process, has increased dramatically in the past two decades. Prior to 1998, a majority of pretrial releases did not include any financial conditions. Thomas H. Cohen and Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts*, Bureau of Justice Statistics Special Report 2 (Nov. 2007).[2] By 2004, two-thirds of defendants had financial conditions required for release. *Id.* at 3.

In late 2016, a task force convened by Chief Justice Scott Bales evaluated Arizona's bail system. *See* Supreme Court, State of Arizona, *Justice for All: Report and Recommendations of the Task Force on Fair Justice For All* (Aug. 12, 2016) ("Bales Task-Force Report").[3] "Every year in Arizona," the task force concluded, "thousands of people are arrested and sit in jail awaiting trial simply because they cannot afford to post bail." *Id*. at 9. The task force explained, "The Arizona Constitution makes it clear that except in limited situations . . . defendants are

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[2] *Available at* https://perma.cc/SE6K-TZ8Q.
[3] *Available at* https://perma.cc/9FVD-KW39.

generally entitled to be released (bailable) from jail on their own recognizance or other conditions . . . . Defendants should not have to remain in custody simply because they are poor." *Id.*

C. <u>Arizona's Bail System</u>

"The right to bail in non-capital cases is rooted in American and Arizona law[.]" *Simpson*, 241 Ariz. at 345 ¶ 11. "[I]n our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception." *Id.* at 345 ¶ 9 (quoting *Salerno*, 481 U.S. at 755). The "purposes of bail and any conditions of release" include: "[a]ssuring the appearance of the accused," "[p]rotecting against the intimidation of witnesses," and "[p]rotecting the safety of the victim, any other person or the community." Ariz. Const. art. 2, § 22(B); *see also* A.R.S. § 13-3961(B).[4]

[4] As relates to money bail specifically, as a practical matter, the trial court may rarely find that the imposition of money bail is necessary to further the safety of any person or the community. *See, e.g.*, *State v. Donahoe ex rel. Cty. of Maricopa*, 220 Ariz. 126, 129–30 ¶ 13 (Ct. App. 2009) ("The primary purpose of bail is to secure the defendant's appearance at future court proceedings. . . . The underlying assumption is that cash or property posted as security for a bond is sufficiently valuable to the defendant that he or she will appear in court as required.") (discussing the imposition of cash bail); *see also In re Humphrey*, 228 Cal. Rptr. 3d 513, 528 (Ct. App. 2018) ("Money bail . . . has no logical connection to protection of the public, as bail is not forfeited upon commission of additional crimes.").

The Arizona Constitution provides that "[a]ll persons charged with crime shall be bailable by sufficient sureties," subject to certain enumerated exceptions. Ariz. Const. art. 2, § 22(A). A person "*shall* be ordered released pending trial on his own recognizance or on the execution of bail in an amount specified by the judicial officer" if charged with an offense that is "bailable as a matter of right." A.R.S. § 13-3967 (emphasis added); *see also* Ariz. R. Crim. P. 7.2(a)(2).

The presumption under Arizona law is that pending and during trial, the defendant must be released on his own recognizance with only certain enumerated mandatory conditions of release,[5] unless "such a release will not reasonably assure the defendant's appearance or protect the victim, any other person, or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.2(a)(2) (providing a "Right to Release"). "Additional conditions of release"—*i.e.*, conditions beyond the mandatory conditions of release—are permitted only if the person's release on his own recognizance "will not reasonably assure the defendant's appearance or protect the victim, any other person, or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.3(c). If the court finds that release with only the mandatory

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[5] These mandatory conditions of release are: "(1) the defendant must appear at all court proceedings; (2) the defendant must not commit any criminal offense; (3) the defendant must not leave Arizona without the court's permission; and (4) if a defendant is released during an appeal after judgment and sentence, the defendant will diligently pursue the appeal." Ariz. R. Crim. P. 7.3(a).

conditions will not reasonably assure the person's appearance or public safety, then the court must impose only the "least onerous conditions of release" that are "reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.2(a)(2); Ariz. R. Crim. P. 7.3(c).

A monetary condition of release may be imposed only if the court "determines a monetary condition is necessary" "to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.3(c); *id.* 7.3(c)(2)(B). Upon such a finding of necessity, the court "must impose the least onerous type of condition in the lowest amount necessary to secure the defendant's appearance or protect other persons or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.3(c)(2). The "court's imposition of a monetary condition of release must be based on an individualized determination of the defendant's risk of non-appearance, risk of harm to others or the community, *and the defendant's financial circumstances*." Ariz. R. Crim. P. 7.3(c)(2)(A) (emphasis added). Further, the court "must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition." *Id.*

A person may be detained pending trial under federal and Arizona law only if the government's interest is "legitimate and compelling" and the pretrial detention

scheme is "narrowly focused" on achieving the government's interest. *Simpson*, 241 Ariz. at 348 ¶ 23 (alteration marks omitted); *see also Salerno*, 481 U.S. at 749–51. Arizona's Constitution and statutes enumerate particular offenses for which a person may be detained pending trial; these laws specify particular findings that the court must make and procedures that must be followed before pretrial detention may be imposed on a person under Arizona law. *See* Ariz. Const. art. 2, § 22(A); *see also* A.R.S. § 13-3961(D).

In practice, Arizona courts frequently impose high amounts of money bail that result in the defendant's pretrial detention, rather than issue a pretrial detention order. *See* Bales Task-Force Report at 32 (discussing "the more common practice of setting a high-dollar bond as a substitute for trying to keep a high-risk individual in jail"). For instance, according to a study cited in the Bales Task-Force Report, in two large jurisdictions in Arizona, "nearly 50 percent of high-risk individuals with high-dollar bonds had the ability to post the bond and be released." *Id.* at 31.

ARGUMENT

"[L]iberty is the norm and detention prior to trial . . . is the carefully limited exception." *Salerno*, 481 U.S. at 755. Pretrial detention, however, fails to be a "carefully limited exception" if trial courts can evade the substantive and procedural requirements for constitutionally permissible pretrial detention simply by requiring unaffordable monetary conditions of release.

An order conditioning a defendant's pretrial release on payment of an amount the defendant cannot afford to pay is a pretrial detention order. If the defendant cannot afford to pay the monetary condition of his release, then the order to pay unattainable money bail must be justified like any other order of pretrial detention: To satisfy the U.S. and Arizona Constitutions, the pretrial detention of the defendant must be narrowly focused on achieving a legitimate and compelling government interest.

Further, to protect against the erroneous deprivation of defendants' pretrial rights, Arizona and federal law require procedural safeguards before an arrestee is jailed pretrial. These procedures include an adversarial hearing, at which the defendant has the right to present evidence and cross-examine witnesses and the right to counsel, and findings on the record by clear and convincing evidence concerning whether the monetary condition is necessary reasonably to assure the defendant's appearance or public safety.

The Superior Court's order requiring Robles to pay a $50,000 money-bail amount as a prerequisite to his pretrial release is illegal for three reasons. First, the Superior Court did not make the findings required by Rule 7 of Arizona's Rules of Criminal Procedure before imposing the $50,000 money-bail amount. Second, before ordering unattainable money bail (a de facto detention order), the Superior Court failed to make the substantive findings required for Robles's pretrial detention

to be constitutionally permissible. Third, the Superior Court failed to provide Robles with the required procedural safeguards before ordering the $50,000 money-bail amount.

The record is clear that Robles cannot pay the money bail that the Superior Court required for his release. The result is that Robles has been in jail for four months and will continue to be detained pending his trial. Because the Superior Court's order requiring unattainable money bail did not satisfy the substantive or procedural requirements of a permissible pretrial detention order, the Superior Court's order violated federal and Arizona law.

I. THE SUPERIOR COURT'S IMPOSITION OF UNAFFORDABLE MONEY BAIL VIOLATED ARIZONA'S RULES OF CRIMINAL PROCEDURE

The Superior Court made none of the findings required under Rules 7.2 and 7.3 of Arizona's Rules of Criminal Procedure in imposing a $50,000 money-bail amount on Robles. That is reason enough to grant relief, even without reaching the serious constitutional questions presented.

Prior to ordering the $50,000 money-bail amount, the Superior Court did not make a finding that the money-bail amount was "reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant," as required under Ariz. R. Crim. P. 7.3(c). Nor did the Superior Court make an individualized determination of Robles's risk of non-

appearance, risk of harm to others or the community, or financial circumstances, as required under Rule 7.3(c)(2). The Superior Court stated on the record only that the court "agree[d]" with the County that the requested bond was "appropriate." *See* APP.00. That was not, however, a finding that the money-bail amount was *necessary* to assure reasonably Robles's appearance or public safety. *See id.* 7.3(c). Nor was it a finding that the $50,000 amount of the money bail was the lowest amount necessary to ensure Robles's appearance or the safety of other persons or the community, as required by Rule 7.3(c)(2).

Robles is presently detained because he cannot afford the payment required to satisfy the $50,000 bond. If he could, then he would be released immediately. Accordingly, the $50,000 money-bail amount is precisely the kind of monetary condition expressly prohibited by Rule 7.3—"a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition." Because the Superior Court did not comply with Rules 7.2 and 7.3 before requiring the $50,000 money-bail amount as a monetary condition of release, the court's imposition of money bail should be vacated.

II. THE SUPERIOR COURT'S IMPOSITION OF UNAFFORDABLE MONEY BAIL ABSENT A FINDING OF NECESSITY VIOLATED THE U.S. AND ARIZONA CONSTITUTIONS

A. An Order of Unaffordable Money Bail Is an Order of Detention

In this case, the Superior Court set a secured financial condition of release that resulted in Robles's detention: The Superior Court required Robles to secure a $50,000 bond for his release. For Robles, who cannot pay the amount required to secure his release, the Superior Court's order requiring a $50,000 money-bail amount is akin to an order requiring a $500 million money-bail amount, or an order allowing Robles's release if he runs a mile in less than one minute. All these orders attach impossible conditions of release; they are all orders of detention.

Unaffordable money bail "is simply a less honest method of unlawfully denying bail altogether." *State v. Brown*, 338 P.3d 1276, 1292 (N.M. 2014). If the state requires a money-bail amount that a person cannot afford to pay, it has entered "the functional equivalent of an order for pretrial detention." *Brangan v. Commonwealth*, 80 N.E.3d 949, 963 (Mass. 2017). Though styled as a "release order," an order requiring, as a condition of release, an unattainable monetary obligation is "tantamount to setting no conditions at all" that would result in the defendant's release. *United States v. Leathers*, 412 F.2d 169, 171 (D.C. Cir. 1969) (per curiam).

State and federal courts alike have squarely held that because an order requiring an unattainable monetary condition is an order of pretrial detention, an order requiring unaffordable money bail is constitutionally permissible only where a pretrial detention order would be constitutionally permissible. As Nevada's Supreme Court recently explained, "when bail is set in an amount that results in continued detention, it functions as a detention order, and accordingly is subject to the same due process requirements applicable to a deprivation of liberty." *Valdez-Jimenez*, 460 P.3d at 987. In these circumstances, the trial court's "insist[ence] on terms in a 'release' order that will cause the defendant to be detained pending trial . . . must satisfy the procedural requirements for a valid detention order." *United States v. Mantecon-Zayas*, 949 F.2d 548, 550 (1st Cir. 1991) (per curiam) (emphasis omitted). Specifically, the court's decision requiring unaffordable money bail "must be evaluated in light of the same due process requirements applicable to such a deprivation of liberty." *Brangan*, 80 N.E.3d at 963.

B. Pretrial Detention is Constitutionally Permissible Only If It is Necessary to Assure Reasonably the Defendant's Appearance or Public Safety

The U.S. and Arizona Constitutions prohibit the state's deprivation of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1; Ariz. Const. art. 2, § 4. The U.S. and Arizona Constitutions also guarantee equal protection of the law. U.S. Const. amend. XIV, § 1; Ariz. Const. art. 2, § 13. The

protections provided by the Due Process Clause in the U.S. Constitution are the same as those provided by the Due Process Clause in the Arizona Constitution. *See Martin v. Reinstein*, 195 Ariz. 293, 316 ¶ 76 (Ct. App. 1999) (finding "no support for the proposition that the Arizona Constitution provides greater [due process] protection than the United States Constitution"). The same is true for their respective Equal Protection Clauses. *Vangilder v. Arizona Dep't of Revenue*, 248 Ariz. 254 ¶ 32, 459 P.3d 1189, 1199 (Ct. App. 2020), *as amended* (Mar. 3, 2020) ("For all practical purposes, the equal protection analysis is the same under the Arizona and U.S. Constitutions." (internal quotation and alteration marks omitted)).

1. It is well-settled that a person's liberty cannot be conditioned on his ability to pay.[6] That principle was first articulated by the U.S. Supreme Court in a trio of landmark decisions. In *Williams v. Illinois*, 399 U.S. 235 (1970), the Court held that a state law permitting a person's continued confinement in lieu of paying a fine violated the Equal Protection Clause because the effect of the state law was to

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[6] The principle that it is unconstitutional to jail the poor solely because they cannot pay a sum of money has deep roots in American constitutional law. *See Williams*, 399 U.S. at 241 ("[T]he Court has had frequent occasion to reaffirm allegiance to the basic command that justice be applied equally to all persons."); *Douglas v. California*, 372 U.S. 353, 355 (1963) (condemning the "evil" of "discrimination against the indigent"); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (plurality opinion) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."); *see also Mayer v. City of Chicago*, 404 U.S. 189, 193 (1971) (same).

"mak[e] the maximum confinement contingent upon one's ability to pay." 399 U.S. at 242. The following year, in *Tate v. Short*, 401 U.S. 395, 398 (1971), the Court held that "the Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." And then, in *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court held that the state cannot condition a person's liberty on a monetary payment he cannot afford unless alternatives to imprisonment are inadequate to satisfy the state's interests. 461 U.S. at 672–73. Explaining that "[d]ue process and equal protection principles converge in the Court's analysis" of claims where indigent persons are imprisoned for failure to pay, *Bearden* held that it is "contrary to the fundamental fairness required by the Fourteenth Amendment" to deprive someone of "freedom simply because, through no fault of his own, he cannot pay." *Id.* at 665, 672–73.

Bearden, *Williams*, and *Tate* were not bail cases, and focused instead on penal fines, but courts have routinely extended those cases' holdings to pretrial detention. For example, the Fifth Circuit held that the bail-setting practices in Houston (Harris County), Texas were unconstitutional because the use of secured money bail without regard to ability to pay invidiously discriminates against the poor. *ODonnell v. Harris County*, 892 F.3d 147, 163 (5th Cir. 2018). And the courts in *McNeil v. Community Probation Services, LLC,* No. 1:18-cv-00033, 2019 WL 633012 (M.D.

Tenn. Feb. 14, 2019), *aff'd*, 945 F.3d 991 (6th Cir. 2019), and *Daves v. Dallas County*, 341 F. Supp. 3d 688 (N.D. Tex. 2018), *appeal filed*, No. 18-11368 (5th Cir. Oct. 23, 2018), granted preliminary injunctions against the imposition of secured money bail absent findings on the arrestee's ability to pay, finding a likelihood of success that the money-bail procedures were a form of wealth-based discrimination that violated equal protection.

2. "[D]ue process requires that pretrial detention may be used only for regulatory rather than punitive purposes." *Simpson*, 241 Ariz. at 346 ¶ 13 (citing *Salerno*, 481 U.S. at 747–48). For all arrestees (indigent and moneyed persons alike), pretrial detention is permissible under the Due Process Clause only if it is narrowly focused on satisfying a legitimate and compelling government interest. *Salerno*, 481 U.S. at 755.

In *Salerno*, the U.S. Supreme Court held that the federal pretrial detention scheme set forth in the Bail Reform Act satisfied the Due Process Clause of the U.S. Constitution. The Court acknowledged that an arrestee, who is presumptively innocent, has an "importan[t] and fundamental" right in his pretrial liberty. The deprivation, however, of the arrestee's liberty under the federal statute satisfied due process because "[t]he government's interest in preventing crime by arrestees is both legitimate and compelling," and the statute "narrowly focuse[d]" on the government's legitimate and compelling interests. *Salerno*, 481 U.S. at 749–50.

The statute "careful[ly] delineat[ed] . . . the circumstances under which detention will be permitted" by requiring the court to make substantive findings and comply with procedural requirements before ordering a person's pretrial detention. *Id.* at 749–52. Among other things, before an order of pretrial detention is imposed, the court must find "by clear and convincing evidence" after "a full-blown adversary hearing" "that no conditions of release can reasonably assure the safety of the community or any person." *Id.* at 750.

Applying *Salerno*, the Arizona Supreme Court recently explained that "pretrial detention is constitutionally permissible if the government has both a 'legitimate and compelling' purpose for restricting an accused's liberty, and the restriction is 'narrowly focused on a particularly acute problem.'" *State v. Wein*, 244 Ariz. 22, 26 ¶ 13 (2018) (alteration marks omitted); *see also Simpson*, 241 Ariz. at 348 ¶ 23 (same). In *Simpson v. Miller*, and *State v. Wein*, the Supreme Court considered due process challenges to Arizona no-bail provisions that denied bail to persons charged with certain sexual-conduct crimes. In *Simpson v. Miller*, the Supreme Court held that the Arizona law's imposition of pretrial detention on persons charged with sexual conduct with a minor violated due process because it was "not narrowly focused" on the state's objective of preventing dangerousness. 241 Ariz. at 344 ¶ 1. The Arizona law challenged in *Simpson* did not require an individualized determination of, or have procedures that were "a convincing proxy"

for, dangerousness. *Simpson*, 241 Ariz. at 348 ¶ 26. Because nothing about the sexual-conduct crimes "inherently predict[s] future dangerousness," imposing pretrial detention on persons charged with those crimes, without complying with *Salerno*'s due-process requirements, violated the Constitution. *Id.* at 349 ¶ 30. In *State v. Wein*, the court affirmed *Simpson*'s holding and similarly held that Arizona's no-bail provision for people charged with sexual assault was facially unconstitutional because it did not require an individualized finding of dangerousness before authorizing detention. 244 Ariz. at 24 ¶ 1.

Other courts across the country have applied *Salerno* similarly: Imposing pretrial detention on certain categories of arrestees must be narrowly tailored to serve a compelling state interest. For example, the Ninth Circuit held that imposing pretrial detention on undocumented immigrants, without consideration of individual circumstances, violated due process because it was "a 'scattershot attempt' at addressing flight risk and [was] not narrowly tailored to serve a compelling interest." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 791 (9th Cir. 2014) (en banc). Because the legislation required "pretrial detention for every undocumented immigrant charged with any of a broad range of felonies, regardless of the seriousness of the offense or the individual circumstances of the arrestee," it violated the Due Process Clause. *Id.* The Fifth Circuit similarly held that the systematic detention of misdemeanor defendants who are unable to afford a secured bond violated due

process and equal protection because the County's procedures did not sufficiently protect indigent arrestees and the pretrial detention scheme was not "narrowly tailored" to serve a compelling interest, *ODonnell*, 892 F.3d at 159–62.

C. An Order Requiring Unaffordable Money Bail is Constitutionally Permissible Only If It Is Necessary To Assure Reasonably the Defendant's Appearance or Public Safety

The pretrial detention of a defendant solely because he is unable to afford a monetary condition of release is unconstitutional unless the unaffordable monetary condition is necessary to satisfy Arizona's legitimate and compelling interests in bail (the defendant's appearance or public safety).

Nevada's Supreme Court recently concluded that the Due Process Clause requires exactly that. In *Valdez-Jimenez v. Eighth Judicial District Court*, the court held that "when bail is set in an amount that results in continued detention, it functions as a detention order, and accordingly is subject to the same due process requirements applicable to a deprivation of liberty." *Valdez-Jimenez*, 460 P.3d at 987. "Thus, bail may be imposed only where it is necessary to reasonably ensure the defendant's appearance at court proceedings or to protect the community, including the victim and the victim's family." *Id.* at 988. The court explained that setting bail "in an amount that an individual is unable to pay[] result[s] in continued detention pending trial, . . . infring[ing] on the individual's liberty interest." *Id.* at 984–85. "[G]iven the fundamental nature of this interest," the unaffordable money

bail "must be necessary to further the State's compelling interests in bail—that is, to prevent the defendant from being a flight risk or a danger to the community." *Id.* at 985 (citing *Salerno*, 481 U.S. at 750 and *Bearden*, 461 U.S. at 668–69).

Other courts have similarly held that unaffordable money bail may be imposed "only upon a determination by clear and convincing evidence that no less restrictive alternative will satisfy [the government's] purpose." *In re Humphrey*, 228 Cal. Rptr. 3d 513, 535 (Ct. App. 2018). If the court "enters an order for pretrial release containing a financial condition that a defendant in good faith cannot fulfill," then the financial requirement is justifiable only if it "is an *indispensable* component of the conditions for release." *Mantecon-Zayas*, 949 F.2d at 551 (emphasis added). An order setting unaffordable money bail "must be evaluated in light of the same due process requirements applicable to . . . a deprivation of liberty" that results from a pretrial detention order, and is permissible only if there is "no less restrictive condition"—including nonmonetary conditions or an affordable amount of money bail—"will suffice to assure the defendant's presence at future court proceedings." *See Brangan*, 80 N.E.3d at 963, 966. The amount of the monetary condition must "not be in an amount greater than necessary" "to further the State's compelling interests in bail." *Valdez-Jimenez*, 460 P.3d at 984–85; *see also Brangan*, 80 N.E.3d at 954.

Arizona's Supreme Court has twice held that due process requires that the pretrial detention of certain categories of persons must be "narrowly focused" on achieving a governmental objective. *See Simpson*, 241 Ariz. 341 (no-bail provision for persons charged with sexual conduct with a minor violated due process); *Wein*, 244 Ariz. 22 (no-bail provision for persons charged with sexual assault violated due process). Although the government's stated purposes for these no-bail provisions—protecting public safety and ensuring the defendant's appearance—were legitimate and compelling, *see Wein*, 244 Ariz. at 27 ¶¶ 16–19, *Simpson*, 241 Ariz. at 348 ¶ 24, the pretrial detention of persons pursuant to these no-bail provisions was unconstitutional because the provisions were not narrowly focused on achieving the government's purposes. *Wein*, 244 Ariz. at 31 ¶ 33, *Simpson*, 241 Ariz. at 344 ¶ 1.

The Court explained that the no-bail provisions were not narrowly focused because they "den[ied] bail categorically for those accused of crimes that do not inherently predict future dangerousness," the Court explained. *Simpson*, 241 Ariz. at 349 ¶ 30. Unless detaining certain classes of persons pretrial is "categorically demonstrated" because the offense with which the person is charged "inherently predicts" dangerousness or flight risk, "the trial court must make an individualized bail determination before ordering pretrial detention." *See Wein*, 244 Ariz. at

24 ¶¶ 2, 31–32, 37.[7] Because nothing about the sexual-conduct offenses was inherently predictive of dangerousness, the Arizona legislation "categorically prohibit[ing] bail without regard for individual circumstances" violated due process. *See Wein*, 244 Ariz. at 31 ¶ 37.

It follows from *Simpson* and *Wein* that imposing pretrial detention on certain persons satisfies due process only if it is "narrowly focused" on accomplishing the state's legitimate and compelling interests in preventing dangerousness or flight risk. Here, an order requiring unaffordable money bail imposes pretrial detention on persons who cannot pay. But the lower court did not make an individualized assessment that pretrial detention was necessary to assure the state's interest in appearance or public safety. There is nothing about unaffordable money bail—or the defendant's financial inability to pay—that "inherently predicts" or is "narrowly focused" on the government's interests in preventing dangerousness or flight risk. Accordingly, under *Simpson* and *Wein*, imposing pretrial detention on persons who

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[7] For instance, the Arizona Supreme Court held that it was constitutional to deny bail to persons charged with "felony offenses committed when the person charged is already admitted to bail on a separate felony charge and where the proof is evident or the presumption great as to the present charge." *Morreno v. Brickner*, 243 Ariz. 543, 545 ¶ 1 (2018) (discussing Ariz. Const. art. 2, § 22(A)(2)). The denial of bail in these circumstances satisfied due process because the risk of dangerousness was "categorically demonstrated" "by a felon who has already reoffended while on pretrial release." *Wein*, 244 Ariz. at 31 ¶ 32 (discussing *Morreno*).

cannot pay—without any individualized assessment justifying the bail determination—violates due process.

That unaffordable money bail must be necessary reasonably to assure the defendant's appearance or public safety comports with Arizona's Rules of Criminal Procedure. Rule 7.3 provides that the court may impose a monetary condition of release only if it determines a monetary condition is "reasonable and *necessary* to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant." Ariz. R. Crim. P. 7.3(c), 7.3(c)(2) (emphasis added). If the court does not find that the monetary condition is necessary to assure reasonably the defendant's appearance or public safety, then the monetary condition of release may not be imposed.

D. Determining Whether Unaffordable Money Bail is Necessary to the Defendant's Appearance or Public Safety Requires an Individualized Assessment of the Defendant's Financial Condition

An individualized assessment of the defendant's ability to pay is an essential component of the due-process inquiry of whether the unaffordable money bail is necessary to assure reasonably the defendant's appearance or public safety. "[C]onsideration of how much the defendant can afford is essential to determining the amount of bail that will reasonably ensure his or her appearance." *Valdez-Jimenez*, 460 P.3d at 986. A $500 money-bail amount, for example, may reasonably assure the appearance of many people, but for wealthy people it would be

inconsequential. Because "the important financial inquiry is . . . the amount necessary to secure the defendant's appearance," failing to conduct an individualized assessment of the defendant's ability to pay "runs afoul of the requirements of due process for a decision that may result in pretrial detention." *In re Humphrey*, 228 Cal. Rptr. 3d at 541.

An individualized assessment of the defendant's financial ability is also required by Arizona's Rules of Criminal Procedures. Rule 7.3 provides, in relevant part, that "[a] court's imposition of a monetary condition of release must be based on *an individualized determination* of the defendant's risk of non-appearance, risk of harm to others or the community, *and the defendant's financial circumstances*." Ariz. R. Crim. P. 7.3(c)(2)(A) (emphases added). In addition, the court "must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition." *Id*. To comply with this Rule, the court must conduct an individualized assessment of how much the defendant can afford to pay and accordingly, what amount for that defendant is "the lowest amount necessary to secure the defendant's appearance or protect other persons or the community from risk of harm by the defendant." *Id.* 7.3(c)(2)(B).

III. ROBUST PROCEDURAL SAFEGUARDS MUST BE IMPLEMENTED BEFORE MONEY BAIL IS IMPOSED IN AN UNAFFORDABLE AMOUNT

A. Due Process Requires Robust Procedural Safeguards

"[T]o ensure the accuracy of the court's bail assessment and to comport with procedural due process, additional procedural safeguards are necessary before bail may be set in an amount that results in continued detention." *Valdez-Jimenez*, 460 P.3d at 987. Robust procedural safeguards are required to ensure "that any government action depriving a person of liberty [is] implemented in a fair manner" in order to satisfy the Due Process Clause. *Id.* (citing *Salerno*, 481 U.S. at 746). Nevada's Supreme Court concluded that the following procedural safeguards are required before the court imposes unaffordable money bail: (i) an adversarial hearing, with the right to be represented by counsel and present evidence; (ii) the clear and convincing evidence standard of proof that no less restrictive alternative will satisfy the state's interest; and (iii) findings of fact and a statement of reasons by the court for the bail decision. *Id.* at 987–88. This Court should do the same.

In *Salerno*, the Court emphasized that pretrial detention is permitted under the Bail Reform Act only after the provision of robust procedural safeguards, including (i) a "full-blown adversary hearing," at which the defendant has the right to counsel, present evidence, and cross-examine witnesses; (ii) a requirement that the government must prove its case by clear and convincing evidence; and (iii) "written

findings of fact and a written statement of reasons for a decision to detain." *Salerno*, 481 U.S. at 751–52. Because these procedures "are specifically designed to further the accuracy" of the court's determination of pretrial detention, the statutory pretrial detention scheme was "narrowly focused" on the government's legitimate and compelling interests and satisfied due process. *Id*. at 751–52.

The procedural protections identified in *Salerno* are "of particular importance in safeguarding against erroneous de facto detention orders" such as unattainable money bail. *Valdez-Jimenez*, 460 P.3d at 987. As *Valdez-Jimenez* explained, the procedural protections it required (adversarial hearing, clear-and-convincing burden of proof, and findings on the record) are necessary "to ensure the accuracy of the court's bail assessment." *Id*. Other courts have reached similar conclusions. *See, e.g.*, *In re Humphrey*, 228 Cal. Rptr. 3d at 545 (requiring a "determination by clear and convincing evidence that no less restrictive alternative will satisfy" the purpose of ensuring the defendant's future court appearance, and requiring that "[t]he court's findings and reasons must be stated on the record or otherwise preserved").[8]

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[8] *See also Schultz v. State*, 330 F. Supp. 3d 1344, 1373 (N.D. Ala. 2018) ("[A]t a minimum, a judge must state on the record why the court determined that setting secured money bond above a defendant's financial means was necessary to secure the defendant's appearance at trial or protect the community."), *appeal filed*, *Hester v. Black*, No. 18-13898 (11th Cir. Sept. 13 2018); *Caliste v. Cantrell*, 329 F. Supp. 3d 296, 312 (E.D. La. 2018), *aff'd*, 937 F.3d 525 (5th Cir. 2019) ("[T]he inquiry into the ability to pay must involve at least notice and opportunity to be heard, and

The *Mathews v. Eldridge* test, which assesses the procedures required by procedural due process, also weighs in favor of requiring these procedures. The *Mathews* test requires courts to balance three factors: (1) the private interest affected; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, the private interest—Robles's liberty—is significant. *See Turner v. Rogers*, 564 U.S. 431, 445 (2011) ("[A]n indigent defendant's loss of personal liberty through imprisonment . . . lies 'at the core of the liberty protected by the Due Process Clause.'"). As *Salerno* explained, an arrestee's interest in his pretrial liberty is "importan[t] and fundamental." 481 U.S. at 750.[9]

The risk of erroneous deprivation of liberty without these procedural safeguards is high. An inquiry into a defendant's ability to pay or the necessity of

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express findings in the record" (internal quotation and alteration marks omitted)); *ODonnell*, 892 F.3d at 165–66 (finding that procedures including, among others, a hearing and "written factual findings or factual findings on the record explaining the reason for the [unaffordable bail] decision" would comport with due process).

[9] In light of current conditions at jails due to the novel COVID-19 pandemic, and the risks from the pandemic to which inmates are exposed, Robles's interest in his liberty is even greater.

detention "would likely be ineffective" without the "basic procedural protections" of notice and opportunity to be heard, express findings on the record, and the appointment of counsel to represent the defendant. *Caliste*, 329 F. Supp. 3d at 312. The procedural protections of an adversarial hearing, findings on the record, and clear-and-convincing-evidence standard of proof are necessary "to ensure the accuracy of the court's bail assessment." *Valdez-Jimenez*, 460 P.3d at 987. In particular, *Valdez-Jimenez* explained that the "intermediate standard of proof" of clear and convincing evidence is required by due process "given the important nature of the liberty interest at stake." *Id.*; *see also In re Humphrey*, 228 Cal. Rptr. 3d at 535 (same). Indeed, in *Lopez-Valenzuela*, the Ninth Circuit concluded that Arizona's pretrial detention statute, unlike the federal Bail Reform Act, was not "narrowly focused" because it did not require a "full-blown adversary hearing" at which the government must prove by clear and convincing evidence that an individual arrestee's detention was necessary. 770 F.3d at 784–85.

Lastly, there is little governmental interest in detaining persons who do not present a flight risk or a danger to the community. The government has a strong interest in the accuracy in the bail determination "and the financial burden that may be lifted by releasing those arrestees who do not require pretrial detention." *Caliste*, 329 F. Supp. 3d at 314.

B. Failing to Require Procedural Safeguards Before Ordering Unaffordable Money Bail is an End Run Around Arizona's No-Bail Provisions

Arizona law requires similar procedural protections before bail is denied to a person under certain no-bail provisions in Arizona's constitution and statutes. The Arizona Constitution imposes pretrial detention on persons who: are charged with felony offenses; "pose[] a substantial danger to any other person or the community"; where "no conditions of release . . . will reasonably assure the safety of the other person or the community"; and "if the proof is evident or the presumption great as to the present charge." Ariz. Const. art. 2, § 22(A)(3). Before a court may deny bail to a person under that no-bail provision, the court must provide: (i) a "bail eligibility hearing," at which the defendant has the right to offer evidence and cross-examine witnesses, Ariz. R. Crim. P. 7.4(b)(1), 7.2(b)(4); (ii) the appointment of counsel if the defendant is indigent, *id.* 7.4(g); (iii) "clear and convincing evidence" that the defendant presents a danger to another person, victim, or the community or that the defendant engaged in certain dangerous criminal conduct, *id.* 7.2(b)(2)(B); and (iv) that the court's findings must be made on the record, *id.* 7.2(b)(4)(E).

A.R.S. § 13-3961(D) similarly imposes pretrial detention on certain particularly dangerous arrestees.[10] Pretrial detention under this statutory provision

[10] A.R.S. § 13-3961(D) provides, in relevant part:

is authorized only if, among other things, the court makes its substantive findings on the person's dangerousness using a clear-and-convincing-evidence standard of proof, after a prompt hearing. *Id.* A.R.S. § 13-3961 further requires that the hearing must be held promptly after the defendant's initial appearance, and at the hearing, the defendant "is entitled to representation by counsel" and "is entitled to present information[,] . . . testify[,] and to present witnesses." *Id.* § 13-3961(E).

These provisions are cold comfort if courts can evade them by requiring unaffordable money-bail amounts. If unaffordable money bail *without* procedural protections is permissible, then a lower court could detain an arrestee that would fall within the scope of the no-bail provisions simply by requiring an unaffordable money-bail amount as a condition of "release." Indeed, that is exactly what has happened in Arizona's lower courts; defendants are frequently detained pretrial

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> [A] person who is in custody shall not be admitted to bail if the person is charged with a felony offense and the state certifies by motion and the court finds after a hearing on the matter that there is clear and convincing evidence that the person charged poses a substantial danger to another person or the community or engaged in conduct constituting a violent offense, that no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community and that the proof is evident or the presumption great that the person committed the offense for which the person is charged.

through a court's order imposing unaffordable money bail. *See* Bales Task-Force Report at 31, 37–38 (describing "the current culture [of] substitut[ing] preventive detention [with] . . . high-dollar bonds" and calling for education program for the state bench). Permitting such an end-run around these no-bail provisions defeats the purpose of the no-bail provisions and the procedural protections they offer.

The same procedural protections that Arizona law offers defendants who are denied bail under Arizona's no-bail provisions—*i.e.*, an adversarial hearing (with the opportunity to present evidence and cross-examine witnesses), appointment of counsel, clear-and-convincing-evidence standard of proof, and findings made on the record—likewise must be provided before money bail is set higher than a defendant can afford. Whether a defendant is refused release by operation of Arizona's no-bail provisions or because he cannot afford to pay the monetary condition, the result is the same: the deprivation of the defendant's liberty interest pending trial.

IV. THE SUPERIOR COURT'S IMPOSITION OF UNAFFORDABLE MONEY BAIL VIOLATED LAW

The Superior Court's order setting an unaffordable money-bail amount failed to satisfy the substantive and procedural requirements set forth above.

The Superior Court made no findings at all that the $50,000 money-bail amount was necessary to assure reasonably Robles's appearance or public safety, nor did the Superior Court make any individualized assessment of Robles's ability to pay the $50,000 money-bail amount. Even though the Superior Court ordered

Robles released with electronic monitoring and a curfew (as well as other conditions), the Superior Court provided no basis for why a monetary obligation was a necessary condition of Robles's release. Although the Superior Court asserted that it "agree[d]" with the State that the $50,000 money-bail amount was "appropriate," *see* APP.006, the law requires that the money bail be *necessary*—not merely appropriate—and in the minimum amount necessary to assure reasonably Robles's appearance or public safety. The Superior Court did not satisfy this standard.

Nor did the Superior Court provide Robles with the procedural safeguards required by due process before ordering the $50,00 money-bail amount. Robles did not have counsel, nor did the Superior Court make any findings on the record, let alone by clear and convincing evidence.

Instead, the Superior Court summarily ordered unaffordable money bail, resulting in Robles's detention. The court, however, had no constitutionally sufficient basis on which to detain Robles. Because Robles's pretrial detention does not comply with the substantive or procedural requirements necessary to justify an order of pretrial detention, the Superior Court's imposition of unattainable money bail violated the U.S. Constitution and Arizona law.

CONCLUSION

Robert Robles is in jail because he does not have enough money to buy his freedom. If the state believes he must stay in jail, there are lawful procedures available to secure his detention. Setting money bail at an amount he cannot afford is not one of them. Robles respectfully asks this Court to either release him on the non-monetary conditions of his existing pretrial release order, or to vacate his money bail and remand to the lower court to conduct a bail hearing that satisfies the U.S. Constitution and Arizona law.

Dated this 3rd day of September, 2020 RESPECTFULLY SUBMITTED,

By */s/ John D. Gattermeyer*
John D. Gattermeyer
Deputy Public Defender

Charles Gerstein
Civil Rights Corps

Wendy Liu
Robbins, Russell, Englert,
Orseck, Untereiner & Sauber LLP

ARIZONA COURT OF APPEALS

DIVISION ONE

ROBERT JOSE ROBLES, *Petitioner*, v. HON. GLENN ALLEN, JUDGE *PRO TEM*. MARY COLLINS CRONIN, and HON. JENNIFER RYAN-TOUHILL, Judges of the Superior Court of the State of Arizona, in and for the County of Maricopa, *Respondents*, and THE STATE OF ARIZONA, *ex rel.* Allister Adel, Maricopa County Attorney, *Real Party in Interest*.	Court of Appeals Division One No. 1_____ Maricopa County Superior Court No. CR2020-118417-001

APPENDIX TO PETITION FOR SPECIAL ACTION

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. ROBERT JOSE ROBLES, Defendant.	CASE NO. CR2020-118417-001 DT

Phoenix, Arizona
May 9, 2020
8:28 a.m.

BEFORE THE HONORABLE MARY VOLLINS CRONIN
SUPERIOR COURT COMMISSIONER

TRANSCRIPT: HEARING

TRANSCRIPT PREPARED BY:

Verbatim Reporting & Transcription, LLC

A P P E A R A N C E S

On Behalf of the Plaintiff:

Lori Eidemanis, Esq.
Maricopa County Attorney's Office
225 West Madison Street
Phoenix, Arizona 85003

On Behalf of the Defendant:

None present

P R O C E E D I N G S

THE COURT: All right. Let me get to your card here. Okay. Why don't you state your name and your date of birth, please?

THE DEFENDANT: Robert Robles, May 4th, 1988.

THE COURT: All right. And would the County Attorney like to make an appearance for the record?

MS. EIDEMANIS: Thank you, Your Honor. Lori Eidemanis (indiscernible) on behalf of the State.

THE COURT: All right. Thank you. All right. Mr. Roberts, you are here on a new matter involving two counts of attempted kidnapping, apprehension of injury listed as a Class 2 felony. One count of burglary in the second degree that is listed as a Class 3 felony. Two counts of attempted custodial interference with a child; those are Class 3 felonies. Two counts of disorderly conduct Class 1 misdemeanor, and one count of criminal damage Class 2 misdemeanor.

Before I get into release conditions, I would like to hear from the county attorney at this time, please.

MS. EIDEMANIS: Thank you, Your Honor. The Form 4 does set forth in a lot of detail the circumstances of this offense. Given the nature of the offenses, the Defendant's persistence, almost obsession with this 14-year-old girl, the fact that she's a child victim and the family is very

frightened because this subject lives very close to them, knows, obviously, of them, and they're afraid they may not give up in his goal to take that girl from the home, in light of that, Your Honor, we're asking for a $50,000 secured appearance bond.

Also, to remind the Court, I did file a motion to seal the Form 4 because of the disclosure of the address of the victim.

THE COURT: Yes, thank you. And just for the record, I did review the motion to seal, and I have sealed the Form 4. And I'm just checking it now. And at this time, I do agree with the county attorney that a $50,000 bond is appropriate in this case. Mr. Robles, I also am going to order that if you're able to post that bond, I'm making it secured, that prior to your release from custody, you will have to wear an electronic monitor.

And pretrial services will go over that with you. Basically, you'll have a curfew, and you'll have to check in with them from time to time. You'll need to make sure you keep that electronic monitor operational. If not, a bench warrant for your arrest will be issued. These are the conditions of your release, and then when I'm done with that, I'm going to give you your court date.

MS. EIDEMANIS: (Indiscernible).

THE COURT: Yes.

MS. EIDEMANIS: Oh, okay. I was just going to say I was also going to ask for clear no contact or no going on the property of the family.

THE COURT: Okay. Thank you. Yes. You're not to return to the scene of the alleged crime. You're to have no contact with the victims or witnesses, which means going back to that residence. And when I say no contact I mean physically and also electronically. Any means, whatsoever. I've also put in the order you are to have no contact with any minors. I did make an exception that you can have contact with your minor children, but no other minors.

And if an order of protection -- well, order against harassment is filed, you will need to comply with that, as well. Your court date -- your next court date will be on May 18th at 8:30. And if you're eligible for court-appointed counsel, one will be appointed at that time to represent you. So do you have any questions at this time?

THE DEFENDANT: Are you guys going to enjoy your Mother's Day? That's pretty much it. Sorry.

THE COURT: All right. And did the county attorney have anything to add at this time?

MS. EIDEMANIS: No, Your Honor. Thank you.

THE COURT: All right. So Mr. Robles, if you would have a seat in the courtroom, you'll get your paperwork will be brought to you in a couple of minutes. Okay?

THE DEFENDANT: Thank you so much.

THE COURT: All right. You're welcome.

THE DEFENDANT: Have a seat?

MS. EIDEMANIS: May I be excused?

THE COURT: Yes. Thank you.

MS. EIDEMANIS: Thank you.

(Proceedings concluded at 8:32 a.m.)

C E R T I F I C A T E

I, KIMBERLY C. McCRIGHT, CET, certified electronic transcriber, do hereby certify that the foregoing pages 1 through 6 constitute a full, true, and accurate transcript from electronic recording of the proceedings had in the foregoing matter.

DATED this 17th day of August, 2020.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
Certified Electronic Transcriber

SUPERIOR COURT OF ARIZONA FOR
Maricopa County
Final Release Order and Order Regarding Counsel

Clerk of the Superior Court
*** Electronically Filed ***
COC Auto-Accept
5/12/2020 9:10:00 PM
Filing ID 11650362

State of Arizona
vs.
Robert Jose Robles

1 Cnt BURGLARY 2ND DE F3
2 Cnt DISORDERLY COND M1
2 Cnt Att.KIDNAP-APPREHEN F2
1 Cnt CRIMINAL DAMAGE M2
2 Cnt Att.CUSTOD INTRFR-C F3

CaseNumber: **PF2020118417001**
Booking#: **T634534**

It is hereby ordered that **Robert Jose Robles shall be released** as indicated and must comply with ALL release conditions.

NEXT HEARINGS

Preliminary Hearing May 18, 2020 at 08:30 AM at South Court Tower, 175 W. Madison Street, 3rd Floor, Phoenix, AZ, 85003-2243 Courtroom: 3B **Docket: RCCT3**

WARNING: If the defendant appears at the next hearing without a lawyer, the hearing may still proceed as scheduled.

RELEASE TYPE

Bailable As a Matter of Right

The defendant has been found to be bailable as a matter of right. IT IS HEREBY ORDERED that the defendant must comply with all release conditions and shall be released from custody in this Cause Number as follows:

Secured Appearance Bond

The defendant will deposit with the Clerk of the above Court the total sum of **$50,000.00**, which includes all applicable surcharges.

If the bond is posted the defendant is subject to the supervision restrictions and conditions of the Pretrial Services Agency set forth below.

PSA Supervision
Electronic Monitoring

Before Release: Mandatory Install

Defendant shall NOT BE released from Jail until Electronic Monitoring Equipment has been Installed.Curfew Times to be determined by PSA

With Curfew Restrictions -

You May Not Leave Your Home Except During The Hours Set or Approved by Your Pretrial Officer.

RELEASE CONDITIONS

1. You are not to return to the scene of the alleged crime.
2. You are not to initiate contact with the alleged victim or victims.
3. You are not to have any physical contact with any alleged victim.
4. You are not to initiate contact with the alleged complainant or witness.
5. You are not to initiate contact with the arresting officers.
6. You are not to have any contact with minors. Except under the following conditions: You may have contact with your minor children.
7. You are not to possess any drugs without a valid prescription.
8. You are not to drive a motor vehicle without a valid driver's license.
9. You must continue to provide the court with proof of your local address.
10. You must obey all of the terms, conditions and requirements of any Order Against Harassment issued, or to be issued, and served upon you.

11. You must submit to DNA testing at the police department that arrested you within five (5) days of release from custody You must bring proof of your DNA Testing to your next hearing. If you do not submit to testing your release will be revoked.
12. You must return to the police department that arrested you and have them 10-Print fingerprint you. If you are released from custody you must complete this before your next hearing. You must bring proof of your fingerprinting to your next hearing or your release may be revoked.

You must appear at all court proceedings in this case or your release conditions can be revoked, a warrant will be issued and proceedings may go forward in your absence. You must maintain contact with your attorney. If convicted, you will be required to appear for Sentencing. If you fail to appear, you may lose your right to a direct appeal. In addition, failure to appear at a future court proceeding may result in a waiver of any claim that you were not informed of a plea offer made in your case by the State. **a**.You will appear to answer and submit to all further orders and processes of the court having jurisdiction of the case. **b**.You will refrain from committing any criminal offenses. **c**.You will diligently prosecute any appeal. **d**.You will not leave the state without permission of the court. If you violate any conditions of this release order, the court may order the bond and any security deposited in connection therewith forfeited to the State of Arizona. In addition, the court may issue a warrant for your arrest upon learning of your violation of any conditions of your release. After a hearing, if the court finds that you have not complied with the conditions of release, it may modify the conditions or revoke your release altogether.

If you are released on a felony charge, and the court finds the proof evident or the presumption great that you committed a felony during the period of release, the court must revoke your release. You may also be subject to an additional criminal charge, and upon conviction you could be punished by imprisonment in addition to the punishment which would otherwise be imposable for the crime committed during the period of release. Upon finding that you violated conditions of release, the court may also find you in contempt of court and sentence you to a term of imprisonment, a fine, or both.

ATTORNEY APPOINTMENT

Defendant at this time cannot provide enough information to determine indigence.

ACKNOWLEDGEMENT BY DEFENDANT

I have received a copy of this form. I understand the standard conditions, all other conditions, and the consequences of violating this release order. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly in the event I change my place of residence.

Date 5/9/2020 8:00:00 PM

Address: 20610 WEST SADDLE MOUNTAIN CIRCLE

City, State, Zip: WITTMAN, AZ, 85361

Signature: Other-REMOTE COURT HEARING

Mary Collins Cronin
Judge / Commissioner

Robert Jose Robles
Defendant

Pretrial Services-Court Report

State of Arizona vs ROBERT JOSE ROBLES		**Reviewed By:**	Enedina Wilson
Superior Court of Arizona, at 7:34 PM on 05/09/2020		**Booking #:**	T634534
IA Type:	Superior Court New Case	**DOB:**	05/04/1988
Interview Type:	Full	**Gender:**	Male
State of Residence:	Arizona	**Ethnicity:**	Anglo
Country Of Residence:	United States	**Arrest Date:**	05/09/2020

Charge(s):

Statute:	Discription:	Class Felony:
13-1507A	BURGLARY 2ND DEGREE	F3
13-1602A1	CRIMINAL DAMAGE-DEFACE	M2
13-1304A4	KIDNAP-APPREHENSION OF INJURY	F2
13-1304A4	KIDNAP-APPREHENSION OF INJURY	F2
13-2904A	DISORDERLY CONDUCT	M1
13-2904A	DISORDERLY CONDUCT	M1
13-1302A1	CUSTOD INTRFR-CHILD-INCOMP PER	F3
13-1302A1	CUSTOD INTRFR-CHILD-INCOMP PER	F3

New Violent Criminal Activity Flag: NO

Failure to Appear Score

1	**2**	3	4	5	6

New Criminal Activity Score

1	**2**	3	4	5	6

Pretrial Services-Court Report

Public Safety Assessment-Court	
Risk Factors	**Responses**
1. Age at Arrest	23 or older
2. Current Violent Offense	Yes
a. Current Violent Offense and 20 or Younger	No
3. Pending Charge at the Time of the Offense	No
4. Prior Misdemeanor Conviction	Yes
5. Prior Felony Conviction	No
6. Prior Violent Conviction	0
7. Prior Failure to Appear pre-trial in Past Two Years	0
8. Prior Failure to Appear pre trial Older than Two Years	No
9. Prior Sentence to Incarceration	No

PSA - Court Assessment Recommendation

Final Recommendation: PSA **Supervision Level:** I Release

Special Conditions:

Additional Recommendations:

Contact

You are not to initiate contact with the arresting officers

Prohibitions

You are not to possess any drugs without a valid prescription

You are not to drive a motor vehicle without a valid driver's license

Requirements

You must continue to provide the court with proof of your local address

You must submit to DNA testing at the arresting police department

You must submit to 10-Print fingerprint at the arresting police department

PRETRIAL SERVICES AGENCY
FINANCIAL INFORMATION

Defendant's Name: ROBERT JOSE ROBLES Booking #: T634534

The Judicial Officer needs to know about your financial situation in determining whether to require you to post bond and, if so, the amount of bond. The Judicial Officer must also determine if you are entitled to have a lawyer appointed to represent you.

Number of Dependents: 0

Employment/Student/Caregiver Status: No Response

Employment Verified: No Occupation :

Employment Status: Length of Employment :

Employer Name:

Income (Monthly):

Pay Amount:
Payroll Deductions for Savings, Stocks, etc.:
Spouse Income:
Public Assistance/Food Stamps:
Disability Benefits:
Veteran Benefits:
Social Security Benefits:
Accident Benefits:
Retirement Benefits:
Allotment Checks(Tribal):
Interest:
Dividends:
Child Support Received:
Alimony Or Maintenance Received:
Unemployment Benefits:
Other Income:
Net Income:

Expense (Monthly):

Rent / Home Payment:
Utilities:
Food:
Gas:
Cell Phone:
Cable:
Charge Account Payments:
Loan Payments:
Car Loan Payments:
Car Insurance:
Child Support:
Medical Care:
Court Fines and Fees:
Alimony:
Child Care:
Union Dues:
Other Expense:
Delinquent Expense:
Total Expenses:

Asset:

Cash Asset:
Checking Amount:
Savings Amount:
Cash Owed To This Person:
Cash Value Of Stock Or Bonds:
Value: $0.00 Owed: $0.00 Net: $0.00
Real Estate Location:
Value: $0.00 Owed: $0.00 Net: $0.00
Automobile 1:
Value: $0.00 Owed: $0.00 Net: $0.00
Automobile 2:
Value: $0.00 Owed: $0.00 Net: $0.00
Trailer:
Value: $0.00 Owed: $0.00 Net: $0.00
Boat:
Value: $0.00 Owed: $0.00 Net: $0.00

Asset (Continued):

Stereos:
Televisions:
Musical Instruments:
Stock In Trade:
Tools:
Jewelry:
Jail Property: $0.00
Other Assets:
Total Assests: **$0.00**

PRETRIAL SERVICES AGENCY
FINANCIAL INFORMATION

Defendant's Name: ROBERT JOSE ROBLES Booking #: T634534

The Judicial Officer needs to know about your financial situation in determining whether to require you to post bond and, if so, the amount of bond. The Judicial Officer must also determine if you are entitled to have a lawyer appointed to represent you.

Number of Dependents:	0		
Employment/Student/Caregiver Status:	No Response		
Employment Verified:	No	Occupation :	
Employment Status:		Length of Employment :	
Employer Name:			

Acknowledgement by Defendant

OATH UNDER PENALTY OF PERJURY: I have truthfully given the information, which appears in this statement. I have not concealed, or in any way misrepresented my financial resources. I am aware that I can be held in contempt of court or prosecuted for perjury, if I made any false statements. If the Public Defender or a court appointed attorney accepts my case, I will notify them of any changes in financial resources, employment, income or re-arrest. I also give permission for the Pretrial Services Agency staff to contact anyone named above or any agency or business concerning their investigation into the statement I made. I hereby make these statements under oath.

_____

ROBERT JOSE ROBLES

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. ROBERT JOSE ROBLES, Defendant.	CASE NO. CR2020-118417-001 DT

Phoenix, Arizona
May 18, 2020
2:35 p.m.

BEFORE THE HONORABLE SUSANNA C. PINEDA
SUPERIOR COURT JUDGE

TRANSCRIPT: PRELIMINARY HEARING/NOT GUILTY ARRAIGNMENT

TRANSCRIPT PREPARED BY:

Verbatim Reporting & Transcription, LLC

A P P E A R A N C E S

On Behalf of the Plaintiff:

Samantha Hardt, Esq.
Maricopa County Attorney's Office
225 West Madison Street
Phoenix, Arizona 85003

On Behalf of the Defendant:

John Gattermeyer, Esq.
Maricopa County Office of the Public Defender
301 West Jefferson Street
Phoenix, Arizona 85003

I N D E X

May 18, 2020

PLAINTIFF'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
Ernesto Guzman	6	12	19	--	--

DEFENDANT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
None					

P R O C E E D I N G S

THE COURT: Mr. Robles, do you have a mask, by chance, sir?

THE DEFENDANT: I do not.

THE COURT: They didn't give him one? Okay. All right. So I'm just going to make sure you keep a distance from your attorney during the course. We're just trying to be safe here. Okay? All right. All right. Are you guys ready to proceed?

MS. HARDT: Yes, Your Honor.

MR. GATTERMEYER: Yes, Your Honor.

THE COURT: So we're here in CR2020-118417-001. Time set for a preliminary hearing in State of Arizona v. Robert Jose Robles. Can everybody please announce?

MS. HARDT: Thank you, Your Honor. Sam Hardt for the State.

MR. GATTERMEYER: John Gattermeyer on behalf of Mr. Robles who is in custody, present, and seated to my right, Your Honor.

THE COURT: All right. And Ms. Hardt, are you ready to proceed with your first witness?

MS. HARDT: I am, Your Honor. The State would call Detective Ernesto Guzman to the stand.

DEPUTY GUZMAN: Deputy.

MS. HARDT: I'm sorry. Deputy.

THE COURT: If you can stand right over here and be sworn in first, okay?

THE CLERK: Raise your right hand.

(Oath administered)

THE WITNESS: Yes, ma'am.

THE COURT: And now you can go ahead and take your -- the witness stand.

Did we wipe that down after the last witness?

THE CLERK: (Indiscernible).

THE COURT: There was some in the back.

Can you wait a second, Detective Guzman? Can you wait one moment?

It's on Judge Hannah's -- in his office, on his table.

MS. HARDT: I'm sorry?

THE COURT: Just wait for a second. What we forgot is we don't have any cleaning items out here, and we did not wipe that down after the last witness. You guys are all first responders, and we don't know what contacts you have with who.

MS. HARDT: Yeah.

THE COURT: Just the arm rests and the table is all she touched. There you go. Sorry about that. We don't do that this often, so trying to be careful. Go ahead.

THE CLERK: Thank you.

THE COURT: Go ahead, Ms. Hardt.

MS. HARDT: Thank you, Your Honor.

ERNESTO GUZMAN

called as a witness on behalf of the Plaintiff, having been duly sworn, testified upon his oath as follows on:

DIRECT EXAMINATION

BY MS. HARDT:

Q All right. Deputy Guzman, can you please introduce yourself for the record?

A My name is Deputy Guzman. I work for the Maricopa County Sheriff's Office.

Q Okay. And Deputy, and if I call you detective at some point, my apologies. It's just --

A That's fine.

Q -- you know, when it's stuck in your head. So please feel free to correct me. So you stated you work for the Maricopa County Sheriff's Office. Were you working then on May 9th of 2020?

A Yes, ma'am.

Q And did you get dispatched to an address in Wittmann, Arizona?

A Yes.

Q And specifically, was that at 20909 West Bradley Road in Wittmann?

A Yes, ma'am.

Q And can you describe for the Court the nature of the

call that you were responding to?

A Initially, it was a very confusing service call. The complainant was reporting someone was there attempting to kidnap her daughter. While in route, multiple callers started calling in advising the same thing, identifying the subject, and actually identifying themselves as the subject's family members stating that yes, this is a fact that a male was attempting to kidnap a 14-year-old.

Q Okay. And the mother of that 14-year-old, did you make contact with her?

A Yes, I did.

Q And is that an individual by the name of Gaylin -- let me get her last name correct here -- Bragg (ph)?

A Yes, ma'am.

Q And is her daughter's name Jasmine Bragg (ph)?

A Yes, ma'am.

Q Okay. And I think you might have stated so a few minutes ago, but it's your understanding that Jasmine is 14 years of age?

A Yes, ma'am.

Q Okay. So when you made contact with Gaylin, did you ensure to make sure you got all contact information for her so that if the State were to need to subpoena her for any kind of future hearing, trial, or something of that nature, we would have that available?

A Yes, ma'am.

Q And did you also work with other law enforcement officers on this particular case?

A Yes, ma'am.

Q And for the record, is it policy of Maricopa County Sheriff's Office that if a deputy is subpoenaed, by policy, he must appear for trial?

A Yes, ma'am.

Q Okay. So after you talked to Gaylin, did she relate to you a couple incidents, or how did that go?

A Yeah. She advised the subject who she identified as the subject in orange, had previously been at her address the day before. They were having a conversation. She felt uncomfortable because of the comments that were being made. He was asked to leave. The morning of, she advised around 7 in the morning, he returned to the address. She located him inside the residence. They had another brief argument where he was attempting to locate Jasmine inside. He left, and then around 9:40 he returned. That's when he forced a door open and attempted to look for Jasmine within the residence.

Q Okay. And I think during that brief narrative there, you pointed to somebody sitting here in the courtroom. Do you know that person's name?

A Yes.

Q And could you please, for the record, identify the

person by name and again narrate for the record where in the courtroom you see that person?

A Yes. He's sitting to the right of the lawyer there. His name is Robert Robles in the orange, with the goatee.

MS. HARDT: Your Honor, may the record reflect that this witness has made an in-court identification of the witness?

THE COURT: It will.

MS. HARDT: Okay.

BY MS. HARDT:

Q And just for absolute clarity, to be clear, Wittmann is in Maricopa County?

A Yes, ma'am.

Q And in the jurisdiction of this court?

A Yes.

Q Okay. Let's talk a little bit about it sounds like there was a division between two different incidents around 7 and then again around 9.

A Yeah.

Q 7:40 or 9 or something of that instance? Yeah, 7 and 9:40.

A 7 and 9:40.

Q I apologize. When you spoke with Gaylin she said that the Defendant had gone into her home?

A Yes, twice.

Q Was he invited in?

A No.

Q Okay. How was it that she found him in the home?

A The initial time she advised she woke up, she went to the kitchen, and saw him inside the residence. She initially was surprised and asked him what he was doing there. He continued talking about her daughter, Jasmine, saying he was there to pick her up. They got into another argument. The second time, she advised she had locked the door. She heard some commotion outside, and then the door was shoved open. She advised it was kicked, but it was later located by Robert who advised he shoved it open with his chest.

Q Okay.

A At that point, he made entry and then attempted to look for the minor inside.

Q Okay. So on two separate times, both at 7 and 9:40, is it your understanding from interviewing witnesses that the Defendant was not invited in either time?

A That is correct

Q Okay. And after he entered the residence, you said he was searching for Jasmine?

A Yes.

Q And do you know what Jasmine was doing while he was searching?

A Yes. On both instances, it was reported she was

actively hiding inside a closet.

Q Okay. And did you or one of your fellow officers have a chance to speak with Jasmine about what she was experiencing during these two separate incidents?

A Yes, I spoke to Jasmine.

Q And did she express that she was fearful for her physical safety?

A She appeared very timid. She was very shy. She kind of wouldn't really answer the questions, but based on her behavior, yes, I believe she was scared.

Q Okay. And I think you talked about the second incident during which there was some force to the door?

A Yes.

Q Did you note anything that was done to the door in terms of was there any kind of indicating that the door had been forced open?

A Yes. The steel -- there's like a steel (indiscernible) I guess you could call it, hinge that holds the door in place with the frame. It was completely damaged. It was located about six feet past the doorway, on the floor, and there was wood chips scattered around.

Q Okay. And is it your understanding from speaking with Gaylin that that was new damage?

A Yes.

Q Okay. And was -- how did it come to be -- now, let

me ask you -- let me back up. Did an officer eventually end up taking the Defendant into custody around that time?

A Yes, I took him into custody after interviewing the parties there.

Q Okay. And after you took him into custody, did you transport him back to headquarters or something of that --

A Yes, I transported him back to District 3 substation.

Q Okay. And did you have a chance to interview the Defendant?

A Yes, I did.

Q Was this post-Miranda?

A Yes, after I Mirandized him.

Q Thank you. And what type of statements did the Defendant make to you about this incident?

A He advised that yes, he was at the residence at those times. That he was actively looking for the minor, Jasmine, as he wanted to give her a better life. He made (indiscernible) statements saying he would give her his heart, soul, and body, and that he would hug a lion and fight a bear for her.

Q Okay. Is there anything else that you can think of that the Court needs to know in determining this matter?

A No.

CROSS-EXAMINATION

BY MR. GATTERMEYER:

Q Good afternoon, Deputy.

A Hello, sir.

Q So I want to start with the first incident in the morning, okay? That occurred around 7 in the morning, right?

A That's what was reported.

Q And at that point, everybody in the Bragg household was awake?

A At that point, it was just reported that she, the mom, was waking up.

Q Okay so you don't know that about everybody else in the house?

A No.

Q Do you know if Jasmine was awake at that time?

A I -- I don't know.

Q Okay. Do you know if Mrs. Bragg's husband was home at the time?

A From the conversation that we had, yes, he was --

Q He was home?

A He was in the area.

Q Okay.

A On the property.

Q And Mr. Bragg has a relationship with Mr. Robles?

A Yes.

Q All right. They actually grew up together and know each other?

A That's what was reported, yes.

Q Okay. Did you talk to Mr. Braggs about this?

A No, he wasn't on scene.

Q Okay. So if he had told Mr. Robles he could go inside, you wouldn't have that knowledge?

A No, I wouldn't have that knowledge.

Q Okay. How did Mr. Robles get inside the house the first time?

A The first time I don't know.

Q You don't know?

A I don't know.

Q Okay. So then the -- Ms. Bragg says that she walked in or she came into the kitchen that morning?

A Yes, sir.

Q And saw him standing inside the house?

A Yes, sir.

Q At that point, was he like tearing the house apart looking for her? Was he screaming? Did she say?

A That wasn't her report. She just said he was inside the residence.

Q Okay. And she said specifically that she did not invite him in?

A Yes.

Q But she did recognize him?

A Yes.

Q And at that point, he began asking for Jasmine?

A Yes, sir.

Q He said he wanted to take her to give her a better life, right?

A (No audible response).

Q And he wanted to know where she was?

A Yeah.

Q Ms. Bragg told him that she wouldn't tell him where she was at, right?

A (No audible response).

Q Ms. Bragg told him to leave?

A Yes, sir.

Q And he did leave?

A Yes, after looking for Jasmine.

Q Okay. How long was it between when she told him to leave that he actually left?

A I didn't ask that question.

Q Okay. So you don't have a general frame of reference for the timeline on that?

A No, sir. I don't.

Q Okay. All right. Well, then let's go ahead and talk a little bit about his searching that first time around. Ms. Bragg said he was actively searching for Jasmine; is that accurate?

A Yes.

Q What is he doing physically to actively look for her?

A From what it was reported, he was looking in the rooms attempting to locate Jasmine.

Q Okay. And at that time, Jasmine was hiding in a closet?

A Yeah, that was -- that's what was reported.

Q Okay. So it doesn't -- the looking in the rooms is not going in and opening every door he can find?

A Based on what she stated, I assumed they opened the --

Q Okay.

A -- door to the rooms.

Q But he didn't find Jasmine, right?

A No.

Q So ultimately, he didn't open at least that door?

A No.

Q Okay. Do you know just generally how long he was in there searching?

A No, I didn't ask that question.

Q Okay. All right. Let's move onto the second incident then. So again, we already covered this. At some point, Ms. Bragg asked Mr. Robles to leave. He does leave eventually?

A Mm-hmm (affirmative).

Q But he does come back, right?

A Yes, sir.

Q It's around three hours later that he comes back?
A 9:40, so 2 hours and 40 minutes.
Q Okay. And there's been discussion about him using his chest to open the door, right?
A Yeah.
Q Did he knock at first?
A That wasn't reported.
Q Okay. So you don't know if he did knock or somebody said come in or anything like that?
A No.
Q And again, at this time, Mr. Bragg's around the property, but you don't know if he's inside?
A The second time the mother had reported that the husband was not there.
Q Was not there?
A Yeah.
Q Okay. So he left between the two --
A Yeah.
Q -- (indiscernible)? Okay. All right. So the deadbolt was broken, though, right?
A Yes, sir.
Q Once again, he's asked to leave -- Mr. Robles is asked to leave, right?
A Yeah.
Q He starts shouting for Jasmine?

A Yes, sir.

Q Does not find her again, right?

A (No audible response).

Q And the same language is used as far as he's actively searching. Is it different this time around from what he was doing the first time around?

A From what was reported, the second time he entered the room where she was in, and there was two other minors, and he asked them where their sister was and no response was given at that point. He then exited the residence.

Q Okay. So he didn't find Jasmine again?

A No, he didn't find her.

Q Do you know if she hid in the same closet or if it was in a different closet?

A It was in the same closet area.

Q Okay. And so obviously, he didn't check there then?

A No.

Q Okay. All right. Then let's go ahead we'll end up with his statements. So you mentioned that he did speak directly to you, right?

A Correct.

Q He said when asked -- I assuming when asked why he was searching for Jasmine he mentioned, as you said, things that he wanted to share his life with her?

A Mm-hmm (affirmative).

Q He wanted to give her a better life, right? Is that a yes?

A Yes. Yes. Sorry.

Q Okay.

A Yes.

Q That's all right. He did mention that he wanted to protect her, right?

A Yes, sir.

Q You talked about the fighting the bear and the lion, right?

A Yes.

Q Now, he did mention that, at some point, that this wasn't a sexual desire, right?

A Yeah, he kept making statements that this wasn't sexual, but wanted to marry her.

Q Okay. And so it's seemingly more of a companionship or a guardianship type?

A On his end, yeah.

Q Yeah. Okay.

MR. GATTERMEYER: One moment, Your Honor. No more questions. Thank you.

THE COURT: Ms. Hardt, any redirect?

MS. HARDT: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HARDT:

Q Is it your understanding in speaking to Witness Gaylin, the mother I believe it is, that he left immediately after being told he needed to leave?

A No, he wouldn't leave immediately. They would start arguing in the hallway --

Q Okay.

A -- as she was trying to block the -- I guess the hallway so he wouldn't continue walking forward.

Q Okay. Did she make it clear, though, that that was -- she communicated to him that he was to leave the house?

A Yes.

Q Which he did, but then he returned?

A Yes.

Q And when he returned, I think you noted did she indicate that she had locked the door after he left?

A Yes, she had locked the door.

Q Okay. And so even by the Defendant's own admission, he forced that door open when he returned?

A Yes, ma'am.

Q Okay. And in terms of, you know, what the Defendant had admitted to, he did clearly admit he was going to remove Jasmine from that home?

A Yes, that's -- those were his intentions.

Q Okay.

MS. HARDT: Nothing further, Your Honor.

THE COURT: Mr. Gattermeyer, do you have any offer of proof?

MR. GATTERMEYER: No, Your Honor.

THE COURT: Any argument you want -- I've heard the testimony, but I forgot on the last one if they had any argument they wanted to make. Ms. Hardt?

MS. HARDT: Just briefly, Your Honor. Your Honor, the Defendant is charged with two separate counts of burglary in the second degree, and two separate counts of attempt to commit kidnapping where the attempted kidnapping serves as the basis of the felony that's kind of inherent in the burglary charge.

The State believes there's proof evident in terms of the witness' testimony of what the civilian witnesses had relayed, also in terms of what he himself observed and heard from the Defendant that the Defendant went into that home with the intent to remove a 14-year-old girl. Whether his intent was sexual or nonsexual is completely irrelevant for the purposes of these charges.

And however, based on what was happening with Jasmine, this little 14-year-old girl who heard a man screaming for her and decided to hide in the closet, it's apparent, Your Honor, that she was in fear of imminent physical injury from the Defendant's actions. Granted, he'd never had a chance to lay a hand on her, but -- and that is why it is charges in

attempt. His own statements certainly indicate what his intentions were when he entered that home, and the State would ask that you find that there is probable cause and that the Defendant needs to be held to answer on this case.

THE COURT: Mr. Gattermeyer.

MR. GATTERMEYER: Yes, Your Honor. Also, briefly, what's important with this case is the ultimate charging decisions that were made, as far as the charging of the attempted kidnap. And the information that needs to -- that there needed to be probable cause for as far as the elements go is it's under this belief that Jasmine was under reasonable apprehension of imminent harm or injury.

There hasn't been any evidence of that. She indicated -- or the officer -- deputy indicated that yes, she seemed timid and shy, and that she was scared. But by his own admissions, by the information that came out that it wasn't an attempt to take her for the purposes of injury, for the purposes of putting her in a situation where she would be in danger.

In fact, the information that came out was the opposite of that. Now, as the State did indicate, all these charges are tied together and looped in a way that the burglary depends on the kidnapping. The kidnap depends on this reasonable apprehension. Therefore, the Defense would argue that because there hasn't been any evidence of this reasonable

apprehension imminent physical injury that there just simply hasn't been probable cause proven on that count; therefore, there cannot be probable cause on the underlying burglary counts. But the Defense would concede that there is probably cause for the criminal damage. Would ask the Court find that. Thank you.

THE COURT: Okay. I do find, actually, and I understand, Mr. Gattermeyer, your argument here, but the issue here with counts -- let me make sure I have the counts right. Count II and Count IV, which are the attempted kidnapping, we do have testimony that the child was fearful; that she hid from the Defendant.

So I do find the probable cause to believe that those two counts -- actually, all five counts, but I'll go through those two because those are the premise for the burglary charges, as you indicated, felony therein. So we have a child under the age of -- who is 14 years of age, so this was also charged as dangerous crimes against children. So the child's age of 14 is important here.

I do find that the State has shown probable cause to believe that the Defendant in this case, Mr. Robles, attempted to restrain the child, victim A, as listed in the complaint, who we have testimony about, 14 year old. Placing her -- with the intent to place her in reasonable apprehension. She was placed in reasonable apprehension. That's the evidence that

was here, so there didn't need to be an attempt there. And he did that twice; once at 7 a.m. and then again at 9:40 a.m. within the jurisdiction of this court, in Maricopa County, in Wittmann.

He, on two occasions, entered and remained unlawfully. Let's start with Count I, the remaining unlawfully. Even though there's no information on how he obtained entry into the home, once Mother, Ms. Gaylin -- I got her last name here.

MS. HARDT: Bragg.

MR. GATTERMEYER: Bragg.

THE COURT: Bragg told him to leave, he did not leave and thus he remained in the residence without authority, with the intent still looking for the child. This Count III, again, the Court finds probable cause because he did enter unlawfully. The door was locked. He broke entry, and that counts also for Count V where there was damage. I wanted to double check the statutes, and I don't have it, but is 250 the least amount?

MS. HARDT: Yeah, it's anything up to 250, so --

THE COURT: Is a class 2 misdemeanor?

MS. HARDT: Is --

THE COURT: Okay.

MS. HARDT: Yeah.

THE COURT: I just was looking for -- I keep my books near me --

MS. HARDT: Understood.

THE COURT: -- just to look at the amounts, so I do find that, you know, a broken doorframe and deadlock is going to cost probably around 250, maybe a little more, to replace depending on labor. But at this point in time, I have to go with the lesser amount for purposes of there's no direct evidence as to the actual amount. So I do find probable cause to believe that the Defendant committed these and that he should be held to answer.

Mr. Gattermeyer, are you assigned to this case?

MR. GATTERMEYER: yes, Your Honor.

THE COURT: Okay.

MR. GATTERMEYER: Through the Public Defender's Office.

THE COURT: So we'll just affirm your assignment to this case.

MR. GATTERMEYER: Thank you.

THE COURT: And then this case is on whose calendar? Let's see.

MR. GATTERMEYER: Judge Ryan Touhill's, Your Honor.

THE COURT: Yes. Okay. So we can get Judge Ryan Touhill last day an IPTC, Jess (ph)?

THE CLERK: 7/7.

THE COURT: And that's before --

MS. HARDT: I'm sorry, which commissioner?

THE COURT: Gilla.

MS. HARDT: Oh, okay. Great.

THE COURT: Just got appointed?

MS. HARDT: Yep.

THE COURT: And then the CPTC?

THE CLERK: 8/5 at 8:30.

THE COURT: That's before Judge Ryan Touhill. FTMC? No problem. 8/5 was before Touhill, right?

THE CLERK: Mm-hmm (affirmative).

THE COURT: Okay.

MS. HARDT: Judge, can my witness step down?

THE COURT: Oh, yes. Thank you.

THE WITNESS: Thank you.

THE COURT: Thank you, Mr. Guzman. Deputy Guzman.

THE WITNESS: Yes. Do you want me to wipe it down?

THE COURT: No, we'll wipe it.

THE CLERK: How long do you want that?

THE COURT: The FTMC probably around the first week of September. I think that's about right?

MR. GATTERMEYER: Yeah, that sounds right.

THE COURT: Given the last day is currently October 15th.

THE CLERK: October 9th.

THE COURT: And the trial date? 9/16? Okay.

So Mr. Robles, sir, your next hearing is before

Commission Gilla on -- or Gilla, I'm not quite sure how she pronounces it. I put that Spanish flare to it. It's an initial pretrial conference before her on July 7th. Then you'll go for your comprehensive pretrial conference before Judge Ryan Touhill on August 5th. Final trial management conference before Judge Ryan Touhill, she's in this building, on September 9th at 8:30. And then your trial before the master calendar, which is in this building, September 16th at 8:00 in the morning.

Understand that I don't have -- my computer just shut off on me, so I don't have any of your current release conditions. If you meet any of your release conditions, understand that you must appear for all of these hearings. If you fail to appear, a warrant could issue for your arrest and the trial or hearing could proceed in your absence. Okay?

THE DEFENDANT: Mm-hmm (affirmative).

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: Sorry. Thank you. Mm-hmms and uh-uhs are very hard. It's been a while since I've had to give people that instruction, but --

THE DEFENDANT: I don't like the attention. I just --

THE COURT: I just need to make sure that you are aware of this. Okay, Mr. Robles? All right.

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Well, have a good rest of your day. Thank you guys.

MS. HARDT: Thank you, Judge.

MR. GATTERMEYER: Thank you, Judge.

(Proceedings concluded at 3:06 p.m.)

C E R T I F I C A T E

I, KIMBERLY C. McCRIGHT, CET, certified electronic transcriber, do hereby certify that the foregoing pages 1 through 28 constitute a full, true, and accurate transcript from electronic recording of the proceedings had in the foregoing matter.

DATED this 17th day of August, 2020.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
Certified Electronic Transcriber

Clerk of the Superior Court
*** Electronically Filed ***
05/20/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2020-118417-001 DT 05/18/2020

HONORABLE SUSANNA C. PINEDA

CLERK OF THE COURT
M. Nelson
Deputy

STATE OF ARIZONA

SAMANTHA HARDT

v.

ROBERT JOSE ROBLES (001)

JOHN GATTERMEYER

COMM. GILLA
JUDGE PINEDA
JUDGE RYAN-TOUHILL

PRELIMINARY HEARING / NOT GUILTY ARRAIGNMENT

2:38 p.m.

Courtroom SCT 7B

State's Attorney:	Samantha Hardt
Defendant's Attorney:	John Gattermeyer
Defendant:	Present

A record of the proceedings is made digitally in lieu of a court reporter.

This is the time set for Witness Preliminary Hearing.

IT IS ORDERED appointing Public Defender's Office to represent the Defendant for all further proceedings in this case.

LET THE RECORD REFLECT John Gattermeyer has been appointed counsel of record for all further proceedings in this matter.

The Defendant is advised of the charges in the Complaint.

State's Case:

Deputy Ernesto Guzman is sworn and testifies.

LET THE RECORD REFLECT the witness makes an in-court identification of the Defendant.

The witness is excused.

Closing arguments.

The Court finds probable cause exists to hold Defendant to stand trial on the charges as set forth in the Direct Complaint.

Court proceeds with Not Guilty Arraignment.

IT IS ORDERED entering a Not Guilty Plea to all charges on behalf of the Defendant.

IT IS ORDERED that the Maricopa County Sheriff's Office conduct ten-print fingerprinting of the Defendant.

This case is assigned to Judge Ryan-Touhill.

IT IS ORDERED that all electronic media (audio tapes, CD's, etc.) or documents which require language translation shall be submitted to the Court Interpretation and Translation Department (CITS) on or before the IPTC hearing date.

IT IS FURTHER ORDERED setting Initial Pretrial Conference for 07/07/2020 at 8:15 a.m. before Commissioner Gilla. ****This is a non-appearance hearing****

IT IS ORDERED setting a Comprehensive Pretrial Conference for 08/05/2020 at 8:30 a.m. before Judge Ryan-Touhill. ****Appearances to be determined****

IT IS ORDERED that the attorneys for both the State and Defense be prepared to provide the court with the following information at the Comprehensive Pretrial Conference (CPTC):

A. The status of plea negotiations. This includes whether or not the State has tendered an offer; if so, when it expires; the results of the settlement conference; and whether or not a Donald advisement is required.

B. The status of disclosure by both the State and Defense. This includes what discovery has been disclosed and what discovery still needs to be disclosed. If any discovery is left undisclosed, it is required that all parties comply with Rule 15.6 and provide appropriate affidavits.

C. The number of days required for trial.

D. The number of witnesses to be used at trial, including any out of town witnesses. And the number of expert witnesses to be used at trial.

E. The status of interviews. This includes how many interviews have been conducted and how many are left to complete. This includes whether or not any depositions are going to be required. If depositions are required, it is ordered that the party file a motion requesting same no later than two days before the CPTC date.

F. Whether or not an interpreter is going to be required for either a witness or the defendant or both.

G. The number of jurors required for trial along with the recommended number of alternates.

H. Whether or not the State is requesting an aggravating factors trial to the jury.

I. Any special jury instructions.

J. Whether or not either party is requesting a lesser-included offense.

K. Whether or not there are any anticipated substantive motions to be filed by either party.

L. Whether or not there are any motions in limine anticipated.

IT IS ORDERED setting Final Trial Management Conference on 09/09/2020 at 8:30 a.m. before Judge Ryan-Touhill. ****This is an appearance required hearing****

CR2020-118417-001 DT 05/18/2020

IT IS ORDERED setting Trial on 09/16/2020 at 8:30 a.m. before the Master Calendar Assignment Judge. ****This is an appearance required hearing****

IT IS ORDERED that the Defendant shall contact and meet with his/her attorney in person no later than three weeks from this date, for the purpose of preparing for the Initial Pretrial Conference.

NOTICE TO DEFENDANTS:

Failure to comply with the above orders may result in revocation of Defendant's release from custody and/or the imposition of other sanctions.

The Defendant may be tried in his/her absence if he/she fails to appear for trial.

Projected Last Day: 10/15/2020

IT IS FURTHER ORDERED affirming prior custody orders.

3:06 p.m. Matter concludes.

Clerk of the Superior Court
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ALLISTER ADEL
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0131835217

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF MARICOPA

THE STATE OF ARIZONA, Plaintiff, vs. ROBERT JOSE ROBLES, Defendant.	CR2020-118417-001 INFORMATION **COUNT 1:** BURGLARY IN THE SECOND DEGREE, A CLASS 3 FELONY (ROBERT JOSE ROBLES) **COUNT 2:** ATTEMPT TO COMMIT KIDNAPPING, A CLASS 3 FELONY DANGEROUS CRIME AGAINST CHILDREN(ROBERT JOSE ROBLES) **COUNT 3:** BURGLARY IN THE SECOND DEGREE, A CLASS 3 FELONY (ROBERT JOSE ROBLES)

INF

COUNT 4: ATTEMPT TO COMMIT KIDNAPPING, A CLASS 3 FELONY DANGEROUS CRIME AGAINST CHILDREN(ROBERT JOSE ROBLES)
COUNT 5: CRIMINAL DAMAGE, A CLASS 2 MISDEMEANOR (ROBERT JOSE ROBLES)

THE MARICOPA COUNTY ATTORNEY accuses ROBERT JOSE ROBLES, on this date, charging that in Maricopa County, Arizona:

COUNT 1:

ROBERT JOSE ROBLES, on or about May 9, 2020, with the intent to commit a theft or a felony therein, did enter or remain unlawfully in or on the residential structure of Gaylynn Marie Bragg, located at Wittman, Arizona, to wit: first incident, in violation of A.R.S. §§ 13-1507, 13-1501, 13-701, 13-702, and 13-801.

COUNT 2:

ROBERT JOSE ROBLES, on or about May 9, 2020, knowingly did attempt to restrain Victim A, under fifteen years of age, with the intent to place her, in reasonable apprehension of imminent physical injury to Victim A, to wit: first attempt, in violation of A.R.S. §§ 13-1001,13-1304, 13-1301, 13-705, 13-701, 13-702, and 13-801.

COUNT 3:

ROBERT JOSE ROBLES, on or about May 9, 2020, with the intent to commit a theft or a felony therein, did enter or remain unlawfully in or on the residential structure of Gaylynn Marie Bragg, located at Wittman, Arizona, to wit: second incident, in violation of A.R.S. §§ 13-1507, 13-1501, 13-701, 13-702, and 13-801.

COUNT 4:

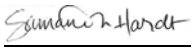
ROBERT JOSE ROBLES, on or about May 9, 2020, knowingly did attempt to restrain Victim A , under fifteen years of age, with the intent to place her, in reasonable apprehension of imminent physical injury to Victim A , to wit: second attempt, in violation of A.R.S. §§ 13-1001,13-1304, 13-1301, 13-705, 13-701, 13-702, and 13-801.

COUNT 5:

ROBERT JOSE ROBLES, on or about May 9, 2020, recklessly did deface or damage property, to-wit: the doorframe and/or deadbolt lock, of Gaylynn Marie Bragg, causing damage in an amount of $250 or less, in violation of A.R.S. §§ 13-1602, 13-1601, 13-707, and 13-802.

Dated May 20, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: 
/s/ Samantha M Hardt
Deputy County Attorney

SH/df

Clerk of the Superior Court
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Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, Plaintiff, v. ROBERT JOSE ROBLES, (001). Defendant.	No. CR2020-118417-001 **MOTION TO MODIFY CONDITIONS OF RELEASE** (Honorable Glen Allen)

EMERGENCY MOTION FOR PRETRIAL RELEASE DUE TO PUBLIC HEALTH AND SAFETY THREAT POSED BY COVID-19 PANDEMIC

Robert Robles moves this Court for immediate release from pretrial detention. Mr. Robles requests that the Court grant the motion, or, alternatively, hold an emergency hearing on this motion and allow the parties to appear by phone.

As the novel coronavirus that causes COVID-19 has spread across the globe, hundreds of thousands of people have been infected and thousands of people have died.[1] There is no known cure. Development of a vaccine is likely at least 12 months away.[2] The county jail has never

[1] The World Health Organization has officially classified the spread of Covid-19 as a global pandemic. *See* World Health Organization, Director-General Opening Remarks (March 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[2] Saralyn Cruickshank, "Experts Discuss Covid-19 and Ways to Prevent Spread of Disease," John Hopkins Mag. (Mar. 17, 2020), https://hub.jhu.edu/2020/03/17/coronavirus-virology-vaccine-social-distancing-update

confronted a global health pandemic like this one.[3] The facility is unequipped either to prevent transmission of COVID-19 among detainees and staff or to isolate and treat individuals who become infected. For the reasons set forth below, Mr. Robles's ongoing pretrial detention poses an imminent threat to Mr. Robles's life and to the health and safety of the community from a deadly infectious disease.

Under these unique circumstances, the Court must release Mr. Robles on appropriate conditions, at least until the resolution of this outbreak.

I. BACKGROUND

A. Procedural History

1. Robert Robles was arrested on May 12, 2020 and charged with two counts Burglary in the Second Degree, a class 3 felony, two counts of Attempted Kidnapping, a class 3 felony and Dangerous Crime Against Children, and one count of Criminal Damage, a class 2 misdemeanor.

2. Mr. Robles has been detained prior to trial because he cannot afford to pay the $50,000 financial condition required for pretrial release. If Mr. Robles could pay $50,000, Mr. Robles would be immediately released.

3. At no point since Mr. Robles's arrest has a judicial officer concluded that Mr. Robles's pretrial detention is necessary to serve the government's compelling interests in preventing flight or reasonably assuring public safety, as the federal Constitution requires. *United States v. Salerno*, 481 U.S. 739, 751 (1987); *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

B. The Public Health Crisis

[3] Given COVID-19's contagiousness and relatively high death rate, particularly in vulnerable populations, the President ordered a 15-day directive to avoid gatherings in groups of more than 10 people. The President's Coronavirus Guidelines for America, Whitehouse.gov (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

4. On March 11, 2020, the World Health Organization declared a global pandemic.[4] Citing "deep[] concern[] both by the alarming levels of spread and severity, and by the alarming levels of inaction," it called for countries to take "urgent and aggressive action."[5]

5. The Governor has declared a Public Health Emergency identifying COVID-19 as an imminent threat to the health and safety of the community, requiring emergency protective actions. Since then, normal life has ceased. Businesses, restaurants, schools, government offices, and churches are closed. People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease.

6. As of June 29, 2020, the Governor has closed bars, gyms, water parks, and events that allow 50 or more people to congregate outside. This is the second instance of the Governor shutting down various businesses as a result of COVID-19.

7. As of July 1, 2020, 2,689,107 people have been diagnosed with COVID-19 in the United States, with 128,828 deaths confirmed.[6]

8. The number of people infected is growing exponentially. The death toll in Italy, which began experiencing this epidemic about a week earlier than the first diagnosed American case, saw a rise of 30% overnight in the 24 hours between March 5, 2020, and March 6, 2020 and a rise of 25% on March 15 alone—a day that killed 368 people in Italy.[7] Experts predict similar rapid growth in the United States.

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[4] *See supra* note 1.
[5] *Id.*; *see also* "Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says," NPR (March 11, 2020), https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says.

[6] Centers for Disease Control, Coronavirus 2019, https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html
[7] "Italy coronavirus deaths near 200 after biggest daily jump," Crispian Balmer & Angelo Amante, Reuters (Mar. 6, 2020), https://www.reuters.com/article/us-health-coronavirus-italy/italy-coronavirus-deaths-near-200-after-biggest-daily-jump-idUSKBN20T2ML.

9. The numbers of people diagnosed reflect only a portion of those infected;[8] very few people have been tested, and many are asymptomatic transmitters.[9] Thousands of people are carrying a potentially fatal disease that is easily transmitted—and few are aware of it.

10. The current estimated incubation period is between 2 and 14 days.[10] Approximately 20% of people infected experience life-threatening complications, and between 1% and 3.4% die.[11]

11. The virus is thought to spread through respiratory droplets or by touching a surface or object that has the virus on it.[12] Thus, infected people—who may be asymptomatic and not even know they are infected—can spread the disease even through indirect contact with others.

12. According, officials and experts urge "social distancing"—isolating oneself from other people as much as possible.[13] Social distancing is virtually impossible inside the County jail.

13. Other federally recommended precautions include frequent hand-washing, alcohol-based hand sanitizers, and frequent cleaning *and* disinfecting of any surfaces touched by any person.[14]

14. It is virtually impossible to engage in these basic preventive measures in the County jail.

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[8] Melissa Healy, "True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say," L.A. Times (Mar. 10, 2020), https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA.

[9] Roni Caryn Rabin, "They Were Infected with the Coronavirus. They Never Showed Signs," N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html; Aria Bendix, "A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,", Bus. Insider (Feb. 24, 2020), https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms.

[10] "Coronavirus Disease COVID-19 Symptoms," Centers for Disease Control (updated: Feb. 29 2020), https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html.

[11] Vox, *Why Covid-19 is worse than the flu, in one chart*, https://www.vox.com/science-and-health/2020/3/18/21184992/coronavirus-covid-19-flu-comparison-chart.

[12] Centers for Disease Control, Coronavirus Factsheet (Mar. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

[13] *See supra* notes 2 & 3.

[14] Centers for Disease Control, Steps to Prevent Illness: https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fprevention-treatment.html; *see also supra* notes 2 & 3.

15. During pandemics, jail facilities become "ticking time bombs" as "[m]any people crowded together, often suffering from diseases that weaken their immune systems, form a potential breeding ground and reservoir for diseases."[15] As Dr. Jaimie Meyer, an expert in public health in jails and prisons, recently explained, "[T]he risk posed by COVID-19 in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected." *See* Exhibit 1, Declaration of Dr. Jaimie Meyer ("Meyer Decl.") ¶ 7 (Mar. 15, 2020). This is due to a number of factors: the close proximity of individuals in those facilities; their reduced ability to protect themselves through social distancing; the lack of necessary medical and hygiene supplies ranging from hand sanitizer to protective equipment; ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill; the increased susceptibility of the population in jails and prisons; the fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic; and loss of both medical and correctional staff to illness. *Id.* ¶¶ 7-19.[16]

16. When coronavirus suddenly exploded in China's prisons, there were reports of more than 500 cases quickly spreading across five facilities in three provinces.[17] In Iran, 54,000

[15] *See* Saint Louis University, "Ticking Time Bomb," *Prisons Unprepared For Flu Pandemic*, ScienceDaily (2006), https://www.sciencedaily.com/releases/2006/09/060915012301.htm.

[16] "The pathway for transmission of pandemic influenza between jails and the community is a two-way street. Jails process millions of bookings per year. Infected individuals coming from the community may be housed with healthy inmates and will come into contact with correctional officers, which can spread infection throughout a facility. On release from jail, infected inmates can also spread infection into the community where they reside." *Pandemic Influenza and Jail Facilities and Populations,* American Journal of Public Health, October, 2009; *See also* Dr. Anne Spaulding, Coronavirus and the Correctional Facility: for Correctional Staff Leadership, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf

[17] Claudia Lauer & Colleen Long, "US prisons, jails on alert for spread of coronavirus," AP News (Mar. 7, 2020), https://apnews.com/af98b0a38aaabedbcb059092db356697.

prisoners were temporarily released to protect them and to protect the community from propagation of an outbreak.[18]

17. People incarcerated at the jail:

a. Are typically housed in close proximity to others and unable to distance themselves;
b. Spend significant time in communal spaces, such as eating areas, recreation rooms, bathrooms, and cells or holding areas, and they are unable to choose to do otherwise;
c. Live in spaces with open toilets within a few feet of their beds, and unable to access a closed toilet that would not aerosolize bodily fluids into their living spaces;
d. Are constantly within six feet of other people, likely none of whom have been tested for COVID-19, and they are unable to choose to do otherwise;
e. Must physically touch others or be touched by others, such as correctional officers and medical staff, many of whom have not been tested for COVID-19, and they are unable to opt out of this contact;
f. Are frequently subjected to intimate contact by correctional staff, many of whom have not been tested for COVID-19, during searches of their person, including having those staff place their hands inside of people's mouths and other body cavities;
g. Lack recommended access to soap, water, tissues, and paper towels;
h. Lack access to hand sanitizer that complies with CDC guidelines.

18. People in the jail also lack access to quality, efficient medical care. Although an incarcerated person can request to see a member of the medical staff, those requests take significant time to process. Further, beginning June 21, 2020, inmates who were in quarantine or under medical observation would not be transported to court under any circumstance. As of June 26, 2020, that amounted to 41% of the inmate population. That number will certainly continue to grow.

19. This combination of lack of adequate sanitation, close quarters, and limited medical capacity create an intolerably dangerous situation, putting detainees, jail staff, and the communities they belong to at greater risk of illness and death—without any compelling need. The constant

[18] *Id.*

cycling of people in and out of the jail[19] makes containment impossible, even if visitations are stopped.[20]

20. Science shows that, within jails and prisons, isolation, segregation, and lockdown are ineffective against COVID-19, Meyer Decl. ¶ 10, and regardless, the jail does not have the physical space to accomplish these efforts for the current jail population. COVID-19 can survive in the air, so separation in a facility where there is still other movement of people, and occasional interaction, will not contain it. Surfaces are still touched–inside cells, in bathrooms, and in transport, at the very least. Further, the reality is that some contact with others, whether through close proximity or actual contact, is inevitable. Kitchen staff, intake staff, officers and medical staff all interact with incarcerated people as a matter of course, even on lockdown.

C. Release Serves Public Health and Community Safety

21. Mr. Robles lives with his wife Shannon, and their children. They have stable housing. Mr. Robles is needed at home for the purposes of providing for his family in the form of financial security, child care, and an extra set of hands for any issues that may arise.

22. In Dr. Meyer's words, "[r]educing the size of the population in jails and prisons is crucially important to reducing the level of risk both for those within those facilities and for the community at large." Meyer Decl. ¶ 37. In this unique moment, release *enhances* the safety of other people and the community—and is necessary to protect Mr. Robles's own health and safety. Mr. Robles must be able to exercise self-protective measures in a sanitary, disinfected space, and to maintain social distance from other community members to flatten the curve of the virus's spread.

[19] *See Peter Wagner & Emily Widra*, "No need to wait for pandemics: The public health case for criminal justice reform," Prison Policy Initiative (Mar. 6, 2020), https://www.prisonpolicy.org/blog/2020/03/06/pandemic.
[20] Premal Dharia, "The Coronavirus Could Spark a Humanitarian Disaster in Jails and Prisons," Slate (Mar. 11, 2020), https://slate.com/news-and-politics/2020/03/coronavirus-civil-rights-jails-and-prisons.html

23. When Mr. Robles was initially detained, circumstances were different; this Court must consider the stark change in circumstances.

II. ARGUMENT

COVID-19 is causing an unprecedented public health crisis that underscores the constitutional requirement that pretrial detention be a last resort. In this case, Mr. robles has been ordered released, but because his release is contingent on him making an upfront monetary payment, Mr. Robles is still in jail. Mr. Robles's ongoing detention is both dangerous and unconstitutional.

A. Requiring Money Bond in this Case Means Robert Robles Will Be Detained

An order requiring an unattainable financial condition of release is a de facto order of pretrial detention. "[T]he setting of bond unreachable because of its amount [is] tantamount to setting no conditions at all." *United States v. Leathers*, 412 F.2d 169, 171 (D.C. Cir. 1969) (per curiam); *United States v. Mantecon-Zayas*, 949 F.2d 548, 550 (1st Cir. 1991) (per curiam) ("[O]nce a court finds itself in this situation—insisting on terms in a "release" order that will cause the defendant to be detained pending trial—it must satisfy the procedural requirements for a valid detention order . . . ."). Every appellate court to address the question has agreed. *See ODonnell v. Harris County*, 892 F.3d 147, 162 (5th Cir. 2018) (holding that Defendants' practices result in the "absolute deprivation of [indigent misdemeanor arrestees'] most basic liberty interests—freedom from incarceration"); *United States v. Leisure*, 710 F.2d 422, 415 (8th Cir. 1983) ("[T]he amount of bail should not be used as an indirect, but effective, method of ensuring continued custody.");; *Brangan v. Commonwealth*, 80 N.E.3d 949, 963 (Mass. 2017); *State v. Brown*, 338 P.3d 1276, 1292 (N.M. 2014 ("Intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether.").

B. The U.S. Constitution Prohibits Pretrial Detention Unless It Is *Necessary* to Achieve Public Safety or Prevent Flight.

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); *id.* at 750 (holding that the "individual's strong interest in [pretrial] liberty is "fundamental."). This norm reflects the longstanding principle that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (citing *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982)).

In *Salerno*, the Supreme Court upheld a law that authorized pretrial detention when necessary to protect public safety in serious federal felony offenses. *See* 481 U.S. at 742; 18 U.S.C. §3142(e)-(f), (i). Specifically, *Salerno* held that pretrial detention is constitutional only if a judicial officer considers alternatives to detention and "'finds that no [release] condition or combination of conditions'" can satisfy the government's interests. *Id.* at 742 (quoting 18 U.S.C. § 3142(e)). The judge's finding of necessity must be based on "clear and convincing" evidence. *See Caliste v. Cantrell*, 329 F. Supp. 3d 296, 315 (E.D. La. 2018), *aff'd*, 937 F.3d 525 (5th Cir. 2019); *Kleinbart v. United States*, 604 A.2d 861, 870 (D.C. 1992); *In re Humphrey*, 228 Cal. Rptr. 3d 513, 535 (Ct. App. 2018); *see also Addington v. Texas*, 441 U.S. 418, 432-33 (1979) (holding the deprivation of the fundamental right to bodily liberty requires a heightened standard of proof beyond a mere preponderance).

Absent such a "sharply focused scheme," the government may not detain a presumptively innocent person. *Foucha*, 504 U.S. at 81; *see id.* at 83 (holding that Louisiana's statutory scheme authorizing the detention of insanity acquittees who were no longer mentally ill was unconstitutional because it did not provide the safeguards set forth in the Bail Reform Act such as a "clear and convincing" evidence requirement); *Reno v. Flores*, 507 U.S. 292, 301-02 (1993)

(*Salerno* is part of the Court's "line of cases" prohibiting infringement of "'fundamental' liberty interests" except where "narrowly tailored to serve a compelling state interest.").[21]

These principles come into stark relief when pretrial detention affects a person solely because the person is poor. The situation our society faces today, in which Mr. Robles continues to be detained in the face of a public health crisis only because s/he cannot make a payment, exacerbates the already devastating consequences of Mr. Robles's unconstitutional pretrial incarceration.

The Supreme Court has long recognized that a person may not be "subjected to imprisonment solely because of his indigency." *Tate v. Short*, 401 U.S. 395, 398 (1971); *see also, e.g.*, *Bearden v. Georgia*, 461 U.S. 660, 672 (1983); *Williams v. Illinois*, 399 U.S. 235, 242 (1970); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."). The right against imprisonment based solely on wealth applies to individuals being detained pretrial. *See, e.g.*, *ODonnell*, 892 F.3d at 161; *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) ("The incarceration of those who cannot [afford to pay monetary bail], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements."); *Caliste*, 329 F. Supp. 3d at 311 n.5; *Humphrey*, 228 Cal. Rptr. 3d at 528 (Ct. App. 2018).[22] The Fourteenth

[21] *See, e.g.*, *Simpson v. Miller*, 387 P.3d 1270, 1276-1277 (Ariz. 2017) (finding that "heightened scrutiny" applies where, as in *Salerno*, the "fundamental" "right to be free from bodily restraint" is implicated), *cert. denied sub nom. Arizona v. Martinez*, 138 S. Ct. 146 (2017); *Brangan v. Commonwealth*, 80 N.E. 3d 949, 964-65 (Mass. 2017) (finding that, when financial conditions of release will likely result in an individual's pretrial detention, the judge must provide "findings of fact and a statement of reasons for the bail decision," including consideration of the individual's financial resources, "explain how the bail amount was calculated," and state why "the defendant's risk of flight is so great that no alternative, less restrictive financial or nonfinancial conditions will suffice to assure his or her presence at future court proceedings").

[22] *See also, e.g.*, *Schultz v. Alabama*, 330 F. Supp. 3d 1344 (N.D. Ala. 2018), *appeal filed sub. nom. Hester v. Gentry*, No. 18-13894 (11th Cir. Sept. 13, 2018); *Daves v. Dallas Cty.*, No. 3:18-CV-0154-N, 2018 U.S. Dist. LEXIS 160741, at *12-13 (N.D. Tex. Sep. 20, 2018), *appeal filed,* No. 18-11368 (5th Cir. Oct 23, 2018); *ODonnell v. Harris Cty.* (*ODonnell I*), 251 F. Supp 3d 1052 (S.D. Tex. Apr. 28, 2017), *aff'd as modified*, 892 F.3d 147 (5th Cir. 2018); *Rodriguez v. Providence Cmty. Corr.*, 155 F. Supp. 3d 758, 768-69 (M.D. Tenn. 2015).

Amendment requires that, before detaining someone pretrial through an unaffordable financial condition, the Court must consider alternatives to detention and make a finding that less restrictive alternatives are insufficient to serve the government's interests. *Pugh*, 572 F.2d at 1057.

In this case, there has been no finding that Mr. Robles's ongoing detention is necessary to serve any compelling government interest. Even if there had been, that decision must be revisited because of changed circumstances: the government's interest in ongoing incarceration cannot be justified where incarceration itself exacerbates an ongoing and devastating public health crisis and brings a heightened risk of illness and death to people inside and outside the jail. This Court should identify conditions of release that better protect public health and safety, and it must do so urgently.

C. The Conditions In the Jail Amid An Unprecedented Epidemic Temporarily Violate Rober Robles's Due Process Rights

The Due Process Clause imposes obligations on the government to meet the basic needs of the people it jails, who rely on the government for food, clothing, and necessary medical care. A failure to provide sustenance for inmates "may [] produce physical 'torture or a lingering death.'" *Estelle v. Gamble,* 429 U.S. 97, 103 (1976) (internal quotation omitted).

The due process rights of a pretrial detainee "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). Those rights are violated if he is "incarcerated under conditions posing a substantial risk of serious harm," and the "state of mind is one of 'deliberate indifference' to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal citation omitted); *see, e.g.*, *Hardy v. District of Columbia*, 601 F.Supp.2d 182, 190 (D.D.C. 2009) (violation of constitutional rights of pretrial detainee if the officials "knowingly disregarded a substantial risk of serious harm of which they were aware"). Continuing to detain MR. Robles if alternatives exist to protect the community and prevent flight while placing Mr. Robles in mortal danger of contracting and

spreading an infectious disease constitute deliberate indifference to Mr. Robles's health and safety. Mr. Robles's incarceration, under these new circumstances, constitutes an independent due process violation that the Court must remedy.

III. Conclusion

WHEREFORE, for the reasons stated above, as well as any other reasons that become apparent to the Court, the defense respectfully requests that the Court grant this Emergency Motion and order that Mr. Robles be released on appropriate conditions prior to trial.

RESPECTFULLY SUBMITTED this 1st day of July, 2020.

MARICOPA COUNTY PUBLIC DEFENDER

By /s/ _____
JOHN D. GATTERMEYER
Deputy Public Defender

Copy of this motion e-filed/delivered
this 1st day of July, 2020, to:

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Clerk of the Superior Court
*** Electronically Filed ***
R. Montoya, Deputy
7/8/2020 5:15:38 PM
Filing ID 11802855

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA, Plaintiff, vs. ROBERT JOSE ROBLES, Defendant.	CR2020-118417-001 STATES RESPONSE TO DEFENDANT'S MOTION TO MODIFY RELEASE CONDITIONS (Assigned to the Honorable Glenn Allen)

The State of Arizona, by and through undersigned counsel, hereby requests that this Court deny Defendant's motion to modify his release conditions and affirm his currently set bond. The basis for the State's request is set forth below.

I. FACTS

Whereas the Defendant neglected to provide the Court with a recitation of the facts of this case, the State believes that providing the Court with an accounting of the events that

gave rise to Defendant's charges is necessary and proper for the Court's consideration in determining whether to modify Defendant's release conditions.

On May 9, 2020 around 7:00 am the Defendant entered the victims' home and told victim Gaylynn that he was there to take her daughter Victim A and give her a better life. Gaylynn told Defendant that he needed to leave and that he was not taking Victim A, but he continued wandering through the home, searching for Victim A as he called out her name. Victim hid in a bedroom closet until Defendant gave up and left. He returned around 9:40 a.m., and forced his way into the home, ripping off a portion of the deadbolt and breaking the door fame as he entered.

Again, he wandered through the house, after having been told to leave, wandering through the rooms and calling out Victim A's name. Again, Victim A hid in a bedroom closet to prevent Defendant from finding her. Defendant questioned Victim A's siblings regarding her whereabouts, but they did not respond. The Defendant left on foot and was located on US 60/Grand Avenue. He was taken into custody.

Victim A knows Defendant's minor daughter, but denied the Defendant ever touched her. She stated she hid in the closet to avoid being seen by him.

Defendant was Mirandized and denied drug use. When asked who Victim A was, he responded, "An amazing girl." He admitted he had pushed the house door open with his chest, and that he was going to take Victim A away to give her a better life. He stated he would "hug a bear and fight a lion for her." Defendant was arrested that day and has

remained in custody since the time of his arrest. At the time of his initial appearance, the judicial officer set a $50,000.00 secured appearance bond.

Judge Pineda presided over the Defendant's preliminary hearing on May 18, 2020, and finding probable cause, Judge Pineda ordered Defendant held to answer. At that time, after listening to the case agent present much of the case evidence, Judge Pineda affirmed Defendant's prior set release conditions.

As of July 6, 2020, the Arizona Department of Health Services has recorded a total of 101,441 cases with a death toll of 1,810 (1.7%).[1]

II. LAW AND ARGUMENT

Defendant's request rests on the fact that there is a spike in confirmed cases of COVID-19. Certainly, as our country and local communities grapple with the ever-changing developments of COVID-19, so too, does the Maricopa County Jail.

Defendant devotes the substance of his twenty included footnotes to articles that range in dates from February to March of 2020, all of which predate the date of Defendant's offenses (May 9, 2020). His cites sources consists of a great number of speculative articles that seem to be using the COVID-19 Pandemic to bolster arguments for criminal justice/bail reform in addition to articles related to case numbers, statistics and best practices.

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[1] https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php (visited July 6, 2020).

Notably absent from Defendant's motion, however, is any individualized analysis that includes (1) how the Defendant's particular health poses or presents elevated risks that render him particularly vulnerable to the virus, or (2) how Maricopa County Jail is specifically failing the Defendant specifically as relates to the jail's duty to provide care for Defendant's needs.

Correctional Health Services ("CHS"), the medical provider for inmates being held at any of the Maricopa County Jail complexes, had implemented protocols to combat the spread of COVID-19 in the jails. Specifically CHS adjusted accordingly:

- Patients/inmates who are identified to meet high-risk criteria for COVID-1 will be triaged rapidly and placed in private rooms.
- In collaboration with Public Health, testing will be conducted on patients who are: symptomatic with a history of close contact with an individual with laboratory-confirmed COVID-19 or with a history of travel from affected geographic areas within 14 days of symptom onset.
- As there is no specific antiviral treatment for COVID-19, patients/inmates will be provided care aimed at reducing symptoms.
- Symptomatic patients will be tested through the Arizona State Lab.
- Patients requiring a higher level of care or hospitalization will be transported to the nearest hospital.

Defendant has alleged no failure on the part of the Maricopa County jail to provide

him requisite care; rather his motion is full of generalized concerns about the spread of COVID-19 in incarceration facilities. Given that justice requires an individualized analysis of a criminal defendant's motion, and that Courts should not grant modifications to release conditions based on sweeping generalizations, the Defendant's motion must be denied. If it is the case that Defendant is not receiving adequate care, Defendant needs to file a separate motion that includes an endorsement of the Civil Division of the Maricopa County Attorney's Office so that the appropriate DCA (one who represents the Maricopa County Jail and CHS) can respond to any treatment concerns/allegations of deficient treatment that the Defendant may need to raise.

The Court's analysis, however, necessarily must include an application of the statutory factors set forth in A.R.S. §13-3967(B). Accordingly, the State asks the Court to consider the following information as applied to the statutory factors.

The victims strongly oppose modification to the Defendant's release conditions. The facts of this case certainly illustrate why. He forced his way into their home with the stated intent of removing the minor, Victim A, from the home. She cowered in fear, hiding in a closet, to evade discovery by the Defendant. Defendant's inexplicable obsession with Victim A led to him twice illegally entering the home of the victims in search of the fourteen year old. Given that the incident occurred in Wittman, a small community, the concerns of the victims merit hefty consideration.

The nature and circumstances of the offenses charged weigh if favor of affirming the currently set bond. Defendant is charged with attempted kidnapping, burglary and criminal damage. He attempted to remove a fourteen year old girl from her parents and her home. Not only did he twice attempt to do this, on his second attempt he forced his way into the victims' home, causing damage to the doorframe in the process. Whether Defendant did what he did due to mental health, an aberrant romantic interest in a child, or because he was under the influence of some intoxicating substance, absent some corrective steps to prevent any repeat behavior, the State believes releasing the Defendant presents a danger to the community.

The State has invited Defendant to submit to a risk assessment in order to determine an appropriate resolution in this case. To date, the State is unaware if Defendant intends to obtain a risk assessment, however, even if he has, the process is a rather lengthy one, and the results thereof would not be available for some time.

The weight of the evidence against the Defendant includes the testimony of the witness-victims and the Defendant's own admissions.

As to many of the factors, the State does not have information for the Court's consideration, however, the State candidly submits that a review of Defendant's criminal history revealed no prior felonies and no prior failures to appear.

Submitted July 8, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: /s/ Samantha M Hardt
Deputy County Attorney

Copy mailed/delivered July 8, 2020, to:

The Honorable Glenn Allen
Judge of the Superior Court

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Deputy County Attorney

SH

Clerk of the Superior Court
*** Electronically Filed ***
08/04/2020 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2020-118417-001 DT 07/22/2020

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
D. McGraw
Deputy

STATE OF ARIZONA SAMANTHA HARDT

v.

ROBERT JOSE ROBLES (001) JOHN GATTERMEYER

JUDGE RYAN-TOUHILL

MINUTE ENTRY

The Court has received and considered Defendant's Motion to Modify Conditions of Release filed on July 1, 2020, and the State's Response filed on July 8, 2020.

IT IS ORDERED denying Defendant's Motion to Modify Conditions of Release.