No. 18-809

In the Supreme Court of the United States

CURTIS T. LOVELACE,
Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FOURTH DISTRICT

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE AND* BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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January 25, 2019

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MOTION OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to Rule 37.2 (b) of the Rules of this Court, the National Association of Criminal Defense Lawyers ("NACDL") hereby requests leave to file the accompanying *amicus curiae* brief in support of Petitioner. NACDL has obtained Petitioner's consent. Respondent's counsel has denied NACDL's request for consent.

NACDL has a particular interest in this case, *Lovelace* v. *State of Illinois*, No. 18-809, because of the negative impact that bail bond retention statutes have had on criminal defendants subject to the State of Illinois' policies and other jurisdictions' similar policies. NACDL files this brief out of concern that the

State of Illinois' system of relying on defendants to fund the court system through bail bond retention statutes—even when the defendant is found innocent—is a violation of defendants' rights under the Due Process Clause, Equal Protection Clause, and the Excessive Fines Clause of the Eighth Amendment.

For these reasons NACDL respectfully requests that the Court grant its motion for leave to file an *amicus curiae* brief in support of Petitioner.

Respectfully submitted,

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INTEREST OF AMICUS CURIAE[1]

The National Association of Criminal Defense Lawyers ("NACDL") is a nonprofit voluntary professional bar association that works on behalf of criminal defense attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958 and boasts a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. It is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice.

NACDL files numerous amicus briefs in the U.S. Supreme Court and other federal and state courts, seeking to provide assistance in cases that present issues of broad importance to criminal de-

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[1] Pursuant to Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity made a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, *amicus curiae* states that it provided Petitioner and Respondent timely receipt of notice of *amicus curiae*'s intent to file this brief. Petitioner has consented to its filing, but Respondent has withheld consent.

fendants, criminal defense lawyers, and the criminal justice system as a whole. See, *e.g., Nelson* v. *Colorado*, 2016 WL 6873056 (U.S. 2016). The organization has a significant interest in ensuring that the due process and equal protection rights of criminal defendants, particularly indigent defendants, are not unfairly infringed by excessive fees. Likewise, the organization has an interest in ensuring that these defendants not face unconstitutional fines. In short, the organization has an interest in this case because of the negative impact that bail bond retention statutes have had on criminal defendants subject to the State of Illinois' policies and other jurisdictions' similar policies.

SUMMARY OF ARGUMENT

Mr. Lovelace's story is distressing and outrageous, but not unique. His life was destroyed and his reputation sullied; he endured the indignities of incarceration for two years; his family suffered. At the conclusion of it all, Illinois handed him an additional $35,000 bill.[2] His story is only one account of the devastating financial costs imposed on the innocent. Those costs include intangible, as well as direct economic costs. In addition to the demoralizing experience of being charged with a crime, an innocent defendant is burdened by a litany of expenses, such as the cost of a defense, court fees, and bail. The total ef-

[2] This is in addition to the $5,433 in fees Mr. Lovelace was charged for the direct costs associated with pretrial release before his second trial.

fect poses a barrier to the effective administration of justice.

This Court has repeatedly recognized the importance of the effective and fair administration of justice. The Court routinely finds it is a Constitutional imperative to minimize burdens on the accused, where doing so is consistent with the goals of the criminal justice system. Bail bond statues are yet another example of an unconstitutional barrier to the administration of justice. The issues posed in the Petition advance the Court's long held commitment to safeguard the rights of the accused—and specifically, the innocent. As such, it warrants the Court's review.

Bail bond retention statutes impair the administration of justice by having a dramatic piling-on effect. Being innocent is not a shield to the endless costs imposed on a criminal defendant. Innocent defendants in every jurisdiction face endless fees, from arrest fees, to bail fees, to defense fees. Bail bond retention statutes dramatically increase the costs the innocent must bear, which in turn have negative consequences on the innocent and their families. The result of these costs is economic disenfranchisement of the innocent—a result that is inconsistent with the effective and fair administration of justice.

When faced with such excessive costs, the innocent are forced to make economic decisions that shift costs to society and the taxpayer. Namely, they may remain in pre-trial detention, which imposes direct costs on federal, state, or local government, as well as collateral costs on communities. Even if most Americans never interact with the criminal justice

system, they, too, shoulder the expenses of the innocent.

This Petition presents a matter of national importance. The public must have trust in our criminal justice system. Bail bond retention statutes functionally punish the innocent and the public, and cannot be tolerated as a basic matter of due process and equal protection.[3]

ARGUMENT

I. REMOVING BARRIERS TO THE EFFECTIVE ADMINISTRATION OF JUSTICE HAS LONG BEEN A PRIORITY FOR THIS COURT

This Court has consistently sought to enforce Constitutional provisions that safeguard the fairness of our criminal justice system. See *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 862 (2018) (Breyer, J., dissenting) ("[T]his Court has held that both the Fifth Amendment's Due Process Clause and the Eighth Amendment's Excessive Bail Clause apply in cases challenging bail procedures.") (citing *United States* v. *Salerno*, 481 U.S. 739, 746–55 (1987); *Carlson* v. *Landon*, 342 U. S. 524, 537-46 (1952)). The Court's intervention is required in situations such as this where harmful procedures "undermine public confidence in the fairness of our system of justice." *Batson* v. *Kentucky*, 476 U.S. 79, 87 (1986); see also *Salerno*,

[3] Alternatively, the bail bond retention statutes operate as an excessive fine in violation of the Eighth Amendment.

481 U.S. at 764 (1987) (Marshall, J., dissenting) ("[O]ur fundamental principles of justice declare that the defendant is as innocent on the day before his trial as he is on the morning after his acquittal.").

The Court has consistently acknowledged the burden placed on criminal defendants and the impact of that burden on the fairness of proceedings. See, *e.g.*, *Gideon* v. *Wainwright*, 372 U.S. 335, 344 (1963) ("[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."). Those burdens are often financial and fall disproportionately on the indigent. In *Hardy* v. *United States*, Justice Goldberg observed the following:

> [I]nsofar as the financial status of the accused impedes vigorous and proper challenges, it constitutes a threat to the viability of the adversary system. We believe that the system is imperiled by the large numbers of accused persons unable to employ counsel or to meet even modest bail requirements and by the large, but indeterminate, numbers of persons, able to pay some part of the costs of defense, but unable to finance a full and proper defense.

375 U.S. 277, 290 n.9 (1964) (Goldberg, J., concurring). Accordingly, the Court has reinforced the government's "obligation not to take advantage of indigence in the administration of justice." *Miranda* v.

Ariz., 384 U.S. 436, 472 (1966); see *id.* at n.40 ("Estimates of 50–90% indigency among felony defendants have been reported.") (internal citations omitted).

The Court has also stepped in to take cases involving bail and pre-trial detention that unfairly burden innocent defendants, particularly indigent ones. See *Bandy* v. *United States*, 81 S. Ct. 197, 198 (1960) ("It would be unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom. Yet in the case of an indigent defendant, the fixing of bail in even a modest amount may have the practical effect of denying him release. The wrong done by denying release is not limited to the denial of freedom alone. That denial may have other consequences.") (internal citations omitted); see also *Bell* v. *Wolfish*, 441 U.S. 520, 583 n.12 (1979) (Stevens, J., dissenting) ("In many instances, detention will occur although the risk of flight is exceedingly low. This is because there is a large class of persons for whom any bail at all is 'excessive bail.' They are the people loosely referred to as 'indigents.' Studies of the operation of the bail system have demonstrated that even at the very lowest levels of bail—say $500, where the bail bond premium may be only $25 or $50—there is a very substantial percentage of persons who do not succeed in making bail and are therefore held in custody pending trial.") (internal quotation marks omitted).

Surely, the same considerations and same protections that apply to the accused extend to the acquitted to an even greater extent. See *Fuller* v. *Oregon*, 417 U.S. 40, 57 (1974) (Douglas, J., concurring) ("The acquitted defendant has prevailed at trial in defending against the charge brought by the State. It

is rational that the State not recover costs from such a defendant while recovering costs from a defendant who has been found guilty beyond a reasonable doubt of the crime that necessitated the trial."); see also *Schilb* v. *Kuebel*, 404 U.S. 357, 378 (1971) (Douglas, J., dissenting) ("Imposition of costs upon individuals who have been acquitted has long been eschewed by our courts.") (citations omitted).

The Court should take certiorari to address the barrier to justice that the Illinois bail bond fee, and others like it, impose on all defendants, but particularly indigent defendants.

II. THE HIGH COSTS IMPOSED ON THE WRONGFULLY ACCUSED ARE A BARRIER TO THE EFFECTIVE ADMINISTRATION OF JUSTICE

Even before a wrongfully accused criminal defendant is acquitted and faced with forfeiture of his bail bond, that innocent person has already incurred significant, nonrefundable costs due to his involvement in the criminal justice system. As explained in the Petition, funding the criminal justice system on the backs of the wrongfully accused is a violation of due process. Further compounding this injustice, by the time a wrongfully accused criminal defendant is acquitted and denied return of his bail bond, that innocent person has already incurred needless booking fees, attorney fees, and costs of pretrial detainment; not to mention the unquantifiable costs to his reputation and family of being arrested and detained for a crime he did not commit. When considered in the context of the overwhelming costs to the wrongfully ac-

cused from arrest to acquittal, bail bond retention statutes that fail to discriminate between the convicted and the innocent results in an unwarranted sanction so severe it deserves this Court's immediate attention.

A. Costs Incurred at the Time of Arrest

Wrongfully accused criminal defendants are charged nonrefundable fees and costs from the moment they are arrested. Upon arrest, many municipalities charge an accused a nonrefundable "booking fee" merely for the privilege of being arrested. For example, some Illinois municipalities charge arrestees a fifty-dollar fee upon "any bookable arrest." See, *e.g.*, *Roehl* v. *City of Naperville*, 857 F. Supp. 2d 707, 710 (N.D. Ill. 2012). Such arrest fees are collected "from all arrested individuals, regardless of the outcome of their case or indigence." *Id.* at 715. Moreover, these fees are rarely refunded, even if the arrest is deemed illegal or the defendant is acquitted of all charges. See *Markadonatos* v. *Village of Woodridge*, 760 F.3d 545, 548 (7th Cir. 2014) (avoiding the thorny constitutional issue of "whether [the] government may charge a person a fee merely for being arrested, even if, as things turn out, he has been falsely arrested."); see also Laura I. Appleman, *Nickel and Dimed Into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. Rev. 1483, 1486 (2016).

An arrest record imposes its own financial costs to the wrongfully accused. An arrest record is public and permanent—even if the arrest was unlawful or the arrestee was acquitted of all charges—

unless the arrestee pays a fee and jumps through the administrative hoops required to have his arrest record expunged. The financial consequences of failing to do so can be extreme: "[o]pportunities for schooling, employment, or professional licenses may be restricted or nonexistent as a consequence of the mere fact of an arrest, even if followed by acquittal or complete exoneration of the charges involved." *Commonwealth* v. *Malone*, 366 A.2d 584, 588 (Pa. Super. 1976).

After arrest, a wrongfully accused criminal defendant must seek legal representation. But hiring a private defense attorney is beyond the means of even middle income families. See Gillian K. Hadfield, The Cost of Law: *Promoting Access to Justice through the Corporate Practice of Law*, 38 Int.'l Rev. L. & Econ., June 2014, at 10 ("Conventional legal services are simply beyond the means of most Americans.").

"If you cannot afford an attorney, one will be provided for you"—but not for free. Many states charge criminal defendants a fee—some as high as $400—to apply for or receive the services of a public defender. See Ronald F. Wright & Wayne A. Logan, *The Political Economy of Application Fees for Indigent Criminal Defense*, 47 Wm. & Mary L. Rev. 2045 (2006); see, *e.g.*, Ind. Code Ann. § 35-33-7-6 (West 2004) (up to $100); N.M. Stat. Ann. § 31-15-12 (West 1978) ($10); Ark. Code Ann. § 16-87-213 (West 2013) (up to $400); Tenn. Code Ann. § 40-14-103 (West 2012) (up to $200). Some of these states impose public defense fees even if the case is dismissed or the defendant is later acquitted. See Devon Porter, *Paying for Justice: The Human Cost of Public Defender Fees*

4 (ACLU 2017) ("Because the fee is assessed even when a person is ultimately acquitted by a jury or when a prosecutor decides to drop the charges, it is also a tax on the falsely accused.").

Of course, counsel must be provided even if the criminal defendant cannot pay the fee. But doing so simply imposes different costs on the accused. In Delaware, for example, a defendant who is unable to pay the $100 public defense fee must "report to the Commissioner of the Department of Correction or a person designated by the Commissioner, for work for a number and schedule of hours necessary to discharge the fine." Del. Code Ann. tit. 29, § 4607 (2015).

This discussion assumes, of course, that the jurisdiction in which the accused has been arrested has sufficient funding to provide a public defender. Considering the critical lack of funding for public defense in nearly every state, a public defender may simply be unavailable. See Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases: Still a National Crisis?*, 86 Geo. Wash. L. Rev. 1564 (2018) (concluding that due to "persistent underfunding and crushing caseloads . . . our patchwork system of public defense for the poor remains disturbingly dysfunctional"). In that case, the wrongfully accused may be arraigned and detained indefinitely until a public defender becomes available. See*, e.g., Lavalee* v. *Justices in Hampden Sup. Court*, 812 N.E.2d 895, 901-02 (Mass. 2004) (thirty-one criminal defendants held in custody without representation for three months).

B. Costs of Release Pending Trial: Nonrefundable Bail Fees

When paying bail is a predicate for pretrial release, a wrongfully-accused criminal defendant has several options: (1) submit to detention; (2) pay the bond in full; (3) post collateral equal to the value of the bail; or (4) procure a bail bond. The coercive effect of imposing a bond fee, regardless of guilt, means that all but the wealthiest of innocent people are required to shell out thousands of dollars to secure freedom pending trial.

Consider New Orleans, Louisiana. The median felony bail in New Orleans is $10,000. Mathilde Laisne, Jon Wool & Christian Henrichson, Vera Institute of Justice, *Past Due: Examining the Costs and Consequences of Charging for Justice in New Orleans* (2017). The average annual income in New Orleans, however, is only $29,275. *See* U.S. Census Bureau, QuickFacts New Orleans City, Louisiana (2019). The bail bond at issue here, 725 ILCS 5/110-7(f), required Mr. Lovelace to deposit 10% of his bond with the clerk as bail security. The statute then directs the court to keep 10% of a defendant's bail security, even if he is acquitted. When the defendant is accused of a serious crime, 10% of his bail security can be a life-altering sum of money, as this case demonstrates. The $35,000 paid by Mr. Lovelace represents 134% of the average per-capita income in his hometown of Quincy, Illinois. U.S. Census Bureau, QuickFacts Quincy City, Illinois (2019).

C. Pretrial Supervision Increases Costs

Even after posting an exorbitant bond, an innocent defendant must continue to pay fees to remain free, as Mr. Lovelace did here. At least 44 states impose fees for supervision parole or probation in connection with pre-trial release. Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying The Price*, NPR (May 19, 2014, 4:02 PM), https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor. For instance, in Florida, probation supervision costs $103.72 per month. *See* Interstate Commission for Adult Offender Supervision, Fees, http://www.interstatecompact.org/fees. If a defendant is declared indigent, his rate is reduced to $50 per month, but this is still a significant amount for an indigent defendant. See *id.* And in all states except Hawaii and the District of Columbia, defendants must pay for any electronic monitoring devices they are required to wear. Shapiro, *As Court Fees Rise, The Poor Are Paying The Price*.

III. WHEN THE BURDEN IS TOO GREAT ON THE INNOCENT, AMERICANS PICK UP THE TAB

An innocent criminal defendant is still an economic actor. Even where the innocent criminal defendant has complete trust in the criminal justice system to reach the correct result, he or she will be forced to make decisions based on costs. Faced with growing defense expenses, the promise of nonrefundable "fees" associated with arrest, legal representation, bail, and pretrial supervision forces some inno-

cent people to remain in detention, shifting costs to the taxpayer. The impact of the cost-shifting is threefold.

First, the cost does not disappear simply because the defendant is not paying for it directly. Second, the costs increase. It is more expensive to keep someone in pretrial detention than to administer a release program. Third, there are collateral consequences that result in additional tangible expenses as well as abstract costs to society. These fees are not only unjust to the innocent defendant, but toxic to society.

A. Jails Are Not Free

Posting bail is impossible for many criminal defendants. A May 2018 report published by the Federal Reserve found that 40% of adults would not be able to cover an unexpected expense of $400 or more. BD. OF GOVERNORS OF THE FED. RESERVE SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2017, at 2 (May 2018). In fact, 25% of adults are not able to pay all of their current bills, let alone save for emergencies. *Id*. If $400 is simply unattainable, bail in the thousands or even millions of dollars is devastating. Even where a defendant could cobble together bail, the imposition of regular administrative fees, such as those discussed *supra* P.IIC, make pre-trial release either unavailable or short-lived. The fact that such fees will be non-refundable even upon acquittal will force the innocent's hand. He will remain in detention because the cost of freedom, despite his innocence, is too great.

Once a criminal defendant makes that calculation and remains in detention, the costs to the innocent become costs to the innocent and to the taxpayer. Jail is not free. These costs mount rapidly. By one estimate, the average direct cost of pre-trial detention is $22,650 per defendant per year. Shima Baradaran Baughman, *Costs of Pretrial Detention,* 97 B.U. L. Rev. 1, 6. By another estimate, the price of a pre-trial detainee's food, medical care, and security (excluding fixed building expenses) is, on average, $85 a day. PRETRIAL JUSTICE INSTITUTE, PRETRIAL JUSTICE: HOW MUCH DOES IT COST? (2017) at *1. An average of 450,000 people are detained before trial on any given day in the United States, making the daily cost to house pre-trial detainees more than $38 million, with an annual cost of $14 billion. *Id.*

B. Taxpayers Will Pay More to Jail the Innocent Than the Cost of Pre-trial Release

Cost shifting results in increased costs overall. The taxpayer will pay more to keep an innocent person in jail than an innocent person will pay to be free. For example, as of October 31, 2014, in Middlesex County, Massachusetts, 22% of the pre-trial detainee population was in jail on less than a $1,000 bail. Alexander Jones & Benjamin Forman, *Exploring the Potential for Pretrial Innovation in Massachusetts*, MASSINC, at *8 (2015). Similarly, New York City detains about 1,200 people a day who could be released by posting a payment of $1,000 or less. The Public Cost of Private Bail: A Proposal to Bain Bail Bonds in NYC at 16, Table 2. Thus, assuming it costs $85 per day to house a pre-trial detainee, any detention last-

ing more than 12 days costs the Middlesex or New York City taxpayer more than $1,000. The implications are startling. Not only has the financial cost shifted to the taxpayer, but that financial cost exceeds the cost a criminal defendant could have paid to be free.

Pre-trial release programs, by comparison, impose minimal direct costs on the taxpayer. In the federal system, an entire pretrial release program costs $3,100 to $4,600 per defendant. Baughman, 97 B.U. L. Rev. 1, 8. This covers the entire period leading up to trial, which can be months or even years. Further, a study of North Carolina's Pretrial Services program showed that the entire operating budget was only $19,880. *Id*. (citing Melinda Tanner, Dillon Wyatt & Douglas L. Yearwood, *Evaluating Pretrial Services Programs in North Carolina*, Fed. Prob. 18, 20 tbl.1 (2008)). Compared to the tens of thousands of dollars it costs to detain a criminal defendant before trial, pretrial release is often an economically superior option. Mr. Lovelace's experience offers a poignant example. He was charged $5,433 in fees for the direct costs associated with pretrial release before his second trial, thus relieving Illinois from paying the exponentially larger costs of detaining him, as they did before the first trial.

C. The Impact of Pre-Trial Detention Has an Economic Ripple Effect

Not only does the American taxpayer have to pay to keep innocent people detained, but American communities lose out on the economic value of that individual. While a defendant is incarcerated, he

cannot work, resulting in lost wages. For example, according to the New York City Criminal Justice Agency, about 40 percent of defendants held on bail are employed. SCOTT M. STRINGER, N.Y.C. COMPTROLLER, THE PUBLIC COST OF PRIVATE BAIL: A PROPOSAL TO BAN BAIL BONDS IN NYC 18 (2018) (citing New York City Criminal Justice Agency, *Testimony to the New York City Council* (January 18, 2017), http://www.nycja.org/resources/details.php?id=1343). Taking into account defendants' median earnings of $400 per week, or $20,800 per year, the New York City Comptroller's Office estimates that detainees lose about $28 million per year in wages because they have not posted bail and are instead incarcerated. *Id*. Of course, this often means that the defendant is unable to pay bills, support his family, pay child support, pay taxes, or otherwise satisfy any of his financial responsibilities throughout the duration of his pretrial detention.

Lost wages have an immediate impact on the family of the innocent and his community. Families often bear the brunt of reduced income. According to a survey of communities in fourteen states, almost half of families with an incarcerated family member described struggling to pay for basic needs, such as food and housing. LILY GLEICHER & CAITLIN DELONG, ILL. CRIMINAL JUSTICE INFO. AUTH., THE COST OF JUSTICE: THE IMPACT OF CRIMINAL JUSTICE FINANCIAL OBLIGATIONS OF INDIVIDUALS AND FAMILIES 3 (2018) (citing deVuono-Powell, S., Schweidler, C., Walters, A., & Zohrabi, A. (2016). *Who pays? The true cost of incarceration on families*. Oakland, CA: Ella Baker Center for Human Rights). On average, the reporting families

experienced an average debt of $13,607 as a result of their family member's incarceration. *Id.*

Furthermore, family members may contribute to the detainee's commissary account, which allow detainees to buy food and toiletries, pay for phone calls, or post bail. In 2016, family and friends of detainees in New York City jails deposited more than $17 million into commissary accounts. Stringer, at 19. And to maintain any type of connection with the defendant, an objective which is particularly important for children, families are often forced to travel to faraway detention facilities, where they may face all-day waiting periods for only a few minutes with their loved one. *Id*.

Thus, lost wages during detention leads to a veritable parade of horribles. By one estimate, the collateral costs to justice systems, communities, and individuals are as high as $10 for every $1 in direct costs. PRETRIAL JUSTICE INSTITUTE at *2. Thus, the true cost for pre-trial detention could be as high as $140 billion per year. This makes logical sense. Loss of wages means loss of consumer spending and the inability to support dependents, who may have to look to the public or other assistance for support.

D. Collateral Consequences of Pre-Trial Detention Erode the Administration of Justice

Aside from the immediate, tangible costs of keeping a criminal defendant in detention, there are collateral costs. Numerous researchers have observed "that pretrial detention has an adverse effect on case

outcomes (from the perspective of the accused)."[41] Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 721 (2017) (citing Esmond Harmsworth, *Bail and Detention: An Assessment and Critique of the Federal and Massachusetts Systems*, 22 New Eng. J. Crim. & Civ. Confinement 213, 217 (1996) ("The idea that detention correlates with, and causes, increased conviction rates goes back to Wayne Morse and R. Beattie's study of Multnomah County, Oregon in the 1920s and Caleb Foote's Philadelphia studies in the 1950s." (footnote omitted)); Patricia Wald, *Pretrial Detention and Ultimate Freedom: A Statistical Study*, 39 N.Y.U. L. Rev. 631, 632 (1964) ("[W]e can no longer disregard the impact of prior detention ... on the sentencing process.").

Detained defendants might experience worse outcomes because they (1) have increased incentives to plead guilty, including potentially overwhelming incentives; (2) cannot effectively prepare a defense; (3) have reduced financial resources for their defense; (4) cannot demonstrate positive behavior; (5) cannot obstruct the prosecution; and (6) lack the advantage of long delay. Heaton et al., 69 Stan. L. Rev. at 722 (2017). Therefore, the taxpayer has not only paid to keep an innocent person in prison pending trial, but the taxpayer may have to continue paying to keep that same innocent—now wrongfully convicted—person in prison for years to come.

Many of the costs—both direct and indirect—impact all criminal defendants, regardless of wealth or status. However, these costs disproportionately af-

fect indigent defendants. Due to an inability to pay costs when they are first imposed, criminal defendants often face continuously compounding consequences. For example, when a defendant violates his probation by failing to pay various fees, increased costs and fees are often imposed, resulting in exponentially growing debt and even repeated incarceration for infractions that would not normally result in incarceration. GLEICHER & DELONG, at 2–3. Further consequences of delinquent payments may include decreased credit scores, preventing defendants from obtaining loans to pay back their debt to the criminal justice system. *Id.* Defendants may also lose their drivers' licenses, forcing them to choose between losing their jobs or driving without a license and getting arrested. *Id.* Additionally, defendants may no longer qualify for food stamps or to vote until their debt is paid. Shapiro, *As Court Fees Rise, The Poor Are Paying The Price*. Although some states may offer alternatives to paying these costs, such as community service, the alternatives often require fees as well, not to mention lost wages for missing work to complete the community service. *Id.*

Perhaps most concerning, defendants fearing re-arrest because they have failed to pay their costs often go underground to avoid law enforcement—cutting themselves off from community resources and job opportunities—at a time when they need access to those resources and opportunities the most. *Id.*

Excessive fees and fines imposed on innocent criminal defendants not only harm the individual defendant, but society as a whole. As such, Mr. Lovelace's Petition raises issues of national importance.

This case is not about a single wronged person. This case is about our deeply broken criminal justice system that is unnecessarily hemorrhaging money, while imposing costs to the effective administration of justice that are ultimately born by the innocent, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

CONCLUSION

For these reasons, and those stated by Mr. Lovelace and The Fines & Fees Justice Center, R Street Institute, the American Civil Liberties Union, the Southern Poverty Law Center, and the Cato Institute as *amici curiae*, the Court should grant certiorari and hold that the Illinois bail bond fee, and others like it, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment, or alternatively, the Excessive Fines Clause of the Eighth Amendment.

Respectfully submitted.

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