



April 26, 2023

FILED VIA TRUEFILING

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

**Re: *Amicus Curiae Letter in Support of Petition for Review
Request for Depublication
Estrada v. The Superior Court of the City and County of San Francisco
First District Court of Appeal Case No. A166474***

Pursuant to Rule 8.500(g)(1) of the California Rules of Court, Civil Rights Corps submits this letter as *amicus curiae* supporting the petition for review in the above referenced case. Alternatively, Civil Rights Corps requests this Court depublish the Court of Appeal’s decision pursuant to Rule 8.1125.

The right to a speedy trial is “one of the most basic rights preserved by our Constitution.”¹ The decision below affirmed two straightforward violations of that right, eviscerates any remedy for the already-violated rights of nearly 1,000 more San Franciscans, and threatens speedy trial rights in other counties.

We write to address the manner in which the Court of Appeal’s decision calcifies two troubling aspects of a criminal legal system that lacks the right to a speedy trial:

First, pretrial detention of the presumptively innocent, already coercive and traumatic, cannot be justified without the time limit imposed by the accused’s right to a speedy trial. This is likely true everywhere, but is particularly salient in San Francisco, where abysmal detention conditions are well-documented.

Second, undermining the right to a speedy trial renders the plea bargain system impermissibly coercive, increasing prosecutors’ leverage in plea negotiations against people, both jailed and free, who await trial indefinitely. Deprived of their lone bargaining chip, the right to reject the offer and demand a speedy trial, the accused will end up begging rather than negotiating.

We urge the Court to grant review and order the dismissal of the Estrada and Kuhaiki matters, signaling that the same remedy applies to all cases that are past the last day for speedy trial under similar circumstances.

¹ *Klopper v. State of N.C.*, 386 U.S. 213, 223–26 (1967).

Alternatively, if the Court chooses not to grant review, we urge this Court to depublish the Court of Appeal decision. The *Estrada* opinion offers no new law and is based on San Francisco-specific facts from 2022. Its continued publication threatens the speedy trial rights of hundreds, if not thousands, of people currently facing trial delays in San Francisco, as well as Santa Clara County and Riverside County.

I. Interest of *Amici Curiae* Civil Rights Corps

Civil Rights Corps (CRC) is a nonprofit legal organization that engages in litigation, policy, and other advocacy nationwide. *Amicus curiae* has litigated many cases around the country challenging misconduct in the criminal legal system, as well as unconstitutional bail practices and detention of the poor on the basis of their poverty,² including *In Re Humphrey*, and three other cases in California and neighboring states.³ Through its work, CRC has developed an institutional expertise in prosecutorial and judicial misconduct, as well as the constitutional requirements attendant to pretrial detention and release conditions.

II. Argument

A. The Lower Court’s Opinion Risks Entrenching Widespread Speedy Trial Violations in San Francisco and Beyond.

Trial backlogs were a serious problem at the height of the COVID-19 crisis. But then the crisis abated and courtrooms re-opened.⁴ The Court of Appeal in *Hernandez-Valenzuela* found good cause for continuances in San Francisco through the last day September 24, 2021,⁵ since local courts had only operated without restriction for three months, but warned that the San Francisco Superior Court “cannot turn to the pandemic and perpetually cite exceptional circumstances to avoid dismissal under section 1382.”⁶

² Civil Rights Corps is currently challenging the continued use of a cash bail schedule to detain presumptively innocent people pre-arraignment in Los Angeles County, in *Urquidi v. Los Angeles Cty* (Case no. 22STCP04044). In *In re Kowalczyk* (S277910), which is currently pending before this court, Civil Rights Corps is challenging the widespread practice of using unaffordable cash bail to intentionally detain people who are ineligible for pretrial detention under the California Constitution.

³ See *In re Humphrey*, 482 P.3d 1008 (Cal. 2021); *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 460 P.3d 976 (Nev. 2020); *State v. Hansen*, No. S068166 (Or. Sup. Ct.); *Robles v. Allen*, No. 1CA-SA20-0192 (Ariz. Ct. App.).

⁴ San Francisco courts have been open throughout the pandemic except for four months in 2020. In June 2021, nearly two years ago, the San Francisco public health officer rescinded all stay-at-home, indoor capacity, and social distancing orders. *Hernandez-Valenzuela v. Superior Court*, 75 Cal.App.5th 1108, 1116 (2022).

⁵ *Id.* at 1135. The court also noted, however, that many courtrooms had been vacant and closed to the public at various points, and that only *five* incarcerated people received a felony trial during the six month period following the courts’ reopening in June 2021.

⁶ *Id.* at 1135 (internal quotations omitted). On Oct. 17, 2022, Governor Newsom announced that in four months, the state of emergency would be terminated, citing documented improvements in health, the economy and education. See Office of Governor Gavin Newsom, *Governor Newsom to End the COVID-*

Since then, nearly all California counties have eliminated any COVID-19-related case backlog.⁷ San Francisco and two other counties remain outliers.

In San Francisco, the Superior Court has routinely granted continuances and denied motions to dismiss based on speedy trial violations. As of February 1, 2023, 939 cases were past their section 1382 statutory speedy trial date; in 129 of those cases, the accused is languishing in a San Francisco jail.⁸

The impact on the accused, both in and out of jail, has been well-documented. Acquittals and dismissals suggest that San Franciscans have suffered *years* of unnecessary incarceration—including notable cases where individuals were detained pretrial for 274 days,⁹ seven months,¹⁰ eight months,¹¹ and two years,¹² respectively, past their speedy trial deadlines. Those who are not detained pretrial also suffer great disruption to their lives, as they are typically unable to plan for an uncertain future trial. Shifting court dates and months of delays can make it very difficult for people to maintain work and family obligations, arrange childcare, and handle onerous pretrial requirements like house arrest and electronic GPS monitoring.

There is also a backlog of cases past their speedy trial deadline in Santa Clara County.¹³ The Santa Clara District Attorney publicly acknowledged the backlog crisis, while also “categorically” opposing dismissals, posturing that “there should be no amnesty for criminals.”¹⁴

The Riverside County Superior Court, on the other hand, correctly interpreted the *Hernandez-Valenzuela* decision as addressing an earlier stage in the pandemic¹⁵ and found that it

19 State of Emergency, Oct. 17, 2022, at <https://tinyurl.com/2wetdtxe>; see also Office of Governor Gavin Newsom, *Governor Newsom Marks End of California’s COVID-19 State of Emergency*, Feb. 28, 2023, at <https://tinyurl.com/457mm3vb>.

⁷ Pet.’s Reply to Informal Opposition to Petition for a Writ of Mandate or Prohibition, at 22.

⁸ San Francisco Public Defender’s Office, Trial Backlog FactSheet at <https://tinyurl.com/y2jnwzt4>.

⁹ San Francisco Public Defender’s Office, *SF Jury Acquits Former Firefighter of Felony After Psychologist Escalated a Confrontation Over Paperwork*, Jan. 6, 2022, at <https://tinyurl.com/428eyk4m>; see also Nuala Bishari, *San Francisco’s Courts are Broken. No One Cares Enough to Fix Them*, Dec. 18, 2022, at <https://tinyurl.com/2p8exzd5>.

¹⁰ San Francisco Public Defender’s Office, *Acquittal in a Trial 7 Months Late for a Man Jailed for Nearly a Year Due to Court Backlog + SFPD Slow to Turn Over Evidence*, May 26, 2022, at <https://tinyurl.com/5n8eumkt>.

¹¹ San Francisco Public Defender’s Office, *SF Jury Acquits Man Who Defended Himself and Pregnant Girlfriend*, Mar. 1, 2023, at <https://tinyurl.com/247yb23r>.

¹² Off San Francisco Public Defender’s Office, *Judge Dismisses Case Against Woman Held in SF Jail for 2.5 Years, Citing Lack of Evidence*, Nov. 8, 2022, at <https://tinyurl.com/2xz978tf>.

¹³ As of March 2023, it is unclear how many trials had been continued past their statutory last day, but there were 473 pending speedy trial demands. Robert Salonga, *Santa Clara County criminal case backlog a bigger problem than in other Bay Area counties*, *The Mercury News*, Mar. 10, 2023, at <https://tinyurl.com/3tja4by3>.

¹⁴ *Id.*

¹⁵ Request for Publication of Unpublished Opinion Under Rule 8.1120(a), *Estrada v. Superior Court* A166474, Office of the District Attorney, County of Riverside, Feb. 28, 2023.

could not excuse speedy trial violations after emergency orders expired. The court dismissed approximately 1,700 cases to protect speedy trial rights,¹⁶ the vast majority of which were misdemeanors. For that reason, the Riverside backlog has shrunk, not ballooned, like that of San Francisco. Nevertheless, the Riverside District Attorney successfully petitioned for the publication of *Estrada* to rebut the Riverside Superior Court’s common-sense approach.

Thus, the temporary, local conditions that justified *Hernandez-Valenzuela*’s finding of good cause for September 2021 trials had dramatically improved by the time of the Petitioners’ speedy trial last days in July and August 2022. But the Court of Appeal’s published *Estrada* opinion extends *Hernandez-Valenzuela*’s “good cause” determination indefinitely across the state, endangering the speedy trial rights of hundreds, if not thousands, of people in San Francisco and beyond.

B. These Widespread Speedy Trial Violations Unjustifiably Exacerbate the Already Enormous Harms of Pretrial Detention.

In considering good cause for a continuance, “[P]rejudice is evaluated in light of three interests intrinsic to a defendant’s right to a speedy trial: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.”¹⁷ This Court has held that in making a good cause determination, “a trial court *must* consider all of the relevant circumstances of the particular case, applying principles of common sense to the totality of circumstances.”¹⁸

A crucial consideration here is the harsh conditions of San Francisco’s jail system. People detained in San Francisco endure degrading conditions, including confinement to small,¹⁹ dirty, poorly-ventilated cells. Even basic hygiene, such as the ability to wash oneself, is not guaranteed.²⁰ Many are living in conditions akin to solitary confinement²¹ where they can be

¹⁶ Jeff Horseman, *A California county dismissed 1,700-plus criminal cases in 6 months. Who’s to blame?* East Bay Times (April 21, 2023) at <https://tinyurl.com/en97zhrz>.

¹⁷ *In re Butler*, 55 Cal. App. 5th 614, 640 (2020) (internal quotation and citation omitted).

¹⁸ *People v. Sutton*, 48 Cal. 4th 533, 546–47 (2010), *as modified* (May 20, 2010) (emphasis added; internal quotation and citations omitted).

¹⁹ When a federal judge visited San Francisco County Jails #4 and #5 (where nearly all male prisoners are held) in 2019, the judge “observed during the site visit that the cells and the day rooms are too small to allow inmates to exercise in a meaningful way in the cells.” *Norbert v. San Francisco Sheriff’s Dep’t*, Order Regarding Pl’s Mot. for Prelim. Inj. and Defs’ Mot. to Dismiss, 19-cv-02724, Doc. 110, at 10, Jan. 31, 2020.

²⁰ Declarations attached to the petition reveal that one detained person reported being on lockdown almost every day with no ability to shower (Dec. of Felipe Preciado, Pet. Exh. PE1476 at ¶ 5), while two others reported being let out their cell to shower “once per week” (Dec. of Alexandra Andrews, Pet. Exh. PE1481, at ¶ 4) and “every few days.” (Dec. of Steven Kloster, Pet. Exh. PE1484, at ¶ 6.)

²¹ See Jean Casella & Sal Rodriguez, *What is Solitary Confinement*, The Guardian, Apr. 27, 2016, at <https://tinyurl.com/y6z7uf69>; see also Penal Reform International, *Solitary Confinement*, at <https://tinyurl.com/59tn3yju>; American Friends Service Committee, *Solitary Confinement Facts*, at <https://tinyurl.com/222w8x8s>.

confined to cells from 22 to 24 hours per day for weeks or months on end,²² and endure the resulting psychological damage, such as depression, anxiety and despair.²³ Statewide, people incarcerated in California’s jails are subject to physical violence and sexual assaults in alarming numbers, often at the hands of their jailers.²⁴

The San Francisco Sheriff herself publicly described the conditions in one of her jails as “an embarrassment to the city” and “decrepit.”²⁵ In 2020, a federal judge found that people held in San Francisco jails are never allowed to be outdoors, never feel sunlight on their skin (except during transport to and from court), and that the lights are kept on all night, when people are trying to sleep.²⁶ It seems that the *only* exposure to sunlight is indirect: in some parts of the jail, there are exercise areas with grated windows.²⁷ However, some people are confined to cells 23-and-a-half hours a day.²⁸ Media reports in 2022 revealed that the jail had begun administering Vitamin-D supplements to people behind bars due to the lack of sun exposure.²⁹

The harms of pretrial detention generally are well-documented and profound. Pretrial jailing harms individuals, their families, and their communities during and even after it has ended. Children are forcibly separated from their parents, and are often placed in foster care simply because the court has removed their sole custodial parent from the household.³⁰ Pretrial detention reduces household income, often leading to utility shutoffs and evictions, which cause long-term disruptions to children’s schooling and emotional well-being.³¹ Thirty percent of

²² “[P]risoners face 23 hours a day in confinement.” Pet.’s Petition for a Writ of Mandate or Prohibition, Nov. 1, 2022, Exh. PE1459, *SF Jail Headed for Disaster*, San Francisco Deputy Sheriff’s Association (July 25, 2022); see also Pet.’s Petition for a Writ of Mandate or Prohibition, Nov. 1, 2022, ¶¶ 75-81.

²³ Pet.’s Petition for a Writ of Mandate or Prohibition, Nov. 1, 2022, ¶¶ 61-67.

²⁴ See, e.g., Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates*, 2011–12 at tbl. 4, at <https://tinyurl.com/mux8rfh4>. California jails have been identified as among those with the highest rates of sexual victimization perpetrated by staff.

²⁵ *Norbert v. San Francisco Sheriff’s Dep’t.*, Order Regarding Pls’ Mot. for Prelim. Inj. and Defs’ Mot. to Dismiss, 19-cv-02724, Doc. 110 at 7, Jan. 31, 2020.

²⁶ *Id.* at 21. The court noted that the lights being on all night was alleged by the incarcerated plaintiffs and not disputed by the defendant Sheriff’s Department; see also Pet.’s Petition for a Writ of Mandate or Prohibition, Nov. 1, 2022, Exh. PE1459, *SF Jail Headed for Disaster*, San Francisco Deputy Sheriff’s Association (July 25, 2022) (“[I]nmates are housed under fluorescent lights, 24/7, 365, and the Sheriff faces accusations of violating inmates’ constitutional right to sleep by forcing breakfast to wake up between 4 am and 4:30 am for breakfast.”)

²⁷ *Id.* at 11; see also Pet.’s Petition for a Writ of Mandate or Prohibition, Nov. 1, 2022, Exh. PE1486, Declarations of Bartolome Flores (“I don’t see any natural light in my cell, we only have artificial light”) and Andre Cannon (“[T]he worst thing about my detention is being unable to see or experience sunlight.”)

²⁸ *Id.* at 3-4.

²⁹ Jonah Owen Lamb, *SF Jail Inmates Get So Little Sunlight They’re Prescribed Vitamin D Supplements*, SF Standard, Nov. 10, 2022, at <https://tinyurl.com/3d8c3sc2>.

³⁰ Human Rights Watch & ACLU, “*You Miss So Much When You’re Gone*”: *The Lasting Harms of Jailing Mothers Before Trial in Oklahoma*, 2018, at 28-29, at <https://tinyurl.com/znsdnt2t>.

³¹ Tiffany Bergin et al., *The Initial Collateral Consequences of Pretrial Detention*, N.Y. City Crim. Just. Agency, 2022, at <https://tinyurl.com/5spcxhr5>.

employed people who are jailed pretrial lose their jobs.³² Moreover, pretrial incarceration diminishes individuals' employment prospects and reduces their earning power long after release.³³

The hardships caused by these speedy trial violations fall disproportionately upon Black San Franciscans. Though just five percent of people who live in San Francisco are Black,³⁴ 45 percent of people detained in the county jail are Black.³⁵

Petitioner Kuhaiki, and countless others, have experienced lockdown for 22 to 24 hours a day for weeks and/or months on end.³⁶ Psychiatrist Professor Terry Kupers, a specialist in the psychiatric impact of jails and prison conditions, concluded these conditions posed a grave risk to incarcerated people's mental health.³⁷ Dr. Kupers noted that the psychological symptoms were consistent with typical effects of extended solitary confinement, and that double-celling (confining two people in a cell together) does not mitigate the harmful effects of isolation and can even enhance them.³⁸

When properly considered, such serious and widespread harm precludes a finding of good cause for a continuance past the speedy trial last day.

C. Eliminating Speedy Trial Rights Multiplies Prosecutors' Already Significant Leverage in Charging and Plea Negotiations, Creating a System of Begging, Not Bargaining.

Prosecutors have immense power in our legal system,³⁹ but their greatest power involves charging and plea bargaining: deciding who to prosecute, with what charges, what plea offers to make (if any), and whether to recommend incarceration (and if so, how much).⁴⁰ Scholars, lawyers, activists, and many others have sounded alarm bells for years about the abuses of a system that largely operates on the basis of prosecutor-run plea bargaining.⁴¹

³² Catherine S. Kimbrell & David B. Wilson, *Money Bond Process Experiences and Perceptions*, Sept. 9, 2016, at 23, at <https://tinyurl.com/yc5a64wk>.

³³ For example, economic researchers have found that "individuals lose an average of \$29,000 over the course of the working-age life cycle when detained in jail for just three days while awaiting the resolution of their criminal cases." Will Dobbie & Crystal Yang, *The Economic Costs of Pretrial Detention*, Brookings Paper on Economic Activity, Spring 2021, at 253, at <https://tinyurl.com/2p8bt3th>.

³⁴ U.S. Census Quick Facts, 2021, at <https://tinyurl.com/ye234nju>.

³⁵ San Francisco Public Defender's Office, Trial Backlog FactSheet at <https://tinyurl.com/y2jnwzt4>.

³⁶ See *Kuhaiki v. San Francisco Superior Court*, Case No. 22004424, Petition for Writ of Mandate or Prohibition, Nov. 8, 2022, ¶¶ 75-80.

³⁷ *Id.* at ¶ 81.

³⁸ *Id.*

³⁹ See, e.g., *The Problem*, AccountabilityNY, at <https://accountabilityny.org/the-problem>.

⁴⁰ Shima Baradaran Baughman and Megan S. Wright, *Prosecutors and Mass Incarceration*, Southern California Law Review, Vol. 94, No. 5 (2020), 94 S. Cal. L. Rev. 1123.

⁴¹ See, e.g., American Bar Association, *2023 Plea Bargain Task Force Report*, at <https://tinyurl.com/yznxc5vt>; Carissa Hessick, *Punishment Without Trial: Why Plea Bargaining is a Bad Deal*. Abrams Press, 2021.

(1) Prosecutors Approve Most Case Outcomes Since Plea Bargains, Not Trials, Are the Norm

Trials are vanishingly rare. As a 2020 Vera Institute report notes, “By one estimate, a criminal case is disposed of by plea bargaining every two seconds during a typical work day in America.”⁴² For that reason, “[the lives of arrested people] are all in the hands of one criminal justice actor: a prosecutor. . . . Prosecutors decide whether to initiate criminal proceedings, what charges to bring, what penalties to seek, and when a plea bargain is appropriate. And since 94% of criminal cases are resolved by plea bargain, prosecutors, not judges, are determining a defendant’s fate the vast majority of the time.”⁴³

There is little regulation of plea bargaining. Little to no documentation is preserved regarding the bargaining process and “plea deals, and the process that produces them, are largely unreviewable and subject to little public scrutiny.”⁴⁴ The Vera Institute report notes the potential for abuse in plea bargaining, in contrast with the transparency of trial evidence:

Prosecutors’ wide powers in plea bargaining still go largely unchecked, and there are no meaningful oversight mechanisms or procedural safeguards to protect against unfair or coercive practices . . . Given this lack of regulation, concern has also grown over the extent to which innocent people are regularly being induced to plead guilty, as well as plea bargaining’s role in perpetuating racial and ethnic disparities in criminal case outcomes—for example, plea bargaining practices that send more Black people to prison or jail than similarly situated white people.⁴⁵

This year, the American Bar Association’s Plea Bargain Task Force released a report finding that “[p]lea bargains provide no adequate constitutional substitute” for the Sixth Amendment’s guarantee of an open, public trial.⁴⁶ The report reveals appalling aspects of a criminal legal system run almost entirely on mass plea bargaining,⁴⁷ including that defendants are coerced into taking pleas, some even pleading guilty to crimes they did not commit.⁴⁸ The Task Force’s first recommendation to remedy these ills of plea bargaining is exactly what is at stake here: “[a] vibrant and active docket of criminal trials . . . [which is] essential to promote transparency, accountability, justice, and legitimacy in the criminal justice system. The public jury trial is among the greatest strengths of the American criminal justice system . . . [T]rials are essential to a healthy criminal justice system and central to our system of justice.”

⁴² Ram Subramanian, Léon Digard, Melvin Washington II & Stephanie Sorage, *In the Shadows: A Review of the Research on Plea Bargaining*, Vera Institute of Justice, 2020, at <https://tinyurl.com/ycy5xyzn>.

⁴³ Baughman & Wright, *supra* at 1128.

⁴⁴ Subramanian, Digard, Washington, & Sorage, *supra* at 3-4.

⁴⁵ *Id.* at 5; see also American Bar Association, *2023 Plea Bargain Task Force Report*, at <https://tinyurl.com/yznxc5vt>.

⁴⁶ American Bar Association, *2023 Plea Bargain Task Force Report*, at <https://tinyurl.com/yznxc5vt>.

⁴⁷ *Id.*

⁴⁸ *Id.*

(2) There Is Powerful Pressure on the Accused to Accept the Prosecution’s Plea Bargain, Even When They Did Not Commit the Charged Offense.

There is overwhelming evidence that people routinely accept plea bargains for crimes they did not commit.⁴⁹ In a survey of defense attorneys, over 89 percent reported having represented a client who pleaded guilty while maintaining their innocence.⁵⁰ As of 2017, the Innocence Project noted that in nearly 11% of the nation’s DNA exoneration cases, innocent people entered guilty pleas.⁵¹ More broadly, 798 people of the National Registry of Exonerations’ 3284 documented exonerations entered a guilty plea to a crime for which they were later exonerated.⁵²

Nonetheless, the system of mass plea bargains is often justified on the ground that the accused makes a free choice to accept a plea bargain or go to trial. As the U.S. Supreme Court noted in *Bordenkircher v. Hayes*, “[I]n the ‘give-and-take’ of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution’s offer.”⁵³

But without a speedy trial, the accused have no mechanism to contest the charges or present evidence of their innocence. In San Francisco, the de facto dissolution of speedy trial rights eliminates what little leverage the defense has. The justification that the accused can freely choose to accept a plea bargain or go to trial has no bearing in a court system where few trials are allowed and only after a prolonged delay.

Pretrial detention places great pressure on the accused to plead guilty.⁵⁴ One of the primary effects of pretrial detention is inducing people to plead guilty to secure their release from custody: “[t]he stress of incarceration—or even just the threat of jail time—frequently prompts defendants to plead guilty and give up their right to trial.”⁵⁵ Those who are incarcerated pretrial

⁴⁹ 2023 *Plea Bargain Task Force Report*, *supra* at 20 (“In the current system, innocent people sometimes plead guilty to crimes to they did commit.”).

⁵⁰ Rebecca K. Helm, Valerie F. Reyna & Allison A. Franz et al., *Limitations on the Ability to Negotiate Justice: Attorney Perspectives on Guilt, Innocence, and Legal Advice in the Current Plea System*, *Psychology, Crime, & Law* 24, no. 9 (2018), 915-934, at <https://perma.cc/Q9KX-37ZS>. Nearly 45 percent of the attorneys involved in the study reported that they had advised a client to take a guilty plea despite believing that the client was innocent.

⁵¹ The Innocence Project, *Innocence Project and Members of Innocence Network Launch Guilty Plea Campaign*, Jan. 23, 2017, at <https://tinyurl.com/3a5tyrdr>.

⁵² National Registry of Exonerations, *Exonerations by State and Total by Year*, Data as of Apr. 4, 2023, at <https://tinyurl.com/3f23us93>.

⁵³ *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978).

⁵⁴ Samuel Weisman, *Bail and Mass Incarceration* (2018) 52 Ga. L. Rev. 235, 252-53, at <https://tinyurl.com/ycktsk5w> (“[T]he system relies centrally on plea bargains to operate efficiently and produce large numbers of convictions, thus enabling mass incarceration. . . . Without [pretrial detention]-driven pleas, the modern system—one that locks up astoundingly large numbers of people on the basis of an even higher plea rate—would collapse . . .”).

⁵⁵ *In re Humphrey*, 19 Cal.App.5th 1006, 1032 fn. 13 (Cal. App. 2018) (quoting Goff, *Pricing Justice: The Wasteful Enterprise of America’s Bail System* (2017) Bklyn. L.Rev. 881, 882) (footnotes omitted); see also *ODonnell v. Harris Cnty.* (S.D. Tex. 2017) 251 F.Supp.3d 1052, 1105 (finding that, when

are in a particularly vulnerable position in any plea bargain negotiation, as they face great obstacles to even communicating with their attorneys and participating in their defense. There is typically tremendous pressure to plead guilty in exchange for release on time served or simply peace of mind from the anxiety produced by uncertainty about the future. Studies repeatedly find that being detained pretrial makes it more likely someone will plead guilty, and that they will do so much faster than similarly situated people who are released pretrial.⁵⁶ And even when controlling for other variables (such as risk level), those detained pretrial are more likely to be convicted and more likely to be sentenced to longer terms of incarceration than their identically situated counterparts out of custody.⁵⁷

There is also great pressure on those awaiting trial who are not detained. Many have been ordered to comply with disruptive pretrial release conditions for the pendency of their case, such as having to live outside of their own home, being subjected to house arrest, or being constantly surveilled by electronic GPS tracking. In San Francisco, pretrial electronic monitoring increased more than twenty-fold from 2017 to 2021.⁵⁸ Those released on electronic GPS monitoring are also prohibited from traveling further than 50 driving miles from the Sheriff's Office and have just 2.5 to four hours per week of "personal needs," including church services or grocery

incarcerated pretrial, many "misdemeanor defendants abandon valid defenses and plead guilty to obtain faster release.").

⁵⁶ See e.g., Will Dobbie, Jacob Goldin & Crystal Yang, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges* (2018) 108(2) *Amer. Econ. Rev.* 201, 203, at <https://tinyurl.com/2s3ksy62> (finding that pretrial release significantly decreased the probability of conviction, which "is largely driven by a reduction in the probability of pleading guilty"); Nick Petersen, *Do Detainees Plead Guilty Faster? A Survival Analysis of Pretrial Detention and the Timing of Guilty Pleas* (2020) 31(7) *Crim. Just. Pol. Rev.* 1015, 1015, at <https://tinyurl.com/3znthyv5> (finding that people who are detained pretrial plead guilty 2.86 times faster than those who are released), 1015-16 (Research suggests that pretrial detention coerces guilty pleas and acts "as a form of structural coercion in plea negotiations.") [citations omitted].

⁵⁷ See, e.g., Christopher T. Lowenkamp et al., Laura and John Arnold Found., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, 2013, at 12, 14, 16, 18, at <https://tinyurl.com/5n8ey69x>; Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 *J.L. ECON. & ORG.* 511, 535-36 (2018); J.C. Oleson, et al., *The sentencing consequences of federal pretrial supervision*, *Crime & Delinquency*, 64(3), 2017, at 313-333; B.D. Johnson and P. Larroulet, *The "distance traveled": Investigating the downstream consequences of charge reductions for disparities in incarceration*, *Just. Q.* 36(7), 2019, at 1229-1257; Christopher M. Campbell, Ryan M. Labreque, Michael Weinerman, and Ken Sanchagrin, *Gauging detention dosage: Assessing the impact of pretrial detention on sentencing outcomes using propensity score modeling*, *J. of Crim. Just.*, 2020, at <https://tinyurl.com/ysnab22n>; C. Tartaro and C.M. Seidelmaier, *A tale of two counties: The impact of pretrial release, race, and ethnicity upon sentencing decisions*, *Crim. Just. Studies*, 22(2), 2009, at 203-331; M.R. Williams, *The effect of pretrial detention on imprisonment decisions*, *Crim. Just. Rev.* 28(1), 2003, at 3-17; Mary Philips, *A decade of bail research in New York City*, *N.Y. City Crim. Just. Agency*, 2012, at <https://tinyurl.com/44jbuwsd>; Stephanie Holmes Didwania, *The immediate consequences of federal pretrial detention*, *Am. Law and Econ. Rev.*, 22(1), 2020, at 24-74, at <https://tinyurl.com/4djv2tje>; P. Heaton, Mayson, and M. Stevenson, *The downstream consequences of misdemeanor pretrial detention*, *Stan. L. Rev.*, 69, 2017, at 711-794.

⁵⁸ Alissa Skog and Johanna Lacoë, *Pretrial Electronic Monitoring in San Francisco. California Policy Lab*, Nov. 2022, at <https://tinyurl.com/msd9saxy>.

shopping.⁵⁹ For at least some people under such conditions pretrial, pleading guilty means taking off the ankle monitor and/or escaping from house arrest, i.e., a return to ordinary life.

The pressure to plead guilty mounts as one experiences prolonged delays and uncertainty about the resolution of the case, causing harms both practical and psychological. Common sources of such stress include GPS surveillance for months past the normal speedy trial date or potential discrimination in the housing or job market based on a criminal record indicating an unresolved charge. A recent media report described the fate of one particular man charged in San Francisco, who waited months for his trial on a minor misdemeanor while experiencing repeated continuances past his speedy trial last date, finding the process incredibly stressful.⁶⁰ His lawyer called him about another approaching court date only to learn that he had died of a heart attack.⁶¹ Since the man's name was on his apartment lease, his sudden death left his live-in girlfriend homeless and staying in a shelter.⁶²

As the trial date is pushed out repeatedly, the pressure mounts on the accused, whether they are enduring the harsh conditions of pretrial detention or the chaotic uncertainty of pending charges with no trial in sight. The effect is entirely predictable to any criminal law practitioner: prosecutorial power is supercharged. The only way out, absent a speedy trial, is to accept whatever the prosecutor offers.

(3) It Is the Court's Responsibility to Ensure Speedy Trials

Despite the mounting pressure on the accused, the San Francisco Superior Court and District Attorney have at times appeared to blame the accused and their attorneys for asserting the right to a speedy trial. At the hearing denying Estrada's motion to dismiss, the court noted the increased number of speedy trials requests (a "headwind of no time waivers") and pronounced, "[w]e do not have justice partners at this time; we have civil litigants."⁶³ The District Attorney claimed that "there has been a strategic assertion of no-time-waivers as a means to clog the court's administration of justice."⁶⁴

The Court of Appeal decision here notes that these requests for speedy trials are "simply another consequence" of the pandemic.⁶⁵ But it is *the court's* responsibility to ensure speedy trials. "[U]nreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and

⁵⁹ San Francisco Sheriff's Department, *Electronic Monitoring Program Rules, Pre-Sentenced Participants*, Feb. 3, 2020, at <https://tinyurl.com/bdhawumu>.

⁶⁰ Nuala Bishari, *San Francisco's Courts are Broken. No One Cares Enough to Fix Them*, Dec. 18, 2022, at <https://tinyurl.com/2p8exzd5>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Estrada v. Sup. Ct.*, 88 Cal.App.5th 1096, 1105 (2023). The San Francisco Public Defender also joined a taxpayer's lawsuit on the speedy trial issue.

⁶⁴ *Estrada*, Informal Opposition to Petition for Writ of Mandate or Prohibition, at 15, Nov. 14, 2022.

⁶⁵ *Estrada*, 88 Cal.App.5th at 1120.

that each case must await its turn.”⁶⁶ Courts cannot point to the now-lapsed public health crisis to excuse its ongoing denial of individuals’ rights.

The Court of Appeal’s decision also gives increased leverage to those District Attorneys who did not adjust to the emergency conditions by focusing on the most serious cases. As one Riverside criminal defense attorney described, neighboring counties in Southern California “adjusted their plea-bargaining practices to responsibly close cases and prevent impossible backlogs in the face of diminished court resources.”⁶⁷ But the Riverside District Attorney “simply refused to negotiate in a way that would clear court backlogs. . . . [and] most defense practitioners believe that plea offers became worse during the pandemic, as defendants languished in jail without any reasonable chance of getting a courtroom for the jury trial. Most defendants awaiting trial in jail were given the ‘choice’ of indefinite detention while fighting their case or taking a plea that would get them out of jail and on felony probation after a few months.”⁶⁸

The ABA’s Task Force insists that *more* trials need to occur, not fewer. Yet the Court of Appeal’s ruling in this case flies in the opposite direction; there is a substantial likelihood that prosecutors in San Francisco, Santa Clara, Riverside, and any other counties with trial backlogs, will try to argue that *Estrada* justifies speedy trials being postponed in an emergency that continues without end. Such a decision dramatically shifts power to prosecutors in those counties; indeed, the party who requested that the *Estrada* decision be published was the Riverside District Attorney.

The plea bargaining system is far from perfect. But without even the critical safety valve of a speedy trial, the accused and their lawyers will not so much bargain, as beg, as pressure mounts on the accused to accept any prosecution offer.

III. Conclusion

The *Estrada* decision is based on San Francisco-specific facts from 2022, but if left in place, it will dangerously undermine the rights of hundreds, if not thousands, of people in San Francisco whose speedy trial rights are under threat, as well as those in Santa Clara and Riverside Counties, or other places in California. For this reason and the others addressed above, we urge this court to grant the petition for review. In the alternative, pursuant to the California Rules of Court Rule 8.1125, if this Court does not grant the petition, it should depublish the Court of Appeal opinion.

Respectfully Submitted,

 /s/
PETER SANTINA

⁶⁶ *Hernandez-Valenzuela*, 75 Cal.App.5th at 1125 (internal citation omitted).

⁶⁷ Joshua Mulligan, *I don’t want to see Riverside County criminal court dismissals work this way*, Desert Sun, Nov. 16, 2022, at <https://tinyurl.com/3nypnxm2>.

⁶⁸ *Id.*

Peter Santina (SBN 241256)
Bina Ahmad (SBN 329387)
Carson White (SBN 323535)
CIVIL RIGHTS CORPS
1601 Connecticut Ave NW, Suite 800
Washington, DC 20009
Tel: 202-894-6124
Fax: 202-609-8030
peter@civilrightscorps.org
bina@civilrightscorps.org
carson@civilrightscorps.org