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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
By: Melanie Gagnepain, Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

TRACY TUCKER, JASON SHARP, NAOMI MORLEY, and BILLY CHAPPELL, on behalf of themselves and all other similarly situated,

Plaintiffs-Appellants,

v.

STATE OF IDAHO; and DARRELL BOLZ, ANGELA BARKELL, ERIC LEHTINEN, REP. DAVID CANNON, HON. LINDA COPPLE TROUT, DAN DINNING, SEN. MELISSA WINTROW, and BEN ANDERSEN, in their official capacities as members of the Idaho State Public Defense Commission,

Defendants-Respondents.

Supreme Court Docket No. 51631-2024

District Court No. CV-OC-2015-10240

BRIEF OF AMICUS CURIAE

Appeal from the District Court of the Fourth Judicial District for Ada County
Honorable Samuel A. Hoagland, District Judge, Presiding

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I. INTEREST OF AMICUS CURIAE

The Ada County Prosecuting Attorney is dedicated to ensuring the safety of Ada County residents in conjunction with law enforcement. The Prosecuting Attorney's deputies appear at criminal hearings, arguing appropriate pretrial release conditions for defendants on a case-by-case basis. The Prosecuting Attorney zealously advocates for justice and proudly stands up for crime victims to ensure they are heard.

While the Prosecuting Attorney does not speak on the question of whether the State Public Defender is fulfilling its duty under the Sixth Amendment, or the broader question of how public defense should operate in Idaho, it does speak on the impact the Appellants' requested relief would have on public safety and the rights of crime victims, as well as on the administration of justice.

The Prosecuting Attorney files this brief pursuant to the Court's order granting permission under I.A.R. 8, dated _____.

II. ARGUMENT

The Appellants' extreme request to unconditionally release criminal defendants, regardless of the charge or the defendant's criminal history, would harm the community by causing more crime, and it would not solve the actual problem of which the Appellants complain—it would not provide a single additional attorney to an unrepresented defendant. In fact, experience with this kind of order in Oregon shows that it would make the situation *worse*, further imperiling public safety. It would create a perverse incentive for public defenders to not contact their clients or show up to hearings, thereby securing release for the client while doing less work, but ultimately leaving

the community to reckon with the societal cost. The Court should reject the Appellants' dangerous proposal.

A. The Appellants' request to indiscriminately release criminal defendants from custody will harm the people of Ada County and elsewhere.

The Appellants ask this Court to order criminal defendants across the State to be summarily released without any "liberty restrictions"—without restrictions on fleeing the State, no-contact orders, controlled substance testing, requirements to check in with probation and parole, nothing. It doesn't matter to the Appellants whether the defendant is a dangerous domestic violence offender bent on revenge against the victim or a serial killer fleeing justice. There is a reason courts do not automatically release every defendant on his or her own recognizance: whether by ensuring criminals are prosecuted for crimes they commit or by detaining those who would immediately threaten the safety of the public, pretrial release considerations are designed to protect the community. But the safety of the community is mentioned nowhere in the Appellants' motion. That's simply not a consideration relevant to their goals.

However, it is a consideration explicitly part of Idaho courts' determination as to pretrial release. The Legislature has declared that ensuring the appearance of the defendant and the protection of victims, witnesses, and the public are among the objectives of bail and pretrial release conditions. Idaho Code § 19–2904. Accordingly, Idaho courts look to multiple factors in analyzing these objectives as to a particular defendant, such as the nature of the charge,[1] the defendant's

[1] Even the Ninth Circuit, in affirming a required-release injunction in Oregon, recognized that there are limits to what is acceptable as far as risk to the public. It upheld the injunction's exception

criminal record, facts indicating the possibility of the defendant violating the law if released without restrictions, and facts regarding ties to the community and likelihood of fleeing the jurisdiction. I.C.R. 46(c). The rules contemplate that courts will carefully determine on a case-by-case basis how best to protect the public with each pretrial release decision, rather than apply a blanket rule that would indiscriminately release large numbers of defendants, with no conditions, and without considering the public safety consequences to the community.

Research indicates that a higher number of defendants released pre-trial is correlated with a higher incidence of violent crime. When Cook County, Illinois implemented new bail procedures intended to expand pretrial release—which, unlike the Appellants' suggestion here, included conditions of release and sometimes monetary bail—and felony pretrial release rose from 71.6 to 80.5 percent of defendants, "the number of released defendants who were charged with committing new crimes increased by about 45 percent. And, more concerning, the number of pretrial releasees who were charged with committing new violent crimes increased by about 33 percent." Paul G. Cassell & Richard Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, 55 WAKE FOREST L. REV. 933, 941–42, 982 (2020).[2]

from mandatory release for those charged with murder and aggravated murder, *Betschart v. Oregon*, 103 F.4th 607, 627 (9th Cir. 2024), a step the Appellants are not willing to go here.

[2] Based on the demographics of violent crime victims in Cook County, "it is virtually certain that the costs of the additional crimes committed as the result of the changes . . . are heavily concentrated among minority crime victims." *Id.* at 979.

Idahoans recently learned in a painful way that these safety concerns are not speculative. As widely reported by the media,[3] on October 1, 2022, John Cody Hart shot and killed 47-year-old Rory Mehen and 45-year-old Sara Mehen at the Hartland Inn in New Meadows, Idaho. At the time of the murders, Hart was waiting for a bed to become available at Western State Hospital, Washington's psychiatric hospital.

Hart had been charged with first degree felony assault in Clark County, Washington, in 2021. After an evaluation found that Hart was not competent to stand trial, Judge Robert Lewis entered a competency restoration order for a 90-day restoration at Western State Hospital. At a competency review hearing on July 22, 2022, Hart's lawyers asked the court to release Hart because he was assaulted in jail and was waiting too long to get transported to Western State Hospital. The Judge agreed and ordered Hart released. The Judge did have "some reluctance" as the charges against Hart were very serious, but he was released nonetheless. Two months later, Hart shot and killed the Mehens while they were working in their New Meadows hotel. Hart later pled guilty to two counts of first-degree murder.

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[3] For detailed descriptions of the murders and the history of the case, see:
Morgan Romero, *New Meadows murder suspect had violent criminal record in Washington, mental health issues*, KTVB7, https://www.ktvb.com/article/news/investigations/7-investigates/new-meadows-murder-suspect-violent-criminal-record-in-washington-mental-health-issues/277-3a5d826c-b20d-4dca-afb5-b3f35b8bdb32 (Oct. 5, 2022); *Documents show possible motive of New Meadows suspect, prosecutor seeks death penalty*, KTVB7, https://www.ktvb.com/video/news/investigations/7-investigates/documents-show-possible-motive-of-new-meadows-suspect-prosecutor-seeks-death-penalty/277-f975dab4-7a0f-40ed-8849-885e100d03c8 (Oct. 5, 2022); *Man sentenced to 30 years in prison for murders of New Meadows couple*, KTVB7, https://www.ktvb.com/article/news/crime/john-cody-hart-sentenced-to-30-years-in-prison/277-6d10b98b-724c-42e3-8664-98ea14412c3f (Dec. 5, 2023).

The Appellants' request to unconditionally release defendants without conditions, without bail, without consideration for criminal history or flight risk, would cause Idahoans, including Ada County residents, to suffer increased crime, including violent crime. This is unacceptable, especially, as explained below, when the asserted 'solution' does not even address the actual Sixth Amendment problem.

B. The Appellants' request to release criminal defendants from custody does not actually solve the problem of defendants having no contact with an attorney.

The serious harm to public safety threatened by the Appellants' request is made all the more unacceptable considering the fact that the request does not even solve the problem of getting indigent defendants in contact with their appointed attorneys. Under the Appellants' request, an unrepresented, indigent defendant remains an unrepresented, indigent defendant even if the relief is granted. Instead of curing the constitutional defect the Appellants assert, this request to release inmates appears more like compensation to the inmate for the seven days spent waiting to have contact with an attorney, and punishment on the citizens of Idaho, including Ada County residents. *Cf. United States v. Montalvo-Murillo*, 495 U.S. 711, 720 (1990) ("there is no reason to bestow upon the defendant a windfall and to visit upon the Government and the citizens a severe penalty by mandating release of possibly dangerous defendants every time some deviation from the strictures of § 3142(f) occurs"). Basically, it holds the innocent people of Idaho ransom. *See Betschart,* 103 F.4th at 629 (Bumatay, J., dissenting) ("Sure, the injunction may inflict so much harm on Oregon that it may push the State to work harder to fix the problem, but it doesn't directly remedy the supposed Sixth Amendment injury for any defendant.").

The Court should reject the Appellants' attempt to punish the citizens of Idaho and the residents of Ada County by increasing the level of criminal activity until the Legislature writes a big enough check. Particularly where there is likely no check big enough to satisfy the Appellants.

C. The Appellants' request would create an incentive to exacerbate the problem.

The Appellants' request would create a perverse incentive: defense attorneys that want to fulfill their obligations to represent their clients' interests could feel obligated to refrain from communicating with their client or showing up to court because that would result in a benefit to their client in the form of unconditional release.

Imagine there were a hypothetical motion a defense attorney could file that would guarantee their client was released from pretrial detention with no conditions or limitations. Every single defense attorney would have an ethical obligation to every in-custody client to file that motion in every case. Failure to do so would be dereliction of duty. Now, this hypothetical is not far from the truth, as defense attorneys in Ada County file a boilerplate motion for bond reduction as a matter of course, whether the motion has merit or not. The work of filing the boilerplate motion is minimal, and the potential benefit to the client is high, and thus defense attorneys have an incentive to file the motion for bond reduction, even though conditions of release will be ordered by the court.

Taking the hypothetical a step further, imagine the defense attorney was not required to file a motion in order to guarantee the defendant's release, but that by not contacting the client or by not attending a court hearing, the attorney could guarantee the defendant was released. If this Court were to rule in favor of the Appellants' desired outcome, it would incentivize defense

attorneys to do the opposite of what the Sixth Amendment guarantees—represent indigent clients. And in fact, showing up for the client would be *detrimental* to the client's immediate interests. All the defense attorney would need to do is stay away for more than seven days, when the client is unconditionally released, and then contact the client. This is more than a low-cost proposition for the defense attorney, it's a *cost-saving* proposition. And it's what the Appellants are advocating for this Court to do. To reiterate, the Appellants are requesting this Court issue an order that allows defense attorneys to gain a benefit for their clients by *not* contacting them within seven days or attending hearings. This truly is a perverse incentive that exacerbates the very problem the Appellants are using to justify it. And the public will pay the price for it.

After the Ninth Circuit issued its decision in *Betschart*, affirming an injunction requiring defendants in Oregon to be released if counsel is not appointed within seven days of the initial appearance, the problem of unrepresented defendants got *worse*, not better. On June 1, 2024, the day after *Betschart* was decided, there were 3,321 cases in which the defendant was unrepresented; on January 1, there were 4,598 cases, and 4,178 people eligible for a public defender were unrepresented, an 11 percent increase over just one month.[4] This, despite Oregon being among the highest states in the nation for per-person spending on public defense at almost four times the

[4] Oregon Judicial Department, *Unrepresented Crisis – January 2025*, https://www.courts.oregon.gov/about/Documents/Unrepresented-Crisis-01-2025.pdf.

national average—leading some to characterize this phenomenon as a "work stoppage," with public defenders opting to take less than a full caseload and demanding even higher funding.[5]

Idaho's per person spending on public defense is likewise over the national average[6] with the current $52,015,300 budget; a large budget enhancement is anticipated for this next fiscal year[7]. If the Appellants' requested relief is granted, Idaho can likewise anticipate a work stoppage, with ever-increasing numbers of unrepresented defendants. As in Oregon, the proposed solution will exacerbate the problem, causing more and more defendants to go unrepresented and consequently be released from custody, resulting in increases in crime and decreased ability to prosecute, and causing innocent citizens to suffer the consequences.

The public defenders are the ones with the ultimate autonomy to show up or not for their clients. The prosecutor and the judge can do little to nothing about that. And it's the not showing up that the Appellants complain of in their motion. Public defenders should not be rewarded for

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[5] Kevin Neely, *Opinion: DA Vasquez is right. The public defense 'crisis' is a work stoppage*, https://www.oregonlive.com/opinion/2025/01/opinion-da-vasquez-is-right-the-public-defense-crisis-is-a-work-stoppage.html (Jan. 15, 2025).

[6] The national average of per capita spending by states was $19.82 in March of 2023. David Carrol & Aditi Goel, *The State of the Nation on Gideon's 60th Anniversary*, SIXTH AMENDMENT CENTER, https://6ac.org/the-state-of-the-nation-on-gideons-60th-anniversary/ (Mar. 14, 2023). The United States Census Bureau estimates Idaho's population at 2,001,619 in 2024. *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: April 1, 2020 to July 1, 2024*, CENSUS.GOV, available at https://www2.census.gov/programs-surveys/popest/tables/2020-2024/state/totals/NST-EST2024-POP.xlsx (last visited 1/30/2025). Dividing the FY 2025 budget by the estimated population yields a per capita spending of $25.99.

[7] FY 2026 Idaho Legislative Budget Book, 5-103, Office of the State Public Defender, available at https://legislature.idaho.gov/wp-content/uploads/budget/JFAC/sessionrecord/2025/6.Economic%20Development/Self-Governing%20Agencies/Office%20of%20the%20State%20Public%20Defender/LBB.pdf (last visited 1/30/2025).

not showing up—the Appellants' request should not be allowed to reward the very thing that they complain of.

D. The Appellants' request to unconditionally release defendants is based on incomplete information about Ada County defendants.

In support of their arguments, the Appellants refer to four defendants who have recently appeared in Ada County courts. However, the Appellants' version of the facts does not paint the entire picture of what happened at the defendants' hearings. For instance, the Declaration of Ingrid Andrulis ("Andrulis Declaration") refers to hearings for three separate defendants, Charles Barkell, Richard A. Ennis Jr., and Giovanni Becerra, but omits substantive facts related to their hearings.

Paragraph 12 of the Andrulis Declaration details the experience of Charles Barkell[8] on November 4, 2024, at his probation violation arraignment. The declaration states that:

> In another instance, I learned that the previous SPD withdrew from in-custody defendant Charles Barkell's case due to a conflict [of] interest and the newly appointed SPD did not show up even though the appointment was made weeks ago. Mr. Barkell was forced to argue on his behalf due to a conflict of interest. The prosecutor's office was equally troubled by the fact that counsel had not been appointed despite the fact that the request for conflicts counsel was submitted weeks prior. . . .The conflict counsel was never appointed, and eventually Mr. Barkell had to obtain his own private counsel.

Andrulis Declaration, ¶ 12.

[8] Charles Barkell was arrested on October 13, 2022, Case No. CR01-22-36897, and charged with one felony count of battery-domestic violence with traumatic injury (Idaho Code § 18–918(2)); one misdemeanor count of battery (Idaho Code § 18–093); and one misdemeanor count of malicious injury to property (Idaho Code § 18–7001(1)). He pled guilty to felony battery-domestic violence with traumatic injury on January 23, 2023, and was sentenced on January 8, 2024. He was arrested again on an agent's warrant for a felony probation violation on October 10, 2024.

Court documents, however, paint a different picture. According to the court's Case Summary Sheet, Mr. Barkell was arrested on an agent's warrant on October 10, 2024. On that same date, an Order Appointing State Public Defender was entered. One week later, on October 17, 2024, Notice of Public Defender Assignment was entered, assigning attorney Jessica Harrison to the case. On November 4, 2024, Mr. Barkell's probation violation video arraignment was held, at which time Ms. Harrison, who was present, told the court that conflict counsel was being appointed but had not appeared yet, and she could not represent Mr. Barkell due to a conflict, but she provided Mr. Barkell with bond notes from his previous counsel. The Court heard arguments from Mr. Barkell and the State, considered the case and denied the motion for bond, and stated that he would consider what to do about the fact that the State Public Defender did not provide counsel and would discuss with the Administrative District Judge. One week later, on November 11, 2024, a Notice of Public Defender Assignment was entered, assigning attorney Paul Taber to the case. Ten days later, on November 21, 2024, a Notice of Substitution of Counsel was entered, substituting Mr. Barkell's private attorney, Brian Neville, to the case.

Even though the Andrulis Declaration states that "conflict counsel was never appointed," the record in Mr. Barkell's case is clear that Paul Taber was appointed on November 11, 2024, just one week after Mr. Barkell's arraignment. Mr. Barkell made the choice to hire a private attorney and ten days later, that private attorney appeared in the case, replacing public defender Taber.

Paragraph 13 of the Andrulis Declaration omits an important fact regarding Richard Ennis Jr.[9] The declaration states that "Richard Ennis, Jr. was unrepresented at his sentencing hearing, which the court continued, because the court had 'no idea' where his SPD was." Andrulis Declaration, ¶ 13. However, the hearing minutes from Mr. Ennis' November 15, 2024, sentencing hearing show that the hearing was reset to just *one week later* to November 22, 2024.[10] The hearing minutes from the November 22, 2024, sentencing hearing show that Mr. Ennis' counsel, SPD Kayla Steinmann, was present and made a sentencing argument on Mr. Ellis' behalf.

[9] Richard Ennis Jr. was arrested on February 26, 2023, Case No. CR01-23-06019, and charged with one felony count of possession of a controlled substance (Idaho Code § 37–2732); one felony count of destruction, alteration or concealment of evidence (Idaho Code § 18–2603); and one misdemeanor count of drug paraphernalia-use or possession with intent to use (Idaho Code § 37–2734A).

[10] Noteworthy is the fact that Mr. Ellis was concurrently facing similar charges in Case No. CR01-23-23680, in which the Case Summary sheet and court minutes show that he was continuously represented by counsel who was present for each sentencing hearing and repeatedly requested sentencing continuances. At Mr. Ellis' sentencing hearing on July 12, 2024, his attorney, Joshua Bishop, requested a continuance as Mr. Ellis had two other cases set for trial, and requested to set sentencing beyond the September trial date to allow for a drug court screening. At the next scheduled sentencing hearing on September 20, 2024, Mr. Ellis' attorney Alan Malone requested another continuance, which was granted by the court and reset for October 18, 2024. At the October 18, 2024, sentencing, Mr. Ellis' attorney Alan Malone again requested a continuance, which the court granted and reset to November 1, 2024. At the November 1, 2024 sentencing, Mr. Ellis was again represented by Alan Malone, who was again present at the hearing. Mr. Malone stated that a jury trial and sentencing was scheduled in Mr. Ellis' other cases, and would like to wait for sentencing, but he was prepared to move forward, which the court did. Mr. Ellis was sentenced on that day.

Paragraph 15 of the Andrulis Declaration is also incomplete. The paragraph refers to an October 7, 2024[11] hearing for Giovanni Becerra:[12]

> There are also inadequate resources to support attorneys. With the new system, it is unclear what services they will be reimbursed for and what may have to come from the attorneys themselves. In multiple instances the hearings were delayed due to the lack of interpreters. During an arraignment for in-custody and Spanish-speaking indigent defendant Giovanni Becerra's case, SPD counsel also indicated that the SPD Ada County office "no longer has access to interpreters." The court noted that the office had been offered interpreters from the TCA but has declined, because the SPD elected to pursue its own contract for interpreters, which had not yet happened.

Andrulis Declaration, ¶ 15.

The implication here is that no interpreter was available for Mr. Becerra's hearings. However, the court documents reflect otherwise. The Video Arraignment Minutes for Mr. Becerra's September 17, 2024[13] hearing state the requirement to "order Spanish interpreter." The Preliminary Hearing Notice/Minute Sheet for Mr. Becerra's October 8, 2024 hearing shows that Interpreter Evans was present. The Case Summary also shows that a "Spanish interpreter" was present at the hearing.

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[11] This date appears to be incorrect. The Case Summary reflects that Mr. Becerra's preliminary hearing was October 8, 2024. There are no court entries in this case on October 7, 2024.

[12] Giovanni Becerra was arrested on September 5, 2024, Case No. CR01-24-30843, on two felony counts of child sexually exploitive material willfully possess or access by any means (Idaho Code § 18–1507(2)(a)); one felony count of grand theft (Idaho Code § 18–2403); one felony count of evidence-destruction, alteration or concealment (Idaho Code § 18–2603); and one felony count of providing false information on own identity or another's to an investigating law enforcement officer (Idaho Code § 18–5413(2)). On September 7, 2024, Mr. Becerra was charged with an additional six felony counts of sexual exploitation of a child (Idaho Code § 18–1507).

[13] Notably this hearing occurred two weeks prior to the October 1, 2024 change in the public defense system.

The Declaration of Ethan Lankford ("Lankford Declaration") also fails to paint the complete picture of his situation. Mr. Lankford[14] states that at his initial hearing, he asked the court to appoint a public defender for him, but his request was denied by the judge. Lankford Declaration, ¶ 4. He further states that he "continued to ask for a public defender" because he "did not have the means to hire a private attorney." *Id*.

However, court records show that Mr. Lankford posted bond on June 10, 2024, the same day he was arrested, and confirm that his request for a public defender was denied by the judge. Mr. Lankford then states, "On September 30, 2024, I spoke with a person at the Ada County Public Defender's office that told me State Public Defender ("SPD") Joshua Stolaroff was the attorney appointed to represent me. Later, SPD Stolaroff told me in an email that he was not representing me." *Id*., ¶¶ 4–5. The Case Summary shows that Mr. Lankford did not have a court-appointed public defender from June 10, 2024, until October 10, 2024, because his only request, which was on June 10, 2024, was denied by the judge. His only other request occurred when Mr. Lankford submitted an Application for Attorney at Public Expense on October 10, 2024, which was granted by the court on the same date. The Case Summary sheet shows that PD Trujillo was appointed on October 24, 2024.

The Court should not take the drastic step of ordering the unconditional release of criminal defendants.

[14] Mr. Lankford was arrested on June 10, 2024, Case No, CR01-24-20109, on one misdemeanor count of disorderly conduct.

III. CONCLUSION

The Court should deny the *Motion to Modify Injunction and for an Order to Show Cause Why Further Relief on Decree Should Not be Granted*.

DATED this 31st day of January, 2025.

JAN M. BENNETTS
Ada County Prosecuting Attorney

By: /s/ *Dayton P. Reed*
Dayton P. Reed
Deputy Prosecuting Attorney

I.A.R. 8(c)(4) Statement

No party's counsel authored any part of this brief. No party, party's counsel, person, or entity contributed money that was intended to fund preparing or submitting this brief.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2025, I served a true and correct copy of the foregoing BRIEF OF AMICUS CURIAE to the following persons by the following method:

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