ARIZONA SUPREME COURT

JASON DONALD SIMPSON, aka JASON DONALD SIMPSON, SR.,
Petitioner,

v.

THE HONORABLE PHEMONIA MILLER, Commissioner of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the COUNTY OF MARICOPA,
Respondent Commissioner,

THE STATE OF ARIZONA,
Real Party in Interest

JOE PAUL MARTINEZ,
Petitioner,

v.

THE HONORABLE ROLAND J. STEINLE, Judge of the SUPERIOR COURT OF ARIZONA, in and for the COUNTY OF MARICOPA,
Respondent Judge,

STATE OF ARIZONA,
Real Party in Interest.

Case No. CR-16-0227-PR

Arizona Court of Appeals, Div. 1, No. 1 CA-SA 15-0292 (consolidated with No. 1 CA-SA 15-0295)

Maricopa County Superior Court Case Nos. CR2015-134762-001
CR2014-002618-001

AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF ARIZONA, AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONERS

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INTRODUCTION AND SUMMARY OF ARGUMENT

Prior to his conviction, an accused is afforded the presumption of innocence: "the bedrock, axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Betterman v. Montana*, 136 S. Ct. 1609, 1614 (2016) (internal citation omitted). To deny the right to bail categorically eviscerates this presumption, violates due process, and causes unnecessary and widespread individual and community harm.

In declaring a defendant ineligible for bail based solely on his arrest for a particular crime, Arizona has overstepped the traditional—and permissible—role of bail in the criminal justice system. Moreover, Arizona's law is an outlier: 44 states have no such outright denial of bail in noncapital cases, and only one other rejects bail categorically for people accused of sex offenses. Finally, as highlighted by increased national attention, overbroad pretrial detention wreaks havoc on individuals and communities and is unnecessary to ensure community safety and the efficient administration of courts.

As Article II, Section 22 of the Arizona Constitution and Arizona Revised Statutes § 13-3961(A) (collectively, "the Prop 103 laws") represent an impermissibly broad deprivation of constitutional rights at the pretrial stage, amici respectfully submit that the decision of the Court of Appeals should be affirmed.

ARGUMENT

I. Categorical denials of the right to bail run afoul of due process

It is undisputed that "[i]n our society liberty is the norm, and detention prior to trial…is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). But under the Prop 103 laws, criminal defendants accused of sexual assault, sexual conduct with a minor less than fifteen years of age, or molestation of a child less than fifteen years of age, are deemed *categorically ineligible* for any form of pretrial release. The law holds accused persons in pretrial detention without any individualized determination of whether they pose a

flight risk or danger to the community. State courts are thus stripped of their power to set bail even when they would find that a defendant poses no such risk. The Proposition 103 laws effectively punish persons accused of sex offenses before any juror swears an oath, any witness takes the stand, any trial exhibit is offered into evidence, or any verdict is rendered. In other words, the Proposition 103 laws eviscerate the presumption of innocence. And, troublingly, this is done with complete disregard for the facts of an individual case or the history and characteristics of an individual defendant.

To broadly foreclose the right to bail is to jettison the presumption in favor of pretrial liberty. The Ninth Circuit recently noted that "[w]hether a categorical denial of bail for noncapital offenses could ever withstand heightened scrutiny remains an open question." *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 785 (9th Cir. 2014). Amici submit that the time has come to resolve this question in the negative.

A. Courts have emphasized that pretrial liberty is the norm since *U.S. v. Salerno*

In its landmark case upholding the constitutionality of the 1984 Bail Reform Act, *United States v. Salerno*, the Supreme Court began to establish

minimum standards for a pretrial detention statute to pass constitutional muster. 481 U.S. 739, 750 (1987). *Salerno* emphasized the narrow scope of the Bail Reform Act's pretrial detention mechanism, as well as the rigorous process afforded accused persons when the government seeks pretrial detention. *Id.* The Court noted that the Bail Reform Act "operates only on individuals who have been arrested for a specific category of extremely serious offenses," and that the government must make a probable cause showing "that the charged crime has been committed by the arrestee, *but that is not enough*." *Id.* (emphasis added). Finally, "[i]n a full-blown adversary hearing, the Government must convince a neutral decisionmaker by clear and convincing evidence that no conditions of release can reasonably assure the safety of the community or any person." *Id.* The Court specifically cautioned against laws without such narrowly-tailored and procedurally-robust mechanisms, distinguishing the limitations in the Bail Reform Act from a "scattershot attempt to incapacitate those who are merely suspected of these serious crimes." *Id.*

The U.S. Supreme Court has made clear that its holding in *Salerno* was not an invitation to expand pretrial detention practices; quite the opposite. *See Foucha*, 504 U.S. at 71 ("The narrowly focused pretrial detention of arrestees permitted by the Bail Reform Act was found to be *one of those carefully limited exceptions permitted* by the Due Process Clause") (emphasis added). Significantly, while *Salerno* authorized the use of pretrial detention in certain narrow circumstances, the Supreme Court has never authorized a categorical denial of the right to bail. "Neither *Salerno* nor any other case authorizes detaining someone in jail while awaiting trial, or the imposition of special bail conditions, based merely on the fact of arrest for a particular crime." *United States v. Scott*, 450 F.3d 863, 874 (9th Cir. 2006).

Numerous courts have emphasized the need for individualization in setting bail in other contexts. For example, in *Pugh v. Rainwater*, the Fifth Circuit highlighted the need for thoughtful, tailored inquiries in the bail context, stating, "The argument favoring a specified priority sequence for the various forms of release overlooks the fact that its impact may vary under varying circumstances." *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th

Cir. 1978). On this basis, courts have more recently invalidated bail systems that rely on mandatory schedules to set money bail for specific offenses. The Eastern District of Missouri recently entered an order requiring a prompt individualized hearing prior to pretrial detention. *See Pierce v. City of Velda City*, 2015 WL 10013006, at *1 (E.D. Mo. June 3, 2015). The Middle District of Alabama similarly held that "the use of a secured bail schedule to detain a person after arrest, without an individualized hearing regarding the person's indigence and the need for bail or alternatives to bail, violates the Due Process Clause of the Fourteenth Amendment." *Jones v. City of Clanton*, 2015 WL 5387219, at *2 (M.D. Ala. Sept. 14, 2015) (citing *Pugh*, 572 F.2d at 1056–57).

Other courts have found the mere imposition of mandatory *conditions* of pretrial release unconstitutional, further emphasizing the fundamental nature of the right to pretrial liberty and demonstrating the need for individualization at all phases of the bail process. *See United States v. Vujnovich*, No. 07-20126-01, 2008 WL 687203, at *2 (D. Kan. Mar. 11, 2008) (finding Adam Walsh Act unconstitutional as applied to plaintiff

because magistrate imposed electronic monitoring solely based on crimes charged); *United States v. Arzberger*, 592 F. Supp. 2d 590, 601 (S.D.N.Y. 2008) (finding Adam Walsh Act unconstitutional because "no defendant is afforded the opportunity to present particularized evidence to rebut the presumed need to restrict his freedom of movement"); *Scott*, 450 F.3d at 874–75 (finding unconstitutional a pretrial release condition requiring defendant to submit to mandatory drug tests, without individualized hearing to establish that condition was needed).

B. Hearings to determine whether "the proof is evident or the presumption is great" do not satisfy due process requirements as they violate the presumption of innocence

Under the Prop 103 laws, the only hearing afforded to a person accused of a sex offense before he is detained pertains to whether "the proof is evident, or the presumption great" that he committed a specified crime. A.R.S. § 13-3961(A). While the accused has a right to counsel and to examine and cross-examine witnesses at these hearings, the court's inquiry is limited to whether "it [is] plain and clear . . . that the accused committed one of the offenses enumerated in A.R.S. § 13–3961(A). In that case, bail

must be denied." *Simpson v. Owens* ("Simpson I"), 207 Ariz. 261, 274, 85 P.3d 478, 491 (Ct. App. 2004).

In *Simpson I*, the Court of Appeals noted, "the bail hearing *is not for a determination of guilt or innocence*, but rather a determination of the preliminary issue of the right to bail." *Simpson I*, 207 Ariz. at 275, 85 P.3d 478 at 492 (quoting *In re* Hayes, 619 P.2d 632, 642 (Or. 1980) (emphasis added)). However, the hearings provided under the Prop 103 laws—by design—hinge upon "whether "the 'proof' is 'evident' or gives rise to a 'strong' presumption of guilt." *Id.* In other words, a preliminary determination is made with respect to likely guilt or innocence, and an individual's liberty is directly affected by that decision.

It is true that "[n]othing in the text of the Bail Clause [of the Eighth Amendment] limits permissible Government considerations solely to questions of flight." *Salerno*, 481 U.S. at 754. Although preventing flight may be the primary function of bail, the government is free to pursue "other admittedly compelling interests through regulation of pretrial release" such as community safety. *Id.* at 753. Yet, beyond the forty-eight-hour period an

arrestee may be detained prior to a probable cause determination, pretrial detention has been authorized only when the state demonstrates a compelling interest beyond the charge itself: (1) an established risk of flight, *Bell v. Wolfish*, 441 U.S. 520, 534 (1979); (2) a danger to witnesses, *Salerno* at 749; or (3) a risk of community harm presented after a "full-blown adversarial hearing," *id.* at 750. By contrast, the Prop 103 laws assume that the mere accusation of a serious crime constitutes a compelling basis to detain alleged offenders.

However, this regime is constitutionally inadequate not because appropriate bail inquiries are *necessarily* limited to the risk of flight, community safety, or safety of witnesses, but rather because the Prop 103 laws are impossible to reconcile with the presumption of innocence. The only bail inquiries to pass review by the United States Supreme Court pertain to longstanding practical factors—risk of flight, community safety, and danger to witnesses—that have nothing to do with an accused person's guilt or innocence. Where, as here, the determination of one's eligibility for

release centers upon the likelihood of guilt, it eviscerates the presumption of innocence.

In summary, a provision denying the right to pretrial liberty must not only be reviewed using the strict scrutiny framework established in *Salerno*, but also respecting the constitutional backstop of an accused person's right to be presumed innocent until proven guilty. *See Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). So viewed, the Prop 103 laws fail to comport with this fundamental constitutional principle.

II. Arizona's categorical bail denial law is an outlier despite the well-established tradition nationwide of release in noncapital cases

The Prop 103 laws are nearly unprecedented in the United States. The vast majority of states do not provide for any categorical denials of bail in noncapital cases. To wit, the law in nine states—Georgia,[1] Hawaii,[2] New

[1] Ga. Code § 17-6-1.
[2] Haw. Rev. Stat. § 804-3.

Jersey,[3] New York,[4] North Carolina,[5] Rhode Island,[6] Virginia,[7] West Virginia,[8] and Wisconsin[9]—do not provide for categorical bail denials, even in capital cases. In thirty-five states—Alabama,[10] Alaska,[11] Arkansas,[12] California,[13] Colorado,[14] Connecticut,[15] Delaware,[16] Florida,[17] Idaho,[18] Illinois,[19] Indiana,[20] Iowa,[21] Kansas,[22] Kentucky,[23] Louisiana,[24] Maine,[25] Massachusetts,[26] Minnesota,[27] Missouri,[28] Montana,[29] Nevada,[30] New

[3] *See* N.J. Cr. R. 7:3.4, 7:4.2.
[4] N.Y. Crim. Proc. Law § 530.20.
[5] N.C. Gen. Stat. §§ 15A-533–34.
[6] R.I. Super. R. Crim. P. 46.
[7] Va. Code § 19.2-120 (setting forth numerous rebuttable presumptions favoring pretrial detention, but all determined by a judge at a hearing).
[8] W. Va. Code § 62-1C-1.
[9] Wis. Const. art. I, § 8.
[10] Ala. Const. art. I, § 16.
[11] Alaska Const. art. I, § 11.
[12] Ark. Const. art. II, § 8.
[13] Cal. Const. art. I, § 12.
[14] Colo. Const. art. II, § 19; *see also* Colo. Rev. Stat. § 16-4-101.
[15] Conn. Const. art. I, §8(a).
[16] Del. Const. art. I, § 12.
[17] Fla. Const. art. I, § 14.
[18] Idaho Const. art. I, § 6.
[19] Ill. Const. art. I, § 9.
[20] Ind. Const. art. 1, § 17 (categorical denial of bail for murder and treason only); *see Fry v. Indiana*, 990 N.E. 2d 429, 449 (Ind. 2013) (identifying treason as a capital offense).
[21] Iowa Const. art. I, § 12.
[22] Kan. Const. Bill of Rights § 9.
[23] Ky. Const. § 16.
[24] La. Const. art. I, § 18.
[25] Me. Const. art. I, §10.
[26] Mass. Gen. Law 276 § 20D

Hampshire,[31] New Mexico,[32] North Dakota,[33] Ohio,[34] Oklahoma,[35] Oregon,[36] Pennsylvania,[37] South Carolina,[38] South Dakota,[39] Tennessee,[40] Texas,[41] Vermont,[42] Washington,[43] and Wyoming[44]—bail is only categorically denied when a defendant is accused of a capital crime or a crime punishable by life imprisonment.

Of the remaining six states that authorize categorical bail denials for noncapital cases, Arizona and Nebraska stand alone in categorically

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[27] Minn. Const. art. I, § 7.
[28] Mo. Const. art. I, § 20.
[29] Mont. Const. art. 2, § 21.
[30] Nev. Const. art. I, § 7.
[31] N.H. Rev. Stat. §§ 597:1, 1-c.
[32] N.M. Const. art. II, § 13.
[33] N.D. Const. art. I, § 11.
[34] In addition to capital cases, the Ohio state constitution prohibits bail for persons charged with felonies who "pose[] a substantial risk of serious physical harm to any person or to the community." Oh. Const. art. I, § 9. However, amici's research suggests that persons in this latter category are still afforded an individualized hearing about the danger presented to the community upon release.
[35] Okla. Const. art. II, § 8; *see also* 22 Okla. Stat. § 1102 (setting forth procedures for bail hearing in noncapital cases).
[36] O.R.S. § 135.240 (denying bail for murder, aggravated murder, or treason); O.R.S. § 166.055(3) (treason is punishable by life imprisonment); O.R.S. § 163.115 (murder punishable by life imprisonment).
[37] Pa. Const. art. I, § 14.
[38] S.C. Const. art. I, §15.
[39] S.D. Cod. Law § 23A-43-2.
[40] Tenn. Const. art. I, § 15.
[41] Tex. Const. art. I, §§11, 11(a).
[42] Vt. Const. CH II, § 40.
[43] Wash. Const. art. I, § 20.
[44] Wyo. Const. art. I, § 14.

prohibiting an individualized bail consideration when a defendant is accused of a sex offense. Maryland includes an outright denial of bail for persons accused of escape. Md. Code. Cr. P. § 5-202.[45] Michigan contains a categorical denial of bail for defendants with two or more violent felony convictions in the past fifteen years, defendants accused of committing a violent felony while out on bail, and defendants accused of murder or treason. Mich. Const. art. I, § 15. Mississippi categorically denies bail only for capital offenses and in cases in which the accused has previously been convicted of a capital offense or crime punishable by twenty years in prison. Miss. Const. art. 3 § 29. Finally, Utah categorically denies bail only as to defendants charged with committing a capital offense or a felony while free on bail from another felony charge. Utah Code Cr. P. § 77-20-1.

Only in Nebraska is there a law as far-reaching as the Prop 103 laws. Neb. Const. art. I, § 9 ("All persons shall be bailable by sufficient sureties, except for . . . sexual offenses involving penetration by force or against the will of the victim . . ."). Notably, the Eighth Circuit determined that this

[45] The Maryland statute creates rebuttable presumptions against release for other crimes including drug kingpin charges, but those release determinations are made an an individualized hearing.

provision violated the Excessive Bail Clause of the Eighth Amendment. *Hunt v. Roth*, 648 F.2d 1148, 1164–65 (8th Cir. 1981), *vacated as moot sub nom. Murphy v. Hunt*, 455 U.S. 478 (1982). As the Eighth Circuit stated, "It is sufficient to observe that the Nebraska procedures *provide for no inquiry into the dangerousness of the individual, and no such finding appears in the record of this case. Instead, Nebraska has made a legislative determination that an entire class of accused persons is not entitled to bail.*" *Id.* at 164 (emphasis added). The Supreme Court later reversed the Eighth Circuit's decision on mootness grounds, as the defendant was convicted during the pendency of his § 1983 claims in federal court, but left its reasoning undisturbed. *Murphy v. Hunt*, 455 U.S. 478 (1982).

The Arizona and Nebraska laws passed in 2006 and 1986, respectively, are of recent vintage compared to the longstanding history of denying bail in capital cases. "From the passage of the Judiciary Act of 1789 to the present Federal Rules of Criminal Procedure, federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). While the recency

of the Prop 103 laws obviously does not alone render them unconstitutional, their break from tradition marks the beginning of a dangerously slippery slope.

Unlike these more recent laws, courts have long held that arrest for a capital case may constitute a "convincing proxy" for risk of flight, as "most defendants facing a possible death penalty would likely flee regardless of what bail was set, but those facing only a possible prison sentence would not[.]" *United States v. Kennedy*, 618 F.2d 557, 559 (9th Cir. 1980) (per curiam) (collecting cases). However, even the widely-accepted use of categorical denials of bail in capital offenses is not absolute. As the dissent in *Salerno* explained, the "denial of bail in capital cases has traditionally been the rule rather than the exception," because judges use a capital charge as a proxy for risk of flight. *Salerno*, 481 U.S. at 765 n.6 (Marshall, J., dissenting). However, "[i]f in any particular case the presumed likelihood of flight should be made irrebuttable, it would in all probability violate the Due Process Clause." *Id.* The Supreme Court has signaled that there may be constitutional problems even with categorical denials of bail in the capital

context; making an expansion of such denials for less serious offenses even more problematic.

Further, the Prop 103 laws cannot be justified as a response to more recent objective threats. Empirical data does not suggest that accused sex offenders represent a higher risk of flight or recidivism in Arizona. First, a study conducted by the PEW Research Center demonstrates that Arizona's overall recidivism rates hover just below the national average. The Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* 10 (April 2011). Moreover, a separate study demonstrated that, of eight main categories of offenders in Arizona, persons convicted of sex offenses have the second-lowest recidivism rate. Daryl R. Fischer, Ph.D., Arizona Prosecuting Attorneys' Advisory Counsel, *Prisoners in Arizona: A 2014 Update on Selected Topics* 78–79 (June 2014). Finally, a recent study suggests that the recidivism rate for sex offenders may be significantly lowered by the use of GPS monitoring—a tool available in appropriate cases, after individualized consideration, at the pretrial stage as well as at post-conviction. Stephen V. Gies, et al., *Monitoring High-Risk Sex*

Offenders with GPS Technology: An Evaluation of the California Supervision Program xvii-xviii (March 31, 2012).

III. Pretrial detention causes widespread, irreparable, and unnecessary harm

The Supreme Court has recognized that "[p]retrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Moreover, the "traditional right to freedom before conviction permits the unhampered preparation of a defense," whereas being housed in a jail inhibits a defendant's ability to prepare for trial. *Stack*, 342 U.S. at 4.

These concerns have borne out in social science data. Pretrial detention is a key driver in the overcrowding of our nation's jails: approximately sixty percent of those jailed in the United States have not yet been convicted.[46] Controlling for other factors, pretrial detention is the greatest predictor of a conviction due to the immense pressure on the

[46] In 2014, 467,500 of the 744,600 inmates in U.S. jails were awaiting their trial. Todd D. Minton & Zhen Zeng, Bureau of Justice Statistics, *Jail Inmates at Midyear 2014* 2 (2015).

accused to plead guilty.[47] Upon conviction, those jailed pretrial tend to receive longer sentences than those released.[48] Moreover, those who are detained pretrial run high risks of losing jobs, child custody, and housing.

Yet, in *Simpson I*, the Court of Appeals mischaracterized the Prop 103 laws as a "regulatory guarantee that a person accused of certain serious crimes stand trial upon a showing that the proof is evident and the presumption great that he committed those offenses with which he is charged." 207 Ariz. 261, 269, 85 P.3d 478, 486 (Ct. App. 2004). In fact, the overwhelming pressures faced by defendants detained pretrial—either due to crowded jail conditions, the inability to speak easily with a lawyer, or mounting stress from attempting to keep employment and housing—result in many defendants pleading guilty before vindicating their right to a trial.

Beyond offending the Constitution, the Prop 103 laws' blanket pretrial detention is not necessary. As both parties concede, Arizona has a

[47] *See* Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* 10–11 (2013); Mary T. Philips, New York City Crim. Justice Agency, Inc., *Pretrial Detention and Case Outcomes, Part 1: Nonfelony Cases* 25–29 (2007); Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use* 88 n.216 (2016) (discussing pressure to plead guilty while in pretrial detention among all defendants).

[48] Lowenkamp, *supra* at 3–4 (2013).

compelling interest in addressing serious crimes and ensuring citizen safety. But these purposes are not disturbed by the implementation of an individualized bail hearing, as evidenced by the overwhelming national practice of providing such hearings. In determining the appropriate means to achieve the purposes of court appearance and public safety, courts may consider numerous conditions and tools upon release, including "third party custody; maintaining employment; abiding by restrictions on place of abode or travel; reporting on a regular basis to a designated law enforcement agency; complying with a curfew," executing an unsecured bond, location monitoring, and any other conditions a court deems reasonably necessary. *United States v. Hanson*, 613 F. Supp. 2d 85, 88 (D.C. 2009) (listing several conditions). Indeed, by empowering courts to conduct such inquiries, it is possible for states to honor both public safety concerns and the constitutional presumption of innocence.

CONCLUSION

The Prop 103 laws unconstitutionally reverse the presumption of innocence, cause unnecessary individual and community harm, and

represent an impermissible expansion of the categorical bail denials traditionally reserved for capital cases, and amici respectfully request that this Court affirm the Court of Appeals.

Respectfully submitted, this 20th day of October, 2016.

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IN THE ARIZONA SUPREME COURT

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Dated this 20th day of October, 2016.

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IN THE ARIZONA SUPREME COURT

JASON DONALD SIMPSON, aka JASON DONALD SIMPSON, SR., Petitioner, v. THE HONORABLE PHEMONIA MILLER, Commissioner of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the COUNTY OF MARICOPA, Respondent Commissioner, THE STATE OF ARIZONA, Real Party in Interest;	Case No. CR-16-0227-PR Arizona Court of Appeals, Div. 1, No. 1 CA-SA 15-0292 (consolidated with No. 1 CA-SA 15-0295) Maricopa County Superior Court Case Nos. CR2015-134762-001 CR2014-002618-001

JOE PAUL MARTINEZ,
Petitioner,

v.

THE HONORABLE ROLAND J. STEINLE, Judge of the SUPERIOR COURT OF ARIZONA, in and for the COUNTY OF MARICOPA,
Respondent Judge,

STATE OF ARIZONA,
Real Party in Interest.

CERTIFICATE OF COMPLIANCE RE AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF ARIZONA AND THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITIONERS

The undersigned hereby certify that the attached brief was prepared in double-spaced 14 point, is double-spaced and contains 3,745 words. The document to which this Certificate is attached does not exceed the word limit as set forth by applicable ARCAP rules.

Respectfully submitted this 20th day of October, 2016.

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