

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent
v.
VELIA DUEÑAS
Defendant and Appellant

Ct. of Appeal No. B285645
App. Div. No. BR052831
Sup. Ct. No. 5VY02034

Los Angeles County Superior Court No. 5VY02034
Honorable Eric P. Harmon, Judge

**APPLICATION TO FILE BRIEF OF *AMICUS CURIAE* AND
BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT FOR:
A NEW WAY OF LIFE REENTRY PROJECT, AMERICAN CIVIL LIBERTIES UNION
OF SOUTHERN CALIFORNIA, ALL OF US OR NONE - LOS ANGELES, ALL OF US
OR NONE - SAN FRANCISCO, BAY AREA LEGAL AID, CALIFORNIA
ASSOCIATION OF LOCAL CONSERVATION CORPS, CALIFORNIA
REINVESTMENT COALITION, CALIFORNIANS FOR SAFETY AND JUSTICE,
CIVICORPS, COMMUNITY COALITION, CONTRA COSTA COUNTY PUBLIC
DEFENDER, CONTRA COSTA RACIAL JUSTICE COALITION, DRUG POLICY
ALLIANCE, EAST BAY COMMUNITY LAW CENTER, ELLA BAKER CENTER,
EQUAL JUSTICE SOCIETY, ESSIE JUSTICE GROUP, HILLARY BLOUT (FORMER
PROSECUTOR), HOMEBOY INDUSTRIES, LAW ENFORCEMENT ACTION
PARTNERSHIP, LAWYERS COMMITTEE FOR CIVIL RIGHTS OF THE SAN
FRANCISCO BAY AREA, LEGAL SERVICES OF NORTHERN CALIFORNIA,
LEGAL SERVICES FOR PRISONERS WITH CHILDREN, NEIGHBORHOOD LEGAL
SERVICES OF LOS ANGELES COUNTY, ROOT & REBOUND, AND RUBICON
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Received by Second District Court of Appeal

APPLICATION TO FILE BRIEF OF *AMICUS CURIAE*

Pursuant to the California Rules of Court, Rule 8.520(f), the organizations described below respectfully request permission to file the attached brief as *amici curiae* in support of Appellant Velia Dueñas.

This application is made pursuant to Rule 8.200(c) of the California Rules of Court and Section 12 of the Code of Civil Procedure. No party or counsel for any party in the pending appeal authored the proposed *amicus* brief in whole or in part, or made a monetary contribution intended to fund the preparation of submission of the brief, and no other person or entity made a monetary contribution intended to fund the preparation of submission of the brief, other than the *amicus curiae*, their members, or their counsel in the pending appeal.

I. Timeliness of Application

Rule 8.882(d)(1) requires that an amicus brief be filed within 14 days after the appellant's reply brief. Appellant's reply brief was filed on January 9, 2018. *Amici* now file this motion and the attached brief within the time period specified in Rule 8.882(d)(1).

II. Background of *Amici Curiae*

A New Way Of Life Reentry Project (ANWOL) is a housing organization for women coming out of incarceration and their children, and an advocacy organization for people with past convictions. The Legal Department of A New Way of Life offers clean slate services, administrative representation, and civil rights representation to people impacted by the criminal and traffic court systems. A significant number of our clients struggle with mandatory court fees and driver's license suspensions, and the substantial negative impacts that these factors have on their daily lives.

All of Us or None – Los Angeles and San Francisco (All of Us or None) is a grassroots civil and human rights organization fighting for the rights of formerly- and currently- incarcerated people and our families. We are fighting against the discrimination that people face every day because of arrest or conviction history and we are building a powerful political movement to win full restoration of our human and civil rights.

The **American Civil Liberties Union of Southern California (ACLU SoCal)** is an affiliate of the ACLU, a national, nonprofit, nonpartisan civil liberties organization with more than 1,000,000 members dedicated to the principles of liberty and equality embodied in both the United States and California constitutions and our nations' civil rights law. Since their founding, both the national ACLU and ACLU SoCal have had an abiding interest in the promotion of the guarantees of liberty and individual rights embodied in the federal and state constitutions, including the rights of due process and equal protection of the laws. The ACLU is committed to protecting the rights of low-income Californians and to ensuring that individuals are not punished on the basis of their poverty.

Bay Area Legal Aid (BayLegal) provides free legal representation to low-income clients on a broad range of issues, including domestic violence prevention, housing preservation and homelessness prevention, improving income security, removing barriers to employment, and providing holistic support and legal representation for formerly incarcerated individuals and homeless or at-risk youth. Because BayLegal's clients are low- and very low-income members of our communities whose economic stability is constantly at risk, they are negatively impacted by statutes and court procedures that automatically assess fines and fees regardless of an individual's ability to pay them. Such laws and policies create obstacles and collateral

consequences that threaten these vulnerable individuals' financial security and well-being, as well as their abilities to maintain safe housing and employment, and to care for their families.

California Association of Local Conservation Corps (CALCC) is a membership organization representing Local Conservation Corps statewide. Our thirteen Corps provide high school education and job training to young adults aged 18-26. A significant percentage of our participants in each locale have had experience with the criminal justice system and understand the negative impact mandatory fines and fees place upon indigent people. While our corpsmembers earn wages in our job-training program, if those wages must be used for fines and fees, other important needs, such as housing, childcare, food and transportation suffer.

Over the past 30 years, the **California Reinvestment Coalition** has grown into the largest state community reinvestment coalition in the country with a membership of 300 nonprofit organizations working for the economic vitality of low-income communities and communities of color. Among our members are a diverse set of organizations including consumer advocates, community organizers, legal service providers, affordable housing developers, small business lenders, and more. In collaboration with national partners, we are addressing the role that local and state governments play in creating or worsening the cycle of debt for low-income families through the collection of fines and fees, and how this criminalization of poverty systemically increases the wealth gap, especially for communities of color.

Californians for Safety and Justice (CSJ) is a nonprofit working with Californians from all walks of life to replace prison and justice system waste with common sense solutions that create safe neighborhoods and save public dollars. Through policy advocacy, public

education, partnerships and support for local best practices, we promote effective criminal justice strategies to stop the cycle of crime and build healthy communities.

Civicorps is the only accredited high school and job-training program in Oakland for young adults aged 18-26 who have dropped out of school. Virtually all of Civicorps students are extremely poor (200% below the federal poverty guidelines) and about 50% have had experiences with the criminal justice system as both youth and adults. They are well acquainted with mandatory fines and fees that they must pay as a result of their court involvement. These fees continue to set them back even further in their goals to gain a high school diploma and sustainable jobs.

For the last 26 years, **Community Coalition** members have waged bold policy campaigns to reform “tough on crime policies” that criminalize poverty and addiction. The organization is deeply concerned with the number of South L.A. residents that have been incarcerated for the inability to pay excessive fines and court fees. For example, in a poll conducted by Community Coalition of 4,000 South L.A. voters, 18% reported having their license suspended due to the inability to pay traffic fines and nearly half of those whose license was suspended reported being arrested for driving with a suspended license. Community Coalition is invested in finding relief for poor and working communities who are disproportionately impacted by the imposition of excessive fines and court fees.

The **Contra Costa County Public Defender (CCCPD)** represents indigent persons accused of crimes in Contra Costa County, California. CCCPD’s attorneys have represented thousands of people facing criminal charges for driving on a suspended license at the trial level. Judges often impose hefty fines on our clients despite their inability to pay them, and our clients are often incarcerated in addition to being fined.

The **Contra Costa County Racial Justice Coalition** is a coalition of organizations and individuals committed to eliminating racial inequalities in Contra Costa and around the world. We organize and advocate for policies that advance racial equity in the criminal justice system, including the elimination of court fines and fees for those that cannot pay, an issue disproportionately impacting families of color. Members of our coalition—both adults and juveniles—have personally experienced the imposition and collection of criminal court fines despite their families' inability to pay.

The **Drug Policy Alliance (DPA)** is a nonprofit organization that promotes drug policies that are grounded in science, compassion, health, and human rights. DPA's goals are to advance policies that reduce the harms of both problematic drug use and drug prohibition, and to seek solutions that both promote public health and public safety. DPA endeavors to end discriminatory drug policies and practices that unjustly target and penalize the poor and people of color. The fines and fees at issue in this case are similarly imposed for drug offenses in California and DPA thus has an abiding interest in the constitutional issues raised herein.

The **East Bay Community Law Center (EBCLC)** provides legal services and policy advocacy that are responsive to the needs of low-income communities. The Clean Slate Practice at the East Bay Community Law Center offers a wide range of integrated services to people whose driver's licenses are suspended, including limited scope representation, full case representation, and appellate advocacy. We also provide services to legal services advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **Ella Baker Center** works locally, statewide, and nationally to end mass incarceration and criminalization. In September 2015, the Ella Baker Center, Forward Together,

Research Action Design, and 20 other organizations across the country launched *Who Pays? The True Cost of Incarceration on Families*. This report reveals the overwhelming debt, mental and physical ailments and severed family bonds that are some of the hidden consequences of mass incarceration in the United States. Especially given the centrality of being able to drive to earn a living, it is important that regulations be tailored so that they avoid unnecessarily keeping people trapped in a cycle of poverty and system involvement.

The **Equal Justice Society (EJS)** is a national legal organization focused on restoring constitutional safeguards against discrimination. We use a three-pronged approach to accomplish these goals, combining legal advocacy, outreach and coalition building, and education through effective messaging and communication strategies. Our legal strategy aims to broaden conceptions of present-day discrimination to include unconscious and structural bias by using cognitive science, structural analysis, and real-life experience. Currently, EJS targets its advocacy efforts on school discipline, special education, and the school-to-prison pipeline, local service and municipal disparities, and inequities in the criminal justice system.

Essie Justice Group, based in Oakland, harnesses the collective power of women with incarcerated loved ones to empower women and end mass incarceration. Essie recognizes how fines, fees, and penalties related to criminalization disproportionately impact women, where women are responsible for paying court-related costs for their loved ones more than 50% of the time. Because Essie aims to end the harm committed against women impacted by criminalization, we oppose fines levied against people that do not consider their ability to pay.

Hillary Blout is a former prosecutor with the San Francisco District Attorney's Office. She was a prosecutor for six years and witnessed for all of those years how court fees were imposed without an inquiry into the defendants' ability to pay. For the last three years, she has

been working with Californians for Safety and Justice on policies for the State of California that will reduce recidivism, and in turn, improve public safety. She has worked with hundreds of formerly convicted individuals who are seeking to petition the courts to reduce and/or expunge their old criminal convictions. A major barrier that continues to arise, are the fines and fees imposed by the court, irrespective of the individual's ability to pay.

Founded in 1988, **Homeboy Industries** provides hope, training, and support to formerly gang-involved and previously incarcerated men and women allowing them to redirect their lives and become contributing members of our community. Homeboy Industries supports individuals whose licenses are suspended to reinstate their licenses and drive responsibly. A valid driver's license contributes to successful community reentry by helping individuals meet their goals and secure stable employment.

Law Enforcement Action Partnership is a 501(c)(3) nonprofit of police, prosecutors, judges, and corrections officials whose mission is to unite and mobilize the voice of law enforcement in support of drug policy and criminal justice reforms that will make communities safer by focusing law enforcement resources on the greatest threats to public safety, promoting alternatives to arrest and incarceration, addressing the root causes of crime, and working toward healing police-community relations.

Lawyers Committee for Civil Rights of the San Francisco Bay Area (LCCR) works to advance, protect and promote the legal rights of communities of color, and low-income persons, immigrants, and refugees. The Second Chance Legal Clinic at LCCR provides free reentry legal services to people who have prior arrests or convictions, assisting in areas such as criminal record "expungement," housing and employment rights, occupational licensing, driver's licenses, and background checks.

Legal Services of Northern California (LSNC) is a non-profit legal aid organization, which provides free legal services to thousands of clients annually. LSNC has seen first-hand the particular burdens that court debt imposes on its clients through individual representation, legal clinics, community legal education, and policy advocacy. LSNC's low-income clients often face a cascading series of challenges that result from court debt, including loss of drivers license, loss of employment, difficulty in obtaining criminal record remedies, inaccessibility of health care in rural areas, lost housing opportunities due to damaged credit, and loss of educational opportunity for the children of clients whose attendance at school is imperiled by decreased mobility.

Legal Services for Prisoners with Children (LSPC) organizes communities impacted by the criminal justice system and has seen that incarceration very often starts with the inability to pay court-ordered debt. When assisting clients attempting to clean up their records after re-entering society, we regularly must inform the unemployed that they may not be able to access expungement—which would improve their chances of finding a job—because they cannot pay for “mandatory” court fees. This catch-22 unjustly increases their risk of reincarceration. To address the criminalization of California’s most vulnerable residents, LSPC is involved with policy, litigation, and public education work aimed at reducing the collateral consequences of fines and fees.

Neighborhood Legal Services of Los Angeles County (NLSLA) is a community based legal aid organization that provides free legal assistance to eliminate poverty in low income communities and to protect the rights of our client communities by ensuring meaningful access to our justice system. We assist people with criminal records to clear up the collateral consequences of their convictions and provide driver license reinstatement assistance to people with suspensions due to unpaid traffic court citations. Through this work, we have seen firsthand

the devastating effects court ordered fines and fees can have on the lives of low income people when they cannot pay them, which only reinforce the vicious cycle of poverty and disproportionately impacts low income communities and communities of color.

Root & Rebound is a reentry legal education and resource center that serves low-income people with criminal records who have faced hefty court fines and fees, arrest warrants due to an inability to pay, driver's license suspensions, and an arduous path out of poverty. Many of the barriers to successful reentry—finding safe housing, securing stable employment, and providing for one's family—are predicated upon a person's ability to escape cycles of incarceration and impoverishment. Work with and on behalf of hundreds of currently and formerly incarcerated people and marginalized communities have led Root & Rebound to conclude that court fines and fees imposed on indigent criminal defendants result in economically-crippling consequences that prolong a person's entanglement with the criminal justice system, while hindering their ability to become autonomous, financially stable members of the community.

Rubicon Programs' mission is to transform East Bay communities by equipping people to break the cycle of poverty. Much of our work is focused on helping formerly incarcerated people successfully reenter the community. Those who must pay mandatory fines and fees despite their inability to pay are further burdened because they face delays with expungements and other criminal record remedies that could help them find employment. Even if they are otherwise eligible for these remedies, unpaid fines and fees often lead to judges denying their requests. This situation is particularly frustrating for our participants who know that an expungement would help them get a job, and a job would help them pay off the fines and fees.

III. Interest of *Amici Curiae*

Amici seek to add to this case the perspective of public interest groups that work on behalf of low-income Californians, so that the Court may take into account the broader consequences of denying ability to pay hearings when imposing court fines and fees. The issues presented in this case implicate the interests of thousands of Californians, including *amici* organizations' California clients, who are unfairly punished because of their poverty when assessed court fines and fees without any consideration of their ability to pay. Without individualized consideration of a person's ability to pay, the practice of routinely imposing substantial court fees on convicted people traps individuals like Ms. Dueñas in a cycle of poverty and entanglement with the criminal justice system. Viewed in the broader social context, these practices serve to entrench poverty and social disadvantage in low-income, minority communities, without any countervailing societal benefit.

IV. Need for Further Briefing

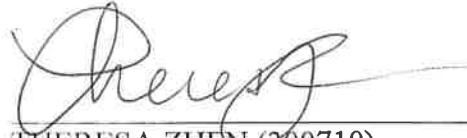
Amici's proposed brief will provide the Court with important perspectives not yet offered in the parties' briefing, but helpful to the Court's assessment of the parties' arguments on the equal protection implications of assessing fines and fees on indigent defendants without regard to the defendant's ability to pay. We submit this *amicus* brief to (1) provide the Court with real-world stories that show the collateral consequences of court-ordered debt on individuals, families and whole communities of color; and (2) demonstrate ways in which the mandatory court debt scheme is inefficient and costly when the imposition of court fines and fees is not tailored to a person's ability to pay.

V. Conclusion

For the foregoing reasons, *amici curiae* respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: January 23, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theresa Zhen', written over a horizontal line.

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**BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT FOR:
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BAY AREA LEGAL AID, CALIFORNIA ASSOCIATION OF LOCAL
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COALITION, CALIFORNIANS FOR SAFETY AND JUSTICE,
CIVICORPS, COMMUNITY COALITION, CONTRA COSTA COUNTY
PUBLIC DEFENDER, CONTRA COSTA RACIAL JUSTICE
COALITION, DRUG POLICY ALLIANCE, EAST BAY COMMUNITY
LAW CENTER, ELLA BAKER CENTER, EQUAL JUSTICE SOCIETY,
ESSIE JUSTICE GROUP, HILLARY BLOUT (FORMER PROSECUTOR),
HOMEBOY INDUSTRIES, LAW ENFORCEMENT ACTION
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THE SAN FRANCISCO BAY AREA, LEGAL SERVICES OF NORTHERN
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STATEMENT OF THE CASE AND FACTS

Amici Curiae adopt the Statement of the Case and Facts set forth in the Brief of Appellant. Ms. Dueñas is a disabled, homeless, indigent mother of two young children who is burdened by court fees imposed on her that she cannot afford to pay. Her situation resembles that of thousands of similarly situated defendants in California.

INTRODUCTION

Across the country, and especially in California, financial obligations owed in connection with a criminal conviction have proliferated.¹ Courts have increasingly imposed fees on convicted people to cover basic court expenses, such as the maintenance of court facilities, compensation for court personnel, and benefits packages for judicial officers. At the same time, states have taken a punitive stance against those who fail to pay, without individualized consideration of a person's ability to pay. This has created an irrational trauma-inducing system that first places low-income minorities at greater risk of police contact and then punishes them more severely for being poor. The inequities of this system of punishment have become stark enough to garner the attention of the United States Commission on Civil Rights. In its 2017 reported, titled "Targeted Fines and Fees Against Communities of Color Civil Rights & Constitutional Implications," the Commission states that:

...[U]nchecked discretion or stringent requirements to impose fines or fees can lead and have led to discrimination and inequitable access to justice when not exercised in accordance with the

¹ See Katherine Beckett & Alexes Harris, *Monetary Sanctions as Misguided Policy: Special Issue on Mass Incarceration*, 10 *Criminology & Pub. Pol'y* (2011); Alicia Bannon et al., Brennan Ctr. for Justice, *Criminal Justice Debt: A Barrier to Reentry* (2010) (referred to hereafter as "Brennan Center Study").

protections afforded under the Due Process and Equal Protection Clauses of the United States Constitution.²

The Commission recommended reforms, including that states should review judges’ “. . . discretion in [the] imposition of fines and fees, and alternatives to imposition of fines and fees³,” and that for persons deemed “indigent, alternatives to payment should be made available, including for example converting fines and fees into community service or waiving the fines and fees.”⁴ The American Bar Association Commission on the Future of Legal Services in the United States endorsed the recently rescinded 2016 Department of Justice “Dear Colleague” letter, which warned courts that “[i]ndividuals may confront escalating debt; face repeated, unnecessary incarceration for nonpayment despite posing no danger to the community; lose their jobs; and become trapped in inescapable cycles of poverty.”⁵

The cycle of escalating debt and unnecessary incarceration is the very cycle that Ms. Dueñas has fallen into. The trial court in Ms. Dueñas’s case failed to dismiss a set of fines and fees levied against her, citing an unwillingness to consider her indigency. The consequences for Ms. Dueñas and similarly situated defendants results in insurmountable and unconstitutional impositions on their basic liberties and well-being. Recently, the Judicial Council and other interested parties in California

² U.S. Com. on Civil Rights, Targeted Fines and Fees Against Communities Of Color: Civil Rights & Constitutional Implications, at 71 (Sept. 2017) <http://www.usccr.gov/pubs/Statutory_Enforcement_Report2017.pdf>.

³ Id. at 77.

⁴ Id. at 75.

⁵ AM. BAR ASS’N, COMM’N ON THE FUTURE OF LEGAL SERVS., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 52 (2016), <https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf>. See also Dear Colleague letter dated March 14, 2016, from Vanita Gupta and Lisa Foster, Office for Access to Justice, U.S. Dep’t of Justice, at 2 <<https://perma.cc/CM79-BVXH>>.

have recognized the inequitable and illogical nature of a system of funding courts off of the misery of the marginalized.⁶ This recognition resulted in significant changes, including the elimination of driver's license suspensions for failure to pay⁷ and the implementation of an ability to pay process in both traffic courts⁸ and for parking tickets.⁹ The Constitution requires that the criminal court does the same.

ARGUMENT

The U.S. and California Constitutions forbid punishing people for poverty, or imposing fines and fees that the defendant cannot afford. Doing so violates the Equal Protection and Due Process Clauses of both constitutions.¹⁰ Because California statutes fail to set forth procedures for determining ability to pay, it is the province of the courts to vindicate these constitutional principles.

Judges routinely fail to consider defendants' ability to pay certain court fines and fees before imposing them. *See, e.g.*, Cal. Penal Code § 1465.8 (West 2012) (court facilities fee); Cal. Gov't Code § 70373 (West 2009) (court operations fee); Cal. Penal Code § 1202.4 (West 2017)

⁶ *See* Chief Justice Tani G. Cantil-Sakauye, State of the Judiciary Address to a Joint Session of the California Legislature (March 8, 2016) <<http://www.courts.ca.gov/34477.htm>>.

⁷ *See* Assem. Bill No. 103 (2017–2018 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB103>.

⁸ *See* Blaine Corren, *Council Approves New Rules to Better Inform Defendants of Their Rights in Infraction Cases* (Dec. 16, 2016) <<https://newsroom.courts.ca.gov/news/council-approves-new-rules-to-better-inform-defendants-of-their-rights-in-infraction-cases>>.

⁹ *See* Assem. Bill No. 503 (2017–2018 Reg. Sess.) <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB503>.

¹⁰ Statement of Interest of the United States in *Stinnie v. Holcomb*, No. 3:16-CV-00044 (W.D. Va. Nov. 7, 2016).

(restitution fine). The court’s failure to consider a defendant’s ability to pay when imposing a court fine or fee unconstitutionally burdens Ms. Dueñas and similarly situated defendants in California. Below, we describe this system of court-ordered fines and fees¹¹ imposed without consideration of ability to pay – often called “mandatory” court fines and fees – in the context of driving with a suspended license. We further discuss how this system feeds a cycle of debt, poverty, incarceration and disenfranchisement for those historically on the margins of our society. Section I outlines resulting harms to the individual and family. Section II highlights the disproportionate impact on communities of color.

In order to satisfy fundamental principles of justice and fairness, all fines and fees should contemplate a defendant’s ability to pay, or at minimum consider non-custody alternatives to imposition of a fee. In cases where a defendant does not possess the means to pay, the court should dismiss the fines and fees in the interest of justice, rather than further penalize the defendant. *See Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (plurality opinion) (“there can be no equal justice where the trial a man gets depends on the amount of money he has”). Ms. Dueñas, who has proven her inability to pay the imposed fines and fees, should be relieved of her obligation to pay those fines and fees, and not be punished simply for being poor.

I. Imposing Fines and Fees Without Considering a Defendant’s Ability to Pay Disproportionately Harms Indigent Defendants

When I can’t pay the court fees, an arrest warrant for failure to pay is issued and I get picked up and sent to jail, all because I can’t pay. I want to stay off the streets, but it gets harder and harder when my

¹¹ Throughout this brief, we will refer to court-ordered fines, fees, and other penalties broadly as “court fees” or “fees.”

court debt continues to grow and I have no way to legally earn the money to pay it off.

- R.P. (Van Nuys)

Court fines and fees in California are substantial. The base fine for a first-time conviction for driving on a suspended license can total over \$1,000. Cal. Veh. Code § 14601(b)(1) (West 2008). If an individual has a prior conviction for driving on a suspended license within a five-year period, the base fine can total over \$2,000. *Id.* § 14601(b)(2).

The total amount owed by an individual consists of a base fine, in addition to other fines, fees, forfeitures, penalty surcharges, assessments, and restitution orders.¹² Ms. Dueñas was assessed a \$300 base fine and penalty assessments, as well as a \$150 restitution fine under California Penal Code Section 1202.4, a \$40 court operations fee under California Penal Code Section 1465.8, a \$30 court operations fee under California Government Code Section 70373, and a probation revocation fine. Attorney's fees were waived due to Ms. Dueñas's indigent status. The remainder was not. As a result, Ms. Dueñas spent an additional nine days in jail, solely because she could not pay the \$300 fine.

In the absence of a meaningful assessment of an individual's ability to pay, these court fees permanently and irreversibly harm indigent defendants by infringing on their liberties in the following ways: (1) by subjecting individuals to aggressive collections methods and compounding

¹² *See, e.g.*, A state penalty assessment of \$10 per every \$10 of a base fine (Cal. Penal Code § 1464) (West 2008); a court penalty assessment of \$7 per every \$10 of a base fine (Cal. Gov't Code § 76000) (West 2012); a court construction assessment of \$5 per every \$10 of a base fine (Cal. Gov't Code § 70372) (West 2012); a Proposition 69 DNA penalty assessment of \$1 per every \$10 of a base fine (Cal. Gov't Code § 76104.6) (West 2012); a DNA identification fund penalty assessment of \$4 per every \$10 of a base fine (Cal. Gov't Code § 76104.7) (West 2012); an EMS penalty assessment of \$2 per every \$10 of a base fine (Cal. Gov't Code § 76000.010) (West 2016); a state surcharge of 20% of a base fine (Cal. Penal Code § 1465.7) (West 2007).

poverty penalties; (2) by extending the period of supervision until debts are paid, while imposing the threat of incarceration for nonpayment; (3) by limiting the availability of criminal records remedies; (4) by creating or exacerbating mental health problems; (5) by passing the debt burden onto family members and friends; and (6) by establishing a basis for driver's license suspension and increasing barriers to employment.

a. Mandatory court fines and fees subject indigent defendants to punitive collections tactics.

When court ordered debt becomes delinquent, it enters the collections process.¹³ Pursuant to California Penal Code Section 1214.1, \$300 is automatically assessed for a person's failure to pay the court debt in full. This is one of the highest late penalties in the country.¹⁴ The \$300 late fee and other administrative fees are inevitable for those who are unable to pay their court debt. Such tack-on fees mean that low-income defendants often end up being charged more than their more affluent counterparts, for the same behavior. Unsurprisingly, the amount of uncollected court debt has grown significantly with each year and is most recently estimated to be \$12.3 billion.¹⁵

¹³ See Mac Taylor, Cal. Governor's Criminal Fine and Fee Proposals 5 (2017).

¹⁴ See, e.g., Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 289, n.55 (2014) (comparing various states' statutory late fee assessments); Ala. Code § 12-17-225.4 (2006) (30% of delinquent amount); Ariz. Rev. Stat. Ann. § 12-116.03 (West 2003) ("reasonable costs"); Cal. Penal Code § 1214.1(a) (West 2011) (up to \$300); Fla. Stat. Ann. § 28.246(6) (West 2010) (up to 40% of amount owed); 730 Ill. Comp. Stat. 5/5-9-3(e) (West 2007) (30% of delinquent amount); Mich. Comp. Laws Ann. § 600.4803(1) (West 2013) (20% of delinquent amount); N.C. Gen. Stat. Ann. § 7A-321(b)(1) (West 2004) (lesser of the average cost of collecting debt or 20% of the delinquent amount).

¹⁵ See supra note 13, at 8.

The County of Los Angeles contracts with a private debt collections agency (GC Services) to collect on delinquent debt.¹⁶ A referral to GC Services means that a person is subjected to numerous intimidating debt collection notices, telephone calls, credit history reporting, and attempts to collect on a debt.¹⁷ When GC Services fails to collect the debt, the person’s account is then referred to the Franchise Tax Board (“FTB”). The FTB is authorized by statute to use a number of collections tools, including wage garnishments, bank levies, and seizure of both real and personal property, all of which undermine an indigent person’s pathway out of poverty. *See* Cal. Rev. & Tax. Code § 19280 (West 2017). Moreover, the FTB can assess up to 15% of delinquent debt to cover administrative fees. *See id.* § 19282(b) (West 1997).

Unlike consumer debt, most court fees and fines cannot be discharged in bankruptcy. *See* 11 U.S.C. § 523(a)(19)(B)(iii) (2016). Collections proceedings also show up on a consumer credit report and can hurt a person’s ability to find employment, housing, and other opportunities. *See, e.g.,* Cal. Lab. Code § 1024.5 (West 2012) (permitting use of a consumer credit report for employment purposes).

The impact of this collections system on those most economically disadvantaged is exemplified in this statement from Contra Costa County Deputy Public Defender Michael Caesar:

After “court convictions assessments,” “court operations assessments,” and “mandatory restitution fines,” our clients—

¹⁶ *See* Los Angeles intent to award GC Services a contract for “primary collections services.” *Los Angeles Board of Supervisors* <<http://file.lacounty.gov/SDSInter/bos/supdocs/114449.pdf>> (as of Jan. 19, 2018).

¹⁷ *See* Master Services Agreement between Judicial Council and GC Services, <http://www.courts.ca.gov/documents/lpa-gcservices.pdf> (last visited Feb. 13, 2017). *See also* Judicial Council Report to the Legislature: Statewide Collection of Delinquent Court-Ordered Debt for FY 2013–2014 (Nov. 20, 2014), <http://www.courts.ca.gov/documents/jc-20141212-item1.pdf>.

who have no ability to cover these costs—are told that they can sign-up for a payment plan through [court collections]. In so doing, however, our clients suffer further from initiation fees and high interest rates. Any failure to pay, of course, brings with it the risk of probation violations, further fines and fees, as well as the potential for more time in custody.

b. Mandatory court fines and fees lead to additional hearings, extended supervision and incarceration for indigent defendants.

When a person of means is ordered to pay court fines and fees, they face inconvenience and temporary discomfort due to the monetary loss. An impoverished person cannot pay the fine, and so faces consequences for failure to pay that can include criminal sanctions and even incarceration (as was the case for Ms. Dueñas). As we have seen with our clients, additional hearings, which Respondent suggests is appropriate here, places a burdensome tax on indigent defendants' time because they require childcare, transportation, and time off from their employment or job search. Failure to comply with all terms and conditions of probation can lead to punitive measures, including the issuance of arrest warrants and more incarceration.¹⁸ In this case, Ms. Dueñas elected to serve nine days in county jail because she could not afford to pay a \$300 base fine and penalty assessments. A person of means with a similar conviction would have avoided that additional incarceration.

In other ways as well, a person of means can, quite literally, buy her way to freedom. California Penal Code Section 1203.3 allows individuals to petition for early termination of probation if all terms and conditions of probation are being complied with, including diligent payment of fines, fees

¹⁸ See East Bay Cmty. Law Ctr. *et al.*, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* (2016). In some jurisdictions like Los Angeles, punishment for a violation of probation is additional jail time.

and restitution. However, such a remedy is widely unavailable to those who owe outstanding court fees because certain court fees and fines are considered conditions of probation. In some cases, judges have determined that a probationer who has not fully paid all of the court-ordered restitution fines by the end of his probationary period has not fulfilled the conditions of his probation for the entire period. *See People v. Guillen*, 218 Cal. App. 4th 975, 1000-02 (2013) (opining that a defendant who failed to pay a \$200 restitution fine did not fulfill all terms of his probation during the entire probationary period).

c. Mandatory court fines and fees limit the availability of criminal record remedies for indigent defendants.

A dismissal (“expungement”) is a criminal record remedy that is critical to helping people directly impacted by the criminal justice system successfully rejoin their communities and boost their earnings.¹⁹ Full payment of all fines and fees is oftentimes a prerequisite to obtaining an expungement under California Penal Code Section 1203.4. *See People v. Chandler*, 203 Cal. App. 3d 782, 789 (1988) (denying a Section 1203.4 petition for dismissal because petitioner did not pay his court-ordered restitution). *Amici* have encountered widespread judicial reluctance to grant discretionary Section 1203.4 petitions in cases where there are any outstanding fines or fees. Many judges fail to consider a defendants’ ability to pay. This results in qualified candidates being denied expungements or

¹⁹ *See* Pen. Code § 1203.4 (he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted); Labor Code § 432.7 (“no employer may utilize, as a factor in determining any condition of employment, ...a conviction that has been judicially dismissed..., including, but not limited to, Sections 1203.4); California Investigative Consumer Reporting Agencies Act (ICRAA) (restricting a background check reporting agency from reporting convictions that have been judicially expunged).

having them delayed, thus denying them employment opportunities and other pathways out of poverty.²⁰

d. Families of indigent defendants bear the costs of mandatory fines and fees imposed on indigent defendants.

Court debt does not only affect those convicted of crimes. It also ensnares their family members and friends. Loved ones provide important assistance in mitigating, sometimes paying the debt in its entirety.

Ms. Dueñas, her husband, and her two young children are homeless. Her husband is sporadically employed as a construction worker. Recently, her family could not afford the electricity bill. On their reduced income, \$220 in court costs is impossible to pay.

The financial struggles faced by Ms. Dueñas's family are not unusual. According to a study by The Ella Baker Center for Human Rights, two in three families had difficulty meeting basic needs as a result of their loved one's conviction and incarceration.²¹ Compounding this is the fact that one in three American families have no savings at all.²² "Family members frequently described experiences of depression, anxiety, chronic stress, and other chronic health issues associated with concern for and support of an incarcerated person, as well as a result of their struggles to sustain their own families."²³ In short, court debt stands to separate families, overburden families with more financial costs than they can

²⁰ According to the National Employment Law Project, "the mark of a criminal record is so stigmatizing that the majority of employers will be deterred from hiring a worker because of it. [Expunging] criminal history information so that employers are unable to obtain those records may eliminate a severe roadblock to employment." National Employment Law Project et al., *State Reforms Promoting Employment of People with Criminal Records: 2010-11 Legislative Round-Up* 8 (2011).

²¹ See Ella Baker Ctr. for Human Rights *et al.*, *Who Pays? The True Cost of Incarceration on Families* 13 (2015).

²² The Pew Charitable Trusts, *What Resources Do Families Have for Financial Emergencies?* 1 (2015).

²³ Ella Baker Ctr., *supra* note 21, at 37.

handle, and destabilize already fragile family bonds. *See Rivera v. Orange County Probation Dept.* 832 F.3d 1103, 1112, fn. 7 (9th Cir. 2016) (“When a minor offense produces a debt, that debt, along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden — a cycle as predictable and counterproductive as it is intractable.”)

e. Mandatory court fines and fees harm the mental health of indigent defendants.

In 2014, A New Way of Life Reentry Project (a nonprofit organization in South Central Los Angeles) conducted an informal survey among 80 Los Angeles residents with past convictions and driver’s license suspensions.²⁴ When asked about the daily impact of court fines and fees on their daily lives, several responded in the following ways:

- *“Extremely stressful- Unmanageable lifestyle, to support self due to financial debt. 50% removal from taxes on money earned during employment.”*
- *“Worries, Anxiety, drug addiction got worse. Baby on the way, need a job a.s.a.p.”*
- *“It was always pay for groceries and rent vs. pay probation fees.”*
- *“Taken away from funds that were needed to support myself once I lost my job due to my convictions.”*

As demonstrated by these responses, the imposition of a fine that far exceeds what a defendant or their family can afford can lead to anxiety, stress, and depression.²⁵ Studies have shown that people who have debt are more likely than their peers to be depressed, or even to contemplate

²⁴ *See* Theresa Zhen, *Traffic Debt & Driver’s License Suspensions*, Practising Law Institute Seminar Presentation on Reentry in California – Overcoming Legal Barriers to Community Reintegration (Aug. 17, 2016), http://a123.g.akamai.net/7/123/121311/abc123/yorkmedia.download.akamai.com/121311/WebContent/pm/150604/pdf/08-12-2016_0915_99122_Zhen.pdf.

²⁵ *See* Ella Baker Ctr., *supra* note 21, at 9, 37-39.

suicide.²⁶ Considering that criminal defendants are more likely to be indigent and subject to an intergenerational racial wealth gap, it is clear that the assessment of “mandatory” court debt could exact a heavy mental and emotional toll – a burden on liberty that wealthy defendants do not face.

f. Mandatory court fines and fees result in driver’s license suspensions for indigent defendants, and consequently, harm to employment prospects.

Driver’s license suspensions are both a cause and consequence of poverty. This case arises from a license suspension stemming from three infraction tickets Ms. Dueñas received as a teenager. Because she was unable to pay the fees—totaling approximately \$1,088—the Department of Motor Vehicles (DMV) suspended her driver’s license for a failure to pay under California Vehicle Code Sections 40509 and 40509.5.²⁷ Ms. Dueñas has suffered numerous convictions for driving on a suspended license, each making it more difficult for her to have her license restored and find steady employment. This is complicated by her family responsibilities that necessitate driving. The practice of suspending driver’s licenses for failure to pay is so pernicious and the weight of the criminal justice system on the poor that the United Nations Special Rapporteur on extreme poverty and human rights condemned it in December 2017 report.²⁸

Though Veh. Code § 40508(b) requires a “willful” nonpayment before a license can be suspended, licenses are routinely suspended due to

²⁶ See Elina Turunen & Heikki Hiilamo, *Health Effects Of Indebtedness: A Systematic Review*, 14 BMC Public Health 489 (2014).

²⁷ The number of license suspension actions taken in the last eight years in California due to inability to pay has now reached over four million. See Lawyers’ Comm. for Civil Rights et al., *Not Just A Ferguson Problem* 4 (2015).

²⁸ See Professor Philip Alston, *Statement on Visit to the USA, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights*, (Dec.15, 2017)

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22533&LangID=E>.

nonpayment, without any determination that nonpayment was “willful.” In fact, the practice of suspending licenses for failure to pay have been challenged on the grounds that they violate state or federal law by failing to assess a person’s ability to pay before imposing a license suspension. Two lawsuits challenging this practice are currently pending before various courts in California. See *Hernandez v. Cal. Dep’t of Motor Vehicles*, (Super. Ct. Alameda County, 2016, No. RG16836460); *Mata Alvarado et al. v. Los Angeles Cnty. Super. Ct.*, (Super. Ct. Los Angeles County, 2016, No. BC628849).

The California governor has publicly condemned the use of driver’s license suspensions to penalize the poor. In June 2017, the Governor signed AB 103 (2017), which discontinues the use of suspensions for failure to pay a fine. The DMV has agreed that “all the remaining legacy FTP license suspensions that were instituted under the former scheme should be lifted,” but the agency suffers from “significant logistical and capacity impediments because of the volume of records and the limitations of the DMV” and “cannot articulate a time that it will take to completely address all the legacy FTP suspensions,”²⁹ in which case Ms. Dueñas’s license suspension will continue to persist beyond the enactment of this new law.

A suspended driver’s license can result in significant financial harm to people like Ms. Dueñas. Without a valid driver’s license, it can be difficult to find transportation to and from work and to access employment opportunities farther away.³⁰ Jobs and job training programs often require

²⁹ *Hernandez v. Cal. Dep’t of Motor Vehicles*, Joint Complex Case Management Statement dated Dec. 6, 2017 (Super. Ct. of Alameda County, 2016, No. RG16836460).

³⁰ See Evelyn Blumenberg, *On the Way to Work: Welfare Participants and Barriers to Employment*, 16 Econ. Dev. Q. 314, 315 (2002); Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work – Private Versus Public Mobility*, 22 J. of Plan. Educ. and Research 50, 61 (2002); Paul Ong & Evelyn

having a valid driver's license. A recent survey of the most common jobs by state revealed that "[t]ruck, delivery, and tractor drivers" topped the list in California as well as in 30 other states.³¹ For people with criminal records, having a job is a crucial factor in reducing rates of recidivism.³² A valid driver's license is essential to accessing employment opportunities and working towards economic security.

Because people like Ms. Dueñas whose driver's licenses are suspended often drive out of necessity, they are uniquely susceptible to a compounding sequence of sanctions, each increasing the court debt owed. For example, multiple convictions lead to mandatory jail time. Cal. Veh. Code § 14601.1(b)(2). Additionally, a first-time conviction for a violation of California Vehicle Code Section 14601.1 (driving on a suspended license) carries two points. *Id.* § 12810(e) (West 2010). A driver is a "negligent operator" when she has reached four or more points in 12 months, six in 24 months, or eight in 36 months. *Id.* § 12810.5(a) (West 2008). Once classified as a "negligent operator," a person's license is suspended for at least six months. Additionally, someone with a "negligent operator" status can be flagged as an insurance risk, prompting an increase in coverage rates. The practical impact of this is that low-income persons, due to their inability to pay and the need to drive, are also most likely to be

Blumenberg, *Job Access, Commute, and Travel Burden Among Welfare Recipients*, 35 Urb. Stud. 77, 90-91 (1998); Steven Raphael & Lorien Rice, *Car Ownership, Employment, and Earnings*, 52 J. of Urb. Econ. 109, 109-30 (2002).

³¹ See Quoc Trung Bui, *Map: The Most Common* Job In Every State*, NPR (Feb. 5, 2015), <http://www.npr.org/sections/money/2015/02/05/382664837/map-the-most-common-job-in-every-state>.

³² See Kristen D. Levingston & Vicki Turetsky, *Debtors' Prison—Prisoners' Accumulation of Debt as a Barrier to Reentry*, Clearinghouse Rev. J. of Law & Pol'y 187, 187-97 (2007); Alan Rosenthal et al., *Sentencing for Dollars: The Financial Consequences of a Criminal Conviction*, (Ctr. for Cmty. Alternative, Working Paper, 2007).

classified as negligent drivers and pay more in insurance, while people with financial means to pay their tickets can avoid that negative classification. The other important practical impact is that low-income persons are more likely to be arrested, detained and incarcerated for driving with a suspended license, while people with financial means can avoid that fate.

As noted above, court debt too can foreclose access to criminal record remedies, and so perpetuate the employment barriers that result from criminal records. Imposition of liens and the garnishing of wages can act as a disincentive for people searching for legitimate, over-the-table employment opportunities.

II. Imposing Fines and Fees Without Considering a Defendant's Ability to Pay Disproportionately Harms Racial Minorities

Fines and fees do not exist in a vacuum but rather are levied against a backdrop of other factors that make their impact fall disproportionately on the shoulders of poor and low-income minority defendants, raising additional constitutional concerns.³³ This racial disparity arises at each stage of the process, from citation or arrest to debt collection.³⁴ Citations and driver's license suspensions are disproportionately issued to people of color, as evidenced by the statistical racial disparities in arrests for driving with a suspended license. Due to this uneven application of law enforcement resources, the racial inequality seeps into the court system where charges for driving with a suspended license are adjudicated and where greater amounts of court debt are being imposed on low-income people of color. The impact of such unconstitutional burdens is all the greater on defendants of color like Ms. Dueñas.

³³ East Bay Cmty. Law Ctr. *et al.*, *supra* note 18 at 1-2.

³⁴ *Id.* at 21-24.

a. Members of racial minority groups are disproportionately stopped, cited and arrested.

There is significant evidence that drivers are treated differently by law enforcement based on a driver's race.³⁵ A 2014 San Diego study showed that Blacks were stopped more than twice as frequently as they should have been, given their relative population.³⁶ Similarly in Oakland, Blacks make up 28% of the population, yet account for approximately 60% of stops made by the Oakland Police Department.³⁷

It is no surprise then that the “intensified policing and racial profiling of people of color” described above can lead to Black and Latino drivers receiving more traffic citations than white drivers, “despite the fact that there is no documented difference in driving behavior.”³⁸ These traffic citations, when unpaid, lead to the suspension of a person's driver's license.

In a 2014 analysis of driver's license suspensions in California, the data showed that zip codes with more than 20% Black residents were *95% more likely* to exceed the statewide average rate of license suspensions.³⁹ Furthermore, nearly every zip code with a suspension rate above 6%—three times the statewide average—had a high proportion of Black residents.⁴⁰

The correlations do not end there. Data from Los Angeles County shows a strong correlation between race and arrests for driving with a suspended license. Although Blacks represent 9.2% of the population, they

³⁵ Christine Eith & Matthew R. Durose, Bureau of Justice Statistics, Contacts Between Police and the Public, 2008 1, 10 (2011).

³⁶ Lawyers' Comm. for Civil Rights, *supra* note 27, at 19.

³⁷ Jennifer L. Eberhardt, Stanford Univ., SPARQ: Social Psychological Answers to Real-World Questions, Strategies for Change: Research Initiatives and Recommendations to Improve Police-Community Relations in Oakland, Calif. 9 (2016).

³⁸ East Bay Cmty. Law Ctr. *et al.*, *supra* note 9 at 21.

³⁹ *Id.* at 8.

⁴⁰ *Id.*

account for 33% of arrests for driving on a suspended license, which is 3.6 times their proportion of the population.⁴¹ While Latinos make up 48.4% of the population, they make up 52.2% of these arrests, and Whites make up 26.8% of the population but comprise only 14.8% (or 0.6 times underrepresentation) of arrests for driving on a suspended license.⁴²

This data is significant because it implicates both Ms. Dueñas's ethnic background as well as her geographic location. Being Latina in Los Angeles increased the odds that she would be stopped, arrested and fined well beyond her economic means.

b. Racial minorities are disproportionately impacted by the imposition of fines and fees in the absence of ability-to-pay hearings.

Low-income people of color, cited at higher rates and unable to pay, contend with a greater amount of debt imposed after a conviction for driving with a suspended license. With these disproportionate arrests and citations, it becomes clear that “Blacks and Latinos are bearing the brunt of this police-as-debt-collector scheme.”⁴³

This becomes even more salient when considering the general deprivation of economic opportunity for minority defendants. Economic security has eluded Black Americans for generations. In the 1990s and early 2000s, the poverty rate for Black Americans was 25%.⁴⁴ In 2013, the rate rose to 28%.⁴⁵ These rates of poverty are approximately three times the

⁴¹ *Id.* at 13.

⁴² *Id.*

⁴³ *Id.* at 24.

⁴⁴ Lauren Victoria Burke, *Is Trump Right? A Look at What Obama's Done for Black Community*, NBC News (Aug. 4, 2015), <http://www.nbcnews.com/news/nbcblk/donald-trump-right-what-obamas-done-black-america-n403881>.

⁴⁵ *Id.*

poverty rates for White Americans.⁴⁶ The unemployment rate for Black Americans has remained double the unemployment rate of White Americans since 1972, when the Bureau of Labor Statistics began tracking this data.⁴⁷ Black Americans lag behind White Americans in average income,⁴⁸ median wealth,⁴⁹ and homeownership.⁵⁰ Relatedly, Black Americans also suffer from disproportionate rates of homelessness.⁵¹ Of course, while the plight of Black Americans is the starkest, other minority groups do not fare much better as it relates to economic opportunity. Asians, Pacific Islanders, and Latinos have lower rates of homeownership than White Americans.⁵² Latino families have significantly less wealth than White families.⁵³ Latino families also face higher rates of unemployment.⁵⁴

The case before the court is a grim example of the human toll of this confluence of race and class. Ms. Dueñas is a homeless Latina mother with few economic opportunities, no savings and no financial safety net. Despite a finding of indigency, the court refused to dismiss fines and fees directly connected to the expansion of court operations. Not only has Ms. Dueñas's

⁴⁶ Inst. for Children, Poverty, and Homelessness, *Intergenerational Disparities Experienced by Homeless Black Families* (2012).

⁴⁷ Philip Bump, *Black unemployment is always much worse than white unemployment. But the gap depends on where you live.*, Washington Post (Sept. 6, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/09/06/black-unemployment-is-always-much-worse-than-white-unemployment-but-the-gap-depends-on-where-you-live/>.

⁴⁸ *Id.*

⁴⁹ Inst. for Children, Poverty, and Homelessness, *supra* note 46.

⁵⁰ U.S. Census Bureau, U.S. Dep't of Commerce, *Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2016* 9 (2017).

⁵¹ Inst. for Children, Poverty, and Homelessness, *supra* note 46.

⁵² U.S. Census Bureau, *supra* note 50.

⁵³ Rakesh Kochhar & Richard Fry, *Wealth inequality has widened along racial, ethnic lines since end of Great Recession*, Pew Research Center (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/>.

⁵⁴ Bureau of Labor Statistics, U.S. Dep't of Labor, *The Employment Situation—January 2017* 2 (2017).

status as a minority woman likely influenced her interactions with law enforcement, Ms. Dueñas's indigence has guaranteed that she be sentenced to fines and fees that she cannot afford to pay.

CONCLUSION

For the foregoing reasons, we urge this court to squarely reject the trial court's decision to impose the fines and fees in their entirety in the absence of an ability-to-pay determination. We urge the court to clarify that any court decision imposing fines and fees should take into account a defendant's ability to pay, and in cases where a defendant is unable to pay, the court should dismiss and/or decline to impose fines and fees in the interest of justice.

CERTIFICATE OF COMPLIANCE

Under Rule 8.883(c) of the California Rule of Court, I hereby certify that this brief contains 5584 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

Respectfully Submitted,



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Counsel for Amici Curiae
1950 University Ave, Suite 200
Berkeley, CA 94704

Dated: January 23, 2018

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent
v.
VELIA DUEÑAS
Defendant and Appellant

Ct. of Appeal No. B285645
App. Div. No. BR052831
Sup. Ct. No. 5VY02034

Los Angeles County Superior Court No. 5VY02034

Honorable Eric P. Harmon, Judge

**[PROPOSED] ORDER GRANTING APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF IN SUPPORT OF APPELLANT FOR:**

A NEW WAY OF LIFE REENTRY PROJECT, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, ALL OF US OR NONE - LOS ANGELES, ALL OF US OR NONE - SAN FRANCISCO, BAY AREA LEGAL AID, CALIFORNIA ASSOCIATION OF LOCAL CONSERVATION CORPS, CALIFORNIA REINVESTMENT COALITION, CALIFORNIANS FOR SAFETY AND JUSTICE, CIVICORPS, COMMUNITY COALITION, CONTRA COSTA COUNTY PUBLIC DEFENDER, CONTRA COSTA RACIAL JUSTICE COALITION, DRUG POLICY ALLIANCE, EAST BAY COMMUNITY LAW CENTER, ELLA BAKER CENTER, EQUAL JUSTICE SOCIETY, ESSIE JUSTICE GROUP, HILLARY BLOUT (FORMER PROSECUTOR), HOMEBOY INDUSTRIES, LAW ENFORCEMENT ACTION PARTNERSHIP, LAWYERS COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, LEGAL SERVICES OF NORTHERN CALIFORNIA, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY, ROOT & REBOUND, AND RUBICON PROGRAMS

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[PROPOSED] ORDER

The Court hereby grants the application of A New Way Of Life Reentry Project, American Civil Liberties Union Of Southern California, All Of Us Or None - Los Angeles, All Of Us Or None - San Francisco, Bay Area Legal Aid, California Association Of Local Conservation Corps, California Reinvestment Coalition, Californians For Safety And Justice, Civicorps, Community Coalition, Contra Costa County Public Defender, Contra Costa Racial Justice Coalition, Drug Policy Alliance, East Bay Community Law Center, Ella Baker Center, Equal Justice Society, Essie Justice Group, Hillary Blout (Former Prosecutor), Homeboy Industries, Law Enforcement Action Partnership, Lawyers Committee For Civil Rights Of The San Francisco Bay Area, Legal Services Of Northern California, Legal Services For Prisoners With Children, Neighborhood Legal Services Of Los Angeles County, Root & Rebound, and Rubicon Programs to file their amicus curiae brief, dated January 22, 2018. Respondent may file an answer brief within 20 days of the date of this Order.

Dated: _____

JUSTICE OF THE COURT OF APPEAL

1 **PROOF OF SERVICE**

2
3 Theresa Zhen certifies as follows:

4 I am over the age of 18 years, and not a party to this action. I am a citizen of the United States. My business
5 address is 1950 University Ave, Suite 200, Berkeley, CA 94704.

6 On January 23, 2018, I served the following document(s) described as follows:

7 **APPLICATION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*; BRIEF OF *AMICUS CURIAE* IN
8 SUPPORT OF *APPELLANT***

9 on the following person(s) in this action at the following addresses:

10 Hon. Eric P. Harmon
11 Judge of the Superior Court
12 Van Nuys Courthouse
13 Department 113
14 14400 Erwin Street Mall
15 Van Nuys, CA 91401

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Mosk Courthouse, 6th Floor
111 North Hill Street
Los Angeles, CA 90012

16
17 (BY MAIL) by placing a true copy of the above documents in a sealed envelope with postage fully prepaid in
the mail at Berkeley, California, addressed to the person(s) above at the above address(es).

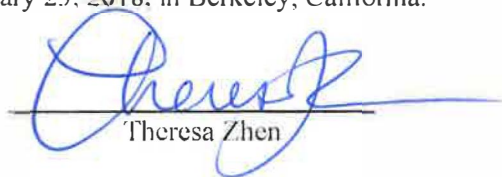
18 (BY PERSONAL SERVICE) by personal delivery to the address listed above.

19 (BY FACSIMILE) by causing such document(s) to be faxed to the person(s) listed above by transmitting said
20 document(s) from faximile machine no. (510) 849-1536 to faximile machine no. -----.

21 (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true
22 and correct.

23 (FEDERAL) I declare that I am employed in the office of a member of the bar of the court at whose direction
24 the service was made.

25 Executed on January 23, 2018, in Berkeley, California.

26 
27 Theresa Zhen
28