

FILED
SUPREME COURT
STATE OF WASHINGTON
10/14/2022 9:05 AM
BY ERIN L. LENNON
CLERK

No. 101173-3

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON
Respondent,

v.

VICTOR ALFONSO PANIAGUA
Petitioner.

BRIEF OF AMICI CURIAE WASHINGTON DEFENDER
ASSOCIATION, CIVIL SURVIVAL PROJECT,
PUBLIC DEFENDER ASSOCIATION IN SUPPORT OF
THE PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY OF AMICI..... 3

III. STATEMENT OF THE CASE 3

IV. ARGUMENT 3

 1. THE CRIME OF BAIL JUMP
 DISPROPORTIONATELY PUNISHES
 MARGINALIZED COMMUNITIES.....3

 2. UNCONSTITUTIONAL PCS CONVICTIONS
 CANNOT BE PREDICATE OFFENSES FOR BAIL
 JUMP CONVICTIONS.....10

V. CONCLUSION..... 15

VI. APPENDICES.....

 A. *State v. Barclay*, Clallam Superior Court Judge's
 Ruling on bail jump being invalid under Blake,
 finding Downey and Gonzales do not govern...2, n.1

 B. American Equity and Justice Group, *Blake* related
 letter, with PCS statistics.....4, n.3

 C. Caseload Forecast Council Chart of Bail Jump
 charges 2010-2020.....4, n.3

TABLE OF AUTHORITIES

Washington State Cases

<i>Ex parte Siebold</i> , 100 U.S. 371, 25 L.Ed 717 (1879)	13
<i>Freedom Found. v. Teamsters Loc. 117 Segregated Fund</i> , 197 Wash. 2d 116, 480 P.3d 1119, 1132 (2021)	14
<i>In re Pers. Restraint of Stacy</i> , No. 56110-7-II, 2021	2
<i>State ex rel. Evans v. Brotherhood of Friends</i> , 41 Wn.2d 133, 247 P.2d 787 (1952)	13
<i>State v. Ammons</i> , 105 Wn.2d 175, 713 P.2d 719, <i>amended</i> , 105 Wn. 2d 175, 718 P.2d 796 (1986).....	10-11, 14
<i>State v. Barnes</i> , 146 Wn.2d 74, 43 P.3d 490, 496 (2002).....	13
<i>State v. Bergstrom</i> , 199 Wn.2d 23, 502 P.3d 837, 840 (2022).....	8-9
<i>State v. Blake</i> , 197 Wn.2d 170, 481 P.3d 521 (2021).....	1, 3, 14
<i>State v. Downing</i> , 122 Wn. App. 185, 93 P.3d 900 (2004).....	2, 11-12

State v. Fredrick, 123 Wn. App. 347, 97 P.3d 47, 49 (2004) 5

State v. French, 21 Wn. App. 2d 891, 508 P. 3d 1036
(2022)..... 13

State v. Gonzales, 103 Wn.2d 564, 693 P. 2d 119
(1985).....2, 12-13

State v. Gonzalez-Lopez, 132 Wn. App. 622, 132 P.3d 1128
(2006)..... 10

State v. Goodman, 150 Wn.2d 774, 83 P.3d 410, 415 (2004) . 11

State v. Gore, 101 Wn.2d 481, 681 P.2d 227 (1984)..... 11-13

State v. Lindberg, No. 54667-1-II, 2021 WL 5578390
(2021)..... 2

State v. Markovich, 19 Wn. App. 2d 157, 492 P.3d 204
(2021)..... 13

State v. O'Brien, 164 Wash. App. 924, 267 P.3d 422, 424
(2011)..... 5

State v. Paniagua, 511 P.3d 113, No. 38274-5-III
(2022).....1-2, 11

State v. Pope, 100 Wn. App. 624, 999 P.2d 51 (2000) 10

State v. Smith, No. 83875-0-I 2

State v. Swindell, 93 Wn.2d 192, 607 P.2d 852 (1980) 11

State v. Willyard, No. 56569-2-II..... 2

State, v. Garoutte, 2022 WL 3137094 2

U.S. Supreme Court Cases

Montgomery v. Louisiana, 577 U.S. 190 136 S.Ct. 718, 193
L.Ed.2d 599 (2016)..... 14

Statutes

RCW 9A.76.170..... 5, n.3

Other Authorities

American Equity and Justice Group.....4, n.3, Appendix B

Aleksandrea E. Johnson, Decriminalizing Non-Appearance in
Washington State: The Problem and Solutions for

Washington's Bail Jumping Statute and Court Nonappearance, 18 Seattle J. for Soc. Just. 433 (2020)	4, n.2, 7, n.7, 9, n.8, 10
Caseload Forecast Council Chart of Bail Jump charges 2010- 2020.....	4, n.3, appendix C
Engrossed Substitute House Bill 2231, Chapter 19, Laws of 2020.....	8
January 14, 2020 hearing of House Public Safety Committee on HB 2231	7, n.8
Senate Bill Report ESHB 2231, 2020	6, n.6
State v. Barclay, Clallam Superior Court Judge's Ruling on bail jump being invalid under Blake, finding Downey and Gonzales do not govern.....	2, n.1, appendix A
The charging manual of the Washington Association of Prosecuting Attorneys.....	4-5, n.5
WA. H.B. No. 2231, 2019.....	7, n.7

Rules

CrR 2.2(a)(1)&(b)(1)..... 14

CrR 3.4(a)-(d)..... 9

GR14.1(a).....2

RAP 13.4(b)(1)-(4)..... passim

Constitutional Provisions

Const. art. I, §6.....4, 14

Const. art. I, § 24 12

Const. art. IV § 6.....14

Const. art. IV § 22 10

U.S. Const. amend. VI.....10

U.S. Const. amend. I.....14

U.S. Const. amend. XIV..... 12, 14

I. INTRODUCTION

This Court should grant Mr. Paniagua's petition for review. Amici write to highlight considerations under RAP 13.4(b)(1)-(4), which favor review. The *Paniagua* decision is: (b)(1) in conflict with Supreme Court analyses and decisions; (b)(2) in conflict with published Court of Appeals analyses and decisions; (b)(3) poses a significant question of law under the constitution; and (b)(4) raises involving matters of substantial public interest needing this Court's direction. *State v. Paniagua*, 511 P.3d 113, No. 38274-5-III (2022). Additional areas include due process and liberty rights; and whether a court had subject matter jurisdiction, or the authority to impose an order to appear at court once PCS was held void from inception. Finally, bail jump sentences often carry longer sentences than the original charge, which could be dismissed, or acquitted.

Following this Court's opinion in *State v. Blake*, 197 Wn. 2d 170, 481 P.3d 521 (2021), holding the statute criminalizing possession of controlled substance (PCS) unconstitutional, many

questions about the validity of charges predicated on PCS have arisen. Appellate Courts and Superior Courts are split on the validity of bail jump convictions predicated on charges of PCS.¹ RAP 13.4(b)(2). The analysis varies based on the court's choice of governing precedent. In *State v. Barclay*, the Clallam County Superior Court Judge held *State v. Downing*, 122 Wn. App. 185, 93 P.3d 900 (2004) and *State v. Gonzales*, 103 Wn.2d 564, 567-68, 693 P. 2d 119 (1985) were not governing precedent and vacated bail jumping based on PCS charges. The Judge withdrew this ruling when the unpublished *Paniagua* decision was released.

¹ See pending appeals: *State v. Paniagua*, 511 P.3d 113, No. 38274-5-III (2022); *State, v. Garoutte*, 2022 WL 3137094 (stayed pending *Paniagua*); *In Pers. Restraint of Stacy*, No. 56110-7-II, 2021 WL 4860741 (2021); *State v. Lindberg*, No. 54667-1-II, 2021 WL 5578390 (2021); *State v. Smith*, No. 83875-0-I; *State v. Willyard*, No. 56569-2-II; GR 14.1(a)(authorizes citation of unpublished opinion as non-binding authority); Appendix A: Superior Court ruling on *Barclay*.

The interests of justice favor finding a bail jump conviction based on a predicate offense of PCS is not valid. Review should be granted pursuant to RAP 13.4.

II. IDENTITY OF AMICI

Amici curiae identities are incorporated by reference as set forth in the Motion for Leave to Join.

III. STATEMENT OF THE CASE

Amici adopt and incorporate by reference the Procedural History and Statement of the Facts set forth by the Petitioner's petition for review.

IV. ARGUMENT

1. The Crime of Bail Jump Disproportionately Punishes Marginalized Communities.

This Court should accept review of this case because it raises topics of substantial public interest; the disproportionate impact on BIPOC communities; and violation of constitutional rights. RAP 13.4(b)(3)-(4). This Court found in *Blake* that BIPOC communities were disproportionately charged with PCS. Accordingly, BIPOC communities are also disproportionately

affected by bail jump convictions predicated on the now void PCS charges.² In 2019, the Washington Legislature modified the bail jump statute. However, many still have convictions under the prior extremely harsh statute.³

Between 2001 and 2019, a person could be charged with bail jumping merely for missing a court date wherein they had knowledge when court was scheduled.⁴ The law included no

² *See also* Aleksandrea E. Johnson, Decriminalizing Non-Appearance in Washington State: The Problem and Solutions for Washington's Bail Jumping Statute and Court Nonappearance, 18 Seattle J. for Soc. Just. 433, 442 (2020); <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjv1-7nxdv6AhVaMUQIHUTdAHYQFnoECAoQAQ&url=https%3A%2F%2Fdigitalcommons.law.seattleu.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1988%26context%3Dsjsj&usg=AOvVaw0tV9arDyIoZABZxFE9TyYt>

³ Appendix B: American Equity and Justice Group, Blake letter with PCS statistics; Appendix C: Caseload Forecast Council bail jump charges 2010-2020

⁴ RCW 9A.76.170 2001 and 2020 read in part “...with knowledge of the requirement of a subsequent personal appearance before any court...”

exceptions for emergencies, lack of transportation due to poverty, employment conflicts, difficulties people with mental illness have tracking court dates or the general disorganization that comes with homelessness. Although an affirmative defense of uncontrollable circumstances existed, it rarely applied. *See e.g. State v. Fredrick*, 123 Wn. App. 347, 352–53, 97 P.3d 47, 49 (2004)(holding sickness insufficient without hospitalization, and calling one’s attorney or attempting to appear is not equivalent to appearing as soon as uncontrollable circumstances cease)(*State v. O'Brien*, 164 Wash. App. 924, 927, 267 P.3d 422, 424 (2011)(refusing to analyze if incarceration is an uncontrollable circumstance because defendant did not appear immediately upon release from prison)). Under the prior statute, courts refused to address the impossibility of appearing immediately. A case must first be noted for appearance, on a weekday specific to that court, and served on the state.

Prosecutors abused their charging discretion and the ease of proving bail jump. The charging manual of the Washington

Association of Prosecuting Attorneys noted the 2001 legislative change, allowing liberal charging of bail jump:

The 2001 Legislature rewrote the bail jumping law. The changes were designed to avoid defendant's arguments that the knowledge part of the "knowingly fail to appear" required proof that the defendant remembered the hearing on the date that the defendant failed to appear, rather than proof that the defendant had been informed at a prior date that a hearing would be held. No longer may a defendant assert a defense of "I forgot." pp. 111-12.⁵

In adopting the less harsh statute now in effect, the Legislature considered that prosecutors charged bail jump when predicate offenses could not be proven. See, e.g., Senate Bill Report ESHB 2231, 2020, p.3⁶ (summarizing testimony that being acquitted of a predicate felony offense did not prohibit a

⁵ WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS, <https://waprosecutors.org/wp-content/uploads/2019/04/2004-CHARGING-MANUAL.pdf> (last visited Oct 5, 2022).

⁶ <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/Senate/2231-S.E%20SBR%20APS%202020.pdf?q=20221005143627>

bail jump conviction, causing the person to leave as a convicted felon merely for missing court).

Legislative history shows bipartisan agreement that prosecutors misused bail jump charges.⁷ Often, prosecutors threatened bail jump charges to coerce pleas to predicate offenses lacking sufficient evidence. For example, a person in Pierce County was charged with possession of a controlled substance with intent to deliver after police found a large amount of what they believed to be methamphetamine in his possession. Despite discovering the substance to be laundry detergent, the prosecutor threatened to charge bail jump for a missed court date unless the person pleaded guilty to a reduced charge of PCS. January 14, 2020 hearing of House Public Safety Committee on HB 2231 at 58:16-58:52.⁸ The bail jump sentence would have been longer

⁷ WA. H.B. No. 2231, 2019; *See also* Johnson, n.2, at 486-87.

⁸ <https://tvw.org/video/house-public-safety-committee-2020011091/?eventID=2020011091>

than for the PCS charge. These forced pleas on insufficient evidence demonstrate prosecutorial ethical concerns, which historically disproportionately impact BIPOC and poor communities. The Legislature understood harm occurs when Washingtonians are charged with bail jump and partially rectified that harm by amending the statute. Engrossed Substitute House Bill 2231, Chapter 19, Laws of 2020.

Also troubling are the justice by geography concerns of prosecutor inconsistencies charging bail jump. Marginalized communities are disproportionately charged with bail jump. People from these groups often miss court due to transportation issues, illness, or risk of employment loss, not from disobedience to the court.⁹ In *State v. Bergstrom*, 199 Wn.2d 23, 26, 502 P.3d 837, 840 (2022), this Court expressed similar concerns about bail

⁹ *Johnson*, n.2, at 441; (citing one multi-city study with state ranges 21-24% failure to appear between 1990-2004, while national rates are stable at 3%).

jump convictions when parties experiencing trauma, poverty, drug addiction and homelessness miss court. Marginalized communities do not have resources, calendaring tools, or skills to track repeated court continuances or appearances in multiple courts. House Bill 2231, *Supra*; *Bergstrom*, at 41-43.

Many bail jump convictions resulted from missing ministerial hearings. This Court recognized this, amending the court rule when an accused must appear in court. CrR 3.4(a)-(d). Now only arraignment, trial, and sentencing require the presence of the accused, absent a prior, individualized finding of good cause. *Id.*

Punishment for missed court dates due to poverty, mental illness, addiction, or lack of trusting the system, does not encourage people to attend court.¹⁰ History demonstrates bail

¹⁰ *Johnson*, n.2, at 484-85.

jump charges do not improve appearance rates. It only disproportionately punishes marginalized populations.¹¹

2. UNCONSTITUTIONAL PCS CONVICTIONS CANNOT BE PREDICATE OFFENSES FOR BAIL JUMPING.

An essential element of bail jump is that a person is held for, charged with, or convicted of a particular crime. *State v. Pope*, 100 Wn. App. 624, 629, 999 P.2d 51, 53 (2000); (*State v. Gonzalez-Lopez*, 132 Wn. App. 622, 625, 132 P.3d 1128, 1129 (2006); (RAP 13.4(b)(2)). Convictions lacking an essential element violate the Sixth Amendment. *State v. Goodman*, 150 Wn.2d 774, 784, 83 P.3d 410, 415 (2004); *citing* Const. art. IV § 22; RAP13.4(b)(1)-(4). This Court held when a predicate conviction is an essential element of a crime, the state must prove the predicate charge is constitutionally valid. *State v. Ammons*, 105 Wn. 2d 175, 187, 713 P.2d 719, *amended*, 105 Wn.2d 175, 718 P.2d 796 (1986) (citing *State v. Swindell*, 93 Wn.2d 192, 607

¹¹ *Id.*, at 462-63.

P.2d 852 (1980); (*State v. Gore*, 101 Wn.2d 481, 681 P.2d 227 (1984); (RAP 13.4(b)(1)). Moreover, a prior judgment determined constitutionally invalid on its face cannot increase an offender score. *Ammons*, 105 Wn.2d at 187-88. If an unconstitutional PCS charge is the “particular crime” essential element for a bail jump conviction, the judgment is facially invalid. *Id.*

The Court of Appeals erroneously relied on *Downing*, deciding a bail jump conviction predicated on PCS, counts in the offender score for sentencing. *Paniagua*, supra. *Downing* held that a bail jump conviction predicated on dismissed charges stands. Here, unlike *Downing*, the predicate PCS charges are unconstitutional, not merely dismissed. The Court of Appeals also mistakenly analogized bail jump to escape, explaining escape convictions stand, even if predicated on an unconstitutional charge. *Paniagua*, supra.

However, this Court has distinguished escape from offenses like unlawful possession of a firearm (UPFA); analyzed

differently because the firearm statute prohibits a constitutional right, and escape does not. *State v. Gonzales*, 103 Wn.2d 564, 567-68, 693 P. 2d 119 (1985); Const. art. I, § 24. Like a firearm offense, bail jump predicated on PCS also involves constitutional rights, raising constitutional due process and liberty rights. U.S. Const. Amend. XIV.

The issue here is also like *Gore*, where this Court held that a constitutionally valid predicate conviction is an essential element of UPFA. A void predicate charge cannot be used to “support guilt or enhance punishment for another offense.” *Gore*, 101 Wn.2d at 484. Similarly, this Court should hold an unconstitutional PCS charge cannot support guilt or punishment for bail jump.

Furthermore, in *Gonzales*, this Court found raising the validity of the predicate offense at trial was improper. However, this Court found the petitioner retained the right to attack the predicate offense in a personal restraint petition. *Gonzales*, 103

Wn.2d at 568. Unlike *Gonzales*, here, the issue is properly raised in a personal restraint petition.

State v. French is also instructive. 21 Wn. App. 2d 891, 508 P. 3d 1036 (2022). Under *French*, the court cannot add a point to a person on community custody for an unconstitutional PCS conviction at the time of a new crime because penalties related to void charges are also void. *Id.*, at 892-93; RAP 13.4(b)(2)-(3).

If a statute is unconstitutional, it is and has always been a legal nullity. *State ex rel. Evans v. Brotherhood of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952). This is true even when a charge is held unconstitutional post-sentencing. *Ammons*; citing *Montgomery v. Louisiana*, 577 U.S. 190, 204, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016); quoting *Ex parte Siebold*, 100 U.S. 371, 376, 25 L.Ed 717 (1879); see also *State v. Markovich*, 19 Wn. App. 2d 157, 172, 492 P.3d 204 (2021).

The Washington Constitution says “[t]he superior court shall have original [subject matter] jurisdiction ... in all criminal cases amounting to a felony....” *State v. Barnes*, 146 Wn.2d 74,

86, 43 P.3d 490, 496 (2002); Const. art. IV § 6. The authority to impose orders and judgments comes from statutes. *Freedom Found. v. Teamsters Loc. 117 Segregated Fund*, 197 Wn.2d 116, 141, 480 P.3d 1119, 1132 (2021) A court rule allows a court to issue a warrant or a summons. CrR 2.2(a)(1)&(b)(1).

However, superior courts that executed orders to appear in PCS cases; or summonses, or arrest warrants for failing to appear; lacked subject matter jurisdiction because since inception PCS was not validly a felony, nor a crime. *Teamsters, at 141; Blake*. Without subject matter jurisdiction, orders to appear in court were invalid. These orders to appear on void charges impede the constitutional rights, to be free from judicial interference, due process and to liberty; to not be sentenced to a prison term based missing court for a void PCS charge. U.S. Const. amend. I and XIV; RAP 13.4(b)(3). Additionally, once a superior court lacked statutory, rule based, or jurisdictional authority to order a person to court, a bail jump conviction predicated on PCS is also void and invalid.

V. CONCLUSION

In summation, it is essential this Court rule on this unprecedented issue. There are substantial public interests due to the lack of precedent, inconsistent applications of various case analyses and the disproportionate impact on BIPOC communities. The inconsistency in court rulings causes justice by geography concerns, also prejudicially impacting BIPOC persons. Moreover, concerns related to constitutional rights, and the lack of subject matter jurisdiction causing the loss of authority to impose the orders to appear related to bail jump based on PCS charges are of substantial public interest.

DATED this 14th day of October, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2022, I served one copy of the foregoing document by email via the Washington Courts E-Portal on the following:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies the number of words contained in this document, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, complies with the provisions of RAP 18.17. The total number of words contained in amici curiae brief is 2,472/2,500, including footnotes, endnotes, and cover sheet.

Dated this 14th day of October, 2021.

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APPENDIX A

JUL 23 2021

NIKKI BOTNEN CLERK

1 **SUPERIOR COURT OF WASHINGTON**
2 **COUNTY OF CLALLAM**

3 STATE OF WASHINGTON,
4 Plaintiff,
5 vs.
6 JESSE BARCLAY,
7 Defendant.

NO. **16-1-00003-6**

MEMORANDUM OPINION

8 On July 20, 2020, this matter came before the court on the defendant's motion to vacate
9 his conviction for Bail Jumping. Present for the State of Washington was Deputy Prosecuting
10 Attorney, Sarah Woolman; present for the defendant was Harry Gasnick.

11 On March 28, 2017, after a stipulated trial, the defendant was found guilty of Unlawful
12 Possession of a Controlled Substance and Bail Jumping. The defendant was sentenced that
13 same day. On June 23, 2021, pursuant to *State v. Blake*, the defendant's conviction for
14 Unlawful Possession of a Controlled Substance was vacated.

15 The defendant argues that because his possession conviction has been vacated – due to
16 the statute being deemed unconstitutional - that the associated bail jumping conviction must
17 also be vacated. The defendant's position is that because the possession statute has been
18 determined void, there was no underlying crime for which the defendant could have jumped
19 bail; i.e. no crime existed for which the court could have found probable cause to support the
20 filing of the original criminal information.

1 The State argues that based upon court decisions in *State v. Gonzales*¹ and *State v.*
2 *Downing*², the defendant's underlying conviction for possession of a controlled substance need
3 not be constitutionally valid to sustain his conviction for bail jumping.

4 The *Gonzales* court held that when prosecuting a charge of first degree escape, the State
5 does not have to prove that the felony conviction giving rise to the escape charge was
6 constitutionally valid. In other words, even if the underlying conviction is later set aside, the
7 conviction for escape would endure. The court concluded that unlike in a prosecution for
8 unlawful possession of a firearm, wherein due to a felony conviction an individual has been
9 prohibited from owning or possessing a firearm – a restriction which forbids the exercise of a
10 constitutionally protected right - the first degree escape statute does not impinge upon any
11 constitutionally protected right. For that reason the State need not prove the constitutional
12 soundness of the predicate offense.

13
14 In *Downing*, the defendant argued that due to multiple filings of UIBC charges in
15 different courts, he was facing possible double jeopardy. The defendant asserted that due to
16 that constitutional implication, in the associated prosecution for jumping bail, the State should
17 have been required to prove that the predicate UIBC convictions were constitutionally valid.
18 The appellate court disagreed stating the issue was actually one of jurisdiction, and that there
19 was no question that the superior court had jurisdiction over the UIBC charges. “Indeed, the
20 fact that the court later dismissed the charges does not mean that it lacked jurisdiction to order
21 *Downing* to appear and answer for those charges, even if his answer could have been that
22 double jeopardy barred further prosecution”. *Downing @ 193*.

23
24 ¹ 103 Wash.2d 564, 693 P.2d 119 (1985)

25 ² 122 Wash.App. 185, 93 P.3d 900 (2004)

1 The situation we are addressing here is distinguishable from both *Gonzales* and
2 *Downing*. In *Gonzales* and *Downing*, the trial courts had jurisdiction over the defendants. Here
3 because the unlawful possession statute has been found void, the trial court had no jurisdiction
4 to release the defendant or admit the defendant to bail. As argued by the defense, the court
5 can't "hold the defendant on a non-crime."

6 The undersigned concludes the superior court had no jurisdiction over the defendant,
7 and therefore no authority to enter conditions of release scheduling a future court appearance.
8 The defendant's conviction for bail jumping must be vacated.

9 DATED this 23rd day of July, 2021.

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11 

12 LAUREN ERICKSON
13 JUDGE

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LAUREN ERICKSON
JUDGE
Clallam County Superior Court
223 E. 4th Street, Suite 8
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APPENDIX B



March 4, 2021

Dear Criminal Justice System stakeholder:

I write due to two important developments in Washington state.

First, the Washington State Supreme Court overturned our state's drug possession statute, RCW 69.50.4013, finding it was unconstitutional. This was *State v. Blake* decision, issued on February 25, 2021. This decision will impact hundreds of thousands of people touched by our justice system, often in harsh and disparate ways. As the Justice Stephen's concurrence to the majority's decision explains:

... "[t]he fact of racial and ethnic disproportionality in our criminal justice system is indisputable." Research Working Grp. Of Task Force on Race and the Criminal Justice Sys. *Preliminary Report on Race and Washington's Criminal Justice System*, 35 Seattle U.L. Rev. 623, 627 (2012) "[S]cholars have shown that the poor, people of color, sexual minorities, and other marginalized populations have borne the brunt of criminal punishment and police intervention." Benjamin Levin, *Mens Rea Reform and Its Discontents*, 109 J. Crime. L. & Criminology 491, 530 (2019).

Second, we are nearing the launch of our nonprofit, the **American Equity and Justice Group ("AEJG")**. AEJG will manage the **Public Equity and Justice System ("PEJS")**, a soon-to-be-public database that contains criminal justice system data and displays that data in a format that is quickly accessible to a wide range of stakeholders – be they interested individuals, lawyers, judges, policymakers, legislators, academics, or others. Simply put, we believe that increasing access to data will help improve the fairness and equity of our criminal justice system.

Currently, the PEJS combines 20 years of Caseload Forecast Council ("CFC") sentencing data, as well as census and population data from Washington State. Future planned updates include integrating more data from different points in the life of a criminal case so we can see the full justice continuum, starting from the first contact with law enforcement all the way through to ultimate resolution of the case. We also look forward to adding and comparing the data from multiple redundant sources, in order corroborate results.

The PEJS will be available to help you quickly and reliably access data so that we can better understand the implications of events such as the *Blake* decision. For instance, using the PEJS, we could easily

determine that, between the years 2000 and 2019, **126,175 prison sentences** were for, in whole or in part, a violation RCW 69.50.4013.¹

We used the PEJS to create the Disproportionality Analysis also sent with this letter. This analysis demonstrates what is recognized by our Supreme Court: racial disproportionality in our criminal justice system is rightfully attributed, in part, to disparities in drug law enforcement. In the vast majority of Washington's 39 counties, the percentage of black or Native American people sentenced under this statute is **greater** than their percentage in Washington's 2019 population. In the vast majority of counties, the percentage of White people sentenced under this statute is **lower** than their percentage in Washington's 2019 population.²

Finally, we filtered the CFC data to make available the cause number, the county of conviction, and other data related to every case involving a prison sentence and a violation of RCW 69.50.4013. That spreadsheet is attached.³

You may have already seen a presentation by my AEJG colleagues and I, as we have begun sharing the PEJS's capabilities with stakeholder groups throughout Washington. If you wish to schedule a presentation or set up a meeting to discuss our work, please reach out via equityjusticegroup@outlook.com. We look forward to connecting. In the meantime, an additional PEJS information sheet is also enclosed.

Very Truly Yours,

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¹ This number is based on CFC data. .

² Because the census data does not differentiate by Latinx, we cannot yet make a comparison of sentencing-to-population percentages for this demographic. Additionally, for this example, 2019 Census and Population data was used. It is possible to make a year-to-year comparison to capture historical changes in population or sentencing rates.

³ This data does not include the names of the individuals sentenced, only the cause number. This is a deliberate decision. Names can be found through court records, but will not be aggregated or disseminated via the PEJS.

Disproportionality Analysis: Representation of Race in Drug Offense Cases compared to
Representation of WA County Population

WA County > Race	% of Drug Cases	% of 2019 Population	# of Drug Cases	2019 Population
Adams	100.0%	100.0%	367	18366
African American	1.4%	1.0%	5	181
Asian	0.8%	0.0%	3	
Native American	1.1%	0.0%	4	
Other	41.7%	0.7%	153	130
White	55.0%	98.3%	202	18055
Asotin	100.0%	100.0%	668	21672
African American	1.5%	0.4%	10	83
Asian	0.1%	0.0%	1	
Native American	2.2%	0.8%	15	169
Other	2.1%	1.5%	14	329
White	94.0%	97.3%	628	21091
Benton	100.0%	100.0%	5548	201794
African American	4.2%	1.7%	232	3377
Asian	0.7%	3.6%	39	7321
Native American	0.3%	1.2%	19	2502
Other	9.1%	3.3%	506	6658
White	85.7%	90.2%	4752	181936
Chelan	100.0%	100.0%	2418	77592
African American	1.4%	0.4%	34	303
Asian	0.2%	0.7%	6	506
Native American	1.3%	1.9%	31	1494
Other	22.6%	2.4%	546	1901
White	74.5%	94.6%	1801	73388
Clallam	100.0%	100.0%	1560	74051
African American	1.2%	0.8%	19	571
Asian	0.3%	2.1%	4	1563
Native American	7.2%	5.7%	113	4245
Other	2.3%	2.3%	36	1733
White	89.0%	89.0%	1388	65939
Clark	100.0%	100.0%	10498	488503
African American	5.3%	2.4%	555	11610
Asian	1.4%	6.0%	144	29281
Native American	0.4%	1.1%	41	5210
Other	1.3%	4.6%	137	22235
White	91.6%	86.0%	9621	420167
Columbia	100.0%	100.0%	68	3975
African American	2.9%	0.4%	2	15
Asian	0.0%	0.0%	0	

Native American	1.5%	1.1%	1	44
Other	8.8%	1.5%	6	59
White	86.8%	97.0%	59	3857
Cowlitz	100.0%	100.0%	7263	107603
African American	2.9%	0.9%	210	976
Asian	0.7%	1.0%	53	1033
Native American	0.6%	1.9%	44	2089
Other	4.7%	4.1%	341	4452
White	91.1%	92.1%	6615	99053
Douglas	100.0%	100.0%	659	41789
African American	0.5%	0.3%	3	139
Asian	0.2%	0.0%	1	
Native American	0.8%	0.9%	5	379
Other	21.9%	2.7%	144	1111
White	76.8%	96.1%	506	40160
Ferry	100.0%	100.0%	85	5966
African American	0.0%	0.0%	0	
Asian	0.0%	0.0%	0	
Native American	5.9%	0.0%	5	
Other	2.4%	0.0%	2	
White	91.8%	100.0%	78	5966
Franklin	100.0%	100.0%	1868	91516
African American	9.9%	2.4%	185	2176
Asian	0.6%	0.0%	11	
Native American	0.5%	0.7%	9	686
Other	29.7%	2.7%	554	2462
White	59.4%	94.2%	1109	86192
Garfield	100.0%	100.0%	68	2162
African American	1.5%	0.0%	1	
Asian	0.0%	0.0%	0	
Native American	4.4%	0.2%	3	5
Other	5.9%	1.0%	4	21
White	88.2%	98.8%	60	2136
Grant	100.0%	100.0%	2250	97964
African American	3.3%	1.0%	74	999
Asian	0.3%	1.3%	6	1308
Native American	1.7%	2.0%	39	1921
Other	24.7%	2.5%	556	2452
White	70.0%	93.2%	1575	91284
Grays Harbor	100.0%	100.0%	2592	71710
African American	1.0%	1.4%	25	979
Asian	0.5%	1.0%	13	737
Native American	5.3%	5.5%	138	3927
Other	4.5%	2.2%	117	1612
White	88.7%	89.9%	2299	64455
Island	100.0%	100.0%	611	81791
African American	6.9%	2.7%	42	2222

Asian	2.0%	6.2%	12	5052
Native American	0.2%	0.0%	1	
Other	2.9%	2.6%	18	2143
White	88.1%	88.5%	538	72374
Jefferson	100.0%	100.0%	478	29556
African American	1.7%	0.0%	8	
Asian	0.6%	1.0%	3	288
Native American	1.7%	1.4%	8	413
Other	0.8%	0.0%	4	
White	95.2%	97.6%	455	28855
King	100.0%	100.0%	13941	2226300
African American	40.2%	7.0%	5606	156287
Asian	5.0%	19.4%	697	431722
Native American	1.5%	1.0%	213	22705
Other	2.7%	5.5%	379	122176
White	50.5%	67.1%	7046	1493410
Kitsap	100.0%	100.0%	5495	270096
African American	8.0%	3.1%	439	8488
Asian	3.6%	6.9%	199	18732
Native American	1.6%	1.7%	88	4626
Other	1.3%	6.7%	72	17994
White	85.5%	81.5%	4697	220256
Kittitas	100.0%	100.0%	978	45301
African American	3.7%	0.6%	36	287
Asian	1.0%	1.2%	10	545
Native American	1.8%	0.0%	18	
Other	6.7%	3.4%	66	1533
White	86.7%	94.8%	848	42936
Klickitat	100.0%	100.0%	379	22249
African American	1.3%	0.4%	5	82
Asian	0.3%	0.3%	1	69
Native American	7.7%	2.2%	29	495
Other	11.3%	3.5%	43	769
White	79.4%	93.6%	301	20834
Lewis	100.0%	100.0%	3687	78100
African American	2.0%	0.8%	73	609
Asian	0.4%	0.6%	16	497
Native American	1.0%	1.0%	38	799
Other	6.4%	3.8%	235	2982
White	90.2%	93.7%	3325	73213
Lincoln	100.0%	100.0%	127	10726
African American	3.1%	0.2%	4	25
Asian	0.8%	0.0%	1	
Native American	7.1%	1.9%	9	199
Other	3.1%	1.3%	4	139
White	85.8%	96.6%	109	10363
Mason	100.0%	100.0%	1836	61835

African American	1.1%	1.0%	21	599
Asian	0.4%	0.0%	7	
Native American	6.5%	2.2%	119	1336
Other	4.7%	4.8%	86	2986
White	87.3%	92.0%	1603	56914
Okanogan	100.0%	100.0%	930	42288
African American	1.0%	0.4%	9	157
Asian	0.3%	0.5%	3	229
Native American	19.8%	12.5%	184	5268
Other	17.0%	3.7%	158	1563
White	61.9%	82.9%	576	35071
Pacific	100.0%	100.0%	769	20587
African American	0.1%	0.5%	1	111
Asian	1.2%	1.3%	9	266
Native American	1.0%	1.5%	8	301
Other	3.1%	2.1%	24	442
White	94.5%	94.6%	727	19467
Pend Oreille	100.0%	100.0%	200	12786
African American	0.0%	0.4%	0	49
Asian	0.0%	0.0%	0	
Native American	2.5%	0.0%	5	
Other	1.0%	1.8%	2	229
White	96.5%	97.8%	193	12508
Pierce	100.0%	100.0%	20200	888296
African American	22.6%	7.7%	4562	68266
Asian	3.4%	9.0%	686	80002
Native American	2.8%	1.6%	558	14494
Other	2.3%	7.8%	466	69248
White	69.0%	73.9%	13928	656286
San Juan	100.0%	100.0%	69	8132
African American	0.0%	0.0%	0	
Asian	0.0%	0.0%	0	
Native American	0.0%	0.0%	0	
Other	5.8%	3.0%	4	241
White	94.2%	97.0%	65	7891
Skagit	100.0%	100.0%	2318	127284
African American	2.8%	1.0%	65	1286
Asian	0.9%	1.2%	20	1555
Native American	3.1%	2.8%	72	3616
Other	14.3%	3.4%	332	4372
White	78.9%	91.5%	1829	116455
Skamania	100.0%	100.0%	247	11405
African American	2.0%	0.0%	5	
Asian	0.0%	0.0%	0	
Native American	3.2%	0.0%	8	
Other	4.9%	1.8%	12	206
White	89.9%	98.2%	222	11199

Snohomish	100.0%	100.0%	9065	818700
African American	8.5%	3.2%	771	26440
Asian	2.1%	12.1%	189	99396
Native American	1.6%	1.6%	149	12743
Other	1.4%	5.2%	126	42289
White	86.4%	77.9%	7830	637832
Spokane	100.0%	100.0%	11366	515246
African American	9.0%	2.0%	1023	10223
Asian	0.6%	3.2%	73	16615
Native American	4.7%	1.7%	539	8924
Other	0.8%	4.4%	94	22887
White	84.8%	88.6%	9637	456597
Stevens	100.0%	100.0%	751	43136
African American	1.1%	0.0%	8	
Asian	0.0%	0.0%	0	
Native American	2.9%	6.1%	22	2610
Other	0.4%	0.0%	3	
White	95.6%	93.9%	718	40526
Thurston	100.0%	100.0%	6471	285799
African American	5.3%	3.2%	343	9226
Asian	2.0%	7.4%	132	21248
Native American	2.5%	1.6%	164	4546
Other	3.0%	6.1%	191	17487
White	87.2%	81.6%	5641	233292
Wahkiakum	100.0%	100.0%	90	1954
African American	0.0%	0.0%	0	
Asian	0.0%	0.0%	0	
Native American	1.1%	0.0%	1	
Other	3.3%	0.0%	3	
White	95.6%	100.0%	86	1954
Walla Walla	100.0%	100.0%	1183	58796
African American	3.4%	1.8%	40	1052
Asian	0.3%	0.0%	3	
Native American	0.5%	0.0%	6	
Other	7.2%	1.5%	85	866
White	88.7%	96.7%	1049	56878
Whatcom	100.0%	100.0%	3877	225299
African American	5.8%	1.2%	223	2767
Asian	1.3%	4.8%	50	10842
Native American	9.9%	3.2%	383	7281
Other	6.7%	4.3%	259	9605
White	76.4%	86.5%	2962	194804
Whitman	100.0%	100.0%	392	46723
African American	4.3%	1.2%	17	544
Asian	1.0%	5.7%	4	2645
Native American	3.6%	0.4%	14	210
Other	4.8%	4.9%	19	2267

White	86.2%	87.9%	338	41057
Yakima	100.0%	100.0%	4801	255957
African American	4.6%	1.5%	222	3875
Asian	0.2%	1.9%	9	4906
Native American	4.9%	5.9%	233	15050
Other	36.3%	3.4%	1743	8701
White	54.0%	87.3%	2594	223425

APPENDIX C

Count of Cases County	FY												Total
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020		
9A.76.170(2)(b)	5	4	10	5	3	1	2	3	3	4	2	42	
Adams			1									1	
Clallam										1		1	
Clark	1			3		1	1	1	1	2		10	
Grant									1			1	
Island									1			1	
King			1									1	
Kitsap			1									1	
Klickitat								1				1	
Okanogan			2									2	
Pierce	1		2				1				1	5	
Skagit		1										1	
Spokane	1	1	3	2	1					1		9	
Stevens											1	1	
Thurston		2										2	
Whatcom	2				1							3	
Yakima					1			1				2	
9A.76.170(2)(c)	276	283	299	274	315	295	321	428	405	350	305	3,551	
Adams	7	6	4		2				2	1	2	24	
Asotin		3	2	3	1	3	6	3	5	3	3	32	
Benton	11	12	19	17	7	17	14	16	16	12	9	150	
Chelan	11	8	4	10	12	15	16	18	16	10	8	128	
Clallam	8	9	8	11	18	13	6	6	17	15	13	124	
Clark	47	61	47	30	36	42	35	36	37	37	19	427	
Columbia											1	1	
Cowlitz	14	21	23	8	17	7	8	30	19	16	19	182	
Douglas	1	2	2	11	5	2	2	1	6	1		33	
Ferry	1	1	1			1	1	1	3			9	
Franklin		1		2	3	1	2	3	2	2	1	17	
Garfield		1			1							2	
Grant	6	5	2	2	6	10	4	3	8	7	7	60	
Grays Harbor		2	4	3	5	1	1	6	2	3	1	28	
Island	9	10	6	1	5	2	4	5		2		44	
Jefferson	3	3	5	4	1			1	2	1	3	23	
King	6	9	15	11	14	13	12	20	7	8	9	124	
Kitsap	2	11	10	14	13	9	7	19	21	15	13	134	
Kittitas				1				2	4	7	2	16	
Klickitat	2	2				4	6	5	5			24	
Lewis	12	7	22	20	16	27	22	20	26	35	40	247	
Lincoln					2		1		1			4	
Mason	3	1	2	3	14	5	16	7	7	3	1	62	
Okanogan		3	2	3	1			1	2	1	2	15	
Pacific		2		3	3	3	4	16	19	9	11	70	
Pend Oreille							1	1				2	
Pierce	48	18	19	20	21	16	36	56	33	27	20	314	

Count of Cases County	FY											Total
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	
San Juan	2		1		1	1						5
Skagit	6	10	13	9	12	8	10	11	18	20	23	140
Skamania				3	2	2		1		1	1	10
Snohomish	14	13	13	12	17	18	6	7	11	13	6	130
Spokane	4	5	3	4	4	11	11	9	7	5	9	72
Stevens	3	3	5	5	9	9	7	16	12	14	12	95
Thurston	14	12	16	17	24	19	40	31	47	44	34	298
Wahkiakum					1			2				3
Walla Walla			1	1		1	3	5	2			13
Whatcom	29	36	42	41	25	21	35	62	36	24	20	371
Yakima	13	6	8	5	17	14	5	8	12	14	16	118
Total	281	287	309	279	318	296	323	431	408	354	307	3,593

WASHINGTON DEFENDER ASSOCIATION

October 14, 2022 - 9:05 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: State of Washington v. Victor Alfonso Paniagua (382745)

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