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**FOR IMMEDIATE RELEASE**  
**Approved by JAK**  
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### **Re: California Supreme Court Issues Ruling Restricting Cash Bail**

Kern County District Attorney Cynthia Zimmer announced that the California Supreme Court has issued a ruling that effects the setting of any bail and pretrial detention that will affect all criminal cases. The opinion, issued in California Supreme Court Case S247278 entitled *In re Kenneth Humphrey*, requires courts to release criminal defendants with no bail obligations unless there is “clear and convincing evidence” that the defendant is a public safety or flight risk. Even if there is some evidence of public safety or flight risk, the court must “consider whether nonfinancial conditions of release may reasonably protect the public and the victim or reasonably assure the arrestee’s presence at trial.” If, after all of that, the court feels monetary bail reasonably necessary to achieve the goals of public safety and attendance at future court proceedings, in addition to other factors, the court must specifically consider the arrestee’s ability to pay, and set bail at a level the defendant can afford to pay.

The Court’s opinion comes less than 7 months after California voters passed a referendum that specifically repudiated the Legislature’s attempt to impose similar restrictions on the bail process that has largely remained the same in California for more than a century. Interestingly, the *Humphrey* opinion derived from a case where no party actually appealed the case to the California Supreme Court.

The Supreme Court’s opinion requires bail, if required at all, to be set individually for each defendant and only after taking into consideration what the defendant can afford to pay. The California Supreme Court opinion acknowledges that it is the first high court in the nation to rule that the cash bail as it has always operated is inherently unconstitutional if judges don’t adjust bail amounts to ensure that defendants can afford to post bail on every case and charge for which they have been arrested.

Kern County District Attorney Cynthia Zimmer spoke of the Court’s ruling, stating “In November of 2020, California voters specifically rejected a proposed state law that would have had a very similar result as what the California Supreme Court mandates today. Apparently unsatisfied with the people’s choice to continue with a bail policy that has been in place for more than a century, the California Supreme Court today decided to create its own law – a role specifically delegated to the Legislature. Not only did the Supreme Court issue an opinion in a case that no one appealed to them, they did so for the specific

purpose of mandating a policy that voters had explicitly rejected in an election less than a year prior. The bias and lengths to which actors within the State government will go to achieve policy objectives designed to benefit criminals seem to be limitless.”

If permitted to stand, the ruling of the California Supreme Court would greatly affect criminal cases, establishing a clear preference for persons arrested for crimes to be released prior to trial, either without requiring any monetary bail at all, or if bail is required, adjusting it as low as necessary to make sure that the person arrested has the ability to post the bail and ensure their release prior to trial. Under the current procedures, bail is generally established by review of standardized bail schedules that set the bail amount based upon the type of crime committed, and specific factors relating to the defendant’s prior criminal history. Under the current system, the more severe the charged crime, and the more substantial a criminal history is, the higher the bail would be set.