

**IN THE SUPREME COURT OF THE
STATE OF OREGON**

THE STATE OF OREGON,) Lane County Circuit Court
Plaintiff-Adverse Party,) No. 24CR59872
vs.)
COLUMBUS DINKEY GENE) MEMORANDUM OF LAW IN
HAYLES,) SUPPORT OF PETITION FOR
Defendant-Relator) WRIT OF MANDAMUS OR
) HABEAS CORPUS
)
) **MANDAMUS PROCEEDING**

Caitlin Plummer, OSB No. 200858
cplummer@lanepds.org
Public Defender Services of Lane
County
180 E. 11th. Ave.
Eugene, OR 97401
(541) 484-2611 ext. 145

Attorney for Defendant-Relator

Dan Rayfield, OSB No. 064790
attorneygeneral@doj.state.or.us
Oregon Department of Justice
1162 State Street NE
Salem, OR 97301
(503) 378-6002

Attorney for Plaintiff-Adverse Party

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2 INTRODUCTION

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4 Relator Columbus Dinkey Gene Hayles is incarcerated in a Lane County jail
5 cell without bail in violation of his constitutional right to bail. The trial court adopted
6 an erroneous statutory interpretation of pretrial release procedures that directly
7 conflicts with Article I, sections 14 and 43, of the Oregon Constitution. This case
8 presents this Court with the opportunity to clarify Oregon law governing pretrial
9 release. Relator respectfully petitions this Court to enter an emergency writ of
10 mandamus or, in the alternative, a writ of habeas corpus ordering the Circuit Court to
11 immediately release him on bail, as required by the Oregon Constitution. Further, the
12 issues raised by this Petition affect many thousands of current and future detainees
13 across the state. Even after he is released, relator requests that this Court issue a
14 precedential opinion that will guide important release decisions and safeguard the
15 right to pretrial liberty.

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FACTS

18

19 On October 31, 2024, Hayles was arrested and charged with driving with a
20 suspended license in case 24CR59872. ER-1. Hayles is unhoused and needed the car
21 for shelter. During arraignment on December 2, 2024, the Circuit Court for Lane
22 County informed Hayles that Lane County Pretrial Release Services “determined that
23 you can be released after court here today as long as you agree to those conditions of
24 release.” ER-6. The court then entered a supervised release agreement, releasing
25
26

1 || Hayles on the conditions recommended by pretrial services, and subject to their
2 supervision. ER-6-7.

3 On December 29, 2024, Hayles was again arrested and charged with driving
4 with a suspended license in a second case, 24CR69215. ER-15. On December 30,
5 2024, a release officer with Lane County Pretrial Services filed an “Affidavit for
6 Order Revoking Release Agreement,” alleging that Hayles had violated the release
7 agreement in 24CR59872 due to the new charge. ER-16.

8 On December 31, 2024, the circuit court held a new hearing in the first case,
9 24CR59872. ER-17, 25. The court announced: “[Hayles is] here after having failed to
10 comply with Pretrial Services, with new charges pending in 24CR69215.” ER-25. The
11 court then ordered that Hayles “be held pursuant to ORS 135.240(4)(f)(A).” ER-25.
12 Defense counsel objected to the detention order by referencing an objection made on
13 the record earlier in the proceedings: “Your Honor, I would object to him being held.

14 * * * Holding [Defendant] without the possibility of release in this case violates
15 Article I, section 14 and 43 of the Oregon Constitution, as well as the 14th * * *
16 Amendment to the United States Constitution.” ER-22, 25. The court responded:
17 “And that objection is noted and overruled.” ER-25. The court then entered an order
18 revoking Hayles’s pretrial release and remanding him without bail to the custody of
19 the Lane County Sheriff. ER-44. A pretrial conference is currently set for January 27,
20 2025, and a jury trial is set for February 19, 2025. Relator has been detained without
21 bail since December 29, 2024.

LEGAL AUTHORITIES AND ARGUMENT

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 US 739, 755, 107 S Ct 2095, 95 L Ed 2d 697 (1987). The Oregon Constitution embraces this principle and guarantees a right to pretrial release on bail with limited exceptions. Or Const, Art I, §§ 14, 43(1)(b). Unless the defendant is accused of murder, treason, or a violent felony, the Oregon Constitution “*requires* courts to set bail.” *State v. Sutherland*, 329 Or 359, 364, 987 P2d 501, 503 (1999).

Despite the clear right to bail, several judges of the Circuit Court of Lane County have adopted an interpretation of ORS 135.240(4)(f)(A) that permits pretrial detention any time a defendant is arrested while released pretrial in a prior case. Under this interpretation, several judges regularly order the pretrial detention of defendants who are not charged with an offense that qualifies for pretrial detention under the Oregon Constitution. Even though relator does not stand accused of murder, treason, or a violent felony, the Circuit Court ordered him detained without bail based on its erroneous understanding of the law. The Circuit Court's order is unsupported by the statute and violates the fundamental protections of the Oregon Constitution.

I. HISTORICAL, CONSTITUTIONAL, AND STATUTORY BACKGROUND

The Oregon Constitution has protected a right to bail for all people not charged with murder or treason since the founding of the state. *See* Or Const, Art I, § 14 (“Offences [sic], except murder, and treason, shall be bailable by sufficient sureties.

1 Murder or treason, shall not be bailable, when the proof is evident, or the presumption
2 strong.”). As a matter of history and law, the term “bail” means, and has always meant,
3 *release* before trial. *See, e.g., Armatta v. Kitzhaber*, 327 Or 250, 280, 959 P2d 49
4 (1998) (describing Article I, section 14 of the Oregon Constitution as entitling
5 arrestees to “release”); Timothy R. Schnacke, *A Brief History of Bail*, Judges’ J 4, 6
6 (2018) (demonstrating that, throughout history, “bail” has “meant release and the bail
7 process was not allowed to be used to intentionally detain”).
8

9 In 1973, the Oregon legislature adopted, and later amended, a comprehensive
10 statutory system of pretrial release. *See* ORS 135.230–135.290. Under this system, an
11 arrested person is *presumed eligible for release on personal recognizance* without any
12 restrictions on their liberty. ORS 135.245(3). The magistrate may impose conditional
13 release “[u]pon a finding that release of the person on personal recognizance is
14 unwarranted.” ORS 135.245(4). Then, “[o]nly after determining that conditional
15 release is unwarranted,” the law allows the magistrate “to consider security release.”
16 *Id.* The law defines “conditional release” as “a nonsecurity release which imposes
17 regulations on the activities and associations of the defendant.” ORS 135.230(2).
18 Typical regulations may require defendants to surrender their passport, restrict their
19 movements to the state or even their home, check in regularly with the court, or use
20 electronic monitoring to track their whereabouts. The law defines “security release”
21 as “a release conditioned on a promise to appear in court at all appropriate times which
22 is secured by cash, stocks, bonds or real property.” ORS 135.230(12).
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1 In 1994, Oregon voters adopted Measure 11. *Sutherland*, 329 Or at 362 n 2.
2 Subsection (4) of Measure 11 “require[d] a trial court to deny release to a defendant
3 accused of [certain offenses], unless the court determine[d] by clear and convincing
4 evidence that the defendant will not commit any new crime while on release.” *Id.* at
5 363. This Court held that Subsection (4) was inconsistent with the right to bail
6 articulated in Article I, section 14 of the Oregon Constitution. *Id.* at 364–65. This was
7 an unsurprising conclusion given the clear language of Article I, section 14:
8 “[o]ffences [sic], except murder, and treason, shall be bailable by sufficient sureties.”
9 Subsection (4), this Court explained, “requires a court to *deny* release and, it follows,
10 to deny bail, if the court concludes that the defendant might commit crimes while on
11 release.” *Id.* (emphasis in original). However, “Article I, section 14, grants most
12 defendants accused of crimes a constitutional right to bail.” *Id.* (citing *Priest v.*
13 *Pearce*, 314 Or 411, 417, 840 P2d 65 (1992)).

14 In 1999, the voters of Oregon amended the Oregon Constitution to add Article
15 I, section 43.1. This provision expanded the narrow categories of individuals eligible
16

17 1 In 1996, the voters of Oregon approved a “crime victims’ rights” constitutional
18 amendment that, among other things, “chang[ed] the circumstances in which certain
19 criminal defendants otherwise would be entitled to release under Article I, section 14
20 [of the Oregon Constitution].” *Armatta v. Kitzhaber*, 327 Or 250, 280, 959 P2d 49,
21 65 (1998). That amendment, which was voted on as Measure 40 in the 1996 election,
22 would have mandated the jailing of any arrestee charged with certain crimes “unless
23 a court determines by clear and convincing evidence that the person will not commit
24 new criminal offenses while on release[.]” *Id.* at 280 n 12. This Court invalidated
25 Measure 40 on the grounds that its adoption violated the separate-vote requirement of
26 the Oregon Constitution. *See id.* at 252.

1 for detention in jail prior to trial. Under the plain terms of this provision, the State
2 may now detain a person prior to trial if the person is charged with a “violent felony”
3 and the State proves by clear and convincing evidence that the person poses a danger
4 to the public.

5 The framework for pretrial release in Oregon shows the state’s longstanding
6 commitment to release presumptively innocent people, not detain them, prior to trial.
7 Yet today, some trial courts evade these constitutional and statutory requirements,
8 routinely detaining people accused of non-violent crimes who have a right to bail and
9 should be presumed eligible for personal recognizance release.

10

12 II. ARGUMENT

13 The Oregon Constitution, at Article I, sections 14 and 43, permits pretrial
14 detention in only specified circumstances. An Oregon statute does not, and cannot,
15 abridge the longstanding constitutional right to release prior to criminal trial or expand
16 the carefully limited categories in which pretrial detention is permitted. By imposing
17 detention outside of the constitutional parameters, the trial court violated both the
18 letter of the law and the principle of pretrial liberty that undergirds Oregon’s system
19 of criminal justice.

20

22 A. *The Oregon Constitution Guarantees a Right to Pretrial Release.*

23 Since Oregon’s constitution was adopted, individuals charged with a crime
24 have enjoyed a constitutional right to release on bail except in specific circumstances
25 where the State makes a particular showing, including probable cause and future

1 dangerousness. This right is guaranteed by Article I, section 14, which provides,
2 “Offences [*sic*], except murder, and treason, shall be bailable by sufficient sureties.
3 Murder or treason, shall not be bailable, when the proof is evident, or the presumption
4 strong.” Or Const, Art I, § 14; *see also Priest*, 314 Or at 417 (explaining that Article
5 1, section 14 sets forth “[t]he concept of a right to bail”). Article I, section 43(1)(b)
6 goes on to expand the circumstances in which defendants can be denied pretrial
7 release:

8 “Murder, aggravated murder and treason shall not be bailable
9 when the proof is evident or the presumption strong that the person is
10 guilty. Other violent felonies shall not be bailable when a court has
11 determined there is probable cause to believe the criminal defendant
12 committed the crime, and the court finds, by clear and convincing
13 evidence, that there is danger of physical injury or sexual victimization
14 to the victim or members of the public by the criminal defendant while
on release.”

15 Or Const, Art I, § 43. These provisions, taken together, permit pretrial detention only
16 if a person is charged with treason, murder, aggravated murder, or violent felonies.
17

18 In the present case, relator is charged with driving while his driving privileges
19 were suspended. Driving with a suspended license is not treason, murder, aggravated
20 murder, or a violent felony. Neither the state nor the trial court suggested that the
21 allegations against relator fall within these categories. Because relator is not charged
22 with a qualifying offense under Article I, sections 14 and 43, he has a constitutional
23 right to release on bail prior to his trial. The trial court erred by ordering his prolonged
24 detention without bail. This violation of the Oregon Constitution requires reversal on
25
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1 an emergency basis.

2 B. *ORS 135.240(4)(f)(A) Does Not Authorize Pretrial Detention Unless a Defendant*
3 *is Charged with a Violent Felony.*

4 The trial court imposed a no-bail order of detention based on an erroneous
5 reading of ORS 135.240(4)(f)(A). This was wrong for two reasons. First, the statute
6 itself does not even purport to permit relator's detention. Second, no application of a
7 statute can infringe a fundamental constitutional right. Read properly, the statute
8 tracks the release standards of the Oregon Constitution and lays out the procedures
9 for pretrial detention when a presumptively innocent individual is charged with a
10 *violent felony*. ORS 135.240 does not, and cannot, authorize Oregon courts to issue
11 detention orders outside of the limits set by the Oregon Constitution. Because this
12 case does not involve a charge of treason, murder, or a violent felony, ORS
13 135.240(4)(f)(A) is inapplicable.

14 1. *The Language of ORS 135.240 Unambiguously Demonstrates that*
15 *Paragraph (4)(f) Applies to Only Violent Felonies.*

16 The text, context, and structure of ORS 135.240(4)(f)(A) establishes that the
17 law applies to only violent felonies. ORS 135.240 states, in relevant part:

18 “(4)(a) When the defendant is charged with a violent felony, release shall
19 be denied if the court finds:

20 (A) Except when the defendant is charged by indictment, that there
21 is probable cause to believe that the defendant committed the
22 crime; and
23 (B) By clear and convincing evidence, that there is a danger of
24 physical injury or sexual victimization to the victim or members
25 of the public by the defendant while on release.

* * * *

(f) When a defendant who has been released violates a condition of release and the violation:

(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody and shall order the defendant held pending trial without release.

* * * *

(5) For purposes of this section, ‘violent felony’ means a felony offense in which there was an actual or threatened serious physical injury to the victim, or a felony sexual offense.”

ORS 135.240(4) - (5). Under this statutory scheme, “[a] defendant is eligible for pretrial release unless (1) the defendant is charged with murder, treason, or a violent felony; and (2) a court makes certain findings.” *Benjamin v. O’Donnell*, 372 Or 764, 769, 557 P3d 1089, 1092 (2024). Paragraph (4)(f) unambiguously codifies the bail procedure for *violent felonies* and works in harmony with Article I, sections 14 and 43. “Oregon’s statutory scheme for pretrial release—ORS 135.230 through ORS 135.290—was created in furtherance of those two constitutional provisions.” *State v. Slight*, 301 Or App 237, 246, 456 P3d 366, 371–72 (2019).

When interpreting a statute, “text should not be read in isolation but must be considered in context.” *Stevens v. Czerniak*, 336 Or 392, 401, 84 P3d 140, 144 (2004). Oregon courts “do not look at one subsection of a statute in a vacuum;” instead, courts must “construe each part together with the other parts in an attempt to produce a harmonious whole.” *Lane County v. Land Conservation & Development Commission*, 325 Or 569, 578, 942 P2d 278, 283 (1997).

1 Here, the structure and context confirm that the law applies to only violent
2 felonies. The statute states that when a “defendant is charged with a violent felony,”
3 the court shall deny release if the court finds “that there is probable cause to believe
4 that the defendant committed the crime” and that there is “clear and convincing
5 evidence” that the defendant poses a danger while on release. ORS 135.240(4)(a). If
6 these standards are not met, “the court shall set security or other appropriate
7 conditions of release.” ORS 135.240(4)(e). If a defendant who was released under
8 *these* procedures “violates a condition of release” by committing “a new criminal
9 offense,” the court “shall order the defendant held pending trial without release.” ORS
10 135.240(4)(f)(A). Even then, before the court may deny bail, the Oregon Constitution
11 requires the court to “determine[] there is probable cause to believe the criminal
12 defendant committed the crime” in addition to “clear and convincing evidence” that
13 the defendant would pose a danger if released. Or Const, Art I, § 43(1)(b). The
14 statutory procedure tracks Article I, section 43, which contemplates pretrial detention
15 for defendants charged with “violent felonies.” The statute contains no indication that
16 it attempts to work a silent constitutional amendment by applying when someone is
17 not charged with a violent felony.

22 2. *The Legislative History Confirms that ORS 135.240 Codifies the*
23 *Constitutional Right to Bail.*

24 The legislative history confirms the statute’s plain meaning. ORS 135.240 went
25 into effect in 1973. At that time, the statute mirrored the language of Article I, section
26

1 14, providing that “a defendant shall be released,” except that “[w]hen the defendant
2 is charged with murder or treason, release shall be denied when the proof is evident
3 or the presumption strong that the person is guilty.” ORS 135.240(1) - (2) (1973). In
4 1997, ORS 135.240 was amended by the legislature to provide that, when a defendant
5 was charged with one of 19 specified crimes, “[r]elease shall be denied unless the
6 court determines by clear and convincing evidence that the defendant will not commit
7 new criminal offenses on release.” ORS 135.240(4)(a) (1997).

8
9 Following the adoption of Article 1, section 43, which addresses pretrial
10 detention for violent felonies, the Oregon legislature passed HB 2138 in 2007 and
11 again amended ORS 135.240. The legislative history demonstrates that the legislation
12 was intended to resolve a conflict between the statutory release scheme and the
13 Oregon Constitution. As stated by then-Assistant Attorney General Timothy
14 Sylwester, the “sole purpose” of the legislation was “to conform the current statutes
15 that govern pretrial release in the case of a violent felony, ORS 135.240, to the
16 requirements of the victims’ rights provision that was enacted by the voters in 1999
17 as Article I, section 43, of the Oregon Constitution.” Testimony, House Judiciary
18 Committee, HB 2138, Mar 28, 2007, Ex C (statement of Senior Assistant Attorney
19 General Timothy A. Sylwester). The bill “simply mends ORS 135.240(4) to conform
20 prescribed pretrial-release procedures to the substantive standard that is mandated by
21 Article I, section 43(l)(b).” *Id.*

22 Similarly, the Staff Measure Summary explained that “HB 2138 attempts to
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1 || reconcile the statute with the Constitution.” Oregon Bill Summary, 2007 Reg Sess
2 || HB 2138. The summary noted that the “provisions appear to conflict with the Oregon
3 || Constitution.” *Id.* To resolve this conflict, the statute was amended to “adopt[] the
4 || constitutional phrase ‘violent felony.’” *Id.* Thus, under the current statute, a court can
5 || deny pretrial release only if it concludes “there is probable cause to believe that the
6 || defendant committed” a violent felony and “there is clear and convincing evidence
7 || that, if released, the defendant poses a danger.” *Id.*

8
9 3. *The Trial Court’s Interpretation of ORS 135.240 Would Render the*
10 *Statute Unconstitutional.*

11 The Oregon Constitution guarantees a right to bail. “[T]he text of Article I,
12 section 14, *requires* courts to set bail for defendants accused of crimes other than
13 murder or treason.” *Sutherland*, 329 Or at 364. It is axiomatic “that the legislature has
14 no power to abrogate or deny a constitutional right.” *Tomasek v. State*, 196 Or 120,
15 143, 248 P2d 703, 714 (1952); *see also State v. Stoneman*, 323 Or 536, 542, 920 P2d
16 535, 539 (1996). “[A] state legislative interest, no matter how important, cannot trump
17 a state constitutional command.”). Because it would allow for pretrial detention
18 outside of offenses listed in the Oregon Constitution, such as, in the present case,
19 driving with a suspended license, the interpretation of ORS 135.240(4)(f)(a) advanced
20 by the Circuit Court would render the statute itself unconstitutional. But “when one
21 plausible construction of a statute is constitutional and another plausible construction
22 of a statute is unconstitutional, courts will assume that the legislature intended the
23 24 25 26

1 constitutional meaning.” *State v. Kitzman*, 323 Or 589, 602, 920 P2d 134, 141 (1996);
2 *see also Ex parte Anderson*, 191 Or 409, 419, 229 P2d 633, 637–38 (1951), *reh’g den*,
3 191 Or 409, 230 P2d 770 (1951) (“There is a well-recognized rule that the court
4 should, whenever possible, so construe legislative enactments as to avoid any
5 construction which would render an act unconstitutional.”). The only way to read
6 ORS 135.240(4)(f)(a) in harmony with the Oregon Constitution is to limit its
7 operation to defendants charged with violent felonies.

8
9 The trial court’s conclusion, that ORS 135.240 authorizes pretrial detention any
10 time a person is charged with a new crime during a release agreement, regardless of
11 the underlying offenses, is without merit. Oregon legislators passed ORS 135.240 to
12 make the substantive and procedural requirements for detention consistent with
13 Article I, section 43 of the Oregon Constitution. ORS 135.240 reiterates that pretrial
14 detention is permissible only when a defendant is charged with a violent felony and
15 only when the court reaches specific findings.

16
17 Relator is not charged with murder, treason, or a violent felony. The trial court
18 never considered alternatives to detention, or even whether relator’s release would
19 pose a risk of flight or danger to the public. Instead, the trial court automatically
20 ordered detention without bail based on an allegation of a new offense. Thus, the trial
21 court’s order detaining him pretrial is plainly illegal.

22
23
24 C. *This Case Presents an Ideal Opportunity to Decide an Important Issue of Law.*

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26 This case presents an ideal opportunity for this Court to address the significant

1 questions presented for two reasons. First, the record in this case is straightforward.
2 Second, this case will remain justiciable even if relator is tried or released before this
3 Court is able to rule on this Petition.

4 The relevant facts of this case are simple. The trial court ordered relator
5 detained without bail even though he is not charged with treason, murder, or a violent
6 felony. Relator argued to the trial court that a detention order would violate the
7 Oregon Constitution. The trial court overruled the objection, erroneously citing a
8 clearly inapplicable statute.
9

10 Even if this case proceeds to judgment in the trial court before this Court has
11 ruled on this Petition, this Court may retain jurisdiction to hear the matter because it
12 is “capable of repetition,” yet “likely to evade judicial review in the future.” ORS
13 14.175. “[J]udicial determination of such cases is consistent with centuries of
14 historical practice and the sound prudential exercise of judicial power.” *Couey v.*
15 *Atkins*, 357 Or 460, 521, 355 P3d 866, 901 (2015).

16 Pretrial detention is a paradigmatic example of an issue that is capable of
17 repetition yet evades review. The unpredictability of such cases alone is sufficient to
18 meet this standard. “The length of pretrial custody cannot be ascertained at the outset,
19 and it may be ended at any time by release on recognizance, dismissal of the charges,
20 or a guilty plea, as well as by acquittal or conviction after trial.” *Gerstein v. Pugh*, 420
21 US 103, 111 n 11, 95 S Ct 854, 861, 43 L Ed 2d 54 (1975). Cases challenging pretrial
22 detention are unlikely to remain pending in the trial courts long enough for this Court
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1 to review them. The pressure to plead guilty increases when a defendant is detained,
2 making it unlikely that cases of pretrial detention remain live for the extended period
3 of time necessary to ensure this Court's review. Because the constitutional issues in
4 this case will affect many thousands of future detainees, and because the issues would
5 otherwise almost certainly evade this Court's review because of the temporary nature
6 of pretrial detention, this case will remain justiciable even if it becomes technically
7 moot.

8
9 Relator requests that this Court issue a precedential opinion that will guide
10 important release decisions and safeguard the right to pretrial liberty. This Petition
11 presents an issue that "arises frequently and concerns a matter important to the courts,
12 the state, defendants, and others involved in criminal cases." *Benjamin*, 372 Or at 768.
13
14 Therefore, even after relator is released, a published opinion is direly needed.

15
16
17 III.CONCLUSION

18 Columbus Hayles is sleeping in a jail cell tonight under a no-bail detention
19 order that violates his constitutional rights. He asks this Court to enter an emergency
20 writ of mandamus or, in the alternative, a writ of habeas corpus ordering the Circuit
21 Court to immediately release him on bail, as required by the Oregon constitution.

22
23 Dated: January 24, 2025

24
25
26 /s/Caitlin Plummer
Caitlin Plummer
Public Defender Services of Lane County
Counsel for Defendant-Relator

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Petition For Writ of Mandamus or Habeas Corpus; Memorandum Supporting Petition; and Excerpts of Record* on the following persons on this date by US mail, first-class, postage paid:

The Honorable Debra K. Vogt
Lane County Courthouse
Lane County Circuit Court
125 E 8th Ave
Eugene, OR 97401

Attorney General of the State of Oregon
Office of the Solicitor General
400 Justice Building
1162 Court Street NE
Salem, OR 97301-4096

Ryan W. Leal
Deputy District Attorney
Lane County District Attorney's Office
125 E 8th Ave #400
Eugene, OR 9740

I further certify that I filed it on the Administrator by eFiling.

January 24, 2025.

/s/ *Caitlin Plummer*
Caitlin Plummer
Public Defender Services of Lane County
Counsel for Defendant-Relator