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In the Supreme Court of California

The People of the State of California, Plaintiff and Respondent, v. **Allen Dimen DeLeon,** Defendant and Appellant.	No. S230906 First District Court of Appeal No. A140050 Solano County Superior Court No. FCR302185

Application of the San Francisco Public Defender's Office to Appear as *Amicus Curiae*

And Brief in Support of Defendant/Appellant DeLeon
(Rule 8.520(f))

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Issue presented

Should parolees charged with having violated parole be entitled to a uniform, probable cause hearing within 15 days of arrest, as the Court of Appeal held in *Williams v. Superior Court* (2014) 230 Cal.App.4th 636; or, is due process a flexible standard requiring no more than a *ex parte* probable cause hearing, as the First District held?

The San Francisco Public Defender urges this Court to hold that *Williams* is better-reasoned and that parolees are entitled to a speedy probable cause hearing under *Morrissey* standards within 15 days. The Legislature called for a uniform system that processes parole violation allegations quickly, to serve the goals of Realignment. San Francisco's experience after *Williams*—swift release, modifications, or settlement, often without the need for *any* hearing—exemplifies how a 15-day rule helps weed out unsupported allegations and return parolees to their rehabilitative programs and jobs, with minimal disruption. "Flexibility" for each of California's 58 counties to devise unique revocation procedures—as the State proposes—will defeat rehabilitation efforts, cause delay, and encourage procedural challenges. A uniform 15-day rule is both practical and constitutional.

Application to Appear as *Amicus Curiae*

The San Francisco Public Defender requests leave to file the attached *amicus curiae* brief supporting defendant and appellant DeLeon. (Cal. Rules of Court, Rule 8.520.)

This case raises an important statewide issue: Should parolees charged with having violated parole be entitled to a uniform, probable cause hearing within 15 days of arrest? Or, as the state proposes, should each of California's 58 counties have the flexibility to devise procedures—including a single, unitary hearing after a parolee has been incarcerated for up to a month—that are convenient for its specific county court system?

The decision here will affect the speedy resolution of parole revocation cases and the implementation of the goals of Realignment. The issue is particularly important to San Francisco Public Defender, Jeff Adachi, whose office is charged with effectively representing thousands of criminal defendants per year, many of whom are on parole, and representing hundreds of parolees in parole-revocation proceedings.

Thus, we request status as amicus to file the below brief.

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Amicus Brief in Support of Defendant and Appellant DeLeon

Introduction

Amicus, the Public Defender of San Francisco, respectfully submits this brief in support of Defendant and Appellant DeLeon.

Failure to set a bright-line rule on probable cause hearings will result in delay and injustice. If not 15 days, will it be 20 days, 30 days, before a parolee appears in court with counsel? Will it be a unitary, full-purpose hearing, or a hearing to establish probable cause? Delay of this magnitude will force admissions prompted by the delay and desire for release, rather than those motivated by guilt. The Realignment Act is at odds with this model.

Realignment represents California's most significant shift from punishment-based incarceration to community-based rehabilitation. One of its fundamental underpinnings is the recognition that incarceration, while sometimes inevitable, does not necessarily help parolees successfully reenter society and avoid re-offending. Thus, Realignment is built on a model of community supervision, programs and services to encourage and support successful reentry, and to minimize incarceration. Because the Court of Appeal's decision represents a step backward from this promise, amicus urges this Court to reverse the judgement.

1. Due process requires a timely, contested probable cause hearing.

The Court of Appeal erred in holding that California's parole revocation scheme does not require preliminary probable cause hearings, as specified in *Morrissey v. Brewer* (1972) 408 U.S. 471, before revoking parole, and that a timely, single hearing procedure can suffice. (*People v. DeLeon* (2015) 241 Cal.App.4th 1059, 1062.)

A. Under the goals of the Realignment Act and United States Supreme Court precedent, this Court should hold that a *Morrissey*-compliant probable cause hearing within 15 days of arrest is required for parolees.

Realignment legislation was intended to promote uniform parole revocation procedures and "simultaneously incorporate the

procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer...*, *People v. Vickers*, ... and their progeny." (2011 Realignment Legislation, SB 1023, Sec. 2(b), effective June 27, 2012.)

While *Morrissey* expressed that states should have some flexibility in devising procedures for fulfilling the requirements of due process, it also set as a *minimum* standard of due process a probable cause hearing with adversarial features. (*Morrissey, supra*, 408 U.S. at 489.) Thus, *Morrissey* contemplated an actual probable cause hearing, not an *ex parte* process (*Id.*, at 486-487) of the kind the Court of Appeal and respondent urge is sufficient.

The *Morrissey* Court also recognized, on the broad level, what California's Realignment legislation sought to accomplish: successful reentry. To that end, a probable cause hearing is not an inconvenient formality; rather, it should ensure that the parolee's life and efforts at rehabilitation are not disrupted by an *unjustified* parole hold. (*Morrissey, supra,* 408 U.S. at 485.) But that goal can only be accomplished by a hearing that embodies procedural safeguards—adversarial in nature, the right to challenge the accusations—and one that happens quickly. In the case of *unjustified* allegations, having to wait for an entire month before having the opportunity to challenge

those allegations—as respondent suggests is acceptable—could mean the difference between keeping a job and being unemployed; completing a program and starting over; between success and failure, hope and capitulation.

Morrissey standards represent the *minimum* requirements of due process. The Court was not concerned with any burden this hearing would cause and neither should this Court be; if anything, the sooner the hearing, the sooner the resolution, and the courts will save time and money, while promoting successful reintegration or parolees into society.

Here, the Court of Appeal got it wrong in finding that the procedures afforded DeLeon were sufficient. Specifically, the Court of Appeal cited two probable cause determinations to support its conclusion: 1) "DeLeon was promptly served with notice of the charges and the circumstances supporting them and his case was reviewed by a parole supervisor for probable cause" (*DeLeon, supra,* 241 Cal.App.4th at 1070); and, 2) "the court made a probable cause determination within 15 days of his arrest." (*Id.* at 1070.) But neither DeLeon nor his counsel was present at either event. Thus, these determinations were devoid of the adversarial features necessary for robust due process. Indeed, respondent agrees that, considered

separately or together, these determinations did not satisfy due process, because *Morrissey*'s minimum standards call for something more than an *ex parte* process.

B. Respondent's proposal, that each of California's 58 counties could fashion their own probable cause procedures, is not supported by *Morrissey* and will lead to confusion, varied treatment, and further legal challenges.

All parties and the Court of Appeal recognize that "the Legislature intended 'to provide for a uniform supervision revocation process for petitions to revoke probation, mandatory supervision, postrelease community supervision, and parole,' that complies with the due process protections prescribed in *Morrissey* and *Vickers* (1972) 8 Cal.3d 451). (Stats. 2012, ch. 43, § 2.)" (*DeLeon, supra,* 241 Cal.App.4th at 1066.)

Yet the Court of Appeal and respondent turn to *Morrissey*'s language about flexibility to suggest that uniformity would be a problem. But the "flexible" process the state suggests would hardly provide the uniformity the Legislature sought, nor promote the goals of Realignment, and it certainly was not contemplated in *Morrissey*.

While *Morrissey* did say that the states should have some flexibility in devising procedures for satisfying its due process mandate, the High Court did not suggest—as respondent does here—

that numerous courts within a state could, or should, come up with their own individual procedures depending on their own particular circumstances. That would throw uniformity to the wind.

Lack of a clear standard will lead to repeated claims that one procedure or another is deficient. Permitting individual courts in individual counties to fashion hearing procedures—primarily how many hearings and how soon—will create a panoply of scenarios ripe for challenge.

On the other hand, a 15-day outside limit for the first hearing and a second, formal revocation hearing to follow—as *Williams* held—provides a clear time limit for bringing these cases before the court and a commonsense distinction between the two proceedings.

C. San Francisco's experience: *Williams*'s 15-day outer limit reduces incarceration costs and encourages productive, speedy resolutions that benefit the parolee, society, and goals of Realignment.

Here, in San Francisco's parole court, the office handled approximately 644 parole revocation petitions in the period between July 1, 2013 and September 8, 2014. Within that time period, San Francisco's post-*Williams* experience is informative.[1]

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[1] *Williams* was published in October of 2014.

Specifically, after *Williams*, the court and the parties sought to resolve the cases quickly, usually without a hearing. The 15-day limit forced the parties to examine the allegations, the parolees level of compliance, and the best interests of the parolee. It encouraged efficient preparation and quick resolution, promoting the goals of Realignment. Parolees against whom weak allegations were brought were not incarcerated for long, but returned to liberty, education, jobs, and programs. Most cases resolved at or before the probable cause hearing with either dismissal or release with additional conditions, and only a handful of cases proceeding to a formal hearing.

In sum, the requirement of a 15-day adversarial hearing was good for public safety (parolees would take responsibility, or they were dismissed for lack of evidence), positive for rehabilitation (parolees resent a system that rewards good-faith efforts with unsupported charges), and cost-efficient (no one argues that incarceration on unfounded allegations is a good way to spend public funds). Additional incarceration, without good reason, serves no societal or economic interest. *Williams* promoted efficiency, fairness, and the goals of Realignment.

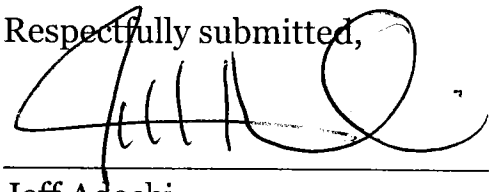
Conclusion

Uniform, *Morrissey*-compliant standards for parole revocation procedures was the express legislative intent. The opinion below invites 58 separate procedures to adjudicate probable cause—systems that will either evade review (parolees will feel coerced into early admissions irrespective of guilt), or induce procedural challenges from all over the state.

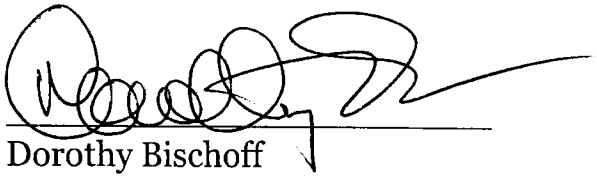
We respectfully urge the Court to overrule the Court of Appeal's opinion here, and set a uniform requirement that a *Morrissey*-compliant probable cause hearing occur within 15 days of arrest for parole-violation allegations.

Dated: September 6, 2016

Respectfully submitted,



Jeff Adachi
Public Defender

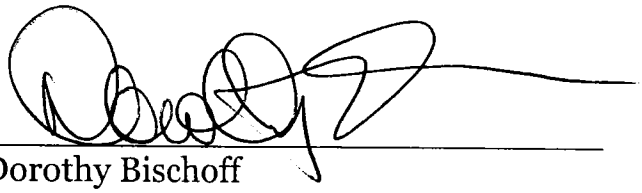


Dorothy Bischoff
Deputy Public Defender

Certificate of Word Count

I, Dorothy Bischoff, counsel for amicus curiae the San Francisco Public Defender, hereby certify that the word count of the attached application to file amicus brief and brief of amicus curiae in support of defendant/appellant is 1,668 words as computed by the word-count function of Word, the word processing program used to prepare this brief.

Dated: September 6, 2016



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Proof of Service

I, the undersigned, say:

I am over 18 years old and not a party to the above action. My business address is 555 Seventh Street, San Francisco, California 94103. On September 6, 2016, I served the attached Application of the San Francisco Public Defender's Office to Appear as *Amicus Curiae* on the following parties by mailing a copy to the addresses listed, and placing the envelopes with postage affixed in the U.S. Mail:

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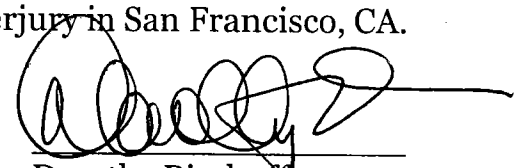
Signed under penalty of perjury in San Francisco, CA.



Dorothy Bischoff
Declarant

In the Supreme Court of California

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Supplemental Proof of Service re:

Application of the San Francisco Public Defender's Office to Appear as *Amicus Curiae* and Brief in Support of Defendant/Appellant DeLeon

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Signed under penalty of perjury in San Francisco, CA.

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