CRIMINAL JUSTICE LEGAL FOUNDATION

CJLF Advisory

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CJLF MOVES TO LIFT COURT INJUNCTIONS BLOCKING EXECUTIONS

Since 2006, two federal district judges in the San Francisco area have blocked the executions of every eligible death-sentenced murderer in California. The original order that year stayed the execution of Michael Morales who was sentenced to death for the 1981 kidnap, rape, and brutal murder of a high school cheerleader in Stockton. When Morales had exhausted all of his appeals and became eligible for execution, he petitioned U. S. District Judge Jeremy Fogel for a stay. Judge Fogel, a Clinton appointee, issued an injunction, finding that the state's three-drug protocol amounted to cruel and unusual punishment violating the Eighth Amendment, and granted the stay.

In April 2008, the United States Supreme Court issued its decision in **Baze v. Rees**, holding that Kentucky's three-drug execution protocol did not violate the Eighth Amendment. The Court utilized arguments and research from the CJLF brief in its decision. The Kentucky protocol utilized the same three drugs as California.

In 2010, rapist/murderer Albert Brown became eligible for execution and petitioned Judge Fogel to block his execution. This time the judge issued a conditional stay, halting his execution, but announced that if the state would switch to a single-drug protocol, the execution could be held. Brown appealed, winning a Ninth Circuit ruling overturning the conditional stay, noting that the judge could not dictate a state's execution protocol. On remand, Judge Fogel issued a new injunction blocking Brown's execution based upon his injunction in the **Morales** case. The injunction in Brown's case also prohibited the state from making preparations for an execution until the **Morales** case was settled. The Governor and the Attorney General could have appealed that ruling, but they didn't. In 2014, Judge Fogel moved to an administrative position and Judge Richard Seeborg, an Obama appointee, took over the **Morales** case. In June 2015, the U. S. Supreme Court further clarified the requirements for a stay of execution in a method-of-execution

continued on page 7

SUPREME COURT TO REVIEW BAIL CHALLENGE

A case before the California Supreme Court involving a habitual criminal's challenge to his bail amount has expanded to include an argument regarding a new state law that will abolish money bail entirely in October of next year. Last May, the high court accepted the case of **In re Humphrey** to review a First District Court of Appeal ruling which announced that, in his decision to set bail, a trial judge must consider a defendant's ability to pay. According to the court of appeal, if it is determined that the defendant is unable to pay, the judge is required to consider non-monetary alternatives, such as release on one's own recognizance.

In September, a month after Governor Brown signed into law SB10, a statute to eliminate money bail, the Supreme Court asked for additional briefing on the impact of the new law on the case.

The Criminal Justice Legal Foundation has joined the case to argue that the appeals court ruling should be overturned and that SB10 is unconstitutional.

The case involves repeat felon Kenneth Humphrey who was charged with robbery after he followed an elderly man into his San Francisco apartment in May 2017 where he threatened and robbed him. At his bail hearing, Humphrey asked to be released on his own recognizance because of his ties to the community. Noting Humphrey's extensive criminal record, the judge refused, setting bail at $350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay.

When the Supreme Court agreed to review that ruling, CJLF joined the case. In a scholarly *amicus curiae* (friend of the court) brief, CJLF Associate Attorney Kymberlee Stapleton argues that California law governing a judge's decision to grant bail requires consideration of five factors: the protection of the public, the safety of the victim, the seriousness of the offense charged, the defendant's previous criminal record, and the probability of his or her appearing for trial. The ability

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CJLF CHALLENGES RULING PROTECTING ALIEN CRIMINALS

The U. S. Supreme Court is reviewing a 2016 Ninth Circuit Court of Appeals ruling which sharply limited a federal law that directs the Attorney General to arrest and detain aliens convicted of aggravated felonies, pending their deportation, and makes them ineligible for release during that time.

Illegal alien Christhian Bahena Rivera has been charged with the July 2018 murder of 20-year-old Mollie Tibbetts in Iowa.

At issue in **Nielsen v. Preap** is the time it takes federal law enforcement to locate the aliens after their release. The Ninth Circuit held that if the criminal aliens are not promptly arrested by federal agents following their release the government loses its authority to arrest and detain them later under the provision of the law in question.

The aliens in this case filed a lawsuit challenging their arrests and detention. Mony Preap came to the U. S. as a refugee from Cambodia and has been convicted for drug possession. Eduardo Vega Padilla has convictions for drug possession and for being a felon in possession of a firearm. Juan Lozano Magdaleno has a conviction for illegal possession of a firearm and possession of drugs. All three were eventually released from federal detention.

In "sanctuary cities," local police are forbidden from notifying federal immigration authorities that a criminal alien will soon be released and are not allowed to hold an alien for federal agents. Because of this, many criminal aliens are able to avoid arrest and blend into the community or move elsewhere. If they commit additional crimes in a "sanctuary city" they may still avoid arrest and deportation due to the local government's noncooperation with immigration authorities.

The Ninth Circuit's ruling, if allowed to stand, would permit immigration judges to release detained aliens even if they have been convicted of the most serious crimes. Because released aliens facing deportation usually do not show up for their hearings, this typically means that they escape deportation altogether.

CJLF has joined the case, filing a scholarly *amicus curiae* (friend of the court) brief arguing that the Ninth Circuit has misinterpreted federal law to create a time limit on the arrest of criminal aliens for deportation. Noting that Congress never intended that the arrest of a criminal alien be subject to a time limitation, the CJLF brief states, "The notion that a released criminal is no longer a danger simply because he is not rearrested soon after release is contrary to both common sense and established facts."

"The Ninth Circuit's ruling in this case misinterprets the law in order to allow alien criminals in sanctuary cities to avoid detention and deportation under federal law," said CJLF Legal Director Kent Scheidegger. "Congress required mandatory detention for those convicted of aggravated felonies for good reason, and this law should not be negated by giving it a tortured interpretation," he added.

Advisory layout design by Irma H. Abella

BOXSCORE

An accounting of the state and federal court decisions handed down over the past year on cases in which CJLF was a participant. Rulings favoring CJLF positions are listed as WINS, unfavorable rulings are LOSSES, and rulings which have left the issue unsettled are DRAWS.

City and County of San Francisco v. Sessions: 8/1/18. Divided Ninth Circuit Court of Appeals ruling to uphold a district court injunction blocking the Trump Administration's Executive Order to deny *federal law enforcement grants* to "sanctuary cities." The government will seek en banc review of the ruling, which will almost certainly be appealed to the U. S. Supreme Court. The CJLF brief cited precedent and settled law supporting the President's authority to direct his cabinet to enforce laws enacted by Congress which condition receiving federal law enforcement grants on compliance with federal law. The panel's ruling expanded the scope of the Executive Order to include *all federal grants*, then announced it unlawful. CJLF will argue to overturn this ruling on appeal all the way to the Supreme Court. **LOSS**

United States v. California: 7/5/18. Federal District Court decision to block enforcement of one of three California "sanctuary state" laws. Two of the laws forbid state law enforcement and government officials from cooperating with federal immigration authorities in identifying illegal aliens. The third law (AB450) allows the state to fine private businesses up to $10,000 for allowing federal immigration authorities to assist in determining if some of its employees are in the country illegally. The Foundation had joined the case to argue that every U. S. citizen, including business owners, have a duty and a right to obey federal immigration law and cooperate with federal law enforcement if they suspect a crime has been committed. This makes AB450 unconstitutional. While the judge upheld the other two "sanctuary state" laws, he *utilized arguments from the CJLF brief* in his decision to enjoin enforcement of AB450. **WIN**

People v. Farwell: 6/21/18. California Supreme Court decision rejecting a habitual criminal's claim that his decision to admit to (stipulate) a lesser included offense at trial, even without a warning by the judge, does not automatically void his conviction. The defendant was driving recklessly on a suspended license when he caused an accident that killed a female passenger. He and his attorney agreed to admit to the suspended license charge and fight the manslaughter charge, which they lost. On appeal, the criminal claimed that his conviction was void because the judge did not warn him that by admitting the suspended license charge he was giving up his right to oppose it at trial. CJLF joined the case to argue that the full circumstances of the case, not just the judge's instruction, should be considered to determine if the conviction was improper. The court unanimously agreed, citing the CJLF brief in its decision. **WIN**

City of Hays v. Vogt: 5/29/18. U. S. Supreme Court dismissal of a case reviewing a federal appeals court ruling which prevents valid evidence from introduction in criminal trials. The case involved a police officer's voluntary admission to the police chief that he took a knife from a crime scene. After an investigation, the officer was charged with two felony counts. His admission and corroborating evidence were introduced at a pretrial hearing to support the charges. The judge dismissed the charges for lack of probable cause. In a lawsuit, the officer claimed that when he admitted taking the knife, he became a witness against himself and that the statement and the related evidence should have been excluded. After a district court rejected the claim, finding that the protection against self-incrimination only applies to a trial, the Tenth Circuit reversed because the evidence was used in a criminal case. CJLF had joined the case to overturn the Tenth Circuit's ruling for expanding the exclusion of evidence. The high court announced that review had been improvidently granted, meaning that the lower court decision stands, but no Supreme Court precedent is set. **DRAW**

Sims v. CDCR: 3/28/18. Marin County Superior Court ruling lifting a six-year-old injunction that was blocking executions in California. The injunction had been issued after condemned murderer Michael Sims claimed that the California Department of Corrections and Rehabilitation (CDCR) had failed to comply with the state's cumbersome Administrative Procedure Act (APA) in developing a new lethal injection protocol. In 2016, when California voters adopted Proposition 66, the APA requirement was removed from the law, mooting the injunction. In January, CJLF moved to vacate the injunction on behalf of Kermit Alexander, whose family was murdered by a criminal currently on death row. CDCR later joined in support of the motion. **WIN**

Trump v. International Refugee Assistance Project, Trump v. Hawai'i: 10/10/17, 10/24/17. U. S. Supreme Court orders voiding earlier rulings by the Fourth and Ninth Circuit Courts of Appeals, which had blocked enforcement of the President's 90-day travel ban for visitors of six Middle Eastern countries overrun with terrorists. Last June, the high court stayed both rulings and allowed the travel ban to proceed until it could review the cases in October. CJLF had joined these cases to encourage the high court to find both lower court rulings moot, because the temporary travel ban would expire before the October review. On October 10, in **Trump v. IRAP**, and on October 24, in **Trump v. Hawai'i**, the Court mooted both cases and ordered them dismissed, *wiping out both rulings as precedent*. Only Justice Sonia Sotomayor voted to leave either of these misguided rulings on the books. **WIN**

continued on page 5

TIME FOR A RATIONAL APPROACH TO HOMELESSNESS

The magnitude of America's current homeless problem is comparable only to the Great Depression. Not since 1929 have we seen so many people living under freeway overpasses and taking over city parks, sidewalks, and wooded areas along urban rivers, streams, and ditches. In Los Angeles, San Francisco, Seattle, and a dozen other west coast cities, thousands of people live full-time on downtown streets, many of which qualify as open sewers. Over 30 percent of the nation's entire homeless population live in California, Oregon, and Washington.

How did we get here?

There has always been a homeless population in the U. S. consisting mostly of unemployed men. Prior to the 1970s, they were the hobos or bums who lived by their own rules and refused most help other than donations of cash. Many were alcoholics who, if caught wandering the streets drunk, were arrested and thrown in the "drunk tank" overnight. Those caught with drugs were arrested and spent time in jail. Mentally ill people behaving radically in public were usually committed by a judge or family members to institutions for care and treatment. But, the quality of government-funded mental hospitals varied, and in the 1960s, the American Civil Liberties Union (ACLU), backed by some prominent psychologists, exploited this by filing lawsuits on behalf of patients involuntarily committed to mental institutions. Court rulings in these lawsuits, along with political pressure by mental health experts, eventually led to the demise of most government mental hospitals. Over the same decade, the ACLU won court rulings creating a moratorium on the arrest of vagrants and panhandlers. The ACLU and several leading criminologists also successfully encouraged many state legislatures to implement "sentencing reforms" which diverted thieves and addicts to government-funded rehabilitation programs rather than prison or jail. These developments, coupled with a national economic recession, created the homeless crisis of the 1980s.

By the end of the Carter administration in 1981, the "misery index," which combined the rates of unemployment and inflation as a gauge of national well being, was the highest it had been since the Great Depression. The numbers of unemployed, joined by the destitute mentally ill, and a growing population of drug addicts living on the streets in American cities became unmanageable. Activist groups blamed this on capitalism, and a sympathetic national media renamed the vagrants as "the homeless."

In a 1982 article in the Atlantic, Harvard Professors James Q. Wilson and George Kelling introduced the "Broken Windows" theory of policing, which correlated the infusion of vagrants and low-level criminals into urban neighborhoods with an increase in serious crime. The article appeared at about the same time that the American people were demanding an end to the failed soft-on-crime policies which had driven crime rates up, replacing them with new laws that increased punishment for repeat offenders. Over the next three decades, responding to public demands for safer communities, states adopted and enforced these tough-on-crime laws and cities engaged in efforts to restore public order. The most effective public order programs moved the homeless off the streets to places where they could receive treatment, necessities, and help finding work or locating families. Those who wanted and needed help, got it. Those who did not, moved on. Following this model, and a surging national economy, crime and homelessness dropped sharply. The most dramatic results regarding cleaning out vagrants from city parks and streets were observed in New York and San Francisco in the 1990s.

Starting in the 1970s and continuing into the new century many organizations serving the homeless, mostly volunteer and often church-supported groups, were supplemented by government programs and government-funded social service institutions. Among these government sponsored programs, the original objective of helping street people to become self-sustaining and productive became secondary to securing government contracts and maintaining programs. For example, the Puget Sound Business Journal reports that the Seattle metro area, with an estimated 11,600 homeless, currently spends more than $1 billion on homeless programs annually—nearly $100,000 per homeless person—and the street population is not declining. According to the Los Angeles Times, a Los Angeles city/county partnership spends roughly $480 million per year on the estimated homeless population of 58,000. This does not include what the county's other 87 cities spend. The San Francisco Chronicle reports that the city by the bay spends $305 million per year on its estimated 7,500 homeless

continued on page 6

BOXSCORE *continued from page 3*

Briggs v. Brown: 8/24/17. California Supreme Court decision upholding Prop. 66, an initiative CJLF co-authored to speed enforcement of the death penalty and adopted by voters in November 2016. Death penalty opponents filed a lawsuit attacking the initiative the day after it passed, claiming it violated the state's single-subject rule and that other provisions were unconstitutional. Concerned that the state would not make a strong argument to uphold the initiative, CJLF won the court's agreement to accept the campaign committee as a party. In its brief, CJLF noted that previous Supreme Court decisions had rejected single-subject challenges to more complex initiatives. The brief also noted that the court would have to clear-cut 40 years of its own precedent to uphold the opponent's claims. In June, CJLF Legal Director Kent Scheidegger presented oral argument at the court hearing on the initiative. The court ruled 7-0 to reject the single-subject challenge and uphold the initiative as a whole. The court also denied, 5-2, claims against two individual provisions. **WIN**

TOTAL	5 Wins	1 Loss	2 Draws

Case Report

A Summary of Foundation Cases Currently Before the Courts

In re Humphrey: California Supreme Court review of an appeals court ruling announcing that the decision to set bail for a habitual felon must be based on his ability to pay it, not public safety. The case involves a repeat felon charged with robbery after he followed an elderly man into his San Francisco apartment and robbed him. At the bail hearing, Humphrey asked to be released without bail because of his ties to the community. The judge refused, setting bail at $350,000. On appeal, Humphrey won a ruling ordering the trial judge to base the decision regarding bail on his ability to pay. When the Supreme Court agreed to review that ruling, CJLF joined the case. After Governor Brown signed SB10, a bill eliminating cash bail in California, the court asked if that new law impacts Humphrey's case. CJLF argues that SB10 won't go into effect until October 2019 and does not apply. CJLF also argues that SB10 is invalid because it amends the Public Safety Bail provisions of at least two previously adopted ballot measures. In this case, neither Proposition 4 (1982) or Proposition 9 (2008) allowed amendments by the Legislature. Public safety remains the first priority of any bail decision, not ability to pay.

Nielsen v. Preap: U. S. Supreme Court review of a Ninth Circuit ruling that places a time limit on when federal immigration agents can arrest alien criminals after they are released from local jails. In its ruling, the Ninth Circuit contended that if, following an alien criminal's release from a local jail, the alien is not promptly arrested by federal agents, the government loses its authority to arrest and detain him later under the mandatory detention law. In "sanctuary cities" local police are forbidden from notifying federal immigration authorities that a criminal alien will soon be released and are not allowed to hold an alien for federal agents. CJLF has joined the case to argue that the Ninth Circuit has misinterpreted federal law to create a time limit on the arrest of criminal aliens for deportation. Noting that Congress never intended that the arrest of a criminal alien be subject to a time limitation, the CJLF brief states, "The notion that a released criminal is no longer a danger simply because he is not rearrested soon after release is contrary to both common sense and established facts."

Hernández v. Chappell: Federal Ninth Circuit reconsideration of a December 2017 ruling *overturning* the conviction of a brutal double-murderer. Undisputed evidence proved that in 1981 Francis Hernández kidnapped, brutally raped, and murdered two young women in Long Beach, CA. Witnesses saw Hernández with one of the victims on the night she was murdered. A search of his house and van uncovered the dead girl's shoe, jewelry, fibers, items used in both rapes, and blood, saliva, and semen that matched fluids found on both victims's bodies. In a tape-recorded statement to police, Hernández arrogantly claimed that he had consensual sex with both victims and that he had accidently killed them. For 34 years after Hernández's conviction and death sentence, numerous courts upheld his conviction and sentence. In its ruling overturning the conviction, the divided Ninth Circuit panel announced that the Supreme Court's 1984 **Strickland v. Washington** decision announced that a conviction was invalid if minor errors during the trial *might have convinced* one juror not to convict Hernández. Earlier this year CJLF filed argument to encourage reconsideration of that ruling, arguing that the court had misinterpreted **Strickland** in order to invent the new one-juror rule. The rehearing was granted in July and a new panel will announce a decision in 2019.

Morales v. Diaz: Federal District Court case involving a death-sentenced murderer's petition for an injunction to prevent his execution. Since 2006, when murderer Michael Morales won an injunction halting his execution in a ruling that found California's three-drug execution protocol cruel and unusual, the case has remained open and 20 additional condemned murderers have won injunctions from the same court. Under Supreme Court precedent, the state's adoption of a new protocol eliminates the basis for these injunctions, but the Governor and Attorney General have chosen not to file appeals to remove them. In October, after a rapist/murderer petitioned the same court to block his execution, CJLF filed an *amicus curiae* (friend of the court) brief on behalf of the families of five murder victims whose killers have been spared by these injunctions.

Johnson v. City of Ferguson: Federal Eighth Circuit Court of Appeals case to review lower court decisions that would allow Dorian Johnson, the 22-year-old companion of Michael Brown, to sue the city and Officer Darren Wilson for violating his rights. In August 2014, Officer Wilson shot and killed 6'4", 290 lbs. Michael Brown. Brown had just robbed a convenience store when Officer Wilson saw the pair walking down the middle of a street in Ferguson, Missouri. Johnson claims that when Officer Wilson ordered them to the sidewalk, he had unlawfully seized him in violation of the Fourth Amendment. Although both federal and grand jury investigations of the incident found that Johnson had lied about the events leading up to the shooting and the shooting itself, motions to dismiss the lawsuit have been rejected by the Federal District Court and a divided Eighth Circuit panel. When the circuit agreed to reconsider the panel's ruling en banc, CJLF joined the case on behalf of the National Police Association, arguing that by Johnson's own admission he was not ordered to stop or prevented from leaving, which he did when he eventually ran. Citing its 1991 U. S. Supreme Court victory in **California v. Hodari D.**, CJLF argues that the facts Johnson describes of his encounter with Officer Wilson do not constitute a seizure, and because of this, the lawsuit should be dismissed.

"APPROACH TO HOMELESSNESS"

continued from page 4

with no visible impact. San Francisco actually pays $185,000 per year for each of its human-feces-removal employees.

A rational approach to homelessness must look beyond the political narratives which blame it on poverty, corporations, a lack of compassion, and the housing shortage. In their book "A Nation in Denial," researchers Alice Baum and Donald Burns observe that "homelessness is a condition of disengagement from ordinary society—from family, friends, neighborhood, church and community." The decline of American culture, which used to be based upon those things, the closing down of mental institutions, the decriminalization of drug use, and the Bush/Obama economy have helped create today's homeless crisis.

It is unlikely that America will be restoring the cultural guardrails that pulled the country out of the Great Depression any time soon. But the homeless population can be reduced and better served by replacing the current multiplex of soup kitchens and ineffective government-funded programs that sustain it with one that will actually make a difference.

The Haven for Hope in San Antonio, Texas, is the model. Its Transformational Campus sits on 22 acres and shelters roughly 1,700 people each night. Of the thousands that have left the campus, 90% have not returned to the streets after one year.

How does it work?

Consolidation of Services: Most homeless don't have cars or bus fare, so finding the services they need involves roaming around the county from program to program. The homeless who walk or are brought to the Haven for Hope campus receive housing, substance abuse and mental health treatment, job skills training and placement, life skills training, legal services, child care, healthcare, and even a kennel for pets.

Accepting Everyone: The campus offers several levels of service, including an open outdoor security-patrolled area where those who do not want most services or to obey rules can have a safe place to sleep, receive regular meals, bathroom and laundry access, sleeping pads, lockers and health care triage, and mental health services. People at this entry level can come and go as they please and sobriety is not a requirement. Those willing to obey more stringent rules are admitted for detox treatment, temporary housing, regular medical care, and programs to provide education, job skills and help locating family and friends.

An Alternative to Jail: In most cities today, when police come across a drunk or drugged vagrant blacked out on a sidewalk or people camping in front of City Hall, they have few good choices regarding where to take them. The drunk tank at the local jail or the hospital emergency room does not have the space or the services that the homeless need. Because Haven for Hope provides comprehensive services including detox and drug recovery programs, and a secure area for the homeless to sleep, it is the facility of choice for the San Antonio police, treating over 50,000 since opening in 2011. Any worthwhile effort to clean up a city's neighborhoods, business districts, and public spaces requires a place to take the homeless where they are welcomed and provided with help.

Many urban counties have abandoned and vacant properties that could be converted to serve as campuses for the homeless. If government property is used, service providers could be located rent-free on a campus, allowing more funds to be used for services. Such campuses would undoubtedly attract both charitable foundation and private sector grants.

Clearly the millions of tax dollars currently going to maintain the homeless in tent cities, housing compounds, or on city streets and parks would be better spent on a serious effort to help them rejoin society following the Haven for Hope model.

Michael Rushford
President & CEO

"LIFT COURT INJUNCTIONS"

continued from front page

challenge in **Glossip v. Gross**. This decision used research submitted in CJLF's brief.

In 2016, California voters adopted Proposition 66, a ballot measure to speed enforcement of the death penalty. Among its provisions, the measure exempted execution protocols from the Administrative Procedure Act, which had been misused to block executions in state court. A legal challenge to the initiative, filed the day after it passed, took the California Supreme Court a year to resolve. CJLF played a major role in both drafting Proposition 66 and winning the decision to uphold it.

On April 18, 2017, Judge Seeborg issued an injunction against the executions of 11 additional murderers without mentioning **Glossip** or finding its requirements had been met. Governor Jerry Brown and Attorney General Xavier Becerra chose not to appeal this very doubtful ruling.

In October 2017, after Judge Seeborg issued yet another stay, CJLF Legal Director Kent Scheidegger wrote Attorney General Xavier Becerra. The letter noted that the stays issued by Judge Seeborg violated U. S. Supreme Court precedent and unlawfully prevented the state from enforcing its laws. "Frankly, we cannot fathom why your office did not seek appellate review of the April 18, 2017, order and why it has not taken the steps needed to vacate the prior injunctions. That however, is water under the bridge. On behalf of the families of murder victims still waiting for long-overdue justice, we request that you pursue the most expeditious means available to immediately stay and ultimately reverse yesterday's lawless order and the prior similar orders." The Attorney General did not bother to respond.

On March 1, 2018, under the authority provided by Proposition 66, California adopted the single-drug procedure that the district court previously held would eliminate the constitutional problem.

On October 31, 2018, condemned murderer Guy Rowland petitioned Judge Seeborg's court for an injunction blocking his execution. Between 1978 and 1986 Rowland had raped and beaten at least five women before he kidnapped, beat, raped, and strangled a 31-year-old woman to death in the small rural town of Byron.

> "None of California's statewide elected leaders have chosen to take the available legal action necessary to uphold the rights of the murder victims and their families in these cases. The time for waiting has passed and we now intend to resolve this gross injustice."
>
> —Kent S. Scheidegger, CJLF Legal Director

On behalf of Kermit Alexander, whose mother, sister, and two nephews were murdered by a criminal on death row, and Bradley Winchell, whose 17-year-old sister was the cheerleader murdered by Michael Morales, CJLF has filed an *amicus curiae* (friend of the court) brief in **Morales v. Diaz** challenging Rowland's petition.

The Foundation notes that since the adoption of the new protocol, the district court has failed to apply the standards set by the Supreme Court in **Baze** and **Glossip** to California's current method. The Foundation also cites the Prison Litigation Reform Act of 1995, a law enacted by Congress which requires that federal court preliminary injunctions in prison cases expire after 90 days unless specific findings are made by the issuing court within the 90-day period. The District Court has made none of the required findings in any of its injunctions and, because of this, *they have all expired*.

"None of California's statewide elected leaders have chosen to take the available legal action necessary to uphold the rights of the murder victims and their families in these cases," said Scheidegger. "The time for waiting has passed and we now intend to resolve this gross injustice," he added.

Thanks to your past support CJLF is continuing its effective work to reign in out-of-control federal judges who are allowing illegal aliens to flood across our borders and blocking the enforcement of the law. We are fighting to overturn state laws that have created a revolving-door criminal justice system that keeps dangerous criminals on the streets to prey upon the innocent. If you are encouraged by the cases we have reported in this *Advisory* and you have not made your tax-deductible contribution this year, please do so today. Return the card on the right with your check, or go to www.cjlf.org or call us at (916) 446-0345 to contribute with your credit card. **Thank you very much.**

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Fall 2018

HAPPY HOLIDAYS

From the CJLF Staff

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"REVIEW BAIL CHALLENGE"

continued from front page

to pay is not a factor for consideration. As a result, the court of appeal's ruling inventing the new "ability to pay" factor was improper.

With regard to SB10, the CJLF brief notes that the law won't go into effect until October 2019 and therefore has no impact on Humphrey's case. The Foundation also argues that SB10 is invalid because it violates the California Constitution's provision that specifies what a judge must consider when determining bail eligibility. The Legislature and the Governor do not have the authority to enact a statute amending the Constitution.

"Ten years ago the California public passed a constitutional amendment to assure that public safety was the primary consideration in a judge's decision to release a defendant on bail," said Stapleton. "It is concerning that our elected lawmakers were unaware of this or the limits of their power to change it," she added.

Watch for a decision on this case in a future *Advisory*.

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