No. S277120

IN THE SUPREME COURT OF CALIFORNIA

ARMIDA RUELAS, et al.,
Respondents,

vs.

COUNTY OF ALAMEDA, et al.,
Petitioners.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 21-16528

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 4:19-CV-07637-JST
HONORABLE JON S. TIGAR

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ISSUE PRESENTED

The United States Court of Appeals for the Ninth Circuit certified, and this Court accepted, the following question:

Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

INTRODUCTION

Respondents, a putative class of incarcerated persons who allegedly performed kitchen work at the Santa Rita Jail pursuant to the County of Alameda's contract with Aramark Correctional Services, LLC ("Aramark"), sued the County, Sheriff Gregory Ahern, and Aramark (collectively, "Petitioners"), asserting various labor-related claims under federal and state law. Two of those claims—one for minimum wages, the other for overtime wages—present the question set forth above. The answer to that question turns on the interplay between the Labor Code's general provisions and the Penal Code's specific provisions governing work done by incarcerated persons in county jails.

The text, history, and structure of Penal Code section 4019.3 and related provisions make clear that the Penal Code governs Respondents' work at the Santa Rita Jail, and that the Labor Code's minimum and overtime wage provisions do not apply here. Enacted in 1959, Penal Code section 4019.3 states that a county "board of supervisors *may* provide that each prisoner

confined in or committed to a county jail shall be credited with a sum not to exceed two dollars ($2) for each eight hours of work done by him in such county jail." (Pen. Code, § 4019.3, italics added.) Section 4019.3 thus established a discretionary scheme that speaks directly to the work performed by Respondents and permits, but does not require, each county to authorize payment to incarcerated persons who perform work in a county jail. In addition, section 4019.3 includes a maximum discretionary compensation rate—currently two dollars per day—that is, and always has been, far lower than the Labor Code's minimum wage.

Well-established interpretive principles reinforce the conclusion that the Penal Code, rather than the Labor Code, provides the governing legal framework. For example, Penal Code section 4019.3 would have been superfluous if the Labor Code applied to work performed by incarcerated persons in county jails; there would have been no reason to provide that such persons may earn up to two dollars per day if another statute guaranteed a much higher minimum wage. Moreover, this Court's precedent dictates that the more specific, conflicting compensation scheme set forth in section 4019.3 supersedes the Labor Code's minimum wage and overtime provisions. The principle that specific statutes take precedence over conflicting general ones applies with particular force where, as here, the two frameworks provide mutually exclusive compensation requirements: the *maximum* compensation rate available under section 4019.3 is well below the *minimum* compensation rate required by the Labor Code.

In addition to harmonizing the two statutory schemes, application of Penal Code section 4019.3 here is consistent with and confirmed by neighboring statutes, which similarly recognize the discretion afforded to counties to determine whether incarcerated persons are compensated for work done in a county jail. (See, e.g., Pen. Code, § 4325(b)(3) [purpose of Jail Industry Authority is to allow persons incarcerated in county jails to "earn funds, *if approved by the board of supervisors pursuant to Section 4019.3*" (italics added)].) Similarly, the legislative history of section 4019.3 documents the Legislature's judgment that persons incarcerated in county jails were not entitled to "any compensation" for work done in a county jail before section 4019.3's enactment; that "any payment is permissive" under that provision; and that the Legislature considered—but declined to enact—provisions that would have made payment mandatory when it amended section 4019.3 in 1975. This additional guidance further confirms that the Labor Code's minimum and overtime wage provisions do not apply in this setting.

While largely overlooking Penal Code section 4019.3, Respondents have cited other statutory and constitutional provisions, including the Prison Inmate Labor Initiative of 1990 ("Proposition 139"), in support of their argument for minimum and overtime wages under the Labor Code. These provisions, however, uniformly support the opposition conclusion. Indeed, the Legislature has expressly made parts of the Labor Code applicable to incarcerated persons in a few narrow contexts only, demonstrating that the Legislature knows how to take that step

when it wishes to do so. The absence of a provision making the Labor Code's minimum and overtime wage provisions applicable to persons incarcerated in county jails thus speaks volumes.

Contrary to Respondents' argument, there is also nothing in Penal Code section 4019.3, or any other relevant law, that distinguishes between convicted and non-convicted persons for purposes of determining which compensation scheme applies. Penal Code section 4019.3 applies to "each prisoner confined in or committed to a county jail," and thus encompasses both classes of individuals, as this Court has recognized when interpreting materially identical language in a neighboring provision, section 4019. Likewise, the Attorney General has concluded that section 4019.3 "applies to pre-sentence as well as post-sentence work." While Respondents have argued that they should be entitled to minimum and overtime wages as a policy matter, the Penal Code forecloses that argument as the law currently stands, and any change in the law must come from the Legislature.

In sum, the text of Penal Code section 4019.3, as well as its structure, context, and history all point to one conclusion: the Labor Code's minimum and overtime wage provisions do not apply to work performed in a county jail by persons incarcerated within the jail.

For these reasons, and those set out below and in the County Petitioners' brief, we respectfully submit that the answer to the certified question is "no."

STATEMENT OF FACTS AND CASE

A. Relevant California Laws

1. *The California Labor Code*

When the California Legislature enacted the state's first comprehensive Labor Code in 1937, it included the civil cause of action asserted by Respondents here. (See Stats. 1937, ch. 90, pp. 185, 217 [codifying Lab. Code, § 1194]; see also *Martinez v. Combs* (2010) 49 Cal.4th 35, 5 & fn. 18 (hereafter *Martinez*) [discussing history of section 1194 and its uncodified predecessor cause of action, enacted in 1913].) At the time, Labor Code section 1194 authorized claims only by women and minors, and only to recover unpaid minimum wages. (See Stats. 1937, ch. 90, p. 217.) But the Legislature subsequently expanded section 1194 to authorize women and minors to recover overtime wages (see Stats. 1961, ch. 408, § 3, p. 1479); to authorize employees other than women and minors to recover minimum wages (see Stats. 1972, ch. 1122, § 13, p. 2156); and, ultimately, to authorize employees generally to recover minimum and overtime wages (see Stats. 1973, ch. 1007, § 8, pp. 2004–2005). Section 1194 thus currently provides, in pertinent part, that "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation." (Lab. Code, § 1194(a).)

The minimum and overtime wage standards covered by Labor Code section 1194's cause of action also have long historical

roots. In 1916, the Industrial Welfare Commission ("IWC") began issuing industry- and occupation-wide "wage orders" specifying minimum and overtime wage standards. (See *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal.5th 542, 552–553; *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1026; see also History of California Minimum Wage, Cal. Dep't of Indus. Rel., https://www.dir.ca.gov/iwc/minimumwagehistory.htm, last visited Jan. 28, 2023.) As the Legislature recognized when it enacted the Labor Code, the central purpose of these minimum wage standards was to "supply the necessary cost of proper living to, and maintain the health and welfare of," the employees subject to them. (Stats. 1937, ch. 90, pp. 185, 215 [codified at Lab. Code, § 1182(a)]; see also *Martinez*, *supra*, 49 Cal. 4th at p. 54 [Legislature's regulation of the minimum wage, as reflected in pre-1937 legislative history, was designed to ensure "necessary shelter, wholesome food, and sufficient clothing" (quotations and citation omitted)].) Overtime standards, meanwhile, were intended to "spread employment by encouraging employers to avoid overtime work and thereby employ additional workers on a regular basis," as well as to compensate employees for the "burden of working longer hours." (*Huntington Mem'l Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902, quotations and citation omitted.) Today, California statutes provide for statewide minimum and overtime wage rates—specifically, Labor Code section 510, which prescribes time-and-a-half and double time overtime rates, and Labor Code section 1182.12, which set minimum

wage rates of $11 and $12 per hour in 2018 and 2019, (the work years alleged by named Respondents), respectively.

2. *The California Penal Code*

For more than 100 years, California law has consistently provided a separate framework to govern work performed by incarcerated persons in county custody. In 1921, shortly after the IWC began issuing wage orders, the Legislature enacted a compensation scheme for persons in the custody of a county-authorized industrial farm or industrial road camp who performed work in such farm or camp. (See Stats. 1921, ch. 843, pp. 1615, 1620.) Specifically, the 1921 statute provided that persons in the custody of a county's industrial farm or road camp "shall be credited with a sum not to exceed fifty cents each day of eight hours work done by him on such farm or camp," or if the individual had dependents, two dollars for each eight hours of such work. (*Ibid.*) The 1921 statute also provided that "[t]he maximum amount per day to be so credited to the person in custody on such farm or camp shall be fixed from time to time by the board of supervisors and shall be as large as is justified by the production on said farm or camp but not to exceed the sums [of 50 cents each day or two dollars each day] mentioned in this section." (*Ibid.*) In 1953, the Legislature codified this provision, as amended, at Penal Code sections 4125 and 4126.[1] (Stats. 1953, ch. 69, § 1, pp. 742–743.)

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[1] The version of Penal Code sections 4125 and 4126 that the Legislature codified in 1953 is the same as the version in effect today, apart from an increase, adopted in 1968, in the maximum

It was against this backdrop that the Legislature enacted Penal Code section 4019.3 in 1959. As the Senate Analysis of the bill reflects, the "justification" for section 4019.3 was that "prisoners assigned to honor farms" (synonymous with county-authorized road farms and camps) could already be "paid a small wage," but incarcerated persons performing work in the county "jail kitchens, laundry or various maintenance assignments" could *not* be paid for their labor. (9th Cir. No. 21-16528, ECF No. 40 [Respondents' Motion for Judicial Notice], Ex. A [Analysis of Senate Bill 1394 (June 10, 1959)].)[2] The Legislature thus provided in section 4019.3 that county boards of supervisors could similarly authorize a wage of up to 50 cents per day of work performed within a county jail facility. (*Ibid.*)

Yet, section 4019.3 was not identical to sections 4125 and 4126. In particular, whereas sections 4125 and 4126 provide that persons in custody on an industrial farm or camp "shall be credited with a sum" and that the maximum amount per day "shall be fixed . . . by the board of supervisors" (provided it is below the statutory maximum), the drafters of section 4019.3 were careful

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compensation rate for persons without dependents, from 50 cents per day to one dollar "for each day of eight hours work done by him on such farm or camp." (Pen. Code, §§ 4125, 4126.)

[2] The Ninth Circuit granted Respondents' motion for judicial notice of these and other legislative history materials, and Aramark's motion for judicial notice of legislative history materials as well as a Letter of Understanding between the County and Aramark cited below. (See 9th Cir. No. 21-16528, ECF Nos. 18, 40, 65.)

to specify that boards of supervisors "may" provide—but were not required to provide—compensation for work performed by persons incarcerated in a county jail. The Senate Bill analysis stated that "[a]doption of [Penal Code section 4019.3] will permit a County Board of Supervisors to pay a county jail prisoner up to 50 cents a day for work done by them." (9th Cir. No. 21-16528, ECF No. 40, Ex. A, original underline.) Likewise, the County Supervisors Association of California ("CSAC")—which represents the county officials charged with administering section 4019.3—similarly commented prior to the law's enactment that "[a]ll the bill does is permit boards of supervisors to credit county jail prisoners with fifty cents or less for each eight hours of work prisoners do in county jails." (9th Cir. No. 21-16528, ECF No. 18, Ex. A [Letter from CSAC Gen. Counsel and Manager William MacDougall to Gov. Edmund Brown Re: Senate Bill 1394 (June 18, 1959) (Governor's Chaptered Bill File)].) Section 4019.3 thus would not preclude work being performed by incarcerated persons without "any compensation." (*Ibid.*, original underline.)

Consistent with this statutory background and legislative history, Penal Code section 4019.3, as enacted, stated that county "board[s] of supervisors *may* provide that each prisoner confined in or committed to a county jail shall be credited with a sum not to exceed fifty cents ($0.50) for each eight hours of work done by him in such jail." (Stats. 1959, ch. 1226, § 1, p. 3308, italics added.)

The version of section 4019.3 in effect today is largely the same as the original version, apart from an increase, adopted in

1975, in the maximum discretionary compensation rate—from 50 cents per eight hours worked to two dollars per eight hours worked. (Stats. 1975, ch. 350, § 1, pp. 796–797.) During its consideration of the 1975 amendment, the Assembly Committee on Criminal Justice observed that payment under the statute is "permissive," and even asked whether it "should . . . be mandatory." (9th Cir. No. 21-16528, ECF No. 18, Ex. C [Assembly Bill 1396 Bill Digest, Assembly Comm. on Criminal Justice (prepared for Hearing on May 28, 1975) (Senate Committee on Judiciary materials)].) The Assembly Committee on Criminal Justice also questioned whether increasing the maximum compensation rate would mean that fewer counties "pay anything." (*Ibid.*) Ultimately, however, the Legislature amended the maximum rate without enacting any other substantive change. Thus, the statute now states that "[t]he board of supervisors may provide that each prisoner confined in or committed to a county jail shall be credited with a sum not to exceed two dollars ($2) for each eight hours of work done by him in such county jail."[3] (Pen. Code, § 4019.3.)

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[3] In addition to the compensation schemes set forth in Penal Code sections 4125–4126 and 4019.3, a third compensation scheme, codified at Penal Code section 4222, governs compensation for incarcerated persons who perform work on a county's public works or highways pursuant to a program established under the Joint County Road Camp Act (codified at Pen. Code, § 4200 et seq.). Under section 4222, "[t]he board of directors [comprised of members of the participating counties' boards of supervisors] . . . may fix a reasonable compensation, not to exceed seventy-five cents

3. *Proposition 139*

In 1990, the People of California approved Proposition 139, a voter initiative that amended the Constitution to authorize public-private work programs in state prisons and county jails. (1990 West's Cal. Legis. Service Prop. 139, § 4 [amending Cal. Const., art. XIV, § 5]; 3-ER-574–75.) In addition to that authorization, Proposition 139 altered the existing compensation scheme for persons incarcerated in *state* prisons (set forth in Penal Code section 2811) by enacting a new provision governing compensation for such persons who perform work through a public-private partnership. (See 1990 West's Cal. Legis. Service Prop. 139, § 5 [enacting Pen. Code § 2717.8].) That provision states that compensation of persons enrolled in such programs "shall be comparable to wages paid by the joint venture employer to non-inmate employees performing similar work," "subject to deductions" of up to "80 percent of gross wages" for taxes, restitution, family support payments, and other costs. (Pen. Code § 2717.8.) But Proposition 139 did not similarly enact new legislation regarding the compensation scheme for persons incarcerated in county jails, set forth in Penal Code section 4019.3. Indeed, Proposition 139 does not mention compensation for incarcerated persons in county custody at all. Rather, Proposition 139 provides (through its amendment to the California Constitution) that public-private programs

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($0.75) per day, for each prisoner performing labor in a camp." (Pen. Code, § 4222, added by Stats. 1953, ch. 69, § 1, p. 748; see also Stats. 1935, ch. 299, p. 1022 [predecessor statute to Pen. Code, § 4222].)

in county jails "shall be operated and implemented . . . by rules and regulations prescribed by . . . local ordinances." (1990 West's Cal. Legis. Service Prop. 139, § 4 [amending Cal. Const., art. XIV, § 5].) Proposition 139 thus retains California's longstanding approach of granting county officials discretion to set compensation policy for work performed by incarcerated persons in county jails.

B. Factual Background

Because this appeal arises at the motion-to-dismiss stage, any plausible and well-pleaded factual allegations in the amended complaint are accepted as true for the limited purposes of this appeal. (*See Ashcroft v. Iqbal* (2009) 556 U.S. 662, 678.)

Respondents are persons currently or formerly incarcerated at the Santa Rita Jail, which is owned by Alameda County and operated by Sheriff Gregory Ahern (together with the County, "County Petitioners"). (2-ER-281, 283.) In 2015, the County Board of Supervisors awarded a contract to Aramark to provide food services (*i.e.*, the "purchase, maintenance and control of food and supplies," among related services) to incarcerated persons and staff of the Santa Rita Jail, as well as Alameda County's now-closed Glenn E. Dyer Detention Facility. (2-ER-193, 284; *see* 1-ER-17 [granting Respondents' request to take judicial notice of the contract].) Under the contract, Aramark provides meals to persons incarcerated in the Santa Rita Jail and the jail's staff (2-ER-193, 197–202), as well as to "satellite facilities," which are county jails located elsewhere in the state (2-ER-208; 2-ER-281, 287; 9th Cir. No. 21-16528, ECF No. 18, Ex. D [Satellite Facilities

Food Service Letter of Understanding between the County and Aramark]).

Aramark provides the contracted-for food services using the industrial kitchen at the Santa Rita Jail. (2-ER-284.) As part of that operation, Respondents prepare and package food and clean and sanitize the kitchen. (*Ibid.*) As Respondents acknowledge, this work allows them to "get out of their cells for some portion of the day, which is beneficial to their physical and mental health, and obtain additional food for their own enjoyment and nutrition." (2-ER-284, 286.) However, Respondents are not paid for working in the kitchen, nor is there an ordinance providing for such compensation. (2-ER-284, 286.) Aramark employees, in cooperation with Sheriffs' deputies, allegedly supervise incarcerated persons who perform kitchen work to ensure that they comply with safety rules. (2-ER-284–285.) Aramark employees also allegedly supervise incarcerated persons' conduct (reporting any misconduct to Sheriffs' deputies) and the "quality and amount" of work performed. (*Ibid.*) In addition, Aramark allegedly determines how much work must be performed in a shift, how many individuals are needed for a shift, and how many shifts are required. (2-ER-285.)

It is undisputed that all of the work performed in the Santa Rita Jail kitchen by incarcerated persons happens within the confines of the Santa Rita Jail, and that Aramark does not provide any meals prepared in the Santa Rita Jail kitchen to facilities outside California's county jail system.

C. Proceedings in the District Court

On November 20, 2019, Respondents brought this action in the U.S. District Court for the Northern District of California for damages and declaratory and injunctive relief on behalf of a putative class of persons incarcerated at the Santa Rita Jail, alleging violations of the Labor Code and other state and federal laws. (Dist. Ct. No. 4:19-CV-07637, ECF No. 1.) Petitioners moved to dismiss Respondents' Labor Code section 1194 claims on the ground that the wage and overtime provisions of the Labor Code do not apply to persons incarcerated in county jails. The District Court granted in part Petitioners' motions to dismiss as to the Labor Code claims brought by convicted persons, but denied the motion as to claims brought by non-convicted persons. In particular, the District Court concluded that Proposition 139 does not entitle persons incarcerated in county jails (unlike those incarcerated in state prisons) to wages unless authorized by local ordinance, and similarly recognized that the Penal Code "presumes that the Labor Code does *not* apply to duly convicted prisoners unless specifically indicated." (2-ER-314–316, 318, italics original.) The District Court, however, reasoned that the Thirteenth Amendment's prohibition against involuntary servitude renders the Labor Code applicable to non-convicted individuals. (*See* 2-ER-319 [concluding that, because non-convicted Respondents "are protected by the Thirteenth Amendment's prohibition against involuntary servi[ce]," they are entitled to "Labor Code protections" with respect to wages].)

On July 10, 2020, Respondents filed an amended complaint, operative here, which reasserted claims for minimum and overtime wages under section 1194 of the Labor Code on behalf of non-convicted incarcerated persons working in the Santa Rita Jail. (2-ER-296.) Petitioners again moved to dismiss these claims. (2-ER-240; Dist. Ct. No. 4:19-CV-07637, ECF No. 52.) Specifically, Aramark argued that the Penal Code—including, in particular, section 4019.3—"delegates to the county boards the discretion to pay a rate of up to two dollars for each eight hours of work performed by anyone confined in or committed to a county jail," and thus "presumes that the Labor Code does not apply." (Dist. Ct. No. 4:19-CV-07637, ECF No. 52 at p. 22, cleaned up, italics omitted.) Aramark further argued that, regardless of a person's conviction status, the Penal Code, together with Proposition 139, is "inconsistent with the Labor Code." (*Ibid*, quotations and citation omitted.) The District Court, however, denied these motions in relevant part in an order issued February 9, 2021 and an amended order issued June 24, 2021 containing additional reasoning.[4] (Dist. Ct. No. 4:19-CV-07637, ECF No. 66 at pp. 13–19; 1-ER-16–24; see also 1-ER-37.)

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[4] With respect to Respondents' Labor Code section 1194 overtime claims, the District Court denied Aramark's motion to dismiss but granted the County's motion because counties are exempt from the Labor Code's overtime requirements. (1-ER-26–27, citing Cal. Code Regs., tit. 8, § 11010.)

In these rulings, the District Court eschewed its prior reliance on the Thirteenth Amendment, recognizing that "claims of unpaid labor are distinct from claims of forced labor."[5] (1-ER-30; see also 1-ER-24 fn. 6.) The District Court, however, reasoned that the Penal Code and Labor Code are still not "mutually exclusive" because, in the District Court's view, the Penal Code does not address "employment and wages . . . for pretrial detainees confined in county jails." (1-ER-22, quotations and citation omitted.) The District Court did not address Penal Code section 4019.3 in reaching that conclusion. The District Court also concluded that laws governing the compensation of persons incarcerated in *state* prisons suggest that the Labor Code applies to persons incarcerated in *county* jails, despite previously recognizing that Proposition 139's provision relating to state prisoners is inapposite. (Compare 1-ER-18–19, 22–23, with 2-ER-314–16.) And despite recognizing that claims of unpaid labor were distinct from claims of forced labor, the District Court relied on a statute concerning compulsory labor to deny the motions to dismiss. (1-ER-22–23.) Finally, the District Court held that Proposition 139 did not preclude Respondents' claims because it was allegedly designed to prevent unpaid labor by incarcerated persons from replacing the non-inmate workforce and did not speak in explicitly preclusive terms. (1-ER-18–19.) The District Court's decision is

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[5] In addition to Respondents' Labor Code claims, Respondents asserted other claims under federal law regarding forced labor. Those claims remain pending in the District Court and are not within the scope of the interlocutory appeal in the Ninth Circuit.

the first ruling—state or federal—to apply Labor Code section 1194 to persons incarcerated in a county jail who perform services in the jail.

Petitioners jointly moved pursuant to 28 U.S.C. § 1292(b) for leave to appeal the District Court's ruling regarding Respondents' Labor Code claims, and the District Court granted the motion. (1-ER-2–3, 37–43.) In particular, the District Court concluded that "a reasonable jurist could adopt Aramark's position that . . . the Penal Code's preclusive effect on convicted individuals' assertions of claims under the Labor Code should also apply to non-convicted detainees." (1-ER-41.) The District Court also recognized that resolution of the question presented could have "substantial public policy importance to the state as a whole." (1-ER-41, quotations and citation omitted.)

D. Proceedings in the Ninth Circuit

The Ninth Circuit likewise granted Petitioners permission to file an interlocutory appeal. (*Ruelas v. County of Alameda*, No. 21-80075, ECF No. 1-3.) As a result of that posture, the case before the Ninth Circuit involves only Respondents' Labor Code claims, and does not encompass any other aspect of Respondents' suit (such as their claims under various federal laws, which remain pending in the District Court).

On November 1, 2022, following oral argument, the Ninth Circuit certified the question set forth above to this Court. (Order Certifying Question to the Supreme Court of California, *Ruelas v. County of Alameda* (9th Cir. Nov. 1, 2022), No. 21-16528, ECF No. 69 at p. 4 (hereafter Certification Order).)

Thereafter, on January 11, 2023, this Court granted the Ninth Circuit's request for certification.[6]

SUMMARY OF ARGUMENT

I. Penal Code section 4019.3, rather than the Labor Code's minimum and overtime wage provisions, governs whether, and to what extent, Respondents may receive compensation for work performed in the Santa Rita Jail kitchen.

A. That conclusion follows from well-established principles of statutory construction. Section 4019.3, which expressly governs work performed by persons incarcerated in a county jail, would be rendered superfluous if the Labor Code's minimum and overtime wage provisions also applied to such work. (See *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390 (hereafter *Imperial Merchant Services*).) Furthermore, applying the Labor Code's general provisions to Respondents would create a direct conflict with Penal Code section 4019.3, which speaks directly to wage rates for persons incarcerated in county jails. Under this Court's precedents, Penal Code section 4019.3 must control as the more specific provision. (See, e.g., *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 748–749 (hereafter *Stoetzl*).) Section 4019.3's statutory and legislative history likewise shows that county jails are subject to their own, separate

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[6] While briefing in the Ninth Circuit progressed, the parties continued to litigate the issue of class certification in the District Court. Following the Ninth Circuit's certification order, however, the District Court stayed those proceedings, pending the resolution of the proceedings in this Court.

compensation framework, and that policies established by county boards of supervisors (rather than the Labor Code) govern whether and to what extent persons incarcerated in county jails are entitled to compensation.

B. The broader statutory context confirms that the Penal Code, rather than the Labor Code's minimum and overtime wage provisions, applies here. Penal Code sections 4325 and 4327 reinforce that persons incarcerated in a county jail are not entitled to any compensation, unless authorized by the board of supervisors under section 4019.3. In addition, the Legislature has, in other statutes (e.g., Penal Code section 4017 and Labor Code sections 3370 and 6304.2) applied specific Labor Code provisions to incarcerated persons in a few narrow contexts, demonstrating that the Legislature knows how to take that step when it wishes to do so. The absence of provisions extending the Labor Code's minimum and overtime wage provisions to persons in county jail custody thus speaks volumes. Similarly, the fact that Proposition 139 expressly altered the compensation scheme applicable to persons incarcerated in *state* prisons, but did not do so for persons incarcerated in *county* jails, further underscores that the framework set forth in Penal Code section 4019.3 applies in the context of public-private programs such as the one alleged to exist here.

C. Applying the Labor Code's minimum and overtime wage provisions would also override legislative policy choices embodied in applicable California laws. In particular, doing so would eliminate the discretion that the Legislature vested in local officials concerning matters that have significant fiscal consequences for

county governments. Although Respondents maintain that they should be entitled to minimum and overtime wages as a policy matter, those arguments are properly directed to the Legislature rather than this Court.

II. Penal Code section 4019.3 applies equally to all persons incarcerated in county jails, irrespective of an individual's conviction status. Section 4019.3's text makes no distinction between persons who have been convicted and those awaiting trial, and this Court has interpreted materially identical language in a neighboring statute (Penal Code section 4019) as encompassing convicted and non-convicted individuals. (*People v. Dieck* (2009) 46 Cal.4th 934, 940 (hereafter *Dieck*).) Moreover, a longstanding Attorney General Opinion explains that section 4019.3 "applies to pre-sentence as well as post-sentence work."

III. The District Court's and Respondents' remaining reasons for applying the Labor Code do not withstand scrutiny. The District Court relied heavily on its mistaken view that the Penal Code does not address "employment and wages . . . for pretrial detainees in county jails" —a conclusion that fails to account for Penal Code section 4019.3, which the District Court did not acknowledge or address in its decision. The District Court likewise erred in concluding that differences between the compensation schemes for persons incarcerated in state and county facilities point in favor of applying the Labor Code to the latter. Those differences, to the extent relevant at all, support the opposite result. Further, the fact that Penal Code section 4017 distin-

guishes between convicted and non-convicted persons for purposes of who can be *required* to perform labor is irrelevant to the sole question presented in this appeal: whether non-convicted persons incarcerated in county jails who do perform work are entitled to minimum and overtime wages under the Labor Code. Finally, Respondents miss the mark in asserting that Penal Code section 4019.3 does not apply to public-private partnerships. There is no support in the text of section 4019.3, Proposition 139, or any other source for that proposition.

ARGUMENT

I. Penal Code Section 4019.3—Not the Labor Code—Governs Compensation for Persons Incarcerated in a County Jail Who Perform Work in Such Jail.

A. Principles of Statutory Construction Dictate that the Labor Code's Minimum and Overtime Wage Provisions Do Not Apply.

The plain text, structure, and history of the statutes addressing compensation for incarcerated persons in county jails—*i.e.*, the group that includes Respondents—confirm that the Labor Code's minimum and overtime wage provisions do not apply here.

1. *The Canon Against Superfluity*

This Court does "not presume that the Legislature performs idle acts, nor do[es] [it] construe statutory provisions so as to render them superfluous." (See *Imperial Merchant Services, supra*, 47 Cal.4th at p. 390.) Applying the anti-superfluity canon here precludes Respondents' minimum and overtime wage claims. If the Labor Code's minimum and overtime wage provisions applied to the work performed by Respondents in the Santa Rita Jail, Penal Code section 4019.3 would serve no purpose.

There would be no reason to enact a discretionary compensation scheme that permits county boards of supervisors to authorize a modest amount of compensation for persons incarcerated in county jails, if those individuals were already entitled to much larger wages mandated by general minimum and overtime regulations. (See, e.g., *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 654 (hereafter *Huntington Beach*) [giving effect to a statutory provision that "directly addresse[d] [plaintiff's] circumstances" and noting that "[t]he Legislature would not have created a specific but *superfluous* provision" (original italics)].)

2. *Conflicts of Statutes*

Other interpretive principles, particularly those governing conflicts among statutes, support the same conclusion. This Court's precedent mandates that "[w]hen possible, courts seek to harmonize inconsistent statutes, construing them together to give effect to all of their provisions." (See *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634 (hereafter *Lopez*).) Here, the most logical way to harmonize California's minimum and overtime wage standards with section 4019.3's discretionary compensation scheme is to conclude that section 4019.3 applies to work performed by incarcerated persons in county jails, whereas the Labor Code governs in other circumstances not specifically addressed in the Penal Code (or in other conflicting and specific compensation schemes). As this Court recognized in *Stoetzl v. Department of Human Resources*, "[w]here the general statute standing alone would include the same matter as the special act,

and thus conflict with it, the special act will be considered as an exception to the general statute *whether it was passed before or after such general enactment*." (7 Cal.5th at pp. 748–749, original italics, cleaned up, citing *People v. Gilbert* (1969) 1 Cal.3d 475, 479.)

In any event, the conflict between the Labor Code and Penal Code section 4019.3 would need to be resolved by application of the latter's more specific compensation scheme. In particular, section 4019.3 conflicts with the Labor Code's minimum and overtime wage standards in at least three respects: (1) it permits local officials not to set any minimum compensation rate for persons incarcerated in county jails; (2) it sets a maximum discretionary compensation rate that is well below the Labor Code's minimum wage rate; and (3) it provides that compensation standards may vary by county. This Court's precedent provides clear rules for how to resolve that conflict: Because section 4019.3 is more "specific" than the Labor Code's minimum and overtime wage provisions, and was enacted after those provisions, it "supersede[s]" the application of those provisions here.[7] (*Lopez*, *supra*, 5 Cal.5th at p. 634; see *Stoetzl*, *supra*, 7 Cal.5th at pp. 748–749.)

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[7] In the event of a conflict between these rules, "the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence." (*Lopez*, *supra*, 5 Cal.5th at p. 635, cleaned up.) But here, both the "specific governs general" rule and "later governs earlier" rule establish that section 4019.3 takes precedence over the Labor Code's minimum and overtime wage provisions.

This Court has applied that principle to hold that a general IWC wage order was superseded by a more specific compensation scheme—a precedent that applies with equal force here regarding the interaction between Penal Code section 4019.3 and the Labor Code's minimum and overtime wage provisions. (See, e.g., *Stoetzl*, *supra*, at pp. 748–749.) In *Stoetzl*, this Court recognized that "the IWC was authorized to adopt general background rules governing employee wages and hours," but the California Department of Human Resources "was the recipient of a more specific delegation, to establish salary ranges for state workers and to adopt, as appropriate, FLSA overtime standards for such workers." (*Id.* at p. 749.) The Court thus concluded that, regardless of which compensation scheme came first, the more specific compensation scheme superseded the IWC's general regulations where the two conflicted. (*Id.* at pp. 749–749.) In light of *Stoetzl* and similar precedents, the answer to the certified question is "no."

To the extent Respondents argue that the Labor Code's minimum and overtime wage provisions could still apply in the absence of a county ordinance governing compensation, that construction is at odds with the text of Penal Code section 4019.3. There is nothing in the statute's text or legislative history to suggest that a county board of supervisors *must* adopt an ordinance setting compensation at zero dollars if it wishes there to be no monetary compensation. To the contrary, section 4019.3 speaks purely in discretionary terms when it states that a "board of supervisors *may* provide" for compensation up to two dollars per

eight hours of work.[8] (Pen. Code, § 4019.3, italics added.) Moreover, it would make no sense for the Legislature to set up a system in which the Labor Code's general minimum and overtime wage provisions applied in the absence of an ordinance, but then, where an ordinance exists, require the county to limit compensation to a rate well below the minimum wage. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122 ["The court will apply common sense to the language at hand and interpret the statute . . . to avoid an absurd result."].) The far more logical conclusion is that section 4019.3 exclusively governs compensation for incarcerated individuals who perform work in a county jail and vests that decision in the discretion of local governments with responsibility for managing how public funds are spent.

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[8] The Legislature could have included language requiring boards of supervisors to enact ordinances governing compensation for work performed in county jails if it wished to do so. Indeed, in Penal Code section 4126, the Legislature enacted a scheme under which "[t]he maximum amount per day to be credited to a person in custody on an industrial farm or camp *shall be fixed from time to time by the board of supervisors* . . . but shall not exceed the sums mentioned in [Penal Code section 4125]." (Pen. Code § 4126, italics added; see also Stats. 1921, ch. 843, p. 1620.) The Legislature omitted that language from section 4019.3, and instead added the discretionary language "the boards of supervisors may provide." Thus, the Legislature was well aware of how to require boards of supervisors to enact ordinances governing inmate compensation, yet chose not to do so in Penal Code section 4019.3.

3. *Statutory and Legislative History*

The statutory and legislative history likewise reveal that the Labor Code's general minimum and overtime wage provisions do not, and never did, apply to work performed by individuals incarcerated in a county jail. (See, e.g., *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046 [courts may "look to legislative history to confirm [their] plain-meaning construction of statutory language"].)

First, since the time of the earliest IWC wage orders, persons in county custody have been subject to separate wage frameworks. The first such framework, enacted in 1921, applied only where work was performed outside the confines of a county jail, *i.e.*, on a county's custodial camp or farm. (See Stats. 1953, ch. 69, § 1, pp. 742–743 [codifying Penal Code sections 4125 and 4126]; Stats. 1921, ch. 843, pp. 1615, 1620.) As a result, incarcerated persons performing work *within* a county jail were initially unable to earn any compensation—under either the Labor Code or Penal Code sections 4125 and 4126. The Legislature addressed that gap in 1959 by enacting Penal Code section 4019.3, thus providing for the first time that boards of supervisors could authorize compensation for work performed by incarcerated persons in "jail kitchens, laundry or various maintenance assignments." (9th Cir. No. 21-16528, ECF No. 40 at p. 6 [Analysis of Senate Bill 1394 (June 10, 1959)].) Critically, as with the framework set forth in Penal Code sections 4125 and 4126, Penal Code section 4019.3 departed from the Labor Code by establishing a maximum wage rate of 50 cents (now two dollars) per eight hours of work, and by allowing each county to establish its own policy

rather than imposing a uniform statewide rule. The statute must be interpreted in a way that "promote[s] rather than defeat[s]" those policy choices and "the general purpose and policy of the law." (*People v. Centr-O-Mart* (1950) 34 Cal.2d 702, 704.)

Second, section 4019.3's legislative history emphasizes that monetary compensation is optional, rather than required, in the county jail context. The Senate Analysis explained that "[a]doption of [Penal Code section 4019.3] will permit a County Board of Supervisors to pay a county jail prisoner up to 50 cents a day for work done by them." (See 9th Cir. No. 21-16528, ECF No. 40 at p. 6 [Analysis of Senate Bill 1394 (June 10, 1959) (original underline)].) The association representing county boards of supervisors, CSAC, also contemporaneously stated that persons incarcerated in county jails would not be entitled to "any compensation" in the absence of authorization by the board of supervisors. (9th Cir. No. 21-16528, ECF No. 18, Ex. A, underline original; see also *Amalgamated Transit Union, Loc. 276 v. San Joaquin Reg'l Transit Dist.* (2019) 36 Cal.App.5th 1, 9–10 ["the contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, while not controlling, is always given great respect"].). The Legislature reiterated that compensation is "permissive" in 1975 when amending Penal Code section 4019.3 to increase the maximum discretionary wage rate to two dollars per eight hours worked. (9th Cir. No. 21-16528, ECF No. 18, Ex. C [Assembly Bill 1396 Bill Digest, Assembly Comm. on Criminal Justice (prepared for Hearing on May 28, 1975) (Senate Committee on Judiciary materials)].) Indeed, the Assembly Committee

on Criminal Justice specifically considered whether compensation "should . . . be mandatory" and whether increasing the maximum discretionary compensation rate would mean that fewer counties "pay anything." (9th Cir. No. 21-16528, ECF No. 18, Ex. C.) Those questions would have made no sense if, as Respondents claim, the Labor Code's minimum and overtime wage provisions already applied to work performed in a county jail.

It is thus unsurprising that, as far as Petitioners are aware, Respondents are the first to argue—and the District Court's ruling is the first to conclude—that the Labor Code's minimum and overtime wage provisions apply to persons incarcerated in county jails. That Respondents' theory had (until this case) apparently never even been raised in the century-long history of the minimum and overtime wage laws is telling in its own right. But the history of the relevant statutory provisions, in combination with their text and structure, shows why that is so—and why there is no basis for adopting Respondents' proffered statutory construction now.

4. *Respondents' Sole Interpretive Argument*

Against the various interpretive principles cited above, Respondents offer a single interpretive argument in response: that Labor Code section 1194 purportedly "controls as a statute of general applicability that must be liberally construed to protect workers." (Certification Order at 8, quotation marks omitted.) As noted above, the fact that the Labor Code's minimum and overtime wage provisions are generally applicable, whereas Penal

Code section 4019.3 specifically applies to Respondents' allegations, cuts *against* Respondents' argument that the Labor Code takes precedence. (See *Huntington Beach*, *supra*, 2 Cal.5th at p. 654; *California Teachers Assn. v. Governing Bd. of Rialto Unified Sch. Dist.* (1997) 14 Cal.4th 627, 649 (hereafter *Cal. Teachers*) ["broad" statutory provisions "do not control over the more specific section . . . which expressly governs" in the circumstances at issue]; see also, e.g., *Lopez*, *supra*, 5 Cal.5th at p. 634 [specific legislation controls over conflicting general provision]; *Stoetzl*, *supra*, 7 Cal.5th at pp. 748–749 [same].)

Although the Labor Code's minimum and overtime wage provisions are to be liberally construed as a general matter, precedent emphasizes that the liberal construction canon cannot overcome clear statutory language of the sort present in section 4019.3. (See *Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605 ["[The] rule of liberal construction . . . should not blindly be followed so as to eradicate the clear language and purpose of the statute"]; see also *Cal. Teachers*, *supra*, 14 Cal.4th at p. 649 [broad statutory provisions did not control over specific statutory provisions, notwithstanding argument that the broad provisions were to be "liberally construed"]; *Ruiz v. Industrial Acc. Commission* (1955) 45 Cal.2d 409, 413 ["It is true . . . that all provisions of the workmen's compensation law should be liberally construed to effect the law's beneficent purposes . . . but that does not mean that the Legislature's intent as expressed in the statute can be ignored."].)

In short, the text, structure, and history of the relevant statutes all establish that Penal Code section 4019.3's discretionary compensation scheme, which directly and specifically addresses the context of work done by incarcerated persons in county jails, applies rather than the Labor Code's general and conflicting minimum and overtime wage provisions.

B. Other California Laws Confirm that the Labor Code's Minimum and Overtime Wage Provisions Do Not Apply.

While section 4019.3 alone precludes application of the Labor Code's minimum and overtime wage provisions, other provisions of California law—including provisions of the Penal Code, Labor Code, and Proposition 139—bolster that conclusion.

1. *Penal Code §§ 4325 and 4327*

The first such provision is Penal Code section 4325. Enacted in its current form in 2016, section 4325 authorizes the boards of supervisors for specified counties to establish Jail Industry Authorities "within the county jail system" to develop various types of work programs for incarcerated persons. (Pen. Code, § 4325.) One purpose of these programs is "[t]o ensure prisoners have the opportunity to work productively and earn funds, *if approved by the board of supervisors pursuant to Section 4019.3*, and to acquire or improve effective work habits and occupational skills." (*Id.*, § 4325(b)(3), italics added.) The plain meaning of this provision—and in particular, the conditional phrase, "if approved by the board of supervisors pursuant to section 4019.3"—reflects the Legislature's understanding that incar-

cerated persons who perform work in a county jail are not necessarily entitled to earn funds at all, let alone minimum and overtime wages under the Labor Code, and that questions concerning compensation for such persons are delegated to boards of supervisors under section 4019.3.[9] (See, e.g., *Cmty. Bank of Arizona v. G.V.M. Tr.* (9th Cir. 2004) 366 F.3d 982, 985, 991 [interpreting "if" in a state statute similarly].)

Another provision, Penal Code section 4327, provides that upon the establishment of a Jail Industry Authority, the board of supervisors shall establish a Jail Industries Fund. (Pen. Code, § 4327.) As relevant here, "*[a]ll* jail industry income shall be deposited in, and *any* prisoner compensation shall be paid to the account of the prisoner from, the Jail Industries Fund." (*Ibid.*, italics added; see also Stats. 1987, ch. 1303, § 3, p. 4664 [including such language in the original version of section 4327, enacted in 1987].) The plain meaning of the conditional term "*any* prisoner compensation," particularly in contrast to "*all* jail industry income," suggests that prisoner compensation is not required. (See, e.g., *Hawkins v. Haaland* (D.C. Cir. 2021) 991 F.3d 216, 231 [interpreting similar usage of "any"].) Thus, section 4327 is consistent with section 4019.3 and 4325, as all of these provisions reflect that persons incarcerated in a county jail are entitled to

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[9] Alameda County is not itself authorized to establish a Jail Industry Authority under section 4325(a), but that does not alter the import of section 4325(b)(3), which simply reflects the Legislature's understanding of the Penal Code's discretionary wage scheme for persons in county jail custody—a scheme that applies throughout the State.

compensation for work done in the jail only if authorized by the board of supervisors—not as a mandatory rule under the Labor Code.

2. *Labor Code §§ 3370, 6304.2; Penal Code § 4017*

Likewise, Labor Code sections 3370 and 6304.2 and Penal Code section 4017 buttress the view that the Labor Code's minimum and overtime wage provisions do not apply here.

Labor Code section 3370 and Penal Code section 4017 provide that the Labor Code's workers' compensation provisions shall apply under certain circumstances to individuals who are incarcerated in state prisons and county jails, respectively. Labor Code section 6304.2, meanwhile, states that an employer-employee relationship shall exist—in certain circumstances and subject to exceptions—between state prisoners and the Department of Corrections "for the purposes of" the Labor Code provisions governing occupational health and safety. These statutes support Petitioners' position, because they show that the Legislature is well aware of how to make the Labor Code's provisions applicable to incarcerated individuals. The Legislature has taken that step in narrow and well-defined circumstances, subject to carefully crafted exceptions. Each of these statutes would have been superfluous if the Labor Code already applied generally to incarcerated individuals, as Respondents assert. That the Legislature enacted these statutes—but did not similarly enact statutes applying the Labor Code's minimum and overtime wage provisions to persons incarcerated in county jails—confirms that those wage

provisions do not apply here. This Court has drawn a similar inference in a variety of analogous situations, and should do so once again here. (See, e.g., *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 ["The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so. It has not done so for malicious prosecution claims."]; *People v. Sargent* (1999) 19 Cal.4th 1206, 1220 ["[W]hen the Legislature chooses to create a reasonable person standard, it knows how to do so."]; *T & O Mobile Homes, Inc. v. United California Bank* (1985) 40 Cal.3d 441, 455 ["It is apparent that, when the Legislature wants to discourage reliance by buyers on a certification system, it knows how to say so."].)[10]

3. *Proposition 139*

Proposition 139 also confirms that the Labor Code's minimum and overtime wage provisions do not apply to work performed by persons incarcerated in county jails. Proposition 139 amended article XIV, section 5 of the California Constitution

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[10] Relatedly, there would be no principled way to limit a ruling that the Labor Code's minimum and overtime wage provisions apply to persons incarcerated in county jails despite the absence of any express provision to that effect. The Labor Code provides a range of other benefits for employees, such as paid family leave (Lab. Code, § 12945.2) and paid sick leave (Lab. Code, § 245), but it would make no sense to apply those benefits in a custodial setting. The absurd and potentially disruptive consequences that could flow from Respondents' argument are yet another reason why the answer to the certified question must be "no." (See *People v. Bullard* (2020) 9 Cal.5th 94, 106 ["[W]e must . . . choose a reasonable interpretation that avoids absurd consequences that could not possibly have been intended."].)

("section 5") to permit public-private work programs in state prisons and county jails. For programs in county jails, such as the one alleged here, Proposition 139 provided that "[s]uch programs shall be operated and implemented . . . by local ordinances." (Cal. Const., art. XIV, § 5(a).) Respondents have argued that where there is a no local ordinance governing a public-private work program under section 5, the governing law should be the Labor Code, rather than the Penal Code. But there is nothing in section 5 that supports that argument, and indeed, other provisions of Proposition 139 point to the opposite conclusion.

The People approved Proposition 139 in 1990 against the backdrop of the existing laws that governed compensation for persons incarcerated in state prisons and county jails. (See *People v. Hernandez* (2003) 30 Cal.4th 835, 866–867 (hereafter *Hernandez*) [assuming that the electorate is aware of relevant existing law when it adopts legislation by initiative].) As described above, at the time of Proposition 139's approval—and dating back to 1959—the law that governed compensation for incarcerated persons who performed work in a county jail was Penal Code section 4019.3. Proposition 139 did not amend section 4019.3's compensation scheme, and indeed did not mention compensation in the county jail context at all. Rather, consistent with section 4019.3, Proposition 139 (through its amendment to section 5) provided that public-private work programs are governed by local ordinances. Proposition 139 did not require county boards of supervisors to enact an ordinance specifically governing the issue of

compensation for incarcerated persons in county jails (the only issue presented in this appeal), let alone suggest that, in the absence of such an ordinance, the Labor Code's minimum and overtime wage provisions, rather than Penal Code section 4019.3, would apply by default.

Proposition 139's differential treatment of work performed by persons in state and county custody is instructive. Proposition 139 revised the compensation scheme for state prisoners by adopting Penal Code section 2717.8. (Compare Pen. Code, § 2811 [mandating compensation of not more than "one-half the minimum wage" for work performed by state prisoners in general] with *id.*, § 2717.8 [mandating compensation comparable to the wages paid to non-inmate employees for Proposition 139 work, subject to deductions of up to 80 percent for restitution, "room and board," and other charges].) Section 2717.8 demonstrates that the drafters of Proposition 139 were well aware of how to alter the compensation scheme for work performed by incarcerated persons. Yet in contrast to its approach to state prisons, Proposition 139 conspicuously did *not* include any similar provision amending the existing framework permitting local governments to decide whether to compensate incarcerated persons who perform work in county jails. Instead, Proposition 139 left the preexisting scheme enacted by Penal Code section 4019.3 in place. Moreover, the substantial deductions Proposition 139 prescribed for work performed by *state* prisoners (i.e., up to 80 percent off of prevailing wages) undermines any suggestion that Proposition 139 *sub silentio* granted persons incarcerated in *county* jails a

right to the much higher minimum wages and overtime mandated by the Labor Code's general provisions (which, absent limited exceptions, may not be subject to deductions as a general matter (see Lab. Code, § 221 et seq.)).

Under Respondents' view of the law, then, persons incarcerated in county jails would earn far *more* than individuals incarcerated in state prisons—even though California counties lack the resources available to the State. There is no evidence that the drafters of Proposition 139 intended the bizarre consequences inherent in Respondents' claim that the Labor Code applies to them. In short, all that Proposition 139 demonstrates is that the drafters of the initiative were aware of how to alter the existing compensation schemes for work performed by incarcerated persons, but chose to keep in place Penal Code section 4019.3's discretionary compensation scheme for work done in county jails.

C. Application of the Labor Code's Minimum and Overtime Wage Provisions Would Override Legislative Policy Choices Embodied in Applicable California Laws.

Because the statutory language and history of Penal Code section 4019.3 and other applicable laws are clear, any public policy arguments advanced by Respondents are properly addressed to the Legislature and the board of supervisors, not this Court. (See *Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 26 ["Where the application of firmly established rules of statutory construction establish a statute's meaning, we may not rest our decision on the weighing and balancing of public

policy considerations." (quotations and citation omitted)].) Insofar as policy considerations are relevant, however, "it is the *Legislature's* policy that ultimately must control." (*Ibid.*, italics original.)

Here, Respondents' interpretation would undermine the Legislature's central policy behind Penal Code section 4019.3: that county officials have exclusive authority to decide whether and to what extent to authorize compensation for persons incarcerated in county jails. That legislative policy is reasonable. After all, it is county officials who are responsible for maintaining county jails (see Pen. Code, § 4000), housing and providing for the needs of persons incarcerated in county jails (see Pen. Code, § 4015), and bearing the substantial costs of operating county jails, including the costs of compensating incarcerated persons or contracting with private companies, such as Aramark, to do so (see Gov. Code, § 29602; see also *Cty. of Lassen v. State of California* (1992) 4 Cal.App.4th 1151, 1155–57 [discussing costs incurred by counties in operating county jails]; 3-ER-350 [District Court recognizing the economic reality that Aramark's contract "reduc[es] the cost of incarceration" for the County]). While the Legislature (and, through Proposition 139, the People) *could* have adopted a policy under which boards of supervisors are required to provide compensation for persons incarcerated in county jails, they chose not to do so. (Compare Pen. Code, § 4019.3 [board of supervisors "*may*" provide for compensation], with Pen. Code, § 4126 [compensation rate "shall be fixed from time to time by the board of supervisors"]; cf. also, e.g., *Simpson*

v. Hite (1950) 36 Cal.2d 125, 129 ["The state Legislature has declared the legislative policy applicable here: that the board of supervisors *shall* provide suitable quarters for the municipal and superior courts." (italics added)] [citing statute that uses the term "shall," not "may"]; 9th Cir. No. 21-16528, ECF No. 18, Ex. C [Assembly committee raised question whether section 4019.3 should be amended to provide for mandatory compensation, but Legislature did not enact such an amendment].)

The Legislature's choice also reflects an understanding that the policies underlying the Labor Code's minimum and overtime wage provisions apply differently in custodial and non-custodial settings. "The purpose sought to be obtained by the fixing of minimum wages was to provide compensation adequate to supply the necessary cost of proper living and to maintain the health and welfare of the employees." (*Jaime Zepeda Lab. Contracting, Inc. v. Dep't of Indus. Rels.* (2021) 67 Cal.App.5th 891, 915 fn. 35, quotations and citation omitted; see also *Martinez*, *supra*, 49 Cal.4th at p. 54 [Legislature's original role in regulating the minimum wage was to ensure a wage that allowed for "necessary *shelter*, wholesome *food*, and sufficient *clothing*" (quotations and citation omitted, italics added)]; Lab. Code, § 1178.5 [tasking the Industrial Welfare Commission to create a wage board if necessary to recommend "a minimum wage adequate to supply the necessary cost of proper living to, and maintain the health and welfare of employees"].) Those principles rest on a premise that workers are, in general, responsible for paying for their own living expenses. However, county governments are required to provide for

the health and welfare of persons incarcerated in county jails regardless of their ability to earn wages. (See Pen. Code, § 4015; cf. *Morgan v. MacDonald* (9th Cir. 1994) 41 F.3d 1291, 1292 [recognizing, in the context of federal minimum wage standards, that "ensuring a minimum standard of living for all workers . . . is simply inapplicable to prisoners for whom clothing, shelter, and food are provided by the prison" (quotations and citation omitted)].)

The Legislature has acknowledged that compensation for incarcerated persons can "[p]rovide restitution and compensation to the victims of crime" and "support inmates' families to the extent possible." (1990 West's Cal. Legis. Service Prop. 139, § 2(b), (d).) But the Legislature has also recognized that work programs can serve to "[r]eimburse . . . counties for a portion of the costs associated with incarceration," as well as other legitimate purposes that do not require compensation for incarcerated persons—namely, "encourag[ing] and maintain[ing] safety in prison and jail operations," and allowing incarcerated persons to "[l]earn skills which may be used upon their return to free society."[11] (*Id.*,

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[11] Incarcerated persons who work in county jails receive other valuable non-monetary benefits as well. For example, as Respondents acknowledge, "working in the [Santa Rita Jail] kitchen means that [Respondents] can get out of their cells for some portion of the day, which is beneficial to their physical and mental health, and obtain additional food for their own enjoyment and nutrition." (2-ER-286 [amended complaint].) In addition, incarcerated persons who perform work in a county jail receive job training and are eligible for sentence reduction credits. (See Pen. Code, § 4019.1.)

§ 2(a), (c), (e).) Critically, for county jails, the Legislature (through Penal Code section 4019.3) and People (through Proposition 139) chose to delegate to boards of supervisors the task of balancing these competing goals and deciding whether and how much compensation to authorize.

II. Penal Code Section 4019.3 Applies Equally to Convicted and Non-Convicted Persons

The District Court held that application of the Labor Code's minimum and overtime wage provisions turns on whether a person incarcerated in a county jail has been convicted. Yet, nothing in the text of section 4019.3, which establishes a discretionary compensation regime for "each prisoner confined in or committed to a county jail," makes any distinction between convicted and non-convicted persons. (Pen. Code, § 4019.3.) To the contrary, section 4019.3 encompasses *all* persons incarcerated in a county jail—a conclusion that is supported by the ordinary meaning of the statutory text, this Court's interpretation of an identically-worded clause in section 4019, and the Attorney General's longstanding and persuasive interpretation of section 4019.3 itself.

Starting with the text: the ordinary meaning of each of the relevant terms in section 4019.3 encompasses all incarcerated individuals, regardless of conviction status. In particular, "confined" simply means "imprison[ed] or restrain[ed]." (Confinement, Black's Law Dict. (11th ed. 2019).) Similarly, "commitment" is "[t]he act of confining a person in a prison, mental hospital, or other institution[.]" (Commitment, Black's Law Dict. (11th ed. 2019).) A "prisoner" is "[s]omeone who is being confined in

prison[,]" a group that encompasses non-convicted persons. (Prisoner, Black's Law Dict. (11th ed. 2019).) Moreover, Penal Code section 4019.3 specifically applies to prisoners in a county "jail" (i.e., not a state penitentiary)—and one of the core purposes of county jails is to house non-convicted individuals. (See, e.g., Pen. Code, § 4000 [county jails are to be used for, among other things, "the detention of persons charged with crime and committed for trial"]; see also Pen. Code, § 4005 ["[T]he sheriff shall . . . keep in the county jail[] any prisoner committed thereto by process or order issued under the authority of the United States[.]"].) Thus, the text and context of section 4019.3 do not support Respondents' argument that the statute applies only to convicted individuals.

The ordinary meaning of section 4019.3's text is further supported by this Court's interpretation of the phrase "confined in or committed to a county jail" in a neighboring provision, Penal Code section 4019, which concerns good time credits. (Pen. Code, § 4019(a)(1)–(3).) Because sections 4019 and 4019.3 "deal[] with the same subject matter," the identically-worded clauses in these provisions "should be accorded the same interpretation." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 175, citation omitted.) When interpreting section 4019, this Court recognized that "the term 'confinement' is defined as 'the state of being imprisoned or restrained.'" (*Dieck*, *supra*, 46 Cal.4th at p. 940, quoting Black's Law Dict. (8th ed. 2004).) This Court also concluded that "committed" "means a judicial officer's

order sending a defendant to jail, prison, or other form of qualifying confinement." (*Ibid.*) While this Court explained that the phrases "confined in" and "committed to" thus have distinct meanings (*id.* at pp. 940–941, quotations and citation omitted), this Court's interpretations of both phrases included non-convicted individuals. Indeed, this Court specifically noted that "presentence" conduct that triggers section 4019 good time credits includes the "period of incarceration that occurs prior to . . . a judgment of imprisonment[.]" (*Id.* at p. 938, fn. 2.) Accordingly, non-convicted individuals who are incarcerated in a county jail are "confined in or committed to a county jail" under section 4019.3.

Consistent with the foregoing, the California Attorney General—whose "opinions are entitled to considerable weight" (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1087, fn. 17)—has concluded that section 4019.3 "applies to pre-sentence as well as post-sentence work time" (57 Ops.Cal.Atty.Gen. 276, 283 (1974)). That opinion is especially persuasive here because the Legislature amended section 4019.3 only one year later and "left intact the language construed" by the Attorney General. (*California Assn of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [explaining that the "Legislature is presumed to be cognizant of [the Attorney General's] construction of the statute," and applying that presumption to find persuasive an Attorney General's opinion that, like here, was issued one year before the Legislature amended the statute at issue (quotations and citation omitted)].)

III. The Other Reasons Advanced in Support of the Labor Code's Application Are Unpersuasive.

The District Court's and Respondents' remaining arguments for applying the Labor Code are meritless.

A. The District Court's Reasoning

First, the District Court reasoned that the Penal Code and Labor Code are not "mutually exclusive" because the Penal Code does not address "employment and wages . . . for pretrial detainees in county jails." (1-ER-22, citing Pen. Code, § 4000 et seq.) But that conclusion (and the District Court's opinion) simply overlooks Penal Code section 4019.3, which addresses the topic of wages for all persons housed in county jails, including non-convicted persons. The District Court's reasoning also bypasses Penal Code sections 4325 and 4327, which further address the issue of compensation for work performed by persons incarcerated in county jails.

Second, the District Court incorrectly concluded that Penal Code sections 2811 and 2717.8, which govern compensation for incarcerated persons working in *state* prisons, support application of the Labor Code to persons incarcerated in *county* jails. (1-ER-18–19, 22–23.) But these statutes, to the extent relevant at all, support the opposition conclusion. In particular, these provisions, together with the Penal Code provisions governing compensation for work done by persons in county custody (*i.e.*, Penal Code sections 4019.3, 4125, 4126, and 4222), are all evidence of the Legislature's approach of applying specific compensation frameworks, rather than the Labor Code, to work done by incar-

cerated persons. Moreover, as noted above, the fact that Proposition 139 created a new compensation scheme in Penal Code section 2717.8 for incarcerated persons performing work as part of a public-private partnership demonstrates that the drafters of Proposition 139 were well aware of how to alter the existing compensation scheme for incarcerated persons, but chose to keep in place Penal Code section 4019.3's compensation scheme for persons in county custody.[12] (See, e.g., *People v. Cole* (2006) 38 Cal.4th 964, 979 [explaining that, "[h]ad the Legislature intended" a proffered statutory reading, "it no doubt would have included similar language" as in a neighboring provision, and the fact "[t]hat the Legislature did not include such language suggests it did not intend" that proffered reading]; *Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal. 5th 257, 266–267 [similarly finding the "absence of language" in one provision that was included in another provision "telling"].)

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[12] Moreover, the fact that the Legislature and People have enacted different provisions for persons in state and county custody makes sense. Counties lack the resources available to the state, and the resources that they do have vary widely by county. (See, e.g., *In re Aline D.* (1975) 14 Cal.3d 557, 567 [noting the effect of "[b]udgetary limitations" that "vary[] from county to county" on juvenile rehabilitation facilities].) In addition, state and county custodial populations differ in various respects, meaning that it is not at all unusual (or impermissible) for different laws to apply to these different sets of incarcerated persons. (Compare Pen. Code, Pt. 3, Titles 1 and 2 (statutes governing persons incarcerated in state prisons), with Pen. Code, Title 1, Pt. 4 ["County Jails, Farms and Camps."].)

Third, in distinguishing non-convicted incarcerated persons from convicted persons, the District Court relied on Penal Code section 4017, which provides that all persons confined in a county jail "under a final judgment of imprisonment rendered in a criminal action or proceeding . . . may be required" to perform certain types of labor. (1-ER-22–23; Pen. Code § 4017.) This provision in inapposite. Section 4017 distinguishes between non-convicted and convicted individuals with respect to who may be *required to perform work*. But the question presented on appeal is not whether pre-trial detainees may be required to perform work—it is whether they may state a claim for minimum and overtime wages under Labor Code section 1194 for the work that they do perform. Their Labor Code cause of action is distinct from their other claims alleging unlawful forced labor, which remain pending in the District Court, and which shed no light on the issue of minimum and overtime wage compensation.[13] (See, e.g., *McCollum v. Mayfield* (N.D. Cal. 1955) 130 F. Supp. 112, 113 [pre-trial county incarcerated person brought section 1983 claim alleging improper forced labor under the Thirteenth Amendment and Penal Code section 4017, *not* a Labor Code claim]; see also *Muchira v. Al-Rawaf* (4th Cir. 2017) 850 F.3d 605, 625 [noting

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[13] Indeed, the District Court itself recognized that "claims of unpaid labor are distinct from claims of forced labor," which prompted it to eschew its earlier reliance on the Thirteenth Amendment. (1-ER-30; *see* 1-ER-24 fn. 6.) But the District Court then repeated the same flawed reasoning by relying on Penal Code section 4017's required-labor provision instead.

that the forced labor provisions of the Trafficking Victims Protection Act "serve a much different purpose" than wage-and-hour claims under federal or state law].)

Fourth, also relying on Penal Code section 4017, the District Court observed that some of Respondents' work benefits third parties outside the county (as clarified in the Certification Order, this out-of-county benefit is limited to provision of meals to a few county jails in other California jurisdictions). In particular, the District Court found it relevant that, under section 4017, persons incarcerated in county jails may only be required to perform labor "on the public works or ways in the county." (Pen. Code § 4017; see 1-ER-23.) But this language, too, is beside the point. Whether an incarcerated person may be *required* to perform labor that benefits third parties outside the county is a distinct question from whether and to what extent an incarcerated person is entitled to *compensation* for work (required or otherwise). The latter question, as explained above, is not governed by section 4017, but by section 4019.3—a statute that makes no distinction between work that benefits the county and such work that benefits third parties outside the county.[14]

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[14] Even if it were relevant whether Respondents' work benefited the county, that point would not support Respondents' position. Respondents allege that they performed work in an Alameda County jail pursuant to a contract between Aramark and the County, executed for the benefit of the County and its residents, and which primarily provides food for Alameda's county jail. The mere fact that a portion of Respondents' work also benefits jails

B. Respondents' Other Arguments

Respondents relied on two additional arguments in the Ninth Circuit, both of which are similarly unavailing.

In particular, Respondents have contended that there is no conflict between Penal Code section 4019.3 and the Labor Code's minimum and overtime wage provisions because section 4019.3 purportedly does not apply to work performed for private contractors. (See 9th Cir. No. 21-16528, ECF No. 41 [Respondents' Answering Brief] at 16–17.) But there is nothing in the text of section 4019.3 to support this argument. The statute does not mention the identity of the alleged employer at all, but rather focuses on who performs the work ("prisoner[s] confined in or committed to a county jail") and where the work is performed ("in such county jail"). There is no dispute that Respondents are (or at the relevant time were) "prisoner[s] confined in or committed to a county jail," or that they allegedly performed work "in such county jail." Respondents are therefore subject to section 4019.3.

In addition, Respondents allege that the program at issue here is governed by Proposition 139, and argue on that basis that Penal Code section 4019.3 does not apply in the context of public-private programs authorized by Proposition 139 because those

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in other counties does not render the clear benefit provided to Alameda County outside the purview of section 4017. Indeed, even as to the food services provided to other county jails, the County receives a direct benefit in the form of commissions that further offset the cost of operating the Santa Rita Jail. (See 9th Cir. No. 21-16528, ECF No. 18, Ex. D [Satellite Facilities Food Service Letter of Understanding between the County and Aramark].)

programs did not exist when the Legislature enacted Penal Code section 4019.3. (See 9th Cir. No. 21-16528, ECF No. 41 [Respondents' Answering Brief] at 21–22.) Put differently, Respondents suggest that the Legislature might have selected a different compensation scheme if Proposition 139 work programs had existed in 1959. This argument is defeated by clear precedent. As this Court explained in *Los Angeles Unified School District v. Garcia*, the fact that the Legislature "did not consider [a] statute's application to the setting at issue" does not preclude the statute from applying to that setting. ((2013) 58 Cal.4th 175, 192; see also *People v. Bell* (2015) 241 Cal.App.4th 315, 344 (hereafter *Bell*) ["[E]ven when a legislature likely would have enacted a differently-worded law had it foreseen future developments, any statutory revision reflecting that reality must come from that legislature, not the judiciary."].) Indeed, courts have applied this principle "in countless cases, refusing to read an exception into a statute merely because a particular application was likely unanticipated by the enacting legislature." (*Bell*, *supra*, 241 Cal.App.4th at p. 344.) Here, not only has Penal Code section 4019.3 remained unchanged since the approval of Proposition 139, but the voters who approved Proposition 139 in fact decided to change the compensation scheme for persons incarcerated in *state* prisons while making no changes to the section 4019.3 scheme. Thus, the rule stated in *Garcia* and *Bell* applies with particular

force here, and forecloses Respondents' request to alter the compensation framework that applies to work performed in county jails.[15]

CONCLUSION

For the foregoing reasons and those set forth in the County's brief, we respectfully submit that this Court should answer the certified question, "No."

Respectfully submitted,

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February 10, 2023 By: 
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[15] Respondents' answering brief in the Ninth Circuit also focused on whether they could adequately plead an employment relationship for purposes of the Labor Code under the test stated in *Martinez*, *supra*, 49 Cal.4th 35. This argument is a red herring. The District Court considered it a distinct issue from the certified question on appeal (see 1-ER-25), for good reason. There is no need to reach the question whether Respondents have adequately pleaded an employment relationship under the Labor Code if the Labor Code's minimum and overtime wage provisions do not apply as a threshold matter—and they do not, for the reasons stated above.

CERTIFICATE OF WORD COUNT

Pursuant to rules 8.204(c) and 8.504(d) of the California Rules of Court, I hereby certify that the text of this Opening Brief on the Merits contains 12,296 words, including footnotes. In making this certification, I have relied upon the word count of Microsoft Word, used to prepare the Brief.

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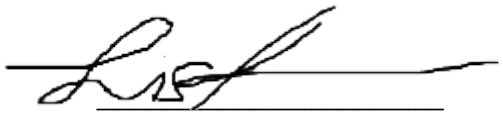

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