

No. S282020

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

THE NORTH RIVER INSURANCE COMPANY,
Defendant and Appellant;
BAD BOYS BAIL BONDS
Real Party in Interest and Appellant.

**After a Decision of the Court of Appeal
Second Appellate District, Div. 8
Case No. B322752**

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANT;
AMICUS CURIAE BRIEF**

**Toni L. Martinson (Bar No. 167520)
Two Jinn, Inc. d/b/a
Aladdin Bail Bonds
1000 Aviara Parkway, Suite 300
Carlsbad, CA 92011
Tel: (858) 527-8328
Attorneys for Amicus Curiae**

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
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INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(f), Two Jinn, Inc. d/b/a Aladdin Bail Bonds respectfully requests leave to file the attached Brief of Amicus Curiae in Support of Appellant The North River Insurance Company (“Appellant”). This application is timely made within 30 days after the reply brief was filed on March 12, 2024.

THE AMICUS CURIAE

Two Jinn Inc. d/b/a/ Aladdin Bail Bonds (“Aladdin”) is agent for surety Seaview Insurance Company. No party or counsel for a party to the pending appeal authorized the amicus brief or made a monetary contribution intended to fund the preparation for submission of the brief. No other person or entity made a monetary contribution intended to fund the preparation for submission of the brief.

INTEREST OF AMICUS CURIAE

Penal Code § 1305(g) provides for exoneration of a bail bond when a bail agent locates a defendant outside of California, has a local law enforcement official identify the defendant under penalty of perjury, and the prosecuting agency elects not to extradite after being informed of the defendant’s location. The issue in this appeal is whether a prosecuting agency may make an extradition decision outside of the appearance period when a bail agent has timely met its obligations under Penal Code § 1305(g).

Aladdin Bail Bonds has retail outlets throughout California. Thus, the resolution of this issue will have a significant and direct impact on Aladdin as it will affect whether Aladdin is entitled to exoneration of a bail bond when it timely locates bail fugitives in foreign countries. Aladdin routinely locates bail fugitives in Mexico and other countries and has been involved in the return of fugitives to face justice in California, largely due

the resources Aladdin deploys as a direct result of the incentive for bail forfeiture relief created by Penal Code § 1305(g). If the prosecuting agency is not allowed to make an extradition decision outside of the appearance period, Aladdin and other bail agents will no longer have the certainty of the expiration of the appearance period as a deadline for locating fugitives. Instead, it will need to start making calculations as to when it must meet its obligations under Penal Code § 1305(g) by guessing as to the time the prosecuting agency needs to make an extradition decision. Rather than using the entire appearance period to locate a defendant and meets its obligations under Penal Code § 1305(g), a bail agent may determine that it should stop its investigation into the defendant's location in a foreign country when a prosecuting agency may not make an extradition decision within the appearance period.

NEED FOR FURTHER BRIEFING

Aladdin is familiar with the issues before this Court and believes further briefing is necessary to address matters not fully addressed by the parties' briefs. Aladdin will explain how the Appellate Court's decision benefits not only sureties and indemnitors but also victims and their families who want to see a defendant face prosecution and the prosecuting agency. Moreover, Aladdin will respond to the People's discussion of Aladdin Bail Bonds' involvement with the 2012 legislative history regarding Penal Code § 1305(g) and Penal Code § 1305(h) in its briefing.

Accordingly, Aladdin respectfully requests that this Court accept leave to file the attached Brief of Amicus Curiae.

Respectfully submitted,

Dated: April 10, 2024

/s/ Toni L. Martinson
Toni L. Martinson
Attorney for Amicus Curiae
Two Jinn, Inc. d/b/a
Aladdin Bail Bonds

BRIEF OF AMICUS CURIAE

INTRODUCTION

The fundamental purpose of the bail bond system is to secure the appearance of a criminal defendant in court. “The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court.” *People v. Far West Insurance Company* (2001) 93 Cal. App. 4th 791, 794. Penal Code § 1305(g) was enacted to further that purpose by providing an incentive for bail agencies to expend the time and resources to locate a defendant who has fled California. *County of Los Angeles v. American Contractors Indem. Co.*, 152 Cal. App. 4th 661, 666 (2007). The *County of Los Angeles* court explained that “[t]here is a public interest at stake here as well - the return of fleeing defendants to face trial and punishment if found guilty. Given the limited resources of law enforcement agencies, it is bail bond companies, as a practical matter, who are most involved in looking for fugitives from justice.” *Id.* at 665-66. Thus, the purpose of Penal Code § 1305(g) is not to reward the surety for locating a defendant outside of California. Rather, the purpose is to ensure that prosecuting agencies have the necessary information to make an extradition decision and seek the extradition of those defendants that the prosecuting agency determines should be arrested and returned to the court’s jurisdiction to face prosecution.

In determining that a trial court may continue the hearing date outside of the appearance period to allow a prosecuting agency to make an extradition decision pursuant to Penal Code § 1305(g), the Appellate Court held that a trial court must either “ask the prosecution to announce its extradition decision or had to grant [the surety’s] request to continue the appearance period to allow the prosecution enough time to make its decision.” *People v. The North River Ins.*

Co., 94 Cal. App. 5th 663, 670 (2023). In doing so, the Appellate Court explained that bail statutes are to be “construed strictly in favor of the bail company to avoid bail forfeiture.” *Id.* Courts are also directed to protect both the surety “and, more importantly, the individual citizens who pledge to the surety their property on behalf of persons seeking release from custody.” *People v. National Automobile and Casualty Insurance Company*, 98 Cal. App. 4th 277, 287-88 (2002).

But as the purpose of bail is the return of the defendant to the court’s jurisdiction, courts must also consider the impact on the criminal justice system and the victims and their families. In this case, the defendant was charged with committing a lewd or lascivious act on a child under the age of fourteen by use of force or fear in violation of Penal Code § 288(b)(1). If the prosecuting agency elected to extradite in this case, it would likely have sought the surety’s assistance during the extradition process. As extraditions can take years and a defendant is not in custody and free to travel anywhere during that time, the prosecuting agency often requests the bail company to provide a location for a defendant during the extradition process. The bail company usually has its own resources in the foreign country that were used to locate the defendant initially and also has likely developed relationships with the indemnitor(s) on the bond and other persons who assisted in that initial investigation, including family members and other associates of the defendant. These resources are necessary when a prosecuting agency requests that the surety obtain an updated location for the defendant during the extradition process (a prosecutor may request an update as to a defendant’s location when it is time to renew an agreement to toll pursuant to Penal Code § 1305(h) or when the Department of Justice has asked for more information) and when the United States Marshals Service requests assistance in locating a defendant once a warrant is issued and the defendant can be arrested.

Thus, a court's ability to continue the hearing date for the prosecuting agency to make an extradition decision benefits not only the surety and the indemnitors but also the prosecuting agency and the victims and their families while furthering the purpose of the bail system. Indeed, when a prosecuting agency elects not to extradite only to be advised by the victims or their families that they want to see the defendant arrested and prosecuted, the prosecuting agency should have the ability to change its extradition decision at the time of the hearing on a Penal Code § 1305(g) motion even when the motion is heard outside of the appearance period. The prosecuting agency not only obtains the continued assistance of the surety until the defendant's arrest but can also collect the costs of the extradition from the surety pursuant to Penal Code § 1306. Accordingly, the Appellate Court's decision should be affirmed as it benefits everyone involved in the criminal justice system except the defendant who has fled California to avoid facing prosecution.

LEGAL DISCUSSION

A HEARING ON A MOTION BROUGHT PURSUANT TO PENAL CODE § 1305(g) SHOULD BE CONTINUED TO ALLOW THE PROSECUTING AGENCY TO MAKE AN EXTRADITION DECISION.

The Appellate Court held that a trial court may continue the hearing date on a motion brought pursuant to Penal Code § 1305(g) to allow the prosecuting agency to make an extradition decision. While the People contend that the extradition decision must be made within the appearance period, neither the statutory language, the legislative history, nor the purpose of the bail system require this limitation.

First, while the requirements under other subsections of Penal Code § 1305 must occur during the 180-day appearance period, Penal Code § 1305(g) does not

contain this language. Thus, a court may continue a hearing pursuant to Penal Code § 1305(j) to allow the prosecuting agency to make an extradition decision. While the People contend that Penal Code § 1305(j) only allows a court to continue a hearing date for management of its docket, the Legislature did not use language limiting a continuance of the hearing date to calendaring or other docket management issues. Rather, the Legislature provided trial courts with broad discretion to continue a hearing by using the much more general “good cause” language.

Nor does the legislative history of Penal Code § 1305(g) and Penal Code § 1305(h) establish that the prosecuting agency must make an extradition decision within the forfeiture period. While the Legislature has not passed legislation to provide for a set time period in which the prosecuting agency must make an extradition decision, this does not mean that the Legislature has determined that Penal Code § 1305(g) bars the prosecuting agency from making an extradition decision outside of the appearance period. As this Court recognized, when “a provision is dropped from a bill during the enactment process, the cause may not even be a *legislative* decision at all.” Thus, “[u]npassed amendments have little value as evidence of legislative intent.” *North River*, 94 Cal. App. 5th at 673, citing *Arnett v. Dal Cielo*, 14 Cal. 4th 4, 28, 29, 56 (1996). The People also conflate an agreement to toll the appearance period pursuant to Penal Code § 1305(h) and the extradition requirement in Penal Code § 1305(g). These are two distinct subsections with different concerns, however. The enactment of Penal Code § 1305(h) did not replace legislation concerning when an extradition decision is required under Penal Code § 1305(g).

Finally, the purpose of the bail system is best served by allowing trial courts to continue the hearing date pursuant to Penal Code § 1305(j) to provide the prosecuting agency with the necessary time to make an extradition decision.

Indeed, as the People explain, reaching an extradition decision takes “substantial time and effort” and the prosecuting attorney may have “a docket overflowing with other matters that have equally or more pressing deadlines.” (AOB 43.) This creates uncertainty as to when the surety must meet its obligations under Penal Code § 1305(g) as it is impossible to know how much time the prosecuting agency will need to make an extradition decision. And this uncertainty undercuts the purpose of Penal Code § 1305(g), which is to provide an incentive to sureties to expend their resources locating defendant who have fled California by providing assurance that the bonds will be exonerated even when a prosecuting agency elects not to extradite. Instead, sureties will need to start making calculations as to which defendants to pursue based on how easily and quickly they can be located. While the People argue that “any adjustments to [the Legislature’s] chosen scheme will have winners and losers” (AOB 30), the only loser under an interpretation that allows the prosecuting agency to make an extradition decision outside of the appearance period is the defendant fleeing from justice. In contrast, in addition to the surety and the indemnitors on the bond, the prosecuting agency, the victims and their families, and the criminal justice system benefit from allowing the prosecuting agency to make an extradition decision outside of the appearance period.

A. Penal Code § 1305(g) Does Not Require a Prosecuting Agency to Make an Extradition Decision within the Appearance Period.

Penal Code § 1305 does not contain any bar to the prosecuting agency making an extradition decision outside of the appearance period. First, unlike other subdivisions of § 1305, Penal Code § 1305(g) does not contain the 180-day limitation for the prosecutor to make an extradition decision. Thus, a court may continue the hearing to allow a prosecutor to make an extradition decision pursuant to Penal Code § 1305(j). Second, Penal Code § 1305(j) provides that a

court may continue a hearing for “good cause” rather than limiting continuances to calendaring or docket concerns. Finally, a trial court’s ability to continue a hearing to allow the prosecuting agency to make an extradition decision does not raise any constitutional concerns regarding the separation of powers doctrine.

Unlike Penal Code §§ 1305(c)(d), and (e), Penal Code §§ 1305(f), (g), and (h) do not include language requiring that the statutory elements be met within the appearance period. “Where the Legislature carefully uses a term or phrase in one place but excludes it in another, [courts should] not imply the term or phrase where excluded.” *Slocum v. State Board of Equalization* (2005) 134 Cal. App. 4th 969, 978-79. “[I]nser[ing] additional language into a statute ‘violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes.’” *People v. Guzman* (2005) 35 Cal. 4th 577, 587 (brackets in the original). Moreover, the addition of this provision to Penal Code § 1305(g) would make the 180-day limitation under Penal Code §§ 1305(c), (d) and (e) surplusage. *See Slocum*, 134 Cal. App. 4th at 979 (stating that “[w]e always seek to avoid a construction that renders some words surplusage”).

Penal Code §§ 1305(f)(g) and (h) are the only subsections of Penal Code § 1305 that require action by the prosecuting agency. While a surety should be responsible for a defendant appearing in court (Penal Code § 1305(c)(1)) or being taken into custody (Penal Code §§ 1305(c)(2) and 1305(c)(3)) or obtaining proof of a temporary or permanent disability (Penal Code §§ 1305(d) and 1305(e)), the surety has no control over when a prosecuting agency will make an extradition decision. As the Appellate Court explained, “[b]ail rules, including appearance periods, give bail companies predictable deadlines for what can be a challenging and expensive hunt.” *North River*, 94 Cal. App. 5th at 671. A requirement that

the prosecuting agency make an extradition decision within the appearance period creates uncertainty as to the surety's deadline for meeting its obligations under Penal Code § 1305(g). *Id.*

Accordingly, the Appellate Court held that a trial court may continue a hearing pursuant to Penal Code § 1305(j) to allow the prosecuting agency to make an extradition decision. While Penal Code § 1305(j) allows a court to continue a hearing for “good cause,” the People contend that “good cause” is limited to matters concerning the court’s docket. (AOB 27). The Legislature did not use such limiting language, however. Rather than specifying that a hearing could be continued due to docket or calendaring issues, the Legislature provided courts with much broader discretion by allowing a hearing to be continued for “good cause.”

Thus, in addition to issues concerning the court’s docket or calendar, the court may want to continue a hearing when a district attorney or county counsel raises an issue concerning a bail motion at the hearing rather than through a filed motion. The district attorney or county counsel may question whether a person in custody or removed from the United States is actually the defendant and request that the surety provide further information as to identity. Or the court may continue the hearing date to have the prosecuting agency confirm the identity as the prosecuting agency has easier access to such information.¹ Similarly, a surety may file a motion based on information it obtained that a defendant is deceased, and the court

¹ “Where the evidence necessary to establish a fact essential to a claim lies peculiarly within the knowledge and competence of one of the parties, that party has the burden of going forward with the evidence on the issue although it is not the party asserting the claim.” *Wolf v. Superior Court* (2003) 107 Cal. App. 4th 25, 36

may continue the hearing so that the surety can provide a death certificate² as Penal Code § 1305(e) does not provide for a tolling in cases of a defendant's death. An interpretation of Penal Code § 1305(j) that limits a court to continuing a hearing based on its docket would produce the "absurd" result of the indemnitors, often family or friends, being liable for the full amount of the bond when a defendant cannot be returned to court because he is deceased. *See Far West*, 93 Cal. App. 4th at 796 (explaining that "it is preferable to rest the outcome on principles of equity rather than to embrace a result that can fairly be termed 'absurd'"). (Citation omitted.)

A similar absurd result would occur if a court could not continue a hearing to allow the prosecutor to make an extradition decision pursuant to Penal Code § 1305(g). First, the Surety has met its burden under the statute when it has located the defendant, had a local law enforcement official identify the defendant under penalty of perjury, and provided that information to the prosecuting agency. At that point, the surety has done everything required of it under the statute and has no control over when the prosecuting agency will make an extradition decision. The People point out that the statutory scheme does not provide relief for the surety in other impossible situations such as when the foreign country does not have an extradition treaty, when the surety cannot locate a law enforcement official to identify the defendant, or when the surety simply cannot locate the defendant. (Reply Brief 10, fn. 1.) But none of those examples include situations where the surety has met all its obligations under the statute and

² As sureties are not law enforcement, they are not automatically entitled to copies of a death certificate and the ability to obtain a death certificate varies widely between states and even counties within California if a surety is unable to obtain a copy of the death certificate from family members.

the burden shifts to the other party to the contract to perform its obligations under the statute. If a defendant flees to a country without an extradition decision, the surety has the burden of locating the defendant and convincing him to return to the United States. If the defendant flees to a country with an extradition treaty, the surety has the burden of locating the defendant and having a law enforcement official identify the defendant. But the surety is not and cannot be burdened with making an extradition decision. Accordingly, the statute then shifts the burden to the prosecuting agency to provide an extradition decision.

While the surety must meet its obligations within the appearance period, no time limit has been placed on when the prosecuting agency must make an extradition decision. Thus, a continuation of a hearing date for the prosecuting agency to make an extradition decision does not violate the prosecuting agency's constitutional rights. The People focus on the Appellate Court's statement that the trial court must "insist" that the prosecution make an extradition decision (AOB 42) but the Appellate Court held that "the trial court should have asked for the prosecutor's decision or should have continued the hearing until the prosecutor made its decision." *North River*, 94 Cal. App. 5th at 674. If the Appellate Court had required a decision at the hearing, there would be no need to hold that the trial court can continue the hearing to allow the prosecuting agency to make such a decision pursuant to Penal Code § 1305(j).

A continuation of a hearing pursuant to Penal Code § 1305(j) does not toll the appearance period. The Surety must locate the defendant, obtain an identification affidavit from a local law enforcement official, and advise the prosecuting agency of the defendant's location within the appearance period as the initial appearance period and any extension period granted

pursuant to Penal Code § 1305.4 sets the deadline for the surety to meet its obligations. The court cannot continue a hearing pursuant to Penal Code § 1305(j) to allow more time for the surety to locate the defendant or obtain an identification affidavit. In contrast, Penal Code § 1305 does not place any deadlines on the prosecuting agency to meet its burden under the statute.

Penal Code § 1305 contains a 180-day limitation on all subsections except those where the trial court loses jurisdiction (Penal Code §§ 1305(a) and (b)) and where the prosecuting agency must take action (Penal Code §§ 1305(f)(g), and (h)). Thus, a trial court may continue a hearing pursuant to Penal Code § 1305(j) to allow the prosecuting agency to make an extradition decision. As the People have explained the considerable amount of time needed to make an extradition decision, the Appellate Court's holding actually benefits the People. It not only allows the People additional time to make an extradition decision, it also allows the People to rely on the surety and its resources to obtain updated locations for the defendant during the extradition process and to pay for the "quite steep" costs of extradition. All of which furthers the purpose of bail – the return of the defendant to the court's jurisdiction to face prosecution.

B. The Legislative History Does Not Require an Extradition Decision within the Appearance Period.

The People also argue that the legislative history establishes that Penal Code § 1305(g) requires that the prosecuting agency make an extradition decision within the appearance period. The Appellate Court rejected that argument, however, explaining that this Court "has cautioned against interpreting legislative history" in regards to failed legislation because "there are a number of possible reasons why the Legislature might have failed to enact a proposed provision."

North River, 94 Cal. App. 5th at 673, citing *Arnett v. Dal Cielo*, 14 Cal. 4th 4, 28 (1996). As discussed below, the Legislature’s failure to enact a statutory timeline for the prosecuting agency to make an extradition decision does not establish that Penal Code § 1305(g) requires the prosecuting agency to make an extradition decision within the forfeiture period.

The People start with the premise that “[d]ecades of legislative history confirm that the Legislature has always understood the statutory scheme to require the extradition process to occur within the appearance period.” (AOB 23, fn 2.) The problem with this understanding is that it is virtually impossible for extraditions to be completed within the appearance period as extraditions generally take several years to complete. See Devin C. McNulty, *The Changing Face of Extradition Between Mexico and the United States*, 31 APR Champion 32, 34-35 (April 2007) (explaining that the extradition process can be lengthy).

The People then discuss a failed 1995 proposal to amend the statute’s “temporary disability” statute to include “any time required to extradite the defendant from a foreign extradition.” (AOB 30-31.) First, this proposal concerned the extradition of the defendant - not the time in which a prosecuting agency must make an extradition decision. Second, the legislative history merely shows that the Legislature did not consider a defendant fleeing the jurisdiction to be a disability. (AOB 30.) Thus, it later enacted Penal Code § 1305(h) – a completely different subsection to provide a tolling for the extradition of a defendant.

Next, the People address a 2008 amendment to Penal Code § 1305 to provide the prosecution with 60 to 120 days to render an extradition decision. (AOB 31.) But this amendment illustrates why courts should not consider failed legislation in determining the law. As the Appellate Court explained, this bill was not rejected on its merits. Rather, “[t]he Governor returned the bill unsigned due

to a ‘historic delay’ in passing the state budget that ‘forced’ him to consider only the ‘highest priority’ bills.” *North River*, 94 Cal. App. 5th at 673-74. The People imply that the Legislature’s failure to attempt to re-pass the bill during a subsequent legislative session indicates that the Legislature did not support the bill. (AOB 31.) As the Appellate Court explained, however, “[d]rawing an inference from inaction can be misleading” as “[t]here are infinite other possibilities” as to why action was not taken. *Id.* at 673. As with the Governor’s initial failure to pass the bill, new priorities may have eclipsed the issue or it may have simply got lost in the shuffle, amongst many other reasons why the Legislature did not take up the bill in a later session. *See id.*

Finally, the People contend that the passing of Penal Code § 1305(h) in 2012 rather than a provision tolling the appearance period while the prosecuting agency makes an extradition decision and an accompanying provision setting aside the forfeiture if that decision is not made within a reasonable period of time establishes that the prosecuting agency must make the extradition decision within the appearance period. (AOB 31.) But once again, the failure to pass the provisions concerning the prosecuting agency’s election to extradite under Penal Code § 1305(g) does not establish that the extradition decision must be made within the forfeiture period.

The People’s entire analysis of this legislative history is flawed because the People conflate the extradition decision requirement under Penal Code § 1305(g) with the extradition process, as illustrated by the statement that “the Legislature considered two options for addressing a problem and decided to adopt the option that prioritizes prosecutorial discretion.” (AOB 28.) But the Legislature did not consider two options for one problem. Rather, it was presented with two different problems: 1) a timeline for when a prosecuting agency must make an extradition decision under Penal Code § 1305(g) and 2) a tolling period during the extradition

process. The fact that the Legislature only addressed the need for a tolling period during the extradition process does not mean that it determined that the prosecuting agency must make an extradition decision within the appearance period.

As this Court recognized, “when ... a provision is dropped from a bill during the enactment process, the cause may not even be a *legislative* decision at all; it may simply be that its proponents decided to withdraw the provision on tactical grounds.” *Id.* at 673, *citing Arnett*, 14 Cal. 4th at 28 (emphasis in the original). In this case, the People point out that “[p]roponents of the bill touted its deference to prosecutorial discretion” and explained that the bill only allowed tolling “when the local prosecutor agrees” and gives “district attorneys complete control over whether” tolling occurs. (AOB 28.) Thus, proponents may have simply dropped the provision regarding extradition decisions to obtain prosecuting agencies’ support for the provision providing tolling for the extradition of defendants who have fled California. Without this provision, sureties and indemnitors would become liable for the full amount of the bond anytime the prosecuting agency elected to extradite a defendant who fled the country as the extradition process cannot be completed within the appearance period even with a full extension of the appearance period pursuant to Penal Code § 1305.4. Moreover, rather than incorporating the requirements for a tolling during the extradition process in Penal Code § 1305(g), the Legislature created an entirely new subsection under Penal Code § 1305 when it passed Penal Code § 1305(h).

Penal Code § (g) along with Penal Code § 1305(f) and § 1305(h) are the only subsections under § 1305 that require prosecutorial action. Other than those subsections that address the court’s loss of jurisdiction, they are also the only subsections that do not contain a 180-day limitation. While the Surety’s actions

are limited by the initial appearance period and any extension period pursuant to Penal Code § 1305.4, no such limitation applies to the prosecuting agency's actions required under the statute. Nor does the legislative history establish any deadline on the required prosecutorial action under the statute.

C. The Appellate Court's Holding Furthers the Purpose of Bail – the Return of a Defendant to the Court's Jurisdiction.

The People contend that the Appellate Court's holding undermines the purpose of the statute. (AOB 29.) In making this argument, the People ignore the overall purpose of bail – the return of a fleeing defendant to the court's jurisdiction to face prosecution. Penal Code § 1305(g) was specifically enacted to further this policy by providing bail agents with an incentive to expend their resources to locate defendants who have fled California. *County of Los Angeles*, 152 Cal. App. 4th at 666. Accordingly, the Appellate Court's decision does not undermine the purpose of the statute. Rather, it furthers that purpose by ensuring that prosecuting agencies have an opportunity to make an extradition decision and seek the return of those defendants who should face prosecution.

Thus, the People's argument that the Legislature has struck a balance between several competing interests that would be upended by allowing prosecuting agencies to make extradition decisions outside of the appearance period fails. (AOB 29-30.) Other than the defendant's interest in pretrial liberty (which is for the court to determine in the setting of bail), the interests do not compete. Rather, "the state's interests in ensuring public safety, in preventing defendants from obstructing justice by fleeing California, and in holding corporations responsible for the economic risks they contractually undertake; the public's interest in having a fugitive defendant returned to California to face trial; the prosecutor's interest in retaining discretion over core executive branch decision making, and the interests of a defendant's loved ones," including

indemnitors on the bond (AOB 29-30) are all best served by allowing a prosecuting agency to make an extradition decision outside of the appearance period.

Penal Code § 1305(g) was enacted to assure bail agents that their bonds would be exonerated even if the prosecuting agency elected not to extradite. This provision provides bail agents with an incentive to expend their resources on costly and time-consuming “global” searches for a defendant. *See id.* at 666, 668. However, “the prosecution’s interpretation of the statute creates unpredictability” by providing prosecutors with unsupervised control over when an extradition decision will be made. *North River*, 94 Cal. App. 5th at 671. The Appellate Court recognized that this unpredictability does not further the purpose of the statute as “[i]ncreasing the uncertainty of when, and whether, a bail company will get paid cannot sharpen its incentive to pursue fugitives.” *Id.*

The People’s description of the extradition process demonstrates the uncertainty that follows a requirement that the prosecuting agency make an extradition decision within the forfeiture period. As the People explain, “[i]t takes substantial time and effort to run these questions [concerning a defendant’s extradition] to the ground, and the attorney assigned to the case may have a docket overflowing with other matters that have equally or more pressing deadlines.” (AOB 43.) Thus, in addition to having no control over when a prosecuting agency will make its extradition decision, a surety has no idea how long it will take for an extradition decision to be made or even when the prosecuting agency will turn its attention to the request for an extradition decision. As the purpose of Penal Code § 1305(g) is to provide bail agents with assurances that the bond will be exonerated if it expends the resources to locate a defendant who has fled California, it is the People’s position that directly contravenes the legislative purpose.

While the People’s solution to that problem is to have the surety locate the defendant earlier in the appearance period (AOB 38-39), the surety has no way of knowing the deadline for submitting the paperwork for an extradition decision because of the many factors, including the prosecuting agency’s workload, that impact when an extradition decision will be made. Moreover, the People’s solution ignores the difficulty of conducting investigations in foreign countries. As the *County of Los Angeles* court recognized “[h]unting for defendants who have jumped bail is a time-consuming and often dangerous job.” *County of Los Angeles*, 152 Cal. App. 4th at 668. The surety needs time to develop leads as to a defendant’s location, which includes following up on addresses, conducting surveillance, determining if neighbors or other persons can be approached without corrupting the investigation, developing confidential informants, and gaining the trust of family and friends and other persons who can aid in the investigation. If an investigator pushes someone too fast or too hard, that person may stop assisting with the investigation and even cut off any further communication with the investigator.

In Mexico, investigators may have to contend with roadblocks set up by the military or a cartel and towns that may be controlled by a cartel during the investigation into the defendant’s location. Even after locating the defendant, the investigator must also locate a local law enforcement official willing to identify the defendant under penalty of perjury. And though Penal Code § 1305(g) only requires that a local law enforcement official identify the defendant under penalty of perjury, the courts have upheld the prosecuting agency’s demands that the bail agents also provide fingerprints or photographs of the defendant – sometimes an impossible task when a defendant refuses to cooperate. *People v. Financial Casualty and Surety*, 10 Cal. App. 5th 369, 382-83, 385 (2017). But that is a risk that

the bail agent carries under Penal Code § 1305(g). In addition, the infrastructure in Mexico does not always allow for a quick transmission of the paperwork obtained for the prosecuting agency. It may take days for the investigator to get from a remote location to a location where the documents can be emailed or mailed to the surety for forwarding to the prosecuting agency.

A requirement that the prosecuting agency make an extradition decision within the appearance period contravenes the purpose of bail by shortening the time that a surety has to locate a defendant in a foreign country by an undefined period of time that is dependent not only on the length of time required for the prosecuting agency to arrive at an extradition decision but on the inner-workings of the prosecuting agency's office. A defendant facing serious allegations and significant prison time will often go to great lengths to hide from investigators. A requirement that the prosecuting agency make an extradition decision within the forfeiture period awards such a defendant as the loss of two weeks, a month, or even longer of investigative time may prevent the surety from locating the defendant.

In turn, the prosecuting agency may never have an opportunity to elect to extradite since it may not learn of a defendant's location in a foreign country without the surety's efforts. Victims and their families not only do not get to see the defendant face prosecution but also may be very concerned about the defendant's location. In contrast, the prosecuting agency, the victims and their families, the surety and the indemnitors, and the criminal justice system all benefit if the prosecuting agency is allowed to make an extradition decision outside of the appearance period as this not only allows the surety the full appearance period to locate the defendant but

also allows for the surety's continued assistance during the extradition process and the surety's responsibility for reimbursing the costs of extradition.

CONCLUSION

For the foregoing reasons, the Appellate Court's decision should be affirmed.

Respectfully submitted,

Dated: April 10, 2024

/s/ Toni L. Martinson
Toni L. Martinson
Attorney for Amicus Curiae
Two Jinn, Inc. d/b/a
Aladdin Bail Bonds

**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1))**

The text of this brief consists of 6,446 words as counted by the Microsoft Word for Microsoft 365 program used to generate this brief.

DATED: April 10, 2024

/s/ Toni L. Martinson
Toni L. Martinson
Attorney for Amicus Curiae
Two Jinn, Inc. d/b/a
Aladdin Bail Bonds

ATTORNEY OR PARTY WITHOUT ATTORNEY AND ADDRESS: Toni L. Martinson, Esq. 1000 Aviara Parkway, Suite 300 Carlsbad, California 92011 Attorney for (name): Amicus Curiae		TELEPHONE NO. (858)527-8328 Bar #: 167520	COURT USE ONLY
Supreme Court of the State of California			
Plaintiff and Respondent: The People of the State of California		I/C Judge:	
Defendant and Appellant: The North River Insurance Company		Dept:	
Real Party in Interest and Appellant: Bad Boys Bail Bonds			
Declaration of Service		Case No. S282020	

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 10, 2024.

/s/ Deborah Duran
Deborah Duran

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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