THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 604(h)

No. 130364

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, vs. CARLOS CLARK, Defendant-Appellee.	) Appeal from the Appellate) Court of Illinois, First District,) No. 1-23-1770B)) There on Appeal from the) Circuit Court of Cook County,) Illinois, No. 23200138301)) Honorable) Anthony Calabrese,) Judge, Presiding.

BRIEF AND ARGUMENT OF DEFENDANT-APPELLEE

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ORAL ARGUMENT REQUESTED

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STATEMENT OF FACTS

This is an unusual case that begins in the world of monetary bail and continues in the world of the Pretrial Fairness Act (PFA). See Pub. Act 101-652, § 10-255, 102-1104, § 70. It began on August 23, 2023, before the effective date of the PFA, when the State filed a felony complaint for aggravated vehicular hijacking under 720 ILCS 5/18-4(a)(1) (2023) in the Circuit Court of Cook County against 19-year-old defendant-appellee Carlos Clark, knowing that Carlos was in custody in a different county. (C. 9-11, 15) A Chicago police detective and a lawyer for the State appeared *ex parte* before Judge Michelle Gemskie in the Skokie courthouse room 102 to demonstrate probable cause for the complaint and obtain an arrest warrant with a D-bond in the amount of $100,000. (C. 9-11) Carlos was not present.

The following facts were presented to Judge Gemskie in support of the felony complaint: on August 6, 2023, at 6:30 p.m., a complaining witness went to a Northbrook CVS. (C. 15) She parked her car in the parking lot, locked it, but left one window partially open, and went into the store. (C. 15) When she returned to her car, there was someone in it. (C. 15) That person climbed from the back seat into the front seat and took the witness's key fob from her hand. (C. 15) He threatened to shoot her, but she did not see a gun, and he drove off in the car. (C. 15) Carlos was later positively identified by the witness in a photo line-up as the person who had taken her car. (C. 15) He

was also identified as committing a retail theft of cologne/perfume at the ULTA Store next to the CVS before taking the car. (C. 15)

Carlos allegedly drove the car to a gas station at 43rd and Wentworth in Chicago to sell the perfume. (C. 15) An employee from the gas station got into the car to view the merchandise. (C. 15) Carlos allegedly drove the car away from the gas station with the employee inside when he noticed an Illinois State Police car behind him. (C. 15) When the employee asked to be let out of the car, Carlos allegedly told him to relax or he would kill him, pointing to his waistband. (C. 15) There was a short pursuit, and the car crashed. (C. 15) Carlos escaped the police that day. (C. 15) Following that, an investigation occurred; POD camera images were obtained allegedly showing Carlos inside and outside the vehicle at the gas station wearing an ankle monitor. (C. 15) The ankle monitor was tracked through GPS and allegedly placed Carlos at the CVS parking lot. (C. 15) Carlos was arrested in Crystal Lake on August 9, 2023, on an unrelated matter, and transferred to the McHenry County Jail, where he was visited by a Chicago Police detective on August 18, 2023. (C. 15) On August 23, 2023, Judge Gemskie made a finding of probable cause and issued the $100,000 warrant that was also signed by the Assistant State's Attorney. (C. 12-13)

Carlos was arrested on September 16, 2023, by the Northbrook Police Department pursuant to the warrant from August 23, 2023. (C. 24) No evidence appears in the record about where that arrest occurred. Carlos

appeared in court for the first time on September 18, 2023, the effective date of the PFA.(C. 24) On that date, the State filed a petition to detain Carlos, and a detention hearing was held. (C. 26-27) Carlos, through counsel, objected to the State's petition arguing that he should be able to keep his monetary bond of $100,000-D from the warrant under Section 110-7.5 of the PFA. (C. 25; R. 13-14) The trial court determined that the monetary warrant was merely a mechanism to get Carlos into court. (R. 16)

According to the court, September 18, 2023, was Carlos's first court date, and no hearing had previously occurred where the State had an opportunity to be heard on potential conditions. (R. 16) The court determined that the State was within its rights under the PFA to file a detention petition at this first court date following the issuance of a warrant. (R. 16-17) Defense counsel noted in response that conditions for release had already been set: a $100,000 D-Bond was issued. (R. 17)

The court then held the detention hearing, at which the State reviewed the allegations in this case and Carlos's criminal history, pretrial services gave an assessment, and the defense presented mitigation. (R. 17-23) The State's proffered facts of the case were very similar to those proffered at the hearing on August 23, 2023, with a few additional details. (R. 16) The amount of perfume and cologne allegedly taken from the ULTA Store was worth $572, and the theft was allegedly captured on surveillance video. (R. 16-17) The witness whose car was taken in the CVS parking lot was 67 years-old and the

car taken was a Honda CRV. (R. 17) When Carlos was driving away from the gas station, he committed several traffic infractions, including speeding up to 110 miles per hour in a 55 miles per hour zone. (R. 18)

A representative from pretrial services presented the agency's assessment. (R. 22) Carlos received a six, the highest score, on the new criminal activity scale with a new violent criminal activity flag, and a five on the failure to appear scale, with two prior failures to appear. (C. 29-30; R. 22-23) Defense counsel noted that Carlos missed court dates because he was detained elsewhere. (R. 34)

In mitigation, the defense noted that 19-year-old Carlos enrolled in Innovations High School the previous week as a senior and before that he went to Hyde Park Academy in his senior year. (R. 23-24) At Hyde Park Academy, he was on the Robotics Team and participated in competitions as part of the team. (R. 23) He is the youngest of six and lives with his grandmother who is not mobile. (R. 23) He helps her by doing the grocery shopping, laundry and other errands. (R. 23) The defense requested that the court set conditions so that Carlos can continue to care for his grandmother and finish his high school education. (R. 24)

The court then determined there was probable cause to detain Carlos. (R. 24) It further determined there was clear and convincing evidence that the proof was evident, and the presumption was great, that Carlos committed the offense of aggravated vehicular hijacking. (R. 24) It concluded that Carlos

poses a real and present threat to the safety of people in the community, especially the complaining witness who was 67 years old and who he threatened to shoot. (R. 25) According to the court, no conditions could mitigate the real and present danger posed by Carlos and there were no less restrictive alternatives. (R. 25) The court issued a written order. (C. 25) Carlos appealed. (C. 33)

In his notice of appeal, Carlos contended that he "did not want to avail himself under the [PFA] and wished to post the previously set bond." (C. 37) He also contended that this Court did not sufficiently articulate the correct factors in ordering detention and did not make adequate findings under the statute. (C. 37)

Appellate counsel supplemented the notice with a memorandum in support of the 604(h) appeal and argued that the trial court erred in granting the State's petition to detain where Carlos elected to keep his previously set monetary bond as allowed under the PFA. (Memo, 4) In particular, Carlos identified Section 110-7.5(b), which states that an individual who has been ordered released is entitled to have his bond reviewed and set for conditions, not for the State to file a detention petition. (Memo, 4-6) Counsel also argued that the State was unable to file a detention petition on September 18, 2023, under Section 110-6.1(c)(1), because it was *not* the "first appearance before a judge[.]" (Memo, 7)

The appellate court addressed whether the State could file a detention petition on September 18, 2023, and a majority of the panel concluded it could not. *People v. Clark*, 2023 IL App (1st) 231770, ¶¶ 13-20. It reversed, finding the State's petition was untimely where it was not filed at the first appearance before a judge, which was the hearing where the State appeared *ex parte*, filed a felony complaint, and obtained an order setting monetary bail. *Id.*, ¶¶ 17, 20. The appellate court reviewed the language in Section 110-6.1(c) of the PFA – the timing of the petition – and noted a difference in a phrase in subsection (c)(1) which allows a detention *petition* to be filed "at the first appearance before a judge" and a phrase in (c)(2) which requires a detention *hearing* to occur within 24 to 48 hours of "the defendant's first appearance[.]" *Id.*, ¶ 14. The appellate court rejected the state's reading of these two phrases as identical – both referring to when a defendant is first present in court – and noted "[w]e may not add terms that contravene the legislative intent." *Id.*, ¶¶ 15-16. The appellate court claimed, "the legislature envisioned a process where the State and the trial court need not wait for a defendant's appearance before considering whether to detain that person without setting bail." *Id.*, ¶ 16. The appellate court looked to the definition of "appearance" from Black's Law Dictionary as meaning "parties to the litigation" and noted that the issue here is a matter of first impression not previously addressed by any appellate court. *Id.*, ¶¶ 17-19. Ultimately, the appellate court concluded that the State's petition was untimely because it

did not seek to detain Carlos when "it began this prosecution" and instead "sought bail of $100,000 D." *Id.*, ¶ 20. Moreover, it could not "avail itself of the 21-day extension" because it failed to give reasonable notice of its intent to detain Carlos and Carlos has remained detained and not arrested and released. *Id.*, ¶ 20.

Justice Tailor wrote a dissenting opinion arguing that the first appearance before a judge must mean "the first appearance before a judge at which the defendant is present." *Clark*, 2023 IL App (1st) 231770, ¶ 34 (Tailor, J., *dissenting*). The dissent concluded that before that, "there would have been no reason for the State to petition to detain him." *Id.* Also, according to the dissent, the State did not file a petition before September 18, 2023, because the PFA had not yet gone into effect. *Id.*, ¶ 36. The dissent would have affirmed the trial court's detention order. *Id.*, ¶ 38.

The State filed a petition for leave to appeal that was granted by this Court on February 14, 2024.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE APPELLATE COURT'S DECISION TO REVERSE CARLOS CLARK'S DETENTION ORDER AND HOLD THAT CARLOS CLARK IS ENTITLED TO KEEP HIS MONETARY BOND SET BEFORE THE EFFECTIVE DATE OF THE PFA.

The appellate court's majority's decision correctly notes that this is an unusual case that comes down to an issue of timing: "[t]iming is everything in life and law." *People v. Clark*, 2023 IL App (1st) 231770, ¶ 1. The State filed a case against Carlos Clark in August 2023, likely while Carlos was detained in another county, and obtained a $100,000 warrant for his arrest. (C. 9-11, 15) Carlos was subsequently arrested on a $100,000 warrant and appeared in court on the effective date of the Pretrial Fairness Act (PFA), hoping to keep the previously assigned monetary bond rather than proceed under the PFA. (C. 24-25; R. 13-14) With the bond, Carlos had an opportunity to be released by paying $10,000. Under the PFA, the trial court detained Carlos without any ability of pretrial release. (C. 25) The appellate court reversed the trial court's detention order, concluding the State could not file a detention petition where it did not seek detention at "the first appearance before a judge" – the hearing at which the State filed the complaint and obtained the warrant – choosing instead to file the detention petition at the first court date that Carlos physically attended. *Clark*, 2023 IL App (1st) 231770, ¶ 20. Where the appellate court correctly determined that the PFA contemplated the filing

of a detention petition when a prosecution begins, with or without a defendant's presence, this Court should affirm the appellate court's decision.

The issue in this case is a matter of statutory interpretation: the timing requirements under the PFA of when the State can file a detention petition when a monetary bond has previously been set. In particular, what is the meaning in Section 110-6.1(c)(1) of the "first appearance before a judge[.]" 725 ILCS 5/110-6.1(c)(1) (2023. Matters of statutory interpretation are reviewed *de novo*. *People v. Ramirez*, 2023 IL 128123, ¶ 13.

This Court's "primary objective in construing a statute is to ascertain and give effect to the legislative intent, and the surest and most reliable indicator of that intent is the plain and ordinary meaning of the statutory language itself." *People v. Chapman*, 2012 IL 111896, ¶ 23. "When the statutory language is clear and unambiguous, it must be applied as written, without resort to extrinsic aids of statutory construction." *Solon v. Midwest Med. Recs. Ass'n, Inc.*, 236 Ill. 2d 433, 440 (2010). But, if a statute is capable of being understood by reasonably well-informed persons in two or more different ways, the statute will be deemed ambiguous. *Landis v. Marc Realty, L.L.C.*, 235 Ill.2d 1, 11 (2009). If the statute is ambiguous, the court may consider extrinsic aids of construction to discern the legislative intent. *Id.* As this Court has noted, it can construe a statute one way or the other and consider the consequences of each way, but it presumes that the legislature

did not intend absurd, inconvenient, or *unjust* consequences. *Id.* at 12 (emphasis added).

The appellate court in this case based its decision on the detention petition timing requirements of the PFA. *Clark*, 2023 IL App (1st) 231770, ¶¶ 13-22. Section 110-6.1(c) Timing of the Petition, reads:

> (1) A petition may be filed without prior notice to the defendant at the *first appearance before a judge*, or within the 21 calendar days, except as provided in Section 110-6, after arrest and release of the defendant upon reasonable notice to defendant; provided that while such petition is pending before the court, the defendant if previously released shall not be detained.
>
> (2) Upon filing, the court shall immediately hold a hearing on the petition unless a continuance is requested. If a continuance is requested and granted, the hearing shall be held within 48 hours of *the defendant's first appearance* if the defendant is charged with first degree murder or a Class X, Class 1, Class 2, or Class 3 felony, and within 24 hours if the defendant is charged with a Class 4 or misdemeanor offense. The Court may deny or grant the request for continuance. If the Court decides to grant the continuance, the Court retains the discretion to detain or release the defendant in the time between the filing of the petition and hearing.

725 ILCS 5/110-6.1(c) (2023) (emphasis added). The appellate court read a distinction between "first appearance before a judge" in subsection (1) and "the defendant's first appearance" in subsection (2). *Clark*, 2023 IL App (1st) 231770, ¶ 14. In so doing, it rejected the State's reading of subsection (1) that reads "first appearance before a judge" must mean a defendant's first appearance before judge. *Id.*, ¶¶ 15-16. According to the appellate court, the courts "may not add terms that contravene legislative intent" and "the legislature envisioned a process where the State and trial court need not wait

for a defendant's appearance before considering whether to detain that person without setting bail." *Id.*, ¶ 16. The appellate court likened this to the "longstanding process of seeking a 'no bond arrest warrant[.]'" *Id.*

In its brief before this Court, the State contends that requiring the State to file a petition at the State's first *ex parte* appearance before a judge is inconsistent with the plain language of the statute and "with the remainder of the PFA's comprehensive statutory scheme governing pretrial release." (St. Br. 10, 12-13) In particular, the State notes that once a petition has been filed, the court "shall immediately hold a hearing on the petition unless a continuance is requested" and at the hearing, the defendant has a series of procedural rights, including the right to be present and the right to counsel. (St. Br. 12-13, 15-16) According to the State, in this statutory context, "first appearance before a judge" "clearly refers to a *defendant's* first appearance in court." (St. Br. 13 (emphasis in original)) Any other reading would lead to "*ex parte* detention hearings" and denying defendants the procedural rights granted in the statute at detentions hearings. (St. Br. 10, 17)

The State's argument is incorrect. It conflates the filing of the detention petition with the detention hearing and ignores several choices made by the legislature. In particular, the statute allows the State to request a continuance for the detention hearing following the filing of the detention petition. 725 ILCS 5/110-6.1(c)(2) (2023). As a result, the filing of the detention petition and the hearing do not always occur simultaneously. *Cf.*

People v. Whitmore, 2023 IL app (1st) 231807, ¶ 16 (noting "The Code's timing requirement is meant to prevent the State from having an unlimited window in which to hail defendants into court to determine whether they should be denied pretrial release. The State merely filing a petition early does not implicate this concern"). Thus, it is conceivable and envisioned by the new statute for the State to appear *ex parte,* as it did here, file a detention petition, and ask for a continuance until the defendant is present in person in court. If the continuance is granted, which seems likely given that the defendant is not physically present, subsection (c)(2) then mandates that a hearing occur within either 24 or 48 hours of "a defendant's initial appearance" depending on the felony class of the charge. 725 ILCS 5/110-6.1(c)(2) (2023). Once the defendant is arrested and first physically appears, a hearing can be held within those time limits in the statute and all procedural protections would be given to the defendant. The addition of "*the defendant's* first appearance" signals a distinction between the first appearance in the case before a judge in subsection 1 and the defendant's physical first appearance in subsection 2. The State paints a bleak picture of *ex parte* detention hearings occurring frequently if the State is required to file a detention petition when it appears in court and files a complaint, but that seems unlikely given the procedures in the statute. (St. Br. 16-17)

Both the appellate court majority and the State looked to the dictionary to determine the meaning of "first appearance before a judge" but

they came to different conclusions. (St. Br. 13-14); *Clark*, 2023 IL App (1st) 231770, ¶ 17. "When a statute contains a term that is not specifically defined, it is entirely appropriate to look to the dictionary to ascertain the plain and ordinary meaning of the term." *Chapman*, 2012 IL 111896, ¶ 24.

Both the appellate court and the State agree that an appearance is defined as the "coming into court as a party or interested person, or as a lawyer on behalf of a party of interested person[.]" (St. Br. 13-14, citing Black's Law Dictionary 122 (11th Ed. 2019); *Clark*, 2023 IL App (1st) 231770, ¶ 17 (same). Nonetheless, the State contends that the "plain meaning of 'first appearance' in the context of criminal proceedings is the defendant's first appearance in court." (St. Br. 13) It cites to Black's Law Dictionary again for the "substantially identical phrase 'initial appearance'" which is defined as "[a] criminal defendant's first appearance in court to hear the charges read[.]" (St. Br. 14) The State does not specifically address the addition of the specific language in subsection (c)(2) regarding "the defendant's first appearance[.]" If first appearance always means a defendant's first time physically in court, then the added language of "the defendant's" in subsection (c)(2) is superfluous. *Solon*, 236 Ill. 2d at 440–41 (holding statutes must be construed "to avoid rendering any part of it meaningless or superfluous").

The State notes that in the context of the PFA the appellate court has understood "first appearance" under Section 110-6.1(c)(1) "to refer to the hearing at which defendant first appears." (St. Br. 15) The State cites to

three appellate court decisions: *People v. Rios*, 2023 IL App (5th) 230724; *People v. Brown*, 2023 IL App (1st), 231890; and *People v. Morales-Vargas*, 2023 IL App (2d) 230346-U. But none of these cases address the unusual issue here of what happens when the State initially appears and secures a bail determination without the defendant.

In responding to the appellate court's argument that requiring the detention petition at the *ex parte* hearing is like a "no bond arrest warrant[,]" the State drew attention to the previous statutory procedure for holding someone without bail. (St. Br. 17 fn 3) The prior statutory section is instructive because it contains similar language to the current detention procedure and further elucidates a distinction between "first appearance before a judge" and "the defendant's first appearance before the court." See 725 ILCS 5/110-6.1(a)(1) and (2) (2022). Like with current detention proceedings, to hold someone "no bail" before the effective date of the PFA, the State had to file a petition alleging that the defendant was charged with a nonprobationable felony offense and "the defendant's admission to bail poses a real and present threat to the physical safety of any person or persons." *Id.* Under the prior statute, the no bail petition "may be filed without prior notice to the defendant at the first appearance before a judge[.]" 725 ILCS 5/110-6.1(a)(1) (2022). Then, "[t]he hearing shall be held immediately upon the defendant's appearance before the court[.]" 725 ILCS 5/110-6.1(a)(2) (2022).

The prior statute makes a clear distinction between the filing of the "no bail" petition that does not require notice to the defendant or the defendant's physical presence and the "no bail" hearing that must occur when a defendant appears in court. The appellate court's reference to the prior no bail warrant procedure was thus apt. *Clark*, 2023 IL App (1st) 231770, ¶ 16. The current statute is substantially similar to the prior statute and makes the same distinction.

Justice Tailor in a separate, dissenting opinion notes that the State did not file a detention petition in August 2023 for Carlos, because "the change to the Code had not yet gone into effect." *Id.*, ¶ 36. But if the State wanted Carlos not to be released pretrial, it could have filed a no bail petition (described above). Moreover, the State was aware in August 2023 that the effective date of the PFA was fast approaching. *See Rowe v. Raoul*, 2023 IL 129248, ¶ 52 (decided on July 18, 2023, and giving an effective of the PFA of September 18, 2023). Because the original effective date of the PFA was January 1, 2023, before it was delayed due to a lawsuit, many of the forms and procedures had been laid out and available well before the effective date of September 18, 2023.

The State contends that requiring the State to file a petition for detention when the State appears and files a complaint before the defendant appears would be premature and "would defeat the legislature's intent that the circuit court make a fully informed detention determination." (St. Br. 18-

19) Again, the State unnecessarily combines the filing of a detention petition with the detention hearing. The issue in this case is whether the State could file a detention petition when it had already appeared previously to file the complaint and made a choice to obtain a monetary warrant.

In any event, if the State had previously filed a detention petition, and in the unlikely event had a hearing or even did not have a hearing, the State could have filed a second or subsequent detention petition based on "new facts not known or obtainable at the time of the filing of the previous petition[.]" 725 ILCS 5/110-6.1(d)(2) (2023). New information resulting in a subsequent detention petition could include the pretrial services risk assessment, new facts from the complaining witnesses, additional charges, or new statements made by the defendant following his arrest. (St. Br. 18-19); *Clark*, 2023 IL App (1st) 231770, ¶ 37 (Tailor, J. dissenting). The PFA thus contemplates mechanisms for the State to present additional information to the court for purposes of determining detention. But the State must first timely file its initial detention petition.

Finally, the State contends that requiring the State to file a petition for detention when a complaint for a warrant is filed "would fundamentally alter the nature of the warrant application process." (St. Br. 19) According to the State, "the complaint submitted for the purpose of obtaining a warrant is not intended to prove a defendant's dangerousness," but is instead a mechanism by which a judge can determine probable cause for the arrest

warrant. (St. Br. 19-20) This is incorrect. First, the State ignores that the arrest warrant in this case came with an appraisal of dangerousness in the amount for $100,000. As a result, more was done than just "a judicial determination of probable cause[;]" a monetary amount was assigned to the conduct. (St. Br. 20) Moreover, the current warrant process contemplates "[s]pecify[ing] the conditions of pretrial release, if any[.]" 725 ILCS 5/107-9(d)(7) (2023). It implies first that a consideration of pretrial release conditions is part of obtaining an arrest warrant. Also, the statute contemplates that a no release warrant is possible; that would only be possible with the filing of a detention petition. In any event, the State's argument that the filing of the complaint for purposes of a warrant is fundamentally different than a prosecution that results in a detention hearing is without merit. Technically, most detention petitions are filed, and detention hearings occur, following the filing of a complaint and before an information or indictment has occurred. To say that the filing of a complaint for an arrest warrant is fundamentally different than the filing of a complaint following an arrest ignores this reality.

Allowing the State to file a detention petition over the objection of Carlos in the case put Carlos in a substantially worse position. Since his arrest on September 16, 2024, until the filing of this brief on March 27, 2024, Carlos has been in detention for 193 days without the possibility of pretrial release. If Carlos had been allowed to keep his monetary bond, he would have

had the opportunity of release by paying $10,000. This Court has repeatedly held that under the rule of lenity, ambiguous criminal statutes should be construed in favor of the defendant. *See, e.g., People v. Gutman*, 2011 IL 110338, ¶ 12; *People v. Jones*, 223 Ill.2d 569, 581 (2006). If this Court finds the term "first appearance" to be ambiguous, then it should affirm the appellate court's decision. In this case, where Carlos had a monetary bond and objected to proceeding under the PFA, the appellate court's decision finding the State's detention petition as untimely is in Carlos's favor. Allowing the State to file petitions for detention on outstanding monetary warrants over the objection of the defendant will be substantially unfair to criminal defendants.

This Court should affirm the appellate court's decision reversing the trial court's detention order and remanding to the trial court.

II. IF THIS COURT REVERSES THE APPELLATE COURT'S DECISION, THIS COURT SHOULD REMAND TO THE APPELLATE COURT TO CONSIDER ARGUMENTS MADE IN THE NOTICE OF APPEAL AND IN THE MEMORANDUM THAT REMAIN UNADDRESSED.

In the State's second issue on appeal, the State notes that the appellate court did not address Carlos Clark's arguments that the State had no authority to petition to detain him in the first place because he had already been granted pretrial release. (St. Br. 21) It asked that if this Court reverses the appellate court, it should remand for consideration of the defendant's unadjudicated claim. (St. Br. 22) This is correct.

Carlos argued in his memorandum below that the PFA under Section 110-7.5 "does not permit the State to petition to detain defendants such as Carlos who have been ordered released." (Memo, 5) The PFA reads: "any person who remains in pretrial detention after having been ordered released with pretrial conditions, including the condition of depositing security, *shall be entitled to a hearing under subsection (e) of Section 110-5*." 725 ILCS 5/110-7.5(b) (2023) (emphasis added). Section 110-5(e) of the PFA provides that for a person having been ordered released "the court shall hold a hearing to determine the reason for continued detention." 725 ILCS 5/110-5(e) (2023). It allows the court to "reopen the conditions of release" if a defendant is being held based on ineligibility for or unavailability of a program. *Id.* Section 110-7.5(b) allows but does not require a defendant to ask for a conditions of release hearing. Here, Carlos specifically asked that there not be a pretrial release or detention hearing; he wanted to keep his monetary bond. (C. 37; R. 13-14) Moreover, even if there had been a pretrial release hearing, nothing in Section 110-7.5(b) or 110-5(e) permits the State to file a petition to detain. *See People v. Brown*, 2023 IL App (1st), 231890, ¶ 16. The appellate court did not address this issue in its original opinion.

Additionally, though not noted by the State in its brief before this Court, the notice of appeal identified and raised a separate issue that was also not addressed by the appellate court. It stated the trial court "did not sufficiently articulate the correct factors in ordering detention and the court

failed to make adequate findings under the statute." (C. 37); *see, e.g., People v. Rivas*, 2024 IL App (1st) 232364-U, ¶ 25; *People v. Stock*, 2023 IL App (1st) 231753, ¶¶ 19-22. The appellate court did not address this issue either.

If this Court reverses the appellate court's decision, this case should be remanded to address the two remaining unaddressed issues regarding whether the State had the power to file a petition to detain and whether the trial court made adequate findings under the statute.

CONCLUSION

For the foregoing reasons, Carlos, defendant-appellee, respectfully requests that this Court affirm the appellate court's decision in *People v. Clark*, 2023 IL App (1st) 231770, pursuant to issue I, or, if this Court reverses the appellate court's decision, reverse and remand to the appellate court to address previously unaddressed issues.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rule 342(a), is 20 pages.

/s/Rebecca A. Cohen
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IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, vs. CARLOS CLARK, Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, First District, No. 1-23-1770B There on Appeal from the Circuit Court of Cook County, Illinois, No. 23200138301 Honorable Anthony Calabrese, Judge, Presiding.

NOTICE OF FILING AND PROOF OF SERVICE

TO: Kwame Raoul, Attorney General of Illinois, Criminal Appeals, Attn: AAG Mitchell Ness, 115 South LaSalle Street, Chicago, IL 60603, eserve.criminalappeals@ilag.gov

PLEASE TAKE NOTICE THAT on March 27, 2024, the undersigned shall cause to be filed with the Clerk of the Supreme Court of Illinois, the attached brief of defendant-appellee. Under the penalties provided at law by Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, and that on March 27, 2024, the undersigned caused the brief of defendant-appellee to be served on the parties by either E-File and Serve through Odyssey eFileIL, or by email.

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By: */s/Rebecca A. Cohen*
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