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, v. CARLOS CLARK, Defendant-Appellee.	)	On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-23-1770-B There on Appeal from the Circuit Court of Cook County, Illinois, No. 23-MC2-00138301 The Honorable Anthony Calabrese, Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ARGUMENT

As demonstrated in the People's opening brief, the Pretrial Fairness Act (PFA) provides a comprehensive scheme governing pretrial detention under which defendants are provided a variety of statutory rights to allow them to defend against pretrial detention petitions, including the right to be present at the pretrial detention hearing, the right to confer with counsel before the hearing begins, the right to discovery, the right to present evidence, and the right to testify and present witnesses. *See generally* 725 ILCS 5/110-6.1(f); Peo. Br. 10-18. Subsection 110-6.1(c)(1) of the PFA, which governs the timing of detention petitions, requires that a detention petition be filed "upon reasonable notice to [the] defendant" within 21 days after the defendant has been arrested and released — that is, after the defendant has been arraigned and, if necessary, appointed counsel — but provides that a petition "may be filed without prior notice to the defendant at the first appearance before a judge." 725 ILCS 5/110-6.1(c)(1). Thus, the People may file a detention petition without notice to the defendant only at his first court appearance, by which point he will have the opportunity to exercise his statutory rights to be present, to counsel, and to subject the petition to adversarial testing. *See* Peo. Br. 15-18.

Accordingly, here the People timely filed their petition to detain defendant under subsection 110-6.1(c)(1) by filing it when defendant first appeared in court. Peo. Br. 10-20. The appellate court's contrary reading of

subsection 110-6.1(c)(1) as requiring the People to file a petition whenever any party comes before a judge — including at an *ex parte* hearing on a police officer's application for an arrest warrant — undermines the PFA's statutory scheme, contradicts the plain meaning of the statute, and would lead to absurd and unjust results. Accordingly, the Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining arguments.

I. A Detention Petition Filed Without Prior Notice to the Defendant Must be Filed at the Defendant's First Appearance in Court.

As the People's opening brief explained, subsection 110-6.1(c)(1)'s requirement that a detention petition filed without prior notice to the defendant must be filed at the "first appearance before a judge" means that such petitions must be filed at the *defendant's* first appearance in court. Peo. Br. 10-21. First, the plain meaning of "first appearance," as evident from both lay and legal dictionaries and as consistently used by courts and the American Bar Association, is the defendant's first appearance in court. *See id*. at 13-14 (citing *Webster's Third New International Dictionary* 103 (2021) (defining "appearance"), and *Black's Law Dictionary* 122 (11th ed. 2019) (defining "appearance" and "initial appearance")); *id.* at 14-15 (collecting cases and ABA Standards using term "first appearance").[1] Second,

[1] Defendant distinguishes recent appellate court decisions cited in the People's opening brief — which construe "first appearance" in subsection 110-6.1(c)(1) to mean the defendant's first appearance — by pointing out the differing procedural postures. Def. Br. 13-14. But those cases are

construing "first appearance" to mean defendant's first appearance is the only construction that allows subsection 110-6.1(c)(1) to operate harmoniously with the provisions of the PFA that allow defendants to meaningfully defend against detention petitions. *See id.* at 15-17; *see also id.* at 13 (collecting statutes providing defendants' rights at detention hearings). If a defendant is not present at the hearing on the detention petition, he cannot exercise any of those statutory rights.

Defendant argues that the appellate court's construction of subsection 110-6.1(c)(1) does not lead to absurd and unjust results — specifically, the adjudication of defendants' pretrial liberty interests in *ex parte* proceedings at which the defendants cannot exercise their statutory rights — because the PFA "allows" (but does not require) the People to ask the circuit court to continue the hearing on their petition and allows (but does not require) the court to grant such a continuance. Def. Br. 11-12; *see* 725 ILCS 5/110-6.1(c)(2). Accordingly, defendant reasons,"it is conceivable" that the prosecution will sometimes exercise its discretion to "ask for a continuance" and, in those cases, it "seems likely" that the trial court would grant that request. Def. Br. 12. Defendant concludes that *ex parte* detention hearings, which the appellate court determined are not only contemplated by the

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nevertheless instructive here because they show that courts understand the term "first appearance" to mean the hearing at which defendant first appears, and use the phrases "first appearance" and "defendant's first appearance" interchangeably.

statute but *required* unless the prosecution requests a continuance, A6, ¶ 16, therefore "seem[ ] unlikely," Def. Br. 12. But the General Assembly did not enact a comprehensive scheme providing defendants with the rights necessary to defend against detention petitions merely to make those rights contingent on the prosecution's unilateral exercise of its discretion to seek a continuance (and the circuit court's exercise of its discretion to grant such a request).

Defendant's textual argument is that the General Assembly used the phrase "first appearance" in subsection 110-6.1(c)(1) but used "defendant's first appearance" in subsection 110-6.1(c)(2), and therefore must have meant the phrases to have different meanings. *Id*. at 10. But as the People explained, the terms "first appearance" and "defendant's first appearance" are synonymous in both common usage and Illinois jurisprudence. *See* Peo. Br. 13-14.[2] And even if the use of the different phrases created an ambiguity as to the meaning of "first appearance," that would require that the Court look beyond the text of the statute, consider the consequences of construing it one way rather than another, and adopt the construction that avoids absurd

[2] Defendant also points out that the PFA uses the same language as the prior statute governing pre-trial detention without bond, in that the prior statute similarly required the People to file a detention petition at the "first appearance." Def. Br. 14-15. But defendant cites no precedent construing that prior language — and the People have found none — and so the mere fact that the same language was used in the predecessor statute provides no support for defendant's argument that the language carries a meaning other than its meaning in common usage.

and unjust results. *See Corbett v. Cnty. of Lake*, 2107 IL 121536, ¶ 35. Again, the People's construction preserves defendants' statutory rights under the PFA and thus avoids absurdity or injustice, while the appellate court's construction affords defendants their statutory rights only if the prosecution exercises its discretion to request a continuance.

In addition, as the People explained, requiring that the detention petition be filed at the same time an arrest warrant is sought would cause delays and duplication of effort in the warrant process and provide no additional protection to defendants. Peo. Br. 20. Police officers routinely seek arrest warrants with no assistance from a State's Attorney. *Id.* Were those proceedings the "first appearance" contemplated by subsection 110-6.1(c)(1), officers would be obligated to enlist an Assistant State's Attorney to determine whether to file a detention petition when they seek an arrest warrant. This could delay officers from seeking warrants, allowing potentially dangerous offenders to remain at large. *Id*. at 18-19; 725 ILCS 5/110-6.1(e). Moreover, detention petitions filed prior to the defendant's arrest might lack information relevant to the court's detention decision, as defendant acknowledges. Def. Br. 16. Defendant suggests this problem could be overcome by the People seeking a continuance on the initial petition and filing an amended petition after the defendant's arrest that includes relevant information obtained during or after the arrest. *Id.* But in these circumstances the earlier-filed detention petition will have served no purpose,

because it will need to be amended and then served on the defendant *for the first time* at his first appearance in court. Indeed, it is irrelevant to a defendant whether a petition is filed at an *ex parte* warrant hearing and then held until his first appearance, or initially filed at his first appearance. In either circumstance, the defendant will have neither received nor reviewed the petition until his first appearance. The General Assembly would not have intended such a waste of prosecutorial and judicial resources, providing another reason why the appellate court's construction of subsection 110-6.1(c)(1) leads to absurd and unjust results.

II. The Court Should Remand for the Appellate Court to Consider Defendant's Remaining Arguments.

The parties agree that if the Court reverses the appellate court's judgment, it should remand for the appellate court to consider defendant's remaining arguments. *See* Def. Br. 18.

CONCLUSION

The People of the State of Illinois respectfully request that this Court reverse the appellate court's judgment and remand to the appellate court to consider defendant's remaining arguments.

April 3, 2024

Respectfully submitted,

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RULE 341(c) 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) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 1,463 words.

/s/ Mitchell Ness
MITCHELL NESS
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 3, 2024, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, which provided service to the following:

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