



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

April 15, 2019

The Honorable London Breed
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102

Dear Mayor Breed:

Thank you for including the ACLU of Northern California in your roundtable on pretrial reform in San Francisco this past Monday and allowing us to take part in a conversation that contained an incredible diversity of viewpoints. We refrained from submitting a letter in advance of the meeting, because we did not fully understand what options were being considered and what perspectives would be shared at the meeting. **Having had the opportunity to hear from the many stakeholders present, and having considered all of the perspectives, we write in strong support of the San Francisco Pretrial Diversion Project (SF Pretrial).**

Mayor Breed, the path toward pretrial justice has been long and difficult. The ACLU has been walking that path with many partners for a long time, including in recent years as a partner to groups bringing litigation and in initially sponsoring and spearheading the campaign for the passage of SB 10 before withdrawing our support.

From the outset, we have advocated for independent pre-trial services agencies, with an emphasis on pre-trial release, the provision of services to ensure court dates are met, collaboration with the courts, and independence from the oversight of law enforcement agencies.

To put matters plainly, we ask that you maintain the integrity of the San Francisco model of an independent pretrial agency so that the rest of the state may bend toward justice, rather than to warp San Francisco to conform to the problematic element of SB 10 that favors probation.

The passage of SB is not the end of pre-trial reform; it is a beginning. And the preservation of San Francisco's model of independent pre-trial justice is critical to the future path of pre-trial justice both in San Francisco, but also in California and the country.

American Civil Liberties Union Foundation of Northern California

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To the extent your concerns are driven by SB 10, should the need arise, the ACLU is committed to working with your office to ensure that both the state legislature and the Governor support San Francisco's independent non-profit model and Santa Clara County's independent public agency model on an equal fiscal and policy footing with those counties that choose to assign this role to probation.

Mayor Breed, we said earlier that the ACLU has been dealing with bail in San Francisco for quite some time. To give you an example of how long, we have enclosed a copy of *Fred Korematsu Speaks Up*. In June 1942, at the start of Fred Korematsu's courageous case against Japanese American internment, our predecessor and then the director of the ACLU of Northern California, Ernest Besig, posted \$2,500 in bail for Fred Korematsu. It secured his release from San Francisco jail long enough for Fred to be picked up by military police at the beginning of the long path to our loss at the Supreme Court and the clearing of his name decades later.

Fred's case of course involved bail, but it was not *about* pre-trial justice - it was about plain old justice. Mayor Breed, your decision is *about both* – pre-trial justice and plain old justice.

To add another layer of history, our understanding is that San Francisco pre-trial services were established by the court and the San Francisco Bar Association in the 1960's, and became a separate non-profit in 1976. While I could certainly be wrong and I do not have ready access to the records, I am willing to speculate that Mayor Moscone had to have been involved in that decision. He knew something about due process. Earlier in his career, he had represented clients on behalf of the ACLU before the House UnAmerican Activities Committee.

San Francisco's model was the right decision then, and it is the right decision now.

The ACLU's goals in the pretrial context are to dramatically reduce pretrial detention, eliminate wealth-based detention, and combat bias and systemic racism. We believe the best way to do this is through decriminalization and diversion, the expansion of the right to counsel during pretrial proceedings, and procedural reforms that adhere to constitutional principles and fundamental fairness.

It is our long-standing commitment to due process – forged by the likes of Fred Korematsu, Ernest Besig and George Moscone – that is core to our request that you maintain and support the current the independence of the SF Pre-Trial agency. San Francisco is unique in that it is the only county in California that has a non-profit organization serving as the county's pretrial services agency. With over 43 years of experience and outcomes that meet and exceed national pretrial standards, SF Pretrial has

demonstrated its effectiveness in serving our San Francisco communities. As validated by an independent agency, 87% of their clients appear for court, and 90% are not arrested for another crime. They protect the rights of innocent people while supporting our Courts and criminal justice system and reducing the population of San Francisco County Jails by 47%.

Any agency that oversees pretrial release must be independent from undue law enforcement influence. We have serious reservations about law enforcement agencies monitoring pretrial detainees, who, after all, are presumptively innocent and have not been convicted of a crime.

Against this backdrop, we strongly support SF Pretrial and oppose its role being ceded to the Probation Department. An independent agency is best poised to respect the rights of the pretrial detainee. In this regard, San Francisco has a unique opportunity to be a model for the rest of the state and country in terms of pretrial policy.

The inhumanity of our criminal legal system is on full display in the pretrial context. Every day, thousands of people are subject to its cruelty. In 2016, nationally, there were 10.6 million admissions into local jails and an average of 731,300 people in jail on any given day.¹ Pretrial incarceration has devastating effects on people facing charges and their families. And this crisis disproportionately affects Black and brown people and those without economic resources. Thanks to the dedicated, hardworking professionals at SF Pretrial, San Francisco currently presents the system other counties should aspire to. It would be an incredible missed opportunity for San Francisco to forego its leadership role in protecting the constitutional rights of pretrial detainees by ceding this role to Probation. Please do not hesitate to contact us if we can be of any further assistance.

Sincerely,



Abdi Soltani
Executive Director



Kathleen Guneratne
Senior Staff Attorney

¹ This is according to the Bureau of Justice Statistics, "Jail Inmates in 2016" (Feb. 2018), available at https://www.bjs.gov/content/pub/pdf/ji16_sum.pdf.