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Court of Appeal, First Appellate District
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Case No. A164180

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION 5

COALITION ON HOMELESSNESS

Plaintiff and Appellant,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY; SAN FRANCISO POLICE DEPARTMENT; TEGSCO LLC dba SAN FRANCISO AUTO RETURN,

Defendants and Respondents.

Appeal from the Superior Court of the County of San Francisco,
Case No. CPF-18-516456
The Honorable Ethan P. Schulman

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, rule 8.208.)

Pursuant to California Rules of Court, rule 8.208, Appellant knows of no entity or person that must be listed under Rule 8.208, subdivision (e)(1) or (2). No entity owns 10 percent or more of Appellant Coalition on Homelessness.

DATED: July 18, 2022

By: */s/ J. Max Rosen*
J. Max Rosen

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INTRODUCTION AND SUMMARY OF ARGUMENT

The City of San Francisco, the San Francisco Municipal Transportation Agency, and the San Francisco Police Department (collectively, "Respondents") have admitted they have a policy and practice of systematically towing safely and lawfully parked vehicles without a warrant—just because the owners have accrued five or more unpaid parking tickets. Respondents have also admitted—and the law is clear—that such tows are seizures subject to the limits of Article I, Section 13 of the California Constitution and the Fourth Amendment of the United States. Under those constitutional provisions, a seizure without a warrant "is presumed to be illegal" (*People v. Williams* (2006) ("*Williams*") 145 Cal.App.4th 756, 761) unless the government satisfies its heavy burden of proving that the seizure falls within one of the "'specifically established and well-delineated exceptions'" to the warrant requirement. (*People v. Woods* (1999) ("*Woods*") 21 Cal.4th 668, 674, quoting *Katz v. United States* (1967) ("*Katz*") 389 U.S. 347, 357.)

Respondents have not articulated a single exception to the warrant requirement that would in any way justify the extra-judicial seizure of thousands of lawfully and safely parked vehicles—a critical asset low-income Californians need to maintain their jobs and livelihoods—solely as a punishment for parking ticket debt. Because Respondents cannot meet their heavy burden, these unconstitutional seizures must be enjoined.

The Superior Court disagreed. It held that Respondents could continue their systematic and warrantless seizures of safely and lawfully parked vehicles under the "community caretaking doctrine"—a narrow exception to the warrant requirement. (AR Supp. 57.) But that doctrine permits officers to tow vehicles without a warrant only when the "location of the vehicle" ""jeopardize[s] … public safety and the efficient movement of vehicular traffic.'" (*Williams*, supra, 145 Cal.App.4th at p. 761, quoting

South Dakota v. Opperman (1976) ("*Opperman*") 428 U.S. 364, 368-69, ellipsis in original.)

The Superior Court acknowledged—and Respondents conceded—that their policy and practice is to seize *safely* and *lawfully* parked vehicles—*i.e.*, vehicles that pose no "safety hazard" whatsoever based on their location. (AR 585; AR Supp. 62.) Nevertheless, the Superior Court reasoned that the community caretaking doctrine applies because these warrantless seizures promote public safety by "deterring vehicle owners from" violating parking laws in the future. (AR Supp. 60.) In the Superior Court's estimation, the government may systematically tow safely, lawfully parked vehicles without a warrant so long as it articulates a connection, no matter how indirect, to some distant "safety hazard"—here, by arguing that punishing vehicle owners for failing to pay parking tickets deters them from violating traffic laws in the future.

The Superior Court's extremely broad reading of the community caretaking doctrine is fundamentally incorrect and requires reversal.

First, authoritative decisions from the California Court of Appeal and the Ninth Circuit have repeatedly held that safely and lawfully parked vehicles *may not* be towed without a warrant under the community caretaking doctrine. (See *Williams*, supra, 145 Cal.App.4th at pp. 762-63 ["[n]o community caretaking function was served" where "[t]he car was legally parked"; there was no significant "possibility that the vehicle would be stolen, broken into, or vandalized"; the "car was [not] blocking a driveway or crosswalk"; and it did not "pose[]a hazard or impediment to other traffic."]; *People v. Torres* (2010) ("*Torres*") 188 Cal.App.4th 775, 789; *Miranda v. City of Cornelius* (9th Cir. 2005) ("*Miranda*") 429 F.3d 858, 864 ["Whether an impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police

officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."].)

Crucially, these appellate decisions have rejected the precise basis on which the Superior Court expanded the community caretaking doctrine to apply to Respondents' warrantless tows. As the California Court of Appeal has affirmed, "[i]f the community caretaking function extended so broadly as to include the deterrence of future illegal activity, it 'would expand the authority of the police to impound regardless of the violation, instead of limiting officers' discretion to ensure that they act consistently with their role of caretaker of the streets.'" (*Torres*, supra, 188 Cal.App.4th at p. 792, quoting *Miranda*, supra, 429 F.3d at p. 866.)

Relying on these appellate decisions, every federal district court decision in California to address the question has held that the warrantless tow of vehicles on the basis of unpaid parking tickets—*i.e.*, the precise practice at issue here—violates the Fourth Amendment. (See *Fitzpatrick v. City of Los Angeles* (C.D. Cal. Jan. 20, 2022 No. CV 21-6841 JGB (SPX)) ("*Fitzpatrick*") 2022 WL 1421319, at *4; *Pina v. City of Long Beach* (C.D. Cal. June 28, 2019 No. 2:17-CV-00549-PA (SHK) ("*Pina*") 2019 WL 6998662, at *8, *report and recommendation adopted* (C.D. Cal. Oct. 12, 2019 No. 217CV00549PASHK) 2019 WL 6998768; *Smith v. Reiskin* (N.D. Cal. Oct. 10, 2018 No. C 18-01239 JSW) ("*Reiskin*") 2018 WL 7820727, at *2–3; *Washington v. Los Angeles Dep't of Transportations* (C.D. Cal. Dec. 15, 2015 No. LA CV 15-6278 AB (JCG)) ("*Washington*") 2015 WL 8966702, at *4; *Deligiannis v. City of Anaheim* (C.D. Cal. Mar. 2, 2010 No. SACV 06-720 DOC(JC)) ("*Deligliannis*") 2010 WL 1444538, at *7, *report and recommendation adopted* (C.D. Cal. Apr. 3, 2010 No. SACV 06-720 DOC(JC)) 2010 WL 1444535, *aff'd* (9th Cir. 2012) 471 F. App'x 603.)

The Superior Court's decision is irreconcilable with this wealth of authority.[1]

Second, the Superior Court's expansion of the community caretaking doctrine is wholly inconsistent with the intent of the California Legislature. In 2018, the Legislature amended the Vehicle Code to expressly address the community caretaking doctrine, amending the text of Section 22650 to state: any "removal pursuant to an authority … including … Section 22651 [which addresses tows for parking debt] that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, *such as ensuring the safe flow of traffic or protecting property from theft or vandalism*." (Veh. Code, § 22650, subd. (b), emphasis added).

The legislative history left no doubt about the meaning of these amendments. Committee reports stated that the purpose of the 2018 Amendments was to ensure that the "community caretaking" doctrine be given a "narrow scope." (Sen. Com. on Public Safety, Analysis of Sen. Jones – Sawyer Bill No. AB 2876 (2017-2018 Reg. Sess.), as amended June 12, 2018, at p. 4.)[2] To that end, the Legislature expressly endorsed, in

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[1] Tellingly, Respondents *themselves* conceded that the community caretaking doctrine does not apply to the seizure of lawfully and safely parked vehicles on the basis of unpaid parking ticket debt in a prior case, before inexplicably changing their position in this one. (See *Reiskin*, supra, 2018 WL 7820727, at *2–3.)

[2] These committee reports may properly be cited without a separate request for judicial notice. (See *Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 46 n.9, *as modified* (Sept. 23, 1998) [considering legislative history including "committee reports and analyses" and observing that "[a] request for judicial notice of published [Legislative] material is unnecessary. Citation to the material is sufficient."]; *Knapp v. Ginsberg* (2021) 67 Cal.App.5th 504, 532 ["Although committee reports and analyses or digests of the Legislative Counsel are relevant, a request

multiple reports, the principle that application of the community caretaking doctrine turns on whether the location of a vehicle creates an immediate hazard to safety or property—and does not extend to safely, lawfully parked vehicles. (*Id.* at p. 5.) Specifically citing the very appellate precedents that have rejected the Superior Court's deterrence rationale, the Legislature explained: "Under the community caretaking doctrine, the officer's decision to remove the vehicle depends on the location of the vehicle and the officer's duty to prevent it from being an obstruction or hazard to traffic, or potentially being stolen." (*Id.*, citing *Miranda*, supra, 429 F.3d at p. 864.)

So too did the Legislature articulate the *reason*, in its estimation, that the community caretaking doctrine must remain a narrow exception to the warrant requirement: "Without clarifying [Fourth] Amendment protections in state law, low-income and immigrant families are especially vulnerable to unwarranted vehicle seizures and their dire economic consequences." (*Id.* at p. 4.)

The Superior Court's expansion of the community caretaking doctrine would controvert the intention of the Legislature, and for that reason alone should be rejected by this Court.

Finally, the Superior Court's decision, if affirmed by this Court, would have serious consequences across the State of California. Such a decision would permit municipalities to systematically seize valuable property—including from low-income and unhoused residents who rely on their vehicles for transportation and shelter—without any judicial oversight,

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for judicial notice of these published materials is unnecessary. … Citation to the material is sufficient. We accordingly consider the request for judicial notice as a citation to those materials that are published, including legislative committee reports." (internal citations and quotations omitted).)

effecting a vast program of government debt collection that evades the scrutiny of the courts. That result would be especially unjustified given there are myriad lawful options municipalities have to collect debts from those who can genuinely afford to pay them—options that make use of, rather than eschew, the involvement of the courts. (E.g., AR Supp. 29 [identifying various civil debt collection procedures through state courts involving judicial oversight].) What's more, in the criminal context, expanding the community caretaking doctrine would fundamentally reshape the power of law enforcement to not only seize vehicles without a warrant—but also to search them. (*Williams*, supra, 145 Cal.App.4th at p. 761 ["If officers are warranted in impounding a vehicle, a warrantless inventory search of the vehicle pursuant to a standardized procedure is constitutionally reasonable."].)

Towing vehicles without a warrant to punish citizens for not paying parking debt is, quite simply, not community caretaking. Endorsing the Superior Court's contrary view of that doctrine would dramatically curtail the rights that Californians enjoy to privacy, property, and security—rights protected by Article I, Section 13 of the California Constitution and, specifically, its warrant requirement. For all of these reasons, this Court should reverse the decision of the Superior Court.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Under Vehicle Code § 22651, subd. (i)(1), a peace officer may tow a vehicle if it "is found upon a highway or public land … and it is known that the vehicle has been issued five or more notices of parking violations to which the owner or person in control of the vehicle has not [timely] responded" (Veh. Code § 22651, subd. (i)(1)) —but only provided that that

tow otherwise complies with the California and United States Constitutions, as well as other relevant provision of the Vehicle Code. (Veh. Code § 22650, subd. (b).)

The latter requirement is crucial: as the Vehicle Code itself makes clear, a tow of a vehicle "is a seizure under the Fourth Amendment of the Constitution of the United States and Article I, Section 13 of the California Constitution," and thus, even if otherwise permitted under Section 22651, "shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence." (Veh. Code § 22650, subd. (b); see also *Miranda*, supra, 429 F.3d at p. 862 [a tow is a "seizure within the meaning of the Fourth Amendment"]; *Williams*, supra, 145 Cal.App.4th at p. 762 ["statutory authorization" does not itself "satisf[y] all constitutional requirements"].)

This case concerns the constitutionality of San Francisco's policy and practice of towing vehicles pursuant to Section 22651(i)(1) *without* complying with the warrant requirement of Article I, Section 13 of the California Constitution and the Fourth Amendment. There is no dispute, and Respondents have repeatedly admitted, that Respondents have a policy and practice of towing vehicles that are legally and safely parked based solely on the existence of five or more unpaid parking tickets—and that they systematically do so without obtaining a warrant. (See, e.g., AR 7-16, Answer ¶¶ 1, 8 [admitting these uncontested facts].) Although the Superior Court held that these warrantless tows are defensible in the name of "community caretaking," towing legally and safely parked vehicles—*i.e.*, vehicles that pose no danger to the community whatsoever based on their location—simply cannot be described as community caretaking.

These undisputed facts require reversal of the Superior Court's decision. Nevertheless, Petitioner the Coalition on Homelessness

("Petitioner") provides further relevant facts and procedural history below to provide background and context to this appeal.

A. Petitioner Files Suit to Challenge Respondents' Warrantless Tows Of Safely, Legally Parked Vehicles On The Basis Of Unpaid Parking Tickets

On December 19, 2018, Petitioner filed a complaint for declaratory relief and taxpayer injunction, as well as a verified petition for writ of mandate—challenging Respondents' practice of towing safely and legally parked vehicles without a warrant. (AR 626-638.) Petitioner alleged that Respondents' warrantless debt tows violated Article I, Section 13 of the California Constitution, which incorporates the language of the Fourth Amendment of the United States:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

(Cal. Const., art. I, § 13; U.S. Const., am. IV.) Petitioner also alleged that Respondents towed these vehicles without adequate due process under Article I, Section 7 of the California Constitution, which states "[a] person may not be deprived of life, liberty, or property without due process of law." (Cal. Const., art I, § 7; U.S. Const., am. XIV, § 1; AR 629.)

On February 25, 2019, Respondents answered. (AR 6-14.) They expressly admitted that "SFMTA does not obtain warrants when it tows vehicles …." (AR 7, Answer ¶ 1) and that, pursuant to Respondents' policies and practices, "vehicles subject to tow under [Vehicle Code § 22651, subd. (i)(1)] may be towed without regard to whether they are legally or safely parked at the time of the tow and without regard to whether the vehicle is involved in any crime." (AR 8, Answer ¶ 8.)

B. Undisputed Evidence Confirms Respondents' Unconstitutional Practices

Petitioner thereafter moved for an injunction, declaratory relief, and writ of mandate, attaching evidence—including sworn declarations and deposition testimony—illuminating the precise unconstitutional contours of Respondents' debt tows and the dramatic effects such practices have on low-income and unhoused individuals in San Francisco. (AR 21-58.)

1. *First*, Petitioner provided clear and undisputed evidence of the central proposition in this appeal: Respondents, as they in any event admitted in their answer, have "a policy and practice of towing and impounding" vehicles "without regard to whether they are legally or safely parked at the time of the tow and without regard to whether they are involved in any crime" "without obtaining a warrant"—based solely on the existence of five or more unpaid parking tickets. (AR 8, Answer ¶¶ 8-9.)

Petitioner attached depositions of relevant officials of the SFMTA taken in an earlier case that Petitioner and Respondents stipulated could be admitted in this one. (AR 337.) James Doyle, SFMTA's person most knowledgeable regarding select topics relevant to its tow policies, averred that SFMTA does not "have a policy or practice of obtaining a warrant before towing a car for unpaid parking tickets[.]" (AR 344-45.) He further testified that the SFMTA has a "practice of towing vehicles for unpaid tickets, five or more, … regardless of whether the car is parked legally or illegally." (AR 345; *id.* ["Q: So, for example, a car towed for unpaid parking tickets might be parked in a spot that's legal for the next 24 hours? A: Sure."])

Shawn McCormick, another person most knowledgeable for the SFMTA—as to the "authority of an SFMTA employee to authorize the towing of a vehicle for unpaid parking citations" (AR 339)—confirmed this policy. He also made absolutely clear that Respondents tow vehicles for

having outstanding parking tickets irrespective of whether the car poses any safety or traffic hazard or is illegally parked. As Mr. McCormick explained, if the City identified a car illegally parked in front of a fire hydrant, it would not tow the car if the owner returned to retrieve it; however, if it determined that that same car had unpaid parking tickets, it would tow the car regardless of whether the owner could move it to a safe, legal parking space. As McCormick stated, "the fact that you can move [the car] out up in front of the fire hydrant is one thing, but you haven't cleared the outstanding parking citations yet." (AR 398.) In other words, even when the car was moved to a legal, safe location, it would still be towed if the owner had not timely resolved outstanding parking ticket debt.

SFMTA deponents further explained the purported purpose of these tows. Mr. Doyle stated it was partially "to deter nonpayment of citations." (AR 344.) Diana Hammons, another SFMTA person most knowledgeable with regard to towing practices, justified the practice of towing vehicles without a warrant as having a "deterrent effect of people paying their parking citations" because "they do not want to be towed." (AR 378.) Mr. McCormick too cited a "deterrent" effect. (AR 389.)[3]

Ms. Hammons also testified that she was not certain whether the City of San Francisco "loses money on its towing program …." (AR 378.) After the deposition, the SFMTA admitted it was "likely true […] that the amount that SFMTA expends to conduct towing operations for [tows including those under Vehicle Code Section 22651(i)(1)] is higher than the amount that SFMTA recovers from towing operations [for those tows]." (AR 434.)

[3] These deponents could cite no direct evidence of such an effect. (AR 379; AR 389.)

2. *Second*, in addition to establishing that Respondents tow lawfully, safely parked vehicles without a warrant solely on the basis that the owner has unpaid parking tickets, Petitioner provided evidence identifying the consequences such tows have had on low-income and unhoused individuals in San Francisco. Notably, after Petitioner filed suit, Respondents changed aspects of their policies in order to avoid seizing the vehicles of unhoused persons; however, at the time Petitioner brought suit, Respondents' admitted policy and practice was to seize vehicles irrespective of whether they were used as shelters or someone's sole method of commuting to work. (AR 7, Answer ¶ 1.)

Several witnesses averred to the importance of vehicles to unhoused residents of San Francisco and the devastating consequences of debt tows. (See, e.g., AR 163 [Jennifer Friedenbach, executive director of the Coalition on Homelessness: "[t]he loss of a vehicle in which someone lives is devastating. It is a loss of shelter, of safety and has an enormous emotional impact."]; AR 461 [Miqueesha Willis: "Losing my shelter sent me in a downward spiral financially, mentally, and emotionally. … As a result of stress and sleeplessness, I became depressed, and ultimately, lost my job. I could not function normally after the tow because I was embarrassed, felt humiliated, and was hopeless."]; AR 569 [Kimberly Brown lived in her vehicle with her young daughter after fleeing their home to escape domestic violence—the SFMTA towed that vehicle, leaving her and her daughter homeless.].)

Other declarants highlighted additional negative ways that unchecked, warrantless tows impact the San Francisco community. Christopher Arvin, a member of SFMTA's Citizen Advisory Council, analyzed SFMTA data and averred that tows for unpaid parking citations occurred most frequently in neighborhoods with higher populations of people of color. (AR 62.) Peter Hess, an economics expert, testified that

tows for unpaid parking tickets disproportionately affected low-income individuals who could not afford to pay those tickets—and that a majority of vehicles towed for "debt collection" (*i.e.*, unpaid parking tickets) were sold, rather than released, because the owners could not afford to retrieve their cars. (AR 469.)

Such testimony illuminated the futility of towing the cars of low-income San Franciscans to "deter" them from not paying parking tickets they could not afford; as well as the danger of removing judicial oversight from the systematic seizure of a vital form of security and property. Petitioner also explained that Respondents had other ways of collecting debt that relied on—rather than avoided—judicial oversight, including using the California Franchise Tax Board or other ordinary civil debt collection procedures governed by statute. (AR Supp. 29.)

On the basis of these and other facts, Petitioner argued that Respondents' towing practices violated Article I, Section 13 of the California Constitution—as there was no basis whatsoever for Respondents to seize safely and lawfully parked vehicles without a warrant simply to collect a government debt.

C. Respondents Alter Their Towing Practices In Response To Petitioner's Complaint, But Continue To Tow Safely, Legally Parked Vehicles Without First Obtaining A Warrant

In response to Petitioner's Complaint and Motion, Respondents altered significant aspects of their towing policy. (AR 583-84.) In particular, they averred that they no longer tow vehicles when their owners owe less than $2,500 in outstanding parking ticket debt, instead immobilizing such vehicles with a boot for 72 hours. (AR 584.) Respondents also now averred that vehicles "that appeared to an SFMTA enforcement officer to be used as shelter should not be booted or towed …

unless parked in a tow-away zone or in a manner that creates a safety hazard, and the driver does not, upon the enforcement officer's request, move the car to a place where it is not in a tow-away zone or creating a hazard." (AR 585.)

These changes lessened the devastating impact of Respondents' towing practices on unhoused individuals. But, although Respondents made many substantive changes to their practices as a result of this suit, they did not end their practice of towing safely, legally parked vehicles without a warrant. Instead, they confirmed that they will continue to tow vehicles without a warrant *solely* because the owner owes the City parking ticket debt—even when the vehicle is safely and legally parked. (AR 588-595.) Additionally, in touting their new practice of *not* towing shelters of unhoused people because those individuals have unpaid parking tickets, Respondents averred that such cars would still be towed if "parked … in a manner that creates a safety hazard." (AR 585.) In other words, Respondents admitted that the existence of five or more parking tickets does not, on its own, create a "safety hazard"—and therefore cannot fall within the community caretaking doctrine.

D. The Superior Court Holds The City May Tow Safely, Legally Parked Vehicles Under The "Community Caretaking Exception" To The Warrant Requirement

The Superior Court denied Petitioner's Motion. (AR Supp. 51-72.) The Court agreed that the impoundment of a vehicle is a seizure under the Fourth Amendment (and thus, under Article I, Section 13 of the California Constitution), which would ordinarily require a warrant. (AR Supp. 57, citing *Miranda*, supra, 429 F.3d at p. 862.) Nevertheless, it held that a single exception to the warrant requirement applied to authorize Respondents to seize vehicles for having five or more unpaid parking

tickets: the "community caretaking doctrine." (AR Supp. 57, citing *Opperman*, supra, 428 U.S. at p. 364.)

In the Superior Court's estimation, the warrantless towing of safely, legally parked vehicles on the basis that the owner has five or more unpaid parking tickets falls within this narrow exception because such tows "have a substantial deterrent effect" that promotes public safety—*i.e.*, towing legally parked cars for unpaid parking tickets "deters drivers from committing traffic and parking infractions." (AR Supp. 60.) The Court acknowledged the key language in *Miranda*—which would later be adopted by the California Court of Appeal in *Torres*, supra, 188 Cal.App.4th at p. 792—in which the Ninth Circuit rejected expansion of the community caretaking doctrine to the tow of safely, legally parked vehicles merely because such tows might "deter[a driver] from repeating [the same] illegal activity in the future." (*Miranda*, supra, 429 F.3d at p. 866.) The Court nevertheless incorrectly rejected this language as dicta and, in any event, not binding on the Court, and refused to follow it. (AR Supp. 60 at n.7.)

On the basis of its holding that the community caretaking doctrine applied, the Court entered final judgment for Respondents, from which Petitioner now appeals. (AR 615-17; Code Civ. Proc. § 904.1, subd. (a)(1).)[4]

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[4] The Court also rejected Petitioner's due process arguments—in large part citing and relying on the substantial changes Respondents made to their practices in response to the Petition. (AR Supp. 56). Petitioner does not separately appeal the Superior Court's determination that Respondents' policies and practices comport with the due process clause. A holding by this Court that Respondents must obtain a warrant before seizing safely, legally parked vehicles is sufficient to require reversal of the Superior Court's decision and enjoinment of Respondents' towing practices. Nevertheless, Petitioner does not concede that the Superior Court properly resolved the due process claim—which is a question this Court need not reach in this appeal.

STANDARD OF REVIEW

The Superior Court's determination that Respondents' warrantless tows comply with Article I, Section 13 of the California Constitution is "subject to a de novo" review by this Court. (*Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 989–90 [where relevant facts are undisputed, this court does "not defer to the superior court's ruling; [it] independently interpret[s] the law to determine whether or not [Respondents' practice] is constitutional."].)

ARGUMENT

I. RESPONDENTS' PRACTICE OF SEIZING SAFELY AND LAWFULLY PARKED VEHICLES WITHOUT A WARRANT VIOLATES ARTICLE I, SECTION 13 OF THE CALIFORNIA CONSTITUTION AS WELL AS THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Superior Court erroneously held that the warrantless seizure of safely and legally parked vehicles—solely based on unpaid parking tickets—is authorized under the "community caretaking doctrine." That holding is irreconcilable with authoritative decisions of the California Court of Appeal and Ninth Circuit, which have repeatedly held that safely and lawfully parked vehicles may not be towed under the community caretaking doctrine, and have *specifically* rejected the Superior Court's conclusion that law enforcement may tow such vehicles without a warrant to deter violation of the traffic laws. The Superior Court's holding is also irreconcilable with the decisions of no fewer than five California federal district courts, which have addressed the *exact* towing practice in this case and uniformly held that municipalities may not tow safely, legally parked vehicles on the basis of unpaid parking tickets without a warrant. That holding also contradicts the clear intent of the Legislature as codified in the Vehicle Code—that the community caretaking exception be narrowly and faithfully applied to limit

the power of the state to conduct seizures that would otherwise be authorized under Section 22651(i)(1).

Stated simply, the Superior Court's expansion of the community caretaking doctrine is legally incorrect and would result in that exception to the warrant requirement swallowing the rule. This Court should reject it.

A. The Warrantless Seizure Of A Vehicle Is *Per Se* Unreasonable Unless The Government Can Prove A Recognized Exception To The Warrant Requirement Applies

As Respondents concede, the tow of a vehicle—a valuable piece of property that, for many residents, is essential to their jobs and basic life necessities—is a *seizure* under both Article I, Section 13 of the California Constitution and the Fourth Amendment of the United States. (See *Miranda*, supra, 429 F.3d at p. 862 ["The impoundment of an automobile is a seizure within the meaning of the Fourth Amendment."]; AR 690 [Respondents' Counsel: "[T]he City has never contended that a tow of a vehicle is not legally a seizure under the Fourth Amendment or the California Constitution."]; Veh. Code, § 22650, subd. (b).)

The paramount requirement of reasonableness under Article I, Section 13 of the California Constitution, and the Fourth Amendment of the United States, is a warrant: *i.e.*, a prior determination by a judicial officer that a search or seizure by the executive branch is reasonable and permissible. Recognizing the importance of that protection, the California Supreme Court and the United States Supreme Court have repeatedly affirmed that "[a] search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the 'specifically established and well-delineated exceptions [to the warrant requirement].'" (*Woods*, supra, 21 Cal.4th at p. 674, quoting *Katz*, supra, 389 U.S. at p. 357.) Where the state seeks to avoid a warrant, it bears the

burden of establishing that such a "recognized exception to the warrant requirement" applies. (*Williams*, supra, 145 Cal.App.4th at p. 761; *United States v. Cervantes* (9th Cir. 2012) ("*Cervantes*") 703 F.3d 1135, 1141.) It is well-established that the state cannot satisfy that burden solely by demonstrating that the Vehicle Code—or any statute—authorizes the seizure. (*Williams*, supra, 145 Cal.App.4th at p. 762, citing *Sibron v. New York* (1968) 329 U.S. 40.)

In seeking to justify a warrantless seizure, the state's burden is a "heavy" one—as well it should be. (*Cervantes*, supra, 703 F.3d at 1141 n.1.) The warrantless towing of vehicles directly implicates the most vital interests that underlie Article I, Section 13 of the California Constitution and the Fourth Amendment of the United States Constitution, "to safeguard the privacy and security of individuals against arbitrary invasions by government officials." (*Opperman*, supra, 428 U.S. at p. 377.)

Such seizures disrupt—sometimes irrevocably—a resident's vital security interest in "the uninterrupted use of an automobile." (*Fitzpatrick v. City of Los Angeles* (C.D. Cal. Sept. 10, 2021 No. CV 21-6841 JGB (SPX)) 2021 WL 5918317, at *4 [identifying this interest as "substantial," quoting *Stypmann v. City & Cty. Of San Francisco* (9th Cir. 1977) 557 F.2d 1338, 1343]; *Miranda*, supra, 429 F.3d at p. 868 [acknowledging the "private interest of [vehicle owners] in uninterrupted possession of their car"].) The importance of a vehicle to maintaining a job and basic life functions in modern society cannot be overstated. (*Clement v. City of Glendale* (9th Cir. 2008) 518 F.3d 1090, 1094 ["Normally, of course, the removal of an automobile is a big deal, as the absence of one's vehicle can cause serious disruption of life in twenty-first century America."].) That is especially true for low-income and unhoused Californians—who are the most affected by the warrantless towing of vehicles to enforce parking tickets that, in all likelihood, they cannot afford to pay. "Towing practices disproportionately

prejudice low-income populations as towing can permanently depriv[e] low-income individuals of their vehicles (which often serve as their sole source of income or even their home).” (*Grimm v. Portland* (9th Cir. 2020) (“*Grimm*”) 971 F.3d 1060, 1063.)

The warrantless seizure of vehicles also affects paramount privacy interests. (*Williams*, supra, 145 Cal.App.4th at p. 761 [“The Fourth Amendment to the United States Constitution protects people from unreasonable government intrusions into their legitimate expectations of privacy.”].) In the impoundment context, a holding that the government may seize a vehicle without a warrant means that the government may *search* that vehicle without a warrant. (See *Williams*, supra, 145 Cal.App.4th at p. 761; *United States v. Caseres* (9th Cir. 2008) (“*Caseres*”) 533 F.3d 1064, 1074-75 [“A lawfully impounded vehicle may be searched for the purpose of determining its condition and contents at the time of impounding. Anything observed in the vehicle during the inventory search is admissible against the defendant.”].) In other words, if the government may systematically seize vehicles without a warrant for unpaid parking tickets that means that the government may *search* those vehicles without a warrant as well.

For all of these reasons, “[a] warrantless search,” including the seizure and search of a vehicle without judicial oversight or pre-authorization, “is presumed to be illegal.” (*Williams*, supra, 145 Cal.App.4th at p. 761.)

B. The “Community Caretaking” Doctrine Does Not Permit The Warrantless Seizure Of Safely And Lawfully Parked Vehicles As A Punishment To Deter Future Parking Violations

The Superior Court relied on the “community caretaking doctrine” to uphold Respondents’ warrantless seizures. That doctrine provides that,

"[a]s part of their 'community caretaking functions,' police officers may constitutionally impound vehicles"—without a warrant—if the location of those vehicles "'jeopardize[s] … public safety and the efficient movement of vehicular traffic.'" (*Williams*, supra, 145 Cal.App.4th at p. 761, quoting *Opperman*, supra, 428 U.S. at pp. 368-69.) As the United States Supreme Court explained in dicta in *Opperman*:

> To permit the uninterrupted flow of traffic and in some circumstances to preserve evidence, disabled or damaged vehicles will often be removed from the highways or streets at the behest of police engaged solely in caretaking and traffic-control activities. Police will also frequently remove and impound automobiles which violate parking ordinances and which thereby jeopardize both the public safety and the efficient movement of vehicular traffic. The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge.

(*Opperman*, supra, 428 U.S. at pp. 368-69.)

In the years since *Opperman*, both the California Court of Appeal and the Ninth Circuit have repeatedly clarified the narrow circumstances in which the community caretaking doctrine permits an officer to seize a vehicle without first obtaining a warrant—*i.e.*, that the vehicle must, based on its location, pose an imminent safety hazard to people or property or be illegally parked. District courts across the Ninth Circuit, as well as the California Legislature, have also addressed the scope of this doctrine and its precise application to seizures made pursuant to the California Vehicle Code—and specifically, seizures made on the basis of outstanding parking tickets.

Each of these sources of authority has reached the same indisputable conclusion: the community caretaking doctrine is a narrow one that turns on whether the precise location of a car creates an immediate safety or traffic issue justifying dispensing with the warrant requirement. It does not

permit the systematic, warrantless towing of legally, safely parked vehicles simply because their owners have late parking tickets.

1. Authoritative Precedent Squarely Holds That Safely And Lawfully Parked Vehicles May Not Be Towed Without A Warrant

Multiple authoritative decisions from the California Court of Appeal and the Ninth Circuit have repeatedly rejected the Superior Court's conclusion that the community caretaking doctrine encompasses the seizures of lawfully, safely parked vehicles—even if such tows purportedly deter violation of the traffic laws.

In *People v. Williams*, the California Court of Appeal rejected the government's argument that it could tow a lawfully and safely parked vehicle without a warrant under the community caretaking doctrine. (Supra, 145 Cal.App.4th 756.) Law enforcement had towed the vehicle after arresting the driver, as facially authorized by the Vehicle Code. (*Williams*, supra, 145 Cal.App.4th at p. 762, citing Veh. Code, § 22651, subd. (h)(1).) The Court held that "[n]o community caretaking function was served" by the tow because, at the time that the officer arrested the car's driver, "[t]he car was legally parked"; there was no significant "possibility that the vehicle would be stolen, broken into, or vandalized"; the "car was [not] blocking a driveway or crosswalk"; and it did not "pose[]a hazard or impediment to other traffic." (*Id.* at pp. 762-63.) Because the vehicle was lawfully and safely parked, the government was not permitted to impound it—*i.e.*, to seize it—without a warrant. This was so even though the Vehicle Code had expressly authorized the tow.

The Court of Appeal affirmed this narrow scope of the community caretaking doctrine in *People v. Torres*. (Supra, 188 Cal.App.4th 775.) There, law enforcement impounded a vehicle under Vehicle Code, § 14602.6, subd. (a)(1), which authorizes the tow of a vehicle driven by an

unlicensed driver. (See *Torres*, supra, at p. 781.) The Court of Appeal rejected the argument that the tow was authorized without a warrant under the community caretaking doctrine, where "[t]he prosecution failed to show the truck was illegally parked, at an enhanced risk of vandalism, impeding traffic or pedestrians, or could not be driven away by someone other than defendant." (*Id.* at p. 790.) In doing so, the Court expressly addressed the argument that, because towing the vehicles of unlicensed drivers deters the violation of traffic laws, such tows can be conducted without a warrant. "[I]f the community caretaking function extended so broadly as to include the deterrence of future illegal activity, it 'would expand the authority of the police to impound regardless of the violation, instead of limiting officers' discretion to ensure that they act consistently with their role of 'caretaker of the streets.'" (*Id.*, quoting *Miranda*, supra, 429 F.3d at p. 866; and citing *Caseres,* supra, 533 F.3d at p. 1075].)[5]

The Ninth Circuit reached the same conclusion in *Miranda*—the case on which the Court of Appeal relied in *Torres*. There, law enforcement towed a vehicle because the driver drove without a license. (*Miranda*, supra, 429 F.3d at p. 861 [Oregon law, like California law, authorizes such tows].) Reversing the district court's grant of summary judgment to the defendant municipality on the plaintiffs' civil rights claim, the Ninth Circuit held that "an officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers." (*Id.* at p. 866; *id*. at 864 n.4 ["[T]he impoundment of a legally-parked vehicle is not necessary to enforce traffic regulations and requires

[5] In an independent holding, the court also concluded that the officer had impounded the vehicle as a pre-text for conducting an investigatory search. (See *id.* at 792.) But the court's analysis of the community caretaking doctrine was an independent basis for reversal. (See *id.* at pp. 790-92.)

some additional justification, as is typically demonstrated by the community caretaking purpose.”].)

In language the *Torres* court would later recite, the Ninth Circuit expressly rejected the argument that “impoundment satisfied the ‘caretaking’ function by deterring [vehicle owners] from repeating this illegal activity in the future.” (*Id.* at p. 866.)

> While the Supreme Court has accepted a deterrence rationale for civil forfeitures of vehicles that were used for criminal activity, the deterrence rationale is incompatible with the principles of the community caretaking doctrine. Unlike in civil forfeitures, where the seizure of property penalizes someone who has been convicted of a crime, the purpose of the community caretaking function is to remove vehicles that are *presently impeding traffic or creating a hazard*. The need to deter a driver's unlawful conduct is by itself insufficient to justify a tow under the ‘caretaker’ rationale.

(*Id*., emphasis added.)[6]

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[6] The Ninth Circuit also agreed that towing the plaintiffs’ car had a “negligible deterrent effect” under the facts of that case. (See *id.*) The Superior Court cited this language to distinguish *Miranda*, suggesting that “towing a vehicle with multiple unpaid parking tickets is far more likely to have a substantial deterrent effect.” (AR Supp. 60.) The point is irrelevant: *Miranda* and *Torres* reject the notion that deterring future illegal activity is “community caretaking”—full stop. (*Miranda*, supra, 429 F.3d at p. 866.) Nevertheless, the Superior Court’s premise is also a confounding one. The evidence in the record made any actual deterrent effect of Respondents’ tows wholly speculative (e.g., AR 378 [Ms. Hammons could offer no direct evidence of such deterrence]; AR 389 [nor could Mr. McCormick].) And as a matter of logic, such tows are not likely to deter traffic violations because they will have no effect on high-income San Franciscans who can continue to flagrantly violate all traffic laws as long as they can pay the ticket price. At most, these tows are designed to deter people from not paying parking tickets on time, as SFMTA’s deponents repeatedly acknowledged. (AR 344; AR 378.) That deterrence rationale has everything to do with debt collection and nothing to do with public safety, and as applied to low-income and unhoused vehicle-owners—is both futile and cruel. (AR 62, 163, 469.)

Both the California Court of Appeal and the Ninth Circuit have repeatedly reaffirmed these principles. (See, e.g., *Blakes v. Superior Ct.* (2021) 72 Cal.App.5th 904, 913 ["What is not present is an adequate community caretaking function served by the impound here. There was no evidence petitioner's car blocked traffic or was at risk of theft or vandalism; the Impala was legally parked in a parking space in a public parking lot. Although the detectives testified it was common (and thus part of the policy) to tow when the driver had a suspended license to prevent more driving under a suspended license, this policy does not provide a community caretaking function for the tow."]; *People v. Lee* (2019) 40 Cal.App.4th 853, 868; *Caseres*, supra, 533 F.3d at 1075 ["There was no community caretaking rationale," where "[t]he car was legally parked"; there was no significant "possibility that the vehicle would be stolen, broken into, or vandalized" and there was no evidence that the "car was blocking a driveway or crosswalk, or that it posed a hazard or impediment to other traffic."]; *id.* ["The rationale of impounding vehicles merely to deter future illegal activity 'is incompatible with the principles of the community caretaking doctrine,'" quoting *Miranda*, supra, 429 F.3d at p. 866.)

In short, the California Court of Appeal *and* the Ninth Circuit have rejected the precise basis on which the Superior Court applied the community caretaking doctrine to Respondents' tows. The Superior Court's decision is irreconcilable with this authority and should be reversed.[7]

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[7] The Superior Court cited, in passing, a series of non-California cases to support its application of the community caretaking doctrine. (AR Supp. 57-58, collecting cases). Not one of them applied, or even cited, the holdings or reasoning in *Miranda*, *Williams*, and *Torres*—holdings that

2. Numerous Courts In The Ninth Circuit Have Held That The Warrantless Seizure Of Lawfully, Safely Parked Vehicles Solely On The Basis Of Unpaid Parking Tickets Violates The Fourth Amendment

The Superior Court's decision is not merely incompatible with decisions of the Court of Appeal and the Ninth Circuit. It is incompatible with every federal district court decision in California that has applied the principles articulated in these appellate decisions to the facts of this case. Federal district courts within the Ninth Circuit have, on at least five occasions, confronted the very question presented to the Superior Court: whether the warrantless towing of a lawfully, safely parked vehicle on the sole basis that the owner has failed to pay parking tickets constitutes an unconstitutional seizure because it violates the warrant requirement. *Each* of these decisions has expressly held that such warrantless tows are unconstitutional.

Most recently, the Central District of California rejected an effort by Los Angeles to rely on the community caretaking doctrine to defend its warrantless towing of safely and legally parked vehicles under Vehicle Code Section 22651(i)(1) for having unpaid parking tickets. (*Fitzpatrick*, supra, 2022 WL 1421319, at *4.)[8] The Central District explained "[t]here is

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were expressly adopted by the California Legislature in Section 22650 of the Vehicle Code. (See infra Argument.I.B.3.) What's more, not one of these decisions even addressed the community caretaking doctrine at all. (See *Tate v. D.C.* (D.C. Cir. 2010) 627 F.3d 904, 911 n.7; *Berger v. Philadelphia Parking Auth.* (E.D. Pa. 2019) 413 F.Supp.3d 412, 417; *Oberhausen v. Louisville-Jefferson Cnty. Metro Gov't* (W.D. Ky. 2007) 527 F.Supp.2d 713, 727; *Rackley v. City of New York* (S.D.N.Y. 2002) 186 F.Supp.2d 466, 472.) They do not support the Superior Court's decision, which cannot stand in the face of extensive, contrary California authority.

[8] The Superior Court rejected the relevance of an earlier decision by the *Fitzpatrick* court granting a preliminary injunction on the basis that the

a distinction, from a community caretaking perspective, between removal of an illegally parked car with multiple unpaid citations and a legally parked car with multiple unpaid citations." (*Id.*) The latter does not fall under the community caretaking doctrine, because "[a] legally parked car would appear to **not** interrupt the flow of traffic, create safety hazards, prevent street cleaning or any of the other disruptions cited by Defendants, even if the person who owned the car had unpaid parking tickets." (*Id.* at *5.) The district court also specifically addressed and dismissed the City's argument that "the threat of towing also deters future transgressions." (*Id.* at *4, emphasis omitted.) "Courts in this circuit consistently repudiate deterrence rationales raised in the community caretaking context," the district court explained. (*Id.* at *5 n.4, collecting cases, including *Miranda*, supra, 429 F.3d at p. 866.)[9]

The *Fitzpatrick* decision was no outlier. In *Pina v. City of Long Beach*, the Central District of California agreed that the community caretaking doctrine did not justify impoundment of a lawfully, safely parked vehicle for having five or more parking tickets under Vehicle Code Section 22651(i)(1). (Supra, 2019 WL 6998662, at *8.) The district court held, as a matter of law: "Because the City has not justified its tow or impound … except as a deterrent, it has not met its burden of showing that no genuine issue of material fact exists as to the reasonableness of its

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injunction was unopposed. (AR Supp. 58 n. 5, citing *Fitzpatrick v. City of Los Angeles* (C.D. Cal. Sept. 10, 2021 No. CV 21-6841 JGB (SPX)) 2021 WL 5918317.) The above decision denying Los Angeles' motion to dismiss, however, was indeed contested.

[9] Los Angeles had apparently quoted the Superior Court's decision in this matter in arguing its motion to dismiss. (Compare *id.* at *4 [quoting the City's briefs]; with AR Supp. 57, 60 [Superior Court's decision using the same language].) The Central District of California rejected those arguments wholesale.

seizure ….” (*Id.* at *11; see also *id.* [“It is also established that impounding a vehicle for purposes of deterrence is not consistent with the police role of ‘caretaker,’” quoting *Miranda*, supra, 429 F.3d at p. 866; *id.* at *9-10 [rejecting any further “administrative penalty exception” to the warrant requirement of the Fourth Amendment].)

Yet again, in *Smith v. Reiskin*, the plaintiff challenged San Francisco’s practice of towing lawfully, safely parked cars under Section 22651(i)(1)—Respondents’ very same practice at issue here, with several of the Respondents as defendants. (Supra, 2018 WL 7820727, at *2–3.) The Court granted a preliminary injunction requiring Respondents to return the plaintiff’s car, which was seized solely on the basis of outstanding parking tickets.

Remarkably, there Respondents openly *conceded* that the community caretaking doctrine could not apply to their warrantless debt tows of safely, lawfully parked vehicles. As the Northern District of California stated, “*[b]oth parties agree* [the vehicle] was not seized as a result of the community caretaking doctrine as it was not parked in a manner that would jeopardize public safety or the efficient movement of vehicular traffic.” (*Id.*, emphasis added.) But the court did not simply rely on Respondents’ concession; it explained that “[n]either party nor the Court could find persuasive or binding authority to support a recognized exception to the warrant requirement” where “impoundment of the car” was “in an effort to secure repayment of the debt owed by [the driver] for his previous parking tickets under Vehicle Code Section 22561(i).” (*Id.* at *3, citing, *e.g.*, *Miranda*, supra, 429 F.3d at p. 864, *Opperman*, supra, 428 U.S. at pp. 368-69.)

In *Washington v. Los Angeles Dep’t of Transportations*, a California federal district court again affirmed the unconstitutionality of these warrantless tows. (Supra, 2015 WL 8966702, at *4.) There, the plaintiff

alleged that Los Angeles violated his Fourth Amendment rights when it towed his "legally parked" vehicle on the basis of unpaid parking tickets. (*Id.* at *4.) Although the court dismissed the complaint on technical grounds, the court agreed that the plaintiff had "present[ed] a colorable claim that the alleged impoundment of his car … constitute[d] an unreasonable 'seizure' under the Fourth Amendment" on the basis that the community caretaking exception did not apply to the seizure. (See *Washington*, supra, 2015 WL 8966702, at *4, citing *Miranda*, supra, 429 F.3d at p. 862.)

Finally, a federal district court reached this same conclusion in *Deligiannis v. City of Anaheim*. (Supra, 2010 WL 1444538, at *7.) There, the plaintiff sued various municipal officials for towing his safely, legally parked vehicle pursuant to Vehicle Code Section 22651(i)(1) without a warrant (*i.e*, solely on the basis of unpaid parking tickets). The district court held that the seizure violated the Fourth Amendment. (*Id.* at *7.) The court did "not question that impounding a vehicle for unpaid parking tickets advances the legitimate state interest of deterring drivers from violating parking laws"; however, citing *Miranda*, it "rejected the notion that deterrence, by itself, is sufficient to justify a warrantless tow under the caretaker rationale" or that "impoundment of a legally parked vehicle is necessary to enforce vehicle regulations." (*Id.*, citing *Miranda*, supra, 429 F.3d at p. 864 n. 4.) The district court thus held that the "defendants [had] failed to demonstrate that the warrantless seizure of plaintiff's vehicle came within the 'community caretaking function' or other exception to the warrant requirement of the Fourth Amendment." (*Id.*)[10]

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[10] The court ultimately dismissed the claims against individual defendants on the basis of qualified immunity. (See *id.*)

In short, every federal court in California to address the practice at issue in this case—and every decision in the Ninth Circuit—has reached the same conclusion: the warrantless seizure of a safely, lawfully parked vehicle on the basis of unpaid parking tickets is unconstitutional. (See *Fitzpatrick*, supra, 2022 WL 1421319, at *4 n.3, n.4 [collecting cases and noting that the court could find no case within the Ninth Circuit suggesting a contrary result].) Those courts have reached that conclusion by relying on the very same reasoning as the California Court of Appeal in its authoritative precedents in *Williams* and *Torres*. This Court should follow those precedents and reverse the Superior Court.

3. Vehicle Code Section 22650(b) And The Legislative History Underlying It Further Make Clear That The Community Caretaking Doctrine Does Not Encompass Respondents' Warrantless Tows

This case-law is clear and overwhelming. Nevertheless, yet another compelling source demonstrates that the Superior Court should be reversed: the text of California's Vehicle Code, and the legislative history behind it.

In 2018, the Legislature specifically amended the Vehicle Code to protect the rights of Californians under both Article I, Section 13 of the California Constitution and the Fourth Amendment to the United States Constitution. The Vehicle Code now expressly states that a tow under that code "shall be reasonable and subject to the limits set forth in Fourth Amendment jurisprudence," and further, that any "removal pursuant to an authority, including … Section 22651, that is based on community caretaking, is only reasonable if the removal is necessary to achieve the community caretaking need, *such as ensuring the safe flow of traffic or protecting property from theft or vandalism*." (Veh. Code, § 22650, subd. (b), emphasis added.)

As the *Fitzpatrick* court correctly observed, on its face, the text of Section 22650(b) "affirms the purpose of the community caretaking exception" as established in numerous federal cases. (*Fitzpatrick*, supra, 2022 WL 1421319, at *3.) In other words, the text's examples—"ensuring the safe flow of traffic or protecting property from theft or vandalism"—mirror the limits applied in *Williams*, *Torres*, and *Miranda*—confirming that the community caretaking function encompasses only the tow of vehicles whose location poses an imminent safety concern to traffic, human life, or property. (*See Martin v. Holiday Inns, Inc.* (1988) 199 Cal.App.3d 1434, 1437 ["where specific words follow general words, the doctrine of *ejusdem generis* is equally applicable and application of the general term is restricted to those things that are similar to those which are enumerated specifically"].)

The legislative history leaves no doubt as to that conclusion. (Cf. *Gund v. Cnty. Of Trinity* (2020) 10 Cal.5th 503, 511 ["If the language of a statutory provision remains unclear after we consider its terms, structure, and related statutory provisions, we may take account of extrinsic sources — such as legislative history — to assist us in discerning the relevant legislative purpose."]; *Quelimane Co. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 45 n. 9, *as modified* (Sept. 23, 1998) ["[C]ommittee reports and analyses or digests of the Legislative Counsel are [relevant] because it is reasonable to infer that all members of the Legislature considered them when voting on the proposed statute."].)

In passing the 2018 Amendments to the Vehicle Code, the Legislature sought to codify and affirm the "narrow scope" of the "community caretaking" doctrine. (Sen. Com. on Public Safety, Analysis of Sen. Jones – Sawyer Bill No. AB 2876, supra, at p. 4.) To codify this narrow scope, the Legislature expressly endorsed the analysis laid out in *Miranda*: "Under the community caretaking doctrine, the officer's decision

to remove the vehicle depends on the location of the vehicle and the officer's duty to prevent it from being an obstruction or hazard to traffic, or potentially being of it being (sic) stolen." (*Id.* at p. 5, citing *Miranda*, supra, 429 F.3d at p. 864.) Making this even clearer, the Senate Committee on Public Safety articulated the doctrine in express and exclusive terms:

> The "community caretaking doctrine" has been defined by courts through various rulings to mean that warrantless seizures of vehicles *are only reasonable* if an individual's substantial property interest in possessing his or her vehicle is outweighed by one or more of the following justifications:
>
> i) Preventing a hazard to other drivers;
> ii) Protecting the public from an unsafe driver; or
> iii) Preventing theft or vandalism.

(*Id.* at p. 4, emphasis added.)

The Legislature also explained *why* it was so important to apply the community caretaking doctrine narrowly and only to vehicles whose location created an immediate safety concern:

> Although the court has made clear that property rights protections exist for individuals, current law is not explicit on this matter, resulting in inadvertent unconstitutional vehicle seizures. This is especially important in cases where a towed vehicle can make the difference between going to work or staying home. Without clarifying 4th Amendment protections in state law, low-income and immigrant families are especially vulnerable to unwarranted vehicle seizures and their dire economic consequences.

(*Id.* at p. 4.) The Assembly Committee on Public Safety, quoting the sponsorship statement of the Mexican American Legal Defense and Education Foundation, emphasized the same point:

> This lack of clarity [that a seizure must be reasonable under the Fourth Amendment independent of statutory authorization] has resulted in vehicle seizures that are outside the scope of the 'community caretaking doctrine' and in

> violation of 4th Amendment rights. It is especially important to provide constitutional protections in cases where a towed vehicle can make the difference between going to work or staying home. Without clarifying 4th Amendment protections in state law, low-income and immigrant families are vulnerable to unwarranted vehicle seizures.

(Assem. Com. on Public Safety, Analysis of Sen. Jones – Sawyer Bill No. AB 2876 (2017-2018 Reg. Sess.), as introduced Feb. 16, 2018, at pp. 4-5.)

In short, the Legislature, in passing the 2018 Amendments to Vehicle Code Section 22650, expressly affirmed that Article I, Section 13 of the California Constitution and the Fourth Amendment to the United States provide significant limitations on the ability of law enforcement officers to seize vehicles under the Vehicle Code; that the property interest in a vehicle, in particular for low-income Californians, is a vital one; that any warrantless seizure must be justified under the community caretaking doctrine; that that doctrine is not satisfied simply because the Vehicle Code authorizes impoundment; and, crucially, that the community caretaking doctrine is a narrow one, which turns on whether the "location" of a vehicle creates "an obstruction or hazard to traffic" or risk of the vehicle "being stolen." (Sen. Rules Comm., Analysis of Sen. Jones – Sawyer Bill No. AB 2876 (2017-2018 Reg. Sess.), as amended August 24, 2018, at p. 5, citing *Miranda*, supra, 429 F.3d at p. 864.) There is no question that the Superior Court expanded the community caretaking doctrine well beyond this narrow scope—and for that reason alone, its decision should also be reversed.

* * *

In sum, countless decisions of the California Court of Appeal and the Ninth Circuit, numerous California federal district court decisions, clear statutory text, and extensive legislative history leave no doubt: Respondents' warrantless seizures of safely, lawfully parked vehicles on

the basis that the owners have unpaid parking tickets violate the California Constitution, as well as the United States Constitution and Vehicle Code Section 22650(b) itself. The Superior Court's contrary decision authorizing such warrantless seizures based on the community caretaking doctrine is wrong, and should be reversed. [11]

C. The Consequences Of Expanding The Community Caretaking Doctrine Further Support Reversal

As the California Supreme Court has long made clear, courts "must enforce the provisions of our Constitution and may not lightly disregard or blink at … a clear constitutional mandate." (*Cnty of Riverside v. Sup. Ct.* (2003) 30 Cal.4th 278, 284-85, internal quotation marks and citation omitted.) Because Respondents' warrantless seizures of safely and lawfully parked vehicles violate Article I, Section 13 of the California Constitution, there is nothing more to decide, and the decision of the Superior Court must be reversed.

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[11] Respondents have already conceded that they do not obtain a warrant before towing safely, lawfully parked vehicles for unpaid parking tickets (AR 7, Answer ¶ 1.) There is therefore no need for this Court to go further than the community caretaking doctrine to determine precisely what showing Respondents must make, in a given case, to demonstrate to a neutral judicial officer that a given debt tow for late parking tickets is reasonable—i.e. the Court need not decide how Respondents should satisfy the warrant requirement. (Cf. *United States v. Vertol H21C Registration No. N8540* (9th Cir. 1976) 545 F.2d 648, 652 [prohibiting summary seizure of a helicopter to satisfy a debt without a hearing before a neutral magistrate because "governmental agencies [cannot] summarily take property as security for the eventuality that civil penalties must, in fact, be paid"]; see also *id.* [critiquing the process the government did ultimately follow to get a warrant, in part because "it was not possible to determine from the affidavit" the government submitted to a court clerk "whether the seizure was warranted"].)

Nevertheless, the Superior Court's decision is not only legally erroneous. If uncorrected by this Court, it will lead to severe and unacceptable consequences.

Some of those consequences are obvious. As Petitioner made clear below, the warrantless impoundment of vehicles to punish residents for failing to timely pay parking ticket debt—in San Francisco and beyond—has had devastating consequences for low-income and unhoused residents. Such seizures can cause vehicle owners to lose their jobs, their homes, and their sense of dignity. (See supra, Statement of the Case, I.B.2 [collecting declarations].) And those deprivations are usually permanent: after such a seizure, most low-income individuals can never afford to get their vehicles back. (See AR 164 [Friedenbach: "When people contact the Coalition after losing their home to a tow, it is usually the permanent loss of that home. It is difficult for the unhoused to reacquire a vehicle because these individuals do not have the money to pay the exorbitant fines and fees" necessary to retrieve the vehicle before it is sold.]; AR 469 [Hess: noting that thousands of vehicles towed for "debt collection" (*i.e.*, unpaid parking tickets) in San Francisco—indeed the majority of those vehicles—were sold, rather than released, because the owners could not afford to retrieve their cars].)

To the degree a municipality has an interest in actually collecting parking ticket debt—and not simply punishing low-income residents—there are multiple ways it can collect that debt through the judicial process. (AR Supp. 29.)[12] As Petitioner outlined below, ordinary civil collections

[12] (See, e.g., State of California Franchise Tax Board, Court-ordered Debt Collections, https://www.ftb.ca.gov/pay/collections/court-ordered-debt/index.html (last visited July 8, 2022 ["Common court-ordered debts include unpaid traffic tickets …."]; State of California Franchise Tax Board, Interagency Intercept Collection Program-Update (Feb. 2019 Tax New), https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/february-

processes necessarily involve a judge and have at least some built-in safeguards that protect severely low-income people from pernicious collections practices. (*Id.* ["the City can collect parking ticket debt through the State Franchise Tax Board using tax intercept, wage garnishment, or bank levy"].)[13] There is no reason that Respondents may—let alone must—systematically seize the vehicles of low-income residents without judicial authorization or oversight and thus deprive those residents of their means of transportation, livelihoods, *and* constitutional rights.

Still, the consequences of affirming the Superior Court do not end in merely sanctioning Respondents' unconstitutional tows. If, as the Superior Court held, the community caretaking doctrine encompasses any seizure that can be said to *deter* violation of the traffic laws—regardless of whether a vehicle is lawfully and safely parked—such a holding will reverberate not just in the civil context, but throughout the *criminal* law. The Superior Court inexplicably believed that its decision was limited to civil impoundments, suggesting that "considerations in the criminal context are entirely distinct." (AR Supp. 62.) But no such limiting principle applies.

It is well-established, for example, that if a law enforcement officer is permitted to impound a vehicle without a warrant, she is also permitted to *search* that vehicle—because the constitutionality of an inventory search turns on the constitutionality of the impoundment that precedes it. (See, e.g., *Williams*, supra, 145 Cal.App.4th at p. 761.) A holding that the

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2019/interagency-intercept-collection-program.html (last visited July 8, 2022) [describing program that intercepts funds to satisfy debt to the government].)

[13] (See, e.g., Civ. Proc. Code, § 706.051 ["[T]he portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family supported in whole or in part by the judgment debtor is exempt from levy under this chapter."].)

community caretaking doctrine encompasses the tows at issue in this case would therefore dramatically and irrevocably transform Californians' rights to "privacy and security … against arbitrary invasions by government officials" in both civil and criminal contexts. (*Opperman*, supra, 428 U.S. at p. 377; see, e.g., *Williams*, supra, 145 Cal.App.4th at p. 761 [criminal case]; *Miranda*, supra, 429 F.3d at p. 866 [Section 1983 civil suit].) These consequences would be serious—and inure far beyond the bounds of this case.

Against these serious negative consequences, the Superior Court identified no basis to ignore the requirements of the California and United States Constitutions. The Superior Court expressed concern that a decision invalidating Respondents' tows could be a watershed opinion—resulting in the invalidation of other seizures under the Vehicle Code. (AR. Supp. 61, citing as examples Veh. Code, § 22651, subd. (k) and subd. (n).) In fact, none of the specific statutory provisions the Superior Court cited involves the tow of *safely* and *lawfully* parked vehicles. (See Veh. Code, § 22651, subd. (k) [authorizing impoundment "[i]f a vehicle is parked or left standing upon a highway for 72 or more consecutive hours *in violation of a local ordinance authorizing removal*," emphasis added]; Veh. Code, § 22651, subd. (n) [authorizing impoundment "[w]henever a vehicle is parked or left standing where local authorities, *by resolution or ordinance*, have prohibited parking and have authorized the removal of vehicles," emphasis added.) A holding that Respondents' warrantless tows are unlawful need have no effect on tows pursuant to these statutes.

To the contrary, it is the Superior Court's expansion of the community caretaking doctrine that would constitute a watershed decision. The California Court of Appeal, the Ninth Circuit, and the California Legislature have already affirmed the narrow scope of that doctrine. (See, e.g., *Williams*, supra, 145 Cal.App.4th 756; *Torres*, supra, 145 Cal.App.

762; Veh. Code, § 22650, subd. (b); *Miranda*, supra, 429 F.3d at p. 864.) Those principles are well-established in the law, and yet the sky has not fallen.[14] Reversing the Superior Court would not change the power of law enforcement to seize vehicles without a warrant—when narrowly appropriate—consistent with this wealth of authority. But affirming the Superior Court would destroy the vital, longstanding protections these authorities have established against warrantless, extra-judicial seizures when they cannot be justified as community caretaking.

CONCLUSION

In sum, this Court should make clear that the community caretaking exception does not apply to excuse Respondents' warrantless seizures, and should reverse the contrary holding of the Superior Court.

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[14] For instance, in the wake of the *Fitzpatrick* decision, Los Angeles has entirely suspended its debt tows based on unpaid parking tickets. (E. Leonard, *LA Stops Vehicle Impounds For Unpaid Parking Tickets* (**NBC Los Angeles** Feb. 7, 2022), https://www.nbclosangeles.com/investigations/la-los-angeles-vehicle-impounds-unpaid-parking-tickets/2819302/#:~:text=The%20city%20of%20Los%20Angeles,parking%20enforcement%20in%20the%20future.)

DATED: July 18, 2022

By: */s/ J. Max Rosen*

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to Rule 8.204(c)(4) of the California Rules of Court, that the enclosed Combined Respondent's Brief contains 10,702 words, which is fewer than the 14,000 words permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 18, 2022

/s/ J. Max Rosen
J. MAX ROSEN

CERTIFICATE OF SERVICE

No. A164180
Coalition on Homelessness v. City and County of San Francisco, et al.
Appeal from the Superior Court, County of San Francisco
Case No. CPF-18-516456

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On July 18, 2022, I served true copies of the following document(s) described as:

APPELLANT COALITION ON HOMELESSNESS'S OPENING BRIEF

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

By Electronic Service: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by:

U.S. Mail (as indicted below): I caused the documents to be served by enclosing true copies thereof in a sealed envelope and, following ordinary business practices, said envelope was placed for mailing and collection in the offices of Munger, Tolles & Olson LLP in the appropriate place for mail collected for deposit with the United States Postal Service. I am readily familiar with the Firm's practice for collection and processing of documents for mailing with the Unites States Postal Service and that said documents are deposited with the United States Postal Service in the ordinary course of business on the same day.

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

Executed on July 18, 2022, at San Francisco, California.

Mark Roberts

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