

THE USE OF PRETRIAL "RISK ASSESSMENT" INSTRUMENTS:

A SHARED STATEMENT OF CIVIL RIGHTS CONCERNS

We believe that jurisdictions should work to end secured money bail and decarcerate most accused people pretrial, without the use of “risk assessment” instruments.

The extraordinary measure of pretrial detention should be treated as a last resort and should only be imposed upon an accused person after they’ve received a thorough, adversarial hearing that observes rigorous procedural safeguards respecting individual rights, liberties, and the presumption of innocence.

In light of the concerns raised in this document, we urge jurisdictions to reconsider their use of risk assessment tools. Pretrial risk assessment instruments – although they may seem objective or neutral – threaten to further intensify unwarranted discrepancies in the justice system and to provide a misleading and undeserved imprimatur of impartiality for an institution that desperately needs fundamental change.

Where these tools are used, in order to reduce the harm they can cause we urge the following:

1

Pretrial risk assessment instruments must be designed and implemented in ways that reduce and ultimately eliminate unwarranted racial disparities across the criminal justice system. Those engaged in the design, implementation, or use of risk assessment instruments should also test ways to reduce the racial disparities that result from using historical criminal justice data, which may reflect a pattern of bias or unfairness.

2

Pretrial risk assessment instruments must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to regular, meaningful oversight by the community. The particular pretrial risk assessment instrument chosen should be trained by, or at least cross-checked with, local data and should be evaluated for decarceral and anti-racist results on a regular basis by the local community, including people impacted by harm and violence, and people impacted by mass incarceration, and their advocates.

3

Pretrial risk assessment instruments must never recommend detention; instead, when a tool does not recommend immediate release, it must recommend a pretrial release hearing that observes rigorous procedural safeguards. Such tools must only be used to significantly increase rates of pretrial release and, where possible, to ascertain and meet the needs of accused persons before trial, in combination with individualized assessments of those persons. Risk assessment instruments must automatically cause or affirmatively recommend release on recognizance in most cases, because the U.S. Constitution guarantees a presumption of innocence for persons accused of crimes and a strong presumption of release pre-trial.

4

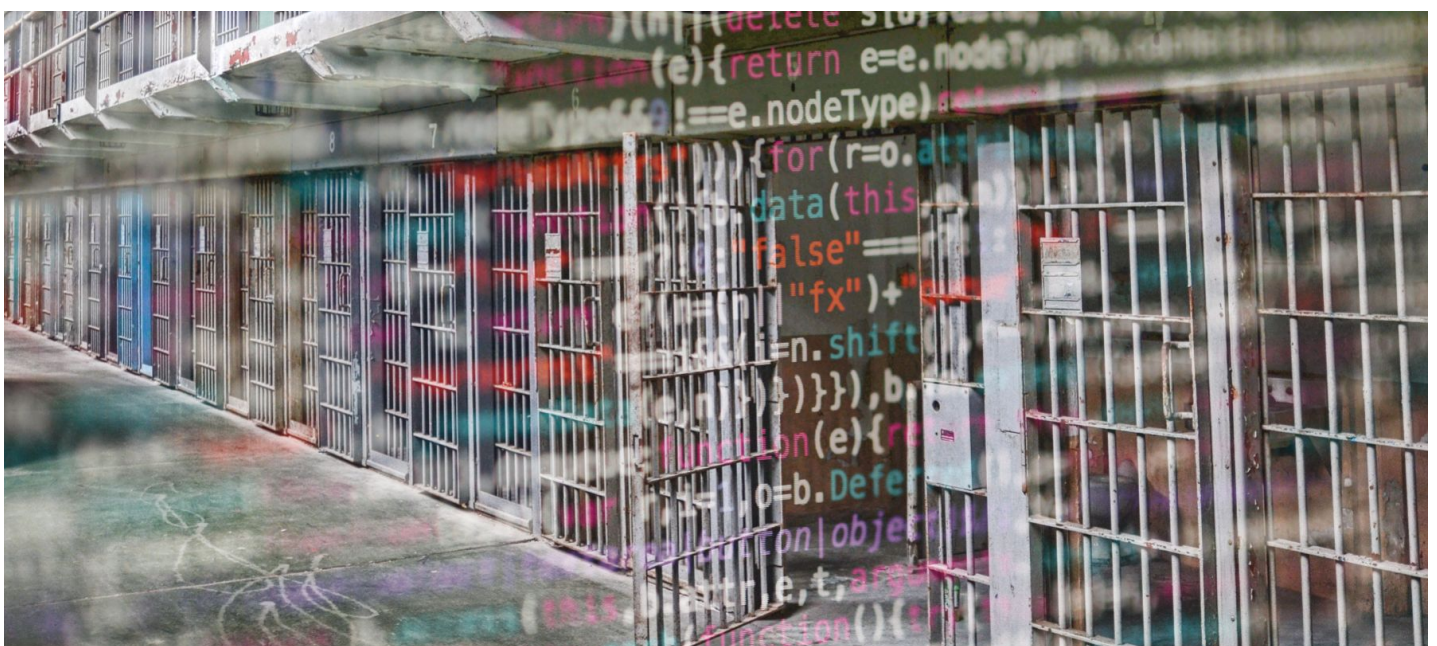
Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing. The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry is required by law) specific, credible danger to specifically identified individuals in the community. The prosecution must be required to demonstrate these specific circumstances, and the court must find sufficient facts to establish at least clear and convincing evidence of a substantial and identifiable risk of flight or significant danger to the alleged victim (or to others where required by law) before the exceptional step of detention of a presumptively innocent person, or other onerous supervisory conditions can be imposed. All conditions short of detention must be the least restrictive necessary to reasonably achieve the government's interests of mitigating risks of intentional flight or of a specifically identified, credible danger to others. Any person detained pretrial must have a right to expedited appellate review of the detention decision.

5

Pretrial risk assessment instruments must communicate the likelihood of success upon release in clear, concrete terms. In accordance with basic concepts of fairness, the presumption of innocence, and due process, pretrial risk assessment instruments must frame their predictions in terms of success upon release, not failure. Further, such tools should only predict events during the length of the trial or case – not after the resolution of the open case.

6

Pretrial risk assessment instruments must be transparent, independently validated, and open to challenge by an accused person's counsel. At minimum, the public, the accused person, and the accused person's counsel must all be given a meaningful opportunity to inspect how a pretrial risk assessment instrument works. The accused person's counsel must also be given an opportunity to inspect the specific inputs that were used to calculate their client's particular categorization or risk score, along with an opportunity to challenge any part – including non-neutral value judgments and data that reflects institutional racism and classism – of that calculation.



SIGNED BY:

1. African American Ministers In Action
2. Alternate ROOTS
3. American Civil Liberties Union
4. American-Arab Anti-Discrimination Committee
5. Amistad Law Project
6. Arab American Institute
7. Asian Pacific American Labor Alliance
8. Bend the Arc Jewish Action
9. Black Alliance for Just Immigration (BAJI)
10. Black Lives Matter Philadelphia
11. Brooklyn Community Bail Fund
12. Brooklyn Defender Services
13. Center for Democracy & Technology
14. Center for Justice Research - Texas Southern University
15. Center for Popular Democracy
16. Center on Race, Inequality, and the Law at NYU Law
17. Chicago Community Bond Fund
18. Civil Rights Corps
19. College and Community Fellowship
20. Color Of Change
21. Colorado Freedom Fund
22. Connecticut Bail Fund
23. Cville Immigrant Bond Fund
24. Data & Society
25. Dauphin County Bail Fund
26. Decarcerate Tompkins County
27. Defender Association of Philadelphia
28. Defending Rights & Dissent
29. Denver Justice Project
30. Eastern Iowa Community Bond Project
31. Electronic Frontier Foundation
32. Ella Baker Center for Human Rights
33. Entre Hermanos
34. Essie Justice Group
35. Families for Justice as Healing
36. Fight for the Future
37. Free Press
38. FreeThe350BailFund
39. Global Justice Institute
40. Government Information Watch
41. Helping Educate to Advance the Rights of Deaf Communities (HEARD)
42. Humanizing AI in Law Research Group, MIT
43. Immigrant Family Defense Fund
44. Impact Fund
45. Impact Justice
46. Insight Center for Community Economic Development
47. Jewish Council for Public Affairs
48. Juntos
49. Justice Strategies
50. Kent County (Michigan) Immigrant Bond Relief Fund
51. LatinoJustice PRLDEF
52. The Leadership Conference Education Fund
53. The Leadership Conference on Civil and Human Rights
54. Local Progress
55. Madison County Bail Fund Inc.
56. Massachusetts Bail Fund
57. Media Alliance
58. Media Mobilizing Project
59. Mijente
60. Minnesota Freedom Fund
61. Movement Voter Project
62. MoveOn
63. NAACP
64. NAACP Legal Defense and Educational Fund, Inc.
65. National Action Network
66. National Association of Social Workers
67. National Bail Out
68. National Center for Lesbian Rights
69. National Council of Churches
70. National Employment Law Project
71. National Hispanic Media Coalition
72. National Law Center on Homelessness & Poverty
73. NETWORK Lobby for Catholic Social Justice
74. New America - Public Interest Technology
75. New America's Open Technology Institute
76. Northwest Community Bail Fund
77. Oakland Privacy
78. One Pennsylvania
79. Open MIC (Open Media and Information Companies Initiative)
80. OVEC-Ohio Valley Environmental Coalition
81. People's Paper Co-op
82. People's Action | Mass Liberation Project
83. Philadelphia Bail Fund
84. Philadelphia Community Bail Fund
85. Philadelphia Red Umbrella Alliance
86. PolicyLink
87. Portland Freedom Fund
88. POWER Interfaith
89. Prison Policy Initiative
90. Progressive Leadership Alliance of Nevada
91. Project SAFE
92. Public Defender Association
93. Public Knowledge
94. Reclaim Philadelphia
95. Reentry Think Tank
96. Richmond Community Bail Fund
97. Robert F. Kennedy Human Rights
98. Silicon Valley De-Bug
99. Southern Center for Human Rights
100. Southerners On New Ground
101. Southwest Workers Union
102. Texas Organizing Project
103. The Bronx Freedom Fund
104. The Center for Carceral Communities
105. The Center for Media Justice
106. The Greenlining Institute
107. The Institute of the Black World 21st Century
108. The Mass Liberation Campaign
109. The National Council for Incarcerated and Formerly Incarcerated Women and Girls
110. The People's Press Project
111. Tucson Second Chance Community Bail Fund
112. United Church of Christ, OC Inc.
113. Urbana-Champaign Independent Media Center
114. VietLead
115. Voice of the Experienced
116. Washington Lawyers' Committee for Civil Rights and Urban Affairs
117. Washington Square Legal Services Bail Fund
118. Young Women's Freedom Center
119. 215 People's Alliance

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