IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-1946

KIRK HOWSARE & AUSTIN HOWSARE,
Applicants-Appellants,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE GREGORY D. BRANDT, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Retention is not necessary. The Howsares seek dismissal alleging they were wrongfully detained in jail overnight, but the Supreme Court has previously held that "the remedy for a violation in the [arrest and probable cause] stage is release from detention rather than dismissal of the charge." *State v. Dowell*, 297 N.W.2d 93, 97 (Iowa 1980). Because established law precludes the relief they seek, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Applicants Kirk and Austin Howsare were granted certiorari to challenge the district court's denial of their motion to dismiss their simple-misdemeanor charges for assault.

Course of Proceedings

On September 13, 2021, the Howsares were charged by complaint with simple-misdemeanor assault in violation of Iowa Code section 708.2(6). Complaints (9/13/2021); App. 6, 9. The magistrate found probable cause and issued arrest warrants noting, "No bond until initial appearance as No Contact Order is requested." Arrest Warrants (9/13/2021); App. 11, 13.

The Howsares were arrested on the afternoon of November 2, and they made initial appearance on the morning of November 3. Initial Appearance Orders (11/3/2021); App. 21, 24. The court issued no-contact orders and set bail at $100. *Id.*; No Contact Orders (11/3/2021); App. 15, 18. The Howsares posted cash bond and were released from custody. Bond Posted (11/4/2021); App. 27, 28.

On November 10, the Howsares filed a motion to dismiss alleging unlawful denial of bond between their arrests and initial appearances. Motion to Dismiss (11/10/2021), Supplement (11/12/2021); App. 31, 35. The State resisted, and the Howsares replied. Resistance (11/22/2021), Reply (11/22/2021); App. 45, 51.

Following a hearing, the district court denied the Howsares' motion to dismiss. Order (12/1/2021); App. 56, 58.

The Howsares filed a petition for writ of certiorari, which the Supreme Court granted. Petition in 21-1946 (12/17/2021), Order Granting Writ (2/2/2022).

Facts

According to the complaint[1], on August 13, 2021, the Howsares were engaged in a professional meeting with the victim, S.B. Complaints (9/13/2021); App. 6, 9. They became upset "because S.B. had not provided the defendant[s] with paperwork said to be part of the business meeting." *Id.* The Howsares "intentionally follow[ed] S.B. into an elevator shouting profanity and telling her she could not leave, forcing S.B. to redirect her exit." *Id.* The magistrate issued warrants for the Howsares' arrests. Arrest Warrants (9/13/2021); App. 11, 13.

On November 2, the Howsares were arrested during a traffic stop in West Des Moines. Warrant Return (11/5/2021); App. 29, 30. They were transported to the Polk County jail, arriving at

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[1] "For purposes of reviewing a ruling on a motion to dismiss, we accept as true the petition's well-pleaded factual allegations, but not its legal conclusions." *Riley Drive Ent. I, Inc. v. Reynolds*, 970 N.W.2d 289, 295 (Iowa 2022) (quotation omitted).

The Howsares—without any citation to the record—provide their version of events. *See* Def. Br. at 12 n.2. They make other factual allegations or assumptions throughout their brief without citing the record. *See, e.g.*, Def. Br. at 14, 17 n.6, 27. This Court cannot consider facts outside the record. *See In re Marriage of Keith*, 513 N.W.2d 769, 771 (Iowa Ct. App. 1994) ("We are limited to the record before us and any matters outside the record on appeal are disregarded.").

approximately 2:30 p.m. Def. Ex. A (dispatch report); App. 87. They saw the court for initial appearance the following morning. Initial Appearance Orders (11/3/2021); App. 21, 24 (filed at 10:08 & 10:10 a.m.).

ARGUMENT

I. The Court Should Annul the Writ of Certiorari Because the Howsares' Bail Complaint Did Not Require Dismissal of Their Assault Charge.

Preservation of Error

The Howsares preserved error by filing a motion to dismiss and receiving an adverse ruling in the district court. Order (12/1/2021); App. 56, 58.

Standard of Review

"We review certiorari actions for correction of errors at law." *Taft v. Iowa Dist. Ct. for Linn Cnty.*, 828 N.W.2d 309, 312 (Iowa 2013) (citation omitted). "We 'examine only the jurisdiction of the district court and the legality of its actions.'" *Id.* "'Illegality exists when the court's factual findings lack substantial evidentiary support, or when the court has not properly applied the law.'" *Id.*

"Ordinarily, we review a district court's decisions related to bail for an abuse of discretion." *State v. Briggs*, 666 N.W.2d 573, 575

(Iowa 2003) (citation omitted). Bond questions that implicate constitutional protections are reviewed de novo. *Id.*

"'We review rulings on questions of statutory interpretation for correction of errors at law.'" *State v. Childs*, 898 N.W.2d 177, 181 (Iowa 2017) (quotation omitted).

Discussion

The Howsares do not identify any illegality necessitating dismissal of their assault charge. The magistrate issuing the arrest warrants held broad authority to set conditions of release to ensure the safety of others, including protecting the victim. The magistrate could reasonably condition their release on issuance of a chapter 664A no-contact order, which could only be issued at initial appearance. Although fulfilling that condition required them to appear at an initial appearance, it occurred without "unnecessary delay" the morning following their arrest. The overnight stay in jail did not infringe any constitutional protection and did not impact their ability to defend against the charge. And even if the issuing magistrate misinterpreted the relevant statutes, the Howsares have not demonstrated intentional misconduct requiring the severe sanction of dismissal. Because the district court did not act illegally

when denying the motion to dismiss, this Court should annul the writ of certiorari.

A. The magistrate could lawfully condition the Howsares' release on the issuance of a no-contact order.

A magistrate issuing an arrest warrant has statutory authority to set conditions for the defendant's release. The statute the Howsares find "determinative" provides:

> If the offense stated in the warrant be bailable, the magistrate issuing it must make an endorsement thereon as follows:
>
> Let the defendant, when arrested, be (admitted to bail in the sum of ..... dollars) or (stating other conditions of release).

Iowa Code § 804.3 (2021), *cited in* Def. Br. at 19. This statute only states the form of the warrant and does not speak on what conditions the magistrate may set for release. But the statute's plain language does anticipate that the magistrate may either set bail as a dollar amount *or* state other conditions of release.

Section 804.3 must be read in pari materia with other pretrial-release statutes. *See State v. Hawk*, 616 N.W.2d 527, 529 (Iowa 2000) ("It is axiomatic that courts are obliged to consider a challenged statute in its entirety and in pari materia with other pertinent statutes."). The pretrial release chapter grants the

magistrate discretion to impose "conditions of release which will reasonably assure the appearance of the person for trial or deferral of judgment and the safety of other persons." Iowa Code § 811.2(1)(a). This authority is broad, permitting "any other condition deemed reasonably necessary to assure appearance as required, or the safety of another person or persons . . ." *Id.* § 811.2(1)(a)(5).

Assuring "the safety of another person" includes protecting the victim. *See State v. Kellogg*, 534 N.W.2d 431, 434 (Iowa 1995) (rejecting the defendant's appeal of his conditions of release when the district court "was primarily concerned with the safety of his victim"). Setting monetary bond offers no protection when the arrestee can afford to post the amount. Rather, a magistrate intending to safeguard the victim's safety must set bond conditions reasonably designed to dissuade the offender from endangering the victim. And that concern for victim safety is particularly high during the period following arrest when offenders might seek to retaliate for their arrest or harass the victim to drop the charge.

One reasonable condition of release designed to protect the victim is issuance of a chapter 664A no-contact order. Such an order "require[es] the defendant to have no contact with the alleged victim

. . . and to refrain from harassing the alleged victim . . .” Iowa Code § 664A.1(1). Violation of a chapter 664A no-contact order results in mandatory arrest and is punishable with a mandatory-minimum jail sentence. *Id.* §§ 664A.6, 664A.7. Prohibiting contact with the victim—and providing definite and severe penalties for violations—fulfills the purpose of protecting the safety of others.

A chapter 664A no-contact order requires an initial appearance. The Howsares believe the issuing magistrate could have “notate[d] the no contact condition on the warrant endorsement” and had it “served at the time of the arrest warrant.” Def. Br. at 26. However, a chapter 664A no-contact order is issued “[w]hen a person is . . . arrested for any public offense referred to in section 664A.2, subsection 1[2], *and the person is brought before a magistrate for initial appearance.*” Iowa Code § 664A.3(1) (emphasis added). It differs from a civil protective order for relief from domestic or sexual abuse, which can be issued ex parte on a temporary or emergency basis. *See id.* §§ 236.4(2), 236.6, 236A.6(2), 236A.8. Thus, for a public offense with a victim—such as the Howsares’ assault charge—

[2] Section 664A.2(1) covers “any other public offense for which there is a victim.”

the statute's plain language requires an initial appearance following arrest before a chapter 664A no-contact order can be issued and served. The Howsares are wrong to suggest that there could "have been such a no contact order done prior to arrest for service upon arrest." Def. Br. at 30.

The Howsares conflate a chapter 664A no-contact order with the less forceful no-contact bond condition from section 811.2. True, section 811.2(1)(a)(5) allows the magistrate to impose "a condition that the defendant have no contact with the victim or other persons specified by the court." Iowa Code § 811.2(1)(a)(5). But violating a mere bond condition could result in bond revocation or perhaps contempt—it would not require immediate arrest or a mandatory-minimum jail sentence in the same manner as a chapter 664A no-contact order. *See id.* §§ 664A.6 (mandatory arrest), 664A.7 (mandatory 7-day jail sentence). The Howsares also assert that a section 811.2 no-contact bond condition "is defined as a 'protective order' under chapter 664A.1(2) such that no further, separate, 'stand alone' 664A order would be necessary." Def. Br. at 22 n.7. But that section's definition of "protective order" only covers "an order that establishes conditions of release or is a protective order or sentencing

order *in a criminal prosecution arising from a domestic abuse assault under section 708.2A*." Iowa Code § 664A.1(2) (emphasis added). The Howsares were not charged with domestic abuse assault under section 708.2A, so imposing a no-contact bond condition under section 811.2 alone would not suffice. Instead, a separate no-contact order issued under the procedure of section 664A.3 was required to invoke the additional protections provided by chapter 664A.

Next, the legislature did not eliminate the magistrate's discretion in the Howsares' circumstances. They argue that holding a defendant until initial appearance is allowed only for violations of certain statutes listed in section 664A.3(2). *See* Def. Br. at 22–24. That statute provides:

> Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or 236A.12 or arrested pursuant to section 236.12 may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11 or 236A.12, whichever is applicable.

Iowa Code § 664A.3(2). Creating one class of offenders who *must* be held until initial appearance is not the equivalent of stating that all others *must not* be held. Apart from 236 and 236A offenders who

must be held, the magistrate retains discretion for all other offenders to set reasonable conditions of release—including the discretion to require issuance of a chapter 664A no-contact order before release.

Likewise, section 804.21 did not dictate the Howsares demand for immediate release. That section states that it and related sections "do not preclude" an arrested person's release pursuant to the uniform bond schedule. Iowa Code § 804.21(1). Although section 804.21 "do[es] not preclude" release pending initial appearance, neither does it demand release of any person who can post the uniform bond amount. Instead, when the issuing magistrate exercises discretion under section 811.2 to set reasonable conditions for release, the arrested person must fulfill those specific conditions. The uniform bond schedule, in contrast, serves only when bond has not been set and court is not in session. Because the issuing magistrate had already spoken on the Howsares' release, the uniform bond schedule did not control their release.

Finally, there was nothing absurd about holding the Howsares until issuance of the chapter 664A no-contact order. They hyperbolize that no one "in their right mind" would find it lawful to arrest and detain a person for service of process. Def. Br. at 29. But the material-

witness statute allows exactly that by authorizing the person's arrest and detention until service of a subpoena. *See generally In re Marshall*, 805 N.W.2d 145 (Iowa 2011). The Howsares were not mere witnesses—they were criminal defendants accused of assaulting the victim. Holding them for issuance of a no-contact order issued at initial appearance was reasonable.

The issuing magistrate lawfully conditioned the Howsares' release. The arrest warrant ordered, "No bond until initial appearance as No Contact Order is requested." Arrest Warrants (9/13/2021); App. 11, 13. This endorsement was not the equivalent of denying them bond altogether; rather, it set a condition that they make an initial appearance for issuance of a no-contact order before they could be released. Although that condition could not be fulfilled until the next morning, the Howsares present no authority limiting the magistrate's discretion to only setting conditions that can be satisfied immediately upon arrest. Holding them until issuance of a chapter 664A no-contact order fit the magistrate's broad discretion to "[i]mpose any other condition deemed reasonably necessary to assure . . . the safety of another person." Iowa Code § 811.2(1)(a)(5). Consequently, the

Howsares fail to demonstrate any illegality in the lower court's actions.

B. The Howsares received an initial appearance without "unnecessary delay."

The Howsares next complain about the timing of their initial appearance. "An officer making an arrest with or without a warrant shall take the arrested person without unnecessary delay before a committing magistrate . . ." Iowa R. Crim. P. 2.2(1). "Unnecessary delay is any unexcused delay longer than 24 hours, and consists of a shorter period whenever a magistrate is accessible and available." *Id.* R. 2.1(2)(d).

The Howsares received their initial appearance within 24 hours. They were arrested during a traffic stop at 2:10 p.m. on November 2. *See* Warrant Returns (11/5/2021); App. 29, 30 ("Date Served: 11/2/2021; Time Served: 1410"). They arrived at the Polk County Jail around 2:30 p.m. Tr. 4:25–5:3, Def. Ex. A; App. 87. Their initial appearance orders were e-filed at 10:08 and 10:10 a.m. the next morning.[3] Initial Appearance Orders (11/3/2021); App. 21, 24. The passage of approximately 20 hours between the Howsares' afternoon

[3] The record does not reflect how soon the orders were e-filed after the initial appearance.

arrest and their next-morning appearance fell within the rule's 24-hour limit. Therefore, dismissal was not warranted unless the Howsares demonstrated that a magistrate was "accessible and available" at an earlier time.

The Howsares structure their unnecessary-delay argument on factual assumptions lacking support in the record. Without citation to any evidence, they assert "[i]t is uncontroverted that a magistrate, or several, were available and accessible at the time of the 1:50 p.m. arrest." Def. Br. at 27. Elsewhere they assume "any number of judges should have been available during the work day." Def. Br. at 14. But these assumptions fail. First, there was no proof how long their jail-intake process lasted. Although they arrived at the jail around 2:30 p.m., it takes time to complete routine booking procedures such as taking photos, fingerprinting, and completing paperwork, especially if other arrestees were in line before them. Second, even assuming the Howsares completed the intake process before the courts closed at 4:30 pm., there was no proof that a judge was available to carry out their initial appearance. Polk County judges—including the associate judge assigned to the jail courtroom—have dockets packed with

arraignments, motion hearings, pleas, and sentencings.[4] They schedule specific times of the day for initial appearances to efficiently process arrestees in an orderly fashion. Nothing entitled the Howsares to jump the line or interrupt other court proceedings to receive an immediate initial appearance.

The Howsares overlook the special meaning of "available and accessible." This Court has previously held, "when a magistrate is not present for initial appearances, as is often the case during the late hours of an evening or the early-morning hours, he is not available as defined in [Iowa Rule of Criminal Procedure 2.1(2)(d)]." *Valadez v. City of Des Moines*, 324 N.W.2d 475, 478–79 (Iowa 1982). "Therefore, there is no unnecessary delay in waiting for the magistrate to preside over initial appearances until his regular courtroom hours, subject to the twenty-four hour maximum of [Rule 2.1(2)(d)]." *Id.* This same rule applies to the Howsares—if no magistrate was present for the purpose of performing initial

[4] *See* In re Polk County District Associate Judge Assignments, Admin. Order 2021-34, at 6–7 (jail court schedule), *available at* https://www.iowacourts.gov/static/media/cms/202134_Amended_Polk_County_District_8D955DAB3BA5F.pdf (last visited Aug. 4, 2022).

appearances, then waiting until normal courtroom hours the next morning did not constitute "unnecessary delay."

The Howsares' comparison to the civil tort of false imprisonment is not persuasive. First, they cite the *Valadez* case, but they do not mention that *Valadez* found insufficient proof of false imprisonment premised on the magistrate not being present for the plaintiff's initial appearance until normal hours the following morning. *Valadez*, 324 N.W.2d at 478–79, *cited in* Def. Br. at 27. Second, the Howsares cite *Andersen v. Spencer*, 294 N.W. 904 (Iowa 1940). But the facts of that case are easily distinguishable—the mayor ordered the city's night watchman to arrest the plaintiff and hold him in jail *without charges*. *Id.* at 904–05. Third, the Howsares cite a series of secondary authorities collecting cases from other states about how long of delay is "unnecessary." Def. Br. at 28. But this Court already undertook a similar analysis in *Valadez*—it approvingly cited cases permitting delays of 20 hours or more until the magistrate became available during normal hours, and it rejected the "contrary view" taken by some states. *Valadez*, 324 N.W.2d at 479–81.

The Howsares failed to demonstrate "unnecessary delay." They were lawfully arrested pursuant to warrant in the afternoon, but the

record lacks proof that any magistrate was available at that time to perform the initial appearance. There was no requirement to scour the county for any possible magistrate or to interrupt other court proceedings to accommodate the Howsares' schedule. Instead, they were treated the same as all other arrestees in Polk County by having their initial appearance the following morning at the designated time. That timing and procedure matches the holding of *Valadez*, so the Howsares have not demonstrated any illegality in the district court's ruling.

C. The Howsares' overnight detention did not infringe their constitutional rights.

The Iowa Constitution grants a limited right to bail. The relevant clause states:

> All persons shall, before conviction, be bailable, by sufficient sureties, except for capital offences where the proof is evident, or the presumption great.

Iowa Const. art. I, § 12. But this Court has recognized that "[o]ur framers chose to provide a limited right to bail in Iowa." *Briggs*, 666 N.W.2d at 582 (finding a defendant who could not afford to post cash-only bond was not constitutionally entitled to a commercial bail

bond). This limited right to bail does not guarantee pretrial release for every defendant under any circumstances.

The Howsares' argument extends the right to bail "before conviction" to a right to release before initial appearance. But they provide no authority finding any constitutional right to *pre-appearance* release. And holding an arrestee overnight does not significantly impact the traditional advantages of granting bail. "[P]retrial release can impact the ability of an accused to defend in a criminal proceeding" because "the defendant detained prior to trial is 'hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.'" *Krogmann v. State*, 914 N.W.2d 293, 309 (Iowa 2018) (quotation omitted). Also, "'[p]retrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships.'" *Id.* (quotation omitted). The Howsares posted bail the morning after their arrest, and they have remained free from pretrial detention ever since. Their one night in jail did not impact their ability to gather evidence, contact witnesses, or prepare for trial. Nor was there any proof that their overnight stay had any significant effect on their employment, family life, or health. Because the Howsares were admitted to bail "without unnecessary

delay," their constitutional right to bail "before conviction" was not impaired.

History shows there was no unfettered constitutional right to pre-appearance release. The Howsares cite *State v. Benzion*, 44 N.W. 709, 710 (Iowa 1890) as proof of the practice for "[r]elease prior to initial appearance, at least on misdemeanors . . ." Def. Br. at 24. But *Benzion* did not recognize any constitutional right; rather, it followed a now-amended statute allowing a person charged with a misdemeanor to give bail to the arresting officer. *Benzion*, 44 N.W. at 710 (citing Iowa Code § 4189 (1888)[5]). At the time of *Benzion*, pre-appearance release was not available to anyone accused of a felony or anyone arrested without a warrant. *See generally* Iowa Code §§ 4191, 4218 (1888). In fact, pre-appearance release for those arrested without a warrant was not permitted by statute until the adoption of the uniform bond schedule in 1983. *See* 1983 Iowa Acts ch. 50, §§ 1–3. This historical perspective does not support the notion that Iowa

[5] Former section 4189—a predecessor of current section 804.3—required the magistrate issuing an arrest warrant for a misdemeanor to "fix in the indorsement the amount in which bail may be taken." Iowa Code § 4189 (1888). The 1978 criminal code revision struck the requirement for the magistrate to endorse a dollar amount and added the option to "stat[e] other conditions of release." 1976 Iowa Acts ch. 1245, § 403 (codified as Iowa Code § 804.3 (2021)).

Constitution Article I, section 12 grants any right to pre-appearance bail.

Finally, the Howsares draw on inapplicable Fourth Amendment principles. They analogize to *Rodriguez v. United States*, 575 U.S. 348, 354 (2015), which held "the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' . . ." But unlike *Rodriguez*, the Howsares were not detained for investigation based on reasonable suspicion of a traffic violation. They were arrested pursuant to a judicial warrant finding probable cause of a criminal offense and setting a reasonable condition of release. Simply put, the Fourth Amendment does not require immediate admission to bail following a lawful arrest. *See, e.g.*, *Mitchell v. Doherty*, 37 F.4th 1277, 1289 (7th Cir. 2022) ("In short, we hold that the Fourth Amendment does not require a bail hearing within forty-eight hours after arrest.").

The Howsares had no constitutional right to pre-appearance release. Article I, section 12 requires bail "before conviction," which the Howsares received the morning after their arrest. Holding them until the next morning to fulfill their condition of release—issuance of a chapter 664A no-contact order—did not infringe any constitutional

protection. The district court did not act illegally, so certiorari is not warranted.

D. Even if the slight delay in bail were unlawful, it did not entitle the Howsares to dismissal.

Finally, the Howsares seek the wrong remedy. Wrongful denial of bail calls for admission to bail, not outright dismissal of the charges. Even if this Court finds the denial of pre-appearance bail was unlawful, the Howsares do not present a compelling case for a deterrent remedy.

This Court has already established the remedy for wrongful pre-appearance detention. In *State v. Dowell*, 297 N.W.2d 93, 95 (Iowa 1980), the defendant was not taken before a magistrate until 44 hours after his arrest for a parole violation. Although the Court found 44 hours was too long, it recognized that "[t]he remedy in each situation is tailored to fit the wrong." *Id.* at 97. "A violation in the arrest and probable cause stage affects the legality of detention of the accused to answer the charge but has no necessary effect on its merits." *Id.* Absent a specific sanction set by statute or rule, "the remedy for a violation in the first stage is release from detention rather than dismissal of the charge." *Id.* (citations omitted).

Other states agree that dismissal is not required under similar circumstances. For example, in *Commonwealth v. Perito*, 632 N.E.2d 1190, 1192 (Mass. 1994), the court found a violation of the defendant's right to a prompt bail hearing and initial appearance when he was held from his February 21 arrest until his March 27 arraignment. But the court recognized that "[d]ismissal of indictments is a drastic remedy for official misconduct." *Id.* at 1195. Dismissal is not appropriate unless a defendant shows "actual prejudice to his case" and official misconduct that "was intentionally undertaken as a means of obtaining a tactical advantage or undertaken with reckless disregard for known risks to the defendant's ability to mount a defense." *Id.* Because authorities were "acting in good faith under the belief that the defendant's detention was lawful," the court refused to dismiss the charges. *Id.*; *see also State v. Strong*, 239 P.3d 580, 584 (Mont. 2010) (finding dismissal with prejudice "may be warranted" only if the defendant "demonstrates material prejudice arising from an unnecessary delay in providing an initial appearance").

The Howsares have not demonstrated actual prejudice to the adjudicative stage of the criminal process. Their overnight stay in jail did not impact their ability to gather evidence, secure witnesses, or

prepare a defense. Although they assert their conduct leading to arrest is "most likely being mislabeled an 'assault'" (Def. Br. at 34), they will have a full opportunity to defend against the charge at trial unencumbered by their pre-appearance detention. Next, although the Howsares suggest the prosecution "sought an unlawful imprisonment for such a petty offense" (Def. Br. at 34), there was no proof of intentional misconduct designed to gain a tactical advantage. In the district court, they hinted at their suspicions of unfair treatment because the victim "just so happens" to be a local judge's daughter-in-law. Tr. 14:13–17, 17:16–18:18. But the district court made clear they were not singled out for pre-appearance detention pending issuance of a no-contact order. *See* Tr. 23:13–14 ("This is a common practice in Polk County."). Because the Howsares failed to demonstrate actual prejudice or intentional misconduct to gain a tactical advantage over them, dismissal was not the appropriate remedy.

Contrary to the Howsares' argument, there is no "need to deter the Polk County Attorney and Polk County Court." Def. Br. at 34. They cite no authority recognizing deterrence as an appropriate consideration. Even if the prosecutor and the issuing magistrate misinterpreted the relevant statutory provisions, they acted out of a

good-faith belief that the Howsares' release could be conditioned on the issuance of a chapter 664A no-contact order at the initial appearance. If they were wrong, this Court may tell them so and allow them to correct their procedure. But there is no reason to assume they will "continue the practice and only face some theoretical civil liability." Def. Br. at 34. And if the Howsares truly believe their pre-appearance detention was a "black and white case of false imprisonment" (Def. Br. at 28), then they may pursue a civil remedy against the county. However, absent proof of a knowing and bad faith violation, dismissal with prejudice "would penalize the public by creating a risk that meritorious charges would be dismissed rather than penalize the officer responsible for the violation of rights." *Dowell*, 297 N.W.2d at 98.

The district court properly declined to dismiss the charges. The prosecutors acted for the righteous purpose of protecting the victim from further assault or harassment. They and the issuing magistrate held a good-faith belief that the broad authority to set conditions of release included the option of requiring issuance of a chapter 664A no-contact order, which cannot be had until the initial appearance. Even if their belief was wrong, it did not affect the Howsares' ability

to defend against the charges and was not done to extract an unwarranted jail sentence. These circumstances do not demonstrate a need for deterrent action, so dismissal was not the proper remedy.

CONCLUSION

This Court should annul Kirk and Austin Howsare's writ of certiorari and affirm the denial of their motion to dismiss.

REQUEST FOR NONORAL SUBMISSION

Established law precludes the relief the defendants seek, so this case is appropriate for submission without oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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Dated: August 4, 2022

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