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FILED
LOS ANGELES SUPERIOR COURT

SEP 24 2010

John A. Clarke, Executive Officer/Clerk

By Ja Romo, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA

12 Plaintiffs,

13 vs.

14 LINDSAY DEE LOHAN

15 Defendants.

CASE NO. 7 BV 01538

WRIT OF HABEAS CORPUS RE
UNLAWFUL DENIAL OF BAIL

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1 **I. FACTUAL BACKGROUND**

2 Defendant Lindsay Lohan is currently on probation stemming from a misdemeanor
3 conviction for driving under the influence. On August 25, 2010, the Honorable Judge Elden Fox
4 ordered that Ms. Lohan, as part of her formal probation, submit to drug and alcohol testing at the
5 Los Angeles County Probation Office ("the Probation Office").

6 On Monday, September 20, 2010, the Probation Office filed a report indicating that Ms.
7 Lohan's tests indicated the presence of drugs in Ms. Lohan's system. On the basis of that alleged
8 violation, the Court summarily revoked Ms. Lohan's probation and issued a bench warrant for her
9 arrest. The Court set a hearing for September 24, 2010 and held the warrant until that date.

10 At the September 24 hearing, the Court set a formal probation revocation hearing for
11 October 22, 2010 to determine whether Mr. Lohan had in fact violated her probation. Although
12 the Court made no formal finding of whether a probation violation had occurred, the Court
13 nevertheless remanded Ms. Lohan into custody without bail.

14 Ms. Lohan now files the present emergency writ of habeas corpus, respectfully requesting
15 that the Court find that Ms. Lohan is entitled to bail. Notice of this writ has been provided to
16 Deputy District Attorney Danette Meyers, ~~who had indicated that the District Attorney's Office~~
17 ~~has waived any notice requirement and does not oppose the writ. See Declaration of Shawn~~
18 ~~Chapman Holley, attached hereto as Exhibit A.~~ Set

19 **II. ARGUMENT**

20 There is no question that Ms. Lohan is entitled to bail while her alleged probation violation
21 is being adjudicated. *See* Cal. Penal Code § 1272. It is clearly established that when the
22 underlying offense is a misdemeanor, "bail must be granted as a matter of right." *See In re*
23 *O'Driscoll*, 191 Cal.App 3d 1356 (1987) (emphasis added). Here, because Ms. Lohan's
24 underlying offense was a misdemeanor, and because her alleged probation violation is in the
25 process of being adjudicated, Ms. Lohan is entitled to bail as a matter of law.

26 In *In re O'Driscoll*, 191 Cal.App. 3d 1356, 1360 (1987), the Court examined Cal. Penal
27 Code § 1272 and held that the section "guarantees a right to bail on an appeal from any appealable
28 order or judgment imposing imprisonment on a misdemeanor offense." 191 Cal.App. 3d at 1359

1 (emphasis added). The phrase "judgment imposing imprisonment" in § 1272 "includes an order or
2 judgment suspending the imposition of sentence and placing the defendant on probation with a jail
3 term as a condition of probation." *Id.* (citing Penal Code § 1272). The *In re O'Driscoll* Court
4 noted that while courts have broad discretion where the underlying offense is a felony,
5 misdemeanor defendants are entitled to bail as a matter of law while their offense is being
6 adjudicated:

7 We reject the argument that the right to bail interferes with the trial
8 court's ability to discipline recidivist probationers, any more than does
9 the right to appeal. The trial court maintains its ability to exercise its
10 discretion in any appropriate fashion when probationers violate the
11 terms and conditions of their probation, and if the revocation order is
12 valid, the punishment will duly follow. However, if the revocation
13 order is invalid the defendant is not lawfully subject to imprisonment,
14 in which case the statutory provision for bail is significant. ... [The
15 Legislature] has chosen to make bail available as a matter of right to
16 misdemeanor appellants, and any policy arguments concerning that
17 decision are for the Legislature, and not the courts.

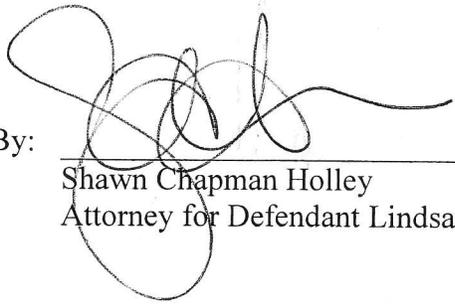
18 *Id.* at 1361.

19 Accordingly, there is no question that Ms. Lohan is entitled to bail while her alleged
20 probation violation is being adjudicated. Ms. Lohan has not been found in violation of her
21 probation. Instead, a probation violation has been alleged and a hearing has been set for October
22 22, 2010 to determine whether Ms. Lohan had in fact violated her probation. It is therefore
23 contrary to both *In re O'Driscoll* and Penal Code § 1272 for Ms. Lohan to have been denied bail
24 while her alleged probation violation is being adjudicated.

25 **III. PRAYER FOR RELIEF**

26 WHEREFORE, Defendant Lindsay Lohan prays that this Court issue an emergency writ of
27 habeas corpus and enter an order setting bail for Ms. Lohan.

28 DATED: September 24, 2010

By: 

Shawn Chapman Holley
Attorney for Defendant Lindsay Dee Lohan