

Arizona Supreme Court No. R-14-0030
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TO:
Rule 28 Distribution
David K Byers

ATTACHMENT*

ARIZONA RULES OF CRIMINAL PROCEDURE

* * *

Rule 7.2. Right to release

a. [No change in text.]

b. Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right. A person shall not be released on bail if the court finds the person is not bailable pursuant to law. ~~A.R.S. Const. Art. 2, § 22 and A.R.S. § 13-3961. If the allegation involves A.R.S. § 13-3961(A)(5), the person shall not be considered bailable if the court finds (1) that the proof is evident or the presumption great that the person committed a serious offense, and (2) probable cause that the person entered or remained in the United States illegally.~~

c.-g. [No change in text.]

Comment to 2014 Amendment to Rule 7.2(b)

Rule 7(b) was amended in 2014 to comply with *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), *stay denied*, 135 S.Ct. 428 (Mem), which held unconstitutional A.R.S. Const. Art. 2, § 22(A)(4) and A.R.S. § 13-3961(A)(5) mandating that bail be denied to undocumented immigrants charged with a serious crime.

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* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

Form 4(a). Release Questionnaire/Law Enforcement

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A. [No change in text.]

B. Probable Cause Statement

1. Summarize and include the facts which establish **probable cause for the crime(s) charged**. Certain felonies may be non-bondable and require facts which establish **proof evident or presumption great** for the crime(s) charged. These include (1) felonies involving a capital offense, sexual assault, sexual conduct with a minor who was under fifteen years of age, or molestation of a child who is under fifteen years of age, and (2) ~~any class 1, 2, 3, or 4 felony or any violation of § 28-1383 if the person has entered or remained in the United States illegally, and (3) felony offenses committed when the person charged is already admitted to bail on a separate felony charge.~~

. . .

2.-3. [No change in text.]

C.-H. [No change in text.]

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