

February 23, 2026

To: Senate Committee on Judiciary  
From: Steven T. Wax, Special Counsel

**Re: Testimony in Opposition to Torres-Lopez “Fix” in HB 4041**

Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Judiciary Committee:

My name is Steven Wax. I am currently Special Counsel at the Oregon Justice Resource Center where I helped launch the Oregon Innocence Project 11 years ago after serving as the Federal Public Defender for the District of Oregon for 31 years. Earlier, I was an assistant district attorney in Brooklyn, New York and part of the team that secured the Son of Sam conviction.

I am here in opposition to the language in HB 4041 Sections 7-12 that address sentence calculations and recapture of people who were released by the DOC that are presented as a *Torres-Lopez* fix.

During my 50 plus years in the legal field, I have been committed to holding our government accountable and fighting for the rule of law. **The rule of law is the foundation of a free and just society.** This is an inherently conservative position. But laws are not enough. Even-handed application of just laws is a necessity if a society is to be truly free. I have seen first-hand how fragile the rule of law is and how quickly it can be trampled by the government.

My experiences have taught me that it’s important not to become complacent about the security of our rights. While most of our focus on infringement of our rights in the past year has been on the actions of the Trump administration, we need to be vigilant here at home as well. The Oregon Executive Branch’s response to the *Torres-Lopez* case echo the threats to the rule of law posed by the Trump administration and the Bush administration’s treatment of detainees in Guantanamo with which I became all too familiar while representing prisoners held there. While it has not employed the same level of force and violence as the federal authorities, during the past months the Executive branch in Oregon has asserted unfettered authority to seize and imprison Oregonians without any lawful basis and without any fair process.

**The State of Oregon’s actions reflect a profound and disturbing abuse of executive power.** Like the Trump administration, the executive in Oregon has engaged in politically pressured arrests and the illegal imprisonment of people. They are forcing these imprisoned people and their advocates to challenge what they should know are illegal detentions in the courts. Indeed, they have done so over the past months notwithstanding the fact that the Oregon Supreme Court has told them **10** times that law permitted the recalculations the DOC performed last August and that there is **NO authority for the seizure and reincarceration of people who were released after the Torres-Lopez decision.** In the 10<sup>th</sup> grant of habeas the Court’s frustration with the situation was evident in the paragraph where it was moved to remind the DOC about its **obligation to follow the law.** *Robinson v. Hendricks*, 374 Or. 866, 872 (2026).

We urge the legislature must reject these actions by the executive to arbitrarily and summarily arrest and imprison people and resist the District Attorneys' narrative of an emergency in need of an immediate legislative fix. This **false narrative of danger from people who have been released** is leading the legislature down the path of not only advancing problematic language without adequate deliberation and input from stakeholders and experts, including organizations and advocates involved in the habeas litigation at the Oregon Supreme Court that has led to this discussion, but also sanctioning and justifying the illegal seizure and imprisonment of Oregonians.

First, **there is no emergency**. All the people released are under supervision of the Board of Pardon and Parole. There is **clear existing authority to sanction** anyone who violates the conditions of their release. The most serious aspect of this situation is DOC's **continued refusal to release people**.

Second, **retroactive dates in Sections 8 and 12** to July 10, the date of the Torres-Lopez decision, violate two fundamental constitutional provisions—the **prohibition on ex post facto laws and the prohibition on bills of attainder**. Simply put, the constitutions of the US and Oregon prohibit this body from increasing punishment on a small class of people and doing so retroactively. These provisions will necessarily bring needless and costly litigation.

Third, the proposed language in HB 4041 in **Sec. 7 on changes in legal interpretation and Sec. 9 on “ambiguous terms”** provides far too much power to the Oregon Department of Corrections and District Attorneys without adequate checks on the expanded power. For example, the so-called recapture language provides the Oregon Department of Corrections immense power to detrimentally impact lives by simply changing their minds, and internal policy, on how they interpret and calculate sentences.

Passing the bill in its current form would be an egregious misuse of legislative power. Outstanding questions, if any, related to *Torres-Lopez* calls for an interim legislative workgroup to have a well-considered and vetted conversation.

I urge you to oppose what is being presented as a “*Torres-Lopez* fix” in HB 4041.

Thank you.