IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SAMANTHA JENKINS et al.,	
Plaintiffs,	
v.	
THE CITY OF JENNINGS	Case No. 4:15-cv-252-CEJ
Defendant.	(Class Action)

JOINT MOTION FOR ENTRY OF FINAL DECLARATORY AND INJUNCTIVE RELIEF AND JOINT STIPULATION OF DISMISSAL

Since this case was filed on February 8, 2015, the parties have worked together to resolve the case and the issues that it presents efficiently and without unnecessary and costly litigation. The Parties have reached a settlement agreement to resolve the declaratory and injunctive portions of this case.

The Parties in the above-styled action therefore jointly make the following submission:

1) The parties have agreed on the basic legal principles that relate to several of the Plaintiffs' claims and, instead of engaging in lengthy adversarial litigation, the parties have attached to this Motion a Joint Memorandum of law in support of their Joint Motion for the entry of declaratory relief. *See* Exhibit 1. Subject to approval by the Court, the parties jointly move for the entry of a declaratory judgment as follows:

a. It violates the Constitution to incarcerate an individual in jail, either before or after trial, solely because an individual does not have the ability to make a monetary payment pursuant to the constitutional principles established by the United States Supreme Court in Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 264, 76 L.Ed.2d 221 (1983). Based upon these constitutional principles, and pursuant to § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015, no individual can be held in jail for non-payment of a fine and/or costs imposed by a Municipal Court without a meaningful inquiry into

the person's ability to pay, which would include notice and an opportunity to present evidence, and without the appointment of counsel.

b. The use of a secured bail schedule to set the conditions for release of a person in custody after arrest for an offense that may be prosecuted by the City of Jennings implicates the protections of the Equal Protection Clause when such a schedule is applied to the indigent. No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny a prompt release from custody to a person because the person is financially incapable of posting such a bond.

c. The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution may be implicated when a state utilizes debt collection procedures to collect debts owed to the state that are materially different from debt collection procedures available under state law for private creditors to collect debts. To ensure compliance with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, fines and costs imposed by a Municipal Court should be collected by any means authorized by law, including means for the enforcement of civil money judgments as authorized by § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015. In no event shall debts from municipal court cases be collected in a manner that deprives debtors of substantial rights available to other civil judgment debtors.

2) The parties further jointly move the Court to enter an injunction requiring that:

A. All cases in the Jennings Municipal Court will comply with the following principles:

i. When fines and costs are assessed after an individual pleads guilty to an offense or an adjudication of guilt is made by the Court, the judge will ask the individual if they can afford to pay the full amount of the fines and costs. If the individual is able to pay the fines and costs on the same day, the individual will be directed to the pay window or otherwise informed how to make payment. The full amount of fines and costs will be paid and the case will be closed.

ii. If the individual tells the Court that he or she is unable to pay on the same day, the individual will be directed to the payment window and given a form with the following options, and the option selected by the individual will be ordered by the Court: (a) placed on a payment plan to pay the fines and costs on a certain date if the individual confirms that the payment can be made on a certain date, with the individual also being told that the total payment must be made within six months of the court date (in no event will a person be charged extra fees for participation in a payment plan); (b) placed on a payment plan to make monthly payments and given a compliance date to make full payment of the fines and costs within six months of the court date; and (c) the individual will be given the opportunity to

complete a financial hardship form and given the opportunity to then present the financial hardship form to the judge to discuss the individual's financial status and condition. The individual will complete the financial hardship form under the penalty of perjury and/or contempt of court and if the individual meets an objective definition of indigence to be agreed upon by the Parties, the judge will give the option to the individual to suspend the payment of fines and costs and satisfy the judgment by performing community service at a fixed hourly rate of at least $10.00 per hour, to attend an approved social program, or to pay the money owed on the fines and costs in monthly payments to be paid in full within six months of the court date. In either case, the judge has the discretion to reduce the fines and costs based upon the financial condition of the individual pursuant to R.S.Mo. § 560.026.1 (2000). The judge will consider an individual to be indigent if the individual is determined to be at or below 125% of the Federal Poverty Level or, if the person is above 125% of the poverty line, the judge will make an individualized assessment of the person's ability to pay based on the totality of the circumstances. If the individual chooses the option of community service, the individual will be given 14 days to provide the name and address of the organization and authorization from a representative of the organization for whom the community service will be performed to the Jennings Municipal Court for approval with the agreement that the community service will be performed within six months of the approval. The Jennings Municipal Court shall have available at least two community service options that people can choose should they not be able to find their own placement and will provide names of approved social programs that the individual can attend. If the individual chooses the option of attending an approval social program, the individual will be given 14 days to provide the name of the social program and confirmation that the individual has enrolled in the social program with the agreement that the individual will complete the program within six months.

All forms created for individuals requesting payment on a certain date and a payment plan to pay the fines and costs within six months of the court date will confirm to the individuals that the failure to pay the fines and costs as agreed will result in the City of Jennings referring the collection of the fines and costs to a civil debt collector for collection. The form will also confirm that the performance of community service and/or the certified completion of an approved social program as ordered will result in the full payment of the fines and costs. Moreover, if an individual accepts the option of performing community service or to attend an approved social program to pay the fines and costs, the form will also confirm that the failure to perform the community service or complete the approved social program as agreed will result in the fines and costs being reinstated and turned over to a civil debt collector for collection. The individual will be given credit for the community service performed when the fines and costs are reinstated for the failure to perform an amount of community service to pay the entire fine and costs.

iii. The City of Jennings will eliminate the payment docket. All debts for fines and costs will be collected in a manner consistent with the enforcement of civil monetary judgments under Missouri law. If fines and costs are not paid or resolved by community service or waived within six months from the date assessed and/or approved, the City of Jennings will refer the debt to a civil debt collector and take no further action in the municipal court. As stated above, this process will be communicated to every individual when the fines and costs are assessed through the use of court forms. In no event will a civil collector be permitted to charge debtors additional fees in addition to the total amount of court debts owed, and the City agrees not to contract with any debt collector who threatens debtors with prosecution or incarceration for non-payment.

iv. The City of Jennings will comply with all laws of the State of Missouri relating to the operation of a Municipal Court, including all statutes contained in Senate Bill No. 5. If any change in state law creates a conflict with the terms of this agreement, the City will notify opposing counsel and the Court as soon as practicable so that appropriate action, if any, can be taken.

B. The City of Jennings and all of its officers, employees, and agents will not utilize secured money bail for persons in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City.

i. The City of Jennings and all of its officers, employees, and agents will offer every person in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City, release from custody of the City on recognizance or on an unsecured bond as soon as practicable after booking.

ii. An exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested for domestic assault, intentional assault or threatening conduct, and/or assault. These individuals will be held in the City of Jennings Jail up to 24 hours pursuant to the terms of § 544.170 R.S.Mo. (2000). These individuals will either be held in jail for up to 24 hours and then released on recognizance or unsecured bond or brought before the Court within 24 hours of arrest for potential imposition of conditions for release other than the posting of money bond or for a determination that release must be denied to prevent danger to a victim, the community, or any other person under applicable constitutional standards. At such a preventative detention hearing, the protections identified in United States v. Salerno, 481 U.S. 739 (1987) will be available if anyone is detained pending trial. If the judge does impose conditions of release for these individuals, individuals who violate conditions of release shall be subject to such actions as determined by the Court pursuant to applicable law. If the individual is released during the 24-hour period on recognizance or an unsecured bond, the City of Jennings will either serve the individual with a summons or citation with a specified court date upon release or send a summons

with specified charges and a specified court date to the individual at the individual's last known address by certified and regular mail.

iii. Another exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested who appear to be incapacitated or intoxicated. These individuals will be held in the City of Jennings Jail up to 12 hours pursuant to the terms of R.S.Mo. 67.315. These individuals will be held in custody up to 12 hours and released on recognizance or unsecured bond and will be either served with a summons or citation with a specified court date upon release or sent a summons with specified charges and specified court date at the individual's last known address by certified and regular mail.

iv. If an individual fails to appear on a court date in the Jennings Municipal Court specified on a summons and/or a citation, the Jennings Municipal Court will send another summons to that individual that confirms that the individual has missed a court date and further confirms if the individual does not appear on a new court date set in the summons that a warrant will be issued for the individual's arrest. This summons will be sent by regular mail to the individual's last known address. If the individual misses the second court date, the Jennings Municipal Court will issue a warrant for the individual's arrest. The individual will be mailed a notification by regular mail at the individual's last known address that the warrant has been issued with a copy of the warrant. The notification will confirm to the individual that the warrant can be removed and a new court date scheduled by the municipal court if the individual will appear in person at the Clerk's Office of the municipal court to schedule a new court date. If the individual chooses to appear in person at the Jennings Municipal Court Clerk's Office to schedule a new court date, the individual will be given a summons confirming the new court date to be signed by the individual which will also confirm that another warrant will be issued for the individual's arrest if the individual fails to appear at the Jennings Municipal Court on the new court date.

If the individual fails to appear in person at the Jennings Municipal Court Clerk's Office to request the warrant to be removed, the warrant will remain outstanding. If the individual is arrested on that warrant, the individual will be processed in the City of Jennings Jail and given a recognizance and will sign a form containing a new court date. Thereafter, the Jennings Municipal Court will send a new summons to the individual with the new court date to the individual's last known address by regular mail.

If the individual then fails to appear on this new court date after procuring a new court date from the Municipal Clerk or service of the first warrant, then the Jennings Municipal Court will issue a new warrant with an unsecured bond. If the individual is arrested on this warrant, the individual will sign a form that will confirm a new court date and that the unsecured bond will be forfeited and converted to a judgment against the individual upon the individual's subsequent

failure to appear at the new court date. The form will also confirm that if the individual does not appear on the new court date and the unsecured bond is converted to a judgment, that the City of Jennings will refer the collection of the debt for the unsecured bond to a civil debt collector if the debt is not paid by the individual within six months of the date the judgment is entered. At any time after any non-appearance, the City of Jennings may take appropriate and lawful steps under the state law to convert any unsecured bond into a civil money judgment.

If the person fails to appear at the subsequent proceeding, the City's Municipal Court may, in its discretion, issue a new warrant and the City may arrest the person. Upon arrest, the City may detain the person in custody without bond for up to 48 hours so that the person may be brought before a judge for the consideration of their underlying case and, if further proceedings are necessary, for individualized consideration of detention or conditions of release provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.

v. If Jennings has in its custody a person on behalf of another municipality, Jennings will make efforts to determine as soon as practicable why the other jurisdiction is holding the person in custody. Jennings will not keep an arrestee in jail on behalf of another municipality if it learns that the person is being held pursuant to a monetary bond (at which point it shall release the person immediately) and in no event will Jennings keep a person in its custody on behalf of another municipality for longer than 24 hours unless it is determined that the individual will be brought before a court within 48 hours for potential imposition of conditions of release other than the posting of money bond or for a determination that the release must be denied to prevent danger to a victim, the community, or any other person under applicable constitutional standards.

vi. The City of Jennings has recalled all warrants issued prior to the time the lawsuit was filed, has not issued any warrants since the lawsuit has been filed, and has dismissed all cases and forgiven all fines and costs due and owing to the City of Jennings imposed upon individuals before March 12, 2011.

vii. The City of Jennings will not use separate failure to appear charges and will not report non-appearance of individuals at court dates for license suspensions to the Director of Revenue for the State of Missouri.

C. Every inmate in the Jennings Jail will be provided with a toothbrush, toothpaste, hand soap, reasonable access to a shower, reasonably sanitary surroundings, the opportunity to exercise, access to legal materials if requested, adequate medical care, and nutritious meals. No person can be charged any money for any time spent in jail or for the provision of basic needs in jail.

D. All court and jail personnel will be trained by counsel for the City of Jennings and sign written acknowledgments of training on the terms of the settlement.

E. The Parties will agree to reasonable information sharing to be determined by the Parties to enable monitoring of compliance with the court order.

F. The Parties agree that, no earlier than 18 months after the Court enters the injunction, either party may move the Court to modify the injunction. The Parties agree to engage in good faith discussions in an effort to resolve any disagreements they may have regarding modifying the injunction prior to filing any motion to modify the injunction.

3) Pursuant to the terms of their executed agreement, *see* Exhibit 2, the parties jointly move the Court to dismiss the Plaintiffs' remaining claims for declaratory and injunctive relief subject only to the continuing jurisdiction of the Court to enforce its injunction and the settlement agreement.

4) The parties continue to negotiate in good faith to come to a resolution of the Plaintiffs' claims for damages.

Respectfully submitted,

/s/ D. Keith Henson D. Keith Henson MBE #31988MO *Counsel for the City of Jennings*	*/s/ Alec Karakatsanis* Alec Karakatsanis (E.D.Mo. Bar No. 999294DC) */s/ Thomas B. Harvey* Thomas B. Harvey (MBE #61734) */s/ Michael-John Voss* Michael-John Voss (MBE #61742) /s/ John J. Ammann John J. Ammann (MBE #34308) /s/ Stephen Hanlon Stephen Hanlon (MBE #19340) /s/ Brendan Roediger Brendan Roediger (E.D.Mo. Bar No. IL6287213) Counsel for Plaintiffs

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JOINT MEMORANDUM OF LAW IN SUPPORT OF PARTIES' JOINT MOTION FOR THE ENTRY OF DECLARATORY RELIEF

The named Plaintiffs brought this class action lawsuit seeking declaratory, injunctive, and compensatory relief for alleged violations of their civil rights. The parties have spent several months discussing the legal and factual issues raised by this case in meticulous detail. The parties have come to a resolution of the declaratory and injunctive claims, which is reflected in the contemporaneously filed Agreement to Settle Declaratory and Injunctive Claims. The declaratory and injunctive settlement was formally approved by the Jennings City Council as Ordinance #2367 on July 27, 2015.[1]

One component of that settlement is the joint request for the entry of several declaratory judgments sought in the Complaint. Because the parties have agreed to settle this case without yet engaging in any formal litigation, the parties have not briefed the legal issues relating to the declaratory relief that they seek. As a result, the parties offer this joint memorandum in support of the declaratory judgments that they jointly ask the Court to enter.

I. Process Due Before Incarceration for Non-Payment

[1] The parties are in the process of negotiating a separate resolution to the claims seeking monetary damages.

The parties jointly request that the Court adopt the following declaration of law:

> It violates the Constitution to incarcerate an individual in jail, either before or after trial, solely because an individual does not have the ability to make a monetary payment pursuant to the constitutional principles established by the United States Supreme Court in *Bearden v. Georgia*, 461 U.S. 660 (1983). Based upon these constitutional principles, and pursuant to § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015, no individual can be held in jail for non-payment of a fine and/or costs imposed by a Municipal Court without a meaningful inquiry into the person's ability to pay, which would include notice and an opportunity to present evidence, and without the appointment of counsel.

In *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983), the Supreme Court explained that to "deprive a probationer of his conditional freedom simply because, through no fault of his own he cannot pay a fine … would be contrary to the fundamental fairness required by the Fourteenth Amendment." As a result, *Bearden* held that a court must engage in a meaningful inquiry into whether any failure to pay was "willful." *Id*. at 672. The Supreme Court criticized the local court's lack of attention to the constitutional principles that ensure that the poor will not be jailed because they are poor:

> The focus of the [state] court's concern, then, was that the petitioner had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned. But this is no more than imprisoning a person solely because he lacks funds to pay the fine, a practice we condemned in *Williams* and *Tate*. By sentencing petitioner to imprisonment simply because he could not pay the fine, without considering the reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders, the court automatically turned a fine into a prison sentence.

Id. at 674; *see also See United States v. Hines*, 88 F.3d 661, 664 (8th Cir. 1996) ("A defendant may not constitutionally be incarcerated solely because he cannot pay a fine through no fault of his own."). While *Bearden* has constituted the definitive articulation of the Supreme Court's jurisprudence on jailing the poor for nonpayment of fines for over 30 years, it was itself founded on a long line of precedent. In *Tate v. Short*, 401 U.S. 395, 398 (1971), the Court held that

imprisoning a defendant who was unable to pay a fine violated the Fourteenth Amendment: "[T]he Constitution prohibits the State from imposing a fine as a sentence and then automatically converting it into a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full." *See Bearden*, 461 U.S. at 667-68 (holding that "if [a] State determines a fine or restitution to be the appropriate and adequate penalty for [a] crime, it may not thereafter imprison a person solely because he lacked the resources to pay it"). These cases and the cases that they rely on articulate some of the most fundamental principles of the American legal tradition. *See Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").[2]

The Supreme Court has made clear that the basic principles forbidding jailing people for their poverty constitute a mixture of its equal protection and due process doctrines. *Bearden,* 461 U.S. at 665 ("Due process and equal protection principles converge in the Court's analysis in these cases."). The substance of the legal doctrine forbids a government from jailing a person for nonpayment unless the person had the ability to pay but willfully refused. In *Turner v. Rogers*, 131 S. Ct. 2507, 2520 (2011), the Supreme Court explained the *procedural* component to these cases: the state must figure out whether the nonpayment was willful in an open and fair way.

[2] The federal courts have scrupulously guarded these rights. In *Frazier v. Jordan*, 457 F.2d 726, 728–29 (5th Cir. 1972), the court held that an alternative sentencing scheme of $17 dollars or 13 days in jail was unconstitutional as applied to those who could not immediately afford the fine. Because those people would be jailed if they could not pay the $17 fine, the city court's order of imprisonment was unconstitutional. *Id*. at 728 (condemning the municipal court scheme because it created a system in which "[t]hose with means avoid imprisonment [but] the indigent cannot escape imprisonment."); *see also, e.g.*, *Barnett v. Hopper*, 548 F.2d 550, 554 (5th Cir.1977) ("To imprison an indigent when in the same circumstances an individual of financial means would remain free constitutes a denial of equal protection of the laws."), vacated as moot, 439 U.S. 1041, (1978); *De Luna v. Hidalgo County*, 853 F. Supp. 2d 623, 647-48 (S.D. Tex. 2012) ("[T]he Court finds that … before a person charged with a … fine-only offense may be incarcerated by Hidalgo County for the failure to pay assessed fines and costs, this deprivation of liberty must be preceded by some form of process that allows for a determination as to whether the person is indigent and has made a good faith effort to discharge the fines, and whether alternatives to incarceration are available."); *United States v. Waldron*, 306 F. Supp. 2d 623, 629 (M.D. La. 2004) ("It is well established that our law does not permit the revocation of probation for a defendant's failure to pay the amount of fines if that defendant is indigent or otherwise unable to pay. In other words, the government may not imprison a person solely because he lacked the resources to pay a fine.").

Turner held that South Carolina's incarceration of a man for unpaid child support payments "violated the Due Process Clause" because the court had imprisoned him without complying with sufficient process. Whether the jailing is pursuant to probation revocation proceedings as in *Bearden* or pursuant to formal contempt proceedings as in *Turner*, the Court explained the basic procedural protections that a government must provide before jailing a person for non-payment:

> Those safeguards include (1) notice to the defendant that his "ability to pay" is a critical issue in the … proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay.

Id. at 2519. The Court held that Turner's imprisonment was unconstitutional because the South Carolina court did not comply with the procedures that were essential to "fundamental fairness":

> He did not receive clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding. No one provided him with a form (or the equivalent) designed to elicit information about his financial circumstances. The court did not find that Turner was able to pay his arrearage, but instead left the relevant "finding" section of the contempt order blank. The court nonetheless found Turner in contempt and ordered him incarcerated. Under these circumstances Turner's incarceration violated the Due Process Clause.
>
> *Id*. at 2520.

Turner left open the question of whether counsel is required at proceedings at which a person is jailed and at which the government is represented by an experienced lawyer. *See Turner*, 131 S. Ct. at 2520 (holding that counsel was not required in *Turner*'s child support proceeding because the civilian adversary (i.e. the indigent mother) was not represented by counsel and expressly relying on the fact that the case did not involve collection of money by the government in a proceeding in which the government was represented by counsel) (citing *Johnson v. Zerbst*, 304 U.S. 458, 462–463 (1938) ("[T]he average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his

life or liberty, wherein the prosecution is presented by experienced and learned counsel."); *see also State v. Stone*, 268 P.3d 226 (Wash. App. 2012) (applying *Turner* to require counsel in proceedings for contempt for nonpayment of court debt when the government is represented by a state prosecutor); *Mead v. Batchlor*, 460 N.W.2d 493, 501-02 (Mich. 1990) ("At least when he is faced with the loss of physical liberty, an indigent needs an attorney to advise him about the meaning and requirements of applicable laws and to raise proofs and defenses in his behalf. In addition, since the state's representative at such a hearing is well versed in the laws relating to child support, fundamental fairness requires that the indigent who faces incarceration should also have qualified representation."); *State v. Pultz*, 556 N.W.2d 708, 715 (Wis. 1996) (indigent individual is entitled to appointed counsel "when an arm of government brings a motion for a remedial contempt hearing against an individual, and that person's liberty is threatened").[3]

Turner's reasoning strongly supports the right to counsel in proceedings initiated by the government, prosecuted by an experienced prosecutor, and resulting in jail. *Turner* itself explained that the liberty interest in civil contempt cases "argues strongly for the right to counsel that Turner advocates. That interest consists of an indigent defendant's loss of personal liberty through imprisonment. The interest in securing that freedom, the freedom from bodily restraint, lies at the core of the liberty protected by the Due Process Clause." *Id*. at 2518 (internal

[3] Additional concerns are raised when a person is threatened with incarceration at a proceeding in which the person is alleged to have violated a condition that is imposed in a prior proceeding at which the person was *not* represented by counsel. *Cf., e.g.*, *Alabama v. Shelton*, 535 U.S. 654, 658 (2002) ("We hold that a suspended sentence that may end up in the actual deprivation of a person's liberty may not be imposed unless the defendant was accorded 'the guiding hand of counsel' in the prosecution for the crime charged.") (quotation marks omitted). In *Shelton*, even the state conceded that counsel would be required at the moment that it later tried to imprison a person for violating a previously imposed condition. *Id*. at 672. Citing the principles articulated in *Shelton,* the Fourth Circuit expressed doubts about jailing a person for violating conditions imposed in previous proceedings in which she lacked counsel. *United States v. Pollard*, 389 F.3d 101, 105 (4th Cir. 2004) ("We also acknowledge, as did the Fifth Circuit, that the actual imposition of a prison term upon revocation of probation may pose Sixth Amendment problems if the defendant was uncounseled for the underlying conviction that led to probation."); *United States v. Perez-Macias*, 335 F.3d 421, 428 (5th Cir. 2003) ("The actual imposition of a term of imprisonment upon probation revocation may pose a Sixth Amendment problem."); *id*. at 428 n.15 (noting that the Solicitor General and the Department of Justice conceded that "if an indigent misdemeanor defendant neither had counsel nor validly waived the right to appointed counsel, the defendant cannot be sentenced to imprisonment upon revocation of his probation").

quotations omitted). Ultimately, though, the Court held that the simplicity of child support proceedings, the absence of a lawyer for the other parent, and the existence of procedural safeguards meant that a lawyer was not required. In particular, the Court worried that "[a] requirement that the State provide counsel to the noncustodial parent in these cases could create an asymmetry of representation that would alter significantly the nature of the proceeding." *Id.* at 2519 (internal quotations removed).

In St. Louis County municipal court proceedings, the municipality is represented by experienced prosecutors who initiate and conduct case proceedings on behalf of the government. Providing counsel to the indigent defendant facing jail would therefore not "alter" the nature of the proceedings at all. Moreover, St. Louis County municipal court proceedings are very complicated. In addition to having to mount constitutional and statutory arguments and defenses in the face of an experienced prosecutor, navigating the origin of the numerous fees and surcharges imposed by the municipality and determining whether they are validly assessed by the municipality in any particular case is a complicated inquiry. This inquiry involves the application of state law and procedure; knowledge concerning local law and practice; review of multiple court files, accounting documents, payment records, and bond forfeitures over a period of years; and constitutional law to a person's lengthy case history. Moreover, because of the network of 81 municipal courts in the county, a defendant will often have to juggle multiple cases, dispositions, and financial and court appearance obligations that fit together in unpredictable and complicated ways, and the ability-to-pay inquiry is necessarily dependent on the contemporaneous resolution of those multiple cases, which may all involve different debts and obligations. *See* Elizabeth B. Patterson, *Civil Contempt and the Indigent Child Support Obligor: the Silent Return of Debtor's Prison*, 18 Cornell J.L. & Pub. Pol'y 95 (2008) ("Even the

simplest 'inability to pay' argument requires articulating the defense, gathering and presenting documentary and other evidence, and responding to legally significant questions from the bench—tasks which are 'probably awesome and perhaps insuperable undertakings to the uninitiated layperson.' This is particularly true where the layperson is indigent and poorly educated."); *see also* Jacob Fiddelman, *Protecting the Liberty of Indigent Civil Contemnors in the Absence of Appointed Counsel*, 46 Colum. J.L. & Soc. Probs. 431, 455-56 (Summer 2013).

II. Secured Money Bail

The parties jointly ask the Court to adopt the following declaratory judgment:

> The use of a secured bail schedule to set the conditions for release of a person in custody after arrest for an offense that may be prosecuted by the City of Jennings implicates the protections of the Equal Protection Clause when such a scheduled is applied to the indigent. No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny a prompt release from custody to a person because the person is financially incapable of posting such a bond.

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987) (applying strict scrutiny to systems of pretrial detention because pretrial detention infringes a "fundamental" right). The same basic principles that prohibit jailing a convicted person for nonpayment of court costs also prohibit jailing a presumptively innocent pretrial arrestee for non-payment of a monetary bail sum.

This Court issued a materially identical declaratory judgment recently in *Pierce et al. v. City of Velda City,* 15-cv-570-HEA (E.D. Mo. June 3, 2015) (issuing a declaratory judgment that the use of a secured bail system in Velda City is unconstitutional as applied to the indigent and enjoining its operation); *see also Cooper v. City of Dothan*, 1:15-cv-425-WKW (M.D. Ala. June

18, 2015) (issuing Temporary Restraining Order and holding that the City of Dothan's fixed money bail schedule violated the Fourteenth Amendment). The United States Department of Justice and United States Attorney for the Middle District of Alabama recently condemned the use of money bail to detain the indigent in a federal court case raising the same issues against the City of Clanton, Alabama. *See* United States Department of Justice, Statement of Interest, *Varden et al. v. City of Clanton,* 15-cv-34 (M.D. Ala. 2015) (arguing on behalf of the United States government that the use of secured monetary bail schedules to keep indigent arrestees in jail "not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy.").[4]

These basic principles are well-established. The seminal case in the area is *Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (*en banc*), which held: "At the outset we accept the principle that imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible."

The panel opinion, *Pugh v. Rainwater*, 557 F.2d 1189, 1190 (5th Cir. 1977), had struck down on its face the Florida Rule of Criminal Procedure dealing with money bail because it is unconstitutional to keep an indigent person in jail prior to trial solely because of the person's inability to make a monetary payment. The *en banc* court agreed with the constitutional holding of the panel opinion but reversed the panel's facial invalidation of the entire Florida Rule. *Rainwater*, 572 F.2d at 1057.

Rainwater's reasoning is easy to understand and dispositive here. The *en banc* court held that the Florida Rule itself did not require on its face the setting of monetary bail for arrestees and explained that, if such a thing were to happen to an indigent person, it would be unconstitutional. In other words, the court held that the Florida courts could not be expected to

[4] Each of these documents is attached in an appendix for the Court's convenience.

enforce the new Rule—which had been amended during the litigation in that case—in a manner that violated the Constitution by requiring monetary payments to secure the release of an indigent person. The court explained the binding constitutional principles at stake:

> We have no doubt that in the case of an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint. We do not read the State of Florida's new rule to require such a result.

Id. at 1058. Summing up its reasoning, the *en banc* court held: "The incarceration of those who cannot [afford a cash payment], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements." *Id*. at 1057 (emphasis added); *see also, e.g.*, *Williams v. Farrior*, 626 F.Supp. 983, 985 (S.D. Miss. 1986) ("For the purposes of the Fourteenth Amendment's Equal Protection Clause, it is clear that a bail system which allows only monetary bail and does not provide for any meaningful consideration of other possible alternatives for indigent pretrial detainee infringes on both equal protection and due process requirements.").

In *State v. Blake*, 642 So. 2d 959, 968 (Ala. 1994), the Alabama Supreme Court struck down a state statute that allowed for indigent arrestees to be held for 72 hours solely because they could not afford monetary payments to secure their release prior to their first appearance. The Court held:

> [A]n indigent defendant charged with a relatively minor misdemeanor who cannot obtain release by cash bail, a bail bond, or property bail, must remain incarcerated for a minimum of three days, and perhaps longer, before being able to obtain [release on recognizance]. We conclude that, as written, article VII of the Act violates an indigent defendant's equal protection rights guaranteed by the United States Constitution, because the classification system it imposes is not rationally related to a legitimate governmental objective.[5]

[5] *Blake* struck down the scheme holding indigent defendants on small cash bonds for at least 72 hours under even rational basis review. *Blake* inappropriately applied rational basis review even after correctly stating the legal rule that strict scrutiny must be applied to any government action that deprives a person of a fundamental right. The

Id. (quotations removed).[6] Similarly, the Mississippi Supreme Court long ago condemned the jailing of the poor based on inability to pay secured monetary bail. *See, e.g., Lee v. Lawson*, 375 So. 2d 1019, 1023 (Miss. 1979) ("A consideration of the equal protection and due process rights of indigent pretrial detainees leads us to the inescapable conclusion that a bail system based on monetary bail alone would be unconstitutional."). In *Lawson*, the court explained that Mississippi law provided for release without payment of money and that, following the American Bar Association Standards, Mississippi courts should adopt a presumption of release on recognizance (at least in cases not involving "violent or heinous crimes"). *Id*. ("There is incorporated in these standards a presumption that a defendant is entitled to be released on order to appear or on his own recognizance."). The court declared that this presumption of non-monetary release "will go far toward the goal of equal justice under law." *Id*. at 1024.

Like the federal and state courts and the Department of Justice, the American Bar Association's seminal Standards for Criminal Justice condemn secured money bail systems that operate to detain the indigent. *See* American Bar Association Standards for Criminal Justice –

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panel decision in *Rainwater*, therefore, was correct in its determination that jailing a person—and depriving her of the *most fundamental* right to liberty, requires that strict scrutiny applied. *See United States v. Salerno*, 481 U.S. 739, 750 (1987) (recognizing "fundamental nature of this right" to pretrial liberty); *United States v. Montalvo-Murillo*, 495 U.S. 711, 716 (1990) (holding that release prior to trial is a "vital liberty interest"); *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971) ("[A] statutory classification based upon suspect criteria or affecting 'fundamental rights' will encounter equal protection difficulties unless justified by a compelling governmental interest."); *see also, e.g.*, *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 781 (9th Cir. 2014) (*en banc*) (applying strict scrutiny to strike down Arizona bail law that required detention after arrest without individualized consideration of an arrestee's circumstances).

The difference is immaterial here, though, because *Blake* correctly held that jailing indigent people who are otherwise deemed eligible for release solely because they cannot make small payments is not even rationally related to a legitimate government objective, let alone necessary to achieve a compelling one.

[6] In *Blake*, the lower court had expressed outrage at the system of detention based on poverty that prevailed in Alabama at the time:

> The pretrial detention of this defendant accused of a misdemeanor for possibly five or six days because of defendant's lack of resources interferes with the right of liberty, the premise of innocent until proven guilty, and shocks the conscience of this court. If this defendant has $60 cash to pay a bondsman, he walks out of the jail as soon as he is printed and photographed … Absent property or money, the defendant must wait 72 hours for a hearing for judicial public bail. Putting liberty on a cash basis was never intended by the founding fathers as the basis for release pending trial.

Id. at 966 (emphases added).

Pretrial Release (3rd ed. 2007) ("ABA Standards"). The ABA Standards, which have been relied on in more than 100 Supreme Court decisions for decades, first began addressing post-arrest release procedures in 1968. The latest revision of the ABA Standards now constitute one of the most comprehensive and definitive statements available on the issue of post-arrest release, and they set forth clear, reasonable, and simple alternatives to the unconstitutional scheme of secured money bail.

For example, the ABA Standards call for the presumption of release on recognizance, followed by release pursuant to the least restrictive non-financial conditions; most importantly, they condemn the use of generic money schedules:

> Consistent with these Standards, each jurisdiction should adopt procedures designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond. Additional conditions should be imposed on release only when the need is demonstrated by the facts of the individual case….

ABA Standards § 10-1.4(a).

> The judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay.

ABA Standards at § 10-1.4(e).

> Financial conditions other than unsecured bond should be imposed only when no other less restrictive condition of release will reasonably ensure the defendant's appearance in court. The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay.

ABA Standards at § 10-5.3(a). According to the ABA Standards, financial conditions are only to be used as a last resort:

> Financial conditions should be the result of an individualized decision taking into account the special circumstances of each defendant, the defendant's ability to meet the financial conditions and the defendant's flight risk, and should never be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge.

ABA Standards at § 10-5.3(e) (emphasis added). The National Association of Pretrial Services Agencies (NAPSA) has also issued definitive Standards that condemn the use of generic monetary schedules. See NAPSA, Standards on Pretrial Release (3rd Ed. 2004) at § 2.5(f).

The ABA Standards are widely viewed as authoritative in a variety of contexts, and they are seen as the seminal text reflecting best practices by the leading commentators on post-arrest procedures. See Department of Justice, National Institute of Corrections, Fundamentals of Bail (2014) at 75 (discussing the importance of the ABA Standards and its rejection of standardized financial conditions of release after arrest). These Standards, which include detailed treatment of all relevant policies and procedures necessary for creating a lawful and effective post-arrest release system, have been a model for numerous jurisdictions around the country to eliminate the practice of detention based on small amounts of money.

III. Debt-Collection Methods in Missouri Municipal Courts

The parties jointly request the following declaratory judgment:

> The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution may be implicated when a state utilizes debt collection procedures to collect debts owed to the state that are materially different from debt collection procedures available under state law for private creditors to collect debts. To ensure compliance with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, fines and costs imposed by a Municipal Court should be collected by any means authorized by law, including means for the enforcement of civil money judgments as authorized by § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015. In no event shall debts from municipal court cases be collected in a manner that deprives debtors of substantial rights available to other civil judgment debtors.

Unpaid court fines and costs are civil judgments,[7] and Missouri law provides that unpaid fines and costs can be collected in any manner authorized to collect a civil money judgment. *See*

[7] *See, e.g., State ex rel. Kansas City v. Meyers*, 513 S.W.2d 414, 416 (Mo.1974) ("Proceedings in municipal courts against persons for violations of city ordinances are civil actions… such proceedings are not prosecutions for crime in a constitutional sense.") (citation omitted). As the Missouri appellate courts have repeatedly explained:

Mo. Stat. § 560.031 (5). Missouri, like Kansas and other states, provides important protections for civil judgment debtors. For example, under Missouri and federal law, when a court orders garnishment, it cannot garnish more than 25% of a person's wages. Mo. Stat. § 525.030; *see also* 15 U.S.C. § 1673 (prohibiting garnishment of more than 25% of a person's wages unless the person's "disposable earnings for that week exceed thirty times the Federal minimum hourly wage"). Moreover, Missouri guards against debt leading to extreme poverty by enshrining important protections of last resort: social security, unemployment, veteran's benefits and all other forms of public assistance benefits are exempt, and household property, furnishings, motor vehicles, and a wide range of other sources of income and property are exempt up to certain monetary thresholds. Mo. Stat. § 513.430. These state and federal rules recognize the principle of fundamental fairness embodied in Missouri law and Supreme Court precedent that a person cannot be forced to pay court fees and costs that he or she cannot afford both to pay and to meet the basic necessities of life. *See Adkins v. E.I. DuPont de Nemours*, 335 U.S. 331, 339 (1948) ("We think an affidavit is sufficient which states that one cannot because of his poverty pay or

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"[V]iolations of municipal ordinances are civil matters but, because of the quasi-criminal nature of an ordinance, are subject to the criminal standard of proof beyond a reasonable doubt." *City of Dexter v. McClain*, 345 S.W.3d 883 (Mo.App. S.D. 2011); *see also, e.g.,*; *City of Strafford v. Croxdale*, 272 S.W.3d 401, 404 (Mo.App. S.D.2008); *City of Kansas City v. Oxley*, 579 S.W.2d 113, 114 (Mo. 1979). Missouri law is therefore clear that the traffic and ordinance cases resulting in the money judgments at issue in this case are "civil" in nature. Although Missouri rightly provides the extra procedural protections associated with criminal prosecution, the judgments issued in municipal cases are civil judgments.

Even criminal monetary judgments in Missouri are authorized to be collected in accordance with standard civil debt collection procedures. Mo. Stat. § 560.031 (5). The State of Missouri has chosen to allow all of the civil statutory tools and obligations to be applied to money judgments from even criminal prosecutions in state courts. It would indeed be strange (and unconstitutional) if the Missouri legislature, in authorizing state court debts to be treated like all other civil debts, silently intended to deprive those debtors with court debts from all of the protections of other debtors while granting the government (and the private collection agents with whom many local Missouri governments often contract) all of the corresponding civil tools. Thus, even if municipal court proceedings were not "civil" nature, the Missouri legislature has nonetheless settled the question on whether civil debt collection tools and protections are available to indigent defendant debtors.

give security for the costs and still be able to provide himself and dependents with the necessities of life.").[8]

In *James v. Strange*, 407 U.S. 128 (1972), the Supreme Court confronted Kansas's attempt to collect fees and costs from defendants in criminal cases. Kansas was attempting to use harsh collection techniques for these court fees and costs, including depriving the indigent defendants of standard available protections under state law for judgment debtors. For example, Kansas was not allowing criminal defendants to use exemptions relating to the amount of a person's disposable earnings subject to garnishment. *Id*. at 135. The Court struck down Kansas's scheme because Kansas was essentially taking advantage of its status as the government to impose stringent debt-collection methods that private creditors could not. *Id*. at 139. The Court wrote:

> We recognize, of course, that the State's claim to reimbursement may take precedence, under appropriate circumstances, over the claims of private creditors and that enforcement procedures with respect to judgments need not be identical. This does not mean, however, that a State may impose unduly harsh or discriminatory terms merely because the obligation is to the public treasury rather than to a private creditor.

Id. at 138. The Supreme Court explained the rationale for its decision: "The debtor's wages are his sustenance, with which he supports himself and his family." *Id*. at 135. The Supreme Court explained that, for all other debtors in Kansas other than criminal defendants, "the maximum which can be garnished is the lesser of 25% of a debtor's weekly disposable earnings or the

[8] Missouri law defines indigence by reference to the federal poverty guidelines. *See* 18 Mo. Code Regs. Ann. 10-3.010. Missouri's use of the federal poverty guidelines to define indigence is consistent with the baseline standards adopted by other states. *See, e.g.*, Delaware Chancery Ct. P. X ("When in forma pauperis applicants have income and assets at or below 125% of the poverty level as published in the Code of Federal Regulations, their applications shall be approved."); Ala. Code § 15-12-1 (125%) ; Cal. Gov. Code § 68632 (125%); Minnesota Stat. Ann. § 563.01 (125%); Vermont Rules of Civil Procedure, Rule 3.1 (150%); Idaho Code Ann. § 19-854 (187%); Florida Stat. Ann. § 27.52(2)(a) (200%). Most of these state standards also provide that a person qualifies if the person receives standard forms of public assistance for the needy. Most major forms of public assistance also use the federal poverty guidelines. *See* http://aspe.hhs.gov/poverty/faq.cfm#programs. The theory behind these standards is simple: a person cannot afford both to make payments and to meet the basic necessities of life.

amount by which those earnings exceed 30 times the federal minimum hourly wage." *Id*. at 136. "For Kansas to deny protections such as these to the once criminally accused is to risk denying him the means needed to keep himself and his family afloat." *Id*. (emphasis added).

Missouri offers a number of related protections for civil debtors. For example, under Missouri law, civil creditors cannot collect public assistance benefits, *see* Mo. Stat. § 513.430, such as social security disability benefits or food stamps. Civil creditors are also not permitted to jail debtors, threaten to jail debtors, charge payments that exceed lawful garnishment protections, or suspend drivers' licenses.

Under *Strange*, a government cannot be permitted to collect debts from the indigent defendant debtors in a manner that is substantially different from the procedures that state law mandates judgments to be collected from other debtors. The Equal Protection Clause requires "more even treatment of indigent criminal defendants with other classes of debtors." 407 U.S. at 141. As the Supreme Court concluded:

> State recoupment laws, notwithstanding the state interests they may serve, need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect. The statute before us embodies elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law.

Id. at 141-42; *see also, e.g*., *Fuller v. Oregon*, 417 U.S. 40, 47 (1974) (upholding Oregon scheme when "[t]he convicted person from whom recoupment is sought thus retains all the exemptions accorded other judgment debtors, in addition to the opportunity to show at any time that recovery of the costs of his legal defense will impose 'manifest hardship"); *Olson v. James*, 603 F.2d 150, 154 (10th Cir. 1979) ("[T]he Court held that indigent defendants were entitled to evenhanded treatment in relationship to other classes of debtors."); *United States v. Bracewell*, 569 F.2d 1194, 1198-1200 (2d Cir. 1978) (discussing the need for individualized consideration

of repayment so as not to require repayment that creates hardship in violation of *Strange* and *Fuller*); *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984) (upholding scheme of payments for appointed counsel costs as long as the indigent defendant is not "exposed to more severe collection practices than the ordinary civil debtor"). No government, because it happens to be a creditor, can take it upon itself to impose those harsh debt collection practices solely because the debt is to the "public treasury." *Strange*, 407 U.S. at 138. For these reasons, debts from municipal court judgments should not be collected in a manner that would not be lawful for private creditors to employ in Missouri.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHRISTY DAWN VARDEN, et al.

Plaintiffs,

v.

Case No. 2:15-cv-34-MHT-WC

THE CITY OF CLANTON, **(Class Action)**

Defendant.

STATEMENT OF INTEREST OF THE UNITED STATES

Incarcerating individuals solely because of their inability to pay for their release, whether through the payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment. *See Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970); *Smith v. Bennett*, 365 U.S. 708, 709 (1961). In this case, Plaintiffs allege that they are subjected to an unlawful bail scheme in Clanton, Alabama. Under this scheme, Plaintiffs are allegedly required to pay a cash "bond" in a fixed dollar amount for each misdemeanor charge faced or else remain incarcerated. Without taking a position on the factual accuracy of Plaintiff's claims, the United States files this Statement of Interest to assist the Court in evaluating the constitutionality of Clanton's bail practices. It is the position of the United States that, as courts have long recognized, any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses in order to gain pre-trial release, without any regard for indigence, not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy.

INTEREST OF THE UNITED STATES

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in a federal court. The United States can enforce the rights of the incarcerated pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997. The United States uses that statute to address unconstitutional conditions of confinement, many of which are caused by the overcrowding of prisons and jails.

The United States has a clear interest in ensuring that state and local criminal justice systems are fair, nondiscriminatory, and rest on a strong constitutional foundation.[1] Unfortunately, that is not always the case. As noted by Attorney General Eric Holder at the National Symposium on Pretrial Justice in 2011:

> As we speak, close to three quarters of a million people reside in America's jail system. . . . Across the country, nearly two thirds of all inmates who crowd our county jails—at an annual cost of roughly nine billion taxpayer dollars—are defendants awaiting trial. . . . Many of these individuals are nonviolent, non-felony offenders, charged with crimes ranging from petty theft to public drug use. And a disproportionate number of them are poor. They are forced to remain in custody—for an average of two weeks, and at a considerable expense to taxpayers —because they simply cannot afford to post the bail required . . . .[2]

For these reasons, the United States is taking an active role to provide guidance on the due process and equal protection issues facing indigent individuals charged with state and local crimes. For example, the United States filed Statements of Interest in *Wilbur v. City of Mount*

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[1] ABA Standards for Criminal Justice, *Prosecution and Defense Function*, Standard 3-1.2(d) (1993) ("It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.").

[2] Eric Holder, Att'y Gen. of the United States, U.S. Dep't of Justice, Speech at the National Symposium on Pretrial Justice (June 1, 2011), *available at* http://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-national-symposium-pretrial-justice.

Vernon in 2013[3] and *Hurrell-Harring v. State of New York* in 2014.[4] Both cases involved the fundamental right to counsel for indigent criminal defendants and the role counsel plays in ensuring the fairness of our justice system.[5]

Accordingly, the United States files this Statement of Interest, reaffirming this country's commitment to the principles of fundamental fairness and to ensuring that "the scales of our legal system measure justice, not wealth."[6]

BACKGROUND

It is long established that the American criminal justice system should not work differently for the indigent and the wealthy. Indeed, as early as 1956, the Supreme Court declared that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Griffin v. Illinois*, 351 U.S. 12, 19 (1956). Twenty years later, the Fifth Circuit extended that precept to incarceration: "[t]o imprison an indigent when in the same circumstances an individual of financial means would remain free constitutes a denial of equal

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[3] Statement of Interest of the United States, *Wilbur v. City of Mount Vernon*, Civ. Action No. 11-1100 (W.D. Wash., Aug. 8, 2013), *available at* http://www.justice.gov/crt/about/spl/documents/wilbursoi8-14-13.pdf.

[4] Statement of Interest of the United States, *Hurrell-Harring v. State of New York*, Case No. 8866-07 (N.Y. Sup. Ct., Sept. 25, 2014), *available at* http://www.justice.gov/crt/about/spl/documents/hurrell_soi_9-25-14.pdf.

[5] In both Statements of Interest, the United States did not take a position on the merits of the plaintiffs' claims. In *Wilbur*, the United States provided its expertise by recommending that if the court found for the plaintiffs, it should ensure that public defender counsel have realistic workloads, sufficient resources, and are carrying out the hallmarks of minimally effective representation. In *Hurrell-Harring*, the United States provided an informed analysis of existing case law to synthesize the legal standard for constructive denial of counsel.

[6] Robert F. Kennedy, Att'y Gen. of the United States, U.S. Dep't of Justice, Address to the Criminal Law Section of the American Bar Association (Aug. 10, 1964), *available at* http://www.justice.gov/ag/rfkspeeches/1964/08-10-1964.pdf; *see also* Eric Holder, Att'y Gen. of the United States, U.S. Dep't of Justice, Speech at the National Association of Criminal Defense Lawyers 57th Annual Meeting (Aug. 1, 2014), *available at* http://www.justice.gov/iso/opa/ag/speeches/2014/ag-speech-140801.html (quoting Attorney General Robert F. Kennedy).

protection of the laws." *Barnett v. Hopper*, 548 F.2d 550, 554 (5th Cir. 1977)[7], *vacated as moot*, 439 U.S. 1041 (1978). Under the clear precedent of this Circuit, "imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible." *Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc).

The sweeping reforms to the federal bail system during the 1960s were based on these same constitutional principles—that access to justice should not be predicated on financial means. In 1962, Attorney General Robert F. Kennedy called for wide-scale bail reform, noting that "[i]f justice is priced in the market place, individual liberty will be curtailed and respect for law diminished."[8] In 1964, Attorney General Kennedy convened a National Conference on Bail and Criminal Justice with the express purpose of understanding and improving both the federal and state bail systems.[9] During his closing remarks at the conference, Attorney General Kennedy declared:

> [U]sually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?[10]

At the time, federal courts routinely employed cash bail schemes similar to the one alleged in this case: bail amounts were based on the charges for which defendants were arrested, and

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[7] The Eleventh Circuit has adopted as precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

[8] Robert F. Kennedy, Att'y Gen. of the United States, U.S. Dep't of Justice, Address to the American Bar Association (Aug. 6, 1962), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-06-1962%20Pro.pdf.

[9] Robert F. Kennedy, Att'y Gen. of the United States, U.S. Dep't of Justice, Welcome Address to the National Conference on Bail and Criminal Justice (May 27, 1964), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/05-27-1964.pdf.

[10] National Criminal Justice Reference Service, *Proceedings and Interim Report from the National Conference on Bail and Criminal Justice* 297 (1965), *available at* https://www.ncjrs.gov/pdffiles1/Photocopy/355NCJRS.pdf.

judicial officers routinely set cash bail amounts that some defendants simply could not afford to pay.

Attorney General Kennedy's conference on bail reform sparked wide-scale changes to the federal pre-trial detention and bail system. Testifying before the Senate Judiciary Committee while bail reform legislation was under consideration, Attorney General Kennedy articulated the Department's growing concern that "the rich man and the poor man do not receive equal justice in our courts. And in no area is this more evident than in the matter of bail."[11] The main reason for this disparity, according to Attorney General Kennedy, was that the federal bail-setting process was "unrealistic and often arbitrary." Bail was set "without regard to a defendant's character, family ties, community roots or financial status." Instead, bail was frequently set based on the nature of the crime alone.[12]

Today, federal law expressly forbids that practice with a single sentence: "The judicial officer may not impose a financial condition that results in the pretrial detention of the person."[13] This concise but profound change was initiated as part of the Bail Reform Act of 1966, which marked a significant departure from past practices. The stated purpose of the Act was "to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest."[14]

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[11] *See Hearings on S. 2838, S. 2839, & S. 2840 Before the Subcomm. on Constitutional Rights and Subcomm. on Improvements in Judicial Machinery of the S. Comm. on the Judiciary*, 88th Cong. (1964) (Testimony by Robert F. Kennedy, Att'y Gen. of the United States, U.S. Dep't of Justice), *available at* http://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf.

[12] *Id.*

[13] 18 U.S.C. § 3142(c)(2).

[14] Bail Reform Act of 1966, Pub. L. No. 89-465, § 2, 80 Stat. 214 (1966). *See also Allen v. United States*, 386 F.2d 634, 637 (D.C. Cir. 1967) (Bazelon, J., dissenting) ("It plainly appears from the language and

The Bail Reform Act requires federal judges and magistrates to conduct an individualized analysis of each defendant prior to ordering pretrial detention.[15] The individualized analysis requires consideration of factors such as ties to the community, employment, and prior record and precludes fixing bail based solely on the charge.[16] In weighing these factors, judges are to consider 1) the extent to which pre-trial release will endanger the safety of those in the community, and 2) what is necessary to reasonably assure that the defendant will return to court when necessary—*i.e.*, that the defendant will not flee or otherwise attempt to avoid justice.[17]

Federal judges must also consider a wide range of "conditions" to be placed upon a defendant's pre-trial release that could alleviate these concerns. These conditions include regular community reporting, establishing curfews, abstaining from drug or alcohol use, and various types of community supervision.[18] Financial conditions, including money bonds, can be among these measures and, in appropriate cases where an accused might be a flight risk, financial conditions can provide strong incentives to return to court. But the imposition of financial conditions can only be made after an individualized assessment of the particular defendant. And, importantly, the Bail Reform Act expressly precludes any federal judge or magistrate from

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history of the Bail Reform Act that its central purpose was to prevent pretrial detention because of indigency.") (citations omitted).

[15] Federal judges must make these determinations during or following detention hearings in open court, in which defendants facing pre-trial detention are represented by counsel, either appointed or retained. 18 U.S.C. § 3142(f).

[16] The Comprehensive Crime Control Act of 1984, signed into law by President Ronald Reagan, modified several sections of the 1966 Act, but made even more explicit the requirement of an individualized determination and the prohibition against cash bail for those who could not pay.

[17] *See generally*, 18 U.S.C. § 3142(b)-(d) (outlining factors the courts must consider in determining whether or not to hold a defendant over until trial, or release him or her on his or her own recognizance or pursuant to conditions).

[18] 18 U.S.C. § 3142(c)(1)(B).

imposing money bail that an accused person cannot afford to pay and would therefore result in that person's pretrial detention.[19]

If the judge determines that no amount of conditions can reasonably secure the safety of the community and the return of the defendant, the judge may order pretrial detention. In doing so, the judge must provide a written statement of facts and the reasons for detention via a "detention order."[20] Reasons for or against pretrial detention include the nature and circumstances of the defendant's charges, the weight of the evidence against the defendant, the defendant's history and character (including family and community ties and employment), and the dangerousness or risk of flight that the defendant may pose if released.[21]

Essentially, the Bail Reform Act's provisions ensure that pretrial detention is based on an objective evaluation of dangerousness and risk of flight, rather than ability to pay. Previous critics of bail reform suggested that the Act would "create a nation of fugitives,"[22] but the Department has not found that to be the case. To the contrary, the Department has found that judicial officers are well suited to make fair, individualized determinations about the risks, if any, of releasing a particular defendant pending his or her next court date and that they are able to do so efficiently with the assistance of an able pretrial services staff and the input of both the prosecutor and defense counsel. Individualized determination and the basic elements of due

[19] 18 U.S.C. § 3142(c)(2) ("The judicial officer may not impose a financial condition that results in the pretrial detention of the person.").

[20] 18 U.S.C. § 3142(i)(1).

[21] 18 U.S.C. § 3142(g).

[22] *Hearings on S. 2838, S. 2839, & S. 2840 Before the Subcomm. on Constitutional Rights and Subcomm. on Improvements in Judicial Machinery of the S. Comm. on the Judiciary*, 88th Cong. (1964) (Testimony by George L. Will, Executive Director of the American Society of Professional Bail Bondsmen).

process help ensure that federal defendants are not detained unnecessarily or simply because they are poor.

DISCUSSION

Plaintiffs in this case seek declaratory, injunctive and compensatory relief, alleging that the mandatory imposition of a bail schedule that sets bail at a fixed amount per charge violates due process and equal protection. If Clanton's bail system indeed fixes bond amounts based solely on the arrest charge, and does not take individual circumstances into account, the Court should find this system to be unconstitutional. Not only are such schemes offensive to equal protection principles, they also constitute bad public policy.

I. Fixed-sum Bail Systems are Unconstitutional under the Equal Protection Clause of the Fourteenth Amendment

In general, the Equal Protection Clause of the Fourteenth Amendment prohibits "punishing a person for his poverty." *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). This is especially true when it comes to depriving a person of his liberty. The Supreme Court has considered a variety of contexts in which the government attempted to incarcerate or continue incarceration of an individual because of his or her inability to pay a fine or fee, and in each context, the Court has held that indigency cannot be a barrier to freedom. *Tate*, 401 U.S. at 398; *Williams*, 399 U.S. at 240-41; *Smith*, 365 U.S. at 709.

Although much of the Court's jurisprudence in this area concerns sentencing or early release schemes, the Court's Fourteenth Amendment analysis applies in equal, if not greater force to individuals who are detained until trial because of inability to pay fixed-sum bail amounts. Liberty is particularly salient for defendants awaiting trial, who have not been found guilty of any crime. *See United States v. Salerno*, 481 U.S. 739, 750 (1987) (recognizing the fundamental nature of the right to pretrial liberty). To be sure, pretrial detention may be

necessary in some circumstances including if a court finds a likelihood of future danger to society or that the defendant poses a flight risk. Fixed-sum bail systems, however, such as the one allegedly used in Clanton, Alabama, do not take these considerations into account. Such systems are based solely on the criminal charge. Because such systems do not account for individual circumstances of the accused, they essentially mandate pretrial detention for anyone who is too poor to pay the predetermined fee. This amounts to mandating pretrial detention only for the indigent.

The Fifth Circuit briefly discussed fixed-sum bail systems, otherwise referred to as "bail schedules," in *Pugh v. Rainwater*, 572 F.2d 1053 (5th Cir. 1978) (en banc). There, the Court held that the new bail scheme passed by the Florida legislature was not constitutionally deficient simply because it failed to articulate a presumption against imposing cash bail. The *en banc* court noted that Florida's new system allowed for six different types of pretrial release—cash bail was but one option of many. Importantly, however, the Court pointed out that the utilization of bond schedules, and only bond schedules, creates an injustice for individuals who cannot meet the financial threshold:

> Utilization of a master bond schedule provides speedy and convenient release for those who have no difficulty in meeting its requirements. The incarceration of those who cannot, without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.

Pugh, 572 F.2d at1057.

As correctly noted in Plaintiff's Motion for Temporary Restraining Order or in the Alternative Motion for Preliminary Injunction (ECF No. 34), courts in this Circuit have had occasion to address scenarios analogous to those alleged here. For example, in *Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972), the Fifth Circuit invalidated a sentencing scheme that offered defendants the choice of immediately paying a $17 fine or serving a 13-day jail sentence as

applied to indigent defendants who could not pay the fine. As the Court noted, "[t]he alternative fine before us creates two disparately treated classes: those who can satisfy a fine immediately upon its levy, and those who can pay only over a period of time, if then. Those with means avoid imprisonment; the indigent cannot escape imprisonment." *Id.*

Similarly, in *Tucker v. City of Montgomery*, 410 F. Supp. 494 (M.D. Ala. 1976), this Court held that the City's practice of charging a bond to exercise appellate rights denied the equal protection of the law to indigent prisoners. In so holding, the court found that "[t]he imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." *Id.* at 502 (quoting *Burns v. Ohio*, 360 U.S. 252, 258 (1959)).

Finally, this Court's recent decision in *United States v. Flowers*, 946 F. Supp. 2d 1295 (M.D. Ala. 2013), addressed practices analytically indistinguishable from those practices Plaintiffs allege are occurring in Clanton. In *Flowers*, the defendant could avoid prison only if she paid for her home confinement, an option her poverty prevented. This Court noted correctly that "it is inequitable for indigent defendants who cannot pay for home-confinement monitoring to be imprisoned while those who can pay to be subject to the more limited monitored home confinement avoid prison." *Id.* at 1302. If Plaintiffs' allegations in this case are true, indigent defendants in Clanton face a similar problem—pay a monetary bond they cannot afford or go to jail. This determination, like the sentence in *Flowers*, would be "constitutionally infirm and [unable to] stand." *Id.* at 1300.

II. Public Policy Weighs Strongly Against Fixed Bail Systems

In addition to being unconstitutional, fixed-bail systems that do not account for a defendant's indigency are an inadequate means of securing the safety of the public or ensuring

the return of the defendant to the court – the central rationales underlying pretrial detention. Indeed, such schemes are driven by financial considerations, rather than legitimate public safety concerns. This is bad public policy, and results in negative outcomes for both defendants and the community at large.

The problems with bail systems based on financial considerations are well-documented.[23] As summarized in a recent Department of Justice publication: "The two central issues concerning money bail are: (1) its tendency to cause unnecessary incarceration of defendants who cannot afford to pay secured financial conditions either immediately or even after some period of time; and (2) its tendency to allow for, and sometimes foster, the release of high-risk defendants, who should more appropriately be detained without bail."[24]

When bail amounts are too high for indigent individuals to afford, fewer defendants will be released pretrial,[25] thereby creating a burden on local jails.[26] Today, according to a Bureau of Justice Statistics analysis, more than 60 percent of all jail inmates nationwide are in custody awaiting an adjudication of their charges, and the majority of these pretrial detainees are charged

[23] *See, e.g.*, Timothy R. Schnacke, United States Department of Justice, National Institute of Corrections, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* (2014), *available at* http://www.pretrial.org/download/research/Fundamentals%20of%20Bail%20-%20NIC%202014.pdf.

[24] *Id.* at 15.

[25] Thomas H. Cohen & Brian A. Reaves, United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Pretrial Release of Felony Defendants in State Courts: State Court Processing Statistics, 1990-2004, Special Report*, NCJ 214994 (2007) (study of state courts in the 75 largest counties from 1990 to 2004, finding that about 7 of 10 defendants secured release when bail was set at less than $5,000, but only 1 in 10 secured release when bail was set at $10,000 or more), *available at* http://www.bjs.gov/content/pub/pdf/prfdsc.pdf.

[26] *See generally* Ram Subramaniam, et al., Vera Institute of Justice, *Incarceration's Front Door: The Misuse of Jails in America* 29-35 (Feb. 2015), *available at* http://vera.org/pubs/incarcerations-front-door-misuse-jails-america.

with nonviolent offenses.[27] Jail overcrowding, in turn, can result in significant security and life and safety risks for both inmates and staff.[28]

While there is a need for continued quantitative research on the effects of pretrial detention, it is clear that the decision to release or detain a defendant pretrial has many collateral consequences beyond the loss of liberty. As detailed by the Supreme Court:

> The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. . . Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent.

Barker v. Wingo, 407 U.S. 514, 532-33 (1972). Incarceration carries weighty mental and social burdens for the accused and for those closest to them. Family obligations may go unmet while defendants are detained, and jobs may be lost, both of which can cause irreparable harm to the defendant, their families, and their communities.

In addition, for many reasons, the judicial decision to detain or release the accused pretrial may be a critical factor affecting the outcome of a case.[29] Pretrial detention can impede

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[27] Todd D. Minton, United States Department of Justice, Bureau of Justice Statistics, *Jail Inmates at Midyear 2012 – Statistical Tables*, NCJ 241264, at 1 (2013) *available at* www.bjs.gov/content/pub/pdf/jim12st.pdf (showing that the percentage of pretrial detainees in jail has remained unchanged since 2005)*; see also* Donna Lyons, *Predicting Pretrial Success,* State Legislatures, February 2014 at 18-19, *available at* http://www.ncsl.org/Portals/1/Documents/magazine/articles/2014/SLG_0214_Pretrial_1.pdf; Arthur W. Pepin, Conference of State Court Administrators, *Policy Paper: Evidence-Based Pretrial Release* (2014), *available at* http://www.colorado.gov/ccjjdir/Resources/Resources/Ref/EBPre-TrialRelease_2012.pdf.

[28] *See generally Brown v. Plata*, 131 S. Ct. 1910 (2011) (overcrowding in California prisons created unconstitutional conditions of confinement, including inadequate medical and mental health care); *see also Hutto v. Finney*, 437 U.S. 678, 688 (1978) (upholding 30-day limit on confinement in isolation, noting that overcrowding in the isolation unit contributed to violence and vandalism of cells).

[29] Mary T. Phillips, New York City Criminal Justice Agency, Inc., *Pretrial Detention and Case Outcomes, Part 1: Nonfelony Cases* (2007), *available at* http://www.nycja.org/lwdcms/doc-view.php?module=reports&module_id=669&doc_name=doc.

the preparation of a defense, such as gathering evidence and interviewing witnesses, and pretrial detention can make it more difficult to confer with an attorney.[30] Research indicates that these barriers have practical consequences: defendants who are detained pretrial have less favorable outcomes than those who are not detained, notwithstanding other relevant factors such as the charges they face or their criminal history. One contributing factor is that detained defendants are more likely to plead guilty, if only to secure release, possibly resulting in at least some wrongful convictions.[31] In some instances, the time someone is detained pretrial can even exceed the likely sentence if the defendant were later found guilty.[32]

For these reasons, many states have moved away from bail systems that are based entirely on the criminal charge and towards systems that allow for different pretrial release options based on individualized determinations of dangerousness or risk of flight.[33] The

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[30] Andrew D. Leipold, *How the Pretrial Process Contributes to Wrongful Convictions*, 42 Am. Crim. L. Rev. 1123, 1165 (2005); *see also Barker*, 407 U.S. at 532-33 (noting that a defendant detained pretrial "is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.").

[31] *Id.* *See also* Mary T. Phillips, New York City Criminal Justice Agency, Inc., *Bail, Detention, and Felony Case Outcomes, Research Brief No. 18* (2008), *available at* http://www.nycja.org/lwdcms/doc-view.php?module=reports&module_id=597&doc_name=doc; *Barker*, 407 U.S. at 533, n.35.

[32] *See* Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2463, 2492 (2004).

[33] States employ a variety of bail systems that satisfy constitutional concerns. The federal model, while constitutionally sufficient, is not the only adequate scheme. *See* Arizona (AR.S. Crim. Proc. Rule 7.2); Arkansas (Arkansas Rules of Criminal Procedure, Rule 9.2); Connecticut (C.G.S.A § 54-63b(b)); Illinois (725 ILCS 5/110-2); Maine (15 M.R.S.A §§ 1002, 1006); Massachusetts (MGL Ch. 276, § 58); Michigan (M.C.L.A 780.62-for misdemeanors only); Minnesota (49 M.S.A, Rules Crim. Proc. § 6.02(1)); Missouri (Missouri Supreme Court Rule 33.01); Montana (MCA 46-9-108 (2)); Nebraska (Neb. Rev. Stat. § 29-901); New Mexico (NMRA, Rule 5-401(D)(2)); North Carolina (N.C.G.S.A. § 15A-534(b)); North Dakota (N.D.R. Crim. P. 46); Oregon (ORS 135.245(3)); Rhode Island (RI ST § 12-13-1.3(e)); South Carolina (S.C. Code § 17-15-10—for non-capital cases only); South Dakota(SDCL § 23A-43-2—for non-capital cases only); Tennessee (T. C. A § 40-11-116(a)); Vermont (13 V.S.A § 7554—for misdemeanors only); Washington (WA ST SUPER CT CR CrR 3.2(b)—for non-capital cases only); Wisconsin (W.S.A 969.01(4)); Wyoming (WY RCRP Rule 46.1(c)(1)(B)—for non-capital cases only). *See generally* Cynthia E. Jones, "*Give Us Free:" Addressing Racial Disparities in Bail Determinants*, 16 N.Y.U. J. Leg. & Pub. Pol'y 919, 930 (2013).

American Bar Association's *Standards for Criminal Justice* have also evolved to reflect the importance of the presumption of pretrial release and the need for individualized determinations before imposing pretrial detention. The Standards advocate for the imposition of the least restrictive of release conditions necessary to ensure the defendant's appearance in court. The Standards also include guidelines to limit the use of financial conditions for pretrial release.[34]

The use of a more dynamic bail scheme, such as that set forth in the federal Bail Reform Act, not only ensures adherence to constitutional principles of due process and equal protection, but constitutes better public policy. Individualized determinations, rather than fixed-sum schemes that unfairly target the poor, are vital to preventing jail overcrowding, avoiding the costs attendant to incarceration,[35] and providing equal justice for all. Consequently, in light of the potential harmful consequences of prolonged confinement and the strain that unnecessary confinement puts on jail conditions, the United States urges that pretrial detention be used only when necessary, as determined by an appropriate individualized determination.

CONCLUSION

Fundamental and long-standing principles of equal protection squarely prohibit bail schemes based solely on the ability to pay. Fixed-sum bail schemes do not meet these mandates. By using a predetermined schedule for bail amounts based solely on the charges a defendant faces, these schemes do not properly account for other important factors, such as the defendant's potential dangerousness or risk of flight. For these reasons, if the bail system in Clanton is as Plaintiff describes, the system should not stand.

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[34] ABA Standards for Criminal Justice, *Pretrial Release*, Standard 10-1.4 (3d ed. 2007).

[35] As noted by the Supreme Court, pretrial detention not only adversely impacts defendants – it also creates significant costs for taxpayers. *See Tate*, 401 U.S. at 399 (prolonged pretrial detention "saddles the State with the cost of feeding and housing [the defendant] for the period of his imprisonment.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, a copy of the foregoing Statement of Interest was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Robert G. Anderson
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DONYA PIERCE et al.,	
Plaintiffs,	
v.	
THE CITY OF VELDA CITY,	Case No. 4:15-cv-570-HEA
Defendant.	(Class Action)

ORDER

Based on the representations of the Parties, the Court orders the following:

1. The Parties to the Settlement Agreement, which is Exhibit 1 to this Order, are ordered to comply with its terms.

2. The parties' motion for the entry of final declaratory relief is granted. The Court hereby issues the following declaratory judgment:

> The use of a secured bail schedule to set the conditions for release of a person in custody after arrest for an offense that may be prosecuted by Velda City implicates the protections of the Equal Protection Clause when such a schedule is applied to the indigent. No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny prompt release from custody to a person because the person is financially incapable of posting such a bond.

3. The Plaintiffs' claims are hereby dismissed with prejudice subject only to the further jurisdiction of this Court to enforce its injunction as set forth below.

4. The Court further orders as follows:

   a. The named Plaintiff and her undersigned counsel notify counsel for the City of Velda City upon the discovery of any perceived breach of their settlement

agreement or the Court's order as set forth herein and give the City of Velda City a reasonable amount of time to cure such alleged breach. The named Plaintiff shall seek relief from the Court for such alleged breach only after such notice and a failure to cure within a reasonable time.

b. The City of Velda City shall, unless and until otherwise ordered by the Court, comply with the following:
    i. The City of Velda City and all of its officers, employees, and agents will not utilize secured money bail for persons in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City.
    ii. The City of Velda City and all of its officers, employees, and agents will offer every person in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City, release from the custody of the City on recognizance or on an unsecured bond as soon as practicable after booking. The only exception to this provision is such persons as are brought before the court within 24 hours of arrest for potential imposition of conditions for release other than the posting of money bond in cases involving intentionally assaultive or threatening conduct or for a determination that release must be denied to prevent danger to a victim, the community or any other person under applicable constitutional standards.[1] Persons who violate conditions of release shall be subject to such actions as determined by the court pursuant to applicable law without regard to any additional procedures set forth herein.
    iii. The City of Velda City will notify all arrestees in writing upon release of the time, date, and place at which they are required to appear in court, if any.
    iv. The City of Velda City will request the most recent address and contact information for any arrestees, and will update that information in any court file or record.
    v. The City will comply with the following principles for subsequent proceedings after the release of a person arrested without a warrant or on an initial warrant or after the issuance of a summons or citation for an offense that does not involve a custodial arrest:
        1. If the person does not appear for a court hearing as required, the City will send a letter by first class mail notifying the person that they missed their court date and providing a new court date. The City may also attempt to contact the person by telephone or text message to inform or remind the person about their court date.

[1] For the purposes of this agreement, the term "secured" bond means a monetary sum that must be paid or posted as a precondition of release from custody. The term "recognizance" means a person's release upon their promise to appear in court at a later date. The term "unsecured" bond does not require any up-front payment and is defined as a monetary sum that a person agrees to pay later if the person fails to appear as required without good cause.

2. If the person does not appear at the subsequent court date discussed in (i), the City's municipal court may, in its discretion, issue a warning that a warrant may be issued for the person's arrest. The City will notify the person of the potential issuance of a warrant by first class mail and, in its discretion, by phone or text message. With such notification, the City will inform the person that they can avoid issuance of the warrant and receive a new court date by appearing in person at the office of the municipal court clerk during normal business hours, and executing a recognizance or unsecured bond.
    a. If the person does not request a new court date within 30 days, the City may issue and execute the arrest warrant. If the warrant is executed and the person is taken into custody, the City will release the person on unsecured bond with notice of a court date.
3. If after actions described in (ii) the person fails to appear at a subsequent proceeding, the City's municipal court may, in its discretion, issue a warrant and the City may arrest the person. Upon arrest, the City may detain the person in custody without bond for up to 48 hours so that the person may be brought before a judge for the consideration of their underlying case and, if further proceedings are necessary, for individualized consideration of detention or conditions of release provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.
4. At any time after any non-appearance, the City may take appropriate and lawful steps under state law to convert any unsecured bond into a money judgment.

vi. The City of Velda City will not hold an arrestee in its custody for another municipality on charges relating to ordinance violations for more than 4 hours.

vii. Velda City police will not impound a car owned by a person arrested on charges of violations of an ordinance so long as the arrestee designates a licensed driver who will immediately take possession of the car and remove it from the scene of arrest, unless such car is to be held for investigation or evidence.

Dated this 3rd day of June, 2015

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY COOPER, individually and on behalf of a class of similarly situated people,	)	
Plaintiffs,	)	
v.	)	CASE NO. 1:15-CV-425-WKW [WO]
THE CITY OF DOTHAN,	)	
Defendant.	)	

ORDER

Plaintiff Anthony Cooper has filed suit against the City of Dothan, Alabama ("the City"), on behalf of himself and similarly situated individuals, alleging that the City's arrest and detention policies and practices routinely result in the confinement of individuals solely due to their poverty in violation of the Fourteenth Amendment's Due Process and Equal Protection clauses. Specifically, he argues that the City's post-arrest detention scheme featuring preset and undifferentiated bond amounts forces indigent individuals arrested on misdemeanor offenses to remain behind bars for as long as a week, while allowing those who can afford the scheduled bond to walk free. Before the court are the named Plaintiff's motion for temporary restraining order or, in the alternative, motion for preliminary injunction (Doc. # 2) and supplemental motion for temporary restraining order (Doc. # 6).

"A temporary restraining order protects against irreparable harm and preserves the status quo until a meaningful decision on the merits can be made." *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1297 (11th Cir. 2005). A temporary restraining order may be issued without notice only if

> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1)(A)–(B). Additionally, the elements that apply to a motion for preliminary injunction also govern the issuance of a temporary restraining order. *See Parker v. State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001). These four elements are "(1) a substantial likelihood of success on the merits, (2) a threat of irreparable injury, (3) that [the movant's] own injury would outweigh the injury to the nonmovant, and (4) that the injunction would not disserve the public interest." *Tefel v. Reno*, 180 F.3d 1286, 1295 (11th Cir. 1999). The movant bears the burden of establishing entitlement to a temporary restraining order. *See Parker*, 275 F.3d at 1034.

After careful consideration of the record, the court finds that the motion for a temporary restraining order is due to be granted in part and denied in part. The procedural requirements of Rule 65(b) for issuing a temporary restraining order without notice to Defendant are satisfied. An affidavit from Mr. Cooper has been

filed evidencing immediate and irreparable injury, as discussed below. Moreover, counsel for Mr. Cooper has certified his efforts to notify the City and has provided sufficient reasons why notice should not be required.

Mr. Cooper also has demonstrated the four elements required for temporary injunctive relief. First, he has highlighted long standing case law from the Fifth Circuit Court of Appeals, as well as from the Supreme Court of Alabama, that establishes the unconstitutionality of a pretrial detention scheme whereby indigent detainees are confined for periods of time solely due to their inability to tender monetary amounts in accordance with a master bond schedule, while those able to afford the preset bond may quickly purchase their release. *See Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) ("Utilization of a master bond schedule provides speedy and convenient release for those who have no difficulty meeting its requirements. The incarceration of those who cannot, without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.")[1]; *State v. Blake*, 642 So. 2d 959, 968 (Ala. 1994) (recognizing the unconstitutionality and irrationality of a bail scheme that allows "a defendant with financial means who is charged with a noncapital violent felony, and

[1] In *Bonner v. City of Prichard*, the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit issued prior to October 1, 1981. See 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

who may potentially pose a great threat to community safety," to "obtain immediate release simply by posting bail," while forcing an "indigent defendant charged with a relatively minor misdemeanor" to "remain incarcerated for a minimum of three days, and perhaps longer, before being able to obtain judicial public bail").

Furthermore, Mr. Cooper has brought to the court's attention a recent consent judgment from the Eastern District of Missouri in which a post-arrest detention scheme centered upon a secured bail system that failed to account for indigency was declared unconstitutional. *Pierce v. City of Velda City*, No. 4:15-cv-570-HEA (E.D. Mo. June 3, 2015). The similarity between the post-arrest practices of the City of Velda City, Missouri, and the City of Dothan, coupled with the constitutional principles espoused in *Pugh* and *Blake*, provide sufficient grounds to find that Mr. Cooper has a substantial likelihood of success on the merits of his challenge.[2]

Second, if a temporary restraining order is not entered, Mr. Cooper will remain confined at the City jail pending his initial appearance as a result of his inability to pay the schedule bond amount. Mr. Cooper has sufficiently demonstrated that this threat of injury is immediate and irreparable. Third, the alleged injury to Mr. Cooper would outweigh any injury to the City, and, as

[2] As the Fifth Circuit explained in *Pugh*, "We have no doubt that in the case of an indigent whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint." 572 F. 2d at 1058.

demonstrated by Mr. Cooper, the City has constitutional alternatives to confining Mr. Cooper in response to his inability to pay the preset bond, while accounting for his future court appearance. Fourth, the public interest will not be disserved by Mr. Cooper's release from confinement.

Generally, security is required when a temporary restraining order issues. *See* Fed. R. Civ. P. 65(c). This is not the typical case, however, in that the present action is grounded upon Mr. Cooper's lack of financial resources. In light of Mr. Cooper's indigency, the ability of the City to secure Mr. Cooper's future appearance through alternative measures, and the court's determination that no costs or damages will be incurred by the City during the pendency of the temporary restraining order, no security bond will be required.

Accordingly, it is ORDERED that:

1. The motion for temporary restraining order (Doc. # 2) is GRANTED insofar as the City is ORDERED to release Plaintiff Anthony Cooper immediately either on his own recognizance or subject to an unsecured bond or other reasonable and lawful non-financial conditions.

2. Plaintiff's motion for temporary restraining order (Doc. # 2) is DENIED in all other respects.

3. A hearing to determine whether to convert this temporary restraining order into a preliminary injunction is set for an evidentiary hearing on **June 26, 2015**

at 10:00 a.m., at the Federal Building & U.S. Courthouse, 100 West Troy Street, Dothan, Alabama.

4. By **12:00 p.m., Monday, June 22, 2015**, Defendant is DIRECTED to respond to the motion for a preliminary injunction (Doc. # 2).

5. By **12:00 p.m., Thursday, June 25, 2015**, Plaintiff may file a reply to Defendant's response.

6. Plaintiff is DIRECTED to serve Defendant with a copy of this Order, and the Clerk of the Court is DIRECTED to fax to Defendant a copy of this Order.

DONE this 18th day of June, 2015, at 12:00 a.m.

W. Keith Watkins

CHIEF UNITED STATES DISTRICT JUDGE

AGREEMENT TO SETTLE ALL EQUITABLE CLAIMS

COME NOW the undersigned parties and, for good and valuable consideration, enter into this Agreement as a full and final settlement of all claims for equitable relief in Case No. 4:15-cv-252-CEJ, *Jenkins et al. v. City of Jennings*, now pending in the U.S. District Court, Eastern District of Missouri.

WHEREAS the named Plaintiffs filed this action alleging that the City had unconstitutional policies and practices; and

WHEREAS the City of Jennings denies such allegations and any liability for the claims raised herein; and

WHEREAS, the parties enter into this Agreement to resolve this case efficiently.

NOW, THEREFORE, the parties agree to the following:

1) Subject to approval by the Court, the parties agree jointly to move for the entry of a declaratory judgment as set forth in the attached Exhibit 1, Jennings Certified Ordinance Number 2367.

2) The parties further jointly agree to move the Court to enter an injunction as set forth in the attached Exhibit 1, Jennings Certified Ordinance Number 2367.

3) The parties agree jointly to move the Court to dismiss the Plaintiffs' remaining claims for declaratory and injunctive relief subject only to the continuing jurisdiction of the Court to enforce its injunction and the settlement agreement.

4) The parties agree that the Plaintiffs claims for damages and attorneys' fees have not yet been resolved and should not be dismissed. The parties continue to negotiate in good faith to come to a resolution of the Plaintiffs' claims for damages and attorneys' fees and will

submit a report to the Court on their progress within the time period set by this Court's prior order.

5) The parties make this agreement on condition that if the Court is not willing to issue such judgment consistent therewith, then such proposal shall be void and they shall thereupon confer in good faith to attempt to address the Court's concerns while still effectuating the intent and approach of this Agreement. If the Court does not issue orders and judgment with the consent of the parties after such additional efforts, then upon notice from either party to the other, this Agreement shall be void and the parties shall resume litigation of all claims and defenses herein.

Respectfully submitted,

/s/ D. Keith Henson D. Keith Henson MBE #31988MO *Counsel for the City of Jennings*	*/s/ Thomas B. Harvey* Thomas B. Harvey (MBE #61734) */s/ Michael-John Voss* Michael-John Voss (MBE #61742) */s/ John J. Ammann* John J. Ammann (MBE #34308) */s/ Stephen Hanlon* Stephen Hanlon (MBE #19340) */s/ Brendan Roediger* Brendan Roediger (E.D.Mo. Bar No. IL6287213) */s/ Alec Karakatsanis* Alec Karakatsanis (E.D.Mo. Bar No. 999294DC) *Counsel for Plaintiffs*

CITY HALL
2120 Hord Avenue
Jennings, Missouri
63136

314.388.1164 PH
314.388.3999 FAX

CITY of
JENNINGS

MAYOR
YOLONDA FOUNTAIN HENDERSON

July 28, 2015

TO WHOM IT MAY CONCERN:

The attached is a true and certified copy of Bill #2415, Ordinance #2367, passed and approved by the Jennings City Council on July 27, 2015.

ATTEST:

Cheryl Balke

Cheryl Balke
City Clerk

CITY OF JENNINGS SEAL MISSOURI

BILL NO. 2415 ORDINANCE NO. 2367

AN ORDINANCE AUTHORIZING THE APPROVAL OF THE CITY OF JENNINGS OF THE DECLARATORY AND INJUNCTIVE RELIEF TO BE SUBMITTED TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION IN CASE NO. 4:15-DV-00252.

WHEREAS the matter of Samantha Jenkins, et.al. v. The City of Jennings, case number 4:15-CV-00252 was filed February 8, 2015 in the United States District Court for the Eastern District of Missouri Eastern Division; and

WHEREAS the parties with the above case have reached an agreement declaratory and injunctive relief which is to be presented to the United States District Court, attached hereto as Exhibit A.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JENNINGS, MISSOURI, AS FOLLOWS:

Section 1. The City of Jennings hereby approves the Declaratory and Injunctive relief as agreed to by the above parties.

Section 2. This Ordinance shall be in full force and effect from and after the date of its passage and approval by the Mayor.

Passed this 27 day of July, 2015.

Yolonda Fountain Henderson

Yolonda Fountain Henderson, Mayor

Approved this 27 day of July, 2015.

Yolonda Fountain Henderson

Yolonda Fountain Henderson, Mayor

Attest:

Cheryl Balke

Cheryl Balke, City Clerk

MEMORANDUM

REVISED CONFIDENTIAL SETTLEMENT DOCUMENT
COUNTER PROPOSAL FOR BASIC PRINCIPLES AND PROPOSALS

---

1. DECLARATORY RELIEF:

Defendant City of Jennings will agree to the entry of declaratory judgments by the Court as set forth below provided that the parties agree upon the appropriate legal submissions to the Court to justify the declarations and the Court agrees to the declarations as a matter of law based upon the parties legal memorandums which would include the following:

A. It violates the Constitution to incarcerate an individual in jail, either before or after trial, solely because an individual does not have the ability to make a monetary payment pursuant to the constitutional principles established by the United States Supreme Court in Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 264, 76 L.Ed.2d 221 (1983). Based upon these constitutional principles, and pursuant to § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015, no individual can be held in jail for non-payment of a fine and/or costs imposed by a Municipal Court without a meaningful inquiry into the person's ability to pay, which would include notice and an opportunity to present evidence, and without the appointment of counsel.

B. The use of a secured bail schedule to set the conditions for release of a person in custody after arrest for an offense that may be prosecuted by the City of Jennings implicates the protections of the Equal Protection Clause when such a scheduled is applied to the indigent. No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in

custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny a prompt release from custody to a person because the person is financially incapable of posting such a bond.

C. The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution may be implicated when a state utilizes debt collection procedures to collect debts owed to the state that are materially different from debt collection procedures available under state law for private creditors to collect debts. To ensure compliance with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, fines and costs imposed by a Municipal Court should be collected by any means authorized by law, including means for the enforcement of civil money judgments as authorized by § 560.031 R.S.Mo. and Missouri Supreme Court Rule 37.65 effective July 1, 2015. In no event shall debts from municipal court cases be collected in a manner that deprives debtors of substantial rights available to other civil judgment debtors.

2. <u>INJUNCTIVE RELIEF</u>:

The Parties will agree to the entry of a court order requiring the following changes in principles be applied to an injunctive class:

A. All cases in the Jennings Municipal Court will comply with the following principles:

i. When fines and costs are assessed after an individual pleads guilty to an offense or an adjudication of guilt is made by the Court, the judge will ask the individual if they can afford to pay the full amount of the fines and costs. If the individual is able to pay the fines and costs on the same day, the individual will be directed to the pay window or otherwise informed how to make payment. The full amount of fines and costs will be paid and the case will be closed.

ii. If the individual tells the Court that he or she is unable to pay on the same day, the individual will be directed to the payment window and given a form with the following options, and the option selected by the individual will be ordered by the Court: (a) placed on a payment plan to pay the fines and costs on a certain date if the individual confirms that the payment can be made on a certain date, with the individual also being told that the total payment must be made within six months of the court date (in no event will a person be charged extra fees for participation in a payment plan); (b) placed on a payment plan to make monthly payments and given a compliance date to make full payment of the fines and costs within six months of the court date; and (c) the individual will be given the opportunity to complete a financial hardship form and given the opportunity to then present the financial hardship form to the judge to discuss the individual's financial status and condition. The individual will complete the financial hardship form under the penalty of perjury and/or contempt of court and if the individual meets an objective definition of

indigence to be agreed upon by the Parties, the judge will give the option to the individual to suspend the payment of fines and costs and satisfy the judgment by performing community service at a fixed hourly rate of at least $10.00 per hour, to attend an approved social program, or to pay the money owed on the fines and costs in monthly payments to be paid in full within six months of the court date. In either case, the judge has the discretion to reduce the fines and costs based upon the financial condition of the individual pursuant to R.S.Mo. § 560.026.1 (2000). The judge will consider an individual to be indigent if the individual is determined to be at or below 125% of the Federal Poverty Level or, if the person is above 125% of the poverty line, the judge will make an individualized assessment of the person's ability to pay based on the totality of the circumstances. If the individual chooses the option of community service, the individual will be given 14 days to provide the name and address of the organization and authorization from a representative of the organization for whom the community service will be performed to the Jennings Municipal Court for approval with the agreement that the community service will be performed within six months of the approval. The Jennings Municipal Court shall have available at least two community service options that people can choose should they not be able to find their own placement and will provide names of approved social programs that the individual can attend. If the individual chooses the option of attending an approval social program, the individual will be given 14 days to

provide the name of the social program and confirmation that the individual has enrolled in the social program with the agreement that the individual will complete the program within six months.

All forms created for individuals requesting payment on a certain date and a payment plan to pay the fines and costs within six months of the court date will confirm to the individuals that the failure to pay the fines and costs as agreed will result in the City of Jennings referring the collection of the fines and costs to a civil debt collector for collection. The form will also confirm that the performance of community service and/or the certified completion of an approved social program as ordered will result in the full payment of the fines and costs. Moreover, if an individual accepts the option of performing community service or to attend an approved social program to pay the fines and costs, the form will also confirm that the failure to perform the community service or complete the approved social program as agreed will result in the fines and costs being reinstated and turned over to a civil debt collector for collection. The individual will be given credit for the community service performed when the fines and costs are reinstated for the failure to perform an amount of community service to pay the entire fine and costs.

iii. The City of Jennings will eliminate the payment docket. All debts for fines and costs will be collected in a manner consistent with the enforcement of civil monetary judgments under Missouri law. If fines and costs are not paid or resolved by community service or waived within six

months from the date assessed and/or approved, the City of Jennings will refer the debt to a civil debt collector and take no further action in the municipal court. As stated above, this process will be communicated to every individual when the fines and costs are assessed through the use of court forms. In no event will a civil collector be permitted to charge debtors additional fees in addition to the total amount of court debts owed, and the City agrees not to contract with any debt collector who threatens debtors with prosecution or incarceration for non-payment.

iv. The City of Jennings will comply with all laws of the State of Missouri relating to the operation of a Municipal Court, including all statutes contained in Senate Bill No. 5. If any change in state law creates a conflict with the terms of this agreement, the City will notify opposing counsel and the Court as soon as practicable so that appropriate action, if any, can be taken.

B. The City of Jennings and all of its officers, employees, and agents will not utilize secured money bail for persons in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City.

i. The City of Jennings and all of its officers, employees, and agents will offer every person in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City, release from custody of the City on recognizance or on an unsecured bond as soon as practicable after booking.

ii. An exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested for domestic assault, intentional assault or threatening conduct, and/or assault. These individuals will be held in the City of Jennings Jail up to 24 hours pursuant to the terms of § 544.170 R.S.Mo. (2000). These individuals will either be held in jail for up to 24 hours and then released on recognizance or unsecured bond or brought before the Court within 24 hours of arrest for potential imposition of conditions for release other than the posting of money bond or for a determination that release must be denied to prevent danger to a victim, the community, or any other person under applicable constitutional standards. At such a preventative detention hearing, the protections identified in United States v. Salerno, 481 U.S. 739 (1987) will be available if anyone is detained pending trial. If the judge does impose conditions of release for these individuals, individuals who violate conditions of release shall be subject to such actions as determined by the Court pursuant to applicable law. If the individual is released during the 24-hour period on recognizance or an unsecured bond, the City of Jennings will either serve the individual with a summons or citation with a specified court date upon release or send a summons with specified charges and a specified court date to the individual at the individual's last known address by certified and regular mail.

Another exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested

who appear to be incapacitated or intoxicated. These individuals will be held in the City of Jennings Jail up to 12 hours pursuant to the terms of R.S.Mo. 67.315. These individuals will be held in custody up to 12 hours and released on recognizance or unsecured bond and will be either served with a summons or citation with a specified court date upon release or sent a summons with specified charges and specified court date at the individual's last known address by certified and regular mail.

iii. If an individual fails to appear on a court date in the Jennings Municipal Court specified on a summons and/or a citation, the Jennings Municipal Court will send another summons to that individual that confirms that the individual has missed a court date and further confirms if the individual does not appear on a new court date set in the summons that a warrant will be issued for the individual's arrest. This summons will be sent by regular mail to the individual's last known address.

If the individual misses the second court date, the Jennings Municipal Court will issue a warrant for the individual's arrest. The individual will be mailed a notification by regular mail at the individual's last known address that the warrant has been issued with a copy of the warrant. The notification will confirm to the individual that the warrant can be removed and a new court date scheduled by the municipal court if the individual will appear in person at the Clerk's Office of the municipal court to schedule a new court date. If the individual chooses to appear in person at the Jennings Municipal Court Clerk's Office to schedule a new court date,

the individual will be given a summons confirming the new court date to be signed by the individual which will also confirm that another warrant will be issued for the individual's arrest if the individual fails to appear at the Jennings Municipal Court on the new court date.

If the individual fails to appear in person at the Jennings Municipal Court Clerk's Office to request the warrant to be removed, the warrant will remain outstanding. If the individual is arrested on that warrant, the individual will be processed in the City of Jennings Jail and given a recognizance and will sign a form containing a new court date. Thereafter, the Jennings Municipal Court will send a new summons to the individual with the new court date to the individual's last known address by regular mail.

If the individual then fails to appear on this new court date after procuring a new court date from the Municipal Clerk or service of the first warrant, then the Jennings Municipal Court will issue a new warrant with an unsecured bond. If the individual is arrested on this warrant, the individual will sign a form that will confirm a new court date and that the unsecured bond will be forfeited and converted to a judgment against the individual upon the individual's subsequent failure to appear at the new court date. The form will also confirm that if the individual does not appear on the new court date and the unsecured bond is converted to a judgment, that the City of Jennings will refer the collection of the debt for the unsecured bond to a civil debt collector if the debt is not paid by the

individual within six months of the date the judgment is entered. At any time after any non-appearance, the City of Jennings may take appropriate and lawful steps under state law to convert any unsecured bond into a civil money judgment.

If the person fails to appear at the subsequent proceeding, the City's Municipal Court may, in its discretion, issue a new warrant and the City may arrest the person. Upon arrest, the City may detain the person in custody without bond for up to 48 hours so that the person may be brought before a judge for the consideration of their underlying case and, if further proceedings are necessary, for individualized consideration of detention or conditions of release provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.

iv. If Jennings has in its custody a person on behalf of another municipality, Jennings will make efforts to determine as soon as practicable why the other jurisdiction is holding the person in custody. Jennings will not keep an arrestee in jail on behalf of another municipality if it learns that the person is being held pursuant to a monetary bond (at which point it shall release the person immediately) and in no event will Jennings keep a person in its custody on behalf of another municipality for longer than 24 hours unless it is determined that the individual will be brought before a court within 48 hours for potential imposition of conditions of release other than the posting of money bond or for a determination that the

release must be denied to prevent danger to a victim, the community, or any other person under applicable constitutional standards.

v. The City of Jennings has recalled all warrants issued prior to the time the lawsuit was filed, has not issued any warrants since the lawsuit has been filed, and has dismissed all cases and forgiven all fines and costs due and owing to the City of Jennings imposed upon individuals before March 12, 2011.

vi. The City of Jennings will not use separate failure to appear charges and will not report non-appearance of individuals at court dates for license suspensions to the Director of Revenue for the State of Missouri.

C. Every inmate in the Jennings Jail will be provided with a toothbrush, toothpaste, hand soap, reasonable access to a shower, reasonably sanitary surroundings, the opportunity to exercise, access to legal materials if requested, adequate medical care, and nutritious meals. No person can be charged any money for any time spent in jail or for the provision of basic needs in jail.

D. All court and jail personnel will be trained by counsel for the City of Jennings and sign written acknowledgments of training on the terms of the settlement.

E. The Parties will agree to reasonable information sharing to be determined by the Parties to enable monitoring of compliance with the court order.

F. The Parties agree that, no earlier than 18 months after the Court enters the injunction, either party may move the Court to modify the injunction. The Parties agree to engage in good faith discussions in an effort to resolve any disagreements

they may have regarding modifying the injunction prior to filing any motion to modify the injunction.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SAMANTHA JENKINS et al.,	
Plaintiffs,	
v.	
THE CITY OF JENNINGS	Case No. 4:15-cv-252-CEJ
Defendant.	(Class Action)

ORDER

Based on the representations of the Parties, the Court orders the following:

1. The Parties to the Settlement Agreement, which is Exhibit 1 to this Order, are ordered to comply with its terms.

2. The parties' motion for the entry of final declaratory relief is granted. The Court will enter a separate order setting forth the declaratory relief requested by the parties.

3. The Plaintiffs' remaining equitable claims are hereby dismissed with prejudice subject only to the further jurisdiction of this Court to enforce its injunction and the settlement agreement as set forth below.

4. The Court further orders as follows:

A. All cases in the Jennings Municipal Court will comply with the following principles:

i. When fines and costs are assessed after an individual pleads guilty to an offense or an adjudication of guilt is made by the Court, the judge will ask the individual if they can afford to pay the full amount of the fines and costs. If the individual is able to pay the fines and costs on the same day, the individual will be directed to the pay window or otherwise informed how to make payment. The full amount of fines and costs will be paid and the case will be closed.

ii. If the individual tells the Court that he or she is unable to pay on the same day, the individual will be directed to the payment window and given a form with the following options, and the option selected by the individual will be ordered by the Court: (a) placed on a payment plan to pay the fines and costs on a certain date if the individual confirms that the payment can be made on a certain date, with the individual also being told that the total payment must be made within six months of the court date (in no event will a person be charged extra fees for participation in a payment plan); (b) placed on a payment plan to make monthly payments and given a compliance date to make full payment of the fines and costs within six months of the court date; and (c) the individual will be given the opportunity to complete a financial hardship form and given the opportunity to then present the financial hardship form to the judge to discuss the individual's financial status and condition. The individual will complete the financial hardship form under the penalty of perjury and/or contempt of court and if the individual meets an objective definition of indigence to be agreed upon by the Parties, the judge will give the option to the individual to suspend the payment of fines and costs and satisfy the judgment by performing community service at a fixed hourly rate of at least $10.00 per hour, to attend an approved social program, or to pay the money owed on the fines and costs in monthly payments to be paid in full within six months of the court date. In either case, the judge has the discretion to reduce the fines and costs based upon the financial condition of the individual pursuant to R.S.Mo. § 560.026.1 (2000). The judge will consider an individual to be indigent if the individual is determined to be at or below 125% of the Federal Poverty Level or, if the person is above 125% of the poverty line, the judge will make an individualized assessment of the person's ability to pay based on the totality of the circumstances. If the individual chooses the option of community service, the individual will be given 14 days to provide the name and address of the organization and authorization from a representative of the organization for whom the community service will be performed to the Jennings Municipal Court for approval with the agreement that the community service will be performed within six months of the approval. The Jennings Municipal Court shall have available at least two community service options that people can choose should they not be able to find their own placement and will provide names of approved social programs that the individual can attend. If the individual chooses the option of attending an approval social program, the individual will be given 14 days to provide the name of the social program and confirmation that the individual has enrolled in the social program with the agreement that the individual will complete the program within six months.

All forms created for individuals requesting payment on a certain date and a payment plan to pay the fines and costs within six months of the court date will confirm to the individuals that the failure to pay the fines and costs as agreed will result in the City of Jennings referring the collection of the fines and costs to a civil debt collector for collection. The form will also confirm that the performance of community service and/or the certified completion of an approved social program as ordered will result in the full payment of the fines and costs.

Moreover, if an individual accepts the option of performing community service or to attend an approved social program to pay the fines and costs, the form will also confirm that the failure to perform the community service or complete the approved social program as agreed will result in the fines and costs being reinstated and turned over to a civil debt collector for collection. The individual will be given credit for the community service performed when the fines and costs are reinstated for the failure to perform an amount of community service to pay the entire fine and costs.

iii. The City of Jennings will eliminate the payment docket. All debts for fines and costs will be collected in a manner consistent with the enforcement of civil monetary judgments under Missouri law. If fines and costs are not paid or resolved by community service or waived within six months from the date assessed and/or approved, the City of Jennings will refer the debt to a civil debt collector and take no further action in the municipal court. As stated above, this process will be communicated to every individual when the fines and costs are assessed through the use of court forms. In no event will a civil collector be permitted to charge debtors additional fees in addition to the total amount of court debts owed, and the City agrees not to contract with any debt collector who threatens debtors with prosecution or incarceration for non-payment.

iv. The City of Jennings will comply with all laws of the State of Missouri relating to the operation of a Municipal Court, including all statutes contained in Senate Bill No. 5. If any change in state law creates a conflict with the terms of this agreement, the City will notify opposing counsel and the Court as soon as practicable so that appropriate action, if any, can be taken.

A. The City of Jennings and all of its officers, employees, and agents will not utilize secured money bail for persons in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City.

i. The City of Jennings and all of its officers, employees, and agents will offer every person in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City, release from custody of the City on recognizance or on an unsecured bond as soon as practicable after booking.

ii. An exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested for domestic assault, intentional assault or threatening conduct, and/or assault. These individuals will be held in the City of Jennings Jail up to 24 hours pursuant to the terms of § 544.170 R.S.Mo. (2000). These individuals will either be held in jail for up to 24 hours and then released on recognizance or unsecured bond or brought before the Court within 24 hours of arrest for potential imposition of conditions for release other than the posting of money bond or for a determination that release must be denied to prevent danger to a victim, the community, or any other person under

applicable constitutional standards. At such a preventative detention hearing, the protections identified in United States v. Salerno, 481 U.S. 739 (1987) will be available if anyone is detained pending trial. If the judge does impose conditions of release for these individuals, individuals who violate conditions of release shall be subject to such actions as determined by the Court pursuant to applicable law. If the individual is released during the 24-hour period on recognizance or an unsecured bond, the City of Jennings will either serve the individual with a summons or citation with a specified court date upon release or send a summons with specified charges and a specified court date to the individual at the individual's last known address by certified and regular mail.

iii. Another exception to the use of a recognizance or unsecured bond for an arrest as soon as practicable after booking shall be for individuals arrested who appear to be incapacitated or intoxicated. These individuals will be held in the City of Jennings Jail up to 12 hours pursuant to the terms of R.S.Mo. 67.315. These individuals will be held in custody up to 12 hours and released on recognizance or unsecured bond and will be either served with a summons or citation with a specified court date upon release or sent a summons with specified charges and specified court date at the individual's last known address by certified and regular mail.

iv. If an individual fails to appear on a court date in the Jennings Municipal Court specified on a summons and/or a citation, the Jennings Municipal Court will send another summons to that individual that confirms that the individual has missed a court date and further confirms if the individual does not appear on a new court date set in the summons that a warrant will be issued for the individual's arrest. This summons will be sent by regular mail to the individual's last known address. If the individual misses the second court date, the Jennings Municipal Court will issue a warrant for the individual's arrest. The individual will be mailed a notification by regular mail at the individual's last known address that the warrant has been issued with a copy of the warrant. The notification will confirm to the individual that the warrant can be removed and a new court date scheduled by the municipal court if the individual will appear in person at the Clerk's Office of the municipal court to schedule a new court date. If the individual chooses to appear in person at the Jennings Municipal Court Clerk's Office to schedule a new court date, the individual will be given a summons confirming the new court date to be signed by the individual which will also confirm that another warrant will be issued for the individual's arrest if the individual fails to appear at the Jennings Municipal Court on the new court date.

If the individual fails to appear in person at the Jennings Municipal Court Clerk's Office to request the warrant to be removed, the warrant will remain outstanding. If the individual is arrested on that warrant, the individual will be processed in the City of Jennings Jail and given a recognizance and will sign a form containing a new court date. Thereafter, the Jennings Municipal Court will send a new

summons to the individual with the new court date to the individual's last known address by regular mail.

If the individual then fails to appear on this new court date after procuring a new court date from the Municipal Clerk or service of the first warrant, then the Jennings Municipal Court will issue a new warrant with an unsecured bond. If the individual is arrested on this warrant, the individual will sign a form that will confirm a new court date and that the unsecured bond will be forfeited and converted to a judgment against the individual upon the individual's subsequent failure to appear at the new court date. The form will also confirm that if the individual does not appear on the new court date and the unsecured bond is converted to a judgment, that the City of Jennings will refer the collection of the debt for the unsecured bond to a civil debt collector if the debt is not paid by the individual within six months of the date the judgment is entered. At any time after any non-appearance, the City of Jennings may take appropriate and lawful steps under the state law to convert any unsecured bond into a civil money judgment.

If the person fails to appear at the subsequent proceeding, the City's Municipal Court may, in its discretion, issue a new warrant and the City may arrest the person. Upon arrest, the City may detain the person in custody without bond for up to 48 hours so that the person may be brought before a judge for the consideration of their underlying case and, if further proceedings are necessary, for individualized consideration of detention or conditions of release provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.

v. If Jennings has in its custody a person on behalf of another municipality, Jennings will make efforts to determine as soon as practicable why the other jurisdiction is holding the person in custody. Jennings will not keep an arrestee in jail on behalf of another municipality if it learns that the person is being held pursuant to a monetary bond (at which point it shall release the person immediately) and in no event will Jennings keep a person in its custody on behalf of another municipality for longer than 24 hours unless it is determined that the individual will be brought before a court within 48 hours for potential imposition of conditions of release other than the posting of money bond or for a determination that the release must be denied to prevent danger to a victim, the community, or any other person under applicable constitutional standards.

vi. The City of Jennings has recalled all warrants issued prior to the time the lawsuit was filed, has not issued any warrants since the lawsuit has been filed, and has dismissed all cases and forgiven all fines and costs due and owing to the City of Jennings imposed upon individuals before March 12, 2011.

vii. The City of Jennings will not use separate failure to appear charges and will not report non-appearance of individuals at court dates for license suspensions to the Director of Revenue for the State of Missouri.

B. Every inmate in the Jennings Jail will be provided with a toothbrush, toothpaste, hand soap, reasonable access to a shower, reasonably sanitary surroundings, the opportunity to exercise, access to legal materials if requested, adequate medical care, and nutritious meals. No person can be charged any money for any time spent in jail or for the provision of basic needs in jail.

C. All court and jail personnel will be trained by counsel for the City of Jennings and sign written acknowledgments of training on the terms of the settlement.

D. The Parties will agree to reasonable information sharing to be determined by the Parties to enable monitoring of compliance with the court order.

E. The Parties agree that, no earlier than 18 months after the Court enters the injunction, either party may move the Court to modify the injunction. The Parties agree to engage in good faith discussions in an effort to resolve any disagreements they may have regarding modifying the injunction prior to filing any motion to modify the injunction.

_____
United States District Judge