IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JOSHUA RYAN, BLAZE FRANKLIN, AMISAR CYRUS NOURANI, and HERBERT SCULLY on behalf of themselves and all others similarly situated, Plaintiffs, v. TARVALD ANTHONY SMITH, BONNIE JACKSON, and RONALD JOHNSON, in their official capacity as Judges of the 19th Judicial District Court of Louisiana; NICOLE ROBINSON, in her official capacity as Commissioner of the 19th Judicial District Court of Louisiana; FRANK HOWZE in his official capacity as Coordinator of the Bail Bond Program for the 19th Judicial District Court of Louisiana; SHERIFF SID J. GAUTREAUX, III, in his official capacity as Sheriff of East Baton Rouge Parish, Louisiana; and LT. COL. DENNIS GRIMES, in his official capacity as Warden of East Baton Rouge Parish Prison, Defendants.	Case No. 20-cv-843 (Class Action)

CLASS ACTION COMPLAINT

1. Every day in Baton Rouge, presumptively innocent people are confined in the East Baton Rouge Parish Prison ("EBRPP" or "Jail") simply because they are too poor to pay for their freedom. Hundreds of people—the vast majority of whom are poor and Black—are condemned to remain restrained in the Jail for weeks, months, or even years. They are locked in the Jail until either they have their day in the 19th Judicial District Court ("19th JDC") or, more likely, accept a plea that allows them to escape custody and return to their lives. This system

inflicts devastating harm on people solely because of their poverty and violates the most fundamental of American axioms, that all people are equal under the law and are innocent until they are found guilty.

2. The Judges and Commissioners of the Criminal Division of the 19th JDC (collectively, "the Judicial Defendants") are responsible for setting conditions of release for people who are arrested and charged with certain crimes in East Baton Rouge Parish. They consistently and unlawfully impose secured financial conditions of release (including what is commonly known as cash bail) in an amount that individuals cannot afford, without any inquiry into or findings concerning the individual's ability to pay or alternatives to incarceration. As a result, the payment-based conditions of release that the Judicial Defendants impose constitute de facto orders of pretrial detention for those who lack the financial means necessary to pay. These pretrial detention orders are issued without the legal and factual findings and procedures required for valid orders of pretrial detention.

3. Sheriff Sid J. Gautreaux, III, and Warden Dennis Grimes (collectively, "the Sheriff Defendants") implement a policy of detaining people under the Judicial Defendants' unconstitutional bail orders. Because Plaintiffs are indigent and cannot pay their bail, the Sheriff Defendants continue to confine them in the East Baton Rouge Parish Prison, the local pretrial detention facility. If Plaintiffs could pay the amount of money required by the Judicial Defendants, then the Sheriff Defendants would release them immediately. Plaintiffs do not have the financial means to pay this amount of money, and so they are forced to remain in jail. By continuing to hold detained people under the Judicial Defendants' unconstitutional bail orders, the Sheriff Defendants violate Plaintiffs' and the putative class members' constitutional rights.

4. On behalf of themselves and all others similarly situated, the named Plaintiffs

seek injunctive and declaratory relief against the Defendants. Plaintiffs seek an order enjoining the Defendants from operating their wealth-based post-arrest detention policies and practices and requiring the immediate release of each Plaintiff. They also seek a declaration that the Defendants violate the Fourteenth Amendment to the United States Constitution when they set secured financial conditions of release without an inquiry into ability to pay or consideration of non-financial alternatives, which results in jailing poor members of the community for no reason other than their poverty while allowing release from jail for their similarly situated counterparts who have greater financial means.

JURISDICTION AND VENUE

5. This is a civil rights action arising under 42 U.S.C. § 1983, 28 U.S.C. §§ 2201–02, and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue in this Court is proper under 28 U.S.C. § 1391.

PARTIES

7. Plaintiff "Joshua Ryan"[1] was arrested on November 6, 2020, for allegedly violating La. R.S. § 14:62, simple burglary. He appeared before Defendant Judge Ronald Johnson on November 9, 2020, who imposed a $10,000 secured bond as a condition of Mr. Ryan's release. Because Mr. Ryan cannot afford to pay the amount of money set by Judge Johnson without regard to his ability to pay, Mr. Ryan is currently confined in jail by the Sheriff Defendants.

8. Plaintiff Blaze Franklin was arrested on October 27, 2020, for allegedly violating

[1] Plaintiff "Joshua Ryan" has contemporaneously filed a motion to proceed anonymously in this suit along with a motion to file a supporting declaration—detailing his true identity and reasons for wishing to proceed anonymously—under seal.

La. R.S. § 14:93.3, cruelty to persons with infirmities. He appeared before Defendant Commissioner Nicole Robinson on October 28, 2020, who imposed a $200,000 bond as a condition of Mr. Franklin's release. Because Mr. Franklin cannot afford to pay the amount of money set by Commissioner Robinson without regard to his ability to pay, Mr. Franklin is currently confined in jail by the Sheriff Defendants.

9. Plaintiff Amisar Cyrus Nourani was arrested on November 9, 2020, for allegedly violating La. R.S. §§ 40:966, 967 and 969, possession of marijuana, heroin, alprazolam, and methamphetamine. He appeared before Defendant Judge Ronald Johnson on November 12, 2020, who imposed a $13,000 bond as a condition of Mr. Nourani's release. Because Mr. Nourani cannot afford to pay the amount of money set by Judge Johnson without regard to his ability to pay, Mr. Nourani is currently confined in jail by the Sheriff Defendants.

10. Plaintiff Herbert Scully was arrested on July 12, 2020, for allegedly violating La. R.S. §§ 14:98, 14:988, and 47:521, driving while intoxicated, driving under suspension, and display of temporary registration license plates. He appeared before Defendant Judge Tarvald Smith on July 13, 2020, who imposed a $30,750 bond as a condition of Mr. Scully's release. Because Mr. Scully cannot afford to pay the amount of money set by Judge Smith without regard to his ability to pay, Mr. Scully is currently confined in jail by the Sheriff Defendants.

11. Defendant Judge Tarvald Anthony Smith is the Judge of Division A, Section 5 of the criminal division of the 19th JDC. He sets initial secured financial conditions of release for arrestees and does so without considering the person's ability to pay or non-financial alternative conditions of release. Plaintiffs sue Judge Smith in his official capacity only.

12. Defendant Judge Bonnie Jackson is the Judge of Division K, Section 4 of the criminal division of the 19th JDC. She sets initial secured financial conditions of release for

arrestees and does so without considering the person's ability to pay or non-financial alternative conditions of release. Plaintiffs sue Judge Jackson in her official capacity only.

13. Defendant Judge Ronald Johnson is the Judge of Division L, Section 6 of the criminal division of the 19th JDC. He sets initial secured financial conditions of release for arrestees and does so without considering the person's ability to pay or non-financial alternative conditions of release. Plaintiffs sue Judge Johnson in his official capacity only.

14. Defendant Commissioner Nicole Robinson is a Commissioner of the 19th JDC. She is appointed by a majority vote of the Judges of the 19th JDC. La. R.S. § 13:711. Where designated by the acting duty judge, Commissioner Robinson sets secured financial conditions of release for arrestees; she does this without considering the person's ability to pay or non-financial alternative conditions of release. Plaintiffs sue Commissioner Robinson in her official capacity only.

15. Defendant Frank Howze is the Coordinator of the 19th JDC's Bail Bond Program. He administers the collection of information from recent arrestees, presents that information to the judges and commissioners for bail determinations, and processes applications for personal surety and property bonds. Plaintiffs sue Mr. Howze in his official capacity only.

16. Defendant Sheriff Sid J. Gautreaux, III, is the Sheriff of East Baton Rouge Parish, Louisiana. He has the ultimate authority to detain arrestees whose charges are pending before the 19th JDC, and he supervises and controls Warden Grimes and his employees at the EBRPP. Plaintiffs sue Sheriff Gautreaux in his official capacity only.

17. Defendant Lieutenant Colonel Dennis Grimes is the Warden of East Baton Rouge Parish Prison. He is responsible for supervision, administration, policies, practices, customs, operations, training of staff, and operation of the jail. He has implemented a policy or practice of

adhering to secured financial conditions of release set by the Judicial Defendants. When someone is arrested in East Baton Rouge Parish, Grimes's employees, at his direction, demand the amount required by the Commissioners and Judges. Plaintiffs sue Warden Grimes in his official capacity only.

18. None of the Defendants inquire into, or make findings about, any arrestee's ability to pay money bail or her suitability for alternative non-financial conditions of release.

FACTUAL BACKGROUND[2]

A. Plaintiffs' Unlawful Detention in East Baton Rouge Parish Prison

1. "Joshua Ryan"

19. At the time of his arrest on November 6, 2020, Plaintiff Joshua Ryan was homeless and unemployed. He had no income and no assets.

20. Arresting officers brought Mr. Ryan to the EBRPP following his arrest and, on November 9, 2020, Mr. Ryan was brought to a room in the jail with other arrestees for a "callout" hearing. He appeared by video in front of Defendant Judge Ronald Johnson. Judge Johnson asked each arrestee to stand in front of the camera and state their name and date of birth. He then informed the arrestee of their charge and the amount of money for their bond before asking if they could afford a lawyer. If they said that they could not afford a lawyer, Judge Johnson said that he would appoint a lawyer for them.

21. Judge Johnson set a $10,000 bond for Mr. Ryan's release and appointed the public defender to represent him. Judge Johnson did not ask Mr. Ryan if he could afford to pay that amount of money for his release. He did not inquire into Mr. Ryan's income or expenses. He did not state why a nonfinancial condition of release would be insufficient to ensure future

[2] Plaintiffs make the allegations in this Complaint based on personal knowledge as to matters in which they have personal involvement and on information and belief as to all other matters.

appearance in court or community safety.

22. After Judge Johnson informed Mr. Ryan that his bail was a $10,000 bond, Mr. Ryan asked for a "sign-out" bond. Judge Johnson denied this request. Mr. Ryan was not represented by an attorney during this hearing.

23. Mr. Ryan cannot afford to pay a $10,000 bond for his release. He has been confined in the EBRPP as a result for over a month.

2. Blaze Franklin

24. Plaintiff Blaze Franklin is a retired 67-year-old man who receives a $750 monthly Social Security benefit as his sole income.

25. Mr. Franklin was booked into the EBRPP following his arrest on October 27, 2020, and appeared by video before Defendant Commissioner Robinson for a callout hearing on the following morning.

26. During the hearing, the Commissioner instructed arrestees that she would inform arrestees of their bonds but that there would be no further discussion of bonds. Prior to the hearing, Defendant Judge Bonnie Jackson had ordered a secured bond in the amount of $200,000 as a condition of Mr. Franklin's release.

27. Mr. Franklin was not represented by counsel during this hearing. The Commissioner did not ask Mr. Franklin whether he could afford to pay this amount of money for his release, inquire into his income, expenses, risk of flight, or danger to the community, nor did the Commissioner explain why alternative conditions of release would be insufficient to ensure Mr. Franklin's future appearance in court or the community's safety.

28. Mr. Franklin cannot pay $200,000 for his release, so he has remained imprisoned at EBRPP since October 27, 2020. Mr. Franklin suffers from Stage IV prostate cancer that has metastasized to his bones and is incredibly painful. He is not receiving cancer treatments while

he is in the Jail. In the time that he has been detained in the EBRPP on Judge Jackson's bail order, Mr. Franklin's mother died, and he was unable to attend the funeral.

3. Amisar Cyrus Nourani

29. Following his arrest on November 9, 2020, on drug-possession charges, Plaintiff Amisar Cyrus Nourani was booked into EBRPP. On Nov. 12, 2020, he appeared via video before Defendant Judge Johnson for his callout hearing. He was not represented by counsel during this hearing. Mr. Nourani estimates that his hearing lasted about thirty seconds, in which he was informed of his charges, told that a condition of his release was payment of a $13,000 bond, and appointed a public defender for his case.

30. Mr. Nourani asked Judge Johnson if he could have a sign-out bond or a reduced bond. Judge Johnson responded that such a bond was not possible. Judge Johnson did not ask whether Mr. Nourani could afford to pay a $13,000 bond for his release, inquire into his income, expenses, risk of flight, or danger to the community, nor did Judge Johnson explain why alternative conditions of release would be insufficient to ensure Mr. Nourani' future appearance in court or the community's safety.

31. Mr. Nourani has been unable to pay $13,000 for his release and has remained in EBRPP since his arrest. He is scheduled to be arraigned on December 15, 2020. He has not yet seen or spoken to a public defender about his case.

32. During the little over a month that he has been detained at EBRPP, Mr. Nourani has been the victim of multiple physical and sexual assaults and several incidents of discrimination and harassment based on his religion.

4. **Herbert Scully**

33. Plaintiff Herbert Scully was arrested on July 12, 2020, and brought to the EBRPP. He was unemployed at the time, having been unable to earn a steady income through work since

2018 due to a number of physical ailments, including a fractured pelvis. But for approximately $200 a month operating a lawn service in 2019, he had no income at the time of his arrest, and his only asset was his vehicle.

34. Mr. Scully appeared before Defendant Judge Tarvald Smith on the morning of July 13, 2020, for his callout hearing. Mr. Scully was not represented by counsel during the hearing. This hearing lasted one minute, during which Judge Smith informed Mr. Scully of his charges, the amount of his bail, and appointed the public defender to his case. In this minute-long hearing, seven seconds were devoted to bail—a secured bond of $30,750. Judge Smith did not ask if Mr. Scully could afford to pay that amount of money for his release. He did not inquire into Mr. Scully's income or expenses. He did not state why a nonfinancial condition of release would be insufficient to ensure a future appearance in court or the community's safety.

35. Mr. Scully cannot afford to pay this amount of money for his release, so he has been detained for the five months since his arrest. He will not be is arraigned until January 12, 2021. He has not yet spoken to a public defender. Mr. Scully has filed pro se motions for his release.

B. The Defendants' Policies and Practices

36. Plaintiffs are currently confined in the East Baton Rouge Parish Prison. They would be released immediately if they or someone acting on their behalves paid the bail money set by the Judicial Defendants at an amount that Plaintiffs cannot afford. They can afford neither to pay the full amount of their secured bail nor to pay a bondsman 12% of the face value to act as their surety.

37. As described more fully in the following paragraphs, the Judicial Defendants, Bail Bond Program Coordinator, and the Sheriff Defendants act according to shared customs, policies, and practices when determining conditions of pretrial release. Among these shared

customs, policies, and practices are a failure to inquire into an arrestee's ability to pay a secured financial condition of release (i.e., money bond) or to take that ability into account when determining conditions of pretrial release, failure to consider nonfinancial alternatives to secured financial conditions of release, failure to make findings in accordance with the proper evidentiary standards when issuing de facto orders of detention, and failure to provide adequate representation to indigent defendants during hearings on conditions of release. These shared practices violate the constitutional rights of Plaintiffs and the putative class members.

1. Arrest and Initial Financial Conditions

38. Louisiana law defines "bail"[3] to include "(1) Bail with a commercial surety[;] (2) Bail with a secured personal surety[;] (3) Bail with an unsecured personal surety[;] (4) Bail without surety[; and] (5) Bail with a cash deposit." La. Code. Crim. Proc. Ann. art. 321. The fifth option, also known as secured money bail, requires that the arrestee deposit money in order to be released; unsecured money bail (i.e., "Bail without surety") requires only that the arrestee promise to pay money if she violates conditions of release. In the 19th JDC, the initial conditions of release set by the Judicial Defendants for misdemeanors and most felonies are usually financial and almost always secured. This means that a person must, upon arrest, deposit money up front or leverage real property with the Sheriff or a commercial surety to be released while they await trial or a decision on whether their charge will be accepted for prosecution. Commercial sureties generally demand that the arrestee deposit 12% of the total money bail amount to obtain their pretrial freedom. La. R.S. § 22:1443.

39. In the 19th JDC, Personal Surety and Property Bonds are available only by

[3] "[B]ail," as defined by history, law, and practice, "is a mechanism for pretrial release and not for continued pretrial preventive detention." *ODonnell v. Harris Cty., Texas*, 251 F. Supp. 3d 1052, 1070 (S.D. Tex. 2017), *aff'd in part* 892 F.3d 147 (5th Cir. 2018).

application through the Bail Bond Program, which imposes a number of requirements not included in state law that functionally limit the availability of different forms of bond.

40. Property bonds must be secured via recording the bond against a property with sufficient equity.

41. Unsecured personal surety bonds may be applied for, but they are available only to first-time arrestees who are not charged with violent crimes, weapon offenses, or sex offenses. Furthermore, the person acting as surety must have been "employed full-time by the same company for at least 3 years" and be "free of ANY criminal history."

42. Louisiana law explicitly permits detention without bail of people found to be especially dangerous or likely to flee, regardless of the crimes with which those people are charged. La. Code Crim. Proc. Ann. art. 313(B). Those people may be detained only after "a contradictory hearing [and] . . . upon proof by clear and convincing evidence either that there is a substantial risk that the defendant might flee or that the defendant poses an imminent danger to any other person or the community." *Id.* Defendants do not conduct such hearings or find such evidence prior to issuing de facto orders of pretrial detention based on unaffordable amounts of money.

43. In accordance with a schedule set by the Judges, the Judges alternate on a weekly basis in fulfilling the role of Duty Judge. By operation of the local rule created by the Judges, the designated Duty Judge has jurisdiction to, among other things, "authorize all search and arrest warrants; [and] fix bail and appoint counsel when appropriate."

44. Judges may designate a Commissioner to preside as Duty Judge during their allotted week. References to "Duty Judge" in the ensuing paragraphs of this Complaint are intended to include Commissioners designated as Duty Judge.

45. When someone is arrested in East Baton Rouge Parish, she is brought to the EBRPP. The Sheriff and Warden are the chief officers of the jail and are responsible for overseeing all the people confined within it.

46. The Sheriff claims that EBRPP can hold over 1500 inmates and is staffed by 350 sheriff's deputies. As of December 14, 2020, there were 1,404 people detained in EBRPP. Approximately 81% of the people held in the Jail at any given time are presumed to be innocent and are awaiting trial.[4] The Sheriff and Warden hold these prisoners in deplorable conditions of confinement: the jail has a mortality rate that is over two times the national average, and the Sheriff Defendants have for years engaged in the practice of transferring hundreds of people arrested in East Baton Rouge to other parish jails across the state due to extreme overcrowding.

47. If someone is arrested on a warrant, the Duty Judge sets an initial secured financial condition of release when they approve the warrant. The Sheriff Defendants will release the person only if she or her surety can pay the amount set by the judicial officer. The Sheriff Defendants never release anyone who cannot meet the bail obligation imposed by the judicial officers.

48. If someone is arrested without a warrant, employees of the 19th JDC's Bail Bond Project under the direction of Defendant Howze are supposed to interview the arrestee at EBRPP and obtain basic information like name, address, family relations, employer, income, and whether the arrestee plans to hire an attorney. The Bail Bond Program employees would then record this information on a form and forward it to whichever Commissioner or Judge is acting

[4] Loop Capital Financial Consulting Services, *East Baton Rouge Parish: Justice Center Study – Final Report* 6 (June 30, 2016) ("The majority of the Prison's inmate population is unsentenced (81%)."), *available at* https://static1.squarespace.com/static/5b07033af79392c7df457840/t/5ba945fee2c483603e70055c/1537820159490/loop+report.pdf (last visited Dec. 13, 2020).

as Duty Judge for that week.

49. The Duty Judge determines whether there was probable cause to support the arrest and sets secured financial conditions of release over the phone or by other electronic means. As with arrests on warrants, the Sheriff Defendants will release a warrantless arrestee only if she or her surety can pay the amount of money set by the Duty Judge. The Sheriff Defendants never release anyone who cannot deposit the amount set either by the money bail schedule or the Duty Judge.

50. The Duty Judge sets these initial financial conditions of release without any inquiry into whether the arrestee can meet them and with no consideration of alternative, non-financial conditions. When imposing these conditions, the Duty Judge has not communicated with the arrestee and has no information about the arrestee's financial obligations (e.g., number of dependent children, monthly expenses) or their relative ability to afford a financial condition. Arrestees who cannot afford private lawyers are not represented by counsel at this stage. All arrestees at this point are presumed by law to be innocent, and most have not yet actually been charged with any crime by the prosecutor.

51. The Sheriff's Office collects and holds the deposited money bail sums.[5]

52. The Sheriff's Office never makes any inquiry into whether the person can pay the amount set by the Duty Judge.

2. Initial Appearance Policies

53. Arrestees do not see a judicial officer until their initial appearance. State law

[5] Pursuant to Louisiana law, the Sheriff deposits a percentage of each secured money bail into a fund controlled by the same judges who determine whether to require a secured money bond and, if so, what amount of money bond to require for release. The Sheriff deposits another portion of every money bond into an account used to fund the District Attorney's Office and into a separate account used to fund the Public Defender's Office.

mandates that this appearance happen within 72 hours of arrest, excluding Saturdays, Sundays, and legal holidays. La. Code Crim. Proc. Ann. art. 230.1(A). These appearances are referred to as "callouts" or, by the detainees, "tv court."

54. The Duty Judge presides over all callout hearings, which are held only Monday through Friday. Someone arrested on a Friday will not see a judicial official for at least two days.

55. Callout hearings are conducted by closed-circuit television: the Duty Judge normally presides from a small room in the Bail Bond Program's offices in the courthouse, while the arrestee is in a large room with other detainees at the jail.

56. Sheriff's Deputies are present in the jail at every callout hearing.

57. The Sheriff's Office gathers the most recent arrestees into a small room in the jail for the callout hearings. The arrestees wear jail-issued jumpsuits. They are called up to the camera one-by-one as the Duty Judge works through the docket.

58. Callout hearings are short in duration, many lasting approximately one minute or less. The Duty Judge generally asks the arrestee if her name, address, and date of birth are correctly listed on her arrest paperwork; states the charges against the arrestee; tells the arrestee her conditions of release—almost always a secured bond amount—and asks the arrestee if she can afford a lawyer. If the arrestee answers that she cannot afford a lawyer, the Duty Judge formally appoints a lawyer from the East Baton Rouge Office of the Public Defender. In some instances, the Duty Judge will make limited inquiries into a person's finances before deciding whether they are indigent for purposes of appointing counsel.

59. Duty judges generally do not permit argument on conditions of release at the callout hearings.

60. A public defender is present at EBRPP with the arrestees but is there only for the purposes of accepting appointment.

61. During the callout hearings, public defenders are not provided with an opportunity to confer with their new clients such that they could provide substantive argument against pretrial detention.

62. Although state law explicitly authorizes a Duty Judge to "review a prior determination of the amount of bail" at the callout hearing, La. Code Crim. Proc. art. 230.1(B), the Judicial Defendants' policy and practice is to rarely entertain arguments to either reduce secured financial conditions or impose unsecured or non-financial conditions of release at the callout hearings.

63. Even in the rare instances when argument on bail is allowed at a callout hearing, the Duty Judge makes no inquiry into an arrestee's ability to pay the bond amount in question, nor does the Duty Judge make findings, supported by clear and convincing evidence, that no other condition of release could ensure the arrestee's return to court or the safety of the community. In cases where limited financial information may have been elicited for appointment of counsel, the Duty Judge does not inquire into whether a person can afford the bond or make sufficient findings on the record based upon the information obtained.

64. When Defendant Commissioner Robinson serves as a Duty Judge, she instructs arrestees that she cannot reconsider a bail set prior to callout by a judge of the 19th JDC. For example, she presided over a callout hearing on June 26, 2020, in which she opened the proceeding with this admonishment: "Please do not ask me for a bond reduction or a sign-out bond. I cannot make any changes to Judge Anderson's bond. So save yourself the trouble and don't ask." This approach to setting bond at initial appearances was mirrored in Plaintiff Blaze

Franklin's experience.

65. The Judicial Defendants share a common practice and policy—written or unwritten—in the conduct of callout hearings, which includes: failure to consider ability to pay secured money bond, failure to consider whether nonfinancial alternative conditions of release could protect the government's interest in future appearances and community safety, issuing de facto orders of detention without the necessary procedural protections or substantive legal standards, and failure to provide adequate representation to indigent arrestees during the callout hearings.

66. The practices described above result in "hearings" that are inadequate forums to present arguments on conditions of release. Arrestees are unrepresented in this stage and only later may file pro se bond-reduction motions or hopefully obtain assistance of counsel. Many will not have substantive representation until their arraignment dates.

67. Defendant Judge Smith's callout hearing on July 13, 2020—during which he ordered that Plaintiff Scully be held on a $30,750 bail—is indicative of the Judicial Defendants' practices in callout hearings. Immediately preceding the hearing, Defendant Howze told Judge Smith that 23 people were on the docket that day. Judge Smith said, "Some of them I set. I recognize the first name here." Howze replied, "Oh yeah, most of them are set. It's just that you've got to tell them." As this exchange demonstrates, hearings are not conducted with an intent to determine an arrestee's flight risk or danger to the community or to otherwise elicit any information that would influence conditions of release. Rather, they are an assembly-line process in which a defendant states their name and date of birth, the judge informs them of their charges, announces a bond amount, and asks if they can afford an attorney before calling the next arrestee. Ms. Tabitha Daigle, who appeared before Judge Smith at the July 13 hearing asked,

"Can you lift the bond? Because I don't have any—." Judge Smith stopped her, saying, "No, I cannot lift your bond. Your bond is set at $11,500. I'll allow you to make a phone call to attempt to reach that bond. We're talking about two felonies here. No." Not only was there no inquiry into Ms. Daigle's ability to pay a secured bond, Judge Smith actively prevented her from providing such information. Further, Judge Smith provided no explanation of why $11,500 was a necessary condition for her release. At another point in the same hearing, arrestee Jason Bazille pointed out to Judge Smith that he had another charge for which Judge Smith needed to determine conditions of release. Judge Smith denied this and yelled at Mr. Bazille, "Shut up!" while Mr. Bazille politely tried to make his case. Judge Smith ultimately discovered a discrepancy in Mr. Bazille's paperwork from the Sheriff, proving Mr. Bazille right. Although Judge Smith apologized to Mr. Bazille, the exchange is indicative of arrestees' inability to advocate for conditions of pretrial release during these hearings.

68. Defendant Judge Ron Johnson's callout hearings follow the same general format and suffer from the same constitutional infirmities. Judge Johnson asks arrestees to provide their names and dates of birth and then he informs them of their charges, determines whether he will appoint the public defenders to the case, and then announces a bond amount. In the callout hearing Judge Johnson presided over on September 14, 2020, he informed Mr. Ashley Fisher that his bond for two charges of simple burglary and theft would be $20,000. Mr. Fisher asked, "Can I have a sign-out bond?" Judge Johnson replied, "Not on these charges!" He provided no further explanation of why a secured bond in that amount had to be a condition of Mr. Fisher's release and made no inquiry into his finances, risk of flight, or potential danger to the community. Mr. Fisher remains incarcerated as of this filing, although Judge Smith recently reduced his bail amount to $5,000.

69. Ms. Amy Robinson also appeared before Judge Johnson for a callout hearing on September 14, 2020. Judge Johnson informed her that she would need to pay a $5,500 bond as a condition of release for charges of possession of drug paraphernalia and a schedule I substance. Ms. Robinson, whose residence was listed as "homeless" on the affidavit of probable cause for her arrest, asked Judge Johnson, "Is there any way I can bond myself out?" "No, ma'am," Judge Johnson replied, "not for this." Ms. Robinson persisted, "So there's no way I can get—." Judge Johnson interrupted her and asked if she could afford to hire an attorney. Ms. Robinson responded that she could not, and Judge Johnson appointed the public defender while ordering that Ms. Robinson pay $40 for their representation. Ms. Robinson then asked, "I just wanted to see if I could get like an ROR or something that we can [inaudible]." Judge Johnson responded, "You cannot get an ROR on this charge, ma'am." Ms. Robinson ultimately remained in custody until The Bail Project paid her bond six weeks later on October 30th. On December 9, 2020, Ms. Robinson pleaded guilty to the paraphernalia charge, receiving a sentence of fifteen days with credit for time served; i.e., one-third of the time that she had actually spent imprisoned on an unaffordable secured bond.

70. Mr. Courtney Davis also appeared before Judge Johnson for a callout hearing on September 14, 2020, having been charged with unauthorized use of a motor vehicle and simple criminal damage to property. Before informing Mr. Davis of his charges or his bond, Judge Johnson asked Davis if he had been working prior to his arrest. Mr. Davis answered that he had not. Judge Johnson asked, "How do you support yourself?" Mr. Davis responded, "Family." Judge Johnson proceeded to impose a $7,000 bond and a protective order as conditions of release. He then appointed the public defender's office to Mr. Davis's case. There was no explanation of why a protective order alone would not have been sufficient, whether Mr. Davis

could afford to pay a $7,000 bond, or whether a secured bond was necessary to ensure his appearance at future hearings. Mr. Davis remained in custody for nine days before a commercial surety posted his bond.

71. On September 16th, Mr. Johnny Patterson appeared before Judge Johnson for a callout hearing. After Judge Johnson informed Mr. Patterson that he would have to pay a bond of $15,000 to be released while awaiting trial on two counts of simple criminal damage to property, Mr. Patterson asked why the bond was "so high over something so petty?" Judge Johnson replied, "Well, because of the nature of the allegations. I will consider a motion to reduce bond; once your attorney is enrolled, they can come to me and ask me to reduce the bond." Judge Johnson made no inquiry into Patterson's finances, whether he could pay that bail, or whether alternative conditions of release—such as the protective order and "criminal tracking service" that he also imposed—would have been sufficient conditions. On that same day, Judge Johnson ordered the release of one arrestee accused of shoplifting. Releases on recognizance are apparently such a rare occurrence, however, that Judge Johnson turned to Mr. Howze to ask, "Mr. Frank, where do I put that on this bond sheet?" Howze responded, "I just put it in here in big letters, 'ROR WAIVE FEES'."

72. Because they are present at all callout hearings, Sheriff's Deputies, under the authority of the Sheriff Defendants, know that Duty Judges do not consider ability to pay at the callout hearings.

3. Detention Following the Initial Appearance

73. After the callout hearing, an arrestee's only opportunity to modify her conditions of release is by filing a bail-modification motion. If the district attorney has not yet decided whether to prosecute the arrestee by formally charging her by bill of information or indictment, then the bail-modification motion is heard by the Duty Judge.

74. If charges have been initiated by the district attorney, the defendant's case will be assigned to a Division of Court and only that Division's Judge can preside over a bail-modification motion.

75. In the 19th JDC, cases are allotted to the Division and section of the Judge who was the Duty Judge on the day of the alleged incident for which the person was arrested.

76. Having a bond-reduction motion heard by a court can typically take a week or more. During that waiting period, the arrestee is confined in jail having had no opportunity to be heard concerning her ability to pay, circumstances weighing in favor of release, or alternative conditions of release (e.g., in-patient mental health or substance abuse treatment).

77. Absent a hearing on a bail-modification motion or a motion for a preliminary examination—which is available only for felony charges—an arrestee will not have an opportunity to challenge her conditions of release until charges are accepted or declined by the district attorney. Under Louisiana law, an arrestee may remain in custody for up to 45 days while awaiting the charging decision for a misdemeanor arrest and 60 days for a non-capital felony arrest.

78. When reconsidering conditions of confinement on a bail-modification motion or at any time following callouts, the Judicial Defendants use a shared, similarly deficient policy as they do when determining bail at callout: failure to consider ability to pay secured money bond, failure to consider whether nonfinancial alternative conditions of release could protect the government's interest in future appearances and community safety, and issuing de facto orders of detention without the necessary procedural protections or substantive legal standards.

79. People who cannot afford to pay predetermined amounts of money that have been set without considering their actual financial resources often spend months in jail awaiting the

disposition of their cases. They are all presumed innocent.

80. Many of the 1,400 people detained in EBRPP are pretrial and would be released immediately if they could deposit enough money.

C. Being Detained in EBRPP is Detrimental to One's Criminal Case and Life, Especially During the COVID-19 Pandemic

81. At the time of filing, COVID-19 continues to spread in East Baton Rouge Parish. According to the New York Times, there have been an average of 181 reported new cases daily in the parish over the last 7 days. According to the Sheriff, there have been at least 100 confirmed cases among prisoners in EBRPP, but the jail's lack of meaningful testing leaves no doubt that this number is grossly undercounted. As many as 41 East Baton Rouge Sheriff's deputies have been infected, and at least one has died.

82. The EBRPP is a dilapidated warehouse of caged humanity. The jail was built in 1965, with no substantive renovations since the 1980s. Even the parts of the facility that are not condemned are crumbling and decrepit. The buildings where people are housed are in terrible condition. The roof leaks, the walls and floors are filled with mold and rust, the showers and toilets are broken or bug-infested on many of the housing lines ("lines"), the windows are so dirty that detainees cannot see out of some of them, and rats have overrun some dorm areas, requiring detainees to sleep with their food to prevent it from being eaten by vermin. On some lines, the walls are streaked with blood and other bodily fluids. The bars on the housing lines are "gunked up with mold, juice, spit, and old food." In a recently filed case challenging the Jail's response to the COVID-19 pandemic, a medical expert who inspected the facility described it as the worst jail he had ever seen in his 16-year career and as bad as a jail that was 100 years old.

83. The East Baton Rouge Parish Prison is designed to hold 1,594 people. The majority—about 81%—of detainees confined in the jail are there pretrial. The jail also holds

individuals on work-release (both pretrial and post-conviction) and post-conviction detainees serving sentences with the Department of Corrections. Currently, the jail confines about 1,400 people. Individuals in the Sheriff's custody are also held in jails across the state, which serve as overflow facilities when the jail is overcapacity.

84. The jail has a long and ignoble history of medical issues and poor medical care, and it has one of the highest death rates—largely related to medical neglect—of all jails in the country. The jail is responsible for the wrongful deaths of numerous men and women.

85. For years, Baton Rouge policymakers have acknowledged that the old part of the jail—where COVID-19-positive detainees are confined—is unfit for the safe detention of people and the provision of health care. In 2015, Sheriff Gautreaux told the Parish's Metro Council the "old part of the prison is really in deplorable condition. We have issues with ventilation; with plumbing. Really it's laid out in the old way, that poses a problem from a safety standpoint for the safety of the inmates in the prison . . . ." He concluded that the current facility is "not adequate for providing health care" and admitted the "if [investigators from the federal Department of Justice] came in that prison today, they would shut half of it down." The Metro Council also heard that Dr. Rani Whitfield, who had worked in the jail for 16 years, witnessed a "significant decline in care to patients" due to underfunding and understaffing. Councilwoman Banks-Daniel presciently described the health care situation in the jail as "catastrophic."

86. An assessment of the jail's health care system by Health Management Associates ("HMA"), commissioned by the Baton Rouge Metro Council, confirmed that the health "care provided is episodic and inconsistent" and that only about 36% of the needed doctor positions were filled. HMA highlighted the jail's "notably deficient" physical plant and "inadequate medical units, dental suites, infirmary space, [and] . . . medical/MH screening space." HMA

concluded to the Metro Council that "[a]ny solution will be more expensive than the current system"; HMA believed that the Parish's investment in the jail's health care system would need to double from approximately five million in 2016 to ten million dollars. Rather than follow that advice, the City/Parish's "solution" was to outsource health care to a private, for-profit company, CorrectHealth. The total increase for the jail's health care budget when the City/Parish hired CorrectHealth was only 12%.

87. The result has been nothing short of catastrophic. CorrectHealth failed to increase staffing levels for health care workers at the jail; instead, the company decreased them. Not surprisingly, the death rate at the jail—which was already high compared to the national average—continued to climb under CorrectHealth's management and now far exceeds the national mortality rate.

88. During the pandemic, prisoners confined within the Jail are unable to take measures recommended by the CDC to protect themselves from the COVID-19 virus. They cannot socially distance, do not get sufficient cleaning or hygiene supplies, and are not subject to surveillance testing or other efforts to track the spread of the virus. Instead, jail staff test and treat only the sickest prisoners, most of whom are moved to punitive solitary confinement conditions in a part of the Jail that was condemned and closed before the pandemic.

89. Pretrial detention not only subjects community members to the unconscionable conditions in East Baton Rouge's jail, but also significantly impacts their personal lives and jeopardizes their legal defense. The collateral consequences of pretrial incarceration are severe: pretrial detainees routinely suffer losses in employment, child custody, and housing, and they experience greater risks of physical and emotional illness, barriers to counsel, and—critically—statistically worse trial and sentencing outcomes than released individuals who were charged

with the same offense.

90. This is despite compelling evidence that alternatives to monetary release conditions are more effective in ensuring appearance for trial and reduce the risk of re-arrest before trial.

91. It is well documented that pretrial incarceration harms individuals' lives far beyond their loss of liberty and the conditions they face in jails. Collateral consequences of pretrial incarceration include:

- Loss of income and wages when individuals lose their jobs because of their incarceration;
- Loss of housing and missed payments on bills because individuals cannot work or pay bills while incarcerated;
- Loss of physical and/or legal custody of children;
- An increase in mental illness symptoms because conditions in jail can put an individual under a lot of stress and restrict access to needed medications or non-medical support structures, exacerbating or even causing mental illness; and
- Increased risk of assault, including sexual assault, is shockingly common in jails, especially in the first few days of incarceration.

92. In addition, merely being detained pretrial can have a significant impact on the legal outcome of an individual's case. People who are being detained have a harder time preparing for their defense, gathering evidence and witnesses, and meeting with their lawyers. It is also well documented that individuals detained pretrial face worse outcomes at trial and sentencing than those released pretrial, even when charged with the same offenses.

93. Given the totality of circumstances during this pandemic, the horrifying conditions of confinement for pretrial detainees at the Jail, and the impact of pretrial detention on detained people, urgent action is necessary to stop the Defendants' unconstitutional wealth-based

detention scheme.[6]

CLASS ACTION ALLEGATIONS

94. The named Plaintiffs bring this action, on behalf of themselves and all others similarly situated, to assert the claims alleged in this Complaint on a common basis.

95. A class action is a superior means, and the only practicable means, by which the named Plaintiffs and unknown Class members can challenge the Defendants' unlawful wealth-based post-arrest detention scheme.

96. This case can be maintained as a class action under Federal Rules of Civil Procedure 23(a)(1)–(4) and 23(b)(2).

97. This action satisfies the numerosity, commonality, typicality, and adequacy requirements of those provisions.

98. The Plaintiffs propose the following Class seeking declaratory and injunctive relief: all individuals who are in the custody of the East Baton Rouge Sheriff's office after their arrest and who have been or will be subjected to the bail practices of the Judges and Commissioners of the 19th Judicial District Court.

A. Numerosity. Fed. R. Civ. P. 23(a)(1)

99. The proposed class is comprised of all individuals who are detained in the East Baton Rouge Parish Prison pre-trial and who receive determinations on their eligibility for bail from Baton Rouge's 19th Judicial District Court.

[6] Plaintiffs contemporaneously file a Motion for Temporary Restraining Order seeking the release of the named Plaintiffs and a preliminary injunction providing relief to the Plaintiff Class.

100. The East Baton Rouge Parish Prison holds over 1500 inmates at a time.[7] Approximately 81% of the people held in the Jail at any given time have not been convicted of the charges they were arrested for and are being held awaiting trial.[8] In 2019, 8,289 non-traffic criminal cases were filed in the 19th JDC.

101. As a result of the size of the facility and the high annual detention rate, the proposed Class—including future arrestees—numbers in the thousands of people. This is certainly sufficient to meet the numerosity requirement. *See Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (citing 1 *Newberg on Class Actions* § 3.05, at 3–25 (3d ed. 1992) for the proposition that a class of more than forty members "should raise a presumption that joinder is impracticable"). Given the projected size of this putative class, joinder is impracticable.

B. Commonality. Fed. R. Civ. P. 23(a)(2)

102. Common questions of law and fact exist as to all members of the Class. The Named Plaintiffs and the putative Class seek common declaratory and injunctive relief, including a determination as to whether the Defendants' policies, practices, and procedures violate the rights of the Class members and an order that the Defendants stop those illegal practices.

103. The common legal and factual questions arise from one central scheme and set of policies and practices: Defendants' post-arrest, procedurally deficient detention policies and procedures (or lack thereof), which they follow when imposing financial conditions of release

[7] *See* East Baton Rouge Sheriff's Office, "Parish Prison," https://www.ebrso.org/WHO-WE-ARE/Divisions/Parish-Prison (last visited Apr. 4, 2020).

[8] Loop Capital Financial Consulting Services, *East Baton Rouge Parish: Justice Center Study – Final Report* 6 (June 30, 2016) ("The majority of the Prison's inmate population is unsentenced (81%)."), *available at* https://static1.squarespace.com/static/5b07033af79392c7df457840/t/5ba945fee2c483603e70055c/1537820159490/loop+report.pdf (last visited Nov. 19, 2020).

and when detaining individuals. Defendants operate this scheme openly and in materially the same manner every day with respect to all individuals arrested and held in the East Baton Rouge Parish Prison. The material components of the scheme do not vary from Class member to Class member, and the resolution of these legal and factual issues will determine whether all members of the Class are entitled to the constitutional relief they seek.

104. Among the most important, but not the only, common questions of fact are:

- Whether the Judicial Defendants have a policy and/or practice of setting pretrial release conditions (including financial conditions) without process or a hearing as required under the United States Constitution and Louisiana law;
- Whether the Judicial Defendants have a policy and/or practice of refusing to conduct an inquiry into ability to pay prior to requiring secured financial conditions of release;
- Whether the Judicial Defendants have a policy and/or practice of routinely refusing to consider non-financial conditions of release;
- Whether the Judicial Defendants require secured financial conditions of release without making any findings that those conditions are the least restrictive conditions necessary to mitigate any particular risks identified;
- Whether the Judicial Defendants issue de facto orders of pretrial detention based on unattainable secured financial conditions of release without applying any applicable legal or evidentiary standard, let alone by clear and convincing evidence;
- The standards and factors used by the Judicial Defendants to set release conditions;
- Whether indigent arrestees have the opportunity to be represented by counsel in their initial appearance hearings;
- How long arrested individuals must wait in jail before they have an opportunity to challenge their pretrial release conditions (including financial conditions), raise their inability to pay for their release, and/or request alternative, non-monetary conditions; and
- The role of the Bail Bond Program in setting bail and conditions of release, whether any individualized analysis occurs, and whether and how inability to pay is considered;

- Whether the Sheriff Defendants have a policy or practice of detaining people on unconstitutional bail orders and refusing to release people unless they pay an amount of money to secure their release.

105. Among the most important common questions of law are:

- Whether requiring an individual to pay money to secure release from pretrial detention without an inquiry into or findings concerning the individual's present ability to pay the amount required, the need for detention, and less restrictive alternative release conditions violates the Fourteenth Amendment's Due Process and Equal Protection clauses;

- Whether it is unconstitutional to impose a monetary release condition—which would operate as a de facto order of pretrial detention because of a person's inability to pay—without complying with the substantive findings, legal standards, and procedures required for issuing and enforcing a de facto order of preventive detention; and

- Whether the setting of pretrial release conditions without an individual's ability to consult and be represented by Counsel violates the Fourteenth Amendment's Due Process clause.

C. Typicality. Fed. R. Civ. P. 23(a)(3)

106. The named Plaintiffs' claims are typical of the claims of the other members of the Class, and they have the same interests in this case as all other members of the putative Class. Each of them suffers injuries from the Defendants' failure to comply with basic constitutional provisions: they each face confinement in jail because they could not afford to pay Defendants' required bond amount and because they received a constitutionally deficient bail hearing. The answer to whether Defendants' policies and practices are unconstitutional will determine the claims of the named Plaintiffs and every other Class member.

107. All Class members seek the same declaratory and injunctive relief. If the named Plaintiffs succeed in their claims that the Defendants' policies and practices for post-arrest detention violate their constitutional rights, that ruling will benefit every other member of the Class.

D. Adequacy. Fed. R. Civ. P. 23(a)(4)

108. The named Plaintiffs are adequate representatives of the Class because their interests in the vindication of the legal claims they raise are entirely aligned with the interests of the other Class members, who each have the same constitutional claims. The named Plaintiffs are members of the putative Class, and their interests coincide with and do not conflict with those of the other Class members.

109. There are no known conflicts of interest among members of the putative Class, all of whom have a similar interest in vindicating their constitutional rights in the face of Defendants' unlawful policies and procedures.

110. Plaintiffs are represented by attorneys from the Roderick & Solange MacArthur Justice Center ("MacArthur Justice Center"),[9] Advancement Project,[10] and the Fair Fight Initiative,[11] who have experience litigating complex civil rights matters in federal court and knowledge of both the details of the Defendants' policies and practices and the relevant

[9] Lead Counsel MacArthur Justice Center is a non-profit public interest law firm. Undersigned counsel Eric Foley is an attorney at the MacArthur Justice Center and has practiced law in Louisiana for nine years, litigating a variety of complex civil matters in state and federal court, including class action cases and challenges to pretrial detention throughout Louisiana. *See Moran v. Landrum-Johnson*, No. 2:19-cv-13553 (E.D. La. filed Nov. 11, 2019); *Caliste v. Cantrell*, No. 2:17-cv-6197 (E.D. La filed June 27, 2017); *Little v. Frederick*, 6:17-cv-724 (W.D. La. filed June 5, 2017); *Snow v. Lambert*, 3:15-cv-567 (M.D. La. filed Aug. 25, 2015). Undersigned counsel Hannah Lommers-Johnson is an attorney at the MacArthur Justice Center and has practiced law in Louisiana for 7 years, litigating criminal defense cases as well as civil matters in both state and federal court.

[10] The Advancement Project is a non-profit in Washington, DC. The undersigned members are part of the Justice Project, which focuses on mass incarceration and policing issues in our criminal legal system. Thomas Harvey, project director of Justice Project, has litigated complex federal class action lawsuits for over a decade in his current role and previously as the Founder and Executive Director of ArchCity Defenders in St. Louis. Miriam Nemeth, a senior staff attorney, has over a decade of litigation experience as well, including lawsuits arising under 42 U.S.C. § 1983 and complex class actions. Both Mr. Harvey and Ms. Nemeth are currently involved in litigation challenging bail practices in another jurisdiction. *See Dixon v. City of St. Louis*, E.D. Mo. No. 4:19-cv-00112 (filed Jan. 28, 2019). Staff Attorney Tiffany Yang has over five years of litigation experience that includes complex civil rights class actions and appeals.

[11] The Fair Fight Initiative ("FFI") is a non-profit in Savannah, GA. Executive Director David Utter has over 30 years of civil rights class action litigation experience, starting with the Southern Center for Human Rights in Atlanta, GA. Through litigation and community advocacy, FFI works to expose abuse within law enforcement, including jails and prisons, and end mass incarceration. Undersigned counsel William Claiborne, Scott Robichaux, and Jacob Longman are attorneys with extensive litigation experience.

constitutional and statutory law. Putative Class counsel also have experience litigating similar challenges in other jurisdictions.

111. The combined efforts of putative Class counsel have so far included investigation of Defendants' money-based pretrial detention system, including observing court and speaking with regular court observers, witnesses, and community members; interviews with jail detainees and attorneys practicing in the area; consultation with local and national experts; and research regarding the legality of Defendants' bail and pretrial detention practices. Putative Class counsel have studied the way that post-arrest detention systems function in other cities and counties in order to investigate the wide array of lawful options in practice for municipal entities.

112. As a result, counsel have undertaken significant efforts toward becoming familiar with the Defendants' policies and practices and with all the relevant state and federal laws and procedures than can and should govern it. The interests of the members of the Class will be fairly and adequately protected by the Named Plaintiffs and their attorneys.

E. Rule 23(b)(2)

113. Class action status is appropriate because Defendants, through the policies, practices, and procedures that make up their post-arrest money-based release and detention system, act and have acted in the same unconstitutional manner with respect to all Class members.

114. The Class therefore seeks declaratory relief, requesting that this Court find that Defendants' current processes and practices relating to conditions of pretrial release in the 19th Judicial District Court violate individuals' rights.

115. The Class also seeks injunctive relief to institute a constitutional custody process and to prevent Defendants from detaining individuals pretrial who have not been afforded this process and who thus remain incarcerated due to their inability to pay their bail and/or

Defendants' failure to consider less restrictive pretrial release conditions.

116. Because the putative Class challenges Defendants' scheme as unconstitutional through declaratory and injunctive relief that would apply the same relief to every member of the Class, Rule 23(b)(2) certification is appropriate and necessary.

CLAIMS FOR RELIEF

Count I
42 U.S.C. § 1983 – Violation of the Fourteenth Amendment Substantive Due Process and Equal Protection On Behalf of Plaintiffs and the Putative Class, against All Defendants

117. Plaintiffs incorporate by reference the allegations in paragraphs 1–116.

118. The Fourteenth Amendment's Due Process and Equal Protection clauses have long prohibited jailing a person because of her inability to make a monetary payment.

119. Defendants, acting under color of law, deny pretrial detainees their constitutionally protected right to liberty without any compelling state interest. The State's interest at the pretrial-conditions-of-release stage is limited to ensuring that the accused will appear for trial and protecting the public from danger associated specifically with that individual's release, yet the Judicial Defendants fail to consider a particular detainee's likelihood to appear or whether that individual poses any danger to the community, and make no findings regarding the necessity of detention, before setting de facto detention orders through imposition of unaffordable monetary conditions of release. The Sheriff enforces these unconstitutional detention orders. Thus, Defendants deny pretrial detainees their fundamental rights to liberty in the absence of any compelling government interest and in violation of their substantive due process rights.

120. Defendants' policies and practices result in arrestees who are poor being detained until trial when similarly situated wealthy arrestees are released, in violation of the Fourteenth

Amendment's Equal Protection Clause. The Sheriff and Warden enforce these unconstitutional detention orders. Thus, Defendants deny individuals their equal protection rights.

Count II
42 U.S.C. § 1983 – Violation of the Fourteenth Amendment
Procedural Due Process
On Behalf of Plaintiffs and the Putative Class, against All Defendants

121. Plaintiffs incorporate by reference the allegations in paragraphs 1–116.

122. An individual's liberty interests in pretrial freedom and against wealth-based detention require that certain procedural protections precede the issuance of pretrial detention orders. These protections include: notice; an inquiry into ability to pay; an adversarial hearing at which the arrestee is represented by counsel and has an opportunity to be heard, to present evidence, and to confront evidence offered by the government; an impartial decision-maker; and findings on the record by clear and convincing evidence that pretrial detention is necessary to serve a specific government interest.

123. The Judicial Defendants fail to provide: sufficient notice to arrestees that a hearing will occur; notice of the importance of inquiry into the ability to pay, potential flight risk, and danger to the community at the hearing and thus inquiry into that individual's pretrial liberty; an opportunity to present their own and confront the government's evidence; findings on the necessity of detention that meet the clear-and-convincing evidence standard; and adequate assistance of counsel. Because of these failures collectively and individually, Sheriff Gautreaux deprives arrestees of liberty under unconstitutional detention orders.

Count III
42 U.S.C. § 1983 – Violation of the Sixth Amendment
On Behalf of Plaintiffs and the Putative Class, against Judicial Defendants

124. Plaintiffs incorporate by reference the allegations in paragraphs 1–116.

125. For those arrestees who cannot afford private counsel, the Sixth Amendment

requires the government to provide counsel at critical stages of criminal proceedings, including where substantial rights of the accused may be affected or significant consequences are at stake. There are few rights more substantial than freedom or consequences more significant than imprisonment for any period of time, particularly while presumed innocent.

126. Defendants first appoint counsel to indigent arrestees at callout hearings, but the failure to allow those counsel to make substantive arguments prior to the order of detention is a constructive denial of counsel.

REQUEST FOR RELIEF

127. WHEREFORE, Plaintiffs and putative Class members request that this Court issue the following relief:

A. A declaratory judgment that Defendants violate the named Plaintiffs' and Class members' constitutional rights by issuing detention orders without due process;

B. A declaratory judgment that Defendants violate the named Plaintiffs' and Class members' constitutional rights by operating a system of wealth-based detention that keeps them in jail because they cannot afford to pay monetary conditions of release without an inquiry into or findings concerning ability to pay, without consideration of non-financial alternatives, and without findings that a particular release condition—or pretrial detention—is necessary to meet a compelling government interest;

C. A declaratory judgment that when the Judicial Defendants are determining conditions of release, an individualized determination on release conditions must occur promptly and incorporate the following procedures:

- Defendants must provide notice to the individual arrested that financial information will be collected and must explain the significance of the financial information to be collected;

- Defendants must determine each individual's ability to pay money bail and the amount of money bail they can afford;

- The individual arrested must be given an opportunity to be heard at the first opportunity concerning their ability to afford money bail and what nonmonetary release conditions, if any, are necessary. The individual must have the opportunity to present evidence, make argument concerning those issues, and contest any evidence or argument offered by the government concerning those issues;

- The judge conducting the hearing must make substantive findings on the record about why an individual's continued incarceration is warranted and that no less restrictive alternatives to detention address the state's concerns; and

- The individual must be provided free counsel at the hearing;

D. A declaratory judgment that the Sheriff and Warden must not enforce any order requiring a monetary release condition that was imposed prior to an individualized hearing and that is not accompanied by a record showing that the procedures and findings described above were provided;

E. An order permanently enjoining Defendants from operating and enforcing a system of wealth-based detention that keeps the named Plaintiffs and putative Class members in jail because they cannot afford a monetary release condition without an inquiry into or findings concerning ability to pay, without consideration of non-financial alternatives, and without any findings that a particular release condition—or pretrial detention—is necessary to meet a compelling government interest;

F. An order permanently enjoining Defendants from operating and enforcing pretrial detention without constitutionally valid process that complies with the above outlined procedures;

G. A temporary restraining order requiring the Sheriff to release the Named Plaintiffs unless they are provided the procedures stated above;

H. An order enjoining the Sheriff to release class members who are currently detained on financial conditions of release previously imposed by the Judicial Defendants unless the Judicial Defendants immediately conduct rehearings that provide adequate notice of the rights at stake; an inquiry into ability to pay; an adversarial hearing at which the arrestee is represented by counsel and has an opportunity to be heard, to present evidence, and to confront evidence offered by the government; and findings on the record by clear and convincing evidence that pretrial detention is necessary to serve a specific government interest.

I. Declaratory and injunctive relief directing Defendant Howze to cease the use of arbitrary financial and employment criteria as conditions of obtaining release through personal surety and property bonds.

J. Any other order and judgment this Court deems necessary to permanently enjoin Defendants from implementing and enforcing a system of wealth-based pretrial detention that keeps arrestees in jail because they cannot afford a monetary release condition without an inquiry into or findings concerning ability to pay, without consideration of non-financial alternatives, and without any findings that a particular release condition—or pretrial detention—is necessary to meet a compelling government interest;

K. An order certifying the class defined above; and

L. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42

U.S.C. § 1988; and

M. Any other relief this Court deems just and proper.

Respectfully submitted,

/s/ Eric A. Foley
Eric A. Foley, La. Bar No. 34199*
Hannah Lommers-Johnson, La. Bar No 34944
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org
hannah.lommersjohnson@macarthurjustice.org

/s/ Miriam R. Nemeth
Miriam R. Nemeth, D.C. Bar No. 1028529**
Tiffany Yang, D.C. Bar No. 230836**
Thomas B. Harvey, Mo. Bar No. 61734**
Advancement Project
1220 L Street NW #850
Washington, DC 20005
Phone: (202) 728-9557
Fax: (202) 728-9558
mnemeth@advancementproject.org
tyang@advancementproject.org
tharvey@advancementproject.org

/s/ David J. Utter
David J. Utter, La. Bar No. 23236
William R. Claiborne, Ga. Bar No. 126363**
Scott Robichaux, Ga. Bar No. 806198**
Jacob Longman, La. Bar No. 38042
Fair Fight Initiative
410 East Bay Street
Savannah, Georgia 31401
Phone: (912) 236-9559
Fax: (912) 236-1884
david@fairfightinitiative.org
will@fairfightinitiative.org
scott@claibornefirm.com
jlongman@ljlaw.org

**Lead Attorney for Plaintiffs*
***pro hac vice applications forthcoming*

Attorneys for Plaintiffs