**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

**COLUMBIA DIVISION**

| | | |
|---|---|---|
| Twanda Marshinda Brown, et al,<br><br>Plaintiffs,<br><br>v.<br><br>Lexington County, South Carolina, et al.,<br>Defendants. | ) | Civil Action No. 3:17-1426-MBS<br><br><br><br>**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** |

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## INTRODUCTION

This action was filed in 2017. Plaintiffs sought prospective and monetary relief in cases involving the "arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees." Second Amended Complaint ("SAC"), ECF No. 48 at 120 (Prayer for Relief, second bullet point). They alleged that the matters of which they complained were the result of "administrative policies" at the county level.

Plaintiffs asserted that they needed a chance to take discovery in order to prove their claims. Because the case was in mediation for almost two years, discovery was stayed until the summer of 2020. Now, however, Plaintiffs have reviewed approximately 29,000 documents produced by Defendants (*see* ECF No. 270 at 2).[1] They have also taken all the depositions they wished to take, including the depositions of all named individual Defendants.

The actions at the root of Plaintiffs' claims occurred in cases where Plaintiffs were convicted and sentenced to jail, but given the option to pay fines instead. Those Plaintiffs who appeared at their case hearings (only three of the seven named Plaintiffs) were further permitted to pay their fines in monthly installments. After they failed to pay those installments on time, the magistrates, usually after there had been no payments for several months, reviewed their case files. In some instances, some of the Plaintiffs were given the opportunity to appear before the sentencing magistrate to show cause why they should not be incarcerated pursuant to the original jail sentence. If they did not appear, or did not show sufficient cause for nonpayment, the magistrates issued bench warrants for their arrest and incarceration. The bench warrants were typically not served until several weeks or months later. In the meantime, or even after they were

[1] While this large number of documents met the broad search term criteria proposed by Plaintiffs, the vast majority of the produced documents were not actually relevant to any issue in the case.

arrested, the nonpaying defendants still had the opportunity either (a) to make additional arrangements to resume paying, or (b), if arrested, to reduce their jail time by paying the remaining unpaid amounts of their fines.

The extensive discovery in which Plaintiffs engaged has shown that these procedures were not followed as a result of any "policy" set by anyone in Lexington County, but rather were the result of the use of forms authorized by South Carolina Court Administration, the administrative arm of the Chief Justice of South Carolina. The actions of which Plaintiffs complain were effectuated by the use of Court Administration bench warrant forms specifically permitting the commitment to jail of persons in the situations described above who did not make timely payments.

In September 2017, Chief Justice Beatty issued a Memorandum ("Beatty Memorandum"), applicable statewide, directing county magistrates and other summary court judges not to order incarcerations in the absence of an appointment of counsel or a knowing waiver of counsel. Not long thereafter, Court Administration provided the summary court judges with detailed instructions and a series of new or replacement forms to assist the judges in putting the terms of the Memorandum into operation. (Those changes are generally referred to herein as the "2017-2018 changes.")[2]

Those actions by the Chief Justice and Court Administration profoundly changed the factual scenario of this case from the situation that had been in effect when this case was filed in June 2017. Discovery has shown that the Lexington County magistrates, presumably like others elsewhere in the State, hastened to comply with the terms of the Beatty Memorandum, and that

[2] The changes began to be effectuated as early as September 2017, and were largely or completely effectuated in Lexington County no later than early November 2017. For ease of reference, the period before the changes took effect will be referenced as the "pre-2018" period, even though the changes had been put in place by November 2017.

they have complied with the 2107-2018 changes ever since. Discovery did not disclose any reason to believe that the Chief Justice would abandon the 2017-2018 changes at some point in the future. Even if he were so inclined, he is not a party to this case. Plaintiffs' claims for prospective relief have thus been rendered moot by the actions of others who are not parties to this case.

The 2017-2018 changes also removed any concerns about the need to provide counsel for persons arrested and incarcerated under the pre-2018 procedures. This now-discontinued factual situation was the only one in which Plaintiffs sought relief related to the right to counsel, but Plaintiffs cannot show that such arrests and incarcerations are still occurring. In the absence of such arrests and incarcerations, the issue of availability of counsel for indigents prior to such arrests and incarcerations simply does not arise. Nor is there any remaining question about the actions of the Sheriff's Department when such arrests occur, again, because such arrests do not occur.

Finally, the claim for damages also fails. It was based on Plaintiffs' allegation that "administrative policies" at the county level were the cause of harm to them. Again, however, the magistrates' actions in the pre-2018 period were performed using statewide forms authorized by Court Administration, and did not result from any directives specific to Lexington County. And even if those statewide forms reflected an erroneous view of constitutional requirements (a point that need not be reached), it is not reasonable to expect the Defendants to have disputed Court Administration's authorization of the pre-2018 procedures.

For these reasons, discussed in detail below, Defendants have moved for an order granting summary judgment in their favor and dismissing this case in its entirety.

## PROCEDURAL HISTORY

This action was filed on June 1, 2017. All Defendants thereafter answered and moved for summary judgment on all claims. This Court denied those motions in 2018, holding that additional discovery and factual development were necessary. ECF No. 84 at 28, 29.

Shortly after the entry of that order, the Court ordered on August 9, 2018, that the parties mediate the case. ECF No. 109 (text order). After some discussion by the Court and the parties about the possibility of having Judge Duffy serve as mediator in this case as well as in *Bairefoot v. City of Beaufort*, Civil Action No. 9:17-2759-RMG, the Court on October 19, 2018, appointed Magistrate Judge Shiva Hodges to serve as the mediator. ECF No. 113. Mediation efforts began shortly thereafter with an in-person session in Columbia on November 14, 2018. ECF No. 120.

During this same timeframe, all Defendants appealed this court's decisions denying, without prejudice, Defendants' motions for summary judgment on the damage claims, and holding that discovery should proceed. On January 23, 2019, the Fourth Circuit dismissed the appeal as involving a nonappealable interlocutory decision. *Brown v. Reinhart*, 760 Fed. Appx. 175 (4th Cir. 2019). The Fourth Circuit held that "the district court correctly determined that whether Defendants are immune from suit is a fact-intensive inquiry that will turn on the record as it develops at least through discovery." *Id.* at 179. Emphasizing the preliminary posture of the case, the Fourth Circuit further held that

> At the same time, we emphasize our recognition of the importance of immunity from suit. And because we lack jurisdiction over the appeal, this opinion does not address Defendants' arguments on the merits as to the asserted immunities, nor does it foreclose the possibility that Defendants may be successful in so arguing following discovery on this issue.

*Id.* at 180. Judge Wilkinson, concurring in the dismissal of the appeal, nevertheless recognized the possibility that even if the alleged policies actually existed, they might not suffice to defeat judicial immunity:

> I am not convinced that the distinction between what is an administrative action on the one hand and a judicial action on the other rests solely on the matter of whether the challenged action is a "policy." A policy, written or unwritten, can bear so directly on the judicial function and be so intertwined with judicial duties that absolute judicial immunity will attach. While internal personnel actions are a classic example of an administrative proceeding, *see Forrester v. White*, 484 U.S. 219 (1988), policies affecting outside parties in court proceedings are much more likely to be judicial. They are not, after all, "acts that simply happen to have been done by judges." *Id*. at 227. Further factual development in this case may shed light on how the alleged policies here, if they existed at all, can be characterized.

*Id.* at 181 (emphases added).

Following the November 2018 in-person mediation session, and continuing through the spring of 2020, there were a number of mediation-related telephone conferences involving Magistrate Judge Hodges and counsel for both sides. *See generally*, ECF Nos. 121-155. There were also a number of written documents exchanged during the mediation process. However, Magistrate Judge Hodges declared an impasse in late June 2020.

The Court had stayed discovery during the mediation process. Discovery recommenced in late August 2020, when Plaintiffs' counsel renewed some, but not all, of the discovery requests they had served earlier in the litigation.[3] Discovery proceeded from then until early May 2021, when a discovery dispute arose near the then-scheduled end of the discovery period. Both parties filed discovery-related motions, which were resolved in an Order issued on July 14, 2021. ECF No. 255. In that Order, the Court required Defendants to produce certain documents that had been withheld on the grounds of asserted privileges for intra-judicial communications. The Order further provided that "Defendants shall additionally undertake a search of their emails and files for responsive documents, with the assistance of keywords Plaintiffs' counsel provide." *Id.* at 28.

[3] During the mediation process, Defendants provided Plaintiffs with a substantial amount of information sought by Plaintiffs.

The parties thereafter worked cooperatively. It was anticipated that such keyword-based searches would not take very long. However, the keywords (or in some instances lists of senders and recipients but without keyword limits) provided by Plaintiffs' counsel for the email searches were often very broad, initially resulting in an initial total of over 500,000 hits.[4] That number was significantly reduced after discussions among the parties, but in the end, Defendants still produced approximately 29,000 documents. *See* ECF No. 270 at 2.

During a period of over four months, defense counsel reviewed not only the documents actually produced, but also many thousands more, which met the search terms, but were not actually responsive to Plaintiffs' discovery requests. This large volume of documents that needed review led to the parties jointly filing a number of status reports every two weeks between August and November 2021. Once it appeared that the document production was close to completion, the parties moved for a Fourth Amended Scheduling Order, which the Court issued on November 22, 2021. ECF No. 272.

After the document production was complete, Plaintiffs concluded the remaining depositions that had been scheduled earlier. The present Motion for Summary Judgment is being filed on the due date (April 11, 2022) set for dispositive motions in the Fourth Amended Scheduling Order.

[4] To cite just one example of many of how a keyword search could produce so many results, one search term was "recall," and was directed toward recalls of bench warrants. However, many emails contained the phrase "as I recall," which led to many irrelevant hits. Plaintiffs also requested all emails between certain groups of persons, with no keyword limitation, which substantially increased the number of emails that needed to be reviewed.

## FACTS

The 122-page Second Amended Complaint ("SAC"), ECF No. 48, sets forth the factual situation of each individual Plaintiff in considerable, detail, but in the process, it obscures the relatively few pertinent and operative facts about those individuals' magistrate court cases. Those operative facts have either been admitted by Plaintiffs, or are otherwise uncontested facts that appear in the SAC or in their case records. Those simple facts are set forth herein, but the logical starting point for the factual narrative of this case is the state statute pertaining to ability-to-pay hearings.

### 1. South Carolina law pertaining to ability-to-pay hearings.

Plaintiffs asserted when this action was filed in 2017 that they and others were arrested and incarcerated "for nonpayment of court fines and fees without pre-deprivation ability-to-pay hearings. . . ." SAC 5, ¶ 10. The SAC conspicuously omits reference to S.C. Code Ann. § 17-25-350, a 1973 enactment which not only permits, but in fact requires, the courts of South Carolina to establish payment plans for indigents who appear in court and make a showing of indigency. That statute, overlooked or ignored by Plaintiffs, provides as follows:

> In any offense carrying a fine or imprisonment, the judge or magistrate hearing the case **shall**, upon a decision of guilty of the accused being determined and it being established that he is indigent at that time, set up a reasonable payment schedule for the payment of such fine, taking into consideration the income, dependents and necessities of life of the individual. Such payments shall be made to the magistrate or clerk of court as the case may be until such fine is paid in full. Failure to comply with the payment schedule shall constitute contempt of court; however, imprisonment for contempt may not exceed the amount of time of the original sentence, and where part of the fine has been paid the imprisonment cannot exceed the remaining pro rata portion of the sentence.
>
> No person found to be indigent shall be imprisoned because of inability to pay the fine in full at the time of conviction.

> Entitlement to free counsel shall not be determinative as to defendant's indigency.

(Emphases added.)

The SAC repeatedly asserts that Plaintiffs "could not afford" to pay magistrate court fines and fees." *See, e.g.,* SAC at 2, ¶ 2. However, as will be shown below, it is undisputed that four of the seven named Plaintiffs never appeared in court to make a showing of indigency at the time they were convicted. As for the three named Plaintiffs who did appear, all three were sentenced to jail terms, suspended upon the payment of fines that were payable on monthly time payment plans established at the time of their sentences. They were arrested and incarcerated only after they failed to make the scheduled time payments, and the cases of Plaintiffs Brown and Darby, failed to contact the magistrates' court, after they ceased to continue making payments.

**2. Summary of the facts concerning the individual Plaintiffs.[5]**

The relevant facts pertaining to the state criminal cases of the named Plaintiffs are summarized below. Six of the seven Plaintiffs were convicted between April and November 2016 of offenses triable in the Magistrates' Courts. The conviction of the seventh Plaintiff, Nora Corder, came several months later, but was otherwise similar.

- Four of the seven Plaintiffs (Goodwin, Corder, Johnson and Palacios) did not appear on their scheduled trial date, and therefore were tried and convicted in their absence.

[5] Despite its length, the Second Amended Complaint omits many relevant facts, and erroneously states a number of other facts. However, for the most part, those inaccuracies are not material to the issues before the Court at present, so they are not discussed in any detail herein. If Plaintiffs attempt to rely on demonstrably inaccurate facts, Defendants will call attention to any such inaccuracies.

- The other three Plaintiffs (Brown, Darby and Wright) did appear; Ms. Brown and Mr. Wright pled guilty, and Ms. Darby was tried and found guilty.
- All seven Plaintiffs were sentenced to jail terms, suspended on the payment of a fine.
- The three Plaintiffs who appeared in court were given monthly payment plans to assist them in satisfying their obligation to pay fines.

Before discussing the details of the convictions of which those three Plaintiffs complain, that is, their most recent convictions at the time this action was filed, it is informative to provide some context. The Affidavit of Edward Lewis, Exhibit 8 and its attachments, sets forth the prior criminal history of the three Plaintiffs who actually appeared at their original case hearings. Plaintiffs Wright and Brown had had a considerable amount of experience with criminal and traffic cases, dating back many years. *Id.* Plaintiff Darby did not have the same high volume of prior cases as the other two, but only days before the 2016 case on which her present claims are based, she had just finished making time payments for a 2015 conviction of the same offence (third degree assault and battery) before the same judge (Adams) and with a similar sentence. Ex. 8, ¶ 4(c) and Ex. A to Ex. 8.

This information about Plaintiffs' prior history is relevant to show their familiarity with the criminal justice system. Throughout the SAC, Plaintiffs attempt to that they were unaware, through no fault of their own, of their right to counsel and of the implications of their actions or inactions in their cases. However, the Fourth Circuit has held that "Whether a waiver of the right to counsel was knowing and intelligent is determined by an examination of the totality of the circumstances surrounding the waiver . . . [including] familiarity with the criminal justice system"). *Poyner v. Murray*, 964 F.2d 1404, 1413-14 (4th Cir.), cert. denied, 506 U.S. 958

(1992)(emphasis added). *See also, e.g., Jenkins v. Leonardo,* 991 F.2d 1033, 1039 (2d Cir. 1993)(waiver of right to counsel was valid when defendant was "no stranger to the criminal justice system") [6]

The details of these three Plaintiffs' complained-of convictions were as follows:[7]

- Plaintiff **Raymond Wright, Jr.** was appeared in court on July 26, 2016 and pled guilty to for Driving Under Suspension. As indicated by Exhibit B to the Lewis Declaration, Ex. 8, this was at least his fifteenth arrest in Lexington County alone. He was convicted and was sentenced to 30 days in jail, suspended upon payment of $666.93 in installments of $50/month. He initially made some of the payments, but after no more payments had been made for over 4 months, the court sent him a letter in April 2017, resulting in his appearance in court on April 19, 2017. SAC, ¶ 373. At that time, his unpaid balance was $416.93. At the hearing, he was ordered to pay $100.00 within 9 days, presumably in lieu of additional action. Ex. 1, p. 4. He did not make that payment. Although his prorated jail time would have been 19 days, the judge reduced it to 10 days, and issued a bench warrant for the payment of the outstanding balance of $416.93 or the service of 10 days in jail, reduced from 19. He served 7 days and was released from incarceration.
- Plaintiff **Sasha Darby** was tried and convicted of third degree assault and battery. She was sentenced 30 days in jail, suspended upon the payment of a fine of $1,000, of which she paid $170 on the date of her conviction. She agreed to the pay the remaining amount of $830 in five installments of $150 per month, with a final installment of $80.

[6] The criminal histories of the other four Plaintiffs are not set forth in detail, given that they presumably waived their rights to damages by not appearing for the original hearings in their cases.

[7] Unless otherwise noted, these facts about these three Plaintiffs appear in Exhibits 1, 2 and 3, the case documents for the cases of which they complain.

After she failed to make the second $150 payment, which was due on October 23, 2016, a Rule to Show Cause was issued by the magistrate on November 8, 2016, using another Court Administration form, MC 19. Ex. 3. It was mailed to the address on her court summons/Uniform Traffic Ticket, notifying her of a hearing on December 6, 2016 to determine whether she should be held in contempt of court and a bench warrant issued for her arrest.[8] She failed to appear at that hearing. As a result, the magistrate issued a bench warrant on December 8, 2016. It was served on or about March 28, 2017. Plaintiff Darby served 20 days and then was released. SAC at 52, ¶ 215.

- Plaintiff **Twanda Brown** appeared in court on April 12, 2016, where she pled guilty to the charges of DUS, 2nd offense, and driving with no tag light. As shown in the Edward Lewis affidavit and its attachments, this was only the latest of over 15 entanglements of Ms. Brown with the criminal justice system, dating back to 2002. She was sentenced to pay a fine of $2,163, payable in installments of $100 per month, starting on August 12, 2016, and following completion of another scheduled time payment plan that she satisfied on July 12, 2016. After an initial payment of $55.37, followed by two more payments of $100 each, she made no more payments after October 4, 2016. Approximately three months later, on January 12, 2017, the magistrate issued a bench warrant. There is no evidence indicating that Ms. Brown, at any time in the months that followed that last payment, made any effort to contact the court to discuss the months of arrearages that had started in early

[8] Specifically, the Rule to Show Cause advised that "TO AVOID ISSUANCE OF THIS BENCH WARRANT, YOU MUST 1) PAY IN FULL $680.00 OR 2) SURRENDER YOURSELF TO THE COURT PRIOR TO THE SCHEDULED COURT DATE AND TIME OR 3) BE PRESENT FOR THE HEARING AS SCHEDULED ABOVE. Ex. 3.

October 2016.[9] The bench warrant was served in Richland County on February 18, 2017. She was incarcerated for a total of 57 days of her 90-day sentence. SAC at 46, ¶ 171.

The three Plaintiffs who appeared in their cases all received time payment plans. Each such individual signed a "Scheduled Time Payment Agreement" on another form promulgated by South Carolina Court Administration, Form MC15. *See* Exhibits 1, 2 and 3. Each such form contained information about the conviction and fine, along with the schedule for the payments, by date and amount. Near the bottom of each form, just above the defendant's signature line, was the following language:

> I certify that all the foregoing information is true and I fully understand and accept the conditions of this payment schedule. Failure to appear as directed or failure to comply with the terms set forth in this payment schedule will result in a BENCH WARRANT/COMMITMENT being issued for my arrest and denial of any future requests for a scheduled time payment.
>
> _____ _____
>
> Signature of Defendant' Date
>
> (Emphases added.)

As already discussed, each Plaintiff was eventually incarcerated for the remaining part of the jail sentences that had originally been suspended.

**3. South Carolina's unified judicial system, under which magistrates' courts operate.**

In order to establish the legal and factual context in which Plaintiffs' claims arise, it is necessary to have an understanding of the legal structure under which the magistrate court system

[9] However, the SAC alleges (p. 45, ¶ 162) that "During January 2017, Ms. Brown made significant efforts to find a new job and requested an extension of time to pay her electricity bills, which she could not afford to pay." There is no suggestion that she also requested an extension of time to pay her outstanding fines.

in South Carolina operates, including the allocation of powers, duties and responsibilities within the State's unified judicial system. As will be shown, Plaintiffs' claims concerning the alleged authority of the Chief Judges or Associate Chief Judges for Administrative Purposes (hereinafter "Chief or Associate Chief Magistrate Judges")[10] are unsupported by the legal structure of the court system and also are without factual support.

Beginning in 1973 with the adoption of Article V of the Constitution of South Carolina, the judicial power of the State has been "vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law." S.C. Constitution, Article V, § 1. Article V, ¶ 4, vests certain powers in the Chief Justice and the Supreme Court, providing in pertinent part as follows:

> The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. . . . The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. . . .[11]

Prior to the adoption of Article V in 1973, no official, judicial or otherwise, had authority to administer the court system. The legislature had created numerous local courts which were described as a "local, factionalized court system. . . ," which ceased to exist following the

[10] The term "Chief Magistrate Judge" is used for brevity of reference. Also, Plaintiffs cannot show that any Associate Chief Judge took, or was in a position to take, any action that affected any Plaintiff. Associate Chief Judges act only "in the absence or disability of the Chief Judge" and when "administrative duties . . . are assigned to them by the Chief Judges." *See* Ex. 9 (semi-annual order, last page). There is no evidence that any of these triggering events occurred.

[11] South Carolina Court Administration was created pursuant to the above provision in the State Constitution that the Chief Justice "shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State."

enactment of present Article V. *Cort Indus. Corp. v. Swirl, Inc.*, 264 S.C. 142, 146, 213 S.E.2d 445, 446 (1975).

Article V also contained a provision for the magistrates' courts. Article V, ¶ 26. Not long after Article V was enacted, the Supreme Court of South Carolina held that "magisterial courts are vested with judicial power and are, therefore, a part of the State's uniform judicial system." *State ex rel. McLeod v. Crowe*, 272 S.C. 41, 46, 249 S.E.2d 772, 775 (1978). *See also, e.g., Parker v. Beaufort Cty. Det. Ctr.*, No. CA 407-0287-MBS-TER, 2007 WL 1377639, at *3 (D.S.C. May 7, 2007("County magistrates are judges in the State of South Carolina's unified judicial system").

As for the manner of appointing magistrates, Article V, ¶ 26 provides that "The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law." *Crowe, supra,* also held that "Sections 1 and 23 [now § 26] of Article V require that the jurisdiction of magistrates be uniform throughout the State. Such uniformity can only be accomplished through legislation which grants all magistrates uniform countywide jurisdiction."

In 1981, the Supreme Court of South Carolina further reaffirmed the principle of statewide uniformity in judicial matters, holding that Article VIII, §§ 14(4) and (6), of the Constitution of South Carolina, "effectively with[drew] administration of the State judicial system from the field of local concern." *Douglas v. McLeod*, 277 S.C. 76, 80, 282 S.E.2d 604, 606 (1981).[12]

[12] Article VIII, § 14 provides that the general law provisions applicable to certain matters shall not be set aside. Paragraphs (4) and (6) include the following:

> (4) the structure for the administration of the State's judicial system;
>
> (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

For a number of years, the Chief Justice has issued orders twice yearly, appointing Chief Judges or Associate Chief Judges for Administrative Purposes for each county for six-month terms. *See, e.g.,* Ex. 9 (January 2077 semi-annual order). Those orders also set forth certain limited administrative matters over which the Chief Justice has given authority to the Chief Magistrate Judges. Plaintiffs base some of their claims on some of the provisions of those semi-annual orders. Those claims will be discussed below. However, there is a provision in those orders that confirms the uniformity concept set forth in Articles V and VIII of the South Carolina Constitution and in decisions of the Supreme Court of South Carolina interpreting the Constitution. That part of each semi-annual order provides that "No order issued by the Chief [Magistrate] Judge under the authority of this Order shall be effective unless the order is filed with the Office of South Carolina Court Administration and approved for consistency with statewide administrative policies." Ex. 9, last page.

**4. The manner of handling cases involving failure to pay court fines and fees, prior to the issuance of the September 15, 2017 Beatty Memorandum.**

**a. Plaintiffs' allegations of nonexistent "policies."**

When this action was filed in 2017, Plaintiffs asserted the existence of a purported "Default Payment Policy" and a purported "Trial in Absentia Policy." *See, e.g.,* SAC at 3-5. The extensive document discovery in this case has not produced any evidence that county Chief Magistrates created, or had authority to create, any such alleged written or unwritten "policies" that directed other county magistrates how to exercise their judicial authority in individual cases in their courts. Much less was any evidence found that indicates that Chief Magistrates Reinhart or Adams ever "oversaw, enforced, and sanctioned," SAC at 4, ¶ 6, those nonexistent "policies."[13] Further,

[13] Plaintiffs may have borrowed the concept of these named, but nonexistent policies from much different legal arrangements or factual situations that may exist in other jurisdictions.

although Plaintiffs had alleged earlier in this case, *see, e.g.,* ECF No. 80 at 10 (3/2/18), that bench warrants were "issued automatically. . . when Plaintiffs could not pay fines and fees," no evidence supports that allegation. To the contrary, the uncontroverted deposition testimony established that in cases where fines were not being paid, each such case received at least one additional layer of review by the sentencing magistrate, who then made an individualized judicial decision about what would be the next step in enforcing the conviction. Ex. 12. Lewis Dep., p. 77 (discussed in more detail below).

The way in which Lexington County Magistrates sentenced Plaintiffs was not unique to Lexington County, and was not the result of "policies" created by any local Chief Magistrate, including Defendants Reinhart and Adams. Ex. 11, Adams Declaration, ¶¶ 29-32; Ex. 12, Reinhart Declaration, ¶¶ 12-15.Nor did any Chief Magistrate have authority to direct other county magistrates how to sentence criminal defendants. *Id.* To the contrary, the actions taken by county magistrates were taken via the use of forms prescribed by South Carolina Court Administration, dating back a number of years prior to the filing of the present action, as discussed in heading (b) below. As will be seen, Court Administration made a number of changes to those forms not long after the Beatty Memorandum was issued on September 15, 2017, mandating certain practices to be followed in the summary courts.

**b, Court Administration statewide forms used prior to 2018.**

All of the bench warrants issued with respect to the named Plaintiffs used a statewide form created by South Carolina Court Administration, promulgated around 2007 and still in effect in 2016 and 2017 when issued in the cases of all Plaintiffs.[14] That form was replaced in early 2018, although the practice of issuing bench warrants for jail commitments for failure to pay LFOs was

[14] The bench warrants in all Plaintiffs' cases are part of Exhibits 1 through 7.

discontinued shortly after the September 2017 Beatty Memorandum. Adams Declaration, Ex. 11, ¶¶ 22-24.

The Court Administration bench warrant form used in each Plaintiff's case was identified as "MC2" (Magistrate Court 2). It specifically provided that law enforcement officers were ordered and authorized to

> to take and convey [the criminal defendant] to the common jail. The keeper of said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; and for so doing, this shall be your good and sufficient warrant.

*See, e.g.*, Exhibit 1, second page. This language, formulated and recommended for use by South Carolina Court Administration, made it clear that a person arrested pursuant to such a bench warrant could be jailed until his or her sentence had run, that is, "until he/she shall be thereof discharged by due course of law. . . ." Indeed, in 2018, a Court Administration official, noting that Form MC2 was being replaced by a different form following the 2017 Beatty Memorandum, expressly confirmed that Form MC2 and several others "had the sentences on them and many courts and jails were using them as commitment orders." Exhibit 16, p. SCCA-000002. (Emphasis added.)

This reference to "many courts and jails" extended beyond Lexington County. Ex. 11, ¶ 11. Exhibit 5 contains examples of the same form in use in Richland County. As can readily be seen from the generic version of the form included in a memorandum sent by Court Administration in connection with the present case, Form MC2 was designed to be used in any county of the State. The image on the following page is the blank former MC2 template (Ex. 16, p. SCCA-000111), with various blank document fields to be filled in by the county in which the form is used:

| | | |
|---|---|---|
| **STATE OF SOUTH CAROLINA** | ) | **BENCH WARRANT** |
| **«COUNTY_ADDRESS_2» «COUNTY_NAME_1»** | ) | **«ServiceWarrant_number»** |
| | ) | |
| | ) | **Case Number** |
| | ) | **«Case_Number»** |

**To any Lawful Constable or Officer:**

WHEREAS: One **«Party_list_2_name_1»** on **«Case_disposition_date»** was convicted in this court of: **«Case_offense_charge_desc»** with sentence imposed/balance due of **«Balance_due»** **«WM_Off_1_sent_1_sent_desc»** in the amount of **«WM_Off_1_sent_1_sent_amount»** Days to run consecutively with any and all other sentences.

This order is to command you to take and convey him/her to the common jail. The keeper of said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; and for so doing, this shall be your good and sufficient warrant.

Witness: The due execution of this warrant on **November 2, 2018.**

_____
**Judge «Case_disposition_judge_name»**
**«Court_agency_description»**
**«Court_agency_address_1»**
**«Court_agency_address_2»**
**«Court_agency_city», «Court_agency_state» «Court_agency_zip_code»**

---

This Bench Warrant is CERTIFIED FOR SERVICE in the ☐ County / ☐ Municipality of

_____. The defendant is to be arrested and brought before me to be dealt with according to the law.

_____
Signature of Judge Date

---

## OFFICER'S RETURN

**STATE OF SOUTH CAROLINA**
**«COUNTY_ADDRESS_2» «COUNTY_NAME_1»**

I hereby certify that pursuant to the command of the within warrant, I have placed the said **«Party_list_2_name_1»** in the jail this day.

_____
Officer's Name Date

| | |
|---|---|
| Name: | «Party_list_2_name_1» |
| Address: | «Party_list_2_address_1__line_1» |
| | «Party_list_2_address_1__line_2» |
| | «Party_list_2_city_state_zip_1» |
| DL#: | «Defendant_drivers_license_number» |
| State: | «Defendant_drivers_license_state» |
| Height: | «Defendant_height_feet»'«Defendant_height_inches»" |
| Weight: | «Defendant_weight» |
| SSN: | «Defendant_SSN» |
| DOB: | «Defendant_DOB» |
| Sex: | «Defendant_Sex» |
| Race: | «Defendant_race» |

MC2

**c. Pre-2018 practices for issuing bench warrants.**

The first step in each Plaintiff's conviction process was that a conviction occurred, either as a result of a guilty plea or a trial (this included trials in the absence of the nonappearing defendants,). The ticket/court summons became a judgment once the judge signed or initialed the ticket. An example of a ticket is to be found in Ex. 7.

Next, in the cases of the three named Plaintiffs who appeared, the magistrates performed the judicial action of assigning scheduled time payment plans. Then, in all three cases, there came a time when the defendants stopped making payments. The next steps in such instances were described by Mr. Edward Lewis, Chief Court Administrator for Lexington County. Mr. Lewis testified at his Rule 30(b)(6) deposition that physical copies of the Scheduled Time Agreements were kept in file drawers in the offices of each magistrate. Exhibit 12, Lewis Deposition, p. 77. Those files were periodically reviewed by each judge's staff. *Id.* If that review revealed that the person "ha[d] not made a payment or had any correspondence with our court for maybe many weeks or many months," the staff person "would take the case files to the magistrate to let the magistrate determine what the next step would be." *Id.*, lines 16-18. At that point, and on a case-by-case basis, the magistrate might "deem that the individual should be ruled back in a rule to show cause hearing to discuss an alternate payment plan." *Id.*, 77:24-78:2. This is what happened, for instance, in the case of Plaintiff Darby. Ex. 3. In Plaintiff Wright's case, the court send him a letter. SAC ¶ 373. Alternatively, the magistrate might decide simply to issue a bench warrant. This is what happened in the case of Ms. Brown, who had a long history of successive infractions.

As Mr. Lewis testified, "if the magistrate decided that a bench warrant should be issued, they [staff] would prepare the bench warrant on behalf of the magistrate." *Id.* at 34:15-17. The bench warrant was physically signed in ink by the magistrate and then physically transferred to

the Warrant Division of the Lexington County Sheriff's Department. *Id.* at 34:19-35:2.[15] As the SAC reflects, most of the bench warrants of the named Plaintiffs were only served after some other event brought them to the attention of the Sheriff's Department).

**5. The September 15, 2017 Memorandum of Chief Justice Beatty, and the revision of statewide forms and directives by South Carolina Court Administration.**

On September 15, 2017, Chief Justice Beatty issued a Memorandum that set into motion a dramatic change in the way magistrate courts handled

> It has continually come to my attention that defendants, who are neither represented by counsel nor have waived counsel, are being sentenced to imprisonment. This is a clear violation of the Sixth Amendment right to counsel and numerous opinions of the Supreme Court of the United States. All defendants facing criminal charges in your courts that carry the possibility of imprisonment must be informed of their right to counsel and, if indigent, their right to court-appointed counsel prior to proceeding with trial. Absent a waiver of counsel, or the appointment of counsel for an indigent defendant, summary court judges **shall not** impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted. When imposing a fine, consideration should be given to a defendant's ability to pay. If a fine is imposed, an unrepresented defendant should be advised of the amount of the fine and when the fine must be paid. This directive would also apply to those defendants who fail to appear at trial and are tried in their absence.
>
> I am mindful of the constraints that you face in your courts, but these principles of due process to all defendants who come before you cannot be abridged.

Exhibit 16, pp. SCCA-000004-05 (emphasis in original). Although Plaintiffs have in the past attempted to intimate that some of the Lexington County magistrates may have effectively ignored this directive, the emails produced by Defendants show that any such claim has no factual support.

[15] In the instances where the individual Plaintiffs did not appear, were tried in their absence, and accordingly not given payment plans, the physical records were kept in a different drawer for "guilty, not paid" cases, but even those files were reviewed by the judges before bench warrants were issued. Lewis Deposition at 80:24-81:6.

There was never a question of whether to comply with it. Given the structure of the court system, that was a given. The only questions the magistrates had were concerned with how to put the Memorandum into operation, rather than whether to do so. *See, e.g.,* Ex. F to Exhibit 11.

Court Administration soon followed up with a presentation at the annual mandatory training session for summary court judges that occurred on November 1, 2017. That presentation, by Ms. Renee Lipson of Court Administration, Exhibit 16, pp. SCCA-000006-073, contained a considerable amount of detail about the manner in which the Beatty Memorandum was to be implemented in practice.

At that same meeting, Chief Magistrate Adams spoke with Chief Justice Beatty and asked about the possible recall of all existing bench warrants. She immediately, i.e., that same day, directed that that be done. Exhibit 11, ¶ 15. As a result, 5,960 bench warrants, some dating back for a number of years, were recalled, so that they could be reviewed by the issuing magistrates for compliance with the Beatty Memorandum. *Id.*, ¶ 19.

Several days later, on November 9, 2017, then-Chief Magistrate Adams sent the following email to all Lexington County magistrates:

> Guys,
>
> I know this is late notice. But ..... l would like for as many of us as possible to meet Thursday morning at 830. I know this is early to meet and late notice, but if you can rearrange your schedule to be there it would be great. I just want us to discuss these new procedures and make sure we all understand the memo and information. Also, maybe a little brainstorming and discussion to make sure we all understand the process we are required to follow now from the Chief Justice and the Court Administration. Judge Morgan is working on streamlining the information and I think Carlie and Colleen [staff members] are looking at this as well. Hopefully all of us have had a chance to study these new guidelines from the Court Administration and we will be ready to discuss.

> We will meet at the Old Courthouse since I think that is centrally located. Please let me know if you can be there.
>
> Thanks,
>
> Becki

*Id.*, ¶ 21 and attached Ex. E.

**6. Post-Beatty Memorandum practices in enforcing failures to pay legal financial obligations.**

Lexington County magistrates began taking steps to comply with the Beatty Memorandum as soon as they understood its implications. Exhibit 11, ¶ 23. Eventually, on March 14, 2018, Court Administration sent a memorandum to all summary court judges outlining the new procedures and attaching new forms. That memorandum was similar to Ms. Lipson's presentation on November 1, 2017. Ms. Lipson, in a different memorandum, sent to Magistrate Judge Hodges in 2018, and in the record of this case by agreement, Ex. 16, pp. SCCA-000001-03, noted that several previous forms, including Form MC 2, were "removed from the system," meaning that their use was being discontinued. *Id.* at 1. Ms. Lipson noted that "These bench warrants had the sentences on them and many courts and jails were using them as commitment orders." *Id.* at 2.[16]

The March 14, 2018, directive from Court Administration made it clear that unless counsel was present or the right to counsel affirmatively waived, summary court judges were not to imprison defendants who failed to make scheduled time payments (the situation for all of the named Plaintiffs). On p. SCCA-000076 of that document (Exhibit 16) Court Administration

[16] Form MC 15 was later changed to eliminate the "BENCH WARRANT/COMMITMENT" language. An example for the replacement form, which bears an inaccurate revision date of 10/14, is attached as Exhibit 17. The revised form now reads, ". . . Failure to appear as directed or failure to comply with the terms set forth in this payment schedule may result in the balance being referred to the Department of Revenue/Set Off Debt or Converted to a Civil Judgment."

directed in subparagraph (h)(vi) as follows in cases where the summary court judge might wish to impose jail sentences:

> "vi. If you want to incarcerate a Defendant in one of the above situations [___], he must be rescheduled and informed of his right to counsel. No TIA unless Defendant has waived counsel by conduct or affirmative waiver."

*Id.* The net result is that the no one was to go to jail unless counsel was present or the right to counsel was waived in accordance with U.S. Supreme Court precedent. This policy underlying the 2017-2018 directives was also explicitly set forth on p. SCCA-000077 of Ex. 16, ¶ 3 (c)(i)(2):

> (2) Policy underlying the Chief Justice's September 15, 2017 memo is to keep people out of jail unless their right to counsel is honored or waived.

(Emphasis added.)

As already discussed above, the practice of incarcerating criminal defendants, even those who had received suspended jail sentences, on bench warrants, was halted either immediately after the Beatty Memorandum was issued, or within a matter of a few weeks thereafter. The end of that practice is confirmed by testimony in at least four depositions:

Deposition of Sheriff Koon:

Q. Sheriff Koon, when a magistrate court
24 bench warrant is executed by a deputy, do you know
25 the process for removing that bench warrant from
[45]
1 the system or marking it executed?
2 A. You talking about before this
3 litigation or currently?
4 Q. Well, let's -- let's say before the
5 litigation.
6 A. It's my understanding -- this is as
7 much as I know. [Former, i.e., pre-2018, practice described]
16 Q. And how has that process changed now?
17 A. I just don't think we're seeing those
18 same type bench warrants.
19 Q. Has the sheriff's department created
20 any new policies that -- that would change the way
21 that -- that type of bench warrant would be treated

22 if you saw that bench warrant again?
23 A. It's my understanding that style of
24 bench warrant no longer exists.
25 Q. And I appreciate that answer. I guess
[46]
1 what I'm asking is if, hypothetically, you saw that
2 type of bench warrant, do you have any new policies
3 since the start of this litigation that would
4 change the way you executed that bench warrant?
5 MR. WOODINGTON: Object to the form of
6 the question.
7 You can answer, Sheriff.
8 THE WITNESS: I don't think we will see
9 one of those type of bench warrants because I
10 believe they were all recalled.
11 BY MR. NUSSER:
12 Q. And I think I understand what -- what
13 it is that you're saying, and -- and I appreciate
14 your answer.
15 Does the sheriff's department have any
16 new policy since the start of this litigation that
17 would treat a bench warrant like that differently?
18 MR. WOODINGTON: Object to the form of
19 the question.
20 You can answer.
21 THE WITNESS: I guess the answer would
22 be no because those -- we don't see those bench
23 warrants anymore, so it's no need to address policy
24 for something that we don't deal with anymore.

Koon Dep., Ex. 15 at 44-46. (Emphasis added).

Another Sheriff's Department official, Lt. Travis Felder, who was designated under Rule 30(b)(6) as a witness regarding such topics as booking and incarceration at the Detention Center, testified similarly:

11 Q. All right. Okay. So let's say a
12 person is brought in -- into booking by an
13 arresting officer pursuant to a bench warrant for
14 nonpayment of LFOs. Is -- is there a standard
15 procedure for the booking officer to bring that
16 person before a judge?
17 MR. WOODINGTON: Object to the form.
18 You can answer.

19 THE WITNESS: Okay. On a bench
20 warrant -- I haven't seen a bench warrant came
21 [sic] as nonpayment in a while. So are you going
22 back to the old bench warrants or the way they're
23 doing bench warrants now?
24 BY MR. NUSSER:
25 Q. Okay. That's fair. So -- so when you
[65]
1 say in a while, when was the last time that you
2 believe you saw a payment bench warrant?
3 A. I -- I don't remember. I -- I don't --
4 I don't know.
5 Q. Okay. In the last couple years?
6 A. I can say, yes, probably a couple
7 years
8 Q. Okay. Okay. So -- so let's go ahead
9 then and -- and -- and divide our questions up then
10 in -- as far as the time goes, the time period
11 goes. Okay. The -- what's an easy way to say
12 this. Longer than a couple years ago, we'll
13 just -- we'll just stick with a couple years,
14 longer than a couple years ago. . . .

Felder Deposition, Ex. 14 at 64-65 (emphasis added).

Another deponent, Edward Lewis, Chief Court Administrator for Lexington County Magistrate Court, also testified to the same effect:

[176]
7 Q. And -- and we talked about what was
8 going on in 2017 at the time this lawsuit was filed
9 and people were being arrested and taken to the
10 detention center without ever being brought before
11 a magistrate judge, right?
12 A. Right.
13 Q. Okay. And -- and that changed in 2018;
14 is that correct?
15 A. The end of 2017 after the memorandums
16 from the Supreme Court and the mandatory magistrate
17 meeting, yes.
18 Q. Okay. And are bench warrants for
19 nonpayment of court debt that's been imposed in the
20 magistrate court still being issued today?
21 A. No.

* * *

[179]

13 Q. Okay. Has the Lexington County
14 Magistrate Court issued any bench warrant for
15 nonpayment of fines or fees imposed in that court
16 since April of 2018?
17 A. Not to my knowledge.
18 Q. Was there a discussion within the
19 Lexington County Magistrate Court system about
20 terminating the use of bench warrants for that
21 purpose?
22 A. The discussion would have been that we
23 use the new forms that were loaded in the case
24 management system by the court administration. The
25 other forms would have been terminated due to
[180]
1 our -- our inability to access them.

* * *

[202]

22 Q. Okay. Okay. And I think I -- I'm
23 getting some clarity here. That's -- that's
24 helpful. Is it fair to say that bench warrants are
25 still being issued by Lexington County Magistrate
[203]
1 Court, it's just they're not being issued in
2 relation to nonpayment of court debt or in relation
3 to TIAs?
4 A. Correct, they're being issued in
5 regards to the Supreme Court memorandums.
6 Q. So there are other reasons that a
7 person may need to be brought before the court
8 and -- and bench warrants are still being issued
9 for those other reasons?
10 A. Yes.

Lewis Deposition, Ex. 12 at 202-203 (emphases added).

Finally, the testimony of Judge Adams also made it clear that complained-of practice ended years ago and has not been resumed:

[125]
20 Q. Okay. And the reason I'm -- I'm asking
21 this in part is the existence of the setoff debt
22 program, it doesn't preclude a Lexington County

23 magistrate judge from issuing a bench warrant of
24 the type that were occurring before 2017 where
25 someone would be ordered to be incarcerated for
[126]
1 failure to pay?
2 A. The setoff debt program is not what
3 triggers that, but the chief justice is the one
4 that said that we were not to issue bench warrants
5 strictly because someone had not paid a fine. So
6 that's -- that's why we do not do that. You know,
7 I don't know that that had anything to do with the
8 setoff debt program. To my knowledge no magistrate
9 in Lexington County has issued those type of bench
10 warrants since --
11 Q. Okay.
12 A. -- that order.
13 Q. The -- and -- and all I -- my
14 question -- I understand what you're saying is you
15 believe chief -- that the magistrates aren't
16 allowed to issue those warrants because of the --
17 the chief judge's -- justice's order, Chief
18 Justice's [sic] Beatty's order; is that –
19 A. Right, the policy was changed and --
20 and -- right.

Adams Deposition, Ex. 13 at 125-126 (emphasis added).

## LEGAL STANDARD

The applicable legal standard for summary judgment motions was stated by the Court in a prior Order, ECF No. 84 at 19-20:

> Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" if proof of its existence or non-existence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248-49 (1986). A genuine question of material fact exists where, after reviewing the record as a whole, the court finds that a reasonable jury could return a verdict for the nonmoving party. *Newport News Holding Corp. v. Virtual City Vision*, 650 F.3d 423, 434 (4th Cir. 2011).
>
> In ruling on a motion for summary judgment, a court must view the evidence in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123-24 (4th Cir. 1990). The non-moving party may not oppose a motion for summary judgment with mere allegations or denials of the movant's pleading, but instead must "set forth specific facts" demonstrating a genuine issue for trial. Fed. R. Civ. P. 56(e); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Shealy v. Winston*, 929 F.2d 1009, 1012 (4th Cir. 1991). All that is required is that "sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Anderson*, 477 U.S. at 249.

In the present case, it is appropriate to also note the following additional aspect of the summary judgment standard, as set forth, for example, in *Est. of Valentine by & through Grate v. South Carolina*, No. CV 3:18-00895-JFA, 2021 WL 3423353 (D.S.C. Aug. 5, 2021):

> *Celotex* made clear that Rule 56 does not require the moving party to negate the elements of the nonmoving party's case; to the contrary, "regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied."

*Id.* at *6-7, citing *Cray Commc'ns, Inc. v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 394 (4th Cir. 1994), which quotes *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 885 (1990)).

## ARGUMENT

### A. Plaintiffs' Claims for Prospective Relief.

In five of their eight causes of action, Plaintiffs request declaratory and/or injunctive relief. Those causes of action involve only one or two of the seven named Plaintiffs, that is, Plaintiffs Goodwin and/or Wright.

Plaintiffs have not described the precise nature of the prospective relief they actually seek. The Prayer for Relief in the Second Amended Complaint contains six bullet points setting forth the declaratory relief they seek, but the request for injunctive relief is limited to a single blanket request for "[a]n order and judgment permanently enjoining Defendants Adams, Dooley, Koon, [and] Lexington County . . . from enforcing the above-described unconstitutional policies and practices." SAC, ECF No. 48 at 121. That request is too vague to support an order granting an injunction, which under Rule 65(d)(1)(C) must "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required."

It appears, however, that Plaintiffs' request for injunctive relief boils down to requesting that one or more Defendants be enjoined from

> (1) allegedly ordering the incarceration of persons without conducting pre-deprivation ability-to-pay hearings after the issuance of bench warrants for failure to pay outstanding court debt,[17] and
>
> (2) allegedly failing to afford notice of the right to appointment of counsel, or to afford assistance of counsel to indigent persons facing incarceration for nonpayment.

[17] This and other injunctive relief could never in any event be directed to the magistrates in the first instance, because 42 U.S.C. § 1983, as amended in 1996, provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

There are several reasons why this Court should not grant the prospective relief Plaintiffs seek, starting with the jurisdictional ground of mootness resulting from the actions of Chief Justice Beatty and South Carolina Court Administration in 2017 and 2018. This Court has previously expressed an interest in examining the facts pertaining to those subsequent events. Specifically, in its July 24, 2021 Order, the Court referred to the existence of "questions of fact . . . as to whether the state Supreme Court's guidance had indeed eradicated" the practices complained of in this litigation. 7/24/21 Order, ECF No. 255 at 6. The answer to that question is that the practices complained of have indeed been eradicated. As a result, and because the issue of mootness affects the Court's subject matter jurisdiction, *see. e.g., Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983), that issue will be the first one addressed below.

**1. The 2017-2018 actions of Chief Justice Beatty and Court Administration not only render Plaintiffs' claims for prospective relief moot, but those actions by third parties also mean that prospective relief against the Defendants in this case is neither necessary nor justified.**

The facts discussed above with regard to actions following the 2017-2018 changes mean that Plaintiffs cannot reasonably claim that at any time after those changes, Lexington County magistrates have still continued to issue bench warrants leading to incarceration in cases where there has been a failure to pay legal financial obligations. That manner of using bench warrants for jail commitments, although previously authorized by Court Administration, came to a halt not long after the September 15, 2017 Memorandum. The Chief Justice of South Carolina, acting through Court Administration, had the undisputed power to issue the September 15, 2017 Memorandum and to require the magistrates to cease using Forms MC 2 and MC 15, and to require them instead to use the revised forms ordered by Court Administration, thereby eliminating the prior practice. After the Chief Justice's actions, the magistrates were no longer authorized to continue the practices authorized by those superseded forms. In fact, they no longer even had access to the

former forms. *See. e.g.,* Ex. 8, Lewis deposition at 179, *supra* (referencing "inability to access" the old forms, which were "terminated" from the statewide case management system.

The reason for placing "a heavy burden [on defendants generally] to establish mootness . . . "is that 'otherwise they would simply be free to 'return to [their] old ways' after the threat of a lawsuit had passed." *Iron Arrow, supra,* 464 U.S. at 72, quoting *United States v. W.T. Grant Co.,* 345 U.S. 629, 632 (1953). The test is whether "the likelihood of further violations is sufficiently remote to make injunctive relief unnecessary." *United States v. Concentrated Phosphate Exp. Ass'n,* 393 U.S. 199, 203 (1968)

This is just such a case in which the likelihood of returning to prior practice is "remote," if for other reason than that the power do so is, as a practical matter, beyond the control of county magistrates. As indicated above, the previously-used forms are no longer even in existence in the statewide case management system. The mandatory nature of the actions of the Chief Justice and Court Administration, both nonparty state actors with supervisory power over all magistrates in the state, means that county magistrates do not even have the ability "to return to [their] own ways." The power to change the magistrates' practices lies with the Chief Justice and Court Administration. As a result, prospective relief is neither necessary not justified in this case. The actions that rendered the prospective claims moot were not those of any Defendants in this case, but rather were the "voluntary acts of a third party non-defendant." *Iron Arrow, supra,* 464 U.S. at 72. *See also, e.g., Wright & Miller,* 13C Fed. Prac. & Proc. Juris. § 3533.5 (3d ed.)("[a] third party's change of course may have the same effect if it promises to eliminate the prospect of continued dispute").

To the same effect is *U.S. v. Jones,* 136 F.3d 342 (4th Circuit 1998), the case involving the admission of female cadets to The Citadel. After the Supreme Court held in practical effect in

*United States v. Virginia*, 518 U.S. 515 (1996), that the Virginia Military Institute could not constitutionally exclude female cadets, The Citadel promptly announced that it would accept qualified female applicants. 136 F.3d at 345-46. Nevertheless, the district court issued an order providing for certain injunctive relief along the lines of the actions The Citadel had already undertaken. The Fourth Circuit vacated the injunction, holding that "we have been directed to no evidence that the injunction was necessary or justified." *Id.* at 348. Plaintiffs in the present case are equally unlikely to be able to show any evidence that an injunction against the Magistrate Defendants would be "necessary or justified." And if Plaintiffs have concerns that the Chief Justice or Court Administration might later revoke the 2017-2018 changes, they have never sought to bring those officials before the Court.[18]

Further, the 2017-2018 actions of the Chief Justice and Court Administration, while directed only against county magistrates, had a domino effect that also rendered moot the prospective relief claims against the County and the Sheriff. As to those two Defendants, Plaintiffs seek prospective relief in future cases involving only the "arrest and incarceration of indigent

[18] Even if Chief Justice Beatty or Court Administration were before the Court in this case, Plaintiffs would have little chance in trying to argue that the actions of those officials, which were of a legislative nature, should be regarded as subject to hasty change. As to the legislative nature of the acts, *see, e.g., Gallas v. Supreme Ct. of Pennsylvania*, 211 F.3d 760, 774 (3d Cir. 2000)(Pennsylvania Supreme Court performed a legislative function when it issued an administrative order reorganizing a judicial district). Such enactments of a legislative nature will render a case moot "even where re-enactment of the statute at issue is within the power of the legislature." *Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601, 606 (4th Cir.2001). Similarly, it was held in *Brooks v. Vassar*, 462 F.3d 341, 348 (4th Cir. 2006) that a claim of mootness will be rejected "[o]nly if reenactment is not merely possible but appears probable. . . ." (Emphases added.) Plaintiffs cannot come close to making such a showing. Indeed, rulemaking actions of state courts that moot a case are accorded great respect. *See, e.g., Attwell v. Nichols*, 608 F.2d 228, 230-231 (5th Cir. 1979), cert. denied, 446 U.S. 955 (1980)(federal claim mooted by promulgation of a rule by the Supreme Court of Georgia; *Golden v. State Bd. of L. Examiners*, 614 F.2d 943, 944 (4th Cir. 1980)(case mooted by the repeal by the Maryland Court of Appeals of requirement that applicants for the bar examination must be domiciled in the state).

people for nonpayment of magistrate court fines and fees," SAC at 120 (Prayer for Relief, second bullet point).

The short answer to this request is that as a result of 2017-2018 changes, the factual predicate for the requested relief, that is, the "arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees," simply no longer occurs. Because no bench warrants are being issued for the "arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees," there is no longer a need for an order pertaining to appointed counsel in that situation. This claim is therefore moot for the same reasons that the claim concerning ability-to-pay hearings is moot. Likewise, there is no need to order prospective relief against the Sheriff in the now-nonexistent scenarios "that result in indigent people being arrested and incarcerated on bench warrants based on nonpayment of magistrate court fines and fees. . . ." SAC at 122.

To reiterate, the Second Amended Complaint only seeks right-to-counsel relief in situations involving the "arrest and incarceration of indigent people for nonpayment of magistrate court fines and fees." All six descriptive paragraphs of the Prayer for Relief characterize the relief sought in that context only. SAC at 120-21. Should Plaintiffs now attempt to expand the relief sought to situations involving the provision of counsel to indigents in any other context, any such claims are far beyond the scope of the case as set forth in the Second Amended Complaint, and should therefore be disregarded.

**2. Even if the Court holds that Plaintiffs' claims for prospective relief are not moot, those claims are likely barred by *Younger v. Harris*, 401 U.S. 37 (1971), *O'Shea v. Littleton*, 414 U.S. 488 (1974), and their progeny, depending on the nature of the relief Plaintiffs seek.**

If the Court holds that the Plaintiffs' claims for prospective relief are moot, the inquiry into those claims for prospective relief ends there. However, even if the Court holds that the requests

for prospective relief have not been rendered moot, those claims for prospective relief would still be barred by such cases as *Younger v. Harris*, 401 U.S. 37 (1971), *O'Shea v. Littleton*, 414 U.S. 488 (1974) and their progeny.

Defendants will present argument on those issues, if necessary, once Plaintiffs set forth the precise nature of the prospective relief they seek, which so far they have not done. However, it is difficult to see how the prospective relief sought by Plaintiffs would not be barred, because it "would require nothing less than "an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that *Younger* ... and related cases sought to prevent." *Suggs v. Brannon*, 804 F.2d 274, 279 (4th Cir. 1986), quoting *O'Shea,* 414 U.S. at 500. Thus, for instance, where federal orders are sought regarding indigent defense funding, the courts have applied *Younger* and/or *O'Shea* to deny such relief. *See, e.g., Yarls v. Bunton*, 231 F. Supp. 3d 128, 132 (M.D. La. 2017)("Any declaratory judgment or injunction [regarding public defense funding] entered by this Court would inevitably lead it to become the overseer of the Orleans Parish criminal court system, a result explicitly condemned by the United States Supreme Court in *Younger* and *O'Shea.*[19] However, Defendants cannot fully address this issue until Plaintiffs make clear the relief they are seeking. If they seek relief that would cause this Court "to become the overseer of the [Lexington County] criminal court system," *Yarls, supra,* summary judgment should be granted for Defendants, as will be more fully argued as necessary.

[19] Plaintiffs may cite *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013), in which the court an injunctive order directing local government (municipalities in that case) to take certain steps to run an indigent defense system. However, the defendants in that case removed it to federal court and therefore do not appear to have raised the federalism defenses that have defeated the claims of plaintiffs in similar cases decided both before and after *Wilbur*. In addition, there was no suggestion of mootness in that case.

**B. Claims for Damages.[20]**

**a. Plaintiffs' due process and unreasonable seizure damage claims (Claims Four and Six) against the Magistrate Defendants (Reinhart and Adams individually) should be dismissed, because (a) all actions of magistrates that affected Plaintiffs were judicial acts, and (b) Plaintiffs cannot make the requisite showing that those Defendants created, or had the power to create, "administrative policies" regarding arrest and incarceration on bench warrants for failure to pay legal financial obligations.**

**i. All actions of magistrates that affected Plaintiffs were judicial acts, protected by judicial immunity from damage claims.**

Throughout this case, Plaintiffs have tried to circumvent the magistrates' judicial immunity from damage claims by asserting that the Magistrate Defendants, Gary Reinhart and Rebecca Adams "oversaw, enforced, and sanctioned" certain alleged "administrative policies," e.g., SAC at 4, ¶ 6, and that those alleged policies "directly and proximately led to the routine and widespread issuance of bench warrants that were used to arrest and incarcerate the named Plaintiffs. . . ." *See, e.g.*, SAC at 107, ¶ 491. These alleged "policies" were claimed to have arisen in connection with both with pre-deprivation ability-to-pay hearings and with representation by counsel. *See, e.g., id.* at 5, ¶ 10. Plaintiffs have asserted that Defendants Reinhart and Adams, who were Chief or Associate Chief Magistrates during the period when all seven Plaintiffs were arrested and incarcerated, should be held liable to them in damages both for overseeing the alleged policies and for not correcting them. *Id.*

[20] In Heading (B)(7) below, Defendants contend that the *Rooker-Feldman* doctrine, which is "a jurisdictional doctrine," *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 202 (4th Cir. 2000), bars Plaintiffs' damage claims. That doctrine therefore might logically be discussed first, but in this Memorandum, it is placed after Defendants' fact-specific arguments so that the Court can evaluated the doctrine in context. Notwithstanding its placement at the end of this Memorandum, however, the *Rooker-Feldman* doctrine provides the first and foremost reason, although not the only reason for the dismissal of Plaintiffs' damage claims.

As discussed in subheading (b) below, the extensive discovery in this case has not provided Plaintiffs with any basis for claiming that the complained-of actions were the result of (nonexistent) administrative policies at the county level. Now that the factual record has been fully developed, (including the context of the legal structure under which the magistrate court system operates), Plaintiffs can point to no evidence indicating that their incarcerations were the result of anything other than a series of judicial actions in each of their case, including the issuance of bench warrants by the magistrates who decided their individual cases.

The leading modern case on judicial immunity holds that "the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). Discovery in this case has removed any doubt that the actions of magistrates that affected Plaintiffs were judicial acts.

Plaintiffs presumably do not dispute that the convictions themselves involved judicial acts, because those acts consisted of "a function normally performed by a judge. . . ." *Stump, supra*. Instead, the apparent hypothetical scenario Plaintiffs may have had had in mind when they filed this action was that there was some kind of automatic nonjudicial act involved at some stage of this process. *See, e.g.*, ECF No. 80 at 3 (ECF p. 10)(asserting that "Plaintiffs were arrested on bench warrants that issued automatically. . . ."). Discovery has proved this assertion wrong. In all instances in which a bench warrant was issued for any of the named Plaintiffs, it was a judicial act, signed by a judge and issued after an exercise of judicial discretion and authority by that judge. *See, e.g., Pastene v. Sprouse,* No. CIV.A. 0:09-1390-PMD, 2010 WL 1344971, at *3 (D.S.C. Mar. 30, 2010), aff'd, 393 F. App'x 119 (4th Cir. 2010)(magistrate's acts in issuing bench warrants "were

judicial acts, as they were acts normally performed by a judges sitting in a [ ] judicial capacity"). This process has been described in detail above. As a result, the actions by magistrates that affected Plaintiffs were judicial acts and nothing else. The inquiry could stop at this point, but a review of the facts in the following subheading confirms that county chief magistrates did not create, and could not have created, countywide administrative policies that would have affected the judicial acts from which the alleged harm came.

**ii. Plaintiffs cannot make the requisite showing that the Magistrate Defendants created, or had the power to create, "administrative policies" regarding arrest and incarceration on bench warrants for failure to pay legal financial obligations.**

Plaintiffs have always argued that their claims for damages are based on alleged administrative conduct of one or more magistrates, and "not the individual acts or omissions of judicial decision-makers resolving individual cases." ECF No. 80 at 35 (Plaintiffs' Objections to R & R). However, discovery has made it clear that the county Chief and Associate Chief Magistrates have never possessed the power either to create policies that would authorize county magistrate to take the actions they took, or to prevent county magistrates from taking those actions. Not only that, discovery has proven that the complained-of practices were authorized by Court Administration, not by county Chief Magistrates. It follows that all claims for damages against Defendants Reinhart and Adams must be dismissed.

It is appropriate at this point to reiterate that :

> *Celotex* made clear that Rule 56 does not require the moving party to *negate* the elements of the nonmoving party's case; to the contrary, "regardless of whether the moving party accompanies its summary judgment motion with affidavits, the motion may, and should, be granted so long as whatever is before the district court demonstrates that the standard for the entry of summary judgment, as set forth in Rule 56(c), is satisfied."

*Cray Commc'ns, Inc. v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 394 (4th Cir. 1994), quoting *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 885 (1990)(emphasis added). In addition, while all inferences must be viewed in a light most favorable to the non-moving party, the non-moving party "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir.1985).

The burden is therefore on Plaintiffs to provide evidence consisting of more than "mere speculation or the building of inferences," that the complained-of policies actually existed and that the county Chief Magistrates possessed the power either to create or to prevent such alleged policies. If Plaintiffs still attempt to make such a showing, Defendants will respond more lengthily. For now, however, the Magistrate Defendants would simply direct the Court's attention to Court Administration Form MC2. As discussed above, that form unequivocally made provision for magistrates, in cases involving jail sentences suspended upon the payment of fines, to issue bench warrants that ordered the arrest and incarceration of the person who did not make the payments, without a requirement for an additional ability-to-pay hearing at that stage of the proceedings. While Plaintiffs cannot reasonably argue otherwise, the deposition testimony, exhibits and affidavits attached hereto demonstrate that this language was understood throughout the State as authorizing the use of bench warrants in the same manner used in the cases of the seven individual Plaintiffs, and that Form MC2 was in fact used for that purpose in other counties in the State. The practice was not at all unique to Lexington County.[21]

[21] Plaintiffs have even asserted, at least earlier in this case, that the Chief Magistrates and Associate Chiefs "enforce a system for collecting fines and fees that precludes individualized judicial determinations." ECF No. 80 at 35 (emphasis added). No evidence supports this completely-unfounded assertion.

As for Plaintiffs' assertion that the Chief Magistrates should have done something to "correct" the complained-of "policies," any such "correction" would have required the county Chief Magistrate to advise other magistrates in the county to refrain from following a practice clearly authorized by Court Administration. Now that all of the facts have been brought out, it cannot seriously be argued that county Chief Magistrates would have had any such authority vis-à-vis South Carolina Court Administration. If Plaintiffs nevertheless do attempt to mount such an argument, more details will be set forth by Defendants in response.[22]

**b. Plaintiffs' right-to-counsel damage claim (Claim Five) against the Magistrate Defendants (Reinhart and Adams individually) should be dismissed for the same reasons stated above, and also because none of the named Plaintiffs were affirmatively denied counsel in their criminal cases.**

In Claim Five, Plaintiffs assert that these Defendants should be liable for damages because of supposed "policies" alleged to exist in Lexington County regarding the provision of counsel to the seven named Plaintiffs. SAC at 111, ¶ 501. However, the manner in which criminal defendants are advised of right-to-counsel issues, as with the other occasions for judicial action in the course of their cases, is something handled on a case-by-case basis by each of the eight magistrates in the county. It is not a subject for which administrative policies exist, or could exist, at the county level. If Plaintiffs continue, in the face of the evidence, to maintain otherwise, more details will be set forth by Defendants in response.

**c. By not appearing at their state court hearings, at least four of the seven named Plaintiffs waived any right to assert damage claims.**

[22] The statement of Judge Wilkinson that "policies affecting outside parties in court proceedings are much more likely to be judicial," 760 Fed. Appx. at 181, has now been borne out by the facts as the record has developed.

While the absence of the asserted "policies" provides a complete refutation of Plaintiffs' damage claims, there are a number of alternative reasons why Plaintiffs' damage claims should be dismissed. The simplest one is that four of seven Plaintiffs (Johnson, Palacios, Goodwin (2016 cases) and Corder), by not appearing for their state court trials, waived their entitlement to the rights they now attempt to assert. A fifth Plaintiff, Sasha Darby, was given the opportunity to appear in court after she failed to make payments, but did not appear, thereby also waiving the right to claim damages for subsequent events.[23]

All of the criminal proceedings involving the named Plaintiffs were commenced with the issuance of a Uniform Traffic Ticket, which operates as a summons to appear in a criminal case. Uniform Traffic Tickets, issued pursuant to S.C. Code Ann. § 56-7-10, et seq., inform the defendant of the date, place and time of trial, as well as the name of the offence and a citation to the pertinent section of the South Carolina Code. *See* www.sccourts.org/forms/pdf/utt.pdf. An example of one such ticket is part of Exhibit 7, attached.

As already noted, Plaintiffs, Johnson, Palacios, Goodwin (2016 cases) and Corder did not appear on their scheduled trial dates and were tried and sentenced in their absence.[24] If they had simply attended court upon issuance of a Uniform Traffic Ticket, they could easily have obviated or resolved any federal claims based upon alleged indigency. According to the South Carolina Supreme Court, the Uniform Traffic Ticket "summons the accused person to appear before a

[23] If the damage claims of the other two named Plaintiffs (Wright and Brown) are not dismissed for the reasons set forth herein, Defendants reserve the right to assert that for other reasons, they too waived the rights they now claim.

[24] In SAC Paragraph 8, Plaintiffs allege that "The County's magistrate courts routinely ignore requests for continuances by indigent people who are ticketed for traffic or misdemeanor offenses and who contact the court to explain why they cannot appear on the date and time of their scheduled hearing." A similar allegation is made in ¶ 103. However, only Plaintiffs Johnson and Corder refer to continuances. SAC, ¶¶ 227, 294. Aside from these ad hoc occurrences in two cases, Plaintiffs have not alleged any fact suggesting the existence of a "policy" regarding continuances.

magistrate, where he may submit any contention relative to the preservation of his rights." *State v. Biehl*, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1973) (emphasis added). Had they chosen to attend criminal court, Plaintiffs could easily have, upon conviction, asserted their rights pursuant to § 17-25-350, and if deemed indigent, could have received a payment schedule for the payment of their fines rather than filing this federal lawsuit. Any claims of indigency by those four individuals could have been and should have been resolved by their appearing in state court.

The failure of the aforementioned four individual Plaintiffs to appear at trial for a traffic offense (and Ms. Darby's similar failure to appear after being issued a Rule to Show cause) defeats those five Plaintiffs' damage claims. In *Garcia v. City of Abilene*, 890 F.2d 773 (5th Cir. 1989), the plaintiff brought a § 1983 action against the City contending its fine collection system was unconstitutional as applied to her under *Bearden v. Georgia*, 461 U.S. 660 (1983). Plaintiff was incarcerated for failure to pay the fine. However, she absented herself from the criminal trial. The Court concluded that her federal claim was not meritorious because of her failure to appear for trial. The Court explained:

> Mrs. Garcia contends that the City of Abilene violated the principles established in *Tate* and *Bearden* by attempting to jail her solely because she could not pay her fines. However, these cases rest on the assumption that the indigent appears before the court to assert his inability to pay. Even assuming an individual who is fined is too poor to pay, if he does not appear and assert his indigency, the court cannot inquire into his reasons for not paying and offer alternatives.

890 F.2d at 776.

These four Plaintiffs' trials in their absence were constitutional. See *U.S. v. Camacho*, 955 F.2d 950, 953 (4th Cir. 1992) ("A defendant may waive his constitutional right to be present at his own trial." (citing *Taylor v. U.S.*, 414 U.S. 5, 17 (1973)); *Rice v. Cartledge*, No. 6:14-CV-3748-RMG, 2015 WL 4603282, at *22 (D.S.C. July 29, 2015), quoting *Smith v. Mann*, 173 F.3d 73, 76 (2d Cir.1999) ("we hold that nothing in the Constitution prohibits a trial from being commenced

in the defendant's absence so long as the defendant knowingly and voluntarily waives his right to be present").

In these instances, the four named Plaintiffs were given the opportunity for a full judicial hearing (trial) and the opportunity to have a payment schedule set by the Court if they were indigent. They were warned fully by the UTT of the consequences if they failed to appear. Yet that is exactly what they did. While there are a number of reasons why the damage claims of these four Plaintiffs should be dismissed, the simplest reason is that by not appearing on their original trial dates, they waived the right to assert any of those claims, that is, the claim of a right prove their indigency and their right to counsel. The claims of Plaintiff Darby were also waived after she failed to respond to the Rule to Show Cause that would have provided her with an additional opportunity to assert her financial status when faced with the possible issuance of a bench warrant.

It should be noted that in *White v. Shwedo*, No. CV 2:19-3083-RMG (D.S.C.), Judge Gergel observed that the three named Plaintiffs in that case "appeared not to be appropriate class representatives due to the fact that they failed to appear at their summary court trials and, thus, did not seek the benefit of the indigency protection provisions set forth in S.C. Code Section 17-25-350." *White,* 8/18/20 Order, ECF No. 94 at 3. In an earlier order in the same case, Judge Gergel similarly observed that "Plaintiffs in this action received multiple traffic citations and consistently failed to appear at their summary court proceedings." *Id.*, ECF No. 75 at 4, 2020 WL 2315800 at *2 (D.S.C. May 11, 2020) . While *White* did not involve a damage claim, the orders in that case provide further support for the principle that a person cannot waive a right at the outset of a case and then attempt to escape the effects of such a waiver in subsequent proceedings that result from the waived action.

Should any of the Plaintiffs who waived their claims attempt to assert that their subsequent arrests pursuant to bench warrants should have given rise to an opportunity to revive those previously-waived claims, such an argument would be unavailing. After Plaintiffs waived their right to an indigency determination, they could have been given jail sentences only, as opposed to jail sentences suspended upon payment of fines, as actually occurred. While the courts tempered these Plaintiffs' jail sentences by offering them the opportunity to pay a fine in lieu of going to jail, those offers did not revive the already-waived right to an ability-to-pay hearing.[25]

**d. The damage claim against Lexington County for alleged "failure to afford counsel" should be dismissed.**

The only damage claim against Lexington County is found in Claim Five, "Failure to Afford Counsel." There it is alleged that Lexington County should be liable for damages to Plaintiffs because the County "underfund[ed] public defense. . . ." SAC at 109, ¶ 499. Plaintiffs also allege that Lexington County made "deliberate decision[s]" not to provide public defense services in situations involving "indigent people facing incarceration for nonpayment of magistrate court fines and fees. . . ." *Id.* at 109-110, ¶ 500. To the extent that claim is not barred by Plaintiffs' waivers of their damage claim, it is unavailing for several other reasons as set forth below.

**i. No legal authority supports Plaintiffs' claim for actual damages against a governmental entity for alleged denial of a right to counsel, whether through lack of funding or otherwise.**

Plaintiffs have never in this litigation cited a single case in which a local governing body has been held liable for actual damages when it was claimed that there had been a violation of the Sixth Amendment right to counsel. Nor are defense counsel aware of a case that so holds. To the contrary, the Fifth Circuit has held that a county official was not liable in damages to a criminal

[25] Again, the 2017-2018 actions of Court Administration have prevented that scenario from occurring thereafter.

defendant in a state case for failing to provide legal services to him. *Hamill v. Wright*, 870 F.2d 1032, 1037 (5th Cir. 1989)(Director of the Domestic Relations Office[ ] had no legal duty to ensure that Hamill was provided with counsel[;] . . . That obligation [to appoint counsel] was upon the state district court judge"); the same case also held that the county itself was not liable for failure to provide appointed counsel, because "Texas law [like South Carolina law] makes only state court judges responsible for appointing attorneys for indigent criminal defendants. A county can exercise no authority over state court judges, as the latter are not county officials." *Id.* [26]

**ii. With regard to the damage claim based on alleged "underfunding" of indigent defense, Plaintiffs cannot show that such "underfunding" led to their being convicted without counsel.**

Plaintiffs allege in their Sixth Amendment claim for damages (Claim Five) that "Defendant Lexington County directly and proximately caused the violation of the right of Plaintiffs Brown, Darby, Johnson, Palacios, Corder, Goodwin, and Wright to counsel by developing and maintaining a policy, practice, and custom of grossly underfunding public defense. . . ." SAC at 109, ¶ 499. However, proof of causation leading to damage is particularly lacking to the extent that damage allegedly resulted from alleged "underfunding." In order to prevail on this claim, Plaintiffs would need to show not only that they were actually harmed as a result of not having counsel, but also that the reason for their not having counsel was the absence of an adequate number of indigent defense attorneys. In addition, this claim was waived by the four named Plaintiffs who did not appear for their trials, and arguably by the other three as well, since they proceeded to trial or

[26] Plaintiffs may cite Judge Gergel's order in *Bairefoot v. City of Beaufort, S.C.*, 312 F. Supp. 3d 503, 512 (D.S.C. 2018), to the effect that "the alleged deprivation of counsel certainly suffices to support a claim for nominal damages." Subsequently, however, the Fourth Circuit has made it clear that where, as here, "there is absolutely no specific mention in the Complaint of nominal damages," a Complaint will not be read as asserting a claim for nominal damages. *Foodbuy, LLC v. Gregory Packaging, Inc.*, 987 F.3d 102, 116 (4th Cir. 2021).

hearing without counsel. As already noted, no known legal authority supports a damage claim for alleged failure to provide counsel, and it follows that there likewise can be no authority for a damage claim for an alleged underfunding of indigent defense counsel. If Plaintiffs continue to assert this minimally-alleged damage claim, Defendants will respond accordingly.

**e. There is no legal support for either of the two damage claims against Sheriff Koon.**

**i. Due process claim (Claim 4).**

Plaintiffs have specifically denied that they are seeking damages as a result of the actions "of individual sheriff's deputies to execute [payment bench] warrants. . . ." ECF No. 66 at 17. Plaintiffs' damage claim against Sheriff Koon instead is said to stem from the alleged "exercise of *administrative* authority by Defendant[] . . . Koon. . . ." *Id.* at 27 (emphasis in original). However, Plaintiffs cannot show that Sheriff Koon did anything other than to ensure that the Sheriff's Department carried out its undisputed duties under the applicable statues and the terms of the bench warrants themselves with regard to the execution of facially valid bench warrants and the incarceration of persons arrested under such warrants until directed otherwise by the courts that issued the bench warrants. Indeed, as Plaintiffs themselves have summarized this claim, it is that "Defendant Koon exercised these administrative duties in a manner that enforced a standard operating procedure of automatically arresting indigent people on payment bench warrants and incarcerating them in the Detention Center unless they can pay the full amount of court fines and fees owed before booking."

S.C. Code Ann. § 23-15-4 requires the "sheriff or his regular deputy [to] serve, execute and return every process, rule, order or notice issued by any court of record in this State," and makes him subject to contempt of court for failure to do so). Further, S.C. R. Crim. P. 30(c) provides that "It is the continuing duty of the sheriff, and of other appropriate law enforcement agencies in the

county, to make every reasonable effort to serve bench warrants." Not surprisingly, then, the only policy adopted by the Lexington County Sheriff's Department regarding warrants, including bench warrants, is Policy 3.50, "Criminal/Civil Process," which provides that "It is the policy of the LCSD to execute warrants and serve civil process in accordance with South Carolina State Laws." Exhibit 18, attached.

As already discussed above, the now-discontinued bench warrant form (MC2) used in the cases of the named Plaintiffs specifically provided that law enforcement officers were ordered and authorized to "to take and convey [the criminal defendant] to the common jail. The keeper of said jail is hereby commanded to receive the said defendant and to safely keep until he/she shall be thereof discharged by due course of law; and for so doing, this shall be your good and sufficient warrant." *See, e.g.,* Exhibit 16, p. SCCA-000110.

For these reasons, it is clear that the reason the Sheriff's Department made arrests on bench warrants was that state law required the Department to do so. The reason the Sheriff's Department kept arrested individuals in jail was that the bench warrants commanded the Department to do so. The procedures followed by the Sheriff's Department were not created by Sheriff Koon. To the contrary, Sheriff Koon has no legal authority to do otherwise. Plaintiffs' due process claim against Sheriff Koon for damages therefore must be dismissed.[27]

**ii. Unreasonable seizure claim (Claim 6).**

Plaintiffs' Fourth Amendment (unreasonable seizure) claim is based solely on their contention that the bench warrants issued for the named Plaintiffs were unsupported by probable

[27] To the extent, if any, that Plaintiffs may continue to claim that "Defendant Koon directly and proximately cause violations of the named Plaintiffs' right to a pre-deprivation ability-to-pay hearing," SAC at 107, ¶ 492, that claim is preposterous on its face. It appears to be based on an assumption that the Sheriff could ignore the commands of the bench warrants and attempt to require the magistrates to conduct ability-to-pay hearings.

cause. *See, e.g.,* SAC at 115, ¶ 517 (Plaintiffs Brown, Darby and Wright, as a result of a "standard operating procedure" of the Sheriff's Department, were arrested "on payment bench warrants . . . which were not supported by probable cause of criminal activity"). However, it is well settled that an arrest pursuant to a facially valid arrest warrant will not give rise to a Fourth Amendment claim. *See, e.g., Satterfield v. City of Mauldin,* No. CIV.A. 6:06-1806HFF, 2007 WL 2736310, at *6 (D.S.C. Sept. 17, 2007), citing *Mitchell v. Aluisi*, 872 F.2d 577 (4th Cir.1989). Further, the Fourth Circuit has held that once an arresting officer ascertains that a person is the individual listed on a bench warrant, the officer had "probable cause (and indeed the duty) to serve the warrant and take [the person] into custody." *Carter v. Balt. Cnty.*, 95 F. App'x 471, 479 (4th Cir.2004). *See also, e.g., Luckes v. Cty. of Hennepin, Minn.*, 415 F.3d 936, 939 (8th Cir. 2005)([b]ecause Luckes was named in a valid bench warrant . . . , probable cause for his arrest pursuant to that warrant was established, and his Fourth Amendment argument is thus without merit"). Plaintiffs do not claim that they were not the individuals specified on the bench warrants under which they were arrested. Nor have they suggested any other reason why the bench warrants were facially invalid.

Plaintiffs appear to claim, or at least initially claimed, that Sheriff Koon is responsible for "administrative conduct [that] proximately caused Plaintiffs' arrest and incarceration without any pre-deprivation ability-to-pay hearing or representation by court-appointed counsel" .ECF No. 66 at 39. This claim, however, would impose upon the Sheriff a duty that does not exist. *See, e.g., Perry v. Pennsylvania*, No. CIV.A. 05-1757, 2008 WL 2543119, at *11 (W.D. Pa. June 25, 2008)(law enforcement officials had "no obligation, under pain of violating Plaintiff's federal rights, to look behind [a] facially valid warrant and question the authority of the issuing body"); *Thompson v. Duke*, 882 F.2d 1180, 1186 (7th Cir. 1989)("Hardiman and Patrick, as mere jailers, only had a duty to determine the facial validity of the warrant under which Thompson was held;

they had no independent duty to investigate Thompson's claims of innocence")(citing *Baker v. McCollan*, 443 U.S. 137, 145 (1979)(holding that someone executing an arrest warrant is not required by the Constitution to investigate independently every claim of innocence). The absence of a duty to investigate the arrestee's claims of innocence also logically includes the absence of a duty to inquire into the procedures followed by the issuing court.

With regard to their Sixth Amendment claim against the Sheriff, Plaintiffs claim that the Sheriff enforces a policy whereby "LCSD deputies and Detention Center staff . . . systematically fail to notify bench warrant arrestees of their right to request counsel and to bring them to the Bond Court adjacent to the Detention Center, or any other magistrate court, for a hearing on ability to pay and representation by counsel." ECF No. 66 at 33-34. However, so far in this litigation, Plaintiffs have not cited any authority to support their claim that arresting officers are required to perform any of the listed acts, and Defendants' counsel are aware of none.

It should be recalled that whenever a person is arrested on a bench warrant for failure to pay a legal financial obligation, the person has already been tried and convicted. If the bench warrant is facially valid, the Sheriff's Office has no duty to inquire into whether the sentencing court followed applicable procedures regarding the defendant's ability to pay or representation by counsel. To the contrary, even in the unlikely event that the law enforcement officer knew of a procedural deficiency in the course of the conviction, it would be beyond the power of that officer to refuse to honor the warrant.

**6f As applied to the facts of the named Plaintiffs' cases, the due process rights claimed by Plaintiffs were not "clearly established," and as result, the Magistrate Defendants are entitled to qualified immunity for that reason and also because they had a right to rely on the instructions from South Carolina Court Administration.**

Throughout this litigation, Plaintiffs have argued that *Bearden v. Georgia*, 461 U.S. 660 (1983) requires that before incarceration for nonpayment of a fine, a court must hold "an individualized hearing or make[] a finding that these indigent people are able to pay. . . ." ECF No. 80 at 22. This generalized legal statement does not indicate that the law was clearly established as applied to the facts of the three individual Plaintiffs (Brown, Wright and Darby) who actually appeared in court. In their cases there was some consideration of ability to pay, as shown by those individuals being afforded scheduled time payment plans.

The more precise issue presented under the facts pertaining to those three Plaintiffs, assuming without conceding that their damage claims are not precluded for other reasons set forth herein, is (a) whether a court needs to conduct a second inquiry into ability to pay once a person is incarcerated on a previously-suspended sentence upon failure to make payments previously permitted in lieu of serving jail time, (b) the person has agreed, as part of being offered a scheduled time payment for a fine imposed in the course of suspending a jail sentence, that "[f]ailure to appear as directed or failure to comply with the terms set forth in this payment schedule will result in a BENCH WARRANT/COMMITMENT being issued for my arrest and denial of any future requests for a scheduled time payment," *see, e.g.*, Ex. 3 at p. 10204-B-0171, and (c) the complained-of action has been authorized by an entity with superior legal knowledge and that has supervisory authority over the defendant

*Bearden* did not speak to any of the above circumstances, which were not present in that case. The facts in *Bearden* were significantly different: (a) the state criminal case in *Bearden* did not at any pertinent time involve an incarcerative sentence, the defendant having been sentenced

only to probation; [28] (b) there was no inquiry into the defendant's ability to pay at the time of the conviction and original sentence, (c) the person convicted had not signed a form waiving the right to make any future requests for a scheduled time payment, and (d), the issue did not arise in the context of an action for damages.

Government officials "are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *District of Columbia v. Wesby*, —— U.S. ——, 138 S.Ct. 577, 589 (2018) (internal quotation marks omitted). The Supreme Court has further described the standard for determining whether qualified immunity exists as follows:

> A Government official's conduct violates clearly established law when, at the time of the challenged conduct, "[t]he contours of [a] right [are] sufficiently clear" that every "reasonable official would [have understood] that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate. *See ibid.; Malley v. Briggs*, 475 U.S. 335, 341 (1986).

*Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)(emphasis added).

As the Fourth Circuit reiterated in *Feminist Majority Found. v. Hurley*, 911 F.3d 674, 699 (4th Cir. 2018), "[w]e retain discretion to address the separate qualified immunity inquiries in the order of our choosing. *See Tolan v. Cotton*, 572 U.S. 650 (2014); *see also Pearson v. Callahan*, 555 U.S. 223, 241 (relying, in part, on constitutional avoidance doctrine in concluding that court has discretion to first address clearly established prong. . . .)." Defendants suggest that this case is one in which the "clearly established" prong should be addressed first, because doing so will render it unnecessary to consider the second prong.

[28] The Court in *Bearden* noted that the defendant had originally been sentenced to several years' imprisonment, but that that sentence was reduced to probation for reasons not relevant here. 461 U.S. at 663 n.4.

South Carolina Court Administration, the administrative arm of the Supreme Court of South Carolina, clearly did not regard the question of the applicability of *Bearden* to the facts of these cases to have been "beyond debate," *Ashcroft, supra*. Otherwise, Court Administration would not have authorized county magistrates to use forms and procedures that, under Plaintiffs' view of *Bearden*, would have failed to comply with the requirements of that case.

The present case is therefore similar to *Wadkins v. Arnold*, 214 F.3d 535 (4th Cir. 2000), where the Fourth Circuit agreed with the following holding in a Ninth Circuit case:

> Reasonable attorneys could disagree with our probable cause assessment. It would be plainly unreasonable to rule that the arresting officers ... must take issue with the considered judgment of an assistant United States Attorney and the federal magistrate. . . . [S]uch a rule . . . would also mean that lay officers must at their own risk secondguess the legal assessments of trained lawyers.

214 F.3d at 543, quoting *Arnsberg v. United States*, 757 F.2d 971, 981 (9th Cir.1985)(first emphasis in original, second emphasis added). Such "second-guessing" of Court Administration's authorized forms is precisely what Plaintiffs appear to argue that the county magistrates in the present case, almost all of whom were laypersons, should have done. However, as in *Wadkins, supra*, it would be "plainly unreasonable" to require county magistrates to second-guess the legal assessments of the trained lawyers at South Carolina Court Administration and at the Supreme Court of South Carolina itself. As a result, the Magistrate Defendants are entitled to qualified immunity from the damage claims of those few Plaintiffs who did not waive those claims.

**g. The *Rooker-Feldman* doctrine provides an additional reason for dismissing Plaintiffs' damage claims.**

Plaintiffs' damage claims are barred by the *Rooker-Feldman* doctrine (*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), which involves subject matter jurisdiction. *See, e.g., Exxon Mobil Corp. v. Saudi Basic*

*Indus. Corp.*, 544 U.S. 280, 292 (2005)(noting that "the District Courts in *Rooker* and *Feldma*n lacked subject-matter jurisdiction").[29]

As summarized by the Fourth Circuit, that doctrine applies when "the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself." *Davani v. Virginia Dep't of Transp.*, 434 F.3d 712, 713 (4th Cir. 2006), citing *Exxon Mobile Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280 (2005). The same case holds that "if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-court decision, and is therefore outside of the jurisdiction of the federal district court." *Id.* at 719.

The *Rooker–Feldman* doctrine "divests the district court of jurisdiction where entertaining the federal claim should be the equivalent of an appellate review of [the state court] order." *Jordahl v. Democratic Party of Virginia*, 122 F.3d 192, 202 (4th Cir. 1997). Continuing, the Fourth Circuit held as follows:

> The controlling question in the *Rooker–Feldman* analysis is whether a party seeks the federal district court to review a state court decision and thus pass upon the merits of that state court decision, not whether the state court judgment is presently subject to reversal or modification. Put another way, if "in order to grant the federal plaintiff the relief sought, the federal court must determine that the [state] court judgment was erroneously entered or must take action that would render the judgment ineffectual," *Rooker–Feldman* is implicated.

[29] This Court has previously declined to apply *Rooker-Feldman*, ECF No. 107 at 16-17, but only in connection with damage claims against one Defendant, Lexington County, "based on underfunding of the public defender system." *Id.* at 7. Citing *Bairefoot*, *supra*, this court agreed "that neither *Heck* nor the *Rooker-Feldman* doctrine would bar the plaintiffs' claims under § 1983, because these claims are independent of their state court judgment and seek only 'to force two South Carolina municipalities to comply with the Constitution's requirement to provide counsel for indigent defendants appearing in criminal courts created and managed by those municipalities. . . .'" *Id.* However, the cited holding in *Bairefoot* does not apply to the damage claims against the Magistrate Defendants. Those claims are primarily addressed to the issue of ability-to-pay hearings at the stage of the proceedings at which actual incarceration was ordered.

*Id.* (Emphases added). It is difficult to see how a favorable ruling for Plaintiffs on their damage claims could be reached without effectively concluding "that the [state] court judgment was erroneously entered."

Another case in the District of South Carolina has applied *Rooker-Feldman* to a challenge to a state court bench warrant. *Reaves v. S.C. DSS*, No. CIV.A.4:08-576TLWTER, 2008 WL 5115026, at *3 (D.S.C. Dec. 3, 2008)(applying *Rooker-Feldman* when the plaintiff could succeed only by showing in effect that the state court judge wrongly issued the civil bench warrant).

Case law also supports the application of *Rooker-Feldman* to bar damage claims in contexts similar to those of the present case. For instance, in *Jones v. Cumberland Cty. Municipality*, 2015 WL 3440254, at *5 (E.D.N.C. 2015), report and recommendation adopted, 2015 WL 3440258 (E.D.N.C. 2015), the court reached the following conclusions:

> The injuries plaintiff alleges in this case result from alleged improprieties in the state court criminal proceedings, namely, imposition of an excessive fine and term of imprisonment. Matters relating to these state criminal proceedings are not appropriately brought before this court because a determination of plaintiff's claims in his favor would necessarily require this court to find that the state court proceedings produced an improper result and possibly as well that they were prosecuted in an improper matter. The *Rooker–Feldman* doctrine prohibits this court from making such a determination.[30]

*Accord, e.g.*, *Shahid v. Borough of Eddystone*, 2012 WL 1858954, at *9 (E.D. Pa. 2012), aff'd, 503 F. App'x 184 (3d Cir. 2012), cert. denied, 134 S.Ct. 92 (2013)(federal court may not consider a claim that would require either determining that the state court judgment was erroneously entered or reversing it).

[30] The same case holds that *Rooker-Feldman* applies independently of the principles of *Heck v. Humphrey*, 512 U.S. 477 (1994). 2015 WL 3440254 at *4.

Plaintiffs' damage claims against the Magistrate Defendants stem only from the issuance of the bench warrants in their case. The bench warrants were the relevant "state court decisions," and the incarcerations that resulted from those bench warrants were the injuries "caused by" those state court decisions. In order for Plaintiffs to prevail on their damage claims, this Court would inevitably need to conclude that it was legally erroneous, that is, a violation of the principles of *Bearden*, for magistrates (whether the Magistrate Defendants or others) to have issued bench warrants for their arrest without providing for an additional ability-to-pay hearing. The damage claims against others stem logically from that same challenge to the validity of the bench warrants. Accordingly, Plaintiffs' damage claims against all Defendants should be dismissed under the *Rooker-Feldman* doctrine for lack of subject matter jurisdiction

**CONCLUSION**

For the foregoing reasons, Defendants respectfully submit that their Motion for Summary Judgment should be granted, and this action dismissed.

Respectfully submitted,

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