IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

TWANDA MARSHINDA BROWN, *et al.*, Plaintiffs, v. LEXINGTON COUNTY, SOUTH CAROLINA, *et al.*, Defendants.	Case No. 3:17-cv-01426-MBS

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Defendants' motion for summary judgment relies on erroneous legal analyses, misleading factual contortions, and inappropriate gamesmanship. For the reasons below, the Court should deny Defendants' motion.

Plaintiffs, like thousands of other people in Lexington County, were arrested on bench warrants issued by the Lexington County Magistrate Courts (LCMC) for failing to pay court debt. They were transported directly to jail, denied a hearing to determine willfulness of nonpayment, denied counsel, and subjected to extended incarceration—between seven and sixty-three days. These constitutional deprivations did not arise from ad hoc decisions by individual magistrate judges or sheriff's deputies—rather, they were the direct and intended result of county-wide practices that were sanctioned and implemented by Defendants.

As Chief and Associate Chief Judges for Administrative Purposes, Defendants Reinhart and Adams were directly responsible, by order of the Chief Justice of the South Carolina Supreme Court, for establishing uniform debt collection policies in the LCMC. During their respective tenures as Chief Judges, Reinhart and Adams maintained the Default Payment Policy and Trial in Absentia Policy despite: (1) knowledge that those practices were unconstitutional; (2) authority to implement new debt collection policies; and (3) knowledge that constitutional alternatives were available.

Defendant Koon maintained a policy at the Lexington County Sheriff's Department (LCSD) of incarcerating individuals who were arrested on nonpayment bench warrants and not returning them to court. This policy defied the plain demands of the warrant, contradicted explicit guidance from the South Carolina Attorney General and the South Carolina Bench Book (Bench Book), and perpetuated Lexington County's longstanding debtors' prison scheme.

Defendants attempt to avoid Plaintiffs' core claims by invoking a scattershot assembly of legal doctrines: mootness, abstention, lack of jurisdiction, and both judicial and qualified immunity. But each of these fails—and fails easily.

First, Defendants fail to meet their burden for mootness. They argue that relief is unnecessary because their unlawful practices have been permanently fixed by the September 2017 Memorandum issued by South Carolina Supreme Court Chief Justice Donald Beatty and by a few updated policies from the South Carolina Office of Court Administration (SCCA). But importantly, Defendants' longstanding practices violated decades of clearly established law and were implemented by *misusing* bench warrant forms they received from the SCCA. A nonbinding reminder about legal precedent and a few updated forms from the SCCA fall far short of meeting the requisite "formidable burden Defendants carry, where they must show that it is *absolutely clear*" that the wrongful practices cannot return. *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

Defendants' arguments under the *Younger* and *Rooker-Feldman* doctrines fare no better. These arguments have been recycled from other briefing in this case and have already been rejected by the Court—thus, both arguments fail under the law of the case doctrine.

The Chief and Associate Chief Judges also invoke the protections of judicial and qualified immunity, but again to no avail. The Supreme Court has explained that judicial immunity is "strong medicine" that only protects judges engaging in "paradigmatic judicial acts." *Forrester v. White*, 484 U.S. 219, 227, 230 (1988) (internal quotation omitted). But here, as the Fourth Circuit already recognized, "Plaintiffs are not suing Defendants with respect to individual determinations." *Brown v. Reinhart*, 760 Fed. App'x. 175, 180 (4th Cir. 2019). Rather, Plaintiffs are suing the Chief and Associate Chief Judges because of actions taken in their administrative, policymaking, and supervisory roles in perpetuating a county-wide practice that violated the Sixth and Fourteenth Amendments. The challenged actions are general and not specific to individual cases. They are also administrative, not adjudicative. For these reasons, judicial immunity is inapplicable.

Defendants Reinhart and Adams even attempt to assert qualified immunity against Plaintiffs' Fourteenth Amendment damages claim (Claim Four). This is particularly astounding because the challenged debt collection scheme violated forty years of clearly established caselaw

from the United States Supreme Court, Fourth Circuit Court of Appeals, and South Carolina Supreme Court. Further, the facts presented are not extensions of *Bearden v. Georgia* and its progeny—they lie at the very heart of *Bearden*'s holding. 461 U.S. 660, 672–73 (1983). Defendants Reinhart and Adams violated "clearly established" law and are thus not entitled to qualified immunity.

Finally, Defendants' efforts to deflect blame also fail. The Chief and Associate Chief Judges argue that they cannot be held liable because they were merely following practices set and condoned by the SCCA. The undisputed evidence, however, cuts the other way. The SCCA explicitly instructed magistrates that bench warrants were only to be used "to bring a defendant back before a particular court" and even circulated a "Dear Colleague" letter to all South Carolina judges that emphasized that "[c]ourts must not incarcerate a person for nonpayment of fines and fees without first conducting an indigency determination and establishing that failure to pay was willful." ECF No. 284-1 at 22[1]; ECF No. 284-17 at 17–18. ECF No. 284-18. Such evidence makes it clear that the Chief and Associate Chief Judges—not the SCCA—are the parties responsible for the LCMC's unconstitutional debt collection practices.

Defendant Koon fails at a similar blame game. He argues that he cannot be held liable for illegally detaining Plaintiffs because he was merely enforcing magistrate judges' orders. But like the Chief and Associate Chief Judges' misguided finger pointing at the SCCA, this argument lacks any evidentiary support. Defendant Koon testified that his department arrested individuals on magistrate court bench warrant forms and held them in custody until they paid their debt or served their jail sentence. But that is far from the ordinary enforcement of a bench warrant, particularly one that expressly commands the arrestee be "brought before [the court] to be dealt with according to the law." ECF No. 283-16 at 112. Moreover, evidence shows that Koon was

[1] Citations to pages for documents already in the electronic case file (ECF) refer to the Court's electronically generated page numbers at the top of the page.

aware of the impropriety of using bench warrants as authority to incarcerate a defendant. Given these facts, Defendant Koon's motion for summary judgment should be denied.

In sum, Defendants have not met their burden of establishing that they are entitled to judgment in their favor. The law and undisputed facts support liability on each claim asserted, and Defendants' motion for summary judgment should therefore be denied.

PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF MATERIAL FACTS

The parties rely on many of the same material facts in support of their respective and pending motions for summary judgment. *See* Mem. in Supp. of Defs.' Mot. For Summ. J. (Defendants' brief), ECF No. 283-1; *see also* Mem. in Supp. of Pls.' Mot. For Summ. J. (Plaintiffs' brief), ECF No. 284-1. Defendants, however, repeatedly and heavily rely on a few immaterial facts that illustrate their fundamental misapprehension of Plaintiffs' claims.

Defendants state that "four of the seven named Plaintiffs never appeared in court to make a showing of indigency *at the time they were convicted*." ECF No. 283-1 at 14 (emphasis added). Defendants further state, "[a]s 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." *Id.* Plaintiffs agree that these are the facts that framed their convictions and sentencing. ECF No. 284-1 at 13–21.[2] But as explained in Part IV, Defendants' reliance on these irrelevant facts to make their legal arguments illustrates their continued failure to grasp Plaintiffs' legal claims. Those claims concern the denial of Plaintiffs' constitutional rights *after they were convicted and sentenced*—specifically, the denial of Plaintiffs' rights to (1) a hearing on ability to pay *after* arrest and *before* incarceration for

[2] Defendants subsequently state that the purported Default Payment and Trial in Absentia Policies are "nonexistent." ECF No. 283-1 at 21. Plaintiffs disagree with the characterization that these policies are "nonexistent," and Defendants themselves assert that "the practice of incarcerating criminal defendants, even those who had received suspended sentences, on bench warrants, was halted." *Id.* at 29. Defendants' disagreement with the nomenclature of these policies, ECF No. 283-1 at 21 n.13, is immaterial.

nonpayment of fines and fees under *Bearden v. Georgia*, and (2) access to counsel *before* incarceration for nonpayment under the Sixth Amendment.

To the extent Defendants rely on facts that do not support the legal conclusions Defendants draw, Plaintiffs dispute Defendants' unsupported characterizations of those facts in the following legal argument sections. Plaintiffs do not, however, dispute those underlying facts.

ARGUMENT

I. Defendants have failed to meet their formidable burden of proving that Plaintiffs' prospective relief claims are moot.

In their brief, Defendants argue that their longstanding practices of jailing people without a constitutionally required hearing and access to counsel have been "eradicated" and that Plaintiffs' claims are therefore moot. ECF No. 283-1 at 36. But because Defendants cannot meet their high burden of establishing mootness based on the voluntary cessation doctrine, their mootness argument fails.

The Supreme Court has long recognized that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 445 U.S. 283, 289 (1982)). Simply put, "a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 323 (4th Cir. 2021) (hereinafter *Courthouse News II*) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). This rule is designed "to prevent a manipulative litigant immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after." *Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017) (internal quotation marks omitted) (quoting *ACLU of Mass. v. U.S. Conf. of Catholic Bishops*, 705 F.3d 44, 54–55 (1st Cir. 2003)). When a defendant ceases but *could* reinstate an unlawful practice, courts are reluctant to find that a case is moot because "[t]he defendant [would be] free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion."

United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953) (footnote omitted) (citing *United States v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 309–10 (1897)); *see also Friends of the Earth*, 528 U.S. at 189.

"[A] defendant claiming that its voluntary compliance moots a case bears the *formidable burden* of showing that it is *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 190 (emphasis added) (citing *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)); *see also Porter*, 852 F.3d at 364 (citing *Friends of the Earth*, 528 U.S. at 190); *Courthouse News II*, 2 F.4th at 323 (same); *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 407 (4th Cir. 2019) (emphasizing defendant's "heavy burden of persuading the court"). This formidable burden cannot be met if a defendant "retains the authority and capacity to repeat an alleged harm." *Wall v. Wade*, 741 F.3d 492, 497 (4th Cir. 2014) (finding memorandum describing a change in policy did not moot case because nothing in memo suggested defendant was "actually barred" from reinstating challenged policy); *Courthouse News II*, 2 F.4th at 323 (holding case was not moot despite significant improvements made to challenged practices since filing of suit because "nothing bar[red] [the defendants] from reverting to the allegedly unconstitutional [practices] . . . in the future") (internal quotation marks and alterations omitted) (citing *Porter*, 852 F.3d at 365); *Pashby v. Delia*, 709 F.3d 307, 316 (4th Cir. 2013) (denying mootness argument despite reinstatement of Medicaid benefits to plaintiffs because state officials retained authority to cancel benefits). The "bald assertions of a defendant—whether governmental or private—that it will not resume a challenged policy fail to satisfy any burden of showing that a claim is moot." *Wall*, 741 F.3d at 498 (footnote omitted). Rather, "a defendant satisfies this heavy burden when . . . it enters into an unconditional and irrevocable agreement that prohibits it from returning to the challenged conduct" or where some other change "*completely and irrevocably* eradicate[s] the effects of the condition or policy subject to challenge." *Porter*, 852 F.3d at 364 (alteration in original) (emphasis added) (internal quotation marks and citations omitted).

Relying principally on Chief Justice Donald Beatty's nonbinding 2017 Memorandum and revised forms issued by the South Carolina Office of Court Administration (SCCA), Defendants assert that the challenged practices have been "eradicated" and that Plaintiffs' claims for prospective relief are therefore moot. ECF No. 283-1 at 36–37. This is precisely the kind of "bald assertion" that courts have consistently rejected. *See Wall*, 741 F.3d at 498; *see also Porter*, 852 F.3d at 364. Indeed, Defendants fail to meet the formidable burden of demonstrating that it is *absolutely clear* the challenged conduct could not reasonably be expected to recur for four key reasons.

First, the Chief Justice's Memorandum—which is limited in scope and nonbinding in its application—is far from the type of "unconditional and irrevocable agreement" that would prohibit Defendants from "returning to the challenged conduct." *Porter*, 852 F.3d at 364 (internal quotation marks omitted) (quoting *Already, LLC*, 568 U.S. at 93). To start, the Memorandum does not touch on, much less prohibit, the specific debt collection practices overseen and sanctioned by the Chief and Associate Chief Judges of the LCMC that violate the Fourteenth Amendment. *See* ECF No. 40-1. The Memorandum addresses only Sixth Amendment deficiencies and cites long established Supreme Court precedents concerning the right to counsel, but it makes *no* reference to *Bearden v. Georgia* and does not address the countless *Bearden* violations that occurred within the LCMC for decades. *See* ECF No. 284-1 at 19–24; *see also* ECF No. 284-10 at 159:12–23, 170:9–17, 215:15–23; ECF No. 284-12 at 182:15–183:8; ECF No. 284-15 at 130:24–132:3; ECF No. 284-16. In fact, the Memorandum is entirely silent with respect to the challenged debt collection practices, the roles of the Chief and Associate Chief Judges in sanctioning those practices, and the longstanding and widespread misuse of nonpayment bench warrants. *See* ECF No. 40-1; ECF No. 284-10 at 158:19–159:2; ECF No. 284-11 at 331:19–332:3; ECF No. 284-12 at 162:19–25, 165:2–14, 167:22–168:12.

Moreover, even as to Sixth Amendment issues it acknowledges, the Memorandum does not bind *any* Defendants' conduct in *any* manner. *See, e.g.*, *Wall*, 741 F.3d at 497 (finding that memorandum describing purported policy change did not moot case because nothing in

memorandum suggested defendant was actually barred from reinstating challenged policy); *Courthouse News II*, 2 F.4th at 323–24 (holding case was not moot despite significant improvements made to challenged practices since filing of suit because, absent relief, nothing barred defendants from returning to alleged unconstitutional practices). Rather, it addresses South Carolina magistrate judges *in general* and reminds them of their obligation to comply with longstanding constitutional precedent regarding access to counsel.

Second, the SCCA's issuance of new policies or forms does not render Plaintiffs' need for prospective relief moot. As explained in Part III.C below, Defendants' decades long unconstitutional debt collection practices contravened clear instructions from the SCCA. ECF No. 284-1 at 21. In fact, chronic *misuse* of the SCCA forms—namely, the nonpayment MC2 bench warrant form—is at the heart of Defendants' unconstitutional policies and practices, as nothing in these forms required the jailing of debtors without constitutionally required pre-deprivation hearings or access to counsel. *See Brown v. Reinhart*, 760 F. App'x 175, 180 (4th Cir. 2019) ("Plaintiffs allege that Defendants, acting in their *administrative* capacities, oversaw and enforced policies and practices that violated Plaintiffs' constitutional rights."); *see also* ECF No. 284-1 at 49–51, 53–61. Given Defendants' proven disregard for the SCCA's policies and forms, the new procedures and forms issued by the SCCA cannot constitute the type of change that "completely and irrevocably eradicates" the effects of Defendants' conduct. *Porter*, 852 F.3d at 364 (alteration and internal quotation marks omitted) (quoting *Lindquist v. Idaho State Bd. of Corr.*, 776 F.2d 851, 854 (9th Cir. 1985)).

But even if Defendants obeyed the SCCA's new guidance promulgated after the filing of this lawsuit, these changes lack the permanence sufficient to moot Plaintiffs' claims. *See Porter*, 852 F.3d at 364; *see also Bell v. City of Boise*, 709 F.3d 890, 900–01 (9th Cir. 2013) (denying mootness argument because defendants "have failed to establish with [sufficient] clarity . . . that the new policy is the kind of permanent change that proves voluntary cessation"). Just as easily as they were adopted, these new forms and procedures could be repealed or superseded. Defendants cannot point to *anything* in the new procedures or forms promulgated by the SCCA

suggestive of permanence. Moreover, these voluntary changes occurred after this litigation was filed and pending, when Defendants' conduct was under this Court's scrutiny. Courts have been particularly reluctant to find mootness in these circumstances. *See, e.g.*, *Alcorn*, 913 F.3d at 407 (noting that "[p]romulgating new forms may well have been the right thing to do in accordance with state law . . . . [But] [t]he mootness doctrine ordinarily does not extend to situations where a party quits its offending conduct partway through litigation.") (citing *Friends of the Earth, Inc.*, 528 U.S at 189–94)).

Third, Defendants' continued refusal to acknowledge the illegality of their practices demonstrates precisely why prospective declaratory and injunctive relief is necessary. As the Fourth Circuit has recognized, defendants undermine their mootness arguments when they deny the wrongfulness of their prior conduct. *See, e.g.*, *Porter*, 852 F.3d at 365 (denying mootness in part because defendants repeatedly declined to explicitly acknowledge prior existence of unconstitutional conditions of confinement or to offer explicit guarantees not to revert to constitutionally deficient conditions). Here, by repeatedly attempting to deflect responsibility onto the Chief Justice and the SCCA, ECF No. 283-1 at 9, 36–39, and categorically denying that the Default Payment and Trial in Absentia Policies *existed*, let alone are unconstitutional, *id.* at 21–22, 42, Defendants highlight the need for clear prospective relief. As in *Porter*, Defendants have, "throughout the course of this litigation . . . refused to commit to keep the revised policies in place and not revert to the challenged practices." 852 F.3d at 365. In the face of such denials and deflections, it is far from "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 190 (citing *Concentrated Phosphate Export Ass'n*, 393 U.S. at 203); *see also* 13C Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Fed. Prac. & Proc. Juris. § 3533.7 (3rd ed. 2008) ("[C]ases reject claims of mootness in terms that suggest . . . that the official defendants simply cannot be trusted to continue the pattern of behavior adopted in response to private challenge and judicial inquiry."). Defendants' denials underscore the continued need for this Court to clarify the illegality of Defendants' practices and enjoin any further constitutional violations. *See, e.g.*, *W.T. Grant Co.*,

345 U.S. at 632 ("[A] public interest in having the legality of the practices settled[] militates against a mootness conclusion.").

Fourth and finally, Defendants have not—and cannot—demonstrate that they lack the authority and capacity to revert to the specific debt collection practices that caused the unlawful arrest and incarceration of indigent people who could not afford to pay fines and fees to the LCMC. *See Wall*, 741 F.3d at 497 (rejecting mootness and vacating dismissal of plaintiff's equitable claims because defendants "retain[ed] the authority and capacity to repeat [the] alleged harm"); *Courthouse News II*, 2 F.4th at 323 (same). The Chief and Associate Chief Judges retain policymaking and supervisory authority over summary court debt collection procedures in the LCMC. *See, e.g.*, ECF No. 284-7; ECF No. 284-8. Thus, they are free to revert to the unconstitutional policies at issue, which militates against a finding of mootness. *Pashby*, 709 F.3d at 316–17.

Defendants erroneously rely on *United States v. Jones*, 136 F.3d 342 (4th Cir. 1998), to support their assertions of mootness. *Jones* involved an appeal of a district court's order enjoining the Citadel, a state-supported military college, from resuming its male-only admission policy. *Id.* at 343–44, 346. The Fourth Circuit vacated the district court's order granting injunctive relief, finding the grant of relief moot because defendants had "pointed to *powerful* evidence that there is no reasonable likelihood that the wrong will be repeated." *Id.* at 348–49 (emphasis added) (quoting *Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 71–72 (1983)). The type of evidence presented in *Jones* is simply not present here. First, the Citadel adopted a co-education policy "immediately after" the Supreme Court's decision in *United States v. Virginia*, 518 U.S. 515 (1996), holding that Virginia Military Institute's male-only admissions policy was unconstitutional. *Jones*, 136 F.3d at 345–48. Second, the Citadel "manifested" its intention to not revert to the male-only admissions policy when it subsequently "negotiated and agreed to a consent decree with the [United States] government, to which it [was] now legally bound." *Id.* at 348. Together, these actions—enacting immediate changes in response to binding Supreme Court precedent and entering into a consent decree with the government—amounted to

"powerful evidence" sufficient to clear defendants' formidable burden under the voluntary cessation doctrine. *See id.*; *see also Feldman v. Pro Football, Inc.*, 419 F. App'x 381, 387–89 (4th Cir. 2011) (denying mootness argument because defendants had not "made an affirmative showing that the continuation of their alleged ADA violations [was] 'nearly impossible'") (quoting *Lyons P'Ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 800 (4th Cir. 2001)). Unlike in *Jones*, Defendants have not proffered *any* evidence pointing to permanent changes or a clear manifestation not to revert to the challenged practices. *See Jones*, 136 F.3d at 348; *see also Pro Football, Inc.*, 419 F. App'x at 387–89; *Bell*, 709 F.3d at 900–01. Moreover, in *Jones,* the United States "[had] not argued that South Carolina and The Citadel are likely to revert to the male-only policy." 136 F.3d at 348. Here, to the contrary, Plaintiffs have pointed to several reasons that Defendants could revert to the challenged practices and thus have demonstrated why declaratory and injunctive relief is needed to prevent future or ongoing constitutional violations arising from the challenged conduct.

Defendants have not met their formidable burden of proving, based on undisputed facts, that it is "absolutely clear" their alleged policies and practices cannot reasonably be expected to recur. *Porter*, 852 F.3d at 364. They provide nothing to support their cessation argument beyond a nonbinding memorandum that does not even refer to the specific practices at issue in this litigation; they categorically deny the existence of the unconstitutional policies challenged here; and they make repeated attempts to deflect liability onto the Chief Justice of the South Carolina Supreme Court and the SCCA. Defendants' assertions underlying their mootness argument amount to nothing more than the type of "bald assertions" that the Fourth Circuit has consistently rejected, and they unequivocally demonstrate why Defendants have failed to prove that the challenged practices will never resume. *See Wall*, 741 F.3d at 498. Only declaratory and injunctive relief by the Court will provide this assurance.

II. Defendants fail to demonstrate that Plaintiffs' claims are barred by *Younger* abstention, *O'Shea*, or the *Rooker-Feldman* doctrine.

Defendants' renewed efforts to invoke *Younger* abstention, *O'Shea*, and the *Rooker-Feldman* doctrine should be rejected. First, this Court has previously held that neither *Younger* abstention nor the *Rooker-Feldman* doctrine apply in this case, and as explained below, Defendants fail to demonstrate that any of the three exceptions to the law of the case doctrine are applicable here. Second, Defendants' renewed attacks under *Younger* and *O'Shea* are untimely and provide no substantive basis for abstention. Likewise, Defendants' renewed *Rooker-Feldman* argument is untimely and fails on the merits.

A. Defendants' latest arguments as to *Younger* abstention and the *Rooker-Feldman* doctrine fail under the law of the case doctrine.

Under the "law of the case" doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. . . . unless: (1) a subsequent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice." *TFWS, Inc. v. Franchot*, 572 F.3d 186, 191 (4th Cir. 2009) (quoting *United States v. Aramony* , 166 F.3d 655, 661 (4th Cir. 1999)). District courts in the Fourth Circuit routinely apply the law of the case doctrine, and the three circumstances analysis from *TFWS, Inc. v. Franchot* to their own interlocutory orders. *United States v. Duke Energy Corp.*, No. 1:00-cv-1262, 2014 WL 4659479, at *4 n.5 (M.D.N.C. Sept. 17, 2014) (citing *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003)). None of the exceptions to the law of the case doctrine apply to any of Defendants' latest arguments invoking *Younger* or *Rooker-Feldman*.

1. Defendants' *Younger* abstention argument fails under the law of the case doctrine.

Defendants argue for the fifth time in this case that Plaintiffs' claims for prospective relief are barred by *Younger* abstention. *See* ECF Nos. 29, 30, 87-1, 89, 283-1. The Court has already considered and rejected Defendants' argument on the first four occasions. *See* ECF Nos. 84, 107. The Court should do the same here.

As this Court has already held, *Younger* abstention does not bar Plaintiffs' claims for prospective relief because none of the three factors in *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982), are met. ECF No. 107 at 13–15 ("In determining whether *Younger* abstention is warranted, courts apply a three-factor test: '(1) there is an ongoing state judicial proceeding; (2) an important state interest in the subject matter of the proceeding must be implicated; and (3) the state proceeding must afford an adequate opportunity to raise constitutional challenges.'") (quoting *Middlesex*, 457 U.S. at 432). The first *Middlesex* factor is not satisfied because "Plaintiffs are not seeking review of Plaintiffs' individual state criminal convictions. Rather, Plaintiffs seek a declaration that Defendants' alleged policies or practices in summary courts are unconstitutional, and an injunction enjoining those practices." ECF No. 107 at 13 (citing *Thana v. Bd. of License Comm'r for Charles Cnty.*, 827 F.3d 314 (4th Cir. 2016)).

The second *Middlesex* factor is not satisfied "because the subject matter of this lawsuit pertains to Plaintiffs' constitutional rights under the Fourth, Sixth, and Fourteenth Amendments"; thus, "an important state interest is not implicated." ECF No. 107 at 14. As this Court also noted, Plaintiffs' claims are under Section 1983, over which federal courts have original jurisdiction. *Id.* (citing *Thana*, 827 F.3d at 321).

Finally, the third *Middlesex* factor is similarly unsatisfied because "Plaintiffs did not have an adequate opportunity to raise the subject constitutional claims in the state proceeding." *Id*. As the Court reasoned: "Plaintiffs are not seeking release from prison, but are challenging the constitutionality of Defendants' post-conviction debt collection practices that resulted in incarceration without a pre-deprivation judicial hearing or representation by counsel." *Id*.

There is no reason for the Court to reconsider its prior rulings on *Younger* abstention, as none of the exceptions to the law of the case doctrine apply. Defendants offer no new evidence, let alone "*substantially* different evidence," to suggest the Court should depart from its prior determination that *Younger* abstention is inapplicable. *See TFWS, Inc.*, 572 F.3d at 191 (emphasis added). Nor have Defendants demonstrated any change to controlling authority. Finally, Defendants offer nothing to meet their "high burden" of showing that this Court's prior

decision was clearly erroneous and would work a manifest injustice. *See id*. at 194 ("A prior decision does not qualify for this third exception by being just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish. . . . It must be dead wrong.") (citations and internal quotation marks omitted).

2. Defendants' *Rooker-Feldman* argument also fails under the law of the case doctrine.

Defendants' renewed efforts to invoke the *Rooker-Feldman* doctrine should similarly be rejected. This is the third time Defendants have argued that the *Rooker-Feldman* doctrine deprives the Court of subject matter jurisdiction over Plaintiffs' damages claims. *See* ECF No. 50-1 at 8; ECF No. 88-1 at 2. In the two previous instances, the Court rejected the argument. *See* ECF No. 84 at 29; *see also* ECF No. 107 at 16–17. The law of the case doctrine forecloses Defendants' attempts to relitigate the issue.

In an attempt to evade the law of the case doctrine, Defendants now argue that the Court's prior *Rooker-Feldman* holdings are limited to Plaintiffs' Sixth Amendment damages claim. ECF No. 283-1 at 58 n.29 ("This Court has previously declined to apply *Rooker-Feldman*, ECF No. 107 at 16–17, but only in connection with damage claims against . . . Lexington County . . . ."). The record contradicts this narrow view. In October 2017, Defendants moved for summary judgment on Plaintiffs' damages claims against Defendants Reinhart and Adams arguing, *inter alia*, that the Court lacked jurisdiction under *Rooker-Feldman*. ECF No. 50-1. Defendants explicitly argued that the *Rooker-Feldman* doctrine applied to *all* of Plaintiffs' claims for damages. ECF No. 50-1 at 3, 8–9; ECF No. 70 at 17–18. The motion was referred to Magistrate Judge Hodges, who recommended granting Defendants' motion as to the claims against the judges under absolute judicial immunity. ECF No. 74.

After additional briefing from both parties, this Court overruled the report and recommendation and denied Defendants' motion for summary judgment, necessarily rejecting Defendants' *Rooker-Feldman* argument as to every claim. ECF No. 84 at 29; *see also id.* at 16–18 (acknowledging Defendants' repeated attempts to invoke *Rooker-Feldman*). Defendant

Lexington County then pressed the argument a second time in a motion to reconsider. ECF No. 88-1 at 2. Once again, the Court rejected the argument as to all claims. ECF No. 107 at 16–17 ("With regard to . . . the *Rooker-Feldman* doctrine, the court is persuaded by the reasoning in *Bairefoot v. City of Beaufort, South Carolina*.") (citation omitted).

As with Defendants' failed *Younger* abstention argument, none of the exceptions to the law of the case doctrine apply. Defendants' motion for summary judgment fails to identify any new factual evidence or legal authority since the Court's first two rulings. *TFWS, Inc.*, 572 F.3d at 191. Likewise, Defendants have not and cannot show that the prior decision was "clearly erroneous and would work manifest injustice." *Id.* (quoting *Aramony*, 166 F.3d at 661). For these reasons, the Court should follow its prior rulings and reject Defendants' *Rooker-Feldman* argument.

B. Defendants' renewed *Younger* and *O'Shea* arguments are untimely and provide no substantive basis for abstention here.

Defendants' abstention arguments must fail both on the issue of timeliness and on the merits. First, notwithstanding Defendants' attempt to relitigate an issue that was previously decided, *see supra* Part II.A, Defendants' abstention arguments are wholly untimely. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 929 (1975) (holding that *Younger*'s abstention rule governs when the federal litigation is "in an embryonic stage and no contested matter [has] been decided"); *see also Courthouse News Serv. v. Schaeffer*, 429 F. Supp. 3d 196, 204–05 (E.D. Va. 2019) (hereinafter *Courthouse News I*), *aff'd, Courthouse News II*, 2 F.4th at 324–25 (holding the district court did not abuse its discretion in denying the defendants' motion to abstain). This case is far from the "embryonic" stage. *Courthouse News I*, 429 F. Supp. 3d at 205 (declining to abstain under *Younger*, noting "it cannot be said that this case is still 'embryonic'"). Plaintiffs filed their claims in June 2017, nearly five years ago. *See* ECF No. 1. Since then, extensive discovery has taken place, considerable resources have been invested into the litigation, and trial is less than three months from now. ECF No. 280. In *Courthouse News I*, the district court declined to abstain from adjudicating a case that was only nine months old, where "extensive

discovery [had] taken place and considerable resources have been put into the litigation of this matter" and trial was set three months from the order. 429 F. Supp. 3d at 204–05. As in *Courthouse News I*, this Court should not abstain, as "[t]o abstain now would disregard all the costly and time-consuming work both parties have devoted to this federal litigation." *Id.*

Even if this Court were to reconsider the merits of Defendants' abstention arguments under *Younger* and *O'Shea*—which it should not—those arguments must fail. Defendants make the vague assertion that any prospective relief Plaintiffs might seek would require the Court to become an "overseer" of the LCMC and would thus be barred by *Younger* or *O'Shea*. ECF No. 283-1 at 40. Critically, Defendants fail to acknowledge that abstention is "the exception, not the rule." *Courthouse News II*, 2 F.4th at 324 (quoting *Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)). "The doctrine of abstention . . . is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it . . . [and is] only [justified] in the exceptional circumstances where the order to the parties to repair to the state court would clearly serve an important countervailing interest." *Allegheny Cnty. v. Frank Mashuda Co.*, 360 U.S. 185, 188–89 (1959). And as the Supreme Court made clear in *Sprint Communications, Inc. v. Jacobs*, *Younger* abstention itself is narrowly confined to "three exceptional categories," which Plaintiffs long ago demonstrated are absent here. 571 U.S. 69, 79 (2013); *see also* ECF No. 35 at 30–36.

The issue addressed in *O'Shea v. Littleton* similarly does not apply as Plaintiffs do not request, nor have they ever requested, "an ongoing federal audit of state [court] proceedings which would indirectly accomplish the kind of interference that *Younger v. Harris* . . . sought to prevent." 414 U.S. 488, 500 (1974). Moreover, the relief sought by Plaintiffs would not lead to "continuous or piecemeal interruptions of the state proceedings" or require "the continuous supervision by the federal court." *Id.* at 500–01. As to the County's failure to adequately fund indigent defense (Claim Two), Plaintiffs are asking the Court to order the County to hire an independent consultant to determine the resources necessary to fulfill *Gideon's* promise in the LCMC and to take immediate steps to gain compliance with those recommendations. ECF No.

284-1 at 49. This is not a request to oversee ongoing trial proceedings; rather, Plaintiffs seek injunctive relief to help identify measures necessary to bring the County into compliance with Sixth Amendment guarantees. As to the Chief and Associate Chief Judges (Claims One and Two), Plaintiffs are asking the Court to enjoin these administrative offices from overseeing, sanctioning, or promoting a debt collection policy or standard operating procedure that allows for jailing for nonpayment of fines and fees without first: (1) conducting a judicial hearing to determine whether nonpayment was willful, as required by *Bearden*, and (2) appointing counsel, as required by the Sixth Amendment. *See* ECF No. 284-1 at 51–61. As to Defendant Adams, in her official capacity as Irmo Magistrate Judge (Claims Seven and Eight), Plaintiff Goodwin seeks only a prospective declaratory judgment that it would violate his constitutional rights to arrest and incarcerate him for nonpayment of the fines and fees he owes to Irmo Magistrate Court without being afforded a pre-deprivation hearing and the right to counsel. *Id*. at 61–63. Again, this relief would not call for either continuous and piecemeal interruptions of individual state court proceedings or continuous supervision by this Court or any other federal court.

Furthermore, the type of prospective relief Plaintiffs seek has been granted by federal courts under similar circumstances. For example, in *Wilbur v. City of Mount Vernon*, the court held two municipalities liable under Section 1983 for jointly operating a public defense system with "systemic flaws that deprive indigent criminal defendants of their Sixth Amendment right to the assistance of counsel." 989 F. Supp. 2d 1122, 1131 (W.D. Wash. 2013). The court concluded that the constitutional deprivations at issue "were the direct and predictable result of deliberate choices of City officials charged with the administration of the public defense system," and that those "[i]ntentional choices. . . made while negotiating the public defender contracts and allocating funds to the public defender system" left public defenders severely underfunded. *Id.* at 1132. The court further observed that "[l]egislative and monitoring decisions made by the policymaking authorities of the Cities ensured that any defects in the public defense system would go undetected or could be easily ignored." *Id.* The cities were liable due to "the combination of contracting, funding, legislating, and monitoring decisions made by the[ir]

policymaking authorities," which led to systematic deprivations of indigent defendants' rights guaranteed by the Sixth Amendment. *Id.* at 1133. To remedy these deprivations, the court ordered injunctive relief that included the hiring of an independent supervisor to monitor compliance. *Id.* at 1334–37.

Defendants rely on two distinguishable cases to support their position. In *Suggs v. Brannon*, the three plaintiffs were employees of adult bookstores who had been repeatedly arrested for violating state laws related to disseminating obscene materials and restrictions on adult establishments. 804 F.2d 274, 276–77 (4th Cir. 1986). The plaintiffs sued under Section 1983 to enjoin police, prosecutors, and judges from enforcing obscenity laws, issuing court orders, fixing excessive bail, threatening future prosecutions, and engaging in illegal searches and seizures. *Id.* at 277–78. The district court dismissed those prospective relief claims based on *Younger* abstention, and the Fourth Circuit affirmed. *Id.* at 278–79.

Critical to the Fourth Circuit's holding in *Suggs* was that all three plaintiffs had criminal cases pending in state court at the time their civil appeal was being considered. *Id.* at 277–79. Two of the plaintiffs had been arrested and released on bail but not yet been prosecuted. *Id.* at 277. The remaining plaintiff had been tried on three charges, but the court declared a mistrial and further prosecution of that plaintiff was still pending. *Id.* For the Fourth Circuit, the fact that each plaintiff continued to face ongoing state prosecutions justified the dismissal on *Younger* abstention grounds. *Id.* at 279 ("[T]he district court properly ruled that *Younger* . . . dictate[s] that it must abstain from granting equitable relief because of *pending* state prosecutions." (emphasis added)). Those circumstances are not present here. As this Court has already recognized, no state prosecutions are pending against any of the seven Plaintiffs. ECF No. 107 at 13 (finding first *Middlesex* factor of "ongoing state judicial proceeding" unsatisfied as to any Plaintiff); *see also Courthouse News II*, 2 F.4th at 325 (holding that the district court did not err in refusing to abstain, as *Younger* and *O'Shea* did not justify abstention "given the lack of any pending state proceeding"). And as set forth above, Defendants have provided no basis for the Court to change its finding on this issue. Thus, *Suggs* does not control here.

Yarls v. Bunton, 231 F.Supp.3d 128 (M.D. La. 2017), is similarly distinguishable. There, people who had been arrested in Orleans Parish and put on a waiting list for representation by a public defender brought a class action against two officials, one of whom was tasked with "administering Louisiana's public defense system" and another who headed the Orleans Public Defenders, an office within that system. *Id.* at 130. As a preliminary matter, the court noted that it faced significant difficulties in "discerning the extent of its remedial authority" because, unlike this case, "the parties [were] not concretely adverse." *Id.* at 131. Ultimately, though, the court concluded that it lacked the "tools" necessary to address delays in criminal prosecutions. *Id.* at 132. Central to this decision was the determination that the parties were inviting the court to violate comity and federalism principles by "interfering with state criminal proceedings" and "encroaching upon the role of the state judges in individual prosecutions." *Id.* at 132, 136. As explained above, these concerns are not present here.

C. Plaintiffs' Fourteenth Amendment damages claim against Defendants Reinhart and Adams is not precluded by *Rooker-Feldman*.

Even if the Court were inclined to revisit the substance of Defendants' *Rooker-Feldman* argument, the result would be the same. As a threshold matter, the *Rooker-Feldman* doctrine is inapplicable here because Plaintiffs' Fourteenth Amendment damages claim does not implicate any final state court judgments.[3] *Rooker-Feldman* is a narrow jurisdictional doctrine that prohibits federal district courts from reviewing state court judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). In *Exxon Mobil*, the Supreme Court clarified that the *Rooker-Feldman* doctrine only applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.*;

[3] As noted previously, Defendants' do not renew their *Rooker-Feldman* argument as to Plaintiffs' Sixth Amendment damages claim. *See* ECF No. 283-1 at 57–60 (discussing Plaintiffs' damages claims arising from the issuance of bench warrants); *see also id.* n. 29. Thus, Plaintiffs only address the merits of Defendants' renewed *Rooker-Feldman* argument as applied to Plaintiffs' Fourteenth Amendment damages claim.

see also Davani v. Virginia Dep't of Transp., 434 F.3d 712, 718 (4th Cir. 2006) (recognizing that *Exxon* "undercut[] the [Fourth Circuit's previously] broad interpretation of the *Rooker-Feldman* doctrine"). The doctrine merely prevents the lower federal courts "from exercising appellate jurisdiction over final state-court judgments." *Thana*, 827 F.3d at 319 (quoting *Lance v. Dennis*, 546 U.S. 459, 463 (2006)). "Thus, if a plaintiff in federal court does not seek review of the state court judgment itself but instead '*presents an independent claim*, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court.'" *Id.* at 320 (quoting *Skinner v. Switzer*, 562 U.S. 521, 532 (2011)).

Here, Plaintiffs' damages claim does not implicate any state court judgments. Rather, Plaintiffs seek recovery on an independent claim: that the *post-sentencing debt collection* policies and procedures, sanctioned and overseen by Defendants Reinhart and Adams in their non-adjudicative capacities, caused unconstitutional deprivations of liberty. The *Rooker-Feldman* doctrine does not apply where the "claim of injury rests not on the state court judgment itself, but rather on the alleged violation of [the plaintiff's] constitutional rights by [the defendant]." *Washington v. Wilmore*, 407 F.3d 274, 280 (4th Cir. 2005); *see also, e.g.*, *Johnson v. Jessup*, 381 F. Supp. 3d 619, 626 (M.D.N.C. 2019) ("Plaintiffs' claims do not in any way implicate the soundness of the underlying traffic conviction and pecuniary imposition."); *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 606 (6th Cir. 2007) ("Assertions of injury that do not implicate state-court judgments are beyond the purview of the *Rooker-Feldman* doctrine."); *Brucker v. City of Doraville*, No. 1:18-cv-02375-RWS, 2019 WL 3557893, at *5 (N.D. Ga. Apr. 1, 2019) ("Plaintiffs do not challenge the fines or sentences imposed by the municipal court. Instead, they claim that the City violated their constitutional rights by implementing a custom or policy that caused them to be deprived of due process."), *on reconsideration*, 391 F. Supp. 3d 1207 (N.D. Ga. 2019). That alone resolves the issue here.

Furthermore, the *Rooker-Feldman* doctrine does not apply to federal judicial review of administrative or ministerial actions. *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 479 (1983) (federal courts lacked jurisdiction because "[t]he [state] proceedings were not legislative,

ministerial, or administrative"); *Thana*, 827 F.3d at 320–21; *see also Allstate Ins. Co. v. W. Virginia State Bar*, 233 F.3d 813, 817 (4th Cir. 2000) ("The first question that we must answer is whether the Committee's proceedings qualify as judicial actions as opposed to administrative or ministerial processes."). Plaintiffs have repeatedly stressed, and the Fourth Circuit has recognized, that they are not challenging judicial conduct in this case; rather, Plaintiffs are challenging the administrative, policymaking, and supervisory actions of Defendants Reinhart and Adams. *See, e.g.*, ECF No. 284-1 at 49–51, 53–59; *see also Brown*, 760 F. App'x at 179–80 ("Plaintiffs are not suing Defendants with respect to individual judicial determinations, e.g., denials of bond or incarceration orders. In fact, as both parties acknowledge, Plaintiffs declined to sue the individual judges who sentenced them.").

Defendants' reliance on *Reaves v. S.C. DSS*, No. 4:08-cv-576-TLW-TER, 2008 WL 5115026 (D.S.C. Dec. 3, 2008), is thus misplaced. There, in an unpublished order, the district court dismissed a *pro se* action because "Plaintiff's claims succeed only to the extent that the state court judge wrongly issued the civil bench warrant." *Id.* at *3. As an initial matter, this holding is at odds with the fact that "federal courts regularly undertake reviews of warrants issued by state magistrates without reference to or concern for [the *Rooker-Feldman*] doctrine." *Marshall v. Marshall*, 523 F. Supp. 3d 802, 833 (E.D. Va. 2021) (citing *United States v. Leon*, 468 U.S. 897, 905 (1984) (reviewing warrant issued by California State Superior Court Judge); *Quarles v. C. W. Weeks*, 815 F. App'x 735, 736–37 (4th Cir. 2020) (reviewing state court arrest warrant in action for malicious prosecution under Section 1983). Moreover, Plaintiffs do not allege that the mere issuance of nonpayment bench warrants caused their constitutional injuries. Indeed, if Plaintiffs had received prompt, adequate ability-to-pay hearings and assistance of counsel prior to incarceration for failure to pay fines and fees, there would have been no constitutional violations. But such hearings simply did not happen because Defendants Reinhart and Adams, during their tenures as Chief and Associate Chief Judges, oversaw a county-wide debt collection policy wherein individuals arrested on nonpayment bench warrants were transported to jail and forced to serve out their suspended sentences without receiving a

constitutionally-mandated pre-deprivation hearing to determine willfulness and without pre-deprivation assistance of counsel.

For these reasons, *Rooker-Feldman* simply does not apply. Even if Plaintiffs obtain damages for the constitutional violations they suffered, their traffic convictions will remain valid. That is because Plaintiffs' *Bearden* claims only challenge "one particular post-judgment [debt] collection mechanism, not any aspect of the plaintiffs' convictions or the validity of their court debt." *Thomas v. Haslam*, 329 F. Supp. 3d 475, 481 (M.D. Tenn. 2018) (holding that *Rooker-Feldman* did not preclude claim under Section 1983), *vacated on other grounds, Thomas v. Lee*, 776 F. App'x 910 (6th Cir. 2019). Unlike in *Reaves*, a finding in Plaintiffs' favor is not tantamount to a reversal of any conviction, sentence, or bench warrant.

III. Undisputed facts demonstrate the Chief and Associate Chief Judges are responsible for the unlawful debt collection policies and procedures within Lexington County Magistrate Courts.

The record shows that, during their tenures as Chief and Associate Chief Judges, Defendants Reinhart and Adams maintained a county-wide policy of jailing individuals who owed outstanding court debt without providing a pre-deprivation *Bearden* hearing and without providing access to counsel. ECF No. 284-1 at 19–29. The record further shows that, from 2016 until 2018, at the very least, Reinhart and Adams maintained that policy despite having: (1) knowledge that the practice was unconstitutional; (2) authority to implement new policies; and (3) knowledge that constitutional alternatives were available. *Id.* Moreover, the current Chief and Associate Chief Judges retain the same authority to implement similar policies in the future or revert to old ones. *Id.*; *see also* ECF No. 284-7.

In an attempt to evade liability, Defendants argue that Plaintiffs have failed to show that "the complained of policies actually existed" or that the former Chief and Associate Chief Judges "possessed the power either to create or prevent such alleged policies." ECF No. 283-1 at 44. They then add that even if such policies did exist, Defendants are not liable because the practices were authorized by the SCCA. The record demonstrates that both arguments fail.

A. Plaintiffs' injuries were caused by widespread policies and procedures for which Defendants Reinhart and Adams were responsible.

To start, Defendants' denial that the policies challenged here even existed rings hollow. Contrary to Defendants' insinuations, Plaintiffs need not prove that Defendants Reinhart or Adams wrote, signed, or posted a formal policy explicitly directing magistrates to violate *Bearden* or *Gideon*. Instead, Plaintiffs are only required to show that a widespread policy or practice existed, that it caused their injury, and that Defendants Reinhart and Adams, as Chief and Associate Chief Judges, were responsible for overseeing it—and they have done so. ECF No. 284-1 at 49–59; *see also Dodds v. Richardson*, 614 F.3d 1185, 1197, 1202–03 (10th Cir. 2010) (sheriff liable for "acquiescing" in clerk of court's pre-existing unconstitutional jail policies); *Gordon v. Schilling*, 937 F.3d 348, 360 (4th Cir. 2019) (head prison doctor liable as policymaker for failing to remediate pre-existing deliberately indifferent policy).

There is no dispute that, for decades, the standard operating procedure in the LCMC was to incarcerate people who failed to pay fines and fees owed to the LCMC without first conducting pre-deprivation ability-to-pay hearings and without providing access to counsel. *See* ECF No. 284-1 at 19–21; ECF No. 284-10 at 159:12–23 (Adams confirming that it was "normal practice in Lexington County . . . to issue bench warrants for failure to pay without requiring a hearing"); ECF No. 284-10 at 170:9–17 (Adams confirming that it was "widespread and routine . . . to issue bench warrants for trials in absentia").

Likewise, there is no dispute that Defendants Reinhart and Adams were responsible for overseeing and sanctioning the policies giving rise to this standard operating procedure. As fully explained in Plaintiffs' brief, Chief and Associate Chief Judges are *assigned* the administrative responsibility for creating a uniform system of collecting court-generated revenue, including fines and fees. ECF 284-1 at 25–29. That Reinhart and Adams inherited these policies and procedures, rather than creating them at the outset, does not absolve them of liability. Each state actor is responsible for conducting their affairs in a manner consistent with the Constitution—judges no less so than others. The record is clear that Defendants Reinhart and Adams oversaw a

widespread and uniform practice of collecting court-generated revenue by unconstitutional means. They are, therefore, liable under Section 1983 for the constitutional injuries that resulted.

B. The record plainly shows that Defendants Reinhart and Adams had authority to prevent Plaintiffs' injuries.

Defendants Reinhart and Adams also claim that they "never possessed the power either to create . . . or to prevent" the policies complained of by Plaintiffs. ECF No. 283-1 at 43. But as the undisputed evidence shows, Defendants Reinhart and Adams had the authority as Chief Judges to replace the unconstitutional scheme with the Setoff Debt Program (SDP) or other debt collection mechanisms. *See* ECF No. 284-1 at 27–28; ECF No. 284-28.

Moreover, as Defendants Reinhart and Adams were aware, the SDP was an available option for the LCMC as early as 2016. *See* ECF No. 284-11 at 302:9–303:14; ECF No. 284-29; Ex. 1 at 171:21–172:4.[4] That means that from at least 2016 until 2018 (the period in which each Plaintiff was wrongfully incarcerated), Defendants Reinhart and Adams could have exercised their administrative authority to replace the LCMC's unconstitutional debt collection practices with a known and constitutional alternative. They simply chose not to. To now argue that they lacked authority to remediate the LCMC's debt collection practices is disingenuous and disregards the record.

C. South Carolina Court Administration did not encourage, authorize, or condone these unconstitutional debt collection practices.

Defendants' attempts to deflect blame onto the SCCA also fail. That the nonpayment MC2 bench warrant form was drafted and provided by the SCCA is irrelevant because neither the form itself nor the SCCA policies condoned the unconstitutional debtors' prison scheme operated by the LCMC. To the contrary, the South Carolina Summary Court Judges Bench Book (Bench Book) maintained by the SCCA commands that "all magistrates and municipal judges must strictly heed to the provisions of the [state and federal] Constitutions." ECF No. 284-1 at 21

[4] Unless otherwise noted, all exhibits are attached to the Declaration of Toby J. Marshall in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment.

n.2. Despite these clear directives by the SCCA, Defendants Reinhart and Adams each professed ignorance of well-settled constitutional law. ECF No. 284-12 at 126:19–129:2, 143:2–145:11, 148:11–17; ECF No. 284-10 at 191:25–192:24; ECF No. 284-11 at 340:13–341:7. The Bench Book further instructs that a bench warrant "is a form of process to be used *to bring a defendant back before a particular court* on a particular charge or a specific purpose." ECF No. 284-1 at 22 (emphasis added); ECF No. 284-17 at 17–18. Undisputed evidence shows Defendants Reinhart and Adams, during their tenures as Chief and Associate Chief Judges, maintained a debt collection policy that routinely disregarded this proper use of bench warrants. ECF No. 284-10 at 159:12–23, 170:9–17, 215:16–20; ECF No. 284-12 at 144:2–18, 182:15–183:8. Nothing in the MC2 bench warrant form or the Bench Book required the jailing of debtors without constitutionally required pre-deprivation hearings.

The SCCA even took affirmative steps to rebuke the exact practices Defendants now claim the SCCA authorized. In March 2016—well before the individual Plaintiffs were incarcerated for nonpayment—the SCCA circulated a "Dear Colleague" letter from the United States Department of Justice to all South Carolina judges. ECF No. 284-18. The letter emphasized that under the federal due process and equal protection clauses, "[c]ourts must not incarcerate a person for nonpayment of fines and fees without first conducting an indigency determination and establishing that failure to pay was willful." *Id.* at 6. Despite receiving the letter when he was Chief Judge and acknowledging the similarity between the prohibited practices and those used in the LCMC, Defendant Reinhart did nothing. ECF No. 284-12 at 162:19–25, 165:2–14, 167:22–168:12.

Finally, actions taken by Chief Justice Beatty, the administrative head of the SCCA, repudiate Defendants Reinhart and Adams's argument. The record shows Chief Justice Beatty became aware that the LCMC and other courts were imposing jail for nonpayment of fines and fees without a hearing and without the provision of counsel. ECF No. 40-1. Rather than condoning the practice through the kind of silent acquiescence modeled by Defendants Reinhart and Adams, Justice Beatty issued a Memorandum on September 15, 2017, decrying the practice

as unconstitutional. *Id.* That Memorandum did not imply that the SCCA had condoned the practice or authorized improper use of the nonpayment bench warrant forms, but rather that it disavowed such practices, citing longstanding Supreme Court precedents on the right to counsel, and advising South Carolina "Magistrates and Municipal Judges" of their obligation to comply with the constitution. *Id.*

Considering these facts, there is no merit to Defendants Reinhart and Adams's argument that the SCCA was the moving force behind their unconstitutional debt collection policies and procedures. If the SCCA authorized their conduct, Defendants should have meaningfully engaged in the discovery process designed to reveal those facts. Tellingly, they did not. For example, Defendants made no attempt to depose Chief Justice Beatty, SCCA Staff Attorney Renee Lipson, or a Rule 30(b)(6) representative for the SCCA. Having elected not to explore support for their argument, Defendants cannot hide behind a weak negative inference that the SCCA knew of and tacitly approved their conduct, especially in light of undisputed facts demonstrating the opposite.

IV. Plaintiffs are entitled to damages because they were incarcerated for nonpayment of fines and fees without pre-deprivation *Bearden* hearings or assistance of counsel.

A. Plaintiffs were available for, but were not provided with, constitutionally mandated pre-deprivation *Bearden* hearings.

Defendants argue that five of the Plaintiffs are barred from recovering damages because they failed to appear either for trial or, in one instance, for a rule to show cause hearing. ECF No. 283-1 at 45–49. Even after five years of litigation, Defendants continue to misconstrue Plaintiffs' fundamental claims. Plaintiffs are *not* challenging anything that happened at those court proceedings, just as they are not challenging their underlying convictions or sentences. Rather, Plaintiffs challenge the constitutional violations that occurred *after* they were convicted and sentenced and *after* they were arrested on bench warrants for nonpayment of fines and fees. Specifically, Plaintiffs maintain they were entitled to a *Bearden* hearing, and assistance of

counsel for that hearing, *after* their conviction, sentencing, and arrest for nonpayment but *before* their incarceration for nonpayment of fines and fees.

Indeed, under *Bearden* and its progeny, such a hearing could only have occurred at the time Plaintiffs' fines and fees were going to be converted into incarceration. *See Bearden*, 461 U.S. at 672 ("court[s] must inquire into the reasons for the failure to pay" before incarcerating people for nonpayment); *Doe v. Angelina Cnty.*, 733 F. Supp. 245, 254 (E.D. Tex. 1990) ("[T]he *final* revocation of [a liberty interest] . . . must be preceded by a hearing.") (emphasis added) (quoting *Black v. Romano*, 471 U.S. 606, 611 (1985)); *West v. City of Santa Fe*, No. 3:16-cv-0309, 2018 WL 4047115, at *9 (S.D. Tex. Aug. 16, 2018) ("When, as here, an individual fails to pay a fine that has been previously imposed by the sentencing court, *Bearden* requires some form of pre-deprivation procedure for determining whether the person is indigent and the reasons the individual has failed to pay the fine."), *R. & R. adopted,* 2018 WL 5276264 (S.D. Tex. Sept. 19, 2018). Circuit courts have routinely made clear that *Bearden*'s constitutional protections are implicated at the point when punishment is to be imposed for nonpayment—not before. *See United States v. Pagan*, 785 F.2d 378, 381 (2d Cir. 1986) ("Constitutional principles will be implicated here only if the government seeks to enforce collection of the assessments at a time when [the defendant is] unable, through no fault of his own, to comply.") (citations and internal quotation marks omitted); *United States v. Rivera-Velez*, 839 F.2d 8, 8 (1st Cir. 1988) (same); *United States v. Rising*, 867 F.2d 1255, 1260 (10th Cir. 1989) (same); *United States v. Cooper*, 870 F.2d 586 (11th Cir. 1989) (formally adopting reasoning of First and Second Circuits in *Rivera-Velez* and *Pagan*).

Moreover, every person facing the possibility of incarceration for nonpayment of court debt is entitled to a hearing in which the court "inquire[s] into the reasons for the failure to pay." *Bearden*, 461 U.S. at 672. In other words, the constitutional right to these procedures applies regardless of a person's financial circumstances. *See, e.g.*, *Doe v. Angelina Cnty.*, 733 F. Supp. at 254 (holding failure to engage in *Bearden* inquiry "is unlawful whatever the economic status of the incarcerated person"); *West*, 2018 WL 4047115, at *9. This makes good sense, for the very

purpose of the *Bearden* inquiry is to determine whether a person willfully refused to pay or acquire the resources to pay.

The burden is on the government to conduct the required inquiry before incarceration, regardless of whether the person owing the debt previously failed to appear or did appear but failed to assert their indigence. *See De Luna v. Hidalgo Cnty., Tex.*, 853 F. Supp. 2d 623, 648 (S.D. Tex. 2012) ("[T]he absence of any inquiry into a defendant's indigency unless the defendant 'raises' it of his or her own accord does not provide the process due."); *Cain v. City of New Orleans*, Civ. Action No. 15-4479, 2016 WL 2962912, at *5 (E.D. La. May 23, 2016) ("No court has held that indigent debtors are required to initiate proceedings to request a modification of their financial obligations or otherwise risk imprisonment for nonpayment.").

For each Plaintiff, the constitutionally mandated pre-deprivation hearing necessarily had to occur immediately after the arrest for nonpayment and before incarceration. *See West*, 2018 WL 4047115, at *9 ("To allow [the government] to detain an individual—even just overnight—without providing an ability to pay hearing beforehand would, in effect, often result in individuals being jailed solely because they cannot afford to pay the fine. That is something the Supreme Court has expressly held is not permitted.") (citing *Bearden*, 461 U.S. at 667–68). At that point, Plaintiffs were already in the custody of the Lexington County Sheriff's Department (LCSD) and thus present and available for a *Bearden* hearing. But it is undisputed that no such hearings occurred, and that Plaintiffs were not afforded counsel. Thus, the Court should reject Defendants' erroneous assertion that Plaintiffs are to blame for the absence of such hearings. *See Doe v. Angelina Cnty.*, 733 F. Supp. at 253 ("Self-evidently, a party cannot fail to appear if no provision is made for such a proceeding under these circumstances.").

B. The case law upon which Defendants rely is easily distinguished and does nothing to disturb Plaintiffs' entitlement to recover damages.

Defendants cite to easily distinguishable cases for the erroneous proposition that five of the Plaintiffs waived any claim to damages because they failed to appear for trial or a rule to show cause hearing. None of the cited cases contradict Plaintiffs' argument that they should have

received a constitutionally mandated pre-deprivation inquiry into their ability to pay and afforded counsel to defend against incarceration *after* their arrest on a nonpayment bench warrant.

In *Garcia v. City of Abilene*, for example, the plaintiff was fined $102 by a municipal court after she was convicted of failing to appear on a separate charge. 890 F.2d 773, 775 (5th Cir. 1989). Critically, the municipal court did not impose a jail sentence, suspended or otherwise. *Id.* Instead, the court set an installment plan because the plaintiff could not afford to pay the fine. *Id.* When the plaintiff failed to make payments and did not appear in court to explain the default, the court issued a warrant for her arrest. *Id.* Although the plaintiff was never arrested or incarcerated pursuant to the warrant, she filed suit under Section 1983 alleging the defendants unconstitutionally jailed indigent defendants because of their inability to pay fines imposed. *Id.* The district court refused to certify the class, and a trial was held on her individual claims, after which the court directed a verdict in the defendants' favor. *Id.* The plaintiff appealed, and the Fifth Circuit affirmed. *Id.* at 775–77.

Because the plaintiff in *Garcia* was never arrested or incarcerated for failure to pay her fines, the appellate court did not examine or address the critical issue at play here—namely, whether the plaintiff was improperly denied a pre-deprivation *Bearden* hearing after her arrest. *Id.* Here, by contrast, Plaintiffs *were* arrested and incarcerated for failure to pay fines and fees, and they were available for the required hearings. But as the undisputed facts show, no such hearings were provided—and thus Plaintiffs had no opportunity to waive any rights. *See Doe v. Angelina County*, 733 F. Supp. at 253 (distinguishing *Garcia* because "a party cannot fail to appear if no provision is made for such a proceeding" in the first place).

The cases of *United States v. Camacho*, 955 F.2d 950 (4th Cir. 1992), *Rice v. Cartledge*, No. 6:14-CV-3748-RMG, 2015 WL 4603282 (D.S.C. July 29, 2015), *Smith v. Mann*, 173 F.3d 73 (2d Cir. 1999), and *White v. Shwedo*, C.A. No. 2:19-cv-03083-RMG, 2020 WL 2315800 (D.S.C. May 11, 2020), are likewise inapposite because they concern the issue of whether

defendants may waive the right to be present *at trial*, which is not the issue in question.[5] Plaintiffs' claims concern the constitutional right under *Bearden* to a pre-incarceration hearing on ability to pay *after* an arrest for nonpayment of fines and fees. The record is abundantly clear that such hearings did not occur. ECF No. 284-1 at 13–21.

V. Plaintiffs are entitled to compensatory damages from Lexington County for its failure to adequately fund indigent defense (Claim Five).

Defendant Lexington County fails to offer any evidence or cite any facts to support its argument that its chronic underfunding of public defense did not injure Plaintiffs after they were arrested on bench warrants for nonpayment. Instead, Lexington County simply claims it will "respond accordingly" on reply in the event Plaintiffs do not concede this claim. ECF No. 283-1 at 51. But such an approach to summary judgment is wholly improper, as it leaves Plaintiffs to respond to underbaked, conclusory placeholders, rather than substantive arguments. It also

[5] Notably, however, if the four Plaintiffs convicted in their absence were challenging their trials in absentia, *Camacho* would support Plaintiffs' arguments because it holds that criminal court defendants do not automatically waive their right to be present simply because they failed to appear. 955 F.2d at 955. "Rather, the court should try to find out where the defendant is and why he is absent." *Id.* at 954 (internal quotations marks omitted). Here, three of the Plaintiffs (Palacios, Goodwin, and Johnson) called the court before their trial to inform the court they could not appear because of transportation issues or work obligations. ECF No. 66-3 ¶¶ 7–10; ECF No. 66-5 ¶¶ 5–6; ECF No. 284-3 ¶¶ 7–10. According to the *Camacho* court, making such a phone call is sufficient to establish that defendants did not knowingly and voluntarily waive their right to be present. 955 F.2d at 955 (defendant who telephoned clerk to advise he was having car trouble did not knowingly and voluntarily waive right to be present). And while Corder did not contact the court about her inability to secure transportation to the hearing, she had already appeared for hearings on three previous dates to answer the charges, but each hearing was continued to another date on the prosecuting officer's request. ECF No. 66-4 ¶¶ 12–14. These repeated appearances were enough to demonstrate that Corder did not knowingly and voluntarily waive her right to be present, and the court should have investigated her reason for failing to appear, rather than proceeding in her absence. *Camacho*, 955 F.2d at 954 (defendant who appeared on first day of trial but was absent on second day and did not call did not knowingly and voluntarily waive his right to be present). Thus, while Defendants make the assertion that these four Plaintiffs waived their right to sue for damages in civil court because they supposedly waived their right to be present at their criminal trials, *Camacho* supports the opposite conclusion.

unfairly prevents Plaintiffs from responding to any new arguments and evidence that Lexington County decides to include in a reply brief.

Such gamesmanship is unwarranted and demonstrates only that Lexington County has failed to meet its burden on summary judgment as to Claim Five. Accordingly, the Court should hold that Lexington County waived its opportunity to move for summary judgment on Claim Five and, for the reasons set forth in Plaintiffs' affirmative motion for summary judgment, hold that Lexington County is liable for Sixth Amendment violations and must pay compensatory damages in amounts to be determined at trial.

To the extent Lexington County has made conclusory arguments unsupported by both facts and authority, Plaintiffs will address these below.

A. Authority in the Fourth Circuit and other federal courts supports Plaintiffs' claim for compensatory damages against the County.

Lexington County asserts that it was unable to find a single case in which a governmental entity has been held liable for "actual damages"[6] for violating the Sixth Amendment right to counsel, "whether through lack of funding or otherwise." ECF No. 283-1 at 49. But the Court need not look any further than this very district to find the County's assertion is erroneous. In fact, the County's own brief cites a case in which the court found that local governing bodies could be held liable for compensatory damages resulting from Sixth Amendment violations—a case in which *defense counsel themselves* represented the local governing bodies being sued.

In *Bairefoot v. City of Beaufort, South Carolina*, three plaintiffs were tried and convicted in the municipal courts of Beaufort and Bluffton without representation by an attorney or notification of the right to counsel. 312 F. Supp. 3d 503, 506–07 (D.S.C. 2018). The plaintiffs brought a Section 1983 class action lawsuit against the cities for violations of the Sixth and Fourteenth Amendments, seeking, among other relief, compensatory damages. *Id.* at 508–09.

[6] While the two terms are often used interchangeably, Plaintiffs do not seek "actual damages." Rather, Plaintiffs ask the Court to award "*compensatory* damages . . . for deprivation of liberty, mental anguish, emotional distress, hunger, sleeplessness, disturbed sleep, illness, and loss of income." *See* ECF No. 48 at 121 (emphasis added).

The cities moved to dismiss, arguing, *inter alia*, that the duty to provide counsel for indigent defense was a judicial duty; that the failure to provide for indigent defense was not actionable under Section 1983; that they could not have proximately caused the alleged constitutional violations; and that the facts alleged were insufficient to show actual causation. *Id.* at 510–11.

Citing both *Gideon* and *Wilbur*, the court rejected these arguments, holding that a deliberate decision to operate criminal courts "without providing counsel to indigent defendants is a violation of the Sixth Amendment, which certainly is actionable under § 1983." *Id.* at 511 (citing *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963); *see also Wilbur*, 989 F. Supp. 2d at 1134 ("Having chosen to operate a municipal court system, however, defendants are obligated to comply with the dictates of the Sixth Amendment . . . ."). The court held that, like in *Wilbur*, the plaintiffs had shown Sixth and Fourteenth Amendment violations "were the direct and predictable result of the deliberate choices of City officials charged with the administration of the public defense system." *Bairefoot*, 312 F. Supp. 3d at 508, 511 (internal quotation marks omitted) (quoting *Wilbur*, 989 F. Supp. 2d at 1132). The court noted that "some actual harm must be shown to establish liability for compensatory damages" and that the proper measure of damages was not an issue before the court at that time. *Id.* at 512. But the court did not rule that the cities could never be held liable for the compensatory damages plaintiffs sought.

In other cases alleging Sixth Amendment violations, courts in the Fourth Circuit and beyond have repeatedly held that governmental entities may be held liable to pay compensatory damages. *See, e.g.*, *Hays v. Town of Gauley Bridge, WV*, No. Civ. Action No. 2:09-1272, 2011 WL 1229797, at *5, *8 (S.D.W. Va. Mar. 29, 2011) (finding plaintiff entitled to summary judgment as to town's liability on Sixth Amendment claim for compensatory damages), *aff'd sub nom. Hays v. Town of Gauley Bridge, W. Va.*, 474 F. App'x 930 (4th Cir. 2012) (unpublished); *Brewington v. Bedsole*, No. 91-120-CIV-3-H, 1993 WL 819885, at *14, *25 (E.D.N.C. May 14, 1993) (finding county may be held liable for Sixth Amendment claim seeking compensatory damages under *Monell* theory); *Larsgard v. Straub*, No. CV-13-00638-TUC-DCB, 2019 WL 669788, at *2–3 (D. Ariz. Feb. 19, 2019) (finding claim against official policymaker was

actually against governmental entity under *Monell* and plaintiff could recover compensatory damages for Sixth Amendment violations).

Lexington County cites to only one distinguishable out-of-circuit case for the proposition that a state official cannot be held liable for a state court defendant's failure to receive counsel allegedly because "Texas law [like South Carolina law] makes only state court judges responsible for appointing attorneys for indigent criminal defendants.'" ECF No. 283-1 at 50 (alteration in original) (quoting *Hamill v. Wright*, 870 F.2d 1032, 1037 (5th Cir. 1989)). But as the South Carolina district court in *Bairefoot* already recognized, *Hamill* does not apply to the provision of indigent defense in South Carolina because the laws of Texas are different from those in South Carolina: "Texas law makes only state court judges responsible for appointing attorneys for indigent criminal defendants. South Carolina law, however, clearly makes municipalities responsible for providing for indigent defense in municipal courts." 312 F. Supp. 3d at 510 (internal citation omitted) (quoting *Hamill*, 870 F.2d at 1037). The court further rejected the cities' assertion that the unconstitutional consequences of their decisions were unforeseeable because it was ultimately the judges' responsibility to appoint counsel: "A counterfactual hypothesis that the municipal judges appointed by Defendants might have intervened to prevent an ongoing constitutional violation known to Defendants does not make the violation unforeseeable." *Id.* at 512 (citing *Malley v. Briggs*, 475 U.S. 335, 345–46 (1986)).

Like the municipalities in *Bairefoot*, South Carolina law clearly makes Lexington County responsible for providing for indigent defense in the courts it operates. *See* S.C. Code Ann. § 17-3-550 (South Carolina Indigent Defense Act of 2007, requiring each county to appropriate annual funding for indigent defense at no less than the amount it provided the immediate previous fiscal year). Thus, *Hamill* is inapplicable here, and Lexington County cites no additional authority to support its position.[7]

[7] Lexington County tangentially cites to *Foodbuy, LLC v. Gregory Packaging, Inc.*, 987 F.3d 102 (4th Cir. 2021), for the proposition that a complaint that does not mention a nominal damages

B. Plaintiffs suffered Sixth Amendment injuries *after* their arrest for nonpayment, which were a direct and predictable result of Lexington County's deliberate choice to grossly underfund indigent defense.

Lexington County asserts that "Plaintiffs cannot show that [Lexington County's] 'underfunding' [of indigent defense] led to their being convicted without counsel." ECF No. 283-1 at 50. The County goes on to argue that too many intervening factors, including the failure of four Plaintiffs to appear at trial, preclude Plaintiffs from demonstrating this causal link. *Id.* at 50–51. But, once again, Lexington County's argument is based on a fundamental misunderstanding of Plaintiffs' claims. The thrust of Claim Five is *not* that Plaintiffs were *convicted* without being afforded counsel—rather, it is that they "were arrested and incarcerated in the Detention Center for nonpayment of magistrate court fines and fees without being . . . appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of indigence." ECF No. 48 ¶ 498. By misstating Plaintiffs' claims, Lexington County attempts to redirect the Court's attention to the earlier stages of Plaintiffs' court cases in the LCMC and create confusion where there should be none.

Plaintiffs' allegations in Claim Five only concern events that occurred *after* Plaintiffs' post-conviction arrests. And it is undisputed that after their arrests, Plaintiffs were not afforded access to counsel to defend against their incarceration. ECF No. 66-1 ¶¶ 13–14 (Brown); ECF No. 66-2 ¶¶ 26–27 (Darby); ECF No. 66-3 ¶¶ 19–20 (Palacios); ECF No. 66-4 ¶¶ 19–20

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claim will not be read as asserting one. ECF No. 283-1 n.26. However, the Supreme Court has held that where due process violations occur, nominal damages are the default until some other type of damages are established. *See Carey v. Piphus*, 435 U.S. 247, 266 (1978) (because the right to due process "is 'absolute,'" its denial is "actionable for nominal damages without proof actual injury"); *see also Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021) ("Nominal damages are not a consolation prize for the plaintiff who pleads, but fails to prove, compensatory damages. They are instead the damages awarded *by default* until the plaintiff establishes entitlement to some other form of damages . . . ."") (emphasis added); *see also Clark v. Britt*, 1:18CV493, 2021 WL 681239, at *15 (M.D.N.C. Feb. 22, 2021) (awarding nominal damages where complaint sought only compensatory and punitive damages for due process violations), *R. & R. adopted*, 1:18-CV-493, 2021 WL 2181882 (M.D.N.C. May 13, 2021), *aff'd*, No. 21-6832, 2021 WL 5985557 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 1422 (2022). Thus, nominal damages are available to Plaintiffs and *Foodbuy* is irrelevant.

(Corder); ECF No. 66-5 ¶¶ 12–14 (Goodwin); ECF No. 284-2 ¶¶ 8–10 (Wright); ECF No. 284-3 ¶¶ 15–16 (Johnson). It is also undisputed that there was only one public defender assigned to the LCMC at the time Plaintiffs were arrested and incarcerated, and she already had a caseload that exceeded the ABA standard. ECF No. 284-39 at 62:8–64:15; ECF No. 284-61 at 2, 10. It is further undisputed that Lexington County controls the creation and funding of all positions in the Lexington County Public Defender's Office, ECF No. 284-1 at 31, and that the County denied Robert Madsen's requests for an increase in funding for indigent defense in six out of the seven years preceding Plaintiffs' arrests and incarceration. *Id.* at 32–34. The culmination of Lexington County's deliberate choices to underfund indigent defense created a direct and predictable result that Plaintiffs would not be afforded counsel after their arrest for nonpayment of fines and fees. *See Bairefoot*, 312 F. Supp. 3d at 511 ("Here, as in *Wilbur*, 'Plaintiffs have shown that the constitutional deprivations at issue here were the direct and predictable result of the deliberate choices of City officials charged with the administration of the public defense system.'") (quoting *Wilbur*, 989 F. Supp. 2d at 1132).

C. Plaintiffs' testimony demonstrates they suffered actual harm justifying an award of compensatory damages.

To the extent Plaintiffs are required to show actual harm to justify an award of compensatory damages, undisputed testimony from each Plaintiff demonstrates they suffered such harm. *See Hays*, 2011 WL 1229797, at *8 (finding compensatory damages for Sixth Amendment violation may be sought for monetary harms as well as emotional distress and that a "plaintiff's testimony, standing alone, can support an award of compensatory damages for emotional distress based on a constitutional violation") (quoting *Randall v. Prince George's Cnty.*, 302 F.3d 188, 208–09 (4th Cir. 2002)). It is undisputed Plaintiffs were all incarcerated for nonpayment of fines and fees for periods ranging from seven to sixty-three days without access to counsel to defend against incarceration—and each Plaintiff suffered harm from that constitutional violation. ECF No. 66-1 ¶¶ 12–17 (Brown suffered loss of job and income, mental anguish and emotional distress while incarcerated, and difficulty finding employment and paying

bills upon release from jail); ECF No. 66-2 ¶¶ 25, 28–31 (Darby harmed by inadequate food and medical care for pregnancy while incarcerated, loss of job and home, and subsequent unemployment and homelessness upon release); ECF No. 284-3 ¶¶ 17–20 (Johnson harmed by inadequate medical care while incarcerated, loss of three jobs, mental anguish and emotional distress, and difficulty finding employment and paying bills upon release); ECF No. 66-3 ¶¶ 18, 21–23 (Palacios suffered loss of job and income, inadequate medical care for high blood pressure while incarcerated, and mental anguish and emotional distress resulting from jailing); ECF No. 66-4 ¶¶ 19–21 (Corder injured by loss of home and job); ECF No. 66-5 ¶¶ 12, 15–18 (Goodwin harmed by loss of two jobs and home, mental anguish and emotional distress, and illness from recurring headaches while incarcerated); ECF No. 284-2 ¶¶ 4–7 (Wright suffered through severe intestinal bleeding during incarceration that required him to receive emergency medical treatment at the Lexington County Medical Center while restrained by handcuffs and chains).

Each Plaintiff has submitted sworn testimony that they suffered actual harm resulting from their incarceration after they were denied post-arrest counsel. Plaintiffs have also put forth substantial authority to support their entitlement to recovery of compensatory damages from Lexington County. Conversely, the County has failed to put forth any facts or evidence to dispute Plaintiffs' testimony on these issues. The County also failed to cite any authority that Plaintiffs are precluded as a matter of law from recovering compensatory damages for the County's Sixth Amendment violations. Thus, Plaintiffs are entitled to compensatory damages from Lexington County for its failure to adequately fund indigent defense.

VI. Defendant Koon fails to establish he is entitled to summary judgment on Plaintiffs' Fourteenth Amendment damages claim (Claim Four).

The LCSD, under the direction of Defendant Koon, maintained a policy of holding individuals in jail after their arrest, rather than returning them to court. This policy caused Plaintiffs and Class Members to experience prolonged and unconstitutional deprivations of liberty in violation of clearly established law. In each instance, Koon and his subordinates had

knowledge that Plaintiffs were being jailed for nonpayment of court debt despite their inability to pay.

In support of summary judgment, Defendant Koon insists that he cannot be held liable for Plaintiffs' unconstitutional detentions because his office was merely executing facially valid bench warrants as required by state law. ECF No. 283-1 at 51–52. Specifically, Koon claims that the phrase "keep until . . . discharged by due course of law" from the nonpayment MC2 bench warrant form *required* him to set aside well-settled state law about bench warrants and to violate clearly established constitutional law prohibiting debtors' prisons. *Id.*

This argument fails thrice over. First, Defendant Koon disregards the fact that bench warrants are, by definition, orders to arrest *and return to court*. This rule is codified by SCCA policy and was specifically conveyed to the LCSD by the South Carolina Attorney General (SCAG). ECF No. 284-19 (SCAG's office advising Defendant Koon's predecessor that a bench warrant "should not be considered as authority to incarcerate an individual for the purpose of serving any sentence of imprisonment imposed by a magistrate"). Second, the argument disregards the fact that the MC2 bench warrant itself commands that an arrestee should be "brought before [the court] to be dealt with according to the law." ECF No. 283-16 at 112. And third, the argument fails to address Defendant Koon's refusal to investigate or confirm his office's obligations under the MC2 bench warrant before enforcing it in a manner contrary to law. On these grounds, Defendant Koon's motion for summary judgment should be denied.[8]

[8] Plaintiffs did not affirmatively move for summary judgment against Defendant Koon, *see* ECF No. 284-1, and would be content to proceed to trial. However, based on the Due Process arguments articulated herein, the Court could also reasonably enter judgment in Plaintiffs' favor as a matter of law as to Claim Four. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (noting that "district courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence"). If the Court finds that liability has been established as a matter of law on Claim Four against Defendant Koon, Plaintiffs seek a jury trial on the issue of damages.

A. Defendant Koon maintained a policy of overdetaining individuals arrested on bench warrants.

The Due Process Clause of the Fourteenth Amendment protects against "overdetention"—that is, detention "for longer than legally authorized." *Dodds*, 614 F.3d at 1192 (quoting *Holder v. Town of Newton*, 638 F. Supp. 2d 150, 153 (D.N.H. 2009)); *see also Campbell v. Florian*, 972 F.3d 385, 394 (4th Cir. 2020). Federal circuits have recognized overdetention claims in various contexts, including where people were detained without an opportunity to post bail, *Campbell v. Johnson*, 586 F.3d 835, 840 (11th Cir. 2009); detained for weeks without a probable cause hearing, *Wilson v. Montano*, 715 F.3d 847, 857–58 (10th Cir. 2013); and detained despite discharging their sentence, *Davis v. Hall*, 375 F.3d 703, 718 (8th Cir. 2004).

A case from the Seventh Circuit, *Armstrong v. Squadrito*, is especially instructive. 152 F.3d 564 (7th Cir. 1998). There, an individual was arrested on a bench warrant (there called a "body attachment warrant") and booked into the jail. *Id.* at 567. Although Indiana law required that a bench warrant arrestee be brought immediately back to court, the jail kept him for fifty-seven days before he was ultimately released. *Id.* at 567–69. Armstrong brought claims against the jail, sheriff, and guards under the Fourth and Fourteenth Amendments. *Id.* at 569. The Seventh Circuit disposed of his Fourth Amendment claim on grounds that the warrant was judicially authorized,[9] *id.* at 569–70, but affirmed his Fourteenth Amendment substantive due process claims. *Id.* at 576, 581–82. In so holding, the court explained that under Indiana law, a bench warrant conveyed only "the exceedingly limited authority to bring [Armstrong] before the . . . court," and "*could never justify detention*." *Id.* at 576 (emphasis added). "Given these facts, the detention of Armstrong for anything more than a brief time preceding his appearance in court represents an affront to substantive due process." *Id.*

[9] Plaintiffs concede Claims Three and Six, both brought under the Fourth Amendment, as to Defendant Koon.

So too here. Plaintiffs and Class Members were arrested on bench warrants for nonpayment of fines and fees. ECF No. 66-1 ¶¶ 10–11 (Brown); ECF No. 66-2 ¶¶ 23–24 (Darby); ECF No. 66-3 ¶¶ 13–18 (Palacios); ECF No. 66-4 ¶¶ 16–19 (Corder); ECF No. 66-5 ¶¶ 7–9 (Goodwin); ECF No. 284-2 ¶¶ 2–3 (Wright); ECF No. 284-3 ¶¶ 11–13 (Johnson). As in *Armstrong*, bench warrants in South Carolina convey specific and limited authority—to arrest and return to court. ECF No. 284-17 at 18 (instructing that a bench warrant "is a form of process to be used to bring a defendant back before a particular court"). This is clear on the face of the MC2 bench warrant forms. *See* ECF No. 283-16 at 112 ("The defendant is to be arrested and *brought before me to be dealt with according to the law*.") (emphasis added). Moreover, the South Carolina Attorney General's Office has directed the LCSD that "*it is improper to use the bench warrant itself as any authority to incarcerate a defendant*. A bench warrant is a form of process issued by a judicial officer for the arrest of an individual and is used *to bring the individual back before the court* . . . ." ECF No. 284-19. The Attorney General's guidance, issued to Defendant Koon's own department, bolsters the inference that Koon knew the legal limits of bench warrants.

Despite this, Koon argues that the MC2 bench warrants unambiguously commanded the LCSD to arrest the named individual and detain them until they: (1) pay the full amount of their court debt; or (2) satisfy their court debt by serving a fixed period of incarceration. *See* ECF No. 283-1 at 52. As evidence, Koon relies exclusively on the form's language:

> 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.

See id.; *see also* ECF No. 283-16 at 112. Conspicuously, "until due course of law" is not defined in the bench warrant. Nor has Koon produced evidence that he received special instruction from the LCMC—or any other source—regarding its use. Given that, Koon's suggestion that this

phrase somehow supersedes the well settled rule that it is improper to use the bench warrant itself as any authority to incarcerate a defendant is uncompelling.

B. There is no evidence that Defendant Koon investigated or attempted to resolve any inconsistencies between ordinary bench warrants and the MC2 bench warrant form.

At most, the phrase "keep until . . . discharged by due course of law" created ambiguity as to the warrant's proper execution. ECF No. 283-16 at 112. But ambiguity does not absolve Koon of liability for Plaintiffs' unconstitutional detentions. If the MC2 bench warrant form was ambiguous with respect to its execution, Koon had an obligation to investigate and resolve the ambiguity before enforcing the bench warrants in a way that established an unconstitutional debtors' prison in Lexington County. And Defendants have proffered no evidence—let alone undisputed evidence—that Koon took any efforts or measures to resolve this ambiguity.

When a warrant's dictates are ambiguous, officers must exercise their independent judgment to ensure that they execute the warrant in a way that comports with clearly established statutory and constitutional law. *See Simon v. City of New York*, 893 F.3d 83, 96 (2d Cir. 2018) ("If the plain text of the warrant were not enough, the statutory backdrop against which the defendants acted confirms that the warrant required Simon's production to court at the scheduled time."); *cf. Miller v. Kennebec Cnty.*, 219 F.3d 8, 11 (1st Cir. 2000) (finding warrant's language unambiguous and officer's failure to bring arrestee before a court unreasonable). A version of this rule has been applied in overdetention cases, and requires sheriffs, wardens, and jail officials to independently investigate concerns that inmates were being held in violation of the constitution. *See, e.g.*, *Davis*, 375 F.3d at 716 (noting that "many circuits recognize the necessity of investigation under certain circumstances" in overdetention cases); *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968) ("[U]nlike his prisoner, the jailer has the means, the freedom, and *the duty to make necessary inquiries*. While not a surety for the legal correctness of a prisoner's commitment, he is most certainly under an obligation, often statutory, to carry out the functions

of his office. Those functions include not only the duty to protect a prisoner, but also the duty to effect his timely release.") (emphasis added) (footnote and citations omitted).

Here, Defendant Koon has produced no evidence that he attempted to independently confirm with the LCMC that these bench warrants were meant to be enforced as commitment orders. In fact, Koon testified that he never reached out to Defendant Adams (then-Chief Judge), or anyone else at the LCMC, to discuss a policy or procedure of returning individuals arrested on MC2 bench warrants to court. Ex. 2 at 106:14–107:16. Therefore, Defendant Koon is not entitled to summary judgment on Plaintiffs' Claim Four.

C. Defendant Koon, as a policymaker and supervisor, was deliberately indifferent to Plaintiffs' unlawful incarceration.

Courts evaluate overdetention claims under the deliberate indifference standard. *See, e.g.*, *Armstrong*, 152 F.3d at 576–79; *Alcocer v. Mills*, 906 F.3d 944, 953 (11th Cir. 2018). To establish deliberate indifference, a plaintiff must show (1) that the defendant had "subjective knowledge of a risk of serious harm"; (2) that the defendant "disregarded that risk"; and (3) that the disregard was by "conduct that is more than mere negligence." *Alcocer*, 906 F.3d at 953. "A supervisor's continued inaction in the face of documented widespread abuses . . . provides an independent basis for finding he . . . was deliberately indifferent or acquiesced in the constitutionally offensive conduct of his subordinates." *Slakan v. Porter*, 737 F.2d 368, 373 (4th Cir. 1984) (citing *Orpiano v. Johnson*, 632 F.2d 1096, 1101 (4th Cir. 1980)).

Sheriffs, officers, and jail administrators are keenly aware of their obligations to deliver individuals to court following arrest. As many cases demonstrate, liability arises where policies are inadequate to ensure prompt court appearances following arrest. *See, e.g.*, *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1472, 1479 (9th Cir. 1992) (upholding jury verdict finding sheriff liable because a reasonable jury could conclude that the "likelihood of unjustified incarceration was so obvious that defendants' policy with regard to detecting prolonged incarceration without prompt pretrial procedures evidenced deliberate indifference"); *see also Wilson v. Montano*, 715 F.3d 847, 857–58 (10th Cir. 2013) (affirming district court's denial of

sheriff's motion to dismiss, finding sheriff may be liable for promulgating policies which caused prolonged detention without court hearing). As the Seventh Circuit pointed out, "jailers hold not only the keys to the jail cell, but also the knowledge of who sits in the jail and for how long they have sat there. They are the ones directly depriving detainees of liberty." *Armstrong*, 152 F.3d at 578–79. To that end, jails must carefully ensure they have authority for long-term confinement, *Hayes v. Faulkner Cnty., Ark.*, 388 F.3d 669, 674 (8th Cir. 2004), because "a policy that ignores whether the jail has the authority for long-term confinement . . . [is] a policy of deliberate indifference." *Armstrong*, 152 F.3d at 578–79.

Defendant Koon, as the final policymaker for the Lexington County Detention Center, was deliberately indifferent to Plaintiffs' and Class Members' unlawful overdetention. *See, e.g.*, *Dodds*, 614 F.3d at 1199, 1205–06; *Oviatt By & Through Waugh*, 954 F.2d at 1480; *Alexander v. Perrill*, 916 F.2d 1392, 1398 (9th Cir. 1990) (deliberate indifference satisfied where prison officials were put on notice of a sentence miscalculation and failed to investigate); *Armstrong*, 152 F.3d at 578–79. Defendant Koon was sworn in as Sheriff of Lexington County on April 24, 2015. Ex. 2 at 16:17–20. As Sheriff, Defendant Koon is responsible for "run[ning] the Lexington County Detention Center and everything that . . . goes with that." *Id*. at 15:14–21; *see also* S.C. Code § 24-5-10 (appointing sheriff as custodian of jail). In that capacity, Defendant Koon has final policymaking authority over the LCSD and Detention Center. Ex. 2 at 37:1–14 ("Q. Is there anybody within the sheriff's department who has authority over you to implement a policy? A. No, sir."). According to Defendant Koon, the execution of bench warrants by the LCSD deputies was standardized by either a written policy or an unwritten "standard operating procedure." *Id*. at 42:13–43:16. As discussed above, Defendant Koon knew or should have known that bench warrants require an arrestee to be immediately returned to court. *See* ECF No. 284-19. Yet, he failed to adopt a policy requiring compliance with that rule, and Defendants have proffered no evidence to the contrary. Under Defendant Koon's leadership, the LCSD detained individuals on MC2 bench warrants instead of returning them to court if they were unable to pay their outstanding court debt. Ex. 2 at 107:8–108:22.

Because the facts indicate that Koon knew of a serious risk that the LCSD was overdetaining individuals on bench warrants and disregarded that risk by failing to take *any* step to ensure that a court appearance was not required, he is not entitled to summary judgment on Plaintiffs' Claim Four.

VII. Defendants Reinhart and Adams, former Chief and Associate Chief Judges, are not entitled to judicial immunity.

Defendants Reinhart and Adams attempt to evade liability for their non-adjudicative acts and omissions—taken in their administrative, policymaking, and supervisory capacities—by mischaracterizing the challenged conduct as a series of individualized judicial determinations that entitle them to judicial immunity. ECF No. 283-1 at 41–43. But as the Fourth Circuit has previously recognized, "Plaintiffs are not suing Defendants with respect to individual judicial determinations, e.g., denials of bond or incarceration orders. In fact, as both parties acknowledge, Plaintiffs declined to sue the individual judges who sentenced them." *Brown*, 760 F. App'x at 179–80. Rather, Plaintiffs challenge Defendants Reinhart and Adams's acts and omissions taken in their roles as Chief and Associate Chief Judges for Administrative Purposes—namely, their sanctioning of unconstitutional county-wide debt collection policies and procedures, failure to use their administrative authority to correct the deficient debt collection policies and procedures, and failure to monitor and supervise the LCMC to ensure compliance with the constitution. ECF No. 284-1 at 61–62; *see also Brown*, 760 F. App'x at 180. These acts and omissions are not shielded by judicial immunity.

A. Administrative, legislative, or executive acts performed by judges are not shielded by judicial immunity.[10]

The doctrine of judicial immunity is meant to protect "independent and impartial adjudication," *Forrester v. White*, 484 U.S. 219, 227 (1988), and should only be granted "when

[10] Defendants summarily assert, in a footnote, that injunctive relief is unavailable to Plaintiffs and cite to Section 1983's language providing 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

essential to protect the integrity of the judicial process." *Meek v. Cnty of Riverside*, 183 F.3d 962, 965 (9th Cir. 1999). The doctrine thus applies to "paradigmatic judicial acts" that involve resolution of "disputes between parties who have invoked the jurisdiction of a court." *Forrester*, 484 U.S. at 227; *see also Antoine v. Byers & Anderson, Inc.,* 508 U.S. 429, 435–36 (1993). In adherence to these axiomatic principles, federal courts have adopted a functional approach to the judicial immunity analysis and examine: (1) whether the act is a function normally performed by a judge, and (2) whether the parties dealt with the judge in their judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978); *see also Mireles v. Waco*, 502 U.S. 9, 13 (1991) ("[W]e look to the particular act's relation to a general function normally performed by a judge . . . ."). "The principal hallmark of the judicial function is a decision in relation to a particular case." *Bliven v. Hunt*, 579 F.3d 204, 211 (2d Cir. 2009). Thus, paradigmatically judicial actions shielded by immunity include arraigning, convicting, and sentencing a defendant, *Lopez v. Vanderwater*, 620 F.2d 1229, 1234–35 (7th Cir. 1980); issuing a search warrant, *Burns v. Reed*, 500 U.S. 478, 492 (1991); ordering a warrantless arrest, *King v. Myers*, 973 F.2d 354, 358 (4th Cir. 1992); and directing police officers to bring counsel in a particular case pending before the court, *Mireles*, 502 U.S. at 13.

By contrast, judicial immunity does not protect "administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform." *Forrester*, 484 U.S. at 227. "Administrative decisions, even though they may be essential to the very functioning of the courts," are not judicial acts. *Id*. at 228. "Any time an action taken by a judge is not an

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be granted unless a declaratory decree was violated or declaratory relief was unavailable." ECF No. 283-1 at 35 n.17 (emphasis added) (quoting 42 U.S.C. § 1983). This entirely misconstrues the language of Section 1983 and Plaintiffs' claims. "Section 1983 only contemplates judicial immunity from suit for injunctive relief for acts taken in a *judicial capacity*." *Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004)(emphasis added). Plaintiffs seek injunctive relief with respect to *non-judicial acts* of the office of the Chief and Associate Chief Judges for Administrative Purposes. As briefed in this section, judges are not "immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). "Moreover, judicial immunity does not bar a claim for prospective injunctive and declaratory relief." *Shtrauch v. Dowd*, 651 F. App'x 72, 73 (2d Cir. 2016).

adjudication between parties, it is less likely that the act is a judicial one." *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989) (issuing a generalized order, unconnected to a specific litigation, is an administrative act); s*ee also Ratte v. Corrigan*, 989 F. Supp. 2d 550, 559–60 (E.D. Mich. 2013) (pre-signing orders absent parties and a proceeding is a non-judicial, administrative act); *Zeigler v. New York*, 948 F. Supp. 2d 271, 283–84 (N.D.N.Y. 2013) (authorizing a system for assigning attorneys to arraignments is administrative); *Forrester*, 484 U.S. at 229 (demoting and firing a court officer is administrative act). Additionally, whether an act could be performed by non-judicial officers is significant to the analysis of whether judicial immunity applies. *See, e.g.*, *Kowalski v. Boliker*, 893 F.3d 987, 998–99 (7th Cir. 2018) (denying judicial immunity because challenged conduct could have been committed to a private person and not a judge); *Morrison*, 877 F.2d at 466 (finding judicial immunity did not apply because "[o]ne could . . . imagine a court administrator ordering that the processing of these petitions be delayed"); *Forrester*, 484 U.S. at 229–30 (finding judge acted in an administrative capacity because challenged conduct was indistinguishable from personnel decisions that non-judicial officials make).

The Supreme Court has emphasized that vigilance is required in distinguishing between judicial and administrative acts because "[a]bsolute immunity . . . is 'strong medicine, justified only when the danger of officials being defected from the effective performance of their duties is very great.'" *Forrester*, 484 U.S. at 230 (alterations omitted) (quoting *Forrester v. White*, 792 F.2d 647, 660 (7th Cir. 1986) (Posner, J., dissenting), *rev'd*, 484 U.S. 219); *see also Burns*, 500 U.S. at 487 ("We have been 'quite sparing' in our recognition of absolute immunity, and have refused to extend it any 'further than its justification would warrant.'") (first quoting *Forrester*, 484 U.S. at 224; and then quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 811 (1982)). The official seeking immunity "bears the burden of showing that such immunity is justified for the function in question." *Burns*, 500 U.S. at 486 (citing *Forrester*, 484 U.S. at 224).

B. Defendants Reinhart and Adams's sanctioning and implementation of county-wide debt collection practices are not "paradigmatic judicial acts" shielded by judicial immunity.

The acts of overseeing, sanctioning, authorizing, or creating policies and procedures—the functions challenged in this lawsuit—are fundamentally administrative in nature, and not subject to judicial immunity. For example, in *Morrison v. Lipscomb*, the Sixth Circuit found that judicial immunity was inapplicable where a plaintiff-landlord, who had sought to recover rental property from tenants, sued the presiding judge of a state district court for instituting a general moratorium on the issuance of writs of restitution during a holiday season. 877 F.2d at 466. There, the moratorium order was issued pursuant to the presiding judge's statutorily delegated "authority and control, subject to supervision of the supreme court, over all matters of *administration*." *Id.* at 465 (emphasis added). The court asserted that "simply because . . . administrative authority has been delegated to the judiciary does not mean that acts pursuant to that authority are judicial." *Id.* at 466. Rather, it found that a "general order, not connected to any particular litigation" and taken pursuant to the presiding judge's "authority to facilitate the proper administration of justice" was not a judicial act. *Id.* at 466. The court emphasized that the order concerned "how to process petitions made to the court" and "[o]ne could . . . imagine a court administrator ordering . . . [the act] because other court business was of a higher priority." *Id.* For these reasons, the presiding judge's challenged action was not shielded by judicial immunity. *Id.*

Much like the presiding state court judge in *Morrison*, the Chief and Associate Chief Judges for Administrative Purposes in Lexington County have been appointed to those roles by order of the Supreme Court of South Carolina. ECF No. 284-8; ECF No. 284-13; ECF No. 284-14. Undisputed evidence shows that the orders assign the Chief and Associate Chief Judges the responsibility and authority over several administrative duties, including: "[e]stablish[ing] within the county a procedure with all summary court judges . . . to ensure that court-generated revenues are collected, distributed, and reported in an appropriate and timely manner"; convening judges on a "quarterly basis . . . to formulate uniform procedures in the county

summary court system"; "[m]onitor[ing] all summary court judges within the county to ensure . . . the constitutional and statutory rights of defendants and victims are being upheld"; "[d]esignat[ing] the hours of operation of each magistrate's court office"; and reporting to SCCA "any significant or repetitive non-compliance" by magistrate judges concerning the provisions of the Supreme Court order assigning these administrative responsibilities. ECF No. 284-8 at 5–6.

Pursuant to their delegated administrative authority, Defendants Reinhart and Adams—during their respective tenures as Chief and Associate Chief Judges—sanctioned the unconstitutional debt collection practices for years. *See* ECF No. 284-1 at 19–24. All of the Plaintiffs were incarcerated for nonpayment of fines and fees without constitutionally mandated pre-deprivation judicial hearings on willfulness and access to counsel, pursuant to these illegal practices. ECF No. 284-1 at 13–19. As with the general moratorium order in *Morrison*, the unconstitutional debt collection practices authorized and sanctioned by Defendants Reinhart and Adams were unrelated to any *particular* case before them and thus cannot reasonably be described as judicial in nature. 877 F.2d at 466 (declining judicial immunity for an act taken under the judge's "authority to facilitate the proper administration of justice" because it was not connected to any particular litigation).

Both Defendants Reinhart and Adams testified that during their respective tenures as Chief and Associate Chief Judges, the use of nonpayment bench warrants and incarceration to collect court debt was the standard operating procedure across the LCMC. ECF No. 284-10 at 159:12–23, 170:9–17, 215:16–20; ECF No. 284-12 at 182:15–183:8. The Chief Court Administrator of the LCMC, who has been in that position for nearly two decades, agreed. ECF No. 284-15 at 130:24–132:3. Additionally, Defendant Adams's discussion with the Lexington County Administrator about the use of Setoff Debt Program (SDP), and other debt collection programs offered by the South Carolina Department of Revenue "in lieu of *always* using bench warrants," is further evidence that use of nonpayment bench warrants and incarceration to collect debt was a blanket county-wide policy and procedure unrelated to adjudication of any *particular* case. ECF No. 284-28 at 2 (emphasis added). Plaintiffs challenge these debt collection practices–

–not any individual outcome in any individual case. Judicial immunity does not apply to such administrative, non-adjudicative conduct.

Further, just as the *Morrison* court noted that the decision to temporarily halt processing of certain court petitions could have been made by a non-judicial, administrative staff, decisions regarding adoption and implementation of county-wide debt collection practices could have been carried out by a non-judicial officer. 877 F.2d at 466. In fact, several important actions and responsibilities regarding debt collection policies and procedures were delegated to the LCMC staff. For example, the administrative systems implementing and supporting the debt collection policies and procedures at issue were maintained by the LCMC administrative staff and supervised by the Chief Court Administrator. Ex. 3 at 80:5–83:11; Ex. 1 at 67:18–68:15; ECF No. 284-12 at 94:10–23.

Under the Default Payment and Trial in Absentia Policies, certain administrative filing systems were maintained to handle nonpayment issues. Ex. 3 at 80:5–83:11. The county-wide administrative systems for handling nonpayment issues changed after the LCMC shifted to the SDP for debt collection. *Id*. at 84:3–85:18. In order to move to the new policy and procedure for collection of outstanding court debt, the Chief Court Administrator informed Defendant Adams about what actions she had to take, including asking other magistrate judges in the LCMC and their staff to review and inventory old bench warrants and other records relating to the old policy and procedure. Ex. 4 at 298:18–300:5; ECF No. 284-25 at 3 ("I will prepare an email for you to send out to all Judges ordering them to inventory their outstanding Bench Warrants, NRVC's and [Scheduled Time Payment] files."). Additionally, LCMC administrative staff gathered information about the SDP before the program was implemented. ECF No. 284-11 at 294:7–295:3. Similarly, administrative staff gave presentations about the SDP at LCMC meetings before implementing the SDP across the LCMC and assessed what administrative support was required to implement the SDP. *See, e.g.*, Ex 5; Ex. 4 at 351:22–352:22. LCMC administrative staff were also responsible for actual implementation of the SDP. Ex. 4 at 356:19–357:3, 359:24–360:5; Ex. 6. In other words, many of the administrative tasks regarding debt collection

policies and procedures could have been performed by the Chief Court Administrator or other administrative staff of the LCMC—indeed, the majority of them *were* performed by LCMC administrative staff.

The district court decisions in *Ratte v. Corrigan*, 989 F. Supp. 2d at 560, and *Zeigler v. New York*, 948 F. Supp. 2d at 283–84, are also instructive. In both cases, the courts found that judicial immunity did not apply because the judges' conduct did not pertain to any one particular case. Rather, the act of establishing procedures and practices—which applied broadly to multiple cases—was administrative in nature. In *Ratte*, plaintiff-parents alleged that a family court judge had established a policy and practice of allowing the removal of children from their homes without judicial review by pre-signing form removal orders, independent of any proceeding. 989 F. Supp. 2d at 558–59. The defendant judge argued that the parents' claims were directed at an individual order removing their child and thus were barred by judicial immunity. The federal district court disagreed and found that the plaintiffs did "not challeng[e] the form order or ask[] the Court to review it in any way." *Id.* at 558. Instead, the source of injury was the judge's general "practice of allowing removal of children from their homes without judicial review" by pre-signing removal orders. *Id.* at 559. At the time the judge signed the form orders, "there were no parties before the court nor were there any active child custody proceedings." *Id.* at 560. Although an individual act of signing a removal order in the context of a particular child custody proceeding would be a judicial act, the mass pre-signing of form removal orders, unrelated to a specific case was not. *Id.*

Similarly, in *Zeigler*, an indigent criminal defendant sued an administrative judge for his creation and oversight of a constitutionally deficient plan for providing representation to indigent defendants. 948 F. Supp. 2d at 279. The district court found that judicial immunity did not shield the defendant-administrative judge from damages where the judge was alleged to have authorized and permitted constitutionally deficient arraignment processes and a deficient defense attorney compensation review scheme, pursuant to a county-wide plan. *Id*. at 283–84. Although individual instances of failure to appoint counsel may be judicial acts, the court found that the

administrative judge's actions in *authorizing attorney assignment processes* were administrative in nature. *Id.*; *see also Mitchell v. Fishbein*, 377 F.3d 157, 174 (2d Cir. 2004) (committee's formulation of a list of attorneys qualified to represent indigent defendants was administrative).

Plaintiffs have consistently alleged, and the Fourth Circuit has explicitly recognized, that they are not challenging the use of nonpayment bench warrants in their individual cases. *Brown*, 760 F. App'x at 180. Rather, they are challenging the county-wide debt collection practices sanctioned and implemented by Defendants Reinhart and Adams—these policies and procedures caused their illegal incarcerations, without a judicial hearing or access to counsel. *Id.*; ECF No. 284-1 at 19–29; ECF No. 48 at 33–37. Like the policies and procedures challenged in *Morisson*, *Ratte*, and *Zeigler*, the LCMC's debt collection practices determined the *manner* in which unpaid court fines and fees were handled in individual cases. But, the acts of authorizing, sanctioning, and implementing these practices were untethered to any individual case and thus do not support a finding of judicial immunity.

Further, Plaintiffs challenge Defendants Reinhart and Adams's administrative and supervisory omissions. As noted above, acts taken in an administrative and supervisory capacity are not judicial. Defendants are liable for their failure to monitor the LCMC and report non-compliance with the constitution to the SCCA—duties expressly assigned to the Chief and Associate Chief Judges by the Chief Justice of the South Carolina Supreme Court. ECF No. 284-8, ECF No. 284-11 at 340:13–23. Defendants failed to monitor courts or to discuss known problematic debt collection practices in the County, ECF No. 284-15 at 133:21–134:2, despite acknowledging that monitoring compliance with constitutional mandates was a part of their assigned duties, ECF No. 284-11 at 340:13–23, and despite receiving information explicitly pointing to the deficiencies in Lexington County's debt collection policies and procedures. ECF No. 284-12 at 165:2–168:12. Monitoring compliance and reporting non-compliance to a state agency are not "paradigmatic judicial acts." *Forrester*, 484 U.S. at 227. Rather, they are *administrative* and *supervisory* acts that do not require individual adjudication of cases or resolution of disputes between parties. *Id.*

Defendants Reinhart and Adams's sole authority for the contention that they are entitled to judicial immunity is a single, inapposite case where the plaintiff challenged individual instances of a judge's issuance of bench warrants in her *own* case. *Pastene v. Sprouse*, Civ. Action No. 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). Defendants' reliance on *Pastene* misses a crucial and repeatedly articulated distinction about the claims in this case. Here, as the Fourth Circuit recognized, "Plaintiffs are not suing Defendants with respect to individual judicial determinations." *Brown*, 760 F. App'x at 179. Rather, Plaintiffs challenge a county-wide debt collection policy, overseen and sanctioned by Defendants Reinhart and Adams, during their tenures as Chief and Associate Chief Judges. ECF No. 284-1 at 23–29.

Additionally, the plaintiff in *Pastene* did not allege that the judge's acts were non-adjudicative, but rather that the acts were done in the clear absence of all jurisdiction. *Pastene*, 2010 WL 1344971, at *3. Here, in contrast, Plaintiffs specifically challenge Defendants Reinhart and Adams's non-adjudicative acts and omissions taken in their administrative and supervisory capacities. *Pastene* simply does not support Defendants' position. As the challenged conduct did not involve judicial acts, Defendants Reinhart and Adams are not entitled to judicial immunity from liability for damages.

VIII. Defendants Reinhart and Adams are not entitled to qualified immunity for sanctioning and implementing a county-wide debt collection system that violated Plaintiffs' clearly established rights.

Defendants Reinhart and Adams attempt to evade damages liability for their *Bearden* violations by arguing that they are entitled to qualified immunity as to Plaintiffs Brown, Wright, and Darby. ECF No. 283-1 at 54–57.[11] In advancing this argument, Defendants Reinhart and Adams utterly misconstrue *Bearden*'s clearly established holding that unambiguously governs their conduct in this case.

[11] Defendants assert qualified immunity as to Plaintiffs Brown, Wright, and Darby, but fail to raise the defense as to the other Plaintiffs. ECF No. 283-1 at 55.

A. Plaintiffs' rights to a pre-deprivation hearing on willfulness prior to incarceration for nonpayment was clearly established under *Bearden*.

"When government officials abuse their offices, 'action[s] for damages may offer the only realistic avenue for vindication of constitutional guarantees.'" *Anderson v. Creighton*, 483 U.S. 635, 638 (1987) (alteration in original) (quoting *Harlow*, 457 U.S. at 814). Whether a government official may be held personally liable for an allegedly unlawful action turns on the "'objective legal reasonableness' of the action, assessed in light of the legal rules that were 'clearly established' at the time the action was taken." *Anderson*, 483 U.S. at 635 (quoting *Harlow*, 457 U.S. at 819). To assess a qualified immunity defense, the court must "identify the specific right that the plaintiff asserts was infringed by the challenged conduct." *Winfield v. Bass*, 106 F.3d 525, 530 (4th Cir. 1997) (en banc). Where "a plaintiff pleads facts showing (1) that the official violated [that] statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct," qualified immunity does not shield the official from money damages. *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow*, 457 U.S. at 818); *see also Melgar ex rel. Melgar v. Greene*, 593 F.3d 348, 353 (4th Cir. 2010) (noting the two-step inquiry to determine "whether a constitutional violation occurred and . . . whether the right violated was clearly established").

For a right to be "clearly established," the unlawfulness of the conduct at issue must be apparent "in the light of pre-existing law." *Anderson*, 483 U.S. at 640 (citing *Malley*, 475 U.S. at 344–45). Where "existing precedent . . . [has] placed the statutory or constitutional question beyond debate" the law is clearly established. *Booker v. S.C. Dep't of Corr.*, 855 F.3d 533, 538 (4th Cir. 2017) (quoting *Ashcroft*, 563 U.S. at 741). If the law was clearly established, the immunity defense fails, "since a reasonably competent public official *should* know the law governing his conduct." *Harlow*, 457 U.S. at 818–19 (emphasis added). A government official's subjective belief about the conduct at issue is irrelevant to this analysis. *See Anderson*, 483 U.S. at 641. Government officials "are presumed to know what the law requires, and may be legally

accountable for conduct that violates fixed standards." *Slakan*, 737 F.2d at 377 (denying qualified immunity).

Analysis of whether a law is "clearly established" requires examination of "cases of controlling authority" in the relevant jurisdiction. *Amaechi v. West*, 237 F.3d 356, 363 (4th Cir. 2001) (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999)). Cases of controlling authority refers to "decisions of the Supreme Court, . . . [the relevant] court of appeals, and the highest court of the state in which the case arose." *Booker*, 855 F.3d at 538–39 (quoting *Owens ex rel. Owens v. Lott*, 372 F.3d 267, 279 (4th Cir. 2004)). Courts "need not look any further than decisions from these courts." *Id.*

The Fourth Circuit has also emphasized that consideration must be given not only to "specifically adjudicated rights, but [also to] those manifestly included within more general applications of the core constitutional principles invoked." *Wall*, 741 F.3d at 502–03 (quoting *Pritchett v. Alford*, 973 F.2d 307, 314 (4th Cir. 1992)). In other words, defendants "'can still be on notice that their conduct violates established law even in *novel* factual circumstances,' so long as the law provided 'fair warning' that their conduct was unconstitutional." *Booker*, 855 F.3d at 538 (emphasis added) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)).

The constitutional right to a meaningful inquiry into ability to pay and willfulness prior to incarceration for nonpayment of court fines and fees is clearly established under United States Supreme Court, Fourth Circuit, *and* South Carolina Supreme Court precedent. *Bearden*, 461 U.S. at 672; *see also Alexander v. Johnson*, 742 F.2d 117, 12426 (4th Cir. 1984); *Nichols v. State*, 308 417 S.E.2d 860, 862 (S.C. 1992). All the relevant sources of controlling authority have spoken plainly and repeatedly about *Bearden's* requirements—thus, the governing case law could not be clearer.

The Supreme Court "has long been sensitive to the treatment of indigent[]" people in the criminal legal system. *Bearden*, 461 U.S. at 664; *see also Griffin v. Illinois*, 351 U.S. 12, 19 (1956); *Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971). In *Bearden*, the Court held that in proceedings for failure to pay a fine or restitution, "a sentencing

court must inquire into the reasons for the failure to pay." 461 U.S. at 672. It further explained that if the indigent defendant "could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment." *Id.* Failing to adhere to these constitutional mandates would deprive an indigent person of their "freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id.* at 672–73 (footnote omitted).

For decades, the Fourth Circuit has repeatedly and explicitly applied *Bearden*'s seminal holding in various contexts. In *Alexander v. Johnson*, the Court of Appeals evaluated the constitutionality of a state public defense recoupment scheme and stated that an indigent defendant ordered to repay attorneys' fees as a condition of probation or parole "cannot be imprisoned for failing to extinguish his debt as long as his default is attributable to his poverty." 742 F.2d at 124. Further, the court emphasized that the recoupment scheme complied with *Bearden* because it offered indigent defendants "ample opportunity to challenge the decision to require repayment at all critical stages." *Id.* at 126. Similarly, in *United States v. Lominac*, the Fourth Circuit held that "[i]n determining whether to revoke the supervised release or to modify its terms, the court must consider employment status, earning ability, financial resources, the willfulness of the failure to pay, as well as any other special circumstances bearing on the ability to satisfy" an order requiring payment. 36 F.3d 1095, 1994 WL 510242, at *2 (4th Cir. 1994) (unpublished table decision) (citing *United States v. Allen,* 2 F.3d 538, 539–40 (4th Cir. 1993)); *see also United States v. Genovese*, 836 F.2d 1343, 1988 WL 1082 (4th Cir. 1988) (unpublished table decision) (applying *Bearden*). Numerous other federal courts have similarly followed *Bearden*'s clearly established dictates. *See, e.g.*, *Doe v. Angelina Cnty.*, 733 F. Supp. at 254, 259 (holding failure to engage in *Bearden* inquiry "is unlawful whatever the economic status of the incarcerated person" and denying qualified immunity because "the constitutional infirmity of jailing *indigent* persons for failing to pay fines has been unequivocally stated by the Supreme

Court of the United States")(citing *Tate v. Short*, 401 U.S. 392 (1971) (emphasis in original); *West*, 2018 WL 4047115, at *9; *Pagan*, 785 F.2d at 381.

Bearden's requirements are also clearly established in South Carolina state courts. The South Carolina Supreme Court has repeatedly and squarely applied *Bearden*'s requirements and held that "[p]robation may not be revoked solely for failure to make required payments of fines or restitution without the court first making a determination on the record that a probationer has not made a bona fide effort to pay." *Nichols*, 417 S.E.2d at 862 (citing *Bearden*, 461 U.S. at 672); *see also Barlet v. State*, 343 S.E.2d 620 (S.C. 1986). Furthermore, the South Carolina Supreme Court has asserted that there is "no constitutional distinction between the payment of restitution as a condition of suspended sentencing and the payment of restitution as a condition of probation" and thus courts must hold a hearing to determine whether a person's failure to pay a fine or restitution is a "willful violation of . . . [a] conditional sentence." *Dangerfield v. State*, 656 S.E.2d 352, 355 (S.C. 2008).

There is no question that Defendants Reinhart and Adams's conduct in sanctioning debt collection policies and procedures that resulted in widespread jailing of indigent people without an ability to pay hearing was unlawful "in the light of pre-existing law." *Anderson*, 483 U.S. at 640 (citing *Malley*, 475 U.S. at 344–45). The treatment of indigent defendants for failure to pay court debts has been clearly established precedent since the 1980s and Defendants' meritless attempts to evade liability for their blatantly unconstitutional conduct should be rejected.

B. The Court should decline to entertain Defendants Reinhart and Adams's meritless attempts to avoid liability by pointing to immaterial distinctions.

Defendants attempt to evade this cavalcade of clearly established law under *Bearden* and its progeny by making four equally unavailing arguments. First, Defendants unsuccessfully argue that *Bearden* did not speak to "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." ECF No. 283-1 at 55. The fact of a suspended sentence has no bearing on the application of *Bearden*'s constitutional principles. And

as noted above, the South Carolina Supreme Court has clearly stated that there is no distinction between the payment of court debt as a condition of a suspended sentence and the payment as a condition of probation. *Dangerfield*, 656 S.E.2d at 355. Courts must hold a hearing to determine whether a person's failure to pay a fine or restitution was willful prior to imposing incarceration for nonpayment. *Id.*

Further, whether there was an inquiry into ability to pay at the time of sentencing is irrelevant to *Bearden*'s mandates. In *Bearden*, the petitioner was given four months from the date of sentencing to pay the balance of his fines and fees. 461 U.S. at 662–63. The Court unequivocally held that a hearing—inquiring into willfulness of failure to pay fines and fees before incarceration, even at the post-sentencing stage—was required. *Id.* at 672–74. Specifically, the Court emphasized the need to examine a person's efforts to obtain work and his lack of assets and income as payments, which became due after sentencing. *Id.* at 672–73. Moreover, a *Bearden* hearing necessarily contemplates a post-sentencing, pre-deprivation inquiry into the willfulness of nonpayment. *Id.; see also supra* Part IV.A. In *Alexander v. Johnson*, the Fourth Circuit emphasized that "federal and state constitutions prohibit . . . reincarceration for violating a monetary term of . . . parole that indigency prevent[ed] [the parolee] from fulfilling," and found that the recoupment scheme at issue complied with *Bearden* because it offered "ample opportunity to challenge the decision to require repayment at *all* critical stages." 742 F.2d at 125–26 (emphasis added) (citing *Bearden*, 461 U.S. 660).

Second, Defendants put forward a meritless argument that language in a scheduled time payment form[12] is relevant to whether *Bearden* is clearly established. ECF No. 283-1 at 55. Defendants fail to put forward precise reasoning to support this argument, but they seem to suggest that Plaintiffs may have somehow waived their constitutionally mandated rights under

[12] Defendants point to the following language: "[F]ailure to comply with the terms . . . [of] 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*." ECF No. 283-1 at 55 (emphasis in original).

Bearden and the Fourteenth Amendment by signing a scheduled time payment form. But the language in question makes no mention whatsoever of a waiver of the constitutional right to a hearing to determine ability to pay and willfulness upon default. And even if it did—it does not—such waiver would be irrelevant to the issue of qualified immunity and whether those rights were clearly established.

Third, Defendants improperly attempt to again deflect blame by arguing that they are entitled to qualified immunity because "the complained-of action has been authorized by an entity with superior legal knowledge and that has supervisory authority over the defendant." ECF No. 283-1 at 55. Defendants fail to specify the "entity" to which they are referring, but presumably mean the SCCA. As explained in Part III.C, the SCCA did not authorize the blatant violations of clearly established law that were overseen and sanctioned by Defendants Reinhart and Adams, and Defendants have put forth no evidence to prove otherwise. Defendants' sole source of authority for this muddled and meritless argument consists of one easily distinguishable case. In *Wadkins v. Arnold*, the plaintiff sued a detective and argued that no reasonable officer in the detective's position could have thought there was probable cause to seek a warrant under the circumstances. 214 F.3d 535, 539 (4th Cir. 2000). Analysis of probable cause and application of *Bearden* are starkly different. Indeed, whether probable cause exists turns on the "totality of the circumstances," and "[d]etermining whether the information surrounding an arrest suffices to establish probable cause is a[] . . . fact-specific inquiry." *Id.* at 539 (first citing *Taylor v. Waters*, 81 F.3d 429, 434 (4th Cir. 1996); and then citing *Wong Sun v. United* States, 371 U.S. 471, 479 (1963)). By contrast, clearly established *Bearden* rights apply uniformly to all individuals who face incarceration for failure to pay fines and fees. *See supra*, Section VIII(A). No fact-specific inquiry, "superior knowledge,"[13] or complex legal analysis is required to appreciate *Bearden*'s clear directive.

[13] ECF No. 283-1 at 55.

Moreover, in *Wadkins*, although the court ultimately granted the defendant-detective qualified immunity, 214 F.3d at 543–44, the fact that the detective had approached both a magistrate and the elected chief law enforcement officer in the county seeking authorization for application for a warrant was not, in and of itself, dispositive on the question of qualified immunity. *See id.* at 542–43. Rather, the court noted that these facts, among other evidence, were compelling in assessing the reasonableness of the detective's actions, but clearly stated that the involvement of both a magistrate and chief law enforcement officer "does not automatically cloak [the defendant] with the shield of qualified immunity." *Id.*

Here, unlike the detective in *Wadkins*, Defendants Reinhart and Adams have failed to put forth *any* evidence that they communicated with a supervising authority about whether their policies and procedures of incarcerating people for nonpayment without providing a hearing after arrest to determine ability to pay and willfulness were constitutional. In fact, the evidence demonstrates the opposite. Beyond the clearly established case law from the Supreme Court, Fourth Circuit, and South Carolina Supreme Court, Defendants Reinhart and Adams were explicitly put on notice that their actions were unconstitutional when the SCCA sent them a Department of Justice Dear Colleague Letter in March 2016. ECF No. 284-18. Defendant Reinhart acknowledged receiving the letter at the time he was Chief Judge, reading it, and understanding that the unconstitutional practices described in the letter were occurring in Lexington County. ECF No. 284-12 at 165:2–168:12. But he admitted to doing nothing to discuss the practices with anyone else or address them in anyway. *Id*. In light of this, Defendants cannot now credibly argue that they relied on a "superior authority" for their clearly unconstitutional behavior, especially when that "superior authority"—the SCCA—was the entity that distributed the 2016 Dear Colleague letter highlighting the unconstitutional practices.

Finally, Defendants' assertion that *Bearden* is not clearly established because the petitioner in that case did not request damages is baseless. The form of requested relief is irrelevant to the two-part qualified immunity inquiry: (i) whether the government official's actions violated a right, and (ii) whether the law was clearly established at the time of the

constitutional violation. Defendants have offered no meaningful facts or applicable authority to support qualified immunity. Thus, the Court should reject these arguments and find Defendants Reinhart and Adams are not entitled to qualified immunity.

CONCLUSION

For the reasons stated above, the Court should deny Defendants' Motion for Summary Judgment.

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Respectfully submitted,

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