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' REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

INTRODUCTION

Plaintiffs are entitled to summary judgment on their Sixth and Fourteenth Amendment claims against each named Defendant. For decades, Lexington County Magistrate Courts (LCMC) arrested and incarcerated people for failing to pay court debts. Like Plaintiffs, thousands of people who could not afford to pay their debts at the time of arrest were—as a matter of course—incarcerated without an ability to pay hearing, without a finding that their nonpayment was willful, and without the provision of counsel. As a result of these policies and procedures, Plaintiffs were wrongfully incarcerated for between seven and sixty-three days.

Defendants do not dispute that these practices violated Plaintiffs' rights under the Sixth and Fourteenth Amendments. These concessions notwithstanding, Defendants mischaracterize the nature of Plaintiffs' claims and put forward a panoply of erroneous arguments to avoid liability. But one after the next, these assertions fall flat: Defendants fail to prove that Plaintiffs' claims are moot; fail to demonstrate that the challenged debt collection scheme was "authorized statewide" by South Carolina Court Administration; fail to show how Defendants Reinhart and Adams are entitled to judicial immunity for sanctioning and implementing unconstitutional debt-collection policies; fail to prove that the current and former Chief and Associate Chief Judges do not have authority over LCMC magistrate judges and the challenged policies; and fail to demonstrate how Plaintiffs' requested relief would violate "federalism concerns." Defendants misconstrue the facts and misapply the law throughout their briefing, and the Court should reject their arguments.

ARGUMENT

I. Defendants have failed to meet their formidable burden of proving that Plaintiffs' class claims and Plaintiff Goodwin's individual claims are moot.

Defendants argue that certain actions taken by Chief Justice Beatty and the South Carolina Office of Court Administration (SCCA) in 2017 and 2018 moot Plaintiffs' claims for

prospective relief. ECF No. 283-1 at 36–39[1]; ECF No. 289 at 7–8, 25–26. In support of this argument, Defendants only point to the Chief Justice's nonbinding 2017 Memorandum and a handful of forms revised by the SCCA. ECF No. 283-1 at 36–37; ECF No. 289 at 7. Neither of these demonstrate that Defendants have met their "formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 323 (4th Cir. 2021) (hereinafter *Courthouse News II*) (internal quotation marks omitted) (quoting *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)). Moreover, the voluntary cessation doctrine prevents defendants from "automatically moot[ing] a case simply by ending its unlawful conduct once sued." *Id.* (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). Otherwise, "a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends." *Id.* (internal quotation marks omitted) (quoting *Already, LLC*, 568 U.S. at 91).

As set forth in detail in Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment (Plaintiffs' response brief), ECF No. 290 at 19–25, the Chief Justice's Memorandum and the revised SCCA forms on which Defendants rely do not constitute the type of "unconditional and irrevocable agreement" that actually bars Defendants from "returning to the challenged conduct." *Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017) (internal quotation marks omitted) (quoting *Already, LLC*, 568 U.S. at 93). First, the changes lack the permanence sufficient to moot Plaintiffs' claims. ECF No. 290 at 22–23; *see also Bell v. City of Boise*, 709 F.3d 890, 900–01 (9th Cir. 2013) (denying mootness because defendants "have failed to establish with [sufficient] clarity . . . that the new policy is the kind of permanent change that proves voluntary cessation"). Second, the Memorandum fails to even *mention* the Fourteenth Amendment violations at issue in this case, let alone steps to eradicate them. ECF No. 290 at 21.

[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.

And finally, the current Chief and Associate Chief Judges retain policymaking and supervisory authority over debt collection procedures in the LCMC. *Id.* at 24–25. Thus, Defendants could repeal, supersede, or misuse these new forms at any point—just as they chronically misused the MC2 bench warrant forms prior to the filing of this lawsuit. *Id.* at 22–24; *see also Wall v. Wade*, 741 F.3d 492, 497 (4th Cir. 2014) ("[W]hen a defendant retains the authority and capacity to repeat an alleged harm, a plaintiff's claims should not be dismissed as moot."). Defendants' mootness argument fails because it is far from "absolutely clear the alleged wrongful behavior could not reasonably be expected to recur." *Courthouse News II*, 2 F.4th at 323.

Defendants also argue that Plaintiff Goodwin's individual claims for declaratory relief are moot, because his "pending magistrate court case was recently resolved. . . . [and] sent to the Setoff Debt Program." ECF No. 289 at 33. The voluntary cessation doctrine applies equally here. Defendants provide no evidence to prove that Goodwin's referral to the Setoff Debt Program (SDP) precludes the use of a bench warrant to subsequently arrest and incarcerate him, without a hearing or access to counsel, for outstanding debt owed. On April 20, 2022—mere days after Plaintiffs moved for summary judgment—records related to Goodwin's 2017 conviction suggest a hearing occurred in the Central Traffic Court for "STP [Scheduled Time Payment] Failure to Pay" and his case was sent to the SDP. ECF No. 289-4 at 5. The peculiar timing of these developments are anticipated by the voluntary cessation doctrine, which is designed to impede "a manipulative litigant from immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after." *Porter*, 852 F.3d at 364 (internal quotation marks omitted) (quoting *ACLU of Mass. v. U.S. Conf. of Catholic Bishops*, 705 F.3d 44, 54–55 (1st Cir. 2003)). Here, the Chief Court Administrator of the LCMC has testified that the LCMC sends cases with overdue court debts to the SDP annually. Ex. 60 at 24:6–15.[2] If an individual's state tax refund is insufficient to garnish the entire amount of the

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

court debt owed, the individual continues to owe fines and fees to the LCMC and thus continues to be in danger of arrest for nonpayment of fines and fees. *Id.* at 39:4–41:25. Defendants have failed to prove that Goodwin's referral into SDP is permanent, nor have they proven that it is absolutely clear the challenged conduct could not reasonably be expected to recur as to Goodwin. Thus, declaratory relief remains necessary to protect Plaintiff Goodwin's constitutional rights.

II. Defendants fail to demonstrate that Plaintiffs' claims are barred by the "federalism concerns" of *Younger* abstention, *O'Shea*, or the *Rooker-Feldman* doctrine.[3]

Defendants broadly assert that federalism principles raised in *Younger v. Harris*, 401 U.S. 37 (1971), and *O'Shea v. Littleton*, 414 U.S. 488 (1974), require the Court to abstain from granting Plaintiffs relief. ECF No. 289 at 8, 27. But as Plaintiffs have already explained in their response brief, Defendants' arguments regarding *Younger* and *O'Shea* fail under the law of the case doctrine and are untimely and meritless. *See* ECF No. 290 at 25–33. In their response brief, Defendants likewise fail to demonstrate that "federalism concerns" bar Plaintiffs' claims. ECF No. 289 at 8–14, 27. Defendants erroneously assert that Plaintiffs' requested relief is "precluded by a *unanimous* body of federal caselaw declining to order such relief where the defendants asserted federalism principles." ECF No. 289 at 9 (emphasis added). But Defendants' claim fails on two accounts. First, the "body of federal caselaw" related to the relief Plaintiffs seek is far from unanimous, as several federal courts have indeed ordered such relief. Second, Defendants fundamentally misrepresent the relief Plaintiffs seek in an attempt to shoehorn Plaintiffs' facts, the posture of this case, and relief sought into a handful of inapposite holdings.

[3] Defendants' one-sentence invocation of the *Rooker-Feldman* doctrine resides in a footnote in their response briefing and contains no substantive argument or authority. ECF No. 289 at 27 n.19. To the extent this passing mention merits a reply, Plaintiffs have already addressed Defendants' *Rooker-Feldman* arguments in their response to Defendants' motion for summary judgment, and no additional response is warranted here. *See* ECF No. 290 at 25–26, 28–29, and 33–36.

For example, Defendants' reliance on *O'Shea* is constructed on shaky ground, as is their reliance on other cases they cite to in support of their federalism argument. In *O'Shea*, the Supreme Court found that none of the plaintiffs adequately pleaded standing to bring their claims. 414 U.S. at 493–95. Nonetheless, the Court opined on whether the lower court could have provided equitable relief if any plaintiff actually had standing and held that the equitable relief plaintiffs sought could not be awarded. *Id.* at 499–500, 504. The *O'Shea* Court summarized the relief sought as "an injunction aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials. . . . operative only where permissible state prosecutions are pending against one or more of the beneficiaries of the injunction." *Id.* at 500. Moreover, such relief "would contemplate interruption of state proceedings to adjudicate assertions of noncompliance by petitioners" in federal courts. *Id.* The *O'Shea* Court further contemplated that the injunction plaintiffs sought would halt individual prosecutions in state court for "determination of the claim ab initio" in federal court, just as the relief sought in *Younger* would have disrupted an ongoing state prosecution. *Id.* at 501. It is this halting of state court cases for adjudication in federal court that the Court believed was "nothing less than an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that *Younger v. Harris* . . . and related cases sought to prevent." *Id.*

Here, the relief Plaintiffs seek is nothing like the relief sought in *O'Shea*, nor does it implicate the interference contemplated in *Younger*. Plaintiffs do not seek to interrupt state court proceedings to adjudicate noncompliance of individual cases in federal court or anywhere else. Rather, as to their Sixth Amendment claims, Plaintiffs seek an order requiring Lexington 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. Regarding their Fourteenth Amendment claims, they seek to enjoin the offices of the Chief and Associate Chief Judges from overseeing, sanctioning, or promoting a 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 v. Georgia*, and (2) appointing counsel, as required by the Sixth Amendment. Such hearings would occur *after* arrests for nonpayment and not interfere with prior prosecutions.

Defendants cite to several cases purportedly demonstrating that Plaintiffs' relief cannot be granted. But each of these cases do little more than attempt to build an argument on *O'Shea*, which is not applicable to the instant case. For example, in *Gardner v. Luckey*, plaintiffs brought a class action lawsuit seeking declaratory and injunctive relief against the Florida Public Defender Offices. 500 F.2d 712, 713 (5th Cir. 1974). Specifically, plaintiffs sought relief that required an attorney from the offices to "consult with the accused indigent within 48 hours of arrest, to advise him of all his rights, to explore all possible defenses, to refrain from withdrawing except upon permission of the court and after first advising the indigent of the right to appeal." *Id.* at 713 n.2. Citing *O'Shea*, the court found the requested relief "intrusive and unworkable." *Id.* at 715. But Plaintiffs do not seek relief similar to the relief sought in *Gardner* or *O'Shea*. Instead, Plaintiffs seek relief aimed at addressing Lexington County's gross underfunding of indigent defense and the Chief and Associate Chief Judges' administrative policymaking and supervisory authority. The relief requested here requires none of the comprehensive mandates requested in *Gardner*.

But even if Plaintiffs were seeking such comprehensive relief related to the provision of counsel in misdemeanor courts, federal courts have awarded it. In *Tucker v. City of Montgomery Board of Commissioners*, plaintiffs brought class action claims under Section 1983 alleging, *inter alia*, that the City of Montgomery and its municipal judges (called "recorders") had failed to furnish counsel to indigent people in violation of the Supreme Court's holding in *Argersinger v. Hamlin*, 407 U.S. 25 (1972). 410 F. Supp. 494, 506–08 (M.D. Ala. 1976). Specifically, the plaintiffs alleged that they and other indigent people were denied court-appointed counsel because the city failed to make adequate counsel available. *Id.* at 506–07. The court agreed and held the plaintiffs were "entitled to an injunction requiring that the practice of failing to furnish prompt and effective counsel to those persons entitled to it under *Argersinger* be promptly

terminated." *Id.* at 507. The court ordered the mayor and chief municipal judge to file a plan within 30 days setting forth:

> [The] means and methods for furnishing counsel; means to make known to accused persons that if they are indigent they are entitled to appointed counsel; means to determine the indigency or nonindigency of persons who desire appointed counsel; means to record for each accused person the existence and the name of counsel if retained, the request or absence of request for appointed counsel if there is no retained counsel, the result of a determination of indigency or nonindigency for each person requesting appointed counsel, and the name of counsel where appointed.

Id. at 507–08. In ordering such relief, the court specifically rejected the *Gardner* court's refusal "to establish minimum standards of constitutional effectiveness for representation of indigents. . . . [because] [t]he thrust of the *Gardner* complaint was the *quality* of representation rendered indigent defendants by public defenders" whereas the *Tucker* case focused on the *availability* of representation after defendants were arrested. *Id.* at 508 n.19 (emphasis added). The court held that where the availability of indigent defense is at issue, "equitable relief can be fashioned which guarantees protection of the right to counsel." *Id.* Critical to the demise of Defendants' unanimity assertions, ECF No. 289 at 9, the court in *Tucker* did consider both *Younger* and *O'Shea* but rejected defendants' arguments about comity and federalism concerns before ordering the requested relief. *Id.* at 501.

The facts here align squarely with *Tucker*. Plaintiffs allege that Lexington County's failure to fund indigent defense resulted in Plaintiffs being denied court-appointed counsel after their arrest for nonpayment of fines and fees. Thus, like *Tucker*, the issue here is the *availability* of representation—for which this Court can fashion equitable relief. Notably, Plaintiffs have not asked the Court to order relief as comprehensive as the court awarded in *Tucker*. Nonetheless, that case demonstrates that this Court could do so without running afoul of comity or federalism concerns. *See also, e.g., Johnson v. Solomon*, 484 F. Supp. 278, 294–95 (D. Md. 1979) (rejecting comity and abstention arguments under *Younger* and *O'Shea*, granting injunctive relief to class, and ordering defendants, including circuit court judge, to "file a plan with the Court outlining the

means through which the right to counsel will be implemented" within thirty days) (citing *Tucker*, 410 F. Supp. at 507–08); *Gilliard v. Carson*, 348 F. Supp. 757, 762 (M.D. Fla. 1972) (holding injunctive relief prohibiting prosecution of arrestees without providing access to counsel "is fully consistent with the views of comity and federalism expressed in . . . [*Younger*] and companion cases"). The relief granted in these cases—each of which analyzed federalism arguments brought under *Younger* and/or *O'Shea*—refutes Defendants' unfounded assertion that Plaintiffs' requested relief is "precluded by a *unanimous* body of federal caselaw declining to order such relief where the defendants asserted federalism principles." ECF No. 289 at 9 (emphasis added).

The remaining cases Defendants cite are similarly inapposite. In *Luckey v. Miller*, plaintiffs sued the governor of Georgia seeking systemic changes to the indigent defense system statewide. 976 F.2d 673, 676 (11th Cir. 1992). The plaintiffs requested an order requiring the state of Georgia to furnish statewide relief including: appointment of counsel at all probable cause hearings; speedy appointment of counsel at all critical stages in all cases; furnishing adequate services and experts in all cases; furnishing adequate compensation for counsel; promulgating and adopting uniform standards governing the statewide representation of indigent defendants; and monitoring of statewide implementation of those standards by the federal court. *Id.* In assessing the relief sought by the plaintiffs, the court found itself "constrained . . . to focus on the likely result of an attempt to enforce an order of the nature sought here." *Id.* at 679. That focus led the court to conclude that the potential enforcement difficulties of the statewide relief plaintiffs requested would be too significant a burden for any federal court bear. *Id.* Like *O'Shea*, the court was concerned that any person appearing in any Georgia court who was not furnished with counsel as contemplated in plaintiffs' relief would be able to interrupt a state court proceeding and adjudicate their claim in federal court. *Id.*

As with *O'Shea*, none of the concerns the *Luckey* court identified to enforce the plaintiffs' statewide relief are actually present here. Most notably, Plaintiffs do not seek an order requiring Defendants to furnish counsel to individuals being prosecuted in the LCMC nor do

they seek the promulgation or adoption of uniform standards regarding the appointment of counsel. Moreover, while the court identified substantial difficulties in enforcing the *Luckey* plaintiffs' requested relief *statewide*, the instant case does not present similar difficulties because Plaintiffs seek targeted relief affecting *only* Lexington County.

Defendants' reliance on *Dalton v. Barrett*, No. 2:17-cv-04057-NKL, 2020 WL 420833 (W.D. Mo. Jan. 27, 2020) is similarly misplaced. There, the court denied a joint motion filed by plaintiffs and defendants, members of the Missouri State Public Defender Commission, to enter a proposed consent judgment providing indigent defense across the state. *Id.* at *1. Similar to the relief sought in *Luckey*, the proposed consent judgment imposed a laundry list of obligations on public defenders statewide that the court determined could not be met, given the time constraints on public defenders. *Id.* at *2–3. The court also had substantial concerns that such relief could be coordinated in a public defender system that employed 376 attorneys and represented more than 100,000 indigent defendants across 114 counties each year. *Id.* at *5. The court ultimately determined that the proposed relief placed the public defenders in an untenable position to choose between violating the consent decree of the federal court or failing to represent an indigent defendant as ordered by the state court. *Id.* It was *this* conflict that the court found to raise federalism concerns. *Id.* Here, there is no such conflict. Moreover, Plaintiffs do not seek relief that would necessitate coordination of myriad requirements imposed on hundreds of attorneys across 114 counties. The relief sought here would be imposed in only *one* county to increase funding for a handful of attorneys representing a miniscule fraction of the number of indigent defendants at issue in *Dalton*.

Bender v. Wisconsin, 19-cv-29-wmc, 2019 WL 4466973 (W.D. Wis. Sept. 18, 2019), is similarly distinguishable. There, the plaintiffs brought suit against the governor and other statewide actors to reform the state's public defense system. *Id.* at *1. The court summarized the relief sought as requiring it "to approve and monitor a restructuring and redevelopment of the State's public defense system, including workload, experience requirements, and performance standards" and held that to do so would violate principles of federalism and comity. *Id.* at *5. In

coming to this conclusion, the court gave substantial weight to the fact that there were ongoing efforts by the Wisconsin Supreme Court, the state legislature, and governor to reform the state's indigent defense system. *Id.* at *6. The court dismissed plaintiffs' claims on *Younger* abstention grounds, but specifically noted that it would do so "without prejudice to a more narrowly tailored lawsuit" in the event that the reform efforts headed by the state supreme court, legislature, and governor failed. *Id.* at *6 n.10.

The relief sought by Plaintiffs here, and the factual background in which it is sought, are wholly different from *Bender*. First, unlike in *Bender*, Plaintiffs do not seek to restructure and redevelop Lexington County's "public defense system, including workload, experience requirements, and performance standards." *Id.* at *5. Plaintiffs merely seek the hiring of an independent consultant who can determine the resources and funding necessary to provide adequate indigent defense services in the LCMC. Second, and more importantly, there is no ongoing effort by Defendants—or anyone else—to reform Lexington County's woefully underfunded indigent defense system. Whereas in *Bender*, the Wisconsin Supreme Court, legislature, and governor *all* acknowledged the "emerging constitutional crisis" of indigent defense in that state, *id.* at *6 (quoting Wis. S. Ct. Order 17-06, 14–15 (issued June 27, 2018, eff. Jan 1, 2020)), Defendants here have categorically denied that there are any constitutional concerns with the way indigent defense is funded or provided in Lexington County. Finally, it is critical to note that despite its federalism concerns, the court in *Bender* left open the possibility that if the state actors' own attempts at reform failed, a lawsuit could again be brought in federal court that would not violate principles of federalism or comity. *Id.* at *6 n.10. In Lexington County, Defendants have refused to act on their own. Thus, now is the appropriate time for Plaintiffs to maintain this lawsuit in federal court.

Defendants continue their cavalcade of inapposite case law with *Samuels v. Mackell*, 401 U.S. 66 (1971), which they assert stands for the proposition that where federalism principles justify withholding injunctive relief, declaratory relief is equally inappropriate. But *Samuels* is easily distinguished on two accounts. First, as noted above, federalism principles do not justify

withholding the injunctive relief Plaintiffs seek in this case; thus, the point is academic. Second, and critical to the circumstances here, the Supreme Court limited its holding in *Samuels* to cases in which plaintiffs have pending state criminal court prosecutions. *Id.* at 73–74 ("We, of course, express no views on the propriety of declaratory relief when no state proceeding is pending at the time the federal suit is begun."). Here, as this Court has already acknowledged, Plaintiffs do *not* have any pending state criminal court prosecutions and do not seek review of their state criminal court convictions. ECF No. 107 at 13.[4]

Defendants fail to demonstrate that "federalism concerns" presented by *Younger*, *O'Shea*, or the *Rooker-Feldman* doctrine bar Plaintiffs' claims, and this Court should decline to abstain from adjudicating this case on such grounds.

III. The current and former Chief and Associate Chief Judges are liable for deprivations of Plaintiffs' rights under the Sixth and Fourteenth Amendments.

A. Defendants' unlawful debt collection practices were not "authorized" by South Carolina Court Administration.[5]

In their response brief, Defendants chide Plaintiffs for "ignoring" the "statewide authorization" of the challenged debt collection practices by South Carolina Court Administration (SCCA). ECF No. 289 at 6. But the underlying premise of Defendants' admonition—that SCCA authorized Defendants' debt collection practices—is simply false.

First, Defendants identify no evidence, much less undisputed evidence, that the LCMC's practice of automatically incarcerating individuals who failed to pay they their court debt, without a pre-deprivation hearing or access to counsel, was routine policy "statewide." Nor do

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[4] As already discussed in Plaintiffs' response brief, *Yarls v. Bunton*, 231 F.Supp.3d 128 (M.D. La. 2017), is similarly distinguishable because the facts that raised federalism concerns in that case are not present here. *See* ECF No. 290 at 33. *Bice v. Louisiana Public Defender Board*, 677 F.3d 712 (5th Cir. 2012) fares no better for the same reason. First, unlike the instant case, the plaintiff had an ongoing state criminal prosecution that would have been interrupted if the court had granted the injunctive relief sought. *Id.* at 718. Second, the municipal court presiding over the plaintiff's criminal case had the authority to resolve the alleged constitutional violations. *Id.* at 719. Third, the *Bice* court, unlike this Court, had not certified a class and thus could not provide classwide relief. *See* ECF No. 227.

[5] Plaintiffs also addressed this argument in their response brief. ECF No. 290 at 38–40.

they provide any legal support for the proposition that, if other state counties were engaging in similar unconstitutional practices, then Defendants are shielded from liability. But more importantly, Defendants have put forth no evidence *at all* that the SCCA "authorized," in Lexington County or elsewhere, a practice of automatically jailing individuals who failed to pay their court debt, without a hearing or access to counsel. To the contrary, Plaintiffs have already provided substantial evidence that the SCCA instructed magistrate judges to obey the constitution (which prohibits Defendants' conduct) and to only use bench warrants "to bring a defendant back before a particular court." ECF No. 290 at 38–39. In 2016, the SCCA even circulated a letter to all magistrate judges stressing 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." *Id.* (citing ECF No. 284-18 at 6).

Defendants go on to argue that the MC2 bench warrant form "formalized and institutionalized" the challenged practice, but it did nothing of the sort. ECF No. 289 at 27. Consistent with the Bench Book, the MC2 bench warrant form commanded that an arrestee be "brought before [the court] to be dealt with according to the law." ECF No. 283-16 at 112.

Beyond the demonstrable evidence that SCCA did *not* authorize the LCMC's unconstitutional practices, it is also crucial to remember that SCCA is not responsible for establishing debt collection procedures in the LCMC. That duty is explicitly assigned to the Chief and Associate Chief Judges for Administrative Purposes. *See* ECF No. 284-7 ¶ 17; ECF No. 284-8 ¶ 17. The SCCA's behavior confirms this division of responsibility. For example, even after this lawsuit was filed and the LCMC's egregious debt collection practices were revealed, the SCCA did not explicitly intervene in Lexington County. Rather, it was Defendant Adams who, as Chief Judge, elected to recall nearly 6,000 bench warrants and implement the SDP as an alternate method for collection of court debts. ECF No. 284-22; ECF No. 284-23.

Defendants have failed to put forth *any evidence* in the form of documentation, testimony, or a sworn declaration that SCCA authorized their debtors' prison scheme. On the

other hand, Plaintiffs have put forth substantial evidence that it did not. Defendants' efforts to deflect blame to the SCCA should be rejected.

B. Defendants' continued denial of the existence of policies causing Plaintiffs' and Class Members' constitutional injuries is unsupported by fact or law.

Defendants offer three failed arguments in a futile attempt to support their contention that the unconstitutional practices at issue did not result from policies. First, Defendants erroneously argue that to establish the existence of policies, Plaintiffs must "show that the alleged 'policies' had their origin in the conscious choice of some particular policymaker." ECF No. 289 at 15.[6] In so doing, Defendants rely on one inapposite case. *City of Oklahoma v. Tuttle* involved a completely different factual situation where the plaintiff alleged that a *single incident* of unconstitutional conduct on the part of a police officer was indicative of an unconstitutional municipal training policy. 471 U.S. 808, 812 (1985). In that specific factual context, the Court stated that proof of a "conscious choice . . . [by] policymakers" would assist in demonstrating the existence of a policy. *Id.* at 823. Unlike the plaintiff in *Tuttle,* here, Plaintiffs have established that the constitutional violations caused by the debt collection policies and procedures at issue were widespread and longstanding, and that Defendants had authority over these practices. ECF No. 284-1 at 13–21, 23–24, 49–59.

However, even if it were Plaintiffs' burden to show that the policies had their origin in the conscious choice of a policymaker—which it is not—the facts establish that (i) the Chief and Associate Chief Judges are the policymakers with respect to debt collection policies in the LCMC and (ii) Defendants Reinhart and Adams, during their respective tenures as Chief and Associate Chief Judges, did choose the unconstitutional debt collection policies at issue over

[6] Defendants are incorrect in their assertion that the only way to establish the existence of a policy is to provide evidence of a policymaker's conscious choice. Rather, a policy or custom can be established in at least four ways: "(1) through an express policy . . .; (2) through the decisions of a [final policymaker] . . .; (3) through omissions, such as a failure to properly train officers . . .; or (4) through a practice that is so 'persistent and widespread' as to constitute a 'custom or usage with the force of law.'" *Starbuck v. Williamsburg James City Cnty. Sch. Bd.*, 28 F.4th 529, 533 (4th Cir. 2022) (quoting *Lytle v. Doyle*, 326 F.3d 463, 471 (4th Cir. 2003)).

alternative policies. Plaintiffs have demonstrated with uncontested evidence that both Defendants Reinhart and Adams were aware that the SDP was available as early as 2016, but they chose not to exercise their administrative authority to replace the LCMC's unconstitutional debt collection policies and procedures with a constitutional alternative. *See* ECF No. 284-11 at 302:9–303:14; ECF No. 290-2 at 171:21–172:4; ECF No. 284-12 at 162:19–25, 165:2–14, 167:22–168:12; ECF No. 284-28. Nothing prevented Defendants Reinhart and Adams, during their respective tenures as Chief and Associate Chief Judges, from implementing this program prior to late 2018. *See, e.g.*, ECF No. 284-11 at 306:10–13; ECF No. 284-28 ("We . . . talked about [the SDP] for years but never took any action."). Defendant Adams's decision to implement the SDP in 2018 was a conscious choice to adopt a new debt collection policy. Moreover, the implementation of the Program only required coordination of LCMC staff and approval from the LCMC's Chief Judge. ECF No. 284-27; Ex 61 at 300:10–21; Ex. 60 at 48:16–50:13.

Second, Defendants argue that Plaintiffs have failed to show that Defendants Reinhart or Adams "actually created the alleged 'policies' of which Plaintiffs complain." ECF No. 289 at 15, 17. But this argument is another red herring: Plaintiffs do not need to show that Defendants created the unconstitutional policies at issue for Defendants to be held liable for the constitutional injuries caused by policies they sanctioned. Here, again, Defendants' reference to *Tuttle* is misleading. *Tuttle* does not stand for the proposition that a policymaker must create the policy at issue to be held liable. Rather, the case's central holding is that to establish liability for a policy, there must be proof that the injury was "caused by an existing, unconstitutional municipal policy, which policy can be attributed to a municipal policy maker." 471 U.S. at 824. Plaintiffs need only show that Defendants "possessed responsibility for the continued operation of a policy that . . . *caused* the complained of constitutional harm"—not that they originally created the policy. *Dodds v. Richardson*, 614 F.3d 1185, 1199 (10th Cir. 2010) (emphasis added). Further, government officials, sued in either their individual or official capacities, can be held liable for acquiescing in or failing to remediate pre-existing or inherited policies that cause constitutional injuries. *See, e.g.*, *Gordon v. Schilling*, 937 F.3d 348, 360 (4th Cir. 2019) (holding

head prison doctor could be liable as policymaker for failing to remediate pre-existing unconstitutional policy); *Dodds*, 614 F.3d at 1197, 1202–04 (holding sheriff could be liable for "acquiesce[ing]" in clerk of court's pre-existing policies that caused plaintiffs' constitutional injuries); *see also* ECF No. 284-1 at 53–56. Plaintiffs have established that Defendants Reinhart and Adams were responsible for the continued operation of unconstitutional debt collection policies in the LCMC. ECF No. 284-1 at 27–28, 53–59.

Third, in a disingenuous and failed attempt to minimize the prevalence of the unconstitutional policies and procedures at issue, Defendants assert that Plaintiffs have not shown the percentage of people "who were actually incarcerated on bench warrants." ECF No. 289 at 16. In so arguing, Defendants purposefully ignore several key facts that establish the widespread nature of the unconstitutional practices at issue. Defendants Reinhart and Adams, as well as Lexington County's long-serving Chief Court Administrator, all testified that it was the standard practice to incarcerate people, after arrest on nonpayment bench warrants, for failure to pay fines and fees without a pre-deprivation hearing or access to counsel.[7] ECF No. 284-1 at 19–21; ECF No. 284-10 at 159:12–23, 170:9–17; ECF No. 284-12 at 182:18–183:8; ECF No. 284-15 at 130:24–132:3. Additionally, Plaintiffs have established that over a two-month period in 2017, at least 114 people were incarcerated on nonpayment bench warrants. ECF No. 284-1 at 23; ECF No. 21-5 ¶¶ 4–11; ECF No. 43-1 ¶¶ 9–13. This data suggests that at least several hundred people were incarcerated for nonpayment in 2017, and that several thousand people

[7] Defendants Reinhart and Adams's recent declarations, ECF No. 283-11; ECF No. 283-10, asserting that "[w]hile it was obvious that similar decisions were often reached by Lexington County Magistrates . . . those decisions were the result of the exercise of judicial authority in each individual case" are simply additional examples of their consistent mischaracterization of Plaintiffs' claims in order to avoid liability. As the Fourth Circuit has already recognized in this case, "Plaintiffs are not suing Defendants with respect to individual judicial determinations, e.g., denials of bond or incarceration orders." *Brown v. Reinhart*, 760 F. App'x 175, 180 (4th Cir. 2019). Further, Defendants have already testified as to the longstanding and widespread practice of incarcerating people for failure to pay fines and fees, without judicial hearing or access to counsel. ECF No. 284-10 at 159:12–23,170:9–17; ECF No. 284-12 at 182:15–183:8; ECF No. 284-15 at 130:24–132:3.

were likely incarcerated on nonpayment bench warrants over the many years that these policies and procedures were in effect. Further, Defendants have conceded that incarceration of people on nonpayment bench warrants was a longstanding practice. *See* ECF No. 289 at 27. Thus, Plaintiffs have established that unconstitutional debt collection practices involving jailing of people for failure to pay fines and fees without a hearing or access to counsel were "so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978) (quoting *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 167–68 (1970)).

C. Defendants were on notice that their challenged debt collection policies and procedures were contrary to federal and state law under *Bearden*.

As uncontested evidence shows, Defendants were on notice that their challenged policies and procedures ran afoul of longstanding Supreme Court precedent and South Carolina law. ECF No. 284-1 at 21–22. Nonetheless, Defendants make a futile attempt to evade responsibility for their violations of *Bearden v. Georgia*'s clear mandate by asserting that the South Carolina Summary Court Judges Bench Book (Bench Book) makes no reference to *Bearden* and, apparently, that they therefore lacked notice of its requirements. To be sure, the Bench Book makes no explicit mention of *Bearden*—just as it makes no explicit mention of any number of bedrock Supreme Court cases or constitutional constraints that govern Defendants' conduct. But the Bench Book *does* include a clear directive that "[a]ll magistrates and municipal judges must strictly heed the provisions of the Constitutions."[8] And, of course, *four decades ago* in *Bearden*, the Supreme Court held that the act of "depriv[ing] [a] probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment." 461 U.S. 660, 672–73 (1983).

[8] S.C. Judicial Dep't, Summary Court Judges Benchbook, "General," ch. C § 1, "The Constitution," https://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=GeneralC#C1 (last visited May 16, 2022) ("The Constitution of the United States and South Carolina are the fundamental law of our judicial system. All other laws, regardless of their source, must not conflict with the U.S. Constitution; and all state laws, regulations, and ordinances must not conflict with the S.C. Constitution.").

Plaintiffs have additionally cited to ample precedent—both in the Fourth Circuit and the South Carolina Supreme Court—adopting, interpreting, and applying *Bearden*'s unambiguous mandate. *See* ECF No. 290 at 67–69.[9] Defendants' efforts to suggest they lack notice of a constitutional rule, principle, or constraint unless it is explicitly mentioned in the Bench Book is little more than an abdication of their duty. *See Slakan v. Porter*, 737 F.2d 368, 377 (4th Cir. 1984) ("Whether or not these officials were actually aware of their constitutional and statutory obligations, *they are presumed to know what the law requires*, and may be legally accountable for conduct that violates fixed standards.") (emphasis added).

Defendants also assert that the "Dear Colleague" letter, sent by the SCCA to all South Carolina judges in March 2016, did not give Defendants Reinhart and Adams "any reason to believe that immediate action was required by any South Carolina magistrate." ECF No. 289 at 32; *see also* ECF No. 284-18. As Plaintiffs have already demonstrated, Defendant Reinhart—who was Chief Judge at that time—acknowledged that he read the letter at the time it was sent, and noticed similarities between the way the LCMC collected fines and fees and the unconstitutional conduct at the heart of the letter. ECF No. 284-1 at 22; ECF No. 284-12 at 162:19–25, 167:22–168:12. Despite making these connections, and despite having the authority to make necessary administrative changes, Defendant Reinhart did nothing as Chief Judge to remedy these unconstitutional practices. ECF No. 284-1 at 22; ECF No. 284-12 at 165:2–14.

Rather than respond squarely to these points, Defendants Reinhart and Adams cite to an irrelevant case, *Wadkins v. Arnold*, 214 F.3d 535 (4th Cir. 2000), to argue that they somehow evade liability for ignoring constitutional mandates because they are not lawyers. ECF No. 289 at 32. *Wadkins* simply does not support Defendants' erroneous assertion that Defendants Reinhart and Adams were free to abdicate their judicial responsibility to know the law simply because

[9] *See also* Bench Book, "General," ch. C § 3, "Case Law," https://www.sccourts.org/summaryCourtBenchBook/displaychapter.cfm?chapter=GeneralC#C3 (last visited May 16, 2022) ("The opinions of the Supreme Court of South Carolina constitute the case law of this state. . . . These decisions are precedent, that is, they are binding authority on any issue which has been previously decided by the S.C. Supreme Court.").

they lack a law degree. *See Wadkins*, 214 F.3d at 543; *see also Slakan*, 737 F.2d at 377. As discussed in Plaintiffs' response brief, ECF No. 290 at 71–72, the plaintiff in *Wadkins* sued a detective alleging that he was improperly arrested under warrants obtained by the detective, and 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 at 536, 539. The court found it relevant that the detective had approached both a county magistrate and the prosecutor to seek authorization for the arrest warrants 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.* at 541–43.

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 arresting and incarcerating people for nonpayment were constitutional. In fact, the evidence demonstrates the opposite. 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 that he did nothing to discuss the LCMC policies or practices with anyone else or address them in anyway. *Id.* Defendants cite no authority to support the proposition that their lack of a law degree accords them *any* protection for failing to obey longstanding Supreme Court, Fourth Circuit, or South Carolina Supreme Court precedent.

D. Defendants had a supervisory relationship with the LCMC with respect to implementation of debt collection policies and procedures, and several other duties enumerated in the Supreme Court appointment Orders.

Defendants summarily state that the Supreme Court Orders appointing the Chief and Associate Chief Judges for Administrative Purposes do not confer sufficient "actionable administrative authority" to establish supervisory authority over other magistrate judges. ECF

No. 289 at 29.[10] This argument is neither supported by fact or law and is based on a fundamental misapprehension of Plaintiffs' claims. Plaintiffs allege that the Chief and Associate Chief Judges were: (1) aware of a widespread pattern of unconstitutional behavior; (2) had a duty and the authority to intervene and to report the misconduct to SCCA; and (3) nonetheless allowed the misconduct to continue unabated. *See* ECF No. 284-1 at 56–59. Although Defendants disparage this theory as unprecedented, it has been expressly recognized by the Fourth Circuit. *See Foster v. Fisher*, 694 F. App'x 887, 889 (4th Cir. 2017) (applying supervisor liability test to Chief Judge of North Carolina's 28th Judicial District).[11]

1. The Supreme Court Orders assign Chief and Associate Chief Judges broad administrative and supervisory authority over the LCMC.

Defendants fail to address the fact that the Supreme Court Orders explicitly assign the Chief and Associate Chief Judges the authority, *inter alia*, to establish county-wide debt collection procedures, convene quarterly meetings of the summary court judges to formulate uniform procedures, set the hours of operating and schedule for magistrate courts, monitor magistrate court compliance with the constitution, and report non-compliance for summary court judges to the SCCA. ECF No. 284-1 at 25. Defendants also continue their mischaracterization of Plaintiffs' claims. For example, Defendants irrelevantly state that the "judicial action of issuing bench warrants is not covered by the 'revenue collection' provision of the semi-annual Orders." ECF No. 289 at 22. But Plaintiffs' claims do not turn on the issuance of bench warrants. Further, contrary to Defendants' assertion, Plaintiffs have never argued that Defendant Adams's implementation of the SDP proved that a Chief Judge "could control the sentencing decisions of

[10] Defendants' response brief does not address policymaker liability which is established in Plaintiffs' opening brief for summary judgment. ECF No. 284-1 at 53–56.

[11] In *Foster*, the Court endorsed the notion that supervisory liability can be properly brought against a judicial officer but found that the plaintiff failed to cite any evidence demonstrating a supervisory relationship and that the defendant had "no oversight duties or responsibilities for [other] magistrates . . . ." *Foster v. Fisher*, 1:14-CV-292-MR-DSC, 2016 WL 900654 at *7, *12 (W.D.N.C. Mar. 9, 2016). Unlike *Foster*, Plaintiffs have established the Chief and Associate Chief Judges have assigned supervisory responsibilities and authority in the LCMC and that they have exercised that authority. ECF No. 284-1 at 56–59.

individual judges," nor is this relevant. ECF No. 289 at 23. Similarly, Plaintiffs have never argued that the Chief Judges' administrative authority to oversee and coordinate the "formulat[ion] [of] uniform procedures," ECF No. 284-8 ¶ 7, "confers authority on Chief Magistrates to regulate judicial actions." ECF No. 289 at 23. Rather, Plaintiffs have pointed to numerous examples of Defendants Reinhart and Adams using their supervisory authority to implement administrative policies and procedures for the LCMC that did not constitute the regulation of judicial conduct in individual cases. ECF No. 284-1 at 28–29.

Further, Defendants' narrow interpretation of their monitoring responsibilities does not release them from supervisory liability for Plaintiffs' *Bearden* violations. Defendants insist that their duty to monitor summary court judges extends "only to 'bond hearing procedures and detention facility issues arising in magistrate and municipal courts.'"[12] ECF No. 289 at 20 (quoting ECF No. 289-3 at 2). But even if Defendants' assertions are true, they are still liable because the *Bearden* and Sixth Amendment violations arose, in part, from flawed "bond hearing procedures and detention facility issues." ECF No. 289-3 at 2.

Bond court is not *only* for setting bail. Rather, it is the place where individuals are first seen by a judge following their arrest. *See, e.g.*, ECF No. 284-40 at 5 (requiring individuals served with bench warrants "to be seen at Bond Court within 24 hours"). As highlighted by the 2007 Order, bond court procedures ensure that arrestees are promptly brought before a judge, which then may or may not involve the setting of bail. This 2007 Order commands, for example, that the magistrate or municipal judge conducting bond hearings "shall" discharge any individual who was arrested for violating the law but who, twenty-four hours later, has not been formally

[12] Defendants also warn that a duty to monitor "would require a chief administrative judge of any court to be a guarantor, upon pain of damages, that the other judges of the same status do not violate anyone's constitutional rights." ECF No. 289 at 21. But Plaintiffs do not allege vicarious liability, nor are such claims cognizable under Section 1983. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). Rather, Plaintiffs have alleged that the Chief and Associate Chief Judges are liable for failing to intervene to stop known, widespread, and unconstitutional practices by their subordinate judges. Because Plaintiffs have met their burden of proof, liability is appropriate.

charged with a crime. ECF No. 289-3 at 3. The 2007 Order further requires that "[a]ll persons incarcerated, booked, and charged *with a non-bailable offense* must have a first appearance before a magistrate or municipal judge within twenty-four hours of their arrest." *Id.* at 2 (emphasis added). Such mandate would be nonsensical if bond court procedures were meant only for setting bail.

As Plaintiffs have repeatedly explained, LCMC's *Bearden* violations arose from the policy and procedure of incarcerating people for nonpayment of court debt and failing to bring arrestees back to court for a pre-incarceration ability-to-pay hearing. Put another way, this policy and procedure was illegal because it failed to provide a mechanism by which arrestees could be heard on the issue of willfulness after arrest but prior to prolonged incarceration. The failure to bring new arrestees back before a judge is undoubtedly a failure of "bond hearing procedures and detention facility issues arising in magistrate and municipal courts." ECF No. 289-3 at 1. If ability-to-pay or willfulness hearings *had* occurred, they most likely would have been held in bond court, which is attached to the jail. As a result, the Chief and Associate Chief Judges' responsibility to supervise compliance with bond court—i.e., to ensure defendants were promptly returned to court following arrest—covers the conduct at issue here.[13]

2. Plaintiffs have demonstrated that Defendants did, in fact, exercise the authority granted by the Orders to set policies and procedures in the LCMC.

In addition to the clear language of the Supreme Court Orders granting Defendants supervisory and administrative authority over the LCMC, Defendants also ignore their own testimony regarding the ways in which they did, in fact, supervise the LCMC. ECF No. 284-11 at 278:17–279:5, 291:9–14; ECF No. 284-12 at 94:10–23. They also ignore their own testimony regarding their obligations to monitor summary court compliance with the constitution. ECF No.

[13] Defendants allege in a footnote that they are only permitted to report misconduct that occurs within the context of the Chief Judge's administrative authority. ECF No. 289 at 20 n.28. But, as demonstrated throughout Plaintiffs' briefing, the misconduct Plaintiffs seek to remedy plainly *does* arise out of the Chief Judge's administrative authority. *See* ECF No. 284-1 at 39–50.

284-11 at 340:13–17. Thus, beyond a naked assertion, Defendants fail to explain in any meaningful way why the Orders do not confer supervisory authority upon them.

Defendants further ignore the important fact that Defendant Adams plainly *exercised* supervisory authority when she eventually implemented the SDP. Pursuant to her supervisory authority as Chief Judge, Defendant Adams directed LCMC staff to research the program. *Id.* at 294:7–295:3. She organized staff and allocated work in relation to the SDP. *Id.* at 352:23–353:7; ECF No. 290-5 at 351:22–352:22; ECF No. 290-6. Defendant Adams also appointed the hearing officer for the SDP, who bears responsibility for handling protests from debtors participating in the program. ECF No. 284-11 at 354:4–20. In light of these facts, Defendants simply fail to offer a rationale for their assertion that they do not have supervisory authority over debt collection procedures in the LCMC or the other duties enumerated and assigned through the Order.

Further, Defendants' footnoted assertion that the court in *Slakan* found supervisory authority existed based on the executive chain of command is false. ECF No. 289 at 28 n.21. Rather, the court found that supervisory relationships and liability were established against government officials, including a director of prisons and a secretary of corrections, because they had specific authority and responsibilities with respect to the challenged conduct—not because they were generally in the executive chain of command. 737 F.2d at 374–75 (emphasizing that defendant director was assigned responsibility for "implementing policies governing the treatment of inmates" and defendant secretary was responsible for the "control and custody of all prisoners serving sentence(s)" as well as for "developing programs 'so as to permit the proper segregation and treatment of prisoners'"). Much like the director of prisons and secretary of corrections in *Slakan*, the Chief and Associate Chief Judges were directly assigned authority and responsibility for the debt-collection policies and procedures available in the LCMC. ECF No. 284-1 at 25. And, as discussed above and in Plaintiffs' Motion for Summary Judgment, they were also assigned numerous other supervisory responsibilities and testified about their supervisory responsibilities. *Id.* at 25–29.

Similarly, Defendants' representation of the holding of *Wilkins v. Montgomery*, 751 F.3d 214 (4th Cir. 2014), is disingenuous. The court did not affirm summary judgment for a defendant-hospital director simply because she "did not have supervision over the kinds of actions that were alleged to have caused harm." ECF No. 289 at 28. Rather, the *Wilkins* court acknowledged that the hospital director had an "overarching duty to keep the patients at [the hospital] safe" but stated that the existence of this duty "d[id] not relieve [the plaintiff] of the burden of showing" liability under the full three-part test articulated in *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994), and found that the plaintiff had "fail[ed] to provide sufficient evidence of . . . [the] three elements." 751 F.3d at 226–27. The court then also noted that the director, who had supervisory responsibility for the overall safety of patients in the facility, did not have the much narrower responsibility of monitoring the specific ward in which the plaintiffs' specific harms took place. *Id.* at 228. But the court did not find this factor to be dispositive on its own. *Id*.

Here, unlike the defendants in *Wilkins*, the Chief and Associate Chief Judges *are* assigned the specific responsibility of establishing county-wide debt collection procedures in the LCMC. ECF No. 284-1 at 25. Moreover, Plaintiffs have already demonstrated that Defendants are liable for the challenged conduct under the three-part supervisory liability test, ECF No. 284-1 at 56–59, and Defendants provided no argument in response.

IV. Plaintiffs' Fourteenth Amendment claims are redressable by an injunction against the Chief and Associate Chief Judges in their official capacities (Claim One).

Defendants argue that the Chief and Associate Chief Judges do not possess the authority to offer the relief sought, and thus, Plaintiffs' injuries cannot be redressed by the requested injunctive relief. ECF No. 289 at 26. Their argument, again, ignores both the law and the facts in this case. A plaintiff can satisfy redressability by showing that it will "be likely, as opposed to merely speculative, that a favorable decision would redress the harm." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation marks omitted). "A plaintiff's burden to establish redressability 'is not onerous': he must only 'show that he personally would benefit in a tangible way from the court's intervention.'" *Disability Rts. S.C. v. McMaster*, 24 F.4th 893, 903 (4th Cir.

2022) (alterations omitted) (quoting *Deal v. Mercer Cnty. Bd. of Ed.*, 911 F.3d 183, 189 (4th Cir. 2018)). A plaintiff need not show that the requested relief is a complete remedy: "[t]he removal of even one obstacle to the exercise of one's rights, even if other barriers remain, is sufficient to show redressability." *Sierra Club v. U.S. Dep't of Interior*, 899 F.3d 260, 285 (4th Cir. 2018).

Here, the redressability analysis is simple: as explained above, *see supra* Part III.D, the Chief and Associate Chief Judges are responsible for "establish[ing] within the county a procedure . . . to ensure that court-generated revenues are collected." ECF No. 284-1 at 25 (quoting ECF No. 284-8 ¶ 17). Plaintiffs, who were wrongfully incarcerated under the LCMC's debt collection practices, seek an order prohibiting the current and future Chief and Associate Chief Judges from re-implementing the prior unconstitutional policy. The remedy targets the harm with pinpoint accuracy—it does not prevent every future harm, but it prevents the most likely one.

Defendants' argument also ignores the record, which is replete with examples of the Chief Judge exercising policymaking and supervisory authority over other magistrate judges. *See supra* Part III.D; ECF No. 284-1 at 28–29; *see also, e.g.*, ECF No. 284-34 (courtroom media policy); ECF No. 284-36 (emergency restraining order procedures). As Chief Judge, Defendant Adams exercised authority over the very policy at issue here in at least two ways. First, Defendant Adams ordered a recall of nearly 6,000 bench warrants, most of which were issued by other LCMC judges. ECF No. 284-1 at 24; ECF No. 284-16. Then, months later, she implemented the SDP to replace the longstanding Trial in Absentia and Default Payment Policies. *See* ECF No. 284-1 at 28; ECF No. 284-30. By exercising her authority to remediate LCMC's unconstitutional debt collection policies, Defendant Adams demonstrated that the Chief and Associate Chief Judges also have authority to reinstate them. For that reason, Plaintiffs can show redressability as to their claim for injunctive relief against the Chief and Associate Chief Judges.

V. Defendants Reinhart and Adams are liable for damages for the Sixth Amendment violations Plaintiffs suffered (Claim Five).

Defendants Reinhart and Adams baselessly assert that Plaintiffs made little or no attempt to argue they are liable for the Sixth Amendment violations suffered by Plaintiffs. ECF No. 289 at 32. Defendants Reinhart and Adams then recite several broad defenses without providing any new arguments or authority. *Id.* But Plaintiffs have already addressed each of these issues and disposed of Defendants' arguments in prior briefing as noted below.

Again, Plaintiffs do not allege that their injuries were caused by the judicial acts of individual judges in the LCMC or that Defendants Reinhart and Adams had authority over such judicial decisions. *See* ECF No. 284-1 at 61–62. Plaintiffs allege the undisputed facts demonstrate Defendants Reinhart and Adams were granted explicit administrative, policymaking, and supervisory authority over the LCMC to implement debt collection procedures that would have prevented the injuries Plaintiffs suffered but failed to exercise that authority. *Id.* at 25–29.

Defendants Reinhart and Adams further assert that "the reasons set forth in Defendants' opening Memorandum" absolve them of liability for damages. ECF No. 289 at 32. But Plaintiffs have already addressed each of these arguments in their response to Defendants' motion for summary judgment. *See* ECF No. 290 at 40–44, 57–65. To the extent Defendants assert they specifically argued an "inability to show causation" as to Claim Five in their opening brief, they only asserted such on behalf of Defendant Lexington County. ECF No. 283-1 at 49–51. Plaintiffs likewise dispense with this argument in their response briefing. ECF No. 290 at 44–50.

VI. Defendants Reinhart and Adams fail to demonstrate that their administrative actions in overseeing and sanctioning unconstitutional debt collection policies are protected by judicial immunity.[14]

In asserting judicial immunity, Defendants continue to mischaracterize Plaintiffs' claims

[14] Defendants mention qualified immunity in a footnote, ECF No. 289 at 27 n.19, but make no specific argument regarding its applicability. Plaintiffs have fully explained why qualified immunity does not shield Defendants Reinhart and Adams in their Opposition to Defendants' brief. ECF No. 290 at 65–73.

as challenging judicial decision-making. But again, Plaintiffs are suing Defendants Reinhart and Adams for actions taken in their administrative, policymaking, and supervisory roles, in overseeing and sanctioning unconstitutional county-wide debt collection policies and procedures. ECF No. 284-1 at 19–29; ECF No. 290 at 36–38, 57–65; *see also Brown*, 760 F. App'x at 180 ("Plaintiffs are not suing Defendants with respect to individual judicial determinations").

To support their argument that they are entitled to judicial immunity for the challenged conduct, Defendants make a failed attempt to distinguish their acts from the administrative acts described in *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989), and *Ratte v. Corrigan*, 989 F. Supp. 2d 550, 559–60 (E.D. Mich. 2013), by (i) reasserting that no unconstitutional debt collection policies existed and (ii) again mischaracterizing Plaintiffs' claims as challenging individual adjudications. ECF No. 289 at 29–30. Both assertions have repeatedly been proven false. ECF No. 290 at 37; *Brown*, 760 F. App'x at 180. Plaintiffs have demonstrated that the challenged debt collection policies and procedures did exist, that their constitutional injuries were caused by the policies, and that Defendants Reinhart and Adams sanctioned these unconstitutional policies during their respective tenures as Chief and Associate Chief Judges. *See supra* Parts III.B&D. Because Defendants' challenged actions were administrative and taken in their policymaking and supervisory capacities, Defendants Reinhart and Adams are not entitled to judicial immunity.

Judicial immunity does not protect "administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform." *Forrester v. White*, 484 U.S. 219, 227 (1988). "Any time an action taken by a judge is not an adjudication between parties, it is less likely that the act is a judicial one." *Morrison*, 877 F.2d at 466. Here, Defendants Reinhart and Adams were assigned the administrative duty and responsibility for establishing a procedure for collecting court debt in the LCMC. ECF No. 284-1 at 25; ECF No. 284-8 at 6; ECF No. 284-9 at 6; ECF No. 284-14 at 5. These debt collection policies were not related to any particular litigation or individualized adjudication—rather, they were broadly applicable and were the long-standing standard operating procedure for handling nonpayment of court debt in the LCMC. 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. Defendant Adams further illustrated the administrative nature of overseeing debt collection policies and procedures when she implemented the SDP. ECF 284-1 at 27–28.

Defendants decline to acknowledge the crucial point that, in both *Morrison* and *Ratte*, judges were denied judicial immunity because their actions had the effect of sanctioning general policies and procedures that were unrelated to any specific adjudication or litigation—even though the broadly applicable administrative policies did affect *how* individual cases were handled. 877 F.2d at 466; 989 F. Supp. 2d at 559–60. Just like the general order in *Morrison* and the policy in *Ratte*, the unconstitutional debt collection policies and procedures sanctioned by Defendants Reinhart and Adams were unrelated to any specific adjudication. *See, e.g.*, ECF No. 284-28 at 2. And, like the policies discussed in *Morrison* and *Ratte*, these administrative policies affected the manner in which individual defendants' debt was handled in the LCMC and resulted in Plaintiffs' illegal incarcerations. ECF No. 284-1 at 61–62. Defendants have failed to meaningfully distinguish their situation from *Morrison* and *Ratte.*

Defendants rely on a single, entirely inapposite case that actually illustrates why judicial immunity is inapplicable here. In *McCullough v. Finley*, the court found that "the complaint fail[ed] to describe any specific policies other than the judges' policy of stacking tickets. . . . and fail[ed] to allege any particular facts to describe the individual role that the judges, mayor, and chiefs played in the scheme." 907 F.3d 1324, 1329 (11th Cir. 2018). Instead, the complaint "group[ed] the officials together when it allege[d] that the judges, mayor, and chiefs ordered jailees to sit-out their fines in jail." *Id.* Additionally, plaintiffs in that case challenged actions that individual judges undertook in the context of specific hearings. *Id.* at 1332.

The facts that warranted judicial immunity in *McCullough* are completely absent here. First, unlike the plaintiffs in *McCullough*, Plaintiffs here challenge unconstitutional debt-collection policies and practices in the LCMC. Second, Plaintiffs have established Defendants Reinhart and Adams's role, during their tenures as Chief and Associate Chief Judges, in

overseeing and sanctioning the challenged practices. Third, Plaintiffs do not challenge any individual actions taken in conviction, sentencing, or probation hearings. The challenged practices did not involve decisions made in the context of any judicial hearing. Rather, Plaintiffs challenge the post-sentencing events that occurred outside of any hearing. Indeed, Plaintiffs have established the complete absence of any pre-incarceration hearing on willfulness for failure to pay, as constitutionally required. Thus, judicial immunity does not shield Defendants' conduct.

CONCLUSION

For the foregoing reasons and those set forth in Plaintiffs' Memorandum in Support of their Motion for Summary Judgment, ECF No. 284-1, the Court should grant Plaintiffs' Motion for Summary Judgment and award the relief requested.

DATED this 23rd day of May, 2022.

Respectfully submitted by,

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