**UNITED STATES DISTRICT COURT**
**DISTRICT OF SOUTH CAROLINA**
**COLUMBIA DIVISION**

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| Twanda Marshinda Brown, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>Lexington County, South Carolina, *et al.*,<br><br>Defendants. | Civil Action No.<br><br>3:17-cv-01426-MBS-SVH |

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITY IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON DAMAGES CLAIMS**

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## INTRODUCTION

The Plaintiffs in this case are indigent people who were arrested and incarcerated for periods of time ranging from seven to 63 days because they could not afford to pay fines and fees to the magistrate courts of Lexington County ("the County") in traffic and misdemeanor cases. Despite prima facie evidence of their indigence, none of the Plaintiffs were afforded a pre-deprivation court hearing on their ability to pay, notice of the right to request counsel, or the assistance of a court-appointed attorney to defend against incarceration. Each suffered devastating consequences, including deprivation of liberty, separation from children and family, loss of employment, and emotional distress. Plaintiffs bring this action under 42 U.S.C. § 1983 to vindicate their rights under the Fourteenth, Sixth and Fourth Amendments to the U.S. Constitution, including through damages claims against Defendants Lexington County; Gary Reinhart and Rebecca Adams, the administrative leaders of the County's magistrate courts; and Bryan Koon, the Lexington County Sheriff. Plaintiffs offer detailed allegations concerning how each Defendant directly and proximately caused Plaintiffs' unlawful arrest and incarceration.[1]

Defendants have, for the third time, filed a motion for summary judgment without having responded to *any* discovery in this case.[2] Defendants' most recent motion seeks judgment as a matter of law on Plaintiffs' damages claims under *Heck v. Humphrey*, 512 U.S. 477 (1994), the *Rooker-Feldman* doctrine, judicial immunity, legislative immunity, lack of authority, and

[1] Plaintiffs Xavier Larry Goodwin and Raymond J. Wright, Jr. also bring prospective relief claims and filed a timely motion for class certification to pursue such relief on behalf of a proposed class of similarly situated indigent people who face imminent unlawful arrest and incarceration. *See* Dkt. Nos. 21, 30, 36.

[2] Defendants' First Motion for Summary Judgment on Plaintiffs' prospective relief claims raises standing, mootness, and *Younger* abstention, and is fully briefed. *See* Dkt. No. 29, 35, 39. Defendants subsequently filed a premature Supplemental Motion for Summary Judgment on Plaintiffs' prospective relief claims, which argued that Defendants have purportedly ceased the challenged conduct. Dkt. No. 40. Plaintiffs responded and submitted a declaration detailing discovery needed to oppose the motion. Dkt. Nos. 43, 43–1, 43–2. Rather than file a reply brief, Defendants first sought to stay consideration and then withdrew the motion altogether. Dkt. Nos. 49, 58, 61, 62.

proximate causation. Defendants have also filed a motion to stay all discovery.[3] Defendants thus ask this Court to deny Plaintiffs' damages claims as a matter of law while simultaneously seeking to prevent any discovery from being taken, including on issues of fact raised by Defendants' latest motion for summary judgment.

Only the rarest of circumstances justify summary judgment before discovery, and Defendants fail to meet their burden to justify such a grant here. Defendants' arguments are unsupported by law, contradicted by evidence, and procedurally defective. Under well-settled law, *Heck* does not apply because Plaintiffs had no access to habeas relief while incarcerated. Moreover, neither *Heck* nor *Rooker-Feldman* bar the damages claims because Plaintiffs challenge only post-sentencing procedures that led to their unlawful arrest and incarceration—not the guilty pleas, convictions, or sentences themselves. Defendants' assertion of judicial, quasi-judicial, and legislative immunity also fails because Defendants misconstrue Plaintiffs' claims as contesting the actions of judges and sheriffs in individual cases. But, in fact, Plaintiffs' claims target solely the administrative decisions, oversight, and policymaking by Defendants Reinhart and Adams (as the administrative leaders of Lexington County's magistrate courts) and Defendant Koon (as the administrative head of the Lexington County Sheriff's Department). Defendants fail to show immunity shields such conduct.

Finally, Plaintiffs have identified evidence to support their assertion that Defendants Reinhart, Adams, and Koon established the contested policies and that Lexington County's inadequate funding of indigent defense violated Plaintiffs' Sixth Amendment right to counsel.[4]

[3] Dkt. No. 51. Concurrent with this memorandum, Plaintiffs will file a memorandum opposing Defendants' Motion to Stay Discovery and Scheduling Order Deadlines or For Protective Order.

[4] Plaintiffs have also named Defendant Robert Madsen, the Eleventh Circuit Public Defender, in their Sixth Amendment damages claim, but only for actions in his official capacity as the County's final policymaker for the provision of indigent defense. Dkt No. 48 ¶¶ 499–500. Plaintiffs agree that claim is functionally equivalent to

Because Defendants fail to offer any undisputed evidence to the contrary and there are triable issues of material fact, summary judgment is unwarranted on any of the asserted grounds.

This Court therefore has ample grounds for denying Defendants summary judgment under each of the asserted defenses when viewing the sparse factual record in the light most favorable to Plaintiffs, as is required at this stage. Should this Court determine otherwise, however, Plaintiffs have submitted a declaration under Federal Rule of Civil Procedure 56(d), which describes Plaintiffs' pending discovery requests and details the specific facts that are currently unavailable to Plaintiffs but are needed to oppose Defendants' motion.

Defendants' motion is part of a wasteful strategy of seeking summary judgment with no supporting facts while simultaneously trying to bar Plaintiffs from needed discovery—an approach contrary to the directive of Federal Rule of Civil Procedure 1 to advance the "just, speedy, and inexpensive" resolution of litigation. Plaintiffs respectfully request that this Court deny Defendants' motion for summary judgment on Plaintiffs' damages claims and permit this case to proceed to discovery. In the alternative, Plaintiffs request that the Court stay a decision and permit additional time for Plaintiffs to conduct discovery under Rule 56(d).

## I. STATEMENT OF FACTS

### A. Plaintiffs were arrested and incarcerated because they could not pay money to Lexington County's magistrate courts.

Plaintiffs are indigent people who were sentenced to pay fines and fees they could not afford to Lexington County magistrate courts. After being sentenced, Plaintiffs were arrested pursuant to bench warrants that ordered them to pay the entire amount owed or otherwise serve jail time. None of them could pay. Each was incarcerated without being given a court hearing to assess ability to pay or representation by court-appointed counsel to defend against incarceration.

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Plaintiffs' Sixth Amendment damages claim against Lexington County. Plaintiffs do not contest that there is no damages claim against Defendant Madsen in his individual capacity. *See* Dkt. No. 50–1 at 14–15.

1. Twanda Marshinda Brown

Ms. Brown is an indigent and single working mother. Brown Decl. ¶¶ 1–2. On April 12, 2016, she pled guilty in the Irmo Magistrate Court to driving on a suspended license, second offense ("DUS-2"), and to driving with no tag light. Papachristou Decl. Ex. A (Dkt. No. 21–9); Long Decl. (Dkt. No. 29–2) ¶ 3a; Brown Decl. ¶ 3. Without any assessment of her ability to pay, the court sentenced Ms. Brown to pay $2,100 in fines and fees for DUS-2, $237.50 for driving with no tag light, and a three percent collection fee. Brown Decl. ¶¶ 3–4. The court ordered her to pay $100 each month even though Ms. Brown stated she could not pay that much. *Id.* ¶ 5.

Ms. Brown made five $100 payments but could not afford to pay after October 4, 2016. Brown Decl. ¶ 8; Dkt. No. 29–2 ¶ 3a. On February 18, 2017, law enforcement officers arrested Ms. Brown at her home and in front of her children. Brown Decl. ¶ 10; Dkt. No. 29–2 ¶ 3a. At jail, she was served with a bench warrant issued by the Irmo Magistrate Court, which ordered her to pay $1,907.63 or serve 90 days in jail. Brown Decl. ¶ 11; Dkt. No. 21–9 Ex. A.

Ms. Brown was unable to pay. Brown Decl. ¶ 12. She was incarcerated for 57 days. *Id.*; Dkt. No. 29–2 ¶ 3a. While incarcerated, Ms. Brown lost her job and was separated from her family. Brown Decl. ¶¶ 15–16. She missed her son's seventeenth birthday and her granddaughter's first birthday and could not be with her family when her cousin died. *Id.* ¶ 16.

2. Sasha Monique Darby

Sasha Monique Darby is an indigent and single working mother who suffers from Post-Traumatic Stress Disorder. Darby Decl. ¶¶ 1–3. On August 23, 2016, she was convicted of assault and battery in the third degree in the Irmo Magistrate Court. *Id.* ¶¶ 11, 16. Without any assessment of Ms. Darby's ability to pay, the court ordered her to pay $1,000 in fines and fees and a three percent collection fee. *Id.* ¶¶ 17–19. The court required payment of $150 per month even though Ms. Darby said she could not afford to pay that much. *Id.* ¶¶ 18–19.

Ms. Darby made several payments but fell behind due to childcare costs and family needs. Darby Decl. ¶¶ 21–22; Dkt. No. 29–2 ¶ 3d. Ms. Darby was arrested on March 28, 2017. Darby Decl. ¶ 23; Dkt. No. 29–2 ¶ 3d. At jail, she was served with a bench warrant issued by the Irmo Magistrate Court, which ordered her to pay $680 or serve 20 days in jail. Darby Decl. ¶ 24; Dkt. No. 21–11.

Ms. Darby was unable to pay. Darby Decl. ¶ 25. She was incarcerated for 20 days. *Id.*; Dkt. No. 29–2 ¶ 3d. Because of her incarceration, Ms. Darby was evicted from her home and lost her job. Darby Decl. ¶ 29. Pregnant at the time, Ms. Darby missed her first prenatal appointment and did not get enough food to eat while incarcerated. *Id.* ¶ 28.

3. Cayeshia Cashel Johnson

Ms. Johnson is an indigent and single working mother who lives in Myrtle Beach, South Carolina. Dkt. No. 48 ¶¶ 21, 214–15. On August 21, 2016, she was in a car accident in Lexington County. *Id.* ¶ 218; Dkt. No. 29–2 ¶ 3c. Ms. Johnson was ticketed for five traffic offenses and one misdemeanor and required to appear in the Central Traffic Court on September 22, 2016. Dkt. No. 48 ¶ 220; Dkt. No. 29–2 ¶ 3c.

Before her hearing, Ms. Johnson informed the Central Traffic Court that she could not secure transportation to court from Myrtle Beach, which is located three hours away. Dkt. No. 48 ¶ 223. She was not given a new court date. *Id* ¶ 224. On September 22, 2016, the Central Traffic Court tried, convicted, and sentenced Ms. Johnson in her absence. Dkt. No. 29–2 ¶ 3c. The court sentenced her to serve jail time or pay fines and fees for three offenses. *Id.* Ms. Johnson was not notified of the convictions or sentences. Dkt. No. 48 ¶ 229.

On February 13, 2016, Ms. Johnson was arrested at a traffic stop. Dkt. No. 48 ¶ 231–33. At jail, she was served with a bench warrant issued by the Central Traffic Court, which ordered her to pay $1,287.50 or spend 80 days in jail. *Id.* ¶ 235. Ms. Johnson was unable to pay. *Id.*

¶ 237. She was incarcerated for 55 days. *Id.* ¶ 238. Because of her incarceration, Ms. Johnson was separated from her four children, lost all three part-time jobs she held before her arrest, and suffered emotional distress and ill health while in jail. *Id.* ¶ 239–41.

4. Amy Marie Palacios

Ms. Palacios is an indigent and single working mother. Palacios Decl. ¶¶ 1–3. In October 2016, she was ticketed for driving on a suspended license ("DUS-1") and was required to appear in the Central Traffic Court on November 10, 2016. *Id.* ¶ 5. Ms. Palacios could not attend court due to work. *Id.* ¶ 6. She requested a new court date and provided an affidavit from her employer explaining why she could not appear in court. *Id.* ¶¶ 7–10 & Ex. A.

On November 10, 2016, the Central Traffic Court tried, convicted, and sentenced Ms. Palacios in her absence, ordering her to pay $647.50 or spend 30 days in jail. Dkt. No. 29–2 ¶ 3b. Ms. Palacios was not notified of the convictions or sentences. Palacios Decl. ¶¶ 11, 17.

On February 25, 2017, Ms. Palacios was arrested during a traffic stop. Palacios Decl. ¶¶ 12–14. Law enforcement officers informed her that the arrest was being executed under a bench warrant that required her to pay $647.50 or spend 30 days in jail. *Id.* ¶ 15. Ms. Palacios was unable to pay. *Id.* ¶ 18. She was incarcerated for 21 days. *Id.* While incarcerated, Ms. Palacios lost her job, was separated from her children, and suffered ill health and emotional distress. Palacios Decl. ¶¶ 21–23.

5. Nora Ann Corder

Ms. Corder is an indigent person who works low-wage jobs. Corder Decl. ¶¶ 1–2, 6, 10. On January 27, 2017, she was ticketed for three traffic offenses, including DUS-1. *Id.* ¶ 7. Ms. Corder appeared in the Lexington Magistrate Court on three separate dates in February, March, and April 2017 to answer for the tickets, but no magistrate judge heard her case. *Id.* ¶ 12. Ms. Corder was directed to return to court on May 17, 2017, but could not appear due to lack of

transportation. *Id.* ¶¶ 13–14. On that day, the Lexington Magistrate Court tried, convicted, and sentenced Ms. Corder in her absence on the traffic offenses, ordering her to pay fines and fees or serve jail time. Dkt. No. 29–2 ¶ 3e. Ms. Corder called the Lexington Magistrate Court and was informed that she had to pay $1,320 in full or turn herself in for arrest. Corder Decl. ¶ 17.

On May 26, 2017, Ms. Corder went to the Lexington Magistrate Court building to file forms to defend against an eviction proceeding that stemmed from her indigence. Corder Decl. ¶ 19. She was arrested under a bench warrant that required her to pay $1,320 or spend 90 days in jail. *Id*; Dkt. No. 29 – 2 ¶ 3e. Ms. Corder was unable to pay. Corder Decl. ¶ 20. She was incarcerated for 54 days. *Id.*; Dkt. No. 29–2 ¶ 3e. While incarcerated, Ms. Corder lost her job and her home. Corder Decl. ¶ 21.

6. Xavier Larry Goodwin

Mr. Goodwin is indigent and the principal provider for a family of four. Goodwin Decl. ¶ 1. He also pays child support for two additional children who do not live with him. *Id.* On July 15, 2016, Mr. Goodwin was ticketed for five traffic offenses and directed to appear in the Central Traffic Court on August 9, 2016. *Id.* ¶¶ 3–4. Mr. Goodwin informed the court that he could not appear on that date due to his work schedule. *Id.* ¶ 5. The Central Traffic Court tried, convicted, and sentenced Mr. Goodwin in his absence on all five offenses, ordering him to pay $1,710 in fines and fees or to be jailed for 90 days. Dkt. No. 21–17. Mr. Goodwin was not notified of the convictions or sentences. Goodwin Decl. ¶ 8.

On February 2, 2017, Mr. Goodwin was arrested at a traffic stop. Goodwin Decl. ¶¶ 7–8. At jail, he was served with a bench warrant issued by the Central Traffic Court, which ordered him to pay $1,710 or serve 90 days in jail. *Id.* ¶ 8; Dkt. No. 21–17. He was unable to pay. Goodwin Decl. ¶ 9. Mr. Goodwin was incarcerated for 63 days. *Id.* ¶ 12. While incarcerated, Mr. Goodwin lost his home and the job he had held for thirteen years, was separated from his

wife and children, and suffered emotional distress and headaches in jail. *Id.* ¶¶ 15–18. Mr. Goodwin was unable to be with his daughter on her eleventh birthday or with his wife on their wedding anniversary. *Id.* ¶ 17.

7. Raymond Wright, Jr.

Mr. Wright is an indigent and disabled man. Wright Decl. (Dkt. No. 35–2) ¶ 1. On July 26, 2016, he pled guilty to DUS-1 in the Central Traffic Court and was sentenced to pay $666.93 in fines and fees. Dkt. No. 29–2 ¶ 3f. Without any assessment of Mr. Wright's ability to pay, the Central Traffic Court ordered him to pay $50 each month. *Id.*; Dkt. No. 35–2 ¶¶ 4–5. Mr. Wright made five payments but could not afford to pay after December 7, 2016 because of his limited disability benefits and his wife's unemployment. Dkt. No. 29–2 ¶ 3f; Dkt. No. 35–2 ¶¶ 6–7.

Mr. Wright appeared in the Central Traffic Court for a show cause hearing on April 19, 2017. Dkt. No. 29–2 ¶ 3f; Dkt. No. 35–2 ¶ 8. Without any assessment of Mr. Wright's ability to pay, the Central Traffic Court ordered Mr. Wright to pay $416.93 within ten days. Dkt. No. 29–2 3f; Dkt. No. 35–2 ¶¶ 8–12. Mr. Wright could not afford to pay. Dkt. No. 35–2 ¶ 13. He was arrested on July 25, 2017 pursuant to a Central Traffic Court bench warrant that ordered him to pay $416.93 or serve ten days in jail. Dkt. No. 29–2 ¶ 3f. Mr. Wright was unable to pay. Dkt. No. 35–2 ¶ 14. He was incarcerated for seven days. Dkt. No. 29–2 ¶ 3f.

**B. Defendants' Policies and Practices**

Impoverished people are routinely arrested and incarcerated in Lexington County for inability to pay fines and fees in magistrate court cases. Dkt. Nos. 21–5 ¶¶ 6–14, 21–8 ¶¶ 14–20, 43–1 ¶¶ 4–17. These fines and fees serve as a critical source of County revenue.[5] The County

[5] *See* Lexington County, S.C. General Fund Requested Budgets, Fiscal Year 2017–18 at 703, *available at* http://www.lex-co.com/Departments/Finance/FY17-18/GeneralFundRequestedBudgets.pdf ("Magistrate Courts

annually projects that it will collect substantial revenue in such fines and fees even though the percentage of the County's population living in poverty increased 14.5% from 2012 to 2015.[6]

Over time, the generation of County revenue through magistrate court fines and fees has given rise to a system that routinely deprives indigent people of their constitutional rights. This system has been sustained by the County and the following officials: Defendants Gary Reinhart and Rebecca Adams, the administrative leaders of the County's magistrate courts; Defendant Bryan Koon, the Lexington County Sheriff; and Defendant Robert Madsen, the Circuit Public Defender for the Eleventh Judicial Circuit, who acts on behalf of Lexington County.[7]

1. Defendants Gary Reinhart and Rebecca Adams, Chief Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County

Under Article V, Section 4 of the South Carolina Constitution, the Chief Justice of South Carolina appoints chief judges and associate chief judges for administrative purposes of the summary courts in each South Carolina county.[8] Defendant Gary Reinhart served as Chief Judge for Administrative Purposes of the Summary Courts in Lexington County from at least 2004

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throughout the county . . . generate revenue from Criminal and Traffic cases. All fines and assessments collected are . . . deposit[ed] . . . into the County General Fund . . . .") [hereinafter "Lexington County 2017-2018 Budget"]; *id.* at 706 (indicating that the Traffic Court "generates substantial revenue from traffic violations [and] criminal fines") (emphasis supplied). This Court may "take judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (noting that such judicial notice is "routinely take[n]"); *see also Mitchell v. Newsom*, No. 3:11-0869-CMC-PJG, 2011 WL 2162723, at *3 n.1 (D.S.C. May 10, 2011) (taking judicial notice of information on county website).

[6] *See* Lexington County 2017-2018 Budget, *supra* note 5 at 698 (projecting collection of $1,332,000 in traffic and criminal fines and fees from magistrate courts in Fiscal Year 2016-2017); U.S. Census Bureau, Lexington County, S.C. Community Facts, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_5YR/S1701/0500000US45063 (showing increase in poverty rate from 12.4% in 2012 to 14.2% in 2015).

[7] Albert John Dooley III, the current Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts is sued for prospective relief only. *See* Dkt. No. 48 ¶ 30. His conduct is irrelevant to this motion.

[8] S.C. Const. art. V, § 4 ("The Chief Justice of the Supreme Court . . . shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State.").

until June 28, 2017.[9] Defendant Rebecca Adams served as Associate Chief Judge from at least 2013 until June 28, 2017, at which point she replaced Defendant Reinhart as Chief Judge.[10]

On January 3, 2017, South Carolina Chief Justice Donald Beatty issued one of the orders appointing chief judges for administrative purposes of the summary courts in each South Carolina county ("January 2017 Order").[11] Like previous and subsequent orders, the January 2017 Order grants chief judges significant administrative authority over magistrate courts. This includes the following responsibilities: to establish and oversee a county-wide procedure "to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner"; to convene judges to "establish uniform[] procedures in the county summary court system"; to administer the County's Bond Court; to determine the hours and nighttime and weekend schedule of County magistrate courts; to assign cases to magistrate judges across the County; and to coordinate the planning of budgets for magistrate courts. January 2017 Order at ¶¶ 3, 5–6, 9–10, 15.[12] The associate chief judge carries out the administrative responsibilities of the chief judge in the event the chief judge is absent or disabled. *Id*. The associate chief judge is also required to accept any administrative duties that the chief judge assigns. *Id.*

In their exercise of administrative responsibilities for establishing uniform procedures for collecting fines and fees, Defendants Reinhart and Adams have overseen, enforced, and

[9] *See* S.C. Sup. Ct. Order (Dec. 16, 2004) ("December 2004 Order"), *available at* http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2004-12-16-01 (appointing Defendant Reinhart Chief Judge for Administrative Purposes of the Lexington County Summary Courts). Defendant Reinhart was reappointed in subsequent orders until June 28, 2017. S.C. Sup. Ct. Order (June 28, 2017) ("June 2017 Order"), *available at* https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-28-01 (appointing Defendant Adams Chief Judge for Administrative Purposes of the Lexington County Summary Courts).

[10] *See* S.C. Sup. Ct. Order (Dec. 20, 2013) ("December 2013 Order"), *available at* http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2013-12-20-01 (appointing Defendant Adams Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts); June 2017 Order, *supra* note 9.

[11] S.C. Sup. Ct. Order (Jan. 3, 2017) ("January 2017 Order"), *available at* https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-01-03-01.

[12] Previous and subsequent orders set forth the same duties and responsibilities of the chief judge and associate chief judge. *See* December 2013 Order, *supra* note 10; June 2017 Order, *supra* note 9.

sanctioned unwritten standard operating procedures in the Lexington County magistrate courts that directly and proximately caused Plaintiffs' unlawful arrest and incarceration. These procedures are described in Plaintiffs' Class Action Second Amended Complaint ("Second Amended Complaint") as the "Default Payment" and "Trial in Absentia" policies.

Under the Default Payment Policy, the County's magistrate courts order the arrest and incarceration of people who cannot afford to pay fines and fees in traffic and misdemeanor criminal cases. Dkt. No. 48 ¶¶ 88–101. When an indigent person is unable to pay in full at sentencing, the magistrate court imposes a payment plan requiring steep monthly payments beyond the person's financial means. *See, e.g.*, Brown Decl. ¶¶ 4–5, 7; Darby Decl. ¶¶ 18–20; Dkt. No. 35–2 ¶¶ 4–5. If the indigent person fails to pay in the amount of time required by the payment plan, the magistrate court issues a bench warrant that orders law enforcement to arrest and jail the person unless full payment is made before booking. Brown Decl. ¶¶ 8–12; Darby Decl. ¶¶ 21–25; Dkt. No. 35–2 ¶¶ 6–14. Plaintiffs Brown, Darby, and Wright were incarcerated under the Default Payment Policy solely for inability to pay. Brown Decl. ¶¶ 3–8, 12; Darby Decl. ¶¶ 11–25; Dkt. No. 35–2 ¶¶ 3–14.

Under the Trial in Absentia Policy, the County's magistrate courts order the arrest and incarceration of indigent people who cannot afford to pay fines and fees imposed through proceedings held in their absence. Dkt. No. 48 ¶¶ 102–09. When an indigent person does not appear in court, regardless of the reason for their absence, the magistrate court proceeds without the defendant and imposes a conviction and sentence to a term of incarceration suspended on the payment of fines and fees. *See, e.g.*, Palacios Decl. ¶¶ 6–10; Corder Decl. ¶¶ 12–14; Goodwin Decl. ¶¶ 5–6. Without notifying the defendant of the sentence, the magistrate court swiftly issues a bench warrant that orders law enforcement to arrest and jail the person unless full

payment is made before booking. Palacios Decl. ¶¶ 13–17; Corder Decl. ¶¶ 15–17; Goodwin Decl. ¶¶ 7–9. Plaintiffs Johnson, Palacios, Corder, and Goodwin were incarcerated under the Trial in Absentia Policy solely for inability to pay. Palacios Decl. ¶¶ 7–11, 18; Corder Decl. ¶¶ 12–17, 20; Goodwin Decl. ¶¶ 5–9; Dkt. No. 48 ¶¶ 8–10, 14.

In the standard operating procedure established and overseen by Defendants Reinhart and Adams, indigent people arrested on warrants issued under the Default Payment and Trial in Absentia Policies ("payment bench warrants") are not afforded a pre-deprivation court hearing to assess ability to pay or representation by court-appointed counsel to defend against incarceration. Brown Decl. ¶¶ 11–13; Darby Decl. ¶¶ 24–26; Corder Decl. ¶¶ 17–20; Goodwin Decl. ¶¶ 8–12; Palacios Decl. ¶¶ 18–19; Dkt. No. 35–2 ¶¶ 8–14. Defendants Reinhart and Adams have made a deliberate decision not to require or permit the Bond Court or the original magistrate court that issued the payment bench warrant to hold ability-to-pay hearings for indigent people arrested on these warrants. Defendants Reinhart and Adams could do so by exercising their administrative authority to increase the size of magistrate court dockets, to require additional hours of magistrate court operation, to require magistrate judges to work on evenings and weekends, or to request County funding for magistrate court operations in order to make pre-deprivation ability-to-pay hearings mandatory. *See* January 2017 Order at ¶¶ 6, 9–10.

As the administrative leaders of Lexington County's magistrate courts, Defendants Reinhart and Adams knew, or should have known, that magistrate court judges routinely misuse payment bench warrants to coerce payments and to incarcerate indigent people rather than bring them to court, contrary to South Carolina law.[13] Defendants Reinhart and Adams also failed to

[13] South Carolina law makes clear that bench warrants are to be used *solely* to bring defendants to court. *See* S.C. Code § 22-5-115 ("If the defendant fails to appear before the court . . . a bench warrant may be issued for his arrest."); S.C. Code § 38-53-70 ("If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant."); Nov. 14, 1980 Order of the Supreme Court of

report such abuse to the South Carolina Office of Court Administration, despite their obligation to do so.[14]

2. Defendant Bryan Koon, Lexington County Sheriff

Defendant Bryan Koon has served as the Lexington County Sheriff since April of 2015.[15] In this role, he serves as the head of the Lexington County Sheriff's Department ("LCSD") and the chief administrator of the Detention Center.[16] Defendant Koon has the following administrative duties: managing the LCSD, including deputies and Detention Center staff;[17] setting enforcement priorities including for staff of the Warrant Division, which serves payment bench warrants;[18] negotiating relationships with other law enforcement agencies to execute payment bench warrants;[19] and training, supervising, and directing LCSD officers in the execution of payment bench warrants.[20] In the exercise of his administrative authority, Defendant Koon deliberately directed LCSD deputies to locate and arrest people named in

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South Carolina ("[B]ench warrants . . . are to be used *only* for the purpose of bringing a defendant before a court . . . .") (emphasis supplied); S.C. Judicial Dep't, Summary Court Judges Benchbook, "Criminal," ch. C § 2, "Bench Warrants" (defining "bench warrant" as "a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose . . . .") [hereinafter "Benchbook on Bench Warrants"].

[14] *See* January 2017 Order, *supra* note 11 at ¶ 17 (requiring Chief Judge to "[r]eport to the Office of Court Administration any significant or repetitive non-compliance by any summary court judge in the country concerning the Chief Judge's execution of the provisions of this Order").

[15] *See* Lexington County Sheriff's Department, Sheriff's Biography, http://www.lex-co.com/sheriff/sheriff.aspx.

[16] *See* Lexington County Sheriff's Department News Release, "Sheriff Koon Sworn in as 39th Sheriff of Lexington County," *available at* http://www.lex-co.com/sheriff/media.aspx?mid=2308 (referring to Defendant Koon as the "County's chief law enforcement officer"); S.C. Const. art. V, § 24 (providing for each county's election of a sheriff as a "law enforcement official" and "administrative officer"); S.C. Code Ann. § 23-13-10 (describing sheriffs' power to appoint deputies and to "in all cases be answerable for neglect of duty or misconduct in office of any deputy"); *id*. § 24-5-10 (providing the sheriff as custodian and liable party for his county's jail).

[17] Lexington County 2017-2018 Budget, *supra* note 5 at 752 (describing Sheriff's role in LCSD Administrative Bureau).

[18] Lexington County Sheriff's Department, "Warrant and Civil Process," http://www.lex-co.com/sheriff/divisions.aspx?did=wc; *see also* Lexington County 2018-2018 Budget, *supra* note 5 at 752 (describing Sheriff's role in LCSD Administrative Bureau, which "provide[s] support to all law enforcement and detention center personnel by coordinating day-to-day operations" and "ensure[s] that the deputy sheriffs have the resources necessary to provide professional law enforcement service to the citizens of Lexington County").

[19] *See* S.C. Code Ann. §§ 23-20-20–23-20-40 (providing procedures for county law enforcement agencies to enter into mutual aid agreements).

[20] *See* S.C. Code Ann. § 23-15-50 (requiring deputies to "arrest all persons against whom process for that purpose shall issue from any competent authority").

payment bench warrants. Dkt. No. 48 ¶ 124. Defendant Koon also deliberately trained and supervised the deputies and Detention Center staff to book the arrested people in jail if they could not pay the amount of money identified on the face of the warrants. *Id*. Defendant Koon thus established and enforced a standard operating procedure that caused Plaintiffs to be arrested and incarcerated on payment bench warrants issued without any pre-deprivation court inquiry into their ability to pay or representation by counsel. *Id*. ¶¶ 124–28; Brown Decl. ¶¶ 10–13; Darby Decl. ¶¶ 23–26; Palacios Decl. ¶¶ 12–19; Corder Decl. ¶¶ 16–20; Goodwin Decl. ¶¶ 7–12.

3. Defendant Lexington County

Defendants Lexington County and Robert Madsen operate a public defense system that fails to provide counsel to indigent people who face incarceration in the County's magistrate courts. Defendant Madsen has served as the Circuit Public Defender for the Eleventh Judicial Circuit in South Carolina since 2008.[21] Defendant Madsen and the Lexington County Council are the County's final policymakers for the provision of indigent defense in County magistrate courts.[22] Defendant Madsen is responsible for seeking, and the County is responsible for providing, resources for public defense in magistrate courts.[23] State law requires the County to provide a minimum amount of funding for indigent defense each year.[24] Defendant Madsen

[21] *See* S.C. Comm'n on Indigent Def. ("SCCID"), Circuit Public Defenders, https://sccid.sc.gov/about-us/circuit-public-defenders (indicating Defendant Madsen is the circuit public defender responsible for Lexington County); SSCID, Public Defenders: Robert M. Madsen, https://sccid.sc.gov/about-us/county-public-defenders/bio/1545/robert-m-madsen (indicating that Defendant Madsen has served as circuit public defender since August 2008).

[22] *See* Indigent Defense Act of 2007, S.C. Code Ann. § 17-3-5 (recognizing "Circuit public defender" to be "the head of a public defender office providing indigent defense representation within a given judicial circuit"); *id.* § 17-3-560 (requiring "[e]ach circuit public defender . . . [to] enter into an agreement with the appropriate county within the judicial circuit to administer the funds" for indigent defense in the county).

[23] *See* S.C. Code Ann. § 17-3-540 (requiring each county to pay for "[a]ll personnel costs" for staff appointed by circuit public defender "as necessary to provide adequate and meaningful" indigent defense); *id.* § 17-3-560 (requiring circuit public defender to spend county resources for indigent defense).

[24] *See* S.C. Code Ann. § 17-3-550 ("No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.").

makes final decisions over the expenditure of County resources for public defense services.[25] And all personnel—attorneys and non-attorneys—are County employees under the supervision of Defendant Madsen.[26]

Defendants Lexington County and Madsen have deliberately decided to grossly underfund public defense in magistrate court cases. Lexington County allocated only $543,932 for public defense in fiscal year 2015-2016 and only $543,532 in fiscal year 2016-2017, which was *even less* than the preceding year. *See* Affidavit of J. Hugh Ryan, III ("Ryan Affidavit") Ex. A at 2 & Ex. B at 2. In 2015-2016, the County provided *less than half* the funding for public defense that York and Spartanburg Counties, which are of comparable population size, each provided. *Id.* Ex. A.

4. Evidence of Widespread Arrest and Jailing of Indigent People for Nonpayment of Fines and Fees Owed to Lexington County Magistrate Courts

Public records demonstrate that Defendants Lexington County, Reinhart, Adams, Koon, and Madsen have established standard operating procedures under which indigent people, like Plaintiffs, are unlawfully arrested and incarcerated through the use of payment bench warrants when they cannot pay money to magistrate courts. Court records from February 1, 2017 to March 31, 2017 reveal that the County's magistrate courts targeted 183 people with bench warrants for nonpayment of court fines and fees. Dkt. No. 21–8 ¶ 18; *see also id.* ¶¶ 13–17. If bench warrants are issued at the same rate throughout the year, this two-month estimate suggests

[25] *See* S.C. Code Ann. § 17-3-520(B) (outlining the duties and powers of circuit public defenders); *id.* § 17-3-540 (permitting circuit public defender to "employ . . . staff as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit").

[26] *See* S.C. Code Ann. § 17-3-540 (requiring any staff hired by circuit public defender "as necessary to provide adequate and meaningful representation" to be "employees of the administering county"); *id.* § 17-3-570(B) (requiring all "administrative, clerical, and paraprofessional personnel" hired by circuit public defender to be "employees of the administering county").

that around 1,098 people were subjected to a bench warrant for nonpayment of fines and fees to a Lexington County magistrate court the previous year. *Id.* ¶ 19.

Online Detention Center records demonstrate that the use of payment bench warrants to coerce payments toward magistrate court fines and fees results in the widespread arrest and incarceration of people, including indigent people. Detention Center records from May 1, 2017 to May 28, 2017 reveal that 57 people were arrested and incarcerated on payment bench warrants issued by magistrate courts. Dkt. No. 21–5 ¶ 7; *see also id.* ¶¶ 2–6. Records from September 15, 2017 to October 9, 2017 also demonstrate that at least 57 inmates were incarcerated in the Lexington County Detention Center pursuant to payment bench warrants issued by magistrate courts, and that at least 40 of these people were not provided any court hearing, whether before or after arrest, at which a magistrate court could have considered the reasons for nonpayment, including ability to pay. Dkt. No. 43–1 ¶¶ 13, 20–22.

## II. AUTHORITY AND ARGUMENT

Defendants seek summary judgment on Plaintiffs' damages claims on the following grounds: (1) Plaintiffs' damages claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), Dkt. No. 50–1 at 4–7; (2) Plaintiffs' damages claims are barred by the *Rooker-Feldman* doctrine, *id.* at 8–9; (3) Defendants Gary Reinhart and Rebecca Adams are shielded by judicial immunity, *id.* at 9–10; (4) Defendant Bryan Koon is shielded by quasi-judicial immunity, *id.* at 10; (5) Defendants Reinhart, Adams, and Koon are shielded by legislative immunity, *id.* at 10–11; (6) none of the named Defendants has authority to create the challenged policies as a matter of law, *id.* at 11–13; and (7) Plaintiffs cannot prove that Defendant Lexington County's inadequate funding of indigent defense was the proximate cause of their injuries, *id.* at 14.[27]

[27] Plaintiffs do not contest that the damages claim against Defendant Madsen in his official capacity as a Lexington County policymaker constitutes a claim against Lexington County itself. *See* Dkt. No 50–1 at 14–15.

Defendants fail to meet their summary judgment burden on each of the asserted grounds for three overarching reasons. First, neither *Heck*'s "favorable termination rule" nor the *Rooker-Feldman* doctrine bar Plaintiffs' damages claims when viewing the sparse factual record in the light most favorable to the non-moving party, as this Court must. Under well-settled law, *Heck* does not apply because Plaintiffs had no access to habeas relief while incarcerated. Moreover, neither *Heck* nor *Rooker-Feldman* bar the damages claims because Plaintiffs challenge only post-sentencing procedures that led to their unlawful arrest and incarceration. Plaintiffs are not seeking federal review of their underlying guilty pleas, convictions, or sentences (as required for *Rooker-Feldman* to apply), and Plaintiffs are not pursuing claims that necessarily imply the invalidity of those pleas, convictions, and sentences (as required for *Heck* to apply).

Second, Defendants fail to meet their summary judgment burden on the basis of judicial, quasi-judicial, and legislative immunity. Defendants misconstrue Plaintiffs' claims as contesting the actions of individual judges to issue payment bench warrants and of individual sheriff's deputies to execute those warrants. But Plaintiffs challenge solely the *administrative* decisions, oversight, and policymaking by Defendants Reinhart, Adams, and Koon. Defendants fail to show through undisputed evidence that this *administrative* conduct did not cause Plaintiffs' arrest and incarceration. Nor do Defendants identify authority for the proposition that judicial, quasi-judicial, or legislative immunity applies to such actions.

Third, Defendants raise additional arguments for summary judgment that must be denied because they concern genuine, triable issues of material fact. Plaintiffs have identified evidence showing that Defendants Reinhart, Adams, and Koon established and sustained the policies contested by Plaintiffs and that Lexington County's grossly inadequate funding of indigent defense violated Plaintiffs' Sixth Amendment right to counsel. The record fails to support

Defendants' contention that Plaintiffs cannot prove either point as a matter of law. Defendants' argument is thus premature, and summary judgment is unwarranted.

This Court therefore has ample reasons for denying Defendants' summary judgment motion in its entirety, and should permit this case to proceed to discovery. But should this Court determine otherwise, Plaintiffs seek relief under Federal Rule of Civil Procedure Rule 56(d) with respect to: Defendant Adams, Reinhart and Koon' assertion of immunity; all Defendants' contention that they lack authority to engage in the challenged conduct; and Defendant Lexington County and Koon's assertion of lack of causation. A grant of summary judgment before discovery is exceptionally rare, and Defendants have not responded to Plaintiffs' discovery requests. Plaintiffs have submitted a Rule 56(d) declaration that describes Plaintiffs' pending discovery requests and details specific facts that are unavailable to Plaintiffs but are needed to oppose Defendants' motion for summary judgment on the aforementioned grounds.

**A. Standard of Review**

A court may grant summary judgment pursuant to Federal Rule of Civil Procedure 56(a) only when the moving party "show[s] that there is no genuine dispute as to any material fact" and that it "is entitled to judgment as a matter of law." The party seeking summary judgment bears the initial burden of demonstrating there are no genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If this showing is made, the non-moving party must demonstrate specific, material facts that give rise to a genuine issue. *Id.* at 324.

Evidence presents a genuine issue of material fact when "a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Any inference drawn from the facts should be viewed in the light most favorable to the nonmoving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). A motion for summary judgment should be denied when "the nonmoving party has not had the opportunity to

discover information that is essential to his opposition." *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 244 (4th Cir. 2002) (quoting *Anderson*, 477 U.S. at 250 n. 5).

**B. *Heck* does not bar Plaintiffs' damages claims.**

Defendants assert that Plaintiffs' damages claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because the claims "would necessarily imply that [Plaintiffs'] criminal convictions are invalid" and, therefore, Plaintiffs should have first secured decisions overturning their convictions and sentences. Dkt. No. 50–1, at 4. But Defendants fail to show that the claims meet either of the two requirements that must be met for *Heck* to bar Section 1983 claims by formerly incarcerated individuals.

First, the undisputed record shows that Plaintiffs were jailed for such short periods of time that they could not have pursued and obtained federal habeas relief while incarcerated—a prerequisite for the application of *Heck*. Second, *Heck* is inapplicable to Section 1983 claims challenging *post-sentencing* procedures, which is the case here. Plaintiffs' claims concern the right to pre-deprivation ability-to-pay hearings, the right to counsel at those hearings, and the right to freedom from unreasonable seizures that occur when payment bench warrants used to arrest people are unsupported by probable cause. A judgment in Plaintiffs' favor will not imply the invalidity of Plaintiffs' guilty pleas, convictions, or sentences. Rather, it will establish that the post-sentencing procedures used to arrest and incarcerate Plaintiffs were unlawful. For both reasons, *Heck* does not bar Plaintiffs' claims.

1. <u>*Heck* is inapplicable because Plaintiffs had no practical access to habeas relief while in custody.</u>

In *Heck*, the Supreme Court held that a plaintiff cannot bring a Section 1983 claim for damages "if success will necessarily imply the invalidity" of a conviction or sentence unless the plaintiff can show "that the conviction or sentence has already been invalidated." 512 U.S. at

487. The U.S. Court of Appeals for the Fourth Circuit has established two clear requirements that must be met for the *Heck* rule to apply:

> First, a judgment in favor of the plaintiff [*must*] necessarily imply the invalidity of [a plaintiff's] conviction or sentence. Second, the claim *must* be brought by a claimant who is either (i) currently in custody or (ii) no longer in custody because the sentence has been served, but nevertheless *could have practicably sought habeas relief while in custody*.

*Covey v. Assessor of Ohio Cty.*, 777 F.3d 186, 197 (4th Cir. 2015) (internal quotation marks and citations omitted) (emphasis supplied).

The Fourth Circuit has "ma[de] clear that lawful access to federal habeas corpus is the *touchstone* of [the court's] inquiry." *Griffin v. Balt. Police Dep't*, 804 F.3d 692, 697 (4th Cir. 2015) (emphasis supplied). Only individuals who are "in custody" may pursue a federal habeas suit challenging the legality of their incarceration under the U.S. Constitution. 28 U.S.C. § 2254(a). While a plaintiff who was in custody for "three decades" may be barred from bringing a Section 1983 claim, plaintiffs who had "only a few months to make a habeas claim . . . [or] at most a little over a year" are not. *Id.* at 697 (discussing *Covey*, 777 F.3d 191, 197–98, and *Wilson v. Johnson*, 535 F.3d 262, 263 (4th Cir. 2008)).

Here, it is undisputed that Plaintiffs were incarcerated for periods of time ranging from only seven to 63 days.[28] Consequently, Plaintiffs were "unable to pursue habeas relief because of insufficient time," and *Heck* is "wholly inapplicable." *Covey*, 777 F.3d at 198.[29] Defendants ignore this threshold requirement for *Heck*'s application and fail to meet their burden to address,

[28] Dkt. No. 29–2 ¶ 3 (attesting that Mr. Wright was incarcerated for seven days, Ms. Darby for 20 days, Ms. Palacios for 21 days, Ms. Corder for 54 days, Ms. Johnson for 55 days, and Ms. Brown for 57 days); Goodwin Decl. ¶¶ 3, 5 (attesting that Mr. Goodwin was incarcerated for 63 days).

[29] Defendants appear to incorrectly argue that Plaintiff Goodwin's damages claims concern a "criminal case that is still active." Dkt. No. 50–1 at 4 n.2. Mr. Goodwin seeks damages for unlawful incarceration for 63 days for nonpayment of money owed to the Central Traffic Court stemming from July 2016 traffic tickets. *See* Dkt. 35–1 ¶ 5; Dkt. 48 ¶¶ 326–330, 333–336, 347. That case is not "active" and Mr. Goodwin cannot seek favorable termination of his conviction and sentence in the Central Traffic Court. Goodwin Decl. ¶¶ 7–12. Moreover, the Central Traffic Court case is separate from the Irmo Magistrate Court fines and fees Mr. Goodwin currently owes and cannot afford to pay, which gives rise to his claims for prospective relief. *See* Dkt. 35–1 ¶ 3; Dkt. 48 ¶¶ 322–59.

much less demonstrate, that it is met here. *See* Dkt. No. 50–1 at 4–7; *Wilson*, 535 F.3d at 268 ("[W]e do not believe that a habeas ineligible former prisoner seeking redress for denial of his most precious right—freedom—should be left without access to a federal court."). *Heck* therefore does not bar Plaintiffs' damages claims.

2. *Heck* is inapplicable because success on Plaintiffs' damages claims would not invalidate Plaintiffs' guilty pleas, convictions, or sentences.

Defendants' invocation of *Heck* fails for a second reason: Plaintiffs' damages claims do not call into question the validity of their guilty pleas, convictions, or sentences.

For *Heck* to apply, "a judgment in favor of the plaintiff [*must*] *necessarily* imply the invalidity of [a plaintiff's] conviction or sentence." *Covey*, 777 F.3d at 197 (emphasis supplied); *see also Nelson v. Campbell*, 541 U.S. 637, 647 (2004) ("[W]e were careful in *Heck* to stress the importance of the term 'necessarily.'"). Plaintiffs do not contest their guilty pleas or convictions for traffic or misdemeanor offenses or even the fine-or-jail sentences imposed for those offenses. Their claims attack only the *post-sentencing procedures* used to arrest and incarcerate them for money they could not pay to magistrate courts. Success on these claims does not necessarily imply the invalidity of Plaintiffs' guilty pleas, convictions, or sentences. Plaintiffs' damages claims thus fall squarely within the category of Section 1983 claims challenging post-conviction procedures that courts have held are not barred by *Heck*. *See Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (permitting Section 1983 claim against parole-hearing procedures because success would entitle prisoners to new hearings without necessarily implying invalidity of convictions or sentences); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (permitting Section 1983 claim seeking DNA testing because "[w]hile test results might prove exculpatory, that outcome is hardly inevitable . . . [as] results might prove inconclusive or they might further incriminate [him]").

For example, Plaintiffs' Fourteenth Amendment claim challenges Plaintiffs' incarceration for nonpayment of court fines and fees without first being afforded court hearings on their ability to pay, efforts to secure resources, and the adequacy of alternatives to incarceration. Dkt. 48 ¶ 488. Success on this claim would demonstrate that Plaintiffs were deprived of their liberty for nonpayment of fines and fees through procedures that failed to comply with the requirements of *Bearden v. Georgia*, 461 U.S. 660 (1983). But success on this claim would *not* call into question the validity of Ms. Palacios' conviction for DUS-1, Mr. Wright's guilty plea to DUS-1, or any of the other Plaintiffs' guilty pleas or convictions.[30] Nor would it call into question the validity of the *sentences* imposed on Plaintiffs, which Defendants assert required each Plaintiff to serve jail time or, in the alternative, pay fines and fees.[31] Rather, success would establish the unlawfulness of the post-sentencing procedures used to incarcerate Plaintiffs as a means of enforcing those fine-or-jail sentences. This is because magistrate courts could have validly incarcerated Plaintiffs if the courts had properly provided pre-deprivation ability-to-pay hearings and determined that Plaintiffs willfully failed to pay or to make adequate efforts to secure resources. *See Bearden*, 461 U.S. at 668.

The same is true of Plaintiffs' Sixth Amendment right to counsel claim and the Fourth Amendment claim asserted by Plaintiffs Brown, Darby and Wright. *See* Dkt. No. 48 ¶¶ 495–503

[30] There is a question of fact as to whether Ms. Brown pled guilty to DUS-2 (second offense) or DUS-3 (third offense). *Compare* Dkt. No. 29–2 ¶ 3a *with* Brown Decl. ¶ 3 *and* Dkt. No. 21–9 Ex. A. But this issue is not material to the question of whether *Heck* bars Ms. Brown's damages claims. Ms. Brown does not contest her guilty plea or plead any fact inconsistent with her guilt for driving on a suspended license. *See* Covey, 777 F.3d at 197 (recognizing that *Heck* does not apply "if (1) the conviction derives from a guilty plea," and "(2) the plaintiff does not plead facts inconsistent with guilt.").

[31] There is no dispute that Plaintiffs Johnson, Palacios, Corder, and Goodwin were sentenced in absentia to jail time or the payment of fines and fees for traffic and misdemeanor offenses. Dkt. No. 29–2 ¶¶ 3b, 3c, 3e, 3g. There is a factual dispute as to whether Plaintiffs Brown, Darby, and Wright, who appeared in court, were similarly given fine-or-jail sentences. Defendants' declaration states that these Plaintiffs were, while Plaintiffs attest that in court they were sentenced only to pay fines and fees. *Compare* Brown Decl. ¶ 3, Darby Decl. ¶ 17, Dkt. No. 35–2 ¶¶ 3, 5, *with* Dkt. No. 29–2 ¶¶ 3a, 3d, 3f. Regardless, in asserting damages claims, Plaintiffs Brown, Darby, and Wright do not challenge their sentences, but rather the post-sentencing procedures used to incarcerate them for inability to pay.

(Sixth Amendment), ¶¶ 504–19 (Fourth Amendment). Success on each claim would invalidate the procedures used to arrest and incarcerate Plaintiffs—not the validity of their guilty pleas, convictions, or fine-or-jail sentences. For example, if Plaintiffs had been properly appointed counsel to represent them against allegations of nonpayment, Plaintiffs could have been lawfully incarcerated upon a determination that they had the means to pay, but failed to do so. Likewise, if the payment bench warrants issued against them had been supported by probable cause, Plaintiffs Brown, Darby, and Wright could have been lawfully seized and transported to jail.

For similar reasons, numerous federal courts have held that *Heck* did not bar Section 1983 claims comparable to those asserted here. The U.S. Court of Appeals for the Sixth Circuit rejected the application of *Heck* to the claim of a former prisoner who challenged procedures that led to his incarceration for nonpayment of a fine because success meant "only that the failure to grant [the plaintiff] an indigency hearing was wrongful, not that the order committing him to jail was wrongful." *Powers v. Hamilton Cty. Pub. Def. Comm'n*, 501 F.3d 592, 604 (6th 2007).[32] Similarly, a district court ruled in *Fant v. Ferguson* that *Heck* did not bar challenges to post-judgment fine and fee collection policies in Ferguson, Missouri:

> A judgment in Plaintiffs' favor would not necessarily demonstrate the invalidity of Plaintiffs' underlying traffic convictions or fines, but only the City's procedures for enforcing those fines. Nor would Plaintiffs' success in this case 'necessarily' invalidate the fact or duration of their incarceration. Success would mean only a change in the City's procedures prior to incarceration. Even if those procedures were changed, Plaintiffs may still have been found to have willfully refused to pay a fine they were capable of paying and thereafter lawfully incarcerated pursuant to constitutional procedures and conditions.

107 F. Supp. 3d 1016, 1028 (E.D. Mo. 2015). Nor did *Heck* bar damages claims in *Cain v. City of New Orleans*, where plaintiffs challenged New Orleans' policy of jailing indigent people in an

[32] *See also Powers*, 501 F.3d at 605 (finding that the plaintiff's "incarceration is not necessarily invalid because [he] may have willfully refused to pay a fine he was capable of paying, rather than having been actually impecunious").

effort to collect unpaid court costs without "sufficient inquiry into [their] good-faith ability to pay." 186 F. Supp. 3d 536, 548 (E.D. La. 2016).[33]

Defendants ignore caselaw that is squarely on point. Instead, Defendants argue in conclusory fashion that *Heck* applies because claims concerning violations of due process, the right to counsel, and unreasonable search and seizure can "invalidate a state court conviction." Dkt. No. 50–1 at 4. This generic argument fails to show that success on Plaintiffs' specific challenges to post-sentencing procedures would "*necessarily* imply the invalidity" of Plaintiffs' convictions or sentences as required for *Heck* to apply. *Covey*, 777 F.3d at 197 (emphasis supplied).[34] Moreover, the cases on which Defendants rely are wholly inapposite. For example, *Edwards v. Balisok* involved a state prisoner whose due process claim challenged the "deceit and bias" of a prison disciplinary hearing officer and, if successful, would necessarily invalidate the decision to revoke good time. 520 U.S. 641, 647–48 (1997).[35] And *Carver v. Cty.*, No. CV 1:16-2528-TMC, 2016 WL 4771287 (D.S.C. Sept. 14, 2016), and *Kilbane v. Huron Cty. Comm'rs*, No. 3:10 CV 2751, 2011 WL 1666928 (N.D. Ohio May 3, 2011), concerned the denial of counsel at proceedings leading to conviction, which are distinguishable from Plaintiffs' challenge to denial of counsel in post-sentencing proceedings.[36] The one exception is *Brooks v.*

[33] *See also Ray v. Judicial Corr. Servs.*, No. 2:12-CV-02819-RDP, 2013 WL 5428395, at *8, 12–13 (N.D. Ala. Sept. 26, 2013) (finding *Heck* inapplicable to "procedural challenges . . .—*e.g.*, the lack of an indigency hearing . . . and/or the lack of providing counsel prior to incarceration" that did not "attack[] the propriety of . . . confinement").

[34] Defendants rely on cases that are distinguishable because they involved claims by prisoners that squarely targeted their convictions rather than post-sentencing procedures. *See* Dkt. 50–1 at 4 (citing *Lee v. Mississippi*, 332 U.S. 742, 745 (1948) (due process challenge to coerced confession forming the basis of conviction); *Custis v. United States*, 511 U.S. 485, 496 (1994) (prisoner "attacks his previous convictions . . . claiming the denial of effective assistance of counsel"); *Mapp v. Ohio*, 367 U.S. 643 (1961) (challenge to search that led to plaintiff's conviction)).

[35] Defendants also rely on *Green v. Horry Cty.*, No. 4:17-cv-01304-RBH, 2017 WL 4324843 (D.S.C. Sept. 29, 2017), which is easily distinguishable. The damages claims in that case were barred by *Heck* because the plaintiff "allege[d] that his due process rights were violated when he pled guilty to a drug offense" and the plea was used against him in another conviction. *Id*. at *1. Plaintiffs' claims in no way attack their guilty pleas or convictions.

[36] *See Carver*, 2016 WL 4771287, at *1 (considering pre-trial detainee's claim of denial of legal materials and attorney contact information); *Kilbane*, 2011 WL 1666928, at *1–2 (addressing claim failure to appoint counsel at a bench trial that led to conviction). Defendants cite other cases involving right to counsel claims that are similarly

*City of Winston-Salem*, 85 F.3d 178 (4th Cir. 1996), which actually supports Plaintiffs' argument against application of *Heck* to Plaintiffs' Fourth Amendment claim.[37]

Defendants thus fail to show that success on Plaintiffs' damages claims would necessarily imply the invalidity of Plaintiffs' convictions and sentences as required for *Heck* to apply.

### C. *Rooker-Feldman* does not apply because Plaintiffs do not attack their underlying guilty pleas, convictions, or sentences.

Defendants contend that Plaintiffs' damages claims are barred for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine, which prohibits "state-court losers" from "inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284 (2005). Defendants make the same arguments as those raised in support of their assertion of *Heck*. *See* Dkt. No. 50–1 at 8 (claiming that Plaintiffs "challenge[]" their "convictions and sentences"). As described above, Defendants' assertions misconstrue Plaintiffs' claims. Plaintiffs do not contest their convictions or sentences; rather, Plaintiffs challenge the post-sentencing procedures used to arrest and incarcerate them for inability to pay money to courts. *Rooker-Feldman* simply does not apply to Plaintiffs' claims.

The U.S. Court of Appeals for the Fourth Circuit has emphasized the narrowness of the *Rooker-Feldman* doctrine: "If [the plaintiff] is not challenging the state-court decision, the *Rooker-Feldman* doctrine does not apply." *Davani v. Va. Dep't of Transp.*, 434 F.3d 712, 718

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distinguishable because they involved challenges to convictions. *See Groves v. City of Darlington, S.C.*, No. 4:08-cv-00402-TLW-TER, 2011 WL 825757, at *3 (D.S.C. 2011) (holding *Heck* applied to former prisoners "challeng[e to] the underlying basis for their arrests and subsequent convictions"); *Addison v. S.C. Dep't of Corr.*, No. 8:11-2705-CMC-JDA, 2011 WL 5877017, at *3 (D.S.C. 2011) (holding that *Heck* applied because plaintiff challenged a "Judgment and Commitment Order" of a General Sessions Court).

[37] The U.S. Court of Appeals for the Fourth Circuit reasoned that *Heck* does not bar all unreasonable seizure claims:

> We do not read *Heck* to compel a conclusion that all claims of unconstitutional seizure accrue only upon a termination of the criminal proceedings favorable to the § 1983 plaintiff . . . . [A] charge that probable cause for a warrantless arrest was lacking, and thus that the seizure was unconstitutional, would not necessarily implicate the validity of a subsequently obtained conviction—at least in the usual case.

*Brooks*, 85 F.3d at 182.

(4th Cir. 2006) (recognizing that the U.S. Supreme Court's decision in *Exxon* "undercut[] the broad interpretation of the *Rooker-Feldman* doctrine" that courts had previously applied). The *Rooker-Feldman* doctrine also 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).

Here, Plaintiffs' claims do not invite federal court review and rejection of any magistrate court judgments accepting Plaintiffs' guilty pleas, convicting them of traffic or misdemeanor offenses, or imposing fine-or-jail sentences.[38] And the undisputed record shows that Plaintiffs were *not* sentenced to incarceration for their traffic or misdemeanor offenses. *See* Dkt. No. 29–2 ¶ 3. Plaintiffs' damages claims contest only the post-sentencing procedures used to arrest and incarcerate them when they could not pay money in violation of their rights to due process, equal protection, counsel, and freedom from unreasonable seizures. Because Plaintiffs' claim of injury "rests not on the state court judgment itself" but on Defendants' conduct leading to the violation of their constitutional rights, *Rooker-Feldman* does not apply. *Wilmore*, 407 F.3d at 280.

Numerous federal courts have rejected the application of *Rooker-Feldman* to similar claims with reasoning that has equal force here. In *Fant v. Ferguson*, for example, the doctrine did not bar claims challenging Ferguson's practice of jailing people for failing to pay fines "[b]ecause Plaintiffs [did] not complain of injuries caused by the state court judgment, but rather by the post-judgment procedures employed to incarcerate persons who are unable to pay fines . . . ." 107 F. Supp. 3d at 1030. Similarly, in *Powers v. Hamilton County Public Defender Commission*, the court rejected application of *Rooker-Feldman* "because [the plaintiff did] not allege that he was deprived of his constitutional rights by the state-court judgment, but rather by

[38] Defendants have not produced any Judgment imposing a conviction and/or sentence in any of Plaintiffs' magistrate court cases, much less shown that the damages claims challenge decisions set forth in such documents.

the Public Defender's conduct in failing to ask for an indigency hearing as a prerequisite to his incarceration." 501 F.3d at 606; s*ee also Ray v. Judicial Corr. Servs.*, 2013 WL 5428395, at *10–11 (*Rooker-Feldman* did not bar claims against "post-judgment probationary program" leading to jailing for inability to pay; because claims did not contest court decision "merits").[39]

Because Plaintiffs do not invite federal court rejection of their convictions and sentences, *Rooker-Feldman* is inapplicable.

**D. Plaintiffs' claims against Defendants Reinhart, Adams, and Koon for conduct in their administrative capacities are not barred by judicial, quasi-judicial, or legislative immunity.**

Defendants seek summary judgment on the damages claims against Defendants Adams, Reinhart, and Koon on the grounds that these defendants enjoy judicial, quasi-judicial, and legislative immunity. Dkt. No. 50–1 at 9–10. Defendants fail to carry their burden of establishing the justification for such absolute immunity. *See Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993) (party asserting absolute immunity must establish basis for immunity).

Defendants' general assertion of absolute judicial immunity rests on the premise that Plaintiffs are collaterally attacking individual magistrate court sentencing decisions or, in the alternative, legislative determinations by Defendants Reinhart, Adams, and Koon. Dkt. No. 50–1 at 9–11. But this premise is false. Plaintiffs challenge the exercise of *administrative* authority by Defendants Reinhart, Adams and Koon in establishing, enforcing, and sanctioning unwritten, post-sentencing policies and practices that caused Plaintiffs' arrest and incarceration for inability to pay money to courts. Defendants fail to identify undisputed evidence in the record showing

[39] Defendants rely on a single case to support dismissal under *Rooker-Feldman*. *See* Dkt. 50–1 at 8–9 (citing *Jones v. Cumberland Cty. Municipality*, No. 5:14-CV-550-FL, 2015 WL 3440254 (E.D.N.C. 2015). But *Jones* is distinguishable because it concerned a plaintiff's direct challenge to the "imposition of an excessive fine and term of imprisonment." 2015 WL 3440254, *5. By contrast, Plaintiffs do not contest their sentences; rather, Plaintiffs challenge only the post-sentencing procedures used to arrest and incarcerate them.

that Defendants never engaged in such conduct, or authority demonstrating that judicial, quasi-judicial, and legislative immunity applies to such administrative action.

Defendants do not meet their burden to show that Defendants Reinhart, Adams and Koon are immune from damages claims. Should this Court conclude otherwise, Plaintiffs request relief under Rule 56(d) to secure discovery relating to Defendants' assertion of immunity.

1. Defendants fail to demonstrate that Defendants Reinhart and Adams acted in a judicial, rather than administrative, capacity when engaged in the challenged conduct.

Absolute judicial immunity extends to damages claims against judges for actions taken in their judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1987). The "touchstone" for invoking judicial immunity is whether the claim concerns a judge's "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Antoine*, 508 U.S. at 435–36 (internal citation and quotation marks omitted). But judicial immunity does *not* extend to actions taken in the "administrative . . . or executive functions that judges may on occasion be assigned by law to perform." *Forrester v. White*, 484 U.S. 219, 227 (1988). Courts have thus denied judicial immunity to judges for administrative actions. *See Supreme Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734–36 (1980) (denying immunity for judge's enforcement of attorney code of conduct); *Forrester*, 484 U.S. at 229 (denying immunity for judge's demotion and firing of a probation officer). On this basis, the U.S. Court of Appeals for the Sixth Circuit denied judicial immunity to a state court chief judge for ordering a moratorium on the issuance of writs to evict tenants during the holiday season. *Morrison v. Lipscomb*, 877 F.2d 463, 466 (6th Cir. 1989).

In arguing that Defendants Reinhart and Adams enjoy judicial immunity, Defendants wholly misconstrue Plaintiffs claims. Defendants assert that "each decision reached by each defendant magistrate in each Plaintiff's case was made in the exercise of a judicial function,

clearly within the jurisdiction of each magistrate." Dkt. No. 50–1 at 9. But Plaintiffs do not contest specific decisions by magistrate judges in any of their cases. Indeed, Plaintiffs have not sought damages for individual magistrate judges' acts of accepting their guilty pleas, convicting them, or issuing bench warrants against them.[40] Rather, Plaintiffs seek damages against Defendants Reinhart and Adams *only* for actions taken in their administrative capacities as Chief Judge and Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts, actions that involved overseeing, enforcing, and sanctioning standard operating procedures leading to the arrest and incarceration of Plaintiffs when they could not afford to pay money to Lexington County magistrate courts.[41]

It is undisputed that under South Carolina law, Defendants Reinhart and Adams held, and Defendant Adams continues to hold, the following administrative responsibilities: establishing and overseeing a county-wide procedure for the collection of magistrate court fines and fees; convening magistrate judges to establish uniform procedures; administering the Lexington County Bond Court; determining magistrate court hours of operation and schedules; assigning cases to magistrate judges; and monitoring and reporting to state authorities procedural noncompliance by summary court judges in the County.[42] These duties are not "traditional

[40] Had Plaintiffs pursued damages claims against individual magistrate judges for actions taken in their judicial capacity, Plaintiffs would have sued each of the judges who issued the bench warrants against them. *See* Dkt. No. 21–8 ¶ 4 and accompanying Exhibits A (21–9), C (21–11), E (21–13), G (21–15), and I (21–17) (identifying Judges Adams, Reinhart, and Brian Buck). But Plaintiff Goodwin alone sues Defendant Adams *for declaratory relief only* for actions taken in her judicial capacity, a claim that is not barred by judicial immunity or challenged in this motion. *See, e.g.*, *Ward v. City of Norwalk*, No. 15-3018, 640 F. App'x 462, 467 (6th Cir. 2016) ("Section 1983 now implicitly recognizes that declaratory relief is available against judicial officers.").

[41] It is undisputed that during the years leading up to Plaintiffs' arrest and incarceration from February 2017 to July 2017, Defendant Reinhart served as the Chief Judge for Administrative Purposes of the Lexington County Summary Courts and Defendant Adams served as the Associate Chief Judge. *See* December 2004 Order, *supra* note 9; December 2013 Order, *supra* note 10; January 2017 Order, *supra* note 11. It is further undisputed that after June 28, 2017, Defendant Adams replaced Defendant Reinhart as Chief Judge and took over his administrative responsibilities. June 2017 Order, *supra* note 9.

[42] *See* January 2017 Order *supra* note 11 at ¶¶ 3, 5, 9–10, 15, 17; June 2017 Order *supra* note 9 at ¶¶ 3–5, 7, 11–12, 17, 19.

adjudicative task[s]" that warrant absolute immunity. *Consumers Union*, 446 U.S. at 734. Rather, because carrying out the duties "involve[s] supervising court employees and overseeing the efficient operation of a court," these are administrative responsibilities to which judicial immunity does not apply. *Forrester*, 484 U.S. at 229; *Morrison*, 877 F.2d at 466. Plaintiffs seek damages against Defendants Reinhart and Adams because these Defendants exercised their administrative responsibilities in a manner that established and sanctioned the unwritten standard operating procedures resulting in Plaintiffs' arrest and incarceration for nonpayment of fines and fees without pre-deprivation ability-to-pay hearings or representation by court-appointed counsel. Dkt. No. 48 ¶¶ 110–120.[43]

For example, Plaintiffs contest the decision of Defendants Reinhart and Adams not to require or permit the Bond Court or the magistrate court that issued payment bench warrants under the Default Payment and Trial in Absentia Policies to hold ability-to-pay hearings for indigent people arrested and jailed on these warrants. Dkt. No. 48 ¶ 133; January 2017 Order ¶¶ 3, 5. Plaintiffs further challenge that Defendants Reinhart and Adams could have made pre-deprivation ability-to-pay hearings mandatory by exercising their administrative authority to assign cases, increase the size of magistrate court dockets, require additional hours of magistrate court operation, and mandate magistrate judges to work on evenings and weekends. Dkt. No. 48 ¶ 116; January 2017 Order ¶¶ 3, 9–10. In their Fourth Amendment claims, Plaintiffs also challenge the failure of Defendant Reinhart and Adams, as the administrative leaders of the County's magistrate courts, to report and correct magistrate judges' routine misuse of bench warrants to coerce fine and fee payments and to incarcerate indigent people rather than to bring

[43] Even without Defendants' responses to Plaintiffs' discovery requests, Plaintiffs have introduced evidence from hundreds of court and jail records supporting the allegation that unwritten Default Payment and Trial in Absentia Policies result in the widespread use of payment bench warrants to arrest and incarcerate people unless they pay the full the amount of fines and fees owed to the County's magistrate courts. *See* Dkt. Nos. 21–5 through 21–8, 21–19.

defendants to court, contrary to South Carolina law and directives from the Supreme Court of South Carolina and the Office of Court Administration. Dkt. No. 48 ¶ 119; January 2017 Order ¶ 17.[44]

Defendants fail to point to *any* undisputed evidence establishing that judicial immunity shields Defendants Reinhart and Adams from claims that arise out of Defendants' administrative conduct. For example, Defendants fail to identify evidence showing that Defendants Reinhart or Adams (1) did not engage in the administrative functions detailed in the January 2017 Order; (2) did not exercise their administrative functions in a manner that established or sanctioned the alleged Default Payment and Trial in Absentia Policies; (3) did not fail to administratively monitor, report, and correct magistrate judges' routine misuse of bench warrants to coerce payments and to incarcerate indigent people; (4) were unable to exercise their administrative authority over the Bond Court, case assignment, and magistrate court hours and schedules to ensure that magistrate courts provide ability-to-pay hearings to people reported for nonpayment of fines and fees before arrest and incarceration on payment bench warrants.

Defendants thus fail to meet their summary judgment burden of demonstrating that judicial immunity bars Plaintiffs' damages claims against Defendants Reinhart and Adams.

2. Defendants fail to demonstrate that Defendant Koon acted in a quasi-judicial, rather than administrative, capacity when engaged in the challenged conduct.

Defendants assert that Defendant Koon is shielded from damages claims by quasi-judicial immunity. Dkt. No. 50–1 at 10. Defendants generically argue that non-judicial officers are immune from suit when "performing tasks . . . integral or intertwined with the judicial process"

[44] *See* S.C. Code § 22-5-115 ("If the defendant fails to appear before the court . . a bench warrant may be issued for his arrest."); S.C. Code § 38-53-70 ("If a defendant fails to appear at a court proceeding to which he has been summoned, the court shall issue a bench warrant for the defendant."); Nov. 14, 1980 Order of the Supreme Court of South Carolina ("[B]ench warrants . . . are to be used only for the purpose of bringing a defendant before a court which has already gained jurisdiction over that defendant . . . ."); *see also* Benchbook on Bench Warrants, *supra* note 13 (defining "bench warrant" as "a form of process to be used to bring a defendant back before a particular court on a particular charge for a specific purpose . . . .").

and that such quasi-judicial immunity extends to sheriffs who conduct arrests pursuant to "facially valid court orders." *Id.* (internal quotation marks and citations omitted).

Defendant Koon's assertion of quasi-judicial immunity fails because it misconstrues the conduct targeted by Plaintiffs' damages claims. Plaintiffs do not seek damages from Defendant Koon for arresting and incarcerating them pursuant to payment bench warrants, whether or not such warrants were facially valid.[45] Indeed Plaintiffs did not sue any of the deputies who arrested them or Detention Center staff who booked them in jail. Plaintiffs seek damages only for Defendant Koon's exercise of administrative authority as the head of the Lexington County Sheriff's Department to establish the standard operating procedures that directly and proximately caused Plaintiffs' unlawful arrest and incarceration. Dkt. No. 48 ¶¶ 492–94, 517–19.

It is undisputed that Defendant Koon exercises numerous administrative responsibilities. These include leading the LCSD Administrative Bureau, which "provides direction and overall management" for the LCSD and coordinates the day-to-day operations of "all law enforcement and detention center personnel,"[46] including deputies in the Warrant and Civil Process Division who track and serve warrants.[47] Defendant Koon acts in an administrative capacity when determining enforcement priorities, allocating limited Sheriff's Department resources among various LCSD divisions,[48] negotiating relationships with other law enforcement agencies to

[45] Plaintiffs allege that the County's magistrate courts improperly use bench warrants, which South Carolina law and directives permit "only for the purpose of bringing a defendant before a court . . . ." Dkt. No. 48 ¶ 117 (emphasis added) (quoting S.C. Supreme Court Order (Nov. 14, 1980)); *see also* S.C. Code Ann. §§ 22-5-115 & 38-53-70.

[46] *See* Lexington County 2017-2018 Budget, *supra* note 5 at 752.

[47] Lexington County Sheriff's Department, "Warrant and Civil Process," http://www.lex-co.com/sheriff/divisions.aspx?did=wc.

[48] *See* Lexington County 2017-2018 Budget, *supra* note 5 at 752 (recognizing Sheriff's role in LCSD Administrative Bureau, which "ensure[s] that the deputy sheriffs have the resources necessary to provide professional law enforcement service . . . .").

execute payment bench warrants,[49] and overseeing and directing LCSD deputies and Detention Center staff in the manner in which payment bench warrants are executed.[50] Plaintiffs' claims against Defendant Koon concern his exercise of these administrative duties to "enforce[] a standard operating procedure by which people, including indigent people, are arrested on payment bench warrants and incarcerated in the Detention Center unless they can pay the full amount owed before booking, such as by raising money through phone calls to family and friends." Dkt. No. 48 ¶ 31.

For example, Plaintiffs contest Defendant Koon's decision to prioritize the execution of payment bench warrants "at people's homes, during traffic and pedestrian stops, and elsewhere, including by enlisting other law enforcement agencies to locate debtors." Dkt. No. 48 ¶ 31. Plaintiffs also challenge Defendant Koon's decision to direct LCSD deputies and Detention Center staff to inform bench warrant arrestees that "the *only way* to avoid incarceration is to pay in full" the amount of money identified on a bench warrant. *Id*. ¶¶ 126–127 (emphasis supplied). Plaintiffs also contest Defendant Koon's direction to Detention Center staff to book people arrested on bench warrants "as soon as they can verify that an arrestee is unable to pay the full amount of fines and fees identified on the face of the bench warrant." *Id*. ¶ 128. Finally, Plaintiffs challenge Defendant Koon's direction, supervision, and training of LCSD deputies and Detention Center staff, who systematically fail to notify bench warrant arrestees of their right to

[49] *See* S.C. Code Ann. §§ 23-20-20–23-20-40 (providing procedures for mutual aid agreements between county law enforcement offices).

[50] *See* S.C. Code Ann. § 23-15-40 (requiring sheriff and deputy to "serve, execute, and return every process, rule, order, or notice issued by any court of record in [South Carolina] . . ."); *id* § 23-15-50 ("The sheriff or his deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority . . . ."); *see also* S. C. R. Crim. P. 30(c) ("It is the continuing duty of the sheriff, and of other appropriate law enforcement agencies in the county, to make every reasonable effort to serve bench warrants and to make periodic reports to the court concerning the status of unserved warrants.").

request counsel and to bring them to the Bond Court adjacent to the Detention Center, or any other magistrate court, for a hearing on ability to pay and representation by counsel. *Id.* ¶ 135.

Defendants do not identify undisputed evidence showing that Defendant Koon never exercises the administrative authority granted to him by law. Nor do Defendants point to undisputed evidence demonstrating that Defendant Koon never exercised administrative authority—including the authority to manage the LCSD, set enforcement priorities, allocate resources, oversee and train deputies and Detention Center staff, and negotiate relationships with other law enforcement agencies—to establish standard operating procedures leading to the unlawful arrest and incarceration of indigent people who cannot pay sums of money identified on payment bench warrants. Defendant Koon's assertion of quasi-judicial immunity therefore rests on both a misunderstanding of the nature of Plaintiffs' claims and a failure to identify evidence showing that the challenged conduct is shielded by such immunity.

Defendants therefore fail to meet their burden of demonstrating that Defendant Koon is entitled to quasi-judicial immunity from Plaintiffs' damages claims.

3. Defendants Reinhart, Adams, and Koon fail to show that they acted in a legislative capacity when engaged in the challenged conduct.

Defendants contend that Defendants Reinhart, Adams, and Koon are further shielded from Plaintiffs' damages claims by absolute legislative immunity. Dkt. No. 50–1 at 10–11. Defendants fail, however, to cite any facts or case law that would justify legislative immunity for the administrative conduct at issue.

The purpose of absolute legislative immunity "is to insure that the legislative function may be performed independently without fear of outside interference." *Consumers Union*, 446 U.S. at 731 (internal citation omitted). When it extends to local legislators and non-legislative officials, legislative immunity is strictly limited to *functionally* legislative activity, which

"typically involve[s] the adoption of prospective, legislative-type rules" and "bear[s] the outward marks of public decisionmaking, including the observance of formal legislative procedures." *E.E.O.C. v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 184 (4th Cir. 2011) (internal citations, quotation marks, and alterations omitted) (emphasis added); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (finding immunity because city council's budget ordinance "bore all the hallmarks of traditional legislation").

Defendants do not identify undisputed evidence demonstrating that Plaintiffs' damages claims attack formal rulemaking or other legislative conduct that would merit legislative immunity. *See* Dkt. No. 50–1 at 10–11. Defendants cite only two inapposite cases. *See id.* (citing *Consumers Union*, 446 U.S. 719, and *Abick v. Michigan*, 803 F.2d 874 (6th Cir. 1986)). Both decisions are easily distinguishable because they involve claims challenging state supreme courts' promulgation of formal rules. *See Consumers Union*, 446 U.S. at 734 (promulgation of professional conduct rules for attorneys); *Abick*, 803 F.2d at 878 (promulgation of state rules of practice and procedure).

By contrast, Plaintiffs do not challenge Defendants Reinhart, Adams, or Koon's promulgation of formal rules or participation in any other formal legislative procedures. Rather, as discussed above, Plaintiffs challenge Defendants Reinhart and Adams' exercise of administrative authority over fine and fee collection procedures, case assignment, the Bond Court, magistrate court hours of operation and schedules, and the monitoring and reporting to state authorities procedural noncompliance by the County's magistrate courts. Plaintiffs also challenge Defendant Koon's administrative decisions to prioritize bench warrant executions and his direction, training, and supervision of LCSD officers and Detention Center staff concerning what to tell people arrested on payment bench warrants, when to book them in jail, and when not

to transport them to Bond Court or the magistrate court that issued the warrant. Plaintiffs identify undisputed evidence in the record showing that Defendants have the authority to exercise such administrative functions, and Plaintiffs allege that these administrative actions established unwritten standard operating procedures that resulted in their unlawful arrest and incarceration. *See* Sections I.B.1 & I.B.2, *supra*. None of the specific conduct of Defendants Reinhart, Adams, and Koon alleged to have caused Plaintiffs' injuries "bear[s] the outward marks of public decisionmaking" or involves "the observance of formal legislative procedures." *Washington Suburban*, 631 F.3d at 184.[51] Defendants do not identify a single case establishing that legislative immunity applies to these administrative actions. *See* Dkt No. 50–1 at 10–11.

Defendants Reinhart, Adams, and Koon have thus failed to show that they are shielded by legislative immunity from Plaintiffs' damages claims.

4. Discovery will reveal specific facts necessary to Plaintiffs' opposition.

As demonstrated above, there is ample basis for this Court to deny Defendants Reinhart, Adams, and Koon judgment as a matter of law on Plaintiffs' damages claims on the basis of asserted immunities. The record is replete with evidence that, at a minimum, raises genuine questions of material fact as to whether judicial, quasi-judicial, and legislative immunity apply to claims against these Defendants' administrative conduct. But should this Court conclude otherwise, Plaintiffs respectfully request relief under Rule 56(d) to secure discovery necessary to raise genuine, triable issues of material fact regarding the assertion of immunity.

A nonmovant faced with contesting a motion for summary judgment may seek relief under Rule 56(d) when certain facts are unavailable. Rule 56(d) provides:

[51] Legislative immunity is rarely asserted or applied to claims challenging the kind of administrative conduct alleged here. *See, e.g.*, *Morrison*, 877 F.2d at 466 (finding in case where legislative immunity was not asserted that judge's order imposing a moratorium on the issuance of writs to evict tenants "was an administrative . . . act" to which "absolute immunity does not apply").

> If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> (1) defer considering the motion or deny it;
> (2) allow time to obtain affidavits or declarations or to take discovery; or
> (3) issue any other appropriate order.

The declaration in support of a request for Rule 56(d) relief must specify the reasons for additional discovery or otherwise notify the district court as to which specific facts are yet to be discovered. *See McCray v. Md. Dep't of Transp.*, 741 F.3d 480, 484 (4th Cir. 2014).

Rule 56(d) relief is "especially important when the relevant facts are exclusively in the control of the opposing party." *Harrods Ltd.*, 302 F.3d at 246–47 (quoting 10B Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2741 (3d ed.1998)). Under this principle, a nonmovant's request to conduct discovery under Rule 56(d) is "broadly favored and should be liberally granted." *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt.*, 721 F.3d 264, 281 (4th Cir. 2013) (internal quotation marks omitted).

The presumption in favor of granting Rule 56(d) relief is strong here because Defendants filed a motion for summary judgment before any discovery beyond initial disclosures. Plaintiffs timely invoke Rule 56(d) because, without discovery, they "cannot present facts essential to justify [their] opposition." Fed. R. Civ. P. 56(d). In support of this motion, Plaintiffs submit the Declaration of Nusrat Choudhury ("Choudhury Declaration"), which identifies specific facts concerning the scope of Defendants Reinhart, Adams, and Koon's administrative responsibilities and the impact of their exercise of administrative authority that are yet to be discovered but are material to resolve whether immunity applies. *See McCray*, 741 F.3d at 484.

Specifically, as detailed in the Choudhury Declaration, Defendants have yet to respond to Plaintiffs' Requests for Production ("RFPs"), which are designed to uncover information directly relevant to whether, and to what extent, the policies and practices alleged to have caused

Plaintiffs' unlawful arrest and incarceration are attributable to Defendants Reinhart, Adams, and Koon's administrative actions. Choudhury Decl. ¶¶ 14–26. These requests are likely to assist Plaintiffs in raising genuine, triable issues of material fact that would preclude summary judgment for Defendants based on judicial, quasi-judicial, or legislative immunity. *Id.* ¶ 17.

For example, Plaintiffs have asked for documents prepared by Defendants Reinhart and Adams, or provided by them to other magistrate judges and staff, concerning policies, procedures, instructions, guidance, and training on: the imposition of court fines and fees; use of payment bench warrants; assessment of defendants' financial circumstances; the appointment of counsel to indigent defendants; provision of notice to people alleged to have not paid fines and fees; the use of Scheduled Time Payment Agreements; the conduct of Show Cause Hearings; and the provision of Bond Court hearings for people arrested on payment bench warrants. Choudhury Decl. ¶ 18. Ex. C at RFPs Nos. 3–4, 6–8, 12, 17, 19–20, 40–41, 47–49. These requests seek to determine whether Defendants Reinhart and Adams' exercise of administrative authority over fine and fee collection procedures, the Bond Court, magistrate court case assignment, and magistrate court hours of operation and schedules established the Default Payment and Trial in Absentia Policies and the policy prohibiting an ability-to-pay hearing in Bond Court or magistrate court for people arrested on payment bench warrants. Choudhury Decl. ¶ 19. These requests also seek to determine whether these Defendants exercised administrative authority by failing to report to state authorities and correct magistrates' routine misuse of bench warrants. *Id.* ¶ 20. And these requests seek to determine whether Defendants Reinhart and Adams' administrative actions proximately caused Plaintiffs' arrest and incarceration without pre-deprivation ability-to-pay hearings or representation by counsel. *Id.* ¶ 21.

Likewise, Plaintiffs seek documents prepared by Sheriff Koon concerning policies, procedures, instructions, guidance, and training on court fines and fees; the execution of bench warrants issued by magistrate courts; the booking, incarceration, and release of people jailed on bench warrants; the provision of Bond Court hearings to, and collection of money from, people arrested on bench warrants; the arrest, booking, incarceration, and release of people otherwise incarcerated for non-payment of magistrate court fines and fees; and attorney visitation in the Detention Center. Choudhury Decl. ¶ 22, Ex. B at RFPs Nos. 4, 26, 29–32, 37. These requests are designed to determine whether Defendant Koon's exercise of administrative authority to set enforcement priorities, allocate resources, and oversee and train deputies and Detention Center staff enforced standard operating procedures that caused the arrest and incarceration of indigent people who could not pay the sums of money identified on payment bench warrants. Choudhury Decl. ¶ 23. These document requests also seek to determine whether such administrative conduct proximately caused Plaintiffs' arrest and incarceration without any pre-deprivation ability-to-pay hearing or representation by court-appointed counsel. *Id.* ¶ 24.

Finally, Plaintiffs also seek the production of any agreements concerning the execution of bench warrants and the incarceration of people who owe magistrate court fines and fees between Lexington County magistrate courts and the LCSD, as well between the LCSD and other law enforcement agencies. Choudhury Decl. ¶ 25, Ex. B at RFPs Nos. 23–25; *id*. Ex. C at RFPs No. 22–23. Through these document requests, Plaintiffs seek to determine the relative responsibility of Defendants Reinhart, Adams, and Koon for the Default Payment and Trial in Absentia Policies, as well as the unwritten standard operating procedure by which indigent people arrested on payment bench warrants and incarcerated in the Detention Center are not notified of their right to counsel or transported by LCSD deputies or Detention Center staff to Bond Court or to

the original magistrate court that issued the warrant for an ability-to-pay hearing and representation by court-appointed counsel. Choudhury Decl. ¶ 26.

Furthermore, once Plaintiffs receive the documents to which they are entitled, Plaintiffs will request an opportunity to depose Defendants regarding the scope and exercise of Defendants' administrative responsibilities. Plaintiffs request to depose Defendants Reinhart and Adams regarding the exercise of their duties under the January 2017 Order to establish fine and fee collection procedures, administer the Bond Court, assign magistrate court cases, establish magistrate court hours of operation and schedules, and report to state authorities and correct procedural noncompliance by magistrate judges. Choudhury Decl. ¶ 32. Plaintiffs also request to depose Defendant Koon regarding the scope his duties and powers as the administrative head of the LCSD and Detention Center. *Id.* ¶ 33.

In sum, Plaintiffs' pending Requests for Production and intended depositions seek material information likely to assist Plaintiffs in raising genuine, triable issues of material fact on whether Defendants' administrative conduct caused Plaintiffs' unlawful arrest and incarceration. Because Defendants filed their motion for summary judgment before such discovery could be obtained, this Court should reserve decision on the motion and grant Plaintiffs time to conduct discovery to adduce relevant evidence to defend against Defendants' premature motion.[52]

**E. Defendants fail to demonstrate that questions of authority and causation merit resolution as matters of law at this early stage.**

Defendants argue that all Defendants lack authority to engage in the challenged conduct, and that the County and Defendant Madsen cannot, as a matter of law, be shown to proximately

[52] Defendants argue in a separate motion that "[d]iscovery is not a prerequisite" to this Court's consideration of whether immunity applies. Dkt. No. 51 at 3. But "even a party whose assertion of immunity ultimately proves worthy must submit to the burdens of litigation until a court becomes sufficiently informed to rule." *Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012) (emphasis supplied). Discovery is necessary here where Defendants fail to establish immunity and the record lacks facts material to determining whether immunity applies. *See, e.g., id*. at 223 (denying immunity because defendants had "yet to establish their entitlement to it"); *Ray*, 2013 WL 5428395, at *9 (denying judicial immunity on claims challenging administrative conduct).

cause a violation of the Sixth Amendment right to counsel. Dkt. No 50-1 at 11-14. Plaintiffs' evidence rebuts these assertions and Defendants fail to offer undisputed evidence to the contrary. Summary judgment is unwarranted on either of the asserted grounds. But should this Court conclude otherwise, Plaintiffs seek relief under Rule 56(d).

1. There are triable issues of fact as to whether Defendants lack authority to enforce the alleged unwritten policies that caused Plaintiffs' unlawful arrest and incarceration.

As a threshold matter, Defendants misconstrue Plaintiffs' damages claims against Defendants Reinhart, Adams, and Koon in their individual capacities as a claim against Lexington County. *See* Dkt. No. 50–1 at 11–13. Plaintiffs are not suing these state officials on a theory of municipal liability.[53] Nor do Plaintiffs "claim that Lexington County had authority to make and implement policies as to how specific cases would be handled in magistrates' courts." *Id.* at 13. Because Plaintiffs seek damages against Defendants Reinhart, Adams, and Koon in their individual capacities, it is irrelevant whether "'the Lexington City Council cannot be held responsible for the actions taken by'" the County's magistrate courts. Dkt. No. 50–1 at 13 (quoting *Dunbar v. Metts*, No. 2:10-1775-HMH-BHH, 2011 WL 1480279, at *5 (D.S.C. 2011)).

Defendants further argue that "the magistrates and the sheriff also could not have established the 'policies' alleged by Plaintiffs" because "rulemaking authority" lies "solely in the Supreme Court." Dkt. No. 50–1 at 13. Defendants fail to support this assertion with undisputed evidence. While the Constitution of South Carolina vests the Supreme Court with the authority to "make rules governing the administration of all the courts of the State," it also explicitly permits the Chief Justice to delegate administrative authority to local Chief Judges "as he deems

[53] *Monell* requires a Section 1983 action against a municipal entity to show that the constitutional violation resulted from a municipal "policy or custom." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). The *Monell* standard is inapplicable to Plaintiffs' claims against Defendants Reinhart, Adams, and Koon, who are sued in their individual capacities as state officials. Dkt. No. 48 ¶¶27–28, 31; *see Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.").

necessary to aid in the administration of the courts of the State." S.C. Const. art. V, § 4. Through the January and June 2017 Orders, Chief Justice Beatty granted broad administrative authority over summary courts to chief judges for administrative purposes, including Defendants Reinhart and Adams. Similarly, as described in Sections I.B.2 and II.D.2, *supra*, Defendant Koon has the authority to create and oversee standard operating procedures by allocating resources, setting enforcement priorities for the LCSD Warrant Unit, negotiating agreements with other law enforcement offices, and directing, training, and supervising deputies and Detention Center staff in how to execute and detain people named in payment bench warrants.

The facts available at this stage of the proceedings thus provide ample reasons to deny Defendants' motion. To the extent this Court concludes otherwise, Plaintiffs respectfully request Rule 56(d) relief for discovery relating to the administrative authority of Defendants Reinhart, Adams, and Koon as set forth in the Choudhury Declaration. *See* Section II.D.4, *supra*.

2. There are triable issues of fact as to whether Defendant Lexington County merits summary judgment on Plaintiffs' Fourth Amendment claim for "lack of causation."

Defendants contend, without evidentiary support, that Plaintiffs' damages claim against Defendants Lexington County and Madsen for inadequate provision of indigent defense fails as a matter of law because "even if public defender systems did not exist, a magistrate would still be able to appoint counsel for indigent persons from members of the bar." Dkt. No. 50–1 at 14.[54] "Ordinarily, proximate cause cannot be determined on the basis of pleadings but instead requires a factual development at trial." *Estate of Bailey v. Cty. of York*, 768 F.2d 503, 511 (3d Cir. 1985), *overruled on other grounds by DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489

[54] Defendant Madsen's conduct as a County final policymaker for provision of indigent defense in magistrate courts supports the Sixth Amendment damages claim against the County itself.

U.S. 189 (1989).[55] Regardless, Defendants' argument flies in the face of Sixth Amendment requirements, evidence in the record, and numerous court decisions recognizing that inadequate government funding of indigent defense services can violate the right to counsel.

The Sixth Amendment right to counsel is "fundamental [and] essential to a fair [criminal] trial." *Gideon v. Wainwright*, 372 U.S. 335, 343–44 (1963). The right extends to all state criminal proceedings involving incarceration, whether for felonies or misdemeanors. *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) (actual incarceration); *Scott v. Illinois*, 440 U.S. 367, 373 (1979) (same); *Alabama v. Shelton*, 535 U.S. 654, 674 (2002) (suspended incarceration). The Sixth Amendment requires government to ensure representation to indigent defendants in such proceedings.[56] A local government's inadequate funding and provision of indigent defense is a cognizable Sixth Amendment injury. *See, e.g.*, *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124, 1132 (W.D. Wash. 2013) (municipal policymakers' "deliberate choices regarding the funding, contracting, and monitoring of the public defense system" violated Sixth Amendment).[57]

Evidence supports a claim of inadequate funding and provision of indigent defense against Defendants Lexington County and Madsen. These Defendants bear significant responsibility for providing and paying for court-appointed counsel to represent indigent

[55] *See also Talkington v. Atria Reclamelucifers Fabrieken BV*, 152 F.3d 254, 264 (4th Cir. 1998) ("Proximate cause is generally a question of fact to be decided by the jury.")

[56] *See Tucker v. State*, 394 P.3d 54, 62–63 (Idaho 2017) ("[I]t is the State's obligation to provide constitutionally adequate public defense at critical stages of the prosecution."); *Wilbur*, 989 F. Supp. 2d at 1134 ("Having chosen to operate a municipal court system, . . . defendants are obligated to comply with . . . the Sixth Amendment . . . .").

[57] *See also Church v. Missouri*, No. 17-CV-04057-NKL, 2017 WL 3383301, at *1–2 (W.D. Mo. July 24, 2017) (Sixth Amendment claim challenging inadequate funding of public defense); *Tucker*, 394 P.3d at 63 (finding standing for Sixth Amendment right to counsel claim based on allegations of systemic inadequacies in public defense); *Kuren v. Luzerne Cty.*, 146 A.3d 715, 718 (Pa. 2016) (recognizing Sixth Amendment claim for "systemic violations of the right to counsel due to underfunding"); *Hurrell-Harring v. State*, 15 N.Y.3d 8, 22–23 (N.Y. 2010) (alleged "inadequate funding and staffing of indigent defense providers"sufficiently states Sixth Amendment claim).

defendants in magistrate court proceedings.[58] As the Eleventh Circuit Public Defender, Defendant Madsen must provide "adequate and meaningful representation [to] indigent [defendants] within the counties" of the Eleventh Circuit, which includes Lexington County. S.C. Code Ann. § 17-3-540(A).[59] The County must give funds to Defendant Madsen, who must use the funds along with state resources to hire, manage, and train staff to provide indigent defense services in the County's courts. *See id.* § 17-3-540(B) (requiring each county to pay for staff appointed by circuit public defender "as necessary to provide adequate and meaningful" indigent defense).[60] Lexington County must provide a minimum amount of funding each year.[61]

Evidence that the County provides less than half the funding for inidigent defense compared to counties of comparable population size suggests that Lexington County has funded indigent defense at a level grossly inadequate to ensure representation for indigent defendants in magistrate court cases. *See* Section I.B.3, *supra*; Ryan Aff. Exs. A & B. Plaintiffs Brown, Wright, and Darby were not assigned counsel and did not even see any public defenders in the courtroom when they appeared in court.[62] Plaintiffs were never visited by public defenders in Defendant Madsen's employ after their arrest and incarceration.[63] This evidence supports the assertion that Defendant Madsen does not assign public defenders to serve the County's magistrate courts or to meet with people arrested on payment bench warrants, which underscores that the County's inadequate funding and Defendant Madsen's allocation decisions fail to ensure representation for indigent defendants in magistrate court cases as required by law.

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[58] "South Carolina's Public Defender System is a county-based system" and circuit public defenders "are responsible" for public defense in each county in their circuit. SCCID, Circuit Public Defenders, *supra* note 21.

[59] *See* SCCID, Public Defenders by County, https://sccid.sc.gov/about-us/county-public-defenders.

[60] *See also* S.C. Code Ann. § 17-3-560 (requiring circuit public defenders to "expend the funds received from the counties in the circuit" for "reimbursement to the administering county" to pay for staff).

[61] *See* S.C. Code Ann. § 17-3-550(B)(4) ("No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.").

[62] Brown Decl. ¶¶ 3, 6; Darby Decl. ¶¶ 12–15; Dkt. No. 35–2 ¶¶ 3, 8.

[63] *See* Brown Decl. ¶ 14; Darby Decl. ¶ 27; Goodwin ¶ 13; Palacios ¶ 20.

Defendants fail to cite facts showing that appointment of counsel from the private bar would fulfill their Sixth Amendment obligation to ensure adequate public defense. *See* Dkt. No. 50–1 at 14. Defendants also fail to point to undisputed evidence showing that the County's inadequate funding of the Eleventh Circuit Public Defender's Office *cannot* lead to inadequate defense for indigent people in magistrate court proceedings. *Id*. Because there are triable issues of material fact, summary judgment for the County and Defendant Madsen is unwarranted.

Finally, should this Court rule that there are no triable questions of material fact as to whether the County or Defendant Madsen's conduct could violate Plaintiffs' Sixth Amendment rights, Plaintiffs seek relief under Rule 56(d). Plaintiffs have requested discovery relating to these Defendants' contracts, funding and budgeting for indigent defense services, as well as policies, procedures, practices, guidelines, and training materials concerning representation of people in proceedings involving imposition or collection of magistrate court fines and fees and meeting with people incarcerated on payment bench warrants. *See* Choudhury Decl. ¶¶ 27–28, Ex. A at RFPs Nos. 9, 25–28. These requests are targeted to determine whether the County's and Defendant Madsen's funding, resource allocation, case assignment, and training decisions proximately caused Plaintiffs to be incarcerated without representation by counsel despite prima facie evidence of indigence. *Id.* ¶ 27. Plaintiffs also seek to depose the County and Defendant Madsen regarding these matters. *Id.* ¶ 32. Plaintiffs' pending requests seek material information likely to assist Plaintiffs in raising genuine, triable issues of material fact.

## III. CONCLUSION

For the foregoing reasons, Defendants fail to demonstrate they are entitled to summary judgment on Plaintiffs' damages claims. Plaintiffs respectfully ask the Court to deny the motion. In the alternative, Plaintiffs ask the Court to stay its decision and to grant Plaintiffs relief under Rule 56(d) to conduct discovery for evidence to defend against Defendants' premature motion.

DATED this 29th day of November 2017.

Respectfully submitted by,

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