UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

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

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION TO STAY DISCOVERY AND SCHEDULING ORDER DEADLINES OR FOR PROTECTIVE ORDER

I. INTRODUCTION

Plaintiffs filed this civil rights lawsuit five months ago to challenge Defendants' operation of a modern-day debtors' prison. Hundreds of indigent people currently face a risk of unlawful arrest and incarceration because they cannot afford to pay money to Lexington County magistrate courts. Plaintiffs bring claims against Lexington County; two judges who currently serve, and one judge who formerly served, as the administrative leaders of the County's magistrate courts; the Lexington County Sheriff; and the Eleventh Circuit Public Defender. In their Second Amended Complaint, Plaintiffs allege how the named Defendants established this system, or currently maintain it, in violation of the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution.

Plaintiffs Goodwin and Wright filed a timely motion for class certification to seek prospective relief on behalf of themselves and a proposed class of similarly situated individuals who face a substantial risk of imminent unlawful arrest and incarceration. Plaintiffs also

promptly propounded discovery to each Defendant to discharge their duty under Federal Rule of Civil Procedure 1 to advance the "just, speedy, and inexpensive" resolution of this action. Rather than respond to this discovery and abide by their own Rule 1 obligation to promote the timely and efficient resolution of this action, Defendants moved to stay all discovery as to all Defendants on all claims until this Court's resolution of Defendants' two motions for summary judgment—motions Defendants filed despite a completely undeveloped record. *See* Dkt. No. 51.

Three weeks after Defendants moved to stay discovery, the Court announced its intention to rule on all pending motions at the same time. This announcement effectively altered the manner in which Defendant assumed the motion to stay would be handled—namely, that the Court would rule on the stay motion before it decided Defendants' two pending motions for summary judgment. Because this is no longer the case, the central determination the Court needs to make is whether it will deny Defendant's summary judgment motions and allow the parties to proceed with discovery.

Defendants' First Motion for Summary Judgment seeks judgment as a matter of law on Plaintiffs' declaratory and injunctive relief claims due to lack of standing, mootness, and federal court abstention. Dkt. Nos. 29, 29–1. Defendants' Third Motion for Summary Judgment 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 proximate causation. Dkt. Nos. 50, 50–1. Both motions for summary judgment were filed prematurely. Defendants have not responded to any discovery in this case, and there is very little evidence in the record. As set out in Plaintiffs' response briefing, the Court has ample grounds for denying summary judgment to Defendants under each of the asserted grounds when viewing the sparse factual record in the light most favorable to Plaintiffs, as is required at

this stage. Should the Court determine it is not inclined to deny Defendants' Third Motion for Summary judgment, 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' third motion.

Defendants have engaged in a wasteful strategy of seeking summary judgment with no supporting facts while simultaneously barring Plaintiffs from obtaining needed discovery. This approach to litigation should not be countenanced. Plaintiffs respectfully ask the Court to deny Defendants' motions for summary judgment and permit this case to proceed to discovery. In the alternative, Plaintiffs ask the Court stay a decision as to Defendants' Third Motion for Summary Judgment and permit additional time for Plaintiffs to conduct discovery under Rule 56(d).

II. STATEMENT OF FACTS

A. Procedural Background

On June 1, 2017, Plaintiffs filed their Class Action Complaint ("Complaint") alleging claims for damages and declaratory and injunctive relief. *See* Dkt. No. 1.[1] On August 7, 2017, representative counsel from all parties participated in a telephone conference pursuant to Federal Rule of Civil Procedure 26(f), after which time the parties were free to pursue discovery under Federal Rule of Civil Procedure 26(d). *See* Dkt No. 32–1.

The following week, and prior to either party conducting any discovery, Defendants filed a Motion for Summary Judgment on Declaratory and Injunctive Relief Claims ("First Motion for Summary Judgment"). *See* Dkt. No. 29. The only evidence Defendants entered into the record

[1] Plaintiffs filed their Class Action Amended Complaint and Amended Motion for Class Certification on July 21, 2017. *See* Dkt. Nos. 20, 21. Plaintiffs subsequently filed a Class Action Second Amended Complaint on October 19, 2017, pursuant to this Court's order granting leave to file the amended pleading. *See* Dkt. Nos. 47, 48. The Second Amended Complaint altered the Class Action Amended Complaint only by adding damages claims for Plaintiff Raymond Wright, Jr., and remains the operative pleading in this action. *See* Dkt. No. 46 at 1.

was an affidavit by Lexington County Deputy Court Administrator Colleen Long summarizing court records pertaining to the six Plaintiffs in this case. *See* Dkt. No. 29–2. Based on this single affidavit, Defendants argued that judgment as a matter of law on Plaintiffs' prospective relief claims is warranted due to lack of standing, mootness, and federal court abstention under *Younger v. Harris*, 401 U.S. 37 (1971). *See, generally*, Dkt. No. 29–1.

On September 11, 2017, Plaintiffs filed a response to Defendants' First Motion for Summary Judgment in which Plaintiffs noted that a grant of summary judgment at such an early stage was unwarranted in light of the almost non-existent factual record. Dkt. No. 35 at 11. Plaintiffs did not take issue with the factual assertions set forth in Ms. Long's declaration but argued that even if true, the assertions failed to support judgment as a matter of law on standing, mootness, or abstention grounds. *Id*. at 11, n. 1. Plaintiffs therefore did not file a declaration under Rule 56(d) outlining discovery necessary to settle any factual dispute in the record, but they expressly reserved the right to file such a declaration at a later date in the event Defendants raised factual disputes in reply briefing. *Id.* at 14, n. 3.

On September 22, 2017, Defendants filed a reply brief on their First Motion for Summary Judgment to which they attached three factual exhibits compiled from public records pertaining to Plaintiff Xavier Goodwin. *See* Dkts. Nos. 39, 39–1, 39–2, 39–3. Plaintiffs did not take issue with the factual content of these exhibits or the factual claims in Defendants' reply. For that reason, Plaintiffs did not burden the Court by filing a Rule 56(d) declaration to pursue discovery for the purpose of disputing any specific factual claims made by Defendants in support of their First Motion for Summary Judgment.

On September 22, 2017, the same day Defendants filed their reply brief, Defendants also filed a Supplemental Motion for Summary Judgment on Declaratory and Injunctive Relief

Claims ("Second Motion for Summary Judgment"). *See* Dkt. No. 40. Citing only a memorandum issued by the Chief Justice of the Supreme Court of South Carolina ("Chief Justice's Memorandum"), Defendants argued that they had ceased the alleged unlawful conduct––namely the ongoing violations of Plaintiff Goodwin's and class members' Fourteenth, Sixth, and Fourth Amendment rights under the U.S. Constitution. Dkt. No. 40 at 2.

On October 13, 2017, Plaintiffs filed a response in opposition to Defendant's Second Motion for Summary Judgment. *See* Dkt. No. 43. In support, Plaintiffs submitted a declaration from Plaintiffs' counsel putting forth evidence from public jail and court records raising numerous questions of material fact as to whether Defendants had, in fact, ceased the alleged conduct leading to the unlawful arrest and incarceration of indigent people following issuance of the Chief Justice's Memorandum. *See* Dkt. No. 43–1. The records demonstrate that Lexington County magistrate courts continued to issue payment bench warrants ordering the arrest and incarceration of people who owe money to Lexington County magistrate courts without first providing hearings on ability to pay.

For example, the records show that during the 24-day period following issuance of the Chief Justice's Memorandum, Lexington County magistrate courts issued new bench warrants against 50 people for nonpayment of court fines and fees. *Id.* ¶ 6. The records also show that during the same time period, at least 57 inmates were incarcerated in the Lexington County Detention Center pursuant to such a warrant. *Id.* ¶ 13. Plaintiffs observed that there was no information in the public records reviewed to indicate that 40 of the 57 individuals incarcerated on payment bench warrants were afforded *any* court hearing before or even after arrest at which the magistrate court might have considered their ability to pay. *Id.* ¶ 22; Dkt. No. 43 at 26. Moreover, Plaintiffs showed that the average number of people incarcerated in the Lexington

County Detention Center on any given day for nonpayment of magistrate court fines and fees was actually *higher* during the 24-day period *following* issuance of the Chief Justice's Memorandum than it was during the 28-day period *preceding* the filing of Plaintiffs' first Complaint. Dkt. No. 43–1 ¶¶ 15–17; Dkt. No. 43 at 26.

Defendants elected not to file a reply brief in support of their Second Motion for Summary Judgment. Instead, Defendants initially filed a motion on October 30, 2017, to stay the Court's resolution of their own motion. Dkt. No. 49. Plaintiffs filed a timely response on November 13, 2017, requesting, *inter alia*, that the Court strike Defendant's Second Motion for Summary Judgment. Dkt. No. 58. On November 21, 2017, Defendants ultimately filed a withdrawal of their Second Motion for Summary Judgment. Dkt. No. 62.

On October 31, 2017, Defendants filed a Motion for Summary Judgment on Damages Claims ("Third Motion for Summary Judgment"). In their Third Motion for Summary Judgment, Defendants raise the following defenses: all of Plaintiffs' damages claims are barred by the principles set forth in *Heck v. Humphrey*, 512 U.S. 477, and the *Rooker-Feldman* doctrine; Defendants Reinhart, Adams, and Koon are entitled to absolute judicial, quasi-judicial, and legislative immunity; Defendants lack authority to set policies as a matter of law; and Defendants Lexington County and Madsen did not proximately cause Plaintiffs' injuries. *See* Dkt. No. 50.

Plaintiffs will file a response to Defendants' Third Motion for Summary Judgment concurrently with this brief. Plaintiffs argue that each of Defendants' asserted defenses fail. Should the Court conclude otherwise, however, Plaintiffs are also submitting as an attachment to their response a Rule 56(d) Declaration by Plaintiffs' counsel Nusrat J. Choudhury ("Choudhury Declaration"). The Choudhury Declaration identifies outstanding discovery requests and specific factual questions for which discovery is required prior to the Court's resolution of the

immunity, lack of authority, and causation issues raised in the Third Motion for Summary Judgment.

On November 21, 2017, the Court's law clerk sent an email to counsel of record for all parties in this case. Declaration of Eric R. Nusser ("Nusser Declaration") ¶ 2. The Court stated in that email that it planned to rule on all pending motions at the same time and requested the parties to notify the Court if they did not wish for the Court to take this approach. *Id.* Ex. A. Both parties filed notices of withdrawal relating to matters not at issue in this brief, (*see* Dkt. Nos. 62, 64), but there are no filings on the record requesting that the Court rule on any of the pending motions at a separate time.

B. Plaintiffs have propounded discovery requests on all Defendants but have received nothing in response.

On October 6, 2017, Plaintiffs served their first set of Requests for Production ("RFPs") on Defendants Lexington County and Robert Madsen. *See* Choudhury Decl. Ex. A. That same day, Plaintiffs also served their first set of RFPs on Defendant Bryan Koon. *Id.* Ex. B. On October 10, 2017, Plaintiffs served their first set of RFPs on Defendants Gary Reinhart, Rebecca Adams, and Albert J. Dooley, III. *Id.* Ex. C. These discovery requests are in part designed to uncover information directly relevant to determining whether Defendants continue to engage in actions that violate the rights of indigent defendants in Lexington County's magistrate courts. *See id.* Ex. A at RFPs Nos., 5–9, 24–25, 28–31; *id.* Ex. B at RFPs Nos. 4, 22–27, 29, 32–34, 39–40; Ex. C at RFPs Nos. 3, 20, 38–40, 43, 45, 48–49.

On October 25, 2017, Plaintiffs' counsel sent Defendants' counsel an email offering to discuss document production with the intent to make the process as efficient as possible for both parties. Nusser Decl. ¶ 3. Defendants' counsel did not respond. Instead, they sent an email announcing Defendants' intent to file a motion to stay discovery and requesting Plaintiffs'

consent. Nusser Decl. ¶ 4.

On October 30, 2017, counsel for all parties conducted a telephone conference to discuss the issues underlying the forthcoming motions. Nusser Decl. ¶ 5. Plaintiffs' counsel explained that Plaintiffs could not consent to stay discovery because Plaintiff Goodwin and members of the proposed class continued to face an imminent threat of unlawful arrest and incarceration, and Plaintiffs were aware of no evidence demonstrating that Defendants had ceased the alleged unlawful behavior. *Id.*

On October 31, 2017, Defendants filed their Motion to Stay Discovery. *See* Dkt. No. 51. Defendants' responses to Plaintiffs' first set of discovery requests were due on November 6 and 9, 2017; however, Plaintiffs have not received any documents in response. Choudhury Decl. at ¶¶ 13–16.

III. AUTHORITY AND ARGUMENT

A. Defendants' First and Third Motions for Summary Judgment should be denied.

Defendants' First Motion for Summary Judgment seeks judgment as a matter of law on Plaintiffs' declaratory and injunctive relief claims due to lack of standing, mootness, and federal court abstention under *Younger*. Dkt. No. 29. Plaintiffs' response in opposition argues, *inter alia*, that summary judgment at such an early stage of the proceedings is wholly unwarranted; that Plaintiffs Xavier Goodwin and Raymond Wright both possessed standing to pursue their claims at the time of filing; that their claims are not moot; and that none of the exceptional circumstances required for *Younger* to apply are present in this action. *See, generally*, Dkt. No. 35.

Defendants' Third Motion for Summary Judgment 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, quasi-judicial immunity, legislative immunity, lack of authority, and proximate causation. Dkt. No. 50. Plaintiffs' response in opposition, filed concurrently with this brief, argues, *inter alia*, that Defendants fail to meet their summary judgment burden on each of the asserted grounds for three overarching reasons. First, as argued in greater depth in Plaintiffs' response brief, 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 undisputed 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.

B. If the Court is not inclined to deny Defendants' Third Motion for Summary Judgment entirely, it should grant Plaintiffs limited discovery under Federal Rule of Civil Procedure 56(d).

This Court has ample reasons for denying Defendants' summary judgment motion in its entirety and should permit this case to proceed to discovery. Should this Court determine otherwise, however, Plaintiffs seek relief under Rule 56(d) with respect to assertions of immunity by Defendants Adams, Reinhart, and Koon, the contention that all Defendants lack authority to engage in the challenged conduct, and the assertion of a lack of causation by Defendants Lexington County and Madsen.

A grant of summary judgment before discovery has even begun is <u>exceptionally rare</u>, and Defendants have not responded to any of Plaintiffs' discovery requests in this case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986) ("Th[e] requirement [that the nonmoving party set forth facts showing a genuine issue for trial] . . . is qualified by Rule 56([d])'s provision that summary judgment be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition."); *Hellstrom v. U.S. Dep't of Veterans Affairs*, 201 F.3d 94, 97 (2d Cir. 2000) ("Only in the rarest of cases may summary judgment be granted against a plaintiff who has not been afforded the opportunity to conduct discovery."). A nonmovant faced with contesting a motion for summary judgment may seek relief under Rule 56(d) when certain facts are unavailable. Fed. R. Civ. P. 56(d). The request for relief must be supported by a declaration specifying the reasons for additional

discovery or other notice 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). 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).

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. *See* Choudhury Decl. Those requests 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. *Id.* ¶¶ 17–23. The requests are also likely to assist Plaintiffs in raising genuine, triable issues of material fact that will preclude summary judgment for Defendants on the basis of the asserted immunities (judicial, quasi-judicial, or legislative immunity), lack of authority, or lack of proximate causation. *Id.* ¶ 17.[2]

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

[2] Plaintiffs' memorandum in opposition to Defendants' Third Motion for Summary Judgment does not take issue with the facts asserted by Defendants in support of arguments that *Heck v. Humphrey* and the *Rooker-Feldman* doctrine bar Plaintiffs' damages claims. *See* Dkt. No. 66 at 19–26. Should Defendants raise any issues of fact in reply on the question of whether *Heck* or *Rooker-Feldman* applies to the damages claims, Plaintiffs reserve the right to seek relief under Rule 56(d) in order to secure discovery against a Court ruling that summary judgment is warranted on either basis.

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 also seek to determine whether Defendants Reinhart and Adams exercised administrative authority by failing to report to state authorities and correct magistrates' routine misuse of bench warrants. *Id.* ¶ 20.

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. Once they 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. Choudhury Decl. ¶¶ 32–34. Finally, Plaintiffs have requested documents relating to Defendants Lexington County and Madsen's budgetary decisions and request and grant of funding for indigent defense in the County's magistrate courts, as well as their contracts for public defense services between the County and any public defender. *See* Choudhury Decl. ¶ 27 Ex. A at RFPs Nos. 9, 25–28. Plaintiffs also requested the production of documents prepared or provided by Defendants Lexington County and Madsen regarding policies, practices, procedures, instructions, guidance, and training on: the representation of people in proceedings involving imposition or collection of court fines or fees; public defenders' assessment of ability to pay during convictions and show cause hearings; the responsibilities of public defenders to meet with

or represent inmates incarcerated in the Detention Center; waiver of public defender fees and charges; approval and denial of requests for representation by a public defender; the number of hours worked annually by public defenders, and the time spent on each magistrate court case. *Id.* ¶ 28 & Ex. A at RFPs Nos. 4–8, 10–16, 24. These requests are designed to determine whether and to what extent Defendant Madsen or any other County official exercises final policymaking authority regarding the funding and provision of public defense services in the County's magistrate courts. *Id.* ¶29. They also seek to determine whether the deliberate decisions and policies of Defendants Lexington County and Madsen proximately caused Plaintiffs' arrest and incarceration without any pre-deprivation judicial inquiry into ability to pay or representation by court-appointed counsel. *Id.* Plaintiffs also seek to depose the County and Defendant Madsen regarding these matters. *Id.* ¶¶ 34–35.

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.[3]

CONCLUSION

Defendants' motion to stay discovery is part of a wasteful strategy of seeking summary judgment with no supporting facts while simultaneously preventing Plaintiffs from gathering

[3] Defendants argue 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). 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 and permitting discovery on claims challenging administrative conduct).

needed discovery. Plaintiffs respectfully ask the Court to deny Defendants' motions for summary judgment and permit this case to proceed to discovery. In the alternative, Plaintiffs request that the Court stay a decision as to Defendants' Third Motion for Summary Judgment and permit additional time for Plaintiffs to conduct discovery under Rule 56(d).

DATED this 29th day of November, 2017.

Respectfully submitted by,

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