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 IN OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION AND DEFENDANTS' SUPPLEMENTAL MOTION FOR RECONSIDERATION

Plaintiffs respectfully submit this response in opposition to Defendants' Motion for Reconsideration, ECF No. 87 ("Motion for Reconsideration"), and Supplemental Motion for Reconsideration, ECF No. 88 ("Supp. Motion for Reconsideration") (collectively, "Motions for Reconsideration"). The Court's March 29, 2018 Opinion and Order addressed the factual and procedural history of this case in detail and denied without prejudice, inter alia, Defendants' two pending motions for summary judgment—one that concerned Plaintiffs' prospective-relief claims and the other that concerned Plaintiffs' damages claims. *See* ECF No. 84 at 3–18, 29. Defendants' Motions for Reconsideration urge the Court to reconsider the portions of the Opinion and Order permitting Plaintiffs' prospective-relief claims to proceed against all Defendants and Plaintiffs' damages claims to proceed against Defendant Lexington County ("the County"), asserting that the Court "misapprehended" Defendants' arguments. *See* ECF No. 87–1 at 7–8; ECF No. 88–1 at 3. As explained below, the Court correctly rejected the Report's recommendation to dismiss Plaintiffs' prospective-relief claims as moot due to numerous questions of fact as to whether Defendants have ceased the conduct alleged to cause the unlawful, automatic arrest and incarceration of indigent people who cannot pay money to the County's magistrate courts. The Court also properly rejected both of Defendants' motions for summary judgment.

Defendants' Motions for Reconsideration rehearse previously-raised arguments rather than satisfying any of the narrow circumstances required for this Court to amend, alter, or correct the Opinion and Order under Rule 54(b) or Rule 59(e) of the Federal Rules of Civil Procedure. The Motions for Reconsideration should therefore be denied. The Court should affirm its Order and reiterate that the action will proceed with discovery, which has been delayed for almost a

year due to Defendants' wasteful strategy of filing successive motions to terminate the litigation without adequate evidentiary support.

RELEVANT PROCEDURAL HISTORY

As the Opinion and Order's detailed recital demonstrates, the Court is familiar with the procedural history of this case, including the arguments asserted by Defendants in support of the two summary judgment motions resolved by that Order. *See* ECF No. 84 at 3–18. Although no discovery has taken place in this case beyond initial disclosures, Defendants have filed successive motions for summary judgment.[1] On August 18, 2017, Defendants filed their first motion, seeking summary judgment as to the claims for declaratory and injunctive relief brought by Plaintiffs Xavier Larry Goodwin and Raymond Wright, Jr. on behalf of themselves and a proposed Class. ECF No. 29 ("First Summary Judgment Motion"). The First Summary Judgment Motion argued that Mr. Goodwin's claims were barred by *Younger v. Harris*, 401 U.S. 37 (1971), and that Mr. Wright's claims were now moot because, after filing his claims and seeking class certification, Mr. Wright was subsequently arrested and incarcerated for inability to pay court fines and fees, thereby suffering the harm he sought to prevent. *See id*. The First Motion for Summary Judgment was fully briefed by the parties. *See* ECF Nos. 29, 35, 39.

Additionally, on October 31, 2017, Defendants filed a motion for summary judgment as to Plaintiffs' damages claims. ECF No. 50 ("Third Summary Judgment Motion").[2] The Third

[1] In October 2017, Plaintiffs propounded their first sets of Requests for Production on all Defendants; however, Defendants have failed to respond to these Requests and have not produced any documents pursuant to these Requests. *See* ECF No. 66–7 ¶¶ 13–16, Exs. A–C.

[2] On September 22, 2017, Defendants filed a second motion for summary judgment as to Mr. Goodwin and Mr. Wright's prospective-relief claims, which argued that the claims were moot due to the issuance of a memorandum by Chief Justice Donald Beatty of the South Carolina Supreme Court ("Chief Justice's Memorandum"). ECF No. 40 ("Second Summary Judgment Motion"). Defendants withdrew the Second Motion for Summary Judgment after Plaintiffs submitted evidence that the unlawful arrest and incarceration of indigent people for money owed

Summary Judgment Motion asserted, inter alia, that the damages claims by all Plaintiffs are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), and the *Rooker-Feldman* doctrine; that the damages claims against Defendants Rebecca Adams, Gary Reinhart, and Bryan Koon are barred by judicial, quasi-judicial, or legislative immunity; that, as a matter of law, none of the Defendants could have created the challenged policies; and that, as a matter of law, the County's inadequate funding and provision of indigent defense cannot be the proximate cause of Plaintiffs' Sixth Amendment injuries. *See id*. The Third Motion for Summary Judgment was fully briefed by the parties. *See* ECF Nos. 50, 66, 70.

On February 5, 2018, Magistrate Judge Shiva V. Hodges issued a Report and Recommendation ("Report"), which recommended, inter alia: (1) sua sponte dismissal of Mr. Goodwin and Mr. Wright's claims for prospective relief on the basis that the claims are moot due to Defendants' voluntary cessation of the challenged conduct, as shown by the issuance of the Chief Justice's Memorandum; (2) granting summary judgment to Defendants Adams, Reinhart, and Koon on Plaintiffs' damages claims under the Fourteenth, Sixth, and Fourth Amendments on the bases of judicial and quasi-judicial immunity; and (3) denying summary judgment to the County on Plaintiffs' damages claim challenging the violation of the Sixth Amendment right to counsel for inadequate provision and funding of defense for indigent people facing incarceration for fines and fees owed to magistrate courts. *See* ECF No. 74 at 12–21. Plaintiffs and Defendants both filed timely objections and responses. *See* ECF Nos. 79, 80, 81, 82.

In Defendants' Objections to the Report, Defendants repeated their assertions that Plaintiffs' claims against the County are barred by *Heck* and *Rooker-Feldman*; that the County's alleged underfunding of indigent defense could not be the proximate cause of Plaintiffs'

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to the County's magistrate courts continued even after the Chief Justice's Memorandum, and argued for discovery on Defendants' current practices. *See* ECF Nos. 43–1, 62.

incarceration without representation by court-appointed counsel; and that no authority permits damages claims against the County for failure to fund its indigent defense system. *See* ECF No. 79. Plaintiffs' Response to Defendants' Objections explained that neither *Heck* nor the *Rooker-Feldman* doctrine bar Plaintiffs' Sixth Amendment claim against the County because that claim does not seek to overturn or invalidate Plaintiffs' convictions or sentences; that the County can held be liable in damages for its Sixth Amendment violations because South Carolina law requires the County to fund and provide indigent defense to people facing incarceration for nonpayment of magistrate court fines and fees; and that evidence in the record raises questions of fact concerning whether County funding and resource allocation decisions demonstrate a Sixth Amendment violation. *See* ECF No. 81.

In Plaintiffs' Objections to the Report, Plaintiffs argued that there remain numerous questions of fact as to whether Defendants' alleged unlawful conduct cannot reasonably be expected to recur in light of the Chief Justice's Memorandum and that Defendants therefore had failed to demonstrate mootness of the prospective relief claims under the voluntary cessation doctrine. *See* ECF No. 80 at 20–26. Plaintiffs also argued that because Defendants Adams, Reinhart, and Koon were sued solely for actions taken in their administrative capacities, they were not entitled to judicial or quasi-judicial immunity from Plaintiffs' damages claims or to the Section 1983 bar against injunctive-relief claims challenging judicial conduct. *See id*. at 26–36. In response to Plaintiffs' Objections, Defendants argued, inter alia, that the Report correctly recommended dismissing the prospective-relief claims as moot on the basis of voluntary cessation. *See* ECF. No. 82 at 6–11. Defendants also attached documents that purportedly show termination of the alleged unlawful conduct, including a memorandum by a staff attorney of the South Carolina Office of Court Administration ("OCA Memorandum") and several revised

forms and orders of the South Carolina Supreme Court. *See id*. at 8–11; ECF No. 82–1 ("Defendants' Exhibit"). Defendants further argued, in the alternative, that Plaintiffs' prospective-relief claims should be dismissed under the *Younger* doctrine of federal court abstention and that these claims were purportedly mooted because "it is uncontested that the criminal cases of all Plaintiffs except Goodwin are now ended." ECF No. 82 at 11–13. Finally, Defendants asserted that Plaintiffs' damages claims against Defendants Adams, Reinhart, and Koon should be denied on the basis of judicial and quasi-judicial immunity. *Id.* at 1–6.

On March 29, 2018, the Court issued its Order, which declined to adopt the Report and Recommendation and denied Defendants' First and Third Motions for Summary Judgment. ECF No. 84 at 29. Defendants have since submitted two Motions for Reconsideration of that Order under Federal Rule of Civil Procedure 54(b), which governs reconsideration of interlocutory orders, and Federal Rule of Civil Procedure 59(e), which governs reconsideration of final judgments. ECF Nos. 87, 88.

Defendants' initial Motion for Reconsideration urges the Court to "reconsider, amend or alter" the Opinion and Order, to grant summary judgment to Defendants on Plaintiffs Goodwin and Wright's prospective-relief claims on the basis of mootness and the application of *Younger* abstention as argued in the briefs in support of Defendants' First Motion for Summary Judgment. ECF No. 87–1 at 1. The Motion for Reconsideration also rehearses arguments in support of Defendants' contention that those claims are moot due to the OCA Memorandum as well as the handful of revised forms and orders of the South Carolina Supreme Court. *Id.* at 8–11. Finally, Defendants' Supp. Motion for Reconsideration requests a grant of summary judgment for Defendant Lexington County on Plaintiffs' Sixth Amendment damages claim for failure to

adequately provide for and fund indigent defense based on arguments raised by Defendants in their briefs in support of the Third Motion for Summary Judgment. ECF No. 88–1.

STANDARD OF REVIEW

It is well established in the Fourth Circuit that a motion for reconsideration under Rule 59(e) will be granted "only in very narrow circumstances: (1) to accommodate an intervening change in controlling law, (2) to account for new evidence not available at trial, or (3) to correct a clear error of law or prevent manifest injustice." *In re Pella Corp. Architect and Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F. Supp. 3d 685, 691 (D.S.C. 2017) (quoting *Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002)); *see also* 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 59.30[4] (3d ed.) ("[R]econsideration of a [court's] previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources."). The standard for reconsideration of interlocutory orders under Rule 54(b) "closely resembles the standard applicable to motions . . . pursuant to Rule 59(e) . . . ." *Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017). Although Rule 54(b) affords a court "flexibility to revise interlocutory orders before final judgment as the litigation develops and new facts or arguments come to light," courts have "cabined revision pursuant to Rule 54(b)" to three narrow circumstances "in which [the court] may depart from the law of the case: (1) 'a subsequent trial producing substantially different evidence'; (2) a change in applicable law; or (3) clear error causing 'manifest injustice.'" *Id.* (alterations and emphasis omitted) (quoting *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 515 (4th Cir. 2003)).

Under established precedent, neither Rule 54(b) nor Rule 59(e) should be used to "rehash arguments" the court has already considered. *See In re Pella Corp.*, 269 F. Supp. 3d at 691 ("[A] Rule 59(e) motion . . . should not be used to rehash arguments previously presented or to submit

evidence which should have been previously submitted"); *South Carolina v. United States*, 232 F. Supp. 3d 785, 793 (D.S.C. 2017) (citations omitted) ("[A] motion to reconsider an interlocutory order should not be used to rehash arguments the court has already considered merely because the movant is displeased with the outcome."). Finally, even when the order for which a party seeks reconsideration concerns an issue of subject matter jurisdiction, "a Rule 54(b) motion for reconsideration is assessed under the same standards." *South Carolina v. United States*, 232 F. Supp. 3d at 793–94 (citations omitted); 18B Charles A. Wright et al., *Federal Practice and Procedure* § 4478.5 (2d ed. April 2018) ("Although a federal court is always responsible for assuring itself that it is acting within the limits of subject-matter jurisdiction statutes and Article III, this duty need not extend to perpetual reconsideration.").

ARGUMENT

A. Defendants fail to show that reconsideration of the Court's rulings is warranted to avoid clear error causing manifest injustice or under any other Rule 54(b) or 59(e) standard.

As a threshold matter, Defendants' Motions for Reconsideration should be denied because both motions fail to demonstrate that any of the "narrow circumstances" warranting reconsideration under either Rule 54(b) or Rule 59(e) apply to this Court's Opinion and Order. *In re Pella Corp.*, 269 F. Supp. 3d at 691 (citing *Hill*, 277 F.3d at 708). Defendants do not demonstrate that previously unavailable or "substantially different" evidence has come to light; that there has been an intervening change in law since the Opinion and Order was issued; or that the Court committed a "clear error causing manifest injustice" with respect to rulings permitting Plaintiffs' prospective-relief claims against four Defendants and damages claims against Lexington County to proceed. *Carlson*, 856 F.3d at 325 (internal quotation marks omitted). Instead, Defendants argue for reconsideration solely on the basis that the Court purportedly

"misapprehended" Defendants' positions. ECF No. 87–1 at 7–8; ECF No. 88–1 at 3. In order to prevail on a motion for reconsideration based on an allegation that the court "misapprehended" a party's arguments, however, a party must show that the challenged order would result in manifest injustice if not corrected. *See South Carolina v. United States*, 232 F. Supp. 3d at 794, 799 (requiring plaintiff to "show[] . . . manifest injustice" to succeed on motion for reconsideration based on the assertion "that the court misapprehended [plaintiff's] jurisdictional arguments"). Under this standard, a "patent misunderstanding or misapprehension of the facts or arguments, so as to warrant a finding of manifest injustice, occurs *only* where such error was *indisputably obvious* and apparent from the face of the record." *Id.* at 799 (emphasis supplied). Defendants cannot satisfy the manifest-injustice standard with respect to the Motions for Reconsideration.

All of the arguments Defendants raise in the initial Motion for Reconsideration were fully briefed and before the Court prior to the issuance of the Opinion and Order. The Opinion and Order itself recites in detail each of Defendants' arguments in support of the First Motion for Summary Judgment. *See* ECF No. 84 at 11–12, 14 (addressing Defendants' assertions that Plaintiffs' prospective-relief claims are moot because "criminal proceedings against six of the seven Plaintiffs have concluded" and that *Younger* abstention applies to these claims due to a purportedly "ongoing state criminal proceeding" against Mr. Goodwin). Defendants use the Motion for Reconsideration simply to rehearse arguments previously raised in their response to Plaintiffs' Objections to the Magistrate Judge's Report, namely the contention that Plaintiffs' prospective-relief claims are moot due to the issuance of the Chief Justice's Memorandum, the OCA Memorandum, and a handful of revised forms and orders of the South Carolina Supreme Court. *Compare* ECF No. 82 at 6–11 *with* ECF No. 87–1 at 8–11. All of these materials were

before the Court when it issued the Opinion and Order, and not one of these documents consists of a definitive statement by any of the Defendants that the challenged unlawful conduct causing Fourteenth, Sixth, and Fourth Amendment rights violations has ceased. *See* ECF Nos. 82, 82–1 (showing that Defendants filed brief and factual exhibit in response to Plaintiffs' Objections to the Report one week prior to the Court's issuance of the Opinion and Order). The Opinion and Order nevertheless noted evidence of ongoing unlawful conduct by Defendants and plainly determined that "there is an issue of material fact as to the application of Chief Justice Beatty's Memorandum in Magistrate Court *and whether the alleged conduct could not reasonably be expected to recur*." ECF No. 84 at 28 (emphasis supplied). Defendants thus fail to meet their burden under both Rule 54(b) and Rule 59(e) to point to any "indisputably obvious" error "apparent from the face" of the Opinion and Order that would cause manifest injustice and therefore must be amended, altered, or corrected. *South Carolina v. United States*, 232 F. Supp. 3d at 799.[3]

Similarly, Defendants argue in the Supp. Motion for Reconsideration that "the [Opinion and] Order . . . contained 'an error not of reasoning but of misapprehension'" because it declined to address Defendants' arguments for summary judgment as to Plaintiffs' damages claims against Lexington County. ECF No. 88–1 at 3–4 (quoting *South Carolina v. United States*, 232 F. Supp. 3d at 799). This is incorrect. The Opinion and Order plainly did not "misapprehend[]" Defendants' position. Rather, the Opinion and Order recites in detail Defendant Lexington

[3] The fact that Defendants seek reconsideration of this Court's decision to deny summary judgment on mootness grounds—an issue that relates to subject matter jurisdiction—is irrelevant. The same standard applies to a motion for reconsideration regardless of whether the motion relates to a ruling on subject matter jurisdiction, and Defendants fail to meet that standard. *See South Carolina v. United States*, 232 F. Supp. 3d at 793–94 (success on Rule 54(b) motion for reconsideration concerning issue of subject matter jurisdiction is assessed under the same standard applied to all motions for reconsideration).

County's arguments in support of summary judgment on Plaintiffs' Sixth Amendment damages claims. *See* ECF No. 84 at 16–18 (detailing Defendants' arguments in support of Defendants' Third Summary Judgment Motion). These issues have been argued before the Court at length, not only in the original briefing, but also in Defendants' objections to the Magistrate Judge's Report and Recommendation, and in Plaintiffs' response to Defendants' objections, all of which were before the Court prior to the issuance of the Opinion and Order. *See* ECF Nos. 50, 66, 70, 80, 81. That Defendants are merely rehashing previous arguments becomes abundantly clear in Defendants' Supp. Motion for Reconsideration wherein they fail to posit any new defense or reargue any old defense, choosing instead to merely point the Court to previously submitted and reviewed filings. ECF No. 88–1 at 4.

Defendants therefore fail to demonstrate any "patent . . . misapprehension of the facts or arguments" in the Opinion and Order's rulings on Plaintiffs' prospective-relief claims against Defendants Adams, Dooley, Koon, and Lexington County, or on the damages claims against Lexington County that would justify reconsideration under well-established Rule 54(b) and Rule 59(e) standards. *South Carolina v. United States*, 232 F. Supp. 3d at 799. Rather, Defendants' Motions for Reconsideration merely "rehash arguments the court has already considered" concerning Defendants' efforts to terminate Plaintiffs' prospective-relief claims against numerous Defendants and damages claim against the County before any discovery has taken place. *See In re Pella Corp.*, 269 F. Supp. 3d at 691; *South Carolina v. United States*, 232 F. Supp. 3d at 793. But Defendants' mere "displeas[ure] with the outcome" of this Court's decision to permit each of these claims to move to discovery is insufficient to justify the application of the extraordinary remedy of reconsideration. *South Carolina v. United States*, 232 F. Supp. 3d at 793. For these reasons alone, the Court should deny Defendants' Motion for Reconsideration,

which seeks to disturb the Opinion and Order's denial of summary judgment to Defendants on Mr. Goodwin and Mr. Wright's prospective-relief claims, and should also deny Defendants' Supp. Motion for Reconsideration, which seeks to disturb the Opinion and Order's denial of summary judgment to the County on Plaintiffs' Sixth Amendment damages claim.

B. This Court should reject Defendants' renewed arguments for summary judgment on Plaintiffs' prospective-relief claims.

As demonstrated above, Defendants fail to satisfy any of the narrow circumstances for reconsideration of the portions of the Court's Opinion and Order concerning Plaintiffs' prospective-relief claims. To the extent that this Court contemplates the substance of Defendants' renewed arguments on the application of mootness and *Younger* abstention to Mr. Wright and Mr. Goodwin's prospective-relief claims, this Court should reject these arguments for the reasons summarized below and set forth in detail in previous briefing. *See* ECF No. 35.

1. Mr. Wright's prospective-relief claims should proceed under a well-established exception to the mootness doctrine for inherently transitory claims.

Defendants argue that "the claims of all but one Plaintiff [are] moot and no longer involve[] live cases or controversies . . . ." ECF No. 87–1 at 1. Only Mr. Goodwin and Mr. Wright bring claims for prospective relief, and it is undisputed that Defendants' mootness argument only applies to Mr. Wright's claims.[4] Plaintiffs do not dispute that Defendants' arrest and incarceration of Mr. Wright within days of his filing claims in this action eliminated the case or controversy between him and Defendants with respect to his claims for prospective relief. *See* ECF No. 35 at 20. Although Mr. Wright was arrested and incarcerated for nonpayment after

[4] Despite Defendants' suggestion to the contrary, only Mr. Wright and Mr. Goodwin—not all named Plaintiffs in this action—bring claims for prospective relief. *See* ECF No. 48 ¶¶ 451–85. There is no dispute that Mr. Goodwin satisfies the requirements for standing to bring prospective-relief claims and that he presents a live case and controversy for this Court to adjudicate. *See* ECF No. 87–1 at 6 (acknowledging that Mr. Goodwin has a live claim).

filing his prospective-relief claims, he is allowed to pursue prospective relief on behalf of the proposed Class under a longstanding exception to the mootness doctrine established in *Gerstein v. Pugh*, 420 U.S. 103 (1975), for claims that are "inherently transitory." *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980), and discussing exception to mootness doctrine recognized in *Gerstein*, 420 U.S. 103, 110 n.11); ECF No. 35 at 19–24. This exception applies to Mr. Wright's claims challenging Defendants' post-sentencing debt collection practices because these claims are so inherently transitory that it is unlikely a Court would have enough time to rule on class certification before a proposed representative's individual interest expires. *See* ECF No. 35 at 3, 19–24. At the same time, there is a constant class of persons suffering the deprivations complained of in this case whose rights would never be able to be vindicated if the mooting of a Class representative's claims also mooted their claims. *See id.* at 3, 22–23. Indeed, Mr. Wright's prospective-relief claims challenging the unlawful, automatic arrest and incarceration of indigent people for nonpayment of money owed to magistrate courts are precisely the types of class claims against criminal justice practices that are recognized to fall within the inherently transitory exception to the mootness doctrine. *See* William B. Rubenstein, *Newberg on Class Actions* § 2:13 (5th ed. June 2017 Update) (recognizing that the *Gerstein* exception to mootness "is particularly common in the area of criminal justice class actions due to the inherently transient nature of many trials, jail terms, and prison sentences"). This Court should therefore reject Defendants' argument that the prospective-relief claims are moot due to any lack of a live case or controversy between Defendants and Mr. Wright.

2. *Younger* abstention does not apply to Mr. Goodwin's prospective-relief claims.

This Court should reject Defendants' renewed request that it decline to exercise jurisdiction over Mr. Goodwin's prospective-relief claims under the doctrine of *Younger*

abstention. A federal court's "obligation to hear and decide a case is *virtually unflagging*" when it has jurisdiction. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 67, 77 (2013) (internal quotation marks omitted, emphasis supplied) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). As this Court has recognized, Plaintiffs have addressed in previous briefing that none of the three "exceptional circumstances" required for federal court abstention under the *Younger* doctrine apply to Mr. Goodwin. *See* ECF No. 84 at 13–14. Despite Defendants' repeated, incorrect contention that there is an "ongoing criminal proceeding" against Mr. Goodwin simply because he owes money to the Irmo Magistrate Court, it is undisputed that Mr. Goodwin's criminal prosecution concluded with his conviction and sentence in that court months before the commencement of this action, and that there was no appeal. *See* ECF No. 35 at 25. There simply is no state court criminal proceeding to which this Court should defer, much less one in which Mr. Goodwin could raise the serious constitutional claims for prospective relief from unlawful arrest and incarceration that he raises in this action. *See id.* Consequently, for these reasons and those set forth in prior briefing, this Court should squarely reject Defendants' invocation of *Younger* abstention and exercise jurisdiction over Mr. Goodwin's prospective-relief claims.

3. The Court correctly declined to find that the documents identified by Defendants satisfy Defendants' formidable burden to demonstrate mootness of the prospective-relief claims through voluntary cessation of the challenged conduct.

The Opinion and Order definitively and correctly rejected the Report's recommendation that Plaintiffs' prospective-relief claims be dismissed as moot under the doctrine of voluntary cessation. Defendants fail to meet their formidable burden to show that it is absolutely clear that the unlawful conduct challenged by Plaintiffs' prospective-relief claims cannot reasonably be expected to recur in light of the documents submitted by Defendants in response to Plaintiffs' Objections to the Report. *See* ECF No. 82–1.

As the Court has correctly noted, "'a defendant claiming that its voluntary compliance moots a case bears the *formidable burden* of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.'" ECF No. 84 at 27 (emphasis supplied) (quoting *Porter v. Clark*, 852 F.3d 358, 364 (4th Cir. 2017)). Thus, contrary to Defendants' extraordinary claim that Plaintiffs must "point to any cases in Lexington County in which the problem persists," ECF No. 87–1 at 10, the burden lies *with Defendants* to present evidence that the specific conduct challenged by each of Plaintiffs' claims for prospective relief cannot reasonably be expected to recur in order to secure dismissal of these claims on mootness grounds. *See* ECF No. 48 ¶¶ 451–61 (challenging individual Defendants' maintenance of standard operating procedures causing unlawful, automatic arrest and incarceration of indigent people for money owed to courts without pre-deprivation ability-to-pay hearings); *id.* ¶¶ 462–77 (challenging individual Defendants' maintenance of standard operating procedures causing unlawful, automatic incarceration of indigent people without representation by court-appointed counsel and the County's failure to provide and fund defense for indigent people facing incarceration for nonpayment of magistrate court fines and fees); *id.* ¶¶ 478–85 (challenging individual Defendants' maintenance of standard operating procedures causing unlawful, automatic arrest of indigent people based on warrants unsupported by probable cause).

Defendants contend that, in declining to address the specific documents submitted by Defendants in response to Plaintiffs' Objections to the Report, the Opinion and Order "appears to have misapprehended the fact that this additional support had been placed before the Court . . . ." ECF No. 87–1 at 8. Like the Chief Justice's Memorandum, however, none of these documents bind Defendants Adams, Dooley, Koon, or Lexington County with respect to each of the various types of unlawful conduct challenged by Plaintiffs' prospective-relief claims. Not one of the

documents is addressed to Defendant Lexington County or concerns the County's provision and funding for indigent defense in magistrate courts. *See* ECF No. 82–1. Nor do any of the documents demonstrate that Defendants Adams, Dooley, and Koon have unequivocally disavowed and taken steps to halt the central misconduct challenged in this action—the automatic arrest and incarceration of indigent people for inability to pay money to courts without a pre-deprivation court hearing on their ability to pay. To the contrary, Defendants have conspicuously declined to put forth any evidence that Defendants Adams, Dooley, and Koon have taken any concrete steps to remedy the Fourteenth, Sixth, and Fourth Amendment violations for which Plaintiffs seek prospective relief. Likewise, Defendants have not put forth any evidence that Defendant Lexington County has sought to remedy its gross underfunding of indigent defense and failure to allocate any resources to ensure appointment of counsel to indigent people facing incarceration for inability to pay money to the County's magistrate courts. Moreover, there remain numerous questions of fact as to whether the OCA Memorandum or the revised forms and orders of the Supreme Court of South Carolina have resulted in any changes to the individual Defendants' maintenance of standard operating procedures, which cause the automatic, unlawful arrest and incarceration of indigent people for nonpayment of money owed to magistrate courts without pre-deprivation ability-to-pay hearings or court-appointment of counsel, and based on warrants unsupported by probable cause. Such questions of fact preclude dismissal of the prospective-relief claims on mootness grounds and, at a minimum, weigh strongly in favor of granting Plaintiffs' timely request for discovery under Federal Rule of Civil Procedure 56(d). *See* ECF No. 80 at 37 (referencing Plaintiffs' 56(d) declaration [ECF No. 43–2] submitted in response to Defendants' now-withdrawn Second Summary Judgment Motion).

Defendants make the puzzling suggestion that, because "Counsel for Plaintiffs have shown that they are able to research public records[,]" Plaintiffs should be able to determine whether Defendants have taken any steps to remedy these unlawful acts "without the need for discovery from the Defendants." ECF No. 87–1 at 10. This contravenes the well-established Fourth Circuit precedent that Defendants bear the "formidable burden" of showing their challenged conduct cannot "reasonably be expected to recur" in order to secure dismissal on mootness grounds. *Porter*, 852 F.3d at 364 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)). Likewise, the public records research capability of Plaintiffs' counsel in no way relieves Defendants of their burden to respond to Plaintiffs' discovery requests under Federal Rules of Civil Procedure 26 through 37—particularly because information about changes to Defendants' policies or practices in response to the Chief Justice's Memorandum, the OCA Memorandum, or the handful of other state court documents identified by Defendants are not publicly available.

Because Defendants have failed to show that it is absolutely clear that the challenged conduct cannot reasonably be expected to recur—e.g., documents demonstrating their own unequivocal disavowal of the specific conduct challenged by each of Plaintiffs' prospective-relief claims or the concrete implementation of any of the measures detailed in the Chief Justice's Memorandum or other state court documents—the Court correctly determined that there remain questions of material fact as to voluntary cessation, which preclude summary judgment. Defendants' Motion for Reconsideration should therefore be denied.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Reconsideration and Supp. Motion for Reconsideration and reiterate that this case is

to proceed with discovery on Plaintiffs' prospective-relief claims against Defendants Adams, Dooley, Koon, and Lexington County, and with discovery on Plaintiffs' damages claim against Lexington County.

DATED this 3rd day of May 2018.

Respectfully submitted by,

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