THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALA

	)	
	)	
Plaintiff;	)	
	)	**Case No. 3 -cv-07 -MHH**
v.	)	
	)	**(Class Action)**
MATT GENTRY, in his official capacity as Cullman County Sheriff,	)	
	)	
LISA MCSWAIN, in her official capacity as Circuit Clerk,	)	
	)	
AMY BLACK, in her official capacity as Magistrate of the Cullman County District Court,	)	
	)	
JOAN WHITE, in her official capacity	)	

tiered pretrial justice system. Secured financial conditions of release are required for misdemeanor and felony offenses pursuant to a predetermined bail schedule that specifies a monetary range based

12. Defendant Rusty Turner is a Cullman County District Court Judge. He is sued in his official capacity.

IV.

19. Immediate access to money alone determines whether a person remains in jail following arrest. If a person can pay the amount required, the individual is released from jail immediately. If the person is unable to pay, she remains incarcerated.

ii. Defendant Gentry Detains Arrestees Who Cannot Pay the Predetermined Money Bail Amount While Releasing Those Who Can Pay.

20. When a person is arrested in Cullman County, she is booked into the Cullman County Jail. The Sheriff's Department is responsible for the operation of the Cullman County jail and the release and detention of arrestees.

21. After booking arrestees, the Sheriff's Department sets the bail amount.

22. The Sheriff determines the required amount of money by referring to the bail schedule.

23. As Sheriff Gentry explained, "When someone comes into the jail, we have a chart we go by to set the bonds. You can't go to use the scope of the bond range. We bring in 30 people a day, those we can't go to use the max bond amount when we can't go to use the scope of a contract surety."[4]

24. Arrestees who do not have other restrictions on their eligibility for release can pay this amount themselves, make a phone call to ask a friend or family to pay this amount on their behalf, or contact a bonding agent to assist in posting bail. If an arrestee can afford to pay the predetermined bail, the Sheriff's Department accepts the p

[4] W.C. Mann, *Bail Bonds, Part 2: The Law Enforcement Perspective*, The Cullman Tribune (Feb., 2017), https://goo.gl/okgWP8.

31. Under Alabama law, a judge or magistrate is required to conduct the initial appearance within 48-hours following a warrantless arrest or 72-hours following a warrant arrest. Ala. R. Crim. P. 4.3(a)(1)(iii), (b)(2)(i). The purposes of the initial appearance under state law are to DVFHUWDLQ WKH GHIHQGDQW¶V WUXH QDPH DQG D charges against him, and (3) notify the defendant of the right to counsel. Ala. R. Crim. P. 4.4. A judicial officer is also required to determine a GHIHQGDQW¶V FRQGLWLRQV RI U &ULP 3 ³,I D GHIHQGDQW KDV QRW EHHQ UHOHDVHG IU initial appearance, D GHWHUPLQDWLRQ RI WKH FRQGLWLRQV RI UHOH

Id., Ala.

32. However, it is Defendants

FRQGLWLRQV QRU GR WKH\ PDNH DQ\ DIILUPDWLYH LQTX

ability to pay the amount of secured money bail required.

36. Because of these practices, the initial court appearance provides no opportunity for a person to raise ability to pay, to be heard on alternative conditions of release, or to raise any constitutional issues with ongoing post-arrest detention.

37. $Q DUUHVWHH¶V ILQDQFLDO FRQGLWLRQV RI UHOH

FDQQRW DIIRUG PRQH\ EDLO ,QGHHG DQ DUUHVWHH¶V IL

if a person files a motion for a bond reduction, which is generally scheduled for a hearing no

HDUOLHU WKDQ WZR ZHHNV DIWHU DUUHVWHH¶V DUUHVW D

38. Thus, an individual who cannot afford the predetermined secured money bail amount usually

43. Mr. Hester was taken to the Cullman County Jail and told that he would be released from jail only if he paid a $1,000 bond.

44. A day or two after his arrest, Mr. Hester had his initial appearance via video link between the jail and the courtroom. He was unrepresented by counsel at this hearing, which lasted for one to two minutes in total. The magistrate informed Mr. Hester of the charge against him and his bond amount. At no point during this brief hearing did the magistrate inquire into 0U +HVWHU¶V DEL OLW\ WR SD\ WKH secured financial condition of release that she had imposed or give him the opportunity to say he could not pay it. The magistrate did not ask him any questions at all or tell him when his next court appearance would be. Although the magistrate told him that he could apply for an attorney, a correctional officer told him that he did not need an attorney because he was only charged with a misdemeanor.

45. Mr. Hester is indigent and cannot afford to buy his release from jail. He has no assets, no real property, and no stable income. For the last two years, he has supported himself by working odd jobs.

46. Mr. Hester currently has an open wound from a spider bite on his hand. The wound is very painful and is dripping blood. Mr. Hester cannot obtain medical care for his wound because he cannot afford it.

47. Mr. Hester is sleeping on the floor of his jail cell because there are three people in the cell but only two beds.

48. Mr. Hester has not been told when his next court appearance will be, but he believes it will be in about a month.

C. Non-Financial Conditions of Release Alone or in Combination with Unsecured Money Bail Are As Effective As or More Effective than Secured Money Bail.

49. Detention on money bail increases the likelihood of conviction. Controlling for other factors, a person who is detained pretrial is 13% more likely to be convicted and 21% more likely to plead guilty than a person who is not detained.[8]

50. Studies show that those detained pretrial face worse outcomes at trial and sentencing than those released pretrial, even when charged with the same offense.[9] Controlling for other factors, those detained pretrial will be given longer jail sentences.[10] Detained defendants are more likely to plead guilty just to shorten their jail time, even if they are innocent.[11] They have a harder time preparing a defense, gathering evidence and witnesses, and meeting with their lawyers. $ SHUVRQ¶V DELOLW\ WR SD\ EDLO Thus has an irreparable impact on the outcome of a criminal case.

---

[8] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 18 (May 2, 2016) (finding that a person who is detained pretrial is 13% more likely to be convicted and 21% more likely to plead guilty than a person who is not detained), *available at* https://goo.gl/riaoKD; *see also* Arpit Gupta, Christopher Hansman, & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization* 15, 19 (May 2, 2016), *available at* https://goo.gl/OW5OzL (finding a 12 percent increase in the likelihood of conviction using the same data).

[9] Christopher T. Lowenkamp *et al.*, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation 4 (November 2013), *available at* https://goo.gl/FLjVZP (those detained for the entire pretrial period are more likely to be sentenced to jail and prison ² and receive longer sentences ² than those who are released at some point before trial or case disposition).

[10] *Id.*

[11] Stevenson, *supra* QRWH DW ³3UHWULDO GHWHQWLRQ OHDG GD\V LQ WKH PD[LPXP GD\V RI WKH LQFDUFHUDWLRQ VHQW *see also* Gupta, et. al, *supra* note 1, at 18 ± ³&ULPLQDO GHIHQGDQWV DVVHVVH frequently unable to produce the required bail amounts, and receive guilty outcomes as a result. Entered guilty pleas by defendants unwilling to wait months prior to trial and unable to finance EDLO OLNHO\ FRQWULEXWH WR WKLV UHVXOW ´

51. Wealth-based pretrial detention also makes the community less safe. First, wealth-based detention unnecessarily jails those who could be released safely into the community. Several studies have shown that just two or three days in pi5.909 12 1-12 1->

53. The empirical evidence demonstrates that there is no significant relationship between requiring money bail as a condition of release and arrestees ¶ UDWHV RI DSSHDU court.[13]

54. Other jurisdictions throughout the country do not keep people in jail based on their wealth. Instead of relying on money, these jurisdictions release arrestees with unsecured financial conditions, non-financial conditions, and pretrial supervision practices and procedures that can help increase court attendance and public safety without requiring detention.

55. Other jurisdictions employ numerous less restrictive, non-monetary conditions of release to maximize public safety and court appearances. Such non-monetary conditions of release include, but are not limited to: unsecured bond, reporting obligations, phone and text message reminders of court dates, rides to court for those without transportation or a stable address, substance abuse treatment, mental health treatment, counseling, alcohol monitoring devices, or, in extreme cases of particular risk, electronic monitoring and home confinement.

56. Jurisdictions that rely on pretrial services and non-monetary conditions of release do not sacrifice public safety or court attendance. For example, Washington, D.C. releases more than 94% of all defendants without financial conditions of release and no one is detained on secured money bail that they cannot afford.[14] Empirical evidence shows that nearly 90% of

---

[13] *See, e.g.*, Arpit Gupta, Christopher Hansman, & Ethan Frenchman, *The Heavy Costs of High Bail: Evidence from Judge Randomization* 21 (May 2, 2016), *available at* https://goo.gl/OW5OzL ³2XU UHVXOWV VXJJHVW WKDW PRQH\ EDLO DQ\WKLQJ LQFUHDVHV IDLOXUH WR DSSHDU ´ &KDHO *Unsured Bonds: The As Effective and Most Efficient Pretrial Release Option* 11 (October 2013) *available at* https://goo.gl/UENBKJ ³:KHWKHU UHOHDVHG GHIHQGDQWV DUH KLJK between, XQVHFXUHG ERQGV RIIHU WKH VDPH OLNHOLKRRG RI FRXUW

[14] *See* D.C. Code § 23-1321; *see also* Pretrial Services Agency for the District of Columbia, *Release Rates for Pretrial Defendants within Washington, DC available at* https://goo.gl/VSDeDk ³,Q :DVKLQJWRQ '&ZH FRQVLVWHQ by find over 90% of defendants are

released defendants in Washington, D.C. make all court appearances, nearly 90% complete the pretrial release period without any new arrests, and 98-99% consistently avoid re-arrest for violent crime.[15]

57. The federal judiciary also eschews wealth-based detention, requiring an

Commonality

65. The relief sought is common to all members of Mr. Hester seeks relief from money bail policies, practices, and procedures, which violate the rights of the Class members. Mr. Hester also seeks relief mandating Defendants to change their policies, practices, and procedures so that the constitutional rights of the Class members will be protected in the future.

'HIHQGDQWV¶

66. Among the most important, but not the only, common questions of fact are:

a. Whether the Cullman County District Court and Defendant Gentry uses a predetermined secured money bail schedule;

b. Whether Defendant

Adequacy

70. Mr. Hester will fairly and adequately represent the interests of the proposed Class he seeks to represent.

71. Mr. Hester has no interests separate from or in conflict with those of the proposed Class he seeks to represent as a whole and seeks no relief other than the declaratory and injunctive relief, which is sought on behalf of the entire proposed Class he seeks to represent.

Class Counsel

72. Mr. Hester is represented by attorneys from the Southern Poverty Law Center, the American Civil Liberties Union Foundation of Alabama, the American Civil Liberties Union, Civil Rights Corps, and Thomas E. Drake, II, who have experience in litigating complex civil U L J K W V P D W W H U V L Q I H G H U D O F R X U W D Q G H [W H Q V L Y H N practices and the relevant constitutional and statutory law. Counsel has the resources, expertise, and experience to prosecute this action.

A. Rule 23(b)(2)

73. Class action status is appropriate because Defendants have acted in the same unconstitutional manner with respect to all class members: Defendants require all arrestees to pay for their release in a range pre-determined by a bail schedule. Those who can pay are released and those who cannot pay are detained.

74. The Class therefore seeks declaratory and injunctive relief that Defendants violate W K H 3 O D L Q W L I I ¶ V D Q G &O D V V P H P E H U V ¶ U L J K W V X Q G H U W financial conditions of release without a prompt and individualized release hearing with adequate procedural protections that includes an inquiry into and findings concerning their ability to pay, or meaningful considerations of alternative conditions of release. Because the putative Class

SECOND CLAIM FOR RELIEF
Fourteenth Amendment to the Constitution
(Substantive and Procedural Due Process Individualized Release Hearing)
Plaintiff and the Proposed Class versus Defendants Black, White, Chaney, Turner, and Gentry

81. Mr. Hester incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

82. The Fourteenth Amendment to the U.S. Constitution prohibits Defendants from depriving any person of life, liberty, or property without due process of law.

83. Plaintiff and the Proposed Class have a fundamental interest in pretrial liberty.

84. The Fourteenth Amendment to the U.S. Constitution requires that pretrial arrestees receive an individualized release hearing with adequate procedural safeguards to determine the least restrictive conditions on their pretrial liberty.

85. Defendants do not provide counsel; give arrestees an opportunity to testify or present evidence; restrict detention to extremely serious offenses; or require a finding that no affordable financial or non-financial condition of release will ensure appearance or public safety before jailing pretrial arrestees on monetary bail amounts that they cannot afford. Because Defendants create de facto detention orders by using predetermined monetary amounts, they also fail to apply any legal or evidentiary standards to determine whether a person should be detained prior to trial based on some immitigable risk.

86. Defendants violate 0 U + H V DVQHG ¶W KH 3 U R SRV HG &O D V V ¶ rights under the Fourteenth Amendment by jailing them without providing an individualized release hearing with the procedural protections described above.

THIRD CLAIM FOR RELIEF
Fourteenth Amendment to the Constitution
(Due Process Prompt Release Hearing)
Plaintiff and the Proposed Class versus Defendants Black, White, Chaney, Turner, and Gentry

87. Mr. Hester incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

88. The Fourteenth Amendment to the U.S. Constitution prohibits Defendants from depriving any person of life, liberty, or property without due process of law.

89. Plaintiff and the Proposed Class have a fundamental interest in their pretrial liberty, which outweighs any governmental interest in pretrial detention.

90. The Fourteenth Amendment requires a prompt release hearing following detention.

91. Defendants violate 0 U + H VDWQHU¶V WKH 3 U R SRVHG &O DV V ¶ V fundamental rights to pretrial liberty and due process by jailing them without providing a sufficiently prompt release hearing.

VII. Request for Relief

WHEREFORE, Plaintiff requests the following relief:

a. That the Court assume jurisdiction over this action;

b. Certification of a class under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, represented by Mr. Hester;

c. A declaration that Defendants Black, White, McSwain, Chaney, and Turner violate the Plaintiff¶ DQG &O DV V rights under the Fourteenth Amendment by setting secured financial conditions of release without inquiry into

or findings concerning their ability to pay, or meaningful consideration of alternative non-financial conditions of release;

d. A declaration that Defendants Black, White, Chaney, and Turner violate Mr. +HVWHU &OD VV PHPEHUV¶ GXH SURFHVV ULJKWV by conducting an individualized release hearing with adequate procedural safeguards;

e. A declaration that Defendants Black, White, Chaney, and Turner violate Mr. +HVWHUQ &OD VV PHPEHUV¶ due process rights by jailing them without conducting a sufficiently prompt release hearing;

f. An order and judgment preliminarily and permanently enjoining Defendant Gentry from prospectively detaining arrestees for failing to pay the monetary amount required by the bail schedule without a prompt individualized release hearing with adequate procedural safeguards that includes an inquiry into and findings concerning their ability to pay, the suitability of alternative non-financial conditions of release, and a finding on the record that any conditions of release are the least restrictive conditions necessary to achieve public safety and court appearance;

g. An award of prevailing party costs, including attorney fees; and

h. Such other relief as the Court deems just and appropriate.

Dated: August 1, 2017

Respectfully submitted,

/s/ Samuel Brooke
Samuel Brooke
On behalf of Attorneys for Plaintiff

Samuel Brooke (ASB-1172-L60B)
Micah West (ASB-1842-J82F)

on this March 9, 2018.

/s/ Samuel Brooke
Samuel Brooke