

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

SHARNALLE MITCHELL,

LORENZO BROWN,

COURTNEY TUBBS,

TITO WILLIAMS,

Plaintiffs,

v.

THE CITY OF MONTGOMERY,

Defendant.

Case No. 2:14-cv-186

COMPLAINT

Introduction

The Plaintiffs in this case are each impoverished people who were jailed by the City of Montgomery because they were unable to pay a debt owed to the City from traffic tickets. In each case, the City ordered the Plaintiff either to pay the City immediately or to "sit out" his or her debt in the City jail at a rate of \$50 per day. Although the Plaintiffs pleaded that they were unable to pay due to their poverty, each was sent to jail for nonpayment and none was afforded the inquiry into their ability to pay that the United States and Alabama Constitutions require. Once locked in the City's jail, the Plaintiffs were told that they could reduce their time in jail by working off their debts for an additional \$25 per day if they agreed to perform janitorial tasks assigned by City employees, including cleaning feces and blood from jail floors and wiping the jail bars inside their overcrowded cells.

3/18/14
SCANNED

The treatment of Sharnalle Mitchell, Lorenzo Brown, Tito Williams, and Courtney Tubbs reveals systemic illegality perpetrated by the City of Montgomery against some of its poorest people. The City of Montgomery, as a matter of policy and practice, engages in the same conduct against many other indigent human beings on a daily basis, unlawfully jailing people if they are too poor to pay traffic tickets and the associated fees that the City increasingly levies.

By and through their attorneys, Plaintiffs seek in this civil action the vindication of their fundamental rights, compensation for the violations that they suffered, injunctive relief assuring that their rights will not be violated again, and a declaration that the City's conduct is unlawful. In the year 2014, these practices have no place in our society.

Nature of the Action¹

1. It is the policy and practice of the City of Montgomery to jail people when they cannot afford to pay debts owed to the City resulting from prior traffic tickets without conducting any inquiry into the person's ability to pay and without considering alternatives to imprisonment as required by federal and Alabama law.
2. It is the policy and practice of the City to jail indigent people for these debts without informing people of their right to counsel and without providing adequate counsel.
3. It is the policy and practice of the City to hold prisoners in the City jail at a rate of \$50 per day, "serving out" their debts until the debts are extinguished. It is the policy and practice of the City to tell inmates that their time in City jail can be further reduced if they agree to "work off" their debts to the City while in jail by laboring at janitorial and other work for the City at a rate of \$25 per day toward their debts.

¹ Plaintiffs make the allegations in this Complaint based on personal knowledge as to matters in which they have had personal involvement and on information and belief as to all other matters.

4. It is the policy and practice of the City of Montgomery to contract with a private for-profit corporation, Judicial Correction Services, Inc. (“JCS, Inc.”), to perform what the City calls “probation” services, which consists of collecting City debts in exchange for fees added to the debts owed by people who cannot afford to pay their traffic ticket fees, costs, and surcharges immediately. It is the policy and practice of the City of Montgomery to rely on the discretionary recommendations and factual representations of this private entity to make decisions about whether to arrest a person, what disposition to enter in a person’s case, and whether to put the person on “probation” or to require immediate payment or jail despite the fact that the private entity has a significant personal financial stake in these judicial enforcement proceedings.

5. Plaintiffs seek declaratory, injunctive, and compensatory relief.

Jurisdiction and Venue

6. This is a civil rights action arising under 42 U.S.C. § 1983, 18 U.S.C. § 1595, and 28 U.S.C. § 2201, *et seq.*, and the Fourth, Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

7. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

Parties

8. Plaintiff Sharnalle Mitchell is a 23-year-old resident of Montgomery. Plaintiff Lorenzo Brown is a 58-year-old resident of Montgomery. Plaintiff Courtney Tubbs is a 23-year-old resident of Montgomery. Plaintiff Tito Williams is a 38-year-old resident of Montgomery.

9. Defendant City of Montgomery is a municipal corporation, organized under the laws of the State of Alabama, that operates the Montgomery City Jail and the Montgomery Municipal Court.

Factual Background

A. The Plaintiffs' Imprisonment

i. Plaintiff Sharnalle Mitchell

10. Sharnalle Mitchell is a 23-year-old woman and a mother of two children—a 1-year-old boy and a 4-year-old girl.

11. On January 26, 2014, Montgomery City police officers came to Ms. Mitchell's home and arrested her because she owed the City money from traffic tickets issued in 2010. Officers took Ms. Mitchell away from her two children and brought her to the City jail.

12. The next day, January 27, 2014, she was brought to the City court and was told that she would not be released from jail unless she could pay the total amount of the fines, costs, associated fees, and extra surcharges from her tickets, which she was told was now in excess of \$4,500. Ms. Mitchell told the City prosecutor and the court that she was too poor to pay.

13. The City Attorney and City judge did not make any inquiry into her ability to pay or into any alternatives to imprisonment as required by federal and Alabama law, and the City did not appoint her an attorney to represent her at the hearing. The City judge instead told Ms. Mitchell that she would have to "serve out" her fine at a rate of \$50 per day in the City jail.²

14. When Ms. Mitchell was taken back to the City jail, she was given a sheet of paper stating that her jail term had been reduced to 58 days "or" payment of \$2,907.³ See Exhibit 1. Ms. Mitchell was also informed by jail guards that she could "work off" an additional \$25 per

² According to JCS, Inc., Ms. Mitchell was ineligible for the company's "probation" services because the company believed that she was not making reliable payments to the company when placed on "probation" in the past. The City policy is to check with JCS, Inc. prior to making a case decision and to rely on the company's discretion about whether to put someone on "probation" or not.

³ The statements in court about the amount owed and the jail term to be served almost invariably differ from what debtors are told when they return upstairs to the jail. Typically, the jail term as announced by the judge is reduced, and some portion of the debt is reserved so that debtors, like Plaintiffs, are placed back on a "payment plan" when released. This practice ensures the City's ability to continue to hold hearings, to charge "supervision fees" and other charges through the private "probation" provider responsible for collecting the debts.

day toward her debt to the City if she agreed to perform labor consisting of janitorial tasks, including cleaning floors and wiping jail bars.

15. Desperate to get back to her young children, Ms. Mitchell accepted this opportunity on her first day in jail. Thereafter, she labored to clean the floors and jail bars as directed by City jail employees on as many other occasions as she could.

16. Attached to this Complaint is a photograph of Ms. Mitchell's initial desperate attempt to account for how much of her debt she "worked off" in this way, which she calculated by hand each night on the back of the piece of paper given to her by the City court so that she could determine when she could be released to her family. See Exhibit 3.

17. Prior to her jailing, Ms. Mitchell earned money from styling people's hair to support herself and her two children. Based on her income in 2013, Ms. Mitchell and her children were subsisting at about 33% below the federal poverty line.⁴ Because of her lack of resources, Ms. Mitchell relies on the Supplemental Nutrition Assistance Program (SNAP or "Food Stamps") and the Women, Infants, Children (WIC) program to feed her family.

18. At the time she was jailed in 2014, Ms. Mitchell did not own a house, car, financial instruments, or any other significant assets. She had no bank account. She was struggling to pay the utility bills and to provide clothes for her children.

ii. Plaintiff Lorenzo Brown

19. Lorenzo Brown is a 58-year-old disabled Montgomery resident. He was arrested early in the morning on January 24, 2014, when City police came to the dilapidated boarding

⁴ This number likely substantially overstates Ms. Mitchell's financial resources. Ms. Mitchell estimates her 2013 revenue from hair styling at approximately \$14,000. Her actual earnings were far lower, however, because Ms. Mitchell is responsible for purchasing all of the equipment and supplies necessary for her work. The federal poverty line for a family of three was \$19,530 in 2013. Ms. Mitchell had not worked for several weeks prior to her jailing. See Exhibit 4.

house in which he lives and took him into custody for failure to pay court fines, fees, and surcharges arising from traffic tickets issued in 2010.

20. Mr. Brown was kept in jail for three days until January 27, 2014, when he was brought to the Municipal Court. The Municipal Court informed Mr. Brown that he would be released from jail if he found someone to pay half of the total amount of his outstanding balance, a sum in excess of \$1,100 as reported to Mr. Brown. Mr. Brown informed the court about his previous drug addiction and his financial inability to pay the debt, and he asked the court for mercy.

21. The court, without conducting any inquiry into Mr. Brown's ability to pay, without appointing Mr. Brown an attorney to represent him at the hearing, and without considering any alternatives to imprisonment, ordered him to serve 44 days in City jail, purportedly to "serve out" his \$2,200 debt at a rate of \$50 per day.⁵

22. When Mr. Brown was brought back to the City jail, he was given paperwork informing him that he could be released after payment of \$1,400 "or" 28 days in jail. *See Exhibit 5.* This document also stated that Mr. Brown could be released "upon payment of half."

23. Mr. Brown depends on a monthly Social Security disability check for survival. He does not own a house, car, financial instruments, or any other significant assets. He maintains a bank account to collect his disability check, but it usually has no more than a few dollars in it because he survives check-to-check. *See Exhibit 7.*

24. Mr. Brown suffers constant pain from a variety of ailments, including spinal problems, arthritis, pain and a lack of movement in his hands, and persistent joint pain. As a result, he is not able to work consistently.

⁵ According to JCS, Inc., Mr. Brown was ineligible for the company's "probation" services in January 2014 because the company believed that he had not made reliable payments to the company in the past.

iii. Plaintiff Tito Williams

25. Tito Williams is a 38-year-old father of two children who lives in Montgomery with his mother and his children.

26. Mr. Williams went to the City police station on January 26, 2014, after he learned that he had outstanding warrants for debt from unpaid traffic tickets. Upon reporting to the police station, he was arrested and placed in the City jail (which physically connects to the police station). He was kept overnight and brought before the Municipal Court on January 27, 2014.

27. The City prosecutor and the court informed Mr. Williams that he owed the City approximately \$1,600 and asked him why he had not paid it. Mr. Williams informed the court that he had no money to pay the City. The judge, without conducting any inquiry into Mr. Williams's ability to pay and without considering any alternatives to imprisonment, ordered him to serve out his debt at \$50 per day.

28. When Mr. Williams returned to the City jail, he was given paperwork that told him that he would be released if he paid \$1,164 "or" served 23 days in jail. *See* Exhibit 8.

29. Mr. Williams was told by City jail employees that he could "work off" his debt and be released from confinement earlier at a rate of \$25 credit toward his debts per day if he agreed to labor for the City while in jail, including performing janitorial tasks and serving food at the jail. During Mr. Williams's first few days at the jail, several incidents involving another inmate led to a significant mess of blood and feces throughout an area of the jail. City jail employees did not want to clean the mess and offered extra labor credits to any inmate who agreed to clean the blood and feces. Mr. Williams, desperate to get home to his family, agreed to

clean the blood and feces from the jail floors on several occasions despite the extraordinary discomfort that the task brought him.⁶

30. At the time of his jailing, Mr. Williams had very recently obtained employment for a few weeks, but he lost his job while he sat in the City jail for his traffic ticket debt.

31. Since his release, Mr. Williams has obtained a new job that pays near the minimum wage. The new job is approximately a 20-minute drive from his home, and he must rely on his mother to drop him off and pick him up each day at great expense to his family.

iv. Plaintiff Courtney Tubbs

32. Courtney Tubbs is a 23-year-old Montgomery resident who was incarcerated by the State of Alabama from 2010 until 2013 due to a state criminal conviction separate from any municipal debt. Mr. Tubbs learned after his incarceration that he had been assessed traffic tickets by the City at the time of his 2010 arrest. He had not been aware of the tickets prior to his state incarceration. After his release, he also received a new traffic ticket in the summer of 2013.

33. Since his release from prison, Mr. Tubbs has not been able to find stable, significant employment, and he is indigent. He lives with his little brother and his mother, who is legally blind and who relies on Mr. Tubbs to help take care of her. He does not own a car, house, financial instruments, or any other significant assets. He has no bank account.

34. On January 25, 2014, while sitting on his front porch, Mr. Tubbs was arrested by City police.

35. Two days later, on January 27, 2014, Mr. Tubbs was brought before the City judge, who asked Mr. Tubbs why he had not paid his debt. Mr. Tubbs stated that he could not afford to pay. The judge asked Mr. Tubbs if he could get money down to the court that day, and

⁶ After his release, Mr. Williams did not receive the extra credit toward his debt as promised by the City. Other inmates also participated in this labor in addition to Mr. Williams.

Mr. Tubbs said that he could not. The court did not conduct an inquiry into Mr. Tubbs's ability to pay, did not appoint him an attorney, and did not consider alternatives to imprisonment. Mr. Tubbs was ordered imprisoned unless and until he paid \$626 "or" spent 12 days in jail.

B. The Plaintiffs' Release From City Jail

36. On January 30, 2014, and January 31, 2014, with the assistance of present counsel, Ms. Mitchell, Mr. Brown, Mr. Williams, and Mr. Tubbs each filed petitions for emergency relief in the Montgomery County Circuit Court seeking their immediate release from confinement. After conferring with the state court judge, counsel for the City and counsel for Plaintiffs agreed on a course of action to obtain the release of the Plaintiffs, to subsequently drop the emergency petitions for release from jail as moot, and to litigate the issues raised by the City's treatment of Plaintiffs in federal court.

37. According to this agreement and following a similar procedure to that taken by the City in two similar suits (2013-cv-732-MEF and 2013-cv-733-MEF), counsel for Plaintiff was to file Notices of Appeal in Municipal Court objecting to the orders of incarceration for the inability to pay debts, and the Plaintiffs would be subsequently released from the City jail.

38. Mr. Tubbs was released by the City on February 5, 2014, having served out the entirety of his debt. Mr. Williams was released on February 7, 2014 and told by the City to pay the remainder of his debts by May 6, 2014. *See* Exhibit 9. Ms. Mitchell and Mr. Brown were each released on February 10, 2014, and the City has ordered them to pay the City \$100 and \$150 per month respectively or risk re-imprisonment.⁷ *See* Exhibits 2, 6.

⁷ After the Notices of Appeal were filed as agreed, the Municipal Court notified Plaintiffs' counsel that, pursuant to policy, it intended to charge Ms. Mitchell and Mr. Brown appellate bonds of \$500 for each of their tickets for the right to appeal the order imprisoning them, meaning that Ms. Mitchell would be charged \$9,000 and Mr. Brown \$5,000 for the right to appeal. Counsel requested an indigency hearing for the purpose of proceeding in forma pauperis with the Notices of Appeal. On the date of that hearing, the Court cancelled the previous order jailing the Plaintiffs and ordered Ms. Mitchell and Mr. Brown released and subject to a new debt "payment plan."

39. Plaintiffs Mitchell, Brown, and Williams thus continue to owe the City debts relating to fines, fees, costs, and extra unknown surcharges from traffic cases that were long ago resolved.⁸ They remain impoverished and struggling to provide for themselves and their families. *See* Exhibits 4, 7, 10.⁹ When they are again unable to afford the payments required by the City, they will again be subject to the same unconstitutional treatment pursuant to the City's ongoing policies and practices. They thus suffer an ongoing fear of imminent imprisonment based on the City's policies and practices with respect to municipal debt collection.

C. The City's Policies and Practices

40. The treatment of Plaintiffs was caused by and is representative of the City's policies and practices concerning traffic tickets and collecting related debts. These facts, policies, and practices are similar to those alleged in the Amended Complaints in cases 2013-cv-732-MEF (Doc. 10) and 2013-cv-733-MEF (Doc. 9), which describe additional people whose rights were violated by the same policies and practices.

41. The Plaintiffs and other witnesses have observed numerous other impoverished Montgomery residents jailed by the City for non-payment of debts without a meaningful inquiry into their ability to pay, without the representation of counsel, and without the consideration of whether imprisonment serves legitimate state interests in light of available alternatives as required by federal and Alabama law.¹⁰

⁸ Notwithstanding the unconstitutionality of the City's conduct regardless of state law, the City has not offered in any of the Plaintiffs' cases any valid state-law basis for continuing to put people on "probation" years after tickets are resolved, let alone for jailing them for nonpayment of old monetary debt from various costs, fees, and extra surcharges associated with that "probation."

⁹ Exhibit 10 is a copy of the sworn declaration and motion that Mr. Williams submitted to the state court while jailed. Since his release, he has obtained another low-wage job for several weeks to replace the one lost because of his jailing, but his financial situation remains materially unchanged from when he appeared before the City court.

¹⁰ In addition to violating the United States Constitution, these practices also violate the Alabama Constitution and the explicit requirements of Alabama court rules. *See* Ala. Const. art. I, §§ 1, 6, 22; Ala. R. Crim. P. 26.11.

42. The Plaintiffs and other witnesses have observed numerous other people and families who were told that they or their family member would be held in jail by the City unless and until they brought forward large sums of money to pay off debts supposedly owed for traffic tickets and subsequent surcharges.

43. On the date that each Plaintiff was order jailed, there were 67 people brought into court from the City jail for the City's jail docket, almost all of which involved money owed for traffic tickets or minor offenses. The City holds Municipal Court every business day.

44. The City's policy is to assess fines, costs, surcharges, and additional fees upon a finding of a traffic violation. If the person can afford to pay the total cost, the person is permitted to pay, and the case is closed. If the person cannot afford to pay the entire amount, the City either gives the person a date by which to pay in full or puts the person on a "payment plan"

45. The City has contracted with Judicial Correction Services (JCS, Inc.) to collect those payments, referring to this system of debt collection for traffic tickets as "probation." JCS, Inc. operates what it calls an "Offender Funded Model" of probation, promising the City that it will not charge the City for its services. Instead, JCS, Inc. charges debtors—those who cannot afford to pay their tickets immediately—additional monthly fees for the ability to be on "probation," typically \$40 per month on top of whatever is owed to the City. JCS, Inc. also charges an initial "set up" fee when a person is placed on "probation." The City places people on such "probation" payment plans pursuant to general practice and standing orders.

46. If an impoverished person is unable to make a full payment, JCS, Inc. often takes out the amount owed to JCS, Inc. first so that JCS, Inc. is paid even if a person's debt to the City is not reduced.

47. If a person misses payments or pays less than ordered, JCS, Inc. has the purported contractual authority and discretion to decide whether to petition the City for “revocation” of probation. JCS, Inc. also has a policy of placing people who cannot make full payments—from whom the company has difficulty making a profit—in “warrant status,” which can result in warrants issued for their arrest and which constitutes a JCS, Inc. determination that JCS, Inc. will not accept the person for future probation supervision. JCS communicates this decision to the City, and the City policy is to agree not to place such people back on payment plans, requiring instead that those people pay in full or go to jail.

48. In other cases in which a person is making substantial payments, JCS, Inc. has a personal financial interest in extending a person’s probation and in keeping the person on a plan for as long as possible so that it can profit from the collection of more monthly fees.

49. Thus, under the City’s scheme, JCS, Inc. can not only decide whether to initiate judicial revocation proceedings, but also whether a person is put on probation and what judicially ordered conditions are imposed. JCS, Inc., will also make other recommendations to the City judge concerning how JCS, Inc. believes the person has fared on probation, whether the person should be placed on probation, whether JCS, Inc. considers the person “eligible” for probation, what the amount of monthly court-ordered payments should be, and a variety of other case-related decisions. For example, in the cases of Ms. Mitchell and Mr. Brown, the City could not put them on payment plan probation with JCS, Inc. because JCS, Inc. declined to accept them.

50. JCS, Inc. has a personal financial interest to conduct its role as a probation officer in a way that maximizes its personal profit and not necessarily as a neutral public court officer.

51. JCS, Inc. uses a “probation” room inside the City building that also houses the Municipal Court, directly across from the Municipal courtroom. A JCS, Inc. employee often sits

in the Courtroom near the judge and advises the judge about how to handle the cases of “probationers” and potential “probationers.”

52. JCS, Inc. and the City enforce a policy and practice of initiating and issuing arrest warrants when a person misses a payment or fails to make sufficient payments without considering the person’s ability to pay—even when they have knowledge that the person is indigent—and without providing notice and summoning the person to court for a hearing. Instead, City policy allows the City to issue and serve arrest warrants, and City officers go to the homes of traffic debtors to arrest them.

53. The City often executes these warrants prior to or over the weekend, which results in a person serving needless extra time in jail prior to the next available court date.

54. When warrants are issued and executed, the City adds fees, costs, and surcharges to the amounts of debt already owed. In addition to court fees and JCS, Inc. fees and costs, the City routinely adds surcharges for warrants, a “solicitor” fee, and even a 30% debt-collection fee. Navigating the origin of these numerous fees and surcharges and determining whether they are even validly assessed by the City in any particular case is a complicated inquiry involving the application of state law, local law and practice, and constitutional law to a person’s case history.

55. When a person is brought into court after an arrest, the City’s policy is to order them to pay their debt—or a significant portion of their debt—immediately or be held in jail until their debt is extinguished at a rate of \$50 per day. If JCS, Inc. informs the City that it does not want to accept a person onto “probation,” the person will be ordered to pay or be jailed.

56. The City calls these orders “fines or days” and refers to this policy, without any irony, as “commuting” people’s “sentences.”

57. If family members are present, the City often calls them up to the bench and asks them to pay as much of their family member's debts as they can on the threat that the person who allegedly owes the money will be jailed if the family members do not pay.¹¹ The City does not conduct any meaningful inquiry into the person's ability to pay and does not even explain to people how they might claim indigency through standard forms issued by the State of Alabama.

58. As with the Plaintiffs in this case, the amount of debt announced to debtors by the judge in court often differs from the amount listed on the paperwork that they receive on their return to the jail. The paperwork amount is usually less, meaning that people like the Plaintiffs will often have a balance remaining after they "serve out" their fine, leading to their placement back on a payment plan and their continued supervision. The City appears to refer to this as "reopening" their cases, although this "reopening" and the corresponding modifications that it entails are not performed at any formal hearing or even in the person's presence.

59. Once people return to the jail from City court, they are told of the City policy to have them "work off" an extra \$25 per day toward their debts if the person agrees to labor in the City jail while they are imprisoned.

60. Inmates desperate to return to their families by "working off" their debts more quickly compete to be selected by City jail employees for a limited number of difficult, unsanitary, and demeaning daily labor tasks.

¹¹ For example, on January 27, 2014, the same day that the Plaintiffs appeared in the City court, another local man was brought from the City jail before the court for unpaid traffic tickets. The judge informed the man and his family, who appeared with him in court, that they would have to pay about \$915 in order to get him out of jail or else he would "sit out" his debt to the City. When the family informed the judge that they were too poor to pay, the judge ordered him held in custody, and the man was taken back to the City jail. The man's mother was concerned for her family because the man had recently been hired at a new manufacturing job and was still in his probationary period with his new employer. He would have been fired from his job if he served out his debt. The next day, the man's indigent, disabled mother was able to pull together some money, and she brought \$452 to the clerk's office. The clerk's office accepted the money, and the man was released that afternoon.

61. The City's debt collection practices are enormously profitable, especially in getting family members with no legal obligation to pay any money to the City to come up with money to get their loved ones released from jail and in getting low income people to forgo basic necessities of life in order to pay JCS, Inc. and the City in an attempt to avoid jail.

62. For example, the 2013 City of Birmingham budget reflects approximately \$2.8 million from court fines and traffic citations, the City of Mobile approximately \$2 million, and the City of Huntsville approximately \$2.5 million. In contrast, the City of Montgomery budget reflects revenue of \$15.9 million from municipal court "fines and forfeitures."¹²

63. The City uses the money collected through these procedures to fund the City jail, to pay Municipal Court judicial salaries, to pay City Attorney's Office salaries, and to fund other portions of the City budget.

64. The City's recent "Amnesty Program" starkly demonstrates its practice of jailing persons who are unable to pay debts to the City. In May 2013, Montgomery Mayor Todd Strange and City Municipal Court Administrator Kenneth Nixon (who is also a member of the Mayor's cabinet), announced that the Municipal Court would offer an "Amnesty Program" on the first two Saturdays in June. Under this program, the City announced that it would remove certain fees, eliminate arrest warrants, and institute a payment plan if individuals were unable to pay the full amount to which the City claimed it was entitled.

65. However, at least 15 people were arrested on the first day of the Amnesty Program because they had too much money allegedly outstanding (greater than \$2,500) or did not bring at least \$150 (or 10% of what was owed, if greater) to pay towards their debts.

¹² The City's publicly available budget does not itemize "fines and forfeitures" in as much detail as do the budgets of some other cities, which makes it difficult for the public to know the exact source of these funds. But, the "fines and forfeitures" collected by the City of Montgomery appear substantially higher than those collected by any other major Alabama City, even those cities larger than Montgomery.

66. These policies and practices have created a culture of fear among the City's poorest residents, who are afraid even to appear in City court to explain their indigence because they know they will be jailed by the City without any meaningful process. Indeed, Mr. Nixon reported to the Montgomery Advertiser that many residents were jailed during the amnesty program because they owed too much and could not pay. Mr. Nixon publicly acknowledged that the arrests probably scared others from participating in the Amnesty Program.

67. The same fear motivates many very poor City residents to sacrifice expenditures on food, clothing, utilities, sanitary home repairs, and other basic necessities of life in order to scrape together money to pay traffic debt to the City.

68. Mr. Nixon warned that, following the 2013 Amnesty Program, the City would be "stricter" about arresting people for unpaid debt. The City also has a policy of referring unpaid debt to the Montgomery County District Attorney's Office, which will send letters to debtors threatening imminent arrest if they do not pay their debts. A surcharge of 30% of the value of the debt is added to the debt to compensate the District Attorney's Office for its participation in the City's debt collection. The City purports to have the authority to arrest and jail indigent people when they cannot pay even these additional surcharges.

69. The City has stated that it seeks to use these collection programs and tactics to go after old traffic debt, including debt dating back to the 1980s.

70. As in the Plaintiff's cases, the City's policy is to modify orders of incarceration outside of any formal judicial process. These modifications include: decreasing a person's sentence from what was announced in court so that a person is released with a remaining balance owed; allowing a person's release without any hearing if the person or family members present

some money to the City clerk; and allowing City employees to reduce the time a person is ordered to be in jail based on labor performed in the jail without any judicial involvement.

71. Plaintiffs and witnesses have observed numerous other violations of basic constitutional rights in the Montgomery Municipal Court within the past year.

72. For example, on January 27, 2014, a homeless military veteran appeared with a social worker from the Veterans Administration. The man told the judge that he could not afford the debts but that he hoped to be receiving some disability payments from the Veterans Administration and hoped to get a job when he completed a mental health program in which he was currently enrolled. The judge told him that the City would not wait for the Veterans administration to pay the man and that, if the man could not pay by June, he would lose his job because he would be “upstairs sitting your fine out” at the City jail.

73. On that same day, the City ordered several other people to jail terms for failure to pay traffic ticket debt despite their protestations of indigence. The City did not hold any inquiry into their ability to pay as required by clearly established Alabama and federal constitutional law.

These cases included:

- a. A diabetic man who claimed to be too poor to afford his debt. The judge told him: “I gotta get some money before you can go.” Then the judge said: “you get \$1,000 down here, you can come home.” As the man attempted to protest to the judge, courtroom security took him back into custody.
- b. Another inmate was brought out from the jail, and the judge told his family that he would not be released unless the family could get several hundred dollars down to the municipal court clerk’s office.
- c. Another woman claimed to be too poor to afford her debt to the City. The judge told her: “you’ve got to get this paid or you’ll end up in jail.” He then ordered her to pay in full within 4 weeks and told her that she would not be granted any extensions. The judge did not conduct any hearing into her indigence.

74. Plaintiffs seek the following relief and hereby demand a jury in this cause for all matters so appropriate.

Claims for Relief

Count One: Defendant City of Montgomery Violated Plaintiffs' Rights By Jailing Them For Their Inability To Pay the City.

75. Plaintiffs incorporate by reference the allegations in paragraphs 1-74.

76. The Fourteenth Amendment's due process and equal protection clauses have long prohibited imprisoning a person for the failure to pay money owed to the government if that person is indigent and unable to pay. Defendant violated Plaintiffs' rights by imprisoning them when they could not afford to pay the debt allegedly owed. Defendant violated Plaintiff's rights by imprisoning them, and by threatening to imprison them, without conducting any inquiry into their ability to pay and without conducting any inquiry into alternatives to imprisonment as required by the United States Constitution.

77. Defendant's policy and practice of imprisoning people when they cannot afford to pay their debt and of automatically converting monetary fines into days in jail at a rate of \$50 per day violates the due process and equal protection provisions of the United States Constitution.

Count Two: Defendant City of Montgomery Violated Plaintiffs' Rights By Imprisoning Them For Inability To Pay Debts Without Appointing Adequate Counsel.

78. Plaintiffs incorporate by reference the allegations in paragraphs 1-77.

79. Defendant violated Plaintiffs' right to the effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution by imprisoning Plaintiffs during proceedings initiated by City prosecutors at which Plaintiffs did not have the benefit of adequate counsel and did not knowingly, intelligently, and voluntarily waive counsel.

80. The City's policy of not providing adequate counsel at hearings in which indigent people are ordered to be imprisoned in the City jail for unpaid debts, which are, in turn, based on

traffic violations at which the person was also unrepresented, violates the Sixth and Fourteenth Amendments to the United States Constitution.

Count Three: Defendant City of Montgomery's Use of a Private Actor With a Personal Financial Stake in the Outcome of Judicial Proceedings and Case Decisions As a Supposedly Neutral Probation Official Violates Plaintiffs' Due Process Rights.

81. Plaintiffs incorporate by reference the allegations in paragraphs 1-80 above.

82. The Due Process Clause of the Fourteenth Amendment prohibits neutral judicial officials and neutral civil and criminal law enforcement actors from having a personal financial interest in the cases prosecuted and decided by the government. The City has contracted with a private, for-profit corporation to perform a traditional court function—probation—and made the resolution of people's cases contingent on the advice, recommendations, discretionary decisions, enforcement actions, and representations of this private entity.

83. Because this non-neutral actor profits significantly from the decisions of the City about whether to place people like Plaintiffs on probation, what conditions to require, and how vigorously to enforce those conditions, there is a realistic possibility that those financial interests will affect its judgment when it participates in those decisions. Because this private entity has a significant personal financial interest in how these cases are resolved, unlike a traditional neutral judicial actor, prosecuting authority, or probation department, the City's policies and practices violate the longstanding due process restrictions against such self-interested arrangements in American courts of justice.

Count Four: Defendant City of Montgomery's Scheme of Forcing Indigent Prisoners to Labor in the City Jail in Order to Work Off Their City Debts Violates the Thirteenth Amendment to the United States Constitution and Federal Law.

84. Plaintiffs incorporate by reference the allegations in paragraphs 1-83 above.

85. The City unlawfully imprisoned Plaintiffs for a monetary debt owed to the City. On top of being unlawfully imprisoned for failure to pay debts owed to the City, Plaintiffs Mitchell and Williams were, pursuant to City policy, coerced with longer unlawful prison terms by City officials if they did not “volunteer” to labor in the City jail under disgusting conditions for an extra credit of \$25 per day toward their debts. This amounts to peonage and forced labor, whereby a person is coerced by threat of legal sanction—i.e. imprisonment—to work off a debt to a master. It is also an abuse of the legal process that exploited Defendant’s unlawful incarceration of Plaintiffs to force them to accept, in their desperation to end their unlawful incarceration more quickly, the conditions of forced labor, performing janitorial tasks that even City employees did not want to perform, such as cleaning significant amounts of blood and feces in an overcrowded jail environment.

86. Plaintiffs allegedly owed the City a solely monetary debt for *traffic tickets* and associated fees, costs, and surcharges. Because Plaintiffs were not imprisoned or sentenced to involuntary servitude as punishment for any crime, the Thirteenth Amendment bars the coerced use of their labor to work off their purely monetary debt. The City’s conduct also violates federal statutory law, including 18 U.S.C. § 1589 (forced labor under threat of physical restraint or abuse of process), § 1593A (benefitting from peonage); and § 1595 (providing a civil remedy).

Count Five: Defendant City of Montgomery’s Use of Jail and Threats of Jail To Collect Debts Owed to the City Violates Equal Protection Because It Imposes Unduly Harsh and Punitive Restrictions On Debtors Whose Creditor Is the Government Compared To Those Who Owe Money to Private Creditors.

87. Plaintiffs incorporate by reference the allegations in paragraphs 1-86 above.

88. The United States Supreme Court has held that, when governments seek to recoup costs of prosecution from indigent defendants—for example, the cost of appointed counsel—they

may not take advantage of their position to impose unduly restrictive methods of collection solely because the debt is owed to the government and not to a private creditor. Not only does the City charge additional fees only to those people who are indigent and cannot afford to pay their costs, fees, and fines in full immediately and place such indigent people on “pay only” probation when the cases of wealthier people would be closed, but by imposing imprisonment, threats of imprisonment, indeterminate “probation,” and other restrictions on Plaintiffs, the City takes advantage of its control over the machinery of the City jail and police systems to deny debtors the statutory protections that every other Alabama debtor may invoke against a private creditor. This coercive policy and practice constitutes invidious discrimination and violates the fundamental principles of equal protection of the laws.

Count Six: Defendant City of Montgomery’s Policy and Practice of Issuing and Serving Arrest Warrants Solely Based on Nonpayment of Monetary Debts Violates the Fourth and Fourteenth Amendments.

89. Plaintiffs incorporate by reference the allegations in paragraphs 1-88 above.

90. The City’s policy and practice is to issue and serve arrest warrants at the homes of those who have not paid their traffic debt. These warrants are sought, issued, and served without any inquiry into the person’s ability to pay even when the City has advance knowledge that the person is impoverished and unable to pay the debts. These warrants are sought, issued, and served without any finding of probable cause that the person has committed any offense. The City chooses to pursue warrants instead of issuing summons even when it has spoken to people on the phone or in person and has the opportunity to notify them to appear in court. As in the case of Mr. Brown, the City often chooses to serve these warrants prior to a weekend so that a person can spend, as did Mr. Brown, up to three full days in the City jail prior to the next court session, a practice designed to increase the time a person spends in jail and that is arbitrary and

without justification for such delay. These practices violate the Fourth and Fourteenth Amendments and result in a deprivation of fundamental liberty without adequate due process.

Count Seven: Defendant City of Montgomery's Policy and Practice of Requiring a Costly "Appeal Bond" for Indigent People Without Conducting a Meaningful Inquiry Into Their Ability to Pay Violates Due Process and Equal Protection.

91. Plaintiffs incorporate by reference the allegations in paragraphs 1-90 above.

92. When Plaintiffs Mitchell and Brown attempted to file an emergency appeal of the order imprisoning them for owing the City a monetary debt, the City followed its policy of attempting to bar their appeal unless Plaintiffs paid to the City a total of \$9,000 and \$5,000 respectively, significantly more than the amount either owed to the City, which Plaintiffs were already unable to afford—a fact of poverty that led to their illegal incarceration in the first place.

93. This policy of charging appeal bonds to those who cannot afford them, which a previous decision from this Court held unconstitutional, violates the equal protection rights secured by the Fourteenth Amendment.

Request for Relief

WHEREFORE, Plaintiffs request that this Court issue the following relief:

- a. A declaratory judgment that the Defendant City violated Plaintiffs' Fourteenth Amendment due process and equal protection rights by imprisoning them because they could not afford to pay the City and by imprisoning them without conducting any meaningful inquiry into their ability to pay or into any alternatives to incarceration;
- b. A declaratory judgment that Defendant violated Plaintiffs' rights under the Sixth and Fourteenth Amendments by imprisoning them without appointing adequate counsel at the judicial proceeding that led to their incarceration;
- c. A declaratory judgment that Defendant violated Plaintiffs' rights by employing and relying on a non-neutral "probation" officer who has a significant personal financial stake in the outcome of Plaintiffs' judicial proceedings;
- d. A declaratory judgment that the City violated Plaintiffs' constitutional and statutory rights by coercing them into performing labor in its jail in order to work off their debt;
- e. A declaratory judgment that Defendant violated Plaintiffs' equal protection rights by imposing harsh debt collection measures not imposed on debtors whose creditors are private entities;

- f. A declaratory judgment that Defendant violated Plaintiffs' Fourth and Fourteenth Amendment rights by issuing and serving arrest warrants without probable cause, with unreasonable delay prior to presentment, and without providing pre-deprivation of liberty process where such process is easily available to the City;
- g. A declaratory judgment that Defendant violated Plaintiffs' equal protection rights by charging indigent people appeal bonds on which the right to pursue and appeal was purportedly contingent;
- h. An order and judgment preliminarily and permanently enjoining Defendant from enforcing the above-described unconstitutional policies and practices against Plaintiffs;
- i. A judgment compensating the Plaintiffs for the damages that they suffered as a result of the City's unconstitutional and unlawful conduct;
- j. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and 18 U.S.C. § 1595, and any other relief this Court deems just and proper.

Respectfully submitted,

/s/Matthew Swerdlin

Matthew Swerdlin (ASB-9090-M448)



3/18/14

MATTHEW SWERDLIN, Attorney at Law
P.O. Box 550206
Birmingham, AL 35255
(205) 440-3214
matthewswerdlin@gmail.com

Alec Karakatsanis (D.C. Bar No. 999294)
(Pending Contemporaneous Pro Hac Vice Motion)

Executive Director
Equal Justice Under Law
916 G Street, NW Suite 701
Washington, DC 20001
(202)-681-2409
alec@equaljusticeunderlaw.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following parties via First Class Mail on March 17, 2014:

City of Montgomery, Alabama
c/o City Attorney's Office
Legal Department
103 North Perry Street
Montgomery, AL 36104

s/Matt Swerdlin



3/18/14