IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARLY GRAFF, et. al., *Plaintiffs*, v. ABERDEEN ENTERPRIZES II, INC., et al., *Defendants*.	Case No. 4:17-CV-606-TCK-JFJ

PLAINTIFFS' OPPOSITION TO DEFENDANTS JUDGES' MOTION TO DISMISS

BRIEF H

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INTRODUCTION

Plaintiffs in this case challenge an unlawful debt-collection scheme that has forced them, and thousands of similarly situated indigent Oklahomans, into "a cycle of mounting debts, arrest, and incarceration." Second Am. Compl. ("SAC") ¶ 67, Doc. 212. Defendants Tulsa County Judges Dawn Moody, Doug Drummond, and William Musseman and Rogers County Judge Terrell Crosson (collectively, the "Judicial Defendants") play a central role in keeping that cycle churning in their counties. Specifically, at the request of court clerks or the for-profit debt-collection company Aberdeen Enterprizes II, Inc., ("Aberdeen"), the Judicial Defendants issue warrants for arrest of people who have not paid court debt, regardless of the reason for nonpayment. The Judicial Defendants then require every person arrested on such a debt-collection warrant to remain in jail, sometimes for days, unless they can pay a fixed sum ($250 in Tulsa County and however much outstanding court debt the arrestee has in Rogers County) to gain their freedom. At no point in this process do the Judicial Defendants make the constitutionally required inquiry into the debtors' ability to pay, either before issuing a warrant for nonpayment of court debt or before setting the amount the debtor must pay to be released from jail.

Plaintiffs seek an order from this Court declaring that these warrant and jailing practices violate the Fourth and Fourteenth Amendments. Specifically, in Counts Two and Five, Plaintiffs challenge as a violation of the Due Process and Equal Protection Clauses the Judicial Defendants' practice of issuing warrants for nonpayment without making any inquiry into the debtor's ability to pay. In Count Three, Plaintiffs allege that the Judicial Defendants' practice of issuing warrants not based on oath or affirmation violates the Fourth Amendment. In Count Four, Plaintiffs allege that the Judicial Defendants' practice of requiring arrestees to pay a fixed sum to obtain their release from jail, without the constitutionally required inquiry into ability to

pay, violates the Due Process and Equal Protection Clauses. And in Count Seven, Plaintiffs challenge as a violation of the Equal Protection Clause Defendants' use of unconstitutionally onerous debt-collection methods, including, as relevant here, the role that the Judicial Defendants' warrant and jailing practices play in that scheme.

In their motion to dismiss, the Judicial Defendants do not argue that their practices actually are consistent with the Constitution. Instead, they seek to evade liability for their unlawful acts by challenging Plaintiffs' standing; asking this Court to abstain from hearing the case under *Younger v. Harris*, 401 U.S. 37 (1971), or the *Rooker-Feldman* doctrine; and arguing that this Court lacks authority to grant the requested declaratory relief. None of the Judicial Defendants' attempts to avoid scrutiny of their illegal conduct has merit.

Multiple Plaintiffs have standing to challenge the Judicial Defendants' jailing and warrant practices. Two Plaintiffs have active debt-collection arrest warrants out against them right now, providing them with standing to challenge the jailing practices. The existence of an active warrant creates standing to challenge post-arrest procedures. *See, e.g.*, *Jones v. Murphy*, 470 F. Supp. 2d 537, 551 (D. Md. 2007). Here, if Plaintiffs are arrested, they will be forced to wait in jail for up to four days because they are too poor to pay the hundreds of dollars the Judicial Defendants will require for their release. Plaintiffs thus have concrete and imminent injuries sufficient to satisfy Article III's requirements, and an order from this Court declaring unconstitutional the Judicial Defendants' practice of setting a release fee without regard to ability to pay will redress these anticipated injuries.

Further, five Plaintiffs have standing to challenge the Judicial Defendants' warrant practices. These Plaintiffs cannot afford to pay their court debt, and it is only a matter of time until the Judicial Defendants issue new arrest warrants against them. Aberdeen and the court

clerks have a practice of seeking a new warrant when a debtor misses payments, as each of these Plaintiffs has. Once a request is made, it is the Judicial Defendants' practice to issue the warrant. This, too, is an imminent injury, and an order declaring the Judicial Defendants' warrant practices unconstitutional will shield Plaintiffs from it.

The Judicial Defendants' argument based on *Younger* abstention fails as well. This argument largely repeats ones made by other defendants, which Plaintiffs primarily address in their Opposition to the County Sheriffs' Motion to Dismiss in Their Official Capacity. The Judicial Defendants invoke one new case, *Juidice v. Vail*, 430 U.S. 327 (1977), but their argument suffers from the same infirmity as their co-defendants': There are no ongoing proceedings here that Plaintiffs seek to enjoin or with which this case could interfere, and so *Juidice,* and *Younger* abstention more broadly, does not apply.

Moreover, the Judicial Defendants err in contending that declaratory relief is unavailable because there is no live controversy and because the Oklahoma appellate process provides Plaintiffs with a remedy. The former argument is merely a reframing of the contention that Plaintiffs lack standing, and it fails for the same reasons. The latter argument misunderstands Plaintiffs' claims. Plaintiffs seek declaratory relief related to *anticipated future* injuries. There is not yet any order from which Plaintiffs could appeal, and a state court appeal is therefore not an option, let alone one that would provide a full remedy.

This Court has both jurisdiction to hear Plaintiffs' claims and authority to issue the requested relief. The Judicial Defendants' motion to dismiss should be denied.

RELEVANT BACKGROUND

I. Warrant and Jailing Practices in Tulsa County

In Tulsa County, judges, the Court Clerk, and Cost Administrator assess fines, fees, and costs against persons with criminal or traffic convictions at the close of each case. SAC ¶ 117.

If an individual cannot pay off this court debt immediately, the Cost Administrator establishes a payment plan, with a minimum payment of $25 per month. *Id.* ¶ 118. Each debtor receives a payment plan "regardless of the debtor's ability to pay or whether the debtor depends on government assistance to survive" and regardless of whether the debtor communicates her poverty to the Cost Administrator. *Id.* ¶¶ 118-19.

After the Cost Administrator establishes a payment plan, if the debtor misses a certain number of payments, the Cost Administrator or Court Clerk will request that Judge Moody issue a warrant for the debtor's arrest. *See Id.* ¶¶ 120-21. The Court Clerk and Cost Administrator do not include any information about the debtor's ability to pay in the warrant request and do not make their requests under oath or affirmation. *Id*. Upon receiving a warrant request, Judge Moody issues a warrant as a matter of course, without making the constitutionally required inquiry into the debtor's ability to pay. *Id*. After Judge Moody issues the warrant, if the debtor does not make a payment to get the warrant recalled within 30 days, the Cost Administrator and Clerk transfer the case to Aberdeen to take charge of collections. *Id.* ¶ 125.[1]

A debtor may still make a warrant-recall payment after a case is transferred to Aberdeen, but even if she does, Aberdeen maintains control of collections and has authority to request a new debt-collection arrest warrant. *Id.* ¶ 126. Like the Court Clerk and Cost Administrator, Aberdeen requests a new warrant after a debtor misses a certain number of payments. *Id.* ¶ 126. Aberdeen also requests new warrants without providing essential information about the debtor's ability to pay to the state court or making the request under oath or affirmation. *Id.* ¶¶ 89-90; *id.* at 36 n.23. The Tulsa Clerk and Cost Administrator then put the request in front of Judge

[1] Tulsa County ceased using Aberdeen to collect debt after Plaintiffs initiated this action, but before the filing of the Second Amended Compliant. SAC ¶ 124. The statement of relevant background captures the practices of the Judicial Defendants in Tulsa County prior to that point.

Moody, who issues a warrant, again without making any inquiry into the debtor's ability to pay. *Id.* ¶ 126.

If a debtor is arrested on a debt-collection warrant—regardless of whether the Clerk and Cost Administrator or Aberdeen requested the warrant—the debtor is taken to the Tulsa County jail. *Id.* ¶ 128. Pursuant to policy established by the Tulsa County Judges, each debtor must pay $250 to be released from jail immediately,[2] or, if the debtor is too poor to pay, she must wait until the next "cost docket." *Id.* ¶¶ 128-29, 342. Judge Moody presides over the cost docket on Tuesdays and Fridays, meaning that debtors who cannot pay remain in jail up to four days in a normal week and longer over holidays. *Id.* ¶ 129. When a debtor finally appears in court, Judge Moody releases her without requiring any payment (unless the debtor has another active warrant unrelated to court debt), and the debtor continues to owe court debt. *Id.* ¶¶ 130, 132.

Judges Drummond and Musseman supervise Judge Moody and approved these policies. *Id.* ¶ 33; *id.* at 47 n.29.

II. Warrant and Jailing Practices in Rogers County

Rogers County operates much the same way. As in Tulsa County, judges and the Rogers County Court Clerk assess fines, fees, and costs at the end of criminal and traffic cases. SAC ¶ 133. If a debtor cannot pay off this court debt immediately, the Rogers Clerk establishes a payment plan, normally with a minimum payment of $75 per month. *Id.* ¶ 134. The Rogers Clerk sets the amount owed per month without regard to the debtor's ability to pay. *Id.*

If a debtor then fails to make payments for a certain amount of time, Judge Crosson, on request of the Rogers Clerk, will issue a warrant for the debtor's arrest. *Id.* ¶ 136. These debt-collection arrest warrants issue without regard to, and frequently in the face of evidence of, a

[2] This $250 does not operate as a bond used to secure the debtor's appearance. Rather, the money is simply applied to the debtor's outstanding debt. SAC ¶ 128.

debtor's inability to pay, and the Rogers Clerk does not make the requests under oath or affirmation. *Id.* ¶ 137. The Rogers Clerk then transfers the debtor's case to Aberdeen to take charge of collections. *Id.* ¶¶ 137-38.

As with cases arising out of Tulsa County, a debtor can pay Aberdeen to recall her warrant, but the case will remain with Aberdeen even after that point. *Id.* ¶ 138. If the debtor then misses payments, Aberdeen will request a new warrant. *Id*. Aberdeen, again, does this without providing any information about the debtor's ability to pay to the state court and without making the request under oath or affirmation. *Id*. Judge Crosson, in turn, issues the warrant without making the constitutionally mandated inquiry into the debtor's ability to pay. *Id*.

Once law enforcement arrests a debtor on such a warrant, the debtor is taken to the Rogers County jail. *Id.* ¶ 139. Pursuant to Judge Crosson's policy, each debtor must pay the *total* amount of debt owed (which can be in the thousands of dollars) to obtain immediate release,[3] or, if the debtor is too poor to pay, she must wait until the next arraignment hearing. *Id.* ¶¶ 6, 139-40. Arraignment hearings are held on Mondays, Tuesdays, Thursdays, and Friday, meaning that a debtor may remain in jail up to three days in a normal week (or longer in a holiday week) if she cannot pay. *Id.* ¶ 140. Once the debtor appears in court, Judge Crosson requires the debtor to either pay $100 or, if the debtor is too poor to pay, to "sit it out" in jail for four days before release, with each day in jail earning a $25 credit against the debt owed. *Id*.

[3] As in Tulsa County, this payment does not act as a bond and "is simply a cash payment to be applied to the amount owed by the debtor." SAC ¶ 139.

III. Plaintiffs Are at Risk of Being Subjected to the Judicial Defendants' Practices

Multiple Plaintiffs in this action have cases arising in Tulsa and Rogers County. Two have active debt-collection arrest warrants out against them.[4] One is Randy Frazier, a 59-year-old Tulsa resident who has debt from cases arising in Tulsa County. SAC ¶¶ 161, 164. A debt-collection warrant issued against Mr. Frazier in January 2017, and the Tulsa Clerk and Cost Administrator referred his case to Aberdeen for collection. *Id.* ¶ 164. He has not been able to work since suffering a mini-stroke in November 2015 and has no income beyond Social Security disability payments. *Id.* ¶ 162. Mr. Frazier cannot afford to pay his court debt or the $250 necessary to obtain his release, should he be arrested. *Id.* ¶¶ 19, 165.

The second Plaintiff with an active warrant is Carly Graff. She owes $435.83 in debt from a single traffic ticket case arising in Rogers County. *Id.* ¶ 18. Judge Crosson issued a debt-collection warrant against Ms. Graff in October 2017, and the Rogers Clerk transferred her case to Aberdeen for collection. *Id.* ¶ 158. Ms. Graff depends on public assistance to support not only herself, but also her children. *Id.* ¶ 18. She frequently struggles to purchase groceries and pay her electricity bills, and she avoids going outside for fear of arrest. *Id*. Ms. Graff cannot afford to pay the $435.83 she will have to pay to obtain her release if she is arrested. *Id.*

Aberdeen is in charge of collecting court debt from three additional Plaintiffs with cases in Tulsa County District Court. These Plaintiffs also cannot pay at all or struggle to pay sporadically, but they do not yet have active arrest warrants.[5] Linda Meachum is a 58-year-old

[4] In addition to these Plaintiffs, Melanie Holmes also has active debt-collection arrest warrants out against her, including one from the Tulsa County District Court. SAC ¶ 25. Because Plaintiffs do not rely on Ms. Holmes to establish their claims against the Judicial Defendants, her allegations are not discussed here.

[5] Two other Plaintiffs, Melanie Holmes and Ira Wilkins, have court debt from cases arising in Tulsa County, but their allegations are not necessary to discuss in this opposition to the Judicial Defendants' motion. SAC ¶¶ 24-25.

Tulsa resident whose only income is $194 in food stamps and $50 she receives each month for helping an elderly neighbor. *Id.* ¶ 21. As alleged in the Second Amended Complaint, Ms. Meachum cannot afford to pay her court debt. *Id*. Christopher Choate, a 40-year old resident of Tulsa, depends on federal disability benefits to support himself, his wife, and his wife's grandson, and to make child support payments. *Id.* ¶ 23. Mr. Choate has struggled to make payments on his court debt from this limited income and, at the time the Second Amended Complaint was filed in May 2018, his benefits were "soon [to] be reduced from approximately $800 per month to $588 per month." *Id.* ¶¶ 23, 187. David Smith, a 32-year-old resident of Tulsa County, earns approximately $1,200 a month, which he uses to pay child support for his son and to support his girlfriend and her three children. *Id.* ¶¶ 20, 170. Mr. Smith cannot afford to pay his court debt; he has only been able to make periodic payments by foregoing his child support payments and, as a result, visitations with his son. *Id.* ¶ 173.

ARGUMENT

I. Plaintiffs Are at Imminent Risk of Being Subjected to the Judicial Defendants' Unconstitutional Practices and Therefore Have Standing to Sue

The Judicial Defendants contend that Plaintiffs lack standing to challenge their unlawful jailing and warrant practices, and attack each aspect of Article III standing, "which requires that a plaintiff establish injury-in-fact, causation and redressability." *Finstuen v. Crutcher*, 496 F.3d 1139, 1143 (10th Cir. 2007). In advancing this argument, the Judicial Defendants contradictorily alternate between claiming that Plaintiffs' injuries are speculative because they depend on uncertain events in the future and that Plaintiffs' claims are not redressable by the Judicial Defendants because they involve past injuries.

The Judicial Defendants are wrong on all fronts. Plaintiffs' challenge to the Judicial Defendants' jailing and warrant practices are forward-looking only and seek a declaration

relating to imminent injuries that the Judicial Defendants will inflict on Plaintiffs in the absence of court intervention. Plaintiffs have standing to pursue these claims.

A. Plaintiffs Have Alleged a Concrete Injury-in-Fact

The Judicial Defendants argue that Plaintiffs have failed to plead injury-in-fact because their claims are too speculative to be legally cognizable. Defendants Judges' Motion to Dismiss and Brief in Support ("Doc. 233") at 14-16. This claim is meritless.

Jailing Practices. Plaintiffs Randy Frazier and Carly Graff each have standing to challenge the Judicial Defendants' detention practices.[6] A plaintiff has standing to seek equitable relief so long as she faces an "imminent," rather than a "conjectural" or "speculative," threat of being subjected to the challenged conduct. *See, e.g.*, *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004). A plaintiff has standing to challenge post-arrest procedures if (1) the risk of arrest is imminent and (2) the procedures will necessarily be applied upon arrest. *See, e.g.*, *Jones v. Murphy*, 470 F. Supp. 2d 537, 551 (D. Md. 2007) (finding standing to challenge practice of subjecting arrestees to strip searches where plaintiff faced realistic threat of arrest); *Franklin v. City of Chicago*, 102 F.R.D. 944, 947-48 (N.D. Ill. 1984) (finding standing to challenge practice of subjecting arrestees to transportation without seatbelts where plaintiff "face[d] a realistic threat of being subjected to an arrest").[7]

Both of these elements are satisfied here. First, it is settled that the existence of an active arrest warrant suffices to establish that an arrest is imminent for purposes of Article III. In

[6] In focusing on certain Plaintiffs' standing, Plaintiffs do not concede that the remainder lack standing. *See, e.g.*, *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981) ("Because we find California has standing, we do not consider the standing of the other plaintiffs.").

[7] Although courts have not explicitly articulated their holdings as a two-prong test, a hypothetical demonstrates why it is sensible. If a plaintiff brought suit to challenge the use of handcuffs (a post-arrest procedure necessarily used upon arrest), adequate allegations that the risk of arrest is imminent would, of course, be sufficient to establish that the risk of being subjected to the use of handcuffs is imminent as well.

Juidice v. Vail, the Supreme Court held that a plaintiff who "had not been imprisoned, but alleged that he was 'in imminent danger of being imprisoned pursuant to [a contempt order]" had standing to challenge "the contempt citation or the short period[] of incarceration" to which he would be subjected. 430 U.S. 327, 332 (1977); *see also, e.g.*, *Oryem v. Richardson*, No. 10-cv-1221, 2011 WL 13174639, at *4 (D.N.M. Apr. 11, 2011) (finding standing based on a "likelihood of an unlawful arrest" on the basis of "an outstanding, but invalid, bench warrant"); *Jones*, 470 F. Supp. 2d at 551. Mr. Frazier and Ms. Graff have active arrest warrants commanding their arrest from the Tulsa County District Court and Rogers County District Court, respectively. *See* SAC ¶¶ 158, 164. They can be arrested on those warrants *at any time*, just as the plaintiff in *Juidice* could be arrested on the contempt order. Indeed, that the Tulsa County and Rogers County Defendants are resisting Plaintiffs' motion for a preliminary injunction enjoining such arrests demonstrates that the threat is serious and not speculative. *See* Rogers County Defendants' Brief in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, Doc. 142; Tulsa County Defendants' Brief in Opposition to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, Doc. 145.

Second, upon arrest, Mr. Frazier and Ms. Graff will automatically be subjected to, and injured by, the Judicial Defendants' jailing practices. *Cf. Jones*, 470 F. Supp. 2d at 551; *Franklin*, 102 F.R.D. at 947–48. Plaintiffs have alleged that anyone arrested for nonpayment in Tulsa County or Rogers County must pay a fixed sum to be released from jail and that those who cannot afford to pay this sum must wait in jail, sometimes for days, before they can see a judge. *See* SAC ¶¶ 128-29, 139-40, 342. Further, Mr. Frazier and Ms. Graff have pled that they are too poor to pay the preset amounts the Judicial Defendants require for release, *see* SAC ¶¶ 18–19, so there is no possibility that they will be able to avoid the unconstitutional jailing practice.

In sum, because Mr. Frazier and Ms. Graff are at imminent risk of being arrested and because those arrests will necessarily lead to the Judicial Defendants requiring them to remain in jail because of their inability to pay a fixed sum, Mr. Frazier and Ms. Graff have satisfied Article III's injury-in-fact requirement.

Warrant Practices. Plaintiffs also have standing to challenge the Judicial Defendants' practice of issuing unconstitutional warrants. "Article III standing exists [w]hen the plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1192 (10th Cir. 2000) (internal quotation marks omitted; brackets in original).[8] "The plaintiff need not demonstrate to a certainty that [he] will be prosecuted, only that [he] has an actual and well-founded fear that the law will be enforced against [him]." *Id.* (internal quotation marks and citation omitted).

Under this standard, Plaintiffs Linda Meachum, Christopher Choate, and David Smith have standing to seek relief against the Tulsa County Judges in connection with the court debt they currently owe. Ms. Meachum "has no money to pay Aberdeen" and has not paid; Mr. Choate and Mr. Smith can barely afford basic necessities and have struggled to pay their debts. SAC ¶¶ 20, 23, 172-73. In other words, they expect to "engage in a course of conduct"—

[8] Although this standard is often applied in First Amendment cases, as the Second Circuit has noted, "[t]he Supreme Court has not limited standing to pursue pre-enforcement challenges only to plaintiffs intending conduct arguably affected with a constitutional interest." *Knife Rights, Inc. v. Vance*, 802 F.3d 377, 384 n.4 (2d Cir. 2015). And other courts have found the standard applicable outside the context of the First Amendment. *See, e.g.*, *Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 545 (10th Cir. 2016) (Second Amendment); *Knife Rights*, 802 F.3d at 384 (Due Process Clause vagueness claim). In any event, Plaintiffs submit that, in light of their indigence, they have a constitutional right to be free from warrants, arrest, and detention when not paying the money they use for basic survival to Aberdeen.

nonpayment of court debt, due to indigence, for an extended period—that Defendants treat as an offense subject to arrest. These Plaintiffs will soon miss the requisite number of payments, and the Court Clerk and Cost Administrator (or Aberdeen, if Tulsa renews its relationship) will seek new warrants. *See id.* ¶¶ 88, 121, 126. Those requests will, in turn, lead Judge Moody—acting pursuant to a policy approved by Judges Musseman and Drummond—to issue new debt-collection arrest warrants. *See Id.* ¶¶ 33, 91, 126. This threat is more than credible. As Plaintiffs have alleged, as of February 2017, there were more than 22,000 active arrest warrants in Tulsa County issued for engaging in precisely this course of conduct. *Id.* ¶ 6.

The Supreme Court's decision in *Juidice* is again instructive. In addition to the plaintiff who was facing an already issued contempt order, the Supreme Court also found that another plaintiff had standing. No contempt order had yet issued against this second plaintiff, but he had failed to comply with an order to show cause, the precondition that allowed a judge to issue a contempt order. 430 U.S. at 332. This was sufficient to create standing because it was expected that the judge would, at some point, exercise the authority to issue the contempt order, even though such an order did not issue immediately. *See id.* at 329 (noting that one contempt order issued "[n]early two months" after noncompliance with a court order). Here, in the absence of court intervention, Plaintiffs' nonpayment will prompt new warrants—even if not immediately—just as noncompliance with the show-cause order was expected to prompt the issuance of a contempt order in *Juidice*. Although *Juidice* predates the "credible threat" standard,[9] it nonetheless applies analogous standing principles and demonstrates that Plaintiffs have met the standard.

[9] The Supreme Court first introduced the standard in *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979).

Ms. Graff and Mr. Frazier also have standing to seek relief against Judge Crosson and the Tulsa County Judicial Defendants, respectively. If Ms. Graff and Mr. Frazier are arrested on their current warrants, their debt will remain and they will be given new payment plans that they will be equally unable to pay. *See* SAC ¶ 156, 162; *see also id.* ¶ 132. With that nonpayment will come new debt-collection arrest warrants. As a result, they too are at imminent risk of being subjected to the Judicial Defendants' warrant practices, and to subsequent detention.

Finally, it is irrelevant that the arrest warrants against these Plaintiffs might not issue for a few months. *See Juidice*, 430 U.S. at 329. So long as the likelihood of the warrants issuing is sufficiently concrete—which it definitely is here—the precise date on which the injury will occur need not be known now. *See, e.g.*, *NB ex rel. Peacock v. District of Columbia*, 682 F.3d 77, 84 (D.C. Cir. 2012) (finding plaintiff had standing where precise date injury would occur in the future was unknown, but likely to occur "at some point over the course of a year"); *see also id.* (citing cases finding standing to challenge injuries that would not occur for over a year); *Lynch v. Baxley*, 744 F.2d 1452, 1457 (11th Cir. 1984) (plaintiff had standing to challenge practice of jailing people committed for mental health reasons even though he had experienced such detentions irregularly—specifically, "two . . . in the past three years"—because he still suffered from mental health issues).[10]

[10] Nor is it relevant that Plaintiffs have not alleged that a warrant issued between the filing of this action and the filing of the Second Amended Complaint. At most, this might demonstrate that Defendants have temporarily changed their practices, but a voluntary change of practices under such circumstances cannot defeat this Court's Article III jurisdiction. *Cf. EEOC v. CollegeAmerica Denver, Inc.*, 869 F.3d 1171, 1173 (10th Cir. 2017) (live controversy remains after voluntary cessation of conduct unless "[i]t is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur" (internal quotation marks omitted)).

B. Plaintiffs Have Alleged that Their Injuries Are Fairly Traceable to the Judicial Defendants

The Judicial Defendants next assert that Plaintiffs have not satisfied the "'fairly traceable' element of Article III standing" because Plaintiffs have not shown how their injuries are "attributable to the challenged conduct of defendants." Doc. 233 at 16.[11] It is easy to see, however, that the injuries Plaintiffs fear will be caused *directly* by the Judicial Defendants. When Mr. Frazier is arrested, he will be forced to stay in jail for up to four days because Judge Moody, pursuant to a policy approved by Judges Drummond and Musseman, will require Mr. Frazier to pay $250, which he cannot afford, to obtain his release. And when Ms. Graff is arrested, she will remain in jail for up to three days because Judge Crosson will require her to pay $453.38, which she cannot afford, to obtain her release.

It is equally obvious that the Judicial Defendants will bear immediate responsibility for the injuries caused by their warrant practices. Judge Moody—acting pursuant to a policy approved by Judges Musseman and Drummond[12]—will issue any debt-collection warrants

[11] The Judicial Defendants' argument appears at times to rest on the erroneous view that Plaintiffs seek a declaration related to injuries suffered in the past. *See* Doc. 233 at 16 (arguing that Plaintiffs "have not actually alleged they have had any contact with any of Defendant State Judges"). Plaintiffs' claims are forward-looking, and as alleged, Plaintiffs will soon enough have "contact" with the Judicial Defendants' practices.

[12] In their brief, the Judicial Defendants do not argue that Judge Musseman or Judge Drummond require separate consideration for purposes of Article III standing. In fact, the Judicial Defendants have abandoned a related argument that they made in their motion to dismiss Plaintiffs' Amended Complaint that these two Judges did not "personally participate" in the challenged practices. *See* Doc. 169 at 25. That abandonment is warranted. Judges Drummond and Musseman are responsible for policies related to debt collection in Tulsa County District Court. They supervise Judge Moody, SAC ¶ 33, who is a special judge and who they therefore may fire "at will" under Oklahoma law. *See* Okla. Att'y Gen. Op. No. 07-3 (Feb. 14, 2007). Judge Moody, in turn and as has been explained, issues debt-collection arrest warrants based solely on nonpayment and sets the amount required for release from jail—without any inquiry into ability to pay or other pre-deprivation process—as a matter of regular practice. Critically, the Second Amended Complaint alleges that Judges Drummond and Musseman were part of a committee that recognized the unlawfulness of this conduct and that even recommended ceasing

against Linda Meachum, Christopher Choate, David Smith, and Randy Frazier. SAC ¶¶ 33, 342. Likewise, Judge Crosson will issue the anticipated debt-collection arrest warrant against Carly Graff. *Id.* ¶¶ 34, 342. Thus, Plaintiffs' injuries are fairly traceable to the Judicial Defendants.

At one point, the Judicial Defendants, without citation to any case, suggest that Plaintiffs' injuries are not traceable to the Judicial Defendants because they stem from Plaintiffs' "fail[ure] to meet their financial obligations and . . . fail[ure] to seek or appear for a review of their ability to pay." Doc. 233 at 17. This confuses standing with the merits. The Judicial Defendants are free to argue at the appropriate time that, because Plaintiffs will not have made payments or appeared in court (a contention that would ignore that a core allegation of Plaintiffs' claim is that there is no pre-arrest hearing), they have not violated Plaintiffs' constitutional rights. That is a merits argument. But it does not change that Plaintiffs' claimed injuries stem directly from the Judicial Defendants' conduct. The non-payment (or phantom non-appearance) is the step that triggers the Judicial Defendants' warrant and jailing practices. This means that the Judicial Defendants directly cause Plaintiffs' anticipated injuries.

C. Plaintiffs' Injuries Will Be Redressed by a Favorable Ruling from This Court

The Judicial Defendants' challenge to the redressability element of Article III standing fails as well. They argue that the requested relief will not redress Plaintiffs' injuries because it "will not have any effect on Plaintiffs' underlying criminal cases." *See* Doc. 233 at 18. But Plaintiffs do not challenge their underlying criminal cases; they challenge the unlawful practices relating to the collection of court debt. The Judicial Defendants' argument thus misconceives Plaintiffs' claims as being backward-looking when they are, in fact, only forward-looking. As

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the practice of arresting debtors based solely on nonpayment—which follows directly from the warrants Judge Moody issues—but that Judges Musseman and Drummond nevertheless chose to allow business to continue as usual rather than implement that recommendation. *See* SAC at 47 n.29, ¶ 33.

explained, Plaintiffs still owe court debt, are indigent, and are at imminent risk of being subjected to the Judicial Defendants' wrongful practices. The requested declaratory order stating that the Judicial Defendants' detention and warrant practices are unconstitutional will redress these injuries so long as the Judges respect that order and amend their practices. Because the Judicial Defendants can be expected to do so, a declaratory judgment from this Court "is likely to redress" Plaintiffs' injuries. *ACORN v. City of Tulsa*, 835 F.2d 735, 738 (10th Cir. 1987).

II. The *Younger* Abstention Doctrine Does Not Bar Plaintiffs' Claims

The Judicial Defendants also seek to deprive this Court of jurisdiction by invoking *Younger v. Harris*, 401 U.S. 37 (1971). The vast majority of the Judicial Defendants' argument under *Younger* duplicates the arguments made by their codefendants. For the sake of efficiency, Plaintiffs do not here repeat the reasons why the Judicial Defendants' argument fails, and instead refer the Court to Plaintiffs' Opposition to the County Sheriffs' Motion to Dismiss in Their Official Capacity. *See* Br. I, Section V.B, pp. 28-34.

The Judicial Defendants do, however, depart from their codefendants in invoking *Juidice* in support of their *Younger* argument. *See* Doc. 233 at 11-12. As the Judicial Defendants note, *Juidice* applied *Younger* abstention to a challenge to ongoing civil contempt proceedings. 430 U.S. at 335. According to the Judicial Defendants, because a debt-collection arrest warrant is "essentially an order to appear before the court to show cause," *Younger*'s application to *Juidice* should be extended here. Doc. 233 at 12.

The Judicial Defendants' analogy, and their reliance on *Juidice*, is unconvincing. As an initial matter, the Judicial Defendants' warrants are not "essentially" orders to show cause. Orders to show cause summon a party in litigation to court. The arrest warrants at issue here, by contrast, result in law enforcement forcibly arresting an individual, taking her to jail, and only then to court. *See* Pls.' Opp. to the Rogers County Defendants' Motion to Dismiss in Their

Official Capacity, Br. B, Section I, pp. 4-5. More fundamentally, *Juidice* concerned a challenge to contempt orders that issued *after* an order to show cause hearing. 430 U.S. at 332. The prior show-cause hearing was pivotal to the Court's application of *Younger* because it demonstrated that there were "ongoing state proceedings," *id.* at 337, a necessary element of *Younger* abstention that is lacking here.

Juidice is inapposite for another, related reason. There, the plaintiffs sought to challenge "statutory provisions authorizing contempts" and thus the very existence of the contempt proceedings. *Id.* at 328. That could have been done at the show-cause hearings. *Id.* at 337 n.14. The plaintiffs' lawsuit was therefore akin to an injunction "directed at the state prosecutions as such" and something that "could [have] be[en] raised in defense of the [contempt] prosecution." *Id.* at 337. *Younger* therefore prohibited the suit. Here, there is not only no ongoing enforcement action, but also if one is ever initiated, Plaintiffs will not be able to assert as a defense either that the warrants for their arrest issued unconstitutionally or that their pre-hearing detention was unlawful. *See Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975). *Juidice* thus has no bearing on Plaintiffs claims.

III. Declaratory Relief Is Available

In compliance with § 1983's limits on relief against judicial officers acting in a judicial capacity, Plaintiffs have sought only a declaratory judgment, and not an injunction, against the Judicial Defendants. Nonetheless, the Judicial Defendants make two arguments that even declaratory relief is unavailable here. Both are wrong.

First, the Judicial Defendants assert that a live controversy sufficient to support declaratory relief exists only when a party is "faced with abandoning [the party's] rights or risking prosecution." Doc. 233 at 20. Yet the Judges cite nothing to support this contention. All that is required for declaratory relief is Article III standing. *See, e.g.*, *Surefoot LC v. Sure Foot*

Corp., 531 F.3d 1236, 1240 (10th Cir. 2008). The Judicial Defendants' own brief recognizes as much, observing that "[t]he Supreme Court has explained that the phrase 'case of actual controversy' in the Federal Declaratory Judgment Act refers to the type of cases and controversies that are justiciable under Article III." Doc. 233 at 20. For the reasons explained above, Plaintiffs have satisfied these requirements. And, in any event, Plaintiffs also satisfy the Judicial Defendant's newly invented standard: Plaintiffs submit that, because of their serious indigence, they have a right to refrain from paying the money they use for basic survival to Aberdeen without being exposed to warrants, arrests, and detention.

Second, the Judicial Defendants argue that declaratory relief is inappropriate because "the appellate process" provides a more suitable remedy. Doc. 233 at 21. This argument fails because there is no state appellate process that Plaintiffs can invoke. Again, Plaintiffs' claims are forward-looking: They seek a declaratory judgment about the constitutionality of actions that the Judicial Defendants are likely to undertake in the future, and Plaintiffs cannot appeal something that has not yet occurred.

IV. The Judicial Defendants' Remaining Arguments Are Without Merit

The Judicial Defendants offer a scattershot of undeveloped additional arguments in support of their dismissal from this case. None has merit; indeed two of them ask this Court to ignore Supreme Court precedent.

First, the Judicial Defendants argue that the Anti-Injunction Act ("AIA") bars the requested relief. Doc. 233 at 8. The AIA prohibits federal courts from staying ongoing "proceedings in a State court *except as expressly authorized by Act of Congress*." 28 U.S.C. § 2283 (emphasis added). The Supreme Court has ruled that § 1983 expressly authorizes injunctions, *Mitchum v. Foster*, 407 U.S. 225, 243 (1972), and so the AIA poses no barrier to this suit. Moreover, as noted above, Plaintiffs do not challenge ongoing state proceedings.

Second, the Judicial Defendants argue that this Court lacks authority to "direct[] the State Judges to conduct their dockets in a particular way." Doc. 233 at 7. Plaintiffs, however, do not ask this Court to issue an order controlling how the Judicial Defendants manage their dockets; they seek only a declaratory order finding that the Judicial Defendants violate the Constitution by issuing warrants for non-payment in the manner alleged in the complaint, and by setting a fixed sum that Plaintiffs must pay to be released from jail without considering ability to pay. That relief is well within the power of this Court. *See, e.g.*, *ODonnell v. Harris Cty.*, 892 F.3d 147, 164 (5th Cir. 2018). *Knox v. Bland*, which the Judges cite, offers them no support: As the Judicial Defendants acknowledge, *see* Doc. 233 at 7, that case concerned the power to issue a writ of mandamus to a state court. *See* 632 F.3d 1290, 1292 (6th Cir. 2011). Plaintiffs make no such request here.

Third, the Judicial Defendants, citing *Will vs. Michigan Department of State Police*, 491 U.S. 59 (1989), argue that a "state judge sued in his/her official capacity is not a 'person' under 42 U.S.C. § 1983 and therefore cannot be sued." Doc. 233 at 6. *Will*, however, concerned an action against a state defendant in his official capacity for *damages*, and the Supreme Court took care to explain that its holding did not extend to official capacity actions, like the one here against the Judicial Defendants, for prospective equitable relief. 491 U.S. at 71 n.10.

Fourth, the Judicial Defendants argue that the *Rooker-Feldman* doctrine bars Plaintiffs' claims. Doc. 233 at 8. As Plaintiffs discuss in their Opposition to the County Sheriffs' Motion to Dismiss in Their Official Capacity, *see* Br. I, Section V.B, pp. 23-36, because Plaintiffs do not seek review and rejection of any state court judgment, *Rooker-Feldman* does not apply.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court deny the Judicial Defendants Motions to Dismiss.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

/s/ Seth Wayne