

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

DAVID DIXON, et al.,
Plaintiffs,

v.

CITY OF ST. LOUIS, et al.,
Defendants.

Case No. 4:19-cv-112

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

INTRODUCTION

Plaintiffs file this reply in support of their Motion for Class Certification, addressing the Judge Defendants' arguments that Plaintiffs' proposed class does not satisfy Rule 23 because (1) it includes members who lack standing to seek prospective relief, *see* ECF No. 60 at 3-7; (2) the class representatives lack typicality and adequacy, *see* ECF No. 60 at 7-8; and (3) it does not meet commonality requirements, *see* ECF No. 60 at 8-11. All of these arguments are squarely foreclosed by well-settled Supreme Court precedent.

Plaintiffs seek to certify the following class for prospective relief: All arrestees who are or will be detained in the Medium Security Institution (referred to as "the Workhouse") or the City Justice Center ("CJC"), operated by the City of St. Louis, post-arrest because they are unable to afford to pay a monetary release condition. The proposed class in this case is exactly the sort of class described in Rule 23(b)(2). Plaintiffs' proposed class is also identical to classes recently certified in actions challenging materially similar unconstitutional wealth-based pretrial detention systems in jurisdictions across the country. *See ODonnell v. Harris Cnty., Texas*, No. CV H-16-1414, 2017 WL 1542457, at *1 (S.D. Tex. Apr. 28, 2017); *Caliste v. Cantrell*, No. 17-CV-6917, 2018 WL 1365809 (E.D. La. Mar. 16, 2018); *Walker v. City of Calhoun*, No. 15-CV-170, 2016 WL 361580 at *10 (N.D. Ga. Jan. 28, 2016); *Daves v. Dallas Cnty.*, No. 3:18-CV-0154-N, 2018 U.S. Dist. LEXIS 160742 (N.D. Tex. Sept. 20, 2018); *Buffin v. City & Cnty. of San Francisco*, No. 15-cv-04959, 2018 U.S. Dist. LEXIS 31875 (N.D. Cal. Feb. 26, 2018).

For the reasons explained below, this Court should grant Plaintiffs' Motion.

LAW AND ARGUMENT

I. Plaintiffs Do Not Lack Standing

The Judge Defendants' arguments regarding standing have no merit and are contrary to Supreme Court precedent. The Judge Defendants first argue that because many class members

allege a past injury they lack standing to seek prospective relief. ECF No. 60 at 3-4. By this, the Judge Defendants appear to argue that because their actions have led to the prolonged detention of members of the proposed class, the constitutional violation the Judge Defendants have caused is complete. As a result, they assert, the class is overly broad because those members of the proposed class who have received a hearing could not benefit from the proposed relief, which is the provision of a meaningful hearing to contest conditions of release within 48 hours for people who have been newly arrested.

The Judge Defendants further argue that because named Plaintiffs are no longer detained, they are not representative of the class, ECF No. 60 at 5-7. Finally, the Judge Defendants argue that named Plaintiffs lack standing because they have not established that each individual named Plaintiff is likely to be subjected to the same unconstitutional conduct in the future. ECF No. 60 at 5, relying on *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).

Supreme Court precedent contradicts all of these arguments. *County of Riverside v. McLaughlin*, is a class action challenging the manner and timing of the County of Riverside's probable cause determinations. 500 U.S. 44, 47 (1991). They defined their class as "all present and future prisoners in the Riverside County Jail including those pretrial detainees arrested without warrants and held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who have been or may be denied prompt probable cause, bail or arraignment hearings." *Id.* at 49. Plaintiffs were detained at the time of filing "and were being held in custody without having received a probable cause determination, prompt or otherwise" *Id.* at 51.

The defendants in *Riverside* made the identical arguments the Defendant Judges make here: they challenged "standing" because, after they filed their lawsuit, the plaintiffs had been provided their probable cause determination or been released from custody. *Id.* at 51. Defendants there also argued "there is no standing because it is too late for [plaintiffs] to receive a prompt hearing[.]"

Id. Finally, they argued that the plaintiffs failed to show they are likely to be subjected to the same unconstitutional conduct at a later date. *Id.*

The Supreme Court rejected Defendants' arguments, holding that the plaintiffs had standing to bring their class action. *Riverside*, 500 U.S. at 52. The Court explained that "at the core of the standing doctrine is the requirement that a plaintiff 'allege personal injury fairly traceable to the defendant's unlawful conduct and likely to be redressed by the requested relief'" (citing *Allen v. Wright*, 486 U.S. 737, 751 (1984)). *Id.* at 51. The Court found that Plaintiffs had standing because at the time the complaint was filed, the named Plaintiffs "were suffering a direct and current injury as a result of their detention and would continue to suffer that injury until they received the hearing to which they were entitled." *Id.* Thus, the injury was current because it was capable of being redressed through injunctive relief at the time of filing and the Defendants' "argument that the constitutional violation had already been 'completed' relies on a crabbed reading of the complaint." *Id.*

Here too Judge Defendants' arguments fall within the "continuing, present adverse effects" exception because at the time the complaint was filed the named Plaintiffs were suffering from a direct and current injury as a result of their detention and would continue to suffer that injury until they received the hearing to which they were entitled. Defendants' argument that the requested remedy fails because it would require a hearing in the past is therefore unavailing.

Further, the Supreme Court in *Riverside* reiterated that "some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires, thus the "relation back" doctrine is properly invoked to preserve the merits of the case for judicial resolution. *Id.* at 52 (citing *United States Parole Comm'n v. Geraghty* 445 U.S. 388, 388 (1980), and *Swisher v. Brady*, 438 U.S. 204, 213-214, n.11 (1978)). Like in *Riverside*, Plaintiffs here bring transitory

claims on behalf of an ongoing stream of class members who suffer the same harm from “certainly impending” injury. *Id.* at 51-52 (citing *Gerstein v. Pugh*, 420 U.S. 103, 110-11 n.11 (1975)). Both here and in *Riverside*, the relief would remedy the constitutional injuries whether they have been detained more or less than 48 hours. The injury for which plaintiffs seek relief is against continued detention without process or findings, and the relief itself is a prompt hearing with procedural safeguards and substantive due process.

Moreover, the case law relied on by Defendant Judges is inapposite. Defendant Judges rely on *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) and *O’Shea v. Littleton*, 414 U.S. 488 (1974). However, the Supreme Court in *Riverside* specifically *distinguished* the Plaintiffs’ claims from those brought in *Lyons* as discussed above. Additionally, the Supreme Court found *Lyons* inapplicable because the unconstitutional actions in that case had ceased before the plaintiff filed his complaint, unlike in *Riverside*. Here, like in *Riverside*, the Named Plaintiff’s constitutional violation was ongoing at the time the complaint was filed. As such, *Lyons* is inapplicable and Defendant Judges’ reliance on that decision is misplaced. Similarly, *O’Shea* is distinguishable because none of the named plaintiffs in that case even alleged they were suffering the unconstitutional injury at the time the complaint was filed. *O’Shea*, 414 U.S. at 495.¹

The named Plaintiffs clearly have standing, on behalf of themselves and the transitory class that they represent, to complain about ongoing constitutional violations to which the named Plaintiffs were being subjected when they filed this case and to which members of the Plaintiff class are currently being subjected every day. *See Riverside* 500 U.S. at 51-52; *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). As such, the court should follow the holding in *Riverside* and rule in favor of Plaintiffs on the issue of standing.

¹ Defendant Judges also cite to *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975), for the contention that there is no continuing, present adverse effects in this case. (ECF Doc. 60, p. 11). However, the court specifically notes in its discussion of this issue that the case “is not a class action.” *Id.* at 402. The decision in *Preiser*, which did not

II. The named Plaintiffs Claims Meet the Rule 23 Typicality and Adequacy Requirements

Plaintiffs explained in their Brief in Support of Class Certification why the proposed class meets each of the Rule 23 (a) requirements: numerosity, commonality, typicality, and adequacy. *See generally* ECF No. 4. The Judge Defendants' arguments that certification under Rule 23(a) is inappropriate because Plaintiffs do not meet the typicality and adequacy requirements misunderstands those concepts and the case law applying them. ECF No. 60 at 7-8. The Judge Defendants also appear to be making a mootness argument here, which is foreclosed by *Riverside*.

The Judge Defendants argue that named Plaintiffs are not typical or adequate class representatives because (1) "they have asked for and obtained a 'full hearing'" and (2) they "have all been released after posting bond or upon modified conditions", repeating their standing argument, ECF No. 60 at 8. Both arguments fail for essentially the same reasons described above.

As the Supreme Court has explained, "[t]he adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997). The adequacy requirement merges "with the commonality and typicality criteria of Rule 23(a)", *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n. 13 (1982).

Judge Defendants do not argue that named plaintiffs have a conflict of interest with the class, all of whom share the same interest in vindicating their constitutional rights. Rather, they claim named Plaintiffs are no longer a part of the class because they have been released from custody. ECF No. 60 at 8.

Although Judge Defendants do not specifically raise this issue, it appears as if they mean to argue that the court should not certify the proposed class because named Plaintiffs' claims are moot. ECF No. 60 at 5, 7-8. To the extent Judge Defendants are arguing mootness, *Riverside*

again forecloses that argument.

By the time the district court in *Riverside* reached the question of class certification, the plaintiffs had either received their probable cause determinations or been released. 500 U.S. at 51-52. The Supreme Court addressed the question of mootness, rejecting the defendants' arguments even though the named plaintiffs' individual detentions had ended. *Id.* "We recognized in *Gerstein* that 'some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires.'" *Id.* at 52 (quoting *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980)).

Unlawful pretrial detention is precisely the type of constitutional violation that *Gerstein* and *Riverside* held to be "capable of repetition, yet evading review" because "it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures." *Gerstein*, 420 U.S. at 110-11 n.11 (1975); *Riverside*, 500 U.S. at 51-52.

"The 'inherently transitory' rationale was developed to address circumstances in which the challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in the suit long enough for litigation to run its course." *Genesis Healthcare Corp. v. Symczyk*, 133 S. Ct 1523, 1531 (2013). For this specific reason, certification is crucial because, even when the named plaintiffs' claims resolve, the controversy "remains very much alive" for the class of persons that the named plaintiffs seek to represent. *Sosna v. Iowa*, 419 U.S. 393, 401 (1975); *Riverside*, 500 U.S. at 51-52.

If a plaintiff's claims are inherently transitory, "the 'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution." *Riverside*, 500 U.S. at 52. The relation back doctrine "allows the district court a reasonable opportunity to rule on a pending motion for class certification despite the intervening mootness of the named plaintiffs' individual

claims.” *Symczyk*, 133 S. Ct. at 1530-31

Plaintiffs’ claims here fit squarely within the inherently transitory exception to the mootness doctrine. As the Court explained in *Gerstein*, Plaintiffs’ claims are inherently transitory because “[t]he length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance, dismissal of the charges, or a guilty plea, as well as by acquittal or conviction after trial.” 420 U.S. at 110 n.11.

Moreover, the unnamed class members continue to have ongoing live claims against the Judge Defendants. Thus, there remains a case and controversy between the Judge Defendants and class members. *See Sosna*, 419 U.S. at 402 (finding that a case is not moot if a controversy exists “between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot”); *Gerstein*, 420 U.S. at 110 n.11 (termination of class representative’s claim does not moot the claims of the unnamed members of the class because plaintiff’s claims are inherently transitory and “it is certain that other persons similarly situated will be detained under the allegedly unconstitutional procedures.”).

Here, named Plaintiffs were subjected to the same unconstitutional post-arrest bail practices as the putative class. ECF No. 4 at 1-3. They were arrested and detained for weeks without a hearing because the court had imposed an unaffordable financial condition of release. ECF No. 4 at 1-3. Their experience is only unusual to the extent that they filed this lawsuit. They remain fully adequate representatives of the transitory class of which they were a member when they filed this litigation from their jail cells.

The Judge Defendants also argue that named Plaintiffs fail the adequacy requirement because they are “subject to a unique defense” ECF No. 60 at 7, citing *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437 (8th Cir. 1999). *Milk* was an antitrust action involving milk purchasers and milk products. *Id.* at 432. The plaintiffs in *Milk* alleged that milk producers conspired to fix

prices in violation of the Sherman Act. *Id.* The question was whether Rainy Lake One Stop, the sole remaining class representative after two years of litigation, was adequate and typical of the class. *Id.* at 433. Rainy Lake had sold its business, including the anti-trust claim at the center of the class action. *Id.* at 437. The sale of the business subjected Rainy Lake to a “unique defense” because it faced the prospect of litigating with the convenience store purchasers over ownership of the antitrust claim. *Id.* Where a proposed class representative is subject to a unique defense “that threatens to play a major role in the litigation,” they cannot be considered adequate or typical of the class. *Id.* (citing *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 179-80 (2d Cir. 1990)). As a result of the sale and the likelihood that this “unique defense” would play a major role in the litigation, and therefore require Rainy Lake to “devote time and effort to the defense at the expense of issues that are common and controlling for the class,” the court found that Rainy Lake lacked standing and that the class could not be certified. *Id.*

That case has no relevance here. All named Plaintiffs have been subjected to the same unconstitutional post-arrest practices. Contrary to Defendant Judges unsupported assertion, none of them have a unique claim or defense that distinguishes them from the rest of the proposed class at all, let alone a claim that would require the named Plaintiffs to devote time to such a defense at the expense of the class claims.² Further, named Plaintiffs have vigorously pursued the interests of the class by filing their Motion for Class Certification contemporaneously with the filing of their Complaint.

The named Plaintiffs are adequate class representatives. If Plaintiffs were ordered to substitute a new representative currently in jail awaiting a bail hearing, the same questions would

² Defendant Judges do not even make such a claim. Rather, the only basis for this argument is the same mootness claim addressed in the prior section and equally inapplicable here. Judges identify no conflicting defense or claims that would impact the named Plaintiffs’ ability to represent other class members.

recur before the federal courts could finally resolve those claims. The real upshot of the Judge Defendants' argument is an objection to the concept of transitory class actions as articulated by the Supreme Court, not with Plaintiffs' adequacy.

III. The Proposed Class Meets Commonality and Cohesiveness Requirements

Commonality requires the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A single common question is sufficient to meet the requirements of Rule 23(a)(2). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011).

The Judge Defendants argue that the proposed class does not satisfy commonality and that it lacks a common injury, *see* ECF No. 60 at 10, arguing that because Plaintiffs seek *individualized* process and findings for determining conditions of release, the relief sought is not uniform, and precludes class certification, presumably because the downstream consequences of an individualized process may be different for different class members. ECF No. 60 at 9. But class certification does not require uniformity of outcomes. The named Plaintiffs and putative class members have clearly suffered a common injury—they all have been or will be subjected to pretrial detention without process or findings that satisfy the constitution. The fact that relief ordering the Defendants to engage in constitutional practices might lead to a different outcomes for class members—i.e. some would be released, and some would be detained—has no bearing on certification itself. Again, *Riverside* and *Gerstein* are dispositive. In both cases, plaintiffs sought relief ordering timely probable cause determinations before they could be subjected to pre-trial imprisonment. *Riverside*, 500 U.S. at 47-48; *Gerstein*, 420 U.S. at 105. These probable cause determinations, like the bail determinations sought by Plaintiffs here, would necessarily be individualized, and lead to different outcomes for different class members. But the fact that the ultimate outcomes may be different did nothing to undermine the common *injury* that class members had suffered, or preclude certification.

So too here. Because named Plaintiffs and class members have all suffered the same injury—the imposition of unaffordable money bail resulting in their de facto detention, without any inquiry into ability to pay, a timely adversarial hearing with appropriate procedural safeguards, and required findings that detention is necessary—the court can “resolve issues central to the validity of each one of the claims in one stroke” by answering the question of whether wealth-based detention under the Judge Defendants’ system is constitutional. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiffs’ argument is that the constitutional principles laid out in their Complaint and their Motion for Preliminary Injunction govern whether and when the government may infringe the right to pretrial liberty and the right against wealth-based detention. A ruling answering those questions will apply equally to the entire class, and it will remedy the constitutional injury suffered by each class member.

District courts have recently rejected exactly the argument the Judge Defendants make here. In *Daves*, the court explained that, as here, “[e]very arrestee is exposed to the same procedures that allegedly result in wealth based pretrial detention. The process, not the result, is the origin of this dispute[,]” and therefore satisfied commonality, because resolving the question of whether Defendants’ practices were unconstitutional would resolve the claims of every proposed class member. 2018 U.S. Dist. LEXIS 160742, at *6-7. And in *O’Donnell*, the court explained that although its order preventing Defendants there from detaining people that are too poor to pay financial conditions of release “may require different procedures in different cases[,]” this did not affect class certification, because the relief implementing constitutional practices was “appropriate to the whole class[.]. 2017 U.S. Dist. LEXIS 6544, at *20; see also *Rodriguez v. Hayes*, 591 F.3d 1105, 1122-24 (9th Cir. 2010) (finding commonality even though class members were detained pursuant to different statutes and under different factual circumstances because a single question, namely, whether a bond hearing was required for individuals detained longer than six months, was

“posed by the detention of every member of the class and their [individual claims would] largely be determined by its answer”).

Here, Plaintiffs challenge policies and practices by Defendants that apply to and impact each member of the putative class in the same way. For that reason, this case is pervaded by common questions of fact and law. *E. g.*, *Walker*, 2016 WL 361580, at *6, *Yates v. Collier*, 868 F.3d 354, 363 (5th Cir. 2017). Nothing about individualized hearings changes this analysis: a single, indivisible injunction can “provide relief to each member of the class.” *Dukes*, 564 U.S. at 360.

CONCLUSION

Plaintiffs respectfully request that the Court grant their Motion to Certify Class.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2019, I electronically filed the foregoing with the clerk of the court for the U.S. District Court, Eastern District of Missouri, using the electronic case filing system of the Court.

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