No. 21-5031

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CARLY GRAFF, et al.,

Plaintiffs-Appellants,

v.

ABERDEEN ENTERPRIZES II, INC., et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Oklahoma
Civil Action No. 4:17-cv-00606-TCK-JFJ
Hon. Terence C. Kern

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INTRODUCTION

Defendants-Appellees rely upon blatant mischaracterizations of Plaintiffs-Appellants' claims and this litigation. These mischaracterizations infect not just their jurisdictional arguments, but also their arguments for affirming dismissal on alternative grounds that the district court never considered. For the reasons below, this Court should reverse the district court's judgment and remand for consideration of the merits of Plaintiffs' claims.

ARGUMENT

I. Defendants' Arguments Rely on Factual Distortions.

Defendants invite this Court to ignore the facts and legal claims as alleged in the Complaint and to instead assess Plaintiffs' claims against an alternate reality of Defendants' own making. As a result, Defendants spend an inordinate amount of space tilting at windmills rather than engaging with the substance of the allegations that Plaintiffs actually made.

A. Defendants mischaracterize Plaintiffs' claims.

Most significantly, Defendants repeatedly assert that Plaintiffs challenge "the state court's initial assessment of fines, fees, and costs." *See, e.g.*, Joint Resp. Br. of Cnty. Sheriff Defs., Tulsa & Rogers Cnty. Defs., and Okla. Sheriffs' Ass'n [hereinafter County Br.] at 1. This is untrue. Plaintiffs have never sought—and do not now seek—to challenge the financial obligations they were ordered to pay at the time of sentencing or to otherwise undo their criminal sentences. Nor do they challenge their underlying

convictions. As Plaintiffs' opening brief and the course of proceedings below make clear, Plaintiffs challenge only Defendants' role in what happens *after* court debtors are unable—often long after sentencing—to make payments on their assessed debt.

To support their false narrative about Plaintiffs' claims, Defendants strip descriptive background allegations in the Complaint from their context and prop them up as if they define Plaintiffs' claims. *See, e.g.*, *id.* at 21 ("By Plaintiffs' own admission, the foundation of their lawsuit was the allegedly improper, initial decisions to impose 'exorbitant court debts' or 'establish payment plans' without inquiring into the defendant's ability to pay . . . ." (quoting Second Am. Compl., JA86–186, vol. I [hereinafter SAC] ¶ 9));[1] *see also id.* at 16–18, 25–27, 37–39, 42–43. An honest reading of the Complaint and Plaintiffs' briefing below dispels this illusion.

Plaintiffs' constitutional claims have always been that *post-sentencing* failure-to-pay warrants are sought, issued, and enforced without any pre-deprivation inquiry into ability to pay, sworn affirmation, or probable cause that nonpayment is willful, and that debtors who are arrested on such warrants must remain in jail until the next available court appearance unless they make a cash payment toward their debt. *See* SAC ¶¶ 318–53 (Counts 2, 3, 4, 5); *see also, e.g.*, JA 1419–24, vol. VI; JA1628–30, vol. VII. Plaintiffs also allege that the Aberdeen Defendants' role in enforcing court debt collection

[1] Plaintiffs adhere to the citation conventions adopted in their opening brief. *See* Pls.' Opening Br. at 4 n.2.

violates due process given their financial conflict of interest, and that non-indigent court debtors are not subject to the same onerous collection methods as Plaintiffs and members of the putative class. *See* SAC ¶¶ 354–62 (Counts 6, 7). The RICO and state-law claims, in turn, are all premised on an extortionate scheme carried out by the Aberdeen Defendants with the assistance of the Oklahoma Sheriffs' Association (OSA) and the Defendant Sheriffs to force indigent court debtors to make payments that they cannot afford by threatening them with unlawful arrest if they do not pay, and in some cases, arresting and detaining them for nonpayment. *See id.* ¶¶ 274–317 (Count 1), 363–72 (Counts 8, 9, and 10). None of these claims challenge the initial process or amount that Plaintiffs were ordered to pay, and courts have roundly affirmed that federal court challenges to these methods of enforcement are viable. *See* Pls.' Opening Br. at 22–23, 45.

The initial imposition of court debt is often entirely divorced from post-sentencing collection procedures. Given the "inherently transitory nature" of "an individual's financial resources," even people who are put on an affordable payment plan after an ability-to-pay determination at sentencing may become indigent later in the collections process. *See Motley v. Taylor*, No. 19-cv-478, 2021 WL 2556152, at *7 (M.D. Ala. June 22, 2021); *see also Bearden v. Georgia*, 461 U.S. 660, 666 n.8 (1983) ("[A] defendant's level of financial resources is a point on a spectrum rather than a classification."). Again, Plaintiffs' claims are not about the initial assessment. They arise because, in enforcing those fines and fees, Defendants threaten, arrest, and detain

court debtors for nonpayment without process or an assessment of ability to pay. This argument is not a "bait-and-switch." County Br. at 25. It is what Plaintiffs have alleged at every stage of this litigation.[2]

B. Defendants mischaracterize their own practices.

Defendants engage in similar misdirection when describing their own practices. Specifically, Defendants assert that the arrest warrants they issue and execute are not really arrest warrants, and that the indigent court debtors subject to such warrants are provided a full opportunity to challenge Defendants' practices prior to being arrested and detained. Defendants thereby contradict the allegations in the Complaint, which must be accepted as true at the motion-to-dismiss stage, *see Pueblo of Jemez v. United States*, 790 F.3d 1143, 1147–48 & n.4 (10th Cir. 2015), without pointing to any evidence in the record that materially rebuts those allegations, *see infra* Part II.A.

To begin, it is simply untrue that arrest warrants for nonpayment alone "are essentially . . . order[s] to *appear* before the court to show cause as to why [a person is] non-compliant and are akin to civil contempt." State Judges' Resp. Br. [hereinafter Judges Br.] at 15 (emphasis added); *see also* County Br. at 41. As Plaintiffs allege, the warrants sought and enforced by Defendants are not "orders to appear," which are

[2] To be sure, at points in the Complaint, Plaintiffs allude to the "exorbitant" fines, fees, and costs that are initially imposed. *See, e.g.*, SAC ¶ 9. But these allegations merely provide context for Plaintiffs' claims; they are not offered in *support* of those claims, as demonstrated by the substantive counts and the prayer for relief. *See id.* ¶¶ 274–372 & pp. 98–100.

used to summon parties to court. They are *arrest* warrants that result in law enforcement forcibly seizing an individual, jailing her, and only thereafter taking her to court, sometimes days later. *See, e.g.*, SAC ¶¶ 139–40. Even these relatively short stays in jail can have devastating consequences for impoverished arrestees, including loss of employment, removal from housing, and inability to arrange child care. *Id.* ¶ 99.

They are also crucially different from bench warrants for failure to appear in court. *See* County Br. at 12. Plaintiffs allege that these warrants are issued for nonpayment alone without any court date being scheduled (much less missed), and none of the public records which Defendants provide suggest otherwise. *See* Pls.' Opening Br. at 7, 10–11, 29–30; *see also id.* at 30 n.14 (explaining that the only public records that mention a failure to appear pertain to Plaintiff Killman, who, per the Complaint, was never validly summoned to court in the first place (citing SAC ¶ 184 & n.36)). This difference is critical. Unlike a valid bench warrant, the warrants Plaintiffs challenge are not preceded by a valid summons or based on an attested-to failure to appear in court. Defendants seek and issue the warrants *automatically*—without sworn affirmation—and solely for failure to *pay*.[3]

[3] Defendants' assertion that payment is just another form of appearance and that a Plaintiff could merely show up and assert indigence on a payment date to avoid arrest, County Br. at 12 n.5, is belied by the allegations. For example, in Rogers County, even a debtor who appears before the Clerk and requests an extension of time to pay may be subjected to an arrest warrant if the Clerk decides that the debtor has sought too many extensions. SAC ¶ 136.

Defendants also assert that the "[i]ssuance of a warrant and/or arrest for failing to comply with an order . . . relating to [court debt] cannot be equated to being incarcerated for failing to pay," and that Plaintiffs can address their ability to pay "through the procedures outlined in Rule 8 or otherwise before any risk of imprisonment." *See* Answer Br. of Defs. Aberdeen Enterprizes II, Inc., Jim Shofner, & Rob Shofner [hereinafter Aberdeen Br.] at 13–14. Both assertions are wrong, as Plaintiffs' Complaint makes clear. Plaintiffs allege that indigent court debtors who are arrested on nonpayment warrants may be detained for "days, weeks, and—in some counties—several months." SAC ¶ 98. In other words, they are incarcerated solely for their inability to pay[4]—the precise scenario that *Bearden* forbids. This state of affairs is similarly prohibited under Oklahoma law, which is why Defendants' repeated flouting of Rule 8 provides the basis for an independent claim. *See* SAC p. 93 ("Count Five: Jailing Debtors Without Proof of Willfulness [and] Without Notice and a Hearing Violates Their State-Created Liberty Interests"); *see also id.* ¶¶ 40–45 (explaining how Oklahoma law codifies the due process and equal protection protections outlined in *Bearden*); *id.* ¶ 95 (alleging Defendants' persistent violation of Rule 8); Pls.' Opening Br. at 7, 10–11, 29–30. Again, Plaintiffs allege that the only time a person is offered an

[4] Defendants' argument that Plaintiffs are not "incarcerated" pursuant to arrest warrants appears premised on the notion that there is a meaningful constitutional distinction between being "incarcerated" or "imprisoned" and being jailed after arrest. As Plaintiffs explain *infra* in Part II.C, this is nonsense. Moreover, as Plaintiffs explained in their briefing below, "the long line of Supreme Court cases culminating in *Bearden* . . . do not apply solely to imprisonment." JA1934, vol. VIII.

opportunity to see a judge is after they suffer the deprivations that they challenge, including jailing.

II. The District Court Erred in Dismissing the Complaint under the *Rooker-Feldman*, *Younger*, and *Heck* Doctrines.

A. Defendants did not raise a "factual attack" on jurisdiction requiring Plaintiffs to submit responsive evidence.

As a threshold matter, the County Defendants and OSA suggest that Plaintiffs have failed to satisfy their burden to establish subject-matter jurisdiction by failing to present evidence in response to the motions to dismiss, and they urge the Court to affirm on this basis alone. *See* County Br. at 27–30.

This is wrong. A plaintiff is only required to submit evidence in response to a "factual attack" on the jurisdictionally relevant allegations in the complaint. *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 614 (9th Cir. 2016); *see New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995); *see also Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981) (explaining that a plaintiff is required to submit evidence only when a defendant makes a "'factual attack' upon the court's subject-matter jurisdiction" by submitting "affidavits, testimony, or other evidentiary materials"). Here, any supposed "factual attack" on subject-matter jurisdiction could only be premised upon Defendants' basic misapprehension of the nature of Plaintiffs' claims and the relevant jurisdictional doctrines.

The evidence submitted by Defendants consists primarily of several state-court dockets and records pertaining to some of the named Plaintiffs. *See generally* JA270–

601, vols. II–III; JA637–771, vol. III; JA803–914, vol. IV; JA1144–1211, vol. V. There is simply nothing in these records that contradicts any of the actual allegations in the Complaint, let alone any allegations that might bear on the potential application of *Rooker-Feldman* or *Younger*. For example, a docket Defendants submitted regarding Plaintiff Graff's case confirms that four months after she pleaded guilty to a traffic offense, Defendant Judge Crosson issued a "failed to pay" arrest warrant for Ms. Graff with no prior hearing or process. JA807, vol. IV; *see also, e.g.*, Pls.' Opening Br. at 29–30 & n.14 (citing similar examples from other dockets). As this only serves to confirm Plaintiffs' allegations, there was no need for Plaintiffs to present evidence to establish jurisdiction. *See Const. Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014) ("A factual attack requires a factual dispute, and there is none here."); *NewGen, LLC*, 840 F.3d at 614 ("Only upon a factual attack does a plaintiff have an affirmative obligation to support jurisdictional allegations with proof.").[5]

B. *Rooker-Feldman*

The County Defendants, OSA, and the Aberdeen Defendants each attempt to defend the district court's application of *Rooker-Feldman* on various grounds,[6] but each fails for the simple reason that Plaintiffs do not challenge any aspect of their underlying

[5] At the very least, if the district court intended to treat the motions to dismiss as factual attacks, it should have provided notice to Plaintiffs so that they could present their own evidence (or seek discovery) regarding any issue that the court identified as relevant to jurisdiction.

[6] The Defendant Judges do not address the district court's application of *Rooker-Feldman* (or *Heck*).

state-court judgments. The County Defendants and OSA premise their entire *Rooker-Feldman* argument on this mischaracterization of Plaintiffs' claims—the same mistake made by the district court. *See* County Br. at 30–41. The Court should reject this argument for the reasons already stated above and in Plaintiffs' opening brief. *See supra* Part II.A; Pls.' Opening Br. at 19–26.

The Aberdeen Defendants double down on this mischaracterization, arguing that "an alleged inability to pay the monetary component of [a] criminal sentence[]" is "[c]entral to every Plaintiffs' described circumstances"; thus, they say, Plaintiffs' claims "all implicate state court judgments and alleged injuries resulting" therefrom. Aberdeen Br. at 11. But for a claim to be barred by *Rooker-Feldman*, it must "invit[e] district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Plaintiffs' claims do no such thing. If Plaintiffs obtained relief for every claim in this lawsuit, absolutely nothing would change about their underlying convictions or the initial assessment of court debt. *See* SAC pp. 98–100. Defendants would simply have to change the way they pursue payment of such debts.

The Aberdeen Defendants also wrongly suggest that the state trial courts' jurisdiction to enforce the monetary component of a criminal sentence is relevant to the *Rooker-Feldman* analysis. Such "continuing jurisdiction," Aberdeen Br. at 11, is of no relevance where, as here, Plaintiffs are not asking federal courts to "review and reject[]" the underlying state court judgment, *Exxon Mobil*, 544 U.S. at 284; *see also Mayotte v. U.S. Bank Nat'l Ass'n*, 880 F.3d 1169, 1174 (10th Cir. 2018) ("What *is* prohibited

under *Rooker-Feldman* is a federal action that tries to *modify or set aside* a state-court judgment because the state proceedings should not have led to that judgment."). The only judgments here are the convictions and sentences, and Plaintiffs do not seek to disturb them.

Finally, like the district court, all of the Defendants eschew the type of claim-by-claim approach required by *Rooker-Feldman*. *See* Pls.' Opening Br. 25–26, 31–32; *see also Behr v. Campbell*, 8 F.4th 1206, 1213 (11th Cir. 2021) ("The question isn't whether the whole complaint seems to challenge a previous state court judgment, but whether resolution of each individual claim requires review and rejection of a state court judgment."). Although *none* of Plaintiffs' claims seek review and rejection of any state-court judgment, the fact that the district court ignored individual claims that have nothing to do with the underlying judgment at all is grounds for reversal. *See* Pls.' Opening Br. at 26, 32.[7]

C. *Younger*

Defendants' *Younger* arguments also do nothing to counter those in Plaintiffs' opening brief. Because there are no ongoing state court proceedings within the

[7] In addition, the County Defendants and OSA frame the *Rooker-Feldman* inquiry incorrectly by suggesting that it bars claims that are "inextricably intertwined" with any state-court judgment. *See, e.g.*, County Br. at 34. The "inextricably intertwined" test is not the law. *See Campbell v. City of Spencer*, 682 F.3d 1278, 1283 (10th Cir. 2012) (heeding "the *Exxon Mobil* formulation" without "trying to untangle the meaning of *inextricably intertwined*"); *see also, e.g.*, *Behr*, 8 F.4th at 1209–12 (explaining how *Exxon* served as a "much-needed corrective" to the confusion sowed by *Feldman*'s use of the words "inextricably intertwined").

meaning of *Younger*—nor any adequate opportunity for Plaintiffs to present their claims in state court—abstention is unwarranted here.

First, unpaid court debt is not an "ongoing state proceeding" for *Younger* purposes, notwithstanding the Judges' bare observation that "[Plaintiffs'] sentences are not complete and are subject to judicial oversight until their sentences are completed in full." Judges Br. at 11–12. Defendants cite no law for the proposition that a person being subject to state judicial oversight is all that is required for abstention, or that such a proceeding continues until a sentence is fully complete. That is because the courts that have addressed the issue have held the opposite. *See* Pls.' Opening Br. at 36–37.

Second, Defendants fail to address the fact that even if there were an ongoing state proceeding and Plaintiffs were granted hearings in state court about their debt, "as a matter of state law, Plaintiffs would not be able to raise their claims about the Aberdeen Defendants' extortionate practices and unconstitutional conflict of interest[.]" *Id.* at 43 (relating to Counts 1, 8, 9, and 10).

Third, Defendants hardly address Plaintiffs' argument that *Younger* abstention is inappropriate because Plaintiffs face "irreparable injury." *See id.* at 42 n.15. Defendants appear to argue that Plaintiffs' *Younger* discussion is based on a "misrepresentation of the actual process" because failure-to-pay warrants are merely summonses to appear in court "to determine whether the respective Plaintiff should be incarcerated for failure to pay." Aberdeen Br. at 13; *see also* Judges Br. at 15 ("The bench warrants issued in this context are essentially an order to appear before the court to show cause . . . .").

Under that reasoning, Plaintiffs suffer no cognizable injury before they have an opportunity to be heard. For the reasons discussed *supra* in Part I.B, however, this argument fails.[8]

Beyond this, Defendants evidently seek to define "incarceration" and "imprisonment" as only occurring *after* a hearing, and attempt to exclude from that definition any time spent forcibly confined in jail before being brought to court. This is not the law. "[T]he term 'imprison' has meant '[t]o put in a prison,' 'to incarcerate,' '[t]o confine a person, or restrain his liberty, in any way.'" *Mont v. United States*, 139 S. Ct. 1826, 1832 (2019) (quoting Black's Law Dictionary 681 (5th ed. 1979), and 5 Oxford English Dictionary 113 (1933)). "These definitions encompass pretrial detention[.]" *Id.* They also encompass confinement of debtors in "jail for days before they are allowed to see a judge[.]" SAC ¶ 10.

Rather than engage Plaintiffs' arguments about the *Younger* requirements, Defendants' principal argument invokes *Juidice v. Vail*, 430 U.S. 327 (1977), which applied *Younger* abstention to a challenge to ongoing civil contempt proceedings. *Id.* at 335–37. According to the Defendant Judges, because arrest warrants are part of their "enforcement mechanism[] to compel satisfaction of ordered court" financial

[8] The argument is particularly bold coming from the Aberdeen Defendants, given the allegations that Aberdeen "affirmatively attempts to prevent debtors from learning" of the legal right to have a hearing before being incarcerated for nonpayment. SAC ¶ 95; *see also id.* ¶ 83 ("Aberdeen[] forbids its employees from informing people of their legal rights" and instructs employees "to ***NEVER*** refer any defendant to call the court clerks.").

obligations, Plaintiffs' claims against the Judges would "mak[e] some portion of a remaining sentence unenforceable." Judges Br. at 14–15. This argument too is premised on the notion that the challenged arrest warrants "are essentially an order to appear," *id.* at 15, which is false for the reasons discussed elsewhere in this brief, *see supra* Part I.B. More fundamentally, *Juidice* concerned a challenge to contempt orders that issued *after* a show-cause hearing. 430 U.S. at 329–30, 332. The 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 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 challenge could have been brought at the show-cause hearings. *Id.* at 337 & n.14. The suit in *Juidice* 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." *See id.* at 337. Here, Plaintiffs do not challenge the existence of their debts, or the fact that they may be called into state court to be heard on their ability to pay. Contrary to Defendants' arguments, Plaintiffs' claims would not remove state judges' ability to enforce the financial component of sentences. They would merely ensure that those mechanisms comply with federal law. The fact that state courts do *not* offer Plaintiffs an opportunity to be heard is an underlying component of several of Plaintiffs' claims. Plaintiffs do not seek

to enjoin state process that would vindicate their constitutional rights; in fact, they demand it. *Younger* abstention is therefore inappropriate.[9]

D. *Heck*

Finally, for virtually the same reasons that the district court erred in applying *Rooker-Feldman* to dismiss the Complaint on jurisdictional grounds, the district court also erred in applying *Heck* to bar Plaintiffs' § 1983 claims. Simply put, Plaintiffs' claims—including those challenging the extortion scheme, threats of jail, and failure to consider Plaintiffs' ability to pay before converting a fine into a jail sentence—in no way threaten to "invalidate[]" Plaintiffs' convictions and sentences. *See Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Thus, they "should be allowed to proceed." *Id.* Defendants' arguments to the contrary are unpersuasive for the same reasons stated above and in Plaintiffs' opening brief. *Compare supra* Part I.A, *and* Pls.' Opening Br. at 45–46, *with* County Br. at 41–46, *and* Aberdeen Br. at 14–16.

Defendants offer only two arguments about *Heck* not addressed in Plaintiffs' opening brief, and the Court can quickly dispose of both. First, contra the County Defendants and OSA, this Court has not "employed *Heck* to bar these precise sorts of claims." County Br. at 46. The pro se plaintiff in *Ariatti v. Edwards*, 171 F. App'x 718 (10th Cir. 2006), claimed to be "a sovereign state citizen bound only by common law,"

[9] Notably, Defendants make no attempt to convince this Court that the district court correctly applied *Younger* to dismiss Plaintiffs' *damages* claims. It seems all parties agree that those claims do not merit abstention. *See, e.g.*, *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 953 F.3d 660, 668 n.8 (10th Cir. 2020).

and as such, someone who could not be constitutionally fined or arrested for failure to pay or appear in connection with a traffic citation. *Id.* at 720. The Court's two-page opinion rejected her claims as "legally frivolous" and only mentioned *Heck* as dicta in a footnote. *Id.* at 720 & n.2. None of the Plaintiffs here challenge the state courts' authority to issue a warrant for failure to appear. *See supra* Part I.B. *Ariatti* is inapposite.

Second, the Aberdeen Defendants misunderstand the significance of the cases cited in Plaintiffs' opening brief in arguing that Plaintiffs' reliance on them "ignores" the favorable-termination rule. Aberdeen Br. at 15. The cases Plaintiffs cite stand for the proposition that claims that "merely seek to ensure that court debt is collected in a constitutional way" do not imply the invalidity of an underlying conviction or sentence. Pls.' Opening Br. at 45; *see Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 604–05 (6th Cir. 2007); *Cain v. City of New Orleans*, 186 F. Supp. 3d 536, 548 (E.D. La. 2016); *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1028 (E.D. Mo. 2015). Thus, Plaintiffs do not ignore the favorable-termination rule; they simply argue that, as in *Powers*, *Cain*, and *Fant*, the rule does not apply. *See Heck*, 512 U.S. at 487.

III. This Court Should Decline to Affirm on Alternative Grounds.

Defendants also argue that this Court should affirm on alternative grounds, for reasons not addressed by the district court that relate to both standing and the merits of Plaintiffs' claims. In this case, it would be improper for this Court to affirm the order of dismissal on grounds that were not addressed by the district court. *See Bath v. Nat'l Ass'n of Intercollegiate Athletics*, 843 F.2d 1315, 1317 (10th Cir. 1988) (declining to

affirm on alternative grounds where the "district court expressly avoided any . . . determination" on the merits, and noting that "under these facts, the substance of plaintiff's claim should [not] be examined for the first time on appeal"); *cf. United States v. Suggs*, 998 F.3d 1125, 1141 (10th Cir. 2021) ("[W]e are 'a court of review, not of first view.'" (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005))).

Moreover, the Judges', Counties', and OSA's standing arguments—as well as the Aberdeen Defendants' defenses to Plaintiffs' claims[10]—rest on factual mischaracterizations about Aberdeen's primary function and the degree to which it works in concert with law enforcement, judges, and court clerks. Thus, even if it were to consider Defendants' proposed alternative reasons for affirmance, this Court would have to disregard Defendants' factual misstatements, which go to the heart of this case and plainly contradict the Complaint.[11] *See Smith v. United States*, 561 F.3d 1090, 1097–

[10] Only the Aberdeen Defendants appear to have raised these defenses in this limited appeal. *Compare* Aberdeen Br. at 16–37, *with* Judges Br. at 15–30 (standing only), *and* County Br. at 50–51 (incorporating nearly all merits-based arguments by reference, which "does not satisfy" the requirements for an appellee brief, *see* 10th Cir. R. 28.3(B)). This underscores why the case should be remanded for the district court to resolve these issues in the first instance. *See MacArthur v. San Juan County*, 309 F.3d 1216, 1227–28 (10th Cir. 2002) (declining to affirm on alternative grounds where the defendants failed to brief certain issues on appeal that were not addressed by the district court, and emphasizing "the limited nature of [this Court's] inquiry when assessing Rule 12(b)(6) motions to dismiss," which "'must be cautiously studied'" (quoting *Pelt v. Utah*, 104 F.3d 1534, 1540 (10th Cir. 1996))).

[11] Plaintiffs discuss the Aberdeen Defendants' factual mischaracterizations in depth in their response to Aberdeen's Motion to Dismiss, JA1488–90, vol. VI.

98 (10th Cir. 2009); *Safe Sts. All. v. Hickenlooper*, 859 F.3d 865, 877–78 (10th Cir. 2017). Nevertheless, Defendants' arguments fail on their own terms.

A. Plaintiffs have standing.

1. The Defendant Judges

The Defendant Judges spend most of their brief arguing that Plaintiffs lack standing to sue them for declaratory relief. They mistakenly contend that Plaintiffs fail to meet any of the requirements for constitutional standing—injury in fact, causation, and redressability.

Injury in Fact. As the Supreme Court recently reaffirmed, "a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2210 (2021). A substantial risk of imminent harm likewise suffices for the forward-looking declaratory relief sought here against the Judges. *See, e.g.*, *Steffel v. Thompson*, 415 U.S. 452, 459 (1974).

The existence of an active arrest warrant suffices to establish that an arrest is imminent for purposes of Article III. *See, e.g.*, *Juidice*, 430 U.S. at 332; *Oryem v. Richardson*, No. 10-cv-1221, 2011 WL 13174639, at *4 (D.N.M. Apr. 11, 2011) (finding standing based on "the likelihood of an unlawful arrest on an outstanding, but invalid, bench

warrant"). Plaintiffs Frazier and Holmes[12] have active arrest warrants from the Tulsa County District Court and Holmes from the Rogers County District Court.[13] *See* SAC ¶¶ 19, 25. They can be arrested on those outstanding warrants *at any time*. They thus have standing to challenge the Defendant Judges' practice of requiring persons arrested on debt-collection warrants to pay a fixed sum to be released from detention prior to seeing a judge. *See id.* ¶¶ 128, 139. And, upon arrest, Mr. Frazier and Ms. Holmes would be subjected to, and injured by, the Defendant Judges' jailing practices. *Cf. Jones v. Murphy*, 470 F. Supp. 2d 537, 550–51 (D. Md. 2007); *Franklin v. City of Chicago*, 102 F.R.D. 944, 947–48 (N.D. Ill. 1984). Plaintiffs have pled that anyone arrested for nonpayment in Tulsa County or Rogers County must pay a fixed sum to be released from jail; that those who cannot afford to pay this sum must wait in jail, sometimes for days, before they can see a judge; and that because Mr. Frazier and Ms. Holmes are too poor to pay these fixed sums, they face this unconstitutional jailing practice. *See* SAC ¶¶ 19, 25, 128–29, 139–40, 342.

Plaintiffs also have standing to challenge the Defendant Judges' practice of issuing warrants that lack probable cause, are not based on sworn statements, and are

[12] At the time the Complaint was filed, Plaintiff Graff also had an active arrest warrant from Rogers County. SAC ¶ 18. Defendants represent that she no longer has one. Dist. Ct. ECF No. 342.

[13] 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.").

issued without the necessary pre-deprivation process. Plaintiffs Meachum, Choate, and Smith have standing to seek relief against the Tulsa County Judges in connection with the court debt they currently owe, *see id.* ¶¶ 21, 23, 170–74, and even if Ms. Holmes and Mr. Frazier are arrested on their current warrants, their debt will remain and they will be subject to further warrants for nonpayment, *see id.* ¶¶ 132, 162, 205, 212–13. In other words, they expect to "engage in a course of conduct"—nonpayment of court debt, due to indigence, for an extended period—that, absent court intervention, will subject them to unlawful warrants by Defendant Judges. The Supreme Court has held under similar circumstances that noncompliance with a show-cause order expected to prompt the issuance of a contempt order was sufficient to establish standing. *Juidice*, 430 U.S. at 332–33.

Causation. The Judges assert that Plaintiffs have not pled that their alleged injuries are fairly traceable to the named Judges "with any particularity." Judges' Br. at 22–23. According to the Judges, Plaintiffs "did not and cannot point to any actual policy regarding improper bench warrants" because individual judges retain discretion as to whether to issue a particular warrant. *Id.* at 22. But that belies the Complaint. As noted above, Plaintiffs have alleged that Defendant Judges routinely issue arrest warrants for nonpayment alone that lack probable cause, are not based on sworn statements, and are issued without the necessary pre-deprivation process. *See* SAC ¶ 9; *see also supra* pp. 2–3. Plaintiffs have also 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 ¶¶ 129, 139–40, 342.[14] And Plaintiffs have alleged that Judges—who bear the sole responsibility under Oklahoma law for holding the ability-to-pay hearings required by state and federal law—routinely fail to inquire into individuals' financial circumstances before authorizing their detention solely for nonpayment. *See, e.g.*, SAC ¶ 323.

"[A]t the motion to dismiss stage, a plaintiff can satisfy the 'fairly traceable' requirement by advancing allegations which, if proven, allow for the conclusion that the challenged conduct is a 'but for' cause of the injury." *Santa Fe All. for Pub. Health & Safety v. City of Santa Fe*, 993 F.3d 802, 814 (10th Cir. 2021) (quoting *Petrella v. Brownback*, 697 F.3d 1285, 1293 (10th Cir. 2012)). But for the Defendant Judges' consistent practices of issuing deficient arrest warrants that immediately result in jailing, and the Defendant Judges' failure to hold the required ability-to-pay hearings before said jailing, Plaintiffs would not suffer the constitutional violations of which they complain. This means that Plaintiffs' imminent injuries are traceable to the Defendant Judges for purposes of Article III.

[14] Similarly, the Judges appear to mischaracterize the relief sought in the Complaint by faulting Plaintiffs for failing to allege that any Plaintiff other than Holmes "had any contact with any of the Defendant State Judges." Judges Br. at 22. Plaintiffs do not seek a declaration related to injuries suffered in the past. Their claims are forward-looking, and as alleged, Plaintiffs face imminent "contact" with the Defendant Judges' practices.

Redressability. The Judges' redressability argument fails for similar reasons. The Judges contend that because Plaintiffs "have not challenged [the] statutes and rules" that are "already follow[ed]" by the Judges, "the declaratory relief [Plaintiffs seek] will not change [their] responsibilities toward the debts owed." Judges Br. at 29. These arguments fail as a matter of fact and law. First, the Complaint explicitly alleges that the Judges do *not* follow those statutes and rules. SAC ¶ 95. Indeed, this is a stand-alone claim. *See id.* ¶¶ 345–53. This allegation fits Plaintiffs' reading of the state-law framework as essentially codifying what is already constitutionally required by *Bearden*—a pre-imprisonment inquiry and finding as to the willfulness of nonpayment.

Second, Plaintiffs do not seek to "change [their] responsibilities toward the debts owed." They challenge the process by which Defendants attempt to collect that debt. The Judges misconceive Plaintiffs' claims against them as being backward-looking when they are, in fact, only forward-looking. As explained above, Plaintiffs still owe court debt, are indigent, and are at imminent risk of being subjected to the Judges' wrongful practices. The requested declaratory order stating that the Defendant Judges' detention and warrant practices are unconstitutional will redress these injuries so long as the Judges respect that order and amend their practices accordingly. A declaratory judgment from this Court therefore "is likely to redress" Plaintiffs' injuries. *ACORN v. City of Tulsa*, 835 F.2d 735, 738 (10th Cir. 1987).

2. The County Defendants and OSA

The County Defendants and OSA also argue that Plaintiffs lack standing to sue "many of the[m]." *See* County Br. at 47–50. In particular, these Defendants maintain that Plaintiffs are attempting to hold them responsible for the actions of third parties and thus cannot satisfy the "fairly traceable" element of the standing analysis. *See id.* at 47–48. Because these arguments largely overlap with their arguments about the merits of Plaintiffs' § 1983 claims, *see id.* at 52 ("Plaintiffs have . . . failed to state claims . . . because . . . they've not identified any 'policy' the county officers or OSA exercised that resulted in the alleged injures."), Plaintiffs address them together.

a. The Counties' practices

To begin, Defendants are wrong that Plaintiffs "make no allegations regarding county practices." *Id.* at 48. The court clerk defendants—here, the Tulsa County Court Clerk and Cost Administrator and the Rogers County Clerk—are county agents. As a matter of practice, they determine when to request warrants in the first instance, choose which cases to refer to Aberdeen, and then, in administering that referral, assist Aberdeen in seeking new arrest warrants. *See* JA1429–30, vol. VI; JA1755–59, vol. VII; *see also, e.g.*, JA1761, vol. VII (further explaining how practices of Tulsa Clerk and Cost Administrator harm Plaintiffs); JA1685–88, 1728, vol. VII (same). Similarly, the Tulsa and Rogers County Sheriffs act as county officials with final policymaking authority in carrying out the practices challenged in the Complaint—i.e., contracting with Aberdeen, executing warrants, and detaining people pursuant to those warrants. *See* JA1429–30,

vol. VI; JA1748–55, vol. VII. And so, too, for the remaining Sheriff Defendants, whom Plaintiffs have sued in their official capacities for constitutional violations stemming from their authorization of the contract between OSA and Aberdeen, *see* SAC ¶¶ 354–59, as well as from their policy and practice of using arrests (without any pre-deprivation process) as a means of enforcing court debts against indigent debtors, *see id.* ¶¶ 360–62. *See also* JA1610–28, vol. VII. In short, the policies and practices that Plaintiffs challenge in this lawsuit *are* "county practices" because the county sheriffs and court clerks are final policymakers under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). It is simply not true that a "majority of the county defendants," County Br. at 48, bear no responsibility for the conduct challenged in the Complaint.

The County Defendants and OSA claim support from a recent district court ruling regarding bail in Tulsa County. *See* County Br. at 51–52 (discussing Order, *Feltz v. Bd. of Cnty. Comm'rs*, No. 4:18-cv-298-SPF-JFJ (N.D. Okla. Sept. 29, 2021), ECF No. 306 [hereinafter *Feltz* Order]).[15] The *Feltz* court concluded that the Tulsa Sheriff had "no discretion with respect to whether to carry out the directives of the Tulsa judges concerning detention and release of arrestees," because a sheriff who does not comply with judicial bail directives may be guilty of a felony and removed from office. *Feltz* Order at 18–19. The County Defendants argue that they too "have no authority to disobey" the Judges' orders. County Br. at 52.

[15] The *Feltz* Order is included as Attachment B to the County Defendants' brief.

Feltz has no application to Plaintiffs' claims that each Defendant Sheriff is liable for deciding to contract with Aberdeen through OSA. *See* Okla. Stat. tit. 19, § 514.4 (granting county sheriffs the discretion to decide whether to contract with a private entity for debt collection). Nor does it apply to the Sheriffs' assignment of cases to Aberdeen, provision of assistance to Aberdeen, or their discretionary authorization of the contract requiring such assistance. *See, e.g.*, SAC ¶ 283. These are the only claims Plaintiffs bring against all but two of the Defendant Sheriffs in their official capacities. *See* SAC pp. 95–96.

Even as to Plaintiffs' official-capacity claims against the Tulsa and Rogers County Sheriffs for enforcing failure-to-pay warrants, *Feltz* misses the mark, because it fails to recognize longstanding Supreme Court precedent that officers may be held liable for enforcing a warrant when they lack a reasonable belief that it is lawful. *See generally United States v. Leon*, 468 U.S. 897, 923 (1984); *Malley v. Briggs*, 475 U.S. 335, 344–45 (1986). Here, Sheriffs not only lack a reasonable belief—as alleged, they execute warrants with *full knowledge* of Aberdeen's unlawful collection practices and that the warrants are issued on nothing more than unsworn allegations of nonpayment. SAC ¶¶ 65, 81. This aligns with state law, which only requires Sheriffs to execute warrants "according to law." Okla. Stat. tit. 19, § 514. There is no duty to enforce court orders they know to be deficient.

The Sheriffs are also undoubtedly county policymakers for all matters involving their county jails, including Count 4. *See, e.g.*, *Lopez v. LeMaster*, 172 F.3d 756, 763 (10th

Cir. 1999) (holding that, under Oklahoma law, a "county may be liable on the basis that [its Sheriff] is a final policymaker with regard to its jail, such that his actions 'may fairly be said to be those of the municipality'" (quoting *Bd. of Comm'rs v. Brown*, 520 U.S. 397, 404 (1997))); *McNeil v. Cmty. Prob. Servs., LLC*, No. 1:18-cv-33, 2019 WL 633012, at *15 (M.D. Tenn. Feb. 14, 2019) ("The custom or policy Plaintiffs challenge . . . is the practice of the Sheriff in *detaining* misdemeanor probation arrestees who cannot satisfy the secured bail amount written on the arrest warrant. As the official in charge of the operation of the county jail, the Sheriff effectuates the detention of these indigent misdemeanor probation arrestees."), *aff'd*, 945 F.3d 991 (6th Cir. 2019). Each Sheriff's official actions on behalf of their counties constitute a moving force behind the resulting violations. Thus, the district court can enjoin them, in their official capacity, from enforcing those local policies.

b. The harm caused by OSA

OSA also asserts that Plaintiffs have not alleged any action on the part of the organization that caused them harm. County Br. at 48. But, as alleged, OSA is a direct participant in the unconstitutional conduct alleged in Count 6: it negotiated, signed, and administered a contract that creates an impermissible financial incentive on its face. *See* SAC ¶¶ 354–58. And, again as alleged, OSA directly caused harm through its enlistment of government entities to procure debtor information and relay it to Aberdeen; its refusal to enforce the contractual provisions that require Aberdeen to comply with the law, despite knowledge of Aberdeen's misconduct; and its renewal of the contract with

Aberdeen on multiple occasions. *See* JA1554–56, vol. VI; *see also* SAC ¶¶ 29, 282, 350; SAC, Ex. A at 4. This was a moving force of Aberdeen's misconduct. *See Dodds v. Richardson*, 614 F.3d 1185, 1195–96 (10th Cir. 2010).

c. Prudential standing

The County Defendants also raise a prudential standing argument. They claim that the great majority of the Defendant Sheriffs have had no claim stated against them by a named Plaintiff, and that the class therefore lacks standing to sue them. *See* County Br. at 49–50. This is mistaken for two reasons.

First, when a plaintiff alleges harm at the hands of a conspiracy, as Plaintiffs do here, *see, e.g.*, SAC ¶ 292, she has standing to sue all participants in the conspiracy, regardless of whether she interacted directly with each individual participant. *See, e.g.*, *Rios v. Marshall*, 100 F.R.D. 395, 404 (S.D.N.Y. 1983) ("a plaintiff injured by one of the defendants as a result of the conspiracy has standing to sue the co-conspirator defendants even though that plaintiff had no direct dealings with the co-conspirators" and "to represent a class of individuals injured by any of the defendants as part of the conspiracy"); *Brown v. Cameron-Brown Co.*, 30 Fed. R. Serv. 2d 1181, 1980 WL 1856, at *3 (E.D. Va. 1980) ("the requisite nexus between the defendants and the injured plaintiffs may be established" if all defendants "are linked together by virtue of participation in a conspiracy"), *aff'd in relevant part by* 652 F.2d 375 (4th Cir. 1981). This stems from the foundational tort law principle that each individual member of a conspiracy is jointly and severally liable for the damages caused by the conspiracy. *See,*

e.g., *Com. Standard Ins. Co. v. Liberty Plan Co.*, 283 F.2d 893, 894 (10th Cir. 1960); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 113 (D.N.J. 2012).

In this case, Plaintiffs allege that *all* Defendant Sheriffs have entered into a conspiracy that has harmed the named Plaintiffs. *See, e.g.*, SAC ¶ 292. This conspiracy underpins Plaintiffs' RICO claims (Count 1), and two of Plaintiffs' constitutional claims challenging Aberdeen's improper financial incentives and the Sheriffs' role in enabling the company (Count 6) and all Defendants' onerous debt collection practices (Count 7).

Second, Plaintiffs also have standing to bring their § 1983 claims against Defendant Sheriffs pursuant to the "juridical link" doctrine. Because class members have been injured by each of the Sheriffs through the same course of conduct, the named Plaintiffs have Article III standing to bring these claims on behalf of the class. That is, "if all the defendants took part in a similar scheme that was sustained either by a contract or conspiracy, or was mandated by a uniform state rule, it is appropriate to join as defendants even parties with whom the *named* class representative did not have direct contact." *Payton v. County of Kane*, 308 F.3d 673, 679 (7th Cir. 2002), *cert. denied*, 540 U.S. 812 (2003); *see also Moore v. Comfed Sav. Bank*, 908 F.2d 834, 838–39 (11th Cir. 1990). In such circumstances, standing exists "even though the representative was injured by the conduct of only one of the" defendants. 7AA Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1785.1 (3d ed.).

Here, all Defendant Sheriffs take part in a similar scheme sustained by a single contract that applies to "participating County Sheriffs of Oklahoma," i.e., the Sheriff Defendants in this action. SAC, Ex. A at 1. The facts supporting Plaintiffs' claims against these Sheriffs and the ensuing injuries are materially identical for each Sheriff, as they have each authorized cases to be transferred to Aberdeen for debt collection. SAC ¶ 30. And, as a practical matter, the sheer number of defendants engaged in the same unlawful activity makes it infeasible to add individual named plaintiffs for each county or to bring separate lawsuits. *See Moore*, 908 F.2d at 838 ("Each plaintiff and the defendants have connection to each other . . . . The case is simpler and more economical with the class of plaintiffs and the named defendants. . . . No court would want to have 644 separate lawsuits." (internal quotation marks omitted)). Under the juridical link doctrine, therefore, the named Plaintiffs have standing to sue all Defendant Sheriffs.[16]

B. None of the alternative grounds raised by the Aberdeen Defendants warrants dismissal of the Complaint.

1. Plaintiffs have stated a valid RICO claim.

First, and principally, the Aberdeen Defendants assert that Count 1 in the Complaint, alleging a RICO violation, is deficient. On the contrary, Plaintiffs' allegations satisfy each element of RICO.

[16] If this Court is not prepared to reach that conclusion on the present record, Plaintiffs submit that it should remand this partly factual issue for the district court to consider in the first instance.

a. Interstate commerce

To satisfy the interstate-commerce requirement, a plaintiff need only establish that an enterprise had at least some "minimal effect" on interstate commerce. *United States v. Garcia*, 793 F.3d 1194, 1210 (10th Cir. 2015) (collecting cases). Plaintiffs easily satisfy this lenient standard. Here, the enterprise's activities have extended well beyond the borders of Oklahoma, including threats to family members residing in other states. *See* SAC ¶¶ 76, 96, 212–13, 279, 281.

A plaintiff can also demonstrate a sufficient effect on interstate commerce by showing that the enterprise uses "an instrumentality of commerce, such as telephone lines," *United States v. Mejia*, 545 F.3d 179, 203 (2d Cir. 2008), or depletes the assets of victims who potentially would have used those assets to purchase goods in interstate commerce, *see United States v. Curtis*, 344 F.3d 1057, 1070 (10th Cir. 2003); *United States v. Cruz-Arroyo*, 461 F.3d 69, 75 (1st Cir. 2006). Both conditions are present here. First, Plaintiffs allege that Aberdeen "collects payments from people who live outside of Oklahoma using interstate mail and/or wires." SAC ¶ 279. This alone is a sufficient effect on interstate commerce. *See, e.g.*, *United States v. Kunzman*, 54 F.3d 1522, 1526 (10th Cir. 1995); *cf. United States v. Hampshire*, 95 F.3d 999, 1003–04 (10th Cir. 1996). Moreover, Plaintiffs have shown a sufficient effect on interstate commerce by alleging that the enterprise has "collected millions of dollars in payments from thousands of debtors who would have used some of that money to purchase goods in interstate commerce." SAC ¶ 279; *see, e.g.*, *United States v. Quigley*, 53 F.3d 909, 910 (8th Cir. 1995)

(criminal acts affect interstate commerce when "the number of individuals victimized or the sum at stake is so large that there will be some cumulative effect on interstate commerce"); *Jund v. Hempstead*, 941 F.2d 1271, 1285 (2d Cir. 1991) ("[W]hile the impact from any single person was undoubtedly slight, the cumulative effect on interstate commerce from all those victimized by the scheme could have been very substantial.").

b. Injury to business or property

The Aberdeen Defendants also claim that Plaintiffs have not alleged an injury to "business or property," as they "have suffered no concrete injury to their business or property beyond allegations of personal injuries such as fear of arrest." Aberdeen Br. at 17. This is clearly incorrect. The Complaint alleges injury in the form of property loss due to money that Plaintiffs Killman, Meachum, Choate, Smith, and Holmes paid as a consequence of the enterprise's extortionate threats. *See, e.g.*, SAC ¶ 315; *cf. Reiter v. Sonotone Corp.*, 442 U.S. 330, 340 (1979) ("monetary injury, standing alone, may be injury in one's 'property' within the meaning of § 4 [of the Clayton Act]"); *Safe Sts. All.*, 859 F.3d at 889 (diminishment of value of land cognizable as property injury for RICO purposes).

c. Enterprise

The Aberdeen Defendants argue that Plaintiffs have not alleged the existence of an "enterprise" or a "pattern of racketeering activity" as required by 18 U.S.C. § 1962 (c) and (d). But Plaintiffs' allegations meet every requirement for an "association-in-fact" enterprise, which is "simply a continuing unit that functions with a common

purpose." *Boyle v. United States*, 556 U.S. 938, 948 (2009); *see also United States v. Hutchinson*, 573 F.3d 1011, 1020 (10th Cir. 2009) (RICO enterprises "may be 'proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit'" (quoting *United States v. Turkette*, 452 U.S. 576, 583 (1981))). Here, Plaintiffs allege that the enterprise functions as a continuing unit established by the contract between OSA, its members, and Aberdeen, which has persisted since at least 2010, with the common purpose of maximizing collection from indigent debtors, SAC ¶¶ 55–65; and that each member of the enterprise plays a crucial role in allowing it to succeed and shares in its profits, including those procured by extortion, *id.* ¶¶ 26–32.

Defendants profit from payments coerced by the threat of unlawful jailing, including to individuals whom Aberdeen knows to be indigent, who tell Aberdeen that they are destitute, whose only form of income is protected disability benefits, and who must "sacrifice[] the basic necessities of life, including groceries, clothing, and shelter" in order to make payments. *Id.* ¶¶ 4, 82. These threats are often not subtle. *See id.* at ¶¶ 74–76. The enterprise's activities collectively show a continuing common purpose of using any tactic available, including extortion, to extract as much money as possible from indigent debtors. This type of "long-term" extortionate criminal activity is a "classic example" of what the RICO statute targets. *See, e.g.*, *Empress Casino Joliet Corp. v. Balmoral Racing Club, Inc.*, 831 F.3d 815, 828 (7th Cir. 2016).

d. Racketeering activity

For similar reasons, Plaintiffs have shown that Defendants have engaged in "racketeering activity" for RICO purposes. The Aberdeen Defendants argue that Plaintiffs have not alleged any "unlawful activity" by the enterprise, because Defendants are "not robbing or extorting money from Plaintiffs wrongfully, but performing obligations pursuant to the Agreement for Collection in order to assist county officials with the recovery of money *owed to the county*." Aberdeen Br. at 19. In support, they argue that extortion does not relate to efforts to "obtain property on behalf of the Government." *Id.* at 19–20 (quoting *Wilkie v. Robbins*, 551 U.S. 537, 564–65 (2007)). They further argue that state-law extortion does not apply to the collection of a "legitimate debt" and that threats of arrest cannot be wrongful where state law allows arrest for nonpayment. *Id.* at 20. Finally, they argue that Plaintiffs have not alleged extortionate credit transactions under 18 U.S.C. § 894 because the Aberdeen Defendants are not considered creditors, and that the "use of legal proceedings" is not an extortionate attempt to collect on credit. Aberdeen Br. at 21. Defendants are wrong on each score. *Wilkie* is inapposite, and Plaintiffs have properly alleged the wrongful extortion of money under multiple predicate statutes.

First, *Wilkie* only applies where a governmental entity is the "sole" intended beneficiary of the extracted property. 551 U.S. at 564–65. The Supreme Court expressly distinguished cases, like this one, in which money is extorted to benefit both a private third party and a government actor. *See id.* at 565 (distinguishing *People v.*

Whaley, 6 Cow. 661 (N.Y. Sup. Ct. 1827)); *see also United States v. Renzi*, 861 F. Supp. 2d 1014, 1022–23 (D. Ariz. 2012), *aff'd*, 769 F.3d 731 (9th Cir. 2014). Here, the money is intended for both public *and* private benefit: the extortionate scheme has netted millions of dollars in profit for Aberdeen and OSA, both private entities. *See, e.g.*, SAC ¶ 3.

Plaintiffs have also adequately pled the predicate offenses of Hobbs Act extortion, 18 U.S.C. § 1951; Travel Act extortion, 18 U.S.C. § 1952; extortionate credit transactions, 18 U.S.C. § 894; and state law extortion, Okla. Stat. tit. 21, §§ 1481–82. Under the Hobbs Act, Plaintiffs need allege only that "(1) the defendant induced his victim to part consensually with property (2) either through the wrongful use of actual or threatened force, violence or fear or under color of official right (3) in such a way as to adversely affect interstate commerce." *United States v. Smalley*, 754 F.2d 944, 947 (11th Cir. 1985). Similarly, under state law and the Travel Act,[17] extortion "is the obtaining of property from another with his consent, induced by a wrongful use of force or fear, or under color of official right." Okla. Stat. tit. 21, § 1481.

Here, Plaintiffs "consensually" parted with their property by paying Aberdeen (this is uncontested), and as alleged in the Complaint, the enterprise took payment through the "wrongful use of force and fear," satisfying the standard for extortion.[18]

[17] Travel Act extortion is defined in relation to state law. *See United States v. Nardello*, 393 U.S. 286 (1969).

[18] Aberdeen also collected money for the RICO enterprise "under color of official right." OSA and Aberdeen act as public officials in their respective roles contracting for collection and collecting court debt, *see, e.g.*, *Adickes v. S.H. Kress & Co.*, 398 U.S.

Specifically, Plaintiffs allege that Aberdeen has threatened them with unlawful arrest, and that Plaintiffs gave up basic necessities in order to pay Aberdeen as a result. *See, e.g.*, SAC ¶¶ 166–67, 172–73, 184, 192–93, 203, 281, 291–93. The Aberdeen Defendants claim that their actions are not wrongful because arrest is a statutory consequence of nonpayment, but no statute provides for the arrest of a person known to be indigent and unable to pay. *See* Okla. R. Crim. App. 8.5 (requiring relief from fine and fee payments due to inability to pay); *see also* Okla. Stat. tit. 22, § 983(A); Okla. R. Crim. App. 8.4. The RICO enterprise's extortion is based on threats of *unlawful* arrest. *See* SAC ¶ 281. Once a person is unlawfully arrested for nonpayment, Aberdeen "calls family members and threatens prolonged incarceration of the indigent person if the family does not pay money to Aberdeen." *Id.* This meets the standards of extortion under any of the applicable statutes.[19]

144, 152 (1970), and Plaintiffs allege that both Aberdeen and OSA received payments to which they were not entitled (like payment from disability benefits) in return for the official act of Aberdeen temporarily refraining from seeking issuance of an unlawful warrant. *See, e.g.*, SAC ¶¶ 26, 29, 68–69, 77, 82; *see also United States v. Braasch*, 505 F.2d 139, 151 (7th Cir. 1974) ("It matters not whether the public official induces payments to perform his duties or not to perform his duties . . . . So long as the motivation for the payment focuses on the recipient's office, the conduct falls with the ambit of [Hobbs Act extortion].").

[19] What is more, under state law, actionable "fear" "may be induced by a threat" to "do an unlawful injury to the person or property of the individual threatened," to accuse a person "of any crime," or to "expose, or impute to him . . . any deformity or disgrace." Okla. Stat. tit. 21, § 1482. The allegations easily satisfy these intentionally broad definitions.

Aberdeen has also extortionately extended credit on behalf of the RICO enterprise under 18 U.S.C. § 894. Extending credit includes agreements to accept deferred payments to satisfy a civil judgment debt. *United States v. Goode*, 945 F.2d 1168, 1169–70 (10th Cir. 1991). Here, Plaintiffs allege that Aberdeen enters into repayment agreements with indigent debtors, negotiates with debtors about deferred payments and payment plans, and accepts payments pursuant to those plans—with the enterprise profiting from the money paid. *See, e.g.*, SAC ¶¶ 59, 77–80. Aberdeen has thus extended credit under the meaning of the statute.

That Plaintiffs are alleged to have a "legitimate debt" to the government is no defense here. *Cf.* Aberdeen Br. at 20. "[A] lawful right to property or lawful authority to obtain property is not a defense to extortion; rather, if an official obtains property that he has a lawful authority to obtain, but does so in a wrongful manner, his conduct constitutes extortion under the Hobbs Act." *Robbins v. Wilkie*, 433 F.3d 755, 769 (10th Cir. 2006), *rev'd on other grounds*, 551 U.S. 537 (2007); *see also United States v. Warledo*, 557 F.2d 721, 729–30 (10th Cir. 1977) ("pursuit of an allegedly valid claim" against railroad not a defense to Hobbs Act extortion); *Goode*, 945 F.2d at 1170 (applying 18 U.S.C. § 894 to attempts to collect on a court-ordered judgment).

Finally, Plaintiffs have clearly alleged a "pattern" of racketeering activity. To show a "pattern," Plaintiffs need only show "'at least two acts of racketeering activity, . . . which occurred within ten years' of each other." *Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir. 2006) (alteration in original) (quoting 18 U.S.C. § 1961(5)). The Complaint

alleges a scheme that includes numerous incidents of extortion over the course of years. *See, e.g.*, SAC ¶¶ 2, 8 (detailing Aberdeen's threats). This includes separate acts of racketeering activity that occurred within ten years of each other, such as the extortion of payments from Mr. Smith and Mr. Choate by threats of unlawful arrest. *Id.* ¶¶ 20, 23. These two separate acts are representative of thousands inflicted on other indigent debtors, acts which "have the same or similar purposes, results, participants, victims, [and] methods of commission," and are in no way "isolated events." *United States v. Kamahele*, 748 F.3d 984, 1005 (10th Cir. 2014) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985)). The acts also have a sufficient connection and include "the threat of continuing activity." *Resolution Tr. Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)). Plaintiffs have alleged that coercion of payment by extortion is the Aberdeen enterprise's "regular way of doing business." *Safe Sts. All.*, 859 F.3d at 884 (quoting *H.J. Inc.*, 492 U.S. at 242). Moreover, because the enterprise continues to demand regular payments from Plaintiffs and other debtors under threat of arrest, it has shown "past conduct that by its nature projects into the future with a threat of repetition." *H.J. Inc.*, 492 U.S. at 241. Thus, the allegations show a "pattern" of racketeering activity for RICO purposes.

2. Plaintiffs have stated § 1983 claims against the Aberdeen Defendants.

The Aberdeen Defendants also argue that Plaintiffs' § 1983 claims can be dismissed for "lack of color of law" and "absence of any unconstitutional conduct."

Aberdeen Br. at 22. They also claim immunity. *Id.* at 34. All three of these putative grounds are mistaken as a matter of law.

a. Color of state law

Courts employ a "flexible approach" to determine whether a private entity is acting under color of state law when it engages in unconstitutional conduct. *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1447 (10th Cir. 1995). Defendants are subject to § 1983 liability when they "represent [the state] in some capacity, whether they act in accordance with their authority or misuse it." *NCAA v. Tarkanian*, 488 U.S. 179, 191 (1998) (quoting *Monroe v. Pape*, 365 U.S. 167, 172 (1961)). Courts use four tests to determine whether a private entity has acted under color of law. *See generally Wittner v. Banner Health*, 720 F.3d 770, 775 (10th Cir. 2013). The Aberdeen Defendants need only satisfy one test to be deemed state actors for purposes of § 1983, and they satisfy at least three here.[20]

The Aberdeen Defendants meet the "joint action" test because they are "willful participant[s] in joint action with the State or its agents . . . . in effecting a particular deprivation of constitutional rights." *Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d

[20] The fourth test requires a private actor to exercise powers that are a "traditional and exclusive function of the state." *Wittner*, 720 F.3d at 776–77. Although there is no need to reach this test, Aberdeen likely meets this standard as well. By collecting criminal court debt, it falls within the traditional government category of administering correctional functions. *See, e.g.*, *Smith v. Cochran*, 339 F.3d 1205, 1215–16 (10th Cir. 2003).

584, 596 (10th Cir. 1999) (internal quotation marks omitted). Pursuant to a contract blessed by Oklahoma law, Aberdeen and government entities work together to ensure collection of public debt. *See* Okla. Stat. tit. 19, § 514.4. Under the contract, the Aberdeen Defendants work hand-in-hand with state agents to enforce court debt collection. *See, e.g.*, SAC ¶¶ 60–62, 65, 88–99.

The Aberdeen Defendants also satisfy the "nexus" test, which is met when the state acts "coercive[ly]" on the private actor, *Wittner*, 720 F.3d at 775, as in the form of a "state regulation or contract," *Ellison v. Garbarino*, 48 F.3d 192, 195 (6th Cir. 1995). Here, the contract mandates that Aberdeen follow specific procedures for debt collection, and government officials determine which cases to transfer to Aberdeen, effectively controlling the scope of Aberdeen's business and activities. *See* SAC, Ex. A at 2–5. The contract also imposes obligations on public actors, requiring them to assist Aberdeen in its collection efforts. *See id.* at 4–5; SAC ¶¶ 60, 282. This lack of discretion on the part of both the state and its contractor is an indication that Aberdeen's collection of court fees "may be fairly treated as that of the State." *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 757 F.3d 1125, 1143 (10th Cir. 2014) (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)).[21]

[21] Aberdeen makes much of characterizing the relationship as a mere "private corporation" fulfilling a role as an "independent contractor" pursuant to a "private contract," Aberdeen Br. at 23–24, but this misses the point. The contract establishes a relationship between the state and Aberdeen that easily satisfies the nexus test. *Cf. West v. Atkins*, 487 U.S. 42, 54–56 (1988) (finding private physician contracted by state to

Likewise, the "symbiotic relationship" test is satisfied because the state "has so far insinuated itself into a position of interdependence" with Aberdeen that "it must be recognized as a joint participant." *Gallagher*, 49 F.3d at 1451 (quoting *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725 (1961)). The Oklahoma counties depend heavily on Aberdeen's collection of court debts to run their judicial systems. *See generally* SAC ¶¶ 111, 114. This heavy dependence illustrates the interdependence between Aberdeen and the state. *See Jatoi v. Hurst-Euless-Bedford Hosp. Auth.*, 807 F.2d 1214, 1221–22 (5th Cir. 1987) (finding state action where state relied on private company to satisfy its financial obligations, such as mortgages or bonds).

b. Unconstitutional conduct

The Aberdeen Defendants also argue that "Plaintiffs have failed to identify any unconstitutional policy or custom on behalf of Aberdeen or personal participation on behalf of the Shofners that violated their constitutional rights." Aberdeen Br. at 22; *see id.* at 26–34. Plaintiffs briefly address each of these arguments below.

Count Two. The Aberdeen Defendants argue they are not responsible for any constitutional violation related to seeking, issuing, and executing nonpayment arrest warrants without regard to debtors' ability to pay "because, by statute, the determination as to ability/inability to pay is entrusted to the state trial court and the issuance and

provide medical care to prisoners was state actor, and noting that "[w]hether a physician is on the state payroll or is paid by contract, the dispositive issue concerns the relationship among the State, the physician, and the prisoner").

execution of warrants are entrusted to the state judges and law enforcement officers, respectively." *Id.* at 27. This argument flatly contradicts the allegations in the Complaint, which cite several formal policies and customs of Aberdeen that directly contribute to the denial of the ability-to-pay determinations to which Plaintiffs are entitled, *see, e.g.*, SAC ¶¶ 82–87, and which describe Aberdeen's threats and seeking of debt-collection arrest warrants, *see, e.g.*, *id.* ¶¶ 68–69, 84–88, 321–26.

The Aberdeen Defendants' assertion that it is not unconstitutional to merely seek an arrest warrant based on the provision of truthful information—namely, the failure to pay—is simply wrong as a matter of law. Federal courts have enjoined private probation companies to prevent violations of *Bearden* where, as here, the company's role was to report nonpayment to the courts and thereby trigger arrest warrants that led to probation-revocation proceedings. *Rodriguez v. Providence Cmty. Corr., Inc.*, 191 F. Supp. 3d 758, 779 (M.D. Tenn. 2016); *McNeil*, 2019 WL 633012.

Count Three. Count 3 asserts a Fourth Amendment claim based on the Aberdeen Defendants' policy and practice of seeking, issuing, and executing arrest warrants based solely on unsworn allegations of nonpayment that contain material omissions related to willfulness. Defendants aver that Aberdeen does nothing more than "supply information of nonpayment that another entity [namely, court clerks] may then use in seeking a warrant." Aberdeen Br. at 29. But Plaintiffs have alleged it is *Aberdeen*, and not any other actor, that exercises discretion as to who will be subject to debt-collection arrest warrants, based on whether a debtor has submitted to Aberdeen's

threats. SAC ¶¶ 52, 60–63, 71–93.[22] This is pure law enforcement discretion, akin to the submission of a warrant application by a police officer. The information provided by Aberdeen is subsequently rubberstamped by clerks and judges. *See, e.g.*, SAC ¶¶ 126, 138. As such, it is the direct cause of Plaintiffs' Fourth Amendment injuries.

The Aberdeen Defendants also argue that Plaintiffs' failure to allege that the company supplied any *false* information is fatal to their Fourth Amendment claim. Aberdeen Br. at 29–30. Not so. Government officials violate the Fourth Amendment when they knowingly or recklessly taint their warrant applications with "material omissions, as well as affirmative falsehoods." *United States v. Kennedy*, 131 F.3d 1371, 1376 (10th Cir. 1997) (internal quotation mark omitted). By omitting material information about ability to pay that they clearly know because debtors tell them of it, *see* SAC ¶¶ 63, 165–66, 184, 192, 204, Defendants violate the Fourth Amendment rule that "law-enforcement officers must not disregard facts tending to dissipate probable cause," *Harte v. Bd. of Comm'rs*, 864 F.3d 1154, 1182 (10th Cir. 2017) (internal quotation marks omitted).

Count Five. The Aberdeen Defendants raise two challenges to Count 5, which pertains to the process required before debtors can be jailed. The first disclaims responsibility for providing such process, *see* Aberdeen Br. at 31 (arguing that any

[22] The Aberdeen Defendants state that "Plaintiffs contend that it is the '[c]ourt clerks' that actually seek arrest warrants." Aberdeen Br. at 29 (quoting SAC ¶ 50). But that paragraph in the Complaint describes what happens *before* a case is transferred to Aberdeen.

ability-to-pay determination is entrusted to the trial court), and fails for the same reasons stated above with respect to Count 2, *see supra* pp. 39–40. The second describes Count 5 as either "duplicative" of Counts 2 and 3 or an improper attempt to seek redress under Oklahoma law. *See* Aberdeen Br. at 30. It is neither. "A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or it may arise from an expectation or interest created by state laws or policies." *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (citation omitted). Whereas Counts 2 and 3 ground Plaintiffs' liberty interest in federal law (the constitutional entitlement recognized under *Bearden* and the Fourth Amendment, respectively), Count 5 grounds it independently in state law—specifically, Oklahoma law that affords every person owing court debt an affirmative right to be free from imprisonment in the absence of proof that the person has willfully refused to pay. *See* Okla. Stat. tit. 22, § 983(A); Okla. R. Crim. App. 8.4. This right creates a liberty interest that the Fourteenth Amendment's Due Process Clause protects. Under both theories, Plaintiffs are entitled, under *Mathews v. Eldridge*, 424 U.S. 319 (1976), to a particular process that ensures that they will not be jailed solely for being indigent. *See* JA1667–69, vol. VII.

Count Six. Count 6 claims that Aberdeen's role in collecting court debt and requesting and recalling arrest warrants violates the Due Process Clause of the Fourteenth Amendment given the company's financial bias. In challenging this claim, the Aberdeen Defendants confuse procedural and substantive due process and the standards applicable to each. Count 6 is premised on the long line of Supreme Court

precedents holding that judges and other neutral decision-makers must be free from such financial conflicts of interest. *See* JA1501, vol. VI (citing cases). This "neutrality requirement is a safeguard of *procedural* due process under the 14th Amendment." JA1505, vol. VI (citing *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980)). The "shocks-the-conscience" standard, Aberdeen Br. at 31, which applies to a certain category of *substantive* due process claims, is simply irrelevant here.

Count Seven. Count 7 raises an Equal Protection claim under *James v. Strange*, 407 U.S. 128 (1972), based on the more onerous collection methods that are used against indigent court debtors as compared to court debtors with means. In *Olson v. James*, 603 F.2d 150, 153–54 (10th Cir. 1979), this Court relied on *James v. Strange* to strike down a Kansas recoupment statute that mandated onerous collection of indigent defense fees from criminal defendants without any consideration of the debtor's ability to pay. The Court relied on the collection scheme's "awesome and forbidding character," which made clear "that it emphasizes collection first and foremost," as well as on "its lack of proceedings which would determine the financial condition of the accused," and explained that "indigent defendants were entitled to evenhanded treatment in relationship to other classes of debtors." *Id.* at 154–55. *Olson* directly controls here, where Defendants have a similarly coercive collection scheme that fails to inquire into the debtor's financial circumstances and treats indigent court debtors

differently.[23] *See also Baker v. City of Florissant*, No. 16-cv-1693, 2017 WL 6316736, at *8 (E.D. Mo. Dec. 11, 2017).

c. No immunity

The Aberdeen Defendants are not entitled to any form of immunity in this case. As explained in greater detail in Plaintiffs' opposition below, *Richardson v. McKnight*, 521 U.S. 399 (1997), and its progeny clearly preclude the application of qualified immunity. JA1526–27, vol. VI. Simply put, there is no firmly rooted historical tradition of immunity for the private actor, namely, privately employed debt collectors, and the denial of qualified immunity is unlikely to deter the government from collecting court debts. Indeed, it is unlikely to even deter qualified firms from contracting with the state to collect such debts given the financial incentives involved. And even if qualified

[23] The Aberdeen Defendants argue that this claim must fail because "[p]ersons with limited or no financial means to pay [court debt] connected to their criminal sentences are simply not 'similarly situated' to persons with such means," citing *Cain*, 327 F.R.D. 111. Aberdeen Br. at 32–33. But unlike in *Cain*, where criminal judgment debtors claimed similarity to civil judgment debtors over which the defendant did not have jurisdiction and to whom the challenged policies did not actually apply, 327 F.R.D. at 120, the two groups at issue here owe the same type of debt to the same entity.

Puzzlingly, Aberdeen also cites *State v. Ballard*, 868 P.2d 738, 741 (Okla. Crim. App. 1994), for the proposition that Oklahoma courts have rejected this type of Equal Protection challenge. Although the court there did find the fine-imposing statute at issue constitutional, the law featured a protection that is conspicuously absent here, providing that a defendant who could not pay an assessment because he was "without means to do so" would not be "thrown into prison or otherwise punished." *Id.* This provision alone "enable[d] the assessment to withstand a constitutional challenge by an indigent on equal protection grounds." *Id.* Defendants' scheme offers no such protection and, in fact, purposefully uses the threat of incarceration to compel indigent debtors to pay. In other words, by *Ballard*'s logic, it is unconstitutional.

immunity were available to the Shofners, they would not be shielded by it because Plaintiffs' rights under the Fourth and Fourteenth Amendments are clearly established.[24] *See generally supra* Part III.B.2.b.

Moreover, the Aberdeen Defendants are not entitled to quasi-judicial immunity. As a preliminary matter, this argument fails because neither entities (like Aberdeen) nor private, for-profit actors (like the Shofners) can claim quasi-judicial immunity. *See* JA1507, 1524–26, vol. VI. Moreover, the Aberdeen Defendants are not engaged in quasi-judicial functions. Nothing they do bears any resemblance to a judicial process or has any of the indicia of a court proceeding; as alleged, their function is to oversee the collection of debts and the seeking of arrest warrants for those who cannot pay. *See* JA1525–26, vol. VI.

3. Plaintiffs have adequately pled state-law claims against the Aberdeen Defendants.

Plaintiffs have adequately pled state-law claims against the Aberdeen Defendants, and this Court should reject any invitation to affirm the dismissal of state-law claims that have yet to be examined by the district court.

With respect to Count 8, Plaintiffs pled the elements of abuse of process under Oklahoma law, which are "(1) the improper use of the court's process (2) primarily for an ulterior or improper purpose (3) with resulting damage to the plaintiff asserting the

[24] Further still, any ruling in the Shofners' favor on qualified immunity would not affect Plaintiffs' damages and injunctive claims against Aberdeen and any of the other Defendants in their official capacities.

misuse." *McGinnity v. Kirk*, 362 P.3d 186, 203–04 (Okla. 2015). All three elements are met here. As alleged by Plaintiffs, the Aberdeen Defendants repeatedly threaten people owing court debt that they will be arrested pursuant to a warrant if they do not pay sums they cannot afford, and then condition the recall of the debtor's warrant on the debtor making lump sum payments arbitrarily set in the hundreds of dollars (that is, above the amount of the court-ordered installment payments). *See, e.g.*, SAC ¶¶ 7, 19, 20, 22, 24, 80. Using a warrant as a tool of extortion is not a "proper use" of court process, and the underlying purpose—to extract unlawful payments from indigent debtors—is also improper. *See Donohoe v. Burd*, 722 F. Supp. 1507, 1522 (S.D. Ohio 1989) (abuse of process where creditor "refused to accept time payments and insisted on full payment in exchange for dismissal of the charges"); *Hoppe v. Klapperich*, 28 N.W.2d 780, 790 (Minn. 1947) (holding liable a sheriff who used an arrest warrant "in an attempt to extort certain property" and "for a purpose for which it was not designed"); *Huggins v. Winn-Dixie Greenville, Inc.*, 153 S.E.2d 693, 696 (S.C. 1967) (defendant would be liable if "criminal process of the court was used for the ulterior purpose of coercing the plaintiff into paying ten dollars" instead of "the sole purpose for which it could properly have been intended, viz., to punish the plaintiff for 'shoplifting'"). And Plaintiffs have undeniably been damaged as a result. *See, e.g.*, SAC ¶ 173.

The Aberdeen Defendants' efforts to challenge the duress claim asserted in Count 9 are equally unavailing. Under Oklahoma law, a contract is executed under

duress when consent is induced through "threats regarding the safety or liberty of a person, or his or her family or property, which are so oppressive as to deprive the person of the free exercise of his or her will and prevent a meeting of the minds necessary to a valid contract." *Cimarron Pipeline Constr., Inc. v. U.S. Fid. & Guar. Ins. Co.*, 848 P.2d 1161, 1164 (Okla. 1993); *see also* Okla. Stat. tit. 15, §§ 51–55.[25] That state law permits arrests for nonpayment is of no moment, as state law only permits arrest for nonpayment found to be willful after an inquiry, Okla. Stat. tit. 22, § 983(A), and the Aberdeen Defendants ignored pleas that Plaintiffs were indigent and could not afford to pay, *see* SAC ¶¶ 2, 86. Regardless, even if state law were to permit the arrest of indigent debtors (it does not), it would still not permit extortionate threats. *See* SAC ¶ 71.

Finally, the Aberdeen Defendants argue that the unjust enrichment claim in Count 10 fails because their receipt of a portion of the 30-percent administrative fee is authorized by Oklahoma statute. As just explained, however, state law does *not* authorize the tactics Aberdeen has used to collect its share.

[25] Plaintiffs agree that their duress claim sounds in "contract law" rather than tort law. Aberdeen Br. at 36. But it is still a viable stand-alone claim as such. When a party pays money pursuant to a contract agreed to under duress, they can later sue to recover the amount paid. *See, e.g.*, *Hubbard v. Jones*, 229 P. 516, 518 (Okla. 1924); *Union Cent. Life Ins. Co. v. Erwin*, 145 P. 1125, 1127 (Okla. 1914).

CONCLUSION

For the reasons set forth above and in Plaintiffs' opening brief, the judgment of the district court should be reversed, and the Complaint should be reinstated.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 32(a), 10th Circuit Rule 32, and this Court's order dated October 22, 2021. This brief contains 12,942 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f), as calculated in Version 16.54 of Microsoft Word for Mac. It was prepared in 14-point font using Garamond, a proportionally spaced typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically transmitted the foregoing brief to the Clerk of the Court using the appellate CM/ECF System, causing it to be served on counsel of record, who are all registered CM/ECF users.

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