No. 23-6359

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROBERT FRAZIER; ANIBAL HERNANDEZ; D.P., a minor, by and through his next friend and guardian, K.P.; CHRISTOPHER BUTLER; MIRAMBA WILLIAMS, individually and on behalf of a class of similarly situated persons

Plaintiffs-Appellants

and

DONNELL DAVIS; LESLIE SHARP; ELMER LAGUAN-SALINAS; ADRIENNE WORTHINGTON, individually and on behalf of a class of similarly situated persons

Plaintiffs

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Defendant-Appellee

and

CORENNE LABBÉ, in her official capacity as Director of the Prince George's County Department of Corrections; JEFFREY LOGAN, in his official capacity as Division Chief of the Prince George's County Population Management Division; KENNETH GRAY, in his official capacity as Section Chief of the Prince George's County Community Supervision Section; TANYA LAW, in her official capacity as Unit Chief of the Prince George's County Monitoring Services Unit; LAKEECIA ALLEN; BRYON BEREANO; JOHN BIELEC; SCOTT CARRINGTON; ADA CLARKEDWARDS; STACEY COBB SMITH; BRIAN DENTON;

ROBERT HEFFRON, JR.; DONNAKA LEWIS; OFFICER GREGORY POWELL; CATHY SERRETTE, in their personal capacities and official capacities as District and Circuit Court Judges for the District and Circuit Courts of Maryland for Prince George's County

Defendants

Appeal from the United States District Court
For the District of Maryland
Greenbelt Division

BRIEF OF APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 23-6359 Caption: Robert Frazier v. Prince George's County, Maryland

Pursuant to FRAP 26.1 and Local Rule 26.1,

Robert Frazier, Anibal Hernandez, D.P., Christopher Butler, and Miramba Williams
(name of party/amicus)

who is Appellants, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Ellora Thadaney Israni Date: 04/13/2023

Counsel for: Appellants

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INTRODUCTION

A presumptively innocent person may not be jailed before trial unless a "judicial officer finds that no condition or combination of conditions" of release will reasonably protect the community and ensure that the person will return to court. *United States v. Salerno*, 481 U.S. 739, 742 (1987) (quoting 18 U.S.C. § 3142(e)). This constitutional guarantee ensures that pretrial liberty remains "the norm" and detention while awaiting trial a "carefully limited exception." *Id.* at 755. Yet every night in Prince George's County, hundreds of people sit in jail in violation of this command. None of these people have been convicted of the crimes of which they are accused. No judicial officer has found that detaining these people prior to trial is necessary to reasonably ensure community safety or their return to court. Indeed, in each case, a judicial officer has determined that the person *can* safely be released on some conditions and has authorized County officials to do so.

Nonetheless, these people remain jailed because Prince George's County district and circuit court judges abdicate their legal duty to determine conditions of release, delegating it instead to unaccountable, non-judicial officials within the County Department of Corrections. These officials then decide whether, when, and on what conditions a person will be released while awaiting trial. The officials delay that decision for weeks or months, during which time the person languishes in purgatorial detention. In many cases, the officials ultimately decide—behind closed doors, and according to their own arbitrary criteria unrelated to community safety or flight risk—that despite

the court's authorization, they will not release the person. The Due Process Clause does not permit detention under these circumstances.

Plaintiffs-Appellants brought this lawsuit in July 2022, after having experienced weeks or months of unconstitutional detention. On behalf of themselves and a putative class of similarly situated individuals, they brought claims alleging violations of their rights to substantive and procedural due process under the U.S. and Maryland constitutions. On the same day they filed their complaint, Plaintiffs-Appellants Robert Frazier, Anibal Hernandez, D.P., Christopher Butler, and Miramba Williams sought a preliminary injunction requiring Prince George's County and County officials to adopt constitutionally compliant pretrial policies and practices. Plaintiffs' motion for a preliminary injunction was supported by extensive evidence, which the County did not materially dispute. Yet the district court refused to hold a hearing on the motion and rendered no decision on it for eight months. Finally, on March 14, 2023, the district court denied Plaintiffs' motion in a one-paragraph order that made no reference to Plaintiffs' evidence or the relevant legal standard.

The Federal Rules and this Court's precedent establish that a request for preliminary injunctive relief may not be denied without adequate factual findings and conclusions of law, including express analysis of the factors that make up the standard for a preliminary injunction. Here, the district court has done none of that. As such, this Court should, at a minimum, reverse the district court's erroneous denial of

Plaintiffs-Appellants' motion and remand with instructions for the district court to conduct the appropriate review and make a reasoned decision in a timely manner.

But the record below, the facts of which are substantially uncontested, warrants this Court remanding with instructions for the district court to enter an injunction. Plaintiffs have met each of the factors for preliminary injunctive relief. Plaintiffs are likely to succeed on the merits of their constitutional claims because non-judicial County officials cannot usurp courts' role in making pretrial release decisions and delay such determinations for weeks or months, all while the person remains jailed. Unsurprisingly, this process has caused, and continues to cause, immense irreparable harm to Plaintiffs-Appellants and members of the putative class. Courts across the country have long held that unnecessary and unconstitutional deprivation of constitutional freedoms, including liberty, constitutes irreparable harm. And the balance of equities and public interest favor an injunction because enforcement of unconstitutional restrictions does not further any legitimate state interest.

STATEMENT OF JURISDICTION

This civil rights action arises under 42 U.S.C. § 1983, 28 U.S.C. § 2201, and the Fourteenth Amendment to the U.S. Constitution. The district court had jurisdiction under 28 U.S.C. §§ 1331, 1367. Venue was proper pursuant to 28 U.S.C. § 1391.

This is an appeal of the district court's March 14, 2023 order denying Plaintiffs' motion for a preliminary injunction. JA831. Plaintiffs timely filed a notice of appeal on April 11, 2023. JA872–873. This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a).

STATEMENT OF THE ISSUES ON APPEAL

1. Did the district court abuse its discretion by denying Plaintiffs-Appellants' motion for a preliminary injunction without considering the substantial, undisputed evidence that they put forth in support of the motion, without making findings of fact, and without applying the legal standard set forth in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008)?
2. Did the district court err in denying Plaintiffs-Appellants' motion for a preliminary injunction, where the substantial, undisputed evidence establishes that they are likely to succeed on the merits and that Appellee Prince George's County's unconstitutional practices are causing immense, irreparable harm to Plaintiffs-Appellants and putative class members?

STATEMENT OF THE CASE

I. Factual Background

A. Defendants Unlawfully Keep People in Jail After Their Release Has Been Authorized.

In a constitutionally compliant pretrial system, a person who has been arrested is brought before a "neutral decisionmaker" within hours of their arrest for a "full-blown adversary hearing." *Salerno*, 481 U.S. at 750. At that hearing, a judicial officer must determine whether evidence presented by the government demonstrates that ongoing pretrial detention is necessary to reasonably protect the community and ensure the person's return to court. *Id.* at 742. This standard requires the judicial officer to

consider potential conditions of release; if any such conditions will reasonably protect the government's interests in community safety and return to court, the person *must* be released on these conditions. *Id.* The arrested person must also be offered rigorous procedural protections at this hearing. *Id.* at 750–52. If the judicial officer finds that the government has met its burden, the officer may order the person detained pending trial and must record findings of fact and a statement of reasons supporting its decision. *Id.* at 751. A person's due process rights are violated when, on the other hand, any of these procedural and substantive requirements are not met within a reasonable time following arrest. *See ODonnell v. Harris Cty.*, 892 F.3d 147, 159–61 (5th Cir. 2018) ("*ODonnell II*"), *vacated on other grounds by Daves v. Dallas Cty.*, 64 F.4th 616 (5th Cir. 2023) (en banc); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 784–89 (9th Cir. 2014); *Wheeler v. State*, 864 A.2d 1058, 1065 (Md. Ct. Spec. App. 2005).

This is not what happens in Prince George's County. After a person is arrested, they are brought before a judicial commissioner, who will issue an initial bail order. *See* JA547. If the person remains detained following this initial appearance, they appear before a district court judge for a bail review hearing on the next business day. JA547. At the hearing, the judge reviews the statement of charges, any evidence presented by counsel, and a "pretrial intake fact sheet" prepared by the Population Management Division of the Prince George's County Department of Corrections ("the Pretrial Division" or "the Division"), which lists, *inter alia*, the person's address, any criminal history, and any prior failures to appear in court. *See, e.g.*, JA156–157. A representative

from the Pretrial Division is generally on-call for or present at bail review hearings, JA197, which typically last only a few minutes, *see, e.g.*, JA168, JA211. At the conclusion of the bail review hearing, the judge decides whether to set bail (*i.e.*, release the person on their own recognizance or on conditions of release) or to continue to detain the person without bail. Frequently, in addition to whatever bail is set—or not set, as the case may be—the judge will issue a "pretrial order" or "pretrial option" (collectively, "pretrial referral").[1] *See, e.g.*, JA547.[2] It is these pretrial referrals that form the basis for this lawsuit.

When a judge issues a pretrial referral, the person's file is sent to the Pretrial Division, which will decide whether, when, and on what conditions to release the person prior to trial. JA233. In such cases, it is understood that the judge has authorized the person's release; indeed, the Division may release persons referred to it without further involvement of a judge. JA547. In other words, a judge referring a person to the Pretrial Division has necessarily found that some combination of conditions of release may reasonably ensure community safety and return to court and, therefore, that the

[1] As understood by both judges and the Pretrial Division, the difference between a "pretrial option" and a "pretrial order" is principally one of priority: People with "pretrial orders" are placed at the front of the Division's processing queue. *See, e.g.*, JA163, JA214. Despite the terminology, judges do not require the Pretrial Division to release people who have been granted such "orders." *See, e.g.*, JA173, JA174.

[2] *See also* JA233, JA240 (1,208 pretrial referrals given from Dec. 2018 to Feb. 2021), JA256 (discussing pretrial options), JA274 (discussing pretrial options and orders), JA281–288 (same), JA290–291 (same), JA157, JA168, JA296, JA211, JA316–317, JA331–332, JA336, JA592–600.

person's pretrial detention is not necessary. Yet the person remains in jail until the Division makes its decision, and thereafter, should the Division decide not to release the person. Pretrial referrals thus outsource one of the most important decisions in any criminal case—whether a presumptively innocent person will be jailed awaiting trial—to unaccountable, non-judicial County officials. According to the Chief of the Pretrial Division, this practice has been ongoing "for decades." JA344.

Because the Court does not specify a deadline by which the Pretrial Division must process cases referred to it, JA301–302, the Division may delay for weeks or months after the bail review hearing. And it often does: Legally innocent people in Prince George's County regularly sit in jail for weeks if not months after their bail review hearings, waiting for the Pretrial Division to "process" their release. *Compare* JA626–628, *with* JA622 (nearly six weeks between pretrial referral (July 29) and the Division's notification that it would not release (Sept. 7)). *Compare* JA633–634, *with* JA624 (more than two weeks between referral and notification of non-release).[3] During this time, no court has found that these people are too dangerous or too much of a flight risk to be released; in fact, by referring them to the Division, the Court has implied that some conditions of release would be acceptable. Nevertheless, they remain in jail.

[3] *See also* JA371 (identifying 80 people still detained who had been authorized for release more than a month prior, 48 of whom had been authorized more than three months prior), JA349, JA352, JA356, JA359–360, JA364, JA226–227, JA158, JA169, JA296–297, JA213, JA317, JA332, JA342.

The Division's processing occurs inside an inscrutable black box. No notice is provided, no defense counsel is present, no adversarial hearing occurs, and no evidence is presented or rebutted by either side. *See, e.g.*, JA297–298. County officials decide each referral behind closed doors in the Pretrial Division's offices. The Pretrial Division does not affirmatively provide any information to either the detained person or their counsel as to what investigation (if any) is happening, where the person is in the processing queue, or when they can expect a decision. *See, e.g.*, JA169. The only way to know a detained person's status is to regularly call or email the Pretrial Division for the weeks or months it takes them to process a pretrial referral. *See, e.g.*, JA163–164. At times not even that works, as the Pretrial Division may refuse to respond to emails or return calls. *See, e.g.*, JA212–213. During this time, people given pretrial referrals remain in a state of purgatorial detention,[4] often until their criminal cases are resolved, at which point their pretrial referrals are moot. *See, e.g.*, JA213 ("The vast majority of my clients given a pretrial order or option are never told definitively by the Pretrial Division that they will not be released, or why they are not being released.").

At the conclusion of their "processing," if the County decides that "a defendant [has] qualified for pre-trial release based on the criteria established by the PGCDOC," they are released from jail without further involvement of a judge. JA548. But the County ultimately refuses to release a large proportion of people whose release has been

[4] For further examples of the Pretrial Division's opaque "processing," *see* JA171–172, JA297–300, JA339, JA356–357, JA360, JA365.

authorized. *See, e.g.*, JA213 ("The vast majority of my clients given a pretrial order or option are never released."), JA169 ("[I]n my experience, it is exceedingly rare for a person given a pretrial option to actually be released.").[5] This is true even when the court's referral is called an "order." *See, e.g.*, JA163.

The Pretrial Division itself "sets and administers the criteria for pretrial release." JA547. The Division can and does, within its sole discretion, decline to release referred persons based on these self-determined criteria; as the Chief of the Pretrial Division explained, "it is universally understood that the DOC will conduct an investigation and ultimately determine whether a detainee may participate in the pretrial-release program." JA581. The Division does not always provide a reason to the detained person or the court for its refusal to release. *See, e.g.*, JA212. When a reason is provided, it is often arbitrary, self-defeating, or unrelated to any new evidence about risk to public safety or likelihood of flight.[6] For example, the Division refuses to release people for

[5] *See also* JA240 (identifying 246 people who were referred to the Pretrial Division between Dec. 2018 to Mar. 2021 but not released), JA296–297, JA317, JA367–368 (as of July 15, 2022, about half of people referred to pretrial between Jan.–May 2022 remained in jail, including a third of people given pretrial orders).

[6] *See* JA170–171, JA297–300, JA338 (listing most common "policies" cited by the Pretrial Division for denying release: "(1) a third party has not verified the defendant's address; (2) a third party has verified the defendant's address, but that address is not within Prince George's County; (3) the defendant is also on active probation or parole; (4) the defendant has another pending case in any jurisdiction other than Prince George's County; (5) the defendant's charge is 'too serious'; (6) the defendant has a 'bad' record; (7) Pretrial Services has been unable to contact the complaining witness; (8) Pretrial Services contacted the complaining witness and they report fear if the defendant were released; (9) the defendant has been charged with felonies and Pretrial

reasons that were known to the court at the time it referred the person, such as the person's criminal history or the nature of the criminal allegations against them. *See* JA232. The Pretrial Division refuses to release or transfer individuals who have open warrants from other jurisdictions, preventing them from resolving those warrants. *See, e.g.*, JA341. This is true even when the warrant has issued because the Division's own processing delays cause a person who has been granted a pretrial referral to miss a court date in another jurisdiction. *See* JA341.

The Division also regularly re-delegates the release decision to another non-judicial, non-neutral party: the complaining witness. The Division attempts to contact the complaining witness and refuses release if the witness does not respond or says that they do not want the person released. *See* JA222.[7] The Division does this even when the court issued a referral after considering the witness's input at the bail review hearing, or when the charges were initiated by the complaining witness themselves via citizen complaint. JA299–300.

The Pretrial Division's release eligibility criteria are its own; they were created by County officials with no judicial involvement or oversight. JA547. They are also ever-changing and inconsistent. For example, the Division once accepted utility bills as a

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Services is waiting to see whether those felonies will be dismissed at the preliminary hearing; (10) the defendant has an unserved warrant/detainer (whether the warrant issued from Prince George's County or another jurisdiction); and (11) the defendant tested positive for COVID-19 and must remain isolated at the jail"), JA393–394.

[7] *See also* JA171, JA247, JA260, JA299–300, JA341.

means of address verification but more recently has insisted on a lease or mortgage, with no explanation for the change, and has refused release if the preferred form of paperwork is not presented. *See, e.g.*, JA161. Similarly, the Division has refused to release some referred people because they have other open cases but has released other individuals who have multiple open cases. *See, e.g.*, JA171.

The Division has established four "levels" of pretrial release. JA579. The referring judge may designate the "level" at which a person may be released at the time of referral; if the judge does not, the Division decides, using its self-determined criteria, at what "level" the person is "eligible" to be released. JA579, JA581. The least restrictive forms of release, Levels 1 and 2, are rarely used due to their stringent eligibility criteria. JA159. More people are "eligible" for Level 4 release, *i.e.*, home detention, but the Division will not release people to an address outside Prince George's County. *See* JA580. As such, referred persons regularly remain detained for the simple reason that they reside in neighboring jurisdictions, like the District of Columbia or Montgomery County. JA159.

When the Pretrial Division decides not to release a person, the only notice it provides to the Court or defense counsel is a form letter sent weeks after the fact (if at all). *See, e.g.*, JA187, JA214 (stating that letters are sent in about one of every eight cases), JA403. That letter lists several stock reasons why the Division might decline to release a person given a pretrial referral. In many instances, the Division checks only the last box: "Other–See Explanation." *See, e.g.*, JA403, JA407. The "explanation" provided is

often just an instruction to contact the Pretrial Division for additional information. JA403, JA407.

Judges are aware of the delays in the Pretrial Division's processing and its routine refusals to release referred people. Defense attorneys regularly raise these issues at bail review hearings and file motions requesting renewed bail review hearings on account of the Division's delays and denials. *See, e.g.*, JA202, JA206. State court judges generally have not been receptive to these efforts. *See, e.g.*, JA197. Some judges refuse to hold hearings on these motions. *See, e.g.*, JA173. Others require "changed circumstances" to accompany a request to modify a bail order—even though no law imposes such a condition. *See, e.g.*, JA164, JA173. Others require the Pretrial Division to have issued an outright refusal to release the person—making the Division's indefinite "processing" periods immune from review. *See, e.g*, JA213–214, JA304 ("[I]t's not fair for [my client] for pretrial not to make a decision. If you say yes, great. If you say no, that allows me to at least file a habeas. But keeping him in limbo just keeps him in jail longer.").

This system is unique to Prince George's County. Maryland law allows each County to establish, or not establish, a pretrial supervision agency. JA566. Yet only Prince George's County does so in the uniquely unconstitutional manner described above. *See, e.g.*, JA636–638 (describing practices in Montgomery County). The County has repeatedly threatened to unilaterally "discontinue[e] its pretrial release program as nothing prevents it from doing so." JA566.

B. The Experiences of Each of the Named Plaintiffs Exemplify the Arbitrary Harms that the County's Practices Impose.

Defendants' policies and practices have upended the lives of thousands of people. At the time this lawsuit was filed, the population of the Prince George's County Jail was at more than 900 people. JA435–436. The Chief of the Pretrial Division estimated that approximately one-third of those—over 300 detained people—had received a pretrial referral. JA157. The Division itself has identified hundreds of people referred to pretrial who were never released prior to trial. JA240. A May 2020 audit of the jail population found that about one out of every four people in the jail had received a pretrial referral, and one in every ten people had been referred to the Division more than three months earlier. *See* JA371. A recent, independent analysis of Prince George's County bail review hearings found that, between January and May 2022, 27 percent of bail hearings resulted in a pretrial referral. *See* JA367. As of July 15, 2022, only about half of these people had been released under pretrial supervision. JA368.[8] These people waited an average of 38 days from referral to release. JA368. About 20 percent of them waited more than 60 days. JA368. When accounting for people still detained, the average time spent waiting post-referral was 61 days. JA369.

[8] This does not include persons released on home detention, as that data is not publicly available. JA368.

The experiences of the Named Plaintiffs in this case illustrate the harms inflicted by this unconstitutional system.[9]

i. Robert Frazier

At the time this lawsuit was filed, Robert Frazier was 40 years old. *See* JA348. Until he was arrested in May 2022, he worked in construction, lived with his fiancée and her 4-year-old daughter (whom he loves as his own), and took care of his elderly uncle. *See* JA348. At a bail hearing in his case on May 31, 2022, Judge Bryon Bereano issued a pretrial referral in the form of a pretrial option on Level 4, home detention. JA349, JA417. Soon after Mr. Frazier arrived in the jail, he learned that his mother had passed away. JA349. He was not released before she was cremated and was unable to pay his last respects. JA349. At a subsequent bail hearing on June 21, Judge Ada Clark-Edwards changed Mr. Frazier's pretrial referral from a pretrial option to a pretrial order. JA304, JA421.

[9] At the time this lawsuit was filed, Plaintiffs-Appellants Robert Frazier, Anibal Hernandez, D.P., Christopher Butler, and Miramba Williams were detained pursuant to pretrial referrals. They moved, on behalf of themselves and those similarly situated, for preliminary relief. JA114. In January 2023, the district court issued its order on Defendants' motions to dismiss and dismissed from this action those Named Plaintiffs who were not detained at that point in time—*i.e.*, all except Christopher Butler and Miramba Williams. Applying the "relation back" principle, it is Plaintiffs-Appellants' position that the court should not have dismissed Plaintiffs who were detained at the time this lawsuit was filed but subsequently released. *See Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975). However, because one named representative remains detained pursuant to a pretrial referral, JA839, Plaintiffs do not contest the dismissal of the others at this stage out of concern for judicial economy.

Mr. Frazier suffered a seizure in jail—after which he not only never saw a doctor, but also was moved to a cell with feces, bugs, and worms on the floor. JA350. He broke his tooth because the jail refused to feed him the soft food he requires. JA350. The jail did not allow him to see a dentist. JA350. He was unable to see his children or elderly uncle. JA349. On the day the complaint in this matter was filed, 49 days after a judge had first authorized his release, Mr. Frazier remained jailed. JA427. He was finally released on August 26, nearly three months after he had been given a pretrial referral. JA642. The State subsequently dropped all charges against him. JA756.

ii. Anibal Hernandez

When this lawsuit was filed, Anibal Hernandez was 29 years old. JA356. Until his arrest in June 2022, he worked in construction and lived in Hyattsville with his wife, 1-year-old daughter, parents, brother, and sister-in-law. JA356. The intake fact sheet prepared by the Pretrial Division stated that he has no prior failures to appear in court and only a brief and dated criminal record. JA431. At his initial bail review on June 24, 2022, Judge LaKeecia Allen issued a pretrial referral in the form of an "order" that Mr. Hernandez be released at any level of supervision. JA318. That day, Mr. Hernandez's public defender emailed the Chief of the Pretrial Division and provided the statement of charges and intake fact sheet. JA318.

Mr. Hernandez remained in jail. Over the following weeks, his lawyer emailed the Division Chief five more times, each time requesting an update on the status of Mr. Hernandez's release or at least an explanation as to why he had not been released.

JA318–319. He received none. JA318–319. When Mr. Hernandez's family called the Pretrial Division, they were told that the Division did not know why Mr. Hernandez had not been released. JA357.

On July 12, 2022, Mr. Hernandez's attorney filed a motion for a show cause order for contempt, requesting that the Director of the County Department of Corrections be required to appear in court and explain why Mr. Hernandez had not been released. JA321–322. Finally, the following day, the Chief of the Pretrial Division replied to Mr. Hernandez's lawyer and stated that the Division had deemed Mr. Hernandez ineligible for pretrial release because he has "no verifiable address." JA319. He did not explain how or why the Division had come to that conclusion, what effort (if any) the Division had made to identify or verify an address for Mr. Hernandez, or whether the Division had contacted Mr. Hernandez's mother and girlfriend (whose contact information counsel had provided the same day Judge Allen ordered Mr. Hernandez released). JA319. Mr. Hernandez remained jailed on the date the Complaint in this matter was filed, 25 days after Judge Allen had issued a pretrial referral ordering his release at any level. JA428.

At a subsequent hearing on July 25, Mr. Hernandez's public defender detailed the Division's delays and implored the court to set a money bail amount as an alternative to release under the Division's supervision. JA726–736. The judge set a money bail amount, Mr. Hernandez's family paid it, and he was finally released—two months after

Judge Allen had issued a pretrial referral authorizing his release. JA667. On the day of trial, the State dropped all charges against him.[10]

iii. D.P.

At the time the Complaint was filed, Plaintiff D.P. was 16 years old. *See* JA359. He lived with his mom K.P. and 7-year-old twin sisters, whom he sometimes babysits, in Oxon Hill, Maryland. JA359. He was finishing the 10th grade. JA359. He likes to read and play video games. JA359. His favorite foods are pizza and chicken. JA359. His favorite color is red. JA359.

D.P. was arrested on Thursday, June 16, 2022. JA359. Due to the Juneteenth court holiday, he did not appear before a judge until the following Tuesday, June 21. JA875. At that hearing, Judge Ada Clark-Edwards issued a pretrial referral authorizing D.P.'s release to his mother's house on home detention. *See* JA214. But the Division did not release him. At a subsequent hearing on June 28, Judge Brian Denton again issued a referral authorizing D.P.'s release. JA1118. After that hearing, D.P.'s lawyer sent the Division the statement of charges, his mother's contact information, and a copy of her lease. *See* JA214. The Division took no action on his case. D.P.'s mother and attorneys called and emailed the Pretrial Division, requesting D.P.'s release or at

[10] *See* Notice of Nolle Prosequi and Dismissal, *State of Maryland v. Anibal Erick Hernandez Jr.*, No. CT221365X (Prince George's County Circuit Court Apr. 13, 2023). Mr. Hernandez's case was dismissed after the Notice of Appeal was filed, but appellate courts may take judicial notice of facts outside the record that cannot reasonably be disputed—"most frequent[ly]," "court records." *United States v. Fowler*, 58 F.4th 142, 152 (4th Cir. 2023).

least an explanation as to why he had not been released. JA214, JA332. The Division provided neither. No one even returned his mother's calls. JA360.

D.P. remained detained when this lawsuit was filed, nearly a month after the Court had authorized his release. JA332. At the jail, 16-year-old D.P. was placed in the adult medical unit on suicide watch. JA360. He was allowed out of his cell for one hour per day, usually between midnight and 1:00 A.M. JA360. D.P. could not participate in online summer school from the jail. JA360–361. His arrest had a "domino effect" on his family; for example, K.P. had to quit her weekend job because she relies on D.P. to babysit. JA361. She had difficulty visiting him, as the jail would not permit D.P.'s seven-year-old sisters to join her. JA361.

D.P. was finally released on a cash bond August 30, 2022, more than two months after being authorized for release. JA758. His charges were ultimately transferred to juvenile court and his criminal case was closed. JA779.

iv. Christopher Butler

At the time this case was filed, Christopher Butler was 32 years old. JA352. Until he was arrested in October 2021, he worked at FedEx Field, lived with his mother in Capitol Heights, Maryland, and saw his daughter every day. JA352. At a bail hearing in his case on February 18, 2022, Judge Cathy Serrette issued a pretrial referral in the form of a pretrial order. JA433. Judge Serrette read and acknowledged the seriousness of the charges against Mr. Butler before giving this order. JA353. But the Pretrial Division to this date refuses to release Mr. Butler—purportedly based on the nature of the charges

against him. JA175. After this federal matter was filed, the Division filed an affidavit with an additional purported reason for its refusal to release Mr. Butler: his "mental health status." JA582. More than a year after Judge Serrette ordered his release, Mr. Butler remains detained awaiting trial. JA839.

v. Miramba Williams

When this case was filed, Miramba Williams was 27 years old. *See* JA364. Until his arrest in June 2022, he was taking classes at the University of the District of Columbia, training to work in the HVAC business, and living with his father and one of his children in Suitland, Maryland. JA364. Mr. Williams was arrested on June 30, 2022, but, due to the Fourth of July holiday, did not appear before a judge until July 5. JA217–218, JA364. Judge Gregory Powell gave Mr. Williams a pretrial referral authorizing his release. JA217. Yet he remained in jail, locked in his cell for 23 hours per day due to a COVID-19 case in his unit, separated from and unable to speak to his three young children. JA365. Mr. Williams's parents called the Pretrial Division seeking an explanation, yet received none. JA365. At the time that the Complaint in this matter was filed, Mr. Williams remained jailed. JA429.

The Pretrial Division eventually explained to Mr. Williams's attorney that it was not going to release him because he had a warrant for an alleged violation of probation in Montgomery County (the alleged violation being the fact of his arrest in Prince George's County). *See* JA554. Judges in Prince George's County refused to allow Mr. Williams to be transferred to Montgomery County to handle the warrant there, so he

remained jailed in Prince George's County for months. JA646–647, JA675, JA760–761, JA772–773. Mr. Williams was finally "released" from the Prince George's County Jail, and transferred to the Montgomery County Jail, on March 31, 2023—nine months after Judge Powell authorized his release. JA837. He is still awaiting trial on his Prince George's County charges. JA839.

II. Procedural History

Plaintiffs filed the Complaint in this matter on July 19, 2022, on behalf of themselves and a putative class of similarly situated persons.[11] JA16. They sought declaratory relief against the District and Circuit Court Judges who had referred them to pretrial; and damages, declaratory relief, and injunctive relief against Prince George's County, and four County Officials in their official capacities (collectively, "the County Defendants"), as the custodians of the County Jail and administrators of the Pretrial release program. JA64.[12]

[11] Plaintiffs filed a motion seeking class certification alongside the complaint. JA11. At a status conference on March 2, 2023, the district court stated that it was going to deny the motion without prejudice "for administrative purposes" "because we try not to have a lot of sort of motions just hanging out there for months and months and months." JA817. The court instructed Plaintiffs to re-move for class certification after the court issues a decision on two pending motions to reconsider parts of its opinion granting-in-part and denying-in-part motions to dismiss. JA829.

[12] These officials were Director of the County Department of Corrections, Corenne Labbé; Chief of the Pretrial Division, Jeffrey Logan; Chief of the Division's Community Supervision Section, Kenneth Gray; and Chief of the Division's Monitoring Services Unit, Tanya Law. JA55–56. Plaintiffs moved for a Preliminary Injunction as to all County Defendants. JA150–152. The district court dismissed the four named County officials as duplicative of the County itself during the motion to dismiss proceedings. JA639. As such, only the County itself remains as Appellee.

On the same day that they filed the Complaint, Mr. Frazier, Mr. Hernandez, D.P., Mr. Butler, and Mr. Williams moved on behalf of themselves and all others detained pursuant to a pretrial referral for preliminary injunctive relief as to the County Defendants. JA104. Specifically, they moved for a preliminary injunction prohibiting the County Department of Corrections from detaining persons prior to trial who had not received constitutional due process, as defined in the proposed preliminary injunction order. JA150–152. In support of this motion, they submitted what the district court later described as "extensive" evidence. JA831. In particular, they submitted several declarations by County Department of Corrections officials, including the Chief of the Pretrial Division; many documents produced by the County outlining its policies and procedures regarding pretrial release, which the County had produced in response to public information requests and prior litigation; declarations by eight current and former County public defenders; declarations by each of the nine Named Plaintiffs; declarations by trained observers who regularly attend bail review hearings in Prince George's County; and the court documents for each of the Plaintiffs' underlying criminal court matters. *See* JA153–536.

In its response, the County conceded that "generally [Plaintiffs'] account of the [Pretrial] process is correct." JA547. The County's statement of facts mirrored Plaintiffs' statement of facts in all relevant respects. *Compare* JA547–548, *with* JA116–124. The County's opposition to Plaintiffs' motion spanned a mere four pages. JA573–577. Because the material facts were not contested, the briefing on Plaintiffs' preliminary

injunction motion consisted primarily of disputes about how the law applies to those uncontested facts. Over Plaintiffs' objections, briefing was delayed for several months, JA537–538, and was completed by October 10, 2022, JA541. The district court declined to hold a hearing on the motion. JA639.

Months later, on March 2, 2023, the district court stated during a telephonic scheduling conference, without legal argument on the merits, that it was inclined to deny Plaintiffs' preliminary injunction motion because "I don't have enough of a record to even know whether a preliminary injunction should issue." JA785. The Court did not make any factual findings as to Plaintiffs' motion, instead alluding to concerns about the nature of preliminary injunctions in general. JA786 ("[Y]ou end up with a motion for a preliminary injunction doing essentially the same kind of discovery you are going to do on the merits, which is why I have deferred so far on that because it's just duplicative.").

When Plaintiffs' counsel offered that the parties could engage in limited discovery, present live evidence, or confer about a stipulated factual record, given the undisputed nature of Plaintiffs' allegations, the Court responded: "No. No. I think, candidly, . . . I don't want further discovery on preliminary injunction. I don't want a hearing on preliminary injunction because I think it's all - - it's essentially duplicative." JA795. The Court concluded that unless the parties could come to an agreement about preliminary injunctive relief, "I am almost certainly . . . going to say denied without prejudice." JA795.

On March 14, 2023, the district court summarily denied Plaintiffs' Motion in a single paragraph:

> Having considered Plaintiffs' Motion for Preliminary Injunction (ECF No. 2) as to Defendant Prince George's County, which included extensive exhibits; the County's oppositions thereto (ECF Nos. 64, 78); Plaintiffs' Reply (ECF No. 72); and the parties' joint status report dated March 13, 2023 stating that they have not reached an agreement as to preliminary relief (ECF No. 106), it is, this 14 day of March 2023, for the reasons stated on the record during the March 2, 2023 telephone conference ORDERED Plaintiffs' Motion for Preliminary Injunction (ECF No. 2) is DENIED WITHOUT PREJUDICE.

JA831.

Plaintiffs timely appealed. JA872.

SUMMARY OF ARGUMENT

The district court abused its discretion by denying Plaintiffs-Appellants' Motion for a Preliminary Injunction without making factual findings based on the evidence presented. Notwithstanding the substantial evidence that Plaintiffs marshalled in support of their motion, the district court's one-paragraph order denying their motion gestures only broadly at the evidence and does not even mention the relevant law. This Court should, at a minimum, vacate and remand with instructions to issue findings of fact tied to conclusions of law. But because the undisputed evidence illustrates that Plaintiffs-Appellants are entitled to preliminary relief, this Court can and should go further. The record demonstrates that Plaintiffs are likely to succeed on the merits of their due process claims against the County, that they have and will continue to suffer irreparable harm absent swift relief, and that the balance of equities and public interest

favor a preliminary injunction. This Court can and should remand with injunctions to enter a preliminary injunction.

STANDARD OF REVIEW

This Court generally reviews a district court's denial of a preliminary injunction "for an abuse of discretion, reviewing the district court's factual findings of clear error and its legal conclusions de novo." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 235 (4th Cir. 2014) (cleaned up). "A district court abuses its discretion when it acts in an arbitrary manner, when it fails to consider judicially-recognized factors limiting its discretion, or when it relies on erroneous factual or legal premises." *United States v. Henry*, 673 F.3d 285, 291 (4th Cir. 2012) (citations omitted). Where "the district court's ruling rests solely on conclusions of law and the facts are either established or undisputed, de novo review is appropriate." *Warsoldier v. Woodford*, 418 F.3d 989, 993 (9th Cir. 2005); *see also Philadelphia Marine Trade Ass'n v. Loc. 1291*, 909 F.2d 754, 756 (3d Cir. 1990) ("Where . . . the essential findings of fact are conceded or are undisputed and the district court's decision rests on an interpretation of the law rather than on the facts, our review is broader.").[13]

[13] *Cf. United States v. Ruhe*, 191 F.3d 376, 390 (4th Cir. 1999) ("Determining the value of stolen property for sentencing purposes is a factual issue reviewed for clear error when the facts are disputed, but a question of law reviewed *de novo* when the facts are undisputed."); *Mort Ranta v. Gorman*, 721 F.3d 241, 250 (4th Cir. 2013) ("When reviewing a decision by a district court sitting in its capacity as a bankruptcy appellate court, we review the factual findings of the bankruptcy court for clear error and the legal conclusions de novo. Because this appeal presents only questions of statutory interpretation and the facts are undisputed, our review is de novo." (citations omitted)).

ARGUMENT

I. The District Court Abused Its Discretion By Denying a Preliminary Injunction Without Considering the Evidence Presented or Making Findings of Fact.

"In granting or refusing an interlocutory injunction, the court must . . . state the findings and conclusions that support its action." Fed. R. Civ. P. 52(a)(2). This requirement that a trial court "make particularized findings of fact supporting its decision to grant or deny a preliminary injunction" exists so that appellate courts may "conduct meaningful appellate review." *Greenhill v. Clark*, 672 F. App'x 259, 260 (4th Cir. 2016) (per curiam) (citing *H & R Block Tax Servs. LLC v. Acevedo–Lopez*, 742 F.3d 1074, 1078 (8th Cir. 2014)); *see also, e.g.*, *TEC Eng'g Corp. v. Budget Molders Supply, Inc.*, 82 F.3d 542, 545 (1st Cir. 1996) (reversing four-page order on preliminary injunction as lacking "explicit findings of fact or conclusions of law"). This Court has reprimanded trial courts for failing to make "specific findings of fact or conclusions of law" in denying preliminary injunctive relief. *Rullan v. Goden*, 782 F. App'x 285, 286 (4th Cir. 2019); *see also Bratcher v. Clarke*, 725 F. App'x 203, 206 (4th Cir. 2018); *Crussiah v. Inova Health Sys.*, 688 F. App'x 218, 218–19 (4th Cir. 2017) (per curiam).

That is precisely what the district court did here. The district court declined to hold a hearing on Plaintiffs' preliminary injunction motion and then denied the motion in a one-paragraph order "for the reasons stated on the record during the March 2, 2023 telephone conference." JA831. Those "reasons" are unclear. At the aforementioned scheduling conference, the district court stated that it did not "have enough of a record

to even know whether a preliminary injunction should issue." JA785. When Plaintiffs pointed out that they had submitted 47 exhibits in support of the motion, and would be amenable to a brief discovery period, a hearing, or whatever else the court requested, the court expressed skepticism about the prudence of preliminary injunctive relief in *any* matter: "[Y]ou end up with a motion for preliminary injunction doing essentially the same kind of discovery you are going to do on the merits, which is why I have deferred so far on that because it's just duplicative." JA786; *see also* JA795 ("I don't want further discovery on preliminary injunction. I don't want a hearing on preliminary injunction because I think it's all - - it's essentially duplicative."). In response to the Court's questions about how the preliminary injunction could run against only the County, not the judiciary, JA790–791, Plaintiffs explained that the requested relief was limited to the policies and practices within the County's control, *i.e.*, "the process that happens after someone has been referred to the Pretrial division," JA791. The Court responded that it was "almost certainly" going to deny Plaintiffs' motion without prejudice. JA792. It followed through on that promise with its one-paragraph order, notwithstanding the "extensive exhibits" presented by Plaintiffs and uncontested by Defendants. JA831.

This Court should vacate because, "[i]n denying relief, the district court did not make specific findings of fact, nor did it mention the factors set forth in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)." *Crussiah*, 688 F. App'x at 218–19 (citation omitted). "In the absence of such specific findings of fact and conclusions of law," this Court is "constrained to conclude that the district court abused its discretion

in denying [Plaintiffs'] motion." *Rullan*, 782 F. App'x at 286 (citing *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 192 (4th Cir. 2013) (en banc)). For these reasons alone, this Court should, at a minimum, vacate the order of the district court denying Plaintiffs' motion and remand with instructions for the district court to properly resolve Plaintiffs' motion, making the requisite findings of fact and conclusions of law in a timely manner.

II. The District Court Abused Its Discretion Because the Undisputed Evidence Proffered By Plaintiffs Satisfies the *Winter* Standard.

Although the district court did not explain its reasons, this Court has "the power to vacate and remand a denial of a preliminary injunction with specific instructions for the district court to enter an injunction." *League of Women Voters*, 769 F.3d at 248. Plaintiffs-Appellee have provided sufficient evidence to meet the standard for preliminary injunctive relief. Indeed, Defendant-Appellee Prince George's County has agreed that there was sufficient evidence before the district court for it to render a decision. *See* Appellee's Opposition to Appellants' Motion for Summary Reversal, Doc. 14-1, at 3 (stating that "generally [Plaintiffs-Appellants'] account of the [pretrial] process is correct"). This Court can and should order the district court to enter the requested preliminary relief.

This Court's authority is clear where, as here, "the facts are undisputed." 9C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. § 2577 (3d ed. 2002); *see also, e.g.*, *Smith v. Dravo Corp.*, 208 F.2d 388, 391 (7th Cir. 1953) ("[W]here the record is complete or the evidence uncontradicted or entirely documentary, the

appellate court is bound to decide the case . . . ."); *Perry v. Perry*, 190 F.2d 601, 602 (D.C. Cir. 1951) ("[I]f the trial judge's finding must rest exclusively on the written evidence or the undisputed facts . . . his evaluation of credibility has no significance." (citation omitted)); *Sbicca-Del Mac, Inc. v. Milius Shoe Co.*, 145 F.2d 389, 400 (8th Cir. 1944) (same).

The material evidence in support of Plaintiffs' motion for a preliminary injunction is undisputed. *See* JA547. The County has conceded, just as Plaintiffs alleged, that judges in Prince George's County "often refer or 'order' . . . a defendant to [the County Department of Corrections] pretrial release program" and that the Pretrial Division itself "sets and administers the criteria for pretrial release." JA547. The County has agreed that, "[i]f a defendant qualified for pre-trial release based on the criteria established by the PGCDOC," they are released from jail without further involvement of a judge. JA548. And the Chief of the Pretrial Division himself has explained that the Division can and does, within its sole discretion, decline to release referred persons based on these self-determined criteria. JA581. Plaintiffs allege that such a system is unconstitutional. The County asserts that it is not. That is a purely legal question, which this Court would review de novo in any event.

Because the relevant facts are undisputed, "additional proceedings in the district court would serve no purpose whatsoever." *Planned Parenthood of Blue Ridge v. Camblos*, 155 F.3d 352, 360 (4th Cir. 1998), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). Remanding for the district court to make factual findings and issue conclusions of law will further delay the resolution of Plaintiffs'

motion, which was filed more than nine months ago. JA11. In that time, Plaintiffs and putative class members have suffered irreparable, ongoing harm. *See infra* section II.B. Remanding when this Court is equally equipped to render a ruling on the motion "would serve only to unduly protract this litigation." *King v. Comm'r of Internal Revenue*, 458 F.2d 245, 250 (6th Cir. 1972); *see also Shaw v. F.B.I.*, 749 F.2d 58, 63 (D.C. Cir. 1984) ("Since there are no disputed facts, it would be futile to remand the issue to the District Court and we proceed to its resolution."). Accordingly, this Court is entitled to, and should, assess the uncontested factual record despite the district court's failure to do so and "remand with instructions to the district court to enter as swiftly as possible a preliminary injunction." *League of Women Voters*, 769 F.3d at 248.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. The undisputed evidence demonstrates that Plaintiffs have satisfied each of these factors. *Cf. Mobil Shipping & Transp. Co. v. Wonsild Liquid Carriers Ltd.*, 190 F.3d 64, 69 (2d Cir. 1999) (explaining that trial court's "failure to make factual findings . . . does not require a remand" "[b]ecause the relevant evidence is documentary and undisputed"); *see infra* sections A–C. To deny Plaintiffs a preliminary injunction on such a record was an abuse of discretion. *League of Women Voters*, 769 F.3d at 246 (reversing-in-part denial of preliminary injunction because, *inter alia*, "Plaintiffs presented undisputed evidence" of alleged facts).

A. Plaintiffs Are Likely to Succeed On the Merits of Their Due Process Claims.

Plaintiffs-Appellants are likely to prevail on their due process claims against Appellee Prince George's County.[14] First, the County violates Plaintiffs' substantive due process rights by detaining Plaintiffs without a judicial finding that detention is necessary and that no alternatives to detention will reasonably ensure community safety and return to court. Second, the County violates Plaintiffs' procedural due process rights because the process that ultimately results in Plaintiffs' detention—a referral to the Pretrial Division for its review and decision—lacks crucial procedural safeguards.

i. Defendants Violate Plaintiffs' Substantive Due Process Rights (Counts 1 & 3).

A person's due process "interest in liberty" is "fundamental." *Salerno*, 481 U.S. at 750. Thus, government may not infringe upon that interest by detaining a person pretrial "*at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (citing, *inter alia*, *Salerno*, 481 U.S. at 746). In particular, a person may not be detained prior to trial unless a court finds, by a standard of clear and convincing evidence, that no alternatives to detention—including release on any conditions—will reasonably

[14] Plaintiffs moved for a preliminary injunction on Counts I-IV of their Complaint, which allege due process violations pursuant to the Fourteenth Amendment to the U.S. Constitution and the coextensive Article 24 of the Maryland Declaration of Rights. JA104–105; *Koshko v. Haining*, 921 A.2d 171, 194 & n.22 (Md. 2007).

protect the community's safety and ensure that the person will return to court. *Salerno*, 481 U.S. at 739.

State and federal courts across the country, including in Maryland, have repeatedly articulated these principles. *See, e.g.*, *Lopez-Valenzuela*, 770 F.3d at 784–89; *Torres v. Collins*, No. 20-CV-00026, 2020 WL 7706883, at *8 (E.D. Tenn. Nov. 30, 2020); *Reem v. Hennessy*, No. 17-CV-6628, 2017 WL 6765247, at *1 (N.D. Cal. Nov. 29, 2017); *State v. Mascareno-Haidle*, 514 P.3d 454, 461–62 (N.M. 2022); *In re Humphrey*, 482 P.3d 1008, 1013 (Cal. 2021); *Valdez-Jimenez v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 460 P.3d 976, 985 (Nev. 2020); *Brangan v. Commonwealth*, 80 N.E.3d 949, 962 (Mass. 2017); *Wheeler*, 864 A.2d at 1065. So has the former Attorney General of Maryland. *See* JA465–470.

The County's policies turn this basic due process requirement on its head. When a judge refers a detained person to the Pretrial Division for release, that judge—the only person empowered to make pretrial release determinations under Maryland law, *see* Md. R. Crim. Causes 4-216.1(b)(1)(B)—has necessarily found that release under the supervision of the Pretrial Division is permissible and thus that pretrial detention is not necessary. Indeed, the referral empowers the Pretrial Division to release the person without any further court process or involvement of the judge. JA548.[15]

[15] Despite this referral process, judges making a pretrial referral will sometimes confusingly pair it with a boilerplate recitation that they have found by clear and convincing evidence that no conditions of release will serve to protect the community

As such, the Pretrial Division unlawfully detains legally innocent people in two ways. First, people who are referred to the Division are regularly detained for weeks or months while the Division "processes" their case—a period of detention *after* a judicial officer has necessarily found pretrial release to be permissible. Second, a significant portion of people referred to the Division are *never* released awaiting trial—again, without any proper finding that their ongoing detention is necessary.

Adding insult to injury, the grounds on which the Division bases its refusals to release are often arbitrary or unrelated to community safety or flight risk. For instance, the Division regularly refuses to release people because they live in Washington, D.C., or Montgomery County (as opposed to Prince George's County); because they are unhoused; or because the complaining witness cannot be reached. *See, e.g.*, JA159–161, JA170–171, JA580.[16] In addition, the Division often refuses to release people due to the nature of the charges against them, their criminal history, or the existence of another

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and ensure the person will return to court (although they typically cite no evidence—indeed, they typically *hear* little to no evidence—and do not explain the basis for this finding). This introduces an inherent contradiction: On the one hand, the judge recites that no conditions of release will suffice to protect the community or ensure return to court. On the other, the judge has authorized the Pretrial Division to release the person on whatever conditions it deems appropriate. If judges intend to detain people by referring them to the Division, then they must comply with the substantive standards and procedural protections required by due process. A formulaic recitation of the legal standard does not suffice. *Cf. Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("[T] he decision maker should state the reasons for his determination and indicate the evidence he relied on."). Accordingly, a pretrial referral, whether paired with a purported detention finding or not, necessarily constitutes a determination that pretrial incarceration is *not* necessary.

[16] *See also* JA357, JA212, JA483–484, JA318, JA298.

open case—all information that was available to the judge at the time the judge made the pretrial referral. *See, e.g.*, JA213, JA162–163, JA353.

For example, at the time Plaintiffs filed their Complaint and moved for preliminary relief, Robert Frazier remained jailed 49 days after he had been referred for pretrial release. JA303–305. Mr. Frazier was given inconsistent information about why he remained detained and whether an individualized assessment about his release had been conducted. JA349. A correctional officer informed him that his ongoing detention was related to the jail's budget, not community safety or flight risk. JA349. Meanwhile the Division informed his attorney that it was concerned about a traffic warrant of which, in Defendant Logan's words, the court had been "fully aware" when it authorized Mr. Frazier's release. JA304–305, JA308–314. Ultimately, Mr. Frazier was released nearly three months after he had been referred to the Pretrial Division, JA642, when a judge released him on his own recognizance—indicating that he was neither a danger to the community nor a flight risk all along. All charges against him were eventually dismissed, rendering his three months of unconstitutional detention all the more unnecessary. JA756.

Meanwhile, when the Complaint was filed, Anibal Hernandez, D.P., and Miramba Williams remained in jail weeks after having been referred to the Pretrial Division. JA356–357, JA332, JA364–365. The Pretrial Division refused to release them, or even to explain to them, their families, or their attorneys why it was refusing to release them. JA357, JA214, JA360, JA365. No court had found that Mr. Hernandez, D.P., or

Mr. Williams's detention was necessary for community safety or to ensure their future appearance in court. In fact, in each case, the judge imposed specific conditions of release—for example, home detention and stay-away orders. JA318, JA1117, JA217. Mr. Hernandez and D.P. were eventually released weeks after the Pretrial Division was given authorization to do so—and only because a court set a money bail amount to circumvent the Pretrial Division's delays and denials. JA667, JA758. The charges against Mr. Hernandez were dropped. *See supra* at 17 n.10. D.P.'s adult case was closed. JA779. And Mr. Williams has been released from the County's custody awaiting trial. JA837.

As for Christopher Butler, despite a court authorizing his release 14 months ago, the Pretrial Division continues to detain him due to the "nature of the offense" with which he is charged. JA175. But at Mr. Butler's bail review hearing, the judge specifically acknowledged the seriousness of the charges before determining that release on home confinement was appropriate and, by extension, that pretrial detention was unnecessary. JA353. Mr. Butler nonetheless remains detained on the discretion of the Pretrial Division.[17]

Defendants' policies and practices cause Plaintiffs and putative class members to experience continued and extended pretrial detention without a finding by a judicial

[17] Other judges have, at subsequent hearings, refused to order the Pretrial Division to release Mr. Butler. JA645–646. After the instant lawsuit was filed, the County crafted a new excuse as to why it purportedly cannot release Mr. Butler: his "mental health status." JA582. Why Mr. Butler's mental health status necessitates his ongoing detention remains a mystery.

officer that such detention is necessary. Accordingly, Plaintiffs are likely to prevail on their substantive due process claims under the Fourteenth Amendment as well as pursuant to Article 24 of the Maryland Declaration of Rights.

ii. Defendants Violate Plaintiffs' Procedural Due Process Rights (Counts 2 & 4).

Individuals must receive "'strong procedural protections'" before being deprived of their liberty. *Wheeler*, 864 A.2d at 1062 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001)); *see also, e.g.*, *Vitek v. Jones*, 445 U.S. 480, 495–96 (1980) (persons facing an "immediate deprivation of liberty interests they are currently enjoying" that include an inherent risk of mistake are entitled to protections similar to the rigorous procedures in *Morrissey v. Brewer*, 408 U.S. 471 (1972)). A procedural due process claim proceeds in two steps. First, a court asks: Has the person claiming a constitutional violation asserted a protected liberty or property interest with which the state has interfered? *See Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). As discussed above, Plaintiffs' interest in freedom from incarceration is "fundamental," *Salerno*, 481 U.S. at 750, and they have been deprived of that interest by being detained indefinitely following a pretrial referral.

At the second step, the court considers whether the procedures provided constitutionally sufficient. *Thompson*, 490 U.S. at 460. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine what constitutes sufficiently "meaningful"

procedures in a given circumstance, a court must weigh: (1) "the private interest that will be affected;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

With regard to the first *Mathews* factor, Plaintiffs are incarcerated in violation of their fundamental liberty interest in freedom from detention, for which the collateral consequences are grave. *See infra* section II.B. These detentions are significant: Defendants detain people referred to the Pretrial Division for weeks or months on end, sometimes until their case is resolved. *See Mackey v. Montrym*, 443 U.S. 1, 12 (1979) ("The duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved.").[18]

The seriousness of the private interests at stake here demands rigorous procedures. *See Zadvydas*, 533 U.S. at 690–91 ("[W]e have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections."); *Turner v. Rogers*, 564 U.S. 431, 445 (2011) (discussing the importance of robust procedural protections "to ensure accurate

[18] Plaintiffs do not dispute that the Pretrial Division should be afforded a reasonable period of time after the bail review hearing to effectuate a referred person's release. But courts have measured that period of time in hours or days—not weeks or months. *See Mitchell v. Doherty*, 37 F.4th 1277, 1289 (7th Cir.2022) (collecting cases).

decisionmaking" before a person is jailed). These procedures include a "full-blown adversary hearing" in front of a "neutral decisionmaker," consideration of alternative conditions of release, application of a clear-and-convincing-evidence standard of proof, and recorded "findings of fact" and "statement[s] of reasons for a decision to detain." *Salerno*, 481 U.S. at 750–52 (applying balancing test from *Mathews v. Eldridge* to pretrial detention); *see also Morrissey*, 408 U.S. at 488–89 (requiring the same procedures at parole revocation hearings where, unlike people detained pretrial, there is no presumption of innocence). Courts around the country have repeatedly affirmed that procedural due process requires these protections. *See, e.g.*, *ODonnell II*, 892 F.3d at 159–61; *Torres*, 2020 WL 7706883, at *11–13; *McNeil v. Cmty. Prob. Servs., LLC*, No. 18-CV-00033, 2019 WL 633012, at *15 (M.D. Tenn. Feb. 14, 2019), *aff'd*, 945 F.3d 991 (6th Cir. 2019); *Caliste v. Cantrell*, 329 F. Supp. 3d 296, 312–15 (E.D. La. 2018), *aff'd*, 937 F.3d 525 (5th Cir. 2019; *Valdez-Jimenez*, 460 P.3d at 987.

As to the second *Mathews* factor, the risk that Defendants will erroneously deprive Plaintiffs of their liberty is substantial. Although Defendants offer a bail review hearing following arrest,[19] those given a pretrial referral are then subject to a secondary process that determines whether they will be released or detained absent *any* of the procedural protections due process requires. First, the Division staff who make

[19] The bail review hearing itself contains a number of problematic procedural deficiencies, principal among them that the burden is shifted to the arrested person to show why he or she should not be detained. As such, that hearing does not suffice to meet Defendants' due process obligations.

decisions are not judicial officers, and the Division itself cannot be deemed a "neutral decisionmaker," *Salerno*, 481 U.S. at 750—it sits within the Department of Corrections, the same agency that incarcerates people pretrial. Second, the Division operates behind closed doors, with no affirmative notice to the detained person or their counsel, only sporadic responses to defense counsel's outreach, and no involvement of a judge or judicial official. *See supra* at 8. The detained person receives no hearing in front of the Division, let alone an adversarial hearing, and has no opportunity to "confront" the "evidence" used to detain them. Third, instead of an individualized consideration of conditions of release, the Pretrial Division invents and applies one-size-fits-all eligibility and supervision criteria, such as having a landline telephone or residing in Prince George's County. *See supra* at 9–11. Fourth, the Division does not consider whether alternate conditions, such as pretrial check-ins by cell phone or providing an address in the District of Columbia, would sufficiently address the government's interests in some cases. Fifth, it is unclear what, if any, standard of evidence the Division applies in its opaque, internal decisionmaking process.

Finally, the Division's ultimate decision whether to continue to detain someone is not supported by "findings of fact" or a "statement of reasons." Indeed, the only record of the Division's decision—when one exists at all—is a form on which one or more of a pre-set menu of "reasons" is checked. Not infrequently, that reason is, essentially, "call us if you want an explanation." *See, e.g.*, JA403. The form does not state how the reason given is related to community safety or flight risk, what (if any) alternate

conditions were considered and why they were found to be insufficient, what underlying findings of fact motivated the decision, what standard of evidence was used, or anything else that would allow the detained person to meaningfully challenge the Division's determination. *Cf. Goldberg*, 397 U.S. at 271. Nor is the Division's decision subject to appeal or judicial review of any kind.

As such, Defendants' current procedures result in hundreds of people remaining detained for weeks or months after a court has already authorized their release.[20] In 2022, people referred to the Pretrial Division sat in jail for another 61 days post-referral, on average. JA368–369.[21] Only about half of people referred to the Pretrial Division between January and May 2022 had been released as of July 15, 2022. JA368. The rest remain detained through the resolution of their cases, often not because of any danger to the community or risk of flight, but simply because they failed to meet the Division's own arbitrary criteria.

As for the final *Mathews* factor, the government has no interest in prolonged pretrial detention for reasons unrelated to public safety or risk of flight. The government's interest is that only those who merit pretrial detention actually be detained after arrest. That interest is undermined—not furthered—where a person is detained even though a court has already authorized release through pretrial referral.

[20] *See, e.g.*, JA305, JA214, JA317, JA162.
[21] *See, e.g.*, JA353, JA213–214, JA317, JA162.

Named Plaintiffs' cases are illustrative of the procedural deficiencies in the Division's policies. D.P. and Miramba Williams were provided no process at all, let alone "meaningful" process. When the instant Complaint was filed, they had been authorized for release weeks prior, yet neither of them had spoken to anyone in the Pretrial Division. JA332, JA1116, JA365, JA217. Their family and attorneys, too, were met with silence. JA332, JA365. If the Pretrial Division was keeping them detained for any particular reason, they did not know it, and thus could not challenge it. Neither of them knew if or when they would be released. In fact, neither of them even knew when they would know if or when they would be released.

Plaintiffs do not question that the Pretrial Division may properly play *some* role in determining and implementing appropriate conditions of release. The Maryland Rules permit a judicial officer to consider the "recommendation of an agency that conducts pretrial release investigations" and/or to "commit[] the defendant to the custody or supervision of . . . [an] organization that agrees to supervise the defendant." Md. R. Crim. Causes 4-216.1(f)(2)(E), (d)(2)(K). But the County's current process goes well beyond the Division providing recommendations and supervision services. Instead, its process shifts the decision about whether an arrested person will be released from an open hearing in the courtroom of a state judge, to behind closed doors in the offices of the Department of Corrections. This does not satisfy due process. As such, Plaintiffs are likely to succeed on the merits of their procedural due process claims

under the Fourteenth Amendment as well as pursuant to Article 24 of the Maryland Declaration of Rights.

B. Plaintiffs Are Suffering Ongoing, Irreparable Harm.

"[T]he loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (quotation marks and citations omitted); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987). Plaintiffs-Appellants and putative class members who were referred to the Pretrial Division yet remain detained are enduring unconstitutional detention. *See supra* section II.A. Past experience shows that they are likely to remain detained for weeks, or even months. Where "continued detention is indeed unconstitutional, every subsequent day of detention without remedy visits harm anew." *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 711 (D. Md. 2016). This ongoing violation of constitutional rights is sufficient to show irreparable harm.

Even if the constitutional violations alone were not sufficient, "deprivations of physical liberty," of the sort Plaintiffs-Appellants and putative class members have experienced, "are the sort of actual and imminent injuries that constitute irreparable harm." *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 155 (D.D.C. 2018) (collecting cases); *see also Turner v. Safley*, 482 U.S. 78, 84 (1987) ("Prison walls do not form a barrier separating prison inmates from the protections of the Constitution."). And "the harm from detention pursuant to an unlawful policy cannot be remediated after the fact."

R.I.L-R v. Johnson, 80 F. Supp. 3d 164, 191 (D.D.C. 2015). This is especially true because persons detained while awaiting trial have not been tried—let alone convicted—and have not yet "surrendered" the "liberties and privileges enjoyed by other citizens." *Desper v. Clarke*, 1 F.4th 236, 242 (4th Cir. 2021) (citation omitted), *cert. denied*, 142 S. Ct. 811 (2022). As the Supreme Court explained:

> [Pretrial detention] often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent.

Barker v. Wingo, 407 U.S. 514, 532–33 (1972); *see also Pugh v. Rainwater*, 572 F.2d 1053, 1056–57 (5th Cir. 1978); *United States v. Bogle*, 855 F.2d 707, 710–11 (11th Cir. 1988) ("[U]nnecessary deprivation of liberty clearly constitutes irreparable harm.") (citation omitted); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) ("[L]oss of liberty . . . is perhaps the best example of irreparable harm . . . .").

Plaintiffs presented substantial evidence of this irreparable harm in the district court. Plaintiffs pointed to numerous academic studies, which have shown that, for example, a person who is detained pretrial is 13 percent more likely to be convicted and 25 percent more likely to plead guilty than an similarly situated person who is not detained. JA142. Plaintiffs also submitted reports from recent medical inspections of the Prince George's County Jail that found, *inter alia*, rampant disregard for requests for

medical attention and "an absolute lack of any mental health care." JA455; *see generally* JA439–463. That none of the Named Plaintiffs has been convicted of the crimes for which they were jailed, and thus all remain legally innocent, further highlights this harm. JA756, JA779, JA839; *see also supra* at 17 n.10.

Recent events illustrate the tragic consequences of Defendants' unlawful conduct. In February 2023, a 25-year-old woman who had been referred to the Pretrial Division, thereby making her a member of the putative class, died in the Prince George's County Jail while waiting for the Division to process her case. JA833. The woman had been given a pretrial referral on January 10, 2023. JA832–833. Yet she remained in jail seven weeks later when she died. JA833. Death is the canonical irreparable harm.

As for the Named Plaintiffs, then-16-year-old D.P. was separated from his mother and 7-year-old sisters for more than two months. JA359. He fell behind in school. JA360. Mr. Frazier never got to pay his respects after his mother died. JA349. D.P. and Mr. Williams were locked in their cells for 23 hours per day, D.P. as a child on suicide watch in an adult jail. JA360, JA365. Mr. Frazier suffered a seizure in jail, and spent the first night after his seizure sleeping on one of the medical unit's soaking wet, bug- and worm-infested cots with feces on the floor. JA350. A guard called him a "piece of shit." JA305. Mr. Frazier, Mr. Hernandez, Mr. Butler, and Mr. Williams were unable to see, and in some cases even speak to, their young children. JA349, JA356–357, JA354, JA365. Their detention injured their families too; for example, D.P.'s mom, who relies

on him to babysit his little sisters, had to quit her second job. JA361. All this even though a judge authorized—and in some cases, ordered—their release.

Plaintiffs Donnell Davis, Leslie Sharp, Elmer Laguan-Salinas, and Adrienne Worthington had been released from jail by the time this matter was filed, and thus did not seek injunctive relief. But each was detained for days, weeks, or months after a judge referred them to pretrial. The harms they suffered during these weeks of illegal detention are further illustrative of the damage caused by Defendants' practices. For example, Mr. Laguan-Salinas lost his house and was separated from his baby daughter for three months, JA505–506; Mr. Sharp lost his job, JA490; and Ms. Worthington lost her house and car as a result of her arrest and prolonged detention, during which time she contracted COVID-19, JA512–513.

The hundreds of people who have been referred to the Pretrial Division yet remain in jail are currently experiencing harms similar to those described above. These harms necessitate a preliminary injunction.

C. The Balance of Equities and Public Interest Favor Preliminary Injunctive Relief.

The serious harms that unconstitutionally detained persons continue to experience far exceed any harm the County would suffer by the issuance of an injunction. "[A] state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Centro Tepeyac*, 722 F.3d at 191

(citation omitted). The County's "unnecessary pretrial detention" of hundreds of people who have been authorized for release imposes an unnecessary burden on state coffers. *Jones v. City of Clanton*, No. 15-CV-34, 2015 WL 5387219, at *3 (M.D. Ala. Sept. 14, 2015). Furthermore, the County has implied that the delays in the Pretrial Division's processing are a function of the resources consumed implementing its own arbitrary criteria unrelated to community safety or flight risk. JA557 ("[T]here are only so many hours, judges and PGCDOC staff and the number of cases exceeds their capacities to hold bond hearings, motion hearings and trial in a more [expedient] fashion while safeguarding the accused constitutional rights."). It could address its own administrative burdens by simply complying with the Constitution. The balance of harms weighs substantially in favor of Plaintiffs.

Public interest considerations also favor the proposed injunction because enjoining a government official's unconstitutional conduct does not infringe on any legitimate public interest. *See Centro Tepeyac*, 722 F.3d at 191. Rather, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citations omitted); *see also Hensley v. Eckerhart*, 461 U.S. 424, 443 n.2 (1983) (Brennan, J., concurring in part, dissenting in part) ("Civil rights plaintiffs with meritorious claims 'appear before the court cloaked in a mantle of public interest.'" (citation omitted)); *Giovani Carandola Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

Moreover, unlawful pretrial detention has significant negative consequences for the public. Even brief periods of pretrial detention cause harms that affect the broader community, including disrupted employment and fractured relationships. Rigorous studies have found that detention increases poverty, harms family members, and causes recidivism. *See supra* section II.B. Meanwhile, unnecessarily detaining people wastes public resources that could be spent addressing other needs. *Jones*, 2015 WL 5387219, at *3. Accordingly, the public interest would be served by preliminary injunctive relief.[22]

* * *

The evidence presented above establishes that Plaintiffs-Appelants have met the standard for preliminary injunctive relief. All of that evidence was presented in the district court. The County conceded that "generally [Plaintiffs'] account of the [Pretrial] process is correct." JA547. The district court's denial of Plaintiffs' motion in the face of undisputed evidence to the contrary was an abuse of discretion. *League of Women Voters*, 769 F.3d at 246.

CONCLUSION

The district court abused its discretion by not making findings of fact or conclusions of law in support of its denial of Plaintiffs-Appellants' motion for a preliminary injunction and by denying the motion despite extensive evidence that Plaintiffs-Appellants have met the legal standard for preliminary relief. At a minimum,

[22] Plaintiffs respectfully request that they not be required to give security in order to obtain a preliminary injunction. *Cf.* Fed. R. Civ. P. 65(c).

this Court should reverse, vacate, and remand with instructions for the district court to properly consider the motion and issue findings of fact and conclusions of law. But given the undisputed record, and in order to avoid further irreparable harm to Plaintiffs-Appellants and hundreds of putative class members, this Court should decide the legal issues and remand with instructions to enter the requested preliminary injunction.

Respectfully submitted this 1st day of May, 2023.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume, typeface, and type-style requirements of Federal Rule of Appellate Procedure 32(a). This brief contains 12,634 words, excluding the parts of the document exempted by Rule 32(f), and was prepared in fourteen-point Garamond font, a proportionally spaced typeface, using Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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