

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>HARRIET DELORES CLEVELAND,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 2:13-cv-00732-MEF-TFM</b>
	)	
<b>CITY OF MONTGOMERY,</b>	)	
	)	
<b>THE HONORABLE MILTON J.</b>	)	
<b>WESTRY,</b>	)	
	)	
<b>Defendants.</b>	)	

**AMENDED COMPLAINT**

**INTRODUCTION**

1. Plaintiff Harriet Cleveland is an indigent woman who has been ordered<sup>1</sup> to be incarcerated because of her inability to pay traffic tickets, in violation of her constitutional rights to due process, equal protection, and to counsel.

2. Plaintiff has been unable to find full time employment since she was laid off from her job at a day care in 2009. She has been babysitting and renting out rooms in her home to strangers in order to make ends meet. Very recently, she obtained a part time job as a custodian at a day care.

3. In 2008 and 2009, when a police roadblock was often set up in her neighborhood, she incurred several tickets because she could not afford car insurance. Her license was suspended because she could not pay the steep fines and court costs. Thereafter, she obtained tickets for driving without a suspended license when she drove to work and took her child to school.

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<sup>1</sup> This order has not been vacated. Plaintiff was released from jail on a bond, and Defendants and the Municipal Court have agreed not to arrest her on the cases implicated by this lawsuit while it remains pending.

4. On August 20, 2013, Plaintiff was arrested at her home for her inability to pay fines and costs associated with various traffic tickets in the Montgomery Municipal Court (“Municipal Court”).

5. Defendant, the Honorable Milton J. Westry, was presiding over the Municipal Court proceedings on August 21, 2013 and ordered Plaintiff to either pay \$1,554 immediately to satisfy those fines or serve a 31 day sentence in jail. When Plaintiff told the court that she could not afford to pay the full amount on the spot, she was taken to the Montgomery Municipal Jail.

6. Plaintiff challenges these collection procedures and practices and her incarceration under the due process and equal protection clauses of the U.S. and Alabama Constitutions, and the Alabama state law implementing these provisions. *See* U.S. Const. amend. XIV; Ala. Const. art. I, §§ 1, 6, 22; Ala. R. Crim. P. 26.11. Although Plaintiff informed Defendant Judge Westry that she could not pay, Defendant failed to make a meaningful inquiry into Plaintiff’s financial situation and her ability to pay.

7. Plaintiff further challenges this incarceration as violating her right to counsel under the U.S. and Alabama Constitutions, as she was jailed without being provided counsel to represent her during the aforementioned proceedings or waiving that right. *See* U.S. Const. amend. VI; Ala. Const. art. I, § 6.

8. Plaintiff therefore asks that this Court declare that this order violates the U.S. and Alabama Constitutions and Alabama law.

#### **PROCEDURAL HISTORY, JURISDICTION, AND VENUE**

9. Plaintiff filed this action in the Circuit Court of Montgomery County on August 28, 2013. Defendants removed to this Court on October 4, 2013.

10. Plaintiff brings claims arising under 42 U.S.C. § 1983 and the U.S. Constitution, which this Court has jurisdiction over pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This Court has supplemental jurisdiction over all claims arising under the Alabama Constitution and laws pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because this Court sits in the district and division in which the state court action was pending.

### **PARTIES**

12. Plaintiff Harriet Cleveland is a 49-year-old resident of Montgomery, Alabama.

13. Defendant City of Montgomery (“City”) is an Alabama municipal corporation organized pursuant to Act 73-618 of the Alabama Legislature and located in Montgomery County, Alabama.

14. Defendant Judge Milton J. Westry is a resident of the State of Alabama.

### **STATEMENT OF FACTS**

#### ***Order of Incarceration***

15. Plaintiff Harriet Cleveland was ordered to serve 31 days in jail because of her inability to pay fines and fees on multiple traffic tickets.

16. Plaintiff incurred these traffic tickets in 2008 and 2009, when a police roadblock was often set up in her neighborhood.

17. She was jailed at least twice before for these tickets in 2009 and 2010. When she told the judge at one hearing that she could not afford to pay because she was only able to find part-time work, he told her to find another job.

18. Plaintiff received a letter from the Office of the District Attorney of the Fifteenth Judicial Circuit of Alabama dated June 24, 2013, notifying her that she owed \$2,714 in fines and fees on her traffic tickets. The letter, attached as Exhibit A, states that she “**MUST** pay this amount in full within **SEVEN (7) days** of the date of this notice or [she] may be **ARRESTED.**” (emphasis in original). It does not give any other options if Plaintiff cannot pay.

19. Plaintiff was arrested at her home on August 20, 2013, while babysitting her grandson and brought to the Montgomery Municipal Jail.

20. Plaintiff spent one night in jail and appeared before Defendant Judge Westry of the Montgomery Municipal Court on August 21, 2013. Defendant Judge Westry told Plaintiff that she must serve 31 days in jail or pay \$1,554 immediately.

21. Plaintiff told Defendant Judge Westry that she previously did not have a job. She explained that she had only very recently found a part-time job that would help her make money to pay the tickets. Defendant Judge Westry conducted no further inquiry into her ability to pay now or in the past.

22. Defendant Judge Westry asked a person at the front of the courtroom, believed to be an agent of Judicial Correction Services (“JCS”), whether Plaintiff was qualified for a payment plan and when the agent said no, Plaintiff was ordered back to jail.

23. No lawyer was appointed to represent Plaintiff during this proceeding. Although an individual spoke to Plaintiff before she was called before the court, he did not tell Plaintiff that he was her attorney or represent her when she appeared before Defendant Judge Westry.

24. On the same day she was ordered to be incarcerated, Plaintiff heard Defendant Judge Westry give others the same option of paying fines immediately or serving time in jail.

When one woman said that she was unable to pay, he said that she must be jailed because of a policy that he must follow.

25. A copy of the transcript given to Plaintiff, which details the court's disposition of each of these cases,<sup>2</sup> is attached to this Complaint as Exhibit B. Each case is listed as "commuted," and Defendant Judge Westry's order to either pay the fine or spend 31 days in jail is detailed at the bottom of the order.

26. Plaintiff has been told by many others that they have similarly been incarcerated because of their inability to pay fines.

### ***Financial History and Indigency***

27. Plaintiff was previously ordered to make partial payments on her fines and court costs to Judicial Correction Services ("JCS"), a private probation company. JCS records indicate that Plaintiff's monthly payment amount was \$200 per month, of which \$40 per month went directly to JCS. Plaintiff paid what she could, but almost never had the full amount every month. The Municipal Court did not conduct a review of her financial situation or ability to make those large monthly payments.

28. Plaintiff paid approximately \$3,186.00 to JCS over the time of her probation, which went toward fines and costs owed for these cases and for other cases that have since been closed. In early 2012 she used almost her entire income tax return to pay a large amount to JCS. However, after that, she was unable to continue making payments, as her income was already insufficient to cover her expenses. JCS recommended that she be removed from probation in July 2012, noting in its report to the court that Plaintiff had no income and lost her house.<sup>3</sup>

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<sup>2</sup> The case numbers are 2008TRT029308; 2009TRT022302; 2009TRT034595; 2009TRT035054; 2009TRT047492; 2009TRT095474; 2009TRT095475; and 2009TRT106724.

<sup>3</sup> Plaintiff was facing foreclosure, but had not actually lost her home yet.

29. The court files for the cases on which Plaintiff was jailed do not contain records of the entire amount paid to JCS towards her fines and court costs. Upon information and belief, the court files do not reflect the amounts that Plaintiff actually owes, since at least one case for which Plaintiff was jailed appears to have already been paid in full.

30. Plaintiff has been unable to find full-time work for years. Plaintiff lost her full time job at a daycare in 2009, and was able to obtain only a part time job over the next year until she was again laid off from that job.

31. Since that time, she has made some money for daily necessities by babysitting and by renting out two rooms of her home to strangers. She lost one babysitting job when she was jailed in August 2013.

32. Plaintiff was able to obtain a part-time job cleaning a daycare just before she was imprisoned. She walks to this job every weekday, as she is unable to obtain a license because of her outstanding fines and unable to afford daily bus fare. She continues to look for a full-time job or additional work.

33. After years without a full-time job, Plaintiff is left without resources to pay for daily necessities. She filed for bankruptcy in June 2013. Under her Chapter 13 plan, she must make monthly payments of \$250.00 to the Chapter 13 trustee and additional payments of over \$600 to remain current on her mortgage and cure her past default. She fell behind on these payments in August 2013 when she was in jail and unable to work, and is facing the imminent loss of her home.

***Policies and Practices of the City of Montgomery and Judges of the Municipal Court***

34. It is the policy and practice of Defendants to offer an alternative sentence to those who have not paid outstanding fines and court costs—requiring them to either pay the amount owed immediately or “sit out” the time in jail at a rate of \$50 per day.

35. When individuals are first sentenced or plead guilty and are unable to pay fines and court costs, these individuals are assigned to probation with JCS, under general practice and the Municipal Court’s standing orders. Individuals must make monthly payments to JCS that include monthly supervision fees of \$40. When these individuals fail to make their payments, JCS reports back to the Municipal Court, triggering further proceedings in the Municipal Court to collect what is owed.

36. The Municipal Court does not conduct indigency determinations or explain how an individual may claim indigency if s/he is unable to pay either when the person is initially assigned to JCS or facing jail time for nonpayment. This is true even when it has been reported to the court that a person, such as Plaintiff, has no income and is facing other financial difficulties.

37. The City’s “Amnesty Program” further demonstrates Defendants’ practice of jailing persons who are unable to pay. In May 2013, Montgomery Mayor Todd Strange and Ken Nixon, the City’s Municipal Court Administrator and member of the Mayor’s cabinet, announced that the Municipal Court would offer an amnesty program on the first two Saturdays in June. Under this program, the court would, theoretically, remove certain fees, eliminate arrest warrants, and institute a payment plan if individuals were unable to pay the full amount owed.

38. However, at least 15 people were arrested on the first day of the Amnesty Program because they had too much money outstanding (greater than \$2,500) or did not have at

least \$150 (or 10% of what was owed, if greater) to pay towards their fines. Mr. Nixon publicly acknowledged that the arrests probably scared others from participating.

39. Mr. Nixon warned that, following the Amnesty Program, the City would be even stricter about arresting people with outstanding warrants. Later that same month, Plaintiff received a letter from the district attorney regarding her nonpayment. It threatened arrest, without informing her that she may not be jailed if she was found indigent. (Ex. A.) She was arrested approximately two months later.

40. Over the past years, Plaintiff has witnessed and heard of many others who were not represented by counsel during the proceedings in which they were jailed, and during which no indigency determinations were conducted. In fact, as stated above, on the day that she was ordered to be incarcerated, she heard Defendant Judge Westry tell another woman that he had to enter such an order according to a policy that he must follow.

41. The City of Montgomery relies on the Municipal Court to provide money not only for the court's own expenses, but to pay for the Municipal Jail and for general fund expenses.

42. Defendants' policy is to charge court costs on every individual ticket, as was done in Plaintiff's cases, even if multiple tickets arise from the same incident. *But see* Ala. Code § 12-19-150(c) ("For the purpose of assessing fees in criminal cases, a case shall include all offenses arising out of the same incident. Fees shall be assessed on the basis of the most serious offense of which the defendant is convicted, provided, that the judge may, *in his discretion*, assess costs for each conviction." (emphasis added)).



**CLAIMS**

**COUNT I**

**Declaratory Judgment of Violation of Plaintiff's Rights under the Fourteenth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)**

43. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 42.

44. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to her incarceration for her inability to pay traffic tickets violated the rights to due process and equal protection contained in the Fourteenth Amendment of the United States Constitution.

45. The U.S. Supreme Court has consistently held that the Fourteenth Amendment prohibits treating indigent criminal defendants differently than those who are able to pay or automatically converting a fine-only sentence to a sentence of imprisonment without an inquiry into their ability to pay.

46. Defendants' actions in violating Plaintiff's constitutional rights also constitute violations of 42 U.S.C. § 1983. Defendants were acting under color or law when their actions, policies, or practices caused Plaintiff's confinement.

47. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if she is required to serve the remainder of her sentence. Defendants have not vacated the order confining Plaintiff or promised not to enforce it, but instead have agreed to stay the remainder of the incarceration period and other post-conviction collections until this Court has ruled on this case.

**COUNT II**

**Declaratory Judgment of Violation of Plaintiff's Rights under the Sixth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)**

48. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 47.

49. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to her incarceration violated the right to counsel contained in the Sixth Amendment of the United States Constitution.

50. Defendants violated Plaintiff's right to counsel through their actions, policies, and practices that led to the failure to appoint counsel to represent her in her proceedings before the Municipal Court. Plaintiff was actually imprisoned, and did not knowingly, intelligently, or voluntarily waive her right to counsel.

51. Defendants' actions in violating Plaintiff's constitutional rights also constitute violations of 42 U.S.C. § 1983. Defendants were acting under color or law when their actions, policies, or practices caused Plaintiff's confinement.

52. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if she is required to serve the remainder of her sentence. Defendants have not vacated the order confining Plaintiff or promised not to enforce it, but instead have agreed to stay the remainder of the incarceration period and other post-conviction collections until this Court has ruled on this case.

**COUNT III**

**Common Law Certiorari**

53. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 52.

54. Plaintiff requests review in the nature of certiorari to determine whether the order of incarceration violated Plaintiff's rights under the U.S. and Alabama Constitutions and Alabama law.

55. Defendants violated Plaintiff's constitutional rights to due process, equal protection, and counsel as explained in the preceding paragraphs, including the equivalent protections under the Alabama Constitution, Ala. Const. art. I, §§ 1, 6, 22. Their actions, policies, and practices also violated her rights to an examination into her ability to pay before incarceration and not to be incarcerated as an indigent person under Rule 26.11 of the Alabama Rules of Criminal Procedure, Ala. R. Crim. P. 26.11(g), (h), (i).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- a. A declaration that Defendants violated Plaintiff's Fourteenth Amendment rights under the U.S. Constitution and 42 U.S.C. § 1983;
- b. A declaration that Defendants violated Plaintiff's Sixth Amendment rights under the U.S. Constitution and 42 U.S.C. § 1983;
- c. A declaration, pursuant to certiorari review, that Defendants violated Plaintiff's rights under the U.S. and Alabama Constitutions and Alabama law;
- d. An order awarding reasonable attorneys' fees under 42 U.S.C. § 1988; and
- e. Other and further relief as the Court deems just and proper.

Dated this 12th day of November, 2013.

Respectfully submitted,

/s/ Sara Zampierin  
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***Attorney for Plaintiff***

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2013, I have filed a copy of the foregoing Amended Complaint with the Clerk of Court by means of CM/ECF, which provides electronic copies of the foregoing to the following counsel for Defendants.

Jason Cole Paulk, Esq.  
City Attorney's Office  
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Montgomery, AL 36101-1111  
[jpaulk@montgomeryal.gov](mailto:jpaulk@montgomeryal.gov)

/s/ Sara Zampierin  
Sara Zampierin