



Dear Mayor Reed,

We write to you on behalf of our respective organizations, [Civil Rights Corps](#), and the [Southern Center for Human Rights](#), regarding the money bail policy in effect in the Atlanta Municipal Court. Civil Rights Corps has filed numerous lawsuits in state and federal courts across the country challenging the use of secured money bail to detain low-income arrestees prior to trial. The Southern Center for Human Rights has filed lawsuits throughout Georgia challenging policies that enable municipalities to extract money from low-income people who appear in local criminal courts.¹

Together, our organizations represent Maurice Walker in a pending challenge to the money bail and pretrial practices of the Municipal Court of the City of Calhoun, Georgia. In June 2017, the U.S. District Court for the Northern District of Georgia issued an order halting the City's policy of jailing low-income people who could not pay money bail according to a pre-set bond schedule, without inquiring into ability to pay.² The bond schedule at issue in that litigation is similar to one used by the City of Atlanta's Municipal Court.³

Under the money-based pretrial detention systems like those challenged in the City of Calhoun and nationwide, a person's access to freedom before trial depends on her access to money, not any legitimate consideration. Money bail systems that detain only low-income people devastate families and communities, overcrowd our country's jails, lead to increased crime, cost municipalities billions of dollars in excess costs, and violate basic constitutional rights. There is no place for them in our society.

Our organizations' investigation into the municipal court and jail system in Atlanta has found flagrant violations of federal civil rights laws and the U.S. Constitution. We hope to begin with you, immediately, a dialogue about remedying the constitutional deficiencies in the City's policies and practices.

In Atlanta, we have found that people charged with offenses like "pedestrian soliciting rides or business" and "possession of drug-related objects" are kept in jail cells every night solely because the City of Atlanta's policy has required money bail that these individuals cannot afford to pay. Many people plead guilty immediately just to get out of jail. Other are "bound over" and transferred to the

¹ See Carrie Teegardin, "Illegal Fees Collected on Traffic Tickets at Atlanta Municipal Court, Lawsuit Alleges," *Atlanta Journal-Constitution*, July 26, 2017, available at <http://investigations.blog.ajc.com/2017/07/26/illegal-fees-collected-on-traffic-tickets-at-atlanta-municipal-court-lawsuit-alleges> (last accessed Nov. 9, 2017).

² 2017 WL 2794064 (N.D. Ga. Jun. 16, 2017). The case is currently on appeal in the Eleventh Circuit Court of Appeals.

³ See Municipal Court of Atlanta, "Bond Schedule by Description," available at <http://13.59.171.123/wp-content/uploads/2017/03/CourtofAtlantaBondSchedule.pdf> (last accessed Nov. 9, 2017), and mirrored at <http://bit.ly/atlantabondschedule>.

Fulton County Jail, where they remain until their charges are disposed of. Public records obtained by the Southern Center for Human Rights show that, in 2016, at least 890 people were bound over and transferred to the county jail, where they were detained for a collective 9,000 days before their cases ended or their bail amounts were reduced.⁴

In addition to our two organizations' work together in Georgia, Civil Rights Corps has won federal class action relief in lawsuits against large jurisdictions like Harris County (Houston) and against municipal court money bail practices across the country, including in Alabama, Mississippi, Tennessee, Louisiana, Missouri, and elsewhere. Most recently, after Civil Rights Corps filed a lawsuit in Cook County (Chicago), the County Board of Commissioners, Sheriff, District Attorney, Chief Judge, and County Executive all came together to support bail reform. The Chief Judge issued a standing order ending wealth-based detention in Chicago's criminal system. Similarly, the municipal court judges in the 75 largest cities in Alabama issued standing orders eradicating the use of secured money bail for new misdemeanor arrests throughout almost the entire state of Alabama. Civil Rights Corps is working with other cities, large and small, around the country to change these practices without costly litigation, and to change them urgently.

In contrast, Harris County chose to defend its wealth-based detention policies in court. After an 8-day evidentiary hearing, Chief Judge Lee Rosenthal of the United States District Court for the Southern District of Texas issued a 193-page ruling striking down Harris County's money bail system, which is materially identical to the system used in the Atlanta Municipal Court based on our organizations' initial investigation. The Harris County case is now on appeal in the Fifth Circuit Court of Appeals, and we are told that the County has already spent approximately \$5 million in legal fees to defend its unconscionable system—a system that independent researchers from the University of Pennsylvania found to waste tens of millions of dollars in County funds through the unnecessary incarceration of misdemeanor arrestees.

Additionally, the work of local organizers in Houston made the bail issue a significant issue in the November 2016 elections, and the voters in Harris County voted out of office the incumbent District Attorney and Sheriff in favor of candidates who vowed to end County policies of wealth-based detention. The only misdemeanor judicial race on the ballot was also won by a judge who ran on a bail reform platform.

The Problem in Atlanta

The United States Supreme Court has held that, in our society, freedom prior to trial must be the “norm”, and that pretrial detention, even in cases involving “extremely serious” felony offenses, must be the “carefully limited exception.” *United States v. Salerno*, 481 US 739, 750, 755 (1987). Equal protection and due process, and the fundamental right to pretrial liberty, do not tolerate money-based post-arrest systems in which a person's pretrial freedom depends on her access to cash. Instead, a presumptively innocent person can only be detained prior to trial under extremely limited circumstances and after a court makes specific findings about the lack of any alternative to address a particular danger and after the court provides a detention hearing that provides rigorous procedures (including counsel, heightened evidentiary standards, opportunity to present evidence and confront

⁴ This analysis of pre-trial misdemeanors excludes cases in which individuals were transferred from Atlanta City Detention Center to the Fulton County Jail for other reasons such as probation revocation warrants or bench warrants.

witnesses, and written findings. *Id.*; see also, *ODonnell v. Harris County*, 2017 WL 1956736, at *2 (S.D. Tex. May 11, 2017).

Every single day in Atlanta these basic rights are violated. In Atlanta, as in every other jurisdiction that Civil Rights Corps has sued, arrestees are kept in jail cells every night solely because they cannot afford to pay a secured financial condition of release that was imposed without any inquiry into or findings concerning their ability to pay, and without any consideration of non-financial conditions of release. If those same individuals could afford the money bail amount imposed, they would walk out of the doors of the Atlanta jail and return to their jobs, families, and communities. Instead, because they are poor, they are detained. It is an outrage that this is happening in a progressive city like Atlanta in the year 2017.

On a regular basis, Atlanta Municipal Court judges fail to take the requisite steps required to issue a valid order of pretrial detention. As a result, the City's policies and practices are not only deeply unjust, but they also expose the City of Atlanta to enormous potential liability to federal civil rights litigation. Importantly, American Bar Association, the Department of Justice, and the Conference of Chief Justices, which represents the Chief Justice of every state supreme court, including Georgia, have all filed briefs condemning the practices that prevail every day in Atlanta. We have attached some of these documents to this letter.

We would like to engage with you and other stakeholders to make much-needed improvements to Atlanta's post-arrest practices that would obviate the need for costly constitutional litigation in the federal courts. The majority of lawsuits we have brought have resulted in settlements or preliminary injunctions ending the illegal use of money to keep people in jail without the proper and robust procedures that must accompany any order of pretrial detention.⁵ Other cases are ongoing. Other cities, like Jackson, Mississippi, Montgomery, Alabama, New Orleans, Louisiana, Ferguson and Jennings, Missouri, and the 75 largest cities in Alabama have all agreed voluntarily to end the use of secured money bail in misdemeanor cases in their municipal courts without being sued in federal court.

The Devastating Costs of Atlanta's Money-Based Bail System

In addition to being illegal, Atlanta's current money-based misdemeanor and ordinance bail system is bad policy: every reliable academic study to examine the issue has found that non-financial conditions, or unsecured financial conditions, are as effective, if not more effective, than secured money bail at getting people back to court, and every piece of available evidence demonstrates that they are far more effective at preventing new criminal activity.⁶

⁵ See, e.g., *Walker v. City of Calhoun*, 2016 WL 361612, at *14 (N.D. Ga. Jan. 28, 2016) (finding irreparable harm when an indigent misdemeanor defendant was detained pretrial "simply because he could not afford to post money bail.") vacated sub nom. *Walker v. City of Calhoun*, 2017 WL 929750 (11th Cir. Mar. 9, 2017); *Jones v. City of Clanton*, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015) (holding that it violates the Fourteenth Amendment to detain a person after arrest who cannot pay a monetary amount "without an individualized hearing regarding the person's indigence and the need for bail or alternatives to bail[.]"); see also *Martinez v. City of Dodge City*, No. 15-CV-9344-DDC-TJJ (D. Kan. Apr. 26, 2016); *Thompson v. Moss Point*, 2015 WL 10322002, at *1 (S.D. Miss. Nov. 6, 2015); *Pierce v. City of Velda City*, 2015 WL 10013006 (E.D. Mo. June 3, 2015); and *Cooper v. City of Dothan*, 2015 WL 10013003 (M.D. Ala. June 18, 2015); *Snow v. Lambert*, No. CV 15-567-SDD-RLB, 2015 WL 5071981 (M.D. La. Aug. 27, 2015); *Rodriguez v. Providence Community Corrections, Inc.*, 155 F. Supp. 3d 758, 2015 WL 9239821 (M.D. Tenn. Dec. 17, 2015).

⁶ *ODonnell*, 2017 WL 1735456, at *56 (finding "no empirical basis to conclude that imposing secured money bail promotes better rates of appearance or of law-abiding behavior for those on pretrial release"); *id.* at *62 ("The reliable evidence in

It is also devastating to the Atlanta community. The empirical evidence shows that pretrial detention due to inability to pay leads to tremendous human and economic costs: it increases the likelihood of conviction, the likelihood of a jail sentence, and the length of the sentence imposed.⁷ It can cause precarious lives to unravel when arrestees lose jobs, cars, housing, and child custody due to even just a few days or weeks in jail.⁸ Money-based pretrial systems impose these costs without any of the benefits—for example, mitigation of the risk of non-appearance or new criminal activity—that could justify them.⁹ Indeed, no study has found that secured money bail improves public safety. Releasing arrestees on recognizance with court reminders and, when absolutely necessary, with tailored conditions and appropriate supervision, costs significantly less than detaining everyone who cannot pay money bail, and such systems largely avoid the human costs and disruption of lives that result from money-based systems.

In fact, detention of misdemeanor arrestees using money bail, even for a few days, actually *causes* more crime and makes people less likely to appear for court.¹⁰ A study co-authored by Dr. Marie VanNostrand, perhaps the leading expert on pretrial practices, found that even two or three days of pretrial detention is associated with higher rates of failure to appear and a greater likelihood of new criminal activity both during the pretrial period and after disposition of the case.¹¹ Economists at the University of Pennsylvania conducted the most rigorous study of its kind, examining the effects of

the record shows no meaningful difference in pretrial failures to appear or arrests on new criminal activity between misdemeanor defendants released on secured bond and on unsecured conditions.”); Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute, at 19 (Oct. 2013) (“The findings from this study provide strong evidence that the type of monetary bond posted does not affect public safety or defendants’ court appearance. . . . Specifically, when posted, unsecured bonds . . . achieve the same public safety and court appearance results as do secured (cash and surety) bonds.”). The court’s conclusions were based on detailed study of evidence from all over the country, including New York, Washington, D.C., Kentucky, Texas, California, and other jurisdictions.

⁷ E.g., Heaton, 69 STAN. L. REV. at 717-18 (“When controlling for other factors, those detained because they cannot pay money bail are 25% more likely to be convicted, 43% more likely to receive a jail sentence, and sentenced to twice as many days in jail. Among arrestees with no prior record and a bond amount of \$500 or less, an additional 20% are convicted when they are detained.”); Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, at 1 (Working Paper, University of Pennsylvania, Nov. 2016) (“Pretrial detention on money bail leads to increased rates of conviction, with more pronounced effects in cases where the evidence is weaker.”).

⁸ *O’Donnell*, 2017 WL 1735456, at *62 (“Misdemeanor pretrial detention is causally related to the snowballing effects of cumulative disadvantage that are especially pronounced and pervasive for those who are indigent and African-American or Latino.”); *id.* at *53 (“Bail exacerbates and perpetuates poverty. . . .”); citing the “growing literature” documenting “cumulative disadvantage”) (internal citation omitted); see also *id.* at *70, *72, *81.

⁹ *O’Donnell*, 2017 WL 1735456, at *56, *62.

¹⁰ See, e.g., Heaton, et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 711 (2017) (finding that even a few days in jail because of bail that a person cannot pay makes a person more likely to commit crimes in the future); *O’Donnell*, 2017 WL 1735456, at *53 (“Recent studies of bail systems in the United States have concluded that even brief pretrial detention because of inability to pay a financial condition of release increases the likelihood that misdemeanor defendants will commit future crimes or fail to appear at future court hearings.”); *id.* at *62 (“But even a few days in pretrial detention on misdemeanor charges correlates with — and is causally related to — higher rates of failure to appear and new criminal activity during pretrial release and beyond.”).

¹¹ Christopher T. Lowenkamp & Marie VanNostrand, *Exploring the Impact of Supervision on Pretrial Outcomes*, at 3, Laura and John Arnold Foundation (Nov. 2013) (“Detaining low- and moderate-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition. . . . When held 2-3 days, low-risk defendants are almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.”).

pretrial detention on misdemeanor arrestees, and found that if Harris County, Texas had released even those individuals who were assigned a \$500 bail amount (the lowest bail on the County's bail schedule for first-time offenders), the County would have avoided 5,900 criminal convictions, and 18 months after release, those individuals would have committed 1,600 fewer felonies and 2,400 fewer misdemeanors. It also would have saved \$20 million in supervision costs alone.¹²

Improving the System in Atlanta

Your office should be aware of the specific features of the Atlanta Municipal Court's post-arrest system that violates the United States Constitution:

- A secured money "bond schedule" is used at the Atlanta Detention Center that automatically requires financial conditions of release without judicial review. Those who can pay are released immediately. Those who cannot are jailed.
- The first opportunity for an arrestee to have the automatically set financial condition of release reviewed by a judge does not satisfy due process mandates. In particular, the pace of first appearance hearings prevents an opportunity to provide financial information, evidence of release factors such as ties to the community, and other information the judge is required to consider in determining alternatives to detention.¹³ Additionally, some judges routinely conduct court for only two to three hours per day, and process an average of 50 cases per day, which amounts to less than 4 minutes per case. Presumptively innocent arrestees are routinely detained because of their inability to pay money bail without a valid substantive finding and appropriate procedural safeguards that are required by long-standing federal law prior to the entry of a valid order of pretrial detention.
- The court fails to inquire about the arrestee's ability to pay a secured financial condition; indeed, no financial information whatsoever is collected. The judicial officer makes no findings that an arrestee has the ability to pay a secured bail amount, or that a secured financial condition is necessary to reasonably assure court appearances or community safety; nor is there any meaningful consideration of alternatives to detention. *See ODonnell*, 2017 WL 1735456, at *33, *77.
- Arrestees who are homeless or live out of state are denied signature bonds as a matter of policy and practice, just as they were in Harris County. Requests for bond hearings are typically punished by the court resetting these cases for two or more weeks, during which time people are detained in jail simply because they are too poor to pay a bail amount. This delay deprives them of any meaningful opportunity to be heard in the municipal court prior to suffering the very constitutional violation about which they complain.
- The pace at which dockets are conducted for arrestees is a clear violation of the constitutional right to counsel. Defense counsel cannot adequately represent clients without a meaningful opportunity to meet with the client and prepare for the First Appearance hearing.
- Amazingly, these practices often result in more time spent in pretrial detention in misdemeanor cases than what a jail sentence would be upon conviction.

¹² Heaton, *supra* n.8, at 787.

¹³ *ODonnell*, 2017 WL 1735456, at *68 ("Under the Equal Protection Clause as applied in the Fifth Circuit, pretrial detention of indigent defendants who cannot pay a financial condition of release is permissible only if a court finds, based on evidence and in a reasoned opinion, either that the defendant is not indigent and is refusing to pay in bad faith, or that no less restrictive alternative can reasonably meet the government's compelling interest.").

- Of particular concern is that our investigation suggests that there has been an effort to punish defense counsel for attempting to bring attention to these issues. These efforts have resulted in a behind-closed-doors push to replace the Interim Director of the Public Defender's Office in apparent retaliation for her advocacy on these issues on behalf of her clients. This presents a serious ethical matter for the lawyers and judges involved in this effort, as well as a matter of enormous significance for the public at large.

Please let us know if you are willing to meet with us to discuss these matters. We understand from our initial investigation that a large number of local lawyers, law firms, community-based, and faith-based organizations share our concerns about the state of the Atlanta Municipal Court. We would appreciate the opportunity to speak with you further about Atlanta's policies and practices and to work with you to devise and implement a constitutionally compliant post-arrest system.

We view this matter as urgent and appreciate your prompt reply so that we can determine what action to take.

Sincerely,

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