

DeKalb County, through senior policymaker Chief Judge Nelly Withers of the

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Court probation revocation proceedings, including those heard by the judge who sentenced Mr. Thompson to jail. As a direct result of these policies, practices, and customs, Mr. Thompson was improperly and illegally jailed for probation violation simply because he was poor.

4. Mr. Thompson was initially sentenced to pay-only probation with JCS because he could not afford to pay \$810 in fines related to a ticket for driving on a suspended license. A Recorders Court judge ordered Mr. Thompson to pay the entire \$810 and additional costs within thirty days, and placed him on probation with JCS.

5. Mr. Thompson reported weekly to JCS and explained to his probation officer that he was unemployed. He made painstaking efforts to pay his fines and fees by borrowing money from relatives and earning what he could by completing odd jobs. He was able to pay a total of about \$85—\$30 of which was retained by JCS for its fee. Nevertheless, a JCS probation officer charged Mr. Thompson with probation violation for failure to pay, misinformed him that he would have to pay an additional \$150 for a public defender to represent him in his probation revocation proceedings, and failed to notify him that he had a right to request representation by counsel at no cost. After providing Mr. Thompson incorrect and incomplete information, the JCS probation officer checked off a box on a form

signed by Mr. Thompson to indicate that he had purportedly waived his right to a public defender.

6. Recorders Court Judge Angela Brown revoked Mr. Thompson's probation in a hearing that lasted only minutes and sentenced him to nine days in

Protection Clauses of the Fourteenth Amendment to the U.S. Constitution. Mr. Thompson brings this lawsuit to vindicate those rights.

PARTIES

9. Plaintiff Kevin Thompson is a nineteen-year-old resident of Decatur, Georgia, where he lives with his mother, sister, and four-month-old niece.

10. Defendant DeKalb County, Georgia (“DeKalb County”) is a local subdivision of the State of Georgia and a body corporate organized and existing under the Constitution of the State of Georgia. Ga. Const. Art. 9 § 1 ¶ 1 (2014); Ga. Code Ann. § 36-1-3 (2014). DeKalb County relies heavily on the Recorders Court, which

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probation, establishing probation policies and practices, and training, directing, and supervising Recorders Court judges on, among other things, the collection of fines and fees and the protection of probationers' rights. Chief Judge Withers is a DeKalb County employee and was appointed by the DeKalb County Board of Commissioners. She is sued in her official capacity for actions taken in her executive and administrative role.

12. Defendant Judicial Correction Services, Incorporated, is a Delaware corporation that is registered as a foreign corporation doing business in the State of Georgia, this District, and this Division. JCS is a person acting under the color of state law and liable under 42 U.S.C. § 1983.

13. Defendants undertook all of the acts set forth herein under color of state law and all acts can fairly be attributed to DeKalb County. Each Defendant is a "policymaker" with respect to the policies, practices, and customs challenged in this lawsuit.

JURISDICTION AND VENUE

14. This is a complaint for damages based upon civil rights violations committed by DeKalb County, Chief Judge Withers, in her official capacity, and JCS, in violation of the Fourteenth Amendment to the U.S. Constitution.

15. This Court has subject matter jurisdiction over Mr. Thompson's claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

21. Mr. Thompson subsequently learned that his driver's license was suspended because he forgot to submit a Notice of Withdrawal of Suspension to the Georgia Department of Driver Services ("DDS") in April 2014 following his resolution of a charge for Failure to Appear ("FTA") in the Municipal Court of Atlanta for a ticket concerning a minor traffic violation. The Municipal Court of Atlanta had charged Mr. Thompson with FTA and suspended his driver's license because he had arrived for his hearing after the 8:00 a.m. start time. Mr. Thompson did not receive written notice that his driver's license remained suspended between his resolution of the FTA charge and his July 18, 2014 arrest.

22. On October 9, 2014, Mr. Thompson appeared before a Recorder's Court judge and pled guilty to the charge of driving on a suspended license. The judge sentenced Mr. Thompson to an \$810 fine, and asked if he would be able to pay that day. Mr. Thompson answered that he could not. The judge then ordered Mr. Thompson to pay the \$810 fine within thirty days, to serve twelve months of probation, and to pay court costs, probation fees, and a Georgia Crime Victim Emergency Fund fee.

23. After his hearing, Mr. Thompson was required to sign up with JCS for pay-only probation. He was assigned to JCS probation officer Shanekia Thomas.

24. DDS notified Mr. Thompson that his driver's license was suspended for six months due to his October 9, 2014 conviction for driving on a suspended license.

B) JCS Pay-Only Probation

25. Mr. Thompson first reported to JCS on or around October 30, 2014. He explained to Ms. Thomas that he could not afford to pay any money toward his fine and JCS fees at that time. Ms. Thomas instructed Mr. Thompson to report weekly to the JCS office in Tucker, Georgia.

26. Mr. Thompson reported weekly to JCS and paid what money he could during each visit.

27. While he was on probation, however, Mr. Thompson earned only an average of \$80 dollars each week from doing odd jobs for an auto shop while looking for work. He was unable to earn enough money to pay for basic necessities, including food, public transportation, and his portion of the rent for his family's home. The suspension of his driver's license through April 2015 made it difficult for him to look for, and secure, paid employment.

28. Despite being unemployed and lacking any source of steady income, Mr. Thompson diligently tried to acquire money to make payments toward his fines and fees, including by borrowing money from relatives.

29. On or around November 6, 2014, Mr. Thompson reported to JCS and paid about \$5, which he had borrowed from his sister.

30. On or around November 13, 2014, Mr. Thompson reported to JCS and paid about \$60, which he had borrowed from his mother.

31. On or around November 20, 2014, Mr. Thompson reported to JCS and paid about \$20, which he had borrowed from his grandmother.

32. At some point between October 9, 2014 and December 4, 2014, Mr. Thompson submitted to a Records Court clerk an application for a Limited

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34. Upon information and belief, the Petition of Revocation of Probation is a standard form promulgated and approved by the chief judge of the Recorders Court. It has been routinely and customarily used by JCS when charging indigent Recorders Court probationers with probation violation for failure to pay fines and fees.

35. The Petition of Revocation of Probation ordered Mr. Thompson to appear in Recorders Court on December 8, 2014. It charged him with violating the terms of his probation by failing to pay \$28 in fees to JCS, \$792 in fines and fees to the Recorders Court, and \$18 to the Georgia Crime Victim Emergency Fund.

36. The Petition of Revocation of Probation did not report that Mr. Thompson could not afford to pay these fines and fees, was unemployed, and was facing difficulty seeking and finding work due to the suspension of his driver's license.

37. The Petition of Revocation of Probation includes an

See Adams v. State, 207 Ga. App. 508, 510, 428 S.E.2d 613, 615-16 (Ga. Ct. App. 1993).

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ask him any questions about the circumstances in which he had signed the Petition of Revocation of Probation. Nor did she engage in any colloquy with Mr.

51. Mr. Thompson explained that he was not able to pay the fine because he was a tow truck driver and could not get to work or drive a truck without a driver's license or a permit. He also explained that he had paid what he could toward his fines and fees, but could not pay a lot of money because he was not working. Mr. Thompson further explained that he had brought a permit form to the Recorders Court prior to his hearing to see if the court could grant the permit, which would enable him to work, help support his family, and pay his fines and fees. Mr. Thompson asked the judge to understand that he was doing the best he could.

52. Judge Brown took a short recess. After she returned, Judge Brown asked Mr. Thompson if he had served any time in jail when he was arrested.

53. Mr. Thompson confirmed that he had spent time in jail.

54. Judge Brown then sentenced Mr. Thompson to nine days in jail.

55. At no point during the hearing did Judge Brown ask Mr. Thompson questions about his ability to pay, efforts to borrow money, cash resources, assets, job prospects, or whether staying out of jail would assist Mr. Thompson in finding work and paying his fines and fees. Nor did Judge Brown make any indigency determination on the record prior to sentencing Mr. Thompson to jail. She did not state any finding that Mr. Thompson had willfully failed to pay or had made

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The chief judge and associate judges of the Recorders Court are DeKalb County employees, and are appointed by the DeKalb County Board of Commissioners.

64. DeKalb County relies heavily on the Recorders Court to raise money for general County expenditures. In 2010, DeKalb County faced a \$100 million revenue shortfall and relied on the Recorders Court's collection of fines and fees to help bridge the gap. In 2014, the Recorders Court was the largest contributor of revenue to DeKalb County's total collection of fines and forfeitures. According to the 2014 DeKalb County Budget, the Recorders Court generated over \$30 million for DeKalb County in 2013 and was projected to generate an estimated \$26,949,286 in revenue for the County in 2014. These collections far exceed the projected 2014 cost of operating the Recorders Court, which amounted to only \$3,704,635.

65. In March 2008, DeKalb County issued Request for Proposals No. 08-500079 ("RFP No. 08-500079"), which solicited proposals for probation services to the Recorders Court. RFP No. 08-500079 made clear that a central goal of these probation services was to collect fines and fees for DeKalb County. RFP No. 08-500079 further provided that "[c]omprehensive probation service plans shall be performed . . . under the direction of the Chief Judge of the Recorder's Court or her designee."

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contracts, and directing probation services plans. Chief Judge Withers is also the final DeKalb County policymaker responsible for promulgating and implementing training, direction, and supervision of Recorders Court judges on, among other things, fine and fee collection, procedures to be followed in probation revocation proceedings, and the protection of probationers' rights. Chief Judge Withers' execution of these executive and administrative functions does not involve adjudicating disputes between litigants.

73. By letter dated February 27, 2014, Chief Judge Withers notified JCS that the 2011 Recorders Court-JCS Contract would be extended on a month-by-month basis as she sought to “identify[] a partner for probation services as provided for by Georgia law.” Through the exercise of her executive and administrative powers, Chief Judge Withers extended the 2011 Recorders Court-JCS Contract on a month-by-month basis throughout 2014.

74. Both the 2008 DeKalb County-JCS Contract and the 2011 Recorders Court-JCS Contract set forth DeKalb County and JCS’s policy of fine collection from indigent pay-only probationers. The contracts explicitly authorized JCS to collect a monthly fee of \$30 from people sentenced by the Recorders Court to probation for “Fine Collection Only.” The 2011 Recorders Court-JCS Contract further set forth that JCS would provide services “[a]t no charge to the Court or the County,” and that all costs would be borne by probationers themselves, with the exception of indigent probationers. The 2011 Recorders Court-JCS Contract did not explain how JCS employees would identify or handle the cases of indigent probationers, but made clear that JCS could not collect fees from those “determined by the Court to be indigent.”

75. By virtue of the 2011 Recorders Court-JCS Contract, DeKalb County and JCS established a policy of simultaneously incentivizing the use of pay-only

probation to generate revenue for the County and JCS, while creating a disincentive for JCS to help the Recorders Court identify indigent probationers who could not be charged JCS “supervision” fees.

76. Pursuant to the 2008 and 2011 contracts, JCS did, in fact, collect fines and fees for itself and DeKalb County from indigent pay-only probationers. With DeKalb County and Chief Judge Withers’ endorsement, JCS engaged in the following collection policies, practices, and customs: (1) increasing probationer reporting requirements from monthly to weekly reports when probationers could not afford to make the full amount of payments demanded by JCS; (2) accepting only cash or money order payments made in person at the JCS office in Tucker, Georgia; (3) failing to conduct financial assessments when probationers failed to pay or to make complete payments; (4) charging probationers with violation when a probationer could not make the full payment required by JCS; (5) failing to inform probationers charged with violation for failure to pay that they have a right to request court-appointed counsel to represent them in probation revocation proceedings; (6) failing to inform probationers charged with violation for failure to pay that they could seek waiver of any public defender fees charged if granted court-appointed counsel; and (7) misinforming probationers who failed to make

payments deemed satisfactory by JCS that they were only entitled to counsel at revocation hearings if they could immediately pay a fee.

77. In carrying out these and other measures to collect fines and fees from indigent pay-only probationers, JCS acted under color of Georgia law. JCS's provision of probation services is authorized by Georgia law, which governs the administration of misdemeanor probation and permits the chief judge of any court within a county, with the approval of the governing authority of that county, to contract with for-profit companies for misdemeanor probation services. *See* Ga. Code Ann. § 42-8-100 (2014), *et seq.*; Ga. Code Ann. § 42-8-100(g) (2014). The actions of JCS and its employees are also fairly attributable to DeKalb County because misdemeanor probation services in DeKalb County were performed by government employees prior to 1991.

E) Failure to Train Recorders Court Judges and JCS Employees on Indigent Probationers' Rights

78. DeKalb County, Chief Judge Withers, and JCS established a policy, practice, and custom of failing to train, direct, guide, and supervise Recorders Court judges and JCS employees on how to operate DeKalb County and JCS's program of seeking fines and fees from indigent pay-only probationers in a manner

consistent with federal and state law. This failure exhibited deliberate indifference to indigent probationers' Fourteenth Amendment rights to court-appointed counsel in probation revocation proceedings concerning failure-to-pay charges, and to an indigency hearing that satisfies the requirements of *Bearden v. Georgia*, 461 U.S. 660 (1983), prior to jailing for failure to pay.

79. DeKalb County, Chief Judge Withers, and JCS have failed to provide any training, direction, guidance, or supervision to probation officers on the procedures for handling indigent Recorders Court probationers, including those who cannot afford to make fine and fee payments. Although Recorders Court probation services are performed under her direction, Chief Judge Withers has not provided any training, direction, g

1993 that the same language set forth in the “Acknowledgment” section of this

“The first few cases proceeded quickly. According to lawyers and one probationer who were in the room, Judge Angela Brown called probationers forward and then turned to a JCS employee seated next to her to ask whether there was a warrant out for the person’s arrest. In each case, the JCS employee responded in the affirmative—though she did not actually produce evidence of that warrant for the court. Judge Brown then told the probationer the total amount they allegedly owed in fines and JCS fees and asked whether they could pay that amount immediately and in full. Whenever a probationer said that they could not, Judge Brown ordered their arrest. The witnesses interviewed by Human Rights Watch emphasized that no offender had an oppor

did not describe any inquiry by Judge Simmons into the jailed individuals' ability to pay or efforts to secure money, the adequacy of alternative punishments to

failure to pay; (2) how to conduct an indigency hearing that properly considers a probationer's ability to pay and efforts to secure resources, as well as the adequacy of alternative punishments to incarceration; (3) the right of all probationers to request court-appointed counsel in probation revocation proceedings; (4) indigent probationers' right to counsel in probation revocation proceedings concerning failure-to-pay charges; or (5) the requirement that any waiver of the right to request counsel, or the affirmative right to court-appointed counsel, must be knowing, intelligent, and voluntary. Nor did Chief Judge Withers revise the deficient "Acknowledgment" language in the DeKalb County Recorder's Court, State of Georgia, Petition of Revocation of Probation. If Chief Judge Withers had taken any of these actions, she would have been engaging in administrative and executive functions through her role as a final DeKalb County policymaker.

DEMAND FOR JURY TRIAL

93. Mr. Thompson requests a trial by jury.

FIRST CLAIM FOR RELIEF

**FAILURE TO PROVIDE
PRE-DEPRIVATION INDIGENCY HEARING
in violation of the Due Process and Equal Protection Clauses
of the Fourteenth Amendment and 42 U.S.C. § 1983**

(Jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3))

94. The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitu

hearing when the Recorders Court revoked his probation and jailed him for his inability to pay court-

distress, and other irreparable injury he suffered as a result of being handcuffed and taken to jail in front of his mother, forcibly separated from his mother and family, and detained for five days in unsanitary and cold jail conditions without enough food to eat.

SECOND CLAIM FOR RELIEF

train, direct, and supervise Recorders Court judges on the standard for determining a knowing, intelligent, and voluntary waiver of rights concerning counsel; and (4) failure to investigate and address reports that Recorders Court judges did not afford counsel to indigent probationers charged with probation violation for failure to pay.

104. Through policy, practice, and custom, DeKalb County, Chief Judge Withers, and JCS directly and proximately caused the violation of Mr. Thompson's right to counsel through their acquiescence to the routine and customary use of a standard Petition of Revocation of Probation containing language that failed to inform indigent probationers of their right to court-appointed counsel, and to the routine and customary failure of Recorders Court judges, including Judge Brown,

106. Defendants' actions in violating Mr. Thompson's due process right to counsel also constitute a violation of 42 U.S.C. § 1983. Defendants were acting under color of law when their policies, practices, and customs caused Mr. Thompson to unknowingly, unintelligently, and involuntarily waive his right to counsel, and their acts and omissions can fairly be attributed to the County.

107. Mr. Thompson seeks damages, in an amount to be determined by the enlightened conscience of a jury, from DeKalb County, Chief Judge Withers, in her official capacity, and JCS for the humiliation, anxiety, stress, emotional distress, and other irreparable injury he suffered as a result of being handcuffed and taken to jail in front of his mother, forcibly separated from his mother and family, and detained for five days in unsanitary and cold jail conditions without enough food to eat following probation revocation proceedings in which he lacked representation by counsel.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment including:

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3. An award of attorneys' fees, costs, and expenses of all litigation, pursuant to 42 U.S.C. § 1988; and
4. Such other and further relief as the Court may deem just and proper.

DATED this January 29, 2015

Respectfully submitted by,

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