

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CARINA CANAAN and LEVI LANE,	§	
	§	
Plaintiffs,	§	
v.	§	Civil Action No. 16-CV-132
	§	
CITY OF EL PASO,	§	
Defendant.	§	JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

1. Like nearly one-quarter of their fellow El Pasoans, Plaintiffs Carina Canaan and Levi Lane live in poverty. Nonetheless, when Ms. Canaan and Mr. Lane were unable to pay traffic fines owed to the City of El Paso, they were given just one repayment option — jail. Ms. Canaan was jailed twice due to her indigency, including while pregnant. She still owes outstanding debt that she is unable to pay, and lives in fear of further incarceration. Mr. Lane spent twenty-three days in jail due to his indigency, losing his job. Ms. Canaan and Mr. Lane bring this action to challenge the City of El Paso’s unconstitutional debt collection policies and practices, which discriminate against Plaintiffs and other poor people in violation of the U.S. Constitution, longstanding U.S. Supreme Court case law, and other federal and state law.

2. The City of El Paso (“Defendant”) has unconstitutionally adopted, maintained, and enforced policies and practices that require poor individuals to pay 25% of all fines owed for Class C misdemeanors, the lowest level of wrongdoing, before they may qualify for payment plans (the “25% Upfront Policy”). Last year alone, Defendant resolved nearly 34,000 cases involving debtors who could not pay their fines to go to jail, while refusing to provide them with information about other options.

3. Under long-standing constitutional law, a municipality cannot jail poor debtors merely because they are unable to pay criminal fees or fines. Before imposing a jail sentence, the

government must provide debtors with both notice and opportunity either to ask for a determination of indigency, excusing them from repayment, or to select an alternative option like community service or a reasonable payment plan. Defendant's 25% Upfront Policy disregards these well-established protections.

4. For those indigent defendants unaware of their rights and unable to pay their fines, the practical effect of the 25% Upfront Policy is to automatically convert Class C misdemeanor fines into jail time. As a result, poor El Pasoans are either sentenced to a modern day's debtors' prison or coerced into paying fines that they cannot afford in order to avoid incarceration.

5. The City of El Paso seemingly adopted this policy, and disregarded constitutionally required protections, in order to fully maximize revenue. In 2015, Defendant procured almost \$19 million in fines and court costs — one of its most substantial general revenue sources and a shocking amount in a county where nearly a quarter of the population lives in poverty.

6. Community members, organizations, the media, and state lawmakers have put Defendant's policymakers on notice that its policies and practices fail to give poor debtors proper notice or the opportunity to avoid jail through alternative payment options. Nonetheless, Defendant has failed to take adequate steps to ensure that El Pasoans no longer face the threat of jail time simply for being poor.

7. In addition to Defendant's failure to repeal the 25% Upfront Policy, Defendant's employees repeatedly and systematically inform poor debtors that they must either pay their fines in full, pay 25% of their fines upfront to qualify for a payment plan, or go to jail. Indeed, this is precisely what Plaintiffs were told.

8. Moreover, Defendant's unlawful actions are intentional, the result of an agreement between Defendant and municipal court staff to intentionally violate debtors' due process rights in order to coerce the maximum payment on outstanding traffic fines.

9. Through its policies, practices, illegal agreements, and improper training and supervision, Defendant is violating the Due Process and Equal Protection rights of Ms. Canaan, Mr. Lane, and people across El Paso too poor to pay a significant portion of their debt upfront under the Fourteenth Amendment of the United States Constitution in conjunction with the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the Texas Constitution.

10. Plaintiffs respectfully request that this Court vindicate their constitutional rights. Ms. Canaan seeks an injunctive order prohibiting Defendant from jailing her, and persons like her, for the inability to pay, and other injunctive relief. Mr. Lane seeks compensation for the past violations of his constitutional rights, as well as other relief.

JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the action arises under the Constitution and laws of the United States. The Court additionally has jurisdiction pursuant to 28 U.S.C. §§ 1343(a)(3) and (4) because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to recover damages and secure equitable or other relief for the violation of those rights.

12. The Court has supplemental jurisdiction over Plaintiffs' state law claims because they are so related to the federal claims within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. *See* 28 U.S.C. § 1367(a).

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendant is located in this district, and under 28 U.S.C. § 1391(b)(2) because all of the events giving rise to Plaintiffs' claims occurred in this district.

PARTIES

14. Plaintiff Carina Canaan is a married mother of two young children and resides in El Paso County, Texas. She has worked at a number of low-income jobs across El Paso, never earning

more than \$8 per hour. Ms. Canaan's husband works temporary jobs when he is able to, but his employment is sporadic at best. As a result, their family lives near the federal poverty level. One day, Ms. Canaan dreams of becoming a nurse, as she is passionate about helping her fellow El Pasoans.

15. Plaintiff Levi Lane is a twenty-three year old man who lives in El Paso County, Texas. At the time of his incarceration, Mr. Lane had no savings, owed significant student loan debt, was working at a pet food distribution company earning \$9 an hour, assisted with the care of his brother, who had physical disabilities, and lived at or near the federal poverty level.

16. Defendant City of El Paso, Texas is a municipality organized under the laws of the State of Texas.

17. Defendant's City Council adopted and approved the 25% Upfront Policy. It recently considered the policy in detail and decided to neither repeal nor amend its policy. It further relies upon the City Manager, who in turn is assisted by the clerk of the municipal court and the clerk's staff, to promulgate and enforce the policy. The City Council has the power to direct and control the City Manager, as well as the power to hire and fire him. By law, it further gives the City Manager the power to direct and supervise the administration of all departments, offices, and agencies of the City of El Paso, including the municipal clerk and courts. Under this authority, Defendant's City Manager, with the help of the municipal court clerk, promulgates the 25% Upfront Policy; and all of Defendant's employees, including its court clerks, are acting and trained to act pursuant to the policy.

18. Defendant may be served with process by serving its mayor, clerk, secretary, or treasurer at 300 N. Campbell, El Paso, Texas 79901, or wherever they may be found. *See* Fed. R. Civ. P. 4(j)(2); Tex. Civ. Prac. & Rem. Code § 17.024(b).

STATEMENT OF FACTS

Defendant's 25% Upfront Policy and How It Affects Poor El Pasoans

19. On April 6, 2006, Defendant instituted and promulgated its 25% Upfront Policy, thereby mandating that:

Municipal Court payment plans will carry the following schedule for payment, after completion of the required application:

25% of the fine is required upfront at the time the plan is requested[;]

50% is required on the 30th day of the payment plan[;]

75% is required on the 60th day of the payment plan[; and]

100% is required on the 90th day of the payment plan[.]

20. Under this policy, which is an official administrative directive, Defendant denies those El Pasoans too poor to pay 25% of their outstanding fines upfront equal access to reasonable alternative options to dispose of their debt.

21. The effect of the 25% Upfront Policy is twofold for El Paso's poor. First, for those who are too poor to either pay their fines or qualify for a payment plan, Defendant brings to bear the breadth of its governmental power to give improper information to debtors and send them to jail. Second, the 25% Upfront Policy creates a chilling effect on poor debtors' ability to assert their constitutional rights; instead, afraid of incarceration, poor debtors are coerced into paying fines that they cannot, in fact, afford.

The Debt Collection Process for Class C Misdemeanor Fines

22. The 25% Upfront Policy is an official policy and plays a prominent role throughout the debt collection process. Defendant's municipal clerk staff send official notices to debtors that prominently display the policy, inform them they must pay a minimum 25% of the debt, and fail to provide other information or options apart from jail. Moreover, TV screens in Defendant's municipal courts display and reinforce this message to all who enter.

23. When a debtor accrues a fine or fee based on a traffic ticket, Defendant's Municipal Court Clerk issues a notice to the debtor informing her to pay it or come to the court on a specific date. Defendant's clerks include the amount of the fine due, along with a bold-faced notice stating that, "If a payment plan is needed, you must pay 25% of the amount due; otherwise payment in full is expected."

24. Defendant ensures its message reaches debtors before they come to the court. It notifies those debtors who do attempt to fill out an Application for Extension of Time for Payment of Fine, Court Costs, and Fees in capitalized bold font, that "25% INITIAL PAYMENT PER VIOLATION MUST BE PAID." Defendant does not notify debtors of other options.

25. If, prior to their appearance dates, debtors call Defendant's municipal clerk staff in order to inquire into their options for satisfying their fines, Defendant's court staff informs them that they must either: (1) pay the fines in full; (2) apply for a payment plan by filling out an application and paying 25% of their outstanding fines upfront; or (3) face jail time. Defendant's municipal clerks and their staff thus enforce the 25% Upfront Policy, and they have been trained to advise that the only options for a debtor are to pay a minimum of 25% upfront or go to jail. Defendant's municipal clerk staff do not inform debtors that they have the option to seek any other relief.

26. So, any person who receives a notice from Defendant who cannot afford 25% of a fine can expect to go to jail on that date. For Ms. Canaan and Mr. Lane, the amount due was significant — more than \$1,000 was due upfront.

27. Unsurprisingly, many poor debtors choose not to appear. For these debtors, a warrant is issued for their arrest.

28. Each warrant notice issued by Defendant shows the total amount of all accumulated fines and fees, and informs the debtors — once again — that if they want to avoid jail, they must

pay 25% upfront. Though each notice prominently informs the debtors how and where they may pay their fines, there is no mention of the debtors' right to assert their indigency or access other options.

29. Because Defendant's municipal court staff consistently publicizes the 25% Upfront Policy and systematically fails to inform debtors of any alternatives, many indigent debtors decide not to appear at their trials for fear of incarceration. As a result, between 2014 and 2015, Defendant's clerks sent out over 64,000 post-trial notices.

30. Meanwhile, Defendant prominently displays its 25% Upfront Policy on a rotating loop on television screens throughout its courts, ensuring debtors quickly see it.

31. If Defendant's officers subsequently arrest the debtor on an outstanding traffic warrant, the arresting officer takes the debtor to jail, where Defendant's employees deprive her of her liberty for 24-48 hours before she even receives a chance to set foot in the municipal court. Debtors also receive an additional \$64 to \$97 in court costs and warrant fees added to their outstanding fines for *each* ticket.

32. Ultimately, poor debtors are jailed for a period of time calculated at the rate of \$100 per day for fines they could not pay in the first place.

33. Accordingly, Defendant's 25% Upfront Policy disregards well-established constitutional protections. For those indigent defendants unaware of their rights and unable to pay their fines, the practical effect of the 25% Upfront Policy and improper training and supervision of Defendant's employees is to automatically convert Class C misdemeanor fines into jail time. Defendant's 25% Upfront Policy is the moving force behind Defendant's unconstitutional practices.

Failure to Reform, Despite Notice of Constitutional Concerns

34. Defendant's policymakers are well aware that their 25% Upfront Policy, agreement to use due process violations to coerce payment, and inadequate training and supervision, violate the

rights of indigent El Pasoans. Nonetheless, Defendant has exhibited deliberate indifference to correcting these known constitutional failings by refusing to make any effort at real reform. Instead, after recent public uproar about its practices, Defendant doubled-down on its efforts to advertise the 25% Upfront Policy.

35. In 2015, news media exposed some of the constitutional failings in Defendant's debt collection process. Soon after, a number of community organizations jointly delivered a letter to each of Defendant's City Council members further informing Defendant of these issues.

36. In early 2016, Defendant's City Council directed its City Manager and Municipal Clerk to review El Paso's debt collection process. The Municipal Clerk presented a series of recommendations for reforming the collections process on January 19, 2016, which the City Council adopted that day. However, Defendant's policymakers refused to repeal the unlawful 25% Upfront Policy or to improve training or supervision of Defendant's personnel. Oddly, the recommendations focused on increasing *debtors'* knowledge of Defendant's *current* unconstitutional policies and procedures.

37. After Defendant failed to adequately address its unconstitutional debt collection practices, state Senator José Rodríguez sent a letter to Defendant, voicing his concerns as a representative of the people of El Paso. Still, Defendant's policymakers have refused to reform its 25% Upfront Policy, change its practice of misinforming debtors about their options, or provide adequate training or supervision to its employees about educating the public.

38. As illustrated by the facts set forth above, Defendant's City Council, City Manager, and Municipal Clerk have actual notice that the 25% Upfront Policy, along with their practices and training, is unconstitutional. But they are also aware of the significant revenue collected by Defendant through the coercive collection of outstanding traffic fines, and have thus agreed to continue enforcement of the 25% Upfront Policy.

Injury to Ms. Canaan

39. Ms. Canaan is a married mother of two who dreams of becoming a nurse. However, despite her best efforts, Ms. Canaan has struggled to pursue that dream due to financial hardships and her immediate needs to provide for herself and her family. She has worked at a number of low-income jobs across El Paso, never earning more than \$8 per hour, and lives near the federal poverty level.

40. Among her financial hardships are more than forty traffic tickets from Defendant since 2007. Of those fines and fees, however, only five actually related to moving violations. The remaining thirty-five directly stemmed from Ms. Canaan's indigency, such as fines for driving with an expired license, inability to afford insurance, or inability to maintain her vehicle registration. In total, Defendant claimed that Ms. Canaan owed more than \$10,000.

41. Defendant's employees arrested Ms. Canaan on two occasions as a result of warrants issued after Ms. Canaan failed to appear to pay her fines. In 2011, Defendant jailed Ms. Canaan for two days because she was unable to pay \$5,416 in Class C misdemeanor fines. Two years later, in 2013, Defendant again incarcerated Ms. Canaan for nineteen days because she was unable to pay \$4,571.24 in Class C misdemeanor fines. At the time of her second detention, Ms. Canaan was pregnant with her first child.

42. Prior to both arrests and detentions, acting pursuant to the 25% Upfront Policy, Defendant's agreement with its employees to violate debtors' due process rights, and/or Defendant's failure to adequately train its staff, Defendant's employees repeatedly informed Ms. Canaan that her only options were to pay her fines in full, pay 25% to qualify for a payment plan, or go to jail. Defendant's employees refused to inform Ms. Canaan that she might have the option to assert her indigency or request alternative sentencing that did not require her to pay 25% upfront. None of Defendant's employees ever inquired into Ms. Canaan's ability to pay her fines or the

reasons she failed to pay. Nor did any of Defendant's employees ever consider Ms. Canaan's ability to satisfy her outstanding fines through alternative means like community service.

43. As a result, Ms. Canaan did the only thing she had been led to believe she could, she pled guilty to each charge and went to jail.

44. Defendant caused Ms. Canaan to suffer psychological damage, humiliation, mental anguish, lost wages, and emotional injury as a result of the prolonged incarceration.

45. Ms. Canaan still has three outstanding warrants — all directly related to her indigency — for inability to pay traffic tickets. Despite her best efforts, Ms. Canaan remains unable to pay her outstanding fines and cannot qualify for the 25% Upfront Policy. Because of this, she cannot keep her vehicle registration or license plates up to date and drives with an expired license, all of which present imminent cause for Defendant's police officers to pull her over. Still, she must continue to drive to make money, buy groceries, take her children to the doctor, and generally support her family. Defendant will arrest her and put her in jail soon. Ms. Canaan therefore faces a real and immediate threat that Defendant will stop, arrest, and send her to jail because of her inability to pay those fines.

Injury to Mr. Lane

46. In or about late April of 2014, Mr. Lane had no savings. He had been working full-time for approximately four months at a pet food distribution company earning \$9 an hour, and lived in an apartment with his brother, who had a number of physical disabilities. Mr. Lane tried to assist his brother as best he could, even though Mr. Lane was living at or near the federal poverty level and from paycheck to paycheck.

47. Among other expenses, Mr. Lane was trying to pay off a student loan burden of more than \$20,000. He had incurred his student loans while completing an associates degree.

Despite having completed all the relevant course work, Mr. Lane never received his diploma because he was financially unable to make his final tuition payments.

48. Mr. Lane also faced the burden of seventeen traffic warrants. Of the seventeen outstanding warrants, however, only three were related to moving violations. The remaining fourteen directly stemmed from Mr. Lane's indigency, largely related to a financial inability to maintain vehicle registration and insurance. In total, Defendant claimed Mr. Lane owed more than \$4,300.

49. In 2014, Defendant's employees arrested Mr. Lane on warrants issued as a result of his inability to pay his fines. Mr. Lane subsequently spent twenty-four days in jail merely because of his inability to pay those fines, causing him to lose his job and causing emotional distress.

50. Prior to his arrest, Mr. Lane had called Defendant's municipal court clerks on several occasions to inquire into his options to resolve his debt. However, acting pursuant to the 25% Upfront Policy, Defendant's agreement with its employees to violate debtors' due process rights, and Defendant's failure to adequately train its staff, Defendant's employees repeatedly informed Mr. Lane that his only options were to pay his fines in full, pay 25% to qualify for a payment plan, or go to jail. Defendant's employees refused to inform Mr. Lane that he might have the option to assert his indigency or request alternative sentencing that did not require him to pay 25% upfront. None of Defendant's employees ever inquired into Mr. Lane's ability to pay his fines or the reasons he failed to pay. Nor did any of Defendant's employees ever consider Mr. Lane's ability to satisfy his outstanding fines through alternative means like community service.

51. Mr. Lane did the only thing Defendant had led him to believe he could – he pled guilty to each charge and went to jail.

52. As a result, Defendant caused Mr. Lane to lose his job. Defendant also caused Mr. Lane to suffer psychological damage, humiliation, mental anguish, lost wages, and emotional injury as a result of the prolonged incarceration.

CAUSES OF ACTION

I. Violations of the Right to Due Process **Under the Federal Constitution, 42 U.S.C. § 1983**

53. Plaintiffs incorporate by reference the allegations in paragraphs 1-52 above.

54. Under the Due Process Clause, a governmental entity like the City of El Paso is required to provide both notice and opportunity for a determination of a debtors' indigency prior to depriving individuals of their liberty for failure to pay fine-only Class C misdemeanors. Through its 25% Upfront Policy and/or failure to properly train its employees, Defendant deprived Plaintiffs of this due process by unnecessarily coercing them into jail without inquiring into their reasons or ability to pay. Thus, Defendant offered Plaintiffs no other option than to either pay in full or go to jail. This is a violation of the Due Process Clause of the Fourteenth Amendment. Defendant's 25% Upfront Policy and/or failure to adequately train and supervise are the moving forces behind these violations.

55. Further, by enacting and maintaining its 25% Upfront Policy, and refusing to properly train and supervise its employees, Defendant has been deliberately indifferent to its denial of due process to indigent debtors, including Ms. Canaan and Mr. Lane.

II. Conspiracy to Violate the Right to Due Process **Under the Federal Constitution, 42 U.S.C. § 1983**

56. Plaintiffs incorporate by reference the allegations in paragraphs 1-52 above.

57. Defendant and its employees and/or agents have entered into an agreement to intentionally violate due process rights in order to increase Defendant's revenue streams from traffic violations. Specifically, Defendant and its employees and/or agents have agreed to intentionally

refuse to inform low-income debtors of their rights, and to intentionally refuse to properly inquire into a debtors' financial inability to pay their fines and/or the debtors' reasons for failing to pay. Defendant and its employees and/or agents knew this was and is a violation of due process requirements, and formed the agreement with the specific intent of violating those due process rights as a coercive mechanism in Defendant's debt collection efforts. As a direct result of this illegal agreement, Defendant violated Plaintiffs' constitutional rights to due process.

**III. Violations of the Right to Equal Protection
Under the Federal Constitution, 42 U.S.C. § 1983**

58. Plaintiffs incorporate by reference the allegations in paragraphs 1-52 above.

59. Defendant creates two separate and unequal economic classes with its 25% Upfront Policy and inadequate training and supervision. The first class includes individuals who can afford to pay 25% or more of their outstanding fines upfront, who therefore benefit from payment plan options and do not go immediately to jail. At the same time, Defendant makes second class citizens out of indigent people like Ms. Canaan and Mr. Lane by denying them equal access to payment plan options on a level afforded to more affluent El Pasoans. The Equal Protection Clause prohibits the unequal treatment of people based upon their inability to pay fines because they are indigent. Defendant's 25% Upfront Policy and/or failure to adequately train and supervise its employees are the moving forces behind these violations.

60. Defendant further violated Plaintiffs' rights under the Equal Protection Clause because it used unduly harsh and discriminatory debt collection schemes against Plaintiffs. Defendant's 25% Upfront Policy and/or failure to adequately train and supervise its employees are the moving forces behind these violations.

61. Defendant's policymakers are aware – or should be aware – to the risk that its 25% Upfront Policy discriminated against poor debtors based on economic status and would result in an incarceration-for-credit scheme that was unduly harsh for indigent debtors. Nonetheless, they have

refused to change or otherwise address these policies even though they have no good reason to maintain them. In doing so, Defendant has been deliberately indifferent to its unduly harsh debt collection scheme and to the injuries it has caused to Plaintiffs.

IV. Violations of the Right to Equal Protection
Under the Texas Constitution

62. Plaintiffs incorporate by reference the allegations in paragraphs 1-52 above.

63. Under Sections 13, 18, and 19 of Article I of the Texas Constitution, Plaintiffs have rights against excessive fines, imprisonment for debt, and the deprivation of liberty and disfranchisement without due course of the law. Further, the Texas Equality of Rights provision is an addition to Texas' standard equal rights provision and was added to the state's Bill of Rights in 1979. *See* Tex. Const. art. I, sec. 3. As such, it provides greater protection than standard federal equal protection rights. Under color of state law, Defendant deprived Plaintiffs of these protections through their actions described above.

REQUEST FOR RELIEF

Declaratory and Injunctive Relief

64. Plaintiffs seek declaratory relief because Defendant violated their rights under the federal and state constitutions, as described above.

65. Defendants continue to maintain their illegal policies, practices, and inadequate training and supervision. As a result, Ms. Canaan, who has outstanding warrants for her arrest on failure-to-pay grounds, and who continues to be financially unable to pay those fines, continues to face a real and immediate risk of further deprivations of her federal and state constitutional rights.

66. Ms. Canaan therefore seeks an injunction permanently enjoining Defendants and their agents, employees, and/or any other persons or entities acting on their behalf from further enforcing the 25% Upfront Policy. Ms. Canaan further seeks an injunction preventing Defendant from violating her constitutional rights and the rights of those similarly situated and requiring

Defendant to design and implement new training and supervision policies to ensure that such violations do not continue in El Paso.

67. Both Mr. Lane and Ms. Canaan further seek a declaratory judgment declaring the 25% Upfront Policy invalid under long-standing federal and state law.

Damages

68. The actions of Defendant caused Mr. Lane to suffer damages, including unnecessarily spending numerous days in jail and losing his job, and considerable emotional distress and mental anguish.

69. Mr. Lane is entitled to compensatory and exemplary damages for Defendant's violation of his constitutional rights.

Attorneys' Fees

70. As a result of Defendant's conduct, Plaintiffs had to retain counsel to protect their rights. Plaintiffs will also expend reasonable costs and fees. Pursuant to 42 U.S.C. § 1988, Plaintiffs ask that the Court award them reasonable attorneys' fees, costs, and expenses.

JURY DEMAND

71. Plaintiffs respectfully demand a jury trial on their individual damages claims and all other matters which may be tried to a jury.

PRAYER

72. Plaintiffs respectfully request that the Court grant the following relief:
- a. Enter a judgment declaring that Defendant's policies, practices, training, supervision, acts, and omissions described herein are unlawful and violated Plaintiffs' rights under the Constitution and laws of the United States;
 - b. Permanently enjoin Defendants, their subordinates, agents, employees, successors, and all others acting in concert with them, from subjecting Plaintiffs and others similarly situated to the unconstitutional and unlawful practices described above, including its policies, training, and supervision;

- c. Award compensatory and exemplary damages to Mr. Lane for psychological damage, humiliation, mental anguish, lost wages, and emotional distress, suffered as a result of Defendant's unconstitutional policies, practices, and acts;
- d. Grant Plaintiffs their reasonable attorneys' fees, expenses, and costs pursuant to 42 U.S.C. § 1988; and
- e. Issue such other relief, legal and equitable, general and specific, to which Plaintiffs are justly entitled.

Dated: April 20, 2016.

Respectfully submitted,

By: /s/ William B. Jacobi

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