

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

KARIAN HARRIS,
on behalf of herself and all others similarly
situated,

Plaintiff,

v.

CITY OF AUSTIN,

Defendant.

Civil Action No. 15-cv-956-SS

FIRST AMENDED COMPLAINT

NATURE OF THE ACTION

1. Plaintiffs in this case face the threat of jail solely because they cannot afford to pay their debts. The City of Austin regularly jails people who are too poor to pay their fines and fees for petty misdemeanors, such as traffic tickets, in violation of the Sixth and Fourteenth Amendments to the United States Constitution. Specifically, the City jails people without appointing an attorney to represent them and without asking whether they have the money to pay their debt. Plaintiffs bring this class action to vindicate their constitutional rights to counsel, due process, and equal protection.

2. The City jails people through its operation of the Austin Municipal Court, which has criminal jurisdiction limited to the least serious crimes punishable in the State of Texas. The court charges impoverished people exorbitant fines and fees, then arrests and jails people who fall behind on their payments, violating their constitutional rights in the process. This practice deprives people of their physical liberty, threatens the stability of their employment and housing, and separates them from their children and families.

3. Through this case, Plaintiffs seek to ensure only that the City provides basic procedural protections before it jails people for failing to pay fines and fees for traffic tickets and other petty misdemeanors. The City's constitutionally deficient process results in the imprisonment of hundreds of people each year. Plaintiffs seek an injunction prohibiting the City from jailing people who are too poor to pay without the procedural protections guaranteed by the Sixth and Fourteenth Amendments.

JURISDICTION AND VENUE

4. This is a civil rights action arising under 42 U.S.C. § 1983, 28 U.S.C. § 2201 *et seq.*, and the Sixth and Fourteenth Amendments to the United States Constitution. This Court has

jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

5. Venue in this district is proper under 28 U.S.C. § 1391(b)(1), because the City of Austin resides in this district, and under § 1391(b)(2), because a substantial part of the events giving rise to the Plaintiff's claims occurred in this district.

PARTIES

6. Plaintiff Karian Harris is a thirty-five-year-old mother who resides in Austin, Texas. She lives near the federal poverty level. She is at risk of being jailed, without an attorney to defend her, due to her inability to pay her debt for traffic tickets.

7. Defendant City of Austin is a municipality organized under the laws of the State of Texas. The City of Austin has established the Austin Municipal Court as a department of the City. The City of Austin may be served with process by serving the City Clerk, Mayor, Treasurer, or Secretary at 301 W. 2nd Street, Austin, Texas 78701.

FACTS

Karian Harris

8. Plaintiff Karian Harris is a thirty-five-year-old mother and sole caretaker of seven minor children. She lives with her children in Austin.

9. Ms. Harris makes less than \$500 a month at her job as a childcare aid at Barrington Elementary School, which amounts to less than \$6000 a year. She has no other sources of income. She receives food stamps, Section 8 housing assistance, and free school lunches for her children.

10. Over the last 14 years, the City of Austin gave Ms. Harris many traffic tickets. Ms. Harris did not have enough money to pay her traffic ticket debts because of her modest income and the expenses necessary to feed and shelter her children.

11. Ms. Harris received most of her tickets because she could not afford expenses like a car inspection or insurance. Nevertheless, Ms. Harris had to keep driving to care for her children. She was stuck—she was repeatedly ticketed for offenses such as driving without insurance, but she could not afford insurance or afford to pay off all of her traffic tickets.

12. In December 2010, Ms. Harris was arrested for warrants resulting from her unpaid traffic tickets owed to the City of Austin. She was three months pregnant when she was arrested. After she was arrested, she was taken to Travis County Jail, where she waited to see an Austin Municipal Court judge.

13. The judge ordered Ms. Harris to spend more than two weeks in jail while pregnant. She missed Christmas with her children while in jail and was released on her daughter's birthday, December 26, 2010. While in jail, Ms. Harris was especially concerned for the wellbeing of her unborn child and her six-month-old baby.

14. The judge did not ask Ms. Harris about her income, her dependents, or other factors bearing on her ability to pay. He did not inquire into her ability to complete community service. He did not consider reducing the debts based on Ms. Harris's ability to pay.

15. If the judge had asked, Ms. Harris would have explained that she was working as a housekeeper for only about \$6.50 an hour for 25 hours a week. Ms. Harris also would have told him that she had been assigned community service for her tickets, but that she could not satisfy her community service requirements because she was pregnant and because when she was not at work she had to watch her children—one of whom was only six months old at the time of Ms. Harris's arrest.

16. As a result of her incarceration in 2010, Ms. Harris missed work and lost her job as a housecleaner. Her financial struggles were even worse when she was finally released.

17. About two years after her 2010 arrest, Ms. Harris received three more tickets, all of which arose from a single traffic stop in January 2013. One ticket was for driving without a valid license, one for driving without insurance, and the last for an expired registration. Ms. Harris could not afford to pay those tickets.

18. In June 2013, Ms. Harris was arrested for outstanding warrants resulting from her unpaid traffic tickets owed to the City of Austin. She was four months pregnant when she was arrested. After she was arrested, she was taken to Travis County Jail, where she waited to see an Austin Municipal Court judge.

19. The judge ordered Ms. Harris to either pay \$600 or spend four days in jail. Ms. Harris could not afford to pay and was committed to jail for the four days.

20. The judge did not ask Ms. Harris about her income, her dependents, or other factors bearing on her ability to pay. He did not consider reducing the debts based on Ms. Harris's ability to pay.

21. If the judge had asked, Ms. Harris would have explained that she was not working and could not afford to pay the tickets.

22. On information and belief, Ms. Harris was not offered community service on those tickets. Even if she had been offered community service, she would not have been able to complete it, because she had six young children at home and was pregnant with her seventh child.

23. At no point in Ms. Harris's traffic ticket cases did the court inquire into her ability to afford counsel, take any steps to appoint counsel, or obtain a knowing, voluntary, and intelligent waiver of Ms. Harris's right to counsel. Ms. Harris could not and cannot afford counsel. She was not represented by counsel when she entered a plea on any of her underlying tickets nor when she

was arrested and jailed for failure to pay. She did not waive her right to counsel at any of those proceedings.

24. Since the court jailed Ms. Harris in 2013, the City has given her two more tickets—one for lack of insurance, and the other for not having a driver’s license. The Department of Public Safety will not allow Ms. Harris to renew her driver’s license because the City has reported Ms. Harris for failure to pay her traffic tickets.

25. Ms. Harris has appeared in court on these tickets and made her best effort to satisfy the court’s order. Most recently, in August 2015, the court ordered Ms. Harris to pay \$75 a month until the debt was paid off. She paid one installment before losing her job. She was able to find new employment at Barrington Elementary, but because she makes so little money, she cannot afford to pay \$75 a month.

26. At no point in Ms. Harris’s traffic ticket cases did the court consider reducing or tailoring her debt to her ability to pay.

27. The court has issued two past due warning notices to Ms. Harris, but the court will not offer her any solution other than performing community service that it is a hardship to perform or paying a debt she cannot afford.

28. Ms. Harris is at risk of the Austin Municipal Court issuing warrants, which she cannot afford to clear, and then jailing her without any inquiry into her ability to pay her tickets, forcing her to spend days in jail unable to care for her children.

I. Legal Framework for the Austin Municipal Court’s Jurisdiction Over Petty Crimes

29. The City of Austin vests the Austin Municipal Court with jurisdiction over “fine only” crimes, which include Class C misdemeanors. Austin, Tex., Charter art. VI; Tex. Gov. Code

§§ 29.003, 30.00003–30.00005. Class C misdemeanors are the least serious crimes punishable in the State of Texas, such as failure to signal while changing lanes or entering a park after hours.

30. Under municipal law, the City Council has appointed a Presiding Judge and a Clerk of Court for the Austin Municipal Court. Austin, Tex., City Code §§ 2-10-2, 2-10-11. The Presiding Judge has the duty to adopt “rules for the orderly trial of a case in the municipal court.” *Id.* The Austin Municipal Court is made up of nine full-time and eleven part-time judges.

31. The Presiding Judge and the Clerk of Court act as final policymakers for the Austin Municipal Court. They set municipal policies and practices entirely separate from—and in some cases contrary to—the municipal judges’ authority under state law. References to “the Austin Municipal Court” or “the court” denote an entity that includes municipal judges and staff in the clerk’s office.

II. Constitutional Protections for People Prosecuted in Austin Municipal Court

32. The Due Process and Equal Protection Clauses of the Fourteenth Amendment, along with the Sixth Amendment, protect people who are prosecuted for petty crimes, such as Class C misdemeanors.

33. The Due Process Clause requires courts to hold an ability to pay hearing before jailing a poor person for failure to pay a criminal judgment debt. *Bearden v. Georgia*, 461 U.S. 660 (1983). At that hearing, the court must inquire into the reason the person failed to pay and consider alternatives to jail, such as tailoring the debt to the person’s resources. *Id.* at 672.

34. The Equal Protection Clause prohibits courts from jailing someone for a fine-only offense solely because she lacks the ability to pay. *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970).

35. The Sixth Amendment prohibits courts from jailing a person for a conviction secured without the assistance of counsel for the accused. *Argersinger v. Hamlin*, 407 U.S. 25 (1972). If a trial court fails to appoint counsel for the accused in a misdemeanor case, the court cannot impose a jail term as punishment for a resulting conviction. *Id.* The trial court is prohibited both from imposing a jail term immediately upon conviction, and from activating a suspended jail term for subsequent failure to abide by the terms of the court's judgment. *Alabama v. Shelton*, 535 U.S. 654 (2002). Without the assistance of counsel at trial, the court can never impose a term of imprisonment for that offense. *Id.*

36. The Equal Protection Clause of the Fourteenth Amendment prohibits the government from stripping criminal judgment debtors of the rights afforded to civil judgment debtors and using unduly harsh methods of debt collection for criminal judgment debt. *James v. Strange*, 407 U.S. 128 (1972).

III. The Austin Municipal Court's Policies and Practices Violate the Constitutional Rights of People Who Are Too Poor to Pay

37. Class C prosecutions in Austin Municipal Court trap people who are too poor to pay in an endless cycle of accumulating debt. The court burdens people who are too poor to pay with additional fees and logistical hurdles at every step of the process, then arrests people who cannot pay and denies them the procedural protections required by the Constitution. For people who are too poor to pay, the almost-inevitable result of this system is jail time.

38. The first step in the life of nearly every Class C prosecution is a ticket. When a police officer issues a ticket, she instructs the recipient to sign the bottom of the ticket, which contains a promise to pay a fine or appear in Austin Municipal Court. People who are capable of paying their tickets in a lump sum typically resolve their cases by mailing the court a check.

39. People who are too poor to pay must appear in court. If a person fails to appear in court, the judge has the option to either reschedule the appearance without a formal order, issue a summons ordering the person to appear, or issue a warrant for the person's arrest. Tex. Code Crim. Proc. Arts. 15.03, 45.014.

40. The Austin Municipal Court has a policy and practice of issuing an arrest warrant and increasing all fines by 50% the first time a person fails to appear. The court charges a \$50 fee for each ticket for which a warrant has been issued—the first of many fees the court adds on top of the initial ticket. The court also charges “bail” to clear these warrants. “Bail” is the full amount that the ticket would cost if the person who received the ticket pled guilty. People who are too poor to pay the “bail” are not allowed to clear their warrant by rescheduling a court date over the phone.

41. People with open warrants for failing to appear in court are arrested as a result of encounters with the police. Once arrested, they are taken to Austin Municipal Court.

42. Once a person appears in court—whether voluntarily or upon arrest—the next step is to go to trial, plead no contest, or plead guilty. Upon conviction, Texas law authorizes the court to assess a fine up to \$500, court costs, and various fees that cause the debt to spiral further out of control.

43. For example, the Austin Municipal Court has a policy and practice of charging a \$25 fee to set up a payment plan for each ticket. In other words, if a person has three tickets and she is too poor to pay them up front, the court charges her an extra \$75.

44. The Austin Municipal Court has a policy and practice of charging a \$30 fee for a credit card payment or check that is rejected.

45. The Austin Municipal Court has a policy and practice of charging a \$30 driver's license renewal suspension fee to people who are too poor to pay their tickets. In addition, when the court refers a ticket to a collection agency, the court charges a 30% collection fee.

46. The Austin Municipal Court has many options for easing the burden of these fines and fees on people who are too poor to pay. The court is authorized to convert the debt to a civil judgment, order the ticket recipient to make payments under a payment plan, or order her to discharge her debt through community service. Tex. Code Crim. Proc. Arts. 45.0047, 45.049. The court is also authorized to waive part or all of the outstanding debt for any person who is too poor to pay or perform community service without undue hardship. *Id.* Art. 45.0491.

47. The Austin Municipal Court fails to consider the full range of these options. The court has a policy and practice of refusing to partially or fully waive debt, or collect debt as a civil judgment, for people too poor to pay in full. The court has a policy and practice of limiting people to two options—community service or a payment plan on the full amount of the debt—regardless of whether these options impose an undue hardship.

48. Taking advantage of these two options is not easy. The Austin Municipal Court's payment plan application fails to include spaces for explaining essential financial information, such as how many children a person has, or whether they receive governmental assistance for the poor. The Austin Municipal Court does not post a community service application on its website. Clerk's office staff have a policy and practice of refusing to offer the payment plan or community service options unless a person has already missed the deadline to pay their fines and fees, risking issuance of a warrant and additional fees.

49. The Austin Municipal Court has a policy and practice of issuing an arrest warrant called a "capias pro fine" warrant if a person misses their deadline to make payments or perform

community service. For people who appear in person, prove their poverty, and establish a payment plan, Clerk's office staff refuse to clear their *capias* warrants until the person makes a payment. *Capias* warrants put people who are too poor to pay at high risk of being arrested and jailed.

50. For people whose cases are referred to a collections agency, the court has a policy and practice of refusing to clear *capias* warrants unless the court receives separate payments on each outstanding ticket. In other words, even if a person is making regular payments toward the balance of one ticket, the court refuses to clear outstanding *capias* warrants on that person's other tickets. The longer that a *capias* warrant remains outstanding, the higher the risk that a person who is too poor to pay will be arrested and jailed.

51. The Austin Municipal Court has a policy and practice of demanding arbitrary, on-the-spot payments from people who appear in court—whether voluntarily or upon arrest—to clear a *capias pro fine* warrant. For people with smaller debts, the court has a policy and practice of demanding the amount of money in the person's pockets before letting them go. For people with larger debts, the court asks how much money the person would be able to produce that day, and orders the person to produce that amount under the threat of jail time. The process is like a shakedown.

52. The Austin Municipal Court also charges a \$50 fee for each *capias pro fine* warrant the court issues. In other words, if a ticket recipient is too poor to pay or perform community service, she is subjected to an endless cycle of warrants that increase the debt she owes to the court. For example, for a person who is too poor to make payments or take time off from work, debt from a single ticket for failure to signal while changing lanes can accumulate like so:

Fine	\$ 66.00
Court Costs	\$ 103.00
Late Fine Increase (50%)	\$ 33.00
Arrest Warrant Fee	\$ 50.00

Check Return Fee	\$ 30.00
Payment Plan Fee	\$ 25.00
License Renewal Suspension Fee	\$ 30.00
Capias Warrant Fee	\$ 50.00
	\$ 387.00
Collection Fee	x 1.30
Total	\$ 503.01

53. The Austin Municipal Court adjudicates over 150,000 Class C misdemeanor cases per year, resulting in approximately \$30 million in gross collections.

54. As described in detail below, the Austin Municipal Court has a policy and practice of jailing people who take too long to satisfy their ever-growing debts. The court has a policy and practice of jailing people until their debts are “satisfied,” or for a “total layout” of the debt. The court then issues “jail credit,” or monetary credit for jail time, at a default rate of \$100 per day. That default rate can be modified arbitrarily. The court has a policy and practice of adjusting the amount of jail credit granted per day based on the date the Travis County Sheriff’s Office releases people who are jailed. In other words, the Sheriff’s Office has unilateral authority to determine how long people must spend in jail until they “satisfy” their debt.

55. The Austin Municipal Court does not automatically issue jail credit in all cases. In cases where jail credit is not automatically issued, people who are jailed must provide proof of incarceration to the Austin Municipal Court—even if the Austin Municipal Court is the same court that committed the person to jail. The Austin Municipal Court has a policy and practice of charging people a fee in order to obtain proof that the court jailed them.

56. These policies and practices affect thousands of Austin residents. The Austin Municipal Court issued jail credit in nearly 20,000 cases in fiscal year 2012–2013. During that same period, the Austin Municipal Court refused to waive one dollar of outstanding debt in any of its more than 170,000 cases.

A. The Austin Municipal Court Jails People Solely Because They Are Too Poor to Pay, Without Inquiring Into Ability to Pay or Alternative Punishments

57. The Austin Municipal Court has a policy and practice of jailing people solely because they are unable to satisfy their criminal judgment debt, even if they can demonstrate that their failure to pay or perform community service was not willful.

58. The Austin Municipal Court has a policy and practice of bringing people who are arrested on capias pro fine warrants to Central Booking, where they are processed into Travis County Jail. Their clothes and belongings are confiscated. They are brought before a municipal judge in jail-issued striped pajamas, shackled to one another at the wrist. Under these circumstances, the court holds brief hearings to determine whether to send each person to jail.

59. The Austin Municipal Court has a policy and practice of jailing people without any meaningful inquiry into their reasons for failing to pay. The court jails people without inquiring into their income, expenses, household dependents, or other circumstances bearing on their ability to pay.

60. The Austin Municipal Court has a policy and practice of holding jail commitment hearings without prior notice that the hearing will take place, and without informing ticket recipients that their ability to pay or perform community service is a crucial issue in the hearing.

61. The Austin Municipal Court has a policy and practice of failing to provide form financial information affidavits to arrestees during jail commitment hearings.

62. The Austin Municipal Court has a policy and practice of failing to make meaningful inquiries into alternatives to imprisonment, including collection of outstanding debt as civil judgment debt and reducing or waiving debts.

63. The court's policies and practices are reflected in the preprinted form the court uses to commit people to jail. The form, which judges fill in by hand, does not include a space to enter

meaningful factual findings about constitutionally-required considerations, such as the person's ability to pay, the adequacy of alternative punishments, and the necessity of jail time to satisfy the state's interest in punishment. There is no preprinted form for tailoring outstanding debts to the person's resources.

64. The court's policies and practices are reinforced by the Austin City Code. Section 2-10-21 of the Austin City Code provides: "If a defendant defaults on payment of a fine or fails to comply with alternative sentencing, a judge may imprison the defendant until the fine is paid in full." This Section does not require the court to inquire into ability to pay or consider alternative punishments, such as tailoring a fine to the person's resources, for people who are unable to pay.

65. These policies and practices are also reinforced by the Austin Municipal Court Rules. Rule 9.4, "Inability to Pay Fine," provides that the court "may" order a payment plan or community service in lieu of immediate payment of a fine, "[i]f the defendant qualifies." The Rules do not describe the criteria for permitting people to satisfy their debts through payment plans or community service. The Rules do not require the court to consider alternative punishments, such as tailoring a fine to the person's resources, for people who are unable to pay.

66. The court has a policy and practice of failing to provide any procedures or guidelines for jailing people who have not paid their outstanding debts. No provision of the Austin City Code or the Austin Municipal Court Rules establishes such procedures or guidelines.

67. The best evidence of the court's failure to consider alternatives to jail is its own data on debt waivers. The Austin Municipal Court's self-reported data indicate that the court waived debt in just 11 of more than 600,000 cases over a four-year period. By comparison, on information and belief, the court jailed more than 1700 people in just one year during the same time period.

68. Altogether, the Austin Municipal Court has a policy and practice of failing to comply with any aspect of the ability to pay hearing required under the Due Process Clause. As a result, the court has a policy and practice of jailing people solely because they are unable to satisfy their criminal judgment debt¹, in violation of their rights under the Equal Protection Clause. People who are genuinely unable to make debt payments or perform community service, such as Ms. Harris, are jailed solely because of their lack of resources.

69. This is not a policy and practice set by state law. In fact, state law prohibits municipal judges from jailing people for a crime without an ability to pay hearing required under the Due Process Clause. Tex. Code Crim. Proc. Art. 45.046. Denial of the ability to pay hearing required under the Due Process Clause is a strictly municipal policy and practice.

70. As evidenced by the Austin Municipal Court Rules and preprinted form orders, these policies and practices are so persistent and widespread that knowledge of the policies and practices is attributable to municipal policymakers. The policymakers with final authority to remedy this constitutional violation have failed to do so.

B. The Municipal Court Imprisons People For Criminal Convictions Entered Without Assistance of Counsel

71. The Austin Municipal Court has a policy and practice of entering Class C misdemeanor convictions without the benefit of counsel for the accused, and then using those convictions as a basis for jailing people.

72. The Austin Municipal Court has a policy and practice of refusing to appoint counsel for people charged with Class C misdemeanors. No provision of the Austin City Code or the Austin

¹ Plaintiffs do not challenge the court's authority to jail people for willful nonpayment of debt or other actions in contempt of court.

Municipal Court Rules discusses appointing counsel in these cases. The Austin Municipal Court has no system for appointing counsel.

73. The Austin Municipal Court has the power to jail people for failure to pay their criminal judgment debt. Tex. Code Crim. Proc. Art. 45.4046. The Austin Municipal Court has a policy and practice of using this power to impose a jail term to punish Class C offenses.

74. The court has a policy and practice of issuing orders jailing people “on the above stated cause(s),” which are the underlying Class C offenses. The court has a policy and practice of jailing people to “lay out” or “satisfy” the fines and fees imposed for the underlying Class C offenses. The court therefore has a policy and practice of jailing people as a result of their Class C misdemeanor convictions entered without the assistance of counsel.

75. This is not a policy and practice set by state law. In fact, state law prohibits municipal judges from jailing indigent people without appointing counsel in their underlying criminal cases. Tex. Code. Crim. Proc. Art. 1.051(c). Likewise, state law prohibits municipal judges from jailing anyone for Class C offenses without first making a determination that the person willfully refused to pay, as opposed to failing to pay due to indigency. Tex. Code Crim. Proc. 45.046. Jailing people without appointment of counsel in their defense is a strictly municipal policy and practice.

76. As evidenced by the lack of a system for appointing counsel and hundreds of people jailed each year, these policies and practices are so persistent and widespread that knowledge of the policies and practices is attributable to municipal policymakers. The policymakers with final authority to remedy this constitutional violation have failed to do so.

C. The Municipal Court Employs Unduly Harsh and Discriminatory Terms for Collecting Criminal Judgment Debt, in Contrast to Civil Judgment Debt

77. If the debt resulting from Class C tickets were owed to a private party as a civil debt, the tools available to the debt collector would be much more limited. The Texas Constitution prohibits jailing almost any civil debtors, with narrow exceptions for debtors in contempt of court who have willfully failed to pay a legal financial obligation. Tex Const. Art. I, § 18; *Ex parte Sutherland*, 526 S.W.2d 536 (Tex. 1975).

78. Even civil debtors in contempt of court have significantly stronger procedural protections than the protections afforded by the Austin Municipal Court. Civil debtors are entitled to meaningful written notice of the accusations against them, appointed counsel for their defense, a hearing on willfulness, the complete defense of inability to pay, and a written commitment order if the court decides to imprison the contemnor. Tex. Fam. Code § 157.163; *Ex parte Chambers*, 898 S.W.2d 257 (Tex. 1995); *In re Griffith*, 434 S.W.3d 643 (Tex. App. Houston [1st Dist.] 2014); *In re Acceptance Ins. Co.*, 33 S.W.3d 443 (Tex. App. Ft. Worth 2000); *Ex parte Rosser*, 899 S.W.2d 382 (Tex. App. Houston 1995); *Ex parte Strickland*, 724 S.W.2d 132 (Tex. App. Eastland 1987).

79. The Austin Municipal Court has a policy and practice of stripping criminal judgment debtors of these basic protections.

80. The Austin Municipal Court's policy and practice of collecting Class C debt is unduly harsh and discriminatory as applied to people who are too poor to pay. The threat of imprisonment also induces impoverished families to forego paying for basic needs, such as paying their electricity bill, in order to make their payments.

81. This is not a policy and practice set by state law. In fact, state law requires appointed counsel, a hearing on willfulness, and the complete defense of inability to pay before jailing a

person for failure to pay traffic tickets. Tex. Code Crim Proc. 45.046. These unduly harsh and discriminatory methods of debt collection are a strictly municipal policy and practice.

82. The Austin Municipal Court has a policy and practice of failing to give people who are jailed meaningful written notice of the accusations against them, and failing to appoint counsel, hold meaningful hearings on ability to pay, and draft written commitment orders for a specific jail term. These policies and practices are so well-settled and widespread that knowledge of the policies and practices is attributable to municipal policymakers.

CLASS ACTION ALLEGATIONS

83. The named Plaintiff brings this action on behalf of herself and all others similarly situated under Rule 23 of the Federal Rules of Civil Procedure. She seeks to represent the class of all persons who, now or in the future, are unable to satisfy their criminal judgment debt assessed in Class C misdemeanor cases in Austin Municipal Court.

84. This action is brought and may properly be maintained as a class action pursuant to Rule 23(a)(1)-(4) and Rule 23(b)(2) of the Federal Rules of Civil Procedure.

I. Numerosity, Rule 23(a)(1)

85. Members of the putative class are so numerous that joinder is impracticable. In fiscal year 2012–2013, the Austin Municipal Court disposed of 174,790 cases and issued 65,711 warrants and commitment orders.² During that year, 19.1% of Austin residents lived below the poverty line. Even if impoverished people are marginally over- or under-represented in Austin Municipal Court cases, warrants, and commitment orders, there are thousands of people who are too poor to pay their tickets, and are currently being threatened with arrest and incarceration.

² The Austin Municipal Court reports data about warrants and commitment orders together, as one data point, to the Office of Court Administration.

86. Joinder is also impracticable because membership in the putative class is fluid. New people are ticketed and convicted every day—the average life cycle of a Class C prosecution is just 230 days. Moreover, financial stability is uncertain for people with lower incomes, and someone who is capable of paying their tickets one day may find themselves impoverished the next, due to job loss, injury, or other unforeseen circumstances. Finally, putative class members may moot their claims by serving jail time or paying fines and fees by choosing to miss payments on necessary household expenses.

87. Finally, joinder is impracticable because members of the putative class are poor. They are unable to pay for an attorney to represent their interests or invest the time and money necessary to investigate and litigate their claims pro se.

II. Commonality, Rule 23(a)(2)

88. The relief sought is common to all members of the putative class, and common questions of law and fact exist as to all members of the class. This action seeks to enjoin the Austin Municipal Court's unconstitutional policies and practices on a classwide basis. This action also seeks a declaration that the Austin Municipal Court's policies and practices violate the Sixth Amendment right to counsel and the Due Process and Equal Protection rights of all putative class members.

89. Among the most important, but not the only, common questions of law and fact are:
- a. Whether the Austin Municipal Court has a policy and practice of failing to ask about the reasons for a person's failure to pay before imprisoning that person for failure to pay;
 - b. Whether the Austin Municipal Court has a policy and practice of failing to consider alternative punishments before imprisoning a person for failure to pay;
 - c. Whether the Austin Municipal Court has a policy and practice of declining to appoint counsel in Class C misdemeanor cases, then jailing people for the resulting convictions;

- d. Whether the foregoing policies and practices violate the Sixth Amendment, the Due Process Clause, and/or the Equal Protection Clause;
- e. Whether the foregoing policies and practices are officially promulgated policies, final decisions by municipal policymakers, practices or customs so widespread and well-settled that knowledge is attributable to municipal policymakers, or the byproduct of Defendant's deliberate indifference to putative class members' rights under the Sixth Amendment, the Due Process Clause, and/or the Equal Protection Clause.

III. Typicality, Rule 23(a)(3)

90. The named Plaintiff's claims are typical of the claims of the putative class members, and she has the same interests as all other members of the putative class that she represents. The named Plaintiff's claims arise from the same course of conduct as claims of the putative class, and her claims are based on the same legal theories as those of the putative class.

91. The named Plaintiff has not received unusual treatment by the Austin Municipal Court. She is at risk of suffering injuries—arrest and incarceration—that are typical of injuries that would be suffered from the City's constitutional violations.

92. By pursuing her claims that the Austin Municipal Court's policies and practices concerning criminal judgment debt collection violate the law in the manner alleged, the named Plaintiff will likewise benefit every other member of the putative class.

IV. Adequacy, Rule 23(a)(4)

93. The named Plaintiff is an adequate representative of the putative class because she is a member of the class and because her interests coincide with, and are not antagonistic to, those of the class.

94. There are no known conflicts of interest among putative class members, all of whom have a similar interest in vindicating the constitutional rights to which they are entitled.

95. The named Plaintiff is familiar with the Austin Municipal Court procedures challenged here and the constitutional protections she seeks to vindicate. The named Plaintiff is

prepared to respond to discovery requests in this case. She is enthusiastic about fulfilling the role and duties of a class representative protecting the fundamental constitutional rights of Austin's poorest residents.

96. The Plaintiff is represented by attorneys from the Texas Fair Defense Project, the University of Texas Civil Rights Clinic, Susman Godfrey, and Drinker Biddle & Reath LLP. All four entities have experience litigating complex civil rights matters in federal court. Attorneys from the Texas Fair Defense Project and the Civil Rights Clinic have investigated municipal ticketing in Austin for months. Moreover, Susman Godfrey and Drinker Biddle have extensive experience litigating complex civil cases, including class actions, in federal courts across the country, including this Court, the Fifth Circuit Court of Appeals, and the U.S. Supreme Court. Affidavits from Plaintiff's counsel describing their qualifications accompany the motion for class certification filed simultaneously with the original complaint.

97. The Plaintiff and her attorneys will fairly and adequately protect the interests of the members of the Class.

V. Rule 23(b)(2)

98. Class action status is appropriate because Defendant has acted and refused to act on grounds generally applicable to the putative class. Defendant's policies and practices with regard to failure to inquire into ability to pay before jailing, failure to consider adequate alternatives to imprisonment before jailing, jailing for convictions obtained without the assistance of counsel, and denying core procedural protections for civil judgment debtors apply equally to the class regardless of differences among class members.

99. The putative class seeks final injunctive and declaratory relief with respect to the constitutional protections due to people prosecuted for Class C offenses in Austin Municipal Court.

100. Injunctive and declaratory relief with respect to each claim would be appropriate to the class as a whole. All putative class members are entitled to the constitutional protections the Plaintiff seeks to enforce.

CLAIMS FOR RELIEF

Count One: Failure to Inquire Into Ability to Pay and Alternatives to Incarceration (Section 1983 and Due Process Clause)

101. Plaintiff incorporates by reference allegations in the foregoing paragraphs.

102. The Austin Municipal Court has a policy and practice of jailing people who are too poor to pay their criminal judgment debt, without first inquiring into the reasons the person has failed to pay the debt and adequate alternatives to incarceration.

103. Jailing a person who is too poor to pay her debt without first inquiring into the reasons she has failed to pay her debt and adequate alternatives to incarceration violates the Due Process Clause of the Fourteenth Amendment. *Bearden v. Georgia*, 461 U.S. 660, 666 (1983).

Count Two: Commitment to Jail Solely Due to Inability to Pay (Section 1983 and Equal Protection Clause)

104. Plaintiff incorporates by reference allegations in the foregoing paragraphs.

105. The Austin Municipal Court has a policy and practice of jailing people solely because they are unable to pay their debts arising from fines for Class C misdemeanors.

106. Depriving a person of her liberty solely because she lacks the resources to make a payment violates the Equal Protection Clause of the Fourteenth Amendment. *Tate v. Short*, 401 U.S. 395 (1971); *Williams v. Illinois*, 399 U.S. 235 (1970).

Count Three: Commitment to Jail for Convictions Without Assistance of Counsel (Section 1983 and the Right to Counsel and Due Process Clauses)

107. Plaintiff incorporates by reference allegations in the foregoing paragraphs.

108. The Austin Municipal Court has a policy and practice of failing to appoint counsel for people charged with Class C misdemeanor offenses or to solicit a knowing, voluntary, and intelligent waiver of the right to counsel. The Austin Municipal Court also has a policy and practice of jailing people to satisfy judgments of conviction for Class C misdemeanors that were obtained without the assistance of counsel.

109. The Sixth Amendment right to counsel applies against state and local governments as incorporated through the Due Process Clause of the Fourteenth Amendment.

110. Sentencing a person to imprisonment as a result of a criminal conviction obtained without the assistance of counsel violates the Sixth Amendment right to counsel. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

**Count Four: Unduly Harsh and Discriminatory Debt Collection
(Section 1983 and Equal Protection Clause)**

111. Plaintiff incorporates by reference allegations in the foregoing paragraphs.

112. The Austin Municipal Court has a policy and practice of using proceedings without notice or appointment of counsel, failing to make findings of willfulness before jailing, and jailing people with unclear orders of commitment to collect Class C debts. Use of these tactics for civil judgment debt collection is prohibited by Texas law.

113. The tactics used by the Austin Municipal Court are unduly harsh and discriminatory methods of debt collection when compared with the debt collection tactics permitted by a private creditor.

114. Use of unduly harsh and discriminatory debt collection practices against people who are too poor to pay criminal judgment debt violates the Equal Protection Clause of the Fourteenth Amendment. *James v. Strange*, 407 U.S. 128 (1972).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court issue the following relief:

1. An injunction prohibiting Defendant from:
 - a. imprisoning class members for failure to satisfy their debt without inquiring into the reasons for their failure to satisfy the debt or adequate alternatives to imprisonment, specifically, tailoring the debt to the class member's resources;
 - b. imprisoning class members solely because they lack the resources to satisfy their debt;
 - c. imprisoning class members as a result of convictions for which the class member did not have assistance of counsel or knowingly, intelligently, and voluntarily waive that right; and
 - d. imprisoning class members to collect criminal judgment debt without the core legal protections required for collection of debt by a private creditor;
2. A declaration that the foregoing practices violate the class members' constitutional rights as alleged;
3. An order and judgment granting reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
4. Any other relief this Court deems just and proper.

Respectfully Submitted,

By: /s/ Rebecca Bernhardt

Rebecca Bernhardt
Texas Bar No. 24001729
Susanne Pringle
Texas Bar No. 24083686
Texas Fair Defense Project
510 S. Congress Ave., Suite 208
Austin, TX 78704
(512) 637-5220 (t)
(512) 637-5224 (f)
rbernhardt@fairdefense.org

springle@fairdefense.org

Ranjana Natarajan
Texas Bar No. 24071013
Trisha Trigilio
Texas Bar No. 24075179
University of Texas School of Law
Civil Rights Clinic
727 East Dean Keeton Street
Austin, TX 78705
Tel: 512-232-7222
Fax: 512-232-0800
rnatarajan@law.utexas.edu
ttrigilio@law.utexas.edu

Joseph S. Grinstein (TX Bar No. 24002188)
Neal Manne (TX Bar No. 12937980)
Justin Nelson (TX Bar No. 24034766)
SUSMAN GODFREY LLP
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
jgrinstein@susmangodfrey.com
nmanne@susmangodfrey.com
jnelson@susmangodfrey.com

Brian A. Coleman (*pro hac vice*)
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Washington, D.C. 20005-1209
Telephone: (202) 842-8800
Facsimile: (202) 842-8465
Brian.Coleman@dbr.com

Lindsay B. Orr (*pro hac vice*)
DRINKER BIDDLE & REATH LLP
222 Delaware Ave., Suite 1410
Wilmington, DE 19801-1621
Telephone: (302) 467-4200
Facsimile: (302) 467-4201
Lindsay.Orr@dbr.com

CERTIFICATE OF SERVICE

By my signature below, I certify that on December 8, 2015, this filing was served on all counsel of record via the Court's electronic case filing system.

Dated: December 8, 2015

By: /S/ Trisha Trigilio

Trisha Trigilio
Texas Bar No. 24075179
University of Texas School of Law
Civil Rights Clinic
727 East Dean Keeton Street
Austin, TX 78705
Tel: 512-232-7222
Fax: 512-232-0800
ttrigilio@law.utexas.edu