

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

ANTHONY SWAIN, et al., individually and  
on behalf of all others similarly situated,

Plaintiffs,

**Case No.: 1:20-cv-21457-KMW**

v.

DANIEL JUNIOR, in his official capacity as  
Director of the Miami-Dade Corrections and  
Rehabilitation Department, et al.,

Defendants.

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**PLAINTIFFS' MOTION FOR RECONSIDERATION  
OF INTERLOCUTORY RULING CONTAINED IN  
INJUNCTION ORDER (ECF No. 100 at 2 n.2)**

Plaintiffs respectfully move this Court to reconsider its dismissal of Plaintiff Winfred Hill's claims as moot, which was contained in the Court's Order relating to Plaintiffs' request for a preliminary injunction, ECF No. 100 at 2 n.2, wherein the Court sua sponte "dismissed" Plaintiff Hill's claims without a motion to dismiss those claims and without briefing on whether dismissal was appropriate. To the extent the Court intended to dismiss *all* of Mr. Hill's claims, even those on behalf of the class, the Court's dismissal of Mr. Hill's claims is contrary to Eleventh Circuit and Supreme Court precedent. It is well-established that class claims involving inherently transitory claims are not mooted by an individual named plaintiff's claims becoming moot. Accordingly, Plaintiffs seek an order clarifying that Mr. Hill's claims on behalf of the class are not moot (or reinstating those claims if the Court intended to dismiss them) and clarifying that the claims of other Named Plaintiffs who have been released since filing this lawsuit are not moot.

**BACKGROUND**

Named Plaintiffs are seven individuals in pretrial detention at the time they filed this case. ECF No. 1 ¶¶ 9-15. Plaintiffs filed the complaint/petition as a putative class action and contemporaneously moved for class certification. ECF No. 1; ECF No. 5. Since this case was filed

on April 5, 2020, several of the Named Plaintiffs have been released from pretrial detention. Plaintiff Winfred Hill was released from Metro West on April 21, 2020. ECF No. 81-2 ¶ 7. Plaintiff Peter Bernal was released on April 29, 2020, having been jailed pretrial for almost two months on misdemeanor charges because he could not afford to pay a \$1,500 financial condition of release, when the state decided not to pursue charges against him. Ex. 1, Ragsdale Dec. ¶¶ 1-2. Plaintiff Bayardo Cruz, who had been detained since May 2019 for an alleged probation violation, which resulted from his inability to pay court debts, entered a plea on May 20, 2020 which resulted in his cases being closed and his release that same day. ECF No. 128-1 ¶ 4.

In the order granting a preliminary injunction, this Court sua sponte dismissed Plaintiff Winfred Hill's claims as moot following his release. ECF No. 100 at 2 n.2. The Court stated as follows: "It appears to be undisputed that named Plaintiff Winfred Hill was released on April 21, 2020. (DE 81-2). Accordingly, his claims against Defendants are dismissed as moot."

In their reply in support of their motion to dismiss, Defendants similarly request in a footnote without citation to any authority that the claims of the three Named Plaintiffs who have been released from MDCR custody since this case was filed—Peter Bernal, Winfred Hill, and Bayardo Cruz—be dismissed because their injunctive claims are "moot." ECF No. 136 at 1 n.2.

## ARGUMENT

### **I. This Court should exercise its plenary power to reconsider its dismissal of Plaintiff Hill's claims.**

This Court's dismissal of Plaintiff Hill's claims was an interlocutory order under Fed. R. Civ. P. 54(b) ([A]ny order or other decision . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."); *Cf. Edwards v. Prime Inc.*, 602 F.3d 1276, 1289 (11th Cir. 2010) (federal appellate courts "have no jurisdiction to consider interlocutory orders outside the scope of [Rule 54(b)] certification, unless some other basis of jurisdiction exists"); *SEC v. Carrillo*, 325 F.3d 1268, 1272 (11th Cir. 2003) (One of final judgment rule's "central objectives is to ensure that this court does not engage in piecemeal appellate review.") (citation omitted).

A district court has "plenary power" over its interlocutory orders, and its "power to reconsider, revise, alter or amend [an] interlocutory order is not subject to the limitations of Rule 59." *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307 (11th Cir. 2000) (internal quotation marks omitted); *see also Lanier Const., Inc. v. Carbone Properties of Mobile, LLC*, 253 F. App'x 861,

863 (11th Cir. 2007) (“[T]he district court’s denial of Lanier’s motion for leave to amend the complaint was simply an interlocutory decision . . . which the district court had ample discretion to reconsider.” (citation omitted)); *Hardin v. Hayes*, 52 F.3d 934, 938 (11th Cir. 1995). Thus, a court may reconsider or reverse an interlocutory ruling for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law. *Court-Appointed Receiver for Lancer Mgmt. Grp., LLC v. Redwood Fin. Grp., Inc.*, No. 06-60919-CIV, 2010 WL 2822053, at \*1 (S.D. Fla. July 16, 2010); *Canaday v. Household Retail Servs., Inc.*, 119 F. Supp. 2d 1258, 1260 (M.D. Ala. 2000).

For the reasons set forth more fully below, the Court should exercise its plenary power over its dismissal of Plaintiff Hill’s claims. The dismissal of Plaintiff Hill’s claims is contrary to well-settled Supreme Court and circuit precedent holding that inherently transitory class action claims of pretrial detainees are not mooted by an individual plaintiff’s release from jail. The sua sponte dismissal warrants the Court’s reconsideration.

**II. Plaintiff Hill’s and Plaintiffs’ class claims are not moot even if they are no longer jailed in Metro West because their claims fall within the inherently transitory exception to the mootness doctrine.**

It is well settled “that the necessary personal stake in a live class-action controversy sometimes is present even when the named plaintiff’s own individual claim has become moot.” *Stein v. Buccaneers Ltd. P’ship*, 772 F.3d 698, 705 (11th Cir. 2014). This “well-recognized exception” to the mootness doctrine exists when a named plaintiff’s claim is inherently transitory, *see Dunn v. Dunn*, 148 F. Supp. 3d 1329, 1338-39 (M.D. Ala. 2015), and becomes moot “before the district court can reasonably be expected to rule on a certification motion.” *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975). “A claim is inherently transitory not only if there *exists* no plaintiff who could both establish standing at the outset of litigation and retain an active stake by the time class certification is decided, but also if it would be difficult to identify *which* prospective plaintiff that would be at the time of filing.” *Dunn*, 148 F. Supp. 3d at 1340. “The ‘inherently transitory’ rationale was developed to address circumstances in which the challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in the suit long enough for litigation to run its course.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013).

“Claims that derive from potentially imminent release from custody are ‘a classic example of a transitory claim.’” *Dunn*, 148 F. Supp. 3d at 1340 (quoting *Wade v. Kirkland*, 118 F. 3d 667, 670 (9th Cir. 1997)). Indeed, the Supreme Court has found on at least three occasions that a

plaintiff seeking “to bring a class action challenging the constitutionality of temporary pretrial detentions” fits directly within the inherently transitory exception to the mootness doctrine. *See Symczyk*, 569 U.S. at 76 (noting that a plaintiff challenging the constitutionality of pretrial detention “would face the considerable challenge of preserving his individual claim from mootness, since pretrial custody likely would end prior to the resolution of his claim”); *see also Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (county’s failure to provide probable cause determination was inherently transitory because “[t]he length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance, dismissal of the charges, or a guilty plea, as well as by acquittal or conviction after trial”); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 51-52 (1991) (county’s failure to provide prompt probable cause determination falls within inherently transitory exception to mootness doctrine); *see also Edwards v. Cofield*, 265 F. Supp. 3d 1344, 1347 (M.D. Ala. 2017) (“Courts routinely apply the *Sosna* exception in pretrial detention cases because pretrial detentions are the very sort of transitory subject matter for which the exception was created.”); *Walker v. City of Calhoun, Georgia*, No. 4:15-CV-170-HLM, 2016 WL 361580, at \*4 (N.D. Ga. Jan. 28, 2016) (termination of class representative’s claim as a result of his release from jail did not moot the claims of the unnamed members of the class).

If a plaintiff’s claims are inherently transitory, “the ‘relation back’ doctrine is properly invoked to preserve the merits of the case for judicial resolution.” *Riverside*, 500 U.S. at 52. The relation back doctrine “allows the district court a reasonable opportunity to rule on a pending motion for class certification despite the intervening mootness of the named plaintiffs’ individual claims.” *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1047 (5th Cir. July 27, 1981);<sup>1</sup> *see also Symczyk*, 569 U.S. at 76 (“[T]he relation-back doctrine may apply in Rule 23 cases where it is ‘certain that other persons similarly situated’ will continue to be subject to the challenged conduct and the claims raised are ‘so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires.’”) (quoting *Riverside*, 500 U.S. at 52).

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all Fifth Circuit cases submitted or decided prior to October 1, 1981.

Plaintiffs' claims generally and Plaintiff Hill's claims specifically, fit squarely within the inherently transitory exception to the mootness doctrine because they challenge the conditions of their pretrial detention. As the Supreme Court explained in *Gerstein*, claims involving pretrial detention are inherently transitory because "[t]he length of pretrial custody cannot be ascertained at the outset, and it may be ended at any time by release on recognizance, dismissal of the charges, or a guilty plea, as well as by acquittal or conviction after trial." 420 U.S. at 110 n.11. That is precisely what happened here: the length of time that any of the Named Plaintiffs would spend in the unconstitutional conditions in Metro West could not be ascertained at the time this case was filed, and pretrial detention has ended for several of the Named Plaintiffs because of release on alternative conditions of release, dismissal of charges, and a guilty plea. But because it is "certain that other persons similarly situated," *id.* at 111, will remain detained in Metro West under unconstitutional conditions that have already resulted in the death of a putative class member, the relation-back doctrine applies to Named Plaintiffs' claims and their claims are not moot.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court reconsider its dismissal of Plaintiff Winfred Hill's claims as moot, which was contained in the Court's Order relating to Plaintiffs' request for a preliminary injunction, ECF No. 100 at 2 n.2.

## CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to S.D. Fla. L. R. 7.1(a)(3), the undersigned hereby certifies that counsel for Plaintiffs conferred with counsel for Defendants and, on June 2, 2020, and Defendants' counsel stated that Defendants opposed the instant Motion.

Dated: June 2, 2020

Respectfully submitted,

/s/ Katherine Hubbard

Alexandria Twinem, D.C. Bar No. 1644851

(Admitted Pro Hac Vice 4/6/2020)

alexandria@civilrightscorps.org

Katherine Hubbard, DC Bar No. 1500503

(Admitted Pro Hac Vice 4/6/2020)

katherine@civilrightscorps.org

Alec Karakatsanis

alec@civilrightscorps.org

(Admitted Pro Hac Vice 4/28/2020)

CIVIL RIGHTS CORPS

1601 Connecticut Ave. NW, Ste. 800

Washington, DC 2009

Tel: (202) 894-6126

R. Quinn Smith, Fla. Bar No. 59523

quinn.smith@gstllp.com

Katherine Alena Sanoja, Fla. Bar No. 99137

katherine.sanoja@gstllp.com

GST LLP

1111 Brickell Avenue, Suite 2715

Miami, Florida 33131

Tel: (305) 856-7723

Maya Ragsdale, Fla. Bar No.: 1015395

maya@dreamdefenders.org

DREAM DEFENDERS

6161 NW 9th Ave.

Miami, Florida 33127

Tel: 786-309-2217

Tiffany Yang, DC Bar. No. 230836  
tyang@advancementproject.org  
(Admitted Pro Hac Vice 4/6/2020)  
Thomas B. Harvey, MO Bar. No. 61734  
(Admitted Pro Hac Vice 4/6/2020)  
tharvey@advancementproject.org  
ADVANCEMENT PROJECT  
1220 L Street NW, Ste 850  
Washington, DC 20005  
Tel: (202) 728-9557

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 2nd day of June, 2020 a true and correct copy of the foregoing was electronically filed with the Clerk of the Court U.S. District Court, Southern District of Florida, using the CM/ECF system which will send notification of such filing to counsel of record.

*/s/ Katherine Hubbard*

\_\_\_\_\_  
Katherine Hubbard  
DC Bar No. 1500503

**SUPPLEMENTAL DECLARATION OF MAYA RAGSDALE**

*I, Maya Ragsdale, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746.*

1. Attached as Exhibit A to this declaration is a true and correct copy of a screenshot I took of the docket for Peter Bernal's previously pending case M-20-005061. It indicates that Mr. Bernal is no longer incarcerated and that the State Attorney's Office took "no action" on this case. I obtained this screenshot by going to Miami-Dade County Clerk of Courts website on May 28, 2020.
2. Attached as Exhibit B to this declaration is a true and correct copy of a screenshot of a screenshot I took of the docket for Peter Bernal's previously pending case M-20-002603. It shows that Mr. Cruz is no longer in jail and that the State Attorney's Office took "no action" on this case. I obtained this screenshot by going to the Miami-Dade County Clerk of Courts website on May 28, 2020 and looking up Mr. Cruz's pending case.
3. I have spoken to Mr. Bernal since his release. He is no longer incarcerated.

Under penalties of perjury, I declare that the statement above is true to the best of my ability.



By:

Maya Ragsdale

Date: May 28, 2020

# Exhibit A



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**Court Case No.:** M-20-005061

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**Case Information**

|  |  |                                  |
|--|--|----------------------------------|
| <b>State Case No.:</b> 13-2020-MM-005061-0001-XX | <b>Name:</b> BERNAL, PETER MAURICIO AKAs                     | <b>Date of Birth:</b> 12/23/1984 |
| <b>Date Filed:</b> 03/07/2020                    | <b>Date Closed:</b> 04/28/2020                               |                                  |
| <b>Warrant Type:</b>                             | <b>Warrant Amount:</b> \$0.00                                |                                  |
| <b>Assessment Amount:</b> \$50.00                | <b>Balance Due:</b> \$50.00                                  | <b>Stay Due Date:</b>            |
| <b>Address:</b> 175 NW 1ST AVENUE                |  |                                  |
| <b>Judge:</b> GAMEZ, CARLOS HUMBERTO             | <b>Defense Attorney:</b> PUBLIC DEFENDER APPOINTMENT, ASSIGN |                                  |
| <b>File Section:</b> M088                        | <b>File Location:</b> OPER. CODE                             | <b>Box No.:</b>                  |
| <b>Defendant in Jail:</b> N                      | <b>Defendant Release to:</b> NO ACTION,                      |                                  |
| <b>Bond Amount:</b> \$0.00                       | <b>Bond Status:</b>  |                                  |

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**Charges** Total Of Charges: 1 +

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# Exhibit B



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Court Case No.: M-20-002603

☰ Case Information

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|--|--|----------------------------------|
| <b>State Case No.:</b> 13-2020-MM-002603-0001-XX | <b>Name:</b> BERNAL, PETER MAURICIO AKAs                     | <b>Date of Birth:</b> 12/23/1984 |
| <b>Date Filed:</b> 02/03/2020                    | <b>Date Closed:</b> 04/21/2020                               |                                  |
| <b>Warrant Type:</b>                             | <b>Warrant Amount:</b> \$0.00                                |                                  |
| <b>Assessment Amount:</b> \$50.00                | <b>Balance Due:</b> \$50.00                                  | <b>Stay Due Date:</b>            |
| <b>Address:</b> 175 NW 1ST AVENUE                |  |                                  |
| <b>Judge:</b> GAMEZ, CARLOS HUMBERTO             | <b>Defense Attorney:</b> PUBLIC DEFENDER APPOINTMENT, ASSIGN |                                  |
| <b>File Section:</b> M088                        | <b>File Location:</b> FILE ROOM                              | <b>Box No.:</b>                  |
| <b>Defendant in Jail:</b> N                      | <b>Defendant Release to:</b> NO ACTION,                      |                                  |
| <b>Bond Amount:</b> \$0.00                       | <b>Bond Status:</b>  |                                  |

☰ Charges Total Of Charges: 2 +

📡 Dockets **DISCLAIMER: Official Records Of Criminal Cases Prior To July, 2004 May Not Be Available Online.** Total Of Dockets: 27 +

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Miami, Florida 33130

305-275-1155

