

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF WASHINGTON

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4  
5 SHAWN HUSS, a single man, and  
others similarly situated,

6 Plaintiffs,

7  
8 v.

9 SPOKANE COUNTY, a municipal  
10 corporation,

11 Defendant.

No. CV-05-180-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT AS TO LIABILITY

12  
13 **THIS MATTER** comes before the Court on the Plaintiff's Motion For  
14 Partial Summary Judgment, Ct. Rec. 27, as addressed in the parties'  
15 supplemental briefing. The Plaintiff is represented by Breean Beggs.  
16 The Defendant is represented by James Kaufman and Frank Conklin.

17 **BACKGROUND**

18 The Plaintiff, Shawn Huss, filed suit individually and on behalf  
19 of a class of others similarly situated, under 42 U.S.C. §§ 1983 and  
20 1988, seeking both monetary damages and declaratory and injunctive  
21 relief. The Plaintiffs' complaint alleges that the booking fee policy  
22 of the Defendant Spokane County Jail ("the Jail"), as well as the  
23 underlying statute, RCW § 70.48.390, are facially unconstitutional in  
24 that they deprive individuals who are arrested of their property  
25 without due process of law.

26 In May 1999, the Washington legislature passed RCW § 70.48.390,

1 authorizing city, county, and regional jails to take a \$10.00 booking  
2 fee from the person of each individual booked into jail. In May 2003,  
3 the Washington legislature amended RCW § 70.48.390, allowing jails to  
4 require each person who is booked into jail to pay a fee based on the  
5 jail's actual booking costs or one hundred dollars, whichever is less.  
6 The "fee is payable immediately from any money then possessed by the  
7 person being booked" into jail. RCW § 70.48.390.

8 In accordance with RCW § 70.48.390, on or about February 24,  
9 2004, the Spokane County Board of Commissioners passed Resolution 04-  
10 0160, which authorized the Jail to develop and implement a procedure  
11 to collect a fee from persons booked into jail. On May 5, 2004,  
12 pursuant to Resolution 04-0160, the Jail adopted an official policy<sup>1</sup>  
13 ("the Policy") authorizing the collection of a booking fee. Under the  
14 Policy, federal inmates are charged the federal daily rate while non-  
15 federal inmates are charged the actual jail booking costs--\$89.12.  
16 Pursuant to the statute, the Policy allows the fees to be taken  
17 directly from any funds in the person's possession at the time of  
18 booking. If the person does not have adequate funds to cover the  
19 booking fee, a charge is assessed to the person's account. The Policy  
20 does not provide a mechanism for determining whether the money taken  
21 from the person is exempt public benefits or the property of a third  
22 person. The Policy does not provide for a pre-deprivation hearing or  
23 any other opportunity for persons to contest the taking of their  
24 money.

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25  
26 <sup>1</sup> Policy 2.00.00 Booking

1           Instead, the Jail adopted a separate reimbursement policy. Under  
2 this reimbursement policy, the individual is required to prove the  
3 charges against him or her were dropped or that he or she was  
4 acquitted, and then, upon investigation by the Spokane County Jail  
5 Staff, the inmate may<sup>2</sup> be reimbursed for the intake fee.

6           In the present case, Mr. Huss was arrested based on a domestic  
7 violence complaint and booked into the Spokane County Jail on October  
8 31, 2004. Mr. Huss' wallet was inventoried as personal property that  
9 would be returned upon his release, but the Jail took all of the money  
10 from Mr. Huss' wallet (\$39.30) as payment on the booking fee (\$89.12).  
11 The Jail did not inform Mr. Huss he was being charged a booking fee,  
12 that there was a reimbursement policy in place, or that the money was  
13 required to be returned if his charges were dropped or he was  
14 acquitted. Mr. Huss was released from jail the next day after all of  
15 the charges were dropped. Upon his release, his money was not  
16 returned and he did not receive a copy of the Jail's reimbursement  
17 policy. The Jail eventually returned Mr. Huss' money on February 23,  
18 2005, approximately four months after the charges against him were  
19 dropped, and after Mr. Huss' lawyer sent a letter to Spokane County  
20 stating that the Jail's booking fee policy was unconstitutional.

21           In January 2005, the Jail modified its forms and procedures  
22 related to the collection of booking fees. It is now a requirement  
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24           <sup>2</sup> The "Spokane County Jail Claim Form For Reimbursement of  
25 Intake Fees" specifically states that the Jail Staff will  
26 investigate all claims and the decision to honor the claim is  
based on that investigation.

1 that each person booked into jail receive paperwork outlining methods  
2 for obtaining reimbursement. Further, persons who are released and  
3 not charged within 72 hours, automatically, without request, have  
4 their booking fees returned if paid in part or in full. The Jail also  
5 automatically voids any *unpaid* booking fee for all inmates who are  
6 found not-guilty, acquitted, or have their charge dismissed.

7 On August 29, 2006, the Court granted the Plaintiff's motion for  
8 partial summary judgment, holding that RCW § 70.48.390 and the booking  
9 fees premised upon it are facially unconstitutional. The Defendant,  
10 as well as the Intervenor, State of Washington, moved for  
11 reconsideration on the basis of a number of issues, including standing  
12 and mootness. The Court found that the Plaintiff does not have  
13 standing to seek declaratory or injunctive relief, granted the  
14 Defendant's motion for reconsideration, and withdrew its prior order.  
15 The Court directed the parties to submit supplemental briefing  
16 addressing the question: "Is partial summary judgment appropriate on  
17 any element of the Plaintiff's suit for damages under [42 U.S.C.] §  
18 1983?" Order Granting Motion For Reconsideration, Ct. Rec. 117, ¶ 6.

19 The parties' supplemental briefing is now before the Court.  
20 While the parties have taken the opportunity to address the issue of  
21 damages, the Plaintiffs' underlying Motion For Partial Summary  
22 Judgment, Ct. Rec. 27, seeks a ruling only on the issue of liability.  
23 A ruling on the issue of damages would be premature at this stage of  
24 the litigation. The present order, therefore, is limited to the sole  
25 issue of whether the Defendant is liable to the lead Plaintiff, Mr.  
26 Huss, and other similarly situated individuals under Section 1983.

1           **DISCUSSION**

2           In the Ninth Circuit, a plaintiff must prove two elements to  
3 state a cause of action under Section 1983: "1) that the Defendants  
4 acted under color of state law; and 2) that the Defendants caused them  
5 to be deprived of a right secured by the Constitution and laws of the  
6 United States." *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.  
7 1997). See also *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir.  
8 2006).

9           A person acts under color of state law if he or she is a public  
10 official and takes the offending action in relation to the powers of  
11 his or her public position. *Johnson*, 113 F.3d at 117. In this case,  
12 it is undisputed that the Defendant was acting and continues to act  
13 under state law in assessing its booking fee. The sole issue to be  
14 determined concerning Section 1983 liability is therefore whether the  
15 Defendants caused the Plaintiff and those similarly situated to be  
16 deprived of a right secured by the Constitution.

17           The Plaintiff alleges that the Defendant's assessment of the  
18 booking fee deprived him of procedural due process of law. Procedural  
19 due process questions are examined in two steps. First, the Court  
20 must determine "whether there exists a liberty or property interest  
21 which has been interfered with by the State." Second, the Court must  
22 determine "whether the procedures attendant upon that deprivation were  
23 constitutionally sufficient." *Kentucky Dept. of Corrections v.*  
24 *Thompson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1909, 104 L. Ed. 2d 506,  
25 514 (1989) (internal citations omitted).

1           **A.     Protected Property Interest**

2           The Defendant concedes that the seizure of the Plaintiff's money  
3 implicates a protectible property interest.  Therefore, the only issue  
4 is what "process" is due to protect against an erroneous deprivation  
5 of that interest.  *Mackey v. Montrym*, 443 U.S. 1, 10, 99 S.Ct. 2612,  
6 2617, 61 L. Ed. 2d 321, 329 (1979).

7           **B.     Constitutional Sufficiency of Attendant Procedures**

8           In *Matthews v. Eldridge*, the Supreme Court set forth three  
9 factors that normally determine whether an individual has received the  
10 "process" that is "due" under the Constitution:

11                     First, the private interest that will be affected by the  
12                     official action; second, the risk of an erroneous  
13                     deprivation of such interest through the procedures used,  
14                     and the probable value, if any, of additional or substitute  
15                     procedural safeguards; and finally, the Government's  
16                     interest, including the function involved and the fiscal and  
17                     administrative burdens that the additional or substitute  
18                     procedural requirement would entail.

19           424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976).  By  
20 weighing these concerns, courts can determine whether a State has  
21 provided "the opportunity to be heard at a meaningful time and in a  
22 meaningful manner," which is the fundamental requirement of due  
23 process.  *Id.* at 333, 96 S.Ct. at 902, 47 L. Ed. 2d at 32 (citation  
24 omitted).  "Applying this test, the [Supreme] Court usually has held  
25 that the Constitution requires some kind of hearing before the State  
26 deprives a person of liberty or property."  *Zinermon v. Burch*, 494  
U.S. 113, 127, 110 S. Ct. 975, 984, 108 L. Ed. 2d 100, 114-115 (1990).  
"If there are no extraordinary circumstances, then some type of prior  
hearing is required and an analysis of the three factors under

1 Matthews determines the formality and procedural requisites of the  
2 hearing." *Tellevik v. 31641 E. Rutherford St.*, 120 Wash.2d 68, 82,  
3 838 P.2d 111, 118 (citing *Matthews*).

4 **1. Private interest**

5 The first *Matthews* factor requires identification of the nature  
6 and weight of the private interest affected by the challenged action.  
7 *Matthews*, 424 U.S. at 335, 96 S.Ct. at 903, 41 L. Ed. 2d. "The  
8 duration of any potentially wrongful deprivation of a property  
9 interest is an important factor in assessing the impact of official  
10 action on the private interest involved." *Mackey*, 443 U.S. at 12, 99  
11 S.Ct. at 2618, 61 L. Ed. 2d at 331 (citation omitted).

12 The Defendant argues that the Plaintiff's interest in the  
13 temporary use of his \$39.00 is "de minimus" because this "pocket  
14 change" would not accrue interest while the Plaintiff had it in his  
15 possession. This argument misconstrues the nature of the right at  
16 stake. The right to possess and retain one's property is a  
17 fundamental right, regardless of the property's value or its capacity  
18 to generate interest. An individual who has \$40 in his or her  
19 possession can purchase a meal, a bus ticket, or a jacket. An  
20 abstract right to receive \$40 sometime in the future is small comfort  
21 to someone with a present need to eat, travel, or remain warm.

22 The Defendant further argues that the deprivation of property at  
23 issue in this case is "fleeting" because all criminal defendants are  
24 entitled to a speedy trial and any delay in resolving a criminal case  
25 will be at the defendant's own request. However, an individual's  
26 decision to waive his or her right to a speedy trial should not

1 obligate that individual to forego procedural due process. Moreover,  
2 for those persons who are entitled to the return of their booking fee,  
3 the statute permits the wrongful deprivation of a person's money for a  
4 considerable length of time (i.e. until such time as the person is  
5 exonerated). Although the charges against the Plaintiff were dropped  
6 one day after his arrest, his money was not returned for several  
7 months. Under the present Policy, as amended in January 2005, booking  
8 fees are automatically returned to those persons who are released and  
9 not charged within 72 hours. Individuals released within 72 hours are  
10 thus only deprived of their property for a short period of time.  
11 However, for those persons who are not released within 72 hours, the  
12 duration of the deprivation is dependent on the time it takes to  
13 navigate through the reimbursement process.

14 For the reasons stated above, the Court holds that the  
15 Plaintiff's interest in the continued use and possession of his money  
16 is a significant interest entitled to considerable weight.

## 17 **2. Risk of Erroneous Deprivation**

18 Under the second prong of *Matthews*, the Court evaluates the risk  
19 of erroneous deprivation of the interest at stake and the probable  
20 value, if any, of additional or substantive safeguards. *Matthews*, 424  
21 U.S. at 335, 96 S.Ct. at 903, 41 L. Ed. 2d.

22 Under the Defendant's booking fee policy, everyone who is  
23 arrested is deprived, at least temporarily, of the use of their  
24 property. Those individuals who are eventually acquitted or whose  
25 charges are dropped are entitled to the return of their booking fees.  
26 These individuals are wrongly deprived of the use of their right to



1 use and possess their money from the time of booking until such time  
2 as the fee is returned. A certain number of individuals who are  
3 arrested will eventually be exonerated through one path or another.  
4 For these individuals, erroneous deprivation is not a risk; it is a  
5 certainty.

6 The Defendant argues that due process does not require notice and  
7 a hearing prior to the assessment of a booking fee because the  
8 post-deprivation hearing available to the Plaintiff satisfies his due  
9 process rights. The Defendant relies on *Mackey v. Montrym*, arguing it  
10 is dispositive of the issue before the Court.

11 In *Mackey*, the Supreme Court upheld a Massachusetts statute  
12 mandating a 90-day suspension of a driver's license for refusing to  
13 take a breath-analysis test upon arrest for driving while under the  
14 influence. 443 U.S. at 19, 99 S.Ct. at 2621, 61 L. Ed. 2d at 335.  
15 Applying the Mathews balancing test, the Supreme Court held that the  
16 state's "compelling interest in highway safety justifies" the  
17 automatic suspension of a driver's license "pending the outcome of the  
18 prompt post-suspension hearing available." *Id.* The Supreme Court  
19 recognized that individuals have a strong property interest in their  
20 driver's license, but concluded the immediate post-suspension hearing  
21 before the Registrar of Motor Vehicles to correct any clerical errors  
22 and to resolve questions as to whether grounds exist for suspension of  
23 the driver's license, was sufficient to satisfy the due process  
24 requirement. *Id.* at 7-8, n. 5, 99 S.Ct. at 2616, n. 5, 61 L. Ed. at  
25 327.

26 *Mackey* is distinguishable from the present case, however, because

1 the Jail's Policy does not provide for a prompt post-deprivation  
2 hearing. Instead, the Defendant refers to Washington's "comprehensive  
3 statutory procedure" whereby citizens may file claims against  
4 governmental entities to seek the return of personal property. The  
5 Defendant did not provide the Court with a citation for this  
6 "comprehensive statutory procedure" or explain how this satisfies due  
7 process. Nothing before the Court demonstrates that a "prompt"  
8 hearing is required under this comprehensive statutory procedure.

9 Even if the Jail's policy did provide for a prompt,  
10 post-deprivation hearing, the Defendant has not shown that such a  
11 hearing would afford adequate due process. In *Mackey*, the "prompt  
12 post-deprivation" hearing was sufficient to ensure adequate due  
13 process for the automatic suspension of a driver's license because of  
14 the state's "compelling interest in highway safety." Here, the  
15 Defendant has not shown that it has a compelling interest in the  
16 immediate collection of booking fees.

17 Thus, the Court holds that the risk of erroneous deprivation is  
18 great and this factor weighs in favor of the Plaintiff.

### 19 **3. Government's interest**

20 Under the third prong of *Matthews*, the Court must evaluate the  
21 Defendant's interest underlying application of the Policy, including  
22 the function involved, and any fiscal and administrative burdens that  
23 additional or substitute procedural requirements would entail.  
24 *Matthews*, 424 U.S. at 335, 96 S.Ct. at 903, 41 L. Ed. 2d. at 502. The  
25 interest that must be considered, however, is not the Defendant's  
26 general interest in collecting a booking fee, but the specific

1 interest in collecting the booking fee without a determination of  
2 guilt and without notifying the individual at the time of booking.  
3 *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 56,  
4 114 S.Ct. 492, 502, 126 L.Ed.2d 490 (1993) (discussing third  
5 consideration under *Matthews*); *see also Connecticut v. Doeher*, 501 U.S.  
6 1, 15-16, 111 S. Ct. 2105, 2115, 115 L. Ed. 2d 1, 16-17 (1991)  
7 (analyzing the extent of the plaintiff's interest in ex parte  
8 attachment of property, not the plaintiff's general interest in  
9 property attachment).

10 The parties agree the primary purpose of the booking fee is to  
11 raise revenue for the municipality. The Defendant has stated that  
12 waiting to assess a booking fee until sentencing would impose a  
13 hardship on the County. According to the Defendant, it may be unable  
14 to recover booking fees from criminal defendants if these fees are not  
15 assessed until sentencing. This assertion is supported by neither  
16 evidence nor analysis. Consequently, it is insufficient to raise a  
17 genuine issue of material fact concerning the burden additional  
18 safeguards would place on the government. In the absence of such a  
19 burden, it is clear that the first two *Matthews* factors outweigh the  
20 Defendant's interest in assessing a booking fee at the time of  
21 booking.

### 22 C. Supplemental Authority

23 The Defendant has brought a recent decision of the Sixth Circuit  
24 to the Court's attention. In *Sickles v. Campbell County*, the Sixth  
25 Circuit held that procedural due process does not bar a municipal jail  
26 from seizing the money in a person's possession at the time of his or

1 her arrest and applying a portion of it to the cost of booking and  
2 arraignment without a pre-deprivation hearing. No. 06-6055, 2007 U.S.  
3 App. LEXIS 21163, \*1-2 (Sept. 5, 2007). The Court, however, declines  
4 to follow *Sickles* because the Sixth Circuit's analysis of the first  
5 *Matthews* prong is unpersuasive and its analysis of the second prong is  
6 distinguishable.

7 In applying the first *Matthews* factor, the Sixth Circuit assumed  
8 that only private interests that rise to the level of "the historic  
9 right to maintain control over one's home" or government benefits that  
10 constitute "the very means by which [people] live" deserve a pre-  
11 deprivation hearing. However, the right to a pre-deprivation hearing  
12 is the rule, rather than the exception. *Tellevik*, 120 Wash.2d at 82,  
13 838 P.2d at 118.

14 The Sixth Circuit also found that the private interests at stake  
15 were "small in absolute and relative terms, totaling \$20 in [one  
16 inmate's case] and \$110.27 in [another]." *Id.* at \*7. This analysis  
17 risks overlooking economic realities. Taking the facts of the present  
18 case, \$39.00 may be what the Defendant has termed "pocket change" to  
19 one individual may mean a good deal to another. The import of a given  
20 amount is relative to one's overall economic circumstances.

21 Moreover, *Sickles* is distinguishable from the present case in two  
22 key respects. First, the Defendant's Policy in the present case  
23 provides that individuals who are eventually exonerated are entitled  
24 to recover their booking fee. The Plaintiff is one such individual  
25 who was deprived of his property, exonerated, and then left to wait  
26 for the return of his money. In contrast, it does not appear that the

1 underlying law in *Sickles* entitled any inmate to the return of his or  
2 her funds.

3 Second, even if the law in *Sickles* had contained such a  
4 provision, neither of the *Sickles* plaintiffs had been exonerated.  
5 Based on this fact, the Sixth Circuit declined to consider the effect  
6 of the jails' policies on "those arrested, booked and immediately  
7 released because of mistake." *Id.* at 14. Thus the only possibility  
8 of erroneous deprivation before the *Sickles* court was the possibility  
9 that the jails would withhold the wrong amount of money. *Id.* at \*8.

#### 10 **CONCLUSION**

11 Under *Matthews v. Eldridge*, the Court holds that the application  
12 of Spokane County Jail's booking fee policy to the Plaintiff and other  
13 similarly situated individuals deprived them of due process of law.  
14 Seizure of all of the funds in the Plaintiffs' possession implicated a  
15 significant private interest. When the Jail applies its Policy to  
16 individuals like the Plaintiff, the risk of erroneous deprivation is  
17 extreme compared to the municipality's interest in increasing revenue.  
18 In this situation, due process requires a pre-deprivation hearing.  
19 Accordingly,

#### 20 **IT IS HEREBY ORDERED:**

21 1. The Plaintiff's Motion For Partial Summary Judgment, **Ct. Rec.**  
22 **27**, is **GRANTED**.

23 2. The Defendant's Motion to Strike Plaintiff's Motion for Class  
24 Certification, **Ct. Rec. 102**, is **DENIED**.

25 3. The Defendant shall submit its response to the Plaintiff's  
26 Motion for Class Certification within 20 days of the entry of this

1 order.

2 4. The Plaintiffs shall submit their reply within 20 days of the  
3 filing of the Defendant's response.

4 **IT IS SO ORDERED.** The District Court Executive is hereby  
5 directed to enter this order and furnish copies to counsel.

6 **DATED** this 12th day of October, 2007.

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8 s/ Fred Van Sickle  
9 Fred Van Sickle  
10 United States District Judge

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