

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

_____)	
JOSHUA RYAN, et al.,)	
)	
Plaintiffs,)	
)	Case No. 20-cv-843-SDD-SDJ
v.)	(Class Action)
)	
TARVALD ANTHONY SMITH, et al.,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION AGAINST
DEFENDANTS GAUTREAUX AND GRIMES**

Plaintiffs move this Court for a temporary restraining order to release named Plaintiffs and preliminary order enjoining the practices described in the Complaint and the memorandum in support of this motion.

WHEREFORE, the Plaintiff respectfully requests that this Court:

- A. Schedule a hearing on this matter;
- B. Issue a temporary restraining order to Sheriff Gautreaux and Warden Grimes for the release of the named Plaintiffs;
- C. Preliminarily enjoin Sheriff Gautreaux and Warden Grimes from continuing to detain putative class members whose bail conditions were determined in hearings that violate Due Process and Equal Protection rights; and

Grant such other relief as the Court may deem appropriate.

Respectfully submitted,

/s/ Eric A. Foley

Eric A. Foley, La. Bar No. 34199*
Hannah Lommers-Johnson, La. Bar No 34944
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
(504) 620-2259 (p)
(504) 208-3133 (f)
eric.foley@macarthurjustice.org
hannah.lommersjohnson@macarthurjustice.org

/s/ Miriam R. Nemeth

Miriam R. Nemeth, D.C. Bar No. 1028529**
Tiffany Yang, D.C. Bar No. 230836**
Thomas B. Harvey, Mo. Bar No. 61734**
Advancement Project
1220 L Street NW #850
Washington, DC 20005
Phone: (202) 728-9557
Fax: (202) 728-9558
mnemeth@advancementproject.org
tyang@advancementproject.org
tharvey@advancementproject.org

/s/ David J. Utter

David J. Utter, La. Bar No. 23236
William R. Claiborne, Ga. Bar No. 126363**
Scott Robichaux, Ga. Bar No. 806198**
Jacob Longman, La. Bar No. 38042
Fair Fight Initiative
410 East Bay Street
Savannah, Georgia 31401
Phone: (912) 236-9559
Fax: (912) 236-1884
david@fairfightinitiative.org
will@fairfightinitiative.org
scott@claibornefirm.com
jlongman@ljlw.org

**Lead Attorney for Plaintiffs*

***pro hac vice applications forthcoming*

Attorneys for Plaintiffs

LOCAL RULE 65 CERTIFICATE

I certify that prior to filing copies of this motion and accompanying memorandum along with a copy of the complaint, motion for class certification, and supporting memorandum were e-mailed and faxed to counsel for Defendants Gautreaux and Grimes, Ms. Catherine St. Pierre of Erlingson Banks PLLC, by undersigned counsel. Undersigned counsel faxed and emailed said documents to email addresses and fax numbers publicly listed on the 19th JDC's website for Defendant Howze and Chambers of Defendants Jackson, Johnson, Smith, and Robinson as follows:

Judge Bonnie Jackson: wsimms@brla.gov (judicial assistant), 225-389-5341

Judge Ronald Johnson: vrobillard@brla.gov (judicial assistant), 225-389-8546

Judge Tarvald Anthony Smith: mrwilliams@brla.gov (judicial assistant), 225-389-7617

Commissioner Nicole Robinson: bsaik@brla.gov (judicial assistant); 225-389-8780

Frank Howze: bailbonds1@brla.gov; 225-389-4763

I have also emailed and faxed a copy of this motion and the above-referenced pleadings to James "Gary" Evans, Assistant Special Litigation Counsel, Office of Attorney General Jeff Landry, who I know to have represented Louisiana judges in cases bringing similar claims. Physical copies will also be postmarked to the Defendants on this date via U.S.P.S.

/s/ Eric A. Foley

Eric A. Foley

EXHIBIT

4

DECLARATION OF [REDACTED]

1. My name is [REDACTED] I am [REDACTED] years old and, prior to my arrest in Baton Rouge on November 6, 2020, I was homeless. I am currently a pretrial detainee at East Baton Rouge Parish Prison.
2. On November 6, 2020, I was arrested on a charge of La. R.S. § 14:62. I was initially given a preset bond, because I was arrested on a Friday and would not be able to see a judge until Monday morning.
3. On November 9, 2020, I appeared by video in front of Judge Ronald Johnson of the 19th Judicial District Court for a callout hearing.
4. I was brought to a room in the jail with other arrestees. Judge Johnson appeared on the screen and addressed all of us.
5. Judge Johnson then called each person in front of the camera and asked them their name and date of birth. He then informed them of their charge and bond amount, before asking if they could afford a lawyer. If they could not, he appointed the public defenders.
6. When it was my turn to stand in front of the Judge, he did not ask me about my income, expenses, assets, or my ability to pay a money bond for my release.
7. The Judge did not discuss whether I had failed to show up for court in the past or whether I was a danger to the community. He did not tell me why I could not be released.
8. Before telling me my bail amount, the Judge did not ask me about or discuss any alternatives to a money bond that he would consider for my release.
9. The Judge told me that my bail was \$10,000.
10. I asked Judge Johnson for a sign-out bond, but he denied my request. The judge said I should just wait since, according to him, my next court appearance would be very soon.
11. I was not represented by an attorney during this hearing. The Judge asked if I could afford an attorney and said that the public defender would be appointed to my case. I did not speak to the public defender prior to the hearing. As of today's date, even after trying multiple times to contact the public defender's office, I still have not spoken to an attorney about my case.
12. I was homeless and unemployed at the time of my arrest. I don't have any assets or savings, or even an ID.
13. I cannot afford to pay \$10,000 or even the 12% premium a bail bondsman would charge for my release. Because I cannot afford to pay this amount, I remain in East Baton Rouge Parish Prison.
14. I am currently awaiting arraignment, which has been delayed until January 7, 2021 because of the COVID-19 pandemic.

15. Earlier this year, I was diagnosed with an illness that compromises my immune system and makes me vulnerable to COVID-19—I receive the medicine I need from the jail, but I'm worried about being here during the pandemic. The jail knows about my illness, and they know I'm at greater risk, but I'm on the line with everyone else. Social distancing is largely impossible inside the jail, and there's little space between us when we sleep. The conditions are horrible with all the mold, rust, and mildew.

I declare under the penalty of perjury that the foregoing is true and correct.



Executed on December 14, 2020

EXHIBIT
5

DECLARATION OF BLAZE FRANKLIN

1. My name is Blaze Franklin. I am sixty-seven years old and a resident of Baton Rouge, Louisiana. I am currently a pretrial detainee at East Baton Rouge Parish Prison.
2. In June, before I was arrested, I learned that I have stage four prostate cancer that has metastasized to my bones. It's so painful that I can barely sleep, eat, or talk—I feel it twenty-four hours a day. My cancer has gotten worse while inside the jail. During my first month here, all the jail staff gave me for the pain were four Tylenol pills per day. Now I also get two tramadol pills a day, but it's still not enough. They haven't done or given me anything else for my cancer. I haven't even been able to talk to a doctor about treating my cancer since coming to the jail. I'm in agony, and I'm humiliated by how much pain I'm in when I'm around everyone else on my housing line.
3. On October 27, 2020, I was arrested on a charge of La. R.S. § 14:93.3.
4. On October 28, 2020, I appeared by video in front of Commissioner Robinson of the 19th Judicial District Court for a callout hearing.
5. I was brought to a room in the jail with other arrestees. The Commissioner appeared on the screen and addressed all of us. The Commissioner instructed us that she would not discuss any of our bail conditions and that the decision she announced would be final.
6. The Commissioner then called each person in front of the camera, read that person's name, date of birth, address, and bond amount, and then told them to sit down. The hearings lasted a matter of seconds.
7. When it was my turn to stand in front of the Commissioner, she did not ask me about my income, expenses, assets, or my ability to pay a money bond for my release.
8. The Commissioner did not discuss whether I had failed to show up for court in the past or whether I was a danger to the community. She did not tell me why I could not be released.
9. Before telling me my bail amount, the Commissioner did not ask me about or discuss any alternatives to a money bond that she would consider for my release.
10. The Commissioner told me that my bail was \$200,000 and imposed a stay-away protective order as a condition on that bond.
11. I was not represented by an attorney during this hearing. The Commissioner asked if I could afford an attorney and said that the public defender would be appointed to my case. I did not speak to the public defender prior to the hearing. As of today's date, I still have not spoken to an attorney about my case.
12. I am retired, and I receive Social Security—about \$750 per month. When I was arrested, I estimate that I had only about \$750 available to me in a bank account. I don't have any

other assets, and I haven't received any other income since June 2018. I lived in my mother's house, which she leased with a Section 8 voucher, and now that she passed away I will have nowhere to live.

13. I cannot afford to pay \$200,000 or even the 12% premium a bail bondsman would charge for my release. Because I cannot afford to pay this amount, I remain in East Baton Rouge Parish Prison.
14. I am currently awaiting arraignment, which has been delayed because of the COVID-19 pandemic—I don't think a date has been set yet. I have not even been billed with any charges yet, almost 7 weeks later.
15. In the time that I have been held in East Baton Rouge Parish Prison on this bond, my mother died. I was unable to see her before she died, and the jail wouldn't let me go to her funeral.

I declare under the penalty of perjury that the foregoing is true and correct.


Blaze Franklin

Executed on December 14, 2020

EXHIBIT

6

DECLARATION OF AMISAR CYRUS NOURANI

1. My name is Amisar Cyrus Nourani, and I am twenty-eight years old. I am about 5'9" and weigh about 155 lbs.
2. After I was arrested on November 9, 2020, I was sent to the East Baton Rouge Parish Prison. The sheriff's deputies gave me a rough ride to the jail, and I hit my head in the car. I've never received medical attention for this injury. This is my first time in a jail.
3. Over these past two months in the jail, I've been physically and sexually assaulted repeatedly by the detainees in the jail. I have also been physically assaulted by the guards who oversee us in the jail. This started while I was in intake quarantine. One of the detainees on the line slapped me hard across the face because he thought I was taking too long on the phone. Another detainee saw this happen and saw me not retaliate, so he started picking on me and telling me I had to fight him. I did not want to fight him—it goes against my religion. I called for the guards and begged to be put in protective custody, but they ignored me, even as a crowd of other detainees started to gather around me. The detainee who was threatening me told me I had to go to the back and fight him or he would rape me in my sleep and I would never be able to sleep on the line. I kept repeating that I didn't want to fight the whole time and tried to use grappling techniques to subdue him. But, while I was holding his head near my abdomen, the man bit my penis very hard through my pants. I was trying to get him off me when he forced his fingers in and around my anus. I begged for emergency medical attention from the guards after this assault, but they didn't do anything to help me for about 3-5 days, until I started advocating for other men on the line who had been assaulted or needed medical attention for a swollen leg. I told the guards they were violating my rights and the rights of these other men. The guards were scared to do anything to our attackers and didn't even take their weapons away.
4. Several days after the assault, I was finally able to see the nurse, who saw the teeth marks on my penis and my black eyes from the assault. She also noted discoloration and bruising on my anus and penis during her examination, but she didn't do anything else for me. Investigators from the jail took photos of my injuries. During this visit, I was assaulted further: a guard slammed my head against the wall and put handcuffs on me that were so tight, they cut into my wrists.
5. The guards put me in J1 after this incident to continue my quarantine. I had a mental breakdown on J1, and the guards moved me to a mental health observation cell in central booking. Another one of the detainees in that cell was mentally unwell. While I was there, this person came at me and rubbed his penis around my lower torso and hip area. A guard witnessed this sexual assault, but his response was to laugh at me, and the guards and detainees told me I just had to fight the man who was assaulting me. Ultimately, the

guards moved this man into another cell in central booking. I could hear them brutally beating him and spraying him with mace.

6. I was moved to the special needs lockdown line on N01 next. The social worker put me in a cell with the man who had assaulted me in central booking and told me she wouldn't let me off the line until I dropped my grievances against the guards and the medical staff. Sgt. Gaines also tried to find ways to dismiss my grievances and interrogated me about who wrote the grievances for me, which he said was illegal. He couldn't believe that I wrote the grievances myself, and he didn't want to help me.
7. When I was trapped in lockdown on the N line, the toilet in my cell didn't work, and I became constipated because the guards wouldn't let me out of my cell to use the toilet on the housing line until several hours after I asked. I developed serious intestinal pain, and I had to have a friend, who is an Army Ranger and a Harvard Law Student, call the jail to try to get me the medical care I need. I couldn't even stand up when I finally went to see medical. The guard dragged me out of the chair I was sitting in and used a painful pressure point on my hand to get me to move and then slammed me against a wall and put me in a wrist lock. He told me the pain would make me walk. I still can't feel my thumb on that hand. The guards and nurses gave me some medicine and left me alone in a medical observation room. When I finally had a bowel movement, it was so painful and full of blood. I was crying for help, and no one responded. I could just hear them laughing at my pain. I haven't passed a bowel movement since then, and that was over a week ago. A female Sergeant interrogated me after this incident and told me I had to stop having people call the jail for my medical issues, or I would face more retaliation. She told me that she was moving me to the L wing, where I'm currently housed, and that this was my last chance.
8. Everything I've been forced to go through here has reignited my PTSD, and I'm dealing with bursts of constant anxiety. I feel so afraid. I just want to be safe.
9. I was arrested on charges of La. R.S. §§ 40:966, 967 and 969. During the video callout on November 12, 2020, Judge Ronald Johnson said that my bond was set at \$13,000. He didn't explain why the bond was so high and didn't identify any factors justifying this amount. He never asked if I could afford the bond, and I don't know how the Judge decided on this bond amount, because no one at the Bail Bond Project ever interviewed me or asked me about my financial circumstances. I asked for a reduction or a sign-out bond, but he said it wasn't possible in a dismissive tone. He just told me I shouldn't worry about it because my next court date would be soon. He said nothing about whether I was a danger or a flight risk or about non-financial conditions for release. My total hearing lasted less than about 30 seconds, and I wasn't able to speak to an attorney before or during my hearing.

10. I am forced to stay in this jail, where I have not been able to be safe, because I don't have access to the funds to pay my bond.
11. Judge Johnson appointed me a public defender, but I understand that I haven't been assigned one yet because I haven't been arraigned. I've tried calling the Public Defender's Office numerous times, but I haven't been able to speak to anyone there.
12. I have Lupus and chronic obstructive pulmonary disease (COPD), which is a lung disease. I'm scared to be in the jail because of all the violence I've suffered, but I'm also scared to be here during the COVID-19 pandemic. It's very difficult to social distance in the jail, and they don't take care of us the way we need. We don't get the medical attention, hygiene supplies, or clean clothing that we need. Our toilets are often broken. And the guards don't enforce the rules, like the one that requires detainees to wear their masks on the line.
13. When I was booked into the jail, the staff told me I might need an STD test, but they refused to give me one. They just interrogated me about my race, religion, and immigration status.
14. I am practicing as a Sufi Muslim, and I am to my knowledge the only Persian person in this jail—all the guards and detainees know that. I am also a Zoroastrian. The guards routinely make racist and anti-Muslim comments, and once, a guard physically beat me while mocking my religion and saying that God's light would save me. Some call me a terrorist, Osama, or ISIS sleeper cell. When I ask the guards to point me to the East, so I can pray to Mecca in accordance with my religion, they refuse to tell me what direction that is. I have not been given any Halal food, and I've been forced to eat food that violates my religion for fear of starving. It's important in my religion that I clean myself at least five times a day before I pray, but the guards make it difficult for me to maintain my hygiene here, and I believe it's meant to insult my religion.
15. Before I was arrested, I cared for a young boy with severe autism and trained dogs to care for special needs children. I'm worried about both the boy I was caring for. I also believe I lost my car due to my arrest and detention in the jail.

I declare under the penalty of perjury that the foregoing is true and correct.


Amisar Cyrus Nourani

Executed on December 14th, 2020

EXHIBIT
7

DECLARATION OF HERBERT SCULLY

1. My name is Herbert Scully, and I am fifty-seven years old. I live in Westwego, Louisiana, but can stay here in Baton Rouge, Louisiana upon release.
2. I was arrested on July 12, 2020 on charges of La. R.S. §§ 14:98, 14:988, and 47:521. I was sent to the East Baton Rouge Parish Prison.
3. On July 13, 2020, I appeared before Judge Tarvald Smith of the 19th Judicial District Court by video for a bond hearing.
4. The Judge called my name, informed me of my charges, and asked if I had an attorney. When I responded that I did not have an attorney, he said that he would appoint a public defender to represent me. Immediately following that statement, he informed me that my bond was set at \$30,750.
5. I informed Judge Smith that I thought I had a warrant or a probation hold, too. Judge Smith responded that he would appoint the public defender's office, who would contact Judge Johnson to try to lift the warrant.
6. Judge Smith didn't ask me if I could afford the bond or ask me anything about my finances, and he didn't say anything about whether I was a danger or flight risk. He didn't say anything about non-financial conditions for release.
7. The charges of La. R.S. §§ 14:988 and 47:521 were dropped on November 16, 2020, and my warrant and holds have since been lifted, but there was no reduction in my bond to reflect that these charges had been dropped.
8. At the time of my arrest, I was disabled with a fractured pelvis in two places and had no income. In 2019, I tried to run a small lawn service and received about \$200 per month, but I was largely unable to work for most of the year because of a severe hernia (which required surgery) and my fractured pelvis. I haven't received a steady income since 2018. I don't have any savings. The only asset I have is my car, a Ford Expedition that I think is worth about \$2,000.
9. I can't afford to pay a \$30,750 bond or the 12% premium a bail bondsman would charge, so I've been in the jail since I was booked in July.
10. I've been in the jail for about five months and have yet to be arraigned in court. My arraignment has been delayed until January 12, 2020 because of the COVID-19 pandemic.

11. On October 27, 2020, I filed, on my own, a motion to dismiss and 701 motion for release of bond obligation. I haven't heard anything and to my knowledge, the court hasn't done anything with them. The Judge hasn't even scheduled a motion hearing on these matters yet. Because I am indigent, I was supposed to be assigned a public defender, but no public defender has come to talk to me about my case yet. Even in the room for my callout, I wasn't able to speak to the public defender who was there.
12. Before I was arrested, doctors told me that my hips were already "bone on bone" and that I need a hip replacement surgery. The jail staff gives me ibuprofen every day for my pain, but I had to put in a med call to get this medicine. The ibuprofen doesn't do much, but the jail hasn't given me anything stronger to help with my pain. The Sheriff has never brought me to a specialist about my fractured pelvis or my need for a hip replacement.
13. During the COVID-19 pandemic, I've seen guards come onto our line without their masks, and they don't bring us the cleaning supplies that we need. Social distancing feels impossible, given the communal space we have to share. Several of the toilets in our shared bathroom are broken and haven't been repaired, and the showers will often go out, so we're left with inadequate hygiene facilities. The Q12 housing line has a hole in the ceiling that hasn't been repaired—it has instead been stuffed with paper. Over the past week, it's been in the 40°s or 30°s, but despite the cold the A/C hasn't been shut off and the heater hasn't been turned on. The people on my line haven't been taken outside for fresh air for two months.
14. I haven't had my temperature taken in the jail for months, since the end of July. I've never been COVID tested in the jail, and I've never seen or heard of any other detainees being COVID tested since I've been in here. Detainees have to put in a request to see a doctor to be put on a coronavirus quarantine line, but even that doesn't guarantee that the doctors will see you immediately or even at all. I believe a few days ago that someone being held at the jail died at the hospital, but we have not been told why, and I remain scared for my own health in here.

I declare under the penalty of perjury that the foregoing is true and correct.


Herbert Scully

Executed on December 14th, 2020