

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
Eastern

2015 SEP -8 A 10: 15

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
Case No. 3:15-cv-647-WKW

D'ANGELO FOSTER, *et al.*,

Plaintiffs,

v.

CITY OF ALEXANDER CITY, *et al.*,

Defendants.

**PLAINTIFF UNDERWOOD'S MOTION FOR
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

Plaintiff Ms. Amanda Underwood, on behalf of herself and a class of similarly situated individuals, referred to in the Complaint as the Declaratory and Injunctive Relief Class, hereby submit this motion for temporary restraining order and/or preliminary injunction pursuant to Rule 65(b) or (a) of the Federal Rules of Civil Procedure. Through this Motion, Plaintiff seeks an expeditious order directing Defendants City of Alexander City and Chief Willie Robinson, of the Alexander City Police Department, to refrain from enforcing a policy, practice, or custom of Alexander City to jail persons who are not able to pay in full their traffic or misdemeanor fines, and related court costs, on the date of their adjudication.

Plaintiff Underwood and the putative class require a temporary restraining order, or an expedited preliminary injunction, to be entered before October 1, 2015. This is the date that the Alexander City Municipal Court will next hear cases, and Ms. Underwood and the putative class members will next be exposed to Alexander City's illegal policy. Ms. Underwood has a traffic ticket set for October 1, for which she will be pleading guilty. She will not be able to pay the monetary penalty in full on that date and therefore will be jailed pursuant to Alexander City's

policy, practice, or custom, as she has been in the past.

As detailed in Plaintiff's accompanying Memorandum, if a temporary restraining order and/or expedited preliminary injunction order does not issue, Plaintiff Underwood and the putative Declaratory and Injunctive Relief Class will suffer irreparable injury, including the loss of their liberty. Plaintiff Underwood and the putative class are likely to prevail on the merits of their claims that Defendants' conduct violates the U.S. Constitution; specifically, that Defendants' policy, practice, or custom violates her and putative class members' rights under the Fourteenth Amendment to the U.S. Constitution because the incarceration is occurring without any assessment of the person's ability to pay; the Fourth Amendment because the incarceration is occurring without probable cause of any criminal activity; and the Sixth Amendment because the jail sentence is occurring as a direct result of a monetary sentence that was imposed without the provision or waiver of counsel. The threatened injury to Plaintiff Underwood and the class outweighs whatever damage a temporary or preliminary injunction may cause the Defendants; and the injunction would not be adverse to the public interest.

Plaintiff Underwood is filing this Motion concurrently with the Complaint and Plaintiff Underwood's Motion for Class Certification of a Plaintiff Rule (b)(2) Class. Plaintiffs' counsel will arrange for hand delivery on September 8, 2015, of each of these pleadings on Defendants, and will provide electronic service on the City of Alexander City's counsel.

The issuance of a temporary restraining order without a hearing is appropriate pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure. As shown in the accompanying declarations from Plaintiff Underwood and Plaintiff Foster, and Mr. Luther DeWayne Nichols, and the evidence attached to the declaration of Samuel Brooke, immediate and irreparable harm will result to all putative class members in the absence of an injunction enjoining Defendants

from enforcing their policy, practice, or custom of jailing those who cannot pay their monetary penalties in full. Fed. R. Civ. P. 65(b)(1)(A). Although not required for immediate *ex parte* relief under Rule 65(b)(1), Defendants will be notified by hand delivery of the filing of this action and Motion on September 8, 2015. Fed. R. Civ. P. 65(b)(1)(B).

However, Plaintiff Underwood would also welcome an expedited contested hearing on the instant motions. In the event that the Court determines a hearing is necessary, Plaintiffs request that the Court schedule the hearing as promptly as possible and sufficiently in advance of the next court date of the Alexander City Municipal Court, which is on October 1, 2015, such that this Court may resolve the instant Motion (and Plaintiff Underwood's Motion for Class Certification of a Plaintiff (b)(2) Class, which is being filed contemporaneously) prior to that date.

For the foregoing reasons, and as set forth in the accompanying Memorandum, this Motion for Temporary Restraining Order and/or Preliminary Injunction should be granted.

Dated: September 8, 2015

Respectfully submitted,



Samuel Brooke (ASB-1172-L60B)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that arrangements have been made to, on this date, deliver a true and correct copy of the foregoing by hand delivery to the following parties, at the below addresses:

Harriet Scott
City of Alexander City Clerk
4 Court Square
Alexander City, AL 35011


Chief Willie Robinson
Alexander City Police Department
1 Court Square
Alexander City, AL 35010

Formal proof of service will be filed with the Court when completed.

I further certify that arrangements have been made to, on this date, deliver a true and correct courtesy copy of the foregoing by electronic mail to the City Attorney for Alexander City at the below address:

Larkin Radney
BARNES & RADNEY, P.C.
P.O. Drawer 877
Alexander City, AL 35011-0877
lradney@barnesandradney.com

I so certify this 8th day of September, 2015.



Samuel Brooke