Record No. 18-1524

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TWANDA MARSHINDA BROWN; SASHA MONIQUE DARBY; CAYESHIA CASHEL JOHNSON; AMY MARIE PALACIOS; NORA ANN CORDER; and XAVIER LARRY GOODWIN and RAYMOND WRIGHT, JR., on behalf of themselves and all others similarly situated,

Plaintiffs-Appellees,

v.

GARY REINHART, in his individual capacity; REBECCA ADAMS, in her official and individual capacities as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County and in her official capacity as the Judge of the Irmo Magistrate Court; BRYAN KOON, in his official capacity as the Lexington County Sheriff,

Defendants-Appellants,

LEXINGTON COUNTY, SOUTH CAROLINA; ROBERT MADSEN, in his official capacity as the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina; ALBERT JOHN DOOLEY, III, in his official capacity as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County,

Defendants.

On Appeal from the United States District Court
for the District of South Carolina
Columbia Division

BRIEF FOR PLAINTIFFS-APPELLEES

(Counsel listed on reverse)

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Counsel for Plaintiffs-Appellees

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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No. 18-1524 Caption: Twanda Brown v. Gary Reinhart

Pursuant to FRAP 26.1 and Local Rule 26.1,

Twanda Marshinda Brown
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Nusrat Jahan Choudhury Date: 5/21/18

Counsel for: Appellees

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Pursuant to FRAP 26.1 and Local Rule 26.1,

Nora Ann Corder
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

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Counsel for: Appellees

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No. 18-1524 Caption: Twanda Brown v. Gary Reinhart

Pursuant to FRAP 26.1 and Local Rule 26.1,

Sasha Monique Darby
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

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Counsel for: Appellees

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No. 18-1524 Caption: Twanda Brown v. Gary Reinhart

Pursuant to FRAP 26.1 and Local Rule 26.1,

Xavier Larry Goodwin
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

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Counsel for: Appellees

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Pursuant to FRAP 26.1 and Local Rule 26.1,

Cayeshia Cashel Johnson
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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Signature: s/ Nusrat Jahan Choudhury Date: 5/21/18

Counsel for: Appellees

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Amy Marie Palacios
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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Pursuant to FRAP 26.1 and Local Rule 26.1,

Raymond Wright , Jr.
(name of party/amicus)

who is an appellee, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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Signature: s/ Nusrat Jahan Choudhury Date: 5/21/18

Counsel for: Appellees

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STATEMENT OF JURISDICTION

This Court lacks jurisdiction over this interlocutory appeal for the reasons set forth below in the Argument, Section I.

Plaintiffs properly invoked the district court's jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). Joint Appendix ("JA") 167. On March 29, 2018, the district court denied summary judgment for Defendants and ordered the case to proceed to discovery. JA-667. Defendants-Appellants Gary Reinhart, Rebecca Adams, and Bryan Koon (collectively "Defendants") filed a notice of appeal on April 26, 2018, asserting this Court's jurisdiction under 28 U.S.C. § 1291. JA-668–69; Brief of Appellants ("Defs.' Br.") at 1.

STATEMENT OF THE ISSUES

1. This Court lacks jurisdiction under 28 U.S.C. § 1291 to review on interlocutory appeal the district court's order denying summary judgment because the collateral order doctrine does not apply to the district court's finding that there are genuine issues of material fact as to whether asserted immunities bar Plaintiffs' damages claims against Reinhart, Adams, and Koon.

2. Defendants have failed to meet their summary judgment burden because, when viewing the record in the light most favorable to Plaintiffs, there exist questions of material fact as to whether the challenged conduct is

administrative and Defendants fail to establish judicial, quasi-judicial, or legislative immunity as a matter of law.

3. Defendants waived the argument that Plaintiffs' allegations concerning the administrative actions of Reinhart, Adams, and Koon are so implausible as to fail to state a claim that can defeat immunity because Defendants failed to raise it in the proceedings below.

INTRODUCTION

The Plaintiffs in this case are indigent people who were arrested and incarcerated for periods of time ranging from seven to 63 days because they are victims of a modern-day debtors' prison in Lexington County, South Carolina ("the County"). Like hundreds, if not thousands, of other indigent people each year, Plaintiffs were arrested and incarcerated simply because they lacked the means to pay fines and fees for traffic citations and other low-level offenses to the County's magistrate courts. Despite prima facie evidence of their indigence, once arrested, none of the Plaintiffs were brought before a judge, afforded a court hearing, or given the advice of counsel. Rather, because Plaintiffs could not afford to pay the full amount owed, they were immediately taken to the Lexington County Detention Center ("Detention Center") and forced to spend weeks or even months in jail in violation of their rights under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution. Each Plaintiff suffered devastating

consequences, including deprivation of liberty, separation from children and family, loss of employment and housing, and emotional distress.

Plaintiffs bring damages claims under 42 U.S.C. § 1983 against Defendants Gary Reinhart and Rebecca Adams (Chief Judge and Associate Chief Judge for Administrative Purposes for Lexington County's Summary Courts), and Bryan Koon (Lexington County Sheriff) for their oversight and enforcement of county-wide policies and practices that directly caused Plaintiffs unlawful arrest and incarceration for inability to pay money to courts. Plaintiffs provide detailed factual allegations and submit evidence—including analysis of court and jail records—showing that Reinhart, Adams, and Koon exercised their administrative powers to oversee and enforce standard operating procedures that routinely deprived indigent people of court hearings and the assistance of counsel before lengthy incarceration for inability to pay money to the County's magistrate courts.

Without having responded to any discovery, Defendants asserted on summary judgment that judicial, quasi-judicial, and legislative immunity bar Plaintiffs' claims. The district court denied the motion based on the finding that there are genuine issues of material fact relating to the scope of Defendants' administrative duties concerning the County's magistrate courts and whether the challenged conduct constitutes administrative or judicial action. Defendants'

appeal of that decision is procedurally defective, unsupported by law, and contradicted by evidence.

As a threshold matter, this Court lacks jurisdiction over this interlocutory appeal. Defendants seek review of a district court order that made no final decision but simply found that genuine issues exist concerning facts material to Defendants' immunity assertions. Under this Court's en banc decision in *Al Shimari v. CACI International, Inc.*, 679 F.3d 205 (4th Cir. 2012), this interlocutory appeal fails to satisfy the collateral order doctrine. Thus, this Court has no jurisdiction under 28 U.S.C. § 1291.

Were the Court to consider this appeal, it should nevertheless affirm the district court's order. The limited factual record, when viewed in the light most favorable to Plaintiffs as required at this stage, shows that Defendants fail to establish the justification for immunity. Defendants' immunity assertions rest on the premise that Plaintiffs are collaterally attacking magistrate court sentencing decisions and sheriff's deputies' enforcement of warrants in individual cases or, in the alternative, Defendants' legislative determinations. That premise is false. Plaintiffs' claims target solely the administrative decisions, oversight, and policymaking by Reinhart and Adams (as the administrative leaders of the County's magistrate courts) and Defendant Koon (as the administrative head of the Lexington County Sheriff's Department and Detention Center). Plaintiffs have

also identified discovery requests concerning the scope and impact of Defendants' administrative conduct to which Defendants have not responded. *Al Shimari* makes clear that this Court should not second guess the district court's determination that material facts remain in dispute and that discovery is needed to determine whether judicial, quasi-judicial, or legislative immunity applies to Defendants' challenged conduct.

Finally, this Court should decline to entertain Defendants' argument, raised for the first time on appeal, that Plaintiffs fail to state a claim for relief due to the purported implausibility of the allegations about Defendants' unwritten policies. Defendants never raised or briefed this argument in the court below in a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) or otherwise. Given Plaintiffs' extensive factual allegations concerning Defendants' oversight and enforcement of unwritten, county-wide standard operating procedures, there would be no fundamental error or denial of fundamental justice if the argument were deemed waived.

Defendants' improper appeal is part of a wasteful strategy of seeking summary judgment with no supporting facts while simultaneously trying to bar Plaintiffs from discovery needed to litigate this action, which seeks redress for people deprived of their liberty solely because of their indigence. This Court

should affirm the district court's order denying summary judgment and permit Plaintiffs' damages claims to proceed to discovery.

STATEMENT OF THE CASE

I. FACTS

A. County-wide Policies of Automatically Arresting and Jailing Indigent People Who Cannot Pay Magistrate Court Fines and Fees

Lexington County is a municipal government entity that relies heavily on the collection of fines and fees from traffic and misdemeanor convictions as an essential revenue source.[1] The County collects fines and fees generated by magistrate courts—the Central Traffic Court and six district magistrate courts located throughout Lexington County—which exercise county-wide jurisdiction over certain criminal and traffic offenses. JA-168 ¶¶ 42–43. The County's reliance on money raised by magistrate courts has placed pressure to generate revenue on Defendants Reinhart and Adams, as the chief administrators of the County's magistrate courts, and on Defendant Koon, as the County's chief law

[1] *See* Lexington County, S.C. General Fund Requested Budgets, Fiscal Year 2017-2018 [hereinafter, "Lexington County 2017-2018 Budget"], http://www.lex-co.com/Departments/Finance/FY17-18/GeneralFundRequestedBudgets.pdf, at 703 ("Magistrate Courts throughout the county . . . generate revenue from Criminal and Traffic cases. All fines and assessments collected are . . . deposit[ed] . . . into the County General Fund . . . ."); *id*. at 706 (the Central Traffic Court "generates substantial revenue from traffic violations [and] criminal fines"); *id*. at 698 (projecting collection of $1,332,000 in traffic and criminal fines and fees from the County's magistrate courts in Fiscal Year 2016-2017).

enforcement officer. Facing this pressure, Defendants chose to prioritize the collection of unpaid magistrate court fines and fees over protection of the constitutional rights of indigent people during the time period relevant to Plaintiffs' damages claims.

In their deliberate exercise of administrative authority, Defendants Reinhart, Adams, and Koon oversaw and enforced two unwritten, county-wide standard operating procedures that result in the automatic arrest and incarceration of indigent people who cannot pay fines and fees for minor traffic and misdemeanor offenses, without any inquiry into their ability to pay and without the assistance of counsel to defend against incarceration. Plaintiffs identified these unwritten county-wide procedures as the "Default Payment" and "Trial in Absentia" policies. *See* JA-153. Under the Default Payment Policy, indigent people sentenced to pay fines and fees for traffic or misdemeanor convictions are placed on steep payment plans, without regard to whether they can afford the monthly payments. *See* JA-056–57; JA-400–01; JA-405. Under the Trial in Absentia Policy, indigent people who do not appear for a scheduled traffic or misdemeanor hearing—regardless of the reason for nonappearance—are automatically tried in their absence, convicted, and sentenced to jail time suspended on payment of fines and fees. *See* JA-408–09; JA-416; JA-418.

Under both the Default Payment and Trial in Absentia Policies, when indigent people do not pay money owed to magistrate courts, bench warrants ordering their arrest and incarceration for nonpayment ("payment bench warrants") issue automatically. *See* JA-051–54. Indigent people are then arrested and incarcerated by deputies of the Lexington County Sheriff's Department ("LCSD") unless they can immediately pay their entire debts to magistrate courts. *See* JA-189 ¶ 128; JA-402 ¶¶ 11–12; JA-405 ¶¶ 24–25; JA-409 ¶ 15; JA-415 ¶¶ 19–20; JA-418 ¶¶ 8–9. At no point prior to arrest and incarceration are these indigent people afforded court-appointed counsel, and no court holds any individualized hearing or makes any determination that these people were able to pay, as required by *Bearden v. Georgia*, 461 U.S. 660 (1983). Nor are indigent people taken to magistrate court or the Bond Court adjacent to the Detention Center after being booked in jail for a determination of their ability to pay or appointment of counsel. *See* JA-190–91 ¶¶ 133, 135; JA-402 ¶ 13; JA-405 ¶ 26; JA-409 ¶ 19.

These county-wide procedures contravene South Carolina law, which directs that "bench warrants . . . are to be used only for the purpose of bringing a defendant before a court." S.C. Sup. Ct. Order (Nov. 14, 1980), https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=1980-11-14-01; *see* JA-185–86 ¶¶ 117–18.

B. Defendants' Administrative Responsibilities and Conduct

1. Gary Reinhart and Rebecca Adams: Chief Judge and Associate Chief Judge for Administrative Purposes of Lexington County's Summary Courts

During the time period relevant to the issues on appeal, Defendants Reinhart and Adams served as the Chief and Associate Chief Judges for Administrative Purposes of the Summary Courts in Lexington County by order of the Supreme Court of South Carolina. *See* App. to Defs.' Br. ("Order No. 2017-01-03-01, The Supreme Court of South Carolina, RE: Chief Judges for Administrative Purposes of the Summary Courts") [hereinafter, "January 2017 Order"].[2]

Pursuant to the South Carolina Constitution, the Chief Justice of the Supreme Court of South Carolina is the "administrative head of the [state's] unified judicial system," and has the power to delegate administrative duties "as he deems necessary to aid in the administration of the courts of the State." S.C. Const. art. V, § 4. Through the January 2017 Order and other similar orders, Chief Justice Donald Beatty delegated significant administrative authority over magistrate court procedures to those appointed to serve as the chief judge or associate chief judge for "administrative purposes" for the summary courts in each

[2] On June 28, 2017, Adams replaced Reinhart as the Chief Judge for Administrative Purposes, and Albert John Dooley, III replaced Adams as the Associate Chief Judge. S.C. Sup. Ct. Order (June 28, 2017), http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-28-01.

South Carolina county.[3] The responsibilities of the chief judges for administrative purposes include: establishing and overseeing a county-wide procedure "to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner"; convening judges to establish "uniform[] procedures in the county summary court system"; administering the County's Bond Court; determining the hours and schedules of County magistrate courts; assigning cases to magistrate judges across the County; and coordinating the planning of magistrate court budgets. January 2017 Order ¶¶ 3, 5–6, 9–10, 15. Associate chief judges carry out administrative responsibilities assigned by the chief judge and assume the chief judge's duties if the chief judge is absent or disabled. *Id*. These administrative duties are distinct from the chief judge and associate chief judge's adjudication of individual cases.

As alleged in Plaintiffs' Second Amended Complaint, Defendants Reinhart and Adams deliberately exercised their administrative responsibilities for establishing uniform court fine and fee collection procedures by overseeing and enforcing a county-wide practice of collecting money through the automatic issuance of payment bench warrants against indigent people who miss fine and fee payments (the Default Payment Policy) or who are ordered to pay through trials in absentia (the Trial in Absentia Policy). Defendants exercised their administrative

[3] "Summary courts" include both magistrate and municipal courts located in each South Carolina county.

authority to control magistrate court dockets, schedules, and hours of operation to deliberately exclude from routine court practice any hearings to determine the ability to pay of indigent people subject to payment bench warrants. JA-190 ¶ 133; January 2017 Order ¶¶ 3, 5. Defendants Reinhart and Adams did not require or ensure that the magistrate courts that issue payment bench warrants or the Bond Court located adjacent to the County jail hold ability-to-pay hearings for indigent people arrested on these warrants. JA-185 ¶ 116; January 2017 Order ¶¶ 3, 9–10. They also deliberately decided not to exercise their administrative duty to report to state authorities or otherwise correct magistrate judges' routine misuse of bench warrants to coerce fine and fee payments and to incarcerate indigent people. JA-186 ¶ 119; January 2017 Order ¶ 17. Defendants Reinhart and Adams also deliberately excluded from their requests for County funding for magistrate court operations any appropriations seeking to extend court operation hours to enable magistrate courts to hold predeprivation ability-to-pay hearings for people reported for nonpayment of fines and fees. JA-155–56 ¶ 10; January 2017 Order ¶ 6.

2. Bryan Koon: Lexington County Sheriff and Administrative Head of the Lexington County Detention Center

As Lexington County Sheriff, Defendant Koon serves as the chief administrative officer of the LCSD and the Detention Center, in which capacity he

has significant administrative powers and responsibilities.[4] For example, Defendant Koon leads the LCSD Administrative Bureau, which "provides direction and overall management" for the LCSD and coordinates the day-to-day operations of "all law enforcement and detention center personnel,"[5] including deputies in the Warrant and Civil Process Division who track and serve warrants.[6] He is also responsible for determining enforcement priorities and allocating limited LCSD resources among various LCSD divisions,[7] negotiating relationships with other law enforcement agencies to execute payment bench warrants,[8] and

[4] Lexington County Sheriff's Department News Release, "Sheriff Koon Sworn in as 39th Sheriff of Lexington County," http://www.lex-co.com/sheriff/media.aspx?mid=2308 (Defendant Koon is the "County's chief law enforcement officer"); S.C. Const. art. V, § 24 (providing for each county's election of a sheriff to serve as a "law enforcement official" and "administrative officer"); S.C. Code Ann. § 23-13-10 (describing sheriffs' power to appoint deputies and to "in all cases be answerable for neglect of duty or misconduct in office of any deputy"); *id*. § 24-5-10 (providing the sheriff as custodian and liable party for his county's jail).

[5] Lexington County 2017-2018 Budget, *supra* note 1 at 752.

[6] Lexington County Sheriff's Department, "Warrant and Civil Process," http://www.lexco.com/sheriff/divisions.aspx?did=wc.

[7] *See* Lexington County 2017-2018 Budget, *supra* note 1 at 752 (recognizing Sheriff's role in LCSD Administrative Bureau, which "ensure[s] that the deputy sheriffs have the resources necessary to provide professional law enforcement service . . . .").

[8] *See* S.C. Code Ann. §§ 23-20-20–23-20-40 (providing procedures for mutual aid agreements between county law enforcement offices).

overseeing and directing LCSD deputies and Detention Center staff in the manner in which payment bench warrants are executed.[9]

As alleged in Plaintiffs' Second Amended Complaint, Defendant Koon exercised these administrative duties in a manner that enforced a standard operating procedure of automatically arresting indigent people on payment bench warrants and incarcerating them in the Detention Center unless they can pay the full amount of court fines and fees owed before booking. JA-165 ¶ 31. For example, Defendant Koon prioritized the execution of payment bench warrants at people's homes and during traffic and pedestrian stops, and enlisted other law enforcement agencies to locate debtors. *Id*. He directed LCSD deputies and Detention Center staff to inform bench warrant arrestees that the only way to avoid incarceration was to pay in full the amount of money identified on a payment bench warrant. JA-188–189 ¶¶ 126–127. He also directed Detention Center staff to book people arrested on payment bench warrants as soon as they could verify that an arrestee was unable to pay the full amount of fines and fees identified on the face of the warrant. JA-189 ¶ 128. Defendant Koon's direction, supervision,

[9] *See* S.C. Code Ann. § 23-15-40 (requiring sheriff and deputy to "serve, execute, and return every process, rule, order, or notice issued by any court of record in [South Carolina] . . . ."); *id* § 23-15-50 ("The sheriff or his deputy shall arrest all persons against whom process for that purpose shall issue from any competent authority . . . ."); *see also* S. C. R. Crim. P. 30(c) ("It is the continuing duty of the sheriff . . . to make every reasonable effort to serve bench warrants and to make periodic reports to the court concerning the status of unserved warrants.").

and training of LCSD deputies and Detention Center staff resulted in a systematic failure to notify bench warrant arrestees of their right to request counsel and to bring those arrested to any magistrate court, including the Bond Court adjacent to the Detention Center, for a hearing on ability to pay. JA-190–191 ¶ 135.

C. Plaintiffs' Automatic Arrest and Incarceration Under Defendants' County-Wide Standard Operating Procedures

Under Defendants' county-wide standard operating procedures, Plaintiffs suffered unlawful arrest and incarceration for days to months because they could not pay debts to the County's magistrate courts.[10]

1. Plaintiffs Arrested and Jailed Under the Default Payment Policy

Twanda Marshinda Brown, an indigent and single working mother, was sentenced in 2016 to pay $2,337.50 to the Irmo Magistrate Court for two traffic tickets. JA-052 ¶ 3a; JA-400–01 ¶¶ 1–4. Because she could not pay in full, Ms. Brown was required to make $100 monthly payments, even though she informed the court she could not afford to pay that much. JA-400–01 ¶¶ 4–5. Ms. Brown made five payments, but was unable to pay more. JA-401 ¶ 8. In February 2017,

[10] Defendants incorrectly contend that only six of the seven Plaintiffs were arrested and incarcerated for nonpayment of fines and fees to the County's magistrate courts. Defs.' Br. at 5. Contrary to Defendants' factual recitation, Plaintiff Goodwin brings damages claims for his unlawful arrest and incarceration for fines and fees he could not pay to the Central Traffic Court. *See* JA-222 ¶ 347. Plaintiff Goodwin also brings separate claims for prospective relief, which are not at issue on this appeal, because he currently faces a substantial risk of unlawful arrest and incarceration for inability to pay fines and fees to the Irmo Magistrate Court. *See* JA-224 ¶ 359.

she was arrested and served with a bench warrant ordering her to pay $1,907.63 in full or serve 90 days in jail. JA-052 ¶ 3a; JA-401–02 ¶¶ 10–11. Because she could not pay, Ms. Brown was incarcerated for 57 days, and consequently lost her job and was separated from her children. JA-052 ¶ 3a; JA-402 ¶¶ 12, 15–16.

Sasha Monique Darby, an indigent and single working mother who suffers from Post-Traumatic Stress Disorder, was sentenced in 2016 to pay $1,000 to the Irmo Magistrate Court for a misdemeanor. JA-403–05 ¶¶ 1–3, 16–17. Because she could not pay in full, Ms. Darby was required to make $150 monthly payments, even though she informed the court she could not afford to pay that much. JA-405 ¶¶ 18–19. After making several payments, Ms. Darby fell behind due to childcare costs. JA-053 ¶ 3d; JA-405 ¶¶ 21–22. In March 2017, she was arrested and served with a bench warrant ordering her to pay $680 in full or serve 20 days in jail. JA-405 ¶¶ 23–24. Because she could not pay, Ms. Darby was incarcerated for 20 days, and consequently was evicted from her home, lost her job, and missed a prenatal doctor's appointment. JA-053–54 ¶ 3d; JA-405–06 ¶¶ 25, 28–30.

Raymond Wright, Jr., an indigent and disabled man, was sentenced in the Central Traffic Court in 2016 to pay $666.93 for a traffic ticket; because he could not pay in full, he was required to make $50 monthly payments. JA-054 ¶ 3f; JA-056–57 ¶¶ 1, 3–5. After five payments, Mr. Wright could no longer afford to pay

because of his limited income from disability benefits and his wife's unemployment. JA-054 ¶ 3f; JA-057 ¶¶ 6–7. At an April 2017 hearing, the court refused to consider evidence of Mr. Wright's indigence and ordered him to pay $416.93 within ten days. JA-054 ¶ 3f; JA-057–58 ¶¶ 8–12. Because he could not pay, Mr. Wright was arrested on a bench warrant and jailed for seven days in July 2017. JA-054 ¶ 3f; JA-058 ¶ 14.

2. Plaintiffs Arrested and Jailed Under the Trial in Absentia Policy

Cayeshia Cashel Johnson, an indigent and single working mother, called the Central Traffic Court in advance of a 2016 hearing concerning traffic tickets and a misdemeanor charge to inform the court she was unable to secure transportation to court from her home in Myrtle Beach three hours away. JA-162 ¶ 21; JA-203 ¶¶ 214–15; JA-204 ¶ 223. Rather than providing a new court date, the court tried, convicted, and sentenced Ms. Johnson in her absence. JA-053 ¶ 3c; JA-204 ¶ 224. Ms. Johnson was not notified of the convictions or sentences. JA-205 ¶ 229. Months later, in February 2017, she was arrested and served with a bench warrant ordering her to pay $1,287.50 in full or spend 80 days in jail. JA-205–06 ¶¶ 231–36. Because Ms. Johnson could not pay, she was incarcerated for 55 days, and as a result lost her jobs and was separated from her children. JA-206–07 ¶¶ 237–41.

Amy Marie Palacios, an indigent and single working mother, was unable to attend a 2016 Central Traffic Court hearing for a traffic ticket. JA-407–08 ¶¶ 1–6.

She called the court in advance, requested a new court date, and provided the court an affidavit from her employer explaining that she could not appear due to work. JA-408 ¶¶ 7–10; JA-412. Rather than provide a new court date, the court tried, convicted, and sentenced her in her absence. JA-053 ¶ 3b. Ms. Palacios was not notified of the conviction or sentence. JA-408 ¶ 11; JA-409 ¶ 17. Months later, in February 2017, she was arrested and informed of a bench warrant requiring her to pay $647.50 or spend 30 days in jail. JA-408–09 ¶¶ 12–15. Because she could not pay, she was incarcerated for 21 days, and consequently lost her job and was separated from her children. JA-409–10 ¶¶ 18–23.

Nora Ann Corder, an indigent low-wage earner, appeared for three scheduled hearings at the Lexington Magistrate Court in 2017 to answer for traffic tickets, but each time her case was continued at the ticketing officer's request. JA-413–14 ¶¶ 1–7, 12. Ms. Corder was unable to attend a fourth hearing due to lack of transportation and was automatically tried, convicted, and sentenced in her absence. JA-054 ¶ 3e; JA-415 ¶¶ 13–14. At the time, Ms. Corder was also facing eviction due to her indigence. JA-217 ¶ 318. In May 2017, when she attempted to file forms in defense of eviction, she was arrested at the courthouse under a bench warrant ordering her to pay $1,320 or spend 90 days in jail. JA-054 ¶ 3e; JA-415 ¶ 19. Because Ms. Corder was unable to pay, she was incarcerated for 54 days, and consequently lost her job and her home. JA-054 ¶ 3e; JA-415–16 ¶¶ 20–21.

Xavier Larry Goodwin is indigent, the principal provider for a family of four, and has additional child support responsibilities. JA-417 ¶ 1. Mr. Goodwin informed the Central Traffic Court in advance of a 2016 hearing for a traffic ticket that he could not appear due to his work schedule. JA-417–18 ¶¶ 3–5. Rather than provide a new hearing date, the court tried, convicted, and sentenced Mr. Goodwin in his absence. JA-054 ¶ 3g. Mr. Goodwin was not notified of the conviction or sentence. JA-418 ¶ 8. Months later, in February 2017, Mr. Goodwin was arrested and served with a bench warrant ordering him to pay $1,710 or serve 90 days in jail. JA-418 ¶¶ 7–8. Because he could not pay, he was incarcerated for 63 days, and consequently lost his home and job, and was separated from his wife and children. JA-418 ¶ 9; JA-419 ¶¶ 12, 15–18.

D. Evidence of Widespread Arrest and Incarceration Under Defendants' County-Wide Standard Operating Procedures

In addition to Plaintiffs' experiences, public records provide evidence that the county-wide standard operating procedures enforced by Defendants Reinhart, Adams, and Koon have resulted in the unlawful and automatic arrest and incarceration of hundreds, if not thousands, of indigent people every year. Court records reveal that the County's magistrate courts targeted 183 people with payment bench warrants during a two-month period in 2017. JA-031–32 ¶¶ 14–18. Assuming this rate is consistent throughout the year, these records suggest that

around 1,098 people were subjected to a bench warrant for nonpayment of fines and fees to a Lexington County magistrate court in 2017.

Online Detention Center records indicate that the use of payment bench warrants to coerce payments toward magistrate court fines and fees results in the widespread arrest and incarceration of people, including indigent people. Detention Center records reveal that, during a 28-day period in 2017, at least 57 people were arrested and incarcerated on payment bench warrants issued by the County's magistrate courts. JA-016–18 ¶¶ 2–8. Assuming this rate is consistent throughout the year, these records suggest that around 743 people were arrested and jailed for nonpayment of magistrate court fines and fees in 2017.

II. PROCEDURAL HISTORY

Plaintiffs filed their original complaint on June 1, 2017, bringing claims for damages and injunctive and declaratory relief. Plaintiffs amended the complaint on July 21, 2017. A Second Amended Complaint, which is the operative complaint in this action, was filed on October 17, 2017.[11] Defendants answered

[11] This appeal concerns only Plaintiffs' damages claims against Reinhart, Adams, and Koon. Plaintiffs bring other claims for damages and prospective relief that are not the subject of this appeal, which are proceeding in the district court. These include: Plaintiffs' damages claim against Lexington County for inadequate funding and provision of indigent defense, JA-258–62 (Claim Five, Sixth Amendment); Plaintiffs Goodwin's and Wright's three claims for declaratory and injunctive relief brought on behalf of themselves and a proposed Class against Adams, Koon, Dooley, and Lexington County, JA-244–48 (Claim One, Fourteenth Amendment), JA-248–53 (Claim Two, Sixth Amendment), JA-253–55 (Claim

each of Plaintiffs' complaints and did not, at any point, move to dismiss this action under Federal Rule of Civil Procedure 12. *See* JA-006–14; JA-292–345.

Defendants subsequently refused to participate in discovery beyond initial disclosures and instead filed successive motions for summary judgment. *See* JA-008–10; JA-422–23. In October 2017, Plaintiffs propounded their first sets of Requests for Production ("RFPs") to Defendants. *See* JA-423 ¶¶ 13–15; JA-454–78 (RFPs to Defendant Koon (Oct. 6, 2017)); JA-480–510 (RFPs to Defendants Reinhart, Adams, and Dooley (Oct. 10, 2017)). Defendants failed to either respond to these RFPs or produce any requested documents. *See* JA-423 ¶ 16. Defendants subsequently filed a motion to stay discovery. *See* JA-010.

In August and September of 2017, Defendants filed two separate motions for summary judgment on Plaintiffs' declaratory and injunctive relief claims, which are not the subject of this appeal. *See* JA-008–09. In October 2017, Defendants filed a motion for summary judgment on Plaintiffs' damages claims, asserting that judicial, quasi-judicial, and/or legislative immunity bar these claims against Defendants Reinhart, Adams, and Koon, and asserting other defenses to suit. JA-

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Three, Fourth Amendment); and Plaintiff Goodwin's two claims for declaratory relief solely against Adams, JA-266–68 (Claim Seven, Fourteenth Amendment), JA-268–69 (Claim Eight, Sixth Amendment).

Plaintiffs Goodwin and Wright also filed a timely motion for class certification on behalf of themselves and a proposed Class. *See* JA-006. Plaintiffs' Second Amended Motion for Class Certification remains pending in the district court. *See* JA-012.

273–91.[12] Defendants characterized the damages claims as contesting the sentencing decisions of judges and the execution of warrants by sheriff's deputies in individual cases. In opposition to the motion, Plaintiffs explained that Defendants misconstrued the damages claims, which challenge Defendants' exercise of administrative authority, and argued that Defendants failed to meet their summary judgment burden to establish, based on undisputed evidence, that any of the asserted immunities bar Plaintiffs' damages claims. JA-380–89. Plaintiffs identified questions of fact concerning Defendants' entitlement to immunity and argued that Plaintiffs are entitled to discovery under Federal Rule of Civil Procedure 56(d) before any ruling on whether the asserted immunities apply. JA-389–93. In support, Plaintiffs submitted a declaration from Nusrat J. Choudhury, counsel for Plaintiffs, detailing specific discovery requests to which Defendants had failed to respond, which sought to uncover the scope of Defendants administrative responsibilities and whether Plaintiffs' injuries were attributable to Defendants' administrative actions. JA-420–29.

On February 5, 2018, U.S. Magistrate Judge Shiva V. Hodges issued a Report and Recommendation ("Report") that ruled on all of the pending summary judgment motions. JA-533–53. In relevant part, the Report recommended granting Defendants summary judgment on Plaintiffs' damages claims based on

[12] Defendants also raised *Heck*, *Rooker-Feldman*, and causation arguments, which are not at issue in this appeal. *See* JA-273–74.

judicial and quasi-judicial immunity. JA-546–51. Plaintiffs filed timely objections to that recommendation and Defendants replied. JA-555–616.

On March 29, 2018, U.S. District Judge Margaret B. Seymour issued an Opinion and Order denying without prejudice all of Defendants' motions for summary judgment. JA-639–67. Relevant to this appeal, the district court squarely rejected the magistrate judge's recommendation and denied Defendants' request for summary judgment on the damages claims on the grounds of judicial, quasi-judicial, and legislative immunity. JA-667.[13] The district court acknowledged the parties' competing arguments on immunity and found "that there are issues of material fact as to whether the challenged conduct is considered 'administrative' or 'judicial' acts, as well as, to the scope of Defendants' administrative duties[,]" and that "[t]he matter should proceed to discovery." *Id.*

Defendants then filed this interlocutory appeal seeking review of the part of the Opinion and Order that denied Defendants summary judgment on the damages claims based on asserted immunities. JA-668.[14]

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[13] The Opinion and Order also resolved issues not raised in this appeal. For example, it denied Adams, Dooley, Koon, and Lexington County summary judgment on Plaintiffs Goodwin and Wright's prospective relief claims. JA-667.

[14] In April 2018, Defendants also filed two separate motions for reconsideration, which urged the district court to revisit all other portions of the Opinion and Order. JA-012–13. On July 9, 2018, the district court issued a second Opinion and Order, denying both motions for reconsideration and permitting discovery to proceed on all claims that are not at issue on this appeal. Opinion and

SUMMARY OF THE ARGUMENT

Defendants' interlocutory appeal of the district court's denial of immunity on summary judgment is procedurally defective, unsupported by law, and contradicted by evidence in the record. Under this Court's controlling, en banc decision in *Al Shimari v. CACI International, Inc.*, 679 F.3d 205 (4th Cir. 2012), this Court lacks jurisdiction over this interlocutory appeal, which solely challenges the district court's ruling that genuine issues exist concerning facts material to the asserted immunities. The district court's ruling did not conclusively resolve whether Defendants are immune from suit or even answer any disputed questions concerning Defendants' immunity invocation as required for the collateral order doctrine to afford a basis for appellate jurisdiction under 28 U.S.C. § 1291. Defendants' appeal should be dismissed for want of jurisdiction.

Even if this Court were to exercise jurisdiction over this appeal, the district court's order should be affirmed because Defendants fail to carry their summary judgment burden of establishing the justification for judicial, quasi-judicial, or legislative immunity from Plaintiffs' damages claims. Defendants misconstrue Plaintiffs' claims as collaterally attacking magistrate court sentencing decisions in individual cases and sheriff's deputies' enforcement of individual warrants or, in

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discovery to proceed on all claims that are not at issue on this appeal. Opinion and Order, Brown, et al. v. Lexington Cty., et al., No. 3:17-cv-01426-MBS-SVH (D.S.C. July 9, 2018), ECF No. 107.

the alternative, legislative determinations by Reinhart, Adams, and Koon. But Plaintiffs' claims target solely the administrative decisions, oversight, and policymaking by Reinhart and Adams (as the administrative leaders of Lexington County's magistrate courts) and Koon (as the administrative leader of the Lexington County Sheriff's Department and Detention Center). Moreover, Defendants fail either to point to undisputed evidence showing that Defendants never engaged in the alleged administrative conduct, or to establish as a matter of law that any of the asserted immunities shields such conduct. Plaintiffs, on the other hand, have submitted a declaration detailing specific discovery about the scope and impact of Defendants' exercise of their administrative duties to which Defendants have never responded.

This Court recognized in *Al Shimari* that even in the face of an assertion of absolute immunity from suit, a district court is entitled to have before it sufficient facts to rule on whether immunity attaches. Viewing even the limited factual record in the light most favorable to Plaintiffs, as is required on a motion for summary judgment, the district court correctly found that genuine issues of material fact exist as to the scope of Defendants' administrative conduct related to magistrate courts and whether the asserted immunities apply to the conduct Plaintiffs challenge. The district court's determination that discovery is necessary

to develop a proper record to resolve the immunity question merits this Court's deference.

Finally, this Court should decline to entertain Defendants' belated argument, raised for the first time on appeal, that Plaintiffs fail to state a claim because the allegations concerning Defendants' administrative conduct enforcing unwritten, county-wide standard operating procedures are purportedly implausible. Defendants had ample opportunity to file a motion to dismiss Plaintiffs' well-pled complaint but failed to do so. Defendants thus waived their ability to raise an argument attacking Plaintiffs' claims on plausibility grounds. Nor can Defendants show that any fundamental error or denial of fundamental justice would result if the argument is deemed waived in light of the detailed factual allegations and evidence in the record. Both support Plaintiffs' allegation that Defendants exercised administrative powers to enforce unwritten standard operating procedures causing the arrest and incarceration of indigent people—without court hearings or assistance of counsel—who could not pay money to courts.

This Court should therefore affirm the district court's denial of Defendants' summary judgment motion.

STANDARD OF REVIEW

Under the collateral order doctrine, this Court has jurisdiction to review a district court's denial of summary judgment on immunity grounds "only 'to the

extent that the court's decision turned on an issue of law.'" *Cox v. Quinn*, 828 F.3d 227, 235 (4th Cir. 2016) (citation omitted). This Court "may consider only 'the facts as the district court viewed them as well as any additional undisputed facts,'" and "review is limited to the legal question of whether the court correctly denied summary judgment on those facts." *Id.* "To the extent that the district court has not fully set forth the facts on which its decision is based, . . . [t]his usually means adopting the plaintiff's version of the facts." *Yates v. Terry*, 817 F.3d 877, 884 (4th Cir. 2016) (citations and alterations omitted).

Summary judgment in favor of a moving party is warranted "only if 'no material facts are disputed and [the party is] entitled to judgment as a matter of law.'" *Cox*, 828 F.3d at 235 (citation omitted). But this Court "lack[s] jurisdiction to re-weigh the evidence in the record to determine whether material factual disputes preclude summary disposition" on the basis of an asserted immunity. *Iko v. Shreve*, 535 F.3d 225, 234 (4th Cir. 2008); *see Johnson v. Jones*, 515 U.S. 304, 319–20 (1995) ("[A] defendant, entitled to invoke a qualified immunity defense, may not appeal a district court's summary judgment order insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial.").

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO REVIEW THE DISTRICT COURT'S RULING THAT ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT ON IMMUNITY GROUNDS.

This Court lacks jurisdiction to hear this appeal. Defendants Reinhart, Adams and Koon summarily invoke 28 U.S.C. § 1291 as the basis for interlocutory appeal from the district court's ruling denying summary judgment due to the existence of issues of material fact as to whether judicial, quasi-judicial, and legislative immunity bars Plaintiffs' damages claims. Defs.' Br. at 1. For the Court to exercise jurisdiction over this interlocutory appeal, the district court's order must satisfy the stringent demands of the collateral order doctrine. But the district court's ruling did not conclusively resolve any disputed questions concerning Defendants' invocation of immunity as required for the collateral order doctrine to apply. Under the controlling, en banc decision in *Al Shimari*, 679 F.3d 205, this Court lacks jurisdiction over this appeal, which solely challenges the district court's ruling that genuine issues exist concerning facts material to immunity. Defendants' appeal therefore must be dismissed for want of jurisdiction under the clearly established precedent of this Court.

"[E]very federal appellate court has a special obligation to satisfy itself of its own jurisdiction . . . ." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534 (1986). And it is well established that "[p]iecemeal or interlocutory appeals are

disfavored." *United States v. Under Seal*, 853 F.3d 706, 716 (4th Cir. 2017) (citation omitted). Except for the limited categories of interlocutory orders set forth in 28 U.S.C. § 1292, federal appellate jurisdiction is reserved for "final decisions of the district courts of the United States." 28 U.S.C. § 1291. It is undisputed that Defendants Reinhart, Adams, and Koon seek interlocutory appellate review of a district court order and that no final order or judgment has been entered with respect to them.[15] The only basis for this Court's jurisdiction is therefore the collateral order doctrine, which permits federal appellate review under 28 U.S.C. § 1291 over "a small set of prejudgment [district court] orders that are 'collateral to' the merits of an action and 'too important' to be denied immediate review." *Under Seal*, 853 F.3d at 717 (citation omitted).

The collateral order doctrine is "narrow" and must "never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered." *Campbell-McCormick, Inc. v. Oliver*, 874 F.3d 390, 395 (4th Cir. 2017) (citations omitted). Three "stringent requirements" must be satisfied for this Court to exercise jurisdiction over an interlocutory appeal pursuant to the collateral order doctrine: the lower court order must: "[1] conclusively determine the disputed question, [2] resolve an important issue

[15] It is also undisputed that the district court's order has not been certified appealable by the issuing court pursuant to 28 U.S.C. § 1292(b) and that none of that statute's provisions otherwise apply to confer jurisdiction on this Court.

completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." *Id*. (citation omitted). Although "[o]rders denying immunity often fall within the collateral order doctrine," *Nero v. Mosby*, 890 F.3d 106, 121 (4th Cir. 2018), there is no appellate jurisdiction unless the order meets the first requirement to convey "a fully consummated decision that constitutes a complete, formal, and final resolution of the issue," *Al Shimari*, 679 F.3d at 220 (citations and alterations omitted). The collateral order doctrine does not apply when a district court order denying immunity "makes clear that its decision is a tentative one, and that it might well change its mind after further proceedings." *Id*.

Sitting en banc, this Court ruled in *Al Shimari* that it lacks jurisdiction to review on interlocutory appeal a lower court order denying immunity due to the existence of genuine issues of material fact. *Id*. at 220–23. *Al Shimari* concerned appeals from lower court decisions that denied absolute official immunity and derivative sovereign immunity to companies that had provided civilian employees to assist the U.S. military in Iraq. *See id*. at 209–12; *id*. at 211 n.3 (describing the various immunity doctrines invoked by defendants as "*Mangold* immunity"). This Court held that it lacked jurisdiction under the collateral order doctrine because the interlocutory "appeals were taken before the district courts could reasonably render a decision on the applicability of" the asserted immunities and because the "facts

that may have been tentatively designated as outcome-determinative [were] yet subject to genuine dispute . . . ." *Id*. at 223. Recognizing that the asserted immunities "confer[] upon those within its aegis the right not to stand trial," this Court nevertheless held it lacked jurisdiction to review the lower court orders denying immunity. *Id*. This Court explained:

> Fundamentally, a court is entitled to have before it a proper record, sufficiently developed through discovery proceedings, to accurately assess any claim, including one of immunity. And even a party whose assertion of immunity ultimately proves worthy must submit to the burdens of litigation until a court becomes sufficiently informed to rule.

Id. at 220.

Al Shimari squarely governs this appeal and necessitates dismissal for lack of jurisdiction. Defendants seek review of an interlocutory district court order denying asserted judicial, quasi-judicial, and legislative immunities based on the "find[ing] that there are genuine issues of material fact as to whether Defendants are entitled" to those immunities. JA-666. The collateral order doctrine does not apply because the district court's ruling did not "conclusively determine[]" any disputed question concerning Defendants' invocation of immunity. *Under Seal*, 853 F.3d at 719. Under the plain language of *Al Shimari*, this Court "lack[s] jurisdiction" over such an appeal, which solely "challenges the district court's genuineness ruling—that genuine issues exist concerning material facts." 679 F.3d at 221 (citation omitted); *see Iko*, 535 F.3d at 234.

Notably, as in *Al Shimari*, this appeal does not "require[] resolution of a purely legal question, . . . or an ostensibly fact-bound issue that may be resolved as a matter of law (such as whether facts that are undisputed or viewed in a particular light are material to the immunity calculus) . . . ." 679 F.3d at 221–22. There is no dispute that Reinhart and Adams have administrative powers and responsibilities as Chief Judge and Associate Chief Judge for Administrative Purposes for the Summary Courts of Lexington County. *See* Defs.' Br. at 12. Nor is there any dispute that judicial immunity does not protect judges from claims against their administrative conduct. *See id*. at 11 (conceding that judicial immunity does not apply to judges' "administrative activity"). Similarly, there is no dispute that quasi-judicial immunity similarly does not protect a sheriff's administrative conduct. *See id*. at 16–17. Rather, the parties dispute numerous facts that are material to the question of whether judicial, quasi-judicial, and legislative immunity bar Plaintiffs' damages claims. These include: (1) the scope of the administrative conduct carried out by Reinhart and Adams as the Chief Judge and Associate Chief Judge for Administrative Purposes for the Summary Courts of Lexington County; (2) the scope of the administrative conduct carried out by Koon as Lexington County Sheriff and chief administrator of the Detention Center; and (3) whether such conduct by Reinhart, Adams, and Koon established county-wide unwritten standard operating procedures for Lexington County magistrate court

judges, court clerks, and sheriffs' deputies that resulted in the Plaintiffs' automatic arrest and incarceration, without predeprivation court hearings or the assistance of counsel, when they could not pay money owed to those courts. *Compare* Defs.' Br. at 8 (asserting that Plaintiffs' injuries resulted only from "magistrates' [individual] judicial decisions" and sheriff's deputies' individual "acts of . . . arrest[ing] persons pursuant to facially valid court orders") *with* JA-362–67 (detailing Defendants' specific, administrative conduct that Plaintiffs allege resulted in county-wide standard operating procedures causing their unlawful arrest and incarceration). None of these disputes concern a pure question of law or even a fact-bound issue that may be resolved through application of law. As in *Al Shimari*, this Court lacks jurisdiction precisely because the district court identified "the need for additional development of the record," which is a "matter[] more within a district court's ken." 679 F.3d at 221.

Defendants attempt to distinguish *Al Shimari* by characterizing the immunity doctrine asserted in that case as "rare and esoteric." Defs.' Br. at 16. But nothing in *Al Shimari* limits to the context of *Mangold* immunity this Court's holding that there is no federal appellate jurisdiction over an interlocutory appeal from an order denying immunity due to the existence of genuine issues of material fact. 679 F.3d at 223 ("Because the courts' immunity rulings below turn on genuineness, we lack jurisdiction to consider them on an interlocutory appeal."). *Mangold* immunity—

just like judicial, quasi-judicial, and legislative immunity—is immunity from *suit*, not just from ultimate liability. *See id*. Nevertheless, this Court made clear in *Al Shimari* that even when a defendant seeks immunity from suit, this Court may only exercise jurisdiction over an interlocutory appeal from a denial of immunity when the stringent requirements of the collateral order doctrine are met. *Id*.[16]

Nor is this appeal distinguishable from *Al Shimari* on the basis of Defendants' characterization of *Mangold* immunity as an inquiry assertedly more "fact-intensive" than the immunity doctrines at issue in this appeal. Defs.' Br. at 16. As described above, numerous fact-intensive questions must be resolved for the district court to determine whether Reinhart, Adams, and Koon may avail themselves of judicial, quasi-judicial, and legislative immunity from the damages claims in this case, which challenge conduct taken in furtherance of their responsibilities as the administrative leadership of Lexington County's magistrate courts, the LCSD, and the Detention Center. *See* discussion *supra* Statement of the Case, I.B; 31–32.

[16] Defendants also summarily cite *Mitchell v. Forsyth*, 472 U.S. 511 (1985) in their invocation of this Court's jurisdiction under 28 U.S.C. § 1291. Defs.' Br. at 1. *Mitchell* stands for the uncontroversial proposition that "the denial of a substantial claim of absolute immunity is an order appealable before final judgment . . . ." 472 U.S. at 525. In *Al Shimari*, this Court recognized *Mitchell*, but nevertheless ruled that there is no federal appellate jurisdiction over a lower court order denying immunity due to the existence of factual issues because a district court must ensure that it has a proper record on which to rule that the asserted absolute immunity applies. 679 F.3d at 218, 220–223.

This Court thus lacks jurisdiction under the collateral order doctrine over this interlocutory appeal, which solely challenges a ruling that there are genuine issues of material fact as to whether asserted immunities bar Plaintiffs' damages claims.

II. DEFENDANTS FAIL TO MEET THEIR SUMMARY JUDGMENT BURDEN TO DEMONSTRATE ENTITLEMENT TO ABSOLUTE IMMUNITY WHEN THE LIMITED RECORD IS VIEWED IN THE LIGHT MOST FAVORABLE TO PLAINTIFFS.

A motion for summary judgment requires Defendants, as the moving party, to show that there are no genuine issues of material fact, and that they are "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The district court recognized that the question of whether Defendants are shielded from Plaintiffs' damages claims by the doctrines of judicial, quasi-judicial, or legislative immunity cannot be resolved without discovery. Although Defendants have the burden of establishing that absolute immunity is justified, *see Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993), they chose to move for summary judgment before discovery commenced, framing their argument as a legal determination and offering no evidentiary support. Plaintiffs' allegations, by contrast, are substantiated by evidence that suggests Defendants oversaw and enforced county-wide practices in an administrative capacity—and Plaintiffs have shown that discovery will further

develop the record the district court needs to evaluate Defendants' claim to absolute immunity.

Because Defendants fail to show that there is no genuine dispute as to any material fact and that they are entitled to absolute immunity as a matter of law, Fed. R. Civ. P. 56(a), the district court's order should be affirmed.

A. Defendants fail to demonstrate entitlement to judicial and quasi-judicial immunity for the challenged conduct of overseeing and enforcing unwritten county-wide policies.

Absolute judicial immunity protects judges from liability for monetary damages for actions taken in their judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978). The "touchstone" for invoking judicial immunity is whether the claim concerns a judge's "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Antoine*, 508 U.S. at 435–36 (citation omitted). The doctrine thus applies to "paradigmatic judicial acts" that involve "resolving disputes between parties who have invoked the jurisdiction of a court." *Forrester v. White*, 484 U.S. 219, 227 (1988). Immunity shields judges from exposure to personal liability "for erroneous decisions," which "would manifestly detract from independent and impartial adjudication." *Id.* at 226–27.

While judges enjoy absolute immunity for actions taken in their judicial capacity, the doctrine does not extend to actions taken in the "administrative . . . or

executive functions that judges may on occasion be assigned by law to perform." *Id*. at 227. In *Forrester*, for example, the Supreme Court held that a state court judge was not entitled to immunity for his decision to demote and discharge a probation officer. *Id*. at 230. The Supreme Court distinguished between "truly judicial acts" and "acts that simply happen to have been done by judges," explaining that acts may be administrative even if they are "quite important in providing the necessary conditions of a sound adjudicative system." *Id*. at 227, 229. Courts must be vigilant in distinguishing between judicial and administrative acts because "[a]bsolute immunity . . . is 'strong medicine, justified only when the danger of officials being deflected from the effective performance of their duties is very great.'" *Id*. at 230 (citation and alterations omitted); *see also Burns v*. *Reed*, 500 U.S. 478, 487 (1991) ("We have been 'quite sparing' in our recognition of absolute immunity, and have refused to extend it any 'further than its justification would warrant.'" (citations omitted)).

Defendants try to portray their conduct as "judicial" rather than "administrative" by mischaracterizing Plaintiffs' claims as challenging a series of sentencing and enforcement decisions made by magistrate judges and sheriff's deputies. For example, Defendants assert that "the only question [in this case] is whether the magistrates exercised judicial functions in the course of adjudicating Plaintiffs' criminal cases." Defs.' Br. at 16. But Plaintiffs do not contest the

specific decisions made by magistrate judges in any of their cases. Plaintiffs did not sue each of the judges who issued bench warrants for their arrest.[17] And Plaintiffs do not seek damages for any individual magistrate judge's decision to accept their guilty pleas, convict them, or impose on them a fine-or-jail sentence.

Instead, Plaintiffs seek damages from Defendants Reinhart and Adams solely for actions taken in exercise of their administrative duties as Chief Judge and Associate Chief Judge for Administrative Purposes of the Lexington County Summary Courts to oversee court fine and fee collection procedures, to convene magistrate judges to establish uniform procedures, to administer the County's Bond Court, to determine court schedules and operating hours, to assign cases to magistrate judges, and to monitor and report procedural noncompliance by summary court judges to state authorities. *See* January 2017 Order ¶¶ 3, 5–6, 9–10, 15. For example, Plaintiffs allege that Reinhart and Adams decided not to require or permit the Bond Court or the magistrate courts that issued payment bench warrants to hold ability-to-pay hearings for indigent people arrested and jailed on these warrants. JA-190. Plaintiffs contend that Reinhart and Adams could have made predeprivation ability-to-pay hearings mandatory by exercising their administrative authority to assign cases, increase the size of magistrate court

[17] For example, as Defendants acknowledge, Plaintiffs did not sue the magistrate judges who adjudicated the cases of Ms. Corder or Mr. Wright. *See* Defs.' Br. at 10 n.6.

dockets and the hours of magistrate court operation, and require magistrate judges to work on evenings and weekends. JA-185. Plaintiffs also allege that Defendants Reinhart and Adams could have reported and corrected magistrate judges' routine misuse of bench warrants to coerce fine and fee payments and to incarcerate indigent people, which falls outside the use of bench warrants to secure court appearance, as recognized by South Carolina law. JA-184–86.

Defendants Reinhart's and Adams' exercise of administrative power to oversee and enforce these policies is not the type of "paradigmatic judicial act" that is entitled to absolute immunity. *Forrester*, 484 U.S. at 227; *see also Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734 (1980) (describing consideration of appeals from lower court decisions in disciplinary cases as "a traditional adjudicative task"). To the contrary, Plaintiffs challenge policies that arise out of duties that involve "supervising court employees and overseeing the efficient operation of a court" and are therefore administrative in nature. *Forrester*, 484 U.S. at 229. The U.S. Court of Appeals for the Sixth Circuit denied a similar assertion of absolute immunity in holding that a presiding judge's order declaring a moratorium on the issuance of writs to evict tenants during the holiday season was administrative in nature rather than judicial. *Morrison v. Lipscomb*, 877 F.2d 463, 464–66 (6th Cir. 1989). Citing *Forrester*, the court explained that "[a]ny time an action taken by a judge is not an

adjudication between parties, it is less likely that the act is a judicial one." *Id*. at 466. The presiding judge was not entitled to judicial immunity because the moratorium "was a general order, not connected to any particular litigation." *Id*. Of critical importance, "[t]he order did not alter the rights and liabilities of any parties but, rather, instructed court personnel on how to process the petitions made to the court." *Id*. The same is true for the conduct challenged in this case.

Plaintiffs' evidence is not limited to the South Carolina Supreme Court Orders that gave Defendants Reinhart and Adams the authority to establish and oversee the policies Plaintiffs challenge, including the power and responsibility of establishing county-wide court fine and fee collection procedures. January 2017 Order ¶ 15. Plaintiffs introduced evidence from hundreds of court and jail records supporting their allegation that the unwritten Default Payment and Trial in Absentia Policies result in the widespread use of payment bench warrants to effect the automatic arrest and incarceration of people unless they pay the full amount of fines and fees owed to the County's magistrate courts. *See* JA-15–50. Plaintiffs' declarations describe their own experiences after they were unable to pay fines and fees imposed in traffic or misdemeanor cases. These experiences include their arrest pursuant to bench warrants ordering them to pay the entire amount owed or serve jail time, and their incarceration without predeprivation court hearings to assess ability to pay and without representation by court-appointed counsel. JA-

56–58; JA-400–419. Plaintiffs also cited evidence that the magistrate court fines and fees are a critical source of County revenue.[18]

Defendants did not contest Plaintiffs' evidence. Defendants offered—and continue to offer—nothing more than rhetoric in response to Plaintiffs' evidence of the unwritten Default Payment and Trial in Absentia Policies. Defendants acknowledge that judges perform administrative tasks in addition to their judicial functions, and that the South Carolina Supreme Court Orders appointing the chief judges and associate chief judges for administrative purposes outline the administrative duties to be performed by judges serving in these roles. Defs.' Br. at 11–12. But they refuse to acknowledge that Plaintiffs seek damages from Defendants Reinhart and Adams because they exercised these administrative powers and duties in a manner that established and sanctioned the unwritten policies resulting in the widespread arrest and incarceration of Plaintiffs and other indigent people who could not pay money to courts, without predeprivation ability-to-pay hearings or representation by court-appointed counsel. JA-183–187.

While Defendants say they assume for purposes of this appeal that the challenged policies exist, Defs.' Br. at 3, 18, they do not even attempt to explain how Defendants' implementation and oversight of the policies is a judicial function rather than administrative in nature. They instead alternate between focusing on

[18] *See* discussion *supra* note 1.

Plaintiffs' individual cases and claiming the policies do *not* exist. *Id*. at 10, 13–16. The latter argument highlights the existence of a critical dispute of material fact: Defendants assert in their summary of argument that Plaintiffs' "incarcerations resulted from judicial determinations, and nothing else." *Id*. at 8. But Plaintiffs allege that their incarcerations resulted from the unwritten *policies* sustained and enforced by Defendants as the administrative leadership of Lexington County's magistrate court system, which involves numerous individual courts. *See* JA-168; JA-176–78.

The only evidence Defendants do cite supports Plaintiffs' claims. Defendants note that on September 15, 2017, South Carolina Chief Justice Donald Beatty, "as head of the South Carolina Judicial Department," issued a memorandum instructing that "in the absence of an appointment of counsel or waiver of such appointment, 'summary court judges shall not impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted.'" Defs.' Br. at 14 n.7 (quoting JA-60–61). A subsequent memorandum of the Office of Court Administration addressed procedures for trials in absentia, the issuance of bench warrants, and appointment of counsel. JA-618–638. These memoranda did not stop the conduct at issue in this case,[19] but they

[19] The district court found there is "an issue of material fact as to the application of Chief Justice Beatty's Memorandum in Magistrate Court and whether the alleged conduct could not reasonably be expected to recur." JA-666;

directly contradict Defendants' contention that a county-wide policy governing the misuse of payment bench warrants and the absence of court hearings and access to counsel could not exist—and they suggest that Chief Justice Beatty was sufficiently concerned about the existence of unwritten, county-wide policies that he attempted to correct them with a *written* policy.

Defendants similarly offer no evidence to show that Defendant Koon is entitled to quasi-judicial immunity, resorting once again to mischaracterizing Plaintiffs' claims. Courts have extended the protections of judicial immunity to non-judicial officers when "their judgments are 'functional[ly] comparab[le]' to those of judges—that is, because they, too, 'exercise a discretionary judgment' as part of their function." *Antoine*, 508 U.S. at 436 (alterations in original) (citation omitted). To be protected, the function performed must "involve the exercise of discretion in resolving disputes." *In re Castillo*, 297 F.3d 940, 948 (9th Cir. 2002) (citing *Antoine*, 508 U.S. at 435).

Defendants' only argument supporting Defendant Koon's claim to absolute quasi-judicial immunity is that his officers make arrests pursuant to facially valid bench warrants. *See* Defs.' Br. at 16–17. But Plaintiffs do not seek damages from

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see also JA-62–64; JA-15–50. It also rejected Defendants' motion for reconsideration of this ruling because "issues of material fact remain as to the implementation and compliance with the remedial actions" of the Office of Court Administration. Opinion and Order at 15, No. 3:17-cv-01426-MBS-SVH (D.S.C.), ECF No. 107.

Koon for arresting and incarcerating them pursuant to bench warrants. (None of the Plaintiffs were arrested or booked by Koon.) Plaintiffs seek damages only for Koon's exercise of administrative authority, as the head of the LCSD and Detention Center, in establishing the standard operating procedures that led to the widespread arrests and incarceration of indigent people like Plaintiffs without court hearings and access to counsel. JA-257–258; JA-265.

Defendants have not disputed that Koon has numerous administrative responsibilities. As discussed above, Koon directs and manages the day-to-day operations of all LCSD and Detention Center personnel. *See* discussion *supra* Statement of the Case, I.B.2. Plaintiffs allege that Koon carried out these administrative duties in a manner that oversaw and enforced a standard operating procedure resulting in the routine use of payment bench warrants to arrest and incarcerate people unable to pay the full amount of their court-debt before booking. JA-165. Specifically, Plaintiffs allege that Defendant Koon deliberately prioritized the use of the limited LCSD resources to execute payment bench warrants at people's homes and during traffic and pedestrian stops, and enlisted other law enforcement agencies to locate debtors. *Id*. Plaintiffs also allege that Koon directed, supervised, and trained LCSD deputies and Detention Center staff to inform bench warrant arrestees that the only way to avoid incarceration was to pay in full the amount of money identified on a payment bench warrant. JA-188–189.

Plaintiffs allege that Koon directed, supervised, and trained Detention Center staff to book people automatically upon verifying inability to pay the full amount of fines and fees identified on payment bench warrants. JA-189. And Plaintiffs allege that Koon's direction, supervision, and training of LCSD deputies and Detention Center staff resulted in the systematic failure to notify bench warrant arrestees of their right to request counsel and to bring them to the Bond Court, or any other magistrate court, for an ability-to-pay hearing. JA-190–191.

As with their claims against Defendants Reinhart and Adams, Plaintiffs' claims against Defendant Koon challenge county-wide policies that he oversaw and enforced, which impact hundreds of indigent people, rather than the acts of individual deputies to serve bench warrants on Plaintiffs or to transport them to jail. Defendants have not established through undisputed facts that Koon never exercised the administrative authority granted to him by law or that his exercise of these powers did not sustain the alleged policies challenged by Plaintiffs. Plaintiffs' allegations and evidence—which must "be believed, and all justifiable inferences . . . drawn in [their] favor," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)—confirm that Defendants have not satisfied their burden of demonstrating that they are entitled to judicial and quasi-judicial immunity from Plaintiffs' claims as a matter of law.

B. Defendants fail to demonstrate entitlement to legislative immunity for the challenged conduct of overseeing and enforcing unwritten county-wide policies.

Defendants argue in the alternative that they are entitled to absolute legislative immunity, but the conduct Plaintiffs challenge does not fall within the scope of legislative activity protected by the doctrine. The purpose of absolute legislative immunity "is to insure that the legislative function may be performed independently without fear of outside interference." *Consumers Union*, 446 U.S. at 731. Legislative immunity for non-legislators is strictly limited to functionally legislative activities, which "typically involve the 'adoption of prospective, legislative-type rules'" and "bear the outward marks of public decisionmaking, including the observance of formal legislative procedures." *E.E.O.C. v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 184 (4th Cir. 2011) (citations and alterations omitted). Plaintiffs do not allege that Defendants engaged in the type of formal rulemaking that is protected by absolute legislative immunity. None of the challenged conduct "bear[s] the outward marks of public decisionmaking" or involves "the observance of formal legislative procedures." *Id.*

Defendants present a theory of legislative immunity that is unsupported by law and that would bar all suits against any final policymaker or government officer responsible for overseeing or enforcing a system that results in constitutional violations. Defendants rely on inapposite cases involving claims

challenging state supreme courts' exercise of delegated legislative power to promulgate formal rules. *See Consumers Union*, 446 U.S. at 721–22, 734 (holding that Virginia Supreme Court justices acted as "the State's legislators" when they promulgated professional conduct rules for attorneys under authority delegated to them by Code of Virginia); *Abick v. Michigan*, 803 F.2d 874, 878 (6th Cir. 1986) (Michigan Supreme Court justices are entitled to legislative immunity from claims relating to their promulgation of court rules of practice and procedure, a responsibility delegated to them by the Michigan Constitution).

Defendants also rely on irrelevant cases that distinguish between the rulemaking process, which is protected legislative activity, and legislators' application of rules to a particular individual, which is not. Defs.' Br. at 19. Plaintiffs do not seek damages for the application of the unwritten policies in their cases. *See Scott v. Greenville Cty.*, 716 F.2d 1409, 1423 (4th Cir. 1983) (city legislators did not have absolute immunity from suit for dealing with the plaintiff's specific permit application); *S. Lyme Prop. Owners Ass'n, Inc. v. Town of Old Lyme*, 539 F. Supp. 2d 547, 558–59 (D. Conn. 2008) (town zoning commission members were immune from personal liability for adopting seasonal use restrictions and establishing policies for implementing the restrictions). Rather, Plaintiffs challenge Reinhart and Adams' exercise of their administrative powers over fine and fee collection procedures, case assignment, the Bond Court,

magistrate court operating hours and schedules, and the monitoring and reporting of procedural noncompliance by magistrate courts to state authorities. JA-183–87. Similarly, Plaintiffs challenge Koon's administrative decisions to prioritize payment bench warrant executions and his direction, training, and supervision of LCSD officers and Detention Center staff concerning what to tell people arrested on payment bench warrants, when to book them in jail, and when not to transport them to the Bond Court or the magistrate court that issued the warrant. JA-187–87.

Finally, Defendants cite no authority to support their contention that legislative immunity applies to "the enactment of general, forward-looking policies" by non-legislators like Defendants. Defs.' Br. at 19. In *Youngblood v. DeWeese*, the court merely held that legislative immunity extends to state senators' acts of allocating the total appropriation for office staffing among the state legislators because the acts were "conducted pursuant to the legislative authority implicit in the appropriations legislation itself." 352 F.3d 836, 841 (3d Cir. 2003). The Supreme Court's holding in *Bogan v. Scott-Harris*, 523 U.S. 44 (1998), was relevant to that ruling because it addressed local legislators' acts of introducing, voting for, and signing a budget ordinance—conduct the Supreme Court held was entitled to immunity because it was akin to traditional legislation:

> Though the Court did not outright require an act to be legislative in both 'formal[] character' and substance in order to enjoy immunity, it

> observed that in this case the budget ordinance in substance 'bore all the hallmarks of traditional legislation' because it 'reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides to its constituents.'

Youngblood, 352 F.3d at 840 (quoting *Bogan*, 523 U.S. at 55–56). Defendants are not legislators like the defendants in *Youngblood* and *Bogan*, and thus are not entitled to the same absolute immunity, even if they could demonstrate that the unwritten policies at issue in this case "bore all the hallmarks of traditional legislation," which they have entirely failed to do.

C. Plaintiffs demonstrate that discovery will further develop the record relevant to Defendants' claims to absolute immunity.

While Plaintiffs were able to point to evidence supporting their allegations in response to Defendants' summary judgment motion, they also demonstrated that discovery will reveal additional facts relevant to the district court's evaluation of Defendants' immunity claims. Plaintiffs propounded targeted requests for production designed to uncover information about whether, and to what extent, the policies and practices alleged to have caused Plaintiffs' unlawful arrests and incarceration are attributable to Defendants' administrative actions. JA-423–426 ¶¶ 14–26; JA-454–510. Once they receive responsive documents, Plaintiffs plan to depose Defendants Reinhart and Adams about the exercise of their duties under the January 2017 Order, which include establishing fine and fee collection procedures, administering the Bond Court, assigning magistrate court cases, establishing

magistrate court operating hours and schedules, and correcting and reporting to state authorities procedural noncompliance by magistrate judges. JA-427 ¶ 32. Plaintiffs will also depose Defendant Koon about the scope of his duties and powers as the administrative head of the LCSD and Detention Center. JA-428 ¶ 33.

Plaintiffs expect the requested documents and depositions to reveal, among other things: whether Defendants Reinhart and Adams exercised their administrative authority over fine and fee collection procedures, the Bond Court, magistrate court case assignment, and magistrate court operating hours and schedules to establish and enforce the Default Payment and Trial in Absentia Policies; whether Reinhart and Adams chose not to report to state authorities and correct magistrate judges' routine misuse of bench warrants; and whether the policies at issue led to the arrest and incarceration of Plaintiffs and other indigent people without a predeprivation judicial inquiry into their ability to pay or representation by court-appointed counsel. JA-424–425 ¶¶ 19–21. Plaintiffs also expect to discover whether Defendant Koon exercised his administrative authority to manage the LCSD, set enforcement priorities, allocate resources, and oversee and train deputies and Detention Center staff in a manner that led to the arrest and incarceration of indigent people who could not pay the amounts identified on

payment bench warrants before they were booked in the Detention Center. JA-425 ¶ 23.

The district court recognized that "disputed questions that arise with respect to claims of immunity are not the exception" and that "fundamentally, a court is entitled to have before it a proper record, sufficiently developed through discovery proceedings, to accurately assess any claim, including one of immunity." JA-667 (quoting *Al Shimari*, 679 F.3d at 220). Other courts have similarly found discovery necessary before evaluating a claim of absolute immunity. *See, e.g.*, *Jaggers v. City of Alexandria*, No. 08-5213, 2009 WL 233244, at *5–6 (6th Cir. Feb. 2, 2009) (concluding that discovery was necessary before determining whether city council members' actions were legislative in nature entitling them to absolute legislative immunity); *Miller v. Gammie*, 335 F.3d 889, 894, 900 (9th Cir. 2003) (affirming district court's denial of motion to dismiss because discovery was needed before the court could evaluate functions performed by defendants to determine entitlement to absolute quasi-judicial immunity); *Lawson v. Abrams*, 863 F.2d 260, 262–63 (2d Cir. 1988) (holding that "the availability of a defense of" absolute immunity to claims against a prosecutor that were not clearly foreclosed by precedent "must await the development of facts during discovery").

Defendants contend that discovery should not be allowed because Plaintiffs allege only "unsupported assumptions." Defs.' Br. at 15. In fact, Plaintiffs' claims

are based on highly detailed allegations in a 122-page complaint (JA-151–273) that are further bolstered by the evidence discussed above—evidence Defendants did not dispute. *See* discussion *supra* Statement of the Case, I.D. This case is therefore nothing like the cases Defendants cite, where the plaintiffs proffered no evidence and relied on threadbare or hypothetical allegations. *See Bosarge v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 443 (5th Cir. 2015) (plaintiff did not plausibly allege that narcotics agents' identification of him as a participant in a drug deal was reckless or knowingly false and was not entitled to discovery just because he "strongly suspected that exculpatory evidence exists"); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 530, 532, 535 (6th Cir. 2007) (plaintiffs alleged that Tennessee's driver license law discriminated against undocumented aliens by issuing them driving certificates instead of licenses but failed to allege actual harm and instead merely asserted the possibility of differential treatment by police officers and insurance companies); *Pruitt v. Alba Law Group, P.A.*, No. DKC 15-0458, 2015 WL 5032014, at *4–5 (D. Md. Aug. 24, 2015) (plaintiff "provides no basis and pleads no facts" supporting her allegation "upon information and belief" that the defendants' assessed fees were unjust, not actually incurred, or excessive); *Dupree v. EMC Mortg. Corp.*, No. 4:10-CV-356, 2010 WL 11553160, at *2 (E.D. Tex. Oct. 19, 2010) (although the plaintiff's five-

page complaint was "devoid of factual allegations supporting specific causes of action," the court granted leave to amend).

III. DEFENDANTS WAIVED ANY ARGUMENT THAT ALLEGATIONS CONCERNING DEFENDANTS' UNWRITTEN POLICIES AND PRACTICES ARE IMPLAUSIBLE.

Defendants argue for the first time on appeal that Plaintiffs' allegations regarding Defendants' "'unwritten policies' are so speculative that they fail to state a claim that can defeat immunity defenses." Defs.' Br. at 1, 13. The proper and timely vehicle for such an argument is a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Occupy Columbia v. Haley*, 738 F.3d 107, 116 (4th Cir. 2013) (a Rule 12(b)(6) motion to dismiss "tests the sufficiency of a complaint"). Defendants failed to file any such motion. Instead, Defendants elected to answer Plaintiffs' Second Amended Complaint, to file a motion seeking judgment as a matter of law on Plaintiffs' damages claims based on asserted immunities, and to simultaneously refuse to participate in discovery. *See* discussion *supra* Procedural History. Defendants waived any challenge to the plausibility of Plaintiffs' damages claims and fail to meet the high burden of showing that fundamental error or a denial of fundamental justice would result if the argument is deemed waived.

It is well-settled that "[a]bsent exceptional circumstances . . . [this Court does] not consider issues raised for the first time on appeal." *Robinson v. Equifax*

Information Services, LLC, 560 F.3d 235, 242 (4th Cir. 2009) (citation omitted); *see also Pornomo v. United States*, 814 F.3d 681, 686 (4th Cir. 2016). Specifically, "[w]hen a party in a civil case fails to raise an argument in the lower court and instead raises it for the first time" on appeal, this Court will deem the argument waived absent a showing that "'fundamental error' or a denial of fundamental justice" would result. *In re Under Seal*, 749 F.3d 276, 285 (4th Cir. 2014) (citation omitted). The fundamental error standard places a high burden on a party seeking to raise an argument for the first time on appeal in a civil case, and is even more stringent than the plain error standard required to overcome waiver in a criminal case. *See id.*

This Court applies the fundamental error standard to show "respect for the [integrity of the] lower court, [avoid] unfair surprise to the other party, and [acknowledge] the need for finality in litigation and conservation of judicial resources." *In re Under Seal*, 749 F.3d at 286 (alterations in original) (citation omitted). The waiver rule "ensure[s] that the parties develop the necessary evidence below, and prevent[s] parties from getting two bites at the apple by raising two distinct arguments." *Id.* (internal quotation marks and citations omitted). The Supreme Court has emphasized that the waiver rule also affords "[d]ue regard for the trial court's processes and time investment," *Wood v. Milyard*, 566 U.S. 463, 473 (2012), and "ensure[s] that parties can determine when

an issue is out of the case, and that litigation remains, to the extent possible, an orderly progression," *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487 n.6 (2008) .

Defendants had ample opportunity in the proceedings below to challenge the plausibility of Plaintiffs' allegations concerning Defendants administrative conduct. Instead of timely challenging the sufficiency of any of Plaintiffs' three complaints through a motion to dismiss, Defendants chose to answer each one and to file successive summary judgment motions while simultaneously refusing to participate in discovery. The district court had no opportunity to evaluate the contention Defendants now raise on appeal: that Plaintiffs fail to meet the requirement of Federal Rule of Civil Procedure 8 to plausibly allege that Defendants exercised administrative authority to enforce standard operating procedures relating to the collection of magistrate court fines and fees. This Court's consideration of this belated argument for the first time on appeal would frustrate interests advanced by the waiver rule, including the need for finality in litigation, conservation of judicial resources, and the goal of "ensur[ing] that the parties develop the necessary evidence below." *In re Under Seal*, 749 F.3d at 286.

Moreover, there would be no fundamental error or denial of fundamental justice if this Court deems Defendants' plausibility challenge waived. As described above, Plaintiffs' Second Amended Complaint is replete with detailed factual allegations demonstrating the plausibility of the contention that Reinhart,

Adams, and Koon exercised their administrative responsibilities under South Carolina law to enforce unwritten standard operating procedures resulting in the automatic arrest and incarceration of indigent people who could not pay money to Lexington County's magistrate courts. *See* discussion *supra* Statement of the Case, I. Plaintiffs also provide supporting evidence, including court and jail records showing that in 2017, approximately one thousand people were at risk of arrest and lengthy incarceration in the Detention Center, without predeprivation court hearings or the assistance of counsel, because they could not pay money to magistrate courts. *Id*. at I.D. Such detailed factual allegations and evidence render far from implausible Plaintiffs' allegation that Defendants enforced and sustained the challenged unwritten standard operating procedures. *See Occupy Columbia*, 738 F.3d at 116 ("the complaint must contain facts sufficient 'to raise a right to relief above the speculative level' and 'state a claim to relief that is plausible on its face.'" (citation omitted)). As discussed above, the cases Defendants cite in support of their belated plausibility argument are easily distinguishable. *See* discussion *supra* at 51–52.

CONCLUSION

For the foregoing reasons, this interlocutory appeal should be dismissed for lack of jurisdiction. In the alternative, the district court's order should be affirmed

because Defendants fail to show entitlement to pre-discovery summary judgment on the basis of asserted immunities as a matter of law.

Date: August 8, 2018.

Respectfully submitted by,

s/ Nusrat J. Choudhury

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REQUEST FOR ORAL ARGUMENT

Due to the novel posture of this case, and to the extent this Court finds it necessary to resolve any complex issue presented, Plaintiffs respectfully request oral argument pursuant to Local Rule 34(a).

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements of Rule 32(a)(5), the type-style requirements of Rule 32(a)(6), and the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure. This brief contains 12,961 words, excluding the parts of the brief described in Rule 32(f).

s/ Nusrat J. Choudhury

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Date: August 8, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2018, I electronically filed the foregoing Brief for Plaintiffs-Appellees with the Clerk of the Court using the CM/ECF system, which will send a notice of such filing to the following registered CM/ECF users:

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