

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

FRANCISCO DE LUNA and ELIZABETH DIAZ,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

HIDALGO COUNTY, TEXAS; GUADALUPE
TREVINO, in his official capacity as Hidalgo
County Sheriff; MARY ALICE PALACIOS,
GILBERTO SAENZ, JESUS MORALES, BOBBY
CONTRERAS, ROSA E. TREVINO, LUIS
GARZA, ISMAEL OCHOA, CHARLIE
ESPINOZA, E. "SPEEDY" JACKSON, in their
official capacities as Hidalgo County Magistrates
and Justices of the Peace,

Defendants.

CLASS ACTION COMPLAINT

Civ.

PRELIMINARY STATEMENT

1. This class action lawsuit challenges the routine practice in Hidalgo County, Texas of jailing teens age seventeen and older in the adult county detention center—for days, weeks and sometimes months—because of their inability to pay fines and costs associated with missing school. In many cases, the teens' failure to attend school occurred and was ticketed long before they turned seventeen, the age when adult criminal responsibility attaches in Texas.

2. Since January 2009, approximately 150 teens served time in Hidalgo County jail that may be attributed to unpaid fines for failure to attend school or other school-related misdemeanor offenses that are not supposed to be punishable by jail time. About 60 of these

teens were jailed solely because of outstanding fines related to truancy and other school tickets, and half spent more than a week in the county jail.

3. The process by which many of these teens landed in jail spans excessive ticketing of underage students by public school police, adjudication in Hidalgo County justice courts, arrest by Hidalgo County peace officers, booking and processing by Hidalgo County Sheriff's Office staff, commitment to jail by a Hidalgo County magistrate, and finally incarceration in the Hidalgo County Adult Detention Facility.

4. While the legal claims in this case challenge the County's consistent failure to conduct indigency examinations prior to the confinement of individuals in jail to discharge unpaid fines and costs, the broader context for these unconstitutional practices amplifies their impact on children and families in Hidalgo County.

5. Texas law permits and encourages the assessment of multiple fines of up to \$500 per ticket against students for chronic failure to attend school. On information and belief, between 2005 and 2009, the number of truancy or failure to attend school charges filed by Texas schools increased by more than 40 percent, from about 85,000 to 120,000. Excessive ticketing for school-related conduct can quickly amount to thousands of dollars in fines and places an onerous burden on low-income families.

6. The residents of Hidalgo County are among the poorest not just in Texas, but in the entire United States. The median per capita income in the County is \$9,899, and 45.1 percent of children ages eighteen and under live in poverty.¹

7. Education rates in the county are similarly depressed. The three cities that together comprise Hidalgo County—McAllen, Edinburg and Mission—were recently ranked 98th

¹ U.S. Census Bureau, 2008 State and County Estimates, *available at* <http://www.census.gov/did/www/saige/downloads/estmod08/est08ALL.xls>.

among the country's largest 100 metropolitan areas based on the proportion of residents aged 25 and older with a bachelor's degree.² The rate of attrition in Hidalgo County high schools is 45 percent.³ Acute poverty in the region has been directly correlated to low education rates.

8. The moniker "school to prison pipeline" refers to the process by which students who manifest even minor behavioral issues at school or commit non-violent status offenses such as truancy are adjudicated through a criminal or quasi-criminal process, leading to involvement with the juvenile justice system, which in turn is a significant predictor of involvement with the adult criminal justice system. Rather than increasing the likelihood that such students will complete school and graduate, excessive ticketing for failure to attend school, and aggressive enforcement of such tickets by courts, often drives students to drop out.⁴

9. The Named Plaintiffs are two low-income, eighteen-year-old residents of Hidalgo County whose trip through the pipeline ended in the Hidalgo County jail, where they were incarcerated for several weeks due to their inability to pay accumulated fines assessed for their truancy and school-related tickets.

10. The Named Plaintiffs allege that the actions, inactions, customs and practices of Hidalgo County magistrates and sheriff's department staff in booking, processing, and adjudicating individuals with outstanding fines and costs, and in committing them to jail to discharge those debts, violates both the equal protection and due process guarantees of the

² Brookings Inst. Metro. Policy Program, *State of Metropolitan America: On the Front Lines of Demographic Transformation* 108 (2010), available at http://www.brookings.edu/~media/Files/Programs/Metro/state_of_metro_america/metro_america_report.pdf.

³ Annie E. Casey Found., Kids Count Data Center: Profile for Hidalgo County, available at <http://datacenter.kidscount.org/data/bystate/stateprofile.aspx?state=TX&loc=6622> (last visited July 22, 2010).

⁴ For background and data on the pipeline in Texas, see Texas Appleseed's *Texas' School-to-Prison Pipeline: Drop-Out to Incarceration – The Impact of School Discipline and Zero Tolerance*, available at http://www.texasappleseed.net/index.php?option=com_content&view=category&layout=blog&id=27&Itemid=265.

Fourteenth Amendment to the United States Constitution. The Named Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 to enjoin those unconstitutional practices on behalf of similarly situated persons, and to seek compensation for their own emotional injury.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. §§ 1343(a)(3) and (4) because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to recover damages and secure equitable or other relief for the violation of those rights.

12. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.

13. This Court has jurisdiction to grant injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because one or more Defendants reside in this district and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.

PARTIES

I. Named Plaintiffs

15. Plaintiff **Francisco De Luna** is eighteen years old and lives in McAllen, Texas. Francisco was jailed in the Hidalgo County Adult Detention Facility for 18 days in January 2010 because of his inability to pay over \$10,000 in fines assessed on more than 20 tickets for failure to attend school and other school-related rule violations dating back to 2005, when he was thirteen years old. He would have remained in jail for over 100 days if the public defender had

not noticed Francisco's case in a random review of jail logs and prepared a writ for his release. Although not currently enrolled, Francisco has not graduated from high school and has a statutory right to attend public school in Texas until the age of 21.

16. Plaintiff **Elizabeth Diaz** is eighteen years old and lives in Edinburg, Texas. Elizabeth was jailed in the Hidalgo County Adult Detention Facility for 18 days in February-March 2010 because of her inability to pay over \$1,600 in fines assessed on three tickets for failure to attend school dating back to 2006, when Elizabeth was fourteen years old. Elizabeth is enrolled in Johnny G. Economedes High School and hopes to graduate in December 2010.

II. Defendants

17. Defendant **Hidalgo County**, a county in south Texas with a population of approximately 750,000, is a corporate and political entity organized pursuant to the Texas Local Government Code. Hidalgo County is a "person" for the purposes of 42 U.S.C. § 1983.

18. Defendant Hidalgo County **Sheriff Guadalupe Trevino** is the keeper of the county jail and the legal custodian of all individuals in the custody of the Hidalgo County Sheriff's Office (HCSO). He supervises, oversees and is ultimately responsible for sheriff's department officers and administrative staff who process, book and detain individuals at the county jail pursuant to court orders. Defendant Trevino's compensation is paid by the County.

19. Defendant **Hidalgo County Magistrates and Justices of the Peace**—Mary Alice Palacios, Gilberto Saenz, Jesus Morales, Bobby Contreras, Rosa E. Trevino, Luis Garza, Ismael Ochoa, Charlie Espinoza, and E. "Speedy" Jackson—serve as Magistrates at the Hidalgo County jail on a rotating basis, performing arraignments and issuing process necessary to authorize the confinement of individuals at the jail. Justice of the peace compensation is paid by the County.

20. The policies, practices, and conditions described herein result from specific decisions, policies, or customs of Defendants. Each Defendant has actual or constructive knowledge of the policies, practices, and conditions alleged here. Each Defendant has acted, and continues to act, under color of state law with respect to all matters alleged here. All individual Defendants are sued in their official capacities.

FACTS GIVING RISE TO CLAIMS FOR RELIEF

I. Legal Consequences of Missing School in Hidalgo County

A. “Truancy” Is Different From “Failure to Attend School”

21. Chronic absence from school constitutes both the civil offense of “truancy” under the Texas Family Code, and the criminal offense of “failure to attend school” under the Texas Education Code (TEC). “Truancy” and “failure to attend school” are defined identically: as missing ten or more days or parts of days within a six-month period in the same school year, or three or more days or parts of days in a four-week period. While the definitions are the same, the consequences and procedural protections attached to each charge are quite different.

22. Only children under the age of seventeen may be charged with truancy under the Family Code, and the charge is handled by the juvenile court. A truancy charge is assigned the lowest-level sanction in the Family Code—no fine may be imposed, and the court may require counseling or community service, or simply provide assistance. A child charged with truancy is entitled to a court-appointed lawyer if indigent, and even a waiver of counsel requires the presence of an attorney.

23. Individuals of all ages who are required to attend public school may be charged with failure to attend school, a Class C misdemeanor punishable by a fine of up to \$500 but not confinement in jail. When filed in county, justice or municipal courts, the adjudication of a

charge of failure to attend school is governed by the Code of Criminal Procedure (CCP). There is no statutory entitlement to appointed counsel for indigent defendants charged with misdemeanors that are not supposed to be punishable by jail time. As a result, indigent teens charged with failure to attend school who are adjudicated by justice courts are not afforded counsel.

24. The Education Code gives school districts the option to either refer a student to juvenile court for truancy, or to file a complaint for failure to attend school against the student in county, justice or municipal court. School districts also have discretion to direct their complaints for failure to attend school and other school-related complaints to *specific* county, justice or municipal courts for adjudication.

B. The Pipeline from ECISD to Judge Mary Alice Palacios's Court

25. On information and belief, school districts in Hidalgo County file charges of failure to attend school in justice courts at vastly higher rates than they refer students to juvenile court for truancy, with the result being that the county's justice courts are the primary forum for adjudicating the issue of chronic school absences.

26. On information and belief, Judge Mary Alice Palacios—Hidalgo County Justice of the Peace, Precinct No. 4, Place 2—handles thousands of school-related misdemeanor charges each year, including the great majority of the county's failure to attend school charges and all charges filed by Edinburg Consolidated Independent School District (ECISD). ECISD is the county's largest school district by far, with over 30,000 students.

27. Palacios's disproportionate share of failure to attend school filings in Hidalgo County has been noted in the press, criticized by the criminal district attorney, and considered by the County Judge and Commissioners' Court.

28. In 2008, Hidalgo County entered into interlocal cooperation agreements with the City of Edinburg and four public school districts in the county for the specific purpose of accommodating Judge Palacios's needs for additional space for court hearings, and for clerks and juvenile case managers to manage her exploding school-related docket. In addition to ECISD, the Hidalgo, Donna, and Edcouch-Elsa independent school districts are parties to such agreements with the Hidalgo County and Edinburg. None of the other nine justices of the peace in Hidalgo County are the subject of interlocal agreements related to school-initiated misdemeanor charges.

29. The interlocal agreement between Hidalgo County and ECISD provides that ECISD will provide two full-time clerks, one truancy secretary and two case managers to staff Judge Palacios's office "to assist in managing truancy cases from the District." ECISD pays the salaries and benefits of these additional staff, while the county provides supervision related to the truancy docket in Judge Palacios's court. The interlocal agreements between Hidalgo County and the other school districts provide two additional clerks to Palacios's office under similar terms.

30. The interlocal agreement with ECISD provides that all fines related to charges of failure to attend school shall be split evenly between the County and the school district where the child attends school.

31. Because of the County's cooperation with ECISD and other school districts in directing their truancy charges to Palacios and facilitating her expanding docket, many thousands of children in Hidalgo County have been processed by her court. The vast majority of the teens and young adults who are jailed in Hidalgo County for unpaid fines associated with failure to attend school or other school-related offenses are processed by Palacios's court.

II. Adjudication of Failure to Attend School Charges in Judge Palacios's Court

32. In presiding over proceedings involving failure to attend school, justice courts have many options at their disposal other than fines to punish teens and put them on a path toward better attendance and success at school. A justice of the peace can require the teen to perform community service or attend special programs designed to teach life skills or vocational training, or can order the suspension of the teen's driver's license or permit.

33. Consistent with its general powers, a justice court may also suspend sentencing and defer final disposition of failure to attend school charges for up to six months while the defendant completes various requirements. If the teen complies with the requirements, the charge must be dismissed; if they do not, the court must notify the defendant clearly in writing of that failure.

34. If judgment is entered and a sentence imposed, the justice court has discretion to reduce the amount of the fine, permit payment in installments, or waive the fine entirely upon a finding that the teen and her family are too poor to pay.

35. Finally, under certain circumstances, the justice court may transfer a teen with multiple failure to attend school charges to the juvenile court for processing and supervision.

36. On information and belief, Judge Palacios does not utilize the range of options available to her to fairly and efficiently resolve charges of failure to attend school, either through deferred adjudication and dismissal, or judgment and sentencing.

37. Plea documents, waivers, and other critical paperwork related to final disposition are missing from Palacios's court records with respect to many charges. In addition, Palacios's court frequently sends required notice to the wrong address, although the correct address is reflected in other court documents or public records.

38. On information and belief, poor record-keeping and notice practices by Palacios's staff cause confusion among teens and their parents about when, how, and whether charges have been resolved. Many teens and their parents make numerous visits to Palacios's court, missing valuable days of work and school, without resolving their underlying charges, or without being aware that they have failed to do so

39. On information and belief, Palacios's court consistently fails to provide children and parents with written notice, as required by statute, of their obligation to update the court in writing if their address should change while their charges remain pending.

40. On information and belief, after transferring an individual's failure to attend school charges to Hidalgo County juvenile court, Palacios and the juvenile court fail to share essential information about the disposition of those charges, which often remain pending in Palacios's court.

41. As a result of the practices described above, individuals whose failure to attend school charges were adjudicated by Palacios often carry numerous pending charges, sometimes dating back several years, when they reach their seventeenth birthday. This situation can lead to unexpectedly harsh consequences for the teen.

42. A person under seventeen may not be confined for failure to pay all or part of a fine or costs imposed for the conviction of a fine-only offense. Additionally, an adult generally may not be confined for offenses based on conduct alleged to have occurred before his or her seventeenth birthday.

43. However, if a charge based on underage conduct remains unadjudicated and pending before a justice court after an individual turns seventeen, the court may issue a Notice of

Continuing Obligation to Appear (NCOA) pursuant to CCP Art. 45.060, ordering the individual's appearance at a designated time, place and date to answer the charge.

44. Failure to appear at the hearing set in the NCOA is a Class C misdemeanor committed by an adult, so prosecution for that offense is governed by adult laws respecting issuance of an arrest warrant and imposition of a fine up to \$500. It is an affirmative defense to prosecution for this offense that the individual did not receive the NCOA or was not informed of his or her obligation to keep the court informed of any address changes.

45. Palacios's court is vigilant and aggressive about sending out NCOA notices for all pending charges as soon as a child turns seventeen. Her court sends a single notice listing all charges deemed to be unresolved by her staff and setting one appearance to answer all charges. If that appearance is missed, Palacios immediately issues arrest warrants on all the pending charges based on juvenile conduct.

46. On information and belief, many NCOA notices from Palacios's court are sent to the wrong address and/or list charges that the teen and her parent were under the impression had been resolved—either in juvenile court or by Palacios. As a result, the NCOA process is like a ticking time bomb for some teens, who are unaware as they reach adulthood that they may owe thousands of dollars in unpaid fines related to old school tickets.

47. Many such teens have been confined at Hidalgo County jail because of their inability to pay those fines.

III. Commitment to Hidalgo County Jail for Unpaid Fines

48. The jailing of indigent persons for non-payment of court-assessed fines is contrary to both Texas statute and the United States Constitution. Texas law requires courts to make a written determination at a hearing that a defendant is *not* indigent and has *not* made a

good faith effort to discharge the outstanding debt through payment or community service, prior to committing that individual to jail for non-payment.

49. Notwithstanding this clear statutory and constitutional dictate, Hidalgo County maintains a consistent practice of jailing individuals who are too poor to immediately pay their outstanding fines, without giving them the option of community service or alternate payment arrangements.

50. The jailing of indigent persons for non-payment of fines creates a risk to low-income persons of all ages in Hidalgo County, though teens carrying thousands of dollars in fines associated with truancy or other school-related conduct are particularly vulnerable to this practice. Seventeen- and eighteen-year-olds from poor families rarely have income sufficient to pay the multiple truancy fines that can result from over-aggressive school ticketing.

51. Hidalgo County Sheriff's Office (HCSO) administrative staff process and book defendants upon arrival at the county jail in accordance with well-established practices and procedures that are ultimately controlled, directed and supervised on a daily basis by Sheriff Trevino.

52. Part of the booking process entails a search of electronic offender records to obtain information on all open warrants, prior convictions, and outstanding fines and costs associated with that defendant.

53. On information and belief, if documents or information related to open warrants or prior convictions is needed by the HCSO staff to complete the booking process, HCSO staff request such materials from staff at the originating court or other county departments.

54. On information and belief, prior to arraignment before a county Magistrate, administrative staff will calculate the total amount in fines and costs owed by the defendant, including any additional costs associated with the defendant's arrest and transportation to the jail.

55. By long-standing policy or custom, Hidalgo County utilizes a discharge rate of \$100 per day in jail for defendants to "pay off" outstanding fines and costs. By statute, the minimum such discharge rate is \$50 per 24-hour period.

56. Hidalgo County's nine justices of the peace serve as Magistrates on a rotating basis, performing arraignments and issuing other process at the county jail. On information and belief, arraignments and hearings at the jail are performed in a courtroom where the Magistrate appears via an electronic broadcast system.

57. At a typical arraignment before the on-duty Magistrate, ten or more defendants are brought in handcuffed to each other and wearing jail clothes. Very little time is allotted to each defendant. On information and belief, defendants with unpaid fines and costs associated with open warrants or prior convictions are not processed at a separate hearing, but are handled as their name is called by the Magistrate.

58. On information and belief, after any necessary pleas are taken on pending charges, the Magistrate informs the defendant of any unpaid fines and costs and asks if the defendant is able to pay the amount owed.

59. If the defendant responds that he or she is not able to pay the outstanding fines or costs, the Magistrate informs the defendant of the number of days that would need to be served to discharge the unpaid debt, as calculated by HCSO staff.

60. The defendant is then committed to jail for the amount of time necessary to discharge the outstanding fines and costs. The Magistrate signs a Class "C" commitment order

commanding the sheriff to commit the defendant to the Hidalgo County jail “to be released upon remaining in custody for the time required by law to satisfy the amount of such fines and costs...”

61. On information and belief, Hidalgo County Magistrates consistently fail to inquire about the defendant’s financial resources or income, or elicit any information relevant to his or her ability to pay the outstanding fines or costs, before committing the defendant to jail for non-payment of fines and costs.

62. On information and belief, defendants are not asked to complete a questionnaire under oath concerning their financial resources before being committed to jail for non-payment of fines and costs.

63. On information and belief, before committing the defendant to jail for non-payment of fines and costs, Hidalgo County Magistrates consistently fail to make a written determination that a defendant is not indigent and has not made a good faith effort to discharge his or her fines through payment or community service, as required by CCP Art. 45.046.

64. On information and belief, Hidalgo County Magistrates consistently fail to offer defendants the option of community service as a means of discharging their fines and costs, pursuant to CCP Art. 45.049.

65. On information and belief, Hidalgo County Magistrates consistently fail to offer defendants the option of paying their fines and costs in installments, or discharging their debt through other means.

66. On information and belief, bond is not available for individuals with unpaid fines and costs associated with prior convictions for failure to attend school, even if the individual was unaware of the prior conviction when she was taken into custody.

67. If a defendant has been sentenced to a period of incarceration, continued confinement after the sentence is completed is necessary to discharge unpaid fines and costs. On information and belief, as each fine is discharged by days served—*e.g.*, six days for \$583—HCSO staff fill out a discharge slip for that particular offense.

68. Sheriff Trevino and the Hidalgo County justices of the peace who serve as Magistrates are all aware of the county's long-standing administrative policies and practices with respect to the jailing of individuals for non-payment of fines and costs, including but not limited to the jailing of low-income teens for non-payment of truancy fines; and each of the individual Defendants acquiesces in carrying out those policies and practices.

69. Hidalgo County's electronic record system, Able Term, does not clearly reveal how many individuals at any given time are confined in the county jail for the purpose of discharging unpaid fines and costs, generally or with respect to specific charges such as failure to attend school. However, an approximate number can be inferred from a combination of factors, such as type of offense, court of origin, and length of confinement in jail.

70. Based on approximately 14 months of electronic jail records showing individuals incarcerated in Hidalgo County jail with open warrants for failure to attend school from January 2009 to March 2010, at least 149 individuals during that time period served jail time that may be attributed to school-related tickets. At least 60 of these individuals were jailed with only truancy or other school-initiated charges, or other fine-only misdemeanors on their records; of these individuals, 50 percent were confined for more than a week.

71. From January 2009 to March 2010, at least 31 teens aged seventeen, and 20 teens aged eighteen were confined in Hidalgo County jail with nothing but fine-only offenses on their records, primarily truancy charges. On information and belief, these numbers may understate the

actual number of teens jailed for non-payment because the jail's electronic records omit at least one individual who was confined during this time period—Named Plaintiff Francisco De Luna.

72. On information and belief, Able Term jail reports or jail logs—showing individuals confined or recently processed, their arrest date, their date of birth, their charges, and their court of origin—are periodically made available or are available upon request to different county departments, such as the public defender's office, the criminal district attorney's office, and the justice courts.

73. It was by reviewing one of these jail logs that the County's chief public defender Jaime Gonzalez discovered that Francisco De Luna had been confined for several weeks at the county jail for fine-only, school-related misdemeanor charges originating in Palacios's court.

IV. Named Plaintiffs and Proposed Class Representatives

A. Francisco De Luna

i. Roles of ECISD and ECISD Police in pushing Francisco out of school and into the criminal justice system

74. Francisco De Luna is eighteen years old and lives in McAllen with his mother Elsa De Luna, his brother, his sister, and his sister's four children. Francisco was born in Hidalgo County and attended schools in the Edinburg Consolidated Independent School District (ECISD) throughout his childhood.

75. Francisco suffers from attention-deficit hyperactivity disorder (ADHD), a condition causing inattention and impulsivity in children and adults. Francisco was first diagnosed and prescribed medication for ADHD in 1999, when he was in third grade. Elsa De Luna informed school officials of her son's condition while he was still in elementary school, and the school nurses gave Francisco his medication until he reached middle school. When he began sixth grade at Harwell Middle School in the fall of 2003, the school refused to administer

Francisco's ADHD medication, which had to be taken after breakfast at around 10:00 a.m. Elsa had to rely on Francisco to take his medication on his own, which was not always reliable. Without his medication, Francisco found it difficult to focus at school, and his grades and attendance suffered.

76. On Christmas Eve 2004, when Francisco was thirteen, his father died unexpectedly of a heart attack. Francisco's father had supported the family as a barber, and with his death the family's finances became precarious. Elsa De Luna began to work longer hours as an hourly employee in the home health care industry to support her family.

77. Francisco incurred his first ticket at Harwell Middle School on April 7, 2005 for "failure to comply." The narrative attached to the ticket states that Francisco had displayed a defiant attitude to school officials and "did not want to learn." This purported violation of school rules by a thirteen-year-old who had just lost his father was written up by an ECISD police officer as a violation of TEC § 37.102 and a Class C misdemeanor.

78. Over the next two and a half years, before he turned sixteen, ECISD police ticketed Francisco a dozen times under TEC § 37.102 for rule violations such as wearing baggy pants, using vulgar language, and refusing to follow directives. In addition, during this same time period before his sixteenth birthday, Francisco received nine tickets from ECISD police and school authorities for failure to attend school under TEC § 25.094. At no point did Francisco's actions threaten the safety of students or teaching staff, or constitute a criminal offense other than failure to attend school.

79. The Education Code was amended by the state legislature in 2007 to clarify that only rule violations related to the operation and parking of vehicles on school property constitute a criminal offense under TEC § 37.102. Four of Francisco's rule violation tickets were issued

after September 1, 2007, the effective date of the legislative changes to TEC § 37.102, meaning that there was no statutory basis for those criminal charges or the fines assessed in connection with those charges.

80. On information and belief, despite having been informed of Francisco's ADHD diagnosis as early as 2000, over the next eight years, as Francisco increasingly struggled with behavioral issues and academic progress in ways that could easily be attributed to his condition, ECISD school officials never once sought to identify him as child with a behavioral disability or to develop an individualized educational program that could meet his needs. Even though school officials were aware of his father's death, they did not offer counseling services or other support to help Francisco cope with this loss.

81. Rather, ECISD's actions appear almost calculated to push Francisco out of the school system. Starting in early 2007 when he was attending Harwell Middle School, school officials began to repeatedly suspend Francisco to ECISD's alternative education campus for 30 days or more at a stretch, for the same behavior and attendance issues that were causing him to be ticketed.

82. On information and belief, the social environment at ECISD's Alternative Education Academy (AEA) is disruptive to learning and actually tends to encourage criminal activity and gang affiliation, especially in younger and more impressionable students. Francisco grew to hate his time at the AEA, where he was bored and felt there was no real teaching. On information and belief, Francisco received no academic credit for the more than three months he spent at the AEA in 2007, seriously impairing his progress toward graduation.

83. On two occasions, after being placed in the AEA and then being driven to drop out of school in discouragement, Francisco attempted to re-enroll at Economedes High School,

where he still had friends with whom he wanted to graduate. Both times he was sent back to the AEA because he had not finished his placement there, according to school officials.

84. After years of being ticketed repeatedly by school police officers, being effectively excluded from the regular high school campus and any useful course of academic instruction, and being provided no support whatsoever for his medical and behavioral issues, Francisco finally stopped trying to attend school when he turned seventeen, in November 2008. On December 2, 2008, ECISD filed one last complaint against Francisco for failure to attend school.

ii. Adjudication of Francisco's tickets in the Hidalgo County Justice Court and Juvenile Court

85. All of Francisco's tickets were initially referred for adjudication to Hidalgo County Justice of the Peace Mary Alice Palacios. Francisco and his mother appeared before Judge Palacios on several occasions in connection with his tickets. In addition, they came to docket call as ordered at Palacios's court at least two other times, with Elsa De Luna necessarily taking the entire day off work; but Judge Palacios did not show up.

86. On March 7, 2006 and again on November 16, 2006, Francisco and his mother signed documents entitled "Explanation and Waiver of Rights" in Palacios's court with respect to two of his pending charges. The documents do not constitute valid waivers of the right to appointed counsel with respect to Francisco's subsequent incarceration for inability to pay fines associated with these two charges.

87. On February 26, 2007, Elsa De Luna signed a document agreeing to pay off one ticket per month plus associated court costs for the next eleven months, or a monthly obligation ranging from \$257 to \$383. Elsa remembers being terrified when she signed the document because she did not know how she was going to pay the fines. She assumed she had no

alternative but to sign. At this point, Elsa's annual income for herself and two dependent children was less than \$20,000.

88. During the course of 2007, however, all of Francisco's pending charges were transferred to the Hidalgo County Juvenile Court. Elsa understood this transfer to obviate her need to pay the monthly fines to Palacios's court.

89. During the spring and summer of 2008, as a condition of resolving Francisco's pending charges, the juvenile court required him to perform community service, make progress toward his GED, and complete six months of supervised probation, which entailed a 6:00 p.m. curfew and several unannounced evening visits by a juvenile probation officer each month. On information and belief, Francisco satisfied these conditions. He performed community service at the University of Texas-Pan American, complied with the terms of his probation for six months, and began studying for his GED in the summer of 2008. Both Francisco and his mother remember signing or seeing juvenile court documents stating that Francisco was discharged of the fines associated with his ECISD tickets.

90. There are no documents in Francisco's files at the justice court revealing the disposition of his charges in the juvenile court after the charges were transferred in 2007.

91. On December 17, 2008, one month after Francisco turned seventeen, Amanda Zak, a truancy case manager in Palacios's court, signed and issued a Notice of Continuing Obligation to Appear (NCOA) with respect to 23 charges that the justice court deemed to be open and unresolved. The NCOA ordered Francisco to appear before Palacios on January 19, 2009 in connection with all 23 charges or a warrant would be issued for his arrest. Although there is no proof of service, the NCOA was apparently mailed to a residential address in Edinburg, Texas with the zip code 78539. In January 2009, Francisco and his family lived at that

address, but the U.S. post office zip code for their neighborhood had changed to 78542 in the beginning of 2008.

92. Francisco and his mother did not receive the NCOA.

93. Francisco and his mother also never received written notice from the justice court, as required by statute, informing them of their obligation to notify the court if their address changed, and were never told of this obligation.

94. Francisco did not appear on January 19, 2009 as ordered in the NCOA. On January 21, 2009, Judge Palacios's court staff prepared multiple arrest warrants for her signature, one for each allegedly still-pending school-related charge based on underage conduct. However, a complaint was not filed and a warrant was not issued based on the misdemeanor offense of failing to appear as ordered on January 19, 2009—the one offense based on adult conduct that is clearly authorized for adult prosecution by CCP Art. 45.060.

95. The assessed fine plus court costs associated with each warrant now ranged from \$407 to \$533. The total amount in fines for all Francisco's charges was now over \$10,000. More than half that amount was based on school rule violations that today would be non-ticketable infractions.

96. Francisco and his mother received no communications from Palacios's court after Francisco's charges were referred to juvenile court in 2007. Until he was arrested and jailed, he was unaware that over 20 warrants had been issued for his arrest for non-payment of fines.

iii. Francisco's commitment to jail by the Hidalgo County Sheriff's Office and Magistrate for inability to pay outstanding fines

97. On January 11, 2010 at approximately 1:00 a.m., a Hidalgo County sheriff's officer arrested Francisco and a friend for public intoxication as they emerged from a gas station

convenience store in Edinburg, Texas. Public intoxication (PI) is a Class C misdemeanor, not punishable by jail time.

98. Francisco was booked and held overnight in county jail. The next morning he was told that he could post \$160 bail and would be released. He called his mother with this news, and Elsa began to scrape together the bail money.

99. Later that morning, Francisco was taken to a hearing where Hidalgo County Justice of the Peace Rosa E. Trevino, the on-duty Magistrate that day, presided via an electronic broadcast system. Francisco was wearing an orange jumpsuit and was handcuffed to at least thirty other individuals. Security guards ringed the courtroom. Francisco remembers being confused and intimidated by his surroundings.

100. When his turn came, Judge Trevino informed Francisco in open court that in addition to the PI charge, there were 24 open warrants on him for failure to attend school and other school-related rule violations dating back several years. Francisco could not immediately process this information since he believed all his ECISD tickets to have been discharged in 2008 through juvenile court.

101. Trevino then asked Francisco how he wanted to plea. Francisco plead guilty, understanding his plea to apply only to the PI charge.

102. Trevino then told Francisco that he owed \$11,140 in outstanding fines and asked if he could pay it. Francisco said that he could not. He was not informed and did not understand at that time that he would immediately be committed to jail for non-payment of fines.

103. Trevino did not inquire into Francisco's financial resources or income, or elicit any other information relevant to his ability to pay the outstanding fines. Francisco was not asked to complete a questionnaire under oath concerning his financial resources.

104. On information and belief, Trevino made no written determination that Francisco was not indigent and had failed to make a good faith effort to discharge the fines through payment or community service, as required by CCP Art. 45.046.

105. Trevino did not offer Francisco the option of community service as a means of discharging his fines, pursuant to CCP Art. 45.049.

106. Trevino did not offer Francisco the option of paying his fines in installments, or discharging his debt through other means.

107. Trevino proceeded to sign and stamp 25 commitment orders, dated January 11, 2010, authorizing Francisco's confinement in Hidalgo County jail "for the time required by law to satisfy the amount of such fine and costs" as were assessed for each charge—including the 23 charges based on juvenile conduct identified in the NCOA, the last ECISD charge based on absences from school just after Francisco turned seventeen, and the PI charge.

108. Francisco's jail records include a cover sheet time-stamped 2:37 a.m. on the morning of his arrest, on which there is a hand-written list of all his open warrants and how much jail time would be needed to discharge each fine at a rate of \$100 per day. The total number of days to be served is denoted as "132". A release date of May 22, 2010 is also noted, which is 132 days from Francisco's arrest.

109. Other than the hearing before Judge Trevino, no other hearing was conducted about Francisco's ability to pay outstanding fines prior to his commitment to jail for non-payment.

110. Francisco's jail records include a document entitled "Hidalgo County Sheriffs Department, Questions Regarding Attorney Information," which appears to have been completed by an officer at the jail after an oral dialogue with Francisco. In response to the question "Can

you afford an attorney?,” Francisco responded “No”. In response to the question “Do you want a Court Appointed Attorney?,” Francisco responded “Yes”.

111. Francisco was not asked to furnish any additional information about his financial resources or ability to afford an attorney.

112. Francisco was not provided appointed counsel at the hearing before Judge Trevino or at any other time immediately prior to his commitment to jail to discharge over \$11,000 in fines.

113. At the time of his jailing, Francisco, a legal adult, was unemployed with no source of income. Elsa De Luna’s annual salary at the time of Francisco’s jailing was approximately \$18,000.

114. Francisco remained in Hidalgo County jail for eighteen days, sharing a large cell with 24 adult men, including men who were there for serious felonies such drug distribution and assault. Francisco was scared and disturbed by the experience.

115. Francisco was released before serving the 132 days needed to discharge his fines because of the intervention of Hidalgo County Public Defender Jaime Gonzalez, who noticed Francisco’s confinement in a random review of jail logs. Gonzalez submitted a writ of habeas corpus to County Court at Law Judge Rudolfo Gonzalez, seeking Francisco’s release. Judge Gonzalez granted the writ on January 28, 2010 and discharged Francisco “from further illegal confinement” from all his offenses.

116. Francisco suffered psychological damage, humiliation, mental anguish, and emotional injury as a result of his incarceration and the process through which he was jailed.

117. Because of his confinement in jail, Francisco missed a long-scheduled appointment at a barber college to interview for financial aid. Since his release, he continues to

prepare to take his GED exam. Francisco now hopes to attend South Texas Vocational Technical Institute to study to become a dental assistant.

B. Elizabeth Diaz

i. Elizabeth's ECISD ticketing for failure to attend school

118. Elizabeth Diaz is eighteen years old and lives in Edinburg with her sister and her mother Adelita Hernandez. Elizabeth was born in Hidalgo County and attended schools in ECISD throughout her childhood.

119. Elizabeth suffers from arthritis, osteoporosis and fibromyalgia. She was diagnosed with and prescribed multiple medications for these conditions at age ten and has taken some form of medication for them ever since. The pain associated with these conditions as well as necessary doctor's appointments sometimes prevent Elizabeth from attending school.

120. Elizabeth also suffers from ADHD and bipolar disorder. She began seeking counseling for these conditions when she was about ten years old and was diagnosed at around age fourteen. Elizabeth has been prescribed and continues to take multiple medications for these conditions, as well. Both conditions sometimes make it difficult for Elizabeth to concentrate at school. Necessary doctor's appointments sometimes prevent her from attending school altogether.

121. Elizabeth's mother told ECISD school officials or medical staff about all of Elizabeth's medical conditions soon after they were diagnosed. On information and belief, ECISD school officials never sought to identify Elizabeth as child with a behavioral disability or to develop an individualized educational program that could meet her needs.

122. Elizabeth was ticketed twice for failure to attend school within a three-month period in the fall of 2006, when she was fourteen years old and had just started attending high

school at Edinburg North. Elizabeth was struggling with emotional issues at this time and attributes her absences in part to such problems. Twice, she has voluntarily committed herself to a behavioral health services program offered through ECISD schools for assistance with these issues.

123. Elizabeth received a third ticket for failure to attend school in February 2008, while still at Edinburg North. Elizabeth's attendance and performance in school improved dramatically once she transferred from Edinburg North to Economedes High School in the fall of 2008.

124. On many occasions, Elizabeth's mother or her doctors would write notes to excuse Elizabeth from school because of pain or medical appointments. After submitting the notes to the front desk upon her return to school, Elizabeth was not informed whether the excuses were properly recorded, accepted, or rejected as insufficient. She did not keep a copy of the notes. Elizabeth and her mother believe that many of her absences from school that led to her being ticketed should have been excused for medical reasons. There was no opportunity for her to contest this at school before being ticketed and ordered to appear at the justice court.

ii. Adjudication of Elizabeth's tickets in the Hidalgo County Justice Court and Juvenile Court.

125. Elizabeth's first three tickets were initially referred for adjudication to Hidalgo County Justice of the Peace Mary Alice Palacios. Elizabeth and her mother appeared before Judge Palacios on at least six different occasions in connection with these tickets. In addition, they came to docket call as ordered at Palacios's court at least one time, with Adelita Hernandez necessarily taking the full day off from work; but Judge Palacios did not show up.

126. On December 12, 2006 and again on March 4, 2008, Elizabeth and her mother signed documents titled "Explanation and Waiver of Rights" in Palacios's court with respect to

two of her pending charges. The documents do not constitute valid waivers of the right to appointed counsel with respect to Elizabeth's subsequent incarceration for inability to pay fines associated with these two charges.

127. On information and belief, in 2008, Elizabeth's pending charges were transferred to the Hidalgo County Juvenile Court. The juvenile court required Elizabeth to perform about 60 hours of community service at the Boys and Girls Club in Edinburg and to comply with a term of supervised probation. Elizabeth believes that she completed these requirements in 2008. Additionally, because she did not receive any communications from Palacios's court or the juvenile court for more than a year after her supervised probation, Elizabeth believed that she had been discharged of her pending charges.

128. There are no documents in Elizabeth's files at the justice court reflecting the transfer to juvenile court or the status of her charges there.

129. On January 27, 2009, soon after Elizabeth turned seventeen, Amanda Zak, a truancy case manager in Palacios's court, signed and issued a Notice of Continuing Obligation to Appear (NCOA) with respect to three charges that the justice court deemed to be open and unresolved. The NCOA ordered Elizabeth to appear before Palacios on February 23, 2009 in connection with all three charges or a warrant would be issued for her arrest. Although there is no proof of service, the NCOA was apparently mailed to a residential address in Edinburg, Texas where Elizabeth and her mother did not reside.

130. Elizabeth and her mother did not receive the NCOA.

131. Prior to sending the NCOA, at least three communications sent by Palacios's court to Elizabeth and her mother at a different residential address had "returned to sender."

132. In January 2009, Elizabeth and her mother lived at an Edinburg address where they had resided since June 2008. On information and belief, the address had been listed in Adelita Hernandez's state driver's license records and other state and county records beginning in June 2008.

133. Elizabeth and her mother never received written notice from the justice court, as required by statute, informing them of their obligation to notify the court if their address changed, and were never told of this obligation.

134. Elizabeth did not appear on February 23, 2009 as ordered in the NCOA. That same day, Judge Palacios's court staff prepared multiple arrest warrants for her signature, one for each allegedly still-pending failure to attend school charge based on underage conduct. However, a complaint was not filed and a warrant was not issued based on the misdemeanor offense of failing to appear as ordered on February 23, 2009—the one offense based on adult conduct that is clearly authorized for adult prosecution by CCP Art. 45.060.

135. The assessed fines plus court costs associated with each warrant were \$533, \$533, and \$537, respectively. The total in fines for all of Elizabeth's charges was now over \$1,600.

136. On January 28, 2010, a fourth complaint of failure to attend school was filed against Elizabeth by Information Resource Referral Assistance, Inc. (IRRA), the charter school she was attending, based on absences occurring between October 2009 and January 2010. When she appeared at truancy court on February 25, 2010 in connection with this last ticket, Elizabeth was unaware that warrants had been issued for her arrest on the three earlier tickets.

iii. Elizabeth's commitment to jail by the Hidalgo County Sheriff's Office and Magistrate for inability to pay outstanding fines

137. Elizabeth and her mother appeared at the municipal court building at noon on February 25, 2010 after receiving a summons from Palacios's truancy clerk James Johnson.

Judge Palacios was not present. Marcella Cherry, a case manager from Palacios's court, handled the appearance.

138. When Cherry called Elizabeth's case, she immediately presented her with a document entitled "Explanation/Waiver of Rights and Plea" in relation to the most recent charge, which Elizabeth signed. This document does not constitute a valid waiver of the right to appointed counsel with respect to Elizabeth's subsequent incarceration for inability to pay fines associated with her first three charges for failure to attend school.

139. After presenting Elizabeth with this document, Cherry opened a file containing the original tickets for Elizabeth's three earlier charges. Cherry asked if Elizabeth was aware that she had outstanding fines. Elizabeth was surprised and confused because she thought the earlier charges had been resolved. Cherry asked if Elizabeth was able to pay the \$1,603 in fines she owed on the earlier charges. Elizabeth stated that she was not able to pay.

140. Cherry then told Elizabeth to wait in a room outside the courtroom while Cherry called the constable's office to come and take Elizabeth to jail. Adelita Hernandez pleaded with Cherry to let Elizabeth pay in installments or perform community service in lieu of serving jail time. Although Elizabeth was permitted to perform community service to discharge the most recent ticket, Cherry stated that the only options with respect to the earlier charges were immediate payment or jail time.

141. Hernandez asked Cherry how many days her daughter would need to serve to discharge her fines. Cherry told her that Elizabeth would need to serve 16 days in jail. Elizabeth eventually told her mother to leave, stating, "Mom, I don't want you to see me in handcuffs."

142. An officer from Hidalgo County Constable Precinct 4 came to the municipal court building and arrested Elizabeth and took her to jail, where she was kept in a holding cell until 5:00 a.m. the next morning for processing and booking.

143. The next morning when Hernandez called the jail to inquire about her daughter's status and whether she had received her medication in jail, the sheriff's office employee with whom she spoke told Hernandez that, with the addition of various costs, the amount owed was significantly more than \$1,603 and that Elizabeth would need to serve 18 days in jail to fully discharge the fines.

144. On the morning of February 26, 2010, Elizabeth was taken to a hearing where Hidalgo County Justice of the Peace Bobby Contreras, the on-duty Magistrate that day, presided via an electronic broadcast system. Elizabeth was handcuffed and in a jumpsuit. Contreras addressed Elizabeth, read her charges, and informed her that bond was not available. Elizabeth was not given an opportunity to speak.

145. Contreras proceeded to sign and stamp three commitment orders, dated February 26, 2010, authorizing Elizabeth's confinement in Hidalgo County jail "for the time required by law to satisfy the amount of such fine and costs" as were assessed for her three failure to attend school charges from 2006-2008. Each commitment order sentences Elizabeth to 6 full days in jail.

146. Contreras did not inquire into Elizabeth's financial resources or income, or elicit any other information relevant to her ability to pay the outstanding fines. Elizabeth was not asked to complete a questionnaire under oath concerning her financial resources.

147. On information and belief, Contreras made no written determination that Elizabeth was not indigent and had failed to make a good faith effort to discharge the fines through payment or community service, as required by CCP Art. 45.046.

148. Contreras did not offer Elizabeth the option of community service as a means of discharging her first three fines, pursuant to CCP Art. 45.049.

149. Contreras did not offer Elizabeth the option of paying her first three fines in installments, or discharging her debt through other means.

150. Other than the hearing before Judge Contreras, no other hearing was conducted about Elizabeth's ability to pay outstanding fines prior to her commitment to jail for non-payment.

151. Elizabeth's jail records include a document entitled "Hidalgo County Sheriffs Department, Questions Regarding Attorney Information," which appears to have been completed by an officer at the jail after an oral dialogue with Elizabeth. In response to the question "Can you afford an attorney?," Elizabeth responded "No". In response to the question "Do you want a Court Appointed Attorney?," Elizabeth responded "Yes".

152. Elizabeth was not asked to furnish any additional information about her financial resources or ability to afford an attorney.

153. Elizabeth was not provided appointed counsel at the hearing before Judge Contreras or at any other time immediately prior to her commitment to jail to discharge over \$1,600 in fines.

154. At the time of her jailing, Elizabeth, a legal adult, was unemployed. Her only source of income is Supplemental Security Income (SSI) benefits of approximately \$5,600 per year. Adelita Hernandez, who has been unable to work for medical reasons since 2007, also

receives SSI benefits as her only source of income. At the time of Elizabeth's jailing, Hernandez received approximately \$10,500 annually in SSI income.

155. Elizabeth's mother brought all of Elizabeth's medications to the jail by the evening of February 25, 2010 and told HCSO staff how to administer them. But Elizabeth did not receive any of her necessary medications until March 5, 2010—a full week after she was committed to jail. Elizabeth's prescriptions require daily administration, except for her methotrexate injections, which occur once per week.

156. Elizabeth remained in Hidalgo County jail for eighteen days, sharing a large cell with other adult women, including women who were there for murder, drug distribution, prostitution, and human trafficking. Elizabeth was frightened and disturbed by the experience.

157. Elizabeth suffered psychological damage, humiliation, mental anguish, and emotional injury as a result of her incarceration and the process through which she was jailed.

158. Elizabeth was released on March 14, 2010, the day before Edinburg schools closed for spring break. On the following Monday, March 22, Elizabeth and her mother tried to re-enroll Elizabeth at IRRA, the charter school she had been attending prior to being jailed. However, because of her absence from school while she was in jail, IRRA had revoked her enrollment for the remainder of the school year.

159. The Texas Assessment of Knowledge and Skills (TAKS) tests were administered at IRRA on Monday, March 1, 2010, while Elizabeth was in jail. Students are required to take the TAKS tests before graduating from public high school in Texas. Elizabeth had planned to graduate in August 2010 but now is unable to do so because she missed her TAKS tests and lost credits from the spring semester because of her jailing.

160. Elizabeth is currently enrolled at Economedes High School and hopes to graduate in December 2010. After graduation, she wants to attend South Texas College and then transfer to University of Texas Pan-American to study law or business.

CLASS ACTION ALLEGATIONS

161. Plaintiffs bring all declaratory and injunctive claims set forth in this Complaint on their own behalf and on behalf of all similarly situated persons pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following class:

All individuals who have been or may in the future be adjudicated or processed for commitment to jail for unpaid fines or costs, pursuant to the provisions of Texas Code of Criminal Procedure Art. 45.046, while in the custody of the Hidalgo County Sheriff's Office.

162. Members of the Proposed Class have been and may be subjected to violations of their constitutional and statutory rights by all individual Defendants sued in their official capacity, as described in this Complaint. The Named Plaintiffs represent members of the Proposed Class in seeking declaratory and injunctive relief to eliminate Defendants' actions, policies and practices that deprive them of those rights.

163. On information and belief, the Proposed Class is so numerous, and membership in the class so fluid, that joinder of all members is impracticable.

164. Common questions of law and fact exist as to all members of the Proposed Class. These questions include but are not limited to: whether Defendant Magistrates consistently fail to make a written determination as to indigency prior to committing an individual to jail for non-payment of fines and costs; whether Defendant Magistrates consistently fail to offer indigent defendants the options of paying their fines and costs in installments or discharging their debt

through community service; whether Defendant Sheriff Trevino oversees and directs numerous HCSO administrative staff and officers in processing and carrying out the commitment of indigent persons to the county jail for non-payment of fines and costs; and whether Defendant Hidalgo County maintains a custom or policy of confining individuals in jail for non-payment of fines and costs without required factual determinations as to indigency.

165. The Named Plaintiffs' claims are typical of the claims of the members of the Proposed Class, and the Named Plaintiffs and their counsel will fairly and adequately represent the interests of the members of the Proposed Class.

166. All Defendants have acted and refused to act on grounds generally applicable to the members of the Proposed Class, such that final injunctive and declaratory relief is appropriate with respect to the class as a whole.

167. The injuries suffered by the Named Plaintiffs and the members of the Proposed Class as a result of the policies and practices of all Defendants are capable of repetition, yet may evade review, thereby rendering class relief appropriate.

FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF
Procedural Due Process: Confinement in Jail Due to Inability to Pay Fine
(Fourteenth Amendment to the U.S. Constitution)

168. Plaintiffs incorporate paragraphs 1 through 167 as set forth above.

169. This claim is brought on behalf of the Named Plaintiffs and the members of the Proposed Class.

170. By consistently failing, prior to committing an individual to jail for non-payment of fines and costs, to make a factual determination that the individual is not indigent and has not made a good faith effort to discharge his or her outstanding debt, Defendant Magistrates have violated and continue to violate Plaintiffs' right to due process of law, as guaranteed by the Due

Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

171. By consistently failing, prior to committing an individual to jail for non-payment of fines and costs, to offer the individual alternatives to immediate incarceration such as community service or an installment payment plan, Defendant Magistrates have violated and continue to violate Plaintiffs' right to due process of law, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

172. By supervising, controlling and directing Hidalgo County Sheriff's Office administrative staff and officers who process, book and ultimately confine individuals in the Hidalgo County jail for non-payment of fines and costs without necessary indigency examinations, Defendant Sheriff Trevino has violated and continues to violate Plaintiffs' right to due process of law, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

173. All Defendants' policies, practices, acts, and omissions in processing and adjudicating individuals for commitment to the county jail for non-payment of fines and costs without necessary indigency examinations and despite the inability of many such individuals to pay their outstanding debt violate Plaintiffs' right to due process of law, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

174. All Defendants' policies, practices, acts, and omissions place Plaintiffs at continuing and foreseeable risk of being committed to Hidalgo County jail for non-payment of fines and costs despite their inability to discharge such financial obligations.

175. Plaintiffs seek prospective injunctive relief because they have no plain, adequate or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

Equal Protection: Confinement in Jail Due to Inability to Pay Fine
(Fourteenth Amendment to the U.S. Constitution)

176. Plaintiffs incorporate paragraphs 1 through 167 as set forth above.

177. This claim is brought on behalf of the Named Plaintiffs and the members of the Proposed Class.

178. By consistently failing, prior to committing an individual to jail for non-payment of fines and costs, to make a factual determination that the individual is not indigent and has not made a good faith effort to discharge his or her outstanding debt, Defendant Magistrates have violated and continue to violate Plaintiffs' right to be free of discrimination based on economic status, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

179. By consistently failing, prior to committing an individual to jail for non-payment of fines and costs, to offer the individual alternatives to immediate incarceration such as community service or an installment payment plan, Defendant Magistrates have violated and continue to violate Plaintiffs' right to be free of discrimination based on economic status, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

180. By supervising, controlling and directing Hidalgo County Sheriff's Office administrative staff and officers who process, book and ultimately confine individuals in the Hidalgo County jail for non-payment of fines and costs without necessary indigency

examinations, Defendant Sheriff Trevino has violated and continues to violate Plaintiffs' right to be free of discrimination based on economic status, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

181. All Defendants' policies, practices, acts, and omissions in processing and adjudicating individuals for commitment to the county jail for non-payment of fines and costs without necessary indigency examinations and despite the inability of many such individuals to pay their outstanding debt violate Plaintiffs' right to be free of discrimination based on economic status, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

182. For all relevant purposes, all individuals processed for commitment to jail for unpaid fines and costs in Hidalgo County are similarly situated with respect to their right to due process of law. There exists no legitimate governmental reason to jail individuals who are financially unable to pay outstanding fines and costs, while permitting individuals who have the financial means to pay such fines and costs to avoid being jailed for the same offenses.

183. All Defendants' policies, practices, acts, and omissions place Plaintiffs at continuing and foreseeable risk of being committed to Hidalgo County jail for non-payment of fines and costs despite their inability to discharge such financial obligations.

184. Plaintiffs seek prospective injunctive relief because they have no plain, adequate or complete remedy at law to prevent future injury caused by confinement in jail in violation of their constitutional rights.

DAMAGES CLAIM ON BEHALF OF NAMED PLAINTIFFS

**Equal Protection and Procedural Due Process:
Confinement in Jail Due to Inability to Pay Fine
(Fourteenth Amendments to the U.S. Constitution)**

185. Plaintiffs incorporate paragraphs 1 through 167 as set forth above.

186. This claim is brought on behalf of the Named Plaintiffs.

187. The policies, practices, acts, and omissions of Hidalgo County Sheriff's Office staff, Hidalgo County Magistrates and other Hidalgo County employees in processing and adjudicating Francisco De Luna and Elizabeth Diaz for commitment to the county jail for non-payment of fines and costs without necessary indigency examinations and despite the inability of these individuals to pay their outstanding debt were carried out pursuant to an implicit or explicit municipal policy or custom.

188. The policies, practices, acts, and omissions of Hidalgo County Sheriff's Office staff, Hidalgo County Magistrates and other Hidalgo County employees in processing and adjudicating Francisco De Luna and Elizabeth Diaz for commitment to the county jail for non-payment of fines and costs without necessary indigency examinations and despite the inability of these individuals to pay their outstanding debt violated their right to due process and their right to be free of discrimination based on economic status, as guaranteed by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

189. As a proximate result of Defendant Hidalgo County's policy or custom regarding the commitment of individuals to jail for non-payment of fines and costs, Francisco De Luna and Elizabeth Diaz have suffered psychological damage, humiliation, mental anguish, and emotional injury. They seek compensatory damages to redress Defendant's violations of their federal constitutional rights.

DEMAND FOR JURY TRIAL

190. The Named Plaintiffs respectfully demand a jury trial on their individual damages claims.

PRAYER FOR RELIEF

191. Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

- a. Issue an order certifying the Proposed Class and certify this case to proceed as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- b. Issue a judgment declaring that Defendants' policies, practices, acts and omissions described herein are unlawful and violate Plaintiffs' rights under the Constitution and laws of the United States;
- c. Permanently enjoin Defendants, their subordinates, agents, employees, successors, and all others acting in concert with them, from subjecting Plaintiffs to the unconstitutional and unlawful practices described herein;
- d. Issue injunctive relief sufficient to reform those practices;
- e. Award compensatory damages for humiliation, emotional distress and other injuries sustained by the Named Plaintiffs;
- f. Grant Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- g. Grant such other and further relief as this Court deems just and proper.

Dated: July 26, 2010

Attorneys for Plaintiffs

s/ Lisa Graybill

AMERICAN CIVIL LIBERTIES UNION
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