No. 25-4099

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT	
Dawn Hepikiya Medina, Justin Horton, Madelaine Thompson, Luke Melvin Lewis, Marcos Hernandez, and Denise Ann Beierle on behalf of themselves and all others similarly situated, Appellants, v. The Hon. Ann Marie McIff Allen, the Hon. Jeremiah Humes, the Hon. Christine Johnson, the Hon. Thomas Low, and the Hon. Matthew Bell, in their official capacities, Appellees.	**ORAL ARGUMENT REQUESTED**

Appeal from the U.S. District Court Southern Region, State of Utah
Hon. David Nuffer
Civil No. 4:21-cv-00102-DN-PK

BRIEF OF APPELLANTS

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Memorandum Decision and Order Granting Defendants' Motion to Dismiss, entered on July 11, 2025.

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PRIOR OR RELATED APPEALS

This matter has one prior related appeal: *Medina, et al. v. McIff Allen*, et al., No. 23-4057 (10th Cir. 2024).

JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction under 28 U.S.C. § 1291. This appeal is taken from the district court's July 11, 2025 final judgment that disposed of all claims. Appellants Dawn Hepikiya Medina, Justin Horton, Madelaine Thompson, Luke Lewis, Marcos Hernandez, Denise Ann Beierle ("Named Plaintiffs") on behalf of all others similarly situated (hereinafter "Plaintiffs") appealed on August 5, 2025.

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in ruling that Plaintiffs did not plead cognizable claims for violation of their rights to Due Process?

Standard of Review: An order granting a motion to dismiss is reviewed *de novo*.[1]

Preservation: The issue was raised at App. Vol. IV at 817–28 and ruled on at App. Vol. IV at 986.

[1] *Citizens for Constitutional Integrity, et al. v. United States et al.*, 57 F.4th 750, 756 (10th Cir. 2023).

2. Did the trial court err in ruling that Plaintiffs did not plead cognizable claims for violation of their rights to Equal Protection?

Standard of Review: An order granting a motion to dismiss is reviewed *de novo*.[2]

Preservation: The issue was raised at App. Vol. IV at 817–28 and ruled on at App. Vol. IV at 986.

3. Did the trial court err in ruling that Plaintiffs did not plead cognizable claims for violation of their Sixth Amendment Rights?

Standard of Review: An order granting a motion to dismiss is reviewed *de novo*.[3] A

Preservation: The issue was raised at App. Vol. IV at 828–31 and ruled on at App. Vol. IV at 996.

4. Did the trial court err in granting the motion to dismiss Judge McIff Allen on the basis that a decision on the motion was unnecessary?

Standard of Review: An order granting a motion to dismiss is reviewed *de novo*.[4]

Preservation: The issue was raised at App. Vol. IV at 36 and ruled on at App. Vol. IV at 999.

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[2] *Id.*
[3] *Id.*
[4] *Id.*

STATEMENT OF THE CASE

This case arises from events occurring after Plaintiffs' arrests and before trial, when defendants the Honorables Ann Marie McIff Allen, Jeremiah Humes, Christine Johnson, Thomas Low, and Matthew Bell (the "Judges") assigned Plaintiffs secured financial conditions of release which Plaintiffs could not afford, without conducting the analysis or processes required under the Constitution or Utah law, and thereby caused Plaintiffs to be held in custody. The Judges also conducted Plaintiffs' initial criminal proceedings without the presence of counsel. To analyze Plaintiffs' claims, it is useful to understand Utah's rules and statutes that govern pretrial procedure and bond release.

Pertinent Utah Rules and Statutes

i. Arrest through Bail Eligibility Review

Under Utah's pre-trial rules and statutes, when a person is "arrested and delivered to a correctional facility without a warrant for an offense [the person] must be presented without unnecessary delay before a magistrate for the determination of probable cause and eligibility for pretrial release . . . ."[5] The arresting officer, custodial authority, or prosecutor must present to a magistrate a sworn statement that contains the facts known to support probable cause to believe the arrestee has

[5] UTAH R. CRIM. P. 9(a)(1).

committed a crime.[6] This statement must be presented to the magistrate within 24 hours after the arrest.[7] "The statement must contain any facts known to the affiant that are relevant to determining the appropriateness of precharge release and the conditions thereof."[8] The magistrate "should also be presented with the results of a validated pretrial risk assessment tool" if available.[9]

"The magistrate must review the information provided and determine if probable cause exists to believe the [arrestee] committed the offense or offenses described."[10] If the magistrate finds that the sworn statement does not support probable cause to support the charges filed, then the magistrate may determine what charges are supported or else return the statement to the submitting authority.[11]

"If the magistrate finds there is probable cause, the magistrate must determine if the person is eligible for pretrial release pursuant to Utah Code § 77-20-205."[12] The Utah Constitution and Utah Criminal Code define the circumstances under which an arrestee is not eligible for pretrial release.[13] If an arrestee is not eligible for

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[6] UTAH R. CRIM. P. 9(a)(2).
[7] *Id*.
[8] *Id*.
[9] UTAH R. CRIM. P. 9(a)(3).
[10] UTAH R. CRIM. P. 9(a)(4).
[11] UTAH R. CRIM. P. 9(a)(5)–(6).
[12] UTAH R. CRIM. P. 9(a)(4).
[13] *See* UTAH CONST. art. I § 8 (noting right to bail subject to limited exceptions including clear and convincing evidence of danger to others or flight risk); UTAH CODE § 77-20-205(1)(c).

release, then the magistrate issues a pretrial order that the arrestee be detained during the time the arrestee awaits trial.[14]

ii. Initial Bail Determination

If an arrestee is eligible for bail, then the magistrate shall issue a temporary pretrial release order (referred to herein as the "Initial Bail Determination"). This is the first stage of the criminal pre-trial process with which this appeal is concerned. The magistrate must issue an Initial Bail Determination that, during the time the arrestee awaits trial or resolution of criminal charges, either "releases the [arrestee] on their own recognizance" or "designates a condition, or a combination of conditions, to be imposed upon the [arrestee]'s release[.]"[15]

> The magistrate will impose the least restrictive reasonably available conditions of release reasonably necessary to:
>
> (A) ensure the individual's appearance at future court proceedings;
> (B) ensure that the individual will not obstruct or attempt to obstruct the criminal justice process;
> (C) ensure the safety of any witnesses or victims of the offense allegedly committed by the individual; and
> (D) ensure the safety and welfare of the public and the community.[16]

Utah law requires that "[i]f the magistrate or judge determines that a financial condition, other than an unsecured bond, is necessary to impose as a condition of

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[14] *Id.;* UTAH CODE § 77-20-205(1)(a)(iii).
[15] UTAH CODE § 77-20-205(1)(a)(ii)–(iii).
[16] UTAH R. CRIM. P. 9(a)(4). *See also* UTAH CODE § 77-20-205(4) (noting considerations similar to Rule 9(a) but omitting the "least restrictive" language).

release, the magistrate or judge shall, when determining the amount of the financial condition, refer to the financial condition schedule in Section 77-20-205.5 and consider the individual's risk of failing to appear and ability to pay."[17] (Secured financial conditions for release are referred to herein as "Monetary Bail").

iii. Initial Appearance

An initial appearance is an arrestee's first appearance in front of a judicial officer.[18] This is the second stage of the criminal pretrial process with which this appeal is concerned.

Utah has no court rule or statute requiring that an arrestee held in custody on Monetary Bail receive an initial appearance within a specified time. Utah Criminal Procedure requires that at an initial appearance, a judge inform an arrestee of the charges, right to counsel, and rights concerning pretrial release.[19] A judge conducts an inquiry to determine whether an arrestee financially qualifies for appointment of a public defender.[20] If the arrestee qualifies, then the judge will appoint a public

[17] UTAH CODE § 77-20-205(7).
[18] App. Vol. II at 421; UTAH R. CRIM. P. 7A(a). The term "first appearance" applies to a criminal defendant's first court appearance on a charge of Class A misdemeanor or felony. *Id.* at 7(a). For simplicity, the term "initial appearance" is used herein to refer to both proceedings.
[19] UTAH R. CRIM. P. 7(a), 7A(a)–(b).
[20] UTAH R. CRIM. P. 7(a)–(b), 7A(a)–(b).

defender.[21] A judge then enters the pretrial status order, replacing the temporary pretrial status order that was issued by the magistrate.[22]

Statement of Facts

Plaintiffs are a certified Class, defined by the trial court as follows:

> (1) Persons detained in the county jails of Beaver, Carbon, Iron, and Utah from the date of the filing of the Complaint until the resolution of this case;
> (2) The persons have been assigned secured financial conditions of release;
> (3) The secured financial conditions of release were assigned without presentation of information of the person's ability to pay; and
> (4) The persons remain in custody of the county jail and were found indigent.[23]

This appeal is from a dismissal for failure to state a claim. Accordingly, the facts alleged in Plaintiffs' Second Amended Complaint ("Complaint") and documents incorporated therein are assumed true and viewed in the light most favorable to Plaintiffs. The following facts are summarized from the Complaint.

Each Plaintiff was arrested without a warrant in Beaver, Carbon, Iron or Utah County.[24] Each Plaintiff was taken into custody and held at the Beaver, Carbon, Iron, or Utah County jail.[25]

Following a probable cause determination, the Judges Initial Bail Determinations that each Plaintiff was eligible for pretrial release subject to certain

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[21] UTAH R. CRIM. P. 7(b), 7A(b).
[22] UTAH R. CRIM. P. 7(c), 7A(c).
[23] App. Vol. III at 775–76.
[24] App. Vol. II at 424–439.
[25] *Id.* at 419–20, 426–28, 430–31, 438.

secured financial conditions of release.[26] Plaintiffs are not notified that the Initial Bail Determination is occurring. Neither Plaintiffs nor an attorney for Plaintiffs is present during the Initial Bail Determination. Plaintiffs do not know about the Initial Bail Determination and there is no opportunity for Plaintiffs to participate or be heard.[27] When conducting Initial Bail Determinations, the Judges have no information about and conduct no inquiry into Plaintiffs' ability to pay. The Judges do not consider or make findings regarding non-financial, less restrictive, alternative conditions of release.[28]

Each Plaintiff is unable to pay his or her Monetary Bail and forced to remain in jail solely because he or she cannot afford to pay Monetary Bail.[29] Plaintiffs remain in custody until at least their initial appearances.[30] After arrest, Plaintiffs generally wait in custody anywhere from a few days to more than a week for their initial appearances.[31] During this period, Plaintiffs are not provided counsel. In addition to being unable to afford bail, Plaintiffs cannot afford private counsel and are not represented by counsel during their initial appearance.[32]

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[26] *Id.* at 424, 426–28, 430–33, 438.
[27] *Id.* at 425, 429, 432, 443–44.
[28] *Id.* at 433, 443.
[29] *Id.* at 425–26, 428, 430–433, 438.
[30] *Id.*
[31] *Id.* at 424–425, 428–430, 433; *see also* App. Vol. IV at 843–927 (dockets for Horton, Thompson, Hernandez, Beierle, Medina, and Lewis showing between four to eight days from the date of arrest until they received an initial appearance).
[32] App. Vol. II at 433.

At their initial appearance, each Plaintiff is questioned to determine whether a Plaintiff qualifies for a public defender. The Judges appointed each qualifying Plaintiff a public defender.[33] Plaintiffs are not able to meet with their public defender until after the initial appearance has concluded.[34] The Judges typically do not conduct a review of, or reconsider, pretrial release conditions at the initial appearance.[35]

Written bail-reduction motions filed by counsel are the only meaningful mechanism for challenging pretrial detention. Appointed counsel's first opportunity to file a motion challenging Monetary Bail is after she has met with her client following the conclusion of the first court appearance at which she is appointed, which can be days or more than a week into her client's detention. A written motion challenging Monetary Bail, if prepared by counsel, routinely takes days, if not a week or more, to be heard by a Defendant.[36] This sequence of events means that Plaintiffs are detained without any opportunity to present the Judges with evidence of their ability to afford bail, or any opportunity to contest their detentions, for a minimum of several days after arrest.[37] As a result of the Judges' policies and

[33] *Id.* at 424, 430; s*ee supra* fn. 31 (Named Plaintiffs' dockets showing appointment of public defender at their initial appearances).
[34] App. Vol. II at 433–34.
[35] *Id.*
[36] *Id*.
[37] *Id*.

practices, presumptively innocent Plaintiffs are incarcerated solely because they cannot afford to pay Monetary Bail or hire counsel while similarly situated people (same charge, same criminal background) with access to money are released immediately.[38] As a result of the Judges' policies and practices, Plaintiffs suffer prejudice in their criminal proceedings and harm in their personal and professional lives.[39]

Relevant Procedural History

Named Plaintiffs Medina, Horton, Thompson, Lewis, and Hernandez filed their initial complaint against the Judges.[40] The Judges filed a motion to dismiss.[41] After briefing the first motion to dismiss but before oral argument, Plaintiffs filed their the Complaint to add Beierle as a Named Plaintiff.[42] The parties submitted supplemental briefing regarding the impact of the Complaint on the first motion to dismiss.[43] After oral argument, the trial court granted the Judges' first motion to dismiss, ruling that Plaintiffs did not plead cognizable violations of their Fourteenth or Sixth Amendment Rights.[44] Plaintiffs appealed.[45] Ruling on the briefing, this

[38] *Id*.
[39] *Id.* at 436–37.
[40] App. Vol. I at 1–6, 18–44.
[41] *Id*.at 1–8, 45–271.
[42] *Id*. at 1–10; App. Vol. II at 413–41.
[43] App. Vol. I at 1–11; App Vol. II at 481–544; App. Vol. III at 448–480.
[44] App. Vol. III at 545–566.
[45] App. Vol. I at 11–12; App. Vol. III at 570–632.

Court vacated the trial court's dismissal and remanded for a ruling on the motion for certification of the plaintiff class, and consideration of further proceedings as necessary.[46]

The Parties completed the briefing of the motion for class certification, and the trial court granted the Motion for Class Certification.[47]

The Judges filed a Motion to Dismiss Judge McIff Allen on the basis that the claims against her were moot because she was no longer a state court judge..[48] Plaintiffs opposed the motion on the basis that Fed. R. Civ. P. 25(d) requires substitution of Judge McIff Allen.[49] The Judges replied and Plaintiffs sur-replied regarding the same.[50]

The Judges filed a second Motion to Dismiss for failure to state a claim (the "Second Motion to Dismiss").[51] The Plaintiffs opposed the motion and the Judges replied.[52] Ruling on the papers, the trial court granted the Second Motion to Dismiss as well as the Motion to Dismiss Judge McIff Allen.[53]

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[46] App. Vol. III at 709–716.
[47] App. Vol. I at 13–15; App. Vol. III at 765–83.
[48] App. Vol. III at 717–24.
[49] *Id*. at 725–728.
[50] *Id*. at 729–35, 736–64.
[51] *Id*. at 784–800.
[52] App. Vol. IV at 801–970, 971–977.
[53] App. Vol. I at 16; App. Vol. IV at 978–99.

Rulings Presented for Review

Memorandum Decision and Order Granting Defendants' Second Motion to Dismiss and Motion to Dismiss Judge McIff Allen.

SUMMARY OF ARGUMENT

The trial court erred in ruling that Plaintiffs' Complaint did not state cognizable claims for violation of their procedural due process rights. The court correctly found that Plaintiffs had stated a protected liberty interest but erred in ruling that Plaintiffs received all the process to which they are entitled. The court erred in applying *Gerstein v. Pugh* to reach this conclusion and failed to construe the allegations of the Complaint as true.

The trial court likewise erred in ruling that Plaintiffs' Complaint did not state cognizable claims for violation of their substantive due process rights. Plaintiffs are arrestees whom the Judges deemed eligible for pretrial release. Plaintiffs are thus a narrow category of arrestees who retain their fundamental right to liberty. Because Plaintiffs retain their fundamental liberty interest, heightened scrutiny must be applied to the Judges' assignment of monetary bail. The Judges' assignment of such conditions of release does not survive heightened scrutiny. Even if the Court were to apply rational basis, the Judges' assignment of monetary bail does not pass review because their non-compliance with State procedure is not rationally related to any government interest.

The trial court erred in ruling that Plaintiffs' Complaint did not state cognizable claims for violation of their right to Equal Protection. The court failed to apply heightened scrutiny to Plaintiffs' claims that they are detained because they are indigent. The trial court relied on an erroneous rational basis analysis that analyzed Utah law rather than the Judges' practices which deviate from Utah law.

The trial court also erred in finding that Plaintiffs' Complaint did not state cognizable claims for violation of their Sixth Amendment Rights. Plaintiffs have identified two stages at which violations occurred: the Initial Bail Determination and the initial appearance. These are critical stages of the proceedings because the Judges' use of unaffordable financial conditions of release act as *de facto* detention orders. These orders are prejudicial to Plaintiffs, as research has shown that even as little as one day of pretrial detention leads to worse outcomes for criminal defendants. The trial court further erred in ruling that appointment of counsel at the initial appearance, with no assistance from counsel at the same, is consistent with the Sixth Amendment.

ARGUMENT

A fundamental principle of our criminal justice system is that a person who is arrested is innocent until proven guilty.[54] Building on this principle, the Constitution

[54] *See Coffin v. United States*, 156 U.S. 432 (1895) (discussing the presumption of innocence as "the foundation of the administration of our criminal law").

guarantees that no person may be deprived of liberty without due process of law.[55] Thus, before conviction, the government may only deprive pretrial liberty in "carefully limited exception[s]."[56] Yet an alarming number of Utahns accused of minor criminal offenses are deprived of their pretrial liberty solely because they cannot afford to pay Monetary Bail.

The Plaintiffs in this case were arrested without a warrant and confined to county jail. Each was found to be eligible for pretrial release subject to payment of Monetary Bail. They had not yet been appointed counsel. They had been given no notice of, or opportunity to participate in, the Initial Bail Determination that resulted in their incarceration, and which was based entirely on information provided by an adversary (law enforcement or prosecution). No official conducted any inquiry into Plaintiffs' ability to pay or made inquiry into or findings concerning less restrictive conditions of pretrial release.

For arrestees of financial means, a bail order enables their immediate release from government custody. Research shows that released arrestees have better

[55] U.S. CONST. amend. XIV.
[56] *United States v. Salerno*, 481 U.S. 739, 755 (1987).

outcomes in their criminal matters than their less-wealthy, jailed counterparts.[57] For arrestees without financial means or resources, such as Plaintiffs, a bail order ensures that they will languish in government custody for days, if not weeks, awaiting the resolution of their criminal proceedings.

The constitutional violations continue at Plaintiffs' initial appearances when the Judges leave the Monetary Bail order in place despite express knowledge of Plaintiffs' indigency and the requirements under Utah law that they enter a pretrial status order addressing bail. The Judges continue the financial conditions without constitutionally required examination or findings, e.g., whether the conditions were the least restrictive means of ensuring the arrestee's appearance and were needed for the unobstructed administration of justice or safety of the public. These initial appearances are held without the benefit of defense counsel.

[57] MARY T. PHILIPS, NEW YORK CITY CRIM., JUST. AGENCY, INC., PRETRIAL DETENTION AND CASE OUTCOMES, PART I: NONFELONY CASES, 26 (2007), https://perma.cc/DX65-RL9V (finding that conviction rates rose with as little as one day of pretrial detention and increased for additional days of pretrial detention); CHRISTOPHER T. LOWENKAMP, MARIE VANNOSTRAND & ALEXANDER HOLSINGER, INVESTIGATING THE IMPACT OF PRETRIAL DETENTION ON SENTENCING OUTCOMES 10-11 (2013), https://perma.cc/GEX6-C6A8 ("Low-risk defendants detained for the entire pretrial period are 5.41 times more likely to be sentenced to jail when compared to low-risk defendants who are released at some point pending trial. Moderate and high-risk defendants detained for the entire pretrial period are approximately 4 and 3 times (respectively) more likely to be sentenced to jail than their released counterparts.").

Plaintiffs assert claims for violation of their Fourteenth Amendment rights to substantive due process, procedural due process, and equal protection and Sixth Amendment right to counsel. The trial court granted the Judges' motion to dismiss all claims, finding that the Complaint did not state a claim.

I. THE TRIAL COURT ERRED IN RULING THAT PLAINTIFFS DID NOT STATE A CLAIM FOR VIOLATION OF THEIR FOURTEENTH AMENDMENT RIGHTS.

The trial court ruled that the Complaint did not state a cognizable claim for violation of Plaintiffs' rights to Due Process.[58] The Due Process Clause of the Fourteenth Amendment "is the source of three different kinds of constitutional protection.[59] First, it provides a "guarantee of fair procedure, . . . referred to as procedural due process," in connection with any deprivation of life, liberty, or property by a state.[60] This is the "most familiar office" of the clause."[61] Second, the Clause contains a substantive component "that protects individual liberty against 'certain government actions regardless of the procedures used to implement them.'"[62] This substantive component is referred to as substantive due process.[63]

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[58] App. Vol. IV at 986.
[59] *Daniels v. Williams*, 474 U.S. 327, 337 (1986) (Stephens, J., concurring).
[60] *Id.*
[61] *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 125 (1992) (internal citation omitted).
[62] *Id.*
[63] *Id.*

Third, the Clause incorporates the specific protections of most of the Bill of Rights against the states, including the Sixth Amendment.[64]

A. Plaintiffs Have Pled Cognizable Claims for Violation of Their Procedural Due Process Rights.

"An alleged violation of the procedural due process required by [the Fourteenth Amendment] prompts a two-step inquiry: (1) whether the plaintiff has shown the deprivation of an interest in "life, liberty, or property" and (2) whether the procedures followed by the government in depriving the plaintiff of that interest comported with due process of law."[65] The right at issue in this case is the right to pretrial liberty. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause.[66] Due process entails a right to notice and a meaningful opportunity to be heard.[67]

The trial court ruled that Plaintiffs had satisfied the first step, finding that they presented a strong interest in pretrial liberty.[68] However, the court found that Plaintiffs were afforded the appropriate level of process.[69] The court's analysis erred in two ways. First, the court erred in relying on *Gerstein v. Pugh*, 420 U.S. 103

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[64] *Daniels*, 474 U.S. at 337.
[65] *Elliott v. Martinez*, 675 F.3d 1241, 1244 (10th Cir. 2012). *See also Brown v. Eppler*, 725 F.3d 1221, 1226 (10th Cir. 2013).
[66] *Turner v. Rogers*, 564 U.S. 43, 131 S.Ct. 2507, 2511 (2011).
[67] *LaChance v. Erickson*, 522 U.S. 262, 266, 118 S.Ct. 753 (1998).
[68] App. Vol. IV at 987.
[69] *Id.* at 987–92.

(1975). Next, the court erred in failing to construe the allegations of the Complaint as true and analyzing Utah law rather than the Judges' practices that deviate from law.

1. The Trial Court Failed to Apply *Mathews v. Eldridge*.

The trial court's first error was applying *Gerstein* to analyze Plaintiffs' due process claim.[70] The trial court declined to apply the *Mathews v. Eldridge*, 424 U.S. 319 (1976) three-part test, stating that the test is only applicable to review of administrative proceedings and because the Supreme Court, in analyzing a challenge to pretrial detention raised in *United States v. Salerno*, 481 U.S. 739 (1987), applied *Gerstein*.[71] The trial court is incorrect. While the decision in *Salerno* does refer to *Gerstein*, the Supreme Court also relied on *Schall v. Martin*, 467 U.S. 253 (1984), a pretrial detention case which applied the *Mathews* test.[72]

In *Schall,* the Supreme Court reviewed a due process challenge to a statute that permitted the pretrial detention of juveniles. The Court applied the *Matthews* test in analyzing whether the statute served a legitimate government objective, the juveniles' countervailing interest in freedom from institutional restraints, and whether the procedural safeguards contained in the statute were adequate to protect

[70] *Id.* at 988–91.
[71] *Id.*
[72] *Salerno*, 481 U.S. at 751–52.

against erroneous and unnecessary deprivations of liberty.[73] The *Schall* Court found that the procedures afforded by the subject statute—notice, a hearing, counsel, and a record of the reasons for the detention—comport with due process and are sufficient to prevent the risk of unnecessary detention.[74]

Three years later, the Supreme Court in *Salerno* applied the same *Mathews* test to analyze a procedural due process claim challenging the pretrial detention of adults. The *Salerno* opinion first addressed a claim for substantive due process violation and analyzed the government objectives[75] and the individual interest at stake.[76] When the Court turned its attention to the procedural due process claim, the only factor of the *Mathews* test left to address was whether the procedures afforded were sufficient to protect against erroneous deprivation.[77] The *Salerno* Court reviewed the available procedures—right to counsel, to be heard, to cross examine, and written findings of fact—and held that the procedures provided were "more

[73] *Schall*, 467 U.S. at 253–281. *See also Mathews*, 424 U.S. at 335 ("First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.").
[74] *Id.* at 278–281.
[75] *Salerno*, 481 U.S. at 748–50.
[76] *Id.* at 750.
[77] *Id.* at 751 ("Under the Bail Reform Act, the procedures by which a judicial officer evaluates the likelihood of future dangerousness are specifically designed to further the accuracy of that determination.").

exacting" than the procedures that were upheld in *Schall*.[78] Contrary to the trial court's opinion, the analysis in *Salerno* and *Schall* make clear that *Mathews* must be applied to assess whether pretrial criminal procedures comport with due process.

Under *Mathews*, Plaintiffs have alleged a violation of their rights to procedural due process. Plaintiffs' liberty interest is uncontested. The risk of erroneous deprivation is substantial because Plaintiffs are not afforded any safeguards. The Judges presumably do not intend to issue *de facto* pretrial detention orders by assigning Monetary Bail that is wholly out of Plaintiffs' reach. Plaintiffs' pretrial detention as a result of unaffordable Monetary Bail must be an error because the Judges have failed to conduct an individualized analysis to strike the right balance between the State's interests and Plaintiffs' financial means.[79]

There is significant value in additional procedural safeguards. Additional safeguards such as a meaningful opportunity for Plaintiffs to be heard and participate in the Initial Bail Determination, individualized consideration of Plaintiffs' financial circumstances, application of the least restrictive conditions reasonably available, and review of conditions of release at an initial appearance would all contribute to reducing the risk of erroneous deprivation. An opportunity for Plaintiffs to be heard

[78] *Id.* at 752.

[79] This error is all the more apparent when Plaintiffs' *de facto* detentions are considered in light of the fact that the Judges entered the orders granting Plaintiffs' release on bail after having analyzed whether Plaintiffs were ineligible for bail. *See supra* Pertinent Utah Rules and Statutes, at p. 4–5.

also ensures basic fairness since the Judges have already heard from the State in the form of the Information and probable cause statement.

The burden arising from these additional procedures is minimal. The Judges cannot complain of the burden of complying with Utah law, as this is already their obligation. Any burden associated with additional or substitute procedures not present in Utah law would also be minimal. Plaintiffs' participation in the Initial Bail Determination could be easily accomplished through virtual hearings. In a post-COVID world, virtual hearings are a routine operation for jails and for courts. The necessary software and equipment are already in place.

2. The Court Failed to Accept the Complaint's Allegations as True.

Even if the trial court was correct in applying *Gerstein*, its analysis erred in failing to accept the allegations of the Complaint as true. The court's analysis focused on the sufficiency of pretrial procedures under Utah law.[80] The Complaint makes clear, however, that there is a difference between what the law requires and what the Judges are doing in practice. This difference is the source of the due process violations. The court's misplaced focus results in a failure to analyze the true issues of the case: the Judges' processes which deviate from the law.

[80] App. Vol. IV at 990–91 ("Utah's current bail system satisfies the Constitution's procedural due process requirement as defined in *Gerstein*.").

For example, the ruling recited Utah law's requirements that arrestees be taken without delay before a magistrate for a probable cause and pretrial release review without noting any of the analyses the law requires for issuing to the same, nor noting the fact that the Judges are not performing such analysis.[81] The ruling emphasized that the Initial Bail Determination is temporary (contrary to the allegations of the Complaint), may be overridden by a subsequent pre-trial status order issued during an initial appearance (when the Complaint demonstrates such subsequent orders do not occur at the initial appearance), and that "[a] Utah arrestee is afforded all of the hallmarks of due process at their first initial appearance, including notice, opportunity to be heard, and right to counsel."[82] This last finding is particularly troubling since the Complaint alleges that Plaintiffs are not receiving full constitutional due process at their initial appearance—particularly that they are denied the right to be heard and to counsel. Despite Plaintiffs raising the procedural deficiencies of the initial appearance in their Complaint, the court dismissed the claim arising from the initial appearance without analysis.[83]

The trial court is correct that the procedures mandated by *Gerstein* are minimal; however, the ruling is limited to the probable cause procedures that are

[81] App. Vol. IV at 990–92; *supra* Statement of the Case at 4–5 and 7–8.
[82] *Id.* Elsewhere in the opinion, the court demonstrates further misunderstanding of Utah's pretrial procedures by stating that initial appearances must occur within three days of arrest. *See infra* Section II.
[83] *See* App. Vol. IV at 991–92.

shaped by the State with a view to criminal procedure as a whole.[84] *Gerstein* allows no deference to judicial deviations from a State's carefully designed criminal processes.

Plaintiffs as pretrial defendants are entitled to at least some measure of heightened scrutiny of infringement on their liberty, because the Supreme Court has noted that even under circumstances where a person is not entitled to the full panoply of rights, heightened scrutiny should still be applied when a person may suffer a grievous loss such as a deprivation of liberty.[85]

B. Plaintiffs Have Pled a Cognizable Claim for Violation of Their Right to Substantive Due Process.

The substantive due process analysis must begin with a careful description of the right at stake and its scope.[86] If the asserted interest may be characterized as fundamental, then the governmental provision infringing upon that interest must be narrowly tailored to serve a compelling governmental interest.[87] If the asserted

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[84] *Gerstein*, 420 U.S. at 123-25 ("Although we conclude that the Constitution does not require an adversary determination of probable cause, we recognize that state systems of criminal procedure vary widely. There is no single preferred pretrial procedure and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole.").

[85] *See Morrissey v. Brewer*, 408 U.S. 471, 475–90 (1972) (holding that parolees though not entitled to full panoply of rights are still entitled to due process protections including a preliminary hearing within a reasonable time after being taken into custody).

[86] *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Dawson v. Bd. of Cnty. Commissioners of Jefferson Cnty., Colorado*, 732 F. App'x 624 (10th Cir. 2018).

[87] *Reno*, 507 U.S. at 302.

interest is non-fundamental then the rational basis test is applied to determine whether the infringement is reasonably related to a legitimate government interest, or if the purpose of the infringement is an unconstitutional punishment.[88]

This case implicates Plaintiffs' rights to pretrial liberty. However, Plaintiffs in this case take a very narrow position regarding this asserted liberty interest. Plaintiffs assert a right to be free from financial conditions of pretrial release that are assigned without consideration of a Plaintiffs' ability to pay, and after Plaintiffs have been found eligible for pretrial release. The determination of eligibility for pretrial release is significant because the considerations that make Plaintiffs eligible for pretrial release implicate the holdings in *Salerno* and *Gaylor v. Does*, 105 F. 3d 572 (10th Cir. 1997).

In *Salerno*, the Supreme Court reviewed a due process challenge to the Bail Reform Act, which permitted pretrial detention if, after an adversary hearing, the government demonstrated by clear and convincing evidence that no release conditions would reasonably assure the safety of any other person and the community.[89] The Supreme Court analyzed the government's "legitimate and compelling" interest in preventing crime by arrestees against the individual's "strong interest in liberty."[90] The Court concluded that when the government proves by clear

[88] *Bell v. Wolfish*, 441 U.S. 520, 538 – 39 (1979).
[89] *United States v. Salerno*, 481 U.S. 739, 741 (1987).
[90] *Id.* at 749–51.

and convincing evidence at a full blown adversary hearing that an arrestee presents a threat to others, pretrial detention to disable that threat is consistent with due process.[91] In conclusion, the Court stated that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[92]

In contrast to the arrestees in *Salerno*, Judges here already found that there is not clear and convincing evidence that Plaintiffs constitute a danger to any other person or present a flight risk. Thus, the government concerns at issue in *Salerno* are not present here. By finding Plaintiffs eligible for pretrial release, the state's justification for detention has faded, and Plaintiffs are returned to the norm.[93] The normal concept of liberty in our Nation is that it is a fundamental right.[94] Any exceptions to this right should be carefully limited.

Even if this Court determines that rational basis review is to be applied, the trial court still erred in its analysis. The court analyzed Utah law and found that the laws permitting the assignment of secured financial conditions of release to be rationally related to a legitimate government purpose. As discussed above, Plaintiffs

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[91] *Id.*
[92] *Id.* at 755.
[93] *Gaylor v. Does*, 105 F. 3d 572, 576 (10th Cir. 1997) ("The setting of bond in effect accepted the security of the bond for Gaylor's appearance, and hence the state's justification for detaining him faded."). *See also Dodds v. Richardson*, 614 F. 3d 1185, 1192, 1202–1204, 1207 (10th Cir. 2010).
[94] U.S. CONST. amend XIV, § 1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law"). *See also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

do not challenge the constitutionality of Utah's laws; rather, Plaintiffs challenge the Judges' failure to follow Utah law by failing to consider Plaintiffs' financial resources and failing to assign the least restrictive reasonably available conditions of release when entering the Initial Bail Determination and failing to enter a pretrial status order at the initial appearance. The correct subject of analysis is whether the Judges' practices, which deviate from law, are rationally related to a legitimate government purpose. The Judges have never articulated any legitimate government purpose for their practices nor shown a rational connection to a legitimate purpose. Lacking a rational connection, the Court may infer an intent to punish.[95]

Furthermore, Judge Bells' comments to Medina are suggestive of an intent to punish. At her initial appearance, Medina requested that Judge Bell reduce her bail. Judge Bell refused, stating, "you've got to find a way to stop getting arrested."[96] This comment suggests that Judge Bell assumed Medina to be guilty and that he was willing to condition her pre-trial liberty on accusations. The comment suggests that Judge Bell was using pretrial detention and unaffordable Monetary Bail as a

[95] *Bell*, 441 U.S. at 539 ("if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees."); *Gaylor*, 105 F. 3d at 577–78.
[96] App. Vol. II at 297–98; App. Vol. IV at 827.

retaliatory means of punishing Medina's behavior. This kind of purpose does not survive rational basis review.[97]

C. Plaintiffs Have Pled a Cognizable Claim for Violation of Their Right to Equal Protection.

The Fourteenth Amendment prohibits a state from denying any person within its jurisdiction equal protection of the laws.[98] Equal protection requires that all persons similarly situated should be treated alike.[99]

Indigency is ordinarily not a suspect classification; however, the Supreme Court has found that heightened scrutiny is required when criminal laws detain poor defendants *because of* their indigence.[100] The court has explained that "[d]ue process and equal protection principles converge in the Court's analysis" of cases involving "the treatment of indigents in our criminal justice system."[101] "Most decisions in this

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[97] *Bell*, 441 U.S. at 535 ("under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.").
[98] U.S. CONST. amend. XIV, § 1.
[99] *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 659 (10th Cir. 2006) (quoting *City of Cleburne v. Cleburne Living Ctr.* 473 U.S. 432, 439 (1985)).
[100] *Tate v. Short,* 401 U.S. 395, 397–99 (1971) (invalidating a facially neutral statute that authorized imprisonment for failure to pay fines because it violated the equal protection rights of indigents); *Williams v. Illinois,* 399 U.S. 235, 241–42 (1970) (invalidating a facially neutral statute that required convicted defendants to remain in jail beyond the maximum sentence if they could not pay other fines associated with their sentences because it violated the equal protection rights of indigents). *See also ODonnell v. Harris Cnty.*, 892 F.3d 147, 161–62 (5th Cir. 2018), *overruled on unrelated grounds by Daves v. Dallas Cnty, Texas*, 64 F.4th 616 (2023).
[101] *Bearden v. Georgia*, 461 U.S. 660, 664–65 (1983) (citation omitted).

area have rested on an equal protection framework."[102] The court explained: "[W]e generally analyze the fairness of relations between the criminal defendant and the State under the Due Process Clause, while we approach the question whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants under the Equal Protection Clause."[103]

In *Bearden v. Georgia*, the Supreme Court cautioned against resolving such converging cases by "resort to easy slogans or pigeonhole analysis, but rather requires a careful inquiry into such factors as 'the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose . . .'"[104] The court has noted that indigents received heightened scrutiny when two conditions are met: "[1] because of their impecunity [the indigents] were completely unable to pay for some desired benefit, and [2] as a consequence, they sustained *an absolute deprivation* of a meaningful opportunity to enjoy that benefit."[105]

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[102] *Id.*
[103] *Id.*
[104] *Id.* at 667.
[105] *San Antonio Indep. Sch. Dist. v. Rodriquez*, 411 U.S. 1, 20 (1973); *see also Walker v. City of Calhoun, GA.*, 901 F.3d 1245, 1261 (2018); *Ross v. Moffitt*, 417 U.S. 600, 616 (1974) ("The duty of the State . . . is not to duplicate the legal arsenal that may be privately retained by a criminal defendant . . . but only to assure the indigent defendant an adequate opportunity to present his claims fairly . . . ."); *M.L.B. v. S.L.J.*, 519 U.S. 102, 126-127 (1996) (noting that wealth-based sanctions are

The trial court held that rational basis applies to Plaintiffs' claims of differential treatment based on financial need.[106] Relying on its rational basis analysis applied to Plaintiffs' substantive due process claim, the court held that Plaintiffs' Equal Protection claim similarly failed. The court succumbed to the easy pigeonhole analysis that *Bearden* cautions against. The court's analysis further failed because the substantive due process analysis on which it relied was misplaced. The court's substantive due process analysis examined whether Utah law satisfies rational basis, rather than the Judges' policies and practices about which Plaintiffs complain and which deviate from Utah law.[107]

As in *Bearden*, Plaintiffs' claims lie at the cross-roads of due process and Equal Protection. The rights at issue are Plaintiffs' important (if not fundamental) right to pretrial liberty.[108] This claim is premised on the fact that the only reason Plaintiffs will be detained is because they cannot afford to pay the Monetary Bail which the Judges assign with no hearing or individualized consideration. The liberty interest at stake is not an arrestee's generalized desire to be free from incarceration

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impermissible whey they are "not merely *disproportionate* in impact. Rather, they are wholly contingent on one's ability to pay, and thus "visi[t] different consequences on two categories of persons[.]").

[106] App. Vol. IV at 995–96.

[107] *Id.; Id.* at 992–995.

[108] *Salerno*, 481 U.S. at 750–51; *Reno*, 507 U.S. at 302; *In re Humphrey*, 482 P.3d 1008, 1018 (Cal. 2021); *Valdez-Jimenez v. Eighth Judicial Dist. Court of Nevada*, 460 P.3d 976, 984 (Nev.2020); *Buffin v. City & Cnty. of San Francisco*, 2018 WL 424362 at 8 (N.D. Cal. Jan. 16, 2018).

for the rest of his life; the liberty interest, rather, is the interest of an individual who stands accused but not convicted in freedom from "pretrial restraint of liberty," the denial of which the Supreme Court has pointedly noted is a serious matter.[109] When that freedom is denied, the deprivation is "absolute" within the meaning of *San Antonio Independent School District v. Rodriguez*.[110]

The next step requires analyzing a connection between the Judges' practices and any purpose therefore. The Judges' practices include (1) failing to provide Plaintiffs with notice, a hearing, an individualized Initial Bail Determination that conforms to the analysis required by Utah law, and (2) failing to enter a pretrial status order at the initial appearance. Plaintiffs cannot conceive of any legitimate purpose of the Judges' failure to comply with the analysis required by law in entering an Initial Bail Determination, nor any legitimate purpose for failing to promptly enter an individualized pretrial status order once counsel is appointed or a Judge undisputedly knows that a Plaintiff is indigent and unable to afford Monetary Bail.

There are numerous modern alternatives to Defendants' unconstitutional practices and policies. Possible alternatives include, but are not limited to, prompt

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[109] *Gerstein*, 420 U.S. at 105, 114.

[110] The absolute deprivation of Plaintiffs' liberty stands in contrast to the many options of pretrial conditions of release available to Defendants, including but not limited to ankle monitors, check-in orders, and restraining orders. Such alternatives are only partial restrictions on liberty which would not implicate the kind of equal protection analysis that is compelled by the absolute deprivation that is at issue in this case.

virtual Initial Bail Determination hearings, individualized analysis of Plaintiffs' conditions of release, imposing the least restrictive reasonably available conditions of release, prioritizing the use of non-financial conditions of release, using unsecured financial conditions of release, and making written findings related to the necessity of any conditions of release.

II. THE TRIAL COURT ERRED IN RULING PLAINTIFFS DID NOT STATE A CLAIM FOR VIOLATION OF THEIR SIXTH AMENDMENT RIGHTS.

This case implicates the right to counsel at two stages of criminal proceedings: the Initial Bail Determination and the initial appearance. As noted above, Plaintiffs did not have assistance of counsel at the Initial Bail Determination. In Utah, counsel is appointed at an accused's initial appearance. However, because the appointment occurs during the initial appearance, Plaintiffs do not have the assistance of counsel until after the proceeding.

The trial court found that Plaintiffs did not state a claim for violation of their Sixth Amendment rights.[111] The court ruled that the right to counsel does not attach until an individual's initial appearance.[112] The court further held that appointment of counsel at the initial appearance, and effective assistance occurring only thereafter, is consistent with *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 128 S. Ct. 2578

[111] App. Vol. IV at 997–99.
[112] *Id.* at 998.

(2008) and the Sixth Amendment. The court's ruling errs in its application of *Rothgery* and the Constitution's requirements.

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defen[s]e."[113] The Sixth Amendment "attaches" when "a prosecution is commenced."[114] The standard for commencement is often stated as "the initiation of adversary judicial criminal proceedings . . . by formal charge."[115]

Once the right to counsel attaches, the Sixth Amendment entitles a defendant to counsel at every "critical stage" of a criminal prosecution, which is "any proceeding where an attorney's assistance may avoid the substantial prejudice that could otherwise result."[116] "[W]hat makes a stage critical is what shows the need for counsel's presence."[117] Thus, a court must scrutinize a pretrial proceeding to determine "whether the accused required aid in coping with legal problems or assistance in meeting his adversary."[118] Courts also assess whether the proceeding

[113] U.S. CONST. amend VI.
[114] *Rothgery*, 554 U.S. at 198.
[115] *Id.* (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984); *Kirby v. Illinois*, 406 U.S. 682, 689 (1972) (plurality opinion)).
[116] *United States v. Bergman*, 599 F.3d 1142, 1147 (10th Cir. 2010).
[117] *Rothgery*, 554 U.S. at 212.
[118] *Id.* at 212 fn. 16 (internal quotation marks and citations omitted).

is one that can cause certain rights of the accused to be sacrificed or lost.[119] The "substantial prejudice" standard implicates "pretrial proceedings where the results might well settle the accused's fate."[120] Substantial prejudice concerns the fairness of "the whole course of a criminal proceeding."[121] The right to counsel applies whenever counsel can provide assistance by acting "as a spokesman for, or advisor to, the accused."[122]

Rothgery v. Gillespie County, Texas is among the seminal cases which define the scope and operation of the Sixth Amendment.[123] Walter Rothgery was arrested without a warrant based on erroneous information that he was a felon in possession of a firearm.[124] He was thereafter brought before a magistrate for a Texas "15.17" hearing. The hearing was conducted without a government prosecutor or counsel for Rothgery. At the hearing, the magistrate reviewed and found probable cause existed, informed Rothgery of the charge, and assigned $5,000 Monetary Bail.[125] Rothgery's criminal proceedings continued for another six months before he was indicted, Monetary Bail was raised to $15,000 resulting in his detention, and he was finally

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[119] *United States v. Wade*, 388 U.S. 218, 225 (1967) (holding that an accused has a right to the guidance of counsel at critical stages of the criminal proceedings "where certain rights might be sacrificed or lost.").
[120] *Id.*
[121] *Lafler v. Cooper*, 566 U.S. 156, 165 (2012).
[122] *United States v. Ash*, 413 U.S. 300, 312–13 (1973).
[123] *Rothgery*, 554 U.S. 191, 128 S.Ct. 2578 (2008).
[124] *Id.* at 212.
[125] *Id.* at 195–96.

appointed a lawyer who was able to promptly have the erroneous charge dismissed. Rothgery brought claims for violation of his right to counsel. The Supreme Court held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."[126]

The reasoning in *Rothgery* relied on decades-old precedent pinning the commencement of a prosecution to a list of events occurring with or without the defendant's presence, including "formal charge."[127] *Rothgery* explained the meaning of a "formal charge" triggering attachment: "What counts is that the complaint filed with the magistrate accused [the defendant] of committing a particular crime and prompted the judicial officer to take legal action in response (here, to set the terms of bail and order the defendant locked up)."[128] This Court has faithfully applied this

[126] *Id.*at 213.
[127] *Id.* at 198; *Texas v. Cobb*, 532 U.S. 162, 167 (2001); *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991); *Gouveia*, 467 U.S. at 188; *Moore v. Illinois*, 434 U.S. 220, 228 (1977); *Kirby v. Illinois*, 406 U.S. 682, 689 (1972) (plurality opinion).
[128] *Rothgery*, 554 U.S. at 199 n.9 *accord Brewer v. Williams*, 430 U.S. 387, 398 (1977) ("[T]he right to counsel . . . means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him.").

rule, repeatedly characterizing attachment as requiring no more than pending charges.[129]

A. Plaintiffs Have a Sixth Amendment Right to Counsel at the Initial Bail Determination.

Contrary to the trial court's finding, Plaintiffs' right to counsel attaches long before the initial appearance. The court's ruling appears to assume that Utah's criminal procedures are the same as those of *Rothgery's* 15.17 hearing, and the court therefore did not analyze when a Utah prosecution is commenced.[130] The Texas procedures at issue in *Rothgery*, however, differ from Utah's pretrial procedures. The 15.17 hearing accomplished multiple processes including probable cause review, informing an arrestee of the charges, and setting bail.[131] Utah's pretrial processes effectively divide the 15.17 hearing into two stages: the temporary pretrial status order (probable cause review and setting bail) and the initial appearance

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[129] *E.g.*, *United States v. Ross*, 837 F. App'x 617, 628 (10th Cir. 2020) ("Mr. Ross had not been charged with any federal offense . . . ."); *United States v. Calhoun*, 796 F.3d 1251, 1255 (10th Cir. 1251) (holding attachment occurred when "he was formally charged"); *United States v. Mullins*, 613 F.3d 1273, 1286 (10th Cir. 2010) (holding the right to counsel attaches to "charged offenses"); *Blythe v. Fatkin*, 64 F. App'x 141, 144 (10th Cir. 2003) (holding attachment depends on whether petitioner was "charged with a crime"); *United States v. Mitcheltree*, 940 F.2d 1329, 1339 (10th Cir. 1991) (repeatedly referring to "pending charges": "once charges have been filed, the defendant is in a different position because the right to counsel has attached on those charges").

[130] App. Vol. IV at 997–99.

[131] *See supra* fn. 125 and associated text. *See also* TEX. COD. CRIM. PROC. ANN., Art. 15.17 (Vernon Supp. 2007). The 15.17 processes are also required to occur within 48 hours of arrest. *Id.*

(informing arrestee of charges; bail is supposed to be revisited at this stage but the Judges do not do so).

In contrast to *Rothgery*, under Utah's procedures the prosecution of an arrestee begins when a magistrate finds there is probable cause for the arrest. The State, at this point, has submitted a probable cause determination and committed itself to prosecute. The moment the Judges find probable cause, Plaintiffs are effectively charged with a crime, and criminal proceedings are initiated against Plaintiffs. After probable cause has been found, the next step in Utah's pretrial procedure is the Initial Bail Determination, in which the Judges, acting as judicial officers, take legal action subjecting Plaintiffs to restrictions of their liberty.

Plaintiffs risk substantial prejudice through the coercive effects of pretrial detention. Pretrial detention affects the fairness of plea bargaining and trials for Plaintiffs.[132] Bail amounts set at the Initial Bail Determination decide whether Plaintiffs will be detained for several days at minimum.[133] This period of pretrial detention notably increases the likelihood of conviction by decreasing plea bargaining power through the coercive effect of pretrial detention.[134] Thus, the right to counsel also protects the fairness of plea bargaining, which "is almost always the

[132] App. Vol. II at 436.
[133] *Id.* at 433–34.
[134] *Id.* at 436–37 and underlying footnotes.

critical point for a defendant."[135] Pretrial detention also undermines their ability to consult with their attorney, search for evidence, or help find and meet witnesses who are otherwise reluctant to speak with counsel.[136]

Because the Initial Bail Determination implicates Plaintiffs' liberty, the deprivation of which results in substantial prejudice, Plaintiffs are entitled to the assistance of counsel at this proceeding. An attorney's assistance can help Plaintiffs avoid pretrial detention that increases the likelihood of conviction and the severity of sentences. More importantly, compliance with the Constitution requires that Plaintiffs receive a prompt bail hearing—additional risk "inheres in the particular confrontation," which deepens the need for counsel's presence.[137] Circuit courts across the country have recognized these realities of Initial Bail Determinations.[138]

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[135] *Missouri v. Frye*, 566 U.S. 134, 143–44 (2012) (observing that 94% of state criminal prosecutions are the result of guilty pleas); *Williams v. Jones*, 571 F.3d 1086, 1091–92 (10th Cir. 2009) ("Surely, the plea process is part of the defense.").

[136] *Id.*

[137] *Wade*, 388 U.S. at 227.

[138] *See, e.g.*, *Higazy v. Templeton*, 505 F.3d 161, 172–73 (2d Cir. 2007) (discussing significance of the Initial Bail Determination); *Ditch v. Grace*, 479 F.3d 249, 253 (3d Cir. 2007) (holding preliminary hearing is a critical stage because the prosecutor may seek pretrial detention, and "a principal function of the hearing . . . is to protect the accused's right against [ ] unlawful . . . detention."); *United States v. Abuhamra*, 389 F.3d 309, 323–24 (2nd Cir. 2004) ("Bail hearings fit comfortably within the sphere of adversarial proceedings closely related to trial. . . . [They] require a court's careful consideration of a host of facts about the defendant and the crimes charged . . . [to] determine whether a defendant will be allowed to retain, or forced to surrender, his liberty . . . ."); *Smith v. Lockhart*, 923 F.2d 1314, 1319–20 (8th Cir. 1991) (holding omnibus hearing including bail reduction motion is a critical stage).

The trial court held that the Initial Bail Determination is not a critical stage of the proceeding and therefore the right to counsel does not attach.[139] The court found this stage not critical because it is not a formal, adversarial hearing and only results in a temporary Initial Bail Determination.[140] The court implies that the Initial Bail Determination is of minimal effect or significance because it is temporary. In support, the court erroneously states that an initial appearance must take place within three days of arrest.[141] This is incorrect. Utah does not have a time requirement within which a person arrested without a warrant must receive an initial appearance.[142] Named Plaintiffs waited between four to eight days for their initial appearances.

Moreover, even when Plaintiffs receive their initial appearances, the Judges leave the Initial Bail Determinations in place. The Initial Bail Determination is far from the ephemeral order the trial court assumed it to be. Because the Judges' practices result in the Initial Bail Determination operating as a lasting order, it implicates the aforementioned risks of prejudice, and Plaintiffs are entitled to the assistance of counsel.

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[139] App. Vol. IV at 997.
[140] *Id.*
[141] *Id.*
[142] The trial court cites UTAH R. CRIM. P. 9(a)(1), which contains no timing requirement for an initial appearance. The court appears to rely on UTAH R. CRIM. P. 9A, which applies to persons arrested pursuant to a warrant.

Rothgery supports finding that the Initial Bail Determination is a critical proceeding. The Texas 15.17 hearing at issue in *Rothgery* includes the same processes as Utah's Initial Bail Determination (probable cause review and Initial Bail Determination).[143] The primary difference in Utah's procedure is that the detainee is not present and therefore not informed of the charges or his rights. The Judges' exclusion of Plaintiffs from the Initial Bail Determination and failure to inform Plaintiffs of the charges against them and their rights do not materially differentiate Utah's procedure from that in *Rothgery*. The issue of pretrial liberty is common to both procedures. When liberty is deprived, a detainee's knowledge of the specific reason for the deprivation does not change the substantial prejudice caused by the deprivation.

B. Plaintiffs Have a Sixth Amendment Right to Counsel at the Initial Appearance.

If the right to counsel does not attach at the Initial Bail Determination, it has most certainly attached by the time Plaintiffs, held in custody on unaffordable bail, appear at an initial appearance.[144] The reasoning applied above applies with equal measure to Plaintiffs' initial appearances.

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[143] *See supra* fn. 131 and associated text.

[144] *See* Joseph R. Grano, *Rhode Island v. Innis: A Need to Reconsider the Constitutional Premises Underlying the Law of Confessions*, 17 AM. CRIM. L. REV. 1, 31 (1979) ("[I]t would defy common sense to say that a criminal prosecution has not commenced against a defendant who, perhaps incarcerated and unable to afford judicially imposed bail, awaits preliminary examination on the authority of a

Plaintiffs have none of the benefits of counsel at their initial appearances. Plaintiffs have no opportunity to confer with counsel. Plaintiffs receive no advice or advocacy. And the Judges delay the bail hearing that informs the pretrial status order, resulting in continued deprivation of Plaintiffs' liberty. This is a violation of Plaintiffs' Sixth Amendment rights.[145]

III. THE TRIAL COURT ERRED IN GRANTING THE MOTION TO DISMISS JUDGE MCIFF ALLEN.

The trial court granted the motion to dismiss Judge McIff Allen finding that because Plaintiffs' claims had been dismissed for other reasons, it was unnecessary to consider Rule 25 of the Federal Rules of Civil Procedure and whether another judge should substituted in place of Judge McIff Allen.[146] As shown herein, the trial court erred in ruling that Plaintiffs did not state claims for violation of their Fourteenth and Sixth Amendment constitutional rights. Because Plaintiffs have stated viable claims, the court's ruling regarding the motion to dismiss Judge McIff Allen is also in error and must be reversed for consideration of substitution.

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charging document filed by the prosecutor, less typically by the police, and approved by a court of law" (internal quotation marks omitted)).

[145] *Frye*, 566 U.S. at 138 (citing *Strickland v. Washington*, 466 U.S. 668, 686 (1984) ("The right to is the right to effective assistance of counsel.")).

[146] App. Vol. IV at 999.

CONCLUSION

The trial court's ruling misinterprets the requirements of the Constitution. Plaintiffs respectfully request that this Court reverse the judgment and remand the matter for further proceedings.

STATEMENT REGARDING ORAL ARGUMENT

The Plaintiffs request oral argument. The basis for this request is that the issues and arguments set forth herein involve important federal constitutional analysis. Oral argument will assist the court in ruling on this appeal by permitting counsel for the parties to address the Court's questions regarding the various issues outlined in the parties' briefs.

DATED this 29th day of October, 2025.

CHRISTENSEN & JENSEN, P.C.

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Date: October 29th, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2025, a copy of the foregoing **BRIEF OF APPELLANTS** was sent to the following individuals, by way of the Court's CM/ECF Filing System:

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Date: October 29th, 2025.

/s/ Karra J. Porter
Karra J. Porter

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DAWN HEPIKIYA MEDINA, JUSTIN HORTON, MADELAINE THOMPSON, LUKE MELVIN LEWIS, MARCOS HERNANDEZ, DENISE ANN BEIERLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE HON. ANN MARIE MCIFF ALLEN, THE HON. JEREMIAH HUMES, THE HON. CHRISTINE JOHNSON, THE HON. THOMAS LOW, and THE HON. MATTHEW BELL, in their official capacities, Defendants.	**MEMORANDUM DECISION AND ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS** Case No. 4:21-cv-00102-DN-PK District Judge David Nuffer Magistrate Judge Paul Kohler

Defendants Judge Ann Marie McIff Allen, Judge Jeremiah Humes, Judge Christine Johnson, Judge Thomas Low, and Judge Matthew Bell (collectively, "Defendants" or "the Judges") filed their Second Motion to Dismiss ("Motion") on January 24, 2025.[1] They seek to dismiss Plaintiffs' Second Amended Complaint,[2] filed September 27, 2022, with prejudice under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1).[3] Briefing by the parties followed.

[1] Defendants' Second Motion to Dismiss and Memorandum in Support Thereof ("Motion"), docket no. 108, filed January 24, 2025.

[2] Second Amended Complaint, docket no. 56, filed September 27, 2022.

[3] Motion at 1.

Plaintiffs filed a Memorandum in Opposition on March 10, 2025,[4] and Defendants filed their Reply on April 1, 2025.[5] After careful review of the parties' briefing, the Defendants' Motion[6] is GRANTED.

Defendant Judge Ann Marie McIff Allen filed an earlier, separate Motion to Dismiss on May 17, 2024 ("Motion to Dismiss Judge Allen") seeking dismissal with prejudice because she is no longer a state judge.[7] This argument was re-asserted in Defendants' Second Motion to Dismiss.[8] Briefing by the parties followed; Plaintiffs filed their Opposition on June 14, 2024;[9] and Defendants filed their Reply in support of the Motion to Dismiss Judge Allen on June 28, 2024.[10] Plaintiffs filed two sur-replies, both filed July 19, 2024.[11] After careful review of the parties' briefing, the Motion to Dismiss Judge Allen[12] is GRANTED.

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[4] Plaintiffs' Memorandum in Opposition to Defendants' Second Motion to Dismiss ("Opposition"), docket no. 113, filed Mar. 10, 2025. The first motion to dismiss was filed by the Judges before an appeal was taken. *See* page 4, infra.

[5] Defendants' Reply Memorandum in Support of their Second Motion to Dismiss ("Reply"), docket no. 117, filed Apr. 1, 2025.

[6] Docket no. 108.

[7] Defendants' [sic] Motion to Dismiss the Hon. Anne [sic] Marie McIff Allen ("Judge Allen's Motion to Dismiss"), docket no. 84, at 1, filed May 17, 2024.

[8] Motion at 16.

[9] Plaintiffs' Opposition to Defendants' [sic] Motion to Dismiss the Honorable Anne [sic] Marie McIff Allen ("Opposition to Judge Allen's Motion to Dismiss"), docket no. 88, filed June 14, 2024.

[10] Defendants' [sic] Reply Memorandum in Support of Motion to Dismiss the Hon. Anne [sic] Marie McIff Allen ("Reply in Support of Motion to Dismiss Judge Allen"), docket no. 93, filed June 28, 2024.

[11] Plaintiffs' Sur-Reply to Defendants' Motion to Dismiss the Hon. Anne [sic] Marie McIff Allen (collectively referred to as "Sur-Replies"), docket nos. 98 and 100, filed July 19, 2024.

[12] Docket no. 84.

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A. BACKGROUND

Six individuals ("the Named Plaintiffs"[13]), and on behalf all others similarly situated (the "Class Members"[14] and "Plaintiffs"[15] to collectively designate Named Plaintiffs and Class Members), brought claims alleging that their constitutional rights were violated after they were arrested and held in custody on the sole condition of posting a monetary bail amount.[16] And because they could not afford to bail out, they remained in custody "until at least their initial appearances . . . . [which could be] anywhere from a few days to more than a week for their initial appearance."[17] Plaintiffs argue that these delays resulted in their prolonged detention, affecting their lives by separating them from their family and impacting their employment.

[13] Second Amended Complaint, 5, ¶¶ 3-9, docket no. 56, filed September 27, 2022.

[14] *Id.* at 20, ¶¶ 74, 76.

[15] Opposition at 3, ¶ 1 ("Plaintiffs are a certified Class.").

[16] *Id.* at 2.

[17] *Id.* at 4, ¶¶ 9–10.

"Even a few days in jail significantly increases the risk of job loss, eviction from housing or homeless shelter, exposure to trauma in custody, and impaired family connections."[18]

In their Second Amended Complaint, Plaintiffs allege two causes of action: (1) Defendants' have violated Plaintiffs' constitutional rights under the Fourteenth Amendment's equal protection and due process clauses by failing to inquire into and make findings concerning the Plaintiff's ability to pay at a hearing where Plaintiffs are given individualized release hearings with notice, representation by counsel, and an opportunity to present evidence; and, (2) Defendants have violated Plaintiffs' Sixth Amendment right to counsel by failing to provide counsel during Defendants' decision regarding bail and during the initial "first appearance" (hereinafter referred to as the "Initial Appearance").[19] Plaintiffs assert that during this process those "who cannot afford private counsel are not appointed counsel during the initial period of detention, and no lawyer appears with them at the Initial Appearance" and therefore this practice "violate[s] the Sixth Amendment by imposing de facto orders of detention."[20]

Utah's pretrial bail procedures begin with an initial, temporary bail determination ("Initial Bail Determination"), which is not a hearing and not an adversarial proceeding; neither the arrestee nor the prosecutor are present.[21] Within 24 hours,[22] during the Initial Bail Determination, a magistrate or judge reviews pretrial information collected at the time of booking and issues a "temporary pretrial status order."[23] The Temporary Pretrial Status Order

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[18] *Id.* at 19, ¶ 71.

[19] Second Amended Complaint at 25–27; s*ee also* Utah Code Ann. §77-20-205(1); *see also* Utah R. Crim. P. 7(a).

[20] *Id.* at 2, 26–27, ¶¶ 99–103.

[21] Utah Code Ann. §77-20-205(1).

[22] Utah R. Crim. P. 9(a)(1), (c)(1) ("Unless the time is extended at 24 hours after booking, if no probable cause determination and pretrial status order have been received by the custodial authority, the defendant must be released on the arrested charges on recognizance.").

[23] Utah Code Ann. §77-20-205(1).

either: (1) releases the arrestee on their own recognizance, (2) designates conditions for release, or (3) orders continued detention.[24] However, that Initial Bail Determination is temporary and may be overridden by a subsequent pre-trial status order issued during an arrestee's Initial Appearance, for which the magistrate or judge "may not give any deference to a magistrate's decision in a Temporary Pretrial Status Order."[25] In Utah, an arrestee is afforded all of the hallmarks of due process at their Initial Appearance—notice, opportunity to be heard, and right to counsel.[26]

1. First Motion to Dismiss

The Judges filed their first Motion to Dismiss on March 4, 2022.[27] After extensive briefing, that First Motion to Dismiss was granted by a Dismissal Order on March 31, 2023.[28] The Dismissal Order determined that the Plaintiffs' personal claims for retrospective relief against the Judges were barred by sovereign immunity under the Eleventh Amendment.[29] The Dismissal Order also concluded that the Plaintiffs lacked standing on their claims for prospective relief because pretrial detention was, as to them, not currently a threat nor an immediate future threat and there was no continuing injury.[30] Even though the Dismissal Order noted that "the Class Members' request for prospective declaratory relief" "can go forward," the entire case was dismissed.[31]

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[24] *Id.*

[25] *Id.* at §77-20-205(2)(b).

[26] Utah R. Crim. P. 7(a)–(b).

[27] Defendant's Motion to Dismiss and Memorandum in Support Thereof ("First Motion to Dismiss"), docket no. 29, filed March 4, 2022.

[28] Memorandum Decision and Order Granting Defendants' Motion to Dismiss ("Dismissal Order"), docket no. 64, entered March 31, 2023.

[29] *Id.* at 12–13.

[30] *Id.* at 9–10.

[31] *Id.* at 13.

2. Tenth Circuit Appeal

The Named Plaintiffs appealed the dismissal order, and on March 8, 2024.[32] The Tenth Circuit concluded that it lacked jurisdiction "[b]ecause an uncertified class asserts the only claims at issue in this action . . . . And the district court's jurisdiction over these claims extends only as far as the class-certification motion."[33] The Tenth Circuit remanded the case "for the district court to consider class certification and for further proceedings as required."[34] Following further briefing on the class-certification motion, the class was certified on December 20, 2024.[35]

3. Second Motion to Dismiss and Motion to Dismiss Judge Allen

Defendants now seek dismissal of the claims brought on behalf of the Class Members.[36] Specifically, Defendants seek dismissal for failure to state constitutional claims under the Due Process Clause, the Equal Protection Clause, and the Sixth Amendment.[37] The Named Plaintiffs, on behalf of the Class Members argue that dismissal is not proper because they have asserted claims upon which relief can be granted.[38] And Plaintiffs further assert that "recent decisions from district courts in Oklahoma" – *Feltz v. Regalado*[39] and *White v. Hesse*[40]–are persuasive

[32] *Medina v. Allen*, No. 23-4057, 2024 WL 1006791 (10th Cir. March 8, 2024).

[33] *Id.* at *3.

[34] *Id.*

[35] Memorandum Decision and Order Granting Plaintiffs' Motion to Certify Class and Memorandum, docket no. 103, filed December 20, 2024.

[36] Motion at 2.

[37] *Id.*

[38] Opposition at 2.

[39] *Feltz v. Regalado*, 751 F. Supp. 3d 1198 (N.D. Okla. 2024).

[40] *White v. Hesse*, No. CIV-19-01145-JD, 2024 WL 5202511 (W.D. Okla. Dec. 23, 2024).

authority that their procedural due process claims should be evaluated under the standard utilized in *Mathews v. Eldridge*[41] as opposed to the standard used in *Gerstein v. Pugh*.[42]

Defendant Judge Allen separately argues that dismissal is appropriate now that she is no longer a state judge, thereby removing any live and ongoing controversy and making the issues against her moot.[43] Both parties agree dismissal of Judge Allen is appropriate now that she is no longer a state judge.[44] However, they disagree whether a new judge should be substituted under Federal Rule of Procedure 25(d).

B. STANDARD OF REVIEW

Defendants bring their Motion to Dismiss all of the claims brought in Plaintiffs' Second Amended Complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).[45] "[T]o withstand a motion to dismiss, a complaint must contain enough allegations of fact 'to state a claim to relief that is plausible on its face.'"[46] Dismissal is appropriate under Rule 12(b)(6) when the complaint, standing alone, is legally insufficient to state a claim on which relief may be granted.[47] Each cause of action must be supported by enough sufficient, well-pleaded facts to be plausible on its face.[48] All well-pleaded factual allegations are accepted as true and reasonable inferences are drawn in a light most favorable to the plaintiff.[49] However, "assertions devoid of factual

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[41] *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

[42] *Id.* at 15; *see generally Gerstein v. Pugh*, 420 U.S. 103, 111 (1975).

[43] Motion to Dismiss Judge Allen at 5–6.

[44] Motion at 16; *see also* Opposition at 36–37.

[45] Motion at 1, 7.

[46] *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 544 (2007)).

[47] Fed. R. Civ. P. 12(b)(6); *see Sutton v. Utah State Sch. for the Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. Mar. 1, 1999).

[48] *Twombly*, 550 U.S.at 570.

[49] *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir. Nov. 25, 1997).

allegations" that are nothing more than "conclusory" or "formulaic recitation" of the law are disregarded.[50]

C. JURISDICTION

Defendants first assert that Plaintiffs' Second Amended Complaint should be dismissed under 12(b)(1) for lack of subject matter jurisdiction.[51] Defendants' Motion renews their arguments that the *Younger Abstention* doctrine applies; that H.B. 2003 mooted Plaintiffs' Due Process and Equal Protection Claims; and that all claims made against Judge Allen are non-redressable.[52]

The first two arguments were decided against Defendants in the Dismissal Order.[53] Plaintiffs argue that Defendants' attempt to raise Younger Abstention and mootness is barred because Defendants' missed the opportunity to cross-appeal.[54] In their Reply, Defendants do not respond.[55] Defendants' briefing before the Tenth Circuit explains that the only issues before the Tenth Circuit were the dismissal of Plaintiffs' "claims on Rule 12(b)(6) grounds," not the denial of the jurisdictional defenses.[56] At no time did Defendants file a timely cross-appeal related to the Dismissal Order's ruling related to the jurisdictional arguments. Yet, they now wish to renew and preserve their previous jurisdictional arguments.[57]

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[50] *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 681 (2009).

[51] Motion at 1.

[52] *Id.* at 15–16.

[53] Dismissal Order at 10-12.

[54] Brief of Defendants-Appellees, *Medina, et al. v. Allen, et al*, 2023 WL 7096571, at *16 (10th Cir. Oct. 20, 2023).

[55] *See generally* Reply.

[56] *Id.*

[57] *See generally id.*; *see also* Motion at 15–16.

Since the time to appeal has now passed, and Defendants have not provided a reason for reconsideration, the Dismissal Order on the jurisdictional issues remains in place.

D. THE FOURTEENTH AMENDMENT CLAIM FAILS

The Fourteenth Amendment provides that "[n]o State shall…deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[58] Plaintiffs allege that their due process and equal protection rights were violated because they were incarcerated "without inquiry into and findings concerning ability to pay"; not given notice or an opportunity to be heard during their Initial Bail Determination; and kept in custody because they could not afford to pay their bail amounts.[59]

1. The Due Process Claim Fails

Plaintiffs allege "violations of [the Class Members] rights to procedural and substantive due process."[60] The Tenth Circuit explains that procedural due process under the Due Process Clause "ensures that a state will not deprive a person of life, liberty or property unless fair procedures are used in making that decision."[61] Substantive due process, "on the other hand, guarantees that the state will not deprive a person of those rights for an arbitrary reason regardless of how fair the procedures are that are used in making the decision."[62] Neither of the constitutional violations alleged by Plaintiffs in their Second Amended Complaint are present, as discussed in turn below. Thus, Plaintiffs' First Claim for Relief is DISMISSED.

[58] U.S. Const. amend. XIV, Section 1.

[59] Second Amended Complaint at 25–26, ¶¶ 96–98.

[60] Opposition at 13; *see also* Second Amended Complaint at 25–26, ¶¶ 96–98.

[61] *Archuleta v. Colorado Dep't of Insts., Div. of Youth Servs.*, 936 F.2d 483, 490 (10th Cir. June 20, 1991).

[62] *Id.*

a. Procedural Due Process

To properly allege a violation of procedural due process Plaintiffs' Second Amended Complaint must allege facts sufficient to meet a two-step inquiry: "(1) Did the individual possess a protected interest to which due process protection was applicable? (2) Was the individual afforded an appropriate level of process?"[63] Plaintiffs have met the first requirement but not the second.

First, Plaintiffs claim that "[t]he right at issue here is [an arrestee's] right to pre-trial liberty."[64] A protected liberty interest "may arise from the Constitution itself . . . or it may arise from an expectation or interest created by state laws or policies."[65] Here, it arises from the Constitution.[66] Both parties agree, and the Motion recites a U.S. Supreme Court case explaining that an arrestee has a "strong interest in liberty," a right of "importance and fundamental nature."[67] Although pretrial liberty is not a fundamental right, "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[68] Ultimately, pretrial liberty is not an absolute fundamental right.

Next, the second inquiry is whether Plaintiffs were, through the procedures employed in Initial Bail Determination, "afforded an appropriate level of process prior to the deprivation of the protected interest" which Plaintiffs have in pretrial liberty.[69] "The Due Process Clause of the

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[63] *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1253 (10th Cir. 1998).

[64] Opposition 18; *see also* Second Amended Complaint at 25.

[65] *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005); *see also Boutwell v. Keating*, 399 F.3d 1203, 1212 (10th Cir. 2005) (explaining that a liberty interest can be "inhere in the Due Process clause or it may be created by state law.").

[66] *United States v. Salerno*, 481 U.S. 739, 750 (1987) (noting that the arrestee has a "strong interest in liberty. . . . [And the U.S. Supreme Court does not] minimize the importance and fundamental nature of this right."); *see also* Motion at 5 (citing , Opposition at 5

[67] *Id.*

[68] *Salerno*, 481 U.S. at 755.

[69] *Hennigh*, 155 F.3d at 1255.

United States Constitution entitles each citizen to notice and an opportunity to be heard prior to the deprivation of a fundamental right."[70] Specifically, Plaintiffs contend in their Second Amended Complaint that Plaintiffs were (1) not given notice of the Initial Bail Determination; (2) not given the right to be heard or present evidence at the Initial Bail Determination; and (3) not given the right to counsel at the Initial Bail Determination.[71] It is safe to conclude Plaintiffs define the "Initial Bail Determination" as the moment when an on-call judge reviews a probable cause statement submitted by a law enforcement officer.[72] Notice and an opportunity to be heard at the Initial Bail Determination is not required by the Constitution.

In the early 1970s, the Southern District of Florida "held that the Fourth and Fourteenth Amendments give all arrested persons charged by information a right to a judicial hearing on the question of probable cause."[73] The Fifth Circuit Court of Appeals affirmed.[74] Both lower courts held "that the determination of probable cause must be accompanied by the full panoply of adversary safeguards—counsel, confrontation, cross-examination, and compulsory process for witnesses."[75] The Supreme Court in *Gerstein v. Pugh* corrected this misconception, stating that all of "[t]hese safeguards are not essential for the probable cause determination required by the Fourth Amendment."[76] Rather, "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest."[77] Probable

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[70] *Id.*at 1256.

[71] Second Amended Complaint at 19–20, ¶ 73; *see also* Opposition at 14–15.

[72] *See* Second Amended Complaint 2, 14, 19-20; Opposition 24-25.

[73] *Gerstein v. Pugh*, 420 U.S. at 107.

[74] *Id.* at 114.

[75] *Id.* at 119.

[76] *Id.*

[77] *Id.* at 114.

cause can be determined "without an adversary hearing."[78] "That standard—probable cause to believe the suspect has committed a crime—traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof."[79] The Supreme Court gave states vast latitude on structuring this probable cause process, saying that "[t]here is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole."[80]

Plaintiffs assert that the appropriate test for examining procedural due process of an arrestee's initial bail hearing is not *Gerstein v. Pugh*, discussed above, but the test provided in *Mathews v. Eldridge*, 424 U.S. 319 (1976).[81] However, *Mathews* is distinguishable from this case because it deals with a three-part balancing test used to determine the level of due process required in administrative proceedings.[82] In *Mathews*, the Supreme Court determined that a recipient of Social Security disability payments was entitled to an evidentiary hearing prior to the termination of those benefits.[83] Termination of benefits by an administrative process is not similar to an Initial Bail Determination in a criminal case. *Gerstein* not *Matthews*, governs whether the current Utah bail system satisfies the Constitution's procedural due process. In fact, in a case decided the year after *Mathews* and two years after *Gerstein*, the Supreme Court

[78] *Id.* at 120.

[79] *Id.*

[80] *Id.*

[81] Opposition at 16.

[82] *Mathews*, 424 U.S. at

[83] *Id.* at

decided *U.S. v. Salerno*, which dealt with pretrial detention. *Salerno* utilizes the *Gerstein* analysis; not the *Mathews* three-part analysis.[84]

The Oklahoma district court cases relied on by Plaintiffs,[85] *Feltz v. Regalado* and *White v. Hess*, are distinguishable on their facts. Both involve preconviction bail determinations, but at later stages of the criminal proceedings than at issue here. In *Feltz*, the district court was evaluating the arrestee's challenge to the County's "bond docket appearance," akin to Utah's Initial Appearance, not the probable cause Initial Bail Determination.[86] *White* was also challenging the County's Initial Appearance procedures.[87] Unlike other stages of the process, or the Initial Appearance, notice and an opportunity to be heard at Utah's Initial Bail Determination are not required by the Constitution.

Utah's preconviction bail procedures begin with the Initial Bail Determination, which is not a hearing and not an adversarial proceeding; neither the arrestee nor the prosecutor are present.[88] Within 24 hours of booking the magistrate or judge issues a written Temporary Pretrial Status Order and either: (1) releases the arrestee on their own recognizance, (2) designates conditions for release which may include bail (the Initial Bail Determination), or (3) orders continued detention.[89] An Initial Bail Determination is temporary and may be overridden by a subsequent pre-trial status order issued during an arrestee's Initial Appearance, in which the magistrate or judge "may not give any deference to a magistrate's decision in a Temporary

[84] *Salerno*, 481 U.S. at 749 ("The protections . . . far exceed what we found necessary to effect limited postarrest detention in *Gerstein v. Pugh,* 420 U.S. 103 (1975).").

[85] Opposition at 16–17.

[86] *Feltz v. Regalado*, 751 F. Supp. 3d 1198 (N.D. Okla. 2024).

[87] *White v. Hesse*, No. CIV-19-01145-JD, 2024 WL 5202511 (W.D. Okla. Dec. 23, 2024).

[88] Utah Code Ann. §77-20-205(1).

[89] *Id.*

Pretrial Status Order."[90] A Utah arrestee is afforded all of the hallmarks of due process at their first Initial Appearance, including notice, opportunity to be heard, and right to counsel.[91]

This is dissimilar to *Feltz* where the "'bond docket' is the *only* procedure that routinely serves the function of what is commonly called a detention hearing." [92] The detention hearing in *Feltz* also lacked each of the hallmarks of due process.[93] Similarly, in *White*, at issue was a failure to provide notice and an opportunity to be heard at the Initial Appearance, and not the Initial Bail Determination.[94] Ultimately, *Feltz* and *White* are not controlling and distinguishable.

Utah's current bail system satisfies the Constitution's procedural due process requirement as defined in *Gerstein*. In Utah, "[a] person arrested and delivered to a correctional facility without a warrant for an offense must be presented without unnecessary delay before a magistrate for the determination of probable cause and eligibility for pretrial release pursuant to Utah Code § 77-20-205."[95] Separately (and usually earlier), the arresting officer or a prosecutor is required submit an affidavit no later than twenty-four hours after the arrest containing facts supporting their belief that the defendant has committed a crime.[96] The judge is required to determine if probable cause exists and "must determine if the person is eligible for pretrial release…,"[97] in essence, whether they can be released on bail from custody prior to trial, or other resolution of the criminal charges.[98] The "judicial determination" is accomplished

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[90] *Id.* at §77-20-205(2)(b).

[91] Utah R. Crim. P. 7(a)–(b).

[92] *Feltz*, 751 F. Supp. 3d at 1232.

[93] *Id.*

[94] *White*, 2024 WL 5202511, at *1.

[95] Utah R. Crim. P. 9(a)(1).

[96] *Id.* at 9(a)(2).

[97] *Id.* at 9(a)(4).

[98] Utah Code Ann. § 77-20-102(17).

within twenty-four hours unless the time is extended at 24 hours, of a person being arrested; otherwise the arrestee must, under Rule 9(c)(1) of the Utah Criminal Procedure Code, be released.[99] This practice satisfies the Constitutional requirements.

After the Initial Bail Determination, the Initial Appearance follows with the full constitutional and due process requirements.

b. Substantive Due Process

Plaintiffs also allege that they were denied substantive due process. In a substantive due process analysis, Plaintiffs must "first defin[e] the type of right at stake"—fundamental or non-fundamental.[100] "Once that baseline is established, the Court applies the level of review that corresponds to the right identified."[101] If a law infringes on a fundamental right, it must be "narrowly tailored to serve a compelling state interest."[102] Otherwise, the government need only show how the law is "rationally related to legitimate government interests."[103]

i. Non-Fundamental Right

Plaintiffs assert that they "have a fundamental right to pretrial liberty" and that "[n]either the right against wealth-based detention nor the right to pretrial liberty may be infringed unless the government demonstrates that detention is necessary."[104] Plaintiffs fail to show that their right is "objectively, deeply rooted in this Nation's history and tradition."[105] Plaintiffs give no

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[99] *Id.* at 9(c)(1).

[100] *Dawson v. Bd. of Cnty. Commissioners of Jefferson Cnty., Colorado*, 732 F. App'x 624, 629 (10th Cir. 2018) (internal quotation omitted).

[101] *Id.*

[102] *Reno v. Flores*, 507 U.S. 292, 302 (1993).

[103] *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

[104] Opposition at 18–20; Second Amended Complaint at 25, ¶ 96.

[105] *Glucksberg*, 521 U.S. at 721; *see also* Salerno, 481 U.S. at 755 (stating that although pretrial liberty has "important and fundamental nature," "this right may, in circumstances where the government's interest is sufficiently weighty, be subordinated to the greater needs of society.").

such information in their Second Amended Complaint. Their objections to Utah's bail system, though detailed, lack any support from history or precedent.[106]

Historically, courts hearing Fourteenth Amendment claims focus on laws or persons that physically prevent an arrestee from paying their bail. Only when a plaintiff brings an Eighth Amendment "[e]xcessive bail" claim,[107] which prevents bail from being set at "an amount higher than necessary to ensure the appearance of the accused at trial,"[108] can a court entertain affordability argument. For instance, the Tenth Circuit held in *Gaylor v. Does* that a correctional facility unconstitutionally detained an individual for five days by failing to communicate his bail status and that it was set at $1,000.00[109] practically restraining his ability to pay bail. The Tenth Circuit, in *Dodds v. Richardson*, held that a sheriff unconstitutionally detained arrestees when he could not explain why he "prohibited individuals charged with a felony from posting bond until they had been arraigned by a judge and from posting bond after hours."[110] Plaintiffs do not address this issue and make no excessive bail argument.

Although pretrial liberty is important and fundamental, this right may be outweighed by the government's interest and be subordinated to the "greater needs of society."[111] Pretrial liberty is not absolute.

ii. Rational Basis Review

Rational basis review as applied to a pretrial arrestee requires that a court "decide whether [conditions could be] imposed for the purpose of punishment or whether [they are] but

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[106] *See* Second Amended Complaint at 14–15, ¶¶ 53-79.

[107] U.S. Const. amend. VIII.

[108] *Meechaicum v. Fountain*, 696 Fdd.2d 790, 791 (10th Cir. 1983).

[109] 105 F.3d 572, 577–78 (10th Cir. 1997).

[110] *Dodds v. Richardson*, 614 F.3d 1185, 1193 (10th Cir. 2010).

[111] Salerno, 481 U.S. at 755

an incident of some other legitimate governmental purpose…Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment."[112] Plaintiffs must explain how their financial "conditions amount[ed] to punishment."[113] Plaintiffs argue that "Defendants' practice of requiring people to pay unattainable amounts of money to secure their release is the equivalent of issuing orders of detention against them, but without any of the substantive findings or procedural safeguards constitutionally required for orders of detention."[114] Therefore, Plaintiffs assert, the requirement of bail is punishment.

The Utah Code says otherwise. The statute states that bail is a right: "[a]n individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right."[115] However, a criminal defendant is not given a chance to "make bail" under Utah Code section 77-20-201 if they are charged with any of the following: (a) a capital felony; (b) a felony committed while on probation; (c) a felony charge if the individual would be a danger to the community or would flee; (d) a felony charge if the individual violated a material condition of release while previously on bail; (e) a domestic violence offence; (f) driving under the influence if a serious bodily injury or death occurred; or (g) a felony charge with evidence that the individual will not appear for future court appearances.[116] An argument that any of the (a)-(g) limitations on bail constituted "punishment" would be more understandable. But Plaintiffs instead complain that

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[112] *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979); *see also White* 2024 WL 5202511, at *10 (analyzing the substantive due process utilizing the rational basis standard, "the Court must determine whether the infringement of that right is rationally related to a legitimate governmental interest.").

[113] *Id.* at 535.

[114] Second Amended Complaint at 3; *see also id.* at 17, 25, ¶¶ 65, 96, 98.

[115] Utah Code Ann. § 77-20-201(1).

[116] *Id.* at § 77-20-201(1)(a)-(g).

even though they are given the opportunity to bail out of jail, their inability to afford to do so makes bail a punishment. This is not correct.

Additionally, setting a bail amount is just one of twenty-one conditions a magistrate or judge may use in a temporary pretrial status order when they "find there is probable cause to support the individual's arrest under Rule 9 of the Utah Rules of Criminal Procedure."[117] The requirement to "comply with a financial condition"[118]— monetary bail—"means any monetary condition that is imposed to secure an individual's pretrial release."[119] Bail is a means to secure release, not a method to punish.

The statute reflects a rational connection between bail and securing a criminal defendant's appearance in court, which is a legitimate governmental interest. Therefore, Plaintiffs' substantive due process claim fails.

2. The Equal Protection Claim Fails

"The Equal Protection Clause . . . is essentially a direction that all persons similarly situated should be treated alike."[120] Plaintiffs assert that they were treated differently because the only reason Plaintiffs [are] be detained is because they cannot afford to pay the Monetary Bail which Defendants assign with no hearing or individualized consideration."[121] Strict scrutiny would apply[122] only if Plaintiffs show that their right is fundamental or if they demonstrate that

[117] *Id.* at §77-20-205(1)(a).

[118] *Id.* at §77-20-205(4)(t).

[119] *Id.* at § 77-20-102(6).

[120] *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

[121] Opposition at 26.

[122] *Id.*

they are a suspect class.[123] As reasoned above in Part D. 1. B. i. above of this order, Plaintiffs have not pleaded violation of a fundamental right.

Plaintiffs have also not demonstrated their status as a suspect class. The Supreme Court has made it very clear that they "ha[ve] never held that financial need alone identifies a suspect class for purposes of equal protection analysis."[124] Because financial need is the basis for Plaintiffs' equal protection claim, the claim fails.

Because Part D. 1 b. ii. of this order articulates that rational basis review applies, there is no need for additional analysis. Plaintiffs' equal protection claim fails.

E. THE SIXTH AMENDMENT CLAIM FAILS

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence (sic)."[125] To determine if the Sixth Amendment's guarantee covers a particular phase of a case, a plaintiff must prove (1) that the right of counsel has attached and (2) that a "'critical stage' of the postattachment (sic) proceedings" has been reached.[126] Plaintiffs' second and final claim alleges that "Defendants violate the Sixth Amendment by imposing de facto orders of detention, and detaining Plaintiffs pursuant to these orders, without providing counsel to assist at required pretrial detention hearings."[127] They argue that counsel is necessary so "[arrestees] can meaningfully challenge their prejudicial detentions and so avoid the prejudice of their unlawful pretrial detentions."[128]

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[123] *Goetz v. Glickman*, 149 F.3d 1131, 1140 (10th Cir. 1998) (reiterating that the government classification must "jeopardize the exercise of a fundamental right or a suspect class" to be "reviewed under a strict scrutiny standard.").

[124] *Maher v. Roe*, 432 U.S. 464, 471 (1977).

[125] U.S. Const. amend. VI.

[126] *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 211–12 (2008).

[127] Second Amended Complaint ¶ 102.

[128] *Id.* at ¶ 102.

In *Rothgery* the Supreme Court held that "the right to counsel attaches at the initial appearance before a judicial officer"[129] which is "the first formal proceeding against an accused."[130] "Thus, counsel must be appointed *within a reasonable time after attachment* to allow for adequate representation at any critical stage before trial, as well as at trial itself."[131]

In Utah, the right to counsel attaches at "an individual's Initial Appearance before the court"[132] which must take place within three days of a criminal defendant's arrest.[133] The Initial Bail Determination, "which typically occurs within 24 hours"[134] of arrest, does not occur in a formal or adversarial hearing. The Initial Bail Determination is part of a written order to hold a criminal defendant with bail,[135] known as a "temporary pretrial status order," which must be entered if a state judge finds probable cause to support an arrest.[136] Plaintiffs cite no authority that the right to counsel attaches with this temporary pretrial status order. Therefore, the right to counsel does not attach at the Initial Bail Determination stage.

Also, Plaintiffs have not demonstrated how the judge's decision to set bail in a temporary pretrial status order is a "critical stage" of a case. "The cases have defined critical stages as proceedings between an individual and agents of the State (whether formal or informal, in court or out) that amount to trial-like confrontations, at which counsel would help the accused in coping with legal problems or . . . meeting his adversary."[137] Plaintiffs acknowledge that "[t]he

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[129] *Rothgery*, 554 U.S. at 213.

[130] *McNeil v. Wisconsin*, 501 U.S. 171, 180–81(1991).

[131] *Rothgery*, 554 U.S. at 212 (emphasis added).

[132] Utah Code Ann. § 77-20-205(2)(a); *see also* Utah Code Ann. § 77-20-206(2).

[133] Utah R. Crim. P. 9(a)(1).

[134] Second Amended Complaint at 2,

[135] *Id.* at 2, ¶¶ 15, 24, 29, 34, 42, 48.

[136] Utah Code Ann. § 77-20-205(1)(a).

[137] *Rothgery*, 554 U.S. at 212, n.6.

Initial Bail Determination is a closed proceeding" at which no officer, prosecutor, or criminal defendant is present. Because there is no confrontation, counsel is unnecessary.[138]

Plaintiffs also assert that the Second Motion to Dismiss does "not address Plaintiffs' claim arising from the deprivation of Plaintiffs' right to counsel at the initial appearance."[139] Plaintiffs assert that "effective representation by counsel does not take place until *after* the initial appearance."[140] Plaintiffs argue that the right to counsel should occur before the initial appearance.[141] In support of their Opposition, Plaintiffs attach dockets demonstrating that counsel is appointed at the initial appearance, but not present.[142] This sequence is satisfactory under *Rothgery* and the Sixth Amendment. The Supreme Court explains that "43 States take the first step toward appointing counsel *before, at,* or just after initial appearance. . . . [And those that do not] are a distinct minority."[143] This clearly indicates that the Supreme Court's standard of review is the reasonableness of time in which counsel is appointed.[144] Utah is listed in the 43-state majority, providing counsel at the initial appearance or within a reasonable time after it attaches at the initial appearance.[145]

The Utah criminal procedure for an Initial Bail Determination and the initial appearance without counsel present does not violate the Sixth Amendment. Pursuant to the Utah Criminal Code of Procedure and Utah Code, the right to counsel attaches at the Initial Appearance and

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[138] *White*, 2024 WL 5202511, at *16.

[139] Opposition at 33.

[140] *Id.* at 34.

[141] *Id.*

[142] *Id.*

[143] *Rothgery*, 554 U.S. at 204 (emphasis added) (internal quotations omitted).

[144] *Id.* at 212.

[145] *Id.* at n.14.

counsel is appointed within a reasonable time (and before the next judicial proceeding). This process in providing counsel does not violate the Sixth Amendment. Plaintiffs Sixth Amendment claim is DISMISSED.

F. MOTION TO DISMISS JUDGE ALLEN

Both parties agree that Judge Allen should be dismissed.[146] The disagreement between the parties is whether another judge "should be added to this matter in place of Judge Allen."[147] Dismissal has been granted for other reasons, as stated above, and further discussion of Rule 25 of the Federal Rules of Civil Procedure is unnecessary. Therefore, Judge Allen's Motion to Dismiss is GRANTED.

G. ORDER

Defendants' Second Motion to Dismiss[148] is hereby GRANTED, and the clerk is directed to close the action. Defendant Judge Allen's Motion to Dismiss[149] is GRANTED.

Signed July 11, 2025.

BY THE COURT

David Nuffer
United States District Judge

[146] Motion to Dismiss Judge Allen at 1; *see generally* Opposition to Motion to Dismiss Judge Allen at 2 (noting Plaintiffs agree that Judge Allen is no longer a state judge and that if substitution of a successor is appropriate; otherwise, dismissal is improper.).

[147] Opposition to Motion to Dismiss Judge Allen at 2; *see also* Sur-Replies at Argument 2–5.

[148] Second Motion to Dismiss, docket no. 108, filed Jan. 24, 2025.

[149] Motion to Dismiss Judge Allen, docket no. 84, filed May 17, 2024.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

DAWN HEPIKIYA MEDINA, JUSTIN HORTON, MADELAINE THOMPSON, LUKE MELVIN LEWIS, MARCOS HERNANDEZ, DENISE ANN BEIERLE, on behalf of themselves and all others similarly situated, Plaintiffs, v. THE HON. ANN MARIE MCIFF ALLEN, THE HON. JEREMIAH HUMES, THE HON. CHRISTINE JOHNSON, THE HON. THOMAS LOW, and THE HON. MATTHEW BELL, in their official capacities, Defendants.	**JUDGMENT IN A CIVIL CASE** Case No. 4:21-cv-00102-DN-PK District Judge David Nuffer Magistrate Judge Paul Kohler

IT IS ORDERED AND ADJUDGED THAT the action is dismissed without prejudice.

The clerk is directed to close the action.

Signed July 11, 2025.

BY THE COURT

David Nuffer
United States District Judge