

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

LETICIA ROBERTS, CALVIN SAYERS,
Plaintiffs-Appellants,

v.

SHERIFF TONY THOMPSON, IN HIS OFFICIAL CAPACITY, AND BLACK HAWK COUNTY,
Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Iowa,
Case No. 6:24-cv-2024 (Hon. C.J. Williams)

**BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT
OF PLAINTIFFS-APPELLANTS**

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Dated: June 5, 2025

TABLE OF CONTENTS

	Page(s)
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	6
I. BLACK HAWK COUNTY’S USE OF CONFESSIONS OF JUDGMENT TO ENSURE PAYMENT OF JAIL FEES VIOLATES DUE PROCESS.....	6
A. The Department’s Use of Confessions of Judgment Is Inherently Coercive.	6
B. The Department’s Jail Fee Collection Policy Fails the <i>Mathews v. Eldridge</i> Test.....	11
II. THE DISTRICT COURT ERRED IN ITS STANDING ANALYSIS.....	14
CONCLUSION	19
CERTIFICATE OF BRIEF LENGTH & VIRUS CHECK.....	20
CERTIFICATE OF SERVICE	21

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bd. of Trs. of the Emp. Painters’ Trust v. Digit. Interior Grp. LLC</i> , No. 2:24-mc-00039-TL, 2024 U.S. Dist. LEXIS 145880 (W.D. Wash. Aug. 15, 2024).....	9
<i>Carey v. Piphus</i> , 435 U.S. 247 (1978)	19
<i>Coe v. Armour Fertilizer Works</i> , 237 U.S. 413 (1915).....	16
<i>D.H. Overmyer Co. v. Frick Co.</i> , 405 U.S. 174 (1972)	7
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972).....	16
<i>Goshen Run Homeowners Ass’n v. Cisneros</i> , 223 A.3d 917 (Md. 2020)	8
<i>Iowa Sup. Ct. Bd. of Prof’l Ethics & Conduct v. McKittrick</i> , 683 N.W.2d 554 (Iowa 2004).....	9
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	14, 15
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	12
<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950)	11
<i>Nelson v. Colorado</i> , 581 U.S. 128 (2017)	15
<i>North Penn Consumer Disc. Co. v. Schultz</i> , 378 A.2d 1275 (Pa. Super. 1977)	9
<i>Pease v. Wachovia SBA Lending, Inc.</i> , 6 A.3d 867 (Md. 2010).....	8
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)	15, 16
<i>Swarb v. Lennox</i> , 405 U.S. 191 (1972).....	7
<i>Tara Enters., Inc. v. Daribar Mgmt. Corp.</i> , 848 A.2d 27 (N.J. Super. Ct. App. Div. 2004).....	7

Uzuegbunam v. Preczewski, 592 U.S. 279 (2021).....17

Zinerman v. Burch, 494 U.S. 113 (1990).....12

Statutes

ALA. CODE § 8-9-118

FLA. STAT. § 55.058

IND. CODE § 34-54-4-18

IOWA CODE § 356.7..... 4, 5, 9, 13

IOWA CODE § 676.....7

KY REV. STAT. § 372.140(1).....8

MASS. GEN. LAWS ch. 231, § 13A8

MISS. CODE ANN. § 11-7-187.....8

N.M. STAT. ANN. § 39-1-188

TENN. CODE ANN. § 25-2-101(a)8

WISC. STAT. § 806.258

Regulations

16 C.F.R. § 444.2(a)(1)7

INTEREST OF *AMICUS CURIAE*¹

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, and issues the annual *Cato Supreme Court Review*.

Amicus is interested in this case because preservation of basic due process protections against the arbitrary exercise of government power is vital in a free society. In this case, a county government has violated the due process rights of those it holds in custody by means of coercive demands to sign confessions of judgment.

¹ Fed. R. App. P. 29 Statement: No counsel for either party authored this brief in whole or in part. No person or entity other than *amicus* made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Black Hawk County Sheriff's Office has repeatedly used an unfair and unconstitutional method to collect supposed "debts" from released inmates. Among the victims of this practice was Leticia Roberts, who had served a sentence for a non-violent offense. *See* App. 21; R. Doc. 9, at 21. Near the end of Ms. Roberts's jail time, the Sheriff's Office (or "the Department") demanded that she pay a total of \$730 in jail fees, which purported to reimburse the Department both for administrative costs and for room and board for her nine days in custody. App. 24; R. Doc. 9, at 24.

That demand came in the form of a seemingly unassuming document—a pre-filled "confession of judgment" form. Department personnel told Ms. Roberts to sign it. She did so, and thereby extinguished her right to challenge the Department's jail fee claims. App. 10, 22; R. Doc. 9, at 10, 22. Roberts was told that she would be released and given back her confiscated property *after* she signed this ostensibly binding form. App. 22; R. Doc. 9, at 22. She signed it without counsel present and without understanding that it would be construed to waive her due process rights. App. 10, 22; R. Doc. 9, at 10, 22. Because Ms. Roberts had signed the confession of judgment, she was required to make monthly payments to avoid a court order and garnishment proceedings.

Shortly after Ms. Roberts signed the confession of judgment, the Department began its collections process. When Ms. Roberts failed to pay her jail-fee debt, the Department first contacted her by phone. App. 23; R. Doc. 9, at 23. Ms. Roberts was responsible for the care of three children on a fixed income of \$1500 per month, so she explained that she could not both pay the debt and feed her children. App. 21, 23; R. Doc. 9, at 21, 23. Two weeks after that phone call, the Sheriff mailed Ms. Roberts a collection letter that gave her 10 days to select a payment option. The letter warned her that her nonpayment had “resulted in further enforcement steps” and that “[t]hese actions may increase the total amount due.” App. 23; R. Doc. 9, at 23. Shortly after the county mailed this letter, a uniformed Sheriff’s deputy visited Roberts at her home. App. 23–24; R. Doc. 9, at 23–24. The deputy told her that he would not bother her if she made monthly payments. App. 24; R. Doc. 9, at 24. From October 2022 to February 2024, Ms. Roberts made monthly payments of \$5 to the Department to prevent further collection efforts. App. 393; R. Doc. 37-2, at 29. Because of the signed confession of judgment, Ms. Roberts had no opportunity to seek judicial review; furthermore, she had to make continued payments to avoid entry of a court order and subsequent garnishment.

Ms. Roberts was far from the only victim of the Department’s use of coercive confessions of judgment. Calvin Sayers was another; he now owes the Department a total of \$4,415 in jail fees. App. 3; R. Doc. 9, at 3. Ms. Roberts and Mr. Sayers

brought this lawsuit as a class action to vindicate their interests and the interests of others who signed confessions of judgments in similar circumstances. App. 26; R. Doc. 9, at 26.

What happened to Ms. Roberts and Mr. Sayers were not isolated incidents; they were just two examples of a policy implemented by the Department. Under that policy, jail inmates are presented with a confession of judgment just before their release. Each confession of judgment provides for a jail fee owed to the Department for “room and board” of \$70 per day plus \$25 in administrative fees. *See* App. 1; R. Doc. 9, at 1. Although Iowa law provides for a civil reimbursement process in which a *court* will review and approve jail-fee amounts, the Department created an alternate process that sidestepped judicial review. *See* IOWA CODE § 356.7 (2024) (authorizing the sheriff to charge for administrative costs and to submit a plan for the use of such funds, but only allowing such fees to be collected after their approval by a court). In comparison with the procedure set forth under Iowa law, the Department’s confession of judgment scheme does not just lack in due process; it is without any process at all. The Department’s scheme provides neither adequate notice nor a hearing before depriving the inmates of their property.

Notably, the Sheriff relies on funding obtained through this collection scheme for extraneous expenses unrelated to the Department’s administration. According to the statute, inmates may be charged for the administrative expenses of their arrest

and booking, room and board, and medical care. IOWA CODE § 356.7(2) (2024). But in Black Hawk County, 40% of those fees go to an unallocated fund that is controlled by the Department, and the Sheriff has used that fund to purchase a gun range for his employees, a cotton candy machine, an ice cream machine, and laser tag equipment. App. 15; R. Doc. 9, at 15. Without the county's use of confessions of judgment to collect jail fees, the Department would likely not have made these purchases.

Furthermore, the Sheriff has resisted attempts by the Black Hawk County Board of Supervisors to hold him accountable for such purchases. The plaintiffs' First Amended Complaint provides an extensive account of squabbles among county officials over how the jail fees should be collected and spent. App. 7, 14–16, 17–18; R. Doc. 9, at 7, 14–16, 17–18. In October 2022, the Sheriff told the county's Board of Supervisors via email that the jail fee collection policy should continue because it enriches the county by approximately \$300,000 per year. App. 2, 17; R. Doc. 9, at 2, 17. He complained that without the use of confessions of judgment, “judges are willing to waive” the “room and board [fees].” App. 17; R. Doc. 9, at 17.

As the Sheriff's own email makes clear, he knew that inmates likely would not pay the county nearly as much in jail fees if they received due process. And what they received fell far short of due process, because the Department provided neither adequate notice nor a hearing before depriving the inmates of their property.

Whatever interest the Department has in paying the bills for its administrative services and in collecting fees from inmates in order to do so (and that interest is slight for funding activities unrelated to its law-enforcement responsibilities), that government interest is outweighed by plaintiffs' interest in receiving notice and an opportunity for a hearing.

The district court dismissed the plaintiffs' due process claims for lack of standing. This was error. The lower court held that the plaintiffs' injuries were not caused by the defendants; furthermore, that court held that such injuries were not redressable. But the court improperly conflated a standing analysis with the merits of the plaintiffs' claims. These errors risk harming more than just the plaintiffs in this case. If adopted by other courts, this reasoning would make it nearly impossible for future plaintiffs with due process claims to seek judicial relief. This Court should thus reverse the district court's dismissal and allow the plaintiffs to proceed on the merits of their due process claims.

ARGUMENT

I. BLACK HAWK COUNTY'S USE OF CONFESSIONS OF JUDGMENT TO ENSURE PAYMENT OF JAIL FEES VIOLATES DUE PROCESS.

A. The Department's Use of Confessions of Judgment Is Inherently Coercive.

Confessions of judgment are inherently coercive. A confession of judgment is an "ancient legal device by which the debtor consents in advance to the holder's

obtaining a judgment without notice or hearing” *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 176 (1972). Because confessions of judgment are coercive, the law disfavors their use. *See Tara Enters., Inc. v. Daribar Mgmt. Corp.*, 848 A.2d 27, 33 (N.J. Super. Ct. App. Div. 2004) (“Entry of judgment by confession has long been viewed with ‘judicial distaste.’”). The Supreme Court has described the confession of judgment as “the loosest way of binding a man’s property that ever was devised in any civilized country.” *D.H. Overmyer Co.*, 405 U.S. at 177 (internal citation and quotation marks omitted). The Court has clarified that confessions of judgment are particularly egregious when the following conditions are present: “contracts of adhesion, [] bargaining power disparity, and [] the absence of anything received in return” *Swarb v. Lennox*, 405 U.S. 191, 201 (1972).

As a result, many states limit the use of confessions of judgment.² Although Iowa allows confessions of judgment to be used in some circumstances, the Federal Trade Commission generally prohibits their use in the consumer context. *See* IOWA CODE § 676; *See also* 16 C.F.R. § 444.2(a)(1) (prohibiting contracts that contain a

² The Supreme Court provided a brief overview of the varied jurisdictional treatment of confessions of judgment in *D.H. Overmyer Co.* In that opinion, the Court observed that “[s]tatutory treatment varies widely. Some States specifically authorize the cognovit [i.e., the confession of judgment]. Others disallow it. Some go so far as to make its employment a misdemeanor. The majority, however, regulate its use and many prohibit the device in small loans and consumer sales.” *D.H. Overmyer Co.*, 405 U.S. at 177–78.

confession of judgment). Other states are more stringent. For example, Florida, Alabama, Kentucky, Massachusetts, Mississippi, Tennessee, and Wisconsin prohibit confessions of judgment altogether.³ In Indiana and New Mexico, the use of a confession of judgment is a misdemeanor.⁴

Although state treatment of confessions of judgment varies, their use is subject to widespread criticism and concern. Confessions of judgment are disfavored because they *necessarily* raise questions about due process. In Maryland, the state’s highest court noted that “even in business transactions involving commercial debts, we have recognized that ‘the practice of including in a promissory note a provision authorizing confession of judgment lends itself far too readily to fraud and abuse.’” *Goshen Run Homeowners Ass’n v. Cisneros*, 223 A.3d 917, 934 (Md. 2020) (quoting *Pease v. Wachovia SBA Lending, Inc.*, 6 A.3d 867, 878–79 (Md. 2010)). Similarly, the Pennsylvania Superior Court held that “[i]n the context of a judgment confessed on a judgment note, due process requires, at a minimum, that the judgment debtor have an opportunity to be heard prior to the execution of the judgment against the

³ See FLA. STAT. § 55.05; ALA. CODE § 8-9-11; KY REV. STAT. § 372.140(1); MASS. GEN. LAWS ch. 231, § 13A; MISS. CODE ANN. § 11-7-187; TENN. CODE ANN. § 25-2-101(a) (if the confession occurs before an action is instituted); and WISC. STAT. § 806.25 (if note is executed after June 18, 1972).

⁴ See IND. CODE § 34-54-4-1; N.M. STAT. ANN. § 39-1-18.

debtor's property.” *North Penn Consumer Disc. Co. v. Schultz*, 378 A.2d 1275, 1278 (Pa. Super. 1977). Furthermore, in the context of the attorney-client relationship, confessions of judgment have also been deemed “oppressive.” *See Iowa Sup. Ct. Bd. of Prof’l Ethics & Conduct v. McKittrick*, 683 N.W.2d 554, 563 (Iowa 2004) (finding that an attorney’s use of a confession of judgment to collect fees “adversely reflected on the fitness of an attorney to practice law”). In such relationships, courts are concerned about power imbalances and “opportunities for overreaching with no judicial scrutiny.” *Id.* at 562. “There has been long-running criticism of the confession judgment procedure from legal authorities as well as popular culture based on due process concerns . . . and [they] are now prohibited in most United States jurisdictions.” *Bd. of Trs. of the Emp. Painters’ Trust v. Digit. Interior Grp. LLC*, No. 2:24-mc-00039-TL, 2024 U.S. Dist. LEXIS 145880, at *8-9 (W.D. Wash. Aug. 15, 2024).

In short, the Department’s decision to forgo the lawful procedure for filing civil reimbursement claims outlined in Iowa Code § 356.7—and, instead, to use confessions of judgment to collect jail fees—raises significant due process concerns. Even if there are legitimate alternatives to the statutory procedure that has been established to collect jail fees, the Department’s resort to confessions of judgment is, in this context, especially suspect.

And the Department's use of confessions of judgment against *inmates* is especially hard to defend. Courts and legislatures across the nation have regularly deemed confessions of judgment to be coercive. But the particular circumstances in which the Department uses confessions of judgment exacerbate these concerns. In this case, the Department provides its inmates with a confession of judgment form as a part of the inmate release process. What if the recipient refuses to sign that form? It is unclear, but it is entirely reasonable for the inmates to fear that they will not be released unless they sign. The inmates, while in the Department's custody, must sign such papers without advice of counsel and without understanding that the form waives the right to judicial review of the jail fees. The inmates lack bargaining power under these circumstances; they therefore cannot voluntarily, intelligently, and knowingly consent to a waiver of due process. In short, the use of confessions of judgment to bind inmates to a legal debt that they cannot challenge is unconscionable.

The Department's reliance on confessions of judgment to coerce and compel inmates to pay jail fees violates plaintiffs' procedural due process rights. This Court should therefore reverse and remand the case to address the Department's due process violations.

B. The Department's Jail Fee Collection Policy Fails the *Mathews v. Eldridge* Test.

The Fifth Amendment's Due Process Clause provides that no person shall be "deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. Although there can be close questions about the precise meaning of these "abstract words, . . . there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

In this case, the Department's jail fee collection policy violated the Constitution's promise of due process. The Department deprived the plaintiffs of their property—their money—and required them to accept that deprivation without *any* process. The Department uses confessions of judgment to compel inmates to pay jail fees. By coercing inmates to sign confessions of judgment before they are freed, the Department avoids its responsibility to supply the constitutionally required opportunity to meaningfully challenge or review jail fees.

Once the Department obtains a signed confession of judgment, it demands payment from the released inmate. If that person fails to make payments on the debt, the Department can take the confession of judgment form to court, and the court will then order the signer to pay the fees and commence garnishment proceedings. But

those proceedings do not provide any meaningful process, because they are effectively a rubber stamp. They put the force of a judicial order behind the government's efforts to collect the debt *without* ever providing a notice or hearing. And the signed confession of judgment makes the debt nearly incontestable. If the specified fee is incorrect, the judgment is entered without action—and therefore, to repeat, without notice. In other words, the inmate is not so much subject to a procedure as to the absence of one. That is because the plaintiffs' defenses to the Department's imposition of the fees have been constructively waived by the confession of judgment.

Courts weigh three factors when analyzing due process claims: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the current procedures and the probable value of additional or substitute safeguards; and (3) the government's interest. *See generally Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). When applying this test, the Supreme Court “usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 115 (1990) (emphasis in original).

Under *Mathews*, the Department must provide both prior notice and an opportunity for a hearing before it begins fee collection. All three of the *Mathews* factors point in the same direction. First, the plaintiffs' property interest in this case

is significant. Plaintiffs were not only deprived of their money but also of their constitutional right to challenge the creation of their debt. And in the case of many former inmates, such as Ms. Roberts, the amount demanded by the Department risks tipping them over the edge of financial instability.

Second, the Department's current procedure runs an unacceptably high risk of erroneous fee collections, making the need for judicial safeguards particularly stark. If the Department had adopted the method of jail fee collection provided for by Iowa statute, a court would have provided an independent assessment of the amount owed. *See* IOWA CODE § 356.7(3) (2024). This process would have helped to ensure the accuracy of the Department's jail fee request, and it would have also given released inmates the opportunity to contest the amount when appropriate. But the Department has intentionally avoided using this statutory scheme, one that appears to anticipate and address significant administrative challenges.

Third, there is no defensible government interest in short-circuiting the process laid out in statute so that more sizable jail fees can be collected from inmates. Less still is there a defensible government interest in continued expenditures from a public trust to fund purchases unrelated to the Department's operation of its jail. Whether or not some jail fees might be justified to reimburse the Department for its operational costs, the Department's interest in collecting fees for a gun range, a cotton candy machine, an ice cream machine, and laser tag equipment is slight at

best. That government interest is certainly not so heavy that it justifies discarding the right to notice and an opportunity for a hearing. That is what plaintiffs are entitled to under *Mathews*. The absence of any notice or hearing makes the Department's process constitutionally inadequate.

II. THE DISTRICT COURT ERRED IN ITS STANDING ANALYSIS.

The district court erred when it held that the plaintiffs lacked standing to bring their due process claims. A plaintiff has Article III standing if that plaintiff (1) suffers an “injury in fact” (2) that has a sufficient “causal connection between the injury and the conduct complained of” and (3) that can likely be “redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–51 (1992) (internal citations and quotation marks omitted). Here, plaintiffs suffered an injury-in-fact because they were deprived of their money without due process. The injury was caused by the defendants' conduct, and it can be redressed by a favorable decision declaring the use of confessions of judgment unconstitutional. Nevertheless, the district court held that the plaintiffs did not satisfy *Lujan*'s causation and redressability requirements for standing. The court rested its holding on its view that the plaintiffs would ultimately owe the same amount of jail fees no matter what process they received. This analysis was improper—it conflated the plaintiffs' claims on the *merits* with standing concerns. Ideally, the lower court should have avoided discussion of the

merits in its standing analysis entirely, because a proper standing analysis does not pre-judge the merits of the case.

Here is how the district court *should have* applied *Lujan*'s three factors, without any reference to the merits. The first test in *Lujan*'s triad is easily passed. The plaintiffs suffered an injury-in-fact because they were deprived of their property without due process. For purposes of standing, that test is passed if there is an "invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *See id.* at 560 (internal citations and quotation marks omitted). The money that plaintiffs paid to defendants is a deprivation of property that falls within the scope of the Due Process Clause. *See Nelson v. Colorado*, 581 U.S. 128, 135 (2017) ("[the plaintiffs] have an obvious interest in regaining the money they paid to Colorado."). Furthermore, the plaintiffs suffered an additional injury-in-fact because they were simultaneously deprived of their right to challenge the amount owed to the Department. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016) (the deprivation of a constitutional right can establish an Article III injury-in-fact). On this prong, the district court at least agreed that the deprivation of money is a cognizable harm.

However, the district court erred when applying *Lujan*'s second test. More precisely, the district court erred when it found that the defendants' conduct did not cause the plaintiffs' injuries. Reasoning that "plaintiffs would owe the fees no matter

if defendants used the confessions of judgment or not,” the lower court found that the injuries are not “‘fairly traceable to the challenged conduct’ of the defendants.” App. 245; R. Doc. 34, at 10 (quoting *Spokeo, Inc.*, 578 U.S. at 338). But that line of reasoning is defective, largely because it incorporates a determination on the merits. The court *assumed* that plaintiffs will still owe the same amount in jail fees whether or not they can show a denial of due process. Not only did the lower court attempt to prematurely assess the merits, it also overlooked a crucial fact in its truncated merits analysis. The district court ignored the Sheriff’s concession that judges often waive jail fees. This acknowledgment suggests that plaintiffs would likely have owed *lower* fees, or no fees, had they been afforded judicial review.

Furthermore, as a matter of law, the district court’s outcome-oriented analysis is precisely what courts are supposed to avoid when analyzing due process claims. As the Supreme Court has reasoned, “‘To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case, due process of law would have led to the same result because he had no adequate defense upon the merits.’” *Fuentes v. Shevin*, 407 U.S. 67, 87 (1972) (quoting *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424 (1915)). The Supreme Court has thus rightly underscored the inherent value of due process and the protections it creates from the arbitrary exercise of government power. The same reasoning applies here—

Defendants must provide due process to the plaintiffs, notwithstanding irrelevant predictions about identical outcomes.

Finally, the district court made a similar error in its discussion of *Lujan*'s third prong: redressability. The lower court's redressability analysis similarly confused the merits of the plaintiffs' claims with its standing analysis. According to that court, "[i]f plaintiffs ultimately prevail on their argument that defendants have collected the fees improperly, nothing would change." App. 245; R. Doc. 34, at 10. But this is mistaken. In the alternate world in which plaintiffs were ultimately assessed just the same jail fees, they nonetheless had something else of great value. In this alternate world, plaintiffs had access to justice—and, more precisely, they had the opportunity for redress of injury through provision of the due process that the Constitution requires. Alternatively, the court could have awarded nominal damages for the past violation of plaintiffs' due process rights. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 292 (2021) ("[W]e conclude that a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right."). In short, whether or not plaintiffs ultimately would owe the same amount of jail fees to the Department, the plaintiffs had standing to address the Department's due process violations.

For similar reasons, the district court made an additional mistake in its redressability analysis. According to the court, if it were to file an order declaring

the Department's use of confessions of judgment to be unconstitutional, "[i]t would be an advisory opinion with no real-world effect." App. 247; R. Doc. 34, at 12. That is wrong. Such a declaration would render the confessions of judgment void. Defendants would then be required to comply with the statutory process outlined in Iowa Code § 356.7 and file a reimbursement claim to collect jail fees. That approach would allow for independent judicial assessment of any disputes; not coincidentally, it would allow the plaintiffs to assert defenses to any such claim. Although the district court accurately noted that the confessions of judgment have not yet been filed in court, those documents are being used to compel payments. The plaintiffs must either pay or face garnishment if the Department files the confession of judgment with the court. The "real-world effect" of a finding that the confessions of judgment at issue are unconstitutional would be significant. Defendants would no longer hold an incontestable confession of judgment that could be filed with the court at any point. In that scenario, the Department would have to provide inmates with adequate constitutional safeguards before collecting jail fees from them, so as to comply with the civil reimbursement procedure of Iowa Code § 356.7. That "real-world effect" demonstrates why the redressability element of standing is satisfied.

In sum, the district court improperly considered the merits of the plaintiffs' claims in its discussion of causation and redressability. In that portion of its analysis, it should have confined its discussion solely to issues of standing. The right to

procedural due process is “‘absolute’ in the sense that it does not depend upon the merits of a claimant’s substantive assertions.” *Carey v. Phipus*, 435 U.S. 247, 266 (1978) (internal citations omitted). The district court did not follow *Carey*’s guidance and it thereby committed error. Accordingly, this Court should reverse and remand its decision.

CONCLUSION

Based on the foregoing arguments, and those presented by Appellants, this Court should reverse the Northern District of Iowa’s decision and remand the case.

Respectfully submitted,

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CERTIFICATE OF BRIEF LENGTH & VIRUS CHECK

The undersigned counsel certifies:

1. In accord with FRAP 32(g), this *amicus curiae* brief meets the formatting and type-volume requirements of FRAP 29(a)(4), 29(b)(4), and 32(a). This *amicus curiae* brief is printed in 14-point, proportionately spaced typeface using Microsoft Word and contains 4,449 words. This includes headings, footnotes, and quotations, and excludes all items identified by FRAP 32(f).
2. Per 8th Cir. R. 28A(h)(2), this brief has been scanned and found virus free using Bitdefender Endpoint Security Tools.

/s/ Thomas A. Berry
Counsel for Amicus Curiae

Dated: June 5, 2025

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on July 15, 2025 he electronically filed the foregoing *amicus curiae* brief with the Clerk of the Court for the Eighth Circuit using the CM/ECF system. The undersigned also certifies that all participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Thomas A. Berry
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