No. 25-1475

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
No. 6:24-cv-2024 (Hon. C.J. Williams)

BRIEF OF *AMICUS CURIAE* INSTITUTE FOR JUSTICE IN SUPPORT OF APPELLANTS AND REVERSAL

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Dated: July 16, 2025

/s/ Katrin Marquez
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The Institute for Justice ("IJ") is a nonprofit public interest law firm committed to defending the essential foundations of a free society by securing greater protections for individual liberty. As part of that mission, IJ is a national leader in fighting law enforcement's revenue-generating use of fees, fines, and forfeitures. IJ also seeks to decrease procedural barriers—including the misapplication of justiciability doctrines like standing in this case—that insulate government defendants who violate individuals' rights from lawsuit.

Over the last decade, IJ has advocated for victims of profit-driven law enforcement programs that deprive citizens of their property or due process rights. *See, e.g.*, *Ingram v. Wayne County*, 81 F.4th 603 (6th Cir. 2023) (challenging county's practice of seizing personal vehicles without providing a post-seizure hearing to test probable cause); *Harjo v. City of Albuquerque*, 326 F. Supp. 3d 1145 (D.N.M. 2018) (challenging city's civil forfeiture program on unconstitutional-profit-incentive grounds). And

[1] No party's counsel authored any portion of this brief. No party or person—other than Amicus—contributed money intended to fund preparing or submitting this brief. Counsel for Appellant consented to the filing of this brief. Counsel for Appellees did not consent.

IJ's groundbreaking research has quantified the real-world problems posed by law enforcement's use of revenue-generating criminal justice programs. *See*, *e.g.*, Lisa Knepper et al., Inst. for Just., *Policing for Profit: The Abuse of Civil Asset Forfeiture* (3d ed. Dec. 14, 2020), https://ij.org/report/policing-for-profit-3/.

Indeed, IJ has previously litigated an issue much like the abusive use of confessions of judgment here: federal law enforcement agencies' policy of coercing individuals whose property has been seized into signing hold-harmless agreements that waive their constitutional and statutory rights to challenge the seizures in order to obtain the return of their property. *See* Complaint, *Nwaorie v. U.S. Customs & Border Prot.*, No. 4:18-cv-1406 [ECF No. 1] (S.D. Tex. filed May 3, 2018). This case presents similar concerns. Here the Black Hawk County Sheriff's Office pressures those being released from jail into signing confessions of judgment that waive their rights to challenge fees imposed as the result of their confinement, in direct contradiction of the process mandated in state statutes. The Sheriff's Office's policy of using coerced confessions of judgment violates due process in multiple ways, most notably by foreclosing access to any process at all.

INTRODUCTION AND SUMMARY OF ARGUMENT

Due process is a fundamental right. But it's an inconvenient and unprofitable one for the Sheriff's Office in Black Hawk County, Iowa. So officers there instead pressure vulnerable individuals released from jail into signing confessions of judgment that waive their rights to challenge fees imposed because of their detention. This tactic strips away their right to fight the fees, while simultaneously funneling 40% of the resulting proceeds straight to the Sheriff's Office, which then reinvests them into goodies like laser tag and celebrations at a state-of-the-art shooting range with ice cream and cotton candy.

The Plaintiffs in this case are victims of this system. They seek to end the Sheriff's abusive confessions of judgment policy, which both deprives individuals of their rights and then directly profits the Sheriff's Office. The district court committed various errors in dismissing their claims. In this brief, we focus on two.

The district court erred in its standing analysis. The Plaintiffs have standing to challenge the Sheriff's confessions of judgment policy for the simple reason that they are currently signatories to the Sheriff's confessions of judgment. This policy directly injures the Plaintiffs by

depriving them of their right to challenge the fees, altering their legal status from "not confessed" to "confessed." This injury is traceable to the Sheriff's policy and can be redressed by declaring the confessions of judgment unconstitutional and unenforceable (regardless of whether that is or is not the ultimate outcome on the merits). The district court's convoluted reframing of such a simple standing analysis requires reversal.

The district court also erred in presuming that entering into the confessions of judgment was fully voluntary rather than coercive and, thus, failing to fully consider the real-world harms caused by revenue-generating law enforcement programs that benefit government when it decreases procedural protections. Profit incentives matter in the due process analysis. Revenue-generating criminal justice systems create perverse incentives for law enforcement to extract funds through fines, fees, and forfeitures, undermining impartiality and due process. Such financial incentives can distort decision-making and lead to abuse. Our experience litigating against revenue-driven systems at the Institute for Justice confirms this.

At IJ we've litigated multiple cases that highlight how government officials are incentivized to minimize due process protections in these types of systems. One example of how these systems prioritize revenue over fairness is Brookside, Alabama's aggressive ticketing and towing scheme, through which the police department self-funds through fines and forfeitures. But it's not the only one. Similar systems in Wilmington, Delaware, and New York City impose penalties without avenues for contesting them, stripping individuals of procedural protections. These schemes (like the Sheriff's) illustrate how financial incentives erode constitutional safeguards, enabling unchecked revenue extraction at the expense of justice.

The Sheriff's scheme has all the hallmarks of an abusive policing-for-profit system. In fact, it's particularly egregious. The Sheriff's Office profits by pressuring individuals being released from jail to sign confessions of judgment, which waive their right to challenge imposed jail fees, ensuring a steady revenue stream without neutral oversight, in violation of due process principles. This policy bypasses Iowa's statutory fee-challenging process and functions as an unconstitutional condition on liberty. By design, the confessions of judgment prevent judicial review,

thus ensuring unchecked financial gain at the expense of Plaintiffs' and others' constitutional protections.

ARGUMENT

The Black Hawk County, Iowa Sheriff's Office saddles people held in the county jail with hefty fees of $70 per day, plus a $25 booking fee. To compel payment of those jail fees, the office makes people sign "confessions of judgment" as part of the jail release process. This short-circuits the state process surrounding the collection of such fees—most crucially by depriving the signers of the legal right to challenge the propriety or accuracy of the fees imposed on them. The Sheriff's Office directly keeps 40% of collected fees—and uses that money to fund, among other things, a gun range for its employees that's at times outfitted with cotton candy and ice cream.

This scheme is rife with constitutional infirmities. It specifically violates the due process rights of those being released from jail for the profit of the Sheriff's Office, as Plaintiffs properly alleged. In dismissing their complaint, the district court made various procedural and substantive errors. We focus on two: *One*, the district court misapplied the standing standard. The standing analysis should have been straight-

forward in this case, but the district court misconstrued it. *Two*, the district court ignored the real-world harms caused by revenue-driven criminal justice practices like the one at issue here. When law enforcement has a financial interest in extracting money through fees, fines, or forfeitures, it has every incentive to minimize due process protections—as the Sheriff does through the confessions of judgment policy. *See Harmelin v. Michigan*, 501 U.S. 957, 979 n.9 (1991) (plurality opinion of Scalia. J.) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit.").

I. PLAINTIFFS HAVE STANDING

A plaintiff who's suffered harm due to the defendant's action and seeks relief that addresses that harm has standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (elements of constitutional standing). That's exactly the case here. Plaintiffs are challenging the constitutionality of the Sheriff's policy of pressuring people being released from jail into signing confessions of judgment that the Sheriff's Office can then use to compel payment of jail fees without going through the statutorily mandated process. Plaintiffs have standing because the confessions of judgment the Defendants pressured them into

signing constitute an injury by depriving them of an opportunity to challenge the fees—fees that the Sheriff himself admitted are likely to be waived when there's judicial review, App. 17; R. Doc. 9, at 17. That deprivation is the direct result of the policy and can be redressed through declaratory and injunctive relief. A favorable ruling would directly address the Plaintiffs' injury by invalidating the confessions of judgment and stopping the Sheriff from enforcing them.

Simply put, because of the Sheriff's actions, the Plaintiffs went from "not confessed" to "confessed." No matter the outcome of the Plaintiffs' due process claims, that's enough for standing. *Cf. Cho v. City of New York*, 910 F.3d 639, 648 (2d Cir. 2018) (holding that there may be "an injury regardless of the waivers' enforceability" when plaintiffs are "coerced into unconstitutional waivers"). Each of the standing elements, *see Lujan*, 504 U.S. at 560–61, are met in this case: The confessions of judgment changed the Plaintiffs' legal relationship to the Defendants by depriving the Plaintiffs of any opportunity to challenge the fees (an injury-in-fact). *See id.* That change in the legal relationship is the direct result of the confessions of judgment (traceability). And declaring the confessions of judgment policy unconstitutional would render them void

and unenforceable (redressability). *See Reed v. Goertz*, 598 U.S. 230, 234 (2023) (finding standing where "a change in a legal status . . . would amount to a significant increase in the likelihood" that the plaintiff "would obtain relief that directly redresses the injury suffered" (citation omitted)). It's that simple: Plaintiffs meet all the requirements for standing, especially at the pleading stage. *See Lujan*, 504 U.S. at 561 ("At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice [to establish standing].")

The standing analysis in this case should have been straightforward. But the district court made compounding errors.

From the start, the district court misconstrued Plaintiffs' claims, narrowing them so that the causation elements (traceability and redressability) couldn't be met. At the core of the Plaintiffs' arguments is that the confessions of judgment change their relationship with the Defendants and, thus, their corresponding rights. Before being pressured into signing the confessions of judgment, the Plaintiffs could challenge the fees imposed on them. After signing, they could not. By signing they "waived" that right, thus bypassing any procedural or statutory protections for the Plaintiffs. *That* is the core injury. *See Cho*, 910 F.3d

at 648 (unconstitutional, unenforceable waivers establish an injury). The district court reframed the Plaintiffs' alleged injuries as being much narrower, as being *just* about having to pay fees. App. 245; R. Doc. 34, at 10. According to the district court, the Plaintiffs lack standing because they did "not allege that they would have paid less in fees if defendants collected the fees in a different way" and "plaintiffs would owe the fees no matter if defendants used the confessions of judgment or not." *Id*. From there, it then reasoned that the injury of having to pay fees was neither traceable to the confessions of judgment nor redressable by holding them unconstitutional. App. 245–47; R. Doc. 34, at 10–12. But that's wrong.

Being pressured into waiving your rights is a constitutional injury that is traceable to the waiver and redressable by holding the waiver unenforceable. The confessions of judgment deprive the Plaintiffs of *any* opportunity to challenge the fees. The change in the Plaintiffs' legal status—from "not confessed" to "confessed"—and the resulting change in their rights to challenge the fees *is the foundational injury*. *See Carey v. Piphus*, 435 U.S. 247, 266 (1978). Whether they would ultimately have to

pay any or fewer fees after disputing the fees is secondary.[2] In its analysis, the district court ignored that the Plaintiffs would've been able to challenge the legality of the fees *but for* the confessions of judgment. Being pressured into waiving one's right to impartial adjudication is an injury. *See United Church of the Med. Center v. Med. Ctr. Comm'n*, 689 F.2d 693, 701 (7th Cir. 1982) ("Submission to a fatally biased decisionmaking process is in itself a constitutional injury[.]"); *Cho*, 910 F.3d at 648. And there's no doubt *that* injury is traceable to the confessions of judgment and redressable by a holding that they are void and unenforceable. *See supra.*

On top of that, the district court also misconstrued the differences between standing and merits analyses, allowing its (mistaken) view of the merits to color its view on standing. The district court failed to recognize that, for procedural due process claims, the lack of process itself is an injury. In its Rule 12(b)(6) analysis, the district court concluded that

[2] By "secondary" we do not mean "unimportant." If, for example, the fees imposed were found to be excessive—leading Plaintiffs to not have to pay them at all or to pay a decreased amount—that would vindicate important constitutional interests. But without any ability to bring that challenge because of the confessions of judgment, that interest won't be vindicated.

"Plaintiffs are entitled to procedural rights only if defendants deprived plaintiffs of their property." App. 249; R. Doc. 34, at 14. Not so. "[T]he 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*, 435 U.S. at 266. The Court has recognized that "the denial of procedural due process should be actionable" even "without proof of actual injury." *Id.* *See also Farrar v. Hobby*, 506 U.S. 103, 112 (1991) (noting that procedural due process is an "absolute right" and that it is "importan[t] to organized society that this right be scrupulously observed" (cleaned up)); *Zinermon v. Burch*, 494 U.S. 113, 126 n.11 (1990); *Pollock v. Baxter Manor Nursing Home*, 716 F.2d 545, 546–47 (8th Cir. 1983) ("A fundamental purpose of the due process clause is to allow the aggrieved party the opportunity to present his case and have its merits fairly judged."). And so, the district court was wrong to presume there couldn't be an injury without alleging the Defendants already relied on the confessions of judgment to exact fees from the Plaintiffs.

Properly understood, the standing question and answer in this case are simple: Has the system the Plaintiffs are challenging caused an alteration in their relationship with the Defendants? Of course it has.

Before the Sheriff told the Plaintiffs to sign their "confessions of judgment," the Plaintiffs had not confessed to owing the amount of jail fees stated in that paperwork. But after signing, the Plaintiffs have so confessed. Whatever the ultimate outcome as to the constitutionality of that "confessional" system, the Plaintiffs have standing to challenge it because it's resulted in them going from "not confessing" to "confessing."

II. PROFIT-GENERATING SCHEMES DEPRIVE PLAINTIFFS OF DUE PROCESS BY INCENTIVIZING BAD BEHAVIOR

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). But it is precisely that "fundamental requirement" that the Sheriff's use of confessions of judgment attempts to evade—it denies those pressured into signing them "the opportunity to heard" in a "meaningful manner" on the propriety or accuracy of the fees imposed on them. *Id.* The entire purpose of the confessions of judgment is to foreclose any process at all, including (specifically) the process laid out in the Iowa Code. The most basic requirements of procedural due process cannot be met under this system. That's not surprising since the system is designed to generate revenue

for the Sheriff's Office, not to protect the rights of those being released from jail.

This case highlights a core problem with revenue-driven criminal justice systems: they incentivize law enforcement to act more aggressively and bypass neutral adjudication for financial gain. Due process principles are undermined because the process provided (if any) is corrupted by financial incentives. Here, the entire purpose of the confessions of judgment policy is to allow the Sheriff's Office to aggressively seek fees from those released from jail *without any process at all*. And the profit incentive is particularly pernicious in this case because it spurs the Sheriff's Office into imposing unconstitutional conditions on people in vulnerable positions. Those being released from jail are pressured into waiving their constitutional and statutory rights to challenge the fees, all so the Sheriff's Office can make extra cash to go shooting, with some fun treats thrown in for (not so) good measure.

Systems like the one here, which generate revenue for law enforcement, corrupt the neutral application of criminal justice principles by creating a financial incentive to extract fees from defendants. This section proceeds in two parts. *First*, we provide various

real-world examples of the consequences of revenue-generating law enforcement programs. In doing so, we specifically focus on how government officials are incentivized to minimize due process protections before depriving defendants of their property for the officials' gain. *Second*, we discuss these issues in the specific context of the Sheriff's confessions of judgment policy.

A. Real-world experience shows that financially incentivized law enforcement programs spur bad behavior and reduce due process protections.

In a properly functioning criminal justice system, the various investigators, prosecutors, and adjudicators will have no personal or institutional incentive toward a certain outcome. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249–50 (1980) (noting that a "scheme injecting a personal interest, financial or otherwise, into the [law] enforcement process may bring irrelevant or impermissible factors" into the decisionmaking process and "raise serious constitutional questions"). Each carries out their role in the process without receiving any benefit—pecuniary or otherwise—from adjudicating someone guilty or imposing penalties. But that's not what happens when the system is revenue-generating. In such cases, the presence of an unneutral party raises a

risk of erroneous deprivation—a key consideration in the *Mathews* due process analysis. *Id.* at 242 ("Th[e] requirement of neutrality . . . safeguards [a] central concern[] of procedural due process, the prevention of unjustified or mistaken deprivations[.]"). *See also Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) ("[O]f course, an impartial decision maker is essential."). Revenue-generating systems create incentives for law enforcement to extract funds from the accused—something real-world experience confirms. As the Supreme Court has warned, protections that "ensure the requisite neutrality that must inform all governmental decisionmaking" is "of particular importance" where "the [g]overnment has a direct pecuniary interest in the outcome of the proceeding." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 55–56 (1993). *See also Leonard v. Texas*, 580 U.S. 1178, 137 S. Ct. 847, 848 (2017) (Thomas, J., statement respecting denial of certiorari) (noting how the profit incentive and "limited judicial oversight" for civil forfeiture "has lead to egregious and well-chronicled abuses"); *Culley v. Marshall*, 601 U.S. 377, 401, 402 (2024) (Gorsuch, J., concurring) (noting the problem of "familiar financial incentives" in civil forfeiture and the "relative lack of power of those on whom the system preys").

At the Institute for Justice, we often litigate cases challenging revenue-generating policing practices. Our experience in this area shows just how damaging the profit incentive can be. When law enforcement can generate revenue by imposing penalties on citizens in the form of fees, fines, or even forfeiture, they benefit greatly—sometimes to the point of absurdity. *See, e.g.*, Inst. for Just., *The Top 6 Craziest Things Cops Spent Forfeiture Money On*, YouTube (Jan. 31, 2014), https://www.youtube.com/watch?v=n2iJ7UBODw8 (noting that police departments have used forfeiture proceeds for expenses like steak dinners and concerts; multi-day conferences in Hawaii; a sports car for a DARE program; lots of alcohol—including kegs, whiskey bottles, and a margarita machine; and even sex workers and drugs). From the perspective of law enforcement benefiting from these systems, the lack of oversight is a feature rather than a bug. [3] After all, any government

[3] Policing-for-profit programs are particularly attractive to law enforcement when they allow law enforcement to use the proceeds as they see fit, like "pennies from heaven," to be used on perks. *See* Citizens for Just., *"Pennies From Heaven" Chief Burton Talks Asset Forfeitures (Raw Footage)*, YouTube (Nov. 19, 2012), https://www.youtube.com/watch?v=ipHUNxLLms (chief of police testifying that "there's not really" any limitations "on the forfeiture stuff" and that proceeds from forfeiture can be used "like pennies from heaven" that "give[] you a toy" or "something that would be nice to have" but isn't necessary).

interest is minimal when it seeks merely to raise money for its own enjoyment. And that's especially so when weighed against individuals' weighty interest in maintaining their income and property. In the Sheriff's words, when law enforcement is incentivized to squeeze all the "blood out of a turnip" that they can, they will seek any way to do so without procedural protections for those being squeezed. App. 6; R. Doc. 9, at 6.

Brookside, Alabama, provides an apt example. Starting in March 2018, the town's then-new police chief pushed his department and the municipal court system to maximize the town's revenue stream. *See Coleman v. Town of Brookside*, 663 F. Supp. 3d 1261, 1266–70 (N.D. Ala. 2023) (denying motion to dismiss). He did so through an aggressive traffic-stop and car-towing program under which police would pull over drivers for dubious reasons and then have their cars towed by a private company on similarly dubious bases. *Id.* The private company would only release the cars after the owner or driver paid a mandatory impound fee to the town as well as additional fees to the company. *Id.* at 1267–68. Through this scheme, the town generated hundreds of thousands of dollars in additional revenue. *Id.* at 1267. From 2017 to 2020, Brookside's

annual revenue from fines and forfeitures skyrocketed by nearly 1,100%. First Amended Complaint, *Coleman v. Town of Brookside*, No. 2:22-cv-423 [ECF No. 32] at ¶ 9 (N.D. Ala. filed June 17, 2022). And by 2020, fines and forfeitures made up approximately 49% of the town's annual revenue, a near-fivefold increase from the percentage of the town's revenue from fines and fees in 2017. *Id.* ¶ 11.

Brookside funnels most of the funds generated by the program into the police department. As stated by Brookside's mayor, $544,077 of the $610,307 raised through fines and forfeitures in 2020 went directly to the police in the form of training, conferences, computer and software purchases, vehicle maintenance and purchases, and salaries. *Id.* ¶ 165; *Coleman*, 663 F. Supp. 3d at 1267. The incentive to aggressively ticket residents is also reflected in the police department's practices, like stacking charges so that a single violation results in a handful of charges, with corresponding fines, fees, and court costs for each. *Coleman*, 663 F. Supp. 3d. at 1269.

Brookside's focus on revenue-generation permeates how stops and forfeitures are carried out at each step in the system. That's because the increased revenue also went to the town attorney, municipal judge, and

municipal court, creating an eat-what-you-kill criminal justice system without any neutral arbiters. *Id.* at 1267. In Brookside, the police department's aggressive ticket-and-tow policy to extract funds from residents created a no-due-process-zone where it's normal to use funds for fancy new unmarked SUVs. First Amended Complaint, *Coleman v. Town of Brookside*, No. 2:22-cv-423 [ECF No. 32] at ¶¶ 167, 170 (N.D. Ala. filed June 17, 2022).

The results of this scheme have been exactly what you'd expect—astronomical spikes in cars being towed which, of course, have resulted in devastating consequences for those caught in the scheme. Brookside went from generating approximately $200 in 2016 from impound fees to $261,400 between then and 2021, all of which was deposited in the bank account used for police department expenses. Brookside police have left drivers—including families with young children—stranded in the middle of the road. Inst. for Just., *[CAUGHT] Local Police Terrorize Small Town, They Even Got a Tank*, YouTube (May 24, 2022), at 2:55–3:45, https://www.youtube.com/watch?v=-cil2gdCa-k (drivers' testimony about being stranded and cell phone video of police returning car keys after leaving driver stranded). Others caught in this system have been

physically roughed up by police, seen their property damaged, and been subjected to invasive searches, all for (oftentimes dubious) minor traffic violations. *Id.* at 3:58–5:20 (drivers and their families recounting their experiences). The fees and forfeitures have cost Brookside's vulnerable residents greatly while enriching the Brookside police department, municipal court, and a private towing company.

While the Brookside example may seem extreme, it's not unique. There are many others. When government officials have an incentive to impose financial penalties on their constituents and others, they benefit from a lack of process. *Cf.* Dick M. Carpenter II et al., Inst. for Just., *Municipal Fines and Fees: A 50-State Survey of States Laws* (Apr. 30, 2020), https://ij.org/report/municipal-fines-and-fees/ (choose "Overall Results" from the "Key Findings" drop-down menu) ("[N]early every state performs poorly on factors related to municipalities' financial incentive to pursue fines and fees. For example, only two states . . . firmly cap municipal fines and fees revenue . . . . And no states with municipal courts require municipalities to send all court revenue to a neutral fund[.]").

To take another example, until a recent settlement agreement, Wilmington, Delaware, had a system similar to Brookside's. There the city would issue parking tickets and then allow private companies to tow any cars with more than $200 in outstanding fines. *Shaheed v. City of Wilmington*, 2022 WL 16948762, at *1 (D. Del. Nov. 15, 2022) (denying in part motion to dismiss). Once residents' cars were impounded, the only way to get them back was to pay the city every penny it demanded for parking tickets, fines, fees, and penalties—without any way to contest the validity or amount of the debt. *Id.* This created a financial incentive to take cars for parking violations, and that is what happened: Ameera Shaheed—a disabled woman who depended on her car—lost her vehicle for a few unpaid parking tickets. Complaint, *Shaheed et al. v. City of Wilmington*, No. 1:21-cv-01333 [ECF No. 1] at ¶¶ 44–52 (D. Del. filed Sept. 22, 2021). Similarly, Wilmington impounded and scrapped grandfather Earl Dickerson's legally parked car just because he took too long to move it while dealing with the recent death of a grandchild and couldn't immediately afford the hefty fees imposed. *Id.* ¶¶ 83–106.

New York City does something similar with fines imposed by the Department of Buildings to enforce the city's building code. If the

Department determines that someone has violated certain provisions of the building code, it issues a fine and the only option is to pay the amount demanded. Complaint, *Katergaris v. City of New York*, No. 1:22-cv-7400 [ECF No. 1] at ¶¶ 1–4, 25–26, 30 (S.D.N.Y. filed Aug. 30, 2022). As was the case in Wilmington, in New York there's no process to contest the fines. *See id.* ¶¶ 78–85. As a result, innocent people like Serafim Katergaris are forced to pay for others' violations. In his case, the Department imposed hefty fines just because the previous owner of his home had failed to file paperwork certifying the home's boiler had been inspected. *See id.* ¶¶ 45–77. But that had nothing to do with Serafim—by the time he had moved to the home, it didn't have any boiler at all. *See id.* The lack of process flouts fundamental constitutional protections and places the Department's judgment beyond review, even when it makes a mistake.

In each case—Brookside, Wilmington, and New York City—government officials gain through revenue-generating schemes that deprive those affected of any meaningful opportunity to challenge the penalties imposed on them. So too with the Black Hawk County Sheriff's Office, where the Sheriff's confessions of judgment policy creates a

similar eat-what-you-kill system—the more un-challengeable fees generated by the confessions, the more play money for the Sheriff and his colleagues. That is the essence of a system with an unconstitutionally high risk of erroneous deprivations of property, as detailed next.

B. The use of confessions of judgment here is a particularly pernicious example of profit-driven law enforcement.

The Sheriff's Office directly profits from its policy of depriving the Plaintiffs and all others of any process to challenge the fees imposed against them. It has an incentive to pressure each person being released from jail to sign a confession of judgment, so that it can assess fees and then keep a substantial portion of those fees (total control of the 40% fund), all without having to go through any neutral pre- or post-deprivation oversight. For the Sheriff's Office, these fees present a windfall that allows them to pay for extra goodies.

Through the confessions of judgment, the Sheriff ensures there can be no neutral review of the propriety or accuracy of the fees. The purpose of the confessions of judgment, after all, is for those being released to waive any claims they may have. As the Sheriff himself recognizes, the very fees his office uses confessions of judgment to collect are "generally

the fees that judges are willing to waive" when there's an opportunity for judicial review. App. 17; R. Doc. 9, at 17. That gives the game away. The Sheriff knows that his coerced confessions are often the difference between extracting cash or not. That's exactly *why* he's adopted a policy of cutting out any neutral adjudicator. And it's exactly why his policy is unconstitutional—because "the lack of an impartial decisionmaker . . . heightens the risk of erroneous deprivation." *Ordonez v. Stanley*, 495 F. Supp. 3d 855, 864 (C.D. Cal. 2020).

Indeed, the Sheriff's policy of pressuring people to confess is particularly pernicious because it functions like an unconstitutional condition on the Plaintiffs. The unconstitutional conditions doctrine applies when government threatens to "withhold [a] benefit," or to refuse some other kind of discretionary action, "because someone refuses to give up constitutional rights." *Koontz v. St. John's River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013). *See also Perry v. Sindermann*, 408 U.S. 593, 597 (1972). The doctrine stems from the understanding that the government cannot have a valid interest in forcing a tradeoff between constitutional rights. *See*, *e.g.*, *Simmons v. United States*, 390 U.S. 377, 394 (1968) ("[W]e find it intolerable that one constitutional right should

have to be surrendered in order to assert another."); *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967) ("There are rights of constitutional stature whose exercise [the government] may not condition on the exaction of a price."). That's because "[g]iving the government free rein to grant conditional benefits creates the risk that the government will abuse its power by attaching strings strategically, striking lopsided deals and gradually eroding constitutional protections." *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2006). By pressuring the Plaintiffs at the time of release, there's an implicit threat that release is conditional on signing the confessions of judgment, even if the Sheriff would not have any authority to continue detaining them. The Sheriff can't condition someone's release (or make it seem like the release is conditioned) on signing a paper waiving any rights to sue. [4] *Cf. id.* at 866 n.5 ("The right to keep someone in jail does not in any way imply the right to release that person subject to unconstitutional conditions.").

A system in which department revenue directly benefits from aggressively seeking fees and in which more revenue means more police

[4] To the extent there is any dispute as to the coercive or involuntary nature of the "confessions," it must be resolved in Plaintiffs' favor at the pleading stage.

funding—including for a plethora of frivolous, on-the-job perks—is a system in which the police are, at least partially, "dependent on the maintenance of a high level of penalties." *Brucker v. City of Doraville*, 38 F.4th 876, 888 (11th Cir. 2022) (quoting *Jerrico*, 446 U.S. at 251) (noting that when a high enough portion of a police department's funding comes from fees that's "the kind of bounty system that raises core due process concerns"). If the fees decrease, so too will the ice cream and cotton candy—a risk the Sheriff's Office heads off by ensuring no person being released from jail can challenge the fees imposed on them with the confessions of judgment. The Plaintiffs' allegations in this case do not describe a criminal justice system in which the possibility of financially interested decisionmaking is "exceptionally remote," but one in which it is inevitable. *Cf. Jerrico*, 446 U.S. at 250.

Here the Sheriff has been clear that the function of the confessions of judgment is to ensure fees-based funding for frivolous perks without any oversight. After all, the Sheriff threatened that he would not collect any fees at all rather than allow the County Board of Supervisors any control over the 40% fund. The Sheriff's Office depends on the fees to fund perks like the shooting range and laser tag. And the Sheriff's Office seeks

to insulate the revenue stream that funds those perks by depriving the Plaintiffs of any opportunity to challenge the propriety or amount of fees imposed on them. Due process violations seldom come so neatly packaged.

When police departments get to devise revenue-generating systems, they do what the Sheriff did here: treat themselves to things like a gun range outfitted with cotton candy and ice cream. In this case, a minimal way to guard against abuses in a revenue-generating pay-to-stay jail-fee system is to ensure that the Sheriff can't deprive people of the opportunity to challenge the propriety or accuracy of their fees. It's dangerous—and destructive of due process principles—to let the Sheriff short-circuit the process of determining what percentage of jail fees will be deemed inaccurate or not owed when his office stands to financially benefit from the answer being "zero."

CONCLUSION

This Court should reverse the district court's decisions. It should hold that the Plaintiffs have standing and that Plaintiffs have alleged a due process violation that must proceed to discovery.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed electronically on July 16, 2025, and thus, will be served electronically upon all counsel. I further certify that, upon this brief being file-accepted, one paper copy will be served on counsel for each party by commercial carrier under Local Rule 28A(d) and Fed. R. Civ. App. P. 25(c)(1)(C).

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CERTIFICATE OF COMPLIANCE

Under Federal Rule of Appellate Procedure 32(g), I hereby certify that:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 5,632 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) because this brief has been prepared using Microsoft Office Word and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

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