No. 21-90015

In the

United States Court of Appeals for the Eleventh Circuit

ALDARESS CARTER, *et al.*,
Plaintiff-Petitioner,

v.

THE CITY OF MONTGOMERY AND JUDICIAL CORRECTION SERVICES,
Defendants-Respondents.

On Petition to Immediately Appeal from an Order Denying Plaintiff-Petitioner's Motion for Class Certification by the United States District Court for the Middle District of Alabama, Northern Division
Case No. 2:15-CV-00555-RCL-SMD
(Hon. Royce C. Lamberth)

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* THE SOUTHERN POVERTY LAW CENTER, CIVIL RIGHTS CORPS, PUBLIC GOOD LAW CENTER, AND LAW PROFESSORS IN SUPPORT OF PLAINTIFF-PETITIONER'S PETITION FOR PERMISSION TO APPEAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 23(f)

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned attorney for *Amici Curiae* The Southern Poverty Law Center, Civil Rights Corps, Public Good Law Center, Deborah N. Archer, Myriam Gilles, Suzette Malveaux, Adam N. Steinman, and Heather Elliott hereby certifies, pursuant to Eleventh Circuit Rule 26.1-1, that the certificate of interested persons is complete and adds the following interested persons and entities.

1. Archer, Deborah N. – *Amicus Curiae*
2. Bennigson, Tom – Counsel for *Amici Curiae*
3. Brachfeld, Molly – Counsel for *Amici Curiae*
4. Civil Rights Corps – *Amicus Curiae*
5. Degnan, Ellen – Counsel for *Amici Curiae*
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10. Gilles, Myriam – *Amicus Curiae*
11. Jordan, Alexandra – Counsel for *Amici Curiae*
12. Lopez, Marco – Counsel for *Amici Curiae*
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17. Rosenberg, Lauren M. – Counsel for *Amici Curiae*
18. Ryan, Antony L. – Counsel for *Amici Curiae*
19. Southern Poverty Law Center – *Amicus Curiae*
20. Steinman, Adam N. – *Amicus Curiae*

The undersigned attorney further certifies pursuant to Federal Rule of Appellate Procedure 26.1, that *Amici Curiae* have no parent corporations and that

no corporation directly or indirectly holds 10% or more of the ownership interest of *Amici Curiae*.

Date: June 11, 2021

/s/ Antony L. Ryan
Antony L. Ryan
Attorney for Amici Curiae

MOTION FOR LEAVE TO FILE

The Southern Poverty Law Center, Civil Rights Corps, and Public Good Law Center, along with Professors Deborah N. Archer, Myriam Gilles, Suzette Malveaux, Adam N. Steinman, and Heather Elliott, respectfully move this Court for leave to file a brief as *amici curiae*, which is filed conditionally with this Motion. This brief is in support of the petitions filed by Plaintiffs-Petitioners on June 4, 2021, in the related cases of *Carter v. City of Montgomery*, No. 21-90015, and *McCullough v. City of Montgomery, Ala.*, No. 21-90016, seeking permission to immediately appeal from the District Court's denial of Plaintiffs-Petitioners' motion for class certification. In support of their motion, *Amici* state as follows.

The Southern Poverty Law Center has provided civil rights representation to low-income persons in the Southeast since 1971, with a particular focus on combating privatized probation, debtors' prisons, and other fee-based profiteering schemes in the criminal legal system through litigation and advocacy. *See, e.g.*, *Harper v. Prof'l Probation Servs., Inc.*, 976 F.3d 1236 (11th Cir. 2020).

Civil Rights Corps is a national organization dedicated to landmark litigation and high-impact advocacy that empowers communities to advance justice and equality under the law. It has successfully challenged wealth-based detention and the criminalization of poverty throughout the criminal legal system, including in this Circuit, *see, e.g.*, *Schultz v. State*, 330 F. Supp. 3d 1344 (N.D. Ala. 2018), and

including challenges to unconstitutional private probation schemes, *see, e.g.*, *McNeil v. Cmty. Prob. Servs., LLC*, 945 F.3d 991 (6th Cir. 2019).

Public Good Law Center is a public interest law organization specializing in civil and constitutional rights, consumer protection, freedom of speech, and public health. Through amicus participation in cases of particular significance, Public Good seeks to ensure that the protections of the law are available to all.

Deborah N. Archer is Professor of Clinical Law and Co-Faculty Director of the Center on Race, Inequality, and the Law at New York University School of Law. She is a nationally recognized expert on civil rights and racial justice, and a frequent public speaker on these topics. Prior to fulltime teaching, Deborah worked as an attorney with the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund, Inc., where she litigated in the areas of voting rights, employment discrimination, and school desegregation.[1]

Myriam Gilles is Professor of Law at Benjamin N. Cardozo School of Law and an Academic Fellow of the Pound Civil Justice Institute. Professor Gilles specializes in class actions and aggregate litigation and has written extensively on class action bans in arbitration clauses. Professor Gilles teaches Torts, Civil

[1] Prof. Archer is a member of the board of the National Center for Law and Economic Justice, counsel for Plaintiff-Petitioner McCullough.

Procedure, Products Liability, and Class Actions & Aggregate Litigation. She is 5th most cited civil procedure scholar in the country and a co-editor of an influential casebook in the field, *Civil Procedure: Cases and Problems* (Wolters Kluwer, 7th ed. 2021).

Suzette Malveaux is Director of the Byron R. White Center for the Study of American Constitutional Law and the Provost Professor of Civil Rights Law at the University of Colorado Law School. Prof. Malveaux has taught Civil Procedure, Complex Litigation, Civil Rights and Employment Discrimination for the past eighteen years. Prof. Malveaux is also the co-author of *Class Actions and Other Multiparty Litigation: Cases and Materials* (West Group, 3d ed. 2012; 2d ed. 2006), and author of numerous articles exploring the intersection of civil procedure and civil rights.

Adam N. Steinman is the University Research Professor of Law at the University of Alabama School of Law, where he teaches civil procedure and complex litigation. He is also an elected member of the American Law Institute and a co-author of the Wright & Miller *Federal Practice & Procedure* treatise.

Heather Elliott is the Class of '36 Professor of Law at the University of Alabama School of Law. One of her principal areas of scholarship concerns the role of courts and agencies in a democratic society. Professor Elliott is a former law clerk

to U.S. Supreme Court Justice Ruth Bader Ginsburg and to Judge Merrick B. Garland of the U.S. Court of Appeals for the D.C. Circuit.

The Southern Poverty Law Center, Civil Rights Corps, and Public Good Law Center have served as counsel in numerous federal and state civil rights actions—including class action lawsuits challenging state laws, policies, and practices, across the country, that authorize the use of private probation companies; other punitive fee systems; and government-issued sanctions, such as imprisonment and license suspensions, based on individuals' inability to pay fines, fees, costs, and other monetary amounts. *Amici* have also dedicated substantial resources to investigate, report on, and lobby for legislative change to these systemic financial abuses.

It is well settled that the role of an amicus is to "assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *Mobile Cty. Water, Sewer & Fire Protection Auth., Inc. v. Mobile Area Water & Sewer Sys., Inc.*, 567 F. Supp. 2d 1342, 1344 n.1 (S.D. Ala. 2008) (citing *Newark Branch NAACP v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991)).

Amici believe their expertise will be beneficial to assist the Court in understanding the primary functions and standards of Rule 23 certified class actions

in private probation challenges specifically and in civil rights cases generally. Their insight will help the Court understand the required standard to conduct Rule 23 assessments of ascertainability, commonality, predominance, and superiority. Their brief will illustrate how the District Court abused its direction by improperly injecting administrative class management issues into every aspect of its class certification analysis; how this treatment contradicts the text and purpose of Rule 23; and why granting the petition for interlocutory appeal is necessary to settle the correct standards for ascertainability, commonality, predominance, and superiority. Hinging on this standard is the ability of hundreds of proposed class members—and thousands of people across the South and the nation—to hold the architects of debtors' prisons accountable for taking their liberty and extorting money from them.

For the foregoing reasons, *Amici* respectfully request that this Court grant them leave to file a brief as *amici curiae*.

Date: June 11, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Antony L. Ryan
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Attorney for Amici Curiae

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Date: June 11, 2021

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I. STATEMENT OF INTERESTS OF *AMICI CURIAE*

Amici are nonprofit civil rights organizations leading the fight against exploitative private probation and other fee-based profiteering schemes in the criminal legal system through litigation and advocacy, and professors who are nationally recognized experts on civil rights and class actions. More specific information about each *Amicus* appears in the Addendum.

Amici have a strong interest in seeing that judges do not misapply Rule 23 by blocking access to relief for indigent victims of civil rights violations in the penal system, victims who often have no recourse other than a class action.

II. STATEMENT OF THE ISSUES

1. Whether the District Court abused its discretion when it incorporated class member identification questions into the predominance inquiry.
2. Whether the District Court abused its discretion when it held that the proposed *Bearden* and abuse-of-process classes lacked predominance, despite common proof of systemic practices.
3. Whether the District Court abused its discretion when it held that a class action is not a superior means to resolve the dispute between the parties.
4. Whether the District Court abused its discretion when it held that the false imprisonment class lacked commonality, despite the presence of questions of common law and fact.

III. SUMMARY OF ARGUMENT

This case concerns the Montgomery Municipal Court's practice of routinely jailing traffic offenders for nonpayment of fines without inquiring into their ability to pay, in violation of their constitutional rights under *Bearden v. Georgia*, 461 U.S. 660 (1983).

This Court must again review the District Court's denial of class certification, which has far-reaching implications not just for this case, but for class action proceedings generally in this Circuit. The first time the District Court denied class certification in this case, this Court vacated and remanded in light of its recent opinion in *Cherry v. Dometic Corp.*, 986 F.3d 1296 (11th Cir. 2021), which held that administrative feasibility issues have no place in Rule 23's ascertainability analysis and, at most, are to be considered in the manageability determination under Rule 23(b)(3).

On remand, the District Court denied class certification again, based on the same feasibility issues as before, but this time giving them dispositive weight in analyzing Rule 23's commonality, predominance, and superiority prongs. The District Court committed multiple legal errors. *First*, the District Court abused its discretion by incorporating class member identification issues into its predominance analysis. *Second*, the District Court abused its discretion by ignoring the systemic, class-wide—not individual—evidence applicable to the *Bearden* claim that

Defendants systemically violated class members' rights, and to the claim that Judicial Correction Services ("JCS") abused legal process to enrich itself. *Third*, the District Court abused its discretion in finding that a class action is not a superior adjudication method based solely on manageability grounds and suggesting instead that individual trials employing collateral estoppel for key elements would somehow be more manageable. *Finally*, the District Court abused its discretion in concluding that Petitioners' false imprisonment class lacked any common issues.

Amici respectfully submit that allowing these findings to stand would misconstrue the Rule 23 legal standard and this Court's precedents and set an impossibly high bar for certification of any proposed damages class actions based on systemic practices.

IV. ARGUMENT

A. Class Membership Issues Have No Place in a Predominance Inquiry.

The District Court erred as a matter of law by incorporating class member identification questions into its predominance inquiry. Class membership questions concern administrative feasibility, which has no bearing on predominance. Indeed, in *Cherry*, this Court held that "administrative feasibility is not a requirement for certification under Rule 23" and is "entirely unrelated to either Rule 23(a) or (b)." 986 F.3d at 1304. The District Court nevertheless found that class membership questions create individualized issues (*see* Op. at 30, 49), thereby skewing the

comparison of common and individualized issues by improperly counting class membership issues among the latter.

The District Court's analysis contravenes this Court's holding in *Cherry*. It is also contrary to the practice in federal court damages class actions, in which a jury returns a verdict based on a clear class definition, and class membership—the question of who, in fact, falls under that definition—is resolved in subsequent claim proceedings. The District Court's error is particularly clear here because Petitioners provided a list of *Bearden* class members, based on review of objective facts in records of the Municipal Court and JCS. (*See* Pet'n at 4-5.)

This Court's intervention is necessary not only to correct that clear error, but also to clarify the governing legal standard. Were the District Court's analysis correct, the administrative task of assessing records to confirm class membership would defeat class certification routinely. But "the size of a potential class and the need to review individual files to identify its members are not reasons to deny class certification." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539-40 (6th Cir. 2012) (collecting cases from various circuits recognizing classes should be certified notwithstanding the need to review individual files to identify class members); *see also In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 680 (N.D. Ga. 2016). Indeed, "[i]t is often the case that class action litigation grows out of systemic failures of administration, policy application, or records

management that result in small monetary losses to large numbers of people. To allow that same systemic failure to defeat class certification would undermine the very purpose of class action remedies." *Young*, 693 F.3d at 540.

B. Petitioners' *Bearden* and Abuse-of-Process Claims Are Capable of Common Proof Through Evidence of Defendants' Systemic Violations.

The most important issue in a class trial of Petitioners' *Bearden* claims will be whether Petitioners were imprisoned for failure to pay a fine without receiving a *Bearden* indigency hearing. On this point, the District Court found: "The record contains enough evidence for a reasonable jury to find that the Municipal Court systemically ignored *Bearden*." (Op. at 30.) This evidence is documented in the Alabama judicial inquiry commission's judgment (*McCullough* ECF 252-2) and the District Court's summary judgment decision, *Carter v. City of Montgomery*, 473 F. Supp. 3d 1273 (M.D. Ala. 2020). That should have ended the inquiry.

This Court has held that predominance can be satisfied based on evidence of a common course of conduct. In *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir. 2004), this Circuit affirmed certification of a Rule 23(b)(3) class where there was evidence of a pattern of activity, and class members could establish reliance by "circumstantial evidence . . . common to the whole class." *Id.* at 1258-59. Courts in this Circuit regularly hold that plaintiffs can establish predominance

through "*generalized evidence* which proves . . . an element on a simultaneous, class-wide basis." *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 694 (S.D. Fla. 2004) (emphasis added) (citation and quotation marks omitted).

Here, Petitioners' evidence that "the Municipal Court systemically ignored *Bearden*" (Op. at 30) can establish a violation of each class member's constitutional rights. This Court's test in *Klay* proves the point: "[T]he addition or subtraction of any of the plaintiffs to or from the class [would not] have a substantial effect on the substance or quality of evidence offered," 382 F.3d at 1255 (citation and quotation marks omitted), and thus Petitioners' generalized proof of systemic *Bearden* violations predominates over individualized issues.[2]

The *Bearden* right naturally lends itself to class-wide determination. A *Bearden* hearing *must* be accompanied by "the court's finding, supported by the evidence, that the defendant willfully refused to pay; that he failed to make sufficient bona fide efforts to pay; or, in the event of a showing of sufficient efforts to pay, that alternate measures to punish and deter are inadequate." *Taylor v. State*, 47 So.3d 287, 289 (Ala. Crim. App. 2009) (internal quotation omitted). Moreover, failure to

[2] The District Court mischaracterized Petitioners' citation to the lack of evidence that Defendants *ever* provided indigency hearings as an "attempt to shift the burden to the defendants." (Op. at 31.) It is well established that an absence of records that should exist is powerful circumstantial evidence that no such records actually exist. *See United States v. Parker*, 302 F. App'x 889, 892 (11th Cir. 2008). To show such an absence, as Petitioners did, is not to *shift* the burden of proof but rather to *meet* it.

hold an indigency hearing is a constitutional violation, "whatever the economic status of the incarcerated person." *Doe v. Angelina Cnty.*, 733 F. Supp. 245, 254 (E.D. Tex. 1990); *accord De Luna v. Hidalgo Cnty.*, 853 F. Supp. 2d 623, 647-48 (S.D. Tex. 2012). Thus, whether Defendants violated class members' constitutional rights is a binary question—each class member either received a *Bearden* hearing or not—and this Circuit has found that such "binary" issues are appropriately "suited for class review." *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1325-26 (11th Cir. 2008).[3]

Likewise, the District Court erred in finding no predominance for the abuse-of-process class. Petitioners have identified common evidence of JCS's abuse of process through JCS's own training manuals, coercive collection practices, form documents, and electronic records. (*See* Pet'n at 19 n.9.) As in *Klay*, Petitioners' abuse-of-process claims "are not simply individual allegations"; instead "the very

[3] The District Court erred in relying on *Rutstein v. Avis Rent-A-Car Sys., Inc.*, 211 F.3d 1228 (11th Cir. 2000), and *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999 (11th Cir. 1997). (*See* Op. at 34.) As this Court has explained, those cases involved complex determinations concerning individual instances of discrimination by the defendants' employees, where the circumstances of each class member's case were necessary to determine whether the defendant discriminated. *See Klay*, 382 F.3d at 1256-57.

gravamen" of this claim is that JCS systematically abused the issuance of probation orders to enhance its own profits. *See* 382 F.3d at 1257.[4]

C. A Class Action Is Superior to a Series of Individual Trials.

Closely related to the predominance error is the District Court's abuse of discretion in finding that a class action would not be a superior means of resolving this dispute, due to the same purported feasibility issues of identifying class members. (*See* Op. at 36, 51.) Rule 23 directs courts evaluating whether a class action is "superior to other available methods" to consider four factors. Fed. R. Civ. P. 23(b)(3). Together, they form a balancing test in which no one factor is dispositive. *See Cherry*, 986 F.3d at 1304-05.

Here, the District Court found that the first three factors support class certification but nonetheless concluded that a class action is not superior to other methods on the basis of the fourth factor—manageability—simply because "administrative difficulties in trying this case as a class action would be immense." (Op. at 35-36.)

This conclusion conflicts with this Circuit's law. The question is "whether a class action 'will create relatively *more* management problems *than any*

[4] Nor does JCS's "good faith" defense defeat class certification. (*See* Op. at 50.) "[U]nique affirmative defenses rarely predominate where a common claim is established." *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1240 (11th Cir. 2016) (internal quotation omitted).

of the alternatives,' not whether it will create management problems in an absolute sense." *Cherry*, 986 F.3d at 1304 (quoting *Klay*, 382 F.3d at 1273) (emphases added)).[5] "Speculative problems with case management" are not grounds to deny class certification and manageability "will rarely, if ever, be in itself sufficient to prevent certification of a class." *Klay* at 1272-73. Courts must confine manageability concerns to their proper scope and balance them "against other [favorable] considerations . . . [s]o administrative difficulties . . . do not alone doom a motion for certification." *Cherry*, 986 F.3d at 1304. The District Court undertook no such balancing process. Instead, it "doomed" the case after identifying administrative difficulties, notwithstanding the acknowledgment that the first three factors favor class treatment. For context, for each of the 2,800 abuse-of-process class members (*McCullough* ECF 282, at 35) to proceed individually, plaintiffs would need to file almost three times the total number of new civil cases last year in

[5] The District Court's suggestion of a "quasi-bellwether" alternative is without basis. (Op. at 36.) Bellwethers are generally used for multi-district litigation featuring "thousands of individual tort cases [where] the court system is swamped with potential trials . . . to create a settlement structure." 4 *Newberg on Class Actions* § 11:11 (5th ed. 2011, updated). Nothing here resembles such a scenario. Moreover, successive individual actions are markedly inferior to a single class action, because they would result in thousands of individual actions when this case can be resolved in one class action proceeding. Nor, as the District Court remarkably suggested (*see* Op. at 36), should individual plaintiffs be compelled each to litigate the highly complex and discretionary doctrine of non-mutual offensive collateral estoppel. *See, e.g.*, *Cotton States Mut. Ins. Co. v. Anderson*, 749 F.2d 663, 666 (11th Cir. 1984).

the Middle District of Alabama. Federal Judicial Center, Table C-1–U.S. District Courts–Civil Statistical Tables for the Federal Judiciary (Dec. 31, 2020).

In doing so, the District Court effectively gutted class members' ability to seek redress for the infringement of their constitutional rights, and set a precedent unduly restricting similar future suits. Class members are all but foreclosed from bringing their own claims, as doing so would be time-consuming and expensive and would require sophisticated representation—precisely the reasons that class actions are superior for systemic conduct like that at issue.

D. Petitioners' False Imprisonment Claim Satisfies the Commonality Requirement.

The District Court denied class certification on Petitioners' third claim for false imprisonment, finding a lack of commonality. (Op. at 40-41.) This finding is a clear abuse of discretion that cannot be reconciled with Petitioners' showing of common issues.

To satisfy commonality under Rule 23(a)(2), "even a single common question will do." *Carriuolo v. General Motors Co.*, 823 F.3d 977, 984 (11th Cir. 2016) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011)). Petitioners here set forth several legal issues that "will affect all or a significant number of the putative class members," when they only need to identify "at least one." *Williams v. Mohawk Indus. Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009). Common questions for this class include: whether the jailing of members without

an inquiry into ability to pay was unlawful; whether JCS instigated unlawful detentions; and whether JCS did so in bad faith. (*See* Pet'n at 20.) The District Court ignored these common questions, concluding instead that "there are no common issues of fact or law for the false-imprisonment class's claims," thereby misconstruing the commonality analysis. (Op. at 41.) Other courts in this Circuit, in contrast, have found that a showing of systemic practices establishes commonality. *See, e.g.*, *Braggs v. Dunn*, 317 F.R.D. 634, 657 (M.D. Ala. 2016).

Tellingly, the District Court relied expressly on "systemic practices" to find that representatives for the false-imprisonment class met the typicality requirement. (Op. at 41-42.) The District Court failed to acknowledge, however, that the typicality and commonality requirements are closely linked. *See, e.g.*, *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1278 (11th Cir. 2000). "[A] finding of typicality logically presupposes a finding of commonality." *Newberg*, *supra*, § 3:31. The District Court can hardly find both that Petitioners allege "a common practice and a common legal theory" based on systemic practices (Op. at 42), and yet that "there are no common issues of fact or law" (*id.* at 41).

V. CONCLUSION

For the foregoing reasons, we respectfully ask the Court to grant Petitioners permission to appeal the District Court's denial of class certification.

Signed this 11th day of June, 2021.

Respectfully submitted,

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ADDENDUM: IDENTITY OF *AMICI CURIAE*

The Southern Poverty Law Center has provided civil rights representation to low-income persons in the Southeast since 1971, with a particular focus on combating privatized probation, debtors' prisons, and other fee-based profiteering schemes in the criminal legal system through litigation and advocacy. *See, e.g.*, *Harper v. Prof'l Probation Servs., Inc.*, 976 F.3d 1236 (11th Cir. 2020).

Civil Rights Corps is a national organization dedicated to landmark litigation and high-impact advocacy that empowers communities to advance justice and equality under the law. It has successfully challenged wealth-based detention and the criminalization of poverty throughout the criminal legal system, including in this Circuit, *see, e.g.*, *Schultz v. State*, 330 F. Supp. 3d 1344 (N.D. Ala. 2018), and including challenges to unconstitutional private probation schemes, *see, e.g.*, *McNeil v. Cmty. Prob. Servs., LLC*, 945 F.3d 991 (6th Cir. 2019).

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Myriam Gilles is Professor of Law at Benjamin N. Cardozo School of Law and an Academic Fellow of the Pound Civil Justice Institute. Professor Gilles specializes in class actions and aggregate litigation and has written extensively on class action bans in arbitration clauses. Professor Gilles teaches Torts, Civil Procedure, Products Liability, and Class Actions & Aggregate Litigation. She is the 5th most cited civil procedure scholar in the country and a co-editor of an influential casebook in the field, *Civil Procedure: Cases and Problems* (Wolters Kluwer, 7th ed. 2021).

Heather Elliott is the Class of '36 Professor of Law at the University of Alabama School of Law. One of her principal areas of scholarship concerns the role of courts and agencies in a democratic society. Professor Elliott is a former law clerk to U.S. Supreme Court Justice Ruth Bader Ginsburg and to Judge Merrick B. Garland of the U.S. Court of Appeals for the D.C. Circuit.

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COMBINED CERTIFICATIONS

The undersigned hereby certifies the following:

1. Independent Authorship. No counsel for any party in this case authored this brief in whole or in part, and no party, party's counsel or any other person, contributed money that was intended to fund preparing or submitting this brief.

2. Type-Volume Limitations. This brief complies with the type-volume limitation set forth in Fed. R. App. P. 29(a)(5). As measured by the word-processing system used to prepare this brief, this brief contains 2,590 words.

3. Typeface and Type-Style Requirements. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(5)-(6). It was prepared using a 14-point, proportionally spaced typeface with serifs and set in a roman style, except as otherwise permitted.

4. Filing. In accordance with Fed. R. App. P. 25(a)(2)(B)(ii) and 11th Cir. R. 31-3, on June 11, 2021, this brief was electronically filed with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system. Also in accordance with 11th Cir. R. 31-3, one originally-signed brief and six copies were dispatched to the Clerk of the Court via third-party commercial carrier for delivery on June 11, 2021.

5. Service. Service was accomplished on all counsel of record by the appellate CM/ECF system.

Signed this 11th day of June, 2021.

/s/ Antony L. Ryan
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