UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

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| MICHELLE TORRES, et al.<br><br>Plaintiffs,<br><br>vs.<br><br>W. DOUGLAS COLLINS, et al.<br><br>Defendants | ) | 2:20-CV-00026-DCLC |

**MEMORANDUM OPINION AND ORDER**

Before the Court is Plaintiffs' Motion for a Preliminary Injunction [Doc. 5] and supporting memorandum [Doc. 26] claiming that Defendants' bail practices run afoul of the Fourteenth Amendment of the United States Constitution. Defendants have responded [Doc. 54] to which Plaintiffs have replied [Doc. 71, 84]. The parties have filed a stipulation of facts [Doc. 78] and agreed that an evidentiary hearing on the motion was not necessary and could be resolved on the pleadings. The matter is now ripe for adjudication.

This case involves the procedures Hamblen County, Tennessee, follows in setting bail for those charged with criminal offenses within its jurisdiction. Plaintiffs contend that these procedures, which do not include an individualized hearing, violate the Fourteenth Amendment of the Constitution and ask the Court to enter a preliminary injunction enjoining the sheriff from continuing to detain those for whom the minimum constitutional procedures have not been followed. Defendants contend its bail practices met the constitutional minimums.

In determining whether to issue a preliminary injunction, the Court must consider four factors: "(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal;

(2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). "These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together." *Id.* "When a party seeks a preliminary injunction on the basis of a potential constitutional violation," however, "'the likelihood of success on the merits often will be the determinative factor.'" *City of Pontiac Retired Emps. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (order)(en banc)(per curiam)(citation omitted). In balancing these factors together and considering the constitutional issues involved, the Court finds the factor regarding Plaintiffs' likelihood of success on the merits determinative. In this case, the Court finds Plaintiffs will likely succeed on the merits of their constitutional claim and GRANTS Plaintiff's Motion for a Preliminary Injunction as outlined herein.

## I. FACTUAL BACKGROUND

The parties have filed a Joint Stipulation which they agree is sufficiently specific to permit the Court to address Plaintiffs' motion for a preliminary injunction. These stipulations address the procedures Hamblen County follows in setting bail for those charged with criminal offenses. The stipulated facts are as follows:

After an officer arrests an individual without a warrant, the officer must promptly obtain an arrest warrant. In Hamblen County, the officer prepares an affidavit of complaint and provides that to either the Circuit Court Clerk Teresa West or her designee, who places the officer under oath. [Doc. 78-1, *Joint Stipulations*, ¶ 1]. The officer signs the affidavit under oath. The clerk then determines whether the facts constitute probable cause. If so, the clerk will sign and issue the

arrest warrant [Doc. 78-1, ¶ 1]; Tenn. Code Ann. § 40-6-203.[1] Either the general sessions judge, Clerk West, or one of the judicial commissioners will set the initial bail and records that amount on the warrant at the time the warrant is sworn out by the officer. [Doc. 78-1, ¶¶ 2-3, 6]. Options for bail include release on recognizance, release on non-financial conditions, or release on secured financial conditions, commonly referred to as "money bail." Money bail is the release condition for the majority of those arrested in Hamblen County. [*Id.* at ¶ 5]. Although Tennessee law does not require it, for the majority of those arrested, secured financial conditions (aka "money bail") are set as bail [*Id.* at ¶ 5]. This is done *ex parte* as the arrestee is not present [*Id.* at ¶ 6].

Those who set the initial bail do not follow a schedule, rubric or other guidelines [*Id.* at ¶ 7]. As a general matter, they also do not know whether the arrestee can afford the amount set. [*Id.* at ¶ 9]. Unless they have some experience with the arrestee, those who set bail typically will not know the arrestee's employment status, financial condition, family ties and relationships, or whether members of the community might vouch for the arrestee. [*Id.* at ¶ 11]. Notwithstanding that, it is not the intent of the general sessions judge for the arrestee to remain in jail when he sets the bail amount [*Id.* at ¶ 13].

The arrestee has four options to satisfy secured financial conditions of release: personal surety, real estate, commercial surety company, or cash. [*Id.* at ¶ 14]. Arrestees who make the initial bail are released from custody. Those, who do not make bail, remain detained in jail, until their initial appearance. [*Id.* at ¶ 19]. Initial appearances are held Mondays, Wednesdays, and

[1] Tenn R. Crim. P. 3 requires an Affidavit of Complaint alleging that a person has committed an offense be "made on oath before a magistrate or a neutral and detached court clerk authorized by Rule 4 to make a probable cause determination." Tenn.R.Crim.P. 4 authorizes the issuance of an arrest warrant if the Affidavit of Complaint establishes "that there is probable cause to believe that an offense has been committed and that the defendant has committed it."

Fridays at 8:30 a.m., unless it falls on a holiday, then the next initial appearance will be on the next scheduled date. [*Id.* at ¶ 20]. The general sessions judge or a judicial commissioner will preside over the initial appearances which are generally conducted by video conference between chambers and the jail and closed to the pubic [*Id*. at ¶¶ 22, 24-25]. Unless they are held in open court, they are not on the record [*Id.* at ¶ 26].

At the initial appearance, arrestees are advised of their charges, the initial amount of bail, and the scheduled date for the preliminary hearing, which must be set within 14 days of the arrest[2] [*Id.* at ¶ 28]; [Doc. 78-1, ¶ 45]; Tenn.R.Crim.P. 5(c)(2)(A) and (d)(2). At this hearing, the arrestees may request the appointment of counsel. If so, they complete an affidavit of indigency, and the judicial officer appoints counsel if the arrestee qualifies. In addition to the affidavit of indigency, the presiding officer also has the arrest warrant and arrestee's rap sheet, or criminal history, from Hamblen County, but does not have the arrestee's employment history, family ties and relationships in the community, or whether members of the community would vouch for the arrestee, unless the officer has some prior experience with the arrestee [*Id.* at ¶¶ 29, 31]. The presiding officer does not make any findings on the record regarding the arrestee's ability to make a secured financial condition, the necessity for the initial bail, the necessity of detention, and adequacy of alternative conditions of release [*Id.* at ¶ 33].

The general sessions judge does not revisit the initial bail amount at the hearing for the arrestee's initial appearance. [*Id.* at ¶ 35]. In fact, generally, the general sessions judge will not consider requests for bond modification at that time [*Id.* at ¶ 35]. Notwithstanding that, sometimes

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[2] Prior to the filing of this lawsuit, the Clerk's office did not have an office procedure for informing the public defender's office of new appointments [Doc. 79, ¶ 10; Doc. 77, ¶6]. Typically, the public defender's office would call court staff to find out their new appointments each day [Doc. 77, ¶ 8]. However, public defenders now attend initial appearances on a regular basis [Doc. 71, pg. 8, fn. 10].

he will *sua sponte* modify an arrestee's bond based on the affidavit of indigency [*Id.* at ¶ 51].

Arrestees, who do not satisfy the financial condition for release, remain detained until the preliminary hearing [*Id.* at ¶ 34]. Arrestees can ask the court for a bond reduction but there are no guidelines about the timing of when such a motion will be heard by the court and as noted, such requests made at the initial appearance are generally ignored [*Id.* at ¶ 59]. The general sessions judge often times refuses to consider modifying the initial bail amount when the district attorney objects [*Id.* at ¶ 60]. When the general sessions judge considers a motion to modify bail, he typically makes no findings on the record about public safety, whether the arrestee is likely to appear at future court dates, nor does he require the state to show why the arrestee should be detained in the amount initially set [*Id.* at ¶ 44].

There are four Plaintiffs in this case presently. Each of Plaintiffs' bail was set with secured financial conditions. Ms. Michelle Torres is a 50-year-old woman, who was arrested on February 15, 2020, for felony Manufacturing, Sale and Delivery of Schedule II Methamphetamine and Schedule VI and possession of Schedule II, III, and drug paraphernalia [Doc. 78-1, ¶¶ 77-78]. Her bail was initially set at $75,000 [Doc. 78-1, ¶¶ 78-79]. She was unable to pay that bail [Doc. 78-1, ¶ 80]. Her initial appearance was held on February 17, 202 in front of General Sessions Judge Collins [Doc. 78-1, ¶¶ 80-81]. At the hearing, the judge found her indigent and appointed counsel [Doc. 78-1, ¶ 81].

After the court advised Torres of her charges, the following colloquy occurred:

THE COURT: Do you understand what you've been charged with?

MS. TORRES: I understand it, but …

THE COURT: I understand you may not agree with it.

MS. TORRES: Yes.

THE COURT: I just want to make sure. This may be a co-defendant.

THE CLERK: Yeah, the (Off mic).

…

MS. TORRES: Yeah, I was in the car with someone.

THE COURT: Okay.

THE CLERK: We're going to look at April the 8th.

THE COURT: Are you going to make your bond?

MS. TORRES: No.

THE COURT: Can you make a bond?

MS. TORRES: I very seriously doubt it.

THE COURT: All right. We'll appoint the public defender to represent you. You just may have to deal with it.

THE CLERK: March the 4th at 1.

THE COURT: March 4th at 1 o'clock.

MS. TORRES: Is there any way I can get it lowered – my bond lowered so I can at least try?

THE COURT: But you told me you couldn't make the bond.

MS. TORRES: I mean I can try. That's all I can do.

THE COURT: Does she get another …

MS. TORRES: Yes, I have a case. I just got out.

THE COURT: I'm going to leave your bond where it is. You got another case, another drug case pending?

MS. TORRES: Yes. And I just got out.

THE COURT: Okay. The bond is still where it …

[Doc. 71-7, pg. 13-14]. On February 24, 2020, a third-party organization paid her bail, and Ms. Torres was released from jail [Doc. 78-1, ¶ 84].

Ms. Johnson-Loveday is a 49-year-old woman, who was arrested on February 11, 2020 for Driving Under the Influence, second offense, Driving on a Revoked License, and Violation of Implied Consent [Doc. 78-1, ¶¶ 86-87]. She was held at the Hamblen County Jail on $6,000 bail, with an additional requirement of an alcohol monitoring bracelet [Doc. 78-1, ¶ 88]. Ms. Johnson-Loveday was unable to pay her bail and bracelet fee [Doc. 78-1, ¶ 89]. Her initial appearance was held on February 14, 2020 before a judicial commissioner via video conference with no record of this proceeding [Doc. 78-1, ¶ 90]. At the hearing, she was found indigent and appointed counsel [Doc. 78-1, ¶ 90]. Her preliminary hearing was set for March 3, 2020 [Doc. 78-1, ¶ 91]. On February 25, 2020, a third-party organization paid her bail and bracelet fee, and Ms. Johnson-Loveday was released from jail [Doc. 78-1, ¶ 92].

Ms. Cameron is a 36-year old woman, who was arrested on February 15, 2020 on Schedule II, III, and IV drug violations, Possession of Drug Paraphernalia, and Theft [Doc. 78-1, ¶ 94]. Her bail was set at $32,000 [Doc. 78-1, ¶¶ 94-95]. She was unable to pay her bail [Doc. 78-1, ¶ 96]. Her initial appearance was held on February 17, 2020 before Judge Collins [Doc. 78-1, ¶ 96-97]. At the hearing, she was found indigent and appointed counsel [Doc. 78-1, ¶ 97]. The following colloquy then occurred

THE COURT: Do you understand that that's what they've charged you with?

MS. CAMERON: Yes

THE COURT: Okay. That's a $2,000 bond.

MS. CAMERON: And I…

THE COURT: Can you make that bond?

MS. CAMERON: Possibly.

…

THE COURT: Are you going to make your bond?

MS. CAMERON: I can't afford the bond. And I was going to ask for bond adoption (phonetic). I've got a one year little girl, Your Honor, and I have no family to take care of her right now.

THE COURT: I cannot lower your bond on these charges today.

MS. CAMERON: And 30,000?

THE COURT: It will be 32,000 for both cases. I'll appoint a public defender to represent you. And we'll set your cases for hearing on –

THE CLERK: March 4th at 1:00

THE COURT: --- March 4th and 1 o'clock.

[Doc. 71-7, pg. 6-8]. On February 24, 2020, a third-party organization paid her bail, and she was released [Doc. 78-1, ¶ 100].

Ms. Edmond is a 36-year-old woman, who was arrested on February 12, 2020 for possession of Schedule III and IV drugs and Aggravated Criminal Littering [Doc. 78-1, ¶¶ 106-107]. Her bail was set at $1,500 [Doc. 78-1, ¶¶ 107-108]. She was unable to pay her bail [Doc. 78-1, ¶ 109]. Her initial appearance was held on February 14, 2020 before a judicial commissioner via video conference [Doc. 78-1, ¶¶ 109-110]. At the hearing, she was found indigent and appointed counsel [Doc. 78-1, ¶ 110]. On February 24, 2020, A third-party organization paid her bail, and Ms. Edmond was released [Doc. 78-1, ¶ 111].

## II. ANALYSIS

### A. Introduction

Plaintiffs allege that Defendants "routinely impose money bail without any consideration of or findings about an individual's financial circumstances," which results in wealth-based detention of indigent individuals [Doc. 26, pg. 13]. Plaintiffs also allege that Defendants deny arrestees any opportunity to timely contest their bond [Doc. 26, pg. 2]. As a result, individuals are detained for days or weeks before given the opportunity to present an argument for a lowered bail amount. Plaintiffs argue that Defendants violate both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. Plaintiffs also claim that "Defendants violate individuals' Sixth Amendment rights by failing to provide counsel at initial appearance." [Doc. 26, pg. 11]. They request the Court "order Defendant Jarnigan [Sheriff of Hamblen County] to release Plaintiffs unless they are provided constitutionally adequate procedures." [Doc. 26, pg. 39]. Defendants oppose the motion, arguing that Defendants' procedures are constitutional, and that any injunction would excessively burden Defendants. They state that "Plaintiffs are essentially requesting an overhaul of the entire criminal system." [Doc. 54, pg. 5].

As an initial matter, where an individual is arrested without a warrant, "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Gerstein v. Pugh*, 420 U.S. 103, 113-14, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975). "Once that suspect is in custody, however, 'the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.'" *Cox v. City of Jackson, Tennessee*, 811 F. App'x 284, 286 (6th Cir. 2020)(quoting *Gerstein*, 420 U.S. at 114). The Sixth Circuit noted that at this stage "whatever procedure a State adopts, 'it must provide a fair and

reliable determination of probable cause [to arrest] as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest.'" *Id.* quoting *Gerstein*, 420 U.S. at 125. "[A] jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*." *County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991). In fact, *McLaughlin* found that those jurisdictions that provided a judicial probable cause determination within 48 hours "will be immune from systemic challenges." *Id.* The Supreme Court noted that jurisdictions may combine a bail hearing with a probable cause hearing, but if they do, it would have to meet the promptness requirement. *Id.*

Defendants in Hamblen County set every arrestee's initial bail *ex parte* without a hearing. There is nothing inherently unconstitutional about this practice. Generally, the judicial officers impose secured financial conditions in almost every case, that is, require some amount of money bail as a condition of release. Thus, Defendants' approach begins with the presumption that every defendant charged with a criminal offense should be detained unless they can satisfy the financial conditions for release. This approach is not without some immediate benefit to those who can make the financial conditions as they can obtain immediate release. But for those who cannot make the financial conditions, they all must remain detained in the local jail.

Analyzing a pretrial detention case, according to both equal protection and due process principles, requires similar and sometimes overlapping considerations. This Court, however, finds separate analyses can be made given the particular facts of this case. *See generally, Bearden v. Georgia*, 461 U.S. 660, 665 (1983) ("Due process and equal protection principles converge in the Court's analysis in these cases."); *see also cases involving the constitutionality of bail statutes, Walker v. City of Calhoun, Ga.*, 901 F.3d 1245 (11th Cir. 2018); *Pugh v. Rainwater*, 572 F.2d 1053

(5th Cir. 1978). This Court also does not find the pleadings require an analysis under the Eighth Amendment of the United States Constitution as Plaintiffs did not raise an Eighth Amendment claim and, in this case, Plaintiffs challenge "not the amount and conditions of bail *per se*, but the process by which those terms are set, which [they allege]…invidiously discriminates against the indigent." *Walker*, 901 F.3d at 1259.[3]

**B. Equal Protection Challenge to Hamblen County's bail setting practice**

Plaintiffs allege that Hamblen County's bail setting practice violates the Fourteenth Amendment's Equal Protection Clause. *U.S. Const. amend.* XIV, sec. 1. Specifically, Plaintiffs claim that Hamblen County detained them solely as a result of their indigency, which they claim violates the principles established in *Bearden*. For the reasons that follow, this Court does not agree that Defendants detained Plaintiffs based solely on their inability to pay bail nor does it find *Bearden* controlling on these facts.

At the outset, "[t]o state an equal protection clause claim, a plaintiff must adequately plead that the government treated the plaintiff 'disparately as compared to similarly situated persons and that such disparate treatment either burdens a fundamental right, targets a suspect class, or has no rational basis.'" *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011)(quoting *Club Italia Soccer & Sports Org., Inc. v. Charter Twp. of Shelby, Mich.*, 470 F. 3d 286, 299 (6th Cir. 2006)). The Court must consider whether Hamblen County's bail practices treat Plaintiffs disparately as compared to similarly situated individuals.

In this case, Plaintiffs contend Hamblen County sets bail in a way that results in wealth-

[3] This Court assumes the Fourteenth Amendment incorporates the bail clause of the Eighth Amendment making it applicable to the states and therefore to Defendants in this case. *See Baker v. McCollan*, 443 U.S. 137, 144 n. 3, 99 S.Ct. 2689, 2694 n. 3, 61 L.Ed.2d 433 (1979); *Schilb v. Kuebel*, 404 U.S. 357, 365, 92 S.Ct. 479, 484, 30 L.Ed.2d 502 (1971).

based detention. To be sure, a government can run afoul of the Fourteenth Amendment when making wealth-based distinctions. For example, in *Griffin v. Illinois*, 351 U.S. 12 (1956), the Supreme Court held that Illinois violated the Equal Protection Clause by not providing trial transcripts to indigent criminal defendants who needed them to file their appeal. 351 U.S. at 13. In *Williams v. Illinois*, 399 U.S. 235 (1970), the Supreme Court examined a state practice of continuing to imprison defendants who had not paid fines and court costs regardless of whether that imprisonment exceeded the maximum period of incarceration for the underlying criminal offense. It found that practice to constitute "impermissible discrimination that rests on the ability to pay." *Id.* at 241. It struck down that practice, holding that a court may not "subject a certain class of convicted [indigent] defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency. *Id.* at 242. But in *Williams*, the Supreme Court recognized that "an indigent … may be imprisoned for a longer time than a non-indigent convicted of the same offense" and that, in and of itself, did not violate the Equal Protection Clause. *Id*. at 243. In other words, the Supreme Court held that the Constitution does not require that "two persons convicted of the same offense receive identical sentences" but it does require the statutory ceiling "be the same for all defendants irrespective of their economic status." *Id.* at 243-244.

Likewise, the Supreme Court found unconstitutional a state's practice of incarcerating indigent defendants who could not pay their fines accrued from traffic offenses. *Tate v. Short*, 401 U.S. 395, 398 (1971). It found that the state was subjecting the defendants "to imprisonment solely because of [their] indigency." *Id.* And, finally, in *Bearden*, the Supreme Court refused to permit a state to revoke probation of an indigent probationer based solely on non-willful failure to pay a fine or restitution.

In this case, Plaintiffs have not presented any evidence that Hamblen County's bail

practices are discriminatory or result in the disparate treatment of the indigent. The parties stipulated that in Hamblen County, the person setting bail does not have any information regarding an arrestee's ability to pay bail at the time bail is set. Thus, when setting bail, there is no direct discrimination or treatment of arrestees differently based upon their ability to pay. *See* [Doc. 78-1, *Joint Stipulations*, ¶ 9]. The ability of the arrestee is not considered whatsoever by the judicial officer. Moreover, the parties agreed that it was not the intent of the general sessions judge for these individuals not to be able make their bail [78-1, at ¶ 13]. In other words, Judge Collins was not intentionally discriminating against the indigent by imposing secured financial conditions that, ultimately, they could not meet. Thus, Defendants' treatment of the indigent is no different than their treatment of the non-indigent. To the extent that the amount of bail may disadvantage those unable to pay due to indigency, that fact alone does not show that they were treated differently. Additionally, those who are not indigent may also not be able to make bail. After all, the judicial officer sets the bail based on the criminal offense and the arrestee's rap sheet. Thus, those non-indigent arrestees, who cannot make bail, remain in the same jail cell as the indigent. Accordingly, it is difficult for the court to find an equal protection violation when both the indigent and the non-indigent are both locked up because of not being able to make their bail.

The period of time between the arrest and the initial appearance applies equally to those who cannot pay bail due to indigency as well as to those who need additional time to gather funds or who cannot pay bail because the amount is beyond their ability to pay, even though they are not technically indigent. Further, this Court notes that wealth, alone, without other considerations, is not a suspect class for equal protection analysis purposes. *See generally*, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 25 (1973)("at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages").

Plaintiffs claim that Hamblen County's bail practices runs afoul of *Bearden*. The Court finds *Bearden* distinguishable and not controlling on these facts. In *Bearden*, when a defendant could not pay the fine imposed as a result of his conviction, the state automatically detained him regardless of whether his failure to pay was willful. Since all the plaintiffs in *Bearden* had served their sentence, post-conviction detention turned solely on non-payment of the fine. No other factors were considered. That is not the case when setting bail.

In this case involving pretrial detention, the judicial officer considers the different criminal charges each arrestee faces and, if available, examines their unique criminal history when setting bail. Also, there may be times when a court sets bail exceptionally high given those factors such that the arrestee cannot make bail but is not indigent. Given the different considerations between post-conviction fines and pretrial bail, this Court finds the *Bearden* case distinguishable and that pretrial detention considerations are too individualized to provide a meaningful "similarly situated" analysis.

The present case is also distinguishable from *O'Donnell v. Harris Cty.* 892 F.3d 147 (5th Cir. 2018) also cited by Plaintiffs. In the present case, bail is not set according to a "schedule or rubric or guidelines." [Doc. 78-1, at ¶ 7]. Bail is set by the judge, the county clerk or a judicial commissioner based upon the charges on the warrant and any personal knowledge or experience with the arrestee. [*Id*. at ¶ 11]. Thus, bail appears to be tied in some instances to personal knowledge of the arrestee. However, it is done *ex parte* without any input from the state or arrestee.

In *O'Donnell*, the Fifth Circuit found an equal protection violation when pretrial detention was solely due to a person's indigency. In that case, bail was set strictly on the basis of a schedule, without the introduction of any individualized factors. It found that Harris County engaged in a

"custom and practice [that] resulted in detainment solely due to a person's indigency because the financial conditions for release [were] based on predetermined amounts beyond a person's ability to pay and without any 'meaningful consideration of other possible alternatives.'" *O'Donnell*, 892 F.3d at 161 (citations omitted). The court found that the only difference between individuals with the same bail amounts was their ability to pay. Thus, those who could pay were released while those who could not pay were not released.

The facts in *O'Donnell* are not the facts here. In this case, unlike in *O'Donnell*, there is no evidence to suggest that Hamblen County sets the same bail amount for the same charge for any two arrestees, especially where the individual setting bail has personal knowledge of an arrestee. Moreover, the record in *O'Donnell* established that Harris County's practices evinced a "discriminatory purpose" which was evidenced by "numerous, sufficiently supported factual findings." *Id.* The parties stipulated here that it was not the judge's intention that bail would be unaffordable, and the defendant remain in jail. [78-1, at ¶ 13]. Indeed, unlike in *O'Donnell*, the record in this case does not establish that Hamblen County is detaining individuals based only on their indigency. In addition to the detention of the indigent, also detained are those who are not indigent and still cannot afford bail. For example, if two arrestees are charged with the same violent crime and receive the same bail amount, it is possible that neither could afford to pay bail even if one was not indigent.[4] Finding no discrimination based on wealth or disparate treatment of similarly situated individuals under the facts presented, the Court finds no violation of the Equal Protection Clause. The Court will now turn to the issue of Plaintiffs' due process claim.

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[4] "Any government benefit or dispensation can be framed in artificially narrow fashion to transform a diminishment into total deprivation. … If such narrowing is permissible, then any wealth-based equal protection claim becomes valid so long as the plaintiff frames his interest in a cramped enough style." *Walker v. City of Calhoun, Ga.*, 901 F.3d 1245, 1264 (11th Cir. 2018), *cert. denied sub nom. Walker v. City of Calhoun, Ga.*, 139 S. Ct. 1446, 203 L. Ed. 2d 681 (2019).

### C. Due Process Challenge to Hamblen County's bail practices

Plaintiffs allege Defendants violated their right to due process under the Fourteenth Amendment of the United States Constitution. Plaintiffs correctly contend that "[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisana*, 504 U.S. 71, 80 (1992). In that same way, fairness of the relations between the state and a criminal defendant is a Due Process Clause issue. *Bearden*, 461 U.S. at 665. The Due Process Clause provides for both substantive due process protections and procedural due process protections. Plaintiffs allege Hamblen County's bail practices violate both.

#### 1. Substantive Due Process

"[T]he Fourteenth Amendment 'forbids the government to infringe 'fundamental' liberty interests..., no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)). "[T]he Due Process Clause bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" *Foucha,* 504 U.S. at 80 (quoting *Zinermon v. Burch*, 494 U.S. 113, 125 (1990)). This guarantee, commonly referred to as substantive due process, requires the government action that infringes upon a fundamental right to be narrowly tailored to serve a compelling governmental interest. *Glucksberg*, 521 U.S. at 721 (citing *Reno*, 507 U.S. at 302).

In *United States v. Salerno*, the Supreme Court noted the "general rule … that the government may not detain a person prior to a judgment of guilt in a criminal trial" unless the detention satisfies a heightened standard of scrutiny. It noted the government's interest in that case to be "both legitimate and compelling." *United States v. Salerno*, 481 U.S. 739, 750 (citing

*De Veau v. Braisted*, 363 U.S. 144, 155 (1960)). "On the other side of the scale, of course, is the individual's strong interest in liberty." *Id*. That liberty interest, however, can be subordinated to the greater needs of society where the government's interest is "sufficiently weighty." *Id*. at 750-51.[5]

Plaintiffs allege that pretrial detention deprives them of their fundamental right to freedom from bodily restraint. *See Salerno*, 781 U.S. at 751 (An individual has a "strong interest in liberty. We do not minimize the importance and fundamental nature of this right.") Since detention infringes upon the fundamental right of an individual's personal liberty, this Court will begin by examining how the government arrived at its decision to detain Plaintiffs prior to trial—what criteria were used and the method of decision-making.[6]

Initially, bail is set by the judge, a judicial commissioner or the county clerk. [Doc. 78-1, at ¶ 2]. When bail is initially set, there is no consideration of the arrestee's "employment status, financial condition, family ties and relationships, or [the identification of] members of the community who might vouch for the arrestee, unless [the judicial officer] has some past knowledge or experience with the arrestee." [*Id.* at ¶ 11]. No one makes factual findings as to the reason for the amount of bail. [*Id*. at ¶ 12]. It is just set. Bail can be paid by personal surety, a commercial surety company, by putting up real estate or paying cash. [*Id*. at ¶ 14]. Those unable to pay bail are detained until their next hearing date, which is typically within 48 hours of arrest and

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[5] This Court reads the "sufficiently weighty" standard in *Salerno* as requiring a compelling state interest in this case where a liberty is at issue. So, this Court will apply the traditional "compelling state interest" standard believing that if Defendants illustrate a compelling state interest then they have met a "sufficiently weighty" standard. *Salerno*, 481 U.S. at 750-51.

[6] The Plaintiffs in this case were detained between two and three days before their first post-arrest hearing and were in jail a total of between nine and twelve days until an unnamed "third party organization" paid their bail, presumably in preparation for filing this lawsuit. [78-1, at ¶¶ 84, 92, 100, 111].

constitutes their initial appearance hearing. [*Id*. at ¶ 18-21]. This, of course, could be longer depending on when the individual was arrested and whether the next hearing date falls on a holiday.

Either the judge or a judicial commissioner presides over initial appearances. [*Id*. at ¶ 23]. Generally, no record is made of what is presented at the initial appearance, and pretrial detainees are not given notice of what will occur at the initial appearance, although the court will appoint counsel to qualifying detainees. [*Id*. at ¶ ¶ 26-27, 32, 47]. At the initial appearance, either the judge or a judicial commissioner advises the pretrial detainee of her charges, the amount of the initial bail, and sets the preliminary hearing date within 14 days from that date. [*Id*. at ¶ 28]. The only information before the presiding official is the arrest warrant, an affidavit of indigency (if submitted), any criminal history information in the court's computer and, if applicable, specialized DUI or domestic assault forms. [*Id*. at ¶ 29]. It appears that a court file may also be available containing information regarding whether the pretrial detainee is on probation or has any prior failure to appear charges. [*Id*. at ¶ 30]. The presiding officer does not make any findings of fact at this hearing. [*Id*. at ¶¶ 32-33]. If a pretrial detainee cannot pay the bail, she will be detained in the jail until her preliminary hearing or until the sessions judge modifies the conditions of the bond based on the detainee's motion for a bond reduction. [*Id*. at ¶ 34]. The parties stipulated that pretrial detainees can ask for a bond modification at the initial appearance, but they concede that their requests are generally ignored. [*Id*. at ¶ 35].

The fact that requests for bond modifications are not "generally considered" is of constitutional significance since the bail amount is initially set without any regard for an arrestee's individual circumstances. After all, it is done *ex parte* without information concerning the arrestee's employment, financial condition and the like. Apparently, the person setting bail may

have personal knowledge of the arrestee, but this Court has no evidence as to how frequently repeat offenders are arrested such that they would be familiar to the person setting bail. It is also unknown whether the person setting bail had any personal knowledge of Plaintiffs in this case. Assuming the judge hears bail modification requests at the initial appearance hearings, the transcripts from those hearings that have been provided to this Court demonstrate a complete lack of any meaningful individualized hearing.

For example, Plaintiff Torres was arrested February 15, 2020 and had her initial appearance hearing on February 17, 2020. She was charged with felony Manufacturing, Sale and Delivery of Schedule II Methamphetamine, and Schedule VI and Possession of Schedule II, III, and Possession of Drug Paraphernalia. Her initial bail was set at $75,000. The court found her indigent and appointed her counsel. [*Id*. at ¶¶ 77-85]. Based on the transcript, the following colloquy occurred between the general sessions judge and Torres:

THE COURT: Are you going to make your bond?

MS. TORRES: No.

THE COURT: Can you make bond?

MS. TORRES: I very seriously doubt it.

THE COURT: All right. We'll appoint the public defender to represent you. You just may have to deal with it.

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MS. TORRES Is there any way I can get it lowered—my bond lowered so I can at least try?

THE COURT: But you told me you couldn't make the bond.

MS. TORRES: I mean I can try. That's all I can do.

THE COURT: Does she get another…

MS. TORRES: Yes, I have a case. I just got out.

THE COURT: I'm going to leave your bond where it is. You got another case another drug case pending?

MS. TORRES: Yes. And I just got out.

THE COURT: Okay. The bond is still where it…

[71-7, pg. 13-14].

Plaintiff Cameron was arrested on February 15, 2020 and had her initial appearance on February 17, 2020. She was charged with Schedule II, III, and IV drug charges along with a drug paraphernalia and theft charge. Her bail was set at $32,000. The court found her indigent and appointed counsel. Counsel did not speak on her behalf at the hearing. *Id*. at 93-105. Based on the transcript, the following colloquy occurred between the court and Plaintiff Cameron:

THE COURT: Okay. That's a $2,000 bond.

MS. CAMERON: And I…

THE COURT: Can you make that bond?

MS. CAMERON: Possibly.

THE COURT: Are you going to make your bond?

MS. CAMERON: I can't afford the bond. And I was going to ask for bond adoption (phonetic). I've got a one year little girl, Your Honor, and I have no family to take care of her right now.

THE COURT: I cannot lower your bond on these charges today.

MS. CAMERON: And 30,000?

THE COURT: It will be $32,000 for both cases. I'll appoint a public defender to represent you. And we'll set your cases for hearing on--

[71-7, at pg. 6-8].

There is no indication from the stipulated record that anyone was pursuing a particular interest in protecting the public or ensuring a criminal defendant's appearance at trial when they set bail initially or at the initial appearance hearing. The District Attorney was not called upon to raise any concerns she had about the need for the bond to be set at that amount. Although there is a generally recognized interest in protecting the public and ensuring court appearances, those interests are only a starting point and not a substitute for an actual inquiry and weighing of interests and factors in addressing bail issues. Moreover, substantive due process requires that the court must restrict its abridgment of an individual's liberty interest in as narrow a way as possible.

Here, there is no evidence that the Hamblen County court attempted to do that. Unless the arrestee is personally known to the person setting bail, bail is set without any consideration of individualized factors other than the specific criminal charges and criminal history. Arrestees are not given any notice regarding their rights at the initial appearance hearing or their ability to request a reduction in bail or the need for information that would be pertinent to that request. When counsel are appointed at the initial appearance hearing, presumably that is the first time they have met their clients. It appears that there is no opportunity for the newly appointed counsel to consult with his/her client or present evidence in support of a lower bail or other options to pretrial detention. In point of fact, the transcript demonstrates the initial appearance is simply a very short rapid-fire question and answer event.

At this point, the general sessions judge knows the arrestee is indigent and has appointed an attorney. He conducts no individualized hearing on the arrestee's bail conditions and instead leaves them detained under the same bail conditions that were set *ex parte* until he recalls the case for a preliminary hearing. The record is silent on whether he ever addresses bail at that point. This refusal to address bail violates Plaintiffs' substantive due process rights. "[T]he court imposing detention upon an indigent defendant must both expressly consider and make findings of fact on the record regarding the defendant's ability to pay the bail amount imposed and whether non-monetary alternatives could serve the same purposes as bail. *Hill v. Hall*, No. 3:19-CV-00452, 2019 WL 4928915, at *13 (M.D. Tenn. Oct. 7, 2019)(citing numerous cases holding that the Due Process requires an inquiry into the arrestee's ability to pay and the consideration of alternative conditions of release).

There simply is nothing to indicate that Defendants have narrowly tailored the option of pretrial detention in any appreciable way. Nor has the government demonstrated how its interest is compelling vis-à-vis each individual Plaintiff. Rather than conducting an individualized hearing where the court would consider the various interests of both the state and the individual, the court simply leap frogs over the bail hearing and schedules a preliminary hearing that very well may be 14 days later. The effect of this is to leave an arrestee in jail with bail remaining as it was initially set, having no consideration given to their ability to pay or any alternative conditions of release.[7] And this is true for all arrestees, regardless of their ability to pay.

For purposes of substantive due process, "the question is whether the trial court's order of

[7] In fact, the Eighth Amendment prohibits "excessive bail" and that term means "[b]ail set at a figure higher than an amount reasonably calculated to" provide "adequate assurance that he will stand trial and submit to sentence if found guilty." *Stack v. Boyle*, 342 U.S. 1, 5 (1951). A court cannot determine whether a particular bond is excessive without some individualized considerations.

detention … was narrowly tailored to the protection of the government's interests or whether, instead, the petitioner's continued detention amounts to punishment." *Hill*, 2019 WL 4928915, at *9. That only occurs where there is a hearing where the court can make "an individualized determination that the defendant poses a risk of harm to the public safety and, therefore, that a detention order is narrowly tailored to the state's interest in protecting the public safety." *Id.* To make this judgment, it necessarily requires an individualized hearing, which is not occurring under the facts of this case. Accordingly, it appears that Plaintiffs' claim that Hamblen County's bail practices violate their right to substantive due process and is likely to succeed on the merits.

**2. Procedural Due Process**

"The Fourteenth Amendment of the United States Constitution protects individuals from the deprivation 'of life, liberty, or property, without due process of law.'" *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (quoting U.S. Const. amend. XIV, § 1). That language has been construed to "require[ ] that the government provide a 'fair procedure' when depriving someone of life, liberty, or property." *Id*. (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)(citations omitted). A procedural due process claim has three requirements: (1) a life, liberty or property interest protected by the Due Process Clause; (2) a deprivation of that protected interest; and (3) a procedural deficiency by the government before depriving an individual of that interest. *Women's Medical Professional Corp. v. Baird*, 438 F.3d 595, 611 (6th Cir. 2006); *see also Fields v. Henry County, Tenn*., 701 F.3d 180, 185 (6th Cir. 2012). "Procedural due process generally requires that the state provide a person with notice and an opportunity to be heard before depriving that person of a property or liberty interest." *Warren v. City of Athens, Ohio*, 411 F.3d 697, 708 (6th Cir. 2005) (citing *Thompson v. Ashe*, 250 F.3d 399, 407 (6th Cir. 2001). The Court must "engage in a two-step analysis when resolving procedural due process issues. We initially

determine whether a protected property or liberty interest exists and then determine what procedures are required to protect that interest." *Johnston-Taylor v. Gannon*, 907 F.3d 1577, 1581 (6th Cir. 1990); *see also Warren*, 411 F.3d at 708 ("Only after a plaintiff has met the burden of demonstrating that he possessed a protected property or liberty interest and was deprived of that interest will the court consider whether the process provided the plaintiff in conjunction with the deprivation, or lack thereof, violated his rights to due process.")(citing *Hamilton v. Myers*, 281 F.3d 520, 529 (6th Cir. 2002)).

As previously stated, Plaintiffs allege Defendants failed to provide adequate procedural safeguards before depriving them of their fundamental right to liberty by way of pretrial detention. "The liberty interest at stake is actual liberty—the right of a person who has not been convicted of a crime to be free from detention prior to trial. There is no dispute that this is a fundamental liberty interest protected by the Due Process clause, for purposes of both procedural and substantive due process." *Hill*, 2019 WL 4928915, at *9 (citing *United States v. Watson*, 475 F. App'x 598, 601 (6th Cir. 2012) ("Pretrial detention violates the Fifth Amendment when it amounts to 'punishment of the detainee.'') (quoting *Bell v. Wolfish*, 441 U.S. 520,535 (1979)). Plaintiffs are deprived of that fundamental right to liberty when they are confined to jail prior to their criminal trial without a hearing that takes into account their individualized circumstances.

This leads the Court to the next inquiry and that is whether the procedures implemented by Hamblen County are constitutionally sufficient. A review of the stipulations reveal that the process followed in Hamblen County fails the minimum constitutional standards that must be followed in making bail determinations – "an individualized hearing of which [the arrestee] had adequate advance notice and where he was represented by counsel and permitted to present witnesses and cross-examine the government's witnesses." *Hill*, 2019 WL 4928915, at *16. The general sessions

court does not engage in any individualized assessment when reviewing the bail that was initially set.

Several courts have addressed the issue of constitutionally sufficient process regarding the bail process, and the common theme for all these cases is the requirement that the state actually consider the arrestee's ability to pay and alternative conditions of release. For example, in *Weatherspoon v. Oldham*, No. 17-cv-2535-SHM-cgc, 2018 WL 1053548 (W.D. Tenn. Feb. 26, 2018), the district court, in reviewing a Tennessee state court's bail determination, found a due process violation because the state court failed to consider whether non-monetary conditions of release could satisfy the purposes of bail. *Id.* at *7. Likewise, in *Hill*, the plaintiff challenged the constitutionality of his pretrial detention. Despite the state court failing to fully comply with the Tennessee Bail Reform Act,[8] the *Hill* court found the Due Process Clause was satisfied since bail was set only after an individualized assessment of plaintiff's circumstances, a consideration of all the evidence in the record and an enunciated finding that Hill posed a risk of harm to the public, a result of which the court determined that release was not warranted. *Hill*, 2019 WL 4928915 at *19.

There are many factors that bolster an individual's right to pretrial liberty: the need to help prepare a defense, the stigma attached to detention, loss of employment due to detention, family responsibilities, family hardship, the individual's ability to pay the bail, and ties to the community to name a few. *See Baker v. Wingo*, 407 U.S. 514, 532-33 (1972). Without an individualized

[8] The Tennessee Bail Reform Act, Tenn. Code Ann. §§ 40-11-115 through -118, is not the subject of this Court's inquiry. Although its provisions may prove instructive when considering procedural requirements under the Due Process Clause, that legislation does not control this Court's inquiry. That said, it is noted that the procedures utilized by Hamblen County fail to meet even the Tennessee statutory requirements. *See* Pre-set Bond Schedules, Tenn. Att'y Gen. Op. No. 05-018 (Feb. 4, 2005)(advising that individualized hearings are required for bail determinations under Tennessee statutory law).

hearing allowing the introduction and discussion of competing pretrial detention issues, a court cannot satisfy procedural due process nor did Defendants do so in this case.

The Sixth Circuit has also addressed Tennessee bail procedures. *Fields v. Henry County, Tenn.*, 701 F.3d 180, 185 (6th Cir. 2012). In *Fields*, the defendant was charged with domestic violence which required, under certain circumstances, a 12-hour period of detention, or "cooling off" period. The county used a bail schedule to set the amount of the money bail in his case. Fields did not claim he could not afford bail or that there was "any inherent problem with the dollar amount set in his case." *Id.* at 184. He also did not claim it was excessive "based on the particular facts of his case." *Id.* Indeed, Fields did "not argue that the evidence produced *at his hearing* was too weak to justify the amount." *Id.* at 185 (emphasis added). Although the Sixth Circuit noted that "[t]here is no constitutional right to a speedy bail," it noted that Fields actually had a hearing. *Id.* at 185. In this case, Plaintiffs did not.

As previously set forth, the government has a compelling interest in protecting the public and ensuring a criminal defendant attends trial. However, that interest does not exist in a vacuum. The government must actually utilize procedures that provide for a meaningful, individualized hearing where the government's interest is weighed against the liberty interest of an arrestee. Central to that inquiry is the necessity of bail and an arrestee's ability to pay bail.[9] To comport with due process, that hearing must also include an opportunity to be heard and present evidence, a consideration of alternative conditions for release and, at a minimum, verbal findings of fact regarding these factors. Further, the Court holds that a bail hearing must be within a reasonable period of time of arrest. The Supreme Court held that the probable cause determination had to be

[9] This type of inquiry will also protect against an Eighth Amendment violation of excessive bail. *See Pugh*, 572 F.2d at 1059.

within 48 hours. *McLaughlin*, 500 U.S. at 54; *Cox v. City of Jackson, Tennessee*, 811 F. App'x 284, 286 (6th Cir. 2020)(probable cause determination is a "condition for any significant pretrial restraint of liberty")(quoting *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975)). It has not applied that same time restriction to bail hearings. However, some courts have. *Dixon v. City of St. Louis*, 2019 WL 2437026 (E.D. Mo. June 11, 2019) (requiring individualized hearing within 48 hours of arrest that includes inquiry into an arrestee's ability to pay and opportunity to be heard).

Defendants contend that requiring an individualized hearing is tantamount to "overhauling the criminal justice system" in Tennessee and would unreasonably extend the length of initial appearances.[10] [Doc. 54, pg. 23] ("If the Plaintiffs' demand for immediate bond hearings is granted, it would likely result in the creation of a 'Night Court' scenario with a Judge, Public Defender, District Attorney, Court Clerk, and Court security present 24 hours a day, seven days a week."). They also claim it would drastically increase the time required per initial appearance, create a backlog of cases, create a need for more judges, judicial commissioners, additional staff, and result in higher taxes on the citizens of Hamblen County. [Doc. 54-1, pgs. 4, 9, 14, 19, 23]. The Court is not persuaded by this "sky is falling" argument as the issue in this case deals with constitutional concerns.

**D. Sixth Amendment Right to Counsel**

Plaintiffs allege that Defendants' failure to provide counsel at hearings that result in pretrial detention violates the Sixth Amendment to the United States Constitution. The Supreme Court has

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[10] It should not be lost on those who are making pretrial detention decisions for arrestees that Tennessee law also requires an individualized hearing to address the factors set out in Tenn. Code Ann. § 40-11-118. The Tennessee Attorney General has opined that Tennessee law entitles a defendant "to an *individual determination of bond* whether the arrest is warrantless arrest, arrest pursuant to a warrant, or an arrest pursuant to a capias or attachment." Pre-set Bond Schedules, Tenn. Att'y Gen. Op. No. 05-018 (Feb. 4, 2005) (emphasis added).

held that "the right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty." *Rothgery v. Gillespie Cty*., 554 U.S. 191, 194 (2008); *See also, Michigan v. Jackson*, 475 U.S. 625, 629 (1986); *Brewer v. Williams*, 430 U.S. 387, 398-399 (1977). Restrictions are imposed on one's liberty at bail hearings.

In Hamblen County, bail is set when the arrest warrant is issued. [Doc. 78-1, at ¶ 2]. The first time arrestees go before the judge or judicial commissioner after arrest is at the initial appearance hearing, which generally is within 48 hours of arrest. [*Id.* at ¶¶ 18-21]. At this hearing, based upon the transcripts provided by Plaintiffs, either the judge or judicial commissioner informs the arrestee of the pending charges, considers the need for appointed counsel, and asks if the arrestee can make bail (in cases where the arrestee has not yet made bail).[11] To the extent this initial appearance serves also as a bail hearing, which from the record it does, the Sixth Amendment right to counsel is implicated. *Rothgery v. Gillespie Cty., Tex*., 554 U.S. 191, 194 (2008)("This Court has held that the right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty").

The Hamblen County court appointed counsel at the initial appearance/bail hearing for each Plaintiff except Plaintiff Johnson-Lovejoy. [Doc. 78-1, at ¶¶ 81, 97, 110]. The parties' stipulate that it is customary for the Hamblen County court to examine an arrestee's affidavit of indigency, appoint counsel, and have counsel present at the initial appearance hearing when bail is discussed. *Id*. at 36. Where that occurs, there is no Sixth Amendment violation. Regarding

[11] Plaintiffs have only provided the transcripts of the initial appearance hearings involving Plaintiff Torres and Plaintiff Cameron. The parties have stipulated that the initial appearance hearings generally follow that same pattern. [Doc. 78-1, at ¶ 36]

Plaintiff Johnson-Lovejoy, ¶ 90 of parties' Joint Stipulations indicates that the Hamblen County court found her indigent for the purposes of appointing counsel but she "was not represented by counsel during the proceeding." This is a violation of the Sixth Amendment. Simply put, an arrestee has a right to representation at a bail hearing or at an initial appearance hearing that also constitutes a bail hearing.

**E. Security Requirement**

Fed.R.Civ.P. 65(c) typically requires the moving party to post a security to protect the other party, if the Court later finds that it was wrongfully enjoined. Defendants request that the Court impose the security requirement to offset the economic hardship of the imposed injunction, should the Court later find that they were wrongfully enjoined [Doc. 54, pgs. 24-25]. However, a court may waive the security at its discretion. *See Appalachian Reg'l Healthcare, Inc. v. Coventry Health & Life Ins. Co.*, 714 F.3d 424, 431 (6th Cir. 2013). As the Plaintiffs are indigent, the Court declines to impose a bond in this case.

**III. CONCLUSION**

Plaintiffs' Motion for Preliminary Injunction is **GRANTED**. Because all Plaintiffs in the case have been released on bail, this Preliminary Injunction is prospective only. Further this order is limited in scope. It does not pertain to criminal defendants who are charged with a capital offense, or who are detained as a result of an indictment, or who are detained on probation violations, or whose release has otherwise been revoked after a hearing. Accordingly, pursuant to Fed.R.Civ.P. 65, it is **ORDERED** that Defendant Esco Jarnigan, Sheriff of Hamblen County, is enjoined from detaining any criminal defendant arrested on an arrest warrant who, after having bail set in an *ex parte* fashion by the Defendants authorized by law to set bail for cases pending in Hamblen County general sessions court, is being detained without having had an individualized

hearing within a reasonable period of time consistent with the Due Process Clause requirements as outlined in this Order.

SO ORDERED:

s/ Clifton L. Corker
United States District Judge