
RECORD NO. 18-1524
(3:17-cv-01426-MBS-SVH)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TWANDA MARSHINDA BROWN; SASHA MONIQUE DARBY; CAYESHIA CASHEL JOHNSON; AMY MARIE PALACIOS; NORA ANN CORDER; XAVIER LARRY GOODWIN, on behalf of themselves and all others similarly situated; RAYMOND WRIGHT, JR., on behalf of themselves and all others similarly situated,

Plaintiffs-Appellees,

v.

GARY REINHART, in his individual capacity; REBECCA ADAMS, in her official and individual capacities as the Chief Judge for Administrative Purposes of the Summary Courts in Lexington County and in her official capacity as the Judge of the Irmo Magistrate Court; BRYAN KOON, in his official capacity as the Lexington County Sheriff,

Defendants-Appellants,

and

LEXINGTON COUNTY, SOUTH CAROLINA; ROBERT MADSEN, in his official capacity as the Circuit Public Defender for the Eleventh Judicial Circuit of South Carolina; ALBERT JOHN DOOLEY, III, in his official capacity as the Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

BRIEF OF APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-1524 Caption: Twanda Marshinda Brown et al. v. Gary Reinhart et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Rebecca Adams
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Kenneth P. Woodington Date: 05/21/18

Counsel for: Appellants

CERTIFICATE OF SERVICE

****

I certify that on 05/21/18 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Kenneth P. Woodington (signature) 05/21/18 (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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No. 18-1524 Caption: Twanda Marshinda Brown et al. v. Gary Reinhart et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Gary Reinhart
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
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6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Kenneth P. Woodington Date: 05/21/18

Counsel for: Appellants

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No. 18-1524 Caption: Twanda Marshinda Brown et al. v. Gary Reinhart et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Bryan Koon
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

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6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Kenneth P. Woodington Date: 05/21/18

Counsel for: Appellants

CERTIFICATE OF SERVICE

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I certify that on 05/21/18 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Kenneth P. Woodington (signature) 05/21/18 (date)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

This is an appeal from the part of a March 30, 2018, order issued by the district court which denied a motion for summary judgment in part on the issue of judicial immunity. The district court's jurisdiction was based on 28 U.S.C. § 1331.

The Appellants Gary Reinhart, Rebecca Adams and Bryan Koon filed a timely notice of appeal on April 26, 2018. J.A. 668. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The appeal of the district court's denial of judicial and quasi-judicial immunity is properly before this Court on interlocutory review. *See*, *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether Plaintiffs' damage claims against the county magistrates are barred by judicial immunity?

2. Whether Plaintiffs' assertions of the existence of "unwritten policies" are so speculative that they fail to state a claim that can defeat immunity defenses?

3. Whether Plaintiffs' damage claims against the sheriff based on his office's enforcement of facially valid court orders are barred by quasi-judicial immunity?

4. Whether, even if the magistrates or the sheriff had created "policies" governing the handling of cases such as those of the Plaintiffs, Plaintiffs' damage claims against the magistrates and the sheriff are barred by legislative immunity?

STATEMENT OF THE CASE

1. Procedural history.

This action was filed on June 1, 2017. In the aspects of the case pertinent to the present appeal, the Plaintiffs-Appellees are several individuals who seek damages against two county magistrates (Appellants Reinhart and Adams) based on claims of incarceration without pre-deprivation ability-to-pay hearings and failure to offer to make counsel available. Plaintiff-Appellees also seek damages against Appellant Bryan Koon, the Lexington County sheriff, as well as the two magistrates, based on claims of unreasonable seizures.[1] These claims were all presented in the original Complaint, as well as in the current Complaint, i.e., the Second Amended Complaint, J.A. 151, which made relatively minor changes to the prior pleadings.[2]

The three Defendants-Appellants moved for summary judgment on the issue of damages on October 31, 2017. J.A. 273. As pertinent to the present appeal, the grounds for the motion were judicial immunity (raised by the two magistrates, Reinhart and Adams), quasi-judicial immunity (raised by the sheriff (Koon), and in

[1] At the district court level, this case also involves claims by Plaintiffs for declaratory and injunctive relief, as well as other defenses to the damage claims. As to those parts of this case, Defendants moved for reconsideration of parts of the district court's order of March 30, 2018, on the ground that the order did not address or decide a number of the issues raised by Defendants. As of this writing, that motion to reconsider is still pending. However, the motion did not involve the immunity issues raised in the present appeal.

[2] The Answers of the three Defendants-Appellants are found at pp. 292-345 of the Joint Appendix.

the alternative, legislative immunity, assuming without conceding that any of these Defendants were acting pursuant to alleged "unwritten policies."[3]

The Magistrate Judge to which the present case was assigned recommended that the aforementioned motion for summary judgment on the damage claims should be granted on the bases of judicial and quasi-judicial immunity. J.A. 533-554. With regard to the damage claims against the two county magistrates, the Report and Recommendation noted that the challenged actions of the magistrates were decisions that could "only be made by a judge and that affect[ed] the adjudication of a criminal proceeding," and therefore were covered by absolute judicial immunity. J.A. 548. Other bases for dismissal set forth in the Report and Recommendation are discussed under the argument headings of this brief.

With regard to the damage claims against the sheriff, the Report and Recommendation noted that "Plaintiffs have not alleged [Sheriff] Koon or his deputies committed any constitutional violation independently of their actions in executing court-ordered bench warrants." J.A. 551. As a result, the Magistrate Judge recommended dismissal of those claims based on the well-established principle that law enforcement officers are absolutely immune for enforcing facially valid court orders. J.A. 550-51, citing *Valdez v. City and County of Denver*, 878 F.2d 1285, 1289 (10th Cir. 1989)(sheriff and deputies) and *Fowler v.*

[3] These Defendants also raised other defenses, in addition to the absolute immunity defenses presented herein, to the damage claims.

Alexander, 478 F.2d 694, 696 (4th Cir. 1973) (finding jailer immune for confining plaintiff pursuant to order of court).

Plaintiffs-Appellees filed objections to the Report and Recommendations. J.A. 555. That 41-page document devoted little more than one page to the Defendants' claims of judicial and quasi-judicial immunity from the damage claims. Defendants-Appellants filed a reply to Plaintiffs' objections on March 23, 2018. J.A. 603. A week later, on March 30, 2018, the district court issued an order declining to accept the Magistrate Judge's recommendation of dismissal of these claims and others. J.A. 639-667. That order was 29 pages long, but the vast majority of it was devoted only to summarizing the facts and the contentions of the parties. J.A. 639-664. Only a little over one page was devoted to the damage claims which are the subject of this appeal, J.A. 666-67, and the actual analysis was limited to the following:

> The court finds that there are issues of material fact as to whether the challenged conduct is considered "administrative" or 'judicial' acts, as well as, to the scope of Defendants' administrative duties in the Magistrate Court. Accordingly, Defendants' motion for summary judgment as to Plaintiffs' claims for damages is denied. The matter should proceed to discovery. *See Al Shimari v. CACI Intern, Inc.*, 679 F.3d 205, 220 (4th Cir. 2012). . . .

J.A. 667. This appeal followed.

2. Facts.

The facts pertinent to an understanding of the issues in this appeal are summarized at J.A. 51-54. With one exception referenced in the footnote, each of the seven Plaintiffs was originally convicted of one or more traffic offenses (typically, driving under a suspended license) that carry the possibility of a jail sentence).[4] In some of the cases, monthly payment plans for the fines were set up. All seven Plaintiffs failed to pay some or all of the fines imposed. As a result, bench warrants were issued by magistrates for all seven Plaintiffs. The bench warrants were served by sheriff's deputies. Six of the seven Plaintiffs served some amount of jail time as a result of the bench warrants. Plaintiff Goodwin has so far only served the jail time that was part of his original sentence. J.A. 54.[5]

Plaintiffs allege that they were incarcerated without pre-deprivation ability-to-pay hearings, that the magistrates failed to afford them an opportunity to be represented by counsel, and in some instances, that they were subject to unreasonable seizures. These facts are necessarily admitted for purposes of the present appeal, although if it became necessary to examine the facts, some or all of Plaintiffs' claims might be found to lack factual support. The present appeal,

[4] One Plaintiff, Darby, was convicted of a non-traffic offense, assault/assault and battery 3rd degree, but that offense also carried the possibility of jail time.

[5] There is still a monetary aspect to Plaintiff Goodwin's sentence, a fine of $2,100, but although he was permitted to pay that fine at the rate of $100 per month starting in May 2017, Plaintiff Goodwin has never made a payment. J.A. 54. No bench warrant has been issued in his case, however.

however, is based on absolute immunities, so the hypothetical admission of the above facts as alleged by Plaintiffs is immaterial to the issue of whether Plaintiffs' claims are barred by the absolute immunities claimed herein.

The 122-page Second Amended Complaint, J.A. 151-272, which consists of eight counts in all, seeks damages in three of the claims: the fourth, fifth and sixth. A summary of those claims are set forth in the table below.

Claim no.	**Nature of damage claim**	**Plaintiffs**	**Defendants**
4	Incarceration without pre-deprivation ability-to-pay hearing	Brown, Darby, Johnson, Palacios, Corder, Goodwin, Wright	Reinhart, Adams, Koon (individual capacities)
5	Failure to afford counsel	Same as Claim 4	Lexington County (not a party to this appeal), Reinhart, Adams (individual capacities)
6	Unreasonable seizure	Brown, Darby, Wright	Reinhart, Adams, Koon (individual capacities)

Claim 4: Regarding this claim, Plaintiff allege that the defendant magistrates did not afford them pre-incarceration hearings on their ability to pay the fines that were alternative parts of their sentences. Plaintiffs further claim, with no supporting evidence alleged at all, that the magistrates' decisions were based on alleged unwritten policies. Second Amended Complaint, ¶¶ 7, 8, 492, J.A. 154, 257-58. Finally, Plaintiffs claim that Sheriff Koon "enforces a standard operating procedure by which people arrested on bench warrants, including indigent people,

are transported to the Detention Center and incarcerated unless they can pay the full amount of fines and fees owed before booking." J.A. 257.

Claim 5: In the part of this claim that involves the Defendants-Appellants, Plaintiffs allege that the Defendant magistrates did not inform them "of the right to request counsel, . . . the right to request waiver of the $40 public defender application fee, and [the right to] appointed counsel as an indigent person facing incarceration for nonpayment, despite prima facie evidence of indigence." Second Amended Complaint, ¶ 498. J.A. 259.

Claim 6: In this claim, three Plaintiffs seek damages from the two appellant magistrate judges and from the sheriff, alleging that their "arrests and incarceration . . . violated their Fourth Amendment right to freedom from unreasonable seizures because the arrests and incarceration were carried out under bench warrants based solely on nonpayment of fines and fees." *Id.*, ¶ 507, J.A. 263.

The Second Amended Complaint alleges in conclusory fashion that there were "two unwritten policies and practices that are the standard operating procedure in these [magistrate] courts. . . ." Second Amended Complaint, ¶ 6, J.A. 153-54. The Second Amended Complaint goes so far as to give these alleged unwritten policies names invented by Plaintiffs' counsel, to wit, "the Default Payment Policy and the Trial in Absentia Policy." J.A. 153. However, there is no evidence that such policies actually exist, or that they could exist as a matter of law. These capitalized names for policies not shown to exist or be capable of

existence are products of Plaintiffs' counsels' own imaginations. Plaintiffs also purport to identify a "policy of denying individuals arrested on bench warrants an ability-to-pay hearing in Bond Court or the magistrate court that issued the bench warrant. . . ." J.A. 162.

SUMMARY OF ARGUMENT

Although Plaintiffs attempt to argue, with no factual support, that "unwritten policies" exist for determining the outcome of the magistrates' judicial decisions, the fact remains that Plaintiffs' complaint is that they were incarcerated. Their incarcerations resulted from judicial determinations, and nothing else. Those determinations were "paradigmatic judicial acts," *Forrester v. White*, 484 U.S. 219, 229 (1988), which are at the heart of the doctrine of judicial immunity. The acts of the Sheriff, whose office arrests persons pursuant to facially valid court orders, fall within well-established principles of quasi-judicial immunity. Finally, even if Plaintiffs could prove that the magistrates were acting pursuant to "policies" governing the determinations of cases before them (which the magistrates deny), the magistrates would still be immune from suit because the creation of such policies would afford them immunity for legislative acts.

STANDARD OF REVIEW

This case involves a denial by the district court of certain absolute immunities. Such denials are reviewed *de novo*. *Nero v. Mosby*, 890 F.3d 106, 117 (4th Cir. 2018).

ARGUMENT

1. Plaintiffs' damage claims against the county magistrates are barred by judicial immunity.

It is axiomatic that "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself," *Stump v. Sparkman*, 435 U.S. 349, 355 (1978), quoting *Bradley v. Fisher*, 13 Wall. 335, 351 (1872). The law in this area was summarized by this Court as follows:

> "[J]udges are absolutely immune from suit for a deprivation of civil rights" for actions taken within their jurisdiction. *King v. Myers*, 973 F.2d 354, 356 (4th Cir. 1992). "Magistrates are judicial officers, and are thus entitled to absolute immunity under the same conditions as are judges." *Id*. However, to be entitled to immunity, the act taken must be a "judicial act"—i.e., a "function [that is] normally performed by a judge, and [for which] the parties dealt with the judge in his or her judicial capacity." *Id*. (citation and internal quotation marks omitted). In addition, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57, (1978) (internal quotation marks omitted).

Foster v. Fisher, 694 F. App'x 887, 888 (4th Cir. 2017).

a. The actions of which Plaintiffs complain were taken by county magistrates in the exercise of the judicial function.

It can hardly be disputed that the incarceration of each Plaintiff was made in the exercise of a judicial function, and clearly within the jurisdiction of each

magistrate.[6] Plaintiffs argue that the magistrates' acts or omission "result[ed] in Plaintiffs' arrest and incarceration for nonpayment of fines. . . ." As the Report and Recommendation pointed out, those acts or omissions "could only have been made by a judge, evidencing their judicial nature." J.A. 548. The Report and Recommendation further noted that "an alleged decision, which can only be made by a judge and that affects the adjudication of a criminal proceeding, [cannot] be characterized as a non-judicial administrative decision such that the judge should be deprived of judicial immunity." *Id.*

Those judicial actions, i.e., the sentencing decisions and enforcement decisions of county magistrates (some of whom are not defendants in this case), were the cause of the incarcerations for which Plaintiffs seek damages. *See*, *e.g.*, Second Amended Complaint, ¶¶ 494, 503, 519 ("Plaintiffs . . . seek damages . . . for [injuries] they suffered for being jailed. . . ."). J.A. 258, 262, 265. As the leading modern case on the subject holds, "[t]he relevant cases demonstrate that the factors determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). Decisions about

[6] Plaintiffs Corder and Wright were not tried or sentenced by either of the magistrates who are parties to this case.

sentencing and the enforcement of sentences are judicial decisions and nothing else.

Plaintiffs' attempt to characterize actions or omissions by the magistrates as "administrative" is unavailing. Unquestionably, there is an area of administrative activity in which at least some judicial officers can act, but such administrative activities are completely separate from the judicial function. The leading illustration of such administrative activity is found in *Forrester v. White*, 484 U.S. 219 (1988), a case involving a judge's decision to dismiss a subordinate court employee, specifically, a probation officer. The Supreme Court unanimously held that it was "clear that Judge White was acting in an administrative capacity when he demoted and discharged Forrester." 484 U.S.at 229. This holding stemmed from the Court's distinction between judicial acts and acts that simply happen to have been done by judges:

> When applied to the paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court, the doctrine of absolute judicial immunity has not been particularly controversial. Difficulties have arisen primarily in attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges.

484 U.S. at 227. The present case bears no similarity to the employment decision involved in *Forrester*. Instead, the acts of the magistrates were the "paradigmatic judicial acts" of adjudicating cases before them.

The Chief Justice of South Carolina appoints the Chief [Magistrate] Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts for each county. The duties of the Chief Judge for Administrative Purposes for each county are set forth from to time in orders appointing those chief judges. An example is found in Appendix 1. Those duties are typical of what one might expect to see with regard to administrative functions of a court system, such as financial proceedings, meetings, case assignment policies, hours of operation, etc. Those administrative responsibilities are comparable to those of federal chief judges, whose duties include "ensuring that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out." DESKBOOK FOR CHIEF JUDGES OF U.S. DISTRICT COURTS FOURTH EDITION, 2014 WL 3889521 (2014). Obviously, in neither the federal system nor its state magistrate court counterpart would a chief judge presume to direct judges how to decide cases, and specifically how to sentence criminal defendants or enforce unsatisfied sentences. Such matters are beyond the scope of what is meant by administrative actions. Simply put, cases are not decided by administrative actions or policies within the duties of chief judges, but by judicial decisions.

2. Plaintiffs' assertions of the existence of "unwritten policies" are so speculative that they fail to state a claim that can defeat immunity defenses.

Plaintiffs' counsel are well aware of the existence of judicial immunity as a bar to their damage claims. As a result, they attempt to get around that bar by asserting that the Defendants, including the magistrates and the sheriff, adopted alleged unwritten policies for the determination of cases such as those of the Plaintiffs. *See, e.g.*, Second Amended Complaint, ¶ 6, ¶ 491, J.A. 153-54, 257 (magistrates); ¶ 492, J.A. 257-58 (sheriff). In other words, Plaintiffs contend that such alleged policies were implemented by the Chief [Magistrate] Judge and Associate Chief Judge for Administrative Purposes of the Summary Courts in Lexington County "[a]s the administrative policymakers for Lexington County magistrate courts. . . ." Second Amended Complaint, ¶ 6. J.A. 153-54. In that way, Plaintiffs are attempting to claim that the alleged actions of the magistrates are outside the scope of judicial immunity. There are several different reasons why Plaintiffs' claims fail, as discussed below.

As shown by the summaries above of the criminal cases of the individual Plaintiffs, it was not unusual for the magistrates to enforce unsatisfied sentences by issuance of bench warrants and the incarceration of the criminal defendants. In virtually all instances, incarceration came only after the criminal defendants had completely failed to respond to orders of those courts, often on more than one

occasion.[7] The unsurprising fact that such cases have received relatively similar treatment does not, however, in any way suggest that the magistrates got together among themselves and came up with some kind of unwritten policy for the handling of these cases. While magistrate courts may reach similar results in the adjudication of similar cases, that fact does not logically give rise to an assumption that there must be some unwritten policy underlying those actions. As held in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), "[f]actual allegations must be enough to raise a right to relief above the speculative level." However, there is no basis at all for making the leap to the conclusion that if similar cases are treated similarly, there must be an unwritten policy somewhere that mandates such treatment. Indeed, it is highly implausible to suggest that county magistrates, each of whom is appointed by the Governor, S.C. Code Ann. § 22-1-10, would agree to restrain their judicial discretion pursuant to some unwritten, undisclosed policy of the county chief magistrate who has been given administrative responsibilities. The far more plausible assumption would be that the magistrates simply reached similar results in similar cases. Plaintiffs' claims of alleged unwritten policies have

[7] In a development that occurred after this case was filed, and which does not directly pertain to the immunity issues in this appeal, South Carolina's Chief Justice Beatty, as head of the South Carolina Judicial Department, issued a memorandum on September 15, 2017 to the effect that in the absence of an appointment of counsel or waiver of such appointment, "summary court judges shall not impose a sentence of jail time, and are limited to imposing a sentence of a fine only for those defendants, if convicted." J.A. 60-61. This was followed several months later by more detailed directions and forms to be used by summary court judges. J.A. 617-638.

therefore not been "nudged . . . across the line from conceivable to plausible. . . ." *Id.* at 570. In fact, it is probably stretching matters to conclude that their speculations are even "conceivable."

Plaintiffs have claimed that they need to conduct discovery with regard to the alleged unwritten policies. However, the Supreme Court has held that "Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). In declining to permit discovery based on the kind of unsupported assumptions alleged by Plaintiffs, courts have elaborated on the above-quoted language from *Iqbal* and *Twombly*. *See, e.g.*, *Bosarge v. Mississippi Bureau of Narcotics*, 796 F.3d 435, 443 (5th Cir. 2015)(plaintiff's "suspicion alone is not enough" to permit discovery); *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523, 527 (6th Cir. 2007)("[t]he factual allegations, assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action"); *Pruitt v. Alba Law Grp., P.A.*, 2015 WL 5032014, at *5 (D. Md. 2015)(plaintiff's "bare suspicions are not enough"); *Dupree v. EMC Mortg. Corp.*, 2010 WL 11553160, at *2 (E.D. Tex. 2010)(same when claim is "based strictly on Plaintiff's speculation and suspicions"). Plaintiffs here have shown nothing more.

As previously noted, the district court's terse conclusion was limited to a statement that "there are issues of material fact as to whether the challenged conduct is considered 'administrative' or 'judicial' acts, as well as, to the scope of

Defendants' administrative duties in the Magistrate Court." J.A. 667. The order did not elaborate on what those factual issues might be. As authority for its holding, the district court cited only *Al Shimari v. CACI Int'l, Inc.*, 679 F.3d 205 (4th Cir. 2012), but that case involved the rare and esoteric type of immunity (not judicial) set forth in *Mangold v. Analytic Servs., Inc.*, 77 F.3d 1442 (4th Cir. 1996). *Mangold* holds that private government contractors are immune from suit when (a) exercising discretion and (b) acting within the scope of their employment. Merely to state that test is to show that it is subject to fact-intensive inquiries that are not present in a case such as this, where the only question is whether the magistrates exercised judicial functions in the course of adjudicating Plaintiffs' criminal cases, as they undoubtedly did.

3. Plaintiffs' damage claims against the sheriff based on his office's enforcement of facially valid court orders are barred by quasi-judicial immunity.

Plaintiffs' damage claims against the sheriff are barred by well-settled principles of quasi-judicial immunity. Plaintiffs' only claim against the sheriff is that he "enforces a standard operating procedure by which people arrested on bench warrants, including indigent people, are transported to the Detention Center and incarcerated unless they can pay the full amount of fines and fees owed before booking." Second Amended Complaint, ¶ 492, J.A. 257-58. A variation of the claim is that "Defendant [Sheriff] Koon oversaw and directed LCSD officers who arrested Plaintiffs Brown, Darby, and Wright on payment bench warrants issued

under the Default Payment Policy [sic], which were not supported by probable cause of criminal activity." Id., ¶ 517, J.A. 265.

The short answer to these claims is that absolute quasi-judicial immunity extends to non-judicial officers, such as the sheriff in this case, when "performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune." *Reaves v. Rhodes*, 2011 WL 826358, at *5 (D.S.C. 2011), report and recommendation adopted, 2011 WL 812413 (D.S.C. 2011), quoting *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir.1994). Specifically, *Reaves* holds that a sheriff is absolutely immune for arresting a plaintiff pursuant to a facially valid court order, and for enforcing facially valid court orders. As a result, Plaintiffs should not be heard to argue that Defendant Koon, whose officers acted pursuant to the bench warrants, performed anything other than a quasi-judicial function for which he is entitled to quasi-judicial immunity. In fact, the sheriff had no legal discretion not to execute the warrants, which Plaintiffs do not contend to have been facially invalid.

The district court held in the most general terms that "there are issues of material fact as to whether the challenged conduct is considered 'administrative' or 'judicial' acts, as well as, to the scope of Defendants' administrative duties in the Magistrate Court." J.A. 667. However, nothing about that broad holding in any way overcomes the absolute quasi-judicial immunity of the sheriff, and reversal is therefore appropriate.

4. Even if the magistrates or the sheriff had created "policies" governing the handling of cases such as those of the Plaintiffs, Plaintiffs' damage claims against the magistrates and the sheriff are barred by legislative immunity.

Even if the magistrates and sheriff had created some sort of policies outside the realm of judicial and quasi-judicial immunity, which is denied, they still would be immune from damages in their individual capacities under the principle of absolute legislative immunity. *Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 734 (1980)(recognizing immunity for state judges acting in legislative capacity). *See also, e.g.*, *Abick v. State of Mich.*, 803 F.2d 874, 877 (6th Cir. 1986)(state supreme court had legislative immunity for any suit relating to the promulgation of rules of practice and procedure). The district court appears to have impliedly held that the complained-of actions were not only possibly administrative, but that as a result, they were also not of a legislative nature. That approach, however, is at odds with Plaintiffs' contention that the Defendant-Appellants were acting pursuant to "policies."

Plaintiffs try to have it both ways on this issue. On the one hand, they assert that Defendants are enforcing "unwritten policies." On the other hand, they deny that the officials who promulgated the policies are entitled to legislative immunity. Again, while such policies have not been shown to exist anywhere other than in the minds of Plaintiffs' counsel, it is assumed solely for the purpose of argument on this point that such policies do in fact exist.

Under that assumption, the alleged policies would be covered by legislative immunity. The touchstone in determining whether such immunity exists is the presence of "prospective, legislative-type rules" of general application, *Scott v. Greenville Cty*., 716 F.2d 1409, 1423 (4th Cir. 1983), as opposed to individualized determinations such as are involved, for instance, in deciding specific zoning requests or making employment decisions about specific individuals. *See also, e.g., S. Lyme Prop. Owners Ass'n, Inc. v. Town of Old Lyme*, 539 F. Supp. 2d 547, 559 (D. Conn. 2008)("Defendants' actions in setting enforcement policies were more like the 'kind of broad, prospective policymaking that is characteristic of legislative action.'"), quoting *Harhay v. Town of Ellington Bd. of Educ.*, 323 F.3d 206, 211 (2d Cir.2003). Legislative action is often characterized by the presence of formal legislative processes. *See E.E.O.C. v. Washington Suburban Sanitary Comm'n,* 631 F.3d 174, 184 (4th Cir. 2011). If those processes are present, the courts will generally conclude without further examination that legislative immunity is present. However, the absence of formal processes does not defeat a claim of legislative immunity, because it is the enactment of general, forward-looking policies, and not the nature of the processes of their enactment, that is controlling. As held in *Youngblood v. DeWeese*, 352 F.3d 836, 840 (3d Cir. 2003), as amended (Feb. 11, 2004), the Court in *Bogan v. Scott–Harris*, 523 U.S. 44 (1998) did not require an act to be legislative in both "formal[ ] character" and

substance in order to enjoy immunity. 352 F.3d at 840, citing *Bogan*, 523 U.S. at 55.

Plaintiffs also argue that the chief magistrates, Adams and Reinhart, should be held liable because they "have failed to exercise their administrative authority to correct the longstanding and pervasive Default Payment Policy through any written policy. . . ." Second Amended Complaint, ¶ 516. However, the Supreme Court in *Consumers Union, supra*, specifically noted that failure to amend challenged rules would be as subject to legislative immunity as would the enactment of invalid rules. 446 U.S. at 734.

CONCLUSION

For the foregoing reasons, the Defendants-Appellants respectfully submit that this Court should reverse the order of the district court declining to dismiss the damage claims against them.

Respectfully submitted,

BY: *s/ Kenneth P. Woodington*

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July 9, 2018

APPENDIX 1: Order No. 2017-01-03-01, The Supreme Court of South Carolina, RE: Chief Judges for Administrative Purposes of the Summary Courts

The Supreme Court of South Carolina

RE: Chief Judges for Administrative Purposes of the Summary Courts

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ORDER

The judges of the magisterial and municipal courts, hereinafter referred to as "summary courts", of South Carolina being a part of the uniform statewide judicial system and pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED that the judges of the magisterial courts listed below be designated as Chief Judge or Associate Chief Judge for Administrative Purposes of the Summary Courts in the counties in which they hold office.

Judge S.G. Gladden
Abbeville County

Judge C.S. Insley
Aiken County

Judge D.H. Williamson
Associate Chief Judge
Aiken County

Judge W.D. Branch, Jr.
Allendale County

Judge N.W. Devine
Anderson County

Judge R.C. Threatt
Bamberg County

Judge J.W. Gantt
Barnwell County

Judge L.J. Holland, Jr.
Associate Chief Judge
Barnwell County

Judge L.P. McElynn
Beaufort County

Judge R.H. Sproatt
Associate Chief Judge
Beaufort County

Judge A.E. Bryant
Berkeley County

Judge R.H. Lake
Calhoun County

Judge E.S. Steinberg
Charleston County

Judge L. Linen
Associate Chief Judge
Charleston County

Judge R.B. Howell
Cherokee County

Judge B.H. Cameron
Chester County

Judge G.R. Faulkenberry
Chesterfield County

Judge D.W. Dyches
Associate Chief Judge
Chesterfield County

Judge J.L. Coney
Clarendon County

Judge M.N. Frye
Associate Chief Judge
Clarendon County

Judge K.A. Campbell, Jr.
Colleton County

Judge D.B. Curtis
Darlington County

Judge M.D. Hayes
Dillon County

Judge C.D. Spivey
Associate Chief Judge
Dillon County

Judge K.L. Patton
Dorchester County

Judge P.B. Shelbourne
Associate Chief Judge
Dorchester County

Judge B.B. Carpenter
Edgefield County

Judge W.F. Pope
Fairfield County

Judge S. M. Grimsley
Florence County

Judge I.L. Pyatt
Georgetown County

Judge L. Foster
Greenville County

Judge M.C. Edmonds
Associate Chief Judge
Greenville County

Judge B.S. McGuire
Greenwood County

Judge C.R. Johnson
Associate Chief Judge
Greenwood County

Judge C.A. Williams
Hampton County

Judge M.B. Livingston
Horry County

Judge A.C. Butler
Associate Chief Judge
Horry County

Judge D.D. Lynah
Jasper County

Judge R.M. Todd, Jr.
Kershaw County

Judge J.E. Davis, Jr.
Associate Chief Judge
Kershaw County

Judge V.K. Richardson
Lancaster County

Judge P.D. Lyles
Laurens County

Judge J.S. Scarborough
Lee County

Judge S.C. Davidson
Associate Chief Judge
Lee County

Judge G.W. Reinhart
Lexington County

Judge R.L. Adams
Associate Chief Judge
Lexington County

Judge D.O. Barker
Marion County

Judge R.K. McDonald
Marlboro County

Judge P.L. Smith
McCormick County

Judge B.S. Koon
Newberry County

Judge M.T. Simmons
Oconee County

Judge B.A. Norton
Associate Chief Judge
Oconee County

Judge D.F. Dash
Orangeburg County

Judge P.D. Doremus
Associate Chief Judge
Orangeburg County

Judge B.E. Anders
Pickens County

Judge D.J. Simons
Richland County

Judge K.D. Shealy
Associate Chief Judge
Richland County

Judge J.B. Shults
Saluda County

Judge D.J. Turner
Spartanburg County

Judge J.T. Wall
Associate Chief Judge
Spartanburg County

Judge K.F. Curtis
Sumter County

Judge B.K. Griffin
Associate Chief Judge
Sumter County

Judge J.D. Crocker
Union County

Judge D. F. Williams
Williamsburg County

Judge R.B. Foxworth
Associate Chief Judge
Williamsburg County

Judge L.H. Benfield
York County

A Chief Judges' authority shall include, but not be limited to, the following:

1. Coordinate with the Office of South Carolina Court Administration on all matters pertaining to summary court judges in the county.

2. Coordinate the activities of the summary court judges of the county with other affected persons and/or agencies to insure cooperation and effective judicial service.

3. Establish with the other magistrates of the county, a schedule so arranged that a magistrate will be available, in person or on call, in the county to issue warrants and conduct bail proceedings. The bail proceedings schedule shall be in compliance with the provisions of the Order of the Chief Justice dated September 19, 2007, outlining certain bond procedures in those courts. The Chief Judge shall also inform the municipal courts of the details of the county magisterial court schedule, to insure the availability of a magistrate to issue warrants and conduct bail proceedings for the municipal courts when the municipal judge is unavailable. After hours and weekends does not constitute unavailability in and of itself. Establish a procedure with all municipal courts within the county whereby they provide the Chief Judge with a monthly bond schedule indicating their availability for bond court. Monitor all summary court judges within the county to insure compliance with the above referenced Order dated September 19, 2007. The monitoring shall include, but shall not be limited to, insuring that bond hearings are being conducted twice daily, insuring that defendants' and victims' constitutional and statutory rights are being upheld, insuring that cash bonds only and excessive bonds are not being required, and insuring that no irregular practices as outlined in the above referenced Order are occurring.

4. Establish within the county a procedure to ensure that Certificates of Transmittal are completed and the appropriate documents (warrants or other charging papers, checklists, bond forms, and checks for cash bonds received) are attached and transmitted within fifteen (15) days to the appropriate magistrate, municipal judge or Clerk of Court of General Sessions having jurisdiction over the case.

5. Call a meeting at least on a quarterly basis of all summary court judges in the county to formulate procedures which establish uniformity of procedures in the county summary court system. Require that all summary court judges who have court bank accounts bring to the quarterly meetings documentary proof of all monthly reconciliations of those bank accounts since the previous quarterly meeting. A minimum of one municipal judge from each municipality within the county shall be required to attend these meetings.

6. Coordinate the planning of budgets for the magistrates in the county, with those magistrates' input, and appear before the county governing body to present and justify the budget requests.

7. Attend schools and meetings for Chief Judges called to implement policies and procedures under this and other Orders.

8. Set terms of court, both civil and criminal, when terms are necessary for the disposition of any cases within the jurisdiction of the magisterial court.

9. Provide for the orderly assignments of any case within the jurisdiction of the magisterial court to any magistrate of the county, regardless of whether the case is transferred from circuit court or originally filed in the magisterial court.

10. Designate the hours of operation of each magistrate's court office in the county, and designate the hours during which each magistrate shall be present in the office, based upon the number of hours fixed for each magistrate by the county governing body.

11. Collect from the other magistrates in the county on a quarterly basis and review information concerning the age of pending civil and criminal cases to insure that all civil cases are disposed of within ninety days of filing and that criminal cases are disposed of within sixty days of arrest.

12. When any summary court judge in the county dies, retires, is suspended, goes out of office, becomes incapacitated, is unable to perform the duties of their office, and when a successor has not been nominated or qualified, the Chief Judge shall immediately take custody, or provide for the orderly transfer, of all records, to include past and present, civil and criminal docket books, warrant books, receipt books, financial records including official checking account statements and stubs, bank accounts and any funds contained therein, Acts and Joint Resolutions, the Code of Laws, Bench Books, pending and disposed warrants, tickets, NRVC's, and other court records.

13. Insure that the Office of Court Administration is provided written notification of the appointment, retirement, resignation, suspension or death of any summary court judge, whether municipal or magistrate, within the county.

14. Appoint, coordinate, and assign constables throughout the County, in those Counties that utilize constables, so as to insure cooperation and effective judicial service.

15. Establish within the county a procedure with all summary court judges and appropriate public officials to ensure that court generated revenues are collected, distributed, and reported in an appropriate and timely manner.

16. Monitor all requests for recusals countywide. When all magistrates have recused themselves from a particular case in order to avoid the appearance of impropriety, the Chief Judge shall request from the Chief Justice, by and through Court Administration, a judge from outside of that County be assigned to dispose of the case by order of the Chief Justice.

17. Report to the Office of Court Administration any significant or repetitive non-compliance by any summary court judge in the county concerning the Chief Judge's execution of the provisions of this Order.

No order issued by the Chief Judge under the authority of this Order shall be effective unless the order is filed with the Office of South Carolina Court Administration and approved for consistency with statewide administrative policies.

Associate Chief Judges appointed in this Order shall act in the absence or disability of the Chief Judge. They shall also perform administrative duties that are assigned to them by the Chief Judges.

The authority conferred on the Chief Judges and Associate Chief Judges for Administrative Purposes of the Summary Courts by this Order shall become effective on January 1, 2017 and shall continue through June 30, 2017 unless amended or revoked by Order of the Chief Justice.

s/Donald W. Beatty
Donald W. Beatty
Chief Justice of South Carolina

Columbia, South Carolina
January 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2018, I electronically filed the foregoing **BRIEF OF APPELLANTS** with the Clerk of Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the requirements of Federal Rules of Civil Procedure 32(a)(7)(B) and Circuit Rule 32(b). The brief is proportionately spaced in Times New Roman 14-point type. According to the words processing systems used to prepare the brief, Microsoft Word, the word count of the brief is 4,854, not including the Corporate Disclosure Statements, table of contents, table of authorities, certificate of service, and certificate of compliance.

Dated this 9th day of July, 2018.

s/ Kenneth P. Woodington