



U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

Washington, D.C. 20531

April 6, 2018

VIA CERTIFIED & ELECTRONIC MAIL

Honorable Joseph L. Boohaker  
Presiding Judge  
Tenth Judicial Circuit of Alabama  
Jefferson County Courthouse  
716 Richard Arrington Jr. Boulevard  
Room 400  
Birmingham, AL 35203

Honorable Jimmie Stephens  
Commission President  
Jefferson County Commission  
Jefferson County Courthouse  
716 Richard Arrington Jr. Boulevard  
Birmingham, AL 35203

Nathan Wilson, Esq.  
Executive Director  
Administrative Office of Courts  
Alabama Supreme Court  
300 Dexter Avenue  
Montgomery, AL 36104

Re: Equal Justice Under Law v. Tenth Judicial Circuit of Alabama (15-OCR-970)

Dear Judge Boohaker, Commission President Stephens, and Director Wilson:

I write to advise you of the resolution of the Complaint Investigation (Docket No. 15-OCR-970) initiated by the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ). In July 2015, Equal Justice Under Law (the Complainant), a nonprofit civil rights organization, filed an administrative Complaint with the OCR alleging that the pretrial bail practices in Jefferson County, Alabama, discriminated against African-American individuals. In March 2016, the OCR opened an investigation of the Tenth Judicial Circuit's application of the Alabama Rules of Criminal Procedure to assess whether its practice had an unlawful disparate impact on African-American individuals. To make prompt changes to the Respondents' pretrial bail practices, the OCR and the Respondents mutually agreed to enter into the enclosed voluntary Resolution Agreement (Agreement) prior to the completion of the OCR's investigation.

Background

The Alabama Tenth Judicial Circuit, a judicial district within Alabama's Unified Judicial System, exercises criminal jurisdiction over felony and certain misdemeanor cases in Jefferson County, Alabama.<sup>1</sup> The Tenth Judicial Circuit operates courthouses in Birmingham, Alabama and Bessemer, Alabama. Under delegated authority of the Presiding Judge of the Tenth Judicial Circuit, the Jefferson County Sheriff's Office operates a pretrial program that allows defendants charged with certain

<sup>1</sup> ALA. CONST. art. VI, § 130, amend. 328 (1901); Ala.Code § 12-11-30 (1975).

nonviolent crimes to be released pending trial. Tenth Judicial Circuit judges apply the considerations outlined by the Alabama Rules of Criminal Procedure to assess whether a defendant may be released on bail pretrial.<sup>2</sup> The District Judges in Birmingham, all of whom are African American, hold in-person bail hearings. During the relevant period, the District Judge in Bessemer, who is also African American, conducted bail determination by videoconference.

### Relevant Legal Standards

The OCR is responsible for ensuring that recipients of federal financial assistance from the DOJ's Office of Community Oriented Policing Services, the Office on Violence Against Women, the OJP, and OJP components comply with applicable federal civil rights laws. These laws include Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination based on race, color, or national origin by any program or activity receiving federal financial assistance.<sup>3</sup> Pretrial bail practices may result in unlawful discrimination based on race in multiple ways, including when defendants are intentionally subjected to different treatment on account of their race or when an agency uses a method of administration that has a discriminatory effect.<sup>4</sup> The Recipients receive federal financial assistance that are subject to the civil rights requirements of Title VI and its implementing regulations.<sup>5</sup>

### Initial Review of the Complaint

On April 4, 2016, the OCR notified the Tenth Judicial Circuit of the Complainant's allegations. In its notification, the OCR conveyed its intent to send the Tenth Judicial Circuit a data request related to its pretrial bail practices so that the OCR could investigate the Complaint. Soon after receiving the OCR's notice letter, the Presiding Judge of the Tenth Judicial Circuit contacted the OCR and expressed the Tenth Judicial Circuit's desire to cooperate fully with the OCR's investigation and comply with Title VI. On July 15, 2016, the OCR notified the Alabama Administrative Office of the Courts of the Complaint's allegations and the OCR's investigation. In September 2016, the Tenth Judicial Circuit provided the OCR with data concerning the administration of the pretrial bail process in Jefferson County. The OCR did not find any evidence that the Tenth Judicial Circuit intentionally discriminated against African Americans in its bail practices. The OCR also did not make or issue any findings as to whether the money bail system used by the Tenth Judicial Circuit had a discriminatory effect on African Americans.

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<sup>2</sup> Ala. R. Crim. P. 7.2.

<sup>3</sup> 42 U.S.C. § 2000d (2012).

<sup>4</sup> 28 C.F.R. § 42.104(a)-(b).

<sup>5</sup> 28 C.F.R. §§ 42.101-.112 (2017). The Tenth Judicial Circuit receives subgrants from the Jefferson County Commission and the Alabama Administrative Office of Courts (collectively, the Respondents). DOJ financial assistance to the Recipients includes the following: Jefferson County Commission (Ala.), FY 15 Joint Adult Drug Court Solicitation to Enhance Services, Coordination, and Treatment, Bureau of Justice Assistance (BJA), Grant No. 2015-DC-BX-0082 (\$300,000) (Oct. 1, 2015 – Sep. 30, 2018); Jefferson County Commission (Ala.), FY 14 Second Chance Act Reentry Program for Adult Offenders with Co-Occurring Substance Abuse and Mental Health Disorders, BJA, Grant No. 2014-RW-BX-0006 (\$600,000) (Oct. 1, 2014 – Sep. 30, 2016); and Jefferson County Commission (Ala.), Support Enhanced Community Response to Sexual Violence with an Emphasis on Prosecution, Office on Violence Against Women, Grant No. 2016-SI-AX-K003 (\$400,000) (Jan. 1, 2016 – Dec. 31, 2017). Alabama Administrative Office of Courts, FY 14 Family Drug Court Statewide System Reform, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Grant No. 2014-DC-BX-K004 (\$317,587) (Oct. 1, 2014 – Sep. 30, 2017); and Alabama Administrative Office of Courts, FY 15 Family Drug Court Statewide System Reform, OJJDP, Grant No. 2014-DC-BX-K004 (Suppl. 1) (\$317,587) (Oct. 1, 2014 – Sep. 30, 2017). Additionally, the Tenth Judicial Circuit has received technical assistance from an OJP training and technical assistance advisor that constitutes federal financial assistance. See *Delmonte v. Dep't of Bus. & Prof'l Regulation*, 877 F. Supp. 1563, 1566–67 (S.D. Fla. 1995) (training state officers received from DOJ components constituted receipt of federal financial assistance pursuant to Section 504 of the Rehabilitation Act of 1973).

Instead, the OCR and the Respondents agreed to resolve the Complaint before completion of an investigation.

With the OCR's assistance, the Tenth Judicial Circuit obtained the services of an OJP training and technical assistance provider to conduct an assessment of its pretrial bail procedures. In February 2017, the training and technical assistance provider made recommendations to the Tenth Judicial Circuit on how it could modify its practices to assess more effectively a defendant's risk to the community and the likelihood of his or her return to court. In October 2017, the Tenth Judicial Circuit voluntarily adopted the Virginia Pretrial Risk Assessment Instrument (VPRAI) and an associated risk matrix. The Tenth Judicial Circuit also restarted a pretrial services agency, using local judicial funds, to help inform judicial pretrial assessments of defendants and to screen defendants for opioid use and mental health issues. Tenth Judicial Circuit judges use the information collected during the pretrial assessment to input data into the VPRAI tool, which produces an individualized risk score for each defendant.<sup>6</sup> Using the VPRAI risk score, Tenth Judicial Circuit judges evaluate whether a defendant may be released pretrial and, if appropriate, whether release restrictions should be ordered.

#### Resolution Agreement

On March 15, 2018, the Respondents signed the enclosed Agreement. The OCR will monitor implementation of the Agreement. Pursuant to the Agreement, the Respondents will do the following:

- Use an individualized assessment, supplemented by the VPRAI, to assist Tenth Judicial Circuit judicial officers during the pretrial phase of criminal prosecutions in Jefferson County;
- Validate locally the VPRAI to ensure that it is effective in assisting judicial officers maximize safety to the community and ensure defendants return to court; and
- Maintain a pretrial services program for the duration of the Agreement.

#### Scope of the Agreement

Although Alabama has a unified court system, this Agreement only applies to the bail practices in the Tenth Judicial Circuit. The OCR will not use the Agreement to induce the other judicial circuits the AOC oversees to adopt the VPRAI or establish a pretrial services program.

We wish to thank you and your staff for your cooperation with this Complaint Investigation. Please be reminded that federal law protects persons who participated in the OCR's Complaint Investigation from retaliation for having provided information to the OCR. The OCR will initiate an investigation if it receives credible evidence of reprisal. This letter and the Resolution Agreement are public documents that the OCR will post on its website.

If you have any questions please contact, OCR Attorney Advisor Benjamin Hernandez-Stern, at Benjamin.Hernandez-Stern@usdoj.gov.

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<sup>6</sup> Brief for the United States as Amicus Curiae at 19, Walker v. City of Calhoun, Georgia, No. 17-13139-GG (11th Cir. Sep. 13, 2017) ("Importantly, although in such circumstances the imposition of bail may result in a person's pretrial detention, the deprivation of liberty is not based solely on inability to pay, but rather on an individualized assessment of risk and a finding of no other adequate alternatives.").

Sincerely,



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