



## U.S. Department of Justice

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

### **Via Certified Mail Return Receipt Requested**

February 19, 2019

The Honorable Paul N. Sens  
Administrative Judge  
Municipal and Traffic Court of New Orleans  
727 South Broad Street  
New Orleans, LA. 70119

Re: Equal Just. Under L. v. Mun. & Traffic Ct. of New Orleans (15-OCR-970)  
Closure

Dear Judge Sens:

Thank you for your response of September 14, 2018, to the request from the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) for a statement concerning the pretrial bail practices of the City of New Orleans (City). As I mentioned in my July 2, 2018, correspondence, the OCR is investigating an administrative Complaint that the advocacy organization, Equal Justice Under Law (EJUL), filed with the OCR in July 2015 against the City and Parish of New Orleans alleging that pretrial bail practices in New Orleans discriminate against African Americans. For the reasons set forth below, the OCR is closing the Complaint.

In your response you provided information that indicates that the City has modified its practices since EJUL filed its Complaint, which rendered the allegations moot. In April 2017, the City eliminated the use of fixed bail for most cases that its municipal court hears, directing the release of most arrestees immediately after booking on their own recognizance and setting an initial appearance hearing the next business day.<sup>1</sup> Concerning the vast majority of municipal offenses a “bail schedule shall direct that the defendant shall be released on his or her own recognizance, without the requirement of posting any financial obligation.”<sup>2</sup> The City has, therefore, abandoned for the majority of crimes the practice EJUL alleged was discriminatory. Because there is no longer an allegation to be adjudicated, the OCR has closed the Complaint.<sup>3</sup>

The OCR is aware that the 2017 changes to the City’s municipal code excludes from immediate release arrestees charged with battery, assault, illegal carrying of weapons, impersonating a peace officer, or

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<sup>1</sup> NEW ORLEANS, LA., CODE OF ORDINANCES § 54-23(c) (2018) [hereinafter NOLA CODE].

<sup>2</sup> *Id.*

<sup>3</sup> *See* U.S. v. Sanchez-Gomez, 138 S. Ct. 1532, \*4 (2018) (holding that a complaint becomes moot when there is no longer a case or controversy to be adjudicated).


domestic violence.<sup>4</sup> For arrestees charged with these crimes, the City detains the arrestees until the initial appearance hearing, which must take place within twenty-four hours of booking.<sup>5</sup> Regardless of the municipal offense, if the municipal court determines that an arrestee poses neither a risk of flight nor a danger to the community, the court must release the arrestee on personal recognizance.<sup>6</sup> For those arrestees whom a City judge deems to be a safety or flight risk, the City's court "shall impose the least restrictive non-financial release conditions, tailored specifically to address the risk or danger to the community, including peace bonds, stay away orders and protective orders."<sup>7</sup> The City's judges must then undertake an inquiry into a defendant's ability to pay before imposing a secured financial condition, and under no circumstances, can bond exceed \$2,500.<sup>8</sup> With limited exceptions, the City may not detain an arrestee after the initial appearance hearing based solely on the inability to post bond.<sup>9</sup> Furthermore, the City cannot detain an arrestee who fails to meet a non-financial release condition based on inability to pay.<sup>10</sup>

Your September 2018 letter indicated that there were insufficient data to conduct a statistical analysis to determine whether the City's recently adopted practices might have an adverse effect on arrestees based on race or other protected classes. In the absence of data indicating adverse impact, the OCR is not inclined to review the City's recently modified practices.

The City requested OJP's assistance in implementing an appropriate risk-assessment tool for its pretrial programs. The OCR does not provide direct technical assistance on pretrial programming. The Bureau of Justice Assistance (BJA), however, provides no-cost training and technical assistance on a wide-range of criminal justice issues. The OCR encourages the City to submit its request for technical assistance to BJA's National Training and Technical Assistance Center (NTTAC).

If you have any questions, please contact OCR senior counsel George Mazza at

Sincerely,

X 

Michael L. Alston  
Director  
Signed by: MICHAEL ALSTON

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<sup>4</sup> NOLA CODE § 54-23(d).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 54-23(e)(1).

<sup>7</sup> *Id.* § 54-23(e)(2)(i).

<sup>8</sup> *Id.* § 54-23(e)(2)(ii).

<sup>9</sup> *Id.* § 54-23(f).

<sup>10</sup> *Id.*

The Honorable Paul N. Sens, Administrative Judge  
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cc: The Honorable LaToya Cantrell  
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