UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

TRUSSELL GEORGE, by and through his Guardian Ad Litem, LETITICA WALKER,	*	
PLAINTIFF	*	
VS.	*	**CIVIL ACTION NO. 3:14-00338 JWD-RLB**
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, *et al.*,	*	
DEFENDANTS.	*	

PLAINTIFF'S MEMORANDUM OF LAW IN RESPONSE TO THIS COURT'S AUGUST 23, 2017, ORDER AND IN SUPPORT OF DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff Trussell George submits this memorandum in response to the questions posed by this Court in its August 23, 2017, order and in support of his request for injunctive and declaratory relief.

QUESTION 1: WERE THE PROVISIONS OF LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLES 658(B)(1) AND 899(B) COMPLIED WITH IN THE COURSE OF THE JULY 2013 AND JULY 2014 INCIDENTS SUED UPON?

Louisiana Code of Criminal Procedure Articles 658(B)(1) and 899(B) have both substantive and procedural components. As will be discussed in the following sections, Defendants were acting in a manner permitted by the statutes' substantive provisions when they arrested, or had Mr. George arrested, in 2013 and 2014. However, Defendants failed completely

to comply with the statutes' procedural requirements. It is Mr. George's position that since Articles 658(B)(1) and 899(B) authorized his arrest and incarceration even though at the time he was not being charged with, and had not been convicted of any crime relevant to his arrest, they are unconstitutional, and that even if Defendants had complied with the statutes' procedural components, the constitutional defect would not have been cured.

A. DEFENDANTS COMPLIED WITH THE SUBSTANTIVE PROVISIONS OF LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLES 658(B)(1) AND 899(B).

Given the broad sweep of the statutes, Mr. George contends that his arrest was authorized by Louisiana Code of Criminal Procedure Articles 658(B)(1) and 899(B), which, on their face, permit the arrest and incarceration in a parish jail of a person found Not Guilty by Reason of Insanity (NGRI) who is living in the community on conditional discharge. Under Louisiana's NGRI statute**,** an individual charged with a criminal offense is exempt from criminal responsibility for his behavior when "the circumstances indicate that because of a mental disease or mental defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question." La. R.S. 14:14. The exemption from criminal responsibility contemplated by La. R.S. 14:14 is contradicted by the plain language of Articles 658(B)(1) and 899(B), which permit a person acquitted by NGRI ("NGRI Acquittee") to be arrested and incarcerated merely on a probation officer's "reasonable cause to believe that a defendant has violated or is about to violate a condition of his probation…." Articles 658(B)(1) and 899(B) afford the probation officer broad, unchecked authority to arrest an NGRI Acquittee: they do not require the NGRI Aquittee to have committed, nor be charged with, a crime; do not require a determination of whether the NGRI Acquittee is a danger to himself or others; do not require the arresting officer to weigh the nature and significance of the condition of release in

determining whether arrest is warranted; and do not factor in whether the violation is directly the result of the NGRI Acquittee's mental illness.[1] La. Code Crim. P. art. 899(B).

Under our Constitution, "[d]ue process requires that the nature and duration of commitment bear some reasonable relationship to the purpose for which the individual is committed." Jackson v. Indiana, 406 U.S. 715, 738 (1972). In this context, the breadth of the statutes which authorized Mr. George's arrest and incarceration are constitutionally problematic for two reasons, even though the statutes also require notice to the court and an opportunity for a hearing. First, Mr. George's conditional release, upon which his arrests and incarcerations were predicated, was not the result of a criminal conviction and his arrests and incarcerations were not the result of having been charged with criminal behavior; rather it was the result of a determination by a state court judge that Mr. George needed monitoring and treatment for his mental illness and developmental disabilities.[2] Second, unlike probation or parole following a criminal conviction (and often some jail time), Mr. George's conditional release was not an extension of the penalties imposed for having been convicted of a crime; rather Mr. George had been found "Not Guilty," albeit "by reason of Insanity."[3]

---

1 Other than a "cause to believe" that Mr. George "has violated or is about to violate a condition of his probation," the statute sets no limits on the authority of a probation officer to arrest and incarcerate an NGRI Acquittee on conditional release. Thus, the breadth of these statutes clearly pose a substantial risk that Mr. George could be arrested and incarcerated in a parish jail for a host of minor infractions, including the failure to follow the treatment recommendations prescribed by his treating physician, the failure to "comply and cooperate with sessions of counseling and/or treatment, oral and/or injectable medications as ordered by the attending physician"; the failure to report to the local probation office within twenty-four (24) hours of release from jail, excluding non-business days; the failure to sign all consents for release of information forms; and the failure to "refrain from the consumption of alcohol." Trial Stipulation ¶ 3, Pl.'s Ex. 1, TG000001–02.

2 In ordering a conditional release, the court "shall subject a conditionally released insanity acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment, supervision, and monitoring and will best serve the interests of justice and society." La. Code Crim. P. art. 657.1(B).

3 It is not Mr. George's position that La. Code Crim. P. Art. 899 is unconstitutional as to convicted criminals on probation. In that situation, the individual has been found guilty of a crime, and probation is simply an extension-- a less restrictive extension-- of his sentence. It is, however, Mr. George's position that to the extent that they authorize the release and incarceration for violations of conditional release, the combined provisions of La. Code

In authorizing the arrest and incarceration of individuals on conditional release for merely violating terms of their release, Articles 658(B)(1) and 899 create a substantial risk that Mr. George and other individuals with mental illness and developmental disabilities will be incarcerated for behavior which should be addressed in a treatment setting that is designed especially to cater to the needs of individuals like Mr. George.[4] For example, Progressive Health Care Providers (PHP) the group homes where Mr. George resided in 2013 Intermediate Care Facilities for People with Developmental Disabilities ("ICF-DDs"), overseen by Louisiana's Department of Health and Hospitals' Developmental Disabilities Services System to provide an array of services to individuals who have developmental disabilities and mental illness. Martinez Test., Trial Tr. vol. 1, p. 30-36. Such services include mental health services, a day activities program, and a Behavioral Support Plan to address behaviors that are a manifestation of individuals' disabilities. Martinez Test., Trial Tr. vol. 1, p. 30-36 June 26, 2016; Hope Test., Trial Tr. vol. 2, p. 181-82 June 27, 2016.

Significantly, these programs are specifically designed to address the very issues that led to Mr. George's arrest. According to his Behavioral Support Plan, Mr. George's mental illness caused him on some occasions to engage in verbal aggression and non-compliance within the group home and the day program he attended during the week. Martinez Test., Trial Tr. vol. 1, p. 33; Hope Test., Trial Tr. vol. 2, p. 181-182. His Behavioral Support Plan notes that when his

---

Crim. P. arts. 658 (B) and Art. 899 are unconstitutional as to NGRI Acquittees on conditional release. In such cases, there is no punishment nor sentence. To the extent such individuals are subject to confinement, it must be solely for the purpose of treatment.

4 Mr. Tubbs testified that he has moved to arrest and incarcerate 12-18 persons for violating terms of their conditional releases. Tubbs Test., Trial Tr. vol. 1, 84, 6/27/16. This is true despite the fact that there are options under Louisiana law other than arrest and incarceration where an acquittee violates the terms of conditional release. If a person on conditional release or otherwise probated under the aforementioned code provisions is in need of acute, i.e. short-term, hospitalization and is not charged with a new criminal offense, he may be voluntarily admitted pursuant to La. R.S. 28:52 or admitted by emergency certificate pursuant to La. R.S. 28:53 to the Feliciana Forensic Facility or to another suitable treatment facility, with subsequent notice to the court. La. Code Crim. P. art. 658(B)(4).

medication is incorrect, he may engage in outbursts and so-called "threatening" episodes. Plaintiff's Exhibit 17, TG000151–153. At no point does his Behavioral Support Plan call for him to be punished in any way for the behaviors caused by his disabilities. Id.

The evidence at trial overwhelming shows that the kinds of behaviors exhibited by Mr. George are not in the least unusual in the ICF-DD group home environment, where six to eight men with mental illness and developmental disabilities are living and interacting in very close quarters with one another in order to receive services appropriate to their disabilities. Hope Test., Trial Tr. vol. 2, p. 182. According to Ms. Martinez:

> Q So let me draw your attention to -- well, going, again, to July 2013 and before, did you ever observe Trussell being aggressive with staff; and if so, could you describe what that means?
>
> A I wouldn't use the word "aggressive." Physically aggressive, no. I have observed Trussell fussing, yelling at staff, yelling happens at my house regularly, so I – it wasn't to the point of -- six to eight people living in the same home together, if you want to do something and the staff's not paying attention: oh, you're not listening to me. It's – I never saw him in an aggressive manner, though, no. Argumentative, absolutely. He's a grown man, though, living with other grown men, who might all be arguing. That is absolutely nothing unusual in a group home.
>
> Q What about -- what about threatening, did you ever see him be threatening to anybody?
>
> A Yes. I can – I can think of one time and I believe that all four of the residents were threatening each other to take this, do that. Again, it was not -- it's nothing unusual in a group home for those type of things to happen. And then ten minutes later, they're all drinking a coke together.

Unfortunately, Articles 658(B)(1) and 899 give license to state officials to use the criminal justice system as a substitute for the provision of mental health care in difficult cases. Under the plain language of these statutes, state officials have the power to arrest an NGRI Acquittee, like Mr. George, even when he has not committed or been charged with a criminal act. Prior to the 2013 arrest, the Defendants were well aware of Mr. George's mental health

needs and recognized that the more appropriate setting for a person exhibiting his symptoms would have been a hospital. However, other than briefly and unsuccessfully attempting to place Mr. George at ELMHS, they did nothing to ensure that he was placed in a facility where he could receive the mental health treatment he needs. Tubbs Test., Trial Tr. vol. 1, pgs. 84, 86-87.

It is clear, however, that there were other options besides parish jail available to the Defendants. Instead of incarcerating Mr. George, Defendants could have voluntarily admitted him to Feliciana Forensic Facility pursuant to La. R.S. § 28:52 or admitted him by emergency certificate pursuant to La. R.S. § 28:53., If Feliciana was unavailable, Defendants had the option to admit Mr. George to another suitable treatment facility, with subsequent notice to the court. La. Code Crim. P. art. 658(B)(4). In the alternative, they could have sought a court order pursuant to La. Code Crim. P. art. 658(C) to intensify Mr. George's supervision, to modify or add additional conditions to the probation, including enhanced mental treatment. As a last resort, Defendants could have moved to revoke Mr. George's probation and recommit him to a state mental institution. Any of these alternatives, all of which were available to Defendants, would have been less restrictive than incarcerating Mr. George.

Similarly, in 2014, even though Mr. George was already at ELMHS, and there was clearly available space, including the placement he was already occupying, Defendants opted to have him arrested. The testimony establishes that this decision was made largely because Defendants viewed it as an appropriate punishment for refusing the placement option they had proposed. See Plaintiff's Exhibit 13 ("This staffing was to inform Mr. George that he would either have to accept placement in the Civil Division or we would pursue revocation, and he would probably have to go to jail first. [He] became very angry and ultimately we had to call his probation officer, and he was taken back to the jail."). The primary reason for incarcerating Mr.

George was not therapeutic but punitive. It is also a reflection of the limited placement options available at ELMHS. As Dr. Kelly admitted:

> Q You have. And in the conditions of release anywhere, is there a reference to if Mr. George doesn't comply he gets sent to jail?
>
> A I don't think it's quite stated in those terms, but, I mean, it's -- it's -- if they don't comply, they may be revoked and sent back to the forensic hospital.
>
> Q Oh, so he could be sent back to a hospital?
>
> A Yes.
>
> Q And that's referenced in the conditional release; isn't that right?
>
> A Yes.
>
> Q But jail's not mentioned, is it?
>
> A Well, if you're not guilty by reason of insanity and you're in a group home and you're out in the community and you-- you know, the forensic coordinator is called because the patient is acting out, they often end up in jail because there's no bed in the forensic division. I mean, that's why we're here today.

Kelly Test., Trial Tr. vol. 2, pgs. 103-04.

B. DEFENDANTS VIOLATED THE PROCEDURAL REQUIREMENTS OF LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLES 658(B)(1) AND 899(B).

As this Court noted in its August 23, 2017, order, in the event that a probation officer intends to arrest or cause the arrest of a NGRI Acquittee, Louisiana Code of Criminal Procedure Article 658(B)(5) requires the division of probation and parole, or the Louisiana Department of Health through the conditional release program coordinator, "to immediately notify the court of any substantive violations or imminent violations of the conditions of a person's probated release and present recommendations to the court regarding whether the court should revoke the probation and recommit the probationer to a state mental institution or other recommendations as may be appropriate." Article 658(B)(6) further requires the court, upon receiving a report

recommending revocation or other disposition from the conditional release program coordinator, to "immediately hold a hearing to consider the violations listed or transfer the case to the parish of commitment, if different from that of the arrest, at which place the hearing should be held as soon as possible."

Article 899(B) dictates that, following an arrest of an NGRI Acquittee for an alleged violation of a condition of release, the probation officer "shall immediately notify the proper court of the arrest and shall submit a written report showing in what manner the defendant violated, or was about to violate a condition of his probation."

It is Mr. George's position that these procedural requirements were not complied with in connection with either the July 2013 or July 2014 incidents at issue in this case. It also Mr. George's position that even if these procedures were followed his rights under the constitution were violated, since Articles 658(B)(1) and 899(B) permit his arrest and incarceration even when no criminal charges are involved.

1. The July 2013 arrest.

Even assuming there was reasonable cause to believe in 2013 that Mr. George had violated or was about to violate a condition of his "probation" or that an emergency existed, Defendant Tubbs did not comply with the procedural requirements of La. Code Crim. P. art. 658(B). Under that statute, a probation officer is required to "immediately notify the proper court" of an arrest and submit a "written report showing in what manner the defendant violated, or was about to violate, a condition of his probation." La. Code Crim. P. art. 658(B). Defendant Tubbs did not submit the "written report" to request a court hearing until August 12, 2013, two weeks after Mr. George's July 2013 arrest. Plaintiff's Exh. 11; Tubbs Test., Trial Tr. vol. 1, p. 22.

On August 22, 2013, twenty-five (25) days after his arrest, Mr. George finally had a hearing in the Nineteenth Judicial District Court in Baton Rouge, after which he was ordered to be released from jail and provided with mental health treatment. Brady Test., Trial Tr. vol. 2, p. 22.

2. The July 2014 arrest.

Mr. George's 2014 arrest was also procedurally deficient. While the East Baton Rouge Sheriff's Office was given a written notice that Mr. George was to be incarcerated in the East Baton Rouge Parish Prison in July 2014, Plaintiff's Exhibit 20, there is no evidence that any notice was provided to the presiding state court. In 2014, Mr. George remained in jail for 55 days, until August 25, 2014. Trial Stipulations, Plaintiff's Exh. 24 at ¶¶ 19-20.

QUESTION 2: WHAT WERE THE REASONS FOR AND CIRCUMSTANCES SURROUNDING PLAINTIFF'S RELEASE FROM THE EAST BATON ROUGE PARISH PRISON ON AUGUST 23, 2013?

This Court asked to be pointed to evidence produced at trial that explains why and how Mr. George was released from jail in 2013. Except for the testimony of Stephanie Hope, the trial record does not fully reflect the circumstances surrounding Mr. George's release.[5] The record shows that, on August 22, 2013, there was "a probation revocation hearing in front of the Judge" and the judge ordered Mr. George's release from jail. Brady Test., Trial Tr. vol. 2, 21. As Ms. Hope testified:

Q What happened at the court hearing?

---

5 The documents filed with this court in support of Plaintiff's Motion for Summary Judgment show that this hearing was held and the order was issued after Mr. George filed a Writ of Habeas Corpus challenging his incarceration. The Writ was filed on August 20, 2013. Pl.'s Ex. 3 at 162:13–25, 163:1–22, 178:17–25, 179:1–25, 180:1–13; Pl.'s Ex. 10.

The Summary Judgment documents also show that in on July 14, 2014, Mr. George, through counsel, filed a motion requesting the state district court to schedule a hearing on Mr. George's arrest. Plaintiff's Summary Judgment Exh. 12. When the court did not respond to that request, Mr. George again filed a Petition for Writ of Habeas Corpus. *Id.*

> A I talked to the judge. I'm not sure what they call it, but we were able to come up to where the judge sits to have a conversation off the -- I guess off-the-record, I don't know that any notes were taken, and I just told him I was Director of Operations of the group home where Trussell lived. I believed that Trussell had been incarcerated because my staff were incompetent, they had called the probation officer when there really wasn't a need to call the probation officer. Those were Trussell's normal behaviors, and he was incarcerated and that Trussell was mentally ill and he needed treatment and, in my opinion, jail wasn't where he needed to be.
>
> Q And was he released that day?
>
> A The judge released him that day.

Hope Test., Trial Tr. vol. 2, p. 192-93.

QUESTION 3: A) WERE THERE REQUESTS FOR STATE COURT HEARINGS, AND B) WERE STATE COURT HEARINGS HELD IN CONNECTION WITH MR. GEORGE'S CASE, AND IF SO, WHAT WERE THE DATES OF EACH, THE CIRCUMSTANCES CAUSING OR LEADING UP TO THE HEARINGS, THE SUBSTANCE OF THE HEARINGS, AND THE OUTCOME OF THOSE HEARINGS?

During the course of the proceedings in this case, there were a number of hearings held concerning Mr. George's conditional release. The evidence shows that, on June 10, 2013, one and a half months prior to Mr. George's arrest, Defendant Tubbs sent a letter to the state district court advising "that in the last 4 weeks [Mr. George] has been verbally aggressive with staff over food" and requesting a review hearing to address Mr. George's conditional release expiration date and alleged violations of the group home's rules. Plaintiff's Exhibit 9; Defendants' Exhibit 4. The letter did not provide any recommendations to the court, as required by Louisiana Code of Criminal Procedure Article 658(B)(5), regarding whether the court should revoke Mr. George's discharge. Nevertheless, Defendant Tubbs testified that, at the time, he planned to move Mr. George "to a new group home to solve the problem." Tubbs Test., Trial Tr. vol. 1, p. 75-76, line 1. There is no evidence that Mr. George was served with a copy of this letter. In any case,

Defendant Tubbs testified that he does not believe that the state district court held a hearing in response to his June 10, 2013 letter. Tubbs Test., Trial Tr. vol. 1, p. 76, line 1.

On August 12, 2013, two weeks after Mr. George's July 2013 arrest, Defendant Tubbs for the first time notified the court in writing that Mr. George had been arrested, requested a hearing, and recommended that the court revoke Mr. George's probation. Plaintiff's Ex. 11; Tubbs Test., Trial Tr. vol. 1, p. 78, line 1.[6] On August 22, 2013, a hearing was held and the judge ordered Mr. George's release from jail. Brady Test., Trial Tr. vol. 2, 21.

The stipulations between the parties state that "[a]fter Plaintiff Trussell George's arrest, he was incarcerated from July 29, 2013 to August 23, 2013, at East Baton Rouge Parish Prison."

On December 5, 2013, prior to the expiration of Mr. George's five-year conditional release period, Defendant Brady filed a status review with the court requesting a hearing and recommending that Mr. George's conditional discharge be extended for another year. Plaintiff's Ex. 12. On May 14, 2014, the Nineteenth Judicial District Court in East Baton Rouge Parish extended Mr. George's conditional release to December 14, 2014. Trial Stipulation ¶ 18.

Mr. George was incarcerated again on July 1, 2014 for allegedly violating a condition of his release. Plaintiff's Ex. 13. While the East Baton Rouge's Sheriff's Office was given a written notice that Mr. George was to be incarcerated in the East Baton Rouge Parish Prison in July 2014, Plaintiff's Exhibit 20, there is no evidence that any notice was provided to presiding state court until August 22, 2014, when Defendant Brady filed an "Episode Report" advising the state

6 As noted above, the record on Summary Judgment also shows that a Writ of Habeas Corpus was filed by counsel for Mr. George on August 22, 2013.

court of Mr. George's arrest and requesting a revocation hearing. Plaintiff's Ex. 14. Mr. George remained in jail until August 25, 2014.[7] Trial Stipulations at ¶19-20.

QUESTION 4: EVIDENCE OF DEFENDANTS' POLICIES, PRACTICES, AND PROCEDURES.

A. **Defendants' policies, practices, and procedures cause NGRI Acquittees to be arrested for non-criminal violations or perceived violations of the terms of their conditional release.**

Defendants have never disputed that it is a practice and policy of the Department of Public Safety and Corrections to arrest and incarcerate NGRI Acquittees on conditional discharge who have violated a term of their conditional release. Indeed, Defendant Tubbs, who one of the Probation and Parole Officers employed by the Department of Public Safety and Corrections, testified that he alone has "moved to revoke the conditional release of somewhere around 12 to 18 of the Not Guilty by Reason of Insanity folk…" who were arrested and incarcerated in the East Baton or Orleans Parish prisons. Tubbs Test., Trial Tr. vol. 1, 84-85 6/27/16. He further testified that he was following Department policy when he arrested Mr. George:

> Q And you responded, "well, we should probably arrest him [Mr. George]"; is that right?
>
> A Probably correct, yes.
>
> Q And you consulted your supervisor regarding this decision?
>
> A I did.
>
> Q And it was your understanding that the department's policy is that Mr. George's arrest was in accordance with departmental policy?
>
> A Yes.

---

7 As noted above, the Summary Judgment record shows that, on July 14, 2014, Mr. George, through counsel, filed a motion requesting the state district court to schedule a hearing on Mr. George's arrest and a Petition for Writ of Habeas Corpus on August 5, 2015. Plaintiff's Summary Judgment Ex. 12.

Tubbs Test., Trial Tr. vol. 1, 84, 6/27/16. Moreover, as the testimony indicates, Defendants Department of Public Safety and Corrections and the Louisiana Department of Health act in concert in making decisions regarding, and executing, the arrest and incarceration of individuals on conditional discharge. Tubbs Test., Trial Tr. vol. 1, 83–84, 6/27/16; Brady Test., Trial Tr. vol. 2, 93–94, 6/28/16.

B. Defendants' policies, practices, and procedures cause NGRI Acquittees to be incarcerated for more than one day.

There is no evidence before this Court that by incarcerating Mr. George for 25 and 55 days that Defendants were following a practice unique to Mr. George. Indeed, Louisiana has a long history of confining mentally ill individuals in parish jails for extended periods of time, even when a court orders that they be transferred to a mental health facility. For example, in Advocacy Center for Elderly & Disabled v. Louisiana Dep't of Health & Hospitals, 731 F. Supp. 2d 603, 627 (E.D. La. 2010), the court found that the plaintiffs were likely to prevail on their claim that the lengthy incarceration of persons found individuals found incompetent to stand trial violated due process; the court ordered the state to take physical custody of them these individuals and provide appropriate mental health care within twenty-one (21) days.[8]

Finally, the fact that individuals needing mental health treatment were languishing in and habitually warehoused in parish jails per Defendants' policy, practice, and procedure is supported by the testimony of Eric Defendant Brady:

> Q So the decision to arrest Mr. George in July 2013 was made collectively by you, Dr. Vosburg and Mr. Tubbs; is that correct?

[8] More recently, in Cooper v. Kliebert, Civil Action No. 14–507–SDD–SCR, 2014 WL 7334911 (M.D. LA Dec. 19, 2014), this Court denied Defendants' motion to dismiss plaintiffs' claims that their incarceration in Louisiana correctional facilities for months while awaiting bed space at ELMHS violated their rights under the Fourteenth Amendment, Title II of the Americans with Disabilities Act ("ADA"), and Section 504 of the Rehabilitation Act ("RA"). The parties in the Cooper eventually entered into a Settlement Agreement. Cooper v. Kliebert, Civil Action No. 14–507–SDD–SCR (Doc. Rec. 197-1).

A Yes, Ma'am.

Q Is it your understanding that a person can be involuntarily committed to a psychiatric facility if they're a danger to themselves or to other people?

A Yes, Ma'am.

Q And it's also your testimony that there was not a bed available in any -- in a psychiatric facility the weekend Mr. George was arrested?

A We give special considerations for people under the legal status of not guilty by reason of insanity and at the time, we didn't have any beds available.

Q At ELMHS?

A Yes, Ma'am.

Brady Test., Trial Tr. vol. 1, 127, 6/27/16.

Moreover, it is clear from Mr. Brady's testimony regarding the 2013 arrest and Dr. Kelly's testimony regarding the 2014 arrest that the lack of available mental health beds was much more than a fleeting occurrence restricted to a particular weekend.

Q Mr. Brady, I hate to interrupt you, but I just want to make sure that I get the answer to this question. So did you, from the time Mr. George was arrested, July 29th of 2013, to the time he was released in August 21st of 2013, determine if there was a bed available for him at the hospital in ELMHS?

A Yes, we did check on that and there were no beds available.

Q During that entire period?

A To my understanding, there was no beds available, otherwise, we would have had him in the hospital.

Q Thank you.[9]

---

9 The testimony of Defendant Tubbs also supports Mr. George's position that because of the lack of bed space at ELMHS, NGRI individuals needing mental health treatment were likely to end up, and languish, in parish jails. As he stated in response to questioning from this court:

Q …[T]then with respect to your decision and that of Mr. Brady that his aggressive behavior warranted arrest – let me ask you this, there were no beds, is that why he did not go to ELMHS?

Brady Test., Trial Tr. vol. 1, 128, 6/27/16. See also Kelly Test., Trial Tr. vol. 2, pgs. 103-104.

Mr. George's arrest and incarceration in 2013 and 2014 had far less to do with his behavior than it did with DHH's LDH's shortage of beds at ELMHS, and Defendants' failure and refusal to ensure that he was provided appropriate mental health services at ELMHS or some other appropriate mental facility as required by state law.

C. Defendants' policies, practices, and procedures cause NGRI Acquittees to receive no or substandard mental health care in jail.

First, NGRI Acquittees in jail nearly by definition receive worse mental health care than those in treatment facilities like ELMHS. According to Dr. McConville, ELMHS has approximately 20 psychiatrists, five of which are employed full time. ELMHS also employs psychologists, a full-time nursing staff, dieticians, occupational therapists, recreational therapists and social workers. Furthermore, as in every Joint Commission accredited hospital, each resident at ELMHS has an individualized treatment plan and receives active therapy in order to ensure that its residents are progressing towards the goals of hospitalization. When appropriate, residents have a drug treatment program available to them. Some residents also receive individual psychotherapy. McConville Test., Trial Tr. vol. 2, 154-56, 6/28/16.

ELMHS has a number of units that, depending on treatment needs, residents can move between and into: the ASSA, a forensic unit; the Crossroad Recovery Unit (CRU); the

---

A That's correct.

Q So by your way of thinking, there were two choices: first ELMHSs, if there was a bed available, but if not, your only other choice, the way you saw it, was the parish prison?

A Correct. Until we could go in front of the judge and the judge could make a decision on what to do with him.

Tubbs Test., Trial Tr. vol. 1, 211, 6/27/16.

Intermediate Treatment Unit (ITU); Cedarview, which is another intermediate unit; the East Acute Unit; and the Oakcrest unit, which is an admission unit. McConville Test., Trial Tr. vol. 2, 156-57, 6/28/16; Kelly Test., Trial Tr. vol. 2, 71-73, 6/28/16.

Second, even aside from the comparison to ELMHS, it is clear that mental health treatment at EBRPP, as applied to NGRI Acquittees arrested for nothing more than violating a term of their release, is constitutionally substandard. During trial, in order to highlight the indignities to which he was subjected, Mr. George presented ample evidence regarding mental health treatment at East Baton Rouge Parish Jail (EBRPP),[10] where a significant number of NGRI Acquittees who are arrested for violating conditions of their release are incarcerated. Tubbs Test., Trial Tr. vol. 1, 85-86 6/27/16.

The evidence shows that such individuals are unlikely to receive necessary mental health treatment and that Defendants are well aware of this fact. NGRI Acquittees, such as Mr. George, who are incarcerated are likely be put in an isolation cell and, at most, provided with some medication. The evidence also shows that Defendants, as a matter of course do not contact mental health staff at the jail to ensure that NGRI Acquittees are provided with appropriate mental health treatment. As Defendant Tubbs testified,

> Q At the time Mr. George was arrested, it was your understanding that at East Baton Rouge Parish Prison, the treatment offered to individuals like Mr. George who are not guilty by reason of insanity, would include providing medication and the use of isolation cells if they were unstable; is that right?
>
> A Yes.

---

[10] As indicated above, it is Mr. George's position that regardless of the conditions in EBRPP where he was incarcerated, the fact that he was incarcerated in jail at all for violating his conditional release, in and of itself, violated Plaintiff's due process rights. However, the lack of mental health treatment in the EBRPP makes it clear that the purpose of Plaintiff's conditional release the provision of mental health treatment--did not bear any reasonable relationship to his incarcerations in EBRPP.

.

Q And when someone is in an isolation cell, it was your understanding that they were locked in there all day except for an hour for recreation and eating meals; is that right?

A That's my understanding.

Q You also understood that when eating meals a person in isolation would be brought to a cafeteria fully shackled and in, quote, "a black box;" is that right?

A I don't know how they're brought to eat.

Q And once you had arrested Mr. George, you didn't visit him in jail, did you?

A No.

Q And you didn't speak with him and confirm that he was receiving his mental health medications?

A I called Lisa Burns and told her about him being arrested and being placed at East Baton Rouge Parish Prison, and then she follows up with providing him mental health treatment, medication management, that kind of stuff.

Q And did you confirm with her that he was receiving his medications?

A No, I didn't confirm with her after the initial contact.

Tubbs Test., Trial Tr. vol. 1, 82-83 6/27/16; Brady Test., Trial Tr. vol. 2, 14, 6/28/16.

In all, the testimony at trial demonstrates that jail environments are particularly stressful for people with mental illness and antithetical to the treatment purposes underlying the condition release program.[11] As Plaintiff's expert, Dr. Delaney Smith testified, people who suffer from

[11] The evidence in the record is also clear regarding the dire consequences that can result and has resulted from inadequate treatment. As Ms. Martinez testified regarding Mr. George's experience,

A I -- I met him at the jail the day that he was released. He was released -- he was told to be released earlier that day in court. I went to the jail, so did two other staff members from PHP, and we waited outside -- we were actually going to go in and get him because they didn't know really where he was. Evidently he had checked out but hadn't made it to the gate yet. So just as they were going to let us back in through the gate, here -- he's walking out. And Trussell gave me a hug, and the staff from PHP, they took him to the hospital for observation.

Q How did Trussell look at that time?

A Worse than he did before I saw him. He absolutely smelled like he had not bathed. He was very scruffy, dirty. His skin was very flakey and ashy looking. He was still – he wasn't dragging his feet as much

mental illness are "very susceptible to the impact of the social isolation of being in a jail. For Plaintiff, he was on a 23-plus hour lockdown, which is very difficult for anyone to deal with. But, again someone who's already paranoid, is suffering voices in their head, has difficulty distinguishing reality, to put them alone in a room just further exacerbates their mental health condition." Smith Test., Trial Tr. vol. 2, 40, 6/28/16.

D. Defendants' policies, practices, and procedures cause NGRI Acquittees not to receive a hearing immediately or within ten days of arrest.

The record is silent on how long the 12 to18 individuals arrested while on conditional release were confined in parish jails before they were given a hearing. However, the fact that Defendants have not claimed that Mr. George's experiences were unique, the history of long incarcerations for persons who have been found NGRI or incompetent to stand trial as exemplified in Advocacy Center for Elderly & Disabled v. Louisiana Dep't of Health & Hospitals and Cooper v. Kliebert, as well as the role that the lack of available bed space played in causing Mr. George's incarceration in the first place, all strongly indicate that it is much more likely than not that persons on conditional discharge who are alleged to have violated a term of their conditional release spend considerable time in jail following their arrest and incarceration.

QUESTION 5: IS PLAINTIFF ENTITLED TO THE RELIEF REQUESTED IN HIS SECOND AMENDED COMPLAINT (DOC. 42) WITHOUT ESTABLISHING THAT "POLICIES, PRACTICES AND PROCEDURES" VIOLATED THE CONSTITUTION AND/OR ADA OR RA?

As detailed above, Mr. George maintains that his arrests and periods of incarceration in question were the result of Defendants following their established policies, practices, and

---

and shuffling, but he wasn't in shackles either. But he was -- he was definitely not walking in the manner that he -- he was a few months prior. He was very disoriented.

Martinez Test., Trial Tr. vol. 1, 43-44, 6/27/16.

procedures. The existence of such policies, practices, and procedures, however, is not a necessary element of his obtaining either damages or prospective relief for injury to his rights under federal law.

A. Constitutional Claims

The equitable relief requested by Mr. George for violations of his Due Process rights is not dependent upon proof of the existence of policies, practices, or procedures as would be required for municipal liability under 42 U.S.C. § 1983. Instead, since he seeks prospective relief against state actors under Ex parte Young, 209 U.S. 123 (1908), Mr. George need show only that: (1) Defendants violated his Constitutional rights; and (2) Defendants were either explicitly charged with completing the unlawful action or were sufficiently connected to the unlawful action. See Okpalobi v. Foster, 244 F.3d 405, 421 (5th Cir. 2001).

Mr. George prevails on his Due Process claim if he proves that Defendants deprived him of his liberty interest in freedom from detention or in mental health treatment. (*See* Pls.' Pretrial Brief, Doc. No. 117-1 at 4–14.) Having satisfied the elements of those claims, the next question is whether Mr. George has met the standard for prospective relief under Ex parte Young. Since Mr. George has sought relief against state actors, he need not prove the existence of a policy, practice or custom that was the moving force behind the deprivation of his rights under federal law. When a litigant seeks injunctive relief against a municipality, he must demonstrate the existence of a "policy or custom" on behalf of the municipality. Los Angeles Cty. v. Humphries, 562 U.S. 29, 36–37 (2010). In Humphries, the Court applied to injunctive relief the standard previously used only for damages claims against municipalities, as laid out in Monell v. Dep't of Social Svcs., 436 U.S. 658 (1978). See also Piotrowski v. City of Houston, 237 F.3d 567, 578 (5th Cir. 2001) (holding that Monell liability requires demonstration of municipal policymaker,

existence of a policy, and prof that policy was the "moving force" behind Plaintiff's injury). Thus, in the wake of Humphries, injunctive relief against a municipality under § 1983 can be had only where the municipality has adopted a custom, policy, or practice that caused the Plaintiff's injury. 562 U.S. at 39. But the Humphries court limited its opinion to Monell claims against municipalities. Neither the Supreme Court nor the Courts of Appeal have ever required such a showing for injunctive relief against a state official under Ex parte Young, the vehicle through which Mr. George seeks relief for the violations of his Constitutional rights.

In Viet Anh Vo v. Gee, the Eastern District of Louisiana recently enjoined Louisiana clerks of court—who the court had determined were functioning as state actors for the purposes of that suit—from enforcing a state law that required applicants for a marriage license to first produce a birth certificate. Civil Action No. 16-15639, 2017 WL 1091261 (E.D. La. Mar. 23, 2017). Judge Ivan J. Lemelle rejected the clerks of courts' claim that they could be liable for injunctive relief *only* under a Monell theory: "the Monell requirements that defendants reference apply where a municipal official acts in a local capacity, not where the official performs as a state actor. . . . The appropriate standard that should be used in the instant matter is the one found in Ex parte Young." *Id.* at *4.

In the Fifth Circuit, a claim under Ex parte Young is present where a state official acts, threatens to act, or "at least ha[s] the ability to act to enforce an unconstitutional act." Sonnier v. Crain, 649 F. Supp. 2d 484, 493 (E.D. La. 2009) (citing Okpalobi v. Foster, 244 F.3d 405, 421 (5th Cir. 2001)). The state official must also have "some connection" to the unlawful act. Ex parte Young, 209 U.S. 123, 157 (1908). To gauge whether a sufficient connection between the state official and the challenged conduct exists, courts look to "(1) the ability of the official to enforce the statute at issue under his statutory or constitutional powers; and (2) the demonstrated

willingness of the official to enforce the statute." Sonnier, 649 F. Supp. 2d at 493. In Okpalobi, the Fifth Circuit found Ex parte Young inapplicable where the defendant governor and attorney general were incapable of enforcement of a challenged statute that expanded tort liability for doctors who perform abortions. 244 F.3d at 427 ("The governor and attorney general have no power to redress the asserted injuries. In fact, under Act 825, no state official has any duty or ability to do *anything*.")

In the case at bar, Defendants Tubbs, Brady, and Vosburg all directly participated in the decisions to place Mr. George in the East Baton Rouge Parish Prison instead of ELMHS, a hospital, or another community placement. Defendants LeBlanc, Gibbs, and Starks had supervisory roles over Defendant Tubbs and were charged by law with monitoring individuals like Mr. George who were on conditional release after being acquitted as NGRI. Trial Stipulations ¶¶ 8–11, Pl.'s Trial Ex. 24. Defendant Gee had supervisory authority over Defendants Brady and Vosburg. As agency head of the Louisiana Department of Health (formerly "Department of Health and Hospitals" at the time of filing), Defendant Gee heads an agency charged with the monitoring and care of Mr. George. Id. ¶¶ 12–13 Not only did the Defendants thus have the power and ability to incarcerate Mr. George, but they also proved themselves willing to take such an enforcement action on two separate occasions. Thus, all Defendants had a sufficient connection to the deprivation of Mr. George's Due Process rights. Regardless of whether Defendants acted according to a formal policy, practice, or procedure, the Defendants either took direct action or were sufficiently connected to such action to violate Mr. George's Constitutional rights on two separate occasions.

B. **ADA / Section 504**

To obtain relief for violations of his rights under the Title II of the ADA and Sec. 504, Mr. George need not demonstrate the existence of established policies, practices, and procedures that were the cause of his injury. Delano-Pyle v. Victoria Cty., Tex., 302 F.3d 567, 575 (5th Cir. 2002) (holding "neither a policymaker, nor an official policy must be identified for claims asserted under the ADA or the RA"). Defendants LDH and LDPSC waived sovereign immunity for claims under the ADA and Sec. 504 through their receipt of federal funds. See Pl.'s Trial. Ex. 24 (parties' stipulation to Defendants LDH and LDPSC's receipt of federal funding); Bennet-Nelson v. La. Bd. of Regents, 431 F.3d 448 (5th Cir. 2005) (holding that sovereign immunity for claims under § 504 is waived via receipt of federal funds). Thus, Mr. George has a direct action against the Defendants through the enforcement provisions of Title II and Sec. 504. 42 U.S.C. § 12133; 29 U.S.C. § 794a. Therefore, he must prove only that he was discriminated against within the definition of those statutes and that declaratory judgment and permanent injunction are the proper remedies. Given the waiver of sovereign immunity, an analysis under Ex parte Young is inapplicable to Mr. George's ADA / Sec. 504 claims.

Mr. George need not even make any showing as to the Defendants' intent to justify equitable relief. See Midgett v. Tri-Cty. Metro. Transp. Dist. of Oregon, 254 F.3d 846, 851 (9th Cir. 2001) ("[E]quitable remedies for violations of the ADA are available regardless of a defendant's intent.) While proof of an existing, policy, practice, or procedure is unnecessary to grant relief under the ADA or Sec. 504 for Mr. George to obtain equitable relief, he must demonstrate intentional discrimination to justify the award of compensatory damages. See Delano-Pyle, 302 F.3d at 575.

QUESTION 6: WITH RESPECT TO PLAINTIFF'S CLAIMS UNDER THE ADA AND SECTION 504, WHAT EFFECT OR WEIGHT SHOULD THE COURT GIVE TO THE JURY'S FINDINGS?

This Court asked for briefing on what weight the Court should place on the jury's finding that Defendants LDH and LDPSC did not discriminate against Mr. George on the basis of his disability. Mr. George admits that, as long as the jury's finding stands, this Court is obliged to apply to law to the facts as the jury found them. Therefore, Mr. George respectfully moves this Court to consider his renewed motion for judgment as a matter of law (JMOL) on the grounds that no reasonable jury could have found that Mr. George was not discriminated against on the basis of his mental illness.

A. **Federal Rule of Civil Procedure 50 allows this Court to consider renewed motions for JMOL until 29 days after entry of judgment.**

Federal Rule of Civil Procedure 50 governs a party's motion for JMOL. A movant may move for JMOL at any time before the case is submitted to a jury.[12] The court may grant a motion for JMOL if a party has been fully heard on issue and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue. If the court does not grant the motion for JMOL, the court is considered to have submitted the issue to the jury, subject to the court's later deciding the legal questions raised by the motion. Where a jury has issued a verdict, a movant may renew his motion for JMOL "no later than 28 days after entry of judgment." Fed. R. Civ. Pro. 50(b).

B. **Standard for JMOL.**

A motion for JMOL raises only a question of law: "[w]hether there is any evidence which, if believed, would authorize a verdict against movant." Marsh v. Illinois Cent. R. Co.,

[12] Mr. George moved for judgment as a matter of law before the case was submitted to the jury. Trial Tr. vol. 3, 63, 6/29/16.

175 F.2d 498, 500 (5th Cir. 1949). "A judgment as a matter of law is appropriate if the facts and inferences point so strongly and overwhelmingly in favor of one party that reasonable people could not arrive at a verdict to the contrary." Buchanan v. City of San Antonio, 85 F.3d 196, 198 (5th Cir. 1996). In considering a motion for JMOL, the court is not to reweigh the evidence or assess the credibility of witnesses. See Lytle v. Household Mfg., Inc., 494 U.S. 545, 554 (U.S. 1990). Rather, the court must examine the entire record in the light most favorable to the non-movant and draw all inferences in the non-movant's favor. Becker v. PaineWebber, Inc., 962 F.2d 524, 526 (5th Cir. 1992).

C. **Mr. George is entitled to a JMOL because Defendants did not present the jury with a single shred of evidence to explain why Mr. George was incarcerated in the East Baton Rouge Parish Prison in 2013 and 2014 *except* because of his mental illness. Therefore, no reasonable jury could have found that there was any other cause for his incarceration or that he was not discriminated against because of his mental illness.**

Defendants claim that they arrested and incarcerated Mr. George because his mental illness caused him to have "behaviors." Tubbs Test., Trial Tr. vol. 2, 210, 6/28/16; Brady Test., Trial Tr. vol. 1, 121-22, 6/27/16; Defendants' Memorandum in Support of Summary Judgment, Doc. Rec. 81 at 14-15; Defendants' Proposed Findings of Fact and Conclusions of Law, Doc. Rec. 152 at ¶¶ 38, 100. Yet Defendants did not arrest and incarcerate Mr. George because those "behaviors" constituted a crime, or because they intended to get Mr. George treatment; in other words, Mr. George's "behaviors" alone do not justify Defendants' actions. Defendants arrested Mr. George because of his "behaviors" *paired with* the fact that his disability is mental illness and it once caused him to be acquitted of criminal liability

1. Defendants did not provide the jury with any evidence for a legal basis for Mr. George's arrest and incarceration.

One of the most basic, foundational tenants of our democracy is that the government cannot arrest or incarcerate an individual without a legal basis. It is undisputed that Defendants arrested and incarcerated Mr. George, an NGRI Acquittee not subject to pending criminal prosecution, in 2013 and 2014. So while Mr. George bears the burden of proving by a preponderance that Defendants discriminated against him on the basis of his disability, upon proof of arrest and incarceration, Defendants logically must give the jury evidence of a legal (i.e., non-discriminatory) basis for that arrest and incarceration. In this case, Defendants did not present the jury with a shred of any such evidence.

Notably, the only witness Defendants called to present evidence to the jury was an expert, Dr. Harold Ginzburg, who testified solely on the issue of damages. Dr. Ginzburg's sole testimony was that Mr. George's mental and physical decline was a result of his previous drug use, rather than the failure of Defendants to provide adequate mental health treatment while Mr. George was in EBRPP. Tr. Trans. Pgs. 26-27. Dr. Ginzburg did not, and could not, present the jury with any legal basis for why Mr. George was incarcerated in EBRPP in the first place.

Defendants' only attempts at providing a legal basis for arresting and incarcerating Mr. George are a smattering of excuses that, upon even cursory inspection, fail to provide a non-discriminatory basis for arresting and incarcerating Mr. George. Defendants' focus on Mr. George's "behaviors" are a red herring. While "behaviors" alone may sometimes be a basis for arrest, Defendants cannot claim either of those legal bases in this case. Mr. George's "behaviors" were merely a necessary, *but not sufficient*, condition for Defendants arresting and incarcerating Mr. George.

First, at times Defendants claim they arrested and incarcerated Mr. George for his "behaviors," some of which *could* have constituted crimes. However, no reasonable jury could have found that this was Defendant's reason for arresting and incarcerating Mr. George. If an individual has "behaviors" that constitute a crime, the individual may be arrested and charged with the crime, after which he would enjoy the due process protections afforded to an arrestee. Defendants admit they did not arrest and incarcerate Mr. George because his "behaviors" constituted a crime; indeed, he was never charged with a crime for any events relevant to this case. Tubbs Test., Trial Tr. vol. 1, 82, 6/27/16.

Second, Defendants claim they arrested and incarcerated Mr. George to protect him and get him treatment. However, when Defendants arrested Mr. George in 2013, they knew there were no beds available at ELMHS, Tubbs Test., Trial Tr. vol. 1, 84, 6/27/16; Brady Test., Trial Tr. vol. 1, 124-25, 6/27/16, and they did not even attempt to find another psychiatric treatment facility, Tubbs Test., Trial Tr. vol. 1, 86, 6/27/16; Brady Test., Trial Tr. vol. 1, 123, 6/27/16. After incarcerating Mr. George in jail for the ostensible purpose of getting him treatment, Defendants did not follow up to see whether Mr. George was actually receiving treatment. Tubbs Test., Trial Tr. vol. 1, 83, 90, 6/27/16. Even worse, when Defendants arrested Mr. George again in 2014, they arrested him *while* he was receiving mental health care at ELMHS, and took him *away* from that treatment. Brady Test., Trial Tr. vol. 2, 19-20, 6/28/16. Whether Mr. George ever received treatment for the mental illness that was causing his "behaviors" was clearly of marginal concern, if of any concern, to Defendants.

Finally, Defendants sometimes claim that they arrested and incarcerated Mr. George because there were no beds were available at ELMHS. This last excuse is the most spurious of all. First, it assumes that Defendants had the legal authority to detain Mr. George, which is of

course the very question at issue. Second, it misleads the fact-finder by suggesting that the number and availability of beds is not under Defendants' control. As evidenced by Advocacy Center for Elderly & Disabled v. Louisiana Dep't of Health & Hospitals, 731 F. Supp. 2d 603, 627 (E.D. La. 2010) and Cooper v. Kliebert, 2014 WL 7334911 (M.D. LA 2014), the number, availability, and provision of beds at ELMHS is squarely under Defendant LDH's authority. The lack of beds at ELMHS is not a legal basis to arrest and incarcerate Mr. George when Defendants are the ones responsible for the lack of beds.

2. Defendants arrested and incarcerated Mr. George because he is a person with mental illness whose mental illness has, in the past, caused him to be found not guilty by reason of insanity.

Mr. George's "behaviors" alone did not cause Defendants to arrest and incarcerate him. The crux of Mr. George's ADA claim lies with the *other* condition necessary to his arrest and incarceration, which was that Mr. George is a member of a small class of individuals with disabilities whose disability has caused them to break the law and whose disability happens to be mental illness. Had Mr. George not had mental illness, or had he been acquitted of a crime based on any other disability besides mental illness, he would not have been arrested and incarcerated.

First, had Mr. George never been found NGRI, Defendants would not have arrested and incarcerated him, even if he had "behaviors." That is because if Mr. George's mental illness caused him to commit a crime he would be arrested by the police (not Defendants), and if it caused him to be a danger to himself or others, Defendants would have moved to have him civilly committed.

Second, had Mr. George been acquitted on the basis of a disability other than mental illness, Defendants also would not have arrested and incarcerated him. For example, if a diabetic went into hypoglycemic shock and caused an automobile accident, the diabetic would be acquitted of reckless driving because she would not have been criminally responsible for her

driving. If, five years later, the diabetic had another hypoglycemic incident and fell against a passerby, Defendants would not then have arrested and incarcerated her for "behaviors" caused by her disability. Even more, she would not be arrested and incarcerated for the purported purpose of receiving "treatment," only to be deprived of insulin.

Yet, persons with both characteristics – those whose mental illness has caused them to be acquitted on that basis – are treated differently. Even though the mentally ill arrestee and an NGRI Acquittee both may have "behaviors" caused by their mental illness, only an NGRI Acquittee is deprived of the due process protections of both an arrestee and a civil committee. And even though the diabetic in the hypothetical above and an NGRI Acquittee are both found not to be culpable for their actions on account of their disability, only the NGRI Acquittee can later be arrested for "behaviors," and only the NGRI Acquittee is incarcerated ostensibly to receive "treatment" and then functionally deprived of the very treatment he needs.

Mr. George presented the jury with evidence that Defendants discriminated against him by arresting and incarcerating him solely on the basis that he had mental illness (and the attendant "behaviors") and had once been acquitted based on that mental illness. Defendants, in turn, did not present a single shred of evidence to show that there was any legal basis for Mr. George's arrest and incarceration. Therefore, no reasonable jury could have found that Defendants did not discriminate against Mr. George on the basis of his disability, mental illness.

Respectfully submitted this 6th day of September, 2017.

/s/ Ronald K. Lospennato
Ronald K. Lospennato, Bar No. 32191
Laura Thornton, Bar No. 36053
Kathryn E. Fernandez, Bar No. 33829
Advocacy Center
8325 Oak Street
New Orleans, LA 70118
504-208-4679 (p)

504-522-5507 (f)
rlospennato@advocacyla.org
kfernandez@advocacyla.org
lthornton@advocacyla.org

Katie M. Schwartzmann, Bar No. 30295
Eric Foley, Bar No. 34199
Roderick & Solange MacArthur Justice Center
4400 S. Carrollton Ave.
New Orleans, LA 70119
504-620-2259 (p)
504-208-3133 (f)
katie.schwartzmann@macarthurjustice.org
eric.foley@macarthurjustice.org

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September, 2017, a copy of the foregoing will be served on the Defendants by the "Notice of Electronic Filing" automatically generated by the Court's Electronic Filing System.

/s/ Ronald K. Lospennato__
Ronald K. Lospennato, Bar No. 32191