UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF MICHIGAN

KEVIN LINDKE; MICHAEL SCHULTZ; and all those similarly situated,
Plaintiffs,

v.

MAT KING, in his official and personal capacities; TIMOTHY DONNELLON, in his official and personal capacities; COUNTY OF ST. CLAIR; TRACY DECAUSSIN, in her official and personal capacities; and THOMAS BLISS, in his official and personal capacities,
Defendants

Case No.: 22-cv-11767
Honorable Matthew Leitman

RESPONSE

**** CLASS ACTION ****

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RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

QUESTION(S) PRESENTED

Whether Defendant is entitled to summary judgment?

ANSWER: No.

MOST RELEVANT AUTHORITY

FRCP 56

Jackson v. VHS Detroit Receiving Hosp., Inc.,
814 F.3d 769(6th Cir. 2016)

M.C.L. § 51.281

People v. Cannon,
522 N.W.2d 716 (Mich. Ct. App. 1994)

ARM v. KJL,
995 N.W.2d 361 (Mich Ct. App. 2022)

BRIEF IN OPPOSITION

This lawsuit is premised on over-detention violations. Over-detention or over-detaining is the legal "euphemism for prisoners illegally incarcerated beyond the terms of their sentence." *Hicks v. LeBlanc*, 81 F.4th 497, 500 (5th Cir. 2023). Such is well-established as being unconstitutional, normally (but not exclusively) on due process grounds. *Shorts v. Bartholomew*, 255 Fed. App'x 46, 51-52 (6th Cir. 2007); see also *Porter v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011) ("a jailer has a duty to ensure that inmates are timely released from prison"). Established case law holds that when a prisoner's sentence has expired, he or she is entitled to immediate release. Failing to do so mandates a remedy in damages and other relief. 42 U.S.C. § 1983.

In defense of their unconstitutional conduct, Defendants have offered a slew of faulty reasons why their keeping those jailed due to criminal contempt in excess of their sentences—and whose release dates were blatantly disregarded—should not reach a federal jury. The reasons are mostly repeats that this Court already and correctly rejected. The Court is requested to again (but only[1]) deny the relief Defendants seek in death-knelling this case.

[1] Plaintiffs would like to seek summary judgment themselves but because of the one-way intervention rule, they and this Court must refrain from doing so until after class certification and issued notice. *Costello v. BeavEx, Inc*., 810 F.3d 1045, 1057-1058 (7th Cir. 2016). That motion is concurrently filed with this response.

BACKGROUND AND MATERIAL FACTS[2]

Michigan's "Good-Time-Credit" statute, M.C.L. § 51.281 et seq, automatically reduces criminal sentences of those confined to a Michigan jail (as opposed to a state prison) by "1 day for each 6 days of the sentence" for good-time while confined. M.C.L. § 51.282(1). But before good-time credit can be formally taken away, due process is first required. *Wolff v. McDonnell*, 418 U.S. 539 (1974). To effectuate the taking of credits, the Sheriff must provide the jailee advance written notice of the disciplinary charges and the opportunity to call witnesses and present documentary evidence in defense, and then issue a written notice of the evidence relied on and the reasons for taking away the credits "before issuing the order removing the credits." *Id.* at 563-567. Here, Plaintiffs have never had their good-time credit taken away for any alleged misconduct nor been subject to the *Wolff* process to actually result in any credits being taken away.[3] Yet, Sheriffs King and Donnellon's

[2] Defendant has put forth many pages of what they call "undisputed facts." Most are not facts (they are legal statements) or, to the extent they are facts, are disputed. However, most are simply immaterial. Plaintiffs will not let such inaccurate assertions go unchallenged but asserts most are unnecessary to address the limited legal issues made by Defendants' summary judgment motion. Attached as **Exhibit A** is a table that challenges those asserted "undisputed" facts as incorrectly made.

[3] By suggesting that the credits could be taken through this case without fulfilling the *Wolff* requirements, Defendants are trying to back-door the taking of good-time credit today. That is not permissible and, to the extent it is being attempted, Plaintiffs object. At no point has the Sheriff ever previously decided to take away either Plaintiffs' good-time credit even if he previously 'could have' due to any alleged misconduct. Retroactive punishment in such fashion would violate the ex post facto provisions of the United States

policy of denying good-time credit kept them confined beyond their proper outdates.

The good-time credit concept is simple enough. "In clear and unmistakable terms, the Legislature has stated that every county prisoner *shall* be entitled to a reduction of sentence of one day for every six days served where there are no violations of the rules and regulations." *People v. Cannon*, 522 N.W.2d 716, 718 (Mich. Ct. App. 1994) (italics in original; underlining added). Effectuating any forfeiture of those automatic credits rests within the jurisdiction of the Sheriff alone.[4] *Id.* In that role, only "the sheriff may, by general rule, [] prescribe how much of the good time earned under this subsection a prisoner shall forfeit for any infraction of the general rules and regulations [the General Rule Method], and for any act of insubordination the sheriff may by special order take away any portion of or the whole of the good time made by any prisoner up to the date of such offense [the Special Order Method]." M.C.L. § 51.282(1). Absent forfeiture of good time by the General Rule Method or the Special Order Method with

and Michigan Constitutions. See *People v. Callon*, 662 N.W.2d 501, 507 (Mich. Ct. App. 2003).

[4] The Legislature requires that any changes to the rules be approved by the local chief judge or chief judges. However, the introduction of judges does not make such a judicial act. A judge promulgating a rule or issuing administrative order, outside of a contested case, is undertaking legislative activity. *Alia v. Mich. Supreme Ct*., 906 F.2d 1100, 1102 (6th Cir. 1990).

appropriate *Wolff* due process, each county jailee is automatically entitled to full credit. *Id.* ("shall be entitled to"). Moreover, as has been established for decades, Michigan sentencing criminal courts lack jurisdiction to "circumvent or nullify the good-time statute" under the guise of "setting a specific term of imprisonment with a set release date." *Cannon*, 522 N.W.2d at 718.

This class action case involves those confined to the St. Clair County jail convicted of criminal contempt. See M.C.L. §§ 600.1701; 769.28. Plaintiffs Michael Schultz and Kevin Lindke, along with hundreds of similarly-situated individuals who had been locked up for far too long pursuant to what will be referred to as the Sheriffs' Contempt Over-Detention Policy, filed this class action lawsuit primarily for damages related to St Clair County's illegal over-detention policy of excessively over-confining jailees—guilty merely of contempt[5]—by ignoring the required sentence reductions under the Good-Time-Credit statute. **First Am. Compl., ECF No. 13.** Akin to false imprisonment, damages are sought on behalf of all individuals during the relevant statutorily-limited time period who were subject to the Contempt Over-Detention Policy and suffered the injury of being imprisoned, detained, or incarcerated longer than permitted by Michigan law.

[5] All other jailees confined to the St. Clair County jail for any other criminal sentences to were entitled to and seemingly received good time credit.

Defendants have violated or were flippant about the Good-Time Credit statute in various ways. First, and most critical to this case, good-time credit was not extended to "*every* prisoner" as required M.C.L. § 51.282. Second, at the relevant times of this lawsuit, no copy of the rules and regulations *regarding good-time* were posted or made readily-reviewable at or around the St. Clair County jail and thus no one (guard or prisoner alike) was enabled to become acquainted with any such rules. **Exhibit N, ¶18**; see also **Exhibit Z** at 5 (only statement about good time is that violations of "work/school pass rules can result in... loss of good time earned"). Third, the Sheriff made it impossible, given the lack of a meaningful written grievance process or method of communication, for any jailee to call to the attention of the sheriff or any of his command deputies the fact that one is entitled to release due to good-time. **Exhibit N, ¶19.** But even when such attention was called, it was ignored. **Exhibit B, ¶7**; **Exhibit N, ¶23.** Why? The reason is the Sheriffs' enacted Contempt Over-Detention Policy.

The Contempt Over-Detention Policy

The operative timeframe of this lawsuit cuts across the dual administrations of Sheriffs Mat King and Timothy Donnellon. Attached are their Contempt Over-Detention Policy regarding the calculation of good-time credit which "need[s] to be computed." **Exhibit K, ¶B; Exhibit L, ¶B**. As

Michigan law provides, good-time credit "is done at a rate of 1 day of goodtime for every 6 days of sentence served." ***Id.*** And critical for this case, the Sheriffs of St. Clair County's Contempt Over-Detention Policy mandated that "[g]oodtime is NOT given on sentences for Contempt." **Exhibit K, ¶B(1); Exhibit L, ¶B(1)**. This policy is facially improper and unquestionably illegal. *Cannon*, 522 N.W.2d at 718 ("every county prisoner shall be entitled" to good time and "there are no exceptions… otherwise"); *ARM v. KJL*, 995 N.W.2d 361 (Mich Ct. App. 2022) lv denied 984 N.W.2d 188 (Mich. 2023) (the sheriff does not have "discretion to set a rule on whether a prisoner is eligible to earn such credit in the first instance").

Plaintiff Michael Schultz

Plaintiff Michael Schultz is a perfect example, among the many, of the harm suffered from Defendants' wrongful policy and the injury that resulted therefrom. He was issued a 25-day sentence for criminal contempt on August 11, 2021 for making unwelcome statements in the courtroom. **ECF No. 45-29, PageID.2206**; **Exhibit C.** He served the entire 25 days. **ECF No. 45-29, PageID.2207; Exhibit B, ¶4**. While the order facially states "no good time," Judge Tomlinson has explained these notations of "no good time" are merely "notifications" for the Sheriff to apply the Sheriff's own policies (and never part of any criminal sentence). **Exhibit E.** This matches with what St Clair

County Circuit Court Chief Judge Michael West explained is the law to at least one defendant in October 2021. Compare **Exhibit F** ("We can't compel good time credit or take it away as a general matter") with *Cannon*, 522 N.W.2d at 718. With the required good-time-credit (which Schultz never lost or had taken from him, **Exhibit B, ¶5**), Michigan law mandated that the actual time of confinement was actually to be only 20 days (because for every six days, he received a one-day credit off his sentence)—or until days' end on August 30, 2021. Yet, pursuant to county and sheriff's office policies and actions, he was unconstitutionally confined and detained in the St. Clair County jail until September 4, 2021. **Exhibit D; Exhibit B, ¶4.**

Plaintiff Kevin Lindke

Plaintiff Kevin Lindke's incarceration background is a bit more complicated. As this Court knows, there is an ongoing contest occurring in Port Huron between government officials of St. Clair County (namely Judge Tomlinson) and Plaintiff Lindke regarding family court decisions preventing Plaintiff Lindke from having contact or a relationship with his daughter. To that end, Lindke has been sent to jail, repeatedly, related mostly to social posts (speech) on his Facebook advocacy group that he created and operates. Judge Tomlinson has repetitively deemed Plaintiff Lindke to have violated issued personal protection orders and Plaintiff Lindke has argued

those orders violate the First Amendment.[6] See *TT v. KL*, 965 N.W.2d 101 (Mich. Ct. App. 2020); see also Francis X. Donnelly, *Michigan Renegade Unnerves the Powerful, Becomes Focus of Supreme Court Case*, THE DETROIT NEWS, Aug 15, 2023 *available at* https://bit.ly/LindkeDetNews. It has been a long and contentious clash with numerous legal cases and months of time by Lindke in local jail.[7]

For purposes of this case, Plaintiff Lindke's confinement history can be divided into two confinement "periods." See **Exhibit Y** (orange and blue). The first relevant period commenced on July 26, 2019 where Plaintiff Lindke was sentenced to ten (10) days confinement to the St. Clair County jail for criminal contempt. **Exhibit O**. With good-time credit, Plaintiff Lindke should have, minimally, been released on August 3, 2019 (with a credit of one day). But because of the challenged policy in this case, Plaintiff Lindke was over-confined and unlawfully jailed until August 4, 2019. **Exhibit N, ¶4.** Thus, he suffered at least one day (but possibly two days[8]) of over-detention in August 2019.

[6] The Court will also note that one of Lindke's federal civil rights cases is currently pending before the United States Supreme Court and was argued on October 31, 2023. See https://www.oyez.org/cases/2023/22-611.

[7] That said, this case does not seek to re-hash anything that happened within those cases but to say it was the catalyst of revealing how the good-time credit policy first was discovered to be inappropriately being applied in St. Clair County.

[8] With the way the Sheriffs apply good-time credit by rounding up, see **ECF No. 45, PageID.2058-2059** (fn.7), it is actually two days.

The second relevant period (March 3, 2021 through February 24, 2022) commenced on March 4, 2021 when Plaintiff Lindke was sentenced to the St. Clair County jail for sixty (60) days.[9] See **Exhibit P**; see also **Exhibit Y**. With good-time credit, he should have been released on April 22, 2021. However, before that date, he was sentenced again on March 30, 2021 for ninety (90) days. **Exhibit Q**; see also **Exhibit Y.** That made his new release date, with good time, as June 12, 2021. Plaintiff Lindke was entitled to good-time credit because the Sheriff never revoked any of Lindke's automatically-received good-time credits either by adjudication under the General Rules Method or by order under the Special Order Method while Lindke was jailed. **Exhibit N, ¶¶6, 10.** With good-time, during June 13-21, 2021, Lindke should have been freed or otherwise eligible for immediate release. However, due to the Contempt Over-Detention Policy, **Exhibits K and L**, Defendants kept Plaintiff Lindke illegally confined far beyond the June 12 outdate.

Then again, on June 22, 2021, Judge Tomlinson sentenced Lindke for another ninety-three (93) days for criminal contempt. **Exhibit R**; see also **Exhibit Y**. Further sentencings happened in a daisy chain fashion for the

[9] Defendants did not attach the sentencing order for March 4, 2021 issued by Judge West.

balance of 2021 and into early 2022. See **Exhibit Y** (table). However, Defendants concede, pursuant to the Contempt Over-Detention Policy, various dates of actual confinement occurred which never should have—i.e., the period of two (2) days on October 13, 2021 to October 14, 2021; and a period of five (5) days being December 30, 2021 through January 3, 2022. **ECF No. 45, PageID.2059**.

Given these dates and timeline, Lindke was illegally over-detained within the St. Clair County jail at least one (1) day (but seemingly two (2) with rounding) in August 2019 and seven (7) days being June 13-21, 2021, two (2) days in October 2021, and five (5) days in late December 2021 through January 2022 due to the Contempt Over-Detention Policy. These were denials of constitutionally protected liberty rights when jailing beyond the maximum lawful sentence with required good-time credit.

Case Dismissal Attempt No. 2

This Court previously denied dismissal of all the federal claims in this matter by largely rejecting similar defense arguments after extensive briefing. **ECF No. 32.** After limited initial discovery, Defendants have now moved for summary judgment. **ECF No. 45.** This opposition now follows.

STANDARD OF REVIEW

When Defendants file for summary judgment pursuant to Rule 56 of

the Federal Rules of Civil Procedure, they have to establish not one, but *two* things: 1.) that there is no genuine dispute as to any material fact and 2.) movants are entitled to judgment as a matter of law. The Court "must view the evidence and any inferences that may be drawn from the evidence in the light most favorable to" each Plaintiff as the "nonmoving party." *Redding v. St. Eward*, 241 F.3d 530, 532 (6th Cir. 2001). At this stage, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Jackson v. VHS Detroit Receiving Hosp., Inc*., 814 F.3d 769, 775 (6th Cir. 2016).

COUNTER ARGUMENT

I. No Approval by Judges or Chief Judge

As an assumed foundation for summary judgment, Defendants asserted "[f]or a period of an unknown number of years prior to Sheriff Donnellon's election, the Jail maintained a *judge-approved policy* that stated 'Goodtime is NOT given on sentences for Contempt or to inmates sentenced to serve weekends'" citing a policy titled as *Outdate, Sentence Reductions and Goodtime Computation* as issued by Sheriff King. **ECF No. 45, PageID.2028**. The reason for this statement is seemingly because M.C.L. § 51.281 provides—

> The sheriff of any county may prescribe rules and regulations for the conduct of prisoners in his custody, which rules and regulations shall

> be submitted to the circuit judge or judges in said county or circuit for approval, and upon the endorsement of such judge or judges the said rules and regulations shall be deemed to be effective as far as this act is concerned: Provided, That in counties located in any judicial circuit having more than 1 circuit judge, where 1 of said judges shall be designated as presiding judge, the approval and endorsement of said rules and regulations by said presiding judge shall be sufficient to place said rules and regulations in force and effect.

St. Clair County is a county which has a "chief" or presiding judge given that multiple judges serve the 31st Circuit in St. Clair County. M.C.L. §§ 600.235, 600.532. Oddly missing from the motion's presentation is Defendants' evidence that the policy (which Defendants dubiously assume to be a "rule[] and regulation[] for the conduct of prisoners in [the sheriff's] custody" under M.C.L. § 51.281) was ever actually judicially approved before being signed into effect by Sheriff King (or his predecessor). The closest Defendants come is an affidavit from a jail administrator from years ago that said a single judge, not seemingly in any role as a chief judge, contacted the jail and "informed" jail personnel (who is unclear) that "the Jail was not supposed to be providing good time credit to individuals sentenced on contempt charges." **ECF No. 45, PageID.2028**. According to the vaguely-worded affidavit, the Contempt Over-Detention Policy "was implemented" at an unknown date thereafter. **ECF No. 45-4, PageID.2078**. In short, it is not properly established that either the chief judge or all the judges reviewed, approved, and endorsed any such policy. Instead, "[t]his policy and procedure will remain in effect until

amended or repealed *by the Sheriff, Undersheriff or Jail Administrator*" with no mention of judges or chief judge. **ECF No. 45-5, PageID.2082**.

Because of the insufficiency of the proffered proofs, this Court cannot assume or treat the Contempt Over-Detention Policy as being any sort of "*judge-approved"* rule and regulation, pursuant to M.C.L. § 51.281, for the conduct of prisoners in the sheriff's custody.[10]

"When a party moves for summary judgment and suggests that no trialworthy issues exist, that party ordinarily must support the motion with affidavits or other materials of evidentiary quality." *Federal Refinance Co., Inc. v. Klock*, 352 F.3d 16, 30 (1st Cir. 2003). Summary judgment must be denied "where the movant 'fail[s] to fulfill its initial burden' of providing admissible evidence of the material facts entitling it to summary judgment." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970). Here, Defendants failed to have proper evidence for this Court to even deem the policy as judge-approved. Plaintiffs thusly object to Defendants' mere assumption. As such, the Sheriffs' policies have to be treated as ones of their self-made creation—and not ones that were within the statutory requirements under M.C.L. § 51.281.

[10] In actuality and with a careful reading, the policy on how good-time credit is to be calculated is not related to the conduct *of prisoners* but rather related to the conduct *of jail officials* in the performance of their duties.

II. Criminal Contempt Is An "Ordinary Crime"

Defendants first argue the Good-Time-Credit statute does not apply to imposed terms of confinement on criminal contempt sentences. That argument has already been explicitly rejected by Michigan's courts. *ARM*, 995 N.W.2d at 361.[11] There, a charged PPO violation by Lindke (i.e. KJL) was enforced by criminal contempt and good-time was adjudicated as an entitlement.[12] The Michigan Supreme Court declined further review. *ARM*, 984 N.W.2d at 188.

Throughout every step of that appellate case, Sheriff King tried to intervene and offered briefs for his view on non-applicability of the Good-Time Credit statute for criminal contempt convictions. **ECF No. 48-2; ECF No. 48-4**. Tellingly, the arguments were not sought to clarify the understanding and application of the Good-Time-Credit statute because that was done nearly twenty years earlier in *Cannon*. In *Cannon*, it became established Michigan precedent that "*every* prisoner whose record shows

[11] In Michigan, unless overruling clear and uncontradicted case law, appellate decisions like *ARM* are given full retroactive effect. *Hyde v. Univ. of Mich. Bd. of Regents*, 393 N.W.2d 847, 854 (Mich.1986).

[12] If, in fact, Defendants' assertions that good-time credit is not available for those convicted of contempt, how could they have, in good faith, changed their policies in January 2022? The Court inquired about this contradiction previously, and Defendants lacked a sufficient answer. **ECF No. 36, PageID.1908-1911** ("How do you reconcile what your client is actually doing with your constitutional arguments."). In short, regardless of the notation whether good-time was listed or not, the Sheriff was denying good-time pursuant to the enacted policy. **Exhibits K and L**. This is perhaps why Defendants, correctly, never made a *Monell* challenge.

that there are no violations of the rules and regulations shall be entitled to a reduction from his or her sentence as follows: 1 day for each 6 days of sentence." *Id.* at 717 (citing M.C.L. § 51.282(2) with emphasis in original). To that end, no criminal sentencing court has the jurisdiction to "deprive a prisoner of good-time credit to which the prisoner may be entitled under statute before that prisoner has even begun serving the term of imprisonment" and those who are jailed contrary to the statute "may claim that a deprivation of good-time credit is a denial of a protected liberty interest without due process of law." *Id.* at 718. And most importantly, it is "the *sheriff"* who has sole jurisdiction "to prescribe how much good-time is to be forfeited for any infraction of the general rules and regulations." *Id.* (emphasis in original).

Because every criminal court judge is presumed to know the law, *People v. Alexander*, 599 N.W.2d 749, 753 (Mich. Ct. App. 1999), such any judicial directive about good-time is outside the state sentencing court's jurisdiction and thus can never be part of or treated as a criminal sentence as solely a function of the county and its jail operations. In fact, as Judge Tomlinson has explained, those notations "no good time" were never part of any sentence but merely were notifications for the Sheriff to apply his own policies. **Exhibit E.** This makes sense otherwise judges in St. Clair County

would have *knowingly* been breaking the law—something the legal system never assumes.

Unphased, Defendants point to the law of other states about how those foreign jurisdictions treat criminal contempt differently under their dissimilar good-time-credit statutes. It is a red-herring as we are here about Michigan law. In Michigan, "criminal contempt is a crime in the ordinary sense." *People v. Joseph*, 179 N.W.2d 383, 388 (Mich. 1970); see also *People v. Johns*, 183 N.W.2d 216, 219 (Mich. 1971) (criminal contempt proceedings must be "in line with the standard of due process familiar to all criminal proceedings"). So Defendants are just flat wrong when asserting that a Michigan "contempt sentence is a different animal from that of a criminal sentence." **ECF No. 45, PageID.2040.**

The Michigan Legislature has enacted a statute which recognizes contempt as a crime and prescribed the applicable criminal sentence that can be imposed—a fine of not more than $7,500.00 or imprisonment which may not exceed 93 days, or both, in the discretion of the court. M.C.L. § 600.1715(1); see also M.C.L. § 600.2950a(11)(a)(i) (same). As much as Michigan Legislature has prescribed the applicable sentence for criminal contempt, it equally can reduce the term of total confinement. Binding Michigan case law also confirms the same.

In *Langdon v. Judges of Wayne Cir. Ct.*, 43 N.W. 310, 313 (Mich. 1889), the Michigan Supreme Court explained that while contempt powers can never be totally taken away by the Legislature, the latter, by statute, can "prescribe[] what punishment may be inflicted" by courts of record who make findings of contempt. *Id.* at 313. Contrary to Defendants' assertions, Michigan's highest court has already confirmed such a limitation by statute is not an "attempt[] to curtail the power" of criminal contempt. *Id.*[13] Such a notion is not a vestige of yester-year. More recently in *In re Estate of Bradley*, 835 N.W.2d 545 (Mich. 2013), the Michigan Supreme Court re-explained that any "injection of separation of powers principles" as Defendants are doing here "is misplaced." *Id.* at 395 fn.65. Instead, the rule of *Langdon* was affirmed. *Id.* (citing *Langdon* and explaining its holding as the law

[13] Defendants spend most of their arguments citing to and discussing Huff. *Huff* was a case involving the first time the state's highest court needed to determine if circuit judges before this Court undertook contumacious disobedience of orders of the Supreme Court. In discussion on the circumstances leading up and generally on what to do with contumacious state court Judge Huff, the Supreme Court briefly recited the history of contempt is an "inherent power in the courts" that exists in common law and by statute and stated the single sentence upon which Defendants seize—contempt, "being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." The singular sentence is incomplete and misses the mark. The Michigan Legislature, by the good-time statute, has not and never has taken away the judiciary's authority to punish for contempt. It remains that the judiciary's prerogative to impose a criminal adjudgment of criminal fault on any person in contempt of court. All the good-time statute does is provide or outline the total length of confinement to be inflicted—just like any other crime in Michigan. This is because, in Michigan, "criminal contempt is a crime in the ordinary sense." *Joseph*, 179 N.W.2d at 388.

"recognizing that the Legislature 'regulates the mode of proceeding and prescribes what punishment may be inflicted'"). It is also the holding of at least one Michigan Court of Appeals decision as well. *Catsman v. Flint*, 171 N.W.2d 684, 688 (Mich. Ct. App. 1969) ("even though a court's power to punish for contempt has been conceived of as inherent and not created by statute, where the legislature has laid down prescriptions for the punishment of contempt, *courts must act within the framework and limits of the statutory enactment.*" emphasis added). So, for Defendants' argument to work, this Court must effectively overrule *Langdon*, *Estate of Bradley*, and *Catsman*. As a federal court, this Court properly defers to the Michigan court's explanation of how its own laws and governmental *apparatuses* work. See **ECF No. 36, PageID.1889-1890** (explaining the Michigan appellate court are the "final arbitrators" of state jurisprudence and this federal trial court has "to follow what the Supreme Court of Michigan says the law is"). And most tellingly, when the Sheriff previously invited the state's highest court to adopt its view as part of the appeal in *ARM*, it denied the same.[14,15]

[14] Defendants also suggest that perhaps the judiciary may "determine whether to accept the limitations on its powers passed by the legislature when dealing with those inherent powers." If that is arguendo true, then Michigan's judiciary has done so with *Langdon* and *Bradley Estate* and when not taking up the Sheriff King's repeated intervention requests to overrule the same.

[15] Moreover, this argument fails the straight-face test. If, in fact, Defendants are correct and the Legislature lacks the power to define the length (or shortness) of a

III. Quasi-Judicial Immunity

Next, those individual Defendants named in their personal capacity[16] argue because Plaintiffs' judgments of sentence say "no good-time" that they had no choice but to follow that "sentence" and thus are protected by quasi-judicial immunity. Quasi-judicial immunity is personal immunity that only extends to a person "who acts as the judge's designee, and who carries out a function for which the judge is immune." *Johnson v. Turner*, 125 F.3d 324, 333 (6th Cir. 1997). It is a function-based test, not one premised on title. See *Forrester v. White*, 484 U.S. 219 (1988).

This doctrine derives from the notion that judges are "absolute immune" from civil liability "for acts done by them *within their judicial jurisdiction*." *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974) (citing *Pierson v. Ray*, 386 U.S. 547, 554 (1967)) (emphasis added). Absolute immunity thereafter extends to individuals as "quasi-judicial" immunity who perform functions "closely associated with the *judicial* process." *Duvall v. Cty.*

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sentence under contempt, why would and how could Sheriff King change his policy in January 2022 (**ECF No. 45-12, PageID.2101**) to now award good-time for contempt sentences? If what they are saying is true, then Defendants could have *never* changed their own policy. Actions speak louder than false words.

[16] As a threshold issue, Defendant St. Clair County (and those defendants named in the official capacity) cannot assert this form of immunity. *Capra v. Cook Cnty. Bd. of Review*, 733 F.3d 705, 711 (7th Cir. 2013); see also *Gallegos v. Bernalillo Cnty. Bd. of Cnty. Comm'rs*, 278 F.Supp.3d 1245, 1271 (D.N.M. 2017) ("Bernalillo County does not enjoy quasi-judicial immunity, because the doctrine protects people and not entities.").

of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001) (emphasis added); see also *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994) ("absolute quasi-judicial immunity extends to those persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial officer who is immune."). However, such immunity is vitiated when the acts undertaken are done "in the clear absence of jurisdiction." *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987).

The fatal problem for Defendants is that "no-good-time" was never part of the criminal sentence and the application of good-time credit is not a *judicial* function over which local judges have jurisdiction.[17] *Cannon* explained, since at least 1994, that—

> The Legislature has stated that every county prisoner *shall* be entitled to a reduction of sentence of one day for every six days served where there are no violations of the rules and regulations… ***Further, the sheriff is to prescribe how much good-time is to be forfeited for any infraction of the general rules and regulations.***

Cannon, 522 N.W.2d at 718. As such, a Michigan "trial court[s]" are deprived of any jurisdiction to "deprive defendant of his statutory right to earn good-time credit by setting a specific term of imprisonment with a set release

[17] See *Sample v. Diecks*, 885 F.2d 1099, 1114 (3d Cir. 1989) ("when a policymaking official establishes a constitutionally inadequate state procedure for depriving people of a protected interest and someone is thereafter deprived of such an interest, *the official* has 'subjected' that person to a due process violation.").

date…" *Id.* This is true even if any local chief judges concur with such policy. *ARM*, 995 N.W.2d at 372.

Stated slightly differently, immunity is only available when acting "pursuant to a *valid* court order." *Cooper v. Parrish*, 204 F.3d 937, 948 (6th Cir. 2000). When an official acts under the guise of a "tainted court order," immunity does not protect. *Rieves v. Town of Smyrna*, 959 F.3d 678, 698 (6th Cir. 2020); *Tolu v. Reid*, 639 S.W.3d 504, 532 fn.24 (Mo. Ct. App. 2021). Any order regarding the denial of good time is an invalid order as to that portion. A Michigan trial court is barred from (i.e. has no jurisdiction in) ordering any prisoner to be deprived "of good-time credit to which the prisoner may be entitled under statute before that prisoner has even begun serving the term of imprisonment." *Cannon*, 522 N.W.2d at 718. As such, the "no good time" language is legally not a sentence of any court "regardless of any consent by the circuit court's chief judges" or the sheriff himself. *ARM*, 995 N.W.2d at 372.[18]

Factually, this understanding was equally understood by the judges in St. Clair County. Such was not part of the sentences, but is merely a notification to the Sheriff—

[18] The undersigned has filed *Freedom of Information Act* requests with dozens of Michigan county sheriff's offices seeking to find if any other sheriff's office ever had a like-kind policy. Not a single one has revealed itself and Defendants submitted nothing either.

> "[E]ntitlement to good time is governed by statute, specifically MCL 51.281 et. seq. Under that statutory scheme, the county sheriff may prescribe rules and regulations governing the conduct of prisoners in his custody, with the approval of the chief judge of the circuit court. MCL 51.281. The statute provides for credit for one day for each 6 days of the sentence. MCL 51.282. The county sheriff is then responsible for the administration of the program, and given broad authority to maintain a record of any infractions which may occur and determining which infractions should result in a reduction of good time, or whether "especially good conduct" should result in a reinstatement of good time credits previously reduced.
>
> ***
>
> The St. Clair County Sheriff has a long-standing policy, which has been implemented with the consent of various chief judges of the 31st Circuit Court, that prisoners serving sentences for contempt of court are not entitled to earn good time under MCL 51.281 et. seq. *This court's inclusion of its statement "no good time" on the various judgments of sentence is in recognition of that long-standing policy.* ***It serves to notify the county sheriff of the fact that the sentence is being imposed for contempt****, which permits the county sheriff to implement the statutory scheme consistently with the rules and regulations which the county sheriffs have developed and administered for years*.
>
> ***
>
> **The court, in this matter, has no ability to order the county sheriff to grant [ ] a certain amount of good time or to even grant [] good time.** Under the statutory scheme, the county sheriff is given the sole responsibility of administering the program. [The proper] recourse is to pursue a remedy with the county sheriff, not the Court.

Exhibit E; see also **Exhibit F** (Chief Judge West: "we can't compel good time credit or take it away as a general matter"). In other words, the notation of "no good time" is never an order to the Sheriff or is somehow part of a sentence, but merely a *notification*. As such, no one is entitled to quasi-judicial immunity when not acting pursuant to a valid order. *Cooper*, 203 F.3d

at 948 (immunity can only applies "when that official acts pursuant to a valid court order…"). So, in short, the "judgments" Defendants purport to rely upon were never sentences or valid court orders and, even if Defendants thought it was, *Cannon* expressly confirmed it could have never legally been within the jurisdiction of the trial courts of St. Clair County for the Sheriff to reply upon. This understanding makes sense because even when criminal contempt judgments from judges other than Judge Tomlinson did not have the "no good time" notification, Defendants equally and completely detained jailees by refusing mandatory good-time credit. See **Contempt Judgments, ECF No. 13-4, 13-15** (no notation regarding good time and still refusing the credits).

The Sheriff's arguments are akin to the highly disfavored 'just-following-orders' or 'Nuremberg' defense—not being responsible for one's own actions because someone else has ordered otherwise. See *O'Rourke v. Hayes*, 378 F.3d 1201, 1210 fn.5 (11th Cir. 2004). It is nearly always rejected because "under the Supremacy Clause, public officials have an obligation to follow the Constitution even in the midst of a contrary directive…" E.g. *Kennedy v. City of Cincinnati*, 595 F.3d 327, 337 (6th Cir.

2010). If any sheriff thought[19] that such were honestly part of a criminal sentence on the part of the St. Clair County judges, the Sheriff would have had the duty to reject the same given the binding *Cannon* decision and not jail those longer than the law allows because he "has a duty to ensure that inmates are timely released from prison." *Porter*, 659 F.3d at 445. He also owes his "allegiance to the Constitution first, federal laws second, and state laws third." *Alleghany Corp v. Haase*, 896 F.2d 1046, 1055 (7th Cir. 1990) (Easterbrook, J, concurring). Given *Cannon*, doing nothing in the face of the purported contradiction was never an option.[20]

As such, those charged with enforcing a notification, not an order, from a court without jurisdiction to deny good-time cannot rely on quasi-judicial immunity to be excused from answering in damages. Despite *Cannon*, Defendants illegally jailed Plaintiffs longer than the law allows and were indifferent to their rights otherwise. Summary judgment on this basis must be denied.

[19] If he did such in direct contradiction to *Cannon*, his indifference to the rights of those under its charge makes his actions even more egregious and unconstitutional. However, we do not know either way because nothing was submitted as part of their only one allowed summary judgment motion as to the current or former sheriffs' understanding.

[20] But even if such could somehow excuse the Sheriffs' own liability, it does not excuse St. Clair County (as defendant) for its liability for these violations. There is no good faith defense ever available to unconstitutional policies of a local government that injure a citizen.

IV. *Heck*-Bar Doctrine

Defendants next try to re-invoke the *Heck* doctrine. "The *Heck* doctrine applies only where a § 1983 claim would 'necessarily' imply the invalidity of a conviction." *Schreiber v. Moe*, 596 F.3d 323, 335 (6th Cir. 2010) (clean up). In over-detention damages cases, the *Heck* bar does not apply. *Hicks*, 81 F.4th at 506 ("*Heck* does not bar claims by an overdetained prisoner who 'does not challenge the validity of his sentence, [but] merely the *execution* of his release.'"). "'*Heck* is no bar' where success on a § 1983 claim is based on the period a prisoner 'was held beyond his original sentence [because] it would not invalidate the conviction or its attendant sentence.'" *McNeal v. LeBlanc*, __ F.4th __, __; 2024 U.S. App. LEXIS 392 (5th Cir. 2024) (quoting *Hicks*, 81 F.4th at 506). Here, this lawsuit is not seeking to overturn or invalidate the conviction of criminal contempt—a point that neither side disputes. As such, *Heck* is no bar.

Defendant finally suggests that "Plaintiff Schultz seeks relief that necessarily would invalidate his underlying contempt sentence which expressly stated he was not entitled to good time credit while serving his 25 day sentence." **ECF No. 45, PageID.2055**. But, again, "no good-time" is not part of the sentence; Defendants falsely assume otherwise. Judge Tomlinson has expressly confirmed that that the notation in such judgments

in St. Clair County only "serves to notify the county sheriff of the fact that the sentence is being imposed for contempt" so that sheriff can "implement the statutory scheme" as he, as a judge, "has no ability to order the county sheriff to grant [] a certain amount of good time or to even grant [] good time." **Exhibit E.** Summary judgment based on *Heck* thusly fails.

V. Failure to Request to be Released

Defendants next seek dismissal because, in their view, Plaintiff Schultz never demanded (and Plaintiff Lindke demanded late) to be released and thus the federal remedies for over-detention are barred. This makes little sense, is contrary to the facts, and, more importantly, misses the mark.

Defendants are suggesting that the ability to be entitled to good-time-credit is conditioned upon formal demands being proffered by the jailed contemnors to be released. Such requests, which were actually made (e.g. **Exhibit B, ¶¶6-7**; **Exhibit N, ¶¶23, 31**[21]), were flatly ignored. But regardless — and the whole point of this lawsuit — the adopted and implemented policy

[21] The only reason there is documentation in the fall of 2021 about the denial of good time is because the prior bad-faith practice of hiding grievance forms was replaced when Securus was tasked with creating a communications and grievance system starting in 2021. See **Exhibit BB at 1**; **Exhibit N, ¶¶18-31.** This was not altruistic; the tablet system also became a new revenue source for the sheriff. **Exhibit AA** (receiving 78% rate of compensation on gross revenue of intrastate calls with a guaranteed minimum annual amount of $190,000; 78% of gross revenue from Secure Call Platform; 50% of revenue from video visitation services); **Exhibit BB at 3** ("[Securus] will [also] pay [Sheriff] a commission of 20% on each redeemed stamp based on the Stamp Book Price").

of Defendants was to (illegally) *automatically* and *always* preclude any entitlement to good-time credit. So even if jailees had asked to be released, Defendants had an adopted and uniformly imposed policy to strictly and absolutely refuse good-time credit (and refuse the release) in all circumstances where the incarcerated was convicted of criminal contempt. **Exhibits K and L**.[22] The circumstances are not mere calculation errors—it was an intentionally-created, across-the-board policy. And when an illegal policy[23] is the "moving force" behind the constitutional violations, Section 1983 provides remedies. E.g. *Nugent v. Spectrum Juvenile Justice Servs.*, 72 F.4th 135, 138 (6th Cir. 2023). So when Plaintiffs had each inquired[24] about receiving good-time credit, the illegal policy made any such demand fall on totally deaf ears. The wrong here was the application of the official

[22] Facially, it is unclear when Defendant Mat King actually signed **Exhibit L**, despite it being dated 2017, because he was not appointed sheriff until November 10, 2021. See https://www.mlive.com/news/flint/2020/11/new-sheriff-appointed-in-st-clair-county.html (**Exhibit M**). It is believed he signed this policy, officially, immediately after becoming sheriff to continue the formal policy seamlessly since at least 2017.

[23] In other cases around the county, most litigators have been forced to use the indifference theory of *Monell*. Here, this case is easier and clearer because there is a formally adopted policy. *Monell* is satisfied with the existence of a written policy. *Gregory v. City of Louisville*, 444 F.3d 725, 755 (6th Cir. 2006) ("Plaintiff need not present evidence of a pattern of complaints consistent with his own if he presents evidence of a written policy unconstitutional on its face.").

[24] Plaintiff Schultz indicated he spoke with a guard about getting released for good-time but that inquiry went nowhere likely due to the existence of the adopted policy of no good-time credit for those serving for criminal contempt. **Exhibit B, ¶¶6-7.** Plaintiff Lindke inquired throughout the summer of 2021 and later by a jail communication when that system was first installed. **Exhibit N, ¶23.**

policy; the subsequent injury was being over-detained as a result of the wrong. Defendants are confusing those different concepts.

As a secondary line of consideration, it is noteworthy that the claims being made are federal ones. When bringing a federal Section 1983 claim, the state cannot impose prerequisites and hoop-jumping conditions prior to asserting the federal claim when Congress itself did not add it. For example, in *Felder v. Casey*, Wisconsin tried to require victims injured by unconstitutional conduct to give notice to their violators in order to afford the violator an opportunity to consider the requested relief. 487 U.S. 131 (1988). The US Supreme Court struck down the prerequisite explaining such state-level "requirements are pre-empted as inconsistent with federal law." *Id.* at 134. The same logic fails here too.

Defendants' argument might go slightly further when asserting that jailees must "ask to be released based upon good time credit once they are eligible for such release" based upon the language of the state statute itself. Defendant cites to no precedent for this extraordinary responsibility to be placed on them when their liberty has been taken. As best understood, Defendants are seemingly suggesting an exhaustion requirement needs to be fulfilled *before* bringing a federal civil rights claim. If that is the argument, it fails. *Kanuszewski v. MDHHS*, 927 F.3d 396, 409 fn.5 (6th Cir. 2019) ("The

federal remedy under § 1983 is supplementary to any state remedies, and the latter need not be first sought and refused before the federal one is invoked," citing *Monroe v. Pape*, 365 U.S. 167, 183 (1961)).

Finally, Defendants also might be suggesting that the notice requirement, which is a part of the statute that purports to give just the Sheriffs immunity, places the responsibility of designating the date of release on confined contemnor and not the Sheriff. But that is not right either. There is "no authority that requires a 'protest' in order to trigger a claim for the deprivation of liberty without due process. *Upshaw v. Mich. Dep't of Corr*., No. 1:12-cv-1300, 2016 U.S. Dist. LEXIS 152460, at *20-21 (W.D. Mich. Nov. 3, 2016). The "jailer," not the jailed, has the "duty to ensure that inmates are timely released from prison." *Porter*, 659 F.3d at 445.

Given all ways of thinking, Defendants' arguments fail.

VI. Lindke's "Several Adjudicated Rule Violations"[25]

Next, Defendants argue that because there is an alleged history of rules violations by Plaintiff Lindke that he has previously lost his good-time-credits. Again, this misstates the circumstances.

The US Supreme Court in *Wolff v. McDonnell* involved the application of Nebraska's version of a good-time-credit statute. There, the "chief

[25] This argument by Defendants does not apply against Plaintiff Schultz.

executive officer of each penal facility is responsible for the discipline of inmates" and provided the authority to "order that a person's reduction of term" via "good-time credit" can "be forfeited or withheld." *Id.* at 546-547. A class action challenged the practices and procedures regarding the taking of good time as violating Due Process. After acknowledging that the "Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison," where a statutory right to good time has been provided while at the same time recognizing that its deprivation is a sanction authorized for major misconduct, "minimum procedures appropriate under the circumstances are required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated." *Id.* at 557. In other words, before government officials can take or remove credits, the officials must provide (1) advance written notice of the disciplinary charges; (2) an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3) issue a written statement by the factfinder of the evidence relied on and the reasons for the disciplinary action before issuing the order removing the credits. *Id.* at 563-567.

The fatal problem for Defendants here is that while they have, at best, presented what they assert as an array of rules violations by Lindke that

might arguendo have warranted the ordered reduction or taking of good-time credits, **ECF No. 45, PageID.2057**, they have not presented any evidence that the Sheriff *actually* ordered or *actually* took away the credits at the time of adjudication after providing due process. See **ECF No. 45-24, PageID.2187; ECF No. 45-25, PageID.2189; ECF No. 45-26, PageID.2191; ECF No. 45-27, PageID.2195; ECF No. 45-28, PageID.2199** (imposing various forms of discipline but not a single instance of ordering the cancelling or forfeiting of good-time credit). As such, no good-time credits were ever actually taken and thus Plaintiff Lindke was, contrary to Defendants' view, fully "entitle[d]" to all "good time credit" at the earlier out-date. **ECF No. 45, PageID.2058**. Defendants' argument otherwise fails.

VII. Lindke's "Overlapping Sentences" and Bonds [26]

Defendants argue that Plaintiff Lindke's claims regarding the challenge to the Contempt Over-Detention Policy is a pointless exercise because there was never a time he was entitled to be released where he was not being held on other bond orders (for which Lindke had not posted). The history looks like this:

[26] This argument by Defendants also does not apply against Plaintiff Schultz.

Sentence Date	Out-Date without Good-Time Credit	Out-Date with Good-Time Credit	Bond Imposed Dates	$25,000 Bond *Case No. 20-P-06222-FY*	$10,000 Bond *Case No. 21-M-00496-FY*
July 26, 2019 (10 days)	August 4, 2019	August 2 or 3, 2019	*No Unposted Bond in Effect*		
March 4, 2021 (60 days)	May 1, 2021	April 22, 2021	March 4, 2021 (Arraignment)	$25,000 cash surety bond set at March 4, 2021 arraignment	$10,000 cash surety bond set at March 4, 2021 arraignment
March 30, 2021 (90 days)	June 27, 2021	June 12, 2021		Bond Left Intentionally Unposted by Lindke	Bond Left Intentionally Unposted by Lindke
June 22, 2021 (93 days)	September 22, 2021	September 6, 2021			
July 29, 2021 (93 days)	October 29, 2021	October 13, 2021			
September 15, 2021 (30 days)	October 14, 2021	October 9, 2021			
October 15, 2021 (93 days)	December 30, 2021	January 15, 2022			
November 29, 2021 (Time Served)	n/a	n/a	November 29, 2021	Bond Terminated	Bond Terminated
January 4, 2022 (93 days[27])	April 6, 2022	Would Have Been March 21, 2022	*No Unposted Bond in Effect*		

Confinement Period No. 1 (Orange): Lindke was jailed continuously from July 26, 2019 to August 4, 2019

Confinement Period No. 2 (Blue): Lindke was jailed continuously from March 3, 2021 (arrested) to February 24, 2022 (MCOA Ordered Bond)

[27] The Michigan Court of Appeals granted Lindke's motion to post bond pending appeal on February 24, 2022 directing Lindke be released from St. Clair County Jail upon the posting of a $10,000 personal-recognizance bond. **ECF No. 45-36, PageID.2262**. The bond was granted largely on the assertion that Judge Tomlinson "may not [] impose 'de facto' consecutive sentences by delaying adjudication and sentencing upon individual counts in order to achieve consecutive sentencing." **ECF No. 45-35, PageID.2225**. The timeline above suggests that was occurring. There is an investigation related to the same. See e.g., https://www.facebook.com/groups/2845344492357419/permalink/4485414981683687/.

Given the relevant dates and timeline, Lindke was, at minimum, illegally over-detained to the St. Clair County jail for at least one day (but likely two) in August 2019 (from the July 26, 2019 sentence) when not otherwise subject to any possible withholding on Defendants' unposted-bond-holding theory. That is enough to make Plaintiff Lindke a proper party with a proper claim.

Defendants further conceded there were various days in 2021 when Lindke was jailed under the Contempt Over-Detention Policy during the second confinement period. This includes seven (7) days being June 13-21, 2021; two (2) days being October 13 and 14, 2021; and five days in late December 2021 through January 2022. See **Exhibit Y**. These were denials of liberty when jailing beyond the maximum lawful sentence of confinement legally allowed (given required good-time credit). Defendants' illegal Contempt Over-Detention Policy kept him wrongfully confined.

Defendant has zero 'otherwise-pending-unposted-bond' argument for the August 2019 over-detention. In other words, regardless of whether Lindke had other matters that he could have arguably been held-on in the summer of 2021, it has no bearing on the denial of good-time under the Contempt Over-Detention Policy in August 2019. This over-detention by at least one day (but likely two) is more than enough to continue to pursue this case.

The Two Bonds of 2021

However, in what appears to be a proximate-cause argument, Defendants suggest that while they committed a wrong, there was no injury for the over-detentions in the summer of 2021 because Lindke would have been held on the unposted $25,000 bond in Case No. 20-P-06222-FY and the unposted $10,000 bond in Case No. 21-M-00496-FY. Plaintiff Lindke disagrees for two reasons.

First, Defendants misunderstand the differences between the wrong versus the injury that flows from the wrong. The *wrong* in this case is existence, adoption, and application of the Contempt Over-Detention Policy. Being over-detained (i.e. being kept in jail longer than the law provides) is the *injury* that flowed from the Contempt Over-Detention Policy. This is important because the existence of the wrong does not excuse all available remedies. Even if Lindke is dissimilar to someone who would have been able to walk out of jail but for the Contempt Over-Detention Policy, Lindke is still nevertheless entitled *at least* to nominal damages, *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) ("nominal damages provide the necessary redress for a completed violation of a legal right."); *Carey v. Piphus*, 435 U.S. 247, 266 (1978) (nominal damages required for due process violation), and a chance to ask for and the jury to award punitive

damages, see *GC v. Owensboro Pub. Schs*., 711 F.3d 623, 634 (6th Cir. 2013) ("[e]ven if [a plaintiff] cannot establish compensable damages, he may be entitled to nominal damages" and "punitive damages sometimes attach to an award comprised solely of nominal damages"). And whether Lindke is unique in being one entitled to nominal (instead of compensatory) damages rather than a more traditional jailee who should have been able to walk out the jail (but was confined), it really makes no difference—all contemnors equally sat illegally confined in the St. Clair County jail by being equally denied any good-time credit as a result of the Contempt Over-Detention Policy. Unfortunately, some suffered greater than others but this class case can still completely deal with the same. See *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig*., 722 F.3d 838, 854 (6th Cir. 2013) ("no matter how individualized the issue of damages may be, determination of damages may be reserved for individual treatment with the question of liability tried as a class action"). And what damages a person is entitled is a jury question and, at this motion's posture, "the judge's function is" solely "to determine whether there is a genuine issue for trial" before the *Lindke* jury. *Jackson*, 814 F.3d at 775.

All that said, even if we take Defendants' bond argument one step further, the argument still fails as it was "because of" the Contempt Over-

Detention Policy that Lindke purposely decided *not to post bond* in those other cases because, doing so, would have been a waste of his money. **Exhibit N, ¶¶13-17.** If he had pre-posted monies required for the $25,000 bond in Case No. 20-P-06222-FY and the $10,000 bond in Case No. 21-M-00496-FY to allow his release, the Contempt Over-Detention Policy *still* would have kept him imprisoned and confined at the St. Clair County jail on June 13, July 13-21, October 13-14, and December 30, 2021 through January 3, 2022. It was not the bonds that solely kept him; it was the Contempt Over-Detention Policy. So regardless if the bonds were posted or not, Defendants' over-detainment policy illegally kept him locked up. So Lindke made the most rational (and frankly only) choice he had in the face of the active and injury-inflicting Contempt Over-Detention Policy—he involuntarily stayed in jail. As his declaration confirms, 'but for' the Contempt Over-Detention Policy, he *would have* posted the bonds to secure his release during these periods, but since it existed, it made to no sense to do so.[28] **Exhibit N, ¶¶13-17.** Thusly, the existence of unpaid bonds for release is not a bar to all relief for the illegal Contempt Over-Detention Policy[29] Summary

[28] When the Michigan Court of Appeals provided a $10,000 PR bond (with tether) and the illegal Contempt Over-Detention Policy was not a barrier, he promptly utilized it—just as he similarly would have in the summer of 2021. **ECF No. 45-36, PageID.2262**.

[29] Despite this, Defendant argues that those periods where Lindke was entitled to be free of confinement but was not due to the existence of the illegal policy don't apply

judgment should be denied.

VIII. Immunity by State Statute

Next, Defendants' summary judgment motion re-raises the already-failed argument that the Good-Time Credit statute can immunize the Sheriff Defendants[30] from federal Section 1983 claims. The Sheriffs think they "shall [not] be liable to respond to any prisoner or former prisoner in damages in any form of action," M.C.L. § 51.283, and argues there is no cause-of-action because the Michigan Legislature has immunized them from any constitutional-based claims. The argument fails.

Section 1983 creates a cause-of-action for damages and other relief

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because "Lindke was being held as a pre-trial detainee on other charges and not eligible for release regardless" citing *People v. Browning*, 2001 Mich. App. LEXIS 2236 (Jan. 16, 2001). But *Browning* does not so hold. In *Browning*, the defendant was convicted, by plea, to a drug charge where he was sentenced to 12.5 to 30 years in prison. The "sentence credit statute" at M.C.L. § 769.11b – which is different than the good-time-credit statute at M.C.L. § 51.281 et seq – provides "whenever any person is hereafter convicted of any crime within this state and has served any time in jail prior to sentencing because of being denied or unable to furnish bond for the offense of which he is convicted, the trial court in imposing sentence shall specifically grant credit against the sentence for such time served in jail prior to sentencing." M.C.L. § 769.11b. Under that statute, the defendant was credited for 945 days spent in jail while awaiting trial. However, the defendant further argued that he was also separately entitled to further credits the good-time-credit. That was rejected because, sensibly, good-time credit pursuant to M.C.L. § 51.282 only applies "against a sentence being served by a prisoner in the county jail." When jailed, the *Browning* defendant was awaiting trial and not serving against an imposed sentence. In short, he got his due credit under M.C.L. § 769.11b.

[30] Narrowly analyzed, even if the statute means what it precisely says, *Sun Valley Foods Co. v. Ward*, 596 N.W.2d 119, 123 (Mich. 1999), the immunization section only applies to the sheriff and no other defendants here. Along with the current and former sheriff, this lawsuit has sued St. Clair County and two jail administrators. None of these named 'non-sheriff' defendants are the "sheriff" and have not otherwise been provided the attempted immunity by language within M.C.L. § 51.283.

against any "person who, under color of any statute… subjects… any citizen… to the deprivation of any rights… secured by the Constitution." 42 U.S.C. § 1983. Under federal due process, "an incarcerated inmate has 'a liberty interest in being released at the end of his term of imprisonment'" and "when a prisoner's sentence has expired, he is entitled to release." *Short*, 255 Fed. App'x at 51. In other words, over-detaining jailed contemnors beyond their sentence expirations constitutes a deprivation of due process. *Parker*, 73 F.4th at 407. Yet, the Sheriff Defendants incorrectly believe that the Good-Time-Credit statute conditions of the chance to ever receive good-time credit on them being pre-immunized from damages claims. They are wrong. A state statutory enactment cannot immunize any local government or its officials from federal Section 1983 liability.[31] That type of thinking has been tried before and declared invalid.

In *Martinez*, California had a statute that – in a strikingly similar manner – provided that "neither a public entity nor a public employee is liable for []

[31] The practical reason why this statute seeming flies directly in the face of recognized supremacy of federal law is because Section 1983 litigation, as we know it today, did not yet have its roots when this state law was enacted. Section 1983 was effectively recognized in 1961—some sixteen years after the Good-Time-Credit statute was enacted—with the decision of *Monroe v. Pape*, 365 U.S. 167 (1961). *Monroe* has important significance because it held that 42 U.S.C. § 1983, a then-obscure statutory provision from 1871, could be used to sue state and local officers who violated a plaintiff's constitutional rights. So when the Michigan Legislature enacted the immunization provision of the Good-Time-Credit statute, it was not sufficiently schooled to understand the scope of its state-level limits to curtailing federal rights.

[a]ny injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release." *Martinez v. California*, 444 U.S. 277, 280 (1980). The US Supreme Court explained that such a state law cannot and "does not control" a federal Section 1983 claim. *Id.* at 284. It also confirmed that "conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 [] cannot be immunized by state law." *Id.* at 284 fn.8. "A construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise…" *Id.* This makes sense because the "supremacy clause of the Constitution prevents a state from immunizing entities or individuals alleged to have violated federal law." *Good v. Dauphin Cnty. Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1090-1091 (3d Cir. 1989) (immunity under a state "has no force when applied to suits under the Civil Rights Acts."). Yes, a state need not provide "good time" credit; but when it does, it cannot immunize entities or individuals from the remedies federal Section 1983 awards as a result of federal constitution violations related thereto.[32] M.C.L. § 51.283 simply does not and cannot

[32] To attempt to support its argument otherwise, Defendants cite solely *Crocker v. Tenn. Secondary Sch. Athletic Ass'n*, 980 F.2d 382 (6th Cir. 1992). This same argument has already been rejected and should be again.

provide immunity from ***federal*** damages claims.

To try to avoid the outcome *Martinez* requires, the Sheriffs now suggest that the immunity provision is not actually legal-immunization but a statutory 'cannot-sue' pre-condition each jailed contemnor must accept in exchange for the Sheriffs providing of the benefit of good-time credit (i.e. because each jailed contemnor has no constitutional right to receive). That rendition fails under the unconstitutional conditions doctrine. "Even [if] a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely" such as "deny[ing] a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Government simply cannot make the opportunity to receive good-time credit (the benefit) to be conditioned upon the waiver of Plaintiffs' First Amendment right to sue for the redress of grievances for constitutional violations related to good-time disputes.[33] Accepting the Sheriffs' view, the statute would improperly be

[33] The First Amendment, made applicable to the states by the Fourteenth Amendment, prohibits the government from enacting prohibitions against the right to petition for the redress of grievances. U.S. Const. amend. I. "[T]he filing of a lawsuit against the government is protected by the First Amendment right to petition the government for a redress of grievances." *O'Boyle v. Sweetapple*, 187 F. Supp. 3d 1365, 1370-1371 & fn.4 (S.D. Fla. 2016) (collecting cases). In other words, one "who files… a lawsuit engages in activity protected by the First Amendment and retaliation for filing

attempting to coerce those jailed from receiving good-time credit only if they conditionally accept the condition not to sue to establish liability upon the Sheriffs and waive the First Amendment right to petition for the redress of grievances. Such is improper and the Sheriffs' arguments fail.

IX. Qualified Immunity

Qualified immunity, as an affirmative defense only for individual defendants sued in their personal capacity[34] with Section 1983 claims, is a two step-process. A plaintiff must "show the officer's conduct violated a constitutional right" and that the right was "clearly established." *Robertson v. Lucas*, 753 F.3d 606, 615 (6th Cir. 2014).[35] This defense fails, however, when Defendants have "fair warning that their conduct violated the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Fair warning does not require a case "directly on point." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). In other words, the law can be clearly established "despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning

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lawsuits," i.e. denying the opportunity for good-time, would "violate[] the Constitution." *Willis v. Draper*, 2010 U.S. Dist. LEXIS 45591, at *38 (E.D. Tenn. May 10, 2010).

[34] Qualified immunity is never an available defense for a governmental entity. *Everson v. Leis*, 556 F.3d 484, 493 fn.3 (6th Cir. 2009); *Leach v. Shelby Cnty. Sheriff*, 891 F.2d 1241, 1245 (6th Cir. 1989).

[35] Defendant incorrectly cited *Feather* for the Sixth Circuit's former three-part test. The US Supreme Court made qualified immunity a two-part test starting in *Pearson v. Callahan*, 555 U.S. 223 (2009).

that the conduct then at issue violated constitutional rights." *Hope*, 536 U.S. at 740; see also *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020).

Qualified immunity has been routinely rejected because it is well-established that over-detaining a prisoner beyond the expiration of his sentence in the absence of a facially valid court order or warrant constitutes a deprivation of due process. E.g. *Parker v. LeBlanc*, 73 F.4th 400, 407 (5th Cir. 2023) (citing *Douthit v. Jones*, 619 F.2d 527, 532 (5th Cir. 1980)). While the Fifth Circuit has recently become the de facto leading circuit on this area of law due to the mess in the Louisiana state prisons, our Circuit has been equally clear to put all individual defendants on notice. In *Shorts*, the Sixth Circuit also confirmed "an incarcerated inmate has 'a liberty interest in being released at the end of his term of imprisonment'" and "when a prisoner's sentence has expired, he is entitled to release." 255 Fed. App'x at 51. And "when [one's] sentence expired, the State lost the power to hold him [or her], and [] continued detention violates his [or her] rights under the Fourteenth Amendment." *Id.* (quoting *McNeil v. Dir., Patuxent Inst*., 407 U.S. 245, 246 (1972)). Thus, "[t]he right plaintiff asserts—his right not to be detained past the expiration of his term of incarceration under the Fourteenth and Eighth Amendments—is one we have recognized as being established 'beyond dispute.'" *Jones v. Tilley*, 764 Fed. App'x 447, 449 (6th Cir. 2019). Nothing

less than the US Supreme Court as said so. *McNeil*, 407 U.S. at 246 ("when his sentence expired, the State lost the power to hold him, and… continued detention violates his rights under the Fourteenth Amendment."). Others have echoed the same. *White v. Padilla*, 2022 U.S. Dist. LEXIS 213390 at *34 (D.N.M. Nov. 28, 2022) (collecting numerous cases); see also *Whirl v. Kern*, 407 F.2d 781, 791 (5th Cir. 1969); *Upshaw*, 2016 WL 6518263; *Davis v. Hall*, 375 F.3d 703, 714 (8th Cir. 2004); *Golson v. Dep't of Corr.*, 914 F.2d 1491 (4th Cir. 1990); *Calhoun v. N.Y. State Div. of Parole Officers*, 999 F.2d 647, 653 (2d Cir 1993). "The clearly established weight of authority from [the] courts must have found the law to be as the plaintiff[s] maintain[]." *Cummings v. Dean*, 913 F.3d 1227, 1239 (10th Cir. 2019).

However, Defendants argument is narrower in that, according to them, *Cannon* did not give them sufficiently clear notice on how the Good-Time-Credit statute was to be applied. In their words, "there is a legitimate legal question about whether that holding" in *Cannon* "would apply to a contempt sentence issued by a judge in a civil case" because, in their view, *Cannon* was not "a contempt case." That argument must be rejected because a contempt matter, by Michigan jurisprudence, is a criminal matter—"criminal contempt *is a crime in the ordinary sense*." *Joseph*, 179 N.W.2d at 388.

Moreover, *Cannon* specifically provides that the statute, "in clear and

unmistakable terms," provides that "the Legislature has stated that every county prisoner *shall* be entitled to a reduction of sentence of one day for every six days served where there are no violations of the rules and regulations" and "there are no exceptions… otherwise." 522 N.W.2d at 718. Defendants seemingly suggest that *Cannon* should have read that 'every county prisoner *except those having been found guilty of criminal contempt*.' But that is not what either the statute or *Cannon* provides. Feigned ignorance once a lawsuit has been filed is not grounds to provide immunization from responsibility. Qualified immunity thusly fails.

CONCLUSION

WHEREFORE, Plaintiffs request this Court to deny Defendants' motion for summary judgment and further certify this matter as a class action.

RESPECTFULLY SUBMITTED: Date: February 8, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of and a copy of such filing to counsel of record at their email address(es) of record.

Date: February 8, 2024

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