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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 ****

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Attorney for Plaintiff(s)
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

GRONDA PLC
MATTHEW E. GRONDA (P73693)
Attorney for Plaintiff(s)
4800 Fashion Sq Blvd, Ste 200
Saginaw, MI 48604
(989) 233-1639
matt@matthewgronda.com

FLETCHER FEALKO SHOUDY & FRANCIS, PC
TODD J. SHOUDY (P41895)
VICTORIA R. FERRES (P78788)
Attorneys for Defendants
1411 Third Street, Suite F
Port Huron, MI 48060
(810) 987-8444
tshoudy@fletcherfealko.com
vferres@fletcherfealko.com

PLAINTIFFS' RESPONSE TO
DEFENDANTS' SUPPLEMENTAL SUMMARY JUDGMENT BRIEF

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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). Plaintiffs and the putative class allege that St. Clair County had an unlawfully-enacted policy of keeping criminal contemnors jailed beyond the terms of their legally-maximum sentence. Defendants moved for summary judgment and this Court asked the parties to provide supplemental briefing on the remaining "Part C" issues previously raised. **ECF No. 58, PageID.2683**. Defense counsel effectively briefed five matters. Each lack merit. Summary judgment must be denied.

BACKGROUND

"In clear and unmistakable terms," Michigan's "Good-Time-Credit" statute, M.C.L. § 51.281 et seq, provides "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); M.C.L. § 51.282(1). Loss of these automatically-earned good-time credit happens in only two possible ways. The first is the "General Rule" method where the sheriff, *by general rule*, "prescribe[s] how much of the good time earned under this subsection a prisoner shall forfeit for any infraction of the general rules and regulations. M.C.L. § 51.282(1). However, the Sheriff does

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not have discretion to self-create or amend the "general rules and regulations," but any proposed rule and regulation must 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." M.C.L. § 51.281.[1] The second method of deprivation, the "Special Order" method, provides that the sheriff may *by special order* take away any portion of or the whole of the good time made by any prisoner for an "act of insubordination." *Id.*

Despite the Sheriff's involvement with deprivation of gathered credits, there are no conditions or prerequisites to good-time credit being an automatic entitlement to every confined contemnor. *ARM v. KJL*, 995 N.W.2d 361, 372 (Mich. Ct. App. 2022) ("there is nothing in the statute to suggest that the sheriff has [] discretion to set a rule on whether a prisoner is eligible to earn such credit in the first instance."). Absent forfeiture of good-time by the General Rule or Special Order methodologies (with appropriate *Wolff* due process), every confinee automatically receives full credit. *Id.* ("shall be entitled to"). On the flip side, "the deprivation of good-time credit constitutes a substantial sanction, and a prisoner may claim that a deprivation of good-

[1] It has been conceded that no such rules have ever been enacted. **ECF No. 61, PageID.2704** ("it is undisputed that the Sheriff had no such rules governing under what circumstances good time credit would be taken away or, if so, how much").

time credit is a denial of a protected liberty interest without due process of law." *Cannon*, 522 N.W.2d at 718**.**

This class action case involves Plaintiffs Michael Schultz and Kevin Lindke, along with hundreds of similarly-situated individuals, who are contemnors formerly confined to the St. Clair County jail beyond their actual outdate despite Michigan law awarding good-time credits (i.e. automatic sentence reductions). Yet, Defendants' Contempt Over-Detention Policy kept those convicted of criminal contempt longer in jail longer than Michigan law provides and did so simply because they were convicted of criminal contempt. **First Am. Compl., ECF No. 13.** Damages are sought on behalf of those who were subject to the Contempt Over-Detention Policy and suffered the injury of being imprisoned, over-detained, and incarcerated longer than Michigan law permits.

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COUNTER-ARGUMENTS

Defendants[2] have made five arguments. All fail.

I. Liberty Interest

The U.S. Constitution mandates that Defendants may not deprive any person of life, liberty, or property, without due process of law. U.S. amend. XIV. Protected liberty interests "may arise from two sources — the Due Process Clause itself and the laws of the States." *Kentucky Dep't. of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). The overarching argument conjured by Defendants is that the Good-Time-Credit statute "is insufficient to create a liberty interest." **ECF No. 61, PageID.2699**. They are wrong.

Under due process itself, "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." *Shorts v. Bartholomew*, 255 Fed. App'x 46, 51 (6th Cir. 2007); see also *Schultz v.*

[2] The case still has Defendants—plural. While this Court has dismissed the individually-named defendants in their personal capacities, they remain named in their official capacities. But given the on-the-record concession at the Contempt Over-Detention Policy is a county policy, that distinction means little now. Officials sued in their official capacities "represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); see also *Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994) ("A suit against an individual in his official capacity is the equivalent of a suit against the governmental entity."); *Ostipow v. Federspiel*, 824 Fed. App'x 336, 340 (6th Cir. 2020) ("When a[] [sheriff of Saginaw] is sued in his official capacity, the law treats that suit as an action against Saginaw County.").

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Egan, 103 Fed. App'x 437, 440 (2d Cir. 2004); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 246 (1972); *Whirl v. Kern*, 407 F.2d 781, 791 (5th Cir. 1969). This is "a protected liberty interest in being free from wrongful, prolonged incarceration." *Davis v. Hall*, 375 F.3d 703, 712 (8th Cir. 2004).

Under state law, the Michigan Legislature, "in clear and unmistakable terms," provides "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." *Cannon*, 522 N.W.2d at 718. *Thompson*, 490 U.S. at 462, 463. "A State creates a protected liberty interest," even in the prison setting, by placing substantive limitations on official discretion" and exists where the regulation "contain[s] explicitly mandatory language," meaning there are specific directives to the decisionmaker that a particular outcome must follow. *Id.* at 461-463. A prime guidepost is the use of the word "shall" in the regulation. *Id.* at 461. However, if a decisionmaker can make his decision for any constitutionally permissible reason or for no reason at all, there is no liberty interest. *Olim v. Dakimakura,* 461 U.S. 238, 249 (1983).

Here, a liberty interest is clearly established. Under due process directly, a liberty interests exists per precedents and the teachings of *Short*, *Schultz*, *Whirl*, *McNeil,* and *Davis.* *S*eparately under state law, a liberty

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interest also exists. Where the right to good-time is automatic, there is a legitimate claim of entitlement and thus an established liberty interest. *Sandin v. Conner*, 515 U.S. 472, 477-478 (1995) (explaining that a good-time credit scheme created by state law resulting in shortened confinement – revocable only if the prisoner was guilty of serious misconduct – creates a liberty interest "of real substance"); *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (by "the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment liberty" protections).[3] Michigan case law has also confirmed its good-time credit scheme establishes a protected liberty interest. *Cannon*, 522 N.W.2d at 718 ("once… a prisoner earns that credit…[, wrongful] deprivation of good-time credit *is a denial of a protected liberty interest*…"). Defendants' arguments suggesting otherwise expressly fail.

[3] Moreover, it has been established that "there is nothing in the [Good-Time-Credit] statute] to suggest that the sheriff has [] discretion to set a rule on whether a prisoner is eligible to earn such credit in the first instance." *ARM*, 995 N.W.2d at 372. Despite Defendants' false gloss, there is no discretion regarding jailees securing credits, but only limited discretion (via the General Rule or Special Order methodologies) as to how much good-time credit is forfeited after violations occur. In this case where there is no general rules method utilized, the sheriff can only take away credits by special order for the limited purpose of "acts of insubordination." And even then, there are further handcuffs per *Wolff* in the form of procedural due process that must be provided before deprivation is effectuated.

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II. Request for Early Release

Defendants next argue that the right to benefit from earn good-time credits (so as to be released by the actual legal outdate) is expressly conditioned upon those jailed first 'asking' to be released. Untrue. There is no expressed condition in the plain language of the Good-Time-Credit statute or that 'asking' is a condition precedent to enjoying gathered and awarded good-time credits. Nowhere does the statute *actually* say that the right to good-time credit is conditioned or 'substantively predicated' upon a made request to be released. Instead, the statute merely provides that "it shall be the duty of each prisoner entitled to release with the credit for good behavior allowance to call to the attention of the sheriff or any of his deputies the fact that he is entitled to release." M.C.L. § 51.283. Defendants wrongly assume and mischaracterized this language as being a condition precedent. But any alleged failure of that alleged duty is not, should not, and never has been grounds for preclusion of benefitting from gathered good-time credits. **Exhibit A**. This is true given the plain language of the statute as well as by the standard practices of the St. Clair County jail. Discovery will confirm that. ***Id.***[4] This supposed condition is a legal fiction created for litigation aims and

[4] Moreover, a person confined to the St. Clair County jail has never been required to ask or petition to be released to be a condition of entitlement to good-time credit. See **ECF No. 50-12, PageID.2441**. On information and belief, outdates are automatically

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has never existed in practice. The only basis for the reduction of good-time credit is by its being taken by the sheriff by either the General Rule method (which requires chief-judge approval before enactment) or the Special Order methodology (which requires substantial due process under *Wolff*). And neither circumstance exists here.

To round out the counter-response and even assuming that such a condition of release was somehow read into the statute (which is not permitted[5]), both Plaintiffs made the "calls." **ECF No. 50-3, PageID.2402** (Schultz); **ECF No. 50-15, PageID.2452** (Lindke).[6] And why weren't the calls acted on? Because Defendants had an already-enacted and enforced county policy never to recognize good-time credit to any criminal contemnor confined at the St. Clair County jail. So even when confinees like Lindke and

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calculated to include good-time unless and until it is taken away by the Sheriff via the General Rule or the Special Order methods (which rarely happens). **Exhibit A.**

[5] *AFSCME v. Detroit*, 662 N.W.2d 695, 709 (Mich. 2003) (courts "cannot read into the statute what is not there").

[6] Defendants' argument that there was no written request is a misrepresentative assertion. For many years, there was a lack of any meaningful written grievance process for jailees. **ECF No. 50-15, PageID.2452-2454 (¶¶18-27).** As Lindke explained, grievance forms were routinely and purposely not made available to those incarcerated at the St. Clair County jail to make documented grievances or provide written communications. It was thusly effectively impossible to ever call to the attention of the sheriff or his command-level deputies the fact good-time was owed and a release should happen. ***Id.*** It was only in late 2021 when the bad-faith practice of hiding grievance forms was replaced with an electronic tablet-based communications and grievance system operated by third party Securus were communications properly documented and recorded. **ECF No. 50-29, PageID.2506**; **ECF No. 50-15, PageID.2452** (¶24). Defendants are not entitled to ignore this key fact.

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Schultz made those oral communications (i.e. calls) inquiring about release and good-time credit, they were ignored, just as every other jailed contemnor would be, due to the illegal county policy long in effect. **ECF No. 50-12, PageID.2441** ("Goodtime is NOT given on sentences for Contempt"). The illegal policy made any such demand fall on deaf ears. Remember, the wrong here was the enactment and application of an official policy that impairs or deprives a liberty interest; the subsequent injury was being over-detained as a result of the wrong. The whole point of this lawsuit is that the adopted and implemented policy of Defendants was to *always* (illegally) preclude any entitlement to good-time credit for jailed contemnors. So even if jailees had asked over and over and over to be released, Defendants had an adopted and uniformly imposed policy to strictly and absolutely refuse good-time credit (and by extension refuse the release) in all circumstances where the incarcerated was convicted of criminal contempt. Stated plainly, any request by a jailed contemnor for timely release with gathered good-time credits was futile. Michigan law does not require a futile act. See *Adkins v. Dep't of Civ. Serv.*, 362 N.W.2d 919, 324 (Mich. Ct. App. 1985) ("the law does not impose and exhaustion requirement where it is obvious that to do so would require a useless effort."). In turn, when an illegal policy is the "moving force" behind

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the constitutional violations, Section 1983 provides remedies. E.g. *Nugent v. Spectrum Juv. Justice Servs.*, 72 F.4th 135, 138 (6th Cir. 2023).

In short, 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.*, 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 v. Epps*, 659 F.3d 440, 445 (5th Cir. 2011). And the Good-Time-Credit statute and the St. Clair County jail's long-term practices do not direct otherwise.

III. Lindke's Five Alleged Rule Violations[7]

Defendants re-argue that because there is an alleged history of rules violations by Plaintiff Lindke that he has somehow previously lost his good-time-credits. This again misstates the circumstances and misses the mark.

During the last substantive hearing, the Court was informed that there were not one *but two* separate confinement periods suffered by Plaintiff Lindke. **ECF No. 59, PageID.2685.** Confinement Period No. 1 was for ten days from July 26, 2019. **ECF No. 50-16, PageID.2456**; see also **ECF No. 50-26, PageID.2467** (table). With earned good-time credits, Lindke should

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

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have been released on August 2, 2019.[8] He wasn't released until August 4, 2019. **ECF No. 50-15, PageID.2450** (¶4). Defendants offered no proofs of misconduct violations by Lindke during that first confinement period. Instead, Defendants over-detained Lindke pursuant to its Contempt Over-Detention Policy. **ECF No. 50-15, PageID.2450** (¶¶4-6). Given the undisputed facts of Confinement Period No. 1, complete dismissal of Plaintiff Lindke on this defensive assertion fails.

The more complex question is for Confinement Period No. 2 from March 3, 2021 to February 24, 2022. Defendants assert that Lindke was found guilty of violating jail rules and regulations five times during Confinement Period No. 2 and none were set aside. **ECF No. 61, PageID.2706.** In their view, Lindke "has no automatic entitlement to good-time credit—it is entirely up the Sheriff." ***Id.* at PageID.2705.** But that assertion is untrue and also misses the mark given the due process obligations of *Wolff v. McDonnell*.

Defendants' threshold misunderstanding is easily dispensed with. Their assertion that there is "no automatic entitlement to good time credit" as that "is entirely up the Sheriff" is an incorrect statement of law. *ARM*, 995

[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.

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N.W.2d at 372 ("there is nothing in the statute to suggest that the sheriff has [] discretion to set a rule on whether a prisoner is eligible to earn such credit in the first instance.").

Secondly, the Supreme Court in *Wolff* reviewed Nebraska's highly similar version of a good-time-credit statute. There, the "chief 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." 418 U.S. at 546-547. A class action challenged the practices and procedures for 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, "minimum procedures… 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, 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.

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The Sheriff concedes, during Confinement Period No. 2, there were no chief judge-approved "general" rules in place that automatically took good-time credits. **ECF No. 61, PageID.2704**. That leaves any removal of good-time credits subject to just the Special Order method for acts of "insubordination." But even assuming that Plaintiff Lindke had the various adjudicated jail rule violations might have arguendo warranted the ordered reduction or taking of good-time credits at that time for insubordination,[9] Defendants have presented no evidence that the Sheriff had *actually* ordered or *actually* took away the credits at the time of adjudication in written form 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 one instance of ordering the cancelling or forfeiting of good-time credit). There is no evidence because it never happened. **ECF No. 50-15, PageID.2450** (¶9). In other words, no good-time credits were ever taken away by the Sheriff. ***Id.*** So when Lindke's confinement "reached the level of the number of days of his sentence" with non-forfeited credits in the bank, he was entitled to release. If the Sheriff had wanted to take credits for any

[9] Remember, the Sheriff can only deem credits forfeited (be taken) for insubordination. M.C.L. § 51.281.

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reason during the time of confinement, due process needed to be afforded to Lindke beforehand.

What Defendants are now suggesting is that the good-time credits should have been and now can be effectively "taken" through this case, in a post-hoc fashion, without having timely fulfilled the *Wolff* requirements. The Sheriff is trying to back-door the taking of good-time credit *today* in a post-hoc fashion. That is not permissible. At no point has the Sheriff ever previously decided, after first supplying appropriate due process, to take away Lindke's earned good-time credit from Confinement Period No. 2 – 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 and Michigan Constitutions. See *People v. Callon*, 662 N.W.2d 501, 507 (Mich. Ct. App. 2003).

In short, while the Sheriff might have been able to take (adjudicated as forfeited) Lindke's good-time credits while Lindke was confined for any findings of insubordination, it cannot be done today to avoid the federal civil-rights liability being adjudicated in this case.

IV. Lindke's "Overlapping Sentences" and Bonds[10]

As noted above, there were not one *but two* separate confinement

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

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periods suffered by Plaintiff Lindke. **ECF No. 59, PageID.2685.** During Confinement Period No. 1 starting July 26, 2019 (**ECF No. 50-26, PageID.2467**), Lindke was improperly over-detained due to the Contempt Over-Detention Policy. He was kept in the St. Clair County jail several days longer than he should have. He suffered the very harm that this case is seeking to remedy in damages class-wide. As such, summary judgment in this defense fails given the undisputed facts of Confinement Period No. 1.

What Defendants are challenging in its supplemental brief is solely as to Confinement Period No. 2. This Court should decline to dig into this unnecessary issue at this time given Confinement Period No. 1. Even if the Court were to arguendo agree with everything Defendants suggest for Confinement Period No. 2, Lindke remains a proper party plaintiff for the injury and harm he suffered during Confinement Period No. 1. While resolution of this issue would ultimately go to the amount of damages Lindke would be entitled to when this Court eventually rules for Plaintiffs on this case, the need to address this issue *now* as a death-knell defense is a pointlessly exercise and a waste of judicial resources. Summary judgment cannot be granted given Confinement Period No. 1.

Should the Court desire nevertheless to parse this matter now, Plaintiff Linke restates and incorporates by reference his prior briefing at **ECF No.**

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50, PageID.2372-2380 with particular evidentiary emphasis on Lindke's declaration at **ECF No. 50-15, PageID.2450-2451 (¶¶7-17)** and the FRE 1006 table at **ECF No. 50-26, PageID.2467**. Summary judgment fails.

V. Money Damages

Finally, Defendants argue that because the Good-Time-Credit statute provides that "no sheriff shall be liable to respond to any prisoner or former prisoner in damages in any form of action" that the current federal civil-rights class action claims against Defendant St. Clair County should be dismissed. The argument is difficult to parse faithfully because the current suit, as postured, is not now suing a sheriff but solely suing the County[11] pursuant to its own policy.[12] The Sheriff (personally) has been dismissed from this suit. **ECF No. 58, PageID.2682.** As such, an immunity provision expressly provided to a specifically identified individual (i.e. the Sheriff) cannot extend to another (i.e. the County). See *Sun Valley Foods Co. v. Ward*, 596 N.W.2d 119, 123 (Mich. 1999) ("If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.").

Section 1983 provides a cause-of-action to impose a money judgment

[11] See Footnote 1.

[12] During the last hearing, counsel for St. Clair County conceded that the Contempt Over-Detention Policy was a county policy for purposes of *Monell*. A transcript has been ordered but not yet received to cite to the same.

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against any "person who, under color of any statute, [] regulation, custom, or usage… subjects… any citizen… to the deprivation of any rights… secured by the Constitution." 42 U.S.C. § 1983. A state statutory enactment cannot immunize a local government or its officials from federal Section 1983 liability. *Martinez v. California*, 444 U.S. 277, 284 fn.8 (1980) ("Conduct by persons acting under color of state law which is wrongful under 42 U.S.C. § 1983 . . . cannot be immunized by state law."); *Good v. Dauphin Cnty. Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1090-1091 (3d Cir. 1989) (the "supremacy clause of the Constitution prevents a state from immunizing entities or individuals alleged to have violated federal law.").

Defendants again try to argue that the constitutional supremacy clause principles are not an 'immunity' issue but a 'condition precedent' provision. In their view, a state can condition the 'discretionary' benefit of early release on the waiver of a constitutional right. In other words, Defendants believe a jailed contemnor must accept a waiver of his right to sue (including in damages under Section 1983) as a condition of or in exchange for receipt of the benefit of good-time credits.[13] Plaintiffs disagree that the cited language from the Good-Time Credit statute is a 'condition precedent' that Defendants

[13] If the Court treats the liberty interest as one arising under directly due process rather than under state law, see *supra*, then the conditions Defendants try to read into the statute become a non-consideration.

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claim it to be. It is no more than a now-partially-*invalid* immunity statute from another era.

The practical reason why this statute seemingly 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 originally from the *Ku Klux Klan Act* in 1871,[14] 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 authority to immunize *federal* remedies. But that is no longer the situation today. E.g. *Martinez*, 444 U.S. at 284 fn.8.

But even if this provision of the Good-Time Credit statute is treated as a condition precedent, that formulation fails under the unconstitutional conditions doctrine. "Even [if] a person has no 'right' to a valuable

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[14] See *Dist. of Columbia v. Carter*, 409 U.S. 418, 423 (1973) ("§ 1983 has its roots in § 1 of the Ku Klux Klan Act of 1871, Act of Apr. 20, 1871, § 1, 17 Stat. 13").

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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 credits (the benefit) ever be conditioned upon the waiver of Plaintiffs' First Amendment right to sue for the redress of grievances for constitutional violations that touch upon good-time credit matters. See *Frost & Frost Trucking Co. v. Railroad Comm'n of Cal.*, 271 U.S. 583, 589 (1926) ("a state is without power to impose an unconstitutional requirement as a condition for granting a privilege"). In addition to the claimed liberty interest to be released at the end of his lawful term of imprisonment, the First Amendment, made applicable to Defendant 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. The filing of a lawsuit against the government is protected by the First Amendment's 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," *Willis v. Draper*, 2010 U.S. Dist.

LEXIS 45591, at *38 (E.D. Tenn. May 10, 2010), so that conditioning waiver of such First Amendment protected activities for receipt of a government benefit is improper under the unconstitutional conditions doctrine.[15]

Even accepting Defendants' questionable contextualization of the immunization portion of the statute, the Good-Time-Credit statute would be coercing those jailed into receiving good-time credit only by waiving the First Amendment right to petition for the redress of grievances running afoul of the unconstitutional conditions doctrine. The arguments fail.

CONCLUSION

WHEREFORE, the Court is requested to deny the last remaining portion of Defendants' motion for summary judgment and take the next steps to certify this matter as a class action.

RESPECTFULLY SUBMITTED: Date: July 15, 2024

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Counsel for Plaintiffs
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

/s/ Matthew E. Gronda
GRONDA PLC
MATTHEW E. GRONDA (P73693)
Counsel for Plaintiffs
4800 Fashion Sq Blvd, Ste 200
Saginaw, MI 48604
(989) 233-1639
matt@matthewgronda.com

[15] Defendants also appear to try to slip in the already-rejected argument that the only remedy is a writ of habeas corpus. **ECF No. 61, PageID.2710-2711**. That was previously briefed and rejected. See **ECF No. 20, PageID.1648-1651**; **ECF No. 32, PageID.1789**.

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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: July 15, 2024

RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Counsel for Plaintiffs
PO Box 107
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com

UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF MICHIGAN

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

v.

MAT KING, et al,
Defendants

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

DECLARATION

RULE 56(d) DECLARATION OF PHILIP L. ELLISON

1. I am Plaintiffs' counsel for the above-captioned case and am making this declaration pursuant to Rule 56(d) of the Federal Rules of Civil Procedure.

2. Pending currently before this Court is the balance of Defendants' motion for summary judgment.

3. As part of its supplemental response, Defendants have suggested that right to benefit from earn good-time credits (so as to be released by the actual legal outdate) is expressly conditioned upon those jailed first 'asking' to be released.

4. Discovery is needed to establish, in admissible form, that the St. Clair County jail has never conditioned the ability of confinees to enjoy (or euphemistically "cash in") earned good-time credits upon first asking to be released so as to be released by the actual legal outdate.

5. Stated more simply, a person confined to the St. Clair County jail has never been required to ask or petition to be released as a condition of benefitting from banked good-time credit.

6. Literally hundreds of those St. Clair County jailed individuals with good-time credit being applied are annually released *without* each ever

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having to individually call to the attention of the sheriff or any of his deputies the fact that one is entitled to be released.

7. The outdate of each St. Clair County jail confinee is, on information and belief, automatically calculated by jail staff (i.e. the "classification deputy") to include good-time without any petitioning or "to call" process. See ECF No. 50-12, PageID.2441 ("The St. Clair County Intervention Center will correctly compute outdates to assure that inmates are released in a timely fashion after completing their sentence. *** As part of the outdate computation, goodtime will need to be computed."); ECF No. 50-13, PageID.2444 (same).

8. On information and belief, it is extremely rare (if ever) that the St. Clair County sheriff has taken away good-time credit from anyone.

9. The information needed can be secured by a deposition of St. Clair County Sheriff Mat King or by what is believed to be the officer known as or designated the "classification deputy" at the St. Clair County jail.

10. Because of the way this Court has scheduled motion practice and due to limited-provided discovery related to those motions (see ECF No. 61, PageID.2694 ("After limited discovery into the issues relevant to Defendants' then planned Motion for Summary Judgment")), Plaintiffs and their undersigned counsel cannot present such facts that are essential to justify opposition to certain arguments raised by Defendants in their supplemental briefing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 12, 2024

Philip L. Ellison

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