



U.S. Department of Justice

Civil Rights Division

*United States Attorney's Office
Southern District of Mississippi*

*Special Litigation Section
4 Constitution Square
150 M Street NE
Washington, DC 2002*

*United States Attorney's Office
501 E. Court St.
Suite 4.430
Jackson, Mississippi 39201*

VIA EMAIL AND HARD COPY

Feb. 29, 2024

Katherine Barrett Riley
Barrett Law Group, P.A.
404 Court Square
Lexington, MS 39095
KBRiley@BarrettLawGroup.com

Re: Urgent Serious Concerns Arising in Our Ongoing Pattern or Practice Investigation of the City of Lexington and the Lexington Police Department

Dear Ms. Riley:

We write concerning our investigation of the City of Lexington and the Lexington Police Department (LPD), under 34 U.S.C. § 12601, to determine whether officers are engaged in a pattern or practice of conduct that deprives people of their rights under the Constitution or federal law. Specifically, we are investigating potential violations concerning the use of force; stops, searches, and arrests; discriminatory policing; and the First Amendment. We are also reviewing LPD's practices related to the collection of fines and fees and its systems of accountability.

Thus far in our investigation, which is continuing, we have reviewed hundreds of case files, watched hours of body-worn camera footage, and interviewed dozens of witnesses, including Lexington residents and LPD leadership, officers, and staff. We are grateful for the City's and LPD's cooperation, which has helped our investigation move expeditiously.

Although our investigation remains ongoing, we write you and your clients to raise significant concerns about conduct by the City and LPD that results in incarceration for non-payment of fines without first assessing whether the person can afford to pay them, in violation of the Fourteenth Amendment of the Constitution. In recent guidance to state courts across the country, the Department of Justice noted the U.S. Supreme Court's repeated holdings "that the

government may not incarcerate individuals solely because of their inability to pay a fine or fee.”¹

Therefore, before a jurisdiction can incarcerate a person for not paying a sum of money—such as an outstanding fine or fee—it must first determine whether the person “willfully refused to pay” or simply lacks the resources to do so.² If the person cannot afford to pay, it is unlawful to imprison them for unpaid fines or fees unless there are no alternatives that could satisfy the government’s interest in punishment and deterrence.³

We have identified two practices that raise significant concerns regarding these principles.

1. Lexington Must Stop Jailing People for Outstanding Fines Without Assessing Their Ability to Pay.

First, the Lexington Police Department imprisons people for outstanding fines without first assessing whether the person can afford to pay them. As you know, the City of Lexington operates its own municipal court, which has jurisdiction over both violations of Lexington’s municipal code and state misdemeanor offenses committed within Lexington’s boundaries. People convicted in Lexington’s municipal court can be sentenced to jail, a fine, or both. Some people can afford to pay their fines immediately, but others pay them bit by bit or not at all. Some Lexington residents therefore owe outstanding fines to the City, sometimes for charges imposed decades or more in the past.

When LPD makes an arrest, LPD typically checks whether the person owes any fines to the City of Lexington. If the person does owe old fines, LPD jails that person until they pay all or some portion of the old fines they owe—on top of any bond or fees related to the arrest. And regardless of whether the person owes fines, the person must pay an additional charge to be released as well: a \$50 “processing fee,” paid to LPD in cash. LPD does not evaluate a person’s ability to pay.

Although our investigation into these practices is not complete, we have already found multiple instances in recent months—including as recently as January—where LPD required people to pay down old fines plus a \$50 processing fee before LPD would release the person from jail.

LPD may not force people to remain in jail because they cannot afford to pay a fine or processing fee. LPD may not require payment as a condition of release unless it has conducted an appropriate assessment of the person’s ability to pay. If the person cannot

¹U.S. Dep’t of Justice, Dear Colleague Letter on Fines and Fees, at 6 (Apr. 20, 2023), <https://www.justice.gov/opa/press-release/file/1580546/dl?inline> [hereinafter Dear Colleague Letter on Fines and Fees]. A copy of the entire Letter is attached.

² *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

³ *Id.* The Justice Department discusses potential alternatives to incarceration—including traffic or public safety classes, community service, or penalty-free payment plans—and other related considerations in its Dear Colleague Letter on Fines and Fees. See Dear Colleague Letter on Fines and Fees at 9–10.

afford to pay the fine, LPD may not jail them unless there are no alternatives that would satisfy its interests in punishment and deterrence.

Any ability-to-pay analysis must comply with lawful standards.⁴ The key question for the ability-to-pay analysis is whether the individual has sufficient income and financial resources to pay the fine at issue while still meeting basic needs like housing, food, medical care, and childcare.⁵ Thus, for example, a person who receives means-tested benefits has already been found to have insufficient resources to meet basic needs, and therefore cannot afford to pay a fine, since “individuals who cannot afford to pay for their basic needs also cannot afford to pay fines and fees out of their already insufficient incomes.”⁶

2. LPD Must Not Seek or Enforce Unlawful Arrest Warrants for People with Outstanding Fines.

Second, LPD requests Lexington’s municipal court to issue “bench warrants” for people who owe outstanding fines. The requested warrants are not predicated on any ability-to-pay analysis. They do not demand that the person come before the court. Instead, they order LPD to arrest the person and jail them for a certain number of days unless they pay the outstanding fine that they owe. Here is a redacted sample:

TO ANY LAWFUL OFFICER OF HOLMES COUNTY MISSISSIPPI

You are hereby commanded to take the body of [REDACTED]

and incarcerate him/her in the H.H.C.R.C.F.

for a period of 55.0 days, for his /her contempt of Municipal Court of the

City of Lexington , Mississippi or pay the Sum of \$ 2,221.50

The municipal judge signs these warrants, apparently without any assessment of the person’s ability to pay, much less one that satisfies the requisite standards. LPD then arrests the person under the warrant or enforces the warrant when the person is stopped or arrested for something else.

A court may not order imprisonment for non-payment of fines without conducting the constitutionally required analysis of whether the person can afford to pay them and, if not, whether alternatives exist that could serve the government’s interests. Law enforcement officers cannot seek or enforce unconstitutional warrants. LPD must stop

⁴ See Dear Colleague Letter on Fines and Fees at 6–7.

⁵ *Id.* at 7; see also *Tate v. Short*, 401 U.S. 395, 396 n.1 (1971) (considering evidence at sentencing hearing that petitioner and his family were “poverty stricken,” that he earned limited income in “casual employment” and received monthly federal benefits, and that his family relied on him for support in finding that petitioner could not afford fees).


⁶ Dear Colleague Letter on Fines and Fees at 7.

seeking or enforcing warrants for outstanding fines issued without the required ability-to-pay analysis.

As our investigation proceeds, we ask the City and LPD promptly to assess the serious concerns we identify in this letter and advise us how they intend to remedy them expeditiously. We will continue to examine whether there is a pattern or practice of conduct by law enforcement officers that deprives people of their rights related to the collection and enforcement of fines and fees in violation of federal law.

If you would like to discuss the issues raised in this letter, please do not hesitate to contact Paul Killebrew, Deputy Chief of the Special Litigation Section, at (202) 532-3403 and paul.killebrew@usdoj.gov.

Sincerely,



Todd W. Gee
United States Attorney
Southern District of Mississippi



Kristen Clarke
Assistant Attorney General
Civil Rights Division