



## U.S. Department of Justice

### Access to Justice Initiative

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Members of the Rules Committee  
Standing Committee on Rules of Practice and Procedure  
The Court of Appeals of Maryland  
2011-D Commerce Park Drive  
Annapolis, Maryland 21401

November 17, 2016

Dear Members of the Rules Committee:

We understand that you are considering proposed amendments to Maryland's Rules of Procedure pertaining to pretrial release. The Office for Access to Justice of the Department of Justice ("the Department") writes this letter to provide you with resources that the Department has developed regarding the constitutional framework governing financial conditions of pretrial release as you consider these amendments. We understand that the proposed amendments are intended to ensure that Maryland's pretrial release practices comport with constitutional requirements so that criminal defendants in Maryland are not subjected to pretrial incarceration due solely to their poverty. The Department supports efforts to provide guidance to judicial officers on what is inarguably a critically important decision.

The United States has a strong interest in ensuring that criminal justice systems, including pretrial release practices within those systems, are fair and nondiscriminatory. Toward that end, in March 2010, the Department established the Office for Access to Justice to help criminal and civil justice systems efficiently deliver fair and accessible outcomes, irrespective of wealth and status.

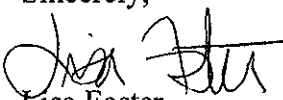
In the context of financial conditions of pretrial release, the Department has promoted practices that do not discriminate against the poor and has called attention to the problem of discriminatory bail practices in state and local courts. As Attorney General Lynch has stated, there should be "no price tag on justice."<sup>1</sup> In February 2015, the Department filed a statement of interest in federal district court in Georgia arguing that bail practices that incarcerate indigent individuals before trial solely because of their inability to pay for their release violates the Fourteenth Amendment. *See* Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015). In August 2016, the Department reiterated these points in an *amicus curiae* brief filed in the Court of Appeals for the Eleventh Circuit. *See* Brief for the United States as Amicus Curiae, *Walker v. City of Calhoun*, No. 16-10521-HH (11th Cir. Aug. 18, 2016). In March 2016, the Department issued a Dear Colleague Letter advising state and local courts that due process and equal protection principles require that, among other things, they "must not employ bail or

<sup>1</sup> Attorney General Loretta E. Lynch Delivers Remarks at White House Convening on Incarceration and Poverty (Dec. 3, 2015), available at <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-white-house-convening-incarceration-and>.

bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release.”<sup>2</sup>

We have attached all of these documents to this letter. As the Department noted in each, the Constitution prohibits “punishing a person for his poverty.” *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). That is precisely what happens when criminal defendants who are able to afford financial conditions of pretrial release are let out of jail, while defendants who pose no greater flight or public safety risk but are not able to afford those conditions remain incarcerated. Each of the attached documents describes the constitutional framework in greater detail.

Thank you for considering this letter and its attachments. Please do not hesitate to contact us if we can provide any additional information.

Sincerely,  
  
Lisa Foster  
Director  
Office for Access to Justice

Attachments:

Statement of Interest of the United States, *Varden v. City of Clanton*, No. 2:15-cv-34, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015).

Brief for the United States as Amicus Curiae, *Walker v. City of Calhoun*, No. 16-10521-HH (11th Cir. Aug. 18, 2016).

Letter from Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division and Lisa Foster, Director, Office for Access to Justice, U.S. Dep’t of Justice, to Colleagues 2 (Mar. 14, 2016)

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<sup>2</sup> Letter from Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division and Lisa Foster, Director, Office for Access to Justice, U.S. Dep’t of Justice, to Colleagues 2 (Mar. 14, 2016), available at <https://www.justice.gov/crt/file/832461/download>.