

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
CINCINNATI, OHIO**

S.W., et al.	:	Case No. 1:14-CV-896
	:	
Plaintiffs,	:	Judge
	:	
v.	:	Magistrate Judge
	:	
John Williams, et al.	:	<u>PLAINTIFFS' MOTION FOR</u>
	:	<u>PRELIMINARY INJUNCTION</u>
Defendants.	:	<u>AND MEMORANDUM IN</u>
	:	<u>SUPPORT</u>
	:	
	:	<u>ORAL ARGUMENT REQUESTED</u>

Plaintiffs S.W. and L.D. are minors, previously arrested and detained in Hamilton County, who have suffered continuous harm because of Defendants' policy and practice of improperly issuing arrest warrants without probable cause and detaining children at the Hamilton County Juvenile Court Youth Center for extended periods of time without a finding of probable cause by a neutral judicial official.¹ Pursuant to Fed. R. Civ. Pro. 65, and for the reasons enumerated in the accompanying Memorandum of Law, Plaintiffs S.W. and L.D. move this Court for a Preliminary Injunction and Order enjoining and prohibiting Defendants from (1) issuing arrest warrants for children without a finding of probable cause by a neutral and detached magistrate, and (2) detaining youth beyond 48 hours in the absence of a probable cause determination made by a neutral judicial official, or otherwise restraining the liberty of children without a constitutionally required procedural protections.

A Memorandum of Law in support of this Motion is attached.

¹ Plaintiffs also seek class certification in the Complaint.

MEMORANDUM OF LAW

I. FACTS

A. Plaintiff S.W.

While sitting in history class, 17-year old S.W. was arrested by a Cincinnati Police officer on September 12, 2014, based on the allegation that he participated in a robbery on September 7, 2014. (Declaration of S.W. (“S.W. Decl.”), attached at Exhibit A at ¶ 3). Scared and confused, S.W. maintained that he had not robbed anyone. He did not have a prior juvenile record and had never been arrested before. *Id.* He was transported, along with two other boys from school, to the Detention Center that day. *Id.*

In the Incident Recall report of the alleged robbery on September 7th, the responding officer documented that, aside from describing one suspect as having “dreds w/blonde tips,” the alleged victim provided “no specific description on remaining 3MB suspects.” (Incident Recall Report, attached as Exhibit B). In the final incident report, the alleged victim only provided a description of the suspects’ clothing and approximate age. (Incident Report, attached as Exhibit C at p. 4-5).

Despite the vagueness of suspect descriptions, Hamilton County Juvenile Court clerk Constance C. Murdock signed and issued an arrest warrant for S.W. and 2 other children. (Arrest Warrant, attached as Exhibit D). There was no probable cause finding made to justify issuance of the arrest warrant.

S.W. did not have a probable cause hearing when he was admitted to the detention center. (S.W. Decl. at ¶4). On September 15, 2014, he had a detention hearing before a Juvenile Court magistrate and was never asked about the allegations. *Id.* at ¶5. The magistrate did not make a probable cause finding at that hearing, but ordered that S.W. be held at the Detention Center

pursuant to Ohio Juv. Ct. Rule 7 (“Rule 7”). (Order of Magistrate dated September 15, 2014, attached as Exhibit E).

On September 24, 2014, S.W. had a hearing before Defendant John Williams. (Hamilton County Juvenile Court Judicial Entry, Sept. 24, 2014, attached as Exhibit F). Williams ordered that S.W. continue to be held at the Detention Center “in accordance with Rule 7.” *Id.* On the detention holder form, Williams indicated that S.W. was held “to protect the juvenile from harm” and “to protect the person or property of others from harm.” *Id.* Although the form has a section for facts supporting the decision to continue detention, this section was left blank. *Id.* There was no probable cause determination made at that hearing. *Id.* S.W. was advised by his attorney that the prosecutor was seeking to transfer his case to adult court. (S.W. Decl. at ¶6).

Although the judicial entry indicated that the case was continued for a probable cause hearing² on October 6, 2014, a probable cause hearing never occurred. (Exhibit F). On October 6, 2014, the matter was continued for a trial on October 10, 2014. Again, Williams ordered that S.W. continue to be incarcerated at the Detention Center “in accordance with Rule 7.” (Hamilton County Juvenile Court Judicial Entry, October 6, 2014, attached as Exhibit G). The supporting fact section of the form was again left blank. *Id.*

On October 10, 2014, S.W., represented by counsel, had a trial before Defendant Williams. After testimony was heard from the alleged victim and witnesses, S.W. was exonerated of the allegations and released from the Detention Center that day. (Hamilton County Juvenile Court Judicial Entry, October 10, 2014, attached as Exhibit H). In total, S.W. was incarcerated for a total of 30 days at the Detention Center for a crime he did not commit,

² The Juvenile Court conducts probable cause hearings in transfer/bindover cases pursuant to O.R.C. ¶2152.12. At this time, Plaintiffs do not allege lack of procedural protections in those cases.

without a probable cause finding supporting the issuance of the arrest warrant or his subsequent detention.

B. Plaintiff L.D.

Sixteen-year L.D. suffers from Oppositional Defiant Disorder (“ODD”), Attention Deficit Hyperactivity Disorder (“ADHD”), has an IQ of 60 along with severe receptive and expressive language deficits. (Declaration of Nefertteria Dawson (“Dawson Decl.”), attached as Exhibit I, ¶2). L.D. has had problems at school because of his disabilities, has been suspended several times and has had prior contact with the Juvenile Court. *Id.* at ¶2. Despite his developmental and mental health diagnoses, his competency was never evaluated in previous juvenile delinquency cases. *Id.*

When he was 14 years old, L.D. was arrested by Cincinnati Police officers, without an arrest warrant, at 7:45 p.m. on July 8, 2013 near his home. *Id.* at ¶2. When L.D.’s mother protested the arrest of her son with no warrant, officers arrested her for “obstructing official business.”³ *Id.* at ¶5-6. L. D. was taken to the Detention Center that same night. *Id.*

An arrest warrant for L.D. was issued by Chief Deputy Clerk John Cullum on July 9, 2013 at 1:21 a.m., more than five hours after L.D. was taken into custody. (Arrest Warrant for L.D., attached as Exhibit J). The subsequent complaint was filed on July 9th and alleged that L.D. participated in a robbery, a second degree felony. (Juvenile Court Complaint dated July 9, 2013, attached as Exhibit K).

L.D. remained incarcerated at the Detention Center from July 8th until July 23rd, pursuant to Rule 7. There is no indication from court documents that a probable cause

³ L.D.’s mother, Nefertteria Dawson, was charged with obstructing official business. After a bench trial on December 9, 2013, she was acquitted of the charge. Ham. Co. Muni. Ct. No. 13-18362 (Dec. 9, 2013).

determination was made in his case. On July 23, 2013, L.D. was released with an electronic monitoring ankle bracelet and placed on house arrest. (Dawson Decl. at ¶8, Ex. I). From July 2013 to January 29, 2014, L.D. was only permitted to leave his home to attend school. *Id.*

On January 29, 2014, L.D. was adjudicated delinquent on a lesser charge and sent back to the Detention Center until February 12, 2014. *Id.* at ¶10. L.D. spent a total of 15 days in detention and approximately six months on house arrest, with no indication that a probable cause determination was made to justify restrictions on his liberty.

C. Hamilton County Juvenile Court and Detention Center

The Hamilton County Juvenile Court (“Juvenile Court”) is comprised of two full-time elected judges, 20 magistrates, and various administrative personnel, including Defendant John M. Williams. (Hamilton County Juvenile Court 2013 Annual Report, http://www.hamilton-co.org/juvenilecourt/Annual_Report/2013_Annual_Report.pdf, attached as Exhibit L)⁴. The judges and magistrates are vested with the authority to hear delinquency cases ranging from minor misdemeanors to high-level felonies. *Id.* In 2013, the Juvenile Court handled 11,719 delinquency/unruly cases. *Id.* at 5.

The Juvenile Court Youth Center (“Detention Center”), operating as a department of the Juvenile Court, is a secure facility that provides confinement for youth awaiting adjudication, waiting transfer to another jurisdiction or serving a commitment ordered by the Juvenile Court. *Id.* at 34. Defendant Dwayne Bowman is the Superintendent of the Detention Center.

The average daily population of the Detention Center was 90 children in 2013, with an average length of stay of fourteen (14) days. *Id.* In 2013, expenditures for the Youth Center

⁴ Due to length of the Annual Report, Plaintiffs have only attached relevant portions to this motion.

totaled \$7,258,814.26, with an additional \$28,477.72 in food service costs, for a total of \$7,287,291.98. *Id.* at 30. The cost per day of housing a youth at the Hamilton County Juvenile Court Youth Center, based upon the annual expenditures of \$7,287,291.98 divided by an average of 90 youth per day, is \$221.83 (Declaration of Jason Ziedenberg (“Ziedenberg Decl.”), attached as Exhibit M, ¶7 (e)).

1. Youth arrests and Detention Intake Policies

On information and belief, the Juvenile Court issues warrants for children on misdemeanor and felonies based on allegations in private complaints from citizens and affidavits from police officers who did not witness the alleged delinquent act. Arrest warrants are authorized by the Juvenile Court’s “Chief Deputy Clerk” and others, without a judicial finding of probable cause or any inquiry as to whether there is probable cause that the child committed a delinquent act.

a. Hamilton County Arrest Rates

In 2013, 6,069 children were arrested in Hamilton County, Ohio and the Detention center processed 6,074 intakes for children. (Annual Report, Ex. L at p. 34). Of those intakes, 2,340 children were admitted to the Detention Center and held. *Id.*

The U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) reports indicate that there is a huge variance between Hamilton County’s youth arrest and detention rates when compared to Franklin and Cuyahoga Counties, the two largest counties in Ohio.⁵ In 2013, the total number of youth arrested in Hamilton County was 6,069, which is roughly 7.43% of the population of youth ages 10-17. (2013 OJJDP Report for Hamilton, Franklin,

⁵ Ohio Juvenile Courts report their arrest and detention statistics each year to the Ohio Department of Youth Services (“ODYS”) and OJJDP. OJJDP statistic reports were obtained from ODYS through Public Records Requests.

Cuyahoga, attached as Exhibit N). In contrast, the Franklin County youth arrests rate was 1,810 (1.51% of the at-risk population), and the Cuyahoga County youth arrest rate was 4,929 (3.77% of the at-risk population). *Id.*

b. Hamilton County Detention Policies

When a child is arrested and taken to the Detention center, a “Clerk Officer” at the Detention Center makes the initial decision as to whether or not the child will be detained. (Hamilton County Juvenile Court Youth Center Policy No. V4C01P03, attached as Exhibit O at 2). Although Detention Center policy directs the clerk to evaluate the “authenticity” of an arrest warrant, the clerk is not directed, required or authorized to make a probable cause finding at the point of admission to the detention center. (Hamilton County Juvenile Court Youth Center Policy No. V4C01P07, attached as Exhibit P). Pursuant to these rules, the clerk is authorized and directed to process all children “per Juvenile Rule 7 Procedures.” (Hamilton County Juvenile Court Youth Center Policy No. V4C01P01, attached as Exhibit Q).

The Detention Center also uses the Ohio Youth Assessment System (“OYAS”), a risk and needs assessment system used within Ohio’s juvenile justice system, to determine whether or not to detain a child who has been arrested. (Hamilton County Juvenile Court Youth Center Policy No. V4C01P05, attached as Exhibit R). Upon information and belief, both the Juvenile Court and Detention Center enforce an unwritten policy to detain all children accused of certain offenses (e.g. deadly weapon, firearm possession). Again, the intake officer/clerk does not evaluate whether there is any evidence that a delinquent act was committed, nor otherwise make findings that the arrest was lawful or that probable cause was established in individual cases.

2. Lack of Probable Cause Determinations

The Rules of Practice of the Hamilton County Juvenile Court do not explicitly require or prescribe procedures for conducting a probable cause determination in delinquency cases. *See* Ham.Co. Juv. R.⁶ The Juvenile Court issues arrest warrants and detains children pursuant to Ohio Juv. Ct. Rule 7 (“Rule 7”), which allows detention under the following circumstances:

(1) to protect the child from immediate or threatened physical or emotional harm; or (2) to protect the person or property of others from immediate or threatened physical or emotional harm; or (3) upon a finding that the child may abscond or be removed from the jurisdiction of the court; or (4) upon a finding that the child has no parent, guardian, custodian or other person able to provide supervision and care for the child and return the child to the court when required; or (5) when an order for placement of the child in detention or shelter care has been made by the court; or (6) if confinement is authorized by statute. Ohio Juv. Ct. Rule 7 (A).

Rule 7 does not require a neutral and detached magistrate to make a probable cause finding as a prerequisite for arrest warrants or detention in delinquency cases.

The Juvenile Court conducts detention hearings, usually within 24 to 48 hours of a child’s admission to the Detention Center. (Hamilton County Juvenile Court Youth Center Policy No. V4C01P06, attached as Exhibit S). However, the magistrates do not make probable cause determinations at detention hearings. The need for detention for each child is evaluated under Rule 7, which focuses entirely on factors unrelated to whether there is likelihood that the child committed a delinquent act.

When a child is detained, Juvenile Court rules require adjudication hearings to be held within ten (10) days after placement in detention. Ham. Co. Juv. R., Title VII (I). However, adjudication hearings can also be postponed up to fourteen (14) additional days beyond that with

⁶ Ham. Co. Juv. R. available at: http://www.hamilton-co.org/juvenilecourt/rules/Rules_Complete_2009_01_01.pdf.

a showing of good cause. *Id.* Thus, under local rules, a child can be arrested and detained without a probable cause hearing for twenty-four (24) days or longer.

D. Statistical Data and Harmful Impact of Detention

1. Harmful Impact on Children

Research shows that detention harms youth by adversely affecting their mental health and disrupting their education and reducing their opportunities for future employment, while increasing incarceration costs of local governments. (Ziedenisberg Decl., Ex. M).

Research has also confirmed that an estimated two-thirds of youth in detention centers could meet the criteria for having a mental disorder, and a little more than a third need ongoing clinical care. *Id.* at ¶ 4. That is twice the rate of the general adolescent population. *Id.* The conditions generated in many detention centers further conspire to create an unhealthy environments. *Id.* For one-third of incarcerated youth diagnosed with depression, the onset occurred after and not before their period of being held in detention. *Id.* Other studies have shown that the rate of suicide in detention is 2 to 4 times more likely than the suicide rate for youth who are not detained. *Id.* The Office of Juvenile Justice and Delinquency Prevention has reported that juvenile correctional facilities often respond to suicidal threats and behaviors in ways that further endanger the youth, including using isolation as an intervention. *Id.* That office also reports that 4 percent of youth in custody have reportedly been forced into sexual activity while incarcerated. *Id.*

In addition, unnecessary detention disrupts a child's education and provides barriers to the child returning to school. *Id.* at ¶ 5. "The U.S. Department of Education study show[s] that 43% of incarcerated youth receiving remedial services in detention did not return to school after they were released, and another 16% dropped out after only five months." *Id.* Other collateral

risks for youth leaving detention who do not complete school include higher unemployment rates, poorer health, and a substantial decrease in earning capacity as compared to youth who complete school. *Id.*

Studies also show that incarcerating youth can have significant short- and long-term negative effects on employment and economic outcomes. *Id.* at ¶ 6. This conclusion is also supported by the National Bureau of Economic Research. *Id.* “Areas with the most rapidly rising rates of incarceration are areas in which youths, particularly African American youths, have had the worst earnings and employment experiences.” *Id.*

2. Cost of Youth Detention

The fiscal impact of incarcerating youth unnecessarily has an impact on local government budget, especially when the detention does not yield a public safety benefit. *Id.* at ¶ 7. Based on the Hamilton County Juvenile Court 2013 expenditures, the county spent an average of \$3,106 per youth it detained. *Id.* Such cost estimates can help the county understand the scale of this expenditure when it needlessly increases the number and length of stay for some youth in lieu of better policy alternatives. *Id.*

3. Disparate Impact on African-American Children

OJJDP⁷ reported that the Juvenile Court’s Relative Rate Index (“RRI”)⁸ for youth arrests and detention in Hamilton County was:

⁷ Amongst other statistics, OJJDP examines the Juvenile Court’s Relative Rate Index (“RRI”) to determine the existence and level of Disproportionate Minority Contact (“DMC”) occurring at each of the nine major phases of the juvenile court process. DMC is a term used to describe the overrepresentation of minority youth in the juvenile justice system.

⁸ The RRI places a numerical value on the level of disparity or difference in contact that a particular racial group has with the juvenile justice system. In the case of Hamilton County Juvenile Court, the formula compares the ratio of African-American children to the ratio of White children. A RRI rate of 1.0 is considered “neutral” indicating that no racial disparity exists.

- 2011** Arrests: African-American children were 5.81 times more likely to be arrested than White children.
Secure Detention: African-American children were 1.87 times more likely than White children to be placed in secure detention.
- 2012** Arrests: African-American children were 8.32 times more likely to be arrested than White children.
Secure Detention: African-American children were 1.82 times more likely than White children to be placed in secure detention.
- 2013** Arrests: African-American children were 9.89 times more likely to be arrested than White children.
Secure Detention: African-American children were 2.22 times more likely than White children to be placed in secure detention. (2011-2013 OJJDP Reports for Hamilton County, 2011-2013, attached as Exhibit T).

In 2013, 79% of the children arrested in Hamilton County were African-American, despite constituting only 30% of the total population at risk for juvenile justice contact (age 10 through 17). *Id.* Of the cases involving secure detention in 2013, nearly 81% of the children were African-American children. *Id.* Statistical data from 2011 to 2013 show that African-American children in Hamilton County are more significantly more likely to be arrested and detained than White children.

II. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION ENJOINING HAMILTON COUNTY FROM ISSUING ARREST WARRANTS AND DETAINING YOUTH ABSENT A FINDING OF PROBABLE CAUSE BY A NEUTRAL JUDICIAL OFFICIAL.

In determining the appropriateness of granting a preliminary injunction, the Court must balance the following four factors: (1) whether the plaintiff has shown a substantial likelihood of success on the merits; (2) whether the injunction is necessary to prevent the plaintiff from suffering irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. *Deja Vu of Nashville, Inc. v. Metro. Govt. of Nashville & Davidson County, Tenn.*, 274 F.3d 377, 400 (6th Cir. 2001).

Even if the Court is not certain that plaintiff is likely to succeed on the merits, a preliminary injunction is still appropriate where the plaintiff shows “serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if the injunction is issued.” *Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009) (quoting *Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 104 (6th Cir. 1982)).

A. Plaintiffs have a substantial likelihood of success on the merits.

Plaintiffs S.W. and L.D. are likely to succeed on the merits of the legal argument because (1) the Fourth and Fourteenth Amendments to the United States Constitution requires that probable cause be established and determined by a neutral and detached judicial officer before an arrest warrant can be issued and a person detained; (2) this fundamental right to due process extends to juveniles in delinquency cases; and (3) the Hamilton County Juvenile Court issues arrest warrants and detains children in delinquency cases for extended periods of time absent a probable cause determination made by a neutral judicial officer, in violation of children’s constitutional rights.

1. The Fourth and Fourteenth Amendments require a probable cause determination prior to the issuance of warrants and extended detention.

The constitutional standards and procedures for arrest and detention have been derived from the Fourth Amendment, while the Fourteenth Amendment extends that right against unlawful search and seizure to the States. See *Mapp v. Ohio*, 367 U.S. 643 (1961). The Fourth Amendment of the United States Constitution protects against warrantless searches and seizures and arbitrary restraints of liberty. U.S. Const. Amend. IV. As a preliminary matter, case law establishes that, in order to meet Fourth Amendment requirements, probable cause must be determined by a neutral and detached magistrate prior to issuing a warrant. *Coolidge v. New Hampshire*, 403 U.S. 443, 450, 91 S. Ct. 2022 (1971) (holding that the warrant for the search and

seizure of petitioner's automobile did not satisfy the requirements of the Fourth Amendment as made applicable to the States by the Fourteenth because it was not issued by a "neutral and detached magistrate."").

The Supreme Court has also held that the Fourth Amendment requires a prompt judicial determination of probable cause. *Gerstein v. Pugh*, 420 U.S. 103, 111-119 (1975) (holding that Florida procedure, whereby a person arrested without a warrant and charged by information may be jailed or subjected to other restraints pending trial without any opportunity for a probable cause determination, is unconstitutional). When presented with the issue of what constitutes a "prompt" judicial determination, the Supreme Court further held in *County of Riverside v. McLaughlin* that probable cause determinations must be made within 48 hours of arrest. 500 U.S. 44, 56 (1991) (holding that in order to satisfy *Gerstein's* promptness requirement, a jurisdiction must make a probable cause determinations no later than 48 hours after arrest).

In a recent decision, the Ohio Supreme Court held that a neutral and detached magistrate or other person authorized under Ohio Crim. R. 4(A)(1) must make a probable cause determination before an arrest warrant can be issued. *State v. Hoffman*, No. 2014-Ohio-4795, slip op. at ¶5 (decided November 4, 2014). In *Hoffman*, the plaintiff challenged the legality of his arrest due to the lack of probable cause determination for the arrest warrant—specifically that the warrant was issued by a deputy clerk who did not make probable cause determinations, in addition to the lack of sufficient evidence to support probable cause. *Id.* at ¶20. The *Hoffman* court held that the failure to determine probable cause was a flagrant violation of the Fourth Amendment, and that it was imperative for the municipal court to amend its processes to conform to the Ohio Constitution and Ohio Rules of Criminal Procedure Rule 4. *Id.* at ¶45. The

Hoffman decision further held that “a mere conclusory statement that the person whose arrest is sought has committed a crime is insufficient to justify a finding of probable cause.” *Id.* at ¶14.

2. These procedural protections extend to youth.

The Fourth Amendment right against unreasonable search and seizure and the due process clause of the Fourteenth Amendment extend to youth in the context of juvenile delinquency proceedings. *In Re Gault*, 387 U.S. 1, 30 (1967). In *Gault*, the Supreme Court stated that “a proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.” *Id.* at 34. This extension is especially important to provide juveniles all due process rights of the Fourteenth Amendment when the juvenile’s freedom is threatened with restraints. *Id.*

Further, in *Schall v. Martin*, the Supreme Court held that “there is no doubt that the Due Process Clause is applicable in juvenile proceedings” and that “certain basic constitutional protections” are afforded to both adults and juveniles. 467 U.S. 253, 263 (1984). At issue in *Schall* was a New York Statute permitting brief preventative pretrial detention of juveniles. The Court held that the New York Statute did not violate due process because, amongst other reasons, it also provided procedural protections against unnecessary extended detention by requiring a probable cause hearing within three days of initial arraignment and a special fact-finding hearing—procedural safeguards that provided far more protection than was constitutionally required for adults in *Gerstein*.

The Sixth Circuit and other courts have concluded that *Gerstein* and *Gault* are applicable in juvenile delinquency proceedings. For example, in *Cox v. Turley*, a case involving the arrest and detention of a 16-year old boy, the Sixth Circuit concluded that “both the Fourth

Amendment and the Fifth Amendment were violated because there was no prompt determination of probable cause—a constitutional mandate that protects juveniles as well as adults.” 506 F. 2d 1347, 1354 (6th Cir. 1974)(citing *Cooley v. Stone*, 414 F. 2d 1213 (1969)). Some courts have further concluded that “the due process standard applied to juvenile pretrial detainees should be more liberally construed than that applied to adult detainees.” *See, e.g., A.J. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Carter v. Doyle*, 95 F. Supp.2d 851 (N.D. Ill 2000).

Therefore, any jurisdiction authorizing the practice of issuing warrants for youth without probable cause or detaining youth without probable cause is violating the due process rights of juveniles. This was precisely the case in Shelby County, Tennessee, where the United States Department of Justice (“DOJ”) investigated Juvenile Court practices and made findings that the court “violate[d] children’s due process rights by not having any provision for holding probable cause hearings on weekends or holidays.” (Shelby County Juvenile Court Investigation dated April 26, 2012, U.S. DOJ Civil Rights Division, attached as Exhibit U at p. 17-18).⁹ Although probable cause hearings were being conducted in Shelby County, the DOJ investigation revealed that it was “not uncommon for children to experience extended unlawful detention” prior to a probable cause determination being made. *Id.*

As a remedial measure to cure the continuous constitutional violation, the Shelby County Juvenile Court agreed to revise its policies and practices to require that:

- 1) Prior to detaining any child, magistrates would make a determination that there is probable cause that: (1) a delinquent act was committed, (2) the named child committed the delinquent act alleged, and (3) the alleged delinquent act is one for which detention is permitted by statute.
- 2) Children arrested without a warrant would have a probable cause determination to detain within 48 hours of the warrantless arrest

⁹ Due to length of the Investigation Report, Plaintiffs have only attached relevant portions to this motion. The full report is available at: http://www.justice.gov/crt/about/spl/documents/shelbycountyjuv_findingsrpt_4-26-12.pdf.

- 3) No child would be detained for more than 48 hours prior to the detention hearing if the court had not made a probable cause determination. (Memorandum of Agreement dated December 17, 2012, US DOJ Civil Rights Division, attached as Exhibit V at p.9-10)¹⁰

a. Ohio law does not require probable cause hearings.

Although the Ohio Rules of Juvenile Procedure do not explicitly state that a probable cause determination is required at a detention hearing, or at any other stage in the juvenile justice process prior to an adjudication hearing, O.R.C. §2151.31(B)(1) states that “the taking of a child into custody is not and shall not be deemed an arrest except for the purpose of determining its validity under the constitution of this state or of the United States.” Thus, the detention of a juvenile must be determined to be constitutionally valid.

In addition, Pursuant to Ohio Juv. R. 1, the rules are to be “interpreted and construed so as to...effect the just determination of every juvenile court proceeding by ensuring the parties a fair hearing and the recognition and enforcement of their constitutional and other legal rights.”

However, in *In re Milgrim*, the Ohio appellate court held that the Ohio Juvenile Rules of Procedure, not *Gerstein*, governed Ohio juvenile delinquency cases and thus, probable cause determinations were generally not required. No. 77510 (Ohio App. Feb. 8, 2001). The decision sanctioned the use of Rule 7 in determining whether a youth should be detained. *Id.* The Supreme Court of Ohio declined to hear the matter on appeal. 92 Ohio St. 3d. 1429 (*cert. denied* September 26, 2001). Thus, the Ohio Juvenile Rules, as interpreted by the Ohio courts, affirmatively preclude consideration of probable cause prior to arresting or detaining a juvenile.

¹⁰ Due to length of the Memorandum, Plaintiffs have only attached relevant portions to this motion. The full report is available at: <http://www.justice.gov/iso/opa/resources/87720121218105948925157.pdf>.

3. The Juvenile Court does not make probable cause determinations prior to issuing arrest warrants nor within 48 hours of detention, in violation of Plaintiffs' constitutional rights.

The policies and procedures employed by the Hamilton County Defendants clearly and unquestionably violate the Fourth and Fourteenth Amendment probable cause requirement and are therefore unconstitutional. Arrest warrants are authorized by the Juvenile Court's "Chief Deputy Clerk," without a judicial finding of probable cause or sufficient inquiry as to whether there is probable cause that the child committed a delinquent act. Pursuant to O.R.C. § 2303, the Juvenile Court Chief Deputy Clerk does not have the authority to make judicial findings. Although the Juvenile Court holds detention hearings before magistrates, it does not conduct probable cause hearings or otherwise make probable cause findings when a child is detained beyond 48 hours. The average length of detention is fourteen (14) days—during which time no magistrate or other designee has determined whether probable cause even exists. This practice affects every child that has been or will be arrested and detained in Hamilton County.

In S.W.'s case, the arrest warrant was not issued by a neutral judicial officer, but a Juvenile Court clerk who did not make a probable cause finding. Furthermore, the arrest warrant was based on allegations contained in a Cincinnati Police Department Incident Report in which the alleged victim did not give a description of the suspects, nor a sworn statement detailing the incident. Like the facts in *State v. Hoffman*, the incident report in S.W.'s case did not contain a description that even remotely identifies S.W. as a suspect in this case, making it insufficient to support an arrest warrant. He was incarcerated for 30 days. S.W. appeared before the court a total of five times during the pendency of his delinquency case, and at no point did the court make a probable cause determination.

In L.D.'s case, an arrest warrant was obtained hours after he was arrested and detained in violation of the Fourth Amendment. In addition, court documents indicate that L.D. was held in detention pursuant to Ohio Rule 7 and that no probable cause determination was made at his detention hearing. L.D. then spent six months on house arrest, with no finding of probable cause. The absence of procedural protections in L.D.'s case is particularly egregious, given his low IQ, development delays, and mental health diagnoses.

As S.W. and L.D.'s cases indicate, the routine policy and practice of the Juvenile Court and the Detention Center is to arrest and detain youth without a finding of probable cause. This practice contravenes the Fourth and Fourteenth Amendments and Supreme Court authority extending the probable cause requirement to juvenile delinquency cases.

B. Plaintiffs will suffer irreparable harm absent an injunction.

When constitutional rights are threatened or impaired, irreparable injury is presumed. *See ACLU of Ky v. McCreary County, Ky.*, 354 F. 3d 438, 445 (6th Cir. 2003). A party is entitled to a preliminary injunction when it has been established that there is a constitutional violation and that plaintiffs will suffer "continuing irreparable harm for which there is no adequate remedy at law." *Id.* at 7 (citing *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir. 1998)).

The policies and practices described in the Complaint negatively affect not only S.W. and L.D., but the thousands of other youth who are arrested and detained without adequate constitutional protections regarding their alleged conduct. Of the 6,000 youth arrested last year, the deficiencies in the warrant process as to lack of substantive information regarding the sufficiency and accuracy of information, without judicial oversight, are commonly applied. Arrest warrants are issued by non-judicial clerks who do not review or question the sufficiency of information provided by police or others to them, and do not make a finding of probable cause,

nor are they vested with the authority to do so. Any of the arrests made under those circumstances are constitutionally infirm.

For those youth arrested who are then detained, totaling 2,340 in 2013, it is without a probable cause determination being made during the initial hearing to review the detention decision. There is no mention in the Hamilton County Court Rules, nor the Ohio Supreme Court Rules, nor Ohio law, which supports the determination and findings of probable cause for these youth; nor does it occur in practice. The practice extends to the class of youth detained just as it does to S.W and L.D. For African American youth, who are arrested nearly ten times the rate of white youth, and detained more than twice as often, the consequences are even more dire.

The overuse of pretrial detention of juveniles presents serious legal, sociological, and economic consequences. The separation of a juvenile from his or her family prior to trial has detrimental effects on the youth. The complete separation of a juvenile from his or her community, home, school, and life is a substantial burden. Youth are subjected to police contact, handcuffing, and booking as alleged criminals. They may be stigmatized and labeled by others as a result of an arrest, and are unable to participate in their home schools, job, church, family events, or social activities. It is a major inconvenience and stressor for families, who may be required to take off work, arrange transportation, find child care, and respond to the needs of the youth who has been arrested. It matters to these families, and it is not insignificant.

The policies and practices of the Hamilton County Juvenile Court which allow thousands of youth to be routinely arrested and detained without adequate due process is inherently unconstitutional and imposes irreparable injury on thousands of youth each year.

C. The harm Plaintiffs will continue to suffer if an injunction is not granted greatly outweighs any harm to others.

As discussed above, if an injunction is not granted, Plaintiffs will continue to suffer. The harm to others, if injunctive relief is granted, is non-existent. Research shows that unnecessary detention of youth does not yield public safety benefits. Instituting the required policies will result in reducing unnecessary youth arrests and detention and cost-saving for the County agencies involved in the juvenile justice process.

D. The public interest favors the granting of the injunction.

Finally, “it is always in the public interest to prevent violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Michigan Liquor Control Com’n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Here, the policies and practices of the Hamilton County Juvenile Court are inherently unconstitutional. The public interest will be served by affording youth constitutionally required procedural protections and granting an injunction requiring Defendants to implement changes in their policies and practice regarding probable cause and arrest.

IV. CONCLUSION

For the reasons discussed above, this Court should grant Plaintiffs S.W. and L.D.’s Motion for Preliminary Injunction. The Court should enjoin and prohibit Defendants from (1) issuing arrest warrants for children without a finding of probable cause by a neutral and detached magistrate, and (2) detaining youth beyond 48 hours in the absence of a probable cause determination made by a neutral judicial official, or otherwise restraining the liberty of children without a constitutionally required procedural protections.

Respectfully Submitted,

/s/ Rickell L. Howard

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CERTIFICATE OF SERVICE

I certify that on November 23, 2014, a copy of the foregoing Plaintiff's Motion for Preliminary Injunction on Behalf of Class was filed electronically. Notice of this filing will be sent to all parties by operation of the court's electronic filing system. Additionally, I served a copy by email to James Harper, Hamilton County Chief Civil Attorney, on November 24, 2014 at James.Harper@hcpros.org.

/s/Rickell L. Howard

Rickell L. Howard