

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

LETICIA ROBERTS and CALVIN  
SAYERS, on behalf of themselves  
and others similarly situated;

Plaintiffs,

v.

SHERIFF TONY THOMPSON, in his  
official capacity; BLACK HAWK  
COUNTY;

Defendants.

Case No. 6:24-cv-02024-MAR

**EXPERT DECLARATION OF APRIL  
FERNANDES, Ph.D. AND GABRIELA  
KIRK-WERNER, Ph.D.**

We, April Fernandes, Ph.D., and Gabriela Kirk-Werner, Ph.D., declare as follows:

**BACKGROUND**

1. Our names are Dr. April Fernandes, tenured Associate Professor in the Department of Sociology and Anthropology at North Carolina State University, and Dr. Gabriela Kirk-Werner, Assistant Professor in the Sociology Department and Senior Research Associate at the Center for Policy Research at Syracuse University. The curriculum vitae of Dr. Fernandes is attached hereto as Exhibit A and Dr. Kirk-Werner's is attached as Exhibit B.

2. Counsel for Plaintiffs in the above-captioned case requested that we prepare a report on the imbalance of power between governments and those incarcerated when the government seeks to impose and collect pay-to-stay fees.

3. We are being compensated \$150 per hour for our expertise, up to \$1,500 total, for authoring this report in support of Plaintiffs' motion for a preliminary injunction.

4. Dr. Fernandes and Dr. Kirk-Werner, along with a third colleague—Brittany Friedman of the University of Southern California—are the foremost experts on pay-to-stay in the country. We have published multiple academic articles (Friedman 2020; Kirk, Fernandes & Friedman 2020; Friedman, Fernandes & Kirk 2021; Fernandes, Friedman & Kirk 2022); provided congressional testimony on the state and federal level; and given our expertise in media interviews and opinion pieces for the Associated Press, National Public Radio, and the Washington Post, among others. We are co-founders of the Captive Money Lab, a research lab spearheading the innovation of research, policy, and advocacy that concerns the political economy of punishment and the resulting impact on inequality in the United States. The flagship work of the lab is the study of pay-to-stay fees.

5. To prepare this report, we have reviewed the Complaint, dated May 14, 2024. Otherwise, we have relied on our educations, professional training, and academic research in formulating the opinions contained in this declaration.

## **OVERVIEW**

6. Pay-to-stay refers to the practice of states and municipalities charging incarcerated people for the per diem costs of their incarceration in prison or in jail. In prison, the costs are typically calculated using the operations cost of each prison facility based on the year(s) of incarceration and the number of people incarcerated. For jails, the departments of corrections typically set the jail rate, which can range from \$10 per day to \$100 per day.

7. In our research on prison pay-to-stay (Friedman 2020; Kirk, Fernandes & Friedman 2020; Friedman, Fernandes & Kirk 2021; Fernandes, Friedman & Kirk 2022), we have found that charging incarcerated people for the costs of their incarceration results in financial burdens for the incarcerated person and their families. Existing empirical research shows that

incarcerated people are often indigent, with limited incomes and often no access to savings (Kirk & Wakefield 2018).

8. There is a wealth of research that details many consequences that result from both prison and jail incarceration, including but not limited to: the ability to obtain and maintain employment (Pettit & Western 2004; Uggen et al. 2014; Fernandes 2020b); effect on wage growth (Pettit & Western 2004); negative physical and mental health outcomes (Massoglia & Pridemore 2015; Fernandes 2020a; Yi, et al. 2017); delays or prohibitions on educational attainment (Stewart & Uggen 2019); inability to obtain stable housing (Kirk 2018); mounting legal debt, including monetary sanctions and child support payment and arrears (Harris 2016; DeMarco et al. 2021; Haney 2022); strained family relationships (Comfort 2016; Miller 2021); difficulty accessing social services, including food benefits (Pattillo et al. 2004); and increased surveillance (Kirk 2021). These impacts come with their own financial costs, with pay-to-stay adding to the financial burden for individuals who have experienced incarceration, even for a limited time.

9. Our extensive research into the practice of pay-to-stay demonstrates that jail pay-to-stay is detrimental to the incarcerated person and their family members because of the legal debt that is incurred. Legal debt can result in collection procedures, such as wage garnishment, tax liens, and private collections charges, that can hinder the reentry process. Our work on pay-to-stay has shown that incarcerated and recently released individuals subject to pay-to-stay costs face substantial financial and familial consequences as a result of the assessment of pay-to-stay costs as well as the collection procedures used, including but not limited to civil lawsuits, wage garnishment, tax liens, and private collections as well as other penalties, including driver's license suspensions/revocations.

10. Jail pay-to-stay is often charged to formerly confined individuals without an assessment of the ability to pay. People who are system-linked are typically economically disadvantaged and are subject to a host of attendant costs and charges as a result of an arrest and/or brief jail confinement. Criminal legal contact results in monetary sanctions that can increase legal debt and place the ability to afford rent / mortgage, health care needs, child care and elder care, basic necessities, including food, utility payments, medications in jeopardy. Research has shown that even a brief jail stay can affect potential for employment, depress wages, and negatively impact physical and mental health outcomes (Fernandes 2020a, 2020b; Turney & Conner 2019). The ability to pay these charges and debts are limited and can result in either not paying for everyday necessities or accruing additional debt via credit cards or payday loan centers and other exploitative lending schemes.

11. Our work has also shown that incarcerated people, in both jail and prison, contribute directly and indirectly to the costs of incarceration in the following ways: through their labor, family and support system contributions, commissary purchases, medical co-pays, among others (Fernandes, Friedman & Kirk 2022). Without the ability to challenge or appeal these charges and provide documentation for these contributions, incarcerated people in jail are at a disadvantage when being assessed daily pay-to-stay fees. This disadvantage stems from the inherent imbalance of power between the government, which imposes the debt, and the individuals forced to pay, who typically have few resources to challenge the debt.

12. This imbalance is furthered when governments use tactics that go beyond typical state laws or that violate human rights norms. One leading scholar on the topic has coined the term “stategraft” to describe efforts by “state agents to transfer property from persons to the state in violation of the state’s own laws or basic human rights.” (Atuahene 2023). As we have

observed in our own scholarship, statecraft relies on targeting segments of the population that are poorly positioned to fight back, including individuals who were formerly incarcerated. (Kirk-Werner, Fernandes, and Friedman 2024).

## OPINIONS

### **A. Pay-to-Stay Collection Relies on Existing Power Disparities to Compel Collection**

13. In order to collect pay-to-stay fees from incarcerated people and their families, states and localities often rely on power and information asymmetries, violating the due process rights of incarcerated people. In our research we have found that most states allowing pay-to-stay rely on collection of these fees through civil and administrative procedures, rather than through criminal court procedures. This dynamic is present in Iowa. Despite the fees originating from a criminal case, these collection practices circumvent some of the due process rights afforded to those in criminal court, including the right to counsel. These practices circumvent incarcerated individuals' ability to contest or appeal these charges, their right to an attorney, and their access to legal resources and information (Kirk-Werner, Fernandes, and Friedman 2024).

14. Incarcerated individuals do not enter jail or prison by their own will. Once incarcerated, the coercive conditions of their confinement make them uniquely vulnerable to exploitation and diminish their ability to meaningfully consent. This vulnerability is established in federal policies that protect them in research settings (U.S. Department of Health and Human Services 2021). Additionally, we have found that many incarcerated people are unaware of the fact that fees are imposed for the cost of their incarceration in jail or prison (Fernandes, Friedman, and Kirk 2022). Thus, incarcerated people cannot be understood to have consented to

either their own incarceration or to the fees associated with their confinement, despite being made to sign a purported “agreement” to pay, like a confession of judgment.

15. The conditions of confinement create an inherently unequal power dynamic between the incarcerated and the state. Current pay-to-stay collection practices are predicated on the assumption that this is a financial contract that people enter into willingly and that when unable to pay, that incarcerated individuals are “willful” nonpayers which allows the state to compel repayment (Fernandes, Friedman, and Kirk 2022). By treating individuals who were formerly incarcerated as having willingly incurred debt, the state justifies its further collection of the purported debt. However, this assumption disregards the fact that this is not a financial agreement that is entered into knowingly and willingly.

16. In *Gideon v. Wainwright*, the Supreme Court asserted that lawyers and legal assistance are necessary to “level the playing field between individual defendants and the coercive power of the state” (Kalb 2018). *Gideon* acknowledges the inherent power imbalance between individuals and the state and the particular vulnerabilities of those involved in the criminal legal process. Thus, in order to level that disparity in power, defendants must be granted legal assistance in order to access their constitutional right of due process. Because pay-to-stay collection often operates outside of the criminal court system, incarcerated people are not entitled to legal representation. However, in order to level the playing field and for incarcerated people to enter this financial contract, incarcerated individuals must be able to access legal information and legal assistance.

17. In addition to a lack of entitled legal assistance, incarcerated individuals face institutional barriers to legal information and assistance. People incarcerated in jail have less access to law libraries as not every county jail is equipped with these resources (Collins 2007).

Based on our research that will be presented in a forthcoming publication on prison pay-to-stay fees, we find that even for incarcerated individuals in prison, law libraries are often inaccessible due to lockdowns, staffing shortages, and other institutional barriers (Fernandes, Friedman, and Kirk-Werner 2024). Research on access to legal representation has found that those incarcerated pretrial have a harder time communicating and building a case with their attorneys, leading to greater chance of conviction and further incarceration (Kalb 2018; Baylor 2015). During the COVID-19 pandemic, policy changes nationwide that restricted and continue to restrict communication between those incarcerated and their attorneys have further limited access to defendants' Sixth Amendment right (Geczy 2023).

18. Current pay-to-stay laws treat incarcerated individuals as if they are knowingly and willingly entering into a financial contract with the state. The state can then pursue collection practices that take resources away from those who already face significant economic disadvantages. These collection practices rely on inherent imbalances of power, information, resources, and the notion of consent between the incarcerated and the state.

**B. Pay-to-Stay Collection in Iowa Relies on the Same Imbalance of Power**

19. In Iowa, the assessment of jail pay-to-stay fees range from \$30-70 per day, depending on the county in which the individual is incarcerated. There are also additional administrative fees for booking and medical expenses that can be charged in addition to pay-to-stay fees.

20. The Iowa law allowing for pay-to-stay fees at county jails has similar features as those described above. Most notably, collections of pay-to-stay fees are to be collected through civil reimbursement claims, not through the criminal process. Iowa Code § 356.7(4). As

provided above, these structural features make it more difficult for individuals to challenge the fees assessed.

21. As we understand from reviewing the Complaint in this case, in Black Hawk County, Iowa, individuals incarcerated in jail sign a “confession of judgment” for pay-to-stay fees. The confession of judgment prohibits individuals from being able to appeal the jail pay-to-stay fees. This procedure limits the due process protections of individuals subject to jail pay-to-stay fees. Due to the civil nature of this procedure, individuals subject to jail pay-to-stay fees are not able to access indigent defense counsel or to be able to appeal the assessment and charging of these fees.

22. The signing of the confession of judgment relies on the power imbalances and information asymmetries that make it impossible for incarcerated people to enter into this financial contract willingly and knowingly. As we have reflected in some of our work, incarcerated individuals are arguably among the most vulnerable and least capable of fighting back (Kirk-Werner, Fernandes, & Friedman 2024). In a jail setting, the power dynamic between the state and the incarcerated individual could not be more stark: the state deprives the individual of his liberty, often before they are convicted of a crime and while they are still deemed innocent until proven guilty. The individual is not free to leave. Often, the individual is not even free to move about the facility without the permission of their jailers.

23. The power imbalance is furthered by the fact that, once released, the state can impose further penalties beyond their criminal sentence. There are substantial financial consequences linked to the assessment and charging of jail pay-to-stay fees. Non-payment can result in additional penalties, including driver’s license suspensions, which can hinder the ability to go to work or school and attend to everyday responsibilities, including child and elder care.



24. Ultimately, it is our opinion that any supposed “agreement” by an individual detained at a jail to pay pay-to-stay charges results from the imbalance of power described above. It is illogical to assume that individuals who are incarcerated against their will agree to the financial costs that result from their local pay-to-stay laws. In fact, pay-to-stay systems generally rely on the imbalance of power to impose the fees and extract wealth from those individuals who have served time. It is a feature of the system, not a bug.

6/26/2024  
Dated \_\_\_\_\_



Gabriela Kirk-Werner, Ph.D.

06/26/2024  
Dated \_\_\_\_\_



April D. Fernandes, Ph.D.

### **Description of Referenced Materials and Studies**

1. **Friedman 2020:** Brittany Friedman, *Unveiling the Necrocapitalist Dimensions of the Shadow Carceral State: n Pay-to-Stay to Recoup the Cost of Incarceration*, 37 J. of Contemporary Crim. Just. 66 (Oct. 21, 2020), <https://doi.org/10.1177/1043986220965040>.
2. **Kirk, Fernandes, & Friedman 2020:** Gabriela Kirk, April Fernandes, & Brittany Friedman, *Who Pays for the Welfare State? Austerity Politics and the Origin of Pay-to-Stay Fees as Revenue Generation*, 63 Sociological Perspectives 921 (Dec. 23, 2020). <https://doi.org/10.1177/0731121420967037>
3. **Friedman, Fernandes & Kirk 2021:** Brittany Friedman, April D. Fernandes, & Gabriela Kirk, *'Like if You Get a Hotel Bill': Consumer Logic, Pay-to-Stay, and the Production of Incarceration as a Public Commodity*, 36 Sociological Forum 735 (May 14, 2021), <https://doi.org/10.1111/sof.12718>.
4. **Fernandes, Friedman & Kirk 2022:** April D. Fernandes, Brittany Friedman, & Gabriela Kirk, *The 'Damaged' State vs. the 'Willful' Nonpayer: Pay-to-Stay and the Social Construction of Damage, Harm, and Moral Responsibility in a Rent-Seeking Society*, 8 RSF: The Russell Sage Found. J. of Soc. Sci. 82–105 (Jan. 2022) <https://doi.org/10.7758/rsf.2022.8.1.04>.
5. **Kirk & Wakefield 2018:** David S. Kirk & Sarah Wakefield, *Collateral Consequences of Punishment: A Critical Review and Path Forward*, 1 Annual Rev. of Crim. 171 (Jan. 2018), <https://doi.org/10.1146/annurev-criminol-032317-092045>.
6. **Pettit & Western 2004:** Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 Am. Soc. Rev. 151 (April 2004), <https://doi.org/10.1177/000312240406900201>.
7. **Uggen et al. 2014:** Christopher Uggen, Mike Vuolo, Sarah Lageson, Ebony Ruhland, & Hilary K. Whitham, *The Edge of Stigma: An Experimental Audit of The Effects of Low-Level Criminal Records on Employment*, 52 Criminology 627 (Nov. 20, 2014), <https://doi.org/10.1111/1745-9125.12051>.
8. **Massoglia & Pridemore 2015:** Michael Massoglia & William Alex Pridemore, *Incarceration and Health*, 41 Annual Rev. of Soc. 291 (Aug. 2015), <https://doi.org/10.1146/annurev-soc-073014-112326>.
9. **Fernandes 2020a:** April D. Fernandes, *On the Job or in the Joint: Criminal Justice Contact and Employment Outcomes*, 66 Crime & Delinquency 1678 (Jan. 22, 2020), <https://doi.org/10.1177/0011128719901112>.

10. **Fernandes 2020b**: April D. Fernandes, *How Far Up the River? Criminal Justice Contact and Health Outcomes*, 7 Soc. Currents 29 (Aug. 24, 2019), <https://doi.org/10.1177/2329496519870216>.
11. **Yi, et al. 2017**: Youngmin Yi, Kristin Turney, & Christopher Wildman, *Mental Health Among Jail and Prison Inmates*, 11 Am. J. of Men's Health 900–909 (July 2017), <https://doi.org/10.1177/1557988316681339>.
12. **Stewart & Uggen 2019**: Robert Stewart & Christopher Uggen, *Criminal Records and College Admissions: A Modified Experimental Audit*, 58 Criminology 156 (Oct. 23, 2019), <https://doi.org/10.1111/1745-9125.12229>.
13. **Kirk 2018**: David S. Kirk, *The Collateral Consequences of Incarceration for Housing*. Handbook on the Consequences of Sentencing and Punishment Decisions 53–68 (1st ed. 2018).
14. **Harris 2016**: Alexes Harris, *A Pound of Flesh: Monetary Sanctions as Punishment for the Poor* (2016).
15. **DeMarco et al. 2021**: Laura M. DeMarco, Rachel E. Dwyer, & Dana L. Haynie, *The Accumulation of Disadvantage: Criminal Justice Contact, Credit, and Debt in the Transition to Adulthood*, 59 Criminology 545 (Aug. 19, 2021), <https://doi.org/10.1111/1745-9125.12286>.
16. **Haney 2022**: Lynne Haney, *Prisons of Debt: The Afterlives of Incarcerated Fathers* (1st ed. 2022).
17. **Comfort 2016**: Megan Comfort, 'A Twenty-Hour-a-Day Job': *The Impact of Frequent Low-Level Criminal Justice Involvement on Family Life*, 665 The Annals of the Am. Acad. of Pol. & Soc. Sci. 63 (April 10, 2016), <https://doi.org/10.1177/0002716215625038>.
18. **Miller 2021**: Reuben Jonathan Miller, *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration* (2021).
19. **Pattillo et al. 2004**: Mary Pattillo, David Weiman, & Bruce Western, *Imprisoning America: The Social Effects of Mass Incarceration* (2004).
20. **Kirk 2021**: Gabriela Kirk, *The Limits of Expectations and the Minimization of Collateral Consequences: The Experience of Electronic Home Monitoring*, 68 Soc. Problems 642 (Aug. 2021), <https://doi.org/10.1093/socpro/spaa021>.

21. **Turney & Conner 2019:** Kristin Turney & Emma Conner, *Jail Incarceration: A Common and Consequential Form of Criminal Justice Contact*, 2 Annual Rev. of Crim. 265 (Jan. 2019), <https://doi.org/10.1146/annurev-criminol-011518-024601>.
22. **Atuahene 2023:** Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. Rev. 1 (April 2023), <https://www.nyulawreview.org/issues/volume-98-number-1/a-theory-of-stategraft>.
23. **Kirk-Werner, Fernandes, & Friedman 2024:** Gabriela Kirk-Werner, April D. Fernandes, & Brittany Friedman, *Pay-to-Stay as Stategraft*, Wis. L. Rev. Forward (April 12, 2024), <https://wlr.law.wisc.edu/pay-to-stay-as-stategraft>.
24. **U.S. Department of Health and Human Services 2021:** Policy for Protection of Human Subjects, 45 C.F.R. § 46 (Mar. 10, 2021), <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/index.html>.
25. **Kalb 2018:** Johanna Kalb, *Gideon Incarcerated: Access to Counsel in Pretrial Detention*, 9 U.C. Irvine L. Rev. 101 (2018), <https://scholarship.law.uci.edu/ucilr/vol9/iss1/3>.
26. **Collins 2007:** William C. Collins, *Jails and the Constitution: An Overview*, U.S. Dep't of Justice, Nat'l Inst. of Corr. (2d ed. Sept. 2007), <https://nicic.gov/resources/nic-library/all-library-items/jails-and-constitution-overview>.
27. **Fernandes, Friedman, & Kirk-Werner 2024:** April D. Fernandes, Brittany Friedman, & Gabriela Kirk-Werner, *Civil Lawfare* (2024) (unpublished manuscript on file with authors).
28. **Baylor 2015:** Amber Baylor, *Beyond the Visiting Room: A Defense Counsel Challenge to Conditions in Pretrial Confinement*, 14 Cardozo Pub. L., Policy & Ethics J. 1 (2015), <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1818&context=facscholar>.
29. **Geczy 2023:** Isabelle M. Geczy, *Captive Without Counsel: The Erosion of Attorney-Client Privilege for Incarcerated Individuals*, 70 U.C.L.A. L. Rev. 1084 (2023), <https://www.uclalawreview.org/erosion-of-attorney-client-privilege-for-incarcerated-individuals>.