

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (hereinafter "Agreement") is made by and among DEKALB COUNTY, GEORGIA ("DeKalb County"); CHIEF JUDGE NELLY WITHERS, In Her Official Capacity as Chief Judge of the DeKalb County Recorder's Court ("Judge Withers"); JUDICIAL CORRECTION SERVICES ("JCS"); KEVIN THOMPSON ("Thompson" or "Plaintiff"), on behalf of himself and each of his respective heirs, successors, and assigns; the AMERICAN CIVIL LIBERTIES UNION FOUNDATION ("ACLU Foundation"); the AMERICAN CIVIL LIBERTIES FOUNDATION OF GEORGIA ("ACLU Foundation of Georgia"); the SOUTHERN CENTER FOR HUMAN RIGHTS ("Southern Center"); and ROGERS & HARDIN LLP ("Rogers & Hardin"). DeKalb County, Judge Withers and JCS are from time to time referred to collectively as "Defendants" herein. DeKalb County, Judge Withers, JCS and Thompson are from time to time referred to hereinafter individually as a "Party" and collectively as the "Parties."

WHEREAS, commencing on December 8, 2014, Thompson alleges that he was incarcerated for five days in the DeKalb County Jail because of his inability to pay \$838 in fines and fees related to a traffic ticket following DeKalb County Recorder's Court probation revocation proceedings in which he was not properly informed of his right to request court-appointed counsel, was not provided counsel

as an indigent probationer charged with failure to pay, and was not afforded a pre-deprivation indigency hearing prior to being jailed for failure to pay fines and fees (the "Incident");

WHEREAS, Thompson filed an action against Defendants on January 29, 2015 in the United States District Court for the Northern District of Georgia, entitled *Thompson v. DeKalb County, Georgia* et al., Civil Action No. 1:15-cv-00280-TWT (the "Lawsuit"), alleging violations of his rights to due process and equal protection of the law under the Fourteenth Amendment to the U.S. Constitution as a result of Defendants' alleged policies, practices, and customs;

WHEREAS, DeKalb County, Judge Withers and JCS deny that they engaged in any unlawful conduct toward Thompson and further deny that Thompson's claims would result in any liability on their part;

WHEREAS, it is the desire of the Parties to resolve all disputes as and between and among them and to settle the Lawsuit;

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration passing between the Parties, the receipt and sufficiency of which consideration is hereby acknowledged, and intending to be legally bound hereby, it is agreed as follows:

1. **RELEASE OF CLAIMS BY PLAINTIFF AND COUNSEL.**

(a) In consideration of the agreements set forth herein, including the

payment provided for below, Thompson, on behalf of himself and his agents, representatives, assignees, attorneys, heirs, executors, and administrators (collectively referred to as "Releasers"), hereby releases DeKalb County, Judge Withers, JCS, and their present and former agents, employees, attorneys, officers, elected officials, departments, contractors and assigns (individually and collectively "Releasees") from any and all controversies, claims, demands, promises, actions, suits, grievances, proceedings, complaints, charges, liabilities, and claims for damages, debts, allowances, bonuses, costs, expenses, and attorneys' fees (individually and collectively "Claims") that Releasers or any of them have or may have against Releasees or any of them by reason of any matter, cause, act, or omission, from the beginning of time until the date of execution of this Agreement, including those alleged in the Lawsuit and those arising out of or in connection with the Incident. This release applies to Claims that Releasers know about, and those Releasers may not know about, occurring or arising at any time on or before the date of execution of this Agreement.

(b) In exchange for the payment to the ACLU Foundation provided for in Paragraph 2 herein, the ACLU Foundation, the ACLU Foundation of Georgia, the Southern Center and Rogers & Hardin, LLP (collectively, "Counsel") hereby release the Releasees from any and all claims for attorneys' fees, costs and expenses, or other compensation that they, or any of their current or former

partners or employees may claim in connection with the Lawsuit or any proceedings related to the Lawsuit. The Plaintiff and Counsel agree that the payments provided for herein satisfy all claims for attorneys' fees, costs and expenses from Defendants related to the Lawsuit, and that they will not seek any additional award of attorneys' fees, costs or expenses from the Defendants or any of them.

2. **PAYMENT.** In full and complete satisfaction of all claims against DeKalb County, Judge Withers, and JCS, and in consideration for the Plaintiff and Counsel executing this Agreement and complying with its terms, Defendants will pay to Plaintiff and Counsel the total amount of SEVENTY THOUSAND DOLLARS (\$70,000.00). This amount includes an amount allocable to all attorneys' fees, costs and expenses incurred by the Plaintiff and Counsel. The parties agree that no part of this amount is for wages. The \$70,000 total amount will be paid by means of checks made payable to "Kevin Thompson" and "The American Civil Liberties Union Foundation." Said checks will be delivered to Plaintiff's Attorney Robert Remar at Rogers & Hardin LLP within ten (10) business days after the County Attorney of DeKalb County receives an original of this Agreement that has been fully executed by Thompson, the ACLU Foundation, the ACLU Foundation of Georgia, the Southern Center , and Rogers & Hardin LLP.

The payment of the above-stated total amount is the entire and only monetary consideration for this Agreement, and Thompson shall be responsible for any additional payment of attorney's fees and legal expenses of Thompson and Thompson's attorneys, including Counsel, and other fees and expenses, including taxes, if any, flowing from, arising out of, or in any way related to the Incident or the Lawsuit. Each Defendant shall likewise be responsible for her or its own attorneys' fees and legal expenses in connection with the Incident and the Lawsuit.

3. AFFIRMATIVE POLICY CHANGES.

(a) In further consideration for the execution of this Agreement, including the dismissal of this Action, Judge Withers will disseminate to all DeKalb County Recorder's Court personnel involved in the administration of misdemeanor probation concerning traffic offenses and violations of DeKalb County ordinances, including DeKalb County Recorder's Court judges adjudicating misdemeanor probation revocation proceedings in any capacity, an Order in the form attached hereto as Exhibit A, and made a part hereof, within ten days after the County Attorney of DeKalb County receives an original of this Agreement that has been fully executed by Thompson, the ACLU Foundation, the ACLU Foundation of Georgia, the Southern Center and Rogers & Hardin LLP.

(b) After Judge Withers disseminates the Order in accordance with Paragraph 3(a) above, Judge Withers will provide a copy of the Order to Plaintiff's

counsel Robert Remar, together with written confirmation from Judge Withers that the Order has been disseminated.

4. DISMISSAL OF LAWSUIT.

Simultaneously with the execution of this Agreement, the Parties will execute a Stipulation of Dismissal with Prejudice of this lawsuit in the form annexed hereto as Exhibit B, which will be filed with the Court by Plaintiff's counsel within two business days after receipt by Rogers & Hardin LLP of checks covering the amount set forth in Paragraph 2 above and receipt of the written confirmation set forth in Paragraph 3(b) above.

5. This Agreement will be binding upon and will inure to the benefit of the signatories hereto and their respective successors and assigns.

6. No amendments of this Agreement will be valid unless made in writing and signed by all of the signatories hereto.

7. This Agreement may be executed in duplicate counterparts, each of which will be deemed an original, with the same effect as if the signatures thereto were on the same instrument. Each signatory to the Agreement may execute this agreement by telefax or by e-mail, which shall have the same force and effect as if executed on an original copy.

8. This Agreement, and the parties' performance herein, shall be governed by and construed under the laws of the State of Georgia, without giving

effect to its conflicts of law provisions that would result in the application of the law of any other jurisdiction.

9. The Parties represent and warrant that they are not relying on the advice of any other Party, or anyone associated with them, as to legal, tax (income, estate, gift, or otherwise), or other consequences of any kind arising out of this Agreement; that they have not relied on any representations or statements, written or oral, of any other Party, including, but not limited to, any factual representation regarding the Incident, except insofar as those representations or statements are set forth in this Agreement; and that they are knowingly and voluntarily signing this Agreement and are not subject to duress, coercion, or undue influence by any other Party or by anyone else.

10. Thompson represents and warrants that, aside from the Lawsuit, he has not filed, will not file, and will not authorize or cause to be filed any Claims, complaints, or demands, of any nature whatsoever, arising from or relating to the Incident in any court or tribunal, or with any adjudicatory body or agency anywhere in the U.S. or abroad.

11. The ACLU Foundation, the ACLU Foundation of Georgia, the Southern Center and Rogers & Hardin, LLP represent and warrant that they do not currently represent any individuals other than Thompson who seek to file claims related to the DeKalb County Recorder's Court.

12. The Parties understand that they have the right to obtain legal counsel to review and evaluate this Agreement, and attest that they have done so or else have agreed to waive this right.

13. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions shall continue in full force and effect. This Agreement is not made to pay claims that are barred by sovereign immunity.

14. It is the intent of the Parties that no part of this Agreement is to be presumptively construed either against or in favor of any Party because of the identity of the drafter; it being agreed that all Parties by their respective attorneys have participated in the drafting of this Agreement.

15. Paragraph headings contained herein are for purposes of organization only and do not constitute a part of this Agreement.

16. Any communications or notices to be provided pursuant to this Agreement will be sent in writing, and addressed, via commercial overnight delivery service, to the attention of the persons identified below (or as the signatories may subsequently direct in writing):

Thompson:

Kevin Thompson, care of Robert Remar, Esq.
Rogers & Hardin LLP
229 Peachtree Street, NE
2700 International Tower

Atlanta, GA 30303

DeKalb County:

O.V. Brantley, Esq.
County Attorney
DeKalb County Law Department
1300 Commerce Drive, 5th Floor
Decatur, GA 30030
Tel.: (404) 371-3011
Fax: (404) 371-3024
ovbrantley@dekalbcountyga.gov

Judge Withers:

O.V. Brantley, Esq.
County Attorney
DeKalb County Law Department
1300 Commerce Drive, 5th Floor
Decatur, GA 30030
Tel.: (404) 371-3011
Fax: (404) 371-3024
ovbrantley@dekalbcountyga.gov

JCS:

John McCauley, Esq.
Director of Insurance and Litigation
Correct Care Solutions, LLC
1283 Murfreesboro Rd. Suite 500
Nashville, Tennessee 37217
Tel: 615-324-5724
jcmccauley@correctcaresolutions.com

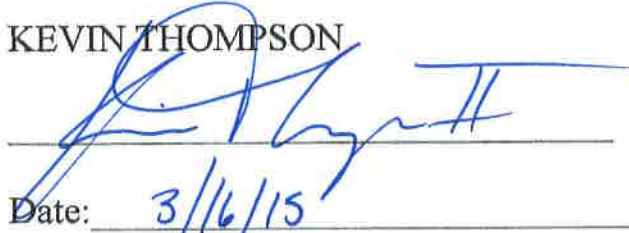
17. This Agreement constitutes the entire agreement and understanding between and among the Parties and other signatories with respect to the subject matter hereof and supersedes all other prior or contemporaneous oral agreements,

understandings, undertakings and negotiations.

18. Upon the execution of this Agreement, the ACLU Foundation and DeKalb County will issue the Joint Press Release attached hereto as Exhibit C. The parties agree, subject to the requirements of the Georgia Open Records Act, that they will not publicly disclose the amounts contributed by DeKalb County and JCS to the settlement payment set forth in Paragraph 2 above.

IN WITNESS WHEREOF, the Parties and other signatories have caused this Agreement to be executed by their duly authorized representatives below.

KEVIN THOMPSON



Date: 3/16/15

DEKALB COUNTY

By _____

Name _____

Title _____

Date: _____

JUDGE NELLY WITHERS

By _____

Name _____

Title _____

Date: _____

JUDICIAL CORRECTION SERVICES, INC.

By _____

Name _____

Title _____

Date: _____

KEVIN THOMPSON

Date: _____

DEKALB COUNTY

By Zachary L. Williams

Name Zachary L. Williams

Title Exec. Asst./COO

Date: 3/18/2015

JUDGE NELLY WITHERS

By _____

Name _____

Title _____

Date: _____

JUDICIAL CORRECTION SERVICES, INC.

By _____

Name _____

Title _____

Date: _____

KEVIN THOMPSON

Date: _____

DEKALB COUNTY

By _____

Name _____

Title _____

Date: _____

JUDGE NELLY WITHERS

By  _____

Name Nelly F. Withers

Title Chief Judge

Date: 3/17/2015

JUDICIAL CORRECTION SERVICES, INC.

By _____

Name _____

Title _____

Date: _____

KEVIN THOMPSON

Date: _____

DEKALB COUNTY

By _____

Name _____

Title _____

Date: _____

JUDGE NELLY WITHERS

By _____

Name _____

Title _____

Date: _____

JUDICIAL CORRECTION SERVICES, INC.

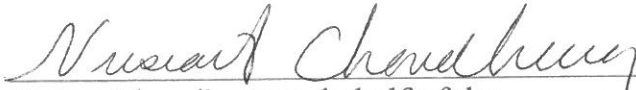
By *Cary McClure*

Name *Cary McClure*

Title *Secretary*

Date: *3-16-15*

AGREED AND APPROVED:


Nusrat Choudhury on behalf of the
American Civil Liberties Union Foundation

Robert Remar on behalf of
Rogers & Hardin LLP and the
American Civil Liberties Union Foundation of Georgia

Sarah Geraghty on behalf of the
Southern Center for Human Rights

Attorneys for Plaintiff

O.V. Brantley
DeKalb County Attorney

Attorney for DeKalb County, Georgia
And Judge Nelly Withers

John McCauley
Attorney for Judicial Correction Services, Inc.

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Attorneys for Plaintiff

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Attorneys for Plaintiff

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Attorneys for Plaintiff



Q.V. Brantley
DeKalb County Attorney

Attorney for DeKalb County, Georgia
And Judge Nelly Withers

John McCauley
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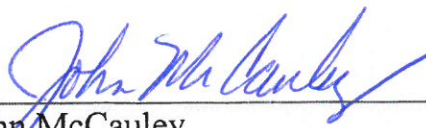
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Attorneys for Plaintiff

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DeKalb County Attorney

Attorney for DeKalb County, Georgia
And Judge Nelly Withers



John McCauley
Attorney for Judicial Correction Services, Inc.

EXHIBIT A

ADMINISTRATIVE ORDER

It is hereby ordered that the “DeKalb County Recorder’s Court, State of Georgia, Petition of Revocation of Probation” and any comparable petition utilized by a Judge of the DeKalb County Recorders Court shall be revised as follows:

The following text shall be removed from the “Acknowledgment” section of the petition:

I am aware that I may employ legal counsel as [sic] said hearing or be represented otherwise as the Court may direct.

The following text shall be included below the “Acknowledgment” section:

Notification of Rights

I am aware that I am being charged with a violation of my probation sentence.

I MAY BE SENTENCED TO JAIL if the court determines that I have violated probation.

Representation by an attorney in my probation revocation proceeding will help PROTECT MY RIGHTS.

If I cannot afford to retain an attorney, I have the right to a COURT-APPOINTED ATTORNEY OR PUBLIC DEFENDER to represent me.

The fee for such representation is normally \$50, but MAY BE WAIVED, if I cannot afford to pay.

It is further ordered that ALL PERSONNEL of the DeKalb County Recorder’s Court involved in the administration of misdemeanor probation concerning traffic offenses in DeKalb County and violations of DeKalb County ordinances, including Judges of the DeKalb County Recorders Court sitting in any capacity, will be trained by March 20, 2015 on the attached bench card setting forth procedures to protect:

- (1) probationers’ right to request court-appointed counsel in probation revocation proceedings;
- (2) indigent probationers’ right to court-appointed counsel in probation revocation proceedings concerning failure-to-pay charges; and
- (3) probationers’ right to an indigency hearing prior to the revocation of probation and jailing for failure to pay fines.

Said "bench card" shall be maintained on the bench of each Recorder's Court Judge and used to inform probationers of the aforementioned rights.

SO ORDERED this __ day of March, 2015.

**Hon. Nelly Withers
Chief Judge
DeKalb County Recorders Court**

**DEKALB COUNTY
COLLECTION OF FINES AND COURT COSTS**

All DeKalb County Recorder's Court judges adjudicating misdemeanor probation revocation proceedings shall abide by the described procedures:

| <u>RIGHT TO COUNSEL</u> | <u>ENFORCING FINES BY IMPOSING JAIL</u> |
|--|---|
| <p>All probationers have a right to counsel (which may include a public defender or court-appointed attorney) in probation revocation proceedings.</p> <p>The court MAY NOT accept a <u>written</u> or <u>oral</u> waiver of the right to counsel without FIRST informing the probationer of the dangers of proceeding without counsel and ensuring that any waiver of the right to counsel is knowing, intelligent, and voluntary.</p> <p>If a probationer seeks to waive his right to counsel, the court must conduct a colloquy <u>on the record</u> to inform the probationer:</p> <ul style="list-style-type: none"> • That the probationer has a right to a court-appointed attorney or public defender at no cost, if he cannot afford to retain an attorney; • That the \$50 fee normally charged for representation by the DeKalb County Public Defender may be waived for those who cannot afford to pay; • Of the risks and dangers of proceeding without counsel, including the risk of incarceration and the <u>maximum jail time</u> that may be imposed if the probationer is determined to have violated probation; and • Of the benefits of representation by counsel, including assistance with asserting constitutional rights, | <p>A probationer charged with failure to pay <u>may</u> be jailed only if (s)he has willfully failed to pay or failed to make reasonable efforts to acquire the resources to pay, AND no adequate alternative to incarceration exists.</p> <p>Prior to revoking probation and committing a probationer to jail for nonpayment of fines, <u>the court must conduct an economic ability-to-pay hearing</u>.</p> <p>To conduct such a hearing, the court shall</p> <ul style="list-style-type: none"> • Inquire and make a determination of a probationer's ability to pay a fine, which shall address the probationer's ability to pay and the income, assets, debts, and financial responsibilities presented by the probationer; • Inquire and make a determination of the reasonableness of a probationer's efforts to acquire resources to pay a fine, which shall take into account efforts to secure employment and borrow money, as well as limitations to the probationer's ability to secure employment and borrow money; • Consider and make a determination of the adequacy of alternatives to incarceration, including a reduction or waiver of fines and fees, an extension of time to pay, and community service, in the event that a probationer is determined to lack ability to pay despite having made reasonable efforts to acquire resources. |

preparing and presenting financial hardship documentation to the court, arguing in favor of alternatives to incarceration, and vigorous advocacy against the imposition of jail as punishment for probation violation.

If, after being so informed, a probationer states a desire to waive his right to counsel, the court must engage in a colloquy and make a determination, supported by findings of fact on the record and set forth in an order, that waiver is knowing, intelligent, and voluntary.

Written waiver of the right to counsel on a probation revocation petition or other document is NOT ACCEPTABLE without such a colloquy and findings of fact made on the record.

Each of these determinations shall be supported by findings of fact on the record and set forth in a written order.

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KEVIN THOMPSON,

Plaintiff,

v.

DEKALB COUNTY, GEORGIA, *et al.*,

Defendants.

Civil Action No.
1:15-cv-00280-TWT

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed.R.Civ.P. Rule 41(a)(1)(A)(ii), Plaintiff Kevin Thompson and all Defendants hereby stipulate to the dismissal of this action with prejudice. Each party will pay its own attorneys' fees, costs and expenses in connection with this action.

Stipulated this ____ day of _____, 2015.

/s/ Robert B. Remar
Robert B. Remar
Ga. Bar No. 600575
ROGERS & HARDIN LLP
2700 International Tower

229 Peachtree Street N.E.
Atlanta, Georgia 30303
Tel. (404) 522-4700
RRemar@rh-law.com
*Cooperating Attorney for the American Civil
Liberties Union Foundation of Georgia*

/s/ Nusrat Choudhury
Nusrat Choudhury
(admitted *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Tel. (212) 519-7876
nchoudhury@aclu.org

/s/ Sarah Geraghty
Sarah Geraghty
Georgia Bar No. 291393
SOUTHERN CENTER FOR
HUMAN RIGHTS
83 Poplar Street N.W.
Atlanta, Georgia 30303
Tel. (404) 688-1202
sgeraghty@schr.org

Counsel for Plaintiffs

/s/ Kendrick Smith
Kendric Smith
Georgia Bar No. 661200
Senior Assistant County Attorney
DEKALB COUNTY LAW DEPARTMENT
1300 Commerce Drive, 5th Floor
Decatur, GA 30030
ovbrantley@dekalbcountyga.gov

*Counsel for Defendants DeKalb County,
Georgia and Nelly Withers*

/s/Craig K. Pendergrast

Craig K. Pendergrast

Georgia Bar No. 571155

TAYLOR ENGLISH DUMA, LLP

1600 Parkwood Circle, S.E.

Suite 400

Atlanta, GA 30318

678-336-7245

cpendergrast@taylorenghish.com

*Counsel for Judicial Correction Services,
Inc.*

EXHIBIT C

Settlement of ACLU Lawsuit Alleging Improper Jailing for Inability to Pay Traffic Fines

FOR IMMEDIATE RELEASE
March 18, 2015

CONTACT: Inga Sarda-Sorensen, ACLU, 212-284-7347, isarda-sorensen@aclu.org

Burke Brennan, DeKalb County, 404 371-6305, bbrennan@dekalbcountyga.gov

ATLANTA – The American Civil Liberties Union and DeKalb County, Georgia, announced a settlement in a federal lawsuit that alleged that practices resulted in the jailing of people unable to pay court-ordered fines in traffic cases. The agreement includes policy changes that could serve as a model in Georgia and across the country.

The lawsuit was filed in January on behalf of Kevin Thompson, a teenager who claims he was jailed in DeKalb County because he could not afford to pay court fines and probation fees stemming from a traffic ticket. The ACLU charged that Thompson's constitutional rights to counsel and an indigency hearing were violated.

Under the settlement, DeKalb County and the other defendants denied liability to Thompson, but the Chief Judge of the DeKalb County Recorder's Court agreed to take measures to protect the rights of people who cannot afford to make fine and fee payments required as a condition of probation for traffic and other misdemeanor offenses. The measures include:

- Adoption of a "bench card" that provides judges instructions to avoid sending people to jail because they owe court fines and are unable to pay. The card lists the legal alternatives to jail and outlines the procedure for determining someone's ability to pay. It also instructs judges on how to protect people's right to counsel in probation revocation proceedings.
- Training and guidance to Recorder's Court personnel involved in misdemeanor probation on probationers' right to counsel in revocation proceedings and right to an indigency hearing before jailing for failure to pay fines and fees.
- Revision of forms to let people charged with probation violation know of their right to court-appointed counsel in probation revocation proceedings, and their right to request a waiver of any public defender fees they cannot afford.

The settlement also provides for a monetary payment to Mr. Thompson and his legal counsel.

"Being poor is not a crime, and these measures will help ensure that people's freedom will not rest on their ability to pay traffic fines and fees they cannot afford," said ACLU attorney Nusrat Choudhury. "These measures also serve as a model for courts across Georgia and in other states to help ensure that our poorest and richest citizens are treated equally and fairly."

"Before the filing of this lawsuit, the DeKalb County Recorder's Court began to develop a plan for a different private probation model. A new provider was selected under a contract which cut supervisory fees dramatically, allowed for little or no reporting, telephone reporting, and the conversion of fines to civil obligations at the request of the defendant. This civil payment model, which has been in place at the court for years on county ordinance violations, should not result in revocations with the possibility of incarceration. Both the Recorder's Court and the DeKalb

County governing authority supported this change,” said Chief Judge Nelly Withers of the DeKalb County Recorder’s Court.

The U.S. Supreme Court ruled more than 30 years ago that locking people up merely because they cannot afford to pay court fines is contrary to American values of fairness and equality embedded in the 14th Amendment to the U.S. Constitution. The court made clear that judges cannot jail someone for failure to pay without first considering their ability to pay, efforts to acquire money, and alternatives to incarceration. Thompson alleges that he was jailed for five days because he could not afford to pay \$838 in traffic fines and fees, despite the fact that he tried his best to make payments.

The case, *Thompson v. DeKalb County*, was filed in U.S. District Court in Atlanta. Rogers & Hardin LLP, the ACLU of Georgia, and Southern Center for Human Rights are co-counsel for the plaintiff.