

[On the letterhead of the Georgia Justice Project]

October 7, 2003

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Re: Illegal Imprisonment of Persons Arrested for Alleged Traffic Violations

Dear Mayor Franklin, Chief Judge Graves, Chief Pennington, Chief Pocock, and Ms. DiSantis:

During the period of September 22, 2003 through today's date, at least 24 persons arrested by the Atlanta Police Department for traffic violations have been illegally imprisoned at the Atlanta City Detention Center. (See Attachments 1 & 2). As of 9:00 am this morning 9 of these persons were still illegally detained. (See Attachment 1.) We write to ask you to do three things immediately:

- 1) Order the release of all persons currently imprisoned by the City of Atlanta who were arrested more than 48 hours ago where no warrant has yet been issued upon a finding of probable cause by a judicial officer. (See Attachment 1.) This must be an unconditional release, not release upon bond.
- 2) For all persons listed in Attachment 2 who were released on bond, order their unconditional release and cancel and refund the bond.
- 3) Take immediate steps to assure that no person who is arrested by the Atlanta Police Department is imprisoned in excess of 48 hours unless a warrant has been issued upon a finding of probable cause by a judicial officer.

Georgia law clearly states:

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“In every case of an arrest without a warrant, the person arresting shall, without delay, convey the offender before the most convenient judicial officer authorized to receive and issue a warrant as provided in Code Section 17-4-40. No such imprisonment shall be legal beyond a reasonable time allowed for this purpose; and any person who is not brought before such judicial officer within 48 hours of arrest shall be released.” OCG 17-4-62.

Any judge of the Traffic Court may sua sponte order the release of arrestees who have been arrested without a warrant and where no warrant has been procured as required by OCG 17-4-62. 1988 Opinion of the Attorney General No. U88-14.

The Georgia court rules also state:

“Immediately following any arrest but no later than 48 hours if the arrest was without a warrant ... the arresting officer or the law officer having custody of the accused shall present the accused before a magistrate or other judicial officer for first appearance. At the first appearance, the judicial officer shall ... [i]n cases of warrantless arrest, unless a subsequent determination of probable cause has been made, make a fair and independent determination of probable cause for the arrest.” Uniform Magistrate Court Rules, Rule 25.1 (6).

Although the City Court of Atlanta (Traffic Court) does hold first appearance hearings for recently arrested persons at the Atlanta Detention Center, these hearings do not include the probable cause hearing required by the Georgia statute and court rule – a fact we have verified by observing first appearance hearings during the last two weeks. All that takes place at these hearings is a reading of rights, an announcement of the charge, imposition of bond, and setting of a court date (typically 3 weeks in the future.) Even if the Traffic Court judge purported to determine probable cause (which does not happen), it is clear that the required finding of probable cause should not be based simply on the traffic ticket, even if the ticket is “certified” at the bottom by the arresting officer. See *Devier v State*, 323 S.E.2d 150, 157 (Ga. 1984) (arrest warrant affidavit insufficient basis for finding of probable cause even though it complied with OCG 17-4-41); *Garmon v Lumpkin County, Georgia*, 878 F.2d 1406 (11th Cir. 1989) (sheriff may be held liable for obtaining arrest warrant from magistrate based on affidavit only; magistrate should not accept without question “mere conclusion that the person whose arrest is sought has committed a crime”).

This imprisonment of persons arrested without warrants not only clearly violates Georgia law; it also violates the U.S. Constitution. As the U.S. Supreme Court held in *County of Riverside v McLaughlin*, 111 S.Ct. 1661, 1664 (1991), the Fourth Amendment requires that, in cases of warrantless arrest, a probable cause hearing must be held “as soon as is reasonably

feasible, but in no event later than 48 hours after arrest.”

We compiled the list of persons in Attachments 1 and 2 by reviewing public records at the Atlanta City Detention Center pursuant to a series of requests made under the Open Records Act. These records indicate that each person was imprisoned more than 48 hours after a warrantless traffic arrest without receiving a probable cause hearing. Many of these persons were imprisoned far more than 48 hours and in many cases on minor traffic charges that are normally paid with a fine of \$100 or less without a required court appearance. A striking number of persons were not even motorists but were arrested for alleged jaywalking and other minor pedestrian offenses.

Under Georgia law, an arresting officer who violates OCG 17-4-26 “may be liable in damages for false arrest and imprisonment.” *French v State*, 107 S.E.2d 890, 893 (Ga. App. 1959). As explained in *Piedmont Hotel Co. v. Henderson*, 72 S.E. 51, 9 Ga.App. 672 (1911)

“Whoever arrests or imprisons a person without a warrant is guilty of a tort, unless he can justify under some of the exceptions in which arrest and imprisonment without a warrant are permitted by law; and the burden of proving the existence of the facts raising the exception is upon the person making the arrest or inflicting the imprisonment. ... A man who seizes the property or arrests the person of another by legal process, or other equivalent authority conferred upon him by law, can only justify himself by a strict compliance with the requirements of such process or authority. If he fails to execute or return the process as thereby required, he may not, perhaps, in the strictest sense be said to become a trespasser ab initio, but he is often called such, for his whole justification fails, and he stands as if he had never had any authority to take the property, and therefore appears to have been a trespasser from the beginning. ... The same rule holds good in the case of an officer who, after arresting a person on criminal process, omits to perform the duty required by the law, of taking him before a court. Hence it is immaterial to inquire whether the officer could have arrested without a warrant if he had thereafter obeyed the provisions of Pen. Code 1910, § 922, [the predecessor statute of OCG 17-4-26] for his legally ascertained disobedience of this law relates back so as to make the arrest in any event illegal.” Id. at 56 (citations omitted).

Although Georgia law refers to the liability of the arresting officer, it is clear that officials of the Atlanta Department of Corrections would also be liable under federal civil rights law for such illegal imprisonment since constitutional law on this issue has been clearly established at least since the *County of Riverside* decision in 1991.

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We trust that you will immediately correct this terrible miscarriage of justice. The words of the Georgia Supreme Court from more than a century ago are as relevant now as ever:

“If anybody ought to keep the law, it is those who are engaged in its administration. What excuse can an officer have for not obtaining a warrant when he has made a legal arrest without one? If officers of the law can be tolerated in violating the law in this manner, what inducement has anybody to abide by that law?” *Potter v Swindle*, 77 Ga. 419, 3 S.E. 94, 95 (1887).

Sincerely yours,

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ATTACHMENT 1
PERSONS STILL ILLEGALLY IMPRISONED AS OF OCTOBER 7, 2003

| NAME | DATE OF BIRTH | DATE ARRESTED |
|----------------------|----------------------|----------------------|
| Kirkpatrick, Milton* | 5/14/61 | 10/1/03 |
| White, Ben* | 9/8/46 | 9/29/03 |
| Short, Rachel** | 8/11/79 | 10/1/03 |
| Mellow, Patrice* | 1/29/60 | 10/1/03 |
| Asberry, Sherman* | 2/19/60 | 10/1/03 |
| Mills, Quinton | 6/18/79 | 10/1/03 |
| Hall, Melvin L. | 5/15/83 | 10/1/03 |
| Morrison, Russell | 12/18/62 | 10/1/03 |
| Kilgore, John | 3/15/63 | 9/30/03 |

* Pedestrian violation

**Minor traffic violation(s)

ATTACHMENT 2
OTHER PERSONS ILLEGALLY IMPRISONED SINCE SEPTEMBER 22, 2003

| NAME | DOB | DATE ARRESTED | DATE RELEASED | APPROX # DAYS IN JAIL |
|---------------------|------------|----------------------|----------------------|------------------------------|
| Boez, Camelle | 1/5/60 | 9/12/03 | 9/23/03 | 12 |
| Daniel, Derek | 6/11/65 | 9/28/03 | 10/6/03 | 9 |
| Grizzard, Patrick** | 3/23/71 | 9/28/93 | 10/6/03 | 9 |
| Dillard, Robert | 4/15/54 | 9/29/03 | 10/6/03 | 8 |
| Walker, Keith | 10/2/65 | 9/23/03 | 9/30/03 | 8 |
| Harper, Chris | 7/2/62 | 9/29/03 | 10/6/03 | 8 |
| Dugger, Tommy* | 6/27/61 | 9/29/03 | 10/6/03 | 8 |
| Little, Anthony B.* | 4/4/81 | 9/27/03 | 10/3/03 | 7 |
| Boswell, Jerry* | 6/5/43 | 9/23/03 | 9/30/03 | 8 |
| Gilbert, Willie Lee | 3/16/58 | 9/29/03 | 10/6/03 | 7 |
| Jones, Otha* | 2/2/58 | 9/26/03 | 10/3/03 | 7 |
| Petty, Ephraim** | 4/22/61 | 9/23/03 | 9/29/03 | 5 |
| Ismael, Hernandez** | 4/20/80 | 9/23/03 | 9/26/03 | 3 |
| Avina, Felipe** | 6/26/83 | 9/22/03 | 9/25/03 | 3 |
| Guah, Sophretta* | 1/21/59 | 9/28/03 | 10/103 | 3 |

* Pedestrian violation

**Minor traffic violation(s)