

Nos. 23-55271 and 23-55286

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Adam Cain, individually and on behalf of others similarly situated,
Plaintiff-Appellee,

v.

JPAY, Inc., Metropolitan Commercial Bank, and Praxell Inc.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Central District of California
No. 2:21-cv-07401-FLA-AGR
Hon. Fernando L. Aenlle-Rocha

Motion for Permission to File Amicus Brief in Support of Rehearing *En Banc* by Uptown People's Law Center and National Police Accountability Project

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GROUND AND RELIEF SOUGHT

Proposed amici are organizations dedicated to serving marginalized people. Amici can assist the Court in its decision by providing information about the impact that receiving high fee debit cards on release from prison or jail have on amici's clients and those similarly situated to their clients. Because of the impact of debit card fees on their clients, these organizations all have a strong interest in the fair and correct outcome of this case.

This motion is made pursuant to Circuit Rule 29-2(b), 29-3, and FRAP 29 and is based on the following declaration of counsel. As required by Circuit Rule 29-3, amici sought consent to file this amicus brief, but counsel for JPay was unable to provide an answer prior to the deadline for filing.

CONCLUSION

Amici request permission to file its brief in support of rehearing en banc.

Submitted on January 8, 2024.

Law Office of Harry Williams
By s/ Harry Williams
Harry Williams
Attorney for proposed amici

Declaration of Harry Williams

1. I am counsel for proposed amici Uptown People’s Law Center and the National Police Accountability Project.
2. I know that the work of these organizations is focused on poor and marginalized people. These organizations have a strong interest in preventing their clients, and those similarly situated to their clients, from being forced to accept high-fee debit cards if and when they are released from prisons or jails.
3. The proposed amicus brief complements rather than duplicates the merits briefs in this matter. Rather than argue the main legal points, amici detail the impact high fee debit cards have on their clients and those similarly situated to their clients.
4. The amicus brief also discussed how the challenges faced by those leaving jail and prison call into question, as a matter of fact, the Panel’s assumption that these individuals are consenting to the terms of service of the debit cards.

5. The amicus brief is concise and contains fewer than 2000 words of substantive argument. It does not cite or argue legal issues and precedent that the parties will address.
6. I emailed counsel for JPay on Friday, January 5 and on Monday, January 8, 2024, to request consent to file an amicus brief, but counsel was not able to provide an answer prior to the deadline to file the brief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Seattle, Washington, on January 8, 2024.

By s/ Harry Williams
Harry Williams

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate electronic filing system on January 8, 2024. I certify that the parties are registered for electronic service.

By: s/ Harry Williams

Harry Williams, WSBA #41020

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BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Amici curiae are:

The National Police Accountability Project, a non-profit § 501(c)(3) corporation formed under the laws of New York. NPAP does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

The Uptown People's Law Center is a nonprofit organization organized under the laws of the State of Illinois. UPLC does not have a parent organization, and no publicly held corporation owns 10% or more of its stock.

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Katie Rose Quandt, Lawsuit Reveals how tech companies profit off the prison-industrial complex, Think Progress (February 9, 2018) 5

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INTEREST OF AMICI CURIAE¹

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including a number of members who represent individuals that are financially exploited by law enforcement officers.

Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and corrections officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as

¹ Pursuant to Federal Rule of Appellate Procedure 29(c)(5), amicus curiae state that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than amicus curiae, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

amicus curiae in cases, such as this one, presenting issues of particular importance for its members and their clients.

The Uptown People’s Law Center (“UPLC”) provides legal representation, advocacy, and education for poor and working people in Chicago, and legal assistance to people housed in Illinois prisons in cases related to their confinement. UPLC has provided direct representation to over 100 persons confined in Illinois prisons pertaining to their civil rights, including in five class-action or putative class-action cases that are currently pending. As particularly relevant to this case, UPLC has actively litigated cases related to the release of prisoners on parole (or Mandatory Supervised Release), as well as worked with people released from Cook County and other Illinois jails, working with clients helping them to transition back into the community. As a result, we have seen first-hand the cost of mandating the use of fee laden debit cards.

ARGUMENT

This case impacts large numbers of marginalized people. Millions of people are released from jails and prisons each year. Most people released from custody are indigent. When debit card fees convert their limited savings from a small

personal lifeline to a steady source of income for corporations and banks, it undermines newly released individual's chances for success in the community. Many of the people released from custody are both poor and struggle with mental illness. On a societal level, these expensive cards are unfair and undermine public safety by making reentry more difficult. On a personal level, they can devastate the limited funds individuals rely on for food and transit when released.

Individuals released from prison and jail suffer from overlapping, reinforcing challenges and prejudices: they are poor, they are disproportionately from communities of color, and they may have limited English proficiency. They may be mentally ill, even delusional. Many are unsheltered after release.

While facing these multiple challenges, newly released people are also issued a series of non-negotiable demands from the government: requirements to report for supervision or probation; rules on where they can and cannot travel; people they must avoid; fines and fees they must pay. Failure to follow these rules results in reincarceration.

The debit cards at issue in this case are another mandatory requirement placed on those leaving prisons and jails. As the Consumer Financial Protection Bureau found, "People exiting jail or prison face frequent fees for the prepaid cards

they often have no choice but to receive” and the “unavoidable cost of these cards after issuance, whether due to use or inactivity, can present a substantial financial burden for people reentering society.”²

A. Millions of people are released from prisons and jails each year.

Jail admissions vary between about 7 and 11.6 million people per year.³ Most people are confined for short periods: about 32 days.⁴ Regardless of their duration of detention, people entering carceral custody will have their property taken when they are booked into the facility; when they are released, they will have their money returned to them. Increasingly, that money is returned on expensive, fee laden debit cards where people are being charged to access their own money.⁵

² Consumer Financial Protection Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace (January 2022) at 28, 29. Available at https://files.consumerfinance.gov/f/documents/cfpb_jic_report_2022-01.pdf

³ Zhen Zeng, Jail Inmates in 2022 Statistical Tables, at 1, available at <https://bjs.ojp.gov/library/publications/jail-inmates-2022-statistical-tables>

⁴ Zeng at 1.

⁵ CFPB, Justice-Involved Individuals at 27.

One survey from 2014 found that over half of jails and prisons used prepaid debit cards issued by private financial institutions to return money to people as they leave custody.⁶ By 2022, Jpay estimated it had issued 1.2 million debit release cards.⁷ In addition to California, Jpay holds exclusive monopoly contracts to issue its debit cards to all prisoners being released from the state prison systems in: Colorado, Louisiana, Oklahoma, Florida, Minnesota, Tennessee, Georgia, Missouri, Virginia, Indiana, New Jersey, Kentucky and North Carolina.⁸ JPay is only one of several issuers of debit release cards to prisoners and arrestees, and other issuers include Keefe Group, Numi Financial, and Rapid Financial Solutions.⁹

⁶ Sean Kolkey, *People over Profit: The Case for Abolishing the Prison Financial System*, 110 *Calif. L. Rev.* 257, 271 (2022).

⁷ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/>

⁸ <https://www.prisonlegalnews.org/news/publications/cdcr-jpay-lock-box-and-debit-card-services-contract/>

⁹ Katie Rose Quandt, *Lawsuit Reveals how tech companies profit off the prison-industrial complex*, *Think Progress* (February 9, 2018), available at <https://thinkprogress.org/prison-technology-companies-inmates-9d4242805363/>

B. People receiving debit cards are likely to be poor and marginalized.

People accused of crimes are disproportionately poor, and therefore those who will be released from jails and prisons are disproportionately poor. In state courts, about 80% of defendants in cases where there is a right to counsel are found indigent and appointed counsel.¹⁰

One study found that about half of families with convicted members cannot afford to pay fees and fines associated with criminal cases.¹¹ Moreover, nearly two in three families who had a family member incarcerated were unable to meet their households' basic needs, such as food and housing.¹² Formerly incarcerated people are almost 10 times more likely to be homeless than the general population.¹³

¹⁰ John Gross, Reframing the Indigent Defense Crisis, Harvard Law Review Blog Essay (March 18, 2023), available at <https://harvardlawreview.org/blog/2023/03/reframing-the-indigent-defense-crisis/>

¹¹ Matthew Menendez et. al, The Steep Costs of Criminal Justice Fees and Fines (2019), available at https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf at 6.

¹² *Id.*

¹³ <https://www.prisonpolicy.org/reports/housing.html>

Those in jail are disproportionately people of color: for instance, 35-40% of those in prison and jail are Black, while Black people make up about 13% of the general population.¹⁴

C. The people receiving debit cards often suffer from severe mental illness and may be incompetent to stand trial.

Between 16% and 24% of those in prison and jail suffer from severe mental illness, compared to a community level of between 3.9% and 5.0%. On release, the Panel's opinion would assume all these individuals understand and assent to the terms in the debit card agreement they are forced to accept.

A significant number of those accused of crimes cannot understand the legal process: they are not competent because of mental illness. Because state and federal law forbid the criminal prosecution of individuals who do not understand the charges against them, courts order that these individuals' competency be evaluated to determine whether they may stand trial. *A.B. by & through Trueblood v. Washington State Dep't of Soc. & Health Servs.*, --- F.Supp.3d ___, C14-1178 MJP, 2023 WL 4407539, at *3 (W.D. Wash. July 7, 2023). If they are found not to

¹⁴ Zeng, Statistical Tables at 2; Kolkey, People over Profit at 261.

understand the legal process and therefore not competent, they are sent to have their competency restored.

Competency restoration “is not treatment for mental illness. It is stabilization and education so that the individual can understand the criminal charges brought against them.” *Id.* “No . . . judge, or member of the public[,] should assume that restoration is treatment for mental illness. It is not.” *Id.* The typical person needing competency services in Washington state is:

- a. living in desperate poverty;
- b. experiencing homelessness or living without stable housing;
- c. possessing little likelihood of employment;
- d. suffering from a serious mental illness, which is most likely to include a psychotic diagnosis;
- e. requiring substance use disorder treatment; and
- f. may be living with a chronic physical disease.

Id. at *5. These individuals cycle through the system, and are arrested an average of once a year. *Id.* In Washington state alone, hundreds of individuals are referred for competency each month. *Id.* at *8. Pretrial detainees “who have recently been restored to competency are at risk of reverting to a delusional or incompetent

state.”¹⁵ Thus, those who have their competency restored long enough to plead guilty may well have reverted to psychosis by the time they are released.

Finally, those in prison and jail have more, and more severe, adverse childhood experiences than the general population, leading to a host of mental and physical challenges.¹⁶

CONCLUSION

Amici Curiae National Police Accountability Project and the Uptown People’s Law Center support Petitioners’ request for Rehearing en banc to protect the rights of the individuals these organizations serve.

Date: January 8, 2024

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Attorney for Amici Curiae

¹⁵ Margaret Wilkinson Smith, *Restore, Revert, Repeat: Examining the Decompensation Cycle and the Due Process Limitations on the Treatment of Incompetent Defendants*, 71 Vand. L. Rev. 319, 328 (2018)

¹⁶ <https://compassionprisonproject.org/childhood-trauma-statistics/>

Certificate of Compliance for Briefs

9th Cir. Case Number(s) No. 23-55271, No. 23-55286

I am the attorney.

This brief contains 2027 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief:

X complies with the word limit of Cir. R. 29-2(c)(2).

Signature s/ Harry Williams

Date January 8, 2024