No. 23-291

IN THE

Supreme Court of the United States

EDWARD LITTLE, ET AL.,

Petitioners,

v.

ANDRE' DOGUET; LAURIE HULIN; MARK GARBER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICI CURIAE* FEDERAL COURTS SCHOLARS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

This brief is filed on behalf of professors Barry Friedman, Helen Hershkoff, Joanna Schwartz, and Fred Smith, Jr. They are federal courts scholars and law professors with expertise in the history and scope of federal jurisdiction and the doctrinal exceptions to those rules crafted by this Court, including abstention under *Younger v. Harris*, 401 U.S. 37 (1971). They are recognized leaders in their academic fields and write extensively about federal jurisdiction, justiciability doctrines, the history and development of abstention doctrines in federal jurisprudence, and the relationship between these doctrines and the role of the federal courts in safeguarding federally protected rights. Their interest in this case is that of friends of this Court.

Amici's names, titles, and institutional affiliations are listed below for identification purposes only. *Amici* join this brief in their individual capacities.

Barry Friedman is the Jacob D. Fuchsberg Professor of Law at NYU School of Law. He also is the Founding Director of the Policing Project at NYU School of Law.

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[1] Pursuant to this Court's Rule 37.2, counsel of record for all parties received notice of *amici*'s intention to file this brief at least 10 days prior to the due date. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. *Amici* file this brief as individuals and not on behalf of the institutions with which they are affiliated.

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Fred Smith, Jr. is the Charles Howard Candler Professor of Law at Emory University School of Law.

SUMMARY OF ARGUMENT

Petitioners in this case ask the Court to decide the important question of whether abstention under *Younger v. Harris*, 401 U.S. 37 (1971), prevents federal courts from determining the constitutionality of a state's pretrial detention system. The Fifth Circuit, applying *Daves v. Dallas County*, 64 F.4th 616 (5th Cir. 2023) (en banc), *petition filed*, 92 U.S.L.W. 3021 (U.S. July 31, 2023) (No. 23-97), erroneously held that it did, but its conclusion cannot be reconciled with *Younger* and its progeny, which impose an unflagging obligation on federal courts to consider constitutional challenges to state practices that inflict irreparable harm.

Younger abstention developed as a narrow exception to federal jurisdiction, triggered when a state criminal defendant challenges an ongoing prosecution in federal court. That situation raises equitable concerns, including because the federal suit has the potential to disrupt the state's exercise of its prosecutorial discretion. The doctrine plays no role, however, when plaintiffs seek relief ancillary to the state prosecution—as here, in the context of bail.

Moreover, *Younger* abstention is appropriate only when a criminal defendant has an adequate remedy at law and will not suffer irreparable injury. Here, Petitioners challenge Lafayette Parish's practice of jailing arrestees for their inability to pay cash bail. No state proceeding provides an adequate alternative remedy because the means of challenging bail determinations in Lafayette Parish take weeks at a minimum. In the meantime, the arrestee, presumed innocent, is illegally detained.

The constitutionality of pretrial detention premised on an inability to pay cash bail—the question the Fifth Circuit abstained from deciding in the case below—has critical consequences. Each year, across the United States, millions of individuals are locked in local jails because they cannot afford bail after they are arrested. These individuals are more likely to lose their job, house, or children, and often lack safety, health care, and religious freedom while in jail.

Imposing these consequences on arrestees with no individualized consideration of their alleged crime or circumstances is likely unconstitutional. *See Bearden v. Georgia*, 461 U.S. 660 (1983). But the constitutionality of this practice is now impervious to review in federal courts throughout the Fifth Circuit because that circuit misapplied *Younger*.

This Court should grant certiorari to ensure that federal courts fulfill their obligation to decide constitutional questions of such great importance. As *Younger* itself explained, where the "threat to [a] plaintiff's federally protected rights" is "great and immediate," and is "one that cannot be eliminated by his

defense against a single criminal prosecution," that threat has "always been considered sufficient to justify federal intervention." 401 U.S. at 46, 48 (internal quotation marks omitted). Such is the case here.

ARGUMENT

I. The Fifth Circuit's Abstention Decision Contravenes Settled Law Dictating The Opposite Result.

Federal courts have a "virtually unflagging obligation … to exercise the jurisdiction given them." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). This obligation remains as true today as it was more than two centuries ago, when Chief Justice Marshall first remarked that federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821).[2] Indeed, over the past decade, this Court has thrice unanimously reaffirmed that principle. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013).

Younger abstention developed as a narrow exception to the obligation to exercise jurisdiction, in the context of injunctions against state criminal prosecutions. *See Younger*, 401 U.S. at 40–41. Outside of that unique

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[2] *See also* Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 YALE L.J. 71, 114 (1984) (explaining that "judge-made abstention presents a considerably greater risk of judicial usurpation").

situation, its application is limited to "exceptional circumstances." *Sprint*, 571 U.S. at 78 (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans* (*NOPSI*), 491 U.S. 350, 368 (1989)). In fact, this Court has made clear that, in the context of *Younger*, "abstention from the exercise of federal jurisdiction is the 'exception, not the rule.'" *Id.* at 82 (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)); *see also Daves*, 64 F.4th at 639 (Southwick, J., concurring) ("[A] clear purpose of *Sprint* was to stop abstention proliferation.").

Sprint identified three narrow types of proceedings in which *Younger* may preclude federal jurisdiction: (1) where "there is a parallel, pending state criminal proceeding," in which case "federal courts must refrain from enjoining the state prosecution"; (2) "certain 'civil enforcement proceedings'"; and (3) pending "'civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.'" 571 U.S. at 72–73, 78 (quoting *NOPSI*, 491 U.S. at 367–68). This Court has never "applied *Younger* outside these three 'exceptional' categories," and *Sprint* explicitly held that they henceforth "define[d] *Younger*'s scope." *Id.* at 78. Here, the Fifth Circuit relied on the first category, concluding that relief would interrupt an ongoing criminal proceeding. Pet. App. 9a.

Younger's limited scope is further underscored by the discretionary factors identified by the Court in *Sprint*: even if a case falls into one of the three aforementioned categories, abstention is warranted only when a federal ruling would interrupt an "ongoing state

judicial proceeding" and when that state forum "provides an adequate opportunity to raise federal challenges." 571 U.S. at 81 (internal quotation marks and citations omitted).

In light of these principles, the Fifth Circuit erred for two reasons. First, the federal adjudication sought—a finding that Lafayette Parish's practice of jailing arrestees for their inability to pay cash bail is unconstitutional—will not interrupt a criminal proceeding. As this Court has previously recognized, when a federal constitutional claim concerns only pretrial detention, as here, the constitutional ruling does not intrude upon the criminal prosecution or otherwise compromise its validity. *Gerstein v. Pugh*, 420 U.S. 103, 108 n.9 (1975). In contrast to disrupting criminal proceedings, the indigent individuals in this case aim instead to attain prompt proceedings. Second, the underlying state proceeding does not provide a timely, and therefore adequate, forum for individuals arrested in Lafayette Parish to raise constitutional objections. By the time they are able to challenge the unconstitutional process that led to their unlawful detention, they will have already experienced serious, irreparable harm.

For these reasons, this case presents a pressing, important issue warranting this Court's review. *Amici* urge this Court to grant certiorari to correct the Fifth Circuit's holding contradicting this Court's settled law on federal abstention.

A. Requiring A Prompt Bail Hearing Before Detaining Individuals Pretrial Does Not Unduly Interfere With State Criminal Proceedings.

We begin with the history of *Younger* abstention, which provides critical context against which to contrast the present case.

In *Younger*, this Court considered whether a federal district court properly enjoined California's prosecution of a criminal defendant who claimed the state's prosecution violated his federal constitutional rights. 401 U.S. at 38–39. The Court concluded that federal courts cannot interfere with state criminal proceedings in this way. It explained then-existing precedents as establishing:

> Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts.

Id. at 46 (internal quotation marks omitted).

The alternative, the Court explained, would "strip[]" the states of "all power to prosecute even the socially dangerous and constitutionally unprotected conduct." *Id.* at 50–51. Such an outcome was improper when "the injury [the defendant] faces" during the state's prosecution "is solely that incidental to every criminal

proceeding brought lawfully and in good faith." *Id.* at 49 (internal quotation marks omitted).

In other words, *Younger* abstention is premised on the equitable considerations that arise when a state criminal defendant challenges an ongoing prosecution in federal court. Once invoked, *Younger* requires federal restraint until the state prosecution concludes. But by contrast, *Younger* itself acknowledged that these equitable considerations presuppose that "the moving party has an adequate remedy at law and will not suffer irreparable injury" in the face of abstention. *Id.* at 43–44. Where instead the "threat to the plaintiff's federally protected rights" is "great and immediate," and is "one that cannot be eliminated by his defense against a single criminal prosecution," the threat is "sufficient to justify federal intervention." *Id.* at 46, 48 (internal quotation marks omitted).

In the context of criminal proceedings, this Court reaffirmed *Younger*'s limited scope in *Gerstein v. Pugh*, 420 U.S. at 103. The Court here need look no further than that case to conclude that, when the government invokes *Younger* abstention on the grounds that federal review interferes with a criminal proceeding, abstaining from such review is appropriate only where a state criminal defendant pursues an unnecessary federal collateral challenge to a state prosecution itself.

In *Gerstein*, a class of individuals arrested and detained "for a substantial period" before receiving probable cause hearings sued Dade County officials, alleging that Florida's pretrial detention practices violated their Fourth and Fourteenth Amendment rights. *Id.* at 106. The class sought declaratory and

injunctive relief in the form of a finding that arrested individuals have a constitutional right to a probable cause hearing and an order requiring state authorities to "give them a probable cause determination" before their extended detention. *Id.* at 107 n.6. Much like Petitioners here, one of the named plaintiffs was detained "because he was unable to post a $4,500 bond." *Id.* at 105.

While the government argued that the district court should abstain from deciding the class's claims, the district court granted an injunction—which required Dade County officials to give the named plaintiffs an immediate preliminary hearing to determine probable cause for future detention—because the *Gerstein* plaintiffs did not ask the court to "enjoin a prosecution." *Pugh v. Rainwater*, 332 F. Supp. 1107, 1111 (S.D. Fla. 1971). They "instead pray[ed] for a declaration of procedural rights and an injunction from the continued denial thereof." *Id.* On appeal, while the Fifth Circuit stayed the injunction on other grounds, that court affirmed the district court's conclusion that *Younger* was inapposite. *See Pugh v. Rainwater*, 483 F.2d 778, 781–82, 790 (5th Cir. 1973). This Court then affirmed the district court's decision to review the constitutionality of Dade County's practices. *Gerstein*, 420 U.S. at 103.

The Court explained that *Younger* posed no barrier to the injunction:

> The District Court correctly held that respondents' claim for relief was not barred by the equitable restrictions on federal intervention in state prosecutions, *Younger v. Harris*, 401 U.S. 37 … (1971). The injunction was not directed at the state prosecutions as such, but only at the

> legality of pretrial detention without a judicial hearing, an issue that could not be raised in defense of the criminal prosecution. The order to hold preliminary hearings could not prejudice the conduct of the trial on the merits.

420 U.S. at 108 n.9.

There is no conceivable daylight between this Court's approach in *Gerstein* and the proper resolution of Petitioners' suit. *Younger* is implicated when the relief requested, in effect, is immunity from state prosecution. This type of relief strikes at the heart of the state's power to prosecute. By contrast, as this Court made clear in *Gerstein*, relief ancillary to the prosecution—such as a probable cause hearing—does not implicate *Younger*'s equitable restrictions because it could be granted without impacting the "trial on the merits." *Id.*

This same conclusion holds with respect to pretrial release on bond or bail. "Regardless of how the bail issue is resolved, the prosecution will move forward unimpeded." *Arevalo v. Hennessy*, 882 F.3d 763, 766 (9th Cir. 2018). As Petitioners note, this is exactly "why federal bail orders are immediately appealable." Pet. 19 (citing *Stack v. Boyle*, 342 U.S. 1, 6 (1951)); *see also Walker v. City of Calhoun*, 901 F.3d 1245, 1254 (11th Cir. 2018) (finding no undue interference because plaintiff did "not ask[] to enjoin any prosecution" and instead "merely s[ought] prompt bail determinations for himself and his fellow class members").

The case cited on the other side of this dispute, *O'Shea v. Littleton*, 414 U.S. 488 (1974), decided a year

before *Gerstein*, is different in degree and kind from both *Gerstein* and the question Petitioners pose here. The plaintiffs in *O'Shea* sought an order that would enjoin statewide practices applicable to setting bonds, imposing criminal sentences, and setting fees for jury trials. *Id.* at 492. That relief would have required an "ongoing audit of state criminal proceedings" and "continuous supervision by the federal court over … conduct" in "future criminal trial proceedings," and thus constituted "unwarranted anticipatory interference in the state criminal process." *Id.* at 500–01. That was so, not merely because it concerned an issue adjacent to an underlying criminal prosecution, but because granting the relief requested would have resulted in "continuous or piecemeal interruptions of the state proceedings." *Id.* at 500.

In contrast, an order simply requiring prompt pretrial hearings, as *Gerstein* later held, does not demand the same piecemeal supervision or interference with criminal prosecutions. Ongoing criminal prosecutions may continue undisturbed. No ongoing proceeding of any sort must cease if federal relief is reinstated in this case. As in *Gerstein*, far from interrupting a criminal proceeding, Petitioners seek prompt hearings wherein individuals who are arrested can press their legal case in a state forum.

B. Petitioners Lack A Timely Opportunity To Challenge Their Pretrial Detention In State Court Proceedings.

That Petitioners' suit poses no undue interference with the state's underlying criminal proceedings is reason enough to find that abstention is unwarranted

here. But *Younger* abstention is independently barred by Petitioners' lack of a timely, and thus adequate, opportunity to challenge their pretrial detention in state court proceedings.

In *Gibson v. Berryhill*, 411 U.S. 564 (1973), this Court held that *Younger* abstention "presupposes the opportunity to raise and have *timely decided* by a competent state tribunal the federal issues involved." *Id.* at 577 (emphasis added). When that "predicate" opportunity is unavailable, so too is abstention. *Id.* Two years later, in *Gerstein*, the Court again emphasized the importance of timely relief in assessing whether the defendant has a suitable alternative. The *Gerstein* majority noted the state's pretrial practices often resulted in individuals being detained without a hearing for a month or more, 420 U.S. at 105–06, before holding that "a judicial determination of probable cause" was "a prerequisite to [an] *extended* restraint of liberty" pretrial, *id.* at 114 (emphasis added). The concurring opinion also described its agreement with the relevant parts of the *Gerstein* majority as premised on the "Constitution clearly requir[ing] at least a *timely* judicial determination of probable cause as a prerequisite to pretrial detention." *Id.* at 126 (Stewart, J., concurring).

Here, the Fifth Circuit fundamentally erred in assuming that state proceedings, even if not timely available to Petitioners, could suffice to protect Petitioners' constitutional rights. They cannot. As this Court itself has explained, the availability of even a competent state tribunal that provides for "judicial review … at the conclusion of the … proceedings" cannot

warrant abstention if the individual will suffer "irreparable damage" in the interim. *Gibson*, 411 U.S. at 577 & n.16 (internal quotation marks omitted).

Petitioners have suffered and will continue to suffer irreparably absent federal jurisdiction. Individuals who are arrested in Lafayette Parish may be detained for weeks before their initial bail determinations can be reviewed by a judge. Pet. 23 (first citing Pet. App. 77a–78a; and then citing ROA.39, 1606) . The fact that, after some indefinite period of time, individuals may have an opportunity to raise their claims on appeal or habeas review does nothing to address the fact that extended pretrial detention without cause "is abhorrent," Pet. App. 161a (*Daves*, 64 F.4th at 641 (Southwick, J., concurring)), and as explained *infra*, constitutes irreparable harm. As this Court has recognized, "any amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration." *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1907 (2018) (cleaned up). This is so not only for the wealthy and the powerful, but also for our great nation's less fortunate.

II. The Proper Application Of *Younger* Has Important Consequences.

Pretrial detention premised on an inability to pay cash bail irreparably harms hundreds of thousands of people for prolonged periods of time.

In Lafayette Parish alone, hundreds of arrestees are detained in jail every day.[3] Those arrested without a warrant or on a warrant without a specified bond amount are detained after a phone call from the 15th Judicial District commissioner to the Lafayette Parish Correctional Center. Pet. 5–6. During that call, "the commissioner chooses a[] [secured bail] amount based on the charges and (sometimes) the individual's criminal history." *Id.* at 6 Arrestees who cannot pay are detained until their first-appearance video hearings before the commissioner, during which they lack counsel and have no opportunity to challenge their bail. *Id.* After, they remain subject to confinement no matter their ability to pay, or the danger (or lack thereof) they pose to the public.

Across the nation, the biggest consequence of uniform pretrial detention is its most obvious. According to the Bureau of Jail Inmates, hundreds of thousands of people are locked in local jails on any given day in the United States, and roughly 10 million are jailed on an annual basis.[4] Importantly, the Vera Institute has found that "[m]oney, or the lack thereof, is now the most important factor in determining whether someone is held in jail pretrial" and that "the majority of defendants cannot raise the money quickly or, in some cases, at all."[5]

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[3] Complaint ¶ 19, *Little v. Frederick*, No. 17-cv-724 (W.D. La. June 5, 2017), ECF No. 1.

[4] Zhen Zeng, Bureau of Just. Stat., U.S. Dep't of Just., *Jail Inmates in 2021 - Statistical Tables*, at 7, tbl. 1 (Dec. 2022).

[5] Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jails in America*, VERA INST. JUST., 32 (Feb. 2015).

The average length of pretrial detention spans 50 to 250 days.[6] For each of these days, every person detained before trial is irreparably deprived of their freedom despite their presumption of innocence.

Pretrial detention also has irreparable collateral and fiscal consequences. Those detained before trial are more likely to lose their job, their house, or their children.[7] While in detention, they may be unsafe,[8] are frequently unable to exercise their religion,[9] and may lack proper medical care.[10] And, as this Court has observed, someone detained pretrial may be "hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." *Barker v. Wingo*, 407 U.S. 514, 533 (1972).

Pretrial detention has public costs, too. Evidence suggests that pretrial detention increases crime, as such detention, whether resulting in a conviction or not, is

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[6] E. Jason Baron et al., *Pretrial Juvenile Detention*, CATO INST. (2023), https://www.cato.org/research-briefs-economic-policy/pretrial-juvenile-detention.

[7] Note, *Bail Reform and Risk Assessment*, 131 HARV. L. REV. 1125, 1128 (2018).

[8] Leah Wang & Wendy Sawyer, *New Data: State Prisons Are Increasingly Deadly Places*, PRISON POL'Y INITIATIVE (2022), https://www.prisonpolicy.org/blog/2021/06/08/prison_mortality/.

[9] *E.g.*, Sanya Mansoor, *'I Don't Think You're Going to Be Eating Tonight.' Muslims Describe Ramadan in U.S. Prisons*, TIME (2021), https://time.com/6048056/muslims-ramadan-prisons/.

[10] Leah Wang, *Chronic Punishment: The Unmet Health Needs of People in State Prisons*, PRISON POL'Y INITIATIVE (2022), https://www.prisonpolicy.org/reports/chronicpunishment.html.

correlated with future convictions.[11] And pretrial detention costs taxpayers $14 billion each year.[12]

Pretrial detention systems similar to Lafayette Parish's are likely unconstitutional.[13] A State may not "imprison a person solely because he lack[s] the resources to pay" a fine or fee. *Bearden v. Georgia*, 461 U.S. 660, 667–68 (1983). And defendants who, awaiting trial, have not been found guilty, have an especially "strong interest in liberty" that necessitates making pretrial detention "the carefully limited exception" to post-arrest release. *United States v. Salerno*, 481 U.S. 739, 750, 755 (1987) (holding the pretrial detention provisions of the federal system sufficiently narrow to fall within that exception).[14] Failing to "exhibit regard for [these] fundamental rights" can erode "public

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[11] Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 714–15 (2017).

[12] Sandra Susan Smith et al., *Mass Incarceration and Criminalization*, HARVARD KENNEDY SCHOOL SOCIAL POLICY DATA LAB (2021), https://www.socialpolicylab.org/mass-incarceration.

[13] *See Welchen v. Bonta*, 630 F. Supp. 3d 1290, 1305 (E.D. Cal. 2022); *Jones v. City of Clanton*, 2015 WL 5387219, at *2–3 (M.D. Ala. Sept. 14, 2015).

[14] *See also* Brief for the United States as *Amicus Curiae* Supporting Plaintiff-Appellee & Urging Affirmance on the Issue Addressed Herein at 13, *Walker v. City of Calhoun*, 682 F. App'x 721 (11th Cir. 2017) (No. 16-10521) ("[A] bail scheme that imposes financial conditions, without individualized consideration of ability to pay and whether such conditions are necessary to assure appearance at trial, violates the Fourteenth Amendment.").

perception of fairness and integrity in the justice system." *Rosales-Mireles*, 138 S. Ct. at 1907.[15]

However, this constitutional issue remains impervious to review by every federal district court across the Fifth Circuit because improper application of *Younger* prevents percolation. In 1973, the circuit held that arrestees could not be jailed without prompt probable cause hearings. *Pugh v. Rainwater*, 483 F.2d 778, 788 (5th Cir. 1973), *aff'd in part*, 420 U.S. 103 (1975). In 1978, the circuit, sitting en banc, ruled that indigent arrestees did not need to be presumptively released without posting bail; but the decision noted, in dicta, that uniform bail schedules which lack individualized consideration of arrestees' circumstances "infringe[] on both due process and equal protection requirements." *Pugh v. Rainwater*, 572 F.2d 1053, 1057–58 (1978) (en banc). After lengthy litigation, the issue of the constitutionality of uniform bail schedules came squarely before the circuit in *O'Donnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018), and the panel held that such schedules violated both the Due Process and Equal Protection Clauses. *Id.* at 157–63. But in light of the circuit's decision in *Daves*, which overruled *O'Donnell* on the grounds that the panel should have abstained from deciding the constitutional questions involved, *see* 64 F.4th at 630, and which the Fifth Circuit

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[15] *See also* Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2356 (2018) ("[W]hen a sense of procedural fairness is illusory, this fosters a sense of second-class citizenship, increases the likelihood people will fail to comply with legal directives, and induces anomie in some groups that leaves them with a sense of statelessness.").

applied here, the Fifth Circuit is now back where it was in 1978—without an answer to the question of the constitutionality of uniform bail schedules, left only with related but differentiable precedent and on-point but nonbinding dicta.

If this Court correctly holds that *Younger* does not prevent a federal court from considering the constitutionality of Lafayette Parish's pretrial detention system, then numerous arrestees can have claims about their fundamental liberty interests heard, and Lafayette Parish itself will learn whether its practices are unconstitutional. These considerations alone—not to mention the consequences for pretrial detention systems in other circuits—merit the Court's consideration of the *Younger* issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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