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Capstone Writing

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DRAFT

The system of cash bail in the United States is a pillar in our criminal justice system but one that is contentious and has received increasing scrutiny in recent years and the resounding oppositional force holds one compelling argument: Pretrial bail is a harmful system.

In 2017 Maranda Lynn ODonnell was arrested in Harris County Texas for a misdemeanor. As a misdemeanor defendant ODonnell was mandated to post a pretrial bond. She stated, “I, Maranda Lynn ODonnell, am a 22-year-old woman. I was arrested yesterday . . . for a misdemeanor offense. . . . I was never asked if I could afford my bail. . . . I have one 4-year-old daughter. . . . I live paycheck to paycheck[.] I'm worried about whether my job will still be there when I get out. I cannot afford to buy my release from jail.” Ms. ODonnell’s story isn’t entirely uncommon and her circumstances prompted her to file a class action lawsuit with many grounds for the miscarriage of justice placed on her, but most prominently noting that pretrial bail in Harris County violated the Fourteenth Amendment's Equal Protection and Due Process Clauses. A federal judge in Texas held that the bail system in Harris County was indeed unconstitutional and following this incredible ruling, more than 12,000 people — accused of misdemeanors and held on money bail that they couldn’t afford — were released.

ODonnell v. Harris County is a unique case in that it was a catalyst for justice for many, but it should spark uproar that an unconstitutional system underpins the foundations of the criminal justice system in the United States. Rooted as a fundamental and introductory element

for the pretrial structure within our justice system, cash bail has remained a pillar in the process of conviction, but has proved to do more harm than good and further violates elements of our criminal justice system. A clear definition for pretrial bail was noted by criminal defense attorney Chris Karpan,

“bail is an amount of money temporarily given to the court by a person charged with a crime to assure compliance with conditions of release and to assure that the charged person will show up in court. The idea behind bail is that, if you have a significant sum of money riding on it, you’re going to do what the court says to avoid losing that money...If the bail is too high and the person charged can’t come up with the money, he or she will stay in jail until the case is resolved.”

Former United States Attorney General put this definition and problematic system into a staggering context, “As we speak, close to three quarters of a million people reside in America’s jail system . . . Across the country, nearly two thirds of all inmates who crowd our county jails - at an annual cost of roughly nine billion taxpayer dollars - are defendants awaiting trial. . . . Many of these individuals are nonviolent, non-felony offenders, charged with crimes ranging from petty theft to public drug use. And a disproportionate number of them are poor. They are forced to remain in custody - for an average of two weeks, and at a considerable expense to taxpayers – because they simply cannot afford to post the bail required.”

Who are the people who fall victim to the system of cash bail? According to Robin Steinberg from The Bail Project, bail amounts for nonviolent crimes typically are less than \$1,000, falling between \$500 and \$750, however, when held in comparison to the 2017 Federal Reserve Report 4 in 10 Americans cannot pay \$400 of unexpected costs; this mean 4 out of 10

American's couldn't shoulder the unexpected high rates of cash bail. Additionally, pretrial detention that is the outcome for anyone that cannot post bail hurts a defendant's capacity to form a strong defense; this leads to poor representation, higher incarceration rates, false confessions and a host of other issues. (The Criminal Justice Policy Program, 2016) Author and scholar, Jessica Morris notes that, "Defendants who are incarcerated during their pretrial period are over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial." This demonstrates the length of the effects to which bail harms people even before their trial begins.

So, if this system has been held as unconstitutional, if it has been disparaged by national leaders, fought by a swarm of grassroots organizations and lobbyists and, depreciated by criminal defense attorneys as an ineffective and harmful practice, how can this system continue? Well, the short answer is that cash bail is an institution and one that was built on the backs of underrepresented and supported populations of criminal defendants. Additionally, cash bail has fallen within legal scope since 1275 England according to the United States District Court Southern District of Texas; institutions with systemic effects have a catalytic effect and are hard to undo, however, there is a recent push to change the status quo. According to the Marshall Project at least six states and Washington D.C. have made sweeping pushes to effect and dismantle the common unjust system of pretrial bial. Some of these reforms include implementing a ceiling on bail amounts for misdemeanors and some states have even eliminated cash bail all together.

Right now a system is in place that undercuts out democratic framing; whether or not you believe in wholehearted adherence to the Constitution, cash bail doesn't deliver protections under Fourteenth Amendment's Equal Protection and Due Process Clauses. Standing at the

forefront of the criminal justice system, cash bail has fostered an perpetuated issue of recidivism, cyclical crime and harmed some of the most vulnerable members of our society and therefore it should be dismantled.

I was getting paid about \$13 per hour when I was arrested. I probably could have posted a \$10,000 bond, but the judge set my bond at \$50,000 and I didn't have the money to make this bond. Although I was originally charged with a felony, I plead guilty to a misdemeanor but **had to spend five months in jail before I resolved my case. –RAY**

If I had gotten a PR bond, I could have kept my clients and work contracts, would have hired a private attorney instead of relying on a public defender paid for by the tax payers, and would have maintained my home. I could have posted a \$10,000 bond and had many friends and family in the community so I wasn't going to jump bond. For some reason, I was never able to get a bond reduction. It's been almost six months since I got out of jail and I'm still trying to rebuild my life. –CRAIG

When I was released on probation ten months later, I was forced to live in a transitional homeless program. After months and months of networking and use of a community art gallery, I was able to finally rebuild my art studio. Today, I am once again an accomplished artist with a home and studio, but this took a great deal

of time and public resources in order for me to rebuild what I lost after I was arrested and unable to post bond. –RODNEY