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October 19, 2015

By email and first-class mail

Vanita Gupta
Principal Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Susan DeClercq
Assistant U.S. Attorney
Civil Rights Unit
U.S. Attorney's Office for the Eastern District of Michigan
211 W. Fort Street, Suite 2001
Detroit, MI 48226

**Re: Request for Civil Rights Investigation into Macomb County Jail and
“Pay or Stay” Sentencing**

Dear Ms. Gupta and Ms. DeClercq,

We write to ask for a Department of Justice investigation into serious civil rights issues that have been thrown into sharp relief by the unconscionable death of David Stojcevski in the Macomb County Jail. We understand that the Federal Bureau of Investigation is already conducting a criminal investigation regarding the circumstances of Mr. Stojcevski's death. In order to prevent similar tragedies in the future, it is critically important that the Department of Justice also investigate two systemic civil rights problems that his death reveals.

First, it is unconscionable that Mr. Stojcevski, after being denied medication he needed to treat opioid withdrawal, lay dying, gasping for breath and naked on the cement floor of his cell, while those responsible for ensuring his safety in the jail watched over video as the life ebbed out of him. The egregious circumstances of Mr. Stojcevski's death suggest systemic problems with the Macomb County Jail's treatment of mentally ill and chemically dependent inmates that likely affect many other inmates. Those problems warrant a civil rights investigation by the Department of Justice.

Second, it is unconscionable that Mr. Stojcevski was in jail in the first place. He had been sent there on a “pay or stay” sentence for 30 days because he was too poor to pay \$772 in fines associated with traffic tickets. “Pay or stay” sentences are unconstitutional when the poor are incarcerated while the wealthy go free. Because there is significant evidence that many

Michigan courts routinely impose such sentences without any inquiry into ability to pay, we ask the Department of Justice to investigate these sentencing practices, with an initial focus on Macomb County where the use of such sentences is already well documented.

Investigation of the Macomb County Jail's Treatment Of Mentally Ill and Chemically Dependent Inmates

When Mr. Stojcevski was first brought to the Macomb County Jail, staff learned that he was under treatment for drug addiction. Mr. Stojcevski had previously been prescribed medications to deal with opioid withdrawal, but he was denied those critical prescriptions in the jail. Mr. Stojcevski was held first in a medical detox unit and then in a mental health unit, where he was put under 24-hour video surveillance. Jail cameras – which presumably were or should have been monitored by jail or contracted staff – chronicled Mr. Stojcevski's precipitous mental and physical deterioration.¹ He displayed obvious signs of withdrawal, starvation and dehydration. He lost approximately 50 pounds in 16 days, and was hallucinating. For the last several days he could not rise from the cement floor, where he lay twitching. Near the end, he was gasping for breath. Approximately 90 minutes after jail staff finally took him to the hospital in response to his desperate situation, he was pronounced dead from acute opioid withdrawal.²

While mentally ill and chemically dependent inmates all too frequently die in custody, Mr. Stojcevski's death is particularly shocking because so much of the dying process was captured on video. Those responsible failed to give Mr. Stojcevski the medication and medical attention he needed, despite the fact that he was obviously in great pain, suggesting a callous and deliberate indifference by Macomb County Jail and its medical provider to the needs of mentally ill and chemically dependent inmates. The fact that Mr. Stojcevski could, effectively, die on camera, leaves us gravely concerned for the safety of other jail inmates.

We are also very troubled by the response of Macomb County officials to this tragedy.³ While an external investigation is needed to determine exactly what happened and who is responsible, it is indisputable that something went terribly, terribly wrong. The Macomb County Sheriff and Executive are nonetheless insisting that their staff acted entirely appropriately in the way they

¹ Portions of the harrowing videotape can be seen at: Click on Detroit, "Man jailed for ticket dies in custody" (Sept. 23, 2015), www.clickondetroit.com/news/man-jailed-for-ticket-dies-in-custody/35452790.

² The facts set out here are based on the complaint in a civil lawsuit brought by Mr. Stojcevski's estate, and public news reports. *See Stojcevski v. County of Macomb*, No. 4:15-cv-11019 (E.D. Mich.); "Jail video footage showed an inmate dying in agony," Washington Post (Oct. 6, 2015); "In Macomb County man's jail death, a horrifying intersection of big issues," Michigan Public Radio (Sept. 24, 2015); "Jail death lawsuit: He was naked, hurting, no one aided," Detroit Free Press (Sept. 24, 2015); "Family of David Stojcevski Files Lawsuit Over Death in Macomb Jail," NBC News (Sept. 25, 2015).

³ "Macomb exec defends jail officials after inmate's death," Detroit News (Oct. 2, 2015); "Macomb exec lashes out at attorney in jail death suit," Detroit Free Press (Oct. 1, 2015).

treated Mr. Stojcevski. Macomb County Executive Mark Hackel has said that “he knows ‘damn well’ that deputies did exactly what they were expected to do,”⁴ while Sheriff Anthony Wickersham “is adamant that his deputies did what they were supposed to do.”⁵ The response to Mr. Stojcevski’s harrowing death should not be to defend what happened, but to make sure that it will never happen again. If county leaders are unwilling to learn from Mr. Stojcevski’s death and to change the patterns and practices that allowed his death to occur, that itself demonstrates deliberate indifference to the needs of the many other mentally ill and chemically dependent inmates incarcerated in the Macomb County Jail. Given that local officials are evidently unwilling to make changes to prevent future deaths under similar circumstances, federal intervention may be warranted.

Investigation of “Pay or Stay” Sentencing

Mr. Stojcevski’s death is even more disturbing because he should not have been in jail in the first place. He was sent to the Macomb County Jail under a “pay or stay” sentence, which illegally required him to go to jail for 30 days because he was too poor to pay \$772 in fines and costs.⁶ Mr. Stojcevski’s death reflects not just an abysmal failure of the Macomb County Jail to address his medical needs, but also the fact that Michigan has a two-tier system of justice. If Mr. Stojcevski had been wealthy, he could have paid the \$772 and gone home. Because he was poor, he ended up in jail, where he died.

“Pay or stay” sentences are unconstitutional when they result in harsher punishment – that is, incarceration – for defendants who lack the ability to pay. As the U.S. Supreme Court has recognized, to deprive a defendant of freedom “simply because, through no fault of his own, he

⁴ “Macomb County executive strikes back in jail case,” Click on Detroit (Oct. 1, 2015).

⁵ “Sheriff responds to Macomb County Jail death,” Click on Detroit (Oct. 1, 2015).

⁶ A memorandum to the Macomb County Jail Office from Community Corrections (Exhibit A) shows a fine schedule, which calculates, based on “rate” of one day in jail per \$32 owed, when Mr. Stojcevski could be released:

7/4/2014	\$32	6/22/2014	\$418
7/3/2014	\$64	6/21/2014	\$450
7/2/2014	\$97	6/20/2014	\$483
7/1/2014	\$129	6/19/2014	\$515
6/30/2014	\$161	6/18/2014	\$547
6/29/2014	\$193	6/17/2014	\$579
6/28/2014	\$225	6/16/2014	\$611
6/27/2014	\$257	6/15/2014	\$643
6/26/2014	\$290	6/14/2014	\$676
6/25/2014	\$322	6/13/2014	\$708
6/24/2014	\$354	6/12/2014	\$740
6/23/2014	\$386	6/11/2014	\$772

cannot pay [a] fine” is “contrary to the fundamental fairness required by the Fourteenth Amendment.”⁷ The Department of Justice has already highlighted this very issue in its *Investigation of the Ferguson Police Department*, where the DOJ found that the practice of arresting and jailing individuals who cannot pay fines and costs “is directly at odds with well-established law that prohibits ‘punishing a person for his poverty.’”⁸ Pay or stay sentences in Michigan – including the sentence imposed on Mr. Stojcevski – are likewise at odds with the clear constitutional prohibition on punishing people because they are poor.

Sadly, Mr. Stojcevski’s unconstitutional sentence was not unusual. The American Civil Liberties Union (ACLU) of Michigan, other legal organizations, and the media have for years documented “pay or stay” sentencing in Michigan.⁹ Cases representative of the problem include:

- Stephane Milton, who was sentenced to 30 days in the Macomb County Jail because he could not afford to pay \$334 in fees and costs related to a jaywalking ticket.¹⁰
- Ryan Rockett, who was sentenced to 93 days in the Macomb County Jail because he could not afford to pay \$1,500 in fees and costs related to

⁷ *Bearden v. Georgia*, 461 U.S. 660, 672-73 (1983). In *Bearden*, the Supreme Court explained that, when sentencing a defendant who is unable to pay a legal financial obligation, the

sentencing court must inquire into the reasons for the failure to pay. If the [defendant] willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay, the court may . . . sentence the defendant to imprisonment within the authorized range of his sentencing authority. If the [defendant] could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment.

Id. at 672.

⁸ United States Department of Justice, *Investigation of the Ferguson Police Department*, at 57-58 (March 4, 2015) (citing *Bearden*, 461 U.S. at 671).

⁹ See, e.g., American Civil Liberties Union, *In For a Penny: The Rise of America’s New Debtors’ Prisons* (Oct 2010), pp 6-9, 29-41, at <http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtors-prisons>; Michigan State Planning Body, *Implementing Crossroads: A Proposal for Evaluating Fees, Fines and Costs* (May 2015), at <http://spb.mplp.org:8080/download/attachments/425986/SPB-Implementing-Crossroads-Final-Report-5-19-15.pdf?version=1>.

¹⁰ *People of the City of Easpointe v. Stephane Milton*, No. 14EA06438 (38th District Court) (pending); “Timeout ordered for poor woman who fears jail in dog case,” *Detroit Free Press* (July 22, 2015).

operating a vehicle without insurance and driving while his license was suspended.¹¹

- Donna Anderson, who was advised by her court-appointed attorney that she will be sent to the Macomb County Jail unless she can pay \$455 in fines and costs related to dog license violations, and who, because she is indigent, filed suit to prevent such incarceration.¹²
- Vladimir Stojcevski (David Stojcevski's brother), who was sentenced to 30 days in the Macomb County jail because he was unable to pay \$655 in fines and costs related to driving on a suspended license.¹³
- Stephen Papa, who was sentenced to 22 days in the Kent County Jail because he was unable to pay \$2,600 in fines and costs related to destruction of property and resisting arrest after he got drunk with friends.¹⁴
- Kyle Dewitt, who was sentenced to 3 days in the Ionia County Jail because he was unable to pay \$215 in fees related to a ticket for catching a fish out of season.¹⁵
- Kristen Preston, who was sentenced to 30 days in the Ionia County Jail because she could not afford to pay a \$125 alcohol assessment fee stemming from a minor in possession (MIP) charge.¹⁶

¹¹ *People of the City of Eastpointe v. Ryan Rockett*, 14EA05894B-OI, 14EA05894C-OT (38th District Court); "Timeout ordered for poor woman who fears jail in dog case," *Detroit Free Press* (July 22, 2015).

¹² *In re Donna Elaine Anderson*, No. 15-2380-AS (Macomb County Circuit Court) (pending); "Timeout ordered for poor woman who fears jail in dog case," *Detroit Free Press* (July 22, 2015). The complaint in Ms. Anderson's case lists eleven additional cases in the 38th District Court where individuals were sentenced to "Money or Jail."

¹³ "Family of David Stojcevski Files Lawsuit Over Death in Macomb Jail," NBC News (Sept. 25, 2015).

¹⁴ *People v. Stephen Papa*, No. 2013-FY-0001413 (61st District Court) (2013); National Public Radio, "As Court Fees Rise, The Poor Are Paying the Price" (May 19, 2014).

¹⁵ *People of the City of Ionia v. Kyle Dewitt*, No. C607947M (64-A District Court) (2011); *Detroit Free Press*.

¹⁶ *People of the City of Ionia v. Kristen Preston*, No. 11926-1IMA (64-A District Court) (2011).

- Dorian Bellinger, who was sentenced to 13 days in the Isabella County Jail because he could not afford to pay \$425 in fines and costs related to a misdemeanor marijuana possession charge.¹⁷
- Dontae Smith, who was sentenced to 41 days in the Oakland County Jail because he could not afford to pay \$415 in connection to several driving offenses, including driving with a suspended license and impeding traffic.¹⁸
- David Clark, who was sentenced to 90 days in the Wayne County Jail because he could not afford to pay \$1,250 in fees and costs related to charges for spanking his girlfriend's son. Clark's girlfriend was charged with the same misdemeanor offense; however, her parents paid her costs, and she was therefore not jailed.¹⁹

Mr. Stojcevski's death is a horrific reminder that even short incarceration on a "pay or stay" sentence can have terrible consequences, particularly for individuals who are already struggling with medical or mental health conditions that the local jail is not equipped to handle. Indeed, Mr. Stojcevski is not the first individual given a "pay or stay" sentence who has died in the Macomb County Jail. Christopher Drewek committed suicide in the Macomb County Jail after being sent there on a "pay or stay" sentence in 2010.²⁰

Hundreds if not thousands of Michigan citizens are given "pay or stay" sentences each year. While fortunately only a few have died, the consequences of incarcerations are severe for anyone illegally sentenced to "pay or stay," resulting in the loss of jobs or housing and separation from children or family, not to mention the suffering inherent in imprisonment itself.

Conclusion

Mr. Stojcevski's death is an incomprehensible tragedy for those who loved him. For those of us who did not know him, it is a call to action.

¹⁷ *People of the City of Livonia v. Dorian Bellinger*, No. 10L04634-OM (16th District Court) (2011).

¹⁸ *People of the City of Ferndale v. Dontae Smith*, No. 11FE07370A; 11FE07370B (2011).

¹⁹ *People v. David Clark*, No. 11-1729 (27th District Court) (2011).

²⁰ Michigan Public Radio, "Debtors pay... or stay in jail" (Nov. 22, 2011), <http://michiganradio.org/post/debtors-pay-or-stay-jail#stream/0>; "Inmate commits suicide," *Macomb Daily News* (Aug. 27, 2010).

We urge the Department of Justice to investigate the failures in both the jail and the court system that caused a man who should never have been jailed to suffer a slow, agonizing death on the jail house floor.

Sincerely,

M. Steinberg 10K

Michael J. Steinberg
Legal Director

Dan Korobkin

Dan Korobkin
Deputy Legal Director

M. Aukerman 10K

Miriam Aukerman
Staff Attorney

Exhibit A

TF
7/11/14

MEMORANDUM

TO: Jail Office

FROM: Community Corrections
Lisa B. (586) 469-1320

DATE: June 17, 2014

RE: Stojcevski, David (#311125)/Prorated Fine Schedule for
Case #12RV11114 - 39th District Court/JFB

Fine	Days	Amt per day
\$772.00	30	\$32

2014 JUN 19 PM 7 08

	<Release Date
7/5/2014	
7/4/2014	\$32
7/3/2014	\$64
7/2/2014	\$97
7/1/2014	\$129
6/30/2014	\$161
6/29/2014	\$193
6/28/2014	\$225
6/27/2014	\$257
6/26/2014	\$290
6/25/2014	\$322
6/24/2014	\$354
6/23/2014	\$386
6/22/2014	\$418
6/21/2014	\$450
6/20/2014	\$483
6/19/2014	\$515
6/18/2014	\$547
6/17/2014	\$579
6/16/2014	\$611
6/15/2014	\$643
6/14/2014	\$676
6/13/2014	\$708
6/12/2014	\$740
6/11/2014	\$772