IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ZACHARY ROBINSON AND MICHAEL LEWIS, *et al.*, on behalf of themselves and a class and subclass of similarly situated persons, *Plaintiffs*, v. LEROY MARTIN JR., E. KENNETH WRIGHT JR., PEGGY CHIAMPAS, SANDRA G. RAMOS, and ADAM D. BOURGEOIS JR., on behalf of themselves and a class of similarly situated persons, *Defendants*.	Case No. 16 CH 13587 Judge Celia Gamrath Calendar 6

ORDER GRANTING SECTION 2-619.1 MOTION TO DISMISS

This lawsuit is one of several filed throughout the country in an effort to end the cash bail system. These lawsuits have generated prodigious discussion and legislative action, including the Illinois Bail Reform Act of 2017 (P.A. 100-1, eff. Jan. 1, 2018). The Illinois Supreme Court and chief circuit judges in Illinois have encouraged reform of bail statutes and practices designed to preserve public safety while maximizing the pretrial release of defendants and ensuring they appear in court. However, this lawsuit, brought by persons who have already been released, against individual judges in their judicial capacity no longer assigned to bond court (now known as pretrial services), is not the way to accomplish the goal of statewide pretrial reform and release of low-risk, non-violent arrestees who cannot afford bail and are presumed innocent.

The relief sought by Plaintiffs is not authorized or envisioned by Illinois law, nor would it resolve an actual controversy of the parties' rights to help end all or part of a controversy. Rather, it would result in the court rendering an advisory opinion or otherwise and impermissibly

engaging in a collateral attack on prior orders – prior orders Plaintiffs could have challenged directly by asking for reconsideration or seeking a direct appeal. For the following reasons, the case is dismissed because the action is completely negated by section 2-619(a) and otherwise fails to state a claim that would entitle Plaintiffs to relief.

PLAINTIFFS' COMPLAINT

Plaintiffs' First Amended Class Action Complaint alleges their constitutional rights of due process and equal protection were violated by judges in Cook County setting bail amounts without inquiry into and findings concerning their ability to pay. They insist the constitution requires inquiry into and findings of fact that the arrestee is presently capable of paying the ordered amount and that monetary bail set above this amount is unconstitutional. Not patently so. Ability alone does not dictate the amount of bail. While the merits of the case have not been fully briefed, the court must touch upon the substance of Plaintiffs' claim, for it highlights their inability to state a cause of action for the relief they seek.

The Illinois bail statute, the constitutionality of which is not challenged facially, allows judges, in their discretion, to impose monetary bail when no other conditions of release will reasonably assure the defendant's appearance in court. 725 ILCS 5/110-2. The amount of bail shall not be oppressive and shall be considerate of the accused's financial resources, but it may be in amounts greater than a defendant can afford. *People v. Saunders*, 122 Ill.App.3d 922, 929 (2d Dist. 1984) ("Although the bond set was a high amount, and the likelihood that the defendant could post even a 10% cash deposit was not great, the financial ability of the defendant is only one of the considerations the court must balance when setting bail"); *U.S. v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988) (bail is not excessive just because it is unaffordable). The Illinois

Bail Reform Act of 2017 contemplates unaffordable monetary bail and tries to rectify it by providing daily credit against monetary bail for every day an arrestee is incarcerated. 725 ILCS 5/110-14. It also provides for expedited rehearing of bail orders. 725 ILCS 5/110-6(a-5). General Order 18.8A, which is unique and exclusive to Cook County, is an effort to "ensure no defendant is held in custody prior to trial solely because the defendant cannot afford to post bail," and sets forth procedures for bail hearings and pretrial services largely consistent with Plaintiffs' desire.

In setting monetary bail, the statute requires the court to take into account approximately thirty factors, including the defendant's financial resources, "on the basis of available information." 725 ILCS 5/110-5(a). The available information comes by way of proffer from either the state or defense counsel. *Id.* Ineludibly, the court sets bail based on information known or proffered at the time. It is up to the state or the defendant and his or her counsel to provide information about the defendant's financial resources and any other factor they wish to be considered. Their failure to offer any information does not make the bail hearing categorically unlawful.

Plaintiffs allege it is an unconstitutional deprivation of rights for a judge not to affirmatively inquire into the financial resources of an arrestee and make findings about the ability to pay bail, even when no facts are offered. However, courts must balance the rights of individuals against their own obligation not to cross the line into the role of advocate, particularly where an arrestee is represented by counsel who has the opportunity to present evidence, but offers nothing. Further, the legislature has not sought to impose a requirement of specific findings, even though it has done so in other areas of law. *See* 750 ILCS 5/504(b-2) (requiring the court to make specific findings of fact as set forth in the statute); 750 ILCS 5/503(a) (requiring the court to make specific factual findings as to its classification of assets,

values, and other factual findings). Nor has it elevated financial resources above all other thirty factors the court must take into account based on available information proffered.

Financial resources is just one of many factors a court ought to consider in imposing bail; it is not the be-all and end-all factor, as Plaintiffs contend. If this information is not provided, arrestees have the right to request rehearing and present any new facts to the court in an effort to reduce the amount of bail. 725 ILCS 5/110-6. They also have the right of appeal under Illinois Supreme Court Rule 604(c) or to seek a writ of habeas corpus. However, they do not have the right to collaterally attack their bail orders or a right to a declaration in state court, on a sweeping class-wide basis, which would advisorily instruct judges how to exercise their discretion in making individual bail determinations or have the effect of invalidating prior bail determinations on a class-wide basis where affirmative inquiry and express findings were not made.

DISMISSAL STANDARD

A motion to dismiss under 735 ILCS 5/2-615 challenges the legal sufficiency of a complaint. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (Ill. 2004). The thrust of a section 2-615 motion is that plaintiff cannot prove any set of facts, under any circumstances, that would entitle him or her to relief. *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (Ill. 2006). If plaintiff cannot allege facts sufficient to bring a claim within a legally cognizable cause of action, the court must grant the motion to dismiss. *Id.* at 429-30. In contrast, a motion to dismiss under 735 ILCS 5/2-619 admits the legal sufficiency of the complaint, but asserts affirmative matter or other defenses listed in section 2-619 that completely negate the cause of action or defeat the claim. Motions with respect to pleadings under section 2-615 and motions for involuntary dismissal under section 2-619 may be filed together as a single motion under 735 ILCS 5/2-619.1.

COLLATERAL ATTACKS ARE PROHIBITED

As Defendants discern, a fundamental defect of Plaintiffs' Complaint is that it seeks a procedural remedy for a substantive violation of their constitutional rights. Throughout their pleadings and at oral argument, Plaintiffs allege the setting of cash bail by the individual judges in Plaintiffs' cases is unconstitutional and a violation of the 8th Amendment, due process and equal protection, and their civil rights. Specifically, they seek redress in the form of a declaration that a bail determination is unconstitutional absent affirmative inquiry and findings by the court concerning the financial resources of the arrestee and his or her ability to pay bail.

While Plaintiffs say the declaration would be prospective only, this does not withstand scrutiny. It is impossible for one to say the constitution requires this inquiry and findings, but that bail determinations made without them may be upheld. Necessarily, Plaintiffs are seeking to modify the bail orders set pursuant to an alleged unconstitutional procedure and acknowledge success on their claims would require a new bail proceeding. This is the essence of a collateral attack. *Apollo Real Estate Inv. Fund v. Gelber*, 403 Ill.App.3d 179, 189 (1st Dist. 2010).

The collateral attack doctrine applies to final and interlocutory orders alike. *Thomas v. Sklodowski,* 303 Ill.App.3d 1028, 1035 (1st Dist. 1999), *citing Lewis v. Blumenthal,* 395 Ill. 588, 594 (Ill. 1947). Once an order is entered, it cannot be attacked except on direct appeal or specific collateral proceedings authorized by law. *Malone v. Cosentino,* 99 Ill.2d 29, 32-33 (Ill. 1983). In connection with a pretrial detention bail determination, Rule 604(c) and habeas corpus proceedings are recognized forms of attack. Declaratory relief on a class-wide basis is not.

What is more, the Illinois bail statute permits arrestees to seek timely and repeated direct review of bond and the opportunity to present information to the bond-setting judge about their

financial resources and ability to pay bail. If the judge rejects the petition, instant appellate review is available to consider the specific circumstances of each individual case. Justice demands this type of due process and swift judicial review. However, justice does not allow another circuit court judge, who is not a successor to the bond-court judge, to act as the appellate court by intruding on matters within each judge's individual discretion. *See People ex rel. Hemingway v. Elrod*, 60 Ill. 2d 74 (Ill. 1975) (the court has inherent authority as it relates to setting bail).

Malone v. Cosentino, 99 Ill.2d 29 (Ill. 1983), *Morgan v. Finley,* 105 Ill.App.3d 80 (1st Dist. 1982), and *Bd. of Trustees of Comm.College Dist. No. 508 v. Rosewell,* 262 Ill.App.3d 938 (1st Dist. 1992), are on point. In these cases, this sort of collateral attack, in both an individual and a more generalized system-wide basis, was deemed ineffective. The same principles apply to this case where the effort is to have this court declare on a class-wide basis that the bail determinations made by individual judges in separate bond proceedings, past and future, are unconstitutional. Under *Malone,* Plaintiffs are not afforded special standing under the collateral attack doctrine just because they filed suit as a class. *Malone*, 99 Ill.2d at 35 (class action was barred under collateral attack doctrine, notwithstanding notions of "fairness and justice" espoused in *Meyerowitz* and *Warr* (*infra*)).

The cases of *Meyerowitz* and *Warr* cited by Plaintiffs are distinguishable. In *Meyerowitz* and *Warr,* a separate action was allowed challenging the constitutionality of the judgments because there was no other avenue of review. *See People v. Meyerowitz*, 61 Ill.2d 200 (Ill. 1975); *People v. Warr,* 54 Ill.2d 487 (Ill. 1973). These cases hold a void judgment may be challenged anytime and "fairness and justice" require that an accused have a mechanism by which to challenge a void conviction. However, "neither *Meyerowitz* nor *Warr* involved an attempt to

challenge the constitutionality of a criminal judgment in a civil class action proceeding." *Malone,* 99 Ill.2d at 35.

In addition, Plaintiffs have an adequate mechanism to challenge the bail orders directly and immediately a multitude of times at the circuit court level, the appellate level through Rule 604(c), and by writ of habeas corpus. Plaintiffs' contention that direct appellate relief would be ineffectual and not redress their constitutional claims is belied by cases in which courts have addressed these issues in an individual case, setting precedent for future decisions. *See People v. Purcell*, 201 Ill.2d 542 (Ill. 2002) (in context of a Rule 604(c) appeal, court held defendant's constitutional right to bail was violated); *People v. McCabe*, 49 Ill.2d 338 (Ill. 1971) (in context of conviction appeal, court addressed defendant's claims of due process and equal protection violations).

Humphrey disproves Plaintiffs' theory that a habeas claim is unavailable and ineffective relief. *See In re Humphrey,* A152056 (Cal. Ct. App. 1st Dist., 2d Div. Jan. 25, 2018, *PLA granted* May 23, 2018). In *Humphrey,* the California Court of Appeals issued a writ of habeas corpus to give Humphrey a new bail hearing. In doing so, the court set precedent affecting future bail proceedings and squarely addressed the constitutionality of pretrial detention without inquiry into an arrestee's ability to pay. The critical difference between *Humphrey* and this case is the nature of the action and relief sought. Humphrey sought a new individual bail hearing by writ of habeas corpus; he did not attempt to collaterally attack the bail order in an unauthorized declaratory judgment action on a sweeping class-wide basis.

Further, declaratory relief is not necessary or allowed under the collateral attack doctrine where Plaintiffs could have proffered evidence to the court demonstrating their financial

resources and inability to pay bail, could have asked for rehearing on the amount of bail, and could have appealed. Having failed to do so, either at all or unsuccessfully, they cannot attack the bail orders or procedures in this collateral proceeding. *People v. Carrera*, 239 Ill.2d 241, 258-59 (Ill. 2010) (no collateral attack permitted where defendant has another remedy); *Morgan*, 105 Ill.App.3d 80 (class action dismissed as impermissible collateral attack where plaintiffs could have pursued a direct appeal). Accordingly, the Complaint is dismissed under 735 ILCS 5/2-619(a) as an impermissible collateral attack on Plaintiffs' bail orders attendant to their criminal proceedings.

DECLARATORY RELIEF IS AN IMPROPER REMEDY

To avoid the obvious collateral attack, Plaintiffs say they seek only a prospective declaration that it is unlawful to order arrestees to pay bail as a condition of pretrial release without making findings and inquiry into their ability to pay the ordered amount. To properly state a cause of action for declaratory relief, a petitioner must have standing. *Messenger v. Edgar,* 157 Ill.2d 162, 170 (Ill. 1993). Standing means there is an actual controversy between adverse parties and that entry of a declaratory judgment would terminate some part of that controversy. *Id.*; *Bd. of Trustees of Comm.College Dist. No. 508*, 262 Ill.App.3d 938 (a party lacks standing where he or she will not benefit from the relief). A case cannot proceed without an actual controversy and may not be decided simply to establish future precedent or render an advisory opinion. *Beahringer v. Page,* 204 Ill.2d 363, 374-75 (Ill. 2003).

It is undisputed the named Plaintiffs are no longer subject to a pretrial detention order. It is pure speculation to say they will encounter these individual Defendants again in connection with a bond hearing on a hypothetical future arrest. Although some of the proposed class

members may still subject to pretrial detention orders, the Complaint does not allege the named Defendants are the ones who imposed bail. In fact, the named Defendants are no longer assigned to bond court, making the utility of a prospective declaration against them even more attenuated. Further, it can hardly be said the judges of Cook County, acting as neutral arbiters in their judicial capacity, have legal interests adverse to Plaintiffs' to give rise to declaratory relief.

Claims against Judges Wright and Martin are also tangential and cannot survive a motion to dismiss. There are no allegations whatsoever that Judges Wright or Martin have made or will make bail determinations infringing on the rights of Plaintiffs. Without an actual and specific controversy to decide between the parties, the court cannot make a declaration of rights.

The federal doctrine of juridical link does not save Plaintiffs' claims against Judges Wright and Martin. A juridical link generally stems from a legal relationship between defendants that warrants imposing joint liability as a result of a contractual relationship, conspiracy, partnership, or joint enterprise, which Defendants here lack. Nonetheless, the juridical link doctrine has not been adopted by Illinois state courts and, in fact, was implicitly rejected in *Kittay v. Allstate Insurance Co.*, 78 Ill.App.3d 335 (1st Dist. 1979), where the court held plaintiffs could not bring suit against twenty defendant insurance companies with whom they had no relationship and from whom they suffered no injury. *See also Glazewski v. Coronet Ins. Co.*, 108 Ill.2d 243, 254-55 (Ill. 1985) (same, and further holding that, before a class is certified, a complaint must meet "all cause-of-action and standing requirements").

Overall, the declaration sought by Plaintiffs would be advisory because it would result in no relief to them and not resolve an actual controversy between the parties. This became apparent at oral argument when Plaintiffs' counsel acknowledged that the point of this

declaration would be for other circuit judges to use it "as they see fit," even though they are not bound by the determination, in an effort to achieve the laudable goal of best practices in future bond hearings (ROP 42-44, 72). However, the requirement of an actual controversy prevents the court from passing judgment on abstract propositions of law or giving advice to fellow circuit court judges on how to conduct bond hearings and exercise their discretion in setting bail in future cases.

Declaratory relief is a remedy in cases involving an actual controversy; it does not create substantive rights and is not a mechanism to expand this court's jurisdiction in order to review another co-equal court's decision. Because Plaintiffs cannot plausibly allege an injury to their own legally cognizable rights that can be cured by prospective relief, declaratory judgment is an improper remedy.

FEDERAL CLAIMS NOT COGNIZABLE UNDER 1983

Dismissal applies equally to Plaintiffs' federal claims set forth in Counts I, III, and V, which are not cognizable under section 1983. In addition to being barred by collateral estoppel, they are dismissed for failure to state a claim under 735 ILCS 5/2-615.

As *Humphrey* demonstrates, Plaintiffs have an adequate remedy at law and may challenge their bail determinations by writ of habeas corpus. *See Humphrey,* A152056. However, they may not do so under section 1983. *Preiser v. Rodriguez,* 411 U.S. 475 (U.S. 1973); *Heck v. Humphrey*, 512 U.S. 477 (U.S. 1994). Plaintiffs creatively attempt to plead around *Preiser* and *Heck,* but cannot escape the obvious result that any relief granted in this action would indeed undermine or demonstrate the invalidity of the detention orders, not just some ancillary aspect of them. *See Wilkinson v. Dotson*, 544 U.S. 74 (U.S. 2005) (defendant

cannot use section 1983 to obtain relief where success would necessarily demonstrate the invalidity of confinement or its duration).

Gerstein v. Pugh, 420 U.S. 103 (U.S. 1975), does not yield a contrary result. The class action in *Gerstein* challenged the utter lack of a probable cause hearing, guaranteed by the 4th Amendment, prior to pretrial detention. The action was deemed cognizable under section 1983 because plaintiffs' release was "neither asked nor ordered" (FN 6) and, thus, did not fall within the purview of habeas corpus.

In contrast, Plaintiffs do ask for an order that would effectively compel pretrial release of those individuals who are detained solely because the amount of bail set was not considerate of their financial resources and commensurate with their ability to pay. If bail is to be limited to affordable bail then those detained solely because they cannot afford bail ought to go free. Indeed they should be released, when the court believes they will comply with all conditions of bond and do not pose a danger or threat (725 ILCS 5/110-2), but *Preiser* bars the use of section 1983 for this purpose.

This case is unlike *Mason* and *O'Donnell* where the plaintiffs were able to point to and challenge a specific rule or policy enacted and enforced by the judicial defendants in their administrative capacity. *See Mason v. County of Cook,* 488 F.Supp.2d 761 (N.D. Ill. 2007); *O'Donnell v. Harris County,* 882 F.3d 528 (5th Cir. 2018), *opinion withdrawn and superseded on reh'g sub nom.,* 2018 U.S. App. LEXIS 14578 (5th Cir. June 1, 2018), *opinion on remand,* 2018 U.S. Dist. LEXIS 101653 (U.D. S.D. Tex. June 18, 2018) (recognizing the unique structure of Texas government where judges routinely exercise lawmaking and administrative authority, not just perform judicial acts, and are policymakers for the municipality). Here, however, in

determining individualized bail, Cook County judges clearly act in their judicial capacity, not as administrators or rulemakers. Plaintiffs do not allege they act as administrators, and there are no well-pled facts to support the conclusory allegation of a widespread systematic policy designed to deprive arrestees of the right to pretrial release. The mere conclusion that, as a matter of practice, Defendants fail to consider financial resources and ability to pay is insufficient to state a claim and immunizes Defendants from suit.

CLAIMS BARRED BY IMMUNITY

In addition to the reasons stated above, Counts II, IV, VI, and VII are subject to dismissal pursuant to section 619(a) under the doctrine of judicial immunity. Judges have absolute immunity from for their judicial acts even when performed in excess of their jurisdiction, flawed by grave procedural error, or allegedly done maliciously or corruptly. *Stump v. Sparkman*, 435 U.S. 349, 359 (U.S. 1978); *Moncelle v. Justice Mary McDade, et al.*, 2017 IL App (3d) 160579, ¶18. A judicial act is one normally performed by a judge dealing with parties in matters surrounding their case. *Stump,* 435 U.S. at 362.

Clearly, the judges named in this suit, with the exception of Judges Wright and Martin, against whom there are absolutely no allegations pled, were acting in their judicial capacity in connection with Plaintiffs' bond hearings and setting of bail. Bond hearings are normal functions performed by bond court judges. Plaintiffs were dealing with Defendants in their judicial roles as bond court judges. The entry of the bond orders are patently judicial acts. *Smith v. City of Hammond,* 388 F.3d 304, 306 (7th Cir. 2004). Defendants are immune from suit as a result of their alleged judicial errors in setting bail. *Id.* Counts II, IV, VI, and VII are therefore dismissed on this alternative ground.

Judicial immunity is not limited to suits for damages, but extends in this instance to Plaintiffs' prayer for declaratory relief. *See Coleson v. Spomer,* 31 Ill.App.3d 563 (5th Dist. 1975) (court dismissed suit for damages and declaratory relief under doctrine of judicial immunity); *Ulrich v. Butler*, 09-1133, 2009 U.S. Dist. LEXIS 37418 (C.D. Ill. May 4, 2009) (court dismissed complaint against a state court judge for alleged civil rights violation for his alleged refusal to have a court reporter present, not allowing motions to be heard, and sentencing defendant to incarceration until he paid in full); *King v. Rumbaugh,* 2017 U.S. Dist. LEXIS 53214 (U.D. W.D. Wash. April 6, 2017) (same, citing *Ulrich*); *Spease v. Olivares,* 509 S.W.3d 512 (Tex. App. 2016) (affirming dismissal of claims for declaratory and injunctive relief against a judge based on immunity).

Citing *Cathy's Tap, Inc. v. Vill. of Mapleton,* 65 F.Supp.2d 874 (C.D. Ill. 1999) and *Pulliman v. Allen,* 466 U.S. 522 (U.S. 1984), Plaintiffs contend their claims are not barred by judicial immunity because judicial immunity does not apply to prospective relief in the form of an injunctive or declaratory judgment.[1] However, the relief Plaintiffs seek is not prospective declaratory relief. Rather, the relief stems only from past conduct, in proceedings that have ended, by individual judges no longer assigned to bond court, with no threat of future violations. This type of relief would undermine and demonstrate the invalidity of Plaintiffs' prior detention orders, and is governed exclusively by the remedies provided for in the Illinois bail statute, Rule 604(c), and writ of habeas corpus.

[1] Although not discussed in *Cathy's Tap, Inc.,* in 1996, Congress enacted the Federal Courts Improvement Act of 1996, Pub. L. 104-317, 110 Stat. 3847 (1996), which amended section 1983 and effectively extended judicial immunity in section 1983 actions to suits for injunctive relief unless a declaratory decree was violated or declaratory relief was unavailable. This language does not expressly authorize declaratory relief, but recognizes it may be available in certain instances. *Allen v. DeBello,* 861 F.3d 433, 439 (3d Cir. 2017).

Further, even if the relief is purely prospective, the doctrine of sovereign immunity prevents the court from granting it, for it would be tantamount to controlling the acts of the state. *See Jackson v. Alvarez,* 358 Ill.App.3d 555, 560 (4th Dist. 1990).

Leetaru v. Bd. of Trustees of Univ. of Ill., 2015 IL 117485, is distinguishable. In *Leetaru,* plaintiff alleged defendants illegally failed to adhere to non-discretionary University policies and procedures, "thereby exceeding defendants' authority and violating Leetaru's constitutional rights to due process." Plaintiffs here do not allege Defendants exceeded their statutory or constitutional authority; rather, they merely disagree with the manner in which Defendants considered, or failed to consider, information proffered at bond hearings and exercised their discretion in setting bail. Because this suit is aimed directly at controlling an act of the state in setting bail – a purely discretionary, judicial function – Counts II, IV, and VI are barred by sovereign immunity to the extent they seek prospective relief.

As discussed above in the Federal Claims section of this Order, this case stands contra to cases that have survived dismissal brought against judges or units of government in their administrative or rulemaking capacity to which absolute judicial immunity does not extend. For instance, in *Mason,* 488 F.Supp.2d 761, the presiding judge agreed he was a proper party defendant for declaratory judgment purposes because he, in his administrative capacity, was the only one who could modify the formalized procedure, created by order, requiring defendants to appear at bond hearings by closed circuit television. In *O'Donnell*, 882 F.3d 528, *opinion withdrawn and superseded on reh'g sub nom.*, 2018 U.S. App. LEXIS 14578, *opinion on remand,* 2018 U.S. Dist. LEXIS 101653, the Texas court refused to order relief against the judges in their personal or judicial capacity, but ordered relief in their official capacity as

rulemakers for their administrative role in promulgating and mechanically applying the secured bail schedule without individual consideration of the statutory factors on a case-by-case basis.

In contrast, judges in Illinois do not impose standardized money bail amounts and there is no formalized procedure or policy at issue in this case.[2] Rather, each judge, in the role of adjudicator, not as administrator or rulemaker, conducts an individualized inquiry based on numerous factors and information proffered by the state and defense counsel before ordering pretrial detention. Thus, even if Defendants did ignore Plaintiffs' financial resources in setting bail, the adjudication of bond is squarely a judicial function conducted by each judge individually. The judges are absolutely immune from suit, requiring dismissal of the entire action.

Again, if an arrestee believes a judge acted improperly and the bail decision is incorrect, the arrestee has the right of rehearing and appeal, but the arrestee has no cause of action against the individual judge who was performing his or her judicial function and exercising inherent discretion in setting individualized bail. *Generes v. Foreman*, 277 Ill.App.3d 353, 357 (1st Dist. 1995). Because Defendants were acting in their judicial capacity in setting bail, Plaintiffs' claims for declaratory relief are barred by immunity and, therefore, dismissed. *See Thomas v. Wilkins,* 61 F.Supp.3d 13, 20-21 (D.D.C. 2014) (district court dismissed claims for declaratory and injunctive relief against a fellow district court judge, finding direct appeal was proper procedural mechanism to challenge the judge's decision, not declaratory relief), *citing Jenkins v. Kerry,* 928 F.Supp.2d 122, 135 (D.D.C. 2013) (declaratory relief against a judge for judicial actions is available by way of direct appeal), and *Lewis v. Green*, 629 F.Supp. 546, 553 (D.D.C. 1986).

[2] General Order 18.8A is perhaps a procedure akin to the procedure challenged in *Mason.* However, Plaintiffs' claims are not based upon General Order 18.8A, which was enacted after the filing of this action and is seemingly consistent with the procedure Plaintiffs desire.

CONCLUSION

After this lawsuit was filed, the Illinois Bail Reform Act of 2017 and General Order 18.8A went into effect. These laws change the landscape of bond hearings for arrestees, but in Plaintiffs' view do not go far enough. The court is cognizant of the concern they have expressed about unaffordable cash bail and truncated bond hearings. The court shares these concerns and weighed this decision heavily. The court spent a considerable amount of time analyzing the parties' briefs, reading state and federal case law, and contemplating the effect of pretrial detention on those who cannot afford bail. However, in the end, the court cannot step in to cure a perceived flaw in the setting of individual bonds by individual judges assigned with the task of setting discretionary bail – bail based on available information offered by the state and the defendant – when it is determined no other conditions of release will reasonably assure the defendant's appearance in court.

The legislature, not this court, has the power to eliminate cash bail and curtail judicial discretion in bond hearings by imposing explicit findings, mandating affirmative inquiry by judges, and limiting the amount of bail to an amount a defendant can afford. A declaration requiring these measures would amount to judicial legislation and collateral attack on decisions made by judges of co-equal status in another division of this court. Intervening in this regard would be violative of the constitutional system of checks and balances and jurisprudence of appellate review.

The court would be remiss if it did not point out Defendants' supplemental argument that General Order 18.8A moots this lawsuit completely. The court need not grapple with the issue of mootness or address Defendants' other grounds for dismissal because the decision does not depend on it. The doctrines discussed above are primary and fundamental to the administration

of justice, not just in this case, but universally across the judicial sphere. To ignore these principles would be to intrude on the judicial discretion of other judges and allow Plaintiffs to bypass the rehearing and appellate review procedures established by law.

Given the court's determination that Plaintiffs' claims are barred by the collateral attack doctrine and judicial immunity, and because their federal claims are not cognizable under section 1983, Plaintiffs' request for declaratory relief fails. For the reasons stated, **IT IS ORDERED:** Defendants' Section 2-619.1 Motion to Dismiss Plaintiffs' First Amended Class Action Complaint is granted with prejudice. The status date of June 29, 2018 is stricken. This Order disposes of all matters and is final and appealable.

Judge Celia Gamrath
ENTERED: JUN 26 2018
Circuit Court-2031

Judge Celia Gamrath, #2031
Circuit Court of Cook County, Illinois
Chancery Division