



September 7, 2023

The Honorable Keith E. Gammage
Solicitor General
Office of the Solicitor General
160 Pryor St. SW
Suite J-301
Atlanta, GA 30303

cc: The Honorable Members of the Fulton County Board of Commissioners, the U.S. Department of Justice

Dear Solicitor General Gammage:

We represent Color Of Change, one of the nation's foremost racial justice organizations with millions of members nationwide, including some 230,000 Georgians. Since 2005, Color Of Change has worked to hold corporate and political leaders accountable and to champion real solutions that move our country forward.

We met on two previous occasions to discuss our concerns about the Fulton County Jail. As the Georgetown Law Center for Innovations in Community Safety noted last year, Fulton County Jail's overcrowding crisis is driven by its overuse of incarceration. The county jails people at a rate nearly three times that of other urban counties.¹

Jail conditions are so deplorable that they are now subject to an investigation by the U.S. Department of Justice. Between 2022 and 2023, more than 20 people have died in the facility. Noni Battiste-Kosoko, 19, had been held for two months without bond on a misdemeanor bench warrant, before she died in the jail in early July. Lashawn Thompson died in September 2022, after being held for three months on a \$2,500 bond on misdemeanor charges.

As the office that oversees misdemeanor offenses, including those faced by Ms. Battiste-Kosoko and Mr. Thompson, your office has a responsibility to seek pretrial conditions that guarantee the safety of the public and the individual being held in custody. Sadly, despite these deaths, your office continues to ask for cash bail and enable people to be held at alarming rates.

¹ "Reducing Jail Overcrowding Without Increasing Crime: Lessons from Fulton County, GA" *Georgetown Law Center for Innovations in Community Safety*: <https://www.law.georgetown.edu/cics/wp-content/uploads/sites/43/2022/11/CICS-Pretrial.pdf>

Our last meeting came about as a result of a letter Color Of Change sent after my colleagues and I meticulously reviewed and took notes on 46 misdemeanor cases in seven hearings between Nov. 18, 2022, and Jan. 5, 2023.² Among our findings:

1. Prosecutors consistently ask judges to hold defendants on surety (money) bonds. This occurred in 90% of observed cases.
2. Nearly every case we observed involved a Black defendant.
3. Most of the cases we observed were rooted in issues of poverty, particularly lack of housing, and economic considerations were not taken into account by prosecutors.

When we met on March 29, 2023, we raised these concerns and highlighted some particularly troubling cases, which took on an additional level of urgency when we learned of people unable to pay cash bail dying in jail.

- In one case, the prosecution asked for a \$1,500 cash bond for a defendant who allegedly stole \$300 worth of merchandise.
- In another case, the prosecution wanted a \$1,000 cash bond for an unhoused person accused of trespassing, for allegedly refusing to leave a racetrack where she sought shelter from the rain.³

We decided to review a more recent set of three bail reviews from August 17, 21 and 22, 2023, and were greatly alarmed to see your office continues to ask for cash bail in the most trivial of cases, including the following:

- An individual was alleged to have stolen \$255 from a Macy's cash register, \$175 from Bloomingdales and damaged the cash register. For what appears to be a crime of poverty, your office saw fit to request a \$5,000 cash bond.
- In another case, a person was accused of stealing a bike and your office asked for a \$1,000 cash bond.
- Another case involved an individual who was accused of stealing an iPhone that a gas station staffer had left on a table. Your office asked for a \$1,500 cash bond.
- One person was stopped by police for having no auto insurance and was allegedly in possession of marijuana. Your office asked for a \$1,000 cash bond.
- Another person was employed by a vendor at a 50 Cent concert, and allegedly took \$40 as payment for two cans of Bud Light, pocketed \$35 and gave back \$5, and did not ID the customer, who was actually an undercover police officer. Your office asked for a \$2,500 cash bond.
- In another case, officers responded to a call about a suspicious person and made contact with someone who told them that he saw a person on the property who had been ordered to stay away

² Color Of Change letter sent to Solicitor General Gammage in February 2023: <https://colorofchange.org/wp-content/uploads/2023/08/Feb-13-COC-Letter-to-Solicitor-Gammage.pdf>

³ Ibid.

from that location because of trespassing. The accused person told officers that he returned because he had left some items there. Your office asked for a \$2,000 cash bond.

- In another case, nurses at a hospital observed an individual wandering around a restricted area of the emergency room. Your office asked for a \$4,000 cash bond.
- Finally, in one observed case, officers responded to a theft at a gas station, where the caller said he put his phone on a can of soda and it was taken. Footage showed a person take the phone and leave. The person admitted taking the phone and said he was trying to return it. Prosecutors asked for a \$2,000 cash bond.

These types of cash bond requests are excessive in any jurisdiction. But in a jurisdiction where failure to pay a bond can mean – and has meant – a death sentence, such decisions and actions by your office are completely irresponsible.

Other options are available. Signature bonds are severely underutilized by your office and would have been appropriate in all of the aforementioned cases — an observation and recommendation we made in our Feb. 13, 2023, letter to you and in our conversations.

We also made a recommendation that your office “[T]rack pretrial defendants who remain incarcerated because they cannot afford the surety bond.” For example, if your office recommends and a judge agrees to a cash bail, then your office should check within seven days if the person has been able to meet that requirement. If not, your office should seek a new bail review and request that the surety bond be converted to a signature bond. State law currently requires the court to consider financial hardship, and we do not believe your office is doing so, hence the reason people die in jail awaiting trial on small amounts of cash bail.

We are aware that certain prosecutors’ offices are concerned about publicly releasing policies on prosecutorial discretion, especially in light of the new Georgia law that allows punishment and removal of prosecutors.⁴ Yet, there is no law that compels your office to ask for cash bail in every instance. And political considerations should never trump people’s lives.

As the Fulton County Board of Commissioners considers building a new jail, it is important that officials know the jail population could be substantially lower if your office showed more humanity, compassion and common sense in its approach to bail reviews. Your office is a national outlier when it comes to jailing people pretrial, as the Georgetown Law Center for Innovations in Community Safety noted last year. And as the ACLU reported, “Other Georgia jurisdictions, like Chatham County, generally release people charged only with misdemeanors on their own recognizance. However, Fulton County detains hundreds of people charged only with misdemeanors, often for lengthy periods of time.”⁵

We strongly urge you to avoid further deaths at the jail by implementing the recommendations in this letter and prior correspondence, namely to request signature/non-monetary bonds with far more

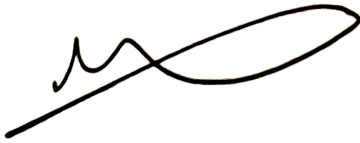
⁴ Amy, Jeff. “Georgia enacts law letting law punish, oust prosecutors.” *AP News*. <https://apnews.com/article/brian-kemp-georgia-prosecutor-district-attorney-remove-7987cd538ab3ccdc713ae4d2b2aec32b>

⁵ “There Are Better Solutions: An Analysis of Fulton County Jail’s Population Data, 2022” *ACLU*. https://www.aclu.org/sites/default/files/field_document/there_are_better_solutions-rev.pdf

frequency, and to work to release individuals who are held on small cash bond amounts when they cannot afford the payment.

We cannot continue to simply discuss these problems to no avail. The time for action is now.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michael Collins', with a large, sweeping flourish at the end.

Michael Collins
Senior Director for State and Local Government Affairs
Color Of Change

A handwritten signature in black ink, appearing to be 'Queen Adesuyi', written in a cursive style.

Queen Adesuyi
Policy Strategist for State and Local Government Affairs
Color Of Change