

**IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF
GEORGIA**

MAR 14, 2024 01:44 PM

Ché Alexander

Ché Alexander, Clerk
Fulton County Superior Court

**BARRED BUSINESS
FOUNDATION,**

Petitioner,

v.

FANI T. WILLIS, in her official
capacity as Fulton County District
Attorney,

Respondent.

Civil Action File

No. _____

VERIFIED PETITION FOR WRIT OF MANDAMUS

This is a Petition for a Writ of Mandamus filed on behalf of Barred Business Foundation (hereinafter referred to as “Petitioner”) to compel Fulton County District Attorney Fani T. Willis (hereinafter referred to as “Respondent”) to comply with her mandatory public duties under O.C.G.A. § 15-1-5 and Uniform Superior Court Rule 26.3. The rules of this Court provide Respondent with the following directive: “The district attorney *shall* notify the chief judge in writing of the name of any unindicted accused who has been in custody under criminal felony charges for 45 days within 2 business days after said 45-day period has run.” Uniform Sup. Ct. R. 26.3 (emphasis added). Section 15-1-5 of the Georgia Code further provides that “[t]he rules of the respective courts, legally adopted and not in conflict with the

Constitution of the United States or of this state, or the laws thereof, are binding and must be observed.” O.C.G.A. § 15-1-5.

Together, these authorities provide a clear public duty that Respondent has completely abdicated. To illustrate, during a superior court hearing on September 20, 2023, Senior Assistant District Attorney George Jenkins, the chief of Respondent’s “Trial Division,” conceded that his office “generally does not deal with” their obligation to provide notice of delayed indictments under Uniform Superior Court Rule 26.3. *See* Exhibit A, Transcript of September 20, 2023 Superior Court Hearing, at 5 (hereinafter referred to as Ex. A). And when, through counsel, Petitioner requested any and all records showing Respondent’s compliance with Uniform Superior Court Rule 26.3, Respondent’s Office responded: “We do not have responsive documents.” *See* Exhibit B, Respondent’s Office’s Response to Petitioner’s Counsel’s First Open Records Request (hereinafter referred to as Ex. B).

Mandamus relief is critical. While the DA’s Office fails to comply with even this basic requirement to provide notice to this Court of unindicted people languishing in custody, the Fulton County Jail¹ is in crisis. In the face of substantial overcrowding, hundreds of incarcerated people are forced to sleep on the floor.² Officials send others to numerous facilities outside Atlanta, placing them hours away

¹ Unless otherwise indicated, references to “the Jail” refer to the facility at 901 Rice Street NW, Atlanta, Georgia.

² *Push to Transfer Inmates Out of State to Relieve Overcrowding in Fulton County Shot Down by Judge*, 11 ALIVE (Oct. 30, 2023), <https://perma.cc/VN6U-BE9Q>.

from their attorneys and families.³ Over the last two years, at least twenty-four people have died in the Fulton County Sheriff's custody.⁴ Those who survive are subject to rampant violence, filthy living quarters, and medical maltreatment.⁵

The significant number of people held without indictment at the Fulton County Jail is a major driver of overcrowding and the horrific conditions that follow. A recent analysis indicates that 1,114 individuals, or 37% of the Fulton County Jail population, are being held without indictment.⁶ Of those unindicted, 503 individuals have been in custody for ninety or more days.⁷ Of those 503 people, 207 have been held in the Jail, without indictment, for over six months.⁸

Enforcing Respondent's reporting requirement is necessary to address the Fulton County Jail crisis. The Uniform Court rules require Respondent to inform the Chief Judge when an incarcerated person has been detained on felony charges for 45

³ See Kristal Dixon, *Judge: Fulton Sheriff Can't Move Detainees Out of State*, AXIOS ATLANTA (Nov. 2, 2023), <https://perma.cc/25EC-CRZF> (discussing the existing policy of housing hundreds of people at the Atlanta City Detention Center, as well as in Forsyth, Oconee, and Cobb counties).

⁴ *10 Inmates Have Died in the Overcrowded Fulton County Jail in Atlanta*, GEORGIA PUBLIC BROADCASTING, WEEKEND EDITION SUNDAY (Nov. 12, 2023), <https://perma.cc/97VT-ALHE> (10 in-custody deaths in 2023); Elizabeth Weill-Greenberg, *Jail Deaths Have Spiked, But Atlanta's Diversion Program May Lose Funding*, THE APPEAL (Dec. 7, 2022), <https://perma.cc/9K7X-H54U> (14 in-custody deaths in 2022).

⁵ See, e.g., George Chidi, *The Real Behind the Wall: A Look Inside the Infamous, Deadly Fulton County Jail*, ATLANTA MAG. (July 15, 2023), <https://perma.cc/H6Q8-BMUC>.

⁶ *Breaking the Cycle: Exploring Alternatives to a New Jail*, ACLU DATA REPORT 9 (2023), <https://perma.cc/C2BY-Y5PH>.

⁷ *Id.*

⁸ *Id.*

days without indictment, so the Chief Judge may take “any action deemed necessary or appropriate under the circumstances.” Ga. R. Super. Ct. 26.3.

Given the dire circumstances, Rule 26.3 is now especially critical so that the Chief Judge has notice of who and how many people are stuck unindicted in the overcrowded and dangerous Jail, and can take “necessary” and “appropriate” action to prevent individuals from languishing in detention for months. Ga. R. Super. Ct. 26.3. This Court has at its disposal a number of mechanisms to remedy this issue. Responsible for overseeing the Court’s administration, the Chief Judge is empowered to, among other things: implement practices and issue standing orders that “regulate the internal processes of the court,”⁹ “make a written request for assistance” from other judges,¹⁰ and instruct magistrate judges to consistently evaluate cases for probable cause within three days of arrest.¹¹ These are all actions that could be used to process cases in a timely way and to drastically reduce the Jail population. But the Chief Judge cannot craft and implement a necessary and appropriate response without Respondent providing an accurate and regular assessment of the pre-indictment population.

⁹ Ga. R. Super. Ct. 1.2(B) (allowing courts to regulate internal procedures that do not substantially or materially affect any party’s rights).

¹⁰ Ga. R. Super. Ct. 18.2(C) (enabling the chief judge to make requests for assistance upon a determination by the majority of judges of the requesting court that the business of the court requires temporary assistance).

¹¹ See Ga. R. Super Ct. 26.1.

Petitioner requests that this Court issue a Writ of Mandamus compelling Respondent to comply with her public duty and notify the Chief Judge in writing of the names of any and all unindicted accused persons who have been in Fulton County custody under criminal felony charges for 45 or more days.

In support of this Verified Petition for Writ of Mandamus, Petitioner show this Honorable Court the following:

1. **Petitioner**, Barred Business Foundation, is a non-profit organization whose mission is to provide justice-impacted people with guidance and assistance to give them opportunities to establish their lives and gain financial independence through providing supportive services, education, job-skill training, life skills, and case management. Its office is located in Fulton County and several of its employees and members live in Fulton County. Petitioner is interested in having the laws executed and the public duty in question enforced, and need not show any legal or special interest. O.C.G.A. § 9-6-24.
2. **Respondent**, Fani T. Willis, is the District Attorney for Fulton County, Georgia. Respondent is named in her official capacity and is subject to the jurisdiction and venue of this Court.
3. This Court has jurisdiction to issue a Writ of Mandamus under O.C.G.A. §§ 9-6-20 – 9-6-28.

4. Respondent has a clear legal duty under O.C.G.A. § 15-1-5 and Uniform Superior Court Rule 26.3.
5. On September 20, 2023, Senior Assistant District Attorney George Jenkins admitted in open court that the office usually does not fulfill its obligations under Uniform Superior Court Rule 26.3. *See* Ex. A.
6. On December 4, 2023, counsel for Petitioner issued a request to Respondent's office through the Open Records Act, seeking, *inter alia*, all internal directives, policies, or other materials regarding the manner in which Respondent notifies Chief Judge in writing the names of unindicted people who have been in custody for forty-five days. *See* Exhibit C, Petitioner's Counsel's First Open Records Request to the Fulton County District Attorney's Office (hereinafter referred to as Ex. C).
7. In response, on December 19, 2023, Respondent's office replied: "We do not have responsive documents." Ex. B.
8. On December 24, 2023, counsel for Petitioner issued a request to Respondent's office through the Open Records Act, seeking records from October 1, 2023, through December 22, 2023 related to any notification Respondent provided the Chief Judge regarding unindicted people who have been in custody for forty-five days. *See* Exhibit D, Petitioner's Counsel's

Second Open Records Request to the Fulton County District Attorney's Office.

9. In response, on December 28, 2023, Respondent's office replied: "We do not have responsive documents." *See* Exhibit E, Respondent's Office's Response to Petitioner's Counsel's Second Open Records Request.
10. Respondent has announced that her office will not indict individuals unless, in her subjective assessment, they are trial ready.¹² This practice causes significant delays and undermines the ability of accused persons to invoke speedy trial rights.
11. Respondent's refusal to comply with Uniform Superior Court Rule 26.3 prevents the Chief Judge from fulfilling his supervisory role in preventing unjustified pre-indictment delay and subsequently contributes to extended case processing and jail overcrowding.
12. Where, as here, a public official has refused to comply with a mandatory public duty, a writ of mandamus is appropriate. *See, e.g.,* O.C.G.A. § 9-6-20; *Georgia Dep't of Transp. v. Peach Hill Properties, Inc.*, 278 Ga. 198, 201, 599 S.E.2d 167, 169 (2004) ("Mandamus is an appropriate remedy to enforce the performance of a public duty which a public officer neglects or refuses to perform"); *SJN Properties, LLC v. Fulton Cnty. Bd. of Assessors*, 296

¹² *See* ACLU & ACLU OF GA, *supra* note 6 at 10.

Ga. 800, 770 S.E.2d 838 (2015) (“A clear legal right to the relief sought may be found only where the claimant seeks to compel the performance of a public duty that an official or agency is required by law to perform”) (citing *Bibb County v. Monroe County*, 294 Ga. 730, 735, 755 S.E.2d 760 (2014)).

13. Accordingly, Petitioner seeks a Writ of Mandamus requiring Respondent to comply with her duty to comply with her public duty and notify the Chief Judge in writing of the names of any and all unindicted accused persons who have been in Fulton County custody under criminal felony charges for 45 or more days.
14. Petitioner has no other specific legal remedy for Respondent’s violation of her public duty. O.C.G.A. § 9-6-20.
15. This petition concerns one of public right whose object is to procure the enforcement of a public duty. Petitioner is interested in having the laws executed and the duty in question enforced, and need not show any legal or special interest. O.C.G.A. § 9-6-24.
16. Mandamus is further appropriate here because it would not “be nugatory or fruitless.” O.C.G.A. § 9-6-26. First, by notifying the Chief Judge of the people who remain in custody unindicted for forty-five days, the Chief Judge can take “any action deemed necessary or appropriate under the circumstances” to expedite case processing and/or resolution. Ga. R. Super. Ct. 26.3. Second, by

bringing her office into compliance with her public duty under Uniform Superior Court Rule 26.3 and maintaining compliance, Respondent is likely to identify cases ripe for dismissal, plea bargain, or other disposition. Together, these actions will facilitate reasonable timelines for indictment and consequently reduce the dangerous overcrowding in the Fulton County Jail. They will also alleviate the costs to the Fulton County Sheriff's Office and the public of needlessly detaining individuals when detention serves neither the ends of justice nor the public interest.

WHEREFORE: Petitioner respectfully requests that this Court issue a Mandamus Nisi (proposed order attached hereto) as soon as practicable, directing Respondent to appear before this Court within not less than ten or more than thirty days, as required by O.C.G.A. § 9-6-27(a), and show cause why a Writ of Mandamus should not be granted, ordering Respondent to comply with her public duty and notify the Chief Judge in writing of the names of any and all unindicted accused persons who have been in Fulton County custody under criminal felony charges for 45 or more days.

Petitioner also requests such other and further relief as may be just and proper, including attorneys' fees.

This 13th day of March, 2024.

Respectfully submitted,

/s/ Julian Clark

Julian Clark*

Brandon Buskey*

American Civil Liberties Union
Foundation

Criminal Law Reform Project

125 Broad Street, 17th Floor

New York, New York 10004

(929) 969-4365

jclark@aclu.org

bbuskey@aclu.org

/s/ Andrés López-Delgado

Andrés López-Delgado

Georgia Bar No. 552876

Cory Isaacson,

Georgia Bar No. 983797

American Civil Liberties Union
Foundation of Georgia

P.O. Box 570738

Atlanta, Georgia 30357

Tel: (770) 464-6236

adelgado@acluga.org

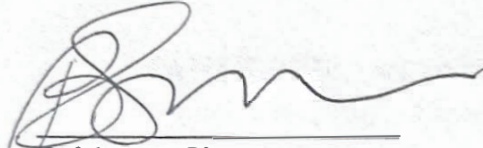
cisaacson@acluga.org

Attorneys for Petitioner

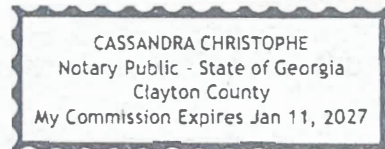
** Pro hac vice application
forthcoming*

VERIFICATION

Before the undersigned officer duly authorized to administer oaths came Bridgette Simpson, who swears under oath that she has read and examined the foregoing **Verified Petition for Writ of Mandamus**, and that the statements contained therein are true and correct.


Bridgette Simpson

SWORN TO and subscribed before
me this 13 day of March, 2024.



NOTARY PUBLIC 

My Commission Expires: January 11, 2027

**IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF
GEORGIA**

**BARRED BUSINESS
FOUNDATION,**

Petitioner,

v.

FANI T. WILLIS, in her official
capacity as Fulton County District
Attorney,

Respondent.

Civil Action File

No. _____

MANDAMUS NISI

The petition of Petitioner Barred Business Foundation in the above-captioned case having been read and considered, the same is hereby sanctioned and ordered filed; and it is further ordered that Respondent Fulton County District Attorney Fani T. Willis, appear before me at the Courthouse in the City of Atlanta, Georgia, on the _____ day of _____, 2024, at _____ o'clock, [A.M./P.M.], or so soon thereafter as can be heard, then and there to show cause why a mandamus absolute should not be issued against them as prayed for in the Petition, and further relief be granted as the facts of the case may warrant.

It is further ordered that in default of such appearance and showing the mandamus prayed for will be made absolute and the Petitioner will be accorded such relief as they may show they are entitled to.

It is further ordered that a copy of said Petition and this order be served upon said Respondent.

Dated and signed, this _____ day of _____, 2024

Judge
Superior Court
Fulton County, Georgia

EXHIBIT A
**(Transcript of September 20, 2023 Superior
Court Hearing)**

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)	
)	
vs.)	
)	CASE NO.: 22CP210601
JASPER WALTERS,)	
)	
Defendant.)	
_____)	

Transcript of the Motion Hearing
before the Honorable Ural D. Glanville
held on September 20, 2023
at the Justice Center Tower, Courtroom 8-F

Kristina Weaver, RPR, CCR-B-1785
185 Central Avenue, S.W.
Suite T-8955
Atlanta, Georgia 30303
(404) 612-0525

APPEARANCES OF COUNSEL:

For the State:

GEORGE JENKINS
Assistant District Attorney

For the Defendant:

SUZANNE TEVIS
Assistant Public Defender

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Good afternoon, counsels, interested
3 parties. We are here on the record in the matter of the
4 State of Georgia v. Jasper Walters in Indictment
5 22CP210601.

6 This motion was filed by the defendant's attorney
7 Ms. Suzanne Tevis, and we're here today to take up this
8 particular motion under Superior Court Rule 26.3.

9 Good afternoon, Mr. Jenkins, and good afternoon,
10 Ms. Tevis, and good afternoon, Mr. Walters.

11 Counsels, I understand that you-all, prior to the
12 Court calling this case formally in open court, were
13 arranging for your client to be here via Zoom. Is that
14 satisfactory to you, Ms. Tevis?

15 MS. TEVIS: Yes, your Honor.

16 THE COURT: Okay. I just want to make sure.

17 You-all had an opportunity to chat; is that correct,
18 Mr. Jenkins?

19 MR. JENKINS: Briefly, your Honor, absolutely.

20 THE COURT: Can you summarize for the record, if you
21 wish or are desirous of doing that, what your discussions
22 have been in regards to Mr. Walters?

23 MR. JENKINS: Yes, your Honor. May I approach the
24 podium?

25 THE COURT: You may, sir, absolutely.

1 MR. JENKINS: Briefly, Judge, Ms. Tevis and I briefly
2 spoke, and I am here on behalf of the State, George
3 Jenkins, and in addition the supervisor of the division in
4 charging because this matter has not formally been indicted
5 as of yet, Judge. The appropriate case number is
6 22CP210601.

7 And essentially Ms. Tevis has been trying to get the
8 attention of our office in connection with some of the
9 underlying matters or facts and circumstances regarding
10 this warrant in this case charging Mr. Walters with
11 aggravated assault against a police officer and I do
12 believe obstruction of a law enforcement officer, Judge.

13 And so she filed these motions on the 18th of
14 September. There's two motions, Judge, before this Court:
15 One under 26, Uniform Superior Court Number Code 26.3, and
16 then essentially what she's filed is a pre-indictment
17 *Franks* hearing motion in her second motion, both filed on
18 that same day at the same time alleging there are some
19 representations by the officer in the warrant itself and
20 his testimony regarding the preliminary hearing in this
21 matter.

22 So the State formally would request ten days for a
23 hearing to set regarding these matters specifically, Judge.

24 However, apart of our conversation, I did have an
25 opportunity, briefly reading the motion in both of these

1 matters presented by Ms. Tevis in this case, I did speak
2 with ED Hutcherson, who is the supervisor and managing
3 attorney over our charging division. I spoke with him.

4 He has also had an opportunity to briefly review the
5 motion in connection with the misrepresentation, the *Franks*
6 hearing essentially. And he said to me that he will make a
7 decision in connection with this case in terms of charging
8 by this Friday, and that would be the 22nd, whether or not
9 to charge or not to charge.

10 We are aware of some of the allegations made by
11 defense counsel in this case, and they need to be vetted
12 specifically.

13 I do and I am aware that Ms. Tevis has for some time
14 been trying to get in contact and get traction from our
15 office in connection with this matter and was, I guess,
16 forced or decided to file these motions. She has our
17 attention, Judge, and we will do that.

18 Now, as for the motion regarding under 26.3, we do
19 apologize to the Court for not specifically alerting you to
20 the fact, Judge -- and I don't -- we don't generally deal
21 with this Superior Court Rule -- but not alerting you after
22 45 days the defendant's been in custody that no indictment
23 had been sought up until this point in time regarding this
24 defendant.

25 He has been in custody over a year in connection to

1 this specific case. Now, he's had some other matters I
2 don't know if the Court is aware he's been dealing with
3 that put him in the custody of the Fulton County Jail.

4 However, I just want to remind the Court that
5 certainly -- and while we understand and we apologize, the
6 defendant is charged with certain felonies. We have the
7 statutory period, which is four years, to formally charge
8 this case. And the allegation in this matter is that it
9 occurred on March 6th of 2021.

10 We were under the, I guess, the tolling period in
11 connection with COVID during that period of time under the
12 former Chief Judge Brasher. And so essentially it would --
13 the statutory period would run officially, I do believe, at
14 least March of 2025. And then if you have the tolling
15 period, there is probably an additional 90 days on that.
16 So we're looking at June of 2025 as to when the statute
17 runs in terms of our ability to charge.

18 However, we are aware, as I said before, Judge, of
19 the circumstances and the allegations that defense counsel
20 made in this case, and Mr. Hutcherson is going to vet that
21 and we'll make a decision by this Friday.

22 So that's our position. We did speak briefly about
23 that, and I'll let Ms. Tevis speak to this matter.

24 If you want to have a formal hearing, we're asking
25 for ten days. However, I think a decision will be made --

1 not think. A decision will be made by Friday the 22nd in
2 this matter in terms of to charge or not charge.

3 And defense counsel and this Court now have the
4 State's position, and that is our request at this time,
5 Judge. Thank you.

6 THE COURT: Okay. I have had a chance to take a look
7 at Ms. Tevis's motion, and what I will -- I'll hear from
8 her, but I think that her prayer for relief is that --
9 she's properly under 26.3 brought this to the Court's
10 attention in my role as the chief judge.

11 And given some of the things that are outstanding,
12 some of them which I know that the elected district
13 attorney is certainly working on, and it asks for you-all
14 to provide a list of the unindicted persons as required
15 under the rule, and that is 26.3, and asks me to
16 specifically address Mr. Walters' case, and then set up
17 status and scheduling orders for other unindicted cases
18 over a certain time period and provide any other relief
19 that the Court deems necessary.

20 So before we leave here, I will go ahead and set at
21 least ten days hence to at least take up some of the other
22 things. And then you-all can kind of just keep me posted
23 on the other -- your progress or whatever on the other
24 things.

25 I would ordinarily -- you are correct, Mr. Jenkins --

1 not get involved with this, but I understand why. I'm not
2 annoyed. I'm not upset. I just, like everyone, I think
3 that, you know, we're all trying to figure out a way to
4 kind of make sure that the perception and reality of
5 justice is followed, and I know everybody is working hard.

6 So I'll hear from Ms. Tevis, and that will be the
7 Court's plan after that.

8 MR. JENKINS: Thank you, Judge.

9 THE COURT: Ms. Tevis, madam?

10 MS. TEVIS: Thank you, your Honor. And just thank
11 you to everyone for scheduling this so fast. I will be
12 brief because I think everything has generally been
13 covered.

14 As far as Mr. Walters goes, having a decision by
15 Friday would be wonderful.

16 THE COURT: Is that acceptable to you and your
17 client?

18 MS. TEVIS: That is. We've always maintained his
19 innocence in this, but if it's going to be indicted, we
20 would like something to happen with the case because he's
21 been stuck in this limbo for over a year. We can't do
22 anything with the case. So if something's going to happen,
23 we ask for it to happen so we can move forward one way or
24 another.

25 But as somebody, as your Honor knows, who has

1 practiced in this jurisdiction for a long time -- same as
2 your Honor, Mr. Jenkins has been here -- it's hard to watch
3 all the things that have been happening and not want to try
4 to address it somehow. And I thought this was a good
5 vehicle to bring it to you. I know you are someone who
6 will do something and someone who cares about all the
7 things that are going on, same as Mr. Jenkins.

8 And I just thought to me something that has been very
9 different about things in Fulton County from years ago as
10 they are now is we used to do more about tracking with the
11 unindicted cases. And I know we've had the pandemic and
12 things have happened, there have been a lot of changes.

13 But to me it seems one of the things that we could do
14 is a better job of tracking these unindicted cases so they
15 aren't falling through the cracks, so that we aren't a year
16 later saying, "What's going on?"

17 Because in practice what happens is we talk to our
18 clients and they say, "Well, what's going to happen?
19 When's my next court date," and we don't have anything to
20 tell them. And it's, like, "Well, maybe I can file a bond
21 motion, maybe you'll have a bond motion at some point," and
22 there's nothing to really tell people.

23 And I just think that one simple fix of having some
24 type of scheduling order, something like that would help,
25 and I think it would help keep everything on track so

1 things don't fall through the cracks. Understanding that
2 the DA's office may say, "Well, this might take longer,
3 we're doing this, X, Y, and Z," that's what would happen.
4 But it used to be that cases would come before the judge
5 every four weeks or so and say, "These are unindicted cases
6 and what's taking so long," and something like that.

7 And that's why I went ahead and asked for that in the
8 relief because I think that's something your Honor could
9 do, and I think that would help address some of the backlog
10 going on, perhaps the overcrowding at the jail if we
11 started maybe addressing those underlying issues.

12 So that's why I included that here, and hopefully --
13 maybe that is something that we can address, some of the
14 overall issues that have been going on in Fulton County.

15 Otherwise, I basically agree with everything else
16 that's been said.

17 So, again, thank you for scheduling us so fast. And
18 just so Mr. Walters knows, this all just happened today so
19 it's not like I didn't tell you. So I know you were
20 surprised as well.

21 So thank you-all very much.

22 THE COURT: All right. Ms. Tevis, let me comment on
23 a couple things that you raised.

24 I am familiar with -- I know that our district
25 attorney and her staff and team are culling through a lot

1 of the unindicted matters. I participate in a, I would
2 say, a monthly update on the progress that all of us as
3 justice partners are making, and it's just -- it's a lot.

4 Having said that, of course, I also am familiar that
5 or aware that Mr. Kenner and people from your team and
6 people from Ms. Willis's team meet weekly to kind of go
7 through the cases that you believe can be resolved, are
8 unindicted, or whatever. They come in different
9 categories.

10 And I think to that extent as well, we're going to
11 try Saturday court at the end of the month to see if we can
12 move some more cases. I know that my colleague
13 Judge McBurney has volunteered to sit and participate in
14 that.

15 So, I mean, this is another vehicle. I don't have
16 any issue with it. But, you know, part of the challenge is
17 that some of these folks may fall into other categories
18 that need to be dealt with individually.

19 So I can certainly -- I think that Mr. Jenkins has
20 told you that he's going to go ahead and deal with -- he
21 and Mr. Hutcherson are going to deal with Mr. Walters by
22 Friday. There will be a charging decision one way or the
23 other.

24 The other folks, my suggestion is that when I set
25 this date for you-all to come back, that you use that as a

1 date, as kind of a benchmark to say, okay, here's the
2 people that we think that we can kind of address, and then,
3 you know, tell me what your plan is. That might be just a
4 way to -- and I'll facilitate anything I possibly can. I
5 don't have an issue with it.

6 But I'm going to leave you-all to do the heavy
7 lifting because that's where it lies. I can provide you a
8 forum and some accountability but understanding there are a
9 lot of other factors that I don't control because I'm the
10 referee.

11 But I can go ahead and at least, pursuant to this
12 Rule 26.3, kind of just inquire. I can inquire. And I
13 think that will, as we say in the military, that as a
14 forcing function, that's fine. I don't have any issue with
15 that.

16 So, Mr. Jenkins, is that acceptable to you, sir --

17 MR. JENKINS: It is, your Honor.

18 THE COURT: -- for you-all to look at those? In
19 addition to Mr. Walters, just look at that particular
20 universe along with your team and just kind of let me know
21 what I can do to help out.

22 MR. JENKINS: Absolutely, Judge.

23 THE COURT: And to that extent, Ms. Willis has
24 reached out as well and has screened several hundred people
25 that are bond eligible or she's going to grant -- or agree

1 to have bond, I should say, too.

2 So I know that some things are happening, Ms. Tevis,
3 and I don't have any issue with you bringing this to my
4 attention. And I'll mark your motion as Court 1 for
5 purposes of the hearing, and like I said, I'll let the
6 State formally respond.

7 And that date -- Mr. Chamberlain, what do you think?
8 How does the 3rd of October look? Does that give you-all
9 enough time, Mr. Jenkins?

10 MR. JENKINS: That's plenty of time, Judge.

11 THE COURT: Can we say maybe 10:00, courtroom 8-F?

12 MR. JENKINS: That's fine, Judge.

13 THE COURT: Ms. Tevis, are you okay with that?

14 MS. TEVIS: Yes.

15 MR. JENKINS: Certainly we'll be in contact with her
16 Friday.

17 THE COURT: And if anything comes up in the pendency,
18 Mr. Jenkins or Ms. Tevis, you can contact Mr. Chamberlain
19 and reach out again. I think you know how to find us, so
20 we can certainly do that.

21 Do you-all have anything else for me?

22 MR. JENKINS: That's all.

23 THE COURT: Mr. Walters, any questions for me, sir?

24 Can you unmute Mr. Walters, please? Violeta, can you
25 unmute courtroom 3?

1 (Brief pause.)
2 THE COURT: Mr. Walters, can you hear me?
3 THE DEFENDANT: I can.
4 THE COURT: Do you have any questions, sir?
5 THE DEFENDANT: No, your Honor.
6 THE COURT: Okay. All right. Then we'll see
7 everybody on the 3rd of October at 10:00.
8 MR. JENKINS: Thank you, Judge.
9 THE COURT: All right. We're in recess.
10 (The proceedings concluded.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,

v.

JASPER WALTERS,

DEFENDANT.

INDICTMENT NO.:
22CP210601

PRE-INDICTMENT

**Court's
Exhibit**

1

**MOTION FOR HEARING WITH CHIEF JUDGE REGARDING DELAYED
INDICTMENT UNDER RULE 26.3**

Rule 26.3 of the Uniform Rules of the Superior Courts of the State of Georgia applies to Delayed Indictments. It states:

The district attorney shall notify the chief judge in writing of the name of any unindicted accused who has been in custody under criminal felony charges for 45 days within 2 business days after said 45-day period has run. The chief judge may take any action deemed necessary or appropriate under the circumstances.

At the time of this motion, Jasper Walters has been in the Fulton County Jail for case 22CP210601 for **434 days** without an indictment. Mr. Walters is stuck, unindicted, and there apparently is not even an Assistant District Attorney (ADA) who is working on his case¹ despite the fact he has been in custody on this matter for more than a year.²

In May 2023, at a hearing for another case for Mr. Walters, a Fulton County ADA announced in open court that this case was “on track” to be indicted. When Defense Counsel inquired as to where that ADA got that information, that ADA told her that three other ADAs told her that, but she would not give Defense Counsel any of those names when requested. That

¹ If there is one, it's a secret that is being more closely guarded than the recipe for Coca-Cola.

² Mr. Walters does have another matter in Fulton County, but this case is controlling.

conversation in court occurred more than four months ago, and the posture of 22CP210601 remains unchanged.

In August 2023, Defense Counsel communicated with a different Fulton County ADA about a potential bond hearing for Mr. Walters. That ADA said that it did not seem as though the case was assigned to anyone in the complaint room, and he said that he was only going to be prepared for a bond hearing. He did not know about the actual merits or the status of the case.

On August 4, 2023, Defense Counsel emailed the head of the intake unit – Executive District Attorney Kenneth Hutcherson – directly to ask for a meeting about this case. As of the date of this filing, there has been no response.

On August 21, 2023, Defense Counsel again emailed Deputy Hutcherson, and this time, copied Madame District Attorney Fani Willis. Defense Counsel understands how unbelievably busy the other parties are, but again, there has been no response.

On August 24, 2023, Defense Counsel again emailed those parties and asked if her emails were going through. Again, there has been no response as of the time of this filing.

Many eyes have been on Fulton County as former President Donald Trump was recently charged, along with eighteen (18) other people, in a RICO indictment. Seventeen (17) of those people were able to contact the Fulton County District Attorney's Office and quickly obtain a consent bond for their clients so that their clients were able to bond in and out quickly from the jail. Yet, Mr. Walters has been sitting in the Fulton County Jail for over a year, and his counsel is unable to find a single ADA who can actually talk to her about the merits of this case. Is it because Mr. Walters has a public defender? Is it because he is not on the Trump RICO case or other high-level case?³

³ It is worth noting that Defense Counsel can get responses from the ADAs in the specialty divisions (Major Cases, Crimes Against Children, etc.). The problem seems to be these trial division cases.

At this point, it is hard to understand why Mr. Walters has been sitting unindicted for over a year while his attorney's emails go unanswered and while it seems his case is not being worked on. The DA's Summer Booklet talks about how the way cases are prosecuted at the DA's office has transformed. "The past administration would pursue an indictment with little to no investigation into cases. Through the inception of the Case Intake Division, the flawed process has come to an end." This certainly is admirable, but this *cannot mean* – or at least should not mean - that defendants just sit in jail while nothing is being done on their cases.

Defense Counsel believes she is ineffective if she continues to sit back idly as her clients sit in custody day by day, unindicted, and at this point, she cannot even figure out who to contact for the State. Mr. Walters has waited patiently for a long time on the very charge for which another person was arrested.⁴

Considering the circumstances, Superior Court Rule 26.3 gives the Chief Judge the power to step in, and Mr. Walters is asking – begging - for that here. Mr. Walters is asking for a status hearing so that his case can either proceed forward or not. He maintains his innocence, but this limbo that the State is keeping him in is a violation of his due process and constitutional rights. And, he is not alone in this.

According to a recent article, of the 3600 people being held pre-trial at the jail, only 36% have had their cases indicted.⁵ Even if that number is off, common sense and experience tells us that there is a problem with unindicted cases at the jail. Many of the inmates who have died recently were being held on unindicted cases. Having the list as required under Rule 26.3 will help

⁴ Originally, the Investigator from the case took out a warrant for another individual after the victim positively identified that individual as the person who committed the assault. Once that individual provided an alibi, that individual was released from the custody, and months later, a warrant was taken out for Mr. Walters. To date, there has never been any identification made of Mr. Walters as the perpetrator of this crime, and in fact, the driver of the car would state that Mr. Walters was not the passenger of the car.

⁵ This was from an article from the Messenger from September 2023, which cites to other articles.

with tracking. **Further, there is a real need for the Court to step in and put a scheduling order in place so that these unindicted cases do not continue to end up lost in the system.**

Thankfully, case numbers have improved post-Pandemic. In fact, in its summer booklet, the DA's office proclaimed, "100% of all unindicted case backlog from previous administration cleared." This booklet also said, "80% of all cases received by the office in 2021 have been processed by charging...60% of all cases received in 2022 have been indicted or dismissed. The Case Intake Division is on track to clear all 2021 cases this fall and all 2022 case this winter."

Considering the totality of the circumstances, Mr. Walters moves this Court to set a date for a hearing:

- 1) Where the District Attorney's Office can provide the list of unindicted inmates as required under Rule 26.3;
- 2) Where the District Attorney's Office can address the status as to Mr. Walters's case and explain what has been done on his case in the last year that he has been in custody;
- 3) Where the Court can set status hearings and scheduling orders for other jail unindicted cases over a certain time period; and
- 4) Provide any other relief the Court deems necessary.

Respectfully submitted, this 18th day of September, 2023.

/s/ Suzanne Tevis

Suzanne Tevis
GA Bar No. 513773
Attorney for Mr. Walters

Office of the Public Defender
Atlanta Judicial Circuit
100 Peachtree St., N.W., Suite 1600
Atlanta, Georgia 30303
(404) 612-3515

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

v.

JASPER WALTERS

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO. 22CP210601

CERTIFICATE OF SERVICE

This is to certify that I have, this day, served a copy of the **MOTION FOR HEARING** upon Deputy Kenneth Hutcherson by electronic filing. I have also sent a copy via email.

Respectfully submitted, this 18th day of September, 2023.

/s/ Suzanne Tevis
Suzanne Tevis
Attorney for Defendant
Georgia Bar No. 513773

C-E-R-T-I-F-I-C-A-T-E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions and answers were reduced to typewriting under my direction; that the foregoing pages represent a true and correct record of the evidence given.

I further certify that in accordance with OCGA 9-11-28(a) I am not a relative, employee, attorney, or counsel of any party, nor am I financially interested in the action.

This the 25th day of January 2024.



KRISTINA WEAVER, RPR, CCR-B-1785

EXHIBIT B

**(Respondent's Office's Response to
Petitioner's Counsel's First Open Records
Request)**

From: Fulton County Georgia <fultoncountyga@mycusthelp.net>
Sent: Tuesday, December 19, 2023 11:03 AM
To: Cory Isaacson <CIsaacson@acluga.org>
Subject: [Records Center] Open Records Request :: R010645-120423

This Message Is From an External Sender

This message came from outside your organization.

--- Please respond above this line ---

OFFICE OF THE COUNTY ATTORNEY

141 PRYOR STREET, S.W.
SUITE 4038
ATLANTA, GEORGIA 30303

SHALANDA M.J. MILLER
OFFICIAL CUSTODIAN OF RECORDS

TELEPHONE (404) 612-0281
FACSIMILE (404) 730-6324
EMAIL ORR@FULTONCOUNTYGA.GOV



We do not have responsive documents.

To monitor the progress, update this request, and retrieve responsive records, please log into the [Fulton County Open Records Center](#).

EXHIBIT C

**(Petitioner's Counsel's First Open Records
Request to the Fulton County District
Attorney's Office)**



December 4, 2023

via Online Portal

Re: Open Records Request

To Whom It May Concern,

This request is made pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), on behalf of the American Civil Liberties Union Foundation of Georgia, Inc. (ACLU-GA) and its members. The ACLU-GA respectfully requests records of the **Office of the Fulton County District Attorney, including, but not limited to any of its units, divisions or departments.** In accordance with the Georgia Open Records Act (O.C.G.A. § 50-18-74), we respectfully request that you produce the requested records, subject to any necessary redaction, within a reasonable time, with a response not to exceed three business days of your receipt of this request. Kindly furnish all applicable records to me at cisaacson@acluga.org.

The ACLU-GA requests the following:

1. Any and all internal directives, memoranda, research, communications, or any other materials documenting the manner in which the Fulton County District Attorney notifies in writing the Chief Judge of the Fulton County Superior Court of the names of any unindicted accused persons who have been in custody under criminal felony charges for 45 days. In the event an automated and/or online system is used for this purpose, please identify that system and provide any documents that explain how the system executes that function.

Should you determine that some portion of the documents requested are exempt from disclosure, please produce any reasonably segregable portions that are not exempt, pursuant to O.C.G.A. § 50-18-72(g). In addition, if our request is denied in whole or in part, the law requires you to justify all deletions by reference to

exemptions of the Georgia Open Records Act, specifying code section, subsection, and paragraph. *See* O.C.G.A. § 50-18-72(h). To the extent that your office claims the right to withhold any record, or portion of any record, please describe each and every record or portion that is being withheld and the claimed reason for exemption, citing the exact language of the Open Records Act on which you rely.

We would prefer electronic copies of the records whenever possible. We request that you waive any copying fees and any other charges on the grounds that disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding. *See* § 50-18-71(c). This information is not being sought for commercial purposes. Should you assess fees and if your estimate of those fees exceeds \$200, please advise us of the costs before they are incurred.

If any records are unavailable within three business days of receipt of the request, and responsive records exist, we seek a description of such records and a timeline of when access to the records will be provided.

We reserve the right to appeal any decision to withhold any information or to deny a waiver of fees. If your office does not maintain these public records, please let us know who does and include the proper custodian's name and address.

Thank you for your prompt attention.

Sincerely,



Cory Isaacson
Legal Director

American Civil Liberties Union Foundation of Georgia
P.O. Box 570738, Atlanta, GA 30357
cisaacson@acluga.org | Phone (770) 415-5490

EXHIBIT D

**(Petitioner's Counsel's Second Open Records
Request to the Fulton County District
Attorney's Office)**



December 24, 2023

via Online Portal

Re: Open Records Request

To Whom It May Concern,

This request is made pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), on behalf of the American Civil Liberties Union Foundation of Georgia, Inc. (ACLU-GA) and its members. The ACLU-GA respectfully requests records of the **Office of the Fulton County District Attorney, including, but not limited to any of its units, divisions or departments.** In accordance with the Georgia Open Records Act (O.C.G.A. § 50-18-74), we respectfully request that you produce the requested records, subject to any necessary redaction, within a reasonable time, with a response not to exceed three business days of your receipt of this request. Kindly furnish all applicable records to me at cisaacson@acluga.org.

The ACLU-GA requests the following:

All documentation sufficient to show each and every case in which the Fulton County District Attorney notified the Chief Judge of the Fulton County Superior Court of the names of any unindicted accused who have been in custody under criminal felony charges for 45 days, from October 1, 2023 through December 22, 2023.

Should you determine that some portion of the documents requested are exempt from disclosure, please produce any reasonably segregable portions that are not exempt, pursuant to O.C.G.A. § 50-18-72(g). In addition, if our request is denied in whole or in part, the law requires you to justify all deletions by reference to exemptions of the Georgia Open Records Act, specifying code section, subsection, and paragraph. *See* O.C.G.A. § 50-18-72(h). To the extent that your office claims the right to withhold any record, or portion of any record, please describe each and

every record or portion that is being withheld and the claimed reason for exemption, citing the exact language of the Open Records Act on which you rely.

We would prefer electronic copies of the records whenever possible. We request that you waive any copying fees and any other charges on the grounds that disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding. *See* § 50-18-71(c). This information is not being sought for commercial purposes. Should you assess fees and if your estimate of those fees exceeds \$200, please advise us of the costs before they are incurred.

If any records are unavailable within three business days of receipt of the request, and responsive records exist, we seek a description of such records and a timeline of when access to the records will be provided.

We reserve the right to appeal any decision to withhold any information or to deny a waiver of fees. If your office does not maintain these public records, please let us know who does and include the proper custodian's name and address.

Thank you for your prompt attention.

Sincerely,



Cory Isaacson

Legal Director

American Civil Liberties Union Foundation of Georgia

P.O. Box 570738, Atlanta, GA 30357

cisaacson@acluga.org | Phone (770) 415-5490

EXHIBIT E

**(Respondent's Office's Response to
Petitioner's Counsel's Second Open Records
Request)**

[Records Center] Open Records Request :: R011309-122423

Fulton County Georgia <fultoncountyga@mycusthelp.net>

Thu 12/28/2023 12:38 AM

To: Cory Isaacson <CIsaacson@acluga.org>

This Message Is From an External Sender

This message came from outside your organization.

--- Please respond above this line ---

OFFICE OF THE COUNTY ATTORNEY

141 PRYOR STREET, S.W.

SUITE 4038

ATLANTA, GEORGIA 30303

SHALANDA M.J. MILLER

OFFICIAL CUSTODIAN OF RECORDS

TELEPHONE (404) 612-0281

FACSIMILE (404) 730-6324

EMAIL ORR@FULTONCOUNTYGA.GOV



The Fulton County District Attorney is in receipt of your open records request. However we do not have responsive documents.

To monitor the progress, update this request, and retrieve responsive records, please log into the [Fulton County Open Records Center](#).