

Exhibit H –
ODonnell,
Dkt. 523-3

EXHIBIT 1

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January 17, 2018

The Honorable Lee H. Rosenthal United States Courthouse
515 Rusk Street, Room 11535
Houston, Texas 77002

Re: *ODonnell et al. v. Harris County et al.*, No. 16-CV-01414

Dear Chief Judge Rosenthal:

Plaintiffs respectfully submit this letter requesting a pre-motion conference to address deeply troubling revelations from the Texas State Commission on Judicial Conduct (the “Commission”) concerning directives from County Court at Criminal Law Judges (“Judges”) to Hearing Officers’ Hagstette, Licata III, and Wallace that purportedly limited their discretion to grant personal bonds.

On January 10, 2018, the Commission publicly admonished the Hearing Officers for “strictly following **directives not to issue personal bonds** to defendants **per the instructions of the judges** in whose court the underlying cases were assigned.” Ex. 1 (emphasis added). The Commission concluded that the Hearing Officers’ “failed to comply with the law” and that their “conduct was motivated by **direct instructions from individual judges** who played a role” in their employment. *Id.* (emphasis added).

The Commission’s public admonition of the Hearing Officers is troubling, and it gives Plaintiffs’ cause for concern regarding Defendants’ compliance with their discovery obligations and Defendants’ possible misrepresentations to this Court and to Plaintiffs.

Throughout the course of discovery, Plaintiffs have sought to confirm whether Hearing Officers had ever received instructions limiting their discretion to grant personal bonds by seeking discovery on any instructions provided by Judges to Hearing Officers. For example, Plaintiffs requested Defendants produce:

Any bail schedules or other instructions, guidelines, or advisories that were in effect at the time the case was filed, whether written or oral, given by any of the County Courts at Law Judges to any of the Hearing Officers, regarding how to set

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bail and whether and when to grant, or recommend individuals for personal bonds

...

Ex. 2 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' First Request for Production of Documents No. 3).¹

Defendants responded that they would produce non-privileged, responsive documents. *Id.* One year later, Plaintiffs filed a pre-motion conference letter in an attempt to resolve what appeared to be Defendants' inadequate production and Defendants' refusal to certify its document production pursuant to Fed. R. Civ. P. 26(g). Ex. 4. In response, Defendants' counsel stated they had produced all responsive documents in Fall 2016 and that no additional responsive e-mails had been located. Ex. 5 (Oct. 20, 2017 letter from Phil Morgan). Alarming, the Commission's findings of fact describe specific e-mails with instructions "from multiple District and County judges aiming to restrict the Hearing Officers' authority to set certain bonds" that, to Plaintiffs' knowledge, have *never* been produced.

In addition, Plaintiffs requested Defendants admit:

The Hearing Officers' discretion to recommend arrestees for personal bonds is circumscribed by instructions from the County Court at Law Judges.

Ex. 6 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' Requests for Admission No. 10).²

Defendants responded that this request was "vague" and thus they could neither admit nor deny. Ex. 6. Yet, there is nothing vague about the Commission's findings of fact that describe testimony from the Hearing Officers that "until August 2016" several Judges did not permit Hearing Officers to grant personal bonds and that the Hearing Officers provided instructions

¹ See also Ex. 2 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' First Request for Production of Documents No. 4) (seeking any bail schedules or other instructions "that are currently in effect"); Ex. 3 (County Criminal Court at Law Judges' Amended Objections and Responses to Plaintiff's First Set of Requests for Production Nos. 3 - 5) (seeking "[a]ny bail schedules or other instructions, guidelines or advisories that have been in effect during the past two years, whether written or oral, given by any of the County Court at Law judges to any of the Hearing Officers, regarding how to set bail in misdemeanor or felony cases," "a chart that summarized the Judges' instructions to the Hearing Officers about how to set bail"; and "any bail schedules or other instructions . . . given by any of the County Courts at Law Judges to any of the Hearing Officers, regarding how to set bail and whether and when to grant, or recommend individuals, for personal bonds," respectively).

² See also Ex. 6 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers' Objections and Responses to Plaintiffs' Requests for Admission Nos. 6, 7, 8, 11) (seeking admission that "the County Court at Law Judges provide instructions, either oral or written, to the Hearing Officers about how to set bail"; "[t]he County Court at Law Judges tell the Hearing Officers which categories of arrestees . . . are eligible for release without secured financial conditions"; "[t]he Hearing Officers follow instructions from the County Court at Law Judges to deny personal bonds to certain groups of people . . ."; "[t]he Hearing Officers' discretion to impose a higher or lower bail amount than what the bail schedule prescribes is circumscribed by instructions from the County Court at Law Judges"); Ex. 7 (County Criminal Court at Law Judges' Objections and Responses to Plaintiff's First Set of Requests for Admission No. 7) (seeking admission that "Defendant Judges provide instructions to the Hearing Officers setting out criteria and/or guidelines for granting or denying a personal bond").

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from **multiple** Judges “aiming to restrict the Hearing Officers’ authority to set certain bonds.” Ex. 1.

Plaintiffs also served the following Interrogatory on November 11, 2016:

In the last two years, what guidance or instructions have the Defendant Judges given to Hearing Officers about arrestees’ eligibility for personal bonds?

Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiffs’ First Set of Interrogatories No. 3).³

As relevant, Defendants’ response stated the following only:

Subject to their objections, the County Criminal Court at Law Judges responded as follows: Three sources of law provide guidance to the Hearing Offices: (1) the Texas Code of Criminal Procedure art. 17.15; (2) the *Roberson* Order; and (3) the Local Rules of Court. The County Criminal Court at Law Judges sent a letter to the magistrate Hearing Officers on August 8, 2016 forwarding recent amendments to the Local Rules of Court and reminding the Hearing Officers that they have full discretion to set appropriate bail amounts according to the five *Roberson* factors, including ability to pay, and to issue personal bonds in appropriate circumstances. *See* Dkt. 80-4. On November 18, 2016, the County Criminal at Law Judges sent a letter to all attorneys practicing in the County Courts at Law, informing of them of additional changes to the pretrial procedures, including requiring the attorneys to raise bail at an arrestee’s initial appearance before a County Criminal Court at Law Judge. **The County Criminal Court at Law Judges have not withheld any responsive information and are not withholding any information on the basis of privilege.**

See Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiff’s First Set of Interrogatories).

Defendants’ response appears inadequate and misleading in light of the Commission’s findings of fact that individual Judges provided Hearing Officers with instructions “aiming to restrict the Hearing Officers’ authority to set certain bonds.” Ex. 1. And the Commission’s findings appear to be based on documents provided to the Commission by Defendants themselves, as well as oral statements made by Defendants in their own defense as purported mitigation of their ethics violations. Pursuant to the Federal Rules, Defendants have an ongoing duty to supplement discovery in a “timely manner” if the party learns that its disclosure or response is “incomplete or incorrect.” *See* Fed. R. Civ. P. 26(e). Yet, Defendants have never supplemented their

³ *See also* Ex. 8 (County Criminal Court at Law Judges’ Amended Objections and Responses to Plaintiffs’ First Set of Interrogatories No. 2) (“In the last two years, what guidance or instructions have been given to Hearing Officers from the Defendant Judges about setting financial conditions of release?”); Ex. 9 (Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers’ Objections and Responses to Plaintiffs’ Interrogatories Nos. 5, 6) (requesting “guidance or instructions” regarding the bail-setting process and arrestees’ eligibility for personal bonds, respectively).

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discovery to inform the Plaintiffs that Judges, in whose court the underlying cases were assigned, had instructed Hearing Officers not to issue personal bonds.

Equally troubling, the Commissions' revelations raise the question of whether any of the Defendants made misrepresentations to the Court. For example, the Commission quotes an e-mail from Judge Diane Bull that states: "Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants." Ex. 1. This quote, if accurate, appears to be inconsistent with Judge Diane Bull's testimony in her sworn declaration: "The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. I do not supervise them." Ex. 10, at JUDGES000928.⁴ Likewise, on appeal, the Judges and Hearing Officers submitted declarations with similar testimony calling the Hearing Officers "independent" to the United States Court of Appeals for the Fifth Circuit and to the United States Supreme Court. Ex. 11. Each of the Hearing Officers submitted sworn declarations stating that they exercise "judicial discretion" to "set bail in an amount that I believe will ensure the accused's return to court." Ex. 12, at HARRISCO-ODONNELL007244 (Declaration of Joe Licata).⁵

In addition, the Commission's revelations cast uncertainty over Defendants' testimony during the preliminary injunction hearing. For example:

Q: Are there, as I understand it, some district courts who may have given instructions in the past to hearing officers?

A: Yes.

Q: Are there any similar written instructions to hearing officers today other than the email that Judge Jordan recently sent?

A: No.

Q: Are there any unwritten practices that you have been told to follow but they didn't put it in writing? When I say "they," for the record, the county court at law judges.

A: Will you give me a timeframe for that?

Q: We are talking about now, the last 16 months, the last 18 months.

A: No.

Dkt. 275 at 115-116 (Testimony of Blanca Villagomez).

In addition, Judge Goodhart testified as follows, testifying explicitly on behalf of all of the Defendant Judges 1-15:

⁴ See also Ex. X, at JUDGES000913 (Declaration of Judge Paula Goodhart); JUDGES000916 (Declaration of Judge Bill Harmon); JUDGES000917 (Declaration of Judge Natalie Fleming); JUDGES000919 (Declaration of Judge John Clinton); JUDGES000920 (Declaration of Judge Margaret Stewart Harris); JUDGES000922 (Declaration of Judge Larry Standley); JUDGES000923 (Declaration of Judge Pam Derbyshire); JUDGES000924 (Declaration of Judge Jay Karahan); JUDGES000926 (Declaration of Judge Analia Wilkerson); JUDGES000927 (Declaration of Judge Dan Spjut); JUDGES000931 (Declaration of Judge Michael Fields); JUDGES000935 (Declaration of Judge Jean Spralding Hughes).

⁵ See also Ex. X, at HARRISCO-ODONNELL007239 (Declaration of Blanca Villagomez); HARRISCO-ODONNELL007242 (Declaration of Jill Wallace); HARRISCO-ODONNELL007246 (Declaration of Ron Nichols); HARRISCO-ODONNELL007240 (Declaration of Eric Hagstette).

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Q: Have you ever sent any email instructions or verbal instructions to the hearing officers about how to conduct their business?

A: I have never sent them emails or verbally instructed them on how to conduct their business.

Dkt. 276 at 67 (Testimony of Paula Goodhart).

These are just a small number of the many more examples of similar potentially inconsistent, possibly misleading, and apparently false statements offered by Defendants and their attorneys throughout this case in numerous documents and oral statements. As this Court knows, Plaintiffs repeatedly pursued such information through documents and testimony (and Defendants themselves affirmatively offered argument and testimony on the issue) because of the significant relevance of the issue to numerous issues in dispute in this case, including to the merits and to questions of municipal liability.

On January 17, 2018, Plaintiffs requested that Defendants produce all documents, statements, or testimony of any type produced to the Commission, described by the Commission, or referenced by the Commission, whether orally or in writing. Ex. 13. In response, counsel for the Judges stated that they are “not aware” of any relevant information provided to the Commission, Ex. 14, and counsel for the Hearing Officers and Harris County stated that the only referenced letter was from 1995 and “was no longer in effect at the time of the lawsuit.” Ex. 13. This lawsuit, however, was filed in May 2016, and the Commission’s findings specifically stated that the Hearing Officers testified that “until August 2016, ‘the County Criminal Court at Law Judges historically’ had rules that limited the Hearing Officers’ discretion to grant personal bonds. Moreover, if the 1995 letter was no longer in effect, it begs the question of how it was offered as mitigation by the Hearing Officers’ in proceedings concerning judicial conduct violations that occurred based on the videos and other evidence in the record in this case.

Plaintiffs do not raise these issues before the Court lightly. Nevertheless, Plaintiffs are gravely concerned by the Commission’s revelations and believe that this Court’s intervention is necessary and appropriate. Consequently, Plaintiffs invoke this Court’s procedure for filing a pre-motion conference letter, so that they may formally move the Court as follows:

- Compel production of all materials responsive to Plaintiffs’ Requests for Production, including all materials and testimony submitted to the Commission so that Plaintiffs can make an assessment of the seriousness of the apparent misrepresentations and discovery violations;
- Strike all incomplete or insufficient discovery responses and compel timely, corrected, and sworn discovery responses;
- Sanctions as deemed appropriate by the Court, including, but not limited to, reasonable costs, including attorneys’ fees, pursuant to the Court’s discretion.

Respectfully submitted,

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EXHIBIT

1



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-0350-AJ

**PUBLIC ADMONITION AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE ERIC HAGSTETTE
CRIMINAL LAW HEARING OFFICER
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on December 6-8, 2017, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Eric Hagstette, Criminal Law Hearing Officer, in Houston, Harris County. Judge Hagstette was advised by letter of the Commission's concerns and provided a written response. Judge Hagstette appeared with counsel before the Commission on December 7, 2017, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Eric Hagstette was a Criminal Law Hearing Officer, in Houston, Harris County. As part of his job duties, he conducts probable cause hearings and sets bond amounts.

Agreeing to Forego Personal Bonds and Adherence to Bond Schedule

2. Chief U.S. District Judge Lee Rosenthal issued an opinion in April of 2017 in a lawsuit against Harris County¹ for violating the rights of misdemeanor defendants. *ODonnell v. Harris County*, 2017 U.S. Dist. LEXIS 65445, *281 (S.D. Tex. April 28, 2017). *Inter alia*, the Court found Harris County's bail policy unconstitutional because the "policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights

¹ Judge Hagstette was one of the defendants named in the lawsuit.

against wealth-based discrimination and violating due process protections against pretrial detention without proper procedures or an opportunity to be heard.”²

3. The Court also issued an injunction requiring Harris County to promptly release indigent defendants within 24 hours of their arrest.³
4. The district court found “little to no credibility in the Hearing Officers’ claims of careful case-by-case consideration under the *Roberson* order and the Article 17.15 factors” based on the high percentage of misdemeanor defendants subject to secured money bail who were detained rather than released, the infrequent deviations from the scheduled bail amount, and the video recordings of probable cause hearings “which consistently show an indifference as to whether pretrial detention will result from setting bail.” *Id.* at *103.⁴
5. Judge Hagstette informed the Commission that he considers “the factors set out in article 17.15 of the Code of Criminal Procedure, all available facts and information, and the accused’s demeanor,” when determining bond amounts for individuals accused of a crime.
6. Judge Hagstette stated he also considers “any rules, preferences, and policies of the assigned trial court judge to whom the case is assigned.” He noted that until March of 2017, several of the District Court Judges “did not permit Hearing Officers to grant personal bonds” and, until August 2016, “the County Criminal Court at Law Judges historically had similar rules.”
7. Judge Hagstette stated that “a job description by the board of judges made clear the Hearing Officers are ‘at will employees,’ [and] that the Hearing Officers are the ‘delegates’ of the judges trying criminal cases.” During his testimony before the Commission, Judge Hagstette testified that Hearing Officers could “be dismissed at any time by the same board that appoints us.”
8. Judge Hagstette provided instructions from multiple District and County judges aiming to restrict the Hearing Officers’ authority to set certain bonds. The following instructions were included in e-mails:
 - a. A retired hearing officer: “You may never, never ever give a PR bond to a defendant in any of the District courts. This would probably get you fired.”
 - b. District Court Judge Joan Huffman: “No pre-trial bonds; no lowering of bonds.”
 - c. County Court Judge Diane Bull: “Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants.”
9. Section 54.851 *et seq.* of the Texas Government Code establishes the Criminal Law Hearing Officer position.

² Harris County was sued on a related issue over thirty years ago. In *Roberson v. Richardson*, Civil No. 84-2974 (S.D. Texas Nov. 25, 1987), the parties reached a final agreed judgment which included language that hearing officers “shall have the authority to order the accused released on personal bond or released on other alternatives to prescheduled bail amounts.”

³ Before the effective date of the trial court’s injunction, Harris County filed motions to stay in the Fifth Circuit and the Supreme Court, both of which were denied.

⁴ Judge Rosenthal gathered evidence over an eight day hearing that included 300 written exhibits, 2,300 video recordings of bail-setting hearings, and the testimony of thirteen witnesses, including Judge Hagstette.

10. Section 54.856(a)(2) of the Texas Government Code outlines the magistrature authority of Criminal Law Hearing Officers, and provides that the “jurisdiction of the criminal law hearing officer” includes: “Committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require.”
11. Judge Hagstette provided the Commission with a copy of the Harris County local rules. Consistent with Section 54.856(a)(2) of the Texas Government Code, Local Rule 12.1 states “whether to approve or deny a personal bond is up to the reviewing magistrate’s sound discretion.”
12. The judge also stated the Hearing Officers “serve many masters” and they “exercise the discretion they can within the bounds set.”
13. During his appearance before the Commission, Judge Hagstette testified that the hearing officers “didn’t write the policies, but we had to follow them.” Regarding the Hearing Officers making bond determinations on cases, he stated: “Could I do something? Probably by law, I could have. I don’t know if it would have been good for my career.”

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states: “A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.”
3. The Texas Code of Criminal Procedure Art. 17.15 states:

The amount of bail...is to be regulated by the court, judge or magistrate; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
 2. The power to require bail is not to be so used as to make it an instrument of oppression.
 3. The nature of the offense and the circumstances under which it was committed are to be considered.
 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
 5. The future safety of a victim of the alleged offense and the community shall be considered.

4. The Texas Code of Criminal Procedure Art. 17.03(a) states “A magistrate may, in the magistrate’s discretion, release the defendant on his personal bond without sureties or other security.”

CONCLUSION

After considering the facts and evidence before it, the Commission concludes that Judge Hagstette failed to comply with the law, and failed to maintain competence in the law, by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned. In so doing, Judge Hagstette violated his constitutional and statutory obligation to consider all legally available bonds, including personal recognizance bonds, for those individuals whose cases were assigned to courts who instructed him not to issue personal recognizance bonds.

In weighing the facts and circumstances of this case, the Commission gave weight to the fact that, at least in part, Judge Hagstette’s conduct was motivated by direct instructions from individual judges who played a role in his continued employment. The Commission considered this a mitigating factor in reaching its determination in this case.

Based on this conduct, the Commission concludes that Judge Hagstette’s actions constituted willful violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct violative of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct recited above, it is the Commission’s decision to issue a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** to Eric Hagstette, Hearing Officer, Houston, Harris County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** by the Commission.

Pursuant to this Order, Judge Hagstette must obtain **four hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Hagstette receive this additional education in the area of magistration and bond setting.

Pursuant to the authority contained in § 33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center to the extent necessary to enable that entity to assign the appropriate mentor for Judge Hagstette.

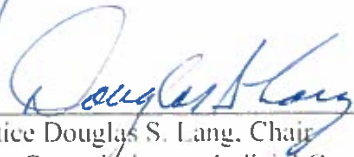
Judge Hagstette shall complete the additional **four hours** of instruction recited above within **60 days** from the date of written notification from the Commission of the assignment of a mentor. Upon receiving such notice, it is Judge Hagstette’s responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four hours** of instruction described herein, Judge Hagstette shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a (8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of assisting Judge Hagstette in his continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 10th day of January, 2018.


Justice Douglas S. Lang, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-0352-AJ

**PUBLIC ADMONITION AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE JOSEPH LICATA III
CRIMINAL LAW HEARING OFFICER
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on December 6-8, 2017, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Joseph Licata, Criminal Law Hearing Officer, in Houston, Harris County. Judge Licata was advised by letter of the Commission's concerns and provided a written response. Judge Licata appeared with counsel before the Commission on December 7, 2017, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Joseph Licata was a Criminal Law Hearing Officer, in Houston, Harris County. As part of his job duties, he conducts probable cause hearings and sets bond amounts.

Agreeing to Forego Personal Bonds and Adherence to Bond Schedule

2. Chief U.S. District Judge Lee Rosenthal issued an opinion in April of 2017 in a lawsuit against Harris County¹ for violating the rights of misdemeanor defendants. *ODonnell v. Harris County*, 2017 U.S. Dist. LEXIS 65445, *281 (S.D. Tex. April 28, 2017). *Inter alia*, the Court found Harris County's bail policy unconstitutional because the "policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights

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5. Judge Licata informed the Commission that he considers “the factors set out in article 17.15 of the Code of Criminal Procedure, all available facts and information, and the accused’s demeanor,” when determining bond amounts for individuals accused of a crime.
6. Judge Licata stated he also considers “any rules, preferences, and policies of the assigned trial court judge to whom the case is assigned.” He noted that until March of 2017, several of the District Court Judges “did not permit Hearing Officers to grant personal bonds” and, until August 2016, “the County Criminal Court at Law Judges historically had similar rules.”
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 - a. A retired hearing officer: “You may never, never ever give a PR bond to a defendant in any of the District courts. This would probably get you fired.”
 - b. District Court Judge Joan Huffman: “No pre-trial bonds; no lowering of bonds.”
 - c. County Court Judge Diane Bull: “Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants.”
9. Section 54.851 *et seq.* of the Texas Government Code establishes the Criminal Law Hearing Officer position.

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³ Before the effective date of the trial court’s injunction, Harris County filed motions to stay in the Fifth Circuit and the Supreme Court, both of which were denied.

⁴ Judge Rosenthal gathered evidence over an eight day hearing that included 300 written exhibits, 2,300 video recordings of bail-setting hearings, and the testimony of thirteen witnesses. Judge Licata did not testify.

10. Section 54.856(a)(2) of the Texas Government Code outlines the magistrature authority of Criminal Law Hearing Officers, and provides that the “jurisdiction of the criminal law hearing officer” includes: “Committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require.”
11. Judge Licata provided the Commission with a copy of the Harris County local rules. Consistent with Section 54.856(a)(2) of the Texas Government Code, Local Rule 12.1 states “whether to approve or deny a personal bond is up to the reviewing magistrate’s sound discretion.”
12. During his appearance before the Commission, Judge Licata testified that the restriction of PR bonds refers to felony cases, and stated “there weren’t that many restrictions on the misdemeanor cases. There were a few guidelines.”

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states: “A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.”
3. The Texas Code of Criminal Procedure Art. 17.15 states:

The amount of bail...is to be regulated by the court, judge or magistrate; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
 2. The power to require bail is not to be so used as to make it an instrument of oppression.
 3. The nature of the offense and the circumstances under which it was committed are to be considered.
 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
 5. The future safety of a victim of the alleged offense and the community shall be considered.
4. The Texas Code of Criminal Procedure Art. 17.03(a) states “A magistrate may, in the magistrate’s discretion, release the defendant on his personal bond without sureties or other security.”

CONCLUSION

After considering the facts and evidence before it, the Commission concludes that Judge Licata failed to comply with the law, and failed to maintain competence in the law, by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned. In so doing, Judge Licata violated his

constitutional and statutory obligation to consider all legally available bonds, including personal recognizance bonds, for those individuals whose cases were assigned to courts who instructed him not to issue personal recognizance bonds.

In weighing the facts and circumstances of this case, the Commission gave weight to the fact that, at least in part, Judge Licata's conduct was motivated by direct instructions from individual judges who played a role in his continued employment. The Commission considered this a mitigating factor in reaching its determination in this case.

Based on this conduct, the Commission concludes that Judge Licata's actions constituted willful violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct violative of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** to Joseph Licata, Hearing Officer, Houston, Harris County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** by the Commission.

Pursuant to this Order, Judge Licata must obtain **four hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Licata receive this additional education in the area of magistration and bond setting.

Pursuant to the authority contained in § 33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center to the extent necessary to enable that entity to assign the appropriate mentor for Judge Licata.

Judge Licata shall complete the additional **four hours** of instruction recited above within **60 days** from the date of written notification from the Commission of the assignment of a mentor. Upon receiving such notice, it is Judge Licata's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four hours** of instruction described herein, Judge Licata shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a (8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of assisting Judge Licata in his continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 10th day of January, 2018.

A handwritten signature in blue ink, appearing to read "Douglas S. Lang", is written over a horizontal line.

Justice Douglas S. Lang, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 17-0351-AJ

**PUBLIC ADMONITION AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE JILL WALLACE
CRIMINAL LAW HEARING OFFICER
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on December 6-8, 2017, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Jill Wallace, Criminal Law Hearing Officer, in Houston, Harris County. Judge Wallace was advised by letter of the Commission's concerns and provided a written response. Judge Wallace appeared with counsel before the Commission on December 7, 2017, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Jill Wallace was a Criminal Law Hearing Officer, in Houston, Harris County. As part of her job duties, she conducts probable cause hearings and sets bond amounts.

Agreeing to Forego Personal Bonds and Adherence to Bond Schedule

2. Chief U.S. District Judge Lee Rosenthal issued an opinion in April of 2017 in a lawsuit against Harris County¹ for violating the rights of misdemeanor defendants. *ODonnell v. Harris County*, 2017 U.S. Dist. LEXIS 65445, *281 (S.D. Tex. April 28, 2017). *Inter alia*, the Court found Harris County's bail policy unconstitutional because the "policy is to detain indigent misdemeanor defendants before trial, violating equal protection rights

¹ Judge Wallace was one of the defendants named in the lawsuit.

against wealth-based discrimination and violating due process protections against pretrial detention without proper procedures or an opportunity to be heard.”²

3. The Court also issued an injunction requiring Harris County to promptly release indigent defendants within 24 hours of their arrest.³
4. The district court found “little to no credibility in the Hearing Officers’ claims of careful case-by-case consideration under the *Roberson* order and the Article 17.15 factors” based on the high percentage of misdemeanor defendants subject to secured money bail who were detained rather than released, the infrequent deviations from the scheduled bail amount, and the video recordings of probable cause hearings “which consistently show an indifference as to whether pretrial detention will result from setting bail.” *Id.* at *103.⁴
5. Judge Wallace informed the Commission she considers “the factors set out in article 17.15 of the Code of Criminal Procedure and all available facts and information” when determining bond amounts for individuals accused of a crime. She also stated she considers the defendant’s “failures to appear within the last two years.”
6. Judge Wallace stated she also considers “any rules, preferences, and policies of the assigned trial court judge to whom the case is assigned.” She noted that until March of 2017, several of the District Court Judges “did not permit Hearing Officers to grant personal bonds” and until August of 2016, “the County Criminal Court at Law Judges historically had similar rules.”
7. Judge Wallace stated that “a job description by the board of judges made clear the Hearing Officers are ‘at will employees,’ [and] that the Hearing Officers are the ‘delegates’ of the judges trying criminal cases.”
8. Judge Wallace provided instructions from multiple District and County judges aiming to restrict the Hearing Officers’ authority to set certain bonds. The following instructions were included in e-mails:
 - a. A retired hearing officer: “You may never, never ever give a PR bond to a defendant in any of the District courts. This would probably get you fired.”
 - b. District Court Judge Joan Huffman: “No pre-trial bonds; no lowering of bonds.”
 - c. County Court Judge Diane Bull: “Please instruct the probable cause hearing officers to withhold their rulings on all pre-trial release applications for defendants.”
9. Section 54.851 *et seq.* of the Texas Government Code establishes the Criminal Law Hearing Officer position.

² Harris County was sued on a related issue over thirty years ago. In *Roberson v. Richardson*, Civil No. 84-2974 (S.D. Texas Nov. 25, 1987), the parties reached a final agreed judgment which included language that hearing officers “shall have the authority to order the accused released on personal bond or released on other alternatives to prescheduled bail amounts.”

³ Before the effective date of the trial court’s injunction, Harris County filed motions to stay in the Fifth Circuit and the Supreme Court, both of which were denied.

⁴ Judge Rosenthal gathered evidence over an eight day hearing that included 300 written exhibits, 2,300 video recordings of bail-setting hearings, and the testimony of thirteen witnesses. Judge Wallace did not testify.

10. Section 54.856(a)(2) of the Texas Government Code outlines the magistration authority of Criminal Law Hearing Officers, and provides that the “jurisdiction of the criminal law hearing officer” includes: “Committing the defendant to jail, discharging the defendant from custody, or admitting the defendant to bail, as the law and facts of the case require.”
11. Judge Wallace provided the Commission with a copy of the Harris County local rules. Consistent with Section 54.856(a)(2) of the Texas Government Code, Local Rule 12.1 states “whether to approve or deny a personal bond is up to the reviewing magistrate’s sound discretion.”
12. The judge also stated the Hearing Officers “serve many masters” and they “exercise the discretion they can within the bounds set.”
13. During her appearance before the Commission, Judge Wallace testified that as a hearing officer, “I’m not a policy maker, I’m a person who’s hired by the judges and given a job to do. And everybody told me we were following *Roberson*, we were following the federal lawsuit.”

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Canon 3B(2) of the Texas Code of Judicial Conduct states: “A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.”
3. The Texas Code of Criminal Procedure Art. 17.15 states:

The amount of bail...is to be regulated by the court, judge or magistrate; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

 1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
 2. The power to require bail is not to be so used as to make it an instrument of oppression.
 3. The nature of the offense and the circumstances under which it was committed are to be considered.
 4. The ability to make bail is to be regarded, and proof may be taken upon this point.
 5. The future safety of a victim of the alleged offense and the community shall be considered.
4. The Texas Code of Criminal Procedure Art. 17.03(a) states “A magistrate may, in the magistrate’s discretion, release the defendant on his personal bond without sureties or other security.”

CONCLUSION

After considering the facts and evidence before it, the Commission concludes that Judge Wallace failed to comply with the law, and failed to maintain competence in the law, by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned. In so doing, Judge Wallace violated her constitutional and statutory obligation to consider all legally available bonds, including personal recognizance bonds, for those individuals whose cases were assigned to courts who instructed him not to issue personal recognizance bonds.

In weighing the facts and circumstances of this case, the Commission gave weight to the fact that, at least in part, Judge Wallace's conduct was motivated by direct instructions from individual judges who played a role in her continued employment. The Commission considered this a mitigating factor in reaching its determination in this case.

Based on this conduct, the Commission concludes that Judge Wallace's actions constituted willful violations of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct violative of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct recited above, it is the Commission's decision to issue a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** to Jill Wallace, Hearing Officer, Houston, Harris County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION** by the Commission.

Pursuant to this Order, Judge Wallace must obtain **four hours** of instruction with a mentor, in addition to her required judicial education for Fiscal Year 2018. In particular, the Commission desires that Judge Wallace receive this additional education in the area of magistration and bond setting.

Pursuant to the authority contained in § 33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center to the extent necessary to enable that entity to assign the appropriate mentor for Judge Wallace.

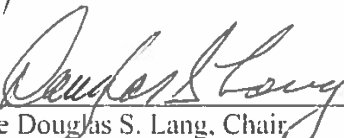
Judge Wallace shall complete the additional **four hours** of instruction recited above within **60 days** from the date of written notification from the Commission of the assignment of a mentor. Upon receiving such notice, it is Judge Wallace's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **four hours** of instruction described herein, Judge Wallace shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a (8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION WITH ORDER OF ADDITIONAL EDUCATION**.

The Commission has taken this action with the intent of assisting Judge Wallace in her continued judicial service, as well as in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 10th day of January 2018.


Justice Douglas S. Lang, Chair
State Commission on Judicial Conduct

EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

**HARRIS COUNTY, TEXAS, SHERIFF RON HICKMAN, AND THE HEARING
OFFICERS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: Plaintiffs Maranda O'Donnell, Loetha McGruder, and Robert Ford, through their attorneys of record, Neal Manne and Lexie White, Susman Godfrey, 1000 Louisiana Street, Suite 5100, Houston, Texas 77002, Rebecca Bernhart, Susanne Pringle, Texas Fair Defense Project, 314 E. Highland Mall Blvd., Suite 180, Austin, Texas 78752, and Alec Karakatsanis, Elizabeth Rossi, 601 Pennsylvania Ave. NW, South Building, 9th Floor, Washington DC 20004.

Defendants Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers serve the following Objections and Responses to Plaintiffs' First Request for Production of Documents.

Respectfully Submitted,

GARDERE WYNNE SEWELL LLP

/s/ Katharine D. David

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OFFICE OF THE HARRIS COUNTY ATTORNEY

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***Counsel for Harris County, Texas, Sheriff
Ron Hickman, Eric Stewart Hagstette,
Joseph Licata III, Ronald Nicholas, Blanca
Estela Villagomez, and Jill Wallace***

CERTIFICATE OF SERVICE

I certify that on the 24th day of October, 2016, I electronically served the foregoing document on the following counsel of record:

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***Counsel for the County Criminal Courts at
Law Judges***

/s/ Katharine D. David
Katharine D. David

Objections to Instructions and Definitions

Harris County, Sheriff Ron Hickman, and the Hearing Officers (collectively, “Defendants”) object to Plaintiffs’ instruction that Defendants specify which documents are being produced in response to each specific request. The Federal Rules of Civil Procedure do not contain such a requirement. Therefore, this instruction is burdensome and goes beyond what is required under the Federal Rules of Civil Procedure.

Defendants also object to the location for production. Defendants will make responsive documents available for viewing at the offices of Gardere Wynne Sewell LLP, 1000 Louisiana, Suite 2000, Houston, Texas 77002 on a date and time that is mutually agreeable to the parties.

Objections and Responses

Request for Production No. 1: Daily lists of people in Harris County custody, charged with misdemeanor offenses, who must satisfy financial conditions of release in order to be released and for whom there are no other holds preventing their release. Plaintiffs request these daily lists for each day from May 5 to the present.

Response: Defendants object to this request because Defendants do not maintain a list of people in Harris County custody “who must satisfy [a] financial condition[] of release in order to be released and for whom there are no holds.” Defendants further object to this request as misleading in that some people who are otherwise eligible for release, can make bail, yet choose not to. No report maintained by any Defendant can provide insight as to this subset of people. Finally, Defendants object on the grounds that this request is substantially overbroad. Plaintiffs seek tens of thousands of pages of documents about people who are not parties to this case and which could potentially reveal sensitive personal information.

Request for Production No. 2: Copies of any forms prepared by or in connection with Pretrial Services for all individuals for whom such forms exist or who were interviewed by pretrial services between May 5, 2016 and May 28, 2016, and in the month of August 2016.

Response: Defendants object to this request as overbroad. For example, this request is not limited to misdemeanor arrestees only. Subject to this objection and entry of a protective order, Defendants are prepared to produce responsive documents.

The County Criminal Court at Law Judges have asserted judicial privilege and work product privilege with respect to these documents. Defendants do not want to prejudice the Judges’ opportunity to assert these objections. Defendants, therefore, will not produce these documents at this time.

Request for Production No. 3: Any bail schedules or other instructions, guidelines, or advisories that were in effect at the time the case was filed, whether written or oral, given by any of the County Courts at Law judges to any of the Hearing Officers, regarding how to set bail and whether and when to grant, or recommend individuals for personal bonds. If the instructions, guidelines, or advisories were not written, they should be reduced to writing.

Response: Defendants object that this request calls for Defendants to reduce to writing oral instructions, guidelines, or advisories. Defendants' only obligation under the Federal Rules of Civil Procedure is to produce documents as they are kept in the ordinary course of business. Defendants also object to this request as overbroad in that it is not limited to "instructions, guidelines, or advisories" about misdemeanor arrestees. Defendants further object to this request as vague in that "regarding how to set bail" is undefined and subject to multiple interpretations. Subject to these objections, Defendants will produce non-privileged, responsive documents.

Request for Production No. 4: Any bail schedules or other instructions that are currently in effect, whether written or oral, given by any of the County Court at Law judges to any of the Hearing Officers, regarding how to set bail and whether and when to grant, or recommend individuals for, personal bonds. If the instructions, guidelines, or advisories are not written, they should be reduced to writing.

Response: Defendants object that this request calls for Defendants to reduce to writing oral instructions, guidelines, or advisories. Defendants' only obligation under the Federal Rules of Civil Procedure is to produce documents as they are kept in the ordinary course of business. Defendants also object to this request as overbroad in that it is not limited to "instructions, guidelines, or advisories" about misdemeanor arrestees. Defendants further object to this request as vague in that "regarding how to set bail" is undefined and subject to multiple interpretations. Subject to these objections, Defendants will produce non-privileged, responsive documents.

Request for Production No. 5: Videos of all probable cause hearings that took place in August 2016.

Response: Defendants object to this request as overbroad in that it is not limited to misdemeanor arrestees only. Subject to this objection, Defendants will produce responsive videos. The Hearing Officers see both misdemeanor and felony arrestees at each court session, so both felony and misdemeanor arrestees are contained on the videos. Because it would be unduly burdensome to spend the time and money to edit out the felony arrestees, Defendants will produce all videos, including felony arrestees. Defendants are not waiving their objection that such videos are irrelevant.

Request for Production No. 6: Any documents, information, or other evidence supporting your contention that any named defendant(s) in fact inquire into ability to pay before setting a financial condition of release.

Response: Defendants object to the extent Plaintiffs are improperly attempting to use a request for production as an interrogatory. To the extent Plaintiffs seek to inquire about Defendants' contentions, such an inquiry is not suited to a request for production.

Defendants also object to this request as assuming facts not in evidence to the extent it appears to assume that Harris County or Sheriff Hickman “set[] a financial condition of release.” Harris County and Sheriff Hickman do not set financial conditions of release.

Request for Production No. 7: Any documents, information, or other evidence upon which you intend to rely at the hearing on plaintiffs’ Motion for Preliminary Injunction.

Response: Defendants object to this request as premature. The hearing on Plaintiffs’ motion for preliminary injunction is not scheduled until December 15, 2016. Defendants will produce the requested documents at a mutually agreeable time before the hearing.

EXHIBIT

3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN ODONNELL, et al.

Plaintiffs,

V.

HARRIS COUNTY, TEXAS, et al.

Defendants.

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)
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) Case No: 16-cv-01414
) (Consolidated Class Action)
) The Honorable Lee H. Rosenthal
) U.S. District Judge
)
)
)
)
)

County Criminal Court at Law Judges' Amended
Objections and Responses to Plaintiff's First Set of Requests for Production

In accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure, the Defendant County Criminal Court at Law Judges, by and through their counsel of record, hereby make the following objections and responses to Plaintiffs' First Set of Requests for Production to the County Criminal Court at Law Judges (Nos. 1-6). The County Criminal Court at Law Judges reserve the right to amend or supplement these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

REQUEST FOR PRODUCTION NO. 1: Identify any document, information, or other evidence upon which your witnesses intend to rely in their testimony at the preliminary injunction hearing. Note which documents will be relied on by which witness.

RESPONSE: The County Criminal Court at Law Judges object to this request as premature. The preliminary injunction hearing has been continued to February 21, 2017 by the Court. We will exchange witness lists and exhibits with Plaintiffs two weeks before the hearing as indicated by the Court.

REQUEST FOR PRODUCTION NO. 2: Any documents, information, witness, or other evidence upon which you intend to rely at the hearing on plaintiffs' Motion for Preliminary Injunction.

RESPONSE: The County Criminal Court at Law Judges object to this request as premature. The preliminary injunction hearing has been continued to February 21, 2017 by the Court. We will exchange witness lists and exhibits with Plaintiffs two weeks before the hearing as indicated by the Court.

REQUEST FOR PRODUCTION NO. 3: Any bail schedules or other instructions, guidelines, or advisories that have been in effect during the past two years, whether written or oral, given by any of the County Court at Law judges to any of the Hearing Officers, regarding how to set bail in misdemeanor or felony cases. If the instructions, guidelines, or advisories were not written, they should be reduced to writing. State the dates during which each instruction, advisory, or guideline was in effect.

AMENDED RESPONSE: The County Criminal Court at Law Judges object to this request on the basis of the judicial privilege to the extent it seeks documents related to individual criminal cases. This privilege covers communications amongst judges and between judges and their staff in the performance of their judicial duties as well as the internal operations of the judicial system. *See Matter of Certain Complaints Under Investigation by an Investigating Comm. of Judicial Council of Eleventh Circuit*, 783 F.2d 1488, 1520 (11th Cir. 1986); *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973); *Adams v. Comm. on Judicial Conduct & Disability*, 165 F. Supp. 3d 911, 925 (N.D. Cal.

2016); *Terrazas v. Slagle*, 142 F.R.D. 136, 139-40 (W.D. Tex. 1992). The County Criminal Court at Law Judges also object on the basis that the request is overbroad, as it includes felony cases which the County Criminal Court at Law Judges do not have jurisdiction to hear. The County Criminal Court at Law Judges further object to the extent that this request calls for them to reduce to writing individual conversations, oral instructions, guidelines, or advisories. The County Criminal Court at Law Judges' only obligation under the Federal Rules of Civil Procedure is to produce documents as they are kept in the ordinary course of business. Subject to their objections, the County Criminal Court at Law Judges have produced Article 17 of the Texas Code of Criminal Procedure, the *Roberson* Order, past and current iterations of the Local Rules of Court, which have been amended over the past two years, as well as letters from the Judges dated August 8, 2016 and November 18, 2016. These are the misdemeanor guidelines in effect during the past two years. The County Criminal Court at Law Judges have conducted a good faith search and have produced all documents responsive to this request. The County Criminal Court at Law Judges have not withheld any responsive documents and are not withholding any documents on the basis of privilege.

REQUEST FOR PRODUCTION NO. 4: Upon information and belief, at the time of filing, there existed a chart that summarized the Judges' instructions to the Hearing Officers about how to set bail. Upon information and belief, the chart described categories of arrestees who are not eligible for personal bonds, and instructed the Hearing Officers to set certain amounts of bail for arrestees charged with certain offenses or within particular criminal histories. Upon information and belief, that chart was made available to the Hearing Officers during probable cause hearings. The same or a similar chart may still be available to Hearing Officers during probable cause hearings. (a) Provide a copy of that chart and any other document that Hearing Officers relied on at the time of filing when setting bail. (b) State whether and which documents and instructions are currently in effect.

AMENDED RESPONSE: The County Criminal Court at Law Judges object to this request to the extent that it mischaracterizes the facts. There is no known chart

summarizing County Criminal Court at Law Judges' instructions to the Hearing Officers about how to set bail apart from the initial bail schedule published in the Local Rules of Court, which also lists the five factors to be considered when setting bail, and provides information on when granting a personal bond is appropriate, per the Texas Code of Criminal Procedure and *Roberson*. The County Criminal Court at Law Judges are not in possession of any responsive documents, other than the Harris County Local Rules of Court, the *Roberson* Order, the Texas Code of Criminal Procedure, and the August 8, 2016 letter.

REQUEST FOR PRODUCTION NO. 5: Any bail schedules or other instructions that are currently in effect, whether written or oral, given by any of the county Courts at Law judges to any of the Hearing Officers, regarding how to set bail and whether and when to grant, or recommend individuals for, personal bonds. If the instructions, guidelines, or advisories are not written, they should be reduced to writing.

AMENDED RESPONSE: The County Criminal Court at Law Judges object to this request on the basis of the judicial privilege to the extent it seeks documents related to individual criminal cases. This privilege covers communications amongst judges and between judges and their staff in the performance of their judicial duties as well as the internal operations of the judicial system. *See Matter of Certain Complaints Under Investigation by an Investigating Comm. of Judicial Council of Eleventh Circuit*, 783 F.2d 1488, 1520 (11th Cir. 1986); *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973); *Adams v. Comm. on Judicial Conduct & Disability*, 165 F. Supp. 3d 911, 925 (N.D. Cal. 2016); *Terrazas v. Slagle*, 142 F.R.D. 136, 139-40 (W.D. Tex. 1992). County Criminal Court at Law Judges also object on the basis that the request is overbroad, as it is not limited to misdemeanor cases. The County Criminal Court at Law Judges further object to the extent that this request calls for them to reduce to writing individual conversations,

oral instructions, guidelines, or advisories. The County Criminal Court at Law Judges' only obligation under the Federal Rules of Civil Procedure is to produce documents as they are kept in the ordinary course of business. Subject to their objections, the County Criminal Court at Law Judges have produced Article 17 of the Texas Code of Criminal Procedure, the *Roberson* Order, the Local Rules of Court as amended August 12, 2016 (*see, e.g.*, Rule 9, which provides the bail schedule pursuant to *Roberson*), and letters from the County Criminal Court at Law Judges dated August 8, 2016 and November 18, 2016. The County Criminal Court at Law Judges have conducted a good faith search and have produced all documents responsive to this request. The County Criminal Court at Law Judges have not withheld any responsive documents and are not withholding any documents on the basis of privilege.

REQUEST FOR PRODUCTION NO. 6: Provide any documents, information or other evidence supporting your contention that the County Judges or the Hearing Officers consider ability to pay before setting a financial condition of release.

AMENDED RESPONSE: The County Criminal Court at Law Judges produced Article 17 of the Texas Code of Criminal Procedure, the *Roberson* Order, and the Local Rules of Court. Under these three areas of controlling law, the Hearing Officers must consider five factors, including ability to pay, before setting bail. Additionally, the County Criminal Court at Law Judges will produce their August 8, 2016 letter to the Hearing Officers, reiterating that they should follow the five factors in *Roberson*, including considering ability to pay, before setting bail, and their November 18, 2016 letter to all attorneys practicing in the County Courts at Law. The County Criminal Court at Law Judges have produced the Pretrial Services Reports for the named Plaintiffs, see JUDGES 000001-000043 and have provided an exemplar Pretrial Services Form as exhibits to their Motion to Dismiss and Reply.

DATED: January 17, 2018

Respectfully Submitted,

/s/ John E. O'Neill

John. E. O'Neill

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ATTORNEYS FOR THE HARRIS
COUNTY CRIMINAL COURT
AT LAW JUDGES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following counsel via e-mail on January 17, 2018:

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ATTORNEYS FOR PLAINTIFFS

/s/ John E. O'Neill
John E. O'Neill

EXHIBIT

4

October 20, 2017

The Honorable Lee H. Rosenthal
United States Courthouse
515 Rusk Street, Room 11535
Houston, Texas 77002

RE: *ODonnell, et al. v. Harris County, et al.*, Case No. 16-cv-01414

Dear Chief Judge Rosenthal:

Plaintiffs submit this letter in accordance with Court Procedure 4. The parties have conferred in good faith on the issues explained below and are unable to reach an agreement. Plaintiffs respectfully request that the Court hold a hearing to address these issues, and that Plaintiffs be permitted to appear by phone.

I. Confidential designation of material that is not “Confidential Material”

The County has finally begun producing the data Plaintiffs requested in July.¹ The County has designated all of the data produced as “Confidential Material” under the Protective Order. *See*

¹ As the County has begun producing spreadsheets, however, it has become clear that the delay in production was caused in significant part by the Judges’ failure or refusal to share its queries and databases with the County—and not just due to the hurricane.

The supplemental data request that Plaintiffs served in July requested substantially the same data that Plaintiffs requested in October 2016, though the request was broader in important respects. Plaintiffs expected that, to the extent the July 2017 request sought the same data requested in October 2016, the production would look substantially like the spreadsheets produced in response to Plaintiffs’ original requests.

The Judges responded to Plaintiffs’ Request for Production (which was served on all Defendants) within 30 days and stated that the County would be producing all of the data this time. The County represented to Plaintiffs and the Court that it could not timely produce the data because of the hurricane. The Court approved staggered deadlines throughout the middle-to-end of October for the County to produce data. (Plaintiffs have further agreed to a 10-day extension for the County to produce pretrial services interview forms. The County said that it needed the extension because of the difficulty producing the data Plaintiffs requested. And just yesterday, the County cited unspecified “personal and technical issues” that will delay production of the Arnold Public Safety Assessment data from today, as ordered by the Court, until “mid-next week.”)

On September 26—the day before counsel appeared before this Court to address various discovery issues—the County produced some responsive data. Plaintiffs reviewed this data and determined that it was deficient in important ways. Moreover, it is clear from reviewing the data that the County is using different databases and queries than those that the Judges had used to produce the initial spreadsheets relied on by the parties earlier in this case. The County further represented that certain data was unavailable, even though the same data had previously been produced by the Judges. The County’s production suggests that an important reason for the delay in data production has been the Judges’ failure or refusal to share its queries and databases with the County.

The County agreed to supplement its production on or around October 19, and stated that that was the earliest possible date it could produce the rest of the data Plaintiffs requested in July. Having realized that the County has been reinventing the wheel to produce the data Plaintiffs requested, Plaintiffs asked the Judges to simply update the spreadsheet they previously provided. The Judges agreed and have stated that it will take about a week to do so.

Plaintiffs should have received this data from Defendants two months ago.

Doc. 91. Plaintiffs agreed to redact names from spreadsheets, but otherwise object to the designation. Most of the information is publicly available, and, in any event, none of it meets the definition of “Confidential Material” set forth in the Protective Order. Defendants have so far been unable to articulate any good-faith basis for designating the data Confidential. Therefore, Plaintiffs ask that the Court order the Defendants to retract the label.

II. Refusal of Defendants’ counsel to certify document production

In early October, Plaintiffs learned that there may be additional documents, including emails, that are responsive to Plaintiffs’ outstanding discovery request for any “instructions, guidelines, or advisories” from the Judges to the Hearing Officers regarding how to set bail and when to grant personal bonds. Plaintiffs asked the County and the Judges to produce all responsive documents or to provide a sworn statement that none exists, as required by Federal Rule of Civil Procedure 26(g). *See also* Fed. R. Civ. P. 26, adv. comm. notes (“[T]he signature certifies that the lawyer has made a reasonable effort to assure that the client has provided all the information and documents available to him that are responsive to the discovery demanded.”).

To date, Defendants have refused to provide additional responsive documents or a signed statement certifying that reasonable efforts were undertaken and no documents were identified. Plaintiffs have also asked Defendants’ counsel to describe the reasonable efforts that have been pursued so that Plaintiffs can decide whether to challenge them as unreasonable. *Id.* (“Ultimately, what is reasonable is a matter for the court to decide on the totality of the circumstances.”).

Plaintiffs ask that the Court order Defendants to produce all responsive documents and a statement describing the efforts undertaken to identify responsive documents. If no documents exist, Plaintiffs ask the Court to order Defendants to produce a signed statement representing that none exist and describing the efforts taken to identify responsive documents.

III. The County’s failure to amend its response to Interrogatory 14

On September 15, the County agreed to amend its response to Interrogatory 14 to state the date on which arrestees released pursuant to the federal order began receiving text message reminders of their court dates.

On October 18—after numerous inquiries from the Plaintiffs inquiring about the status of the amended response—the County sent stated, in the text of an email, that reminders began “on or about August 5.” The County now refuses to provide that information in a sworn interrogatory response and is demanding that Plaintiffs file another Interrogatory, even though the County represented for a month that it would amend its response formally.

Plaintiffs ask that the Court order the County to provide a verified Interrogatory response that states when the County began providing text message reminders to people affected by the Court’s injunction.

Respectfully submitted,

/s/ Neal S. Manne

/s/ Lexie G. White

/s/ Michael Gervais

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/s/ Rebecca Bernhardt

/s/ Susanne Pringle

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/s/ Alec Karakatsanis

/s/ Elizabeth Rossi

Alec Karakatsanis (D.C. Bar No. 999294)
(Appearing *Pro Hac Vice*)
Elizabeth Rossi²
(Appearing *Pro Hac Vice*)

Civil Rights Corps

² Admitted solely to practice law in Maryland; not admitted in the District of Columbia. Practice is limited pursuant to D.C. App. R. 49(c)(3).

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elizabeth@civilrightscorps.org

Attorneys for Plaintiffs

October 20, 2017

The Honorable Lee H. Rosenthal
United States Courthouse
515 Rusk Street, Room 11535
Houston, Texas 77002

RE: *ODonnell, et al. v. Harris County, et al.*, Case No. 16-cv-01414

Dear Chief Judge Rosenthal:

Plaintiffs submit this letter to supplement Section II of the letter filed previously today.¹

After Plaintiffs filed a pre-motion letter, Judges' counsel served on Plaintiffs a single email exchange from May 17, 2017 in which Defendant Judge Clinton's Court Coordinator instructed the Hearing Officers, on behalf of Judge Clinton, that all "drug cases which are granted a pre trial bond in PC court, [must] be ordered to submit to random drug testing." *See* Exhibit A. Plaintiffs previously received from Judge Jordan an email sent by Kelvin Banks on August 16 to the Judges and other County employees that addresses the requirement for verifying information about people who are granted personal bonds. *See* Exhibit B. These are the only responsive documents Defendants have produced.

However, since filing the letter, Plaintiffs have learned that there have been at least 10 additional group emails—some of which were sent by Peyton Peebles, who is a Staff Attorney for the County Criminal Courts at Law, but most of which were sent by the Judges themselves—which provide instructions, guidelines, or advisories for setting bail and granting personal bonds. None of these has been produced to Plaintiffs.

Plaintiffs also learned this morning that the County deletes its employees' emails every 14 days. If the County Defendants or the Judges are destroying evidence, or failing to preserve evidence, that is troubling in the extreme.

Neither the County Defendants nor the Judges have certified that document production is complete. Nor have they described the efforts their clients undertook to identify responsive documents.

Respectfully submitted,

/s/ Neal S. Manne

¹ Section II addressed Defendants' counsel's failure to certify that Defendants had produced all documents responsive to Plaintiffs' request for instructions, advisories, and guidelines from the Judges about setting bail or granting personal bonds.

/s/ Lexie G. White

/s/ Michael Gervais

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/s/ Rebecca Bernhardt

/s/ Susanne Pringle

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/s/ Alec Karakatsanis

/s/ Elizabeth Rossi

Alec Karakatsanis (D.C. Bar No. 999294)
(Appearing *Pro Hac Vice*)
Elizabeth Rossi²
(Appearing *Pro Hac Vice*)

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Attorneys for Plaintiffs

EXHIBIT

5

From: [Morgan, Philip J](#)
To: [Elizabeth Rossi](#)
Cc: [bruce.powers@cao.hctx.net](#); [Spinks, Melissa \(CAO\)](#); [David, Katharine](#); [Stafford, Mike](#); [Neal S. Manne](#); [Premal Dharja](#); [Lexie White](#); [Michael Gervais](#); [Rebecca Bernhardt](#); [Susanne Pringle](#); [Stephens, Ben](#); [O'Neill, John E.](#); [Falk, Sheryl A.](#); [Green, Rob](#); [Stone, Cori](#); [Murray Fogler](#); [Harris, JR \(CAO\)](#); [Soard, Robert \(CAO\)](#); [Alec Karakatsanis](#); [Allan Van Fleet](#); [Jimenez, Victoria \(CAO\)](#); [Kinsley, Gaylyn](#); [Taylor Biddle](#)
Subject: RE: ODonnell v. Harris County: Pre-motion letter
Date: Friday, October 20, 2017 4:57:01 PM
Attachments: [image001.png](#)

Elizabeth,

1. We agree on point 1. We will produce spreadsheets with the name and SPN column removed, as that is the only way I know how to produce an electronic document that is redacted. We have produced a number of spreadsheets, some of which Plaintiffs have found to be incomplete. To make sure we are on the same page, can you identify the spreadsheets you would like us to reproduce?
2. Agree.
3. We disagree with your interpretation of Rule 26. This rule requires that the discovery responses be signed by an attorney. The 1983 committee note you reference only elucidates what the signature means. Neither the rules nor the committee notes require anything other than an attorney to sign discovery responses. Because this is a petty thing to bother the Court with, without waiving any future objections through having to go through this exercise, we will respond:

Plaintiffs' requests for production Nos. 3 and 4 asked for instructions "given by any of the County Court at Law Judges to any of the Hearing Officers." The Hearing Officers' practice is to print out email instructions from the judges. The Hearing Officers provided us hard copies emails, which we reviewed. We produced any responsive documents in the fall of 2016. As for more recent emails, we have had discussions with the Hearing Officers whether any they have received any additional emails. We have not located any more responsive emails. However, there are a couple of emails at the flooded office that they are retrieving for our review. Based on the description of these emails we don't believe that they are responsive, but will update production if they are. Finally, we understand that Judges are reviewing their electronic archives, so any emails from the judges to the hearings or vice versa regarding bail, which is what was requested, has been searched.

4. We will not agree to produce responsive documents in seven days. We have not even seen the new request, so we have no idea how broad it will be or whether we object to the scope. We will, however, agree to (1) confer within three business days if we believe the scope is overbroad or other issues exist with the request itself and (2) produce responsive documents on a rolling basis as quickly as we can.

Please advise if Plaintiffs intend on moving forward with Tuesday's hearing and, if so, on what issues.

Thanks,

Phil

Phillip J. Morgan

t 713.276.5168 f 713.276.6168

1000 Louisiana Street, Suite 2000, Houston, Texas 77002



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NOTICE BY GARDERE WYNNE SEWELL LLP

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From: Elizabeth Rossi [mailto:elizabeth@civilrightscorps.org]

Sent: Friday, October 20, 2017 3:03 PM

To: Morgan, Philip J

Cc: bruce.powers@cao.hctx.net; Spinks, Melissa (CAO); David, Katharine; Stafford, Mike; Neal S. Manne; Premal Dharia; Lexie White; Michael Gervais; Rebecca Bernhardt; Susanne Pringle; Stephens, Ben; O'Neill, John E.; Falk, Sheryl A.; Green, Rob; Stone, Cori; Murray Fogler; Harris, JR (CAO); Soard, Robert (CAO); Alec Karakatsanis; Allan Van Fleet; Jimenez, Victoria (CAO); Kinsley, Gaylyn; Taylor Biddle

Subject: Re: ODonnell v. Harris County: Pre-motion letter

Phil, Sheryl,

Thank you both for calling. I believe we've resolved everything, but please confirm the following:

1) Plaintiffs will agree to keep Confidential any data/spreadsheets from the County or Judges that include names and SPNs. The County agreed to produce redacted versions of the spreadsheets it has produced. Plaintiffs have asked that the Judges also produce redacted spreadsheets. Plaintiffs and the Judges will work this detail out next week. The spreadsheet will be produced on Monday, or Tuesday at the latest.

2) Rog. 14: As Phil states, Plaintiffs will serve a new/amended Rog on the County Defendants.

3) Outstanding RFPs for info on bail setting / personal bonds: Plaintiffs have now spoken with the County and the Judges about what Plaintiffs believe to be Defendants' deficient responses to the RFPs in dispute.

The Judges stated that, to identify responsive documents, they searched the prior six months of emails for any emails containing any of the following terms: bail, bond, release, conditions, personal, surety, interlock, score, risk. 100,000 emails were generated. That set was then limited to only those emails sent by any of the Judges to any of the Hearing Officers (or multiple HOs), and from any Hearing Officer to any of the Judges (or multiple Judges). That search reduced the set to 40-50 emails. Judges' counsel reviewed all of those emails and concluded that a single exchange from May 2017 was responsive, which was produced this morning.

Plaintiffs ask that the County similarly describe the process used for producing documents responsive to Plaintiffs' prior RFP, as required by Rule 26(g).

4) New RFP: Plaintiffs understand that the County Defendants and the Judges interpreted Plaintiffs' RFPs more narrowly than Plaintiffs intended. Plaintiffs will serve amended or new

RFPs on the County Defendants and the Judges that will specify (to the extent the RFP targets emails) the time period to be searched and the search terms to be used. The Judges agreed to produce responsive documents within 7 business days of a new RFP being filed.

Kate, Phil: Will the County also agree to produce responsive documents within 7 business days of service of a new/amended RFP?

5) The Judges' counsel explained that, although emails are deleted from employees' computers every 14 days, they are retained in archives and searchable in the archives. Plaintiffs appreciate the clarification.

If the County can agree to the unresolved aspects of #3 and #4, I believe we can cancel next week's hearing.

Thanks,
Elizabeth

Elizabeth Rossi
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On Fri, Oct 20, 2017 at 3:06 PM, Morgan, Philip J <pmorgan@gardere.com> wrote:
Elizabeth,

Thanks for speaking with us, I thought we had a very productive call. Here is my understanding of where we left things:

-Harris County is willing to redact/remove names and SPNs and produce data that is not marked confidential. Plaintiffs are going to notify us this afternoon if this is acceptable.

-Plaintiffs are going to serve a new or amended interrogatory regarding the date that text message reminders began for those released on BROR bonds, and Harris County will provide a prompt response (only as long as it takes to get a verification for the interrogatory, which should be no longer than forty-eight hours but will likely be less than twenty four hours).

-Plaintiffs are going to serve amended or new requests for production concerning emails about bail and personal bonds. I think this should moot the current controversy about the efforts undertaken to retrieve responsive documents, but I am not entirely clear on that point.

-Should Plaintiffs want to go forward with a hearing on Tuesday about requiring a certification or verification of the responses to requests for production, Harris County does not oppose moving the hearing to 3 pm or allowing Plaintiffs to appear by phone.

Please let me know if I have misstated anything.

Phil

Phillip J. Morgan

t 713.276.5168 f 713.276.6168

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Unless expressly stated otherwise, nothing contained in this message should be construed as a digital or electronic signature, nor is it intended to reflect an intention to make an agreement by electronic means.

From: Elizabeth Rossi [mailto:elizabeth@civilrightscorps.org]

Sent: Friday, October 20, 2017 12:40 PM

To: lisa_eddins@txs.uscourts.gov

Cc: bruce.powers@cao.hctx.net; Spinks, Melissa (CAO); David, Katharine; Stafford, Mike; Neal S. Manne; Premal Dharia; Lexie White; Michael Gervais; Rebecca Bernhardt; Susanne Pringle; Stephens, Ben; O'Neill, John E.; Falk, Sheryl A.; Green, Rob; Stone, Cori; Murray Fogler; Harris, JR (CAO); Soard, Robert (CAO); Alec Karakatsanis; Allan Van Fleet; Jimenez, Victoria (CAO); Kinsley, Gaylyn; Taylor Biddle; Morgan, Philip J

Subject: Re: ODonnell v. Harris County: Pre-motion letter

Ms. Eddins,

I believe the PDF I sent of the supplemental letter was corrupted. The letter is attached again to this email. My apologies.

Elizabeth

Elizabeth Rossi

Attorney

Civil Rights Corps

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On Fri, Oct 20, 2017 at 1:21 PM, Elizabeth Rossi <elizabeth@civilrightscorps.org> wrote:
Ms. Eddins,

Attached is a supplement to Plaintiffs' previously filed letter.

Sincerely,

Elizabeth

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On Fri, Oct 20, 2017 at 8:54 AM, Elizabeth Rossi <elizabeth@civilrightscorps.org> wrote:
Dear Ms. Eddins,

Plaintiffs are writing to submit the attached pre-motion letter regarding certain discovery issues and to request a hearing at the Court's convenience.

Thank you.

Sincerely,
Elizabeth Rossi

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<http://www.civilrightscorps.org/>

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EXHIBIT

6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

**HARRIS COUNTY, TEXAS, SHERIFF RON HICKMAN, AND THE HEARING
OFFICERS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'
REQUESTS FOR ADMISSION**

TO: Plaintiffs Maranda O'Donnell, Loetha McGruder, and Robert Ford, through their attorneys of record, Neal Manne and Lexie White, Susman Godfrey, 1000 Louisiana Street, Suite 5100, Houston, Texas 77002, Rebecca Bernhart, Susanne Pringle, Texas Fair Defense Project, 314 E. Highland Mall Blvd., Suit 180, Austin, Texas 78752, and Alec Karakatsanis, Elizabeth Rossi, 601 Pennsylvania Ave. NW, South Building, 9th Floor, Washington DC 20004.

Defendants Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers serve the following Objections and Responses to Plaintiffs' First Requests for Admission to County Defendants.

Request for Admission No. 4: The Hearing Officers routinely do not know whether an arrestee has the present ability to satisfy any financial conditions of release.

Answer: This request is vague in that “routinely” is undefined, subjective, and without precise meaning. Likewise, the term “present ability” to satisfy any financial conditions of release is vague because “present ability” is undefined and subject to multiple interpretations. It is unclear whether “present ability” means that the arrestee has the cash on hand to satisfy the condition, generally has the means to acquire sufficient funds, has connections (e.g., family or friends) to acquire the funds, could secure a surety bond, or something else. Because of these ambiguities, the Hearing Officers cannot not admit or deny.

Request for Admission No. 5: The Hearing Officers routinely set financial conditions of release in amounts they know arrestees do not have the present ability to pay.

Answer: This request is vague in that “routinely” is undefined, subjective, and without precise meaning. Likewise, the term “present ability” to pay is vague because “present ability” is undefined and subject to multiple interpretations. It is unclear whether “present ability” means that the arrestee has the cash on hand to satisfy the condition, generally has the means to acquire sufficient funds, has connections (e.g., family or friends) to acquire the funds, could secure a surety bond, or something else. Because of these ambiguities, the Hearing Officers cannot not admit or deny.

Request for Admission No. 6: The County Court at Law Judges provide instructions, either oral or written, to the Hearing Officers about how to set bail.

Answer: Admit.

Request for Admission No. 7: The County Court at Law Judges tell the Hearing Officers which categories of arrestees (e.g., students, first-time offenders, people charged with non-violent offenses, etc. . . .) are eligible for release without secured financial conditions.

Answer: Admit in part; the County Criminal Court at Law Judges have recently amended the Rules of Court to include categories of offenses for which there should be a presumption in favor of a personal bond. This could be construed as an instruction on who is eligible for release without secured financial conditions. However, to the extent that Plaintiffs ascribe a different meaning to the phrase “categories of arrestees,” such as students, the homeless, etc., this term is vague, and, as such, the Hearing Officers cannot admit or deny.

Request for Admission No. 8: The Hearing Officers follow instructions from the County Court at Law Judges to deny personal bonds to certain groups of people, e.g., the homeless or people who recently moved the Houston area.

Answer: Defendants cannot admit or deny because this request is vague in that “categories of arrestees” is undefined and subject to multiple interpretations. In addition, this request fails to specify the categories to which Plaintiffs refer, as Plaintiffs appear to leave the term “categories of arrestees” open-ended.

Request for Admission No. 9: The Hearing Officers do not recommend arrestees for personal bonds on the basis of the arrestees’ inability to satisfy a financial condition of release.

Answer: Deny. An accused’s “inability to satisfy a financial condition of release” is not the sole criterion by which eligibility for a personal bond is determined. Depending on the circumstances of the individual case, it may, however, be a factor.

Request for Admission No. 10: The Hearing Officers’ discretion to recommend arrestees for personal bonds is circumscribed by instructions from the County Court at Law Judges.

Answer: Defendants cannot admit or deny because this request is vague in that “circumscribed” is undefined, subjective, and subject to multiple interpretations.

Request for Admission No. 11: The Hearing Officers’ discretion to impose a higher or lower bail amount than what the bail schedule prescribes is circumscribed by instructions from the County Court at Law Judges.

Answer: Defendants cannot admit or deny because this request is vague in that “circumscribed” is undefined, subjective, and subject to multiple interpretations.

Request for Admission No. 12: It is the Defendants’ contention that, consistent with the Constitution, a judicial officer who sets bail can consider a person’s ability to pay and then set an amount of money without determining whether the person has the present ability to pay it.

Answer: Defendants object in that Plaintiffs have served requests for admissions on three separate Defendants, yet for this request, lump all Defendants together. Plaintiffs failure to separate this request by Defendant renders its unanswerable. Defendants also object to this request as calling for a legal conclusion. Defendants further object that this request is tied to no facts, but, instead, is requesting an admission based on generic, hypothetical facts. For instance, Maranda ODonnell reported a monthly income to pretrial services that indicated she could afford her bond. Defendants also object that the term “present ability to pay” is undefined. It is unclear whether Plaintiffs mean that a person must have cash on hand, the ability to secure money within some period, the ability to qualify for a surety bond, or something else.

EXHIBIT

7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN ODONNELL, et al.

Plaintiffs,

V.

HARRIS COUNTY, TEXAS, et al.

Defendants.

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Case No: 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

**COUNTY CRIMINAL COURT AT LAW JUDGES' OBJECTIONS AND RESPONSES
TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION**

In accordance with Rules 26 and 36 of the Federal Rules of Civil Procedure, the Defendant County Criminal Court at Law Judges, by and through their counsel of record, hereby makes the following objections and responses to Plaintiffs' First Set of Requests for Admission to the County Criminal Court at Law Judges (Nos. 1-23). The County Criminal Court at Law Judges reserve the right to amend or supplement these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

federal *Roberson* Order and the Local Rules of Court, judicial officers who set bail must consider a person's ability to pay, along with four other factors before setting bail. The Hearing Officers may then set bail above or below that amount, based on the totality of the five factors.

REQUEST NO. 7: Admit or deny that the Defendant Judges provide instructions to the Hearing Officers setting out criteria and/or guidelines for granting or denying a personal bond.

RESPONSE: Admitted in part. Denied in part. The County Court at Law Judges are responsible for promulgating and amending the Local Rules of Court, which are largely derived from the Texas Code of Criminal Procedure and *Roberson*. The Local Rules of Court contain information for granting or denying a personal bond at the probable cause, bail, and personal bond proceeding or in the County Criminal Courts at Law. For example, Local Rules of Court, Rule 12 (as amended Aug. 12, 2016), states that twelve common misdemeanors are presumptively appropriate for personal bonds, absent good cause.

REQUEST NO. 8: Admit or deny that the Defendant Judges know that the Hearing Officers do not ask arrestees any questions about their finances or provide them an opportunity to present evidence or argument concerning their ability to pay.

RESPONSE: Denied to the extent that the County Criminal Court at Law Judges know that while the Hearing Officers themselves may not ask questions of the arrestee during the probable cause, bail and personal bond proceeding, Pretrial Services gathers financial information at the request and for the benefit of the Hearing Officers prior to the proceeding. Thus, the Hearing Officers, through Pretrial Services, provide arrestees an opportunity to present evidence about their finances. Admitted to the extent that the County Criminal Court at Law Judges know that the Hearing Officers do not frequently ask questions of the arrestee about his or her finances during the probable cause, bail and personal bond proceeding, but rather they rely on the interviews by Pretrial Services.

EXHIBIT

8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN ODONNELL, et al.

Plaintiffs,

V.

HARRIS COUNTY, TEXAS, et al.

Defendants.

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) Case No: 16-cv-01414
) (Consolidated Class Action)
) The Honorable Lee H. Rosenthal
) U.S. District Judge
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**County Criminal Court at Law Judges' Amended
Objections and Responses to Plaintiff's First Set of Interrogatories**

In accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure, the Defendant County Criminal Court at Law Judges, by and through their counsel of record, hereby make the following objections and responses to Plaintiffs' First Set of Interrogatories to the County Criminal Court at Law Judges (Nos. 1-5). The County Criminal Court at Law Judges reserve the right to amend or supplement these objections and responses to the extent allowed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1: What do the Defendant Judges believe it means to “consider” ability to pay? In addressing this question, answer in particular whether the Defendant Judges intend that, following consideration of ability to pay, the Hearing Officers will set an amount of bail that the defendant can afford.

RESPONSE: The County Criminal Court at Law Judges believe the definition of consideration of ability to pay is governed by three sets of rules: (1) the Texas Code of Criminal Procedure art. 17.15; (2) the *Roberson* Order; and (3) the Local Rules of Court. These rules require the County Criminal Court at Law Judges and the magistrate Hearing Officers to consider ability to pay or make bail, along with four other factors, when setting bail. In Harris County, the ability to pay analysis is facilitated by Pretrial Services, which collects information from each arrestee, including financial information. This information is provided to the magistrate Hearing Officers as well as the County Criminal Court at Law Judges prior to them setting bail. The magistrate Hearing Officers and the Criminal County Court at Law Judges use this financial information to help determine a bail amount and whether a personal bond is appropriate. While the ability to make bail is one factor that is regarded, it is not the only factor nor does it override the four other factors. Under the three sets of controlling rules (Texas Code of Criminal Procedure, *Roberson*, and Local Rules of Court), the magistrate Hearing Officers and the County Criminal Court at Law Judges must also consider: (1) that the bail shall be sufficiently high to give reasonable assurance that the arrestee will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances under which the offense was allegedly committed; (3) the future safety of the victim and community; and (4) the employment history, residency, family affiliations, prior criminal record (convictions only, not arrests), previous court appearance performance, and any

outstanding bonds. Thus, while the ability to pay is one factor that the magistrate Hearing Officers and the County Criminal Court at Law Judges must consider when setting bail, it is not the only factor nor is it dispositive. The County Criminal Court at Law Judges believe that an appropriate bail amount must be set in light of all five factors; not just one. The relative weight to be given to each factor depends on the circumstances of the case and the facts pertinent to each factor. It is possible that the appropriate amount of bail, in light of all five factors and in compliance with the Texas Code of Criminal Procedure, *Roberson*, and the Local Rules of Court, may be one that an arrestee cannot afford. If that is the case, arrestees may raise the issue before the County Criminal Court at Law Judges, who will again consider non-financial alternatives for release.

INTERROGATORY NO. 2: In the last two years, what guidance or instructions have been given to Hearing Officers from the Defendant Judges about setting financial conditions of release? In particular, address any and all instructions, guidance, or advisories the Judges (or any individual judge) have given to the Hearing Officers about when the Hearing Officers are permitted to deviate from the bail schedule.

AMENDED RESPONSE: The County Criminal Court at Law Judges object to this Interrogatory on the basis of judicial privilege to the extent it seeks information related to individual criminal cases. This privilege covers communications amongst judges and between judges and their staff in the performance of their judicial duties as well as the internal operations of the judicial system. *See Matter of Certain Complaints Under Investigation by an Investigating Comm. of Judicial Council of Eleventh Circuit*, 783 F.2d 1488, 1520 (11th Cir. 1986); *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973); *Adams v. Comm. on Judicial Conduct & Disability*, 165 F. Supp. 3d 911, 925 (N.D. Cal. 2016); *Terrazas v. Slagle*, 142 F.R.D. 136, 139-40 (W.D. Tex. 1992). Subject to their objections, the County Criminal Court at Law Judges responded as follows:

Three sources of law provide guidance to the Hearing Officers: (1) the Texas Code of Criminal Procedure art. 17.15; (2) the *Roberson* Order; and (3) the Local Rules of Court. The County Criminal Court at Law Judges sent a letter to the magistrate Hearing Officers on August 8, 2016 forwarding recent amendments to the Local Rules of Court and reminding the Hearing Officers that they have full discretion to set appropriate bail amounts according to the five *Roberson* factors, including ability to pay, and to issue personal bonds in appropriate circumstances. *See* Dkt. 80-4. On November 18, 2016, the County Criminal Court at Law Judges sent a letter to all attorneys practicing in the County Courts at Law, informing of them of additional changes to the pretrial procedures, including requiring the attorneys to raise the issue of bail at an arrestee's initial appearance before a County Criminal Court at Law Judge. The County Criminal Court at Law Judges have not withheld any responsive information and are not currently withholding any information on the basis of privilege.

INTERROGATORY NO. 3: In the last two years, what guidance or instructions have the Defendant Judges given to Hearing Officers about arrestees' eligibility for personal bonds? Address in particular, while providing any and all other responsive information, whether any Judge (and which Judge) told the Hearing Officers that personal bonds may not be given to individuals who are homeless, individuals with certain criminal histories (and what criminal histories barred someone from release on a personal bond), individuals who recently moved to the Houston area, or individuals who had previously been given a personal bond in a different case.

AMENDED RESPONSE: The County Criminal Court at Law Judges object to this Interrogatory on the basis of the judicial privilege to the extent it seeks information related to individual criminal cases. This privilege covers communications amongst judges and between judges and their staff in the performance of their judicial duties as well as the internal operations of the judicial system. *See Matter of Certain Complaints Under Investigation by an Investigating Comm. of Judicial Council of Eleventh Circuit,*

EXHIBIT

9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

**HARRIS COUNTY, TEXAS, SHERIFF RON HICKMAN, AND THE HEARING
OFFICERS' OBJECTIONS AND RESPONSES TO PLAINTIFFS'
INTERROGATORIES**

TO: Plaintiffs Maranda O'Donnell, Loetha McGruder, and Robert Ford, through their attorneys of record, Neal Manne and Lexie White, Susman Godfrey, 1000 Louisiana Street, Suite 5100, Houston, Texas 77002, Rebecca Bernhart, Susanne Pringle, Texas Fair Defense Project, 314 E. Highland Mall Blvd., Suit 180, Austin, Texas 78752, and Alec Karakatsanis, Elizabeth Rossi, 601 Pennsylvania Ave. NW, South Building, 9th Floor, Washington DC 20004.

Defendants Harris County, Texas, Sheriff Ron Hickman, and the Hearing Officers serve the following Objections and Responses to Plaintiffs' First Set of Interrogatories to County Defendants.

Interrogatory No. 3: What percent of misdemeanor arrestees in 2015 were released on personal bonds in Harris County, and how was that number calculated? What percent of misdemeanor arrestees to date in 2016 were released on personal bonds in Harris County, and how was that number calculated?

Answer: Defendants object to this request to the extent that it mischaracterizes the process and leads to a distorted and warped picture of the criminal justice system in Harris County. Those who post bail before appearing before a Hearing Officer are never recommended for a personal bond. Plaintiffs, however, consistently appear to overlook this fact, and, as such, present skewed statistics on the criminal justice system as a whole. It is necessary to consider what percent of those who do not post bail, as opposed all misdemeanor arrestees, are recommended for a personal bond. Moreover, in light of the information provided above regarding the number of personal bonds recommended to those who appear before a Hearing Officer, the actual number of people released on personal bonds is irrelevant.

Interrogatory No. 4: What percent of felony arrestees in 2015 were released on personal bonds in Harris County, and how was that number calculated? What percent of felony arrestees to date in 2016 were released on personal bonds in Harris County, and how was that number calculated?

Answer: Defendants object to this request as seeking information that is irrelevant to is lawsuit. This lawsuit only concerns misdemeanor arrestees. Information regarding felony arrestees is irrelevant, and, not likely to lead to the discovery of admissible evidence.

Interrogatory No. 5: What guidance or instructions have the Defendant Judges provided to the Hearing Officers at any point in the previous two years continuing to the present regarding the bail-setting process? In addition to any and all other responsive information, address whether the Defendant Judges provided instructions or guidance regarding the types of cases in which the Hearing Officers were permitted or prohibited from recommending an arrestee for release without financial conditions. Describe the specific guidance, advisories, or instructions that were given and the time periods that each was in effect.

Answer: Defendants object to this request as duplicative of previous discovery requests, and, therefore, is harassing. Subject to this objection, Defendants produced the relevant documents. The County Court at Law Judges provided a letter that could constitute an instruction, as well as the Rules of Court and various amendments thereto.

Interrogatory No. 6: At any point during the previous two years continuing to the present, did the Defendant Judges give the Hearing Officers guidance or instructions regarding arrestees' eligibility for personal bonds? Describe the specific guidance, advisories, and instructions given, and state the time periods that each was in effect. In addition to providing any and all other responsive information, address in particular whether any Judge, and which Judge(s), told the Hearing Officers that personal bonds may not be given to individuals who are homeless, individuals with certain criminal histories (and what criminal histories barred someone from release on a personal bond), individuals who recently moved to the Houston area, or individuals who had previously been given a personal bond. Explain whether, following the filing of the lawsuit, that guidance has changed, and if so, how it has changed.

Answer: Defendants object to this request as duplicative of previous discovery requests, and, therefore, is harassing. Subject to this objection, other than the two recently sent letters and Rules of Court, the County Criminal Court at Law Judges have not provided any specific instructions. Plaintiffs' insistence that a blanket instruction to not give homeless people personal bonds is also inaccurate. The Hearing Officers, in considering all five factors under 17.15, as well as using common sense, generally find that a homeless person is ineligible for a personal bond in that if such a person lacks a sufficient connection to Houston or lacks a reasonable means of being contacted in the event that they fail to appear in court, judicial experience leads to the reasonable conclusion that such a person is ineligible for a personal bond.

Interrogatory No. 7: How many people died in jail while in pretrial custody in 2015? How many people died in jail while in pretrial custody to date in 2016? How many pretrial detainees were hospitalized for any reason in 2015? How many pretrial detainees were hospitalized for any reason to date in 2016? How many pretrial detainees attempted suicide in 2015? How many pretrial detainees attempted suicide in 2016? How many pretrial detainees committed suicide in 2015? How many pretrial detainees committed suicide to date in 2016?

Answer: Defendants object to this request as overbroad, as it is not limited to misdemeanor detainees. This case is only about misdemeanor cases; felony cases are irrelevant to this lawsuit. Defendants further object to this request as overbroad, unduly burdensome, and seeking irrelevant information, in that the number of people who died in jail, were hospitalized, attempted suicide, or committed suicide is utterly irrelevant to Plaintiffs' claims about how bail is set in Harris County. No relationship exists between the number of people who died in jail and the constitutional issues or factual issues Plaintiffs raised. Defendants further object that the term hospitalized is vague, overbroad, and deliberately misleading. Detainees can be hospitalized for a number of reasons. Plaintiffs' request attempts to give the appearance a causal link exists between being in jail and being hospitalized. Subject to these objections, 16 people died in custody in 2015, and 15 to date in 2016. These statistics do not reflect the difference between pretrial detainees whose highest charge is a misdemeanor or felony, pretrial detainee versus post-conviction detainee, or whether these people were being held for another jurisdiction. However, because this is the only way the statistics are maintained, Defendants are producing a total number.

EXHIBIT

10

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARANDA LYNN ODONNELL, et al.

Plaintiffs,

V.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414

(Consolidated Class Action)

The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE PAULA GOODHART

1. My name is Paula Goodhart. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 1, a position that I have held since March 2010. I also currently serve as the Presiding Judge of all the County Criminal Courts at Law. I was a criminal defense attorney from 2007 to 2010 and practiced in Harris, Fort Bend, Galveston, and Walker Counties. Prior to that time, I was an Assistant District Attorney in Harris County for approximately 14 years.
3. A statutorily mandated 9-judge board appoints the Harris County Criminal Law Hearing Officers, with the consent and approval of the Harris County Commissioners Court, to perform duties that include those listed in Article 15.17 of the Texas Code of Criminal Procedure. Three of the board members are County Criminal Court at Law judges. The others are judges from courts that handle felony cases and Class C misdemeanor cases. Hearing Officers serve one-year terms and continue to serve until a successor is appointed. The Board can recommend the termination of Hearing Officers, however any such recommendation must be approved by Commissioners.
4. I am currently one of the three County Criminal Court at Law representatives on the 9-judge panel mentioned above. The panel recently convened to hire two new Hearing Officers that Commissioners Court approved. The panel does not, however, supervise the Hearing Officers.
5. Consistent with judicial independence, I do not provide any special instructions to any Criminal Law Hearing Officer regarding how to set a bail amount or whether to grant a personal bond. Prior to this lawsuit being filed, I had not heard any concerns that one or more Hearing Officers feared losing their job. I am only aware of one Hearing Officer that has ever been terminated by the panel. Frank Aguilar was terminated about seven years ago during a criminal investigation

2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 1, a position that I have held since March 2010. I also currently serve as the Presiding Judge of all the County Criminal Courts at Law. I was a criminal defense attorney from 2007 to 2010 and practiced in Harris, Fort Bend, Galveston, and Walker Counties. Prior to that time, I was an Assistant District Attorney in Harris County for approximately 14 years.

3. A statutorily mandated 9-judge board appoints the Harris County Criminal Law Hearing Officers, with the consent and approval of the Harris County Commissioners Court, to perform duties that include those listed in Article 15.17 of the Texas Code of Criminal Procedure. Three of the board members are County Criminal Court at Law judges. The others are judges from courts that handle felony cases and Class C misdemeanor cases. Hearing Officers serve one-year terms and continue to serve until a successor is appointed. The Board can recommend the termination of Hearing Officers, however any such recommendation must be approved by Commissioners.

4. I am currently one of the three County Criminal Court at Law representatives on the 9-judge panel mentioned above. The panel recently convened to hire two new Hearing Officers that Commissioners Court approved. The panel does not, however, supervise the Hearing Officers.

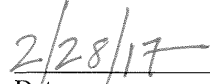
5. Consistent with judicial independence, I do not provide any special instructions to any Criminal Law Hearing Officer regarding how to set a bail amount or whether to grant a personal bond. Prior to this lawsuit being filed, I had not heard any concerns that one or more Hearing Officers feared losing their job. I am only aware of one Hearing Officer that has ever been terminated by the panel. Frank Aguilar was terminated about seven years ago during a criminal investigation

unrelated to his performance as a Hearing Officer. Apart from Frank Aguilar, I am not aware of any previous Hearing Officer ever being replaced except by their own request.

6. On August 8, 2016, the other County Criminal Court at Law Judges and I signed a letter to the Hearing Officers expressing our view that they are independent Texas magistrates for the purpose of setting bail amounts or approving personal bonds in misdemeanor cases.
7. On November 18, 2016, the County Criminal Courts at Law sent a letter to all attorneys appearing in our courts. This letter informed attorneys that the County Criminal Court at Law Judges modified our procedures to require each defendant still in custody after their Article 15.17 proceeding to address bail with the judge at the first appearance, absent a voluntary and affirmative waiver by the defendant. The letter requested the attorneys provide each judge with any additional information relevant to the defendant's bail amount, bail conditions, and suitability for personal bond at the first setting and thereafter, if necessary.
8. On February 9, 2017, the County Criminal Court at Law Judges, sitting *en banc*, amended Local Rules of Court 4.1.1, 4.3, 24.9.1 and 24.9.2 to codify the change of procedures detailed in our November 18, 2016 letter.
9. Newly amended Rule 4.3, replaces the initial arraignment setting replaced with a "bail review hearing" setting for any arrestee booked into the Harris County Jail. This mandatory review hearing shall occur the business day following the booking date, and will occur absent a waiver by the defendant and defense counsel.
10. These bail hearings codified by Rule 4.3 occur daily and routinely in my court.
11. During the automatic bail hearing, if not waived, I review the information provided by Harris County Pretrial Services and the attorneys, both the prosecution and the defense. I then review the bail amount previously set, whether a personal bond is appropriate and conditions of bond. I will modify any of these determinations if good cause is shown under the circumstances. I understand that the power to require bail cannot be used as an instrument of oppression and am aware of the factors listed under Article 17.15 of the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule of Court 4.2.3.1 related to setting bail. These factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I follow these laws and consider all of these factors. I also consider whether an individual is eligible for a personal bond.
12. If an attorney requests a bail hearing subsequent to the automatic bail hearing date, they are given the opportunity to have the matter considered on the same day as the request. Prior to the implementation of the automatic bail hearing, this was the standard practice in Harris County Criminal Court at Law #1.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Paula Goodhart


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE BILL HARMON

1. My name is Bill Harmon. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 2, a position that I have held since January 1, 2007.
3. I do not supervise the Criminal Law Hearing Officers. They are independent magistrates in this regard and follow the same laws that I do when setting bail and determining whether to approve personal bonds.
4. I am aware of my obligations under Texas Code of Criminal Procedure Article 17.15, the *Roberson* Order, and Local Rule 4.2.3.1 to consider five factors when reviewing bail. These factors include (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I'm also aware that the power to require bail cannot be used as an instrument of oppression.
5. Every time a defendant in jail has a court setting, if requested by him or his attorney, I will review the defendant's bail amount, bail conditions and suitability for personal bond. When reviewing bail, I follow the law.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Bill Harmon

3-1-2017
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____)	
MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.)	
	)	Case No. 16-cv-01414
HARRIS COUNTY, TEXAS, et al.	)	(Consolidated Class Action)
	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
_____)	

DECLARATION OF JUDGE NATALIE FLEMING

1. My name is Natalie Fleming. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 3, a position that I have held since March of 2010. Beginning in 1988, I was a prosecutor for five years. I then served as a visiting judge in Harris County throughout the then-15 Harris County Criminal Courts at Law. I also voluntarily serve as one of five S.O.B.E.R. Court Judges.
3. I am one of the three County Criminal Court at Law Judges on the 9-judge board that, with the approval of Commissioners Court, can appoint new Criminal Law Hearing Officers. The board does not supervise the Hearing Officers. It can simply appoint or terminate them with Commissioners Court approval.
4. The Criminal Law Hearing Officers are independent magistrates with the power to set bail amounts and approve personal bonds in misdemeanor cases as they see fit.
5. I am aware of my obligations under the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule 4.2.3.1 to consider all five factors. These factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used as a means to oppress.
6. During bail hearings in my court I follow the law and consider the factors set out in *Roberson*. I also consider whether a personal bond is appropriate, given the circumstances.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Natalie Fleming


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

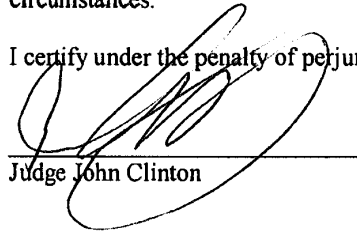
Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE JOHN CLINTON

1. My name is John Clinton. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law Number 4, a position I have held since January 1, 2011. I am a retired Houston police officer, and spent 30 years with the department. I went to law school while still at HPD.
3. The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. In this regard, they are governed by the Code of Criminal Procedure, just as I am.
4. I am aware of my obligations under the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule 4.2.3.1 to consider all five factors when setting bail. These factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature and circumstances of the offense for which probable cause has been found, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used oppressively.
5. During bail hearings held routinely in Court 4, often during the first setting, I follow the law and consider all five of these factors. I also consider whether a personal bond is appropriate, given the circumstances.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge John Clinton

3/1/2017
Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

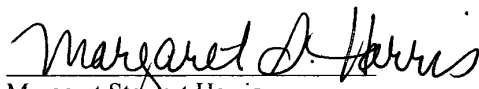
MARANDA LYNN O'DONNELL, et al.)	
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Plaintiffs,)	
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)	Case No. 16-cv-01414
HARRIS COUNTY, TEXAS, et al.)	(Consolidated Class Action)
)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	
)	

DECLARATION OF JUDGE MARGARET STEWART HARRIS

1. My name is Margaret Stewart Harris. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 5, a position that I have held since January 1, 2003.
3. I am a member of the 9-judge board that appoints Harris County Criminal Law Hearing Officers with the approval of Commissioners Court. The board also has the power to terminate Hearing Officers with the approval of Commissioners Court. Neither the board nor I give the Hearing Officers instructions on how to set a bail amount or whether to approve a personal bond in misdemeanor cases.
4. On August 8, 2016, I signed a letter addressed to the Harris County Criminal Law Hearing Officers. This letter informed them of an amendment to Local Rule of Court 12, which stated personal bonds are favored in the County Criminal Courts at Law for twelve common, nonviolent misdemeanor offenses. The letter also reminded the Hearing Officers that they have full judicial discretion to determine bail amounts and grant personal bonds in cases they deemed appropriate, and that they were required to use the factors listed in Texas Code of Criminal Procedure Article 17.15 (reproduced in our Local Rules) and the *Roberson* Order when setting bail and making personal bond determinations.
5. The purpose of the August 8, 2016, letter was to affirm to the Hearing Officers that we, the County Criminal Court Judges, consider the Hearing Officers to be independent judicial magistrates who have their own judicial discretion to set bail and grant personal bonds, and to dispel any notion or allegation to the contrary. We also reminded them of the statutory obligation to consider all five factors required by *Roberson* when determining bail or granting a personal bond.

6. On November 18, 2016, the County Criminal Courts at Law sent a letter to all attorneys appearing in our courts. This letter informed attorneys that the County Criminal Court at Law Judges modified our procedures to require each defendant still in custody after their Article 15.17 proceeding to address bail with the judge at the first appearance, absent a voluntary and affirmative waiver by the defendant. The letter requested the attorneys provide each judge with any additional information relevant to the defendant's bail amount, bail conditions, and suitability for personal bond at the first setting and thereafter, if necessary.
7. These bail hearings occur daily and routinely in my court.
8. On February 9, 2017, the County Criminal Court at Law Judges, sitting *en banc*, amended Local Rule of Court 4.3. The amended Rule 4.3 replaces the initial arraignment setting with "bail review hearing" (encoded as "BLHG") setting for any arrestee that is booked into the Harris County Jail. This rule change codified the change of procedures detailed in our November 18, 2016 letter.
9. At this bail hearing setting, attorneys review the State's file and their client's criminal history. After discussing these with their client, along with other discussion, the defendant and his/her attorney decide whether to have a bail hearing immediately, reset for a hearing at a later time, or waive the hearing completely. Before a hearing will be waived, both the attorney and the client must sign a waiver. During hearings, I accept the defense counsel's proffer of evidence in the event that counsel does not want to present witness testimony or other evidence, review conditions of release, the bail amount previously set, and whether a personal bond is appropriate. I modify any of these determinations if I feel good cause exists to do so under the circumstances. I also consider all five factors listed in Article 17.15 of the Texas Code of Criminal Procedure, recreated in the *Roberson* Order, and Local Rule of Court 4.2.3.1. These factors include (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I welcome defense attorneys to provide any additional relevant information for my consideration at both the initial and subsequent settings. I also consider the bail schedule and non-financial alternatives to bail, including personal bonds, as mandated by *Roberson*.

I certify under the penalty of perjury that the foregoing is true and correct.


Margaret Stewart Harris

3-1-17
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE LARRY STANDLEY

1. My name is Larry Standley. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 6, a position that I have held since January 1, 1999.
3. I do not supervise the Criminal Law Hearing Officers. They are independent magistrates and are governed by Texas statutes when setting bail and deciding whether to approve a personal bond in misdemeanor cases.
4. I am aware of my obligation to consider the *Roberson* factors, Texas Code of Criminal Procedure Article 17.15, and Local Rule of Court 4.2.3.1 when setting bail. The five *Roberson* factors include (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I also know that the power to require bail cannot be used as a tool to oppress someone.
5. During bail hearings held routinely in my court, I follow the law. I also consider whether a personal bond is appropriate, given the circumstances of the case.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Larry Standley

March 1, 2017
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

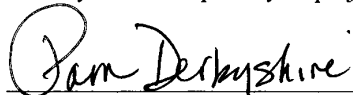
Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE PAM DERBYSHIRE

1. My name is Pam Derbyshire. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 7. I've held this position since January 1, 1999.
3. I do not supervise the Criminal Law Hearing Officers. They are independent magistrates and are governed by Texas statutes when setting bail and deciding whether to approve a personal bond in misdemeanor cases.
4. I am aware of my obligation to consider the five *Roberson* factors, Texas Code of Criminal Procedure Article 17.15, and Local Rule of Court 4.2.3.1. The five *Roberson* factors include (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used in such a manner as to make it an instrument of oppression.
5. I follow the law during bail hearings held in County Criminal Court No. 7. I also consider whether good cause exists to grant a personal bond, given all the circumstances in the case.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Pam Derbyshire

3-1-17
Date

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

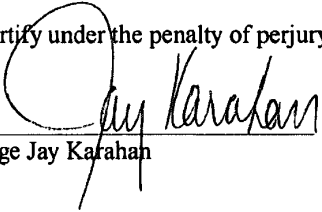
DECLARATION OF JUDGE JAY KARAHAAN

1. My name is Jay Karahan. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 8, a position that I have held since January 1, 2003. Prior to taking the bench I was a state prosecutor, federal prosecutor, and criminal defense attorney. I have been board certified in criminal law (by the Texas Board of Legal Specialization) since 1988.
3. I do not supervise the Harris County Criminal Law Hearing Officers. They are independent Texas magistrates for purposes of setting bail amounts and deciding whether to approve personal bonds in misdemeanor cases. In that regard, they are governed by the Code of Criminal Procedure just as I am.
4. On August 8, 2016, a letter was sent to the Harris County Criminal Law Hearing Officers. This letter informed them of an amendment to Local Rule of Court 12, which stated that the County Criminal Courts at Law judges favored personal bonds for twelve, nonviolent misdemeanor offenses. The letter also reminded the Hearing Officers that they have full judicial discretion to determine bail amounts and grant personal bonds in cases they deemed appropriate, and that Texas Code of Criminal Procedure Article 17.15 and the *Roberson* Order govern the factors to consider when setting bail (also discussed in our Local Rules).
5. On November 18, 2016, the County Criminal Courts at Law sent a letter to all attorneys appearing in our courts. This letter informed attorneys that the County Criminal Court at Law Judges modified our procedures to require each defendant still in custody after their Article 15.17 proceeding to address bail with the judge at the first appearance, absent a voluntary and affirmative waiver by the defendant. The letter asked attorneys to provide each judge with any additional

information relevant to the defendant's bail amount, bail conditions, and suitability for personal bond at the first setting and thereafter, if necessary.

6. Following the November 18th letter, technical staff worked to reprogram the relevant computer systems to accommodate the newly-coded bail hearing setting. The programming was successful and on February 9, 2017, the County Criminal Court at Law Judges, sitting *en banc*, amended Local Rules of Court 4.1.1, 4.3, 24.9.1 and 24.9.2 to codify the procedural change detailed in our November 18, 2016 letter.
7. Newly amended Rule 4.3 authorizes a "bail review hearing" setting for any arrestee booked into the Harris County Jail to occur at their first setting before the judge with dispositive jurisdiction over the case—which is also the judge with authority to appoint counsel for the defendant. This review hearing occurs on the business day following the booking date, regardless of whether the arrestee was released from custody after booking, and occurs unless waived by the defendant and defense counsel.
8. During the bail review hearing, I review conditions of release, the bail amount previously set, and whether a personal bond is appropriate. I will modify any of these determinations if I feel good cause exists to do so under the circumstances.
9. I understand under Article 17.15 of the Texas Code of Civil Procedure, the *Roberson* Order, and Local Rule of Court 4.2.3 set forth factors to consider when setting a bail amount. Those factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used as an instrument of oppression.
10. I follow the law when setting or reviewing bail. I also consider granting personal bonds where appropriate.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Jay Karahan


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.)	
)	
HARRIS COUNTY, TEXAS, et al.	)	Case No. 16-cv-01414
	)	(Consolidated Class Action)
	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	
)	

DECLARATION OF JUDGE ANALIA WILKERSON

1. My name is Analia Wilkerson. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 9, a position that I have held since January 1, 1995. Before that, from 1988 to 1995, I practiced criminal defense law in Harris County.
3. I do not supervise the Harris County Criminal Law Hearing Officers. They set bail amounts and decide whether to approve personal bonds in their own discretion, subject to the Texas Code of Criminal Procedure.
4. I know under the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule 4.2.3.1, I have to consider all five factors when setting bail. These factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature and circumstances of the offense for which probable cause has been found, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am aware that the power to require bail cannot be used as an instrument of oppression.
5. Bail hearings are held routinely in my court, unless waived. In the bail hearings, I follow the law and consider all five of these factors. I also consider whether a personal bond is appropriate, given the circumstances.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Analia Wilkerson

3/01/17

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE DAN SPJUT

1. My name is Dan Spjut. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 10, a position I have held since January 1, 2015.
3. The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. They are governed by the Code of Criminal Procedure just like I am.
4. I am aware of my obligations under the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule 4.2.3.1 to consider certain factors when setting bail. The factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature and circumstances of the offense for which probable cause has been found, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used oppressively.
5. I follow the law during bail hearings held routinely in my court. I also consider whether a personal bond is appropriate, given the circumstances.

I certify under the penalty of perjury that the foregoing is true and correct.

Judge Dan Spjut

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE DIANE BULL

1. My name is Diane Bull. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law Number 11, a position that I have held since January 1, 1995. Prior to taking the bench I was a prosecutor for 5 years and a criminal defense attorney for 5 years.
3. The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. I do not supervise them.
4. I am aware of the bail factors listed in Texas Code of Criminal Procedure Article 17.15, Local Rule of Court 4.2.3.1, and the *Roberson* order. The factors include (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I'm also aware that the power to require bail cannot be used as an instrument of oppression.
5. I routinely hold bail hearings in Court 11 unless they are waived. I follow the law and also consider whether a personal bond is appropriate.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Diane Bull


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

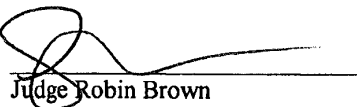
Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE ROBIN BROWN

1. My name is Robin Brown. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 12, a position that I have held since January 1, 1995. I have taught on the topic of DWI specialty courts and evidence based sentencing practices for the Texas Center for the Judiciary, the Texas Association for Drug Court Professionals, and the Texas Association of Counties. I also voluntarily preside over one of the five Harris County DWI S.O.B.E.R. Courts, and have done so since 2008. Prior to my election, I was an assistant district attorney in the Harris County District Attorney's Office trial bureau for eleven years, six of which were as a district court chief. After leaving the District Attorney's Office, I had a very active practice as a criminal defense attorney, giving me invaluable experience from both sides of the bar.
3. I know the factors set forth in *Roberson*, the Texas Code of Criminal Procedure, and the Local Rules of Court very well. I am cognizant of, and adhere to, these sources of law when setting or reviewing bail. The Criminal Law Hearing Officers are independent magistrates for the purpose of setting bail amounts and deciding whether to grant personal bonds in misdemeanor cases. They are governed by the Code of Criminal Procedure just like I am.
4. Unless waived, bail hearings are held routinely in my court. I follow the law and consider all five of the *Roberson* factors. I also consider whether a personal bond is appropriate, given the circumstances of the instant case.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Robin Brown

March 1, 2017
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE DON SMYTH

1. My name is Don Smyth. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law Number 13, a position I have held since November 12, 2010. Prior to taking the bench I was an Assistant District Attorney at the Harris County District Attorney's Office for over 33 years. In that capacity I tried numerous cases at the misdemeanor and felony level and supervised many attorneys in the office's trial and public integrity sections.
3. I am aware of my obligations under the Texas Code of Criminal Procedure, the *Roberson* Order, and Local Rule 4.2.3.1 to consider all five factors when setting bail. These factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used oppressively. The Criminal Law Hearing Officers are independent magistrates in this regard and are controlled by the same laws that I am. I do not supervise them.
4. I routinely consider all of these factors when hearing bail matters in Court 13. I also consider whether a personal bond is appropriate in light of the circumstances of that particular case.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Don Smyth


Date

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Michael Fields

3/1/20

Date

Exhibit 1

From: Nicholas, Ronald (CCL) <Ronald_Nicholas@ccl.hctx.net>
Sent: Monday, February 13, 2017 11:48 AM
To: Villagomez, Blanca (CCL)
Subject: FW: Pre-trial release bonds

From: Fields, Judge Mike (CCL)
Sent: Thursday, February 09, 2017 2:11 PM
To: Villagomez, Blanca (CCL); Nicholas, Ronald (CCL); Hagstette, Eric (CCL); Wallace, Jill (CCL); Licata, Joe (CCL)
Subject: Pre-trial release bonds

Judges,

Thanks for all of the work you do for us. This email is a follow up. I appreciate that you have been working hard to ensure that every defendant who is a sound candidate for pre trial release is granted one in Court fourteen. Please feel free to re-double those efforts and grant pre-trial release as often as possible. One thing I ask is that you review 17.03(c) which reads as follows:

"(c) When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate shall require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial."

Thanks!

Michael R. Fields

Spelling errors provided for free by SpellCheck.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 16-cv-01414
(Consolidated Class Action)
The Honorable Lee H. Rosenthal
U.S. District Judge

DECLARATION OF JUDGE JEAN SPRADLING HUGHES

1. My name is Jean Spradling Hughes. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law No. 15, a position that I have held since November 1, 1995. I have worked in the criminal justice system for over 45 years in courts, corrections, and law enforcement.
3. The Criminal Law Hearing Officers are independent Texas magistrates when setting bail amounts and deciding whether to approve personal bonds in misdemeanor cases. I do not supervise them.
4. I am aware of my obligation to consider the *Roberson* factors, Texas Code of Criminal Procedure Article 17.15, and Local Rule of Court 4.2.3.1 when setting bail. The factors include: (1) bail shall be sufficiently high to give reasonable assurance that the defendant will appear in court; (2) the nature of the offense for which probable cause has been found and the circumstances, including aggravating and mitigating factors; (3) the ability to make bail is to be regarded; (4) the future safety of the victim and community; and (5) the employment history, residency, family affiliations, prior criminal record, previous court appearance performance, and any outstanding bonds. I am also aware that the power to require bail cannot be used as an instrument of oppression.
5. I follow the law during bail hearings held routinely in my court. I also consider whether a personal bond is appropriate, given the totality of circumstances in any given case and defendant.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Jean Spradling Hughes

Date 3/1/2017

JUDGES 000935

EXHIBIT

11

EXHIBIT 53

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE ROBIN BROWN

1. My name is Robin Brown. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 12, a position that I have held since January 1, 1995. I have taught on the topic of DWI Courts for the Texas Center for the Judiciary, the Texas Association for Drug Court Professionals, and the Texas Association for County Judges. I also voluntarily preside over one of the five Harris County DWI Sober Courts, and have done so since 2008. Prior to my election, I was an assistant district attorney with the Harris County District Attorney's Office for 11 years, six of which were as a district court chief. After leaving the District Attorney's Office, I had a very active practice as a criminal defense attorney, giving me invaluable experience from both sides of the bar.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state

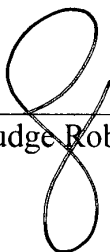
law, nullifies implementation of the Laura and John Arnold Public Safety Assessment (“PSA”) and other reform efforts, and endangers public safety.

5. The district court’s Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can “afford” is self-reported in an unsubstantiated affidavit of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.
6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees

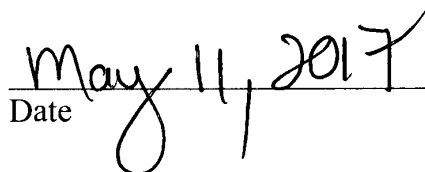
on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.

8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.
9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Robin Brown



Date

EXHIBIT 54

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE NATALIE FLEMING

1. My name is Natalie Fleming. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 3, a position that I have held since March of 2010. Beginning in 1998, I was a prosecutor for five years. I then served as a visiting judge in Harris County throughout the then-15 Harris County Criminal Courts at Law. I also voluntarily serve as one of five Sober Court Judges.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental

incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can “afford” is self-reported in an unsubstantiated affidavit of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.
8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within

24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Natalie Fleming

5/11/17

Date

EXHIBIT 55

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE JEAN SPRADLING HUGHES

1. My name is Jean Spradling Hughes. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 15, a position that I have held since November 1, 1995. I have worked in the criminal justice system for over 45 years in courts, corrections, and law enforcement.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest.

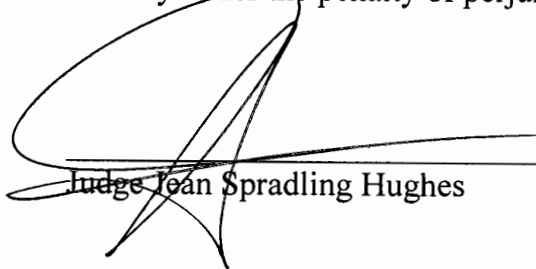
The amount an arrestee can “afford” is self-reported in an unsubstantiated affidavit of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework does not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.
8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This

includes those conditions of release that are statutorily mandated, for example ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.


Judge Jean Spradling Hughes


Date

EXHIBIT 56

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE JAY KARAHAAN

1. My name is Jay Karahan. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 8, a position that I have held since January 1, 2003.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can "afford" is self-reported in an unsubstantiated affidavit

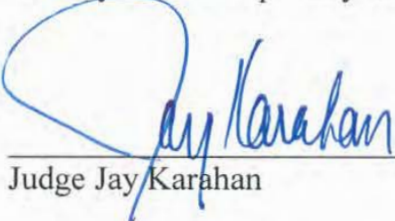
of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.
8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example

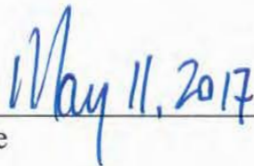
ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Jay Karahan



Date

EXHIBIT 57

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE DON SMYTH

1. My name is Don Smyth. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 13, a position that I have held since January 1, 2011.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can "afford" is self-reported in an unsubstantiated affidavit

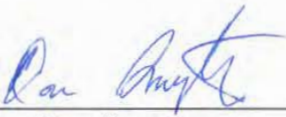
of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.
8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example


ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Don Smyth



Date

EXHIBIT 58

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE DAN SPJUT

1. My name is Dan Spjut. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 10, a position that I have held since January 1, 2015.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can "afford" is self-reported in an unsubstantiated affidavit

of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

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8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example

ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Dan Spjut

5-11-17

Date

EXHIBIT 59

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE LARRY STANDLEY

1. My name is Larry Standley. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 6, a position that I have held since January 1, 1999.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can "afford" is self-reported in an unsubstantiated affidavit

of financial condition that the County has no opportunity to verify or dispute. This requirement misconstrues the Texas Constitution, art. I § 11, which provides that prisoners be bailable by “sufficient sureties,” as well as Texas Code of Criminal Procedure art. 17.15, which mandates that judges and magistrates must consider *five factors* when setting bail, not simply the ability to make bail. The factors ensure that a judge can set bail based on the totality of circumstances in the case, a concept embraced by Texas statutes and an entire body of Eighth Amendment law directed to the specific issue in this case. Texas’s constitutional and statutory framework do not support the Order’s requirement that affordability govern all other factors by imposing a constitutional cap on otherwise reasonable bail amounts.

6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
7. The Order also restricts the County Criminal Court at Law Judges in our rulemaking abilities. Part of our forthcoming July 1, 2017, implementation of the PSA tool includes changing the judges’ bail schedule to withhold bail until magistration before a hearing officer for high-risk arrestees and those charged with certain dangerous offenses—preventing a high-risk arrestee’s release on a cash or surety bond without assessment by a magistrate for bond conditions. The law supports this rule change and it is in keeping with best practices. The Order of Preliminary Injunction, however, requires the sheriff to release high-risk arrestees on a personal bond in the amount of bail set at DA intake, if an arrestee does not appear before a magistrate within 24 hours. The Order therefore does not allow implementation of the existing bail reforms set to occur on July 1st.
8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example

ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

9. The district court's Order also imbues the Sheriff with extra-statutory judicial authority to convert judicial bail orders to unsecured personal bonds and to release arrestees on personal bonds. Although Texas law allows for a peace officer to set bail when a magistrate has not set it (generally reserved to situations where a magistrate is unavailable), and allows a peace officer to take and release an arrestee upon a surety or cash bond, Texas statutes only allow a magistrate to release an arrestee other than through a surety or cash bond through the cite-and-release provisions applying to a limited number of enumerated offenses in article 14.06. This constitutes irreparable harm as it allocates duties the public expects to be performed by elected judges to members of the Sheriff's Office.
10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Larry Standley



Date

EXHIBIT 60

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL, et al.,

Plaintiffs-Appellees,

vs.

HARRIS COUNTY, TEXAS, et al.,

Defendants.

No. 17-20333

DECLARATION OF JUDGE DIANE BULL

1. My name is Diane Bull. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.
2. I am currently the Presiding Judge for Harris County Criminal Court at Law 11, a position that I have held since January 1, 1995.
3. Required implementation of the district court's Order of Preliminary Injunction, will cause irreparable harm to Harris County and its citizens and cause great disruption.
4. I am concerned about the consequences of the district court's Order, particularly that the Order usurps and reallocates judicial discretion and authority, violates state law, nullifies implementation of the Laura and John Arnold Public Safety Assessment ("PSA") and other reform efforts, and endangers public safety.
5. The district court's Order strips the County Criminal Court at Law Judges and the Hearing Officers of our judicial discretion to set bail by requiring that all misdemeanor defendants not subject to formal holds, pending findings of mental incompetency, or charged with certain family-violence misdemeanors, be given a bail they can afford or be released on a personal bond within 24 hours of arrest. The amount an arrestee can "afford" is self-reported in an unsubstantiated affidavit

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6. Perhaps most illustrative of the harmful nature of the district court’s Order is the fact that any arrestee who commits a crime while out on a required personal bond and/or fails to appear for court and/or violates one or more previous bond conditions will, after being arrested again, be released within 24 hours. Although a judge could impose additional and harsher nonfinancial conditions of release, the additional conditions can be violated and the defendant subjected to the same release mechanisms without further consequences or assurances. Whereas the article 17.15 factors allow for a proper bail analysis, the district court’s Order undermines the integrity of the judiciary, impedes efficient court functioning, and endangers the public in immeasurable ways.
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8. Additionally, and even absent the planned reforms discussed above, by requiring that all misdemeanor arrestees who claim they cannot pay bail be released within 24 hours of arrest, the Order severely restricts our ability to impose conditions of release on appropriate defendants before expiration of the allotted time. This includes those conditions of release that are statutorily mandated, for example

ignition interlock devices for DWI 2nd offenders. Indeed, a Texas statute currently allows 48 hours for such a review (24 hours applying only to a probable cause determination, which is non-adversarial and can be done outside the arrestee's presence if necessary). TEXAS CODE CRIM. PRO. 15.17. Without imposition of these conditions, public safety will be placed at risk.

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10. In my opinion, the district court's Order creates a new constitutional right to affordable bail. Such a watershed ruling should undergo appellate review prior to its application.
11. For at least these reasons, requiring implementation of the district court's Order will cause great harm to Harris County and the public.

I certify under the penalty of perjury that the foregoing is true and correct.



Judge Diane Bull

5.11.17

Date

EXHIBIT

12

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	

DECLARATION OF BLANCA VILLAGOMEZ

1. My name is Blanca Villagomez. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.

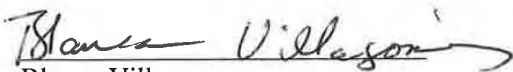
2. I am a Harris County Criminal Law Hearing Officer.

3. In determining eligibility for a personal bond and in setting bail, I consider all the information available to me, including information that Pretrial Services provides and the facts of the alleged offense. Depending on the cooperation of the accused and other facts, the information provided by Pretrial Services may include a risk assessment, personal information about the accused, financial information, and the defendants' criminal history.

4. Specifically, in determining eligibility for a personal bond, I consider applicable Texas law on personal bonds, the Harris County Criminal Court at Law Judges' Rules of Court, which offer some guidance on issuing personal bonds, specific instructions regarding personal bonds from County Criminal Court at Law Judge No. 16 for cases assigned to that court, and information gathered by Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors as discussed above.

5. In setting bail, I regard all the information available to me, including information from Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors, and balance all factors for setting bail as set forth in Article 17.15 of the Texas Code of Criminal Procedure. Using my judicial discretion, I set bail in an amount that I believe will ensure the accused's return to court.

I certify under the penalty of perjury that the foregoing is true and correct.


Blanca Villagomez


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN ODONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

DECLARATION OF ERIC HAGSTETTE

1. My name is Eric Hagstette. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.

2. I am a Harris County Criminal Law Hearing Officer.

3. In determining eligibility for a personal bond and in setting bail, I consider all the information available to me, including information that Pretrial Services provides and the facts of the alleged offense. Depending on the cooperation of the accused and other facts, the information provided by Pretrial Services may include a risk assessment, personal information about the accused, financial information, and the defendants' criminal history.

4. Specifically, in determining eligibility for a personal bond, I consider applicable Texas law on personal bonds, the Harris County Criminal Court at Law Judges' Rules of Court, which offer some guidance on issuing personal bonds, specific instructions regarding personal bonds from County Criminal Court at Law Judge No. 16 for cases assigned to that court, and information gathered by Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors as discussed above.

5. In setting bail, I regard all the information available to me, including information from Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors, and balance all factors for setting bail as set forth in Article 17.15 of the Texas Code of Criminal Procedure. Using my judicial discretion, I set bail in an amount that I believe will ensure the accused's return to court.

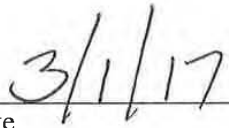
6. I have reviewed three of the four videos identified by Plaintiffs' expert Dr. Steven Demuth in which I participated (the October 7 video was unavailable to me). These select samples are not representative of the day-to-day hearings. These are exceptions to the usual course of hearings. Nevertheless, I have two observations. First, personal bonds are not granted

as a matter of right. Common sense dictates that every person who appears before me wants a personal bond. I examine the information available to me about the accused and make a determination, using my experience and judicial discretion, whether the person is a good candidate for a personal bond. Specifically, as to Mr. Watson, I lowered his bond, evidencing my use of judicial discretion. Second, I do ask those accused to respond with "yes" or "no." Due to the nature of the video link, and, at times, inadequate audio, it can be difficult to hear or understand the accused. Background noise, such as coughing and moving and throat clearing can make a response hard to understand. A clear "yes" or "no" is imperative so that I ensure we are communicating effectively. Furthermore, these are serious proceedings. I believe a level of decorum and respect is necessary and should be expected. I treat every person who appears before me with the utmost respect; I expect the same in return. Moreover, if one person is allowed to disrespect the court, then those watching could possibly believe that they too can do the same, and, in my experience, this often happens. If an accused does not answer with a "yes" or "no," I instruct them to answer in this way. If the accused persists, as a rule, I will then instruct all persons present, including the accused, that I require a "yes" or "no" and I explain why (as set out above). If an accused refuses to follow what I consider to be a reasonable judicial instruction, I believe it may show an unwillingness to abide by other judicial instructions later on.

7. In the situations in which an accused wishes to speak, I am very careful to ascertain whether the accused wishes to ask a question or talk about the case. If it is a question, I will try to answer it. If the accused wishes to talk about the case, I remind the accused that they do not need to do so, and that anything said can be used against the accused that day and later on. I remind the accused that the proceeding is being recorded, that what is said is said without an attorney present for advice, and that the accused is speaking not just to me, but also to the prosecutor. Over and over again, in these situations, I have heard an accused make statements that are incriminatory.

I certify under the penalty of perjury that the foregoing is true and correct.


Eric Hagstette


Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

DECLARATION OF JILL WALLACE

1. My name is Jill Wallace. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.

2. I am a Harris County Criminal Law Hearing Officer.

3. In determining eligibility for a personal bond and in setting bail, I consider all the information available to me, including information that Pretrial Services provides and the facts of the alleged offense. Depending on the cooperation of the accused and other facts, the information provided by Pretrial Services may include a risk assessment, personal information about the accused, and financial information.

4. Specifically, in determining eligibility for a personal bond, I consider applicable Texas law on personal bonds, the Harris County Criminal Court at Law Judges' Rules of Court, which offers some guidance on issuing personal bonds, specific instructions regarding personal bonds from County Criminal Court at Law Judge No. 16 for cases assigned to that court, and information gathered by Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors as discussed above.

5. In setting bail, I regard all the information available to me, including information from Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors, and balance all factors for setting bail as set forth in Article 17.15 of the Texas Code of Criminal Procedure. Using my judicial discretion, I set bail in an amount that I believe will ensure the accused's return to court and takes into consideration the other factors set out in Article 17.15 of the Texas Code of Criminal Procedure.

I certify under the penalty of perjury that the foregoing is true and correct.

Jill Wallace
Jill Wallace

2-26-17
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARANDA LYNN O'DONNELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:16-cv-01414
	)	(Consolidated Class Action)
HARRIS COUNTY, TEXAS, ET AL.,	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	

DECLARATION OF RON NICHOLAS

1. My name is Ron Nicholas. I am over eighteen years of age, have personal knowledge of the facts set forth herein, and am competent to make this declaration.

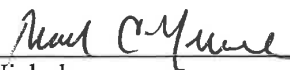
2. I am a Harris County Criminal Law Hearing Officer.

3. In determining eligibility for a personal bond and in setting bail, I consider all the information available to me, including information that Pretrial Services provides and the facts of the alleged offense. Depending on the cooperation of the accused and other facts, the information provided by Pretrial Services may include a risk assessment, personal information about the accused, financial information, and the defendants' criminal history.

4. Specifically, in determining eligibility for a personal bond, I consider applicable Texas law on personal bonds, the Harris County Criminal Court at Law Judges' Rules of Court, which offer some guidance on issuing personal bonds, specific instructions regarding personal bonds from County Criminal Court at Law Judge No. 16 for cases assigned to that court, and information gathered by Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors as discussed above.

5. In setting bail, I regard all the information available to me, including information from Pretrial Services, the completeness of which is dependent on the accused's cooperation and other factors, and balance all factors for setting bail as set forth in Article 17.15 of the Texas Code of Criminal Procedure. Using my judicial discretion, I set bail in an amount that I believe will ensure the accused's return to court.

I certify under the penalty of perjury that the foregoing is true and correct.


Ron Nicholas

03/01/17
Date

EXHIBIT

13

From: [Morgan, Philip J](#)
To: [Michael Gervais; rlgreen@winston.com; Elizabeth.Holt@cao.hctx.net; Bruce.Powers@cao.hctx.net; Melissa.Spinks@cao.hctx.net; David.Katharine; Stafford, Mike; Stephens, Ben; SFalk@winston.com; CStone@winston.com; mfogler@fbfog.com; JR.Harris@cao.hctx.net; Robert.Soard@cao.hctx.net; allanvanfleet@gmail.com; Victoria.Jimenez@cao.hctx.net](#)
Cc: [Neal S. Manne; Lexie White; Alec Karakatsanis; Elizabeth Rossi; Susanne Pringle; Premal Dharja](#)
Subject: RE: O'Donnell et al. v. Harris County et al., 16-CV-01414
Date: Wednesday, January 17, 2018 2:56:38 PM
Attachments: [image001.png](#)

Michael,

The scope of the Commission's inquiry was far broader than the issues in this lawsuit or Plaintiff's discovery requests, including instructions from District Court judges. The only discovery request that comes to mind is request number three in Plaintiff's first set of requests for production. Plaintiffs specifically asked for instructions "in effect at the time the case was filed." While the Commission referenced a letter from a misdemeanor judge, the letter was from 1995. This letter was no longer in effect at the time of the lawsuit, thus, that document is not responsive. We stand by our discovery responses to date.

Please let me know if you have any questions or wish to discuss.

Sincerely,

Phil

Phillip J. Morgan

t 713.276.5168 f 713.276.6168

1000 Louisiana Street, Suite 2000, Houston, Texas 77002-2099



AUSTIN | DALLAS | DENVER | HOUSTON | MEXICO CITY

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NOTICE BY GARDERE WYNNE SEWELL LLP

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From: Michael Gervais [mailto:MGervais@susmangodfrey.com]

Sent: Wednesday, January 17, 2018 1:28 PM

To: rlgreen@winston.com; Elizabeth.Holt@cao.hctx.net; Morgan, Philip J; Bruce.Powers@cao.hctx.net; Melissa.Spinks@cao.hctx.net; David, Katharine; Stafford, Mike; Stephens, Ben; SFalk@winston.com; CStone@winston.com; mfogler@fbfog.com; JR.Harris@cao.hctx.net; Robert.Soard@cao.hctx.net; allanvanfleet@gmail.com; Victoria.Jimenez@cao.hctx.net

Cc: Neal S. Manne; Lexie White; Alec Karakatsanis; Elizabeth Rossi; Susanne Pringle; Premal Dharia

Subject: ODonnell et al. v. Harris County et al., 16-CV-01414

Counsel,

On January 10, 2018, Hearing Officers Hagstette, Licatta III, and Wallace were publicly admonished by the Texas State Commission on Judicial Conduct for failing to comply with the law “by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned.” *See* CJC No. 17-0350-AJ; CJC No. 0351-AJ; CJC No. 17-0352-AJ. The Commission describes and references testimony from the Hearing Officers and describes and references e-mails and documents that are responsive to Plaintiffs’ discovery requests, but that have never been produced to the Plaintiffs.

Please confirm by **12 pm CST tomorrow** whether the Defendants consent to produce by Friday, January 19, all documents, statements, or testimony of any type produced to the Commission, described by the Commission, or referenced by the Commission, whether orally or in writing.

Best,

Michael Gervais
Susman Godfrey LLP
1301 Avenue of the Americas, Floor 32
New York NY 10019
212-729-2015 (Office)
203-887-5632 (Cell)

EXHIBIT

14

From: [Falk, Sheryl A.](#)
To: [Michael Gervais](#); [Green, Rob](#); [Elizabeth.Holt@cao.hctx.net](#); [pmorgan@gardere.com](#); [Bruce.Powers@cao.hctx.net](#); [Melissa.Spinks@cao.hctx.net](#); [kdavid@gardere.com](#); [mstafford@gardere.com](#); [bstephens@gardere.com](#); [Stone, Cori](#); [mfogler@fbfog.com](#); [JR.Harris@cao.hctx.net](#); [Robert.Soard@cao.hctx.net](#); [allanvanfleet@gmail.com](#); [Victoria.Jimenez@cao.hctx.net](#)
Cc: [Neal S. Manne](#); [Lexie White](#); [Alec Karakatsanis](#); [Elizabeth Rossi](#); [Susanne Pringle](#); [Premal Dharia](#)
Subject: RE: ODonnell et al. v. Harris County et al., 16-CV-01414
Date: Wednesday, January 17, 2018 5:31:59 PM

Michael,
Judges 1-13, 15 were not a part of the Texas State Commission on Judicial Conduct's investigation of Hearing Officers Hagstette, Licatta III, and Wallace. The Judges were not asked to furnish any information to the Commission and are not aware of the documents, statements or testimony that were provided to the Commission, described by the Commission, or referenced by the Commission.

Many thanks,
Sheryl

Sheryl A. Falk

Partner

Winston & Strawn LLP

T: +1 713-651-2600

D: +1 713-651-2615

F: +1 713-651-2700

[winston.com](#)



From: Michael Gervais [mailto:MGervais@susmangodfrey.com]
Sent: Wednesday, January 17, 2018 1:28 PM
To: Green, Rob <RLGreen@winston.com>; Elizabeth.Holt@cao.hctx.net; pmorgan@gardere.com; Bruce.Powers@cao.hctx.net; Melissa.Spinks@cao.hctx.net; kdavid@gardere.com; mstafford@gardere.com; bstephens@gardere.com; Falk, Sheryl A. <SFalk@winston.com>; Stone, Cori <CStone@winston.com>; mfogler@fbfog.com; JR.Harris@cao.hctx.net; Robert.Soard@cao.hctx.net; allanvanfleet@gmail.com; Victoria.Jimenez@cao.hctx.net
Cc: Neal S. Manne <NMANNE@SusmanGodfrey.com>; Lexie White <lwhite@susmangodfrey.com>; Alec Karakatsanis <alec@civilrightscorps.org>; Elizabeth Rossi <elizabeth@civilrightscorps.org>; Susanne Pringle <springle@fairdefense.org>; Premal Dharia <premal@civilrightscorps.org>
Subject: ODonnell et al. v. Harris County et al., 16-CV-01414

Counsel,

On January 10, 2018, Hearing Officers Hagstette, Licatta III, and Wallace were publicly admonished by the Texas State Commission on Judicial Conduct for failing to comply with the law "by strictly following directives not to issue personal bonds to defendants per the instructions of the judges in whose court the underlying cases were assigned." See CJC No. 17-0350-AJ; CJC No. 0351-AJ; CJC No. 17-0352-AJ. The Commission describes and references testimony from the Hearing Officers and describes and references e-mails and

documents that are responsive to Plaintiffs' discovery requests, but that have never been produced to the Plaintiffs.

Please confirm by **12 pm CST tomorrow** whether the Defendants consent to produce by Friday, January 19, all documents, statements, or testimony of any type produced to the Commission, described by the Commission, or referenced by the Commission, whether orally or in writing.

Best,

Michael Gervais
Susman Godfrey LLP
1301 Avenue of the Americas, Floor 32
New York NY 10019
212-729-2015 (Office)
203-887-5632 (Cell)

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Exhibit I – Felony Court Docket Schedule

JAIL DOCKET SCHEDULE IN THE CRIMINAL JUSTICE CENTER - GROUP A									
Court	Judge	Courtroom Location	Contact Number	Docket Start Time	Mon	Tues	Wed	Thurs	Fri
176th	Judge Nikita V. Harmon	14-4	832-927-8130	8:30 AM	X	X	X	X	X
177th	Judge Robert Johnson	14-3	832-927-8142	9:30 AM	X	X	X	X	X
178th	Judge Kelli Johnson	14-1	832-927-8124	9:00 AM	X	X	X	X	X
179th	Judge Randy Roll	15-3	832-927-8154	9:00 AM	X	X	X	X	X
183rd	Judge Chuck Silverman	15-2	832-927-8148	9:00 AM	X	X	X	X	
208th	Judge Greg Glass	15-1	832-927-8160	9:00 AM	X	X	X	X	X
209th	Judge Brian Warren	15-4	832-927-8166	9:00 AM	X	X	X	X	X
248th	Judge Hilary Unger	17-2	832-927-8112	9:00 AM	X	X	X	X	X
262nd	Judge Lori Chambers Gray	17-3	832-927-8118	8:30 AM	X	X	X	X	X
263rd	Judge Amy Martin	14-2	832-927-8136	8:30 AM	X	X	X	X	X
351st/ 9999	Judge George Powell*	17-4	832-927-8106	8:30 AM		X	X	X	X
RIC/9996	Judge Brock Thomas (JAIL)	20-1	832-927-4300	9:00 AM	X	X	X	X	X
RIC/9996	Judge Brock Thomas (BOND)	20-1	832-927-4300	10:00 AM	X	X	X	X	X
9997	FMHC	20-1	832-927-4350	3:00 PM	X			X	
9997	Competency Restoration/NGRI	20-2	832-927-4350	9:00 AM		X			X
9999	STAR Court	20-2	832-927-4320	2:00 PM	X	X	X	X	
IA/9998	Felony Impact Docket #1	16-4	832-927-8180	9:00 AM	X	X	X	X	X
IB/9994	Felony Impact Docket #2	16-3	832-927-8174	9:00 AM	X	X	X	X	X
IA/9998	Capital Impact Docket	16-1	832-927-8142	9:00 AM	X	X	X	X	X

*Veteran's Court meets on the 1st and 3rd Wednesday of each month and follows Judge George Powell's location assignment for that week

2020 Criminal District Court Master Calendar Plan: Group A

Highlighted weeks are jail docket weeks. Non-highlighted weeks are bond docket weeks.

January						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

March						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Group A: 176th, 177th, 178th, 179th, 183rd, 208th, 209th, 248th, 262nd, 263rd, 351st.

Group A and Group B alternate weeks in the Criminal Justice Center for jail dockets and in the Civil Justice Center and Juvenile Justice Center for Bond Dockets. RIC Docket/Specialty Courts bond and jail dockets are consolidated and held in the Criminal Justice Center each week.

Dates highlighted in red are County Holidays.

Eff. 02.10.20

JAIL DOCKET SCHEDULE IN THE CRIMINAL JUSTICE CENTER - GROUP B

Court	Judge	Courtroom Location	Contact Number	Docket Start Time	Mon	Tues	Wed	Thurs	Fri
174th	Judge Hazel B. Jones	17-2	832-927-8112	9:00 AM	X	X	X	X	X
180th	Judge DaSean Jones	15-1	832-927-8160	9:00 AM	x	X	X	X	X
182nd	Judge Danilo Lacayo	17-4	832-927-8106	8:30 AM	X	X	X	X	X
184th	Judge Abigail Anastasio	14-2	832-927-8136	8:30 AM	X	X	X	X	X
185th	Judge Jason Luong	14-1	832-927-8124	8:30 AM	X	X	X	X	X
228th	Judge Frank Aguilar	15-3	832-927-8136	8:30 AM	X	X	X	X	X
230th	Judge Chris Morton	14-3	832-927-8142	9:00 AM	X	X	X	X	X
232nd	Judge Josh Hill	14-4	832-927-8130	9:00 AM	X	X	X	X	X
337th	Judge Herb Ritchie	15-2	832-927-8148	9:00 AM	X	X	X	X	X
338th	Judge Ramona Franklin	17-3	832-927-8118	9:00 AM	X	X	X	X	X
339th	Judge Jesse F. McClure III	15-4	832-927-8166	9:00 AM	X	X	X	X	X
RIC/9996	Judge Brock Thomas (JAIL)	20-1	832-927-4300	9:00 AM	X	X	X	X	X
RIC/9996	Judge Brock Thomas (BOND)	20-1	832-927-4300	10:00 AM	X	X	X	X	X
9997	FMHC	20-1	832-927-4350	3:00 PM	X			X	
CR/9997	Competency Restoration/NGRI	20-2	832-927-4350	9:00 AM		X			X
9999	STAR Court	20-2	832-927-4320	2:00 PM	X	X	X	X	
IA/9998	Felony Impact Docket #1	16-4	832-927-8180	9:00 AM	X	X	X	X	X
IB/9994	Felony Impact Docket #2	16-3	832-927-8174	9:00 AM	X	X	X	X	X
IA/9998	Capital Impact Docket	16-1	832-927-8142	9:00 AM	X	X	X	X	X

2020**Criminal District Court Master Calendar Plan: Group B**

Highlighted weeks are jail docket weeks. Non-highlighted weeks are bond docket weeks.

January

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

March

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Group B: 174th, 180th, 182nd, 184th, 185th, 228th, 230th, 232nd, 337th, 338th, 339th.**Group A and Group B alternate weeks in the Criminal Justice Center for jail dockets and in the Civil Justice Center and Juvenile Justice Center for Bond Dockets. RIC Docket/Specialty Courts bond and jail dockets are consolidated and held in the Criminal Justice Center each week.****Exceptions are highlighted and noted in the Docket Schedule. Dates highlighted in red are County Holidays.**

Exhibit J – Court Operations Emergency Order

Revised Order

Effective Tuesday March 24, 2020, the Office of the County Engineer orders the following regulations that are necessary for public health, safety and welfare. Harris County will continue to monitor the compliance and effectiveness of these regulations and consider whether court operations must be further reduced to minimize the threat to public safety from COVID-19.

All Courts:

- To reduce unnecessary risk to the public, in-person gatherings will only be permitted when necessary to accomplish essential court functions.
- All courts operating within county buildings are required to limit all gatherings to a maximum of ten people with the exception of grand juries and mandated Chapter 81 jury trials, mental health trials or as determined constitutionally necessary by a Judge.
- The maximum occupancy of all courtrooms is limited to ten people with the exception of grand juries and mandated Chapter 81 jury trials, mental health trials or as determined constitutionally necessary by a Judge.
- The maximum occupancy of all other spaces is limited to that which can ensure the comfortable social distancing of at least six feet between all persons, and at no time more than ten people.
- All courts will enforce procedures to ensure the comfortable social distancing of at least six feet between all persons at all times.

Elevators:

- The maximum occupancy of all elevators is limited to no more than one person or one pre-existing family or social unit, unless posted to greater capacity.

Harris County Criminal Courts at Law:

- No more than four County Criminal Courtrooms are permitted to operate on any given day within the Criminal Justice Center.
- Courtroom Locations in CJC on the 8th and 9th Floor: CCCL #1, CCCL #3, CCCL#5, & CCCL#6.

Harris County Criminal District Courts:

- No more than eight District Courtrooms will be permitted to operate on any given day within the Criminal Justice Center (CJC) and one District Courtroom in the Civil Courthouse.
- Courtroom Locations in CJC on the 14th and 15th Floor: 14-1, 14-2, 14-3, & 14-4; 15-1, 15-2, 15-3, & 15-4.
- Courtroom Location in the Civil Courthouse, 11th Floor: 157th District Court.

Revised Order

Harris County Civil District Courts:

- No more than six District Courtrooms will be permitted to operate on any given day within the Harris County Civil Courthouse.
- Courtroom locations in the Civil Courthouse: 80th District Court - 9th Floor, 129th District Court -- 10th Floor, 152nd District Court --11th Floor, 165th District Court --12th Floor, 215th District Court --13th Floor, & 333rd District Court --14th Floor.

Harris County Family District Courts

- No more than three Family Courtrooms will be permitted to operate on any given day within the Harris County Civil Courthouse
- Courtroom Locations in the Civil Courthouse: 310th District Court - 15th Floor & 312th District Court -- 16th Floor.
- Courtroom location in the Juvenile Justice Center: 280th District Court --7th Floor

Harris County Probate Courts

- No more than four Probate Courtrooms will be permitted to operate on any given day within the Harris County Civil Courthouse.

Harris County Civil Courts at Law:

- No more than one Civil Court at Law Courtroom will be permitted to operate on any given day within the Harris County Civil Courthouse.
- Courtroom Location in the Civil Courthouse: County Civil Court at Law 2 - 5th Floor.

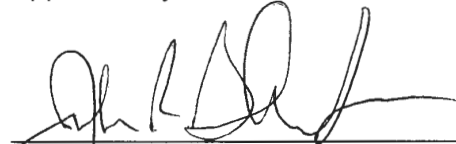
Harris County Juvenile Courts:

- No more than one Juvenile Courtroom will be permitted to operate on any given day within the Juvenile Justice Center in the 314th District Court, 5th floor.
- No more than one Detention Hearing Courtroom will be permitted to operate on any given day within the Juvenile Justice Center on the 1st floor.
- No more than one public viewing area by video will be permitted to operate on any given day within the Juvenile Justice Center at the Juvenile Probation Training Room on the 1st Floor.

Harris County Family Law Center

- All IV-D matters will conducted via virtual courtroom.

Approved By:



John R. Blount, PE
County Engineer

Exhibit K – Harris County Felony Pretrial Detention Reports

HARRIS COUNTY FELONY PRETRIAL DETENTION REPORT

BROUGHT TO YOU BY THE TEXAS CRIMINAL JUSTICE COALITION AND THE TEXAS ORGANIZING PROJECT

EVERY NIGHT THOUSANDS OF PEOPLE ARE LOCKED IN A CAGE AT THE HARRIS COUNTY JAIL BECAUSE THEY CAN'T AFFORD MONEY BAIL, EVEN THOUGH IT IS ILLEGAL TO JAIL PEOPLE SOLELY BECAUSE THEY ARE POOR. THIS REPORT USES JAIL POPULATION DATA PROVIDED BY HARRIS COUNTY TO COMPARE THE PRETRIAL DETENTION NUMBERS OF HARRIS COUNTY'S FELONY JUDGES.

DISTRICT COURTS BY HIGHEST PRETRIAL DETENTION POPULATION

DECEMBER 29, 2019 - JANUARY 4, 2020

#1: JUDGE GEORGE POWELL	#2: JUDGE RAMONA FRANKLIN	#3: JUDGE JESSE MCCLURE
 <p>258 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p> <p>Judge George Powell</p>	 <p>255 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p>	 <p>250 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p>
351ST DISTRICT COURT	338TH DISTRICT COURT	339TH DISTRICT COURT

<u>RANK</u>	<u>COURT</u>	<u>JUDGE</u>	<u>DAILY AVERAGE NUMBER OF PEOPLE DETAINED PRETRIAL</u>
4.	174TH	HAZEL JONES	249
5.	185TH	JASON LUONG	234
6.	337TH	HERB RITCHIE	222
7.	183RD	CHUCK SILVERMAN	215
8.	184TH	ABIGAIL ANASTASIO	215
9.	179TH	RANDY ROLL	213
10.	262ND	LORI CHAMBERS GRAY	207
11.	263RD	AMY MARTIN	205
12.	208TH	GREG GLASS	198
13.	176TH	NIKITA HARMON	195
14.	182ND	DANILO LACAYO	195
15.	230TH	CHRIS MORTON	192
16.	232ND	JOSH HILL	188
17.	248TH	HILLARY UNGER	185
18.	178TH	KELLI JOHNSON	182
19.	177TH	ROBERT JOHNSON	178
20.	209TH	BRIAN WARREN	163
21.	228TH	FRANK AGUILAR	154
22.	180TH	DASEAN JONES	148

Harris County taxpayers spent over **\$2.3 MILLION DOLLARS** on illegal pretrial detention this week. That's close to twice the \$1.3 million Harris County taxpayers spend every week on public health services, the public library, and pollution control **COMBINED.**

HARRIS COUNTY FELONY PRETRIAL DETENTION REPORT

BROUGHT TO YOU BY THE TEXAS CRIMINAL JUSTICE COALITION AND THE TEXAS ORGANIZING PROJECT

ON AN AVERAGE NIGHT LAST WEEK, **4,470** PEOPLE WERE LOCKED IN A CAGE AT THE HARRIS COUNTY JAIL BECAUSE THEY COULDN'T AFFORD MONEY BAIL, EVEN THOUGH IT IS ILLEGAL TO JAIL PEOPLE SOLELY BECAUSE THEY ARE POOR. THIS REPORT USES JAIL POPULATION DATA PROVIDED BY HARRIS COUNTY TO COMPARE THE PRETRIAL DETENTION NUMBERS OF HARRIS COUNTY'S FELONY JUDGES.

DISTRICT COURTS BY HIGHEST PRETRIAL DETENTION POPULATION

FEBRUARY 9, 2020 - FEBRUARY 15 2020

#1: JUDGE GEORGE POWELL	#2: JUDGE HAZEL JONES	#3: JUDGE JESSE MCCLURE
 <p>261 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p> <p>Judge George Powell</p>	 <p>252 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p>	 <p>245 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p>
351ST DISTRICT COURT	174TH DISTRICT COURT	339TH DISTRICT COURT

<u>RANK</u>	<u>COURT</u>	<u>JUDGE</u>	<u>DAILY AVERAGE NUMBER OF PEOPLE DETAINED PRETRIAL</u>
4.	338TH	RAMONA FRANKLIN	241
5.	185TH	JASON LUONG	240
6.	183RD	CHUCK SILVERMAN	238
7.	182ND	DANILO LACAYO	220
8.	337TH	HERB RITCHIE	217
9.	179TH	RANDY ROLL	212
10.	262ND	LORI CHAMBERS GRAY	208
11.	176TH	NIKITA HARMON	205
12.	208TH	GREG GLASS	203
13.	263RD	AMY MARTIN	201
14.	230TH	CHRIS MORTON	186
15.	248TH	HILLARY UNGER	186
16.	232ND	JOSH HILL	179
17.	177TH	ROBERT JOHNSON	175
18.	178TH	KELLI JOHNSON	173
19.	184TH	ABIGAIL ANASTASIO	169
20.	209TH	BRIAN WARREN	162
21.	228TH	FRANK AGUILAR	152
22.	180TH	DASEAN JONES	145

Harris County taxpayers spent over **\$2.3 MILLION** on illegal pretrial detention this week. That's close to twice the \$1.3 million Harris County taxpayers spend every week on public health services, the public library, and pollution control **COMBINED**.

HARRIS COUNTY FELONY PRETRIAL DETENTION REPORT

BROUGHT TO YOU BY THE TEXAS CRIMINAL JUSTICE COALITION AND THE TEXAS ORGANIZING PROJECT

ON AN AVERAGE NIGHT LAST WEEK, **4,391** PEOPLE WERE LOCKED IN A CAGE AT THE HARRIS COUNTY JAIL BECAUSE THEY COULDN'T AFFORD MONEY BAIL, EVEN THOUGH IT IS ILLEGAL TO JAIL PEOPLE SOLELY BECAUSE THEY ARE POOR. THIS REPORT USES JAIL POPULATION DATA PROVIDED BY HARRIS COUNTY TO COMPARE THE PRETRIAL DETENTION NUMBERS OF HARRIS COUNTY'S FELONY JUDGES.

DISTRICT COURTS BY HIGHEST PRETRIAL DETENTION POPULATION

MARCH 8, 2020 - MARCH 14, 2020

#1: JUDGE GEORGE POWELL	#2: JUDGE JASON LUONG	#3: JUDGE HAZEL JONES
 <p>256 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p> <p>Judge George Powell</p> <p>351ST DISTRICT COURT</p>	 <p>247 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p> <p>185TH DISTRICT COURT</p>	 <p>246 PEOPLE DETAINED PER NIGHT BASED ON INABILITY TO PAY</p> <p>174TH DISTRICT COURT</p>

RANK	COURT	JUDGE	DAILY AVERAGE NUMBER OF PEOPLE DETAINED PRETRIAL
4.	183RD	CHUCK SILVERMAN	242
5.	338TH	RAMONA FRANKLIN	222
6.	339TH	JESSE MCCLURE	222
7.	179TH	RANDY ROLL	218
8.	182ND	DANILO LACAYO	215
9.	208TH	GREG GLASS	212
10.	337TH	HERB RITCHIE	212
11.	262ND	LORI CHAMBERS GRAY	209
12.	263RD	AMY MARTIN	200
13.	178TH	KELLI JOHNSON	192
14.	176TH	NIKITA HARMON	190
15.	248TH	HILARY UNGER	180
16.	230TH	CHRIS MORTON	172
17.	177TH	ROBERT JOHNSON	167
18.	232ND	JOSH HILL	166
19.	209TH	BRIAN WARREN	161
20.	184TH	ABIGAIL ANASTASIO	158
21.	180TH	DASEAN JONES	156
22.	228TH	FRANK AGUILAR	148

Harris County taxpayers spent over **\$2.3 MILLION** on illegal pretrial detention this week. That's close to twice the \$1.3 million Harris County taxpayers spend every week on public health services, the public library, and pollution control **COMBINED**.

*THE COUNTY DID NOT PROVIDE DATA FOR MARCH 12, 2020. CALCULATIONS INVOLVING THE AMOUNT OF MONEY SPENT ON PRETRIAL DETENTION INCLUDE PROJECTED COSTS FOR MARCH 12.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

RUSSELL, et al.)	
)	
Plaintiffs,)	
)	
v.	)	Case No. 4:19-cv-00226
	)	(Class Action)
HARRIS COUNTY, TEXAS, et al.	)	The Honorable Lee H. Rosenthal
	)	U.S. District Judge
Defendants.)	
)	

PROPOSED ORDER

Defendants do not contest the factual allegations in Plaintiffs’ Motion, that Plaintiffs are likely to succeed on the merits of their constitutional arguments, that relief is in the public interest, or that Plaintiffs are facing ongoing irreparable harm, including a heightened risk of serious illness or death if there is a widespread outbreak of Covid-19 in the Harris County Jail. Accordingly, the Court finds and concludes that there is “(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.” *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011); *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009). Because all four factors weigh in Plaintiffs’ favor, the Court grants the temporary emergency relief sought.

The Parties are hereby ORDERED to confer and submit either an agreed proposed temporary restraining order or, if not agreed, a redlined version showing the disputed provisions, no later than 24 hours from the entry of this Order. Any agreed proposed temporary order must prohibit Defendants from enforcing conditions of pretrial release that result in pretrial detention of any person arrested for a felony offense who is in Harris County custody 48 hours after arrest

unless a constitutionally adequate bail proceeding has been conducted for that person. A constitutional bail proceeding, absent knowing, intelligent and voluntary waiver, consists of the following substantive and procedural safeguards:

- Notice of the critical issues relevant to the decision;
- An inquiry into ability to pay if a financial condition is contemplated;
- An adversarial hearing at which the arrestee is represented by counsel and has an opportunity to be heard, to present evidence, and to confront evidence offered by the government;
- Meaningful consideration of less restrictive alternatives to pretrial detention; and,
- If the decision-maker issues a transparent or de facto order of detention, findings on the record by clear and convincing evidence that detention is necessary because no other alternatives short of detention are sufficient to reasonably serve the government's interest in either court appearance or public safety, and a statement of reasons explaining the decision and the evidence relied on.

Ordered this ____ day of _____, 2020.

Hon. Lee H. Rosenthal District Judge