

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

---

RUSSELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Case No. 4:19-cv-00226  
(Class Action)  
The Honorable Lee H. Rosenthal  
U.S. District Judge

**PLAINTIFFS' RESPONSE TO THE COURT'S QUESTIONS**

On Friday, April 3, the Court instructed all parties to respond to three questions by 9 a.m. on Monday, April 6. Plaintiffs' responses are set forth below, after this general status update.

The Sheriff is no longer processing for release from the jail anyone who was ordered released pursuant to County Judge Lina Hidalgo's April 1 emergency evacuation order. Ex. A (Hidalgo Order). Administrative Judge Ritchie ordered the Sheriff to disregard the Hidalgo order and threatened to hold the Sheriff in contempt if the Sheriff continued releasing individuals pursuant to Judge Hidalgo's order, *i.e.* those with no "violent" charge or criminal history who could not pay their secured bond. Ex. B (Ritchie April 3 Order). As a result, the multi-stakeholder process that was underway at the time the Parties appeared before this Court on Friday, April 3, has been completely shut down since that hearing ended.<sup>1</sup>

The need for relief from this Court is even more urgent than it was when Plaintiffs filed their motion for Temporary Restraining Order on March 27, ten days ago. The Parties continue to

---

<sup>1</sup> In any event, only a few hundred people likely would have been released pursuant to Judge Hidalgo's order because of the limitations placed by the Governor's Executive Order, leaving many people detained in violation of their equal protection and due process rights and in grave danger.

work toward an agreed proposed order and will advise the Court prior to the hearing scheduled for tomorrow if the Parties are able to reach agreement.

### **The Court's Questions**

#### **1. Are the usual releases proceeding, including those that factor in the risks of continued detention as well as of release?**

It is unclear what the Court means by “usual releases.” People detained in the jail pretrial are being released via the following procedures.

First, the Sheriff is preparing to release people on personal bonds who fall within the offense categories set forth in Judge Ritchie’s April 2 First Amended General Order Bond for Certain Offenses. Ex. C (Ritchie April 2 General Order). In an email on April 5, the Sheriff explained that a list of 60 people detained in the jail who are currently charged with one of the listed offenses had been generated. That list of people will be reviewed by the District Attorney’s Office (“DAO”) to determine how many of them has a potentially disqualifying criminal history consistent with the Executive Order. There is no timeline for the DAO to complete its review of the people on that list, or for people eligible for release to be released. As reported to the Court on April 3, when previous lists have been generated, such as the list of those detained in the jail on “nonviolent” charges (which was generated in response to Judge Hidalgo’s April 1 emergency order), the DAO has objected to about 7 of every 8 people. If that ratio holds true, then only about eight (8) people would be released pursuant to Judge Ritchie’s April 2 General order.

Second, people who are detained in the jail could seek release in their individual cases. However, the Governor’s Executive Order and Judge Susan Brown’s email interpreting the Order, Ex. D (Brown email), purport to deny judges the authority to order, and the Sheriff the authority to enforce, personal bonds for people arrested for, or previously convicted of, “violent” offenses,

a term which is not defined in the Governor’s Order.<sup>2</sup> Thus, any member of the Plaintiff class who cannot afford to pay secured money bail and who the Governor has prohibited from release on a personal bond will be kept in jail no matter what individualized judicial proceedings are held.<sup>3</sup> Moreover, as explained in Plaintiffs’ complaint and in Plaintiffs’ subsequent TRO request, any Plaintiff class member who is *not* categorically barred from release by the Governor’s order, and who seeks release, will nevertheless be required to wait, typically, at least two to four weeks before they could be afforded an adversarial bail hearing under scheduling practices that have prevailed since Hurricane Harvey in 2017. Ex. E (Declaration of Chief Public Defender Alex Bunin) ¶¶ 2–7; Dkt. 32-4 ¶¶ 48–59. Even then, the hearings are not constitutionally adequate because they do

---

<sup>2</sup> On March 30, 2020 at 6:04 p.m., Judge Susan Brown, the regional presiding administrative judge and formerly a Harris County Criminal District Court Judge, sent an email to Judge Herb Ritchie, as well as staff attorneys who support the Harris County judges and other judges in her administrative district, explaining the Executive Order. She asked the recipients of the email to “forward [the email] to all of your judges handling criminal cases as soon as possible.” Ex. D. Judge Brown explained that the Executive Order prohibits release on personal bonds for people charged with, or previously convicted of, “violent” offenses, except in cases involving “a health or medical reason after a hearing with notice to the DA.” *Id.* The email states:

We have been advised that the executive order suspends 17.03 and orders that no authority, **including judges**, may release a person who has a previous conviction for a crime involving physical violence or the threat of physical violence or is charged with a crime involving physical violence or the threat of physical violence on a PR bond. That said, the judge may grant a PR bond if the court finds on an individualized basis a health or medical reason after a hearing with notice to the DA. This would preclude a blanket order for release which many counties use on a regular basis. Please be mindful that the order does not allow magistrates, j[ustices of the] p[ea]ce[], county judges or anyone else to make this determination.

*Id.* (emphasis in the original).

<sup>3</sup> The Attorney General filed the Executive Order in this case on Sunday, March 29. *See* Dkt. 39. Nevertheless, five days later, the Attorney General was unable to tell this Court whether that order purports to suspend the judicial authority of judges to issue personal bonds after individualized consideration and, if so, under what circumstances. The Court asked the Attorney General to clarify the intended effect of the Order on judicial officers’ authority to release certain categories of people on unsecured bond after arrest.

In response to that directive, the Attorney General filed an “Advisory” on Friday afternoon, which did not explicitly answer the most important question posed by the Court, though it appears to confirm Plaintiffs’ and Judge Brown’s interpretation of the order as categorically prohibiting the release of people who cannot afford to pay secured money bail on the basis of their charge and/or criminal history. *See* Dkt. 61. The first paragraph of the Advisory states that the Executive Order permits judges to conduct “individualized assessments” for all arrestees, but does not mention judges’ authority to release people on personal bonds after such individualized assessment. That, of course, was the question that needed to be clarified. The second and third paragraphs state that a judge can release “any arrestee” on “secured bail,” and that judges can grant “personal recognizance bonds” to any arrestee “for health or medical reasons” following notice to the District Attorney and opportunity for the prosecutor to be heard. Plaintiffs would welcome further clarification from the Attorney General on this question.

not result in the findings, or consist of the safeguards, required for a valid order of pretrial detention. Dkt. 32-4 ¶¶ 48–59

**2. Does Judge Ritchie’s Order change what we were told during the telephone hearing earlier today, April 3, 2020, about individualized judicial determinations on release conditions, including the timeline for decisions by those judicial officers who have authority to set bond conditions and order release on financial or nonfinancial conditions?**

Judge Ritchie’s April 3 order changes most of what the Court was told on Friday. After Judge Ritchie’s threat to hold the Sheriff in contempt if he continued to release medically vulnerable and nonviolent detainees, the Sheriff stopped all releases pursuant to the County Judge’s order and pursuant to the multi-stakeholder process the Court heard about in detail. That process is now shut down on threat of contempt.

However, nothing about Judge Ritchie’s April 3 Order changes the undisputed facts in the record: for years, it has taken two to four weeks for a person to have an opportunity for an adversarial bail hearing before a district judge. *See* Ex. E ¶¶ 2–7; Dkt. 32-4 ¶¶ 48–59. As a matter of policy, the “docket” the District Attorney described at the hearing on Friday is not typically an appearance at all by the detained person, let alone the type of individualized bail hearing the Constitution requires be provided before a person can be lawfully detained. Ex. E ¶ 2–7.<sup>4</sup> Prior to the Governor’s Executive Order, some of the felony judges were issuing personal bonds in chambers (or from home) without individualized hearings. They did so on the basis of representations of counsel that their clients should qualify for release, and, more recently, on the basis of the Sheriff’s requests to release people who are medically vulnerable and pose no threat to public safety if released. However, pursuant to local policy and practice, for people who remain detained after arrest, adversarial bail hearings do not occur for weeks or months—if they ever

---

<sup>4</sup> The District Attorney’s Office now admits that “[w]hether and when the state district courts will conduct these individualized bail hearings is a question that the District Attorney’s Office cannot answer.” Dkt. 64 at 4.

occur. Ex. E ¶¶ 2–7; Dkt. 32-4 ¶¶ 48–59. In fact, publicly available dockets show that the first opportunity for an adversarial hearing is currently routinely being scheduled for May or June 2020, five to eight weeks or longer from the person’s arrest. Ex. F (Declaration of Cole Lautermilch) ¶ 4; Ex. C ¶¶ 2, 5, 6 (Bunin Declaration).

### **3. How does Judge Ritchie’s Order impact the two pending temporary restraining order motions?**

Judge Ritchie’s Order along with the other recent events in Harris County have made federal court relief even more urgent, and reveal that local officials are incapable of providing Plaintiffs with relief on a timetable that will protect their important constitutional rights and avert a public health disaster. The jail is still overcrowded, several days behind the exponential explosion in infections that large jails in Chicago and New York are now experiencing. On Rikers, prisoners are now being paid \$6 per hour to dig their own graves.<sup>5</sup> Plaintiffs are still detained pretrial without receiving constitutionally adequate bail hearings and without *any* finding at *any* point that *any* government interest is served by their ongoing pretrial detention. They are still at grave risk of contracting a serious illness and dying because they cannot protect themselves from contracting COVID-19. Because they do not have money, they are unable to do any of the things that have been urged by the CDC and all public health officials. There is no adequate relief available to them other than from this Court.<sup>6</sup>

---

<sup>5</sup> See Hannah Uebele, *Mass Graves Are Being Dug By Rikers Island Prisoner* (Apr. 2, 2020), <https://www.wgbh.org/news/national-news/2020/04/02/mass-graves-are-being-dug-by-rikers-island-prisoners>.

<sup>6</sup> In addition to the three questions posed to all Parties, the Court asked Plaintiffs’ counsel to report on the status of named Plaintiff Johnnie Pierson. Mr. Pierson has been detained in the Harris County Jail since March 6, 2020. Ex. C (Bunin Declaration) ¶ 8. He would be released if he could pay two secured bail amounts, totaling \$50,000. *Id.* Mr. Pierson was identified by the Sheriff’s Office as a person eligible for release pursuant to County Judge Hidalgo’s order. *Id.* ¶ 9. Relying on the Governor’s Executive Order, the District Attorney’s Office objected to releasing him because of a prior, “violent” conviction. *Id.* ¶ 10. As of Sunday, April 5, 2020, Mr. Pierson was still detained in the Harris County Jail. Court records previously showed that he had a court setting scheduled for Monday, April. 6. However, this weekend, the court changed the setting to May 18, 2020. Online court records also show that there has been no adversarial, individualized bail hearing since he was taken into custody on March 6. *Id.* ¶ 11.

Date: April 6, 2020

/s/ Alec Karakatsanis

/s/ Elizabeth Rossi

Alec George Karakatsanis (*Pro Hac Vice*)

alec@civilrightscorps.org

Elizabeth Rossi (*Pro Hac Vice*)

elizabeth@civilrightscorps.org

Civil Rights Corps

1601 Connecticut Ave NW, Suite 800

Washington, DC 20009

Telephone: (202) 681-2721

s/ Mimi Marziani

Mimi Marziani (*Pro Hac Vice*)

Texas State Bar No. 24091906

Liyah Brown (*Pro Hac Vice*)

D.C. Bar No. 500149

Meagan T. Harding

Texas State Bar No. 24080179

Southern District No. 3365526

Texas Civil Rights Project

405 N Main St, Suite 716

Houston, TX 77002

Phone: 512-474-5073 ext 118

[liyah@texascivilrightsproject.org](mailto:liyah@texascivilrightsproject.org)

[mimi@texascivilrightsproject.org](mailto:mimi@texascivilrightsproject.org)

[meagan@texascivilrightsproject.org](mailto:meagan@texascivilrightsproject.org)

Respectfully Submitted,

/s/ Neal S. Manne

Neal S. Manne

Texas Bar No. 12937980

nmanne@susmangodfrey.com

Lexie G. White

Texas Bar No. 24048876

lwhite@susmangodfrey.com

Joseph S. Grinstein

Texas Bar No. 24002188

jgrinstein@susmangodfrey.com

SUSMAN GODFREY L.L.P.

1000 Louisiana Street, Suite 5100

Houston, Texas 77002

Telephone: (713) 651-9366

Facsimile: (713) 654-6666

/s/ Michael Gervais

Michael Gervais (*Pro Hac Vice*)

mgervais@susmangodfrey.com

SUSMAN GODFREY L.L.P.

1900 Avenue of the Stars, #1400

Los Angeles, CA 90067

Telephone: (310) 789-3100

---

Of course, Mr. Pierson's current status of being detained in jail is not required for the propriety of the transitory class vindicating its rights, because the equal protection and due process claims the named Plaintiffs made in this case have never become moot. *See Gerstein v. Pugh*, 420 U.S. 103, 111 n.11 (1975). The named Plaintiffs represent an ongoing transitory class of people who are arrested and subject to the enforcement of unconstitutional bail policies and practices that violate their equal protection and due process rights. A defendant cannot defeat a transitory class by repeatedly making changes to policies that then require a new named Plaintiff to represent the same transitory class seeking relief against the same constitutional violations each time the practices enforced change in any way. Here, the transitory class continues to challenge Defendants' bail practices, including the enforcement of bail orders that continue to violate equal protection and due process in all of the same material ways. *ODonnell* reflects this simple point: although the bail policies applied to Harris County misdemeanor arrestees changed throughout the litigation, the new policies still violated the same constitutional rights that the named Plaintiffs and the transitory class they represented originally sought to vindicate, and the policy changes did not defeat the ability of the class to seek relief. *See, e.g., ODonnell v. Harris Cty.*, 251 F. Supp. 3d 1052, 1112, 1089 (S.D. Tex. 2017) (noting post-filing changes in policy to which named Plaintiffs were not subject); *ODonnell v. Harris Cty.*, 321 F. Supp. 3d 763, 766 (S.D. Tex. 2018) (tailoring amended preliminary injunction to Defendants' changed policies).

**CERTIFICATE OF SERVICE**

I certify that on April 6, 2020 a true and correct copy of this document properly was served on counsel of record via electronic filing in accordance with the USDC, Southern District of Texas Procedures for Electronic Filing.

/s/ Elizabeth Rossi

Elizabeth Rossi





**County Judge Lina Hidalgo**

**DIRECTOR**

### **ORDER BY THE COUNTY JUDGE OF HARRIS COUNTY**

**Whereas**, on March 11, 2020, a Declaration of Local Disaster for Public Health Emergency was issued to allow Harris County to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Harris County residents; and

**Whereas**, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

**Whereas**, on March 13, 2020, the Texas Court of Criminal Appeals issued its First Emergency Order regarding the COVID-19 State of Disaster, which provides the following directives to Texas courts to avoid exposing court proceedings to the threat of COVID-19 (until May 8, 2020, unless extended by the Chief Justice of the Supreme Court):

“Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

- a. Modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted;
- b. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;
- c. Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;
- d. Conduct proceedings away from the court’s usual location, but in the court of venue, and only with reasonable notice and access to the participants and the public;



- e. Require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has, COVID-19 or flu-like symptoms, or a fever, cough or sneezing;
- f. Take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.”

**Whereas**, on March 13, 2020, the Harris County Criminal Courts At Law posted this COVID-19-related public safety notice on their website, suspending jury service and stating, in part:

- a. “In an effort to encourage the safety of the public and court staff members from COVID-19, the County Criminal Court at Law Judges are NOT requiring accused individuals on the bond docket, to come to Court unless they are (1) scheduled for an arraignment setting, (2) set for a plea, (3) do not have an attorney of record, or (4) directly ordered by the Judge of the presiding court. Missed court appearance will NOT lead to bond forfeitures or bond revocations outside of the above four exceptions. All individuals with an attorney, hired or appointed, shall NOT attend their court settings until further notice. Please continue to contact your attorney if you have questions.
- b. If anybody is having symptoms similar to COVID-19, recently travelled internationally, or has come in contact with somebody who has travelled internationally, DO NOT COME TO COURT until released from isolation by your Health Care Physician. Contact the Court and the Court will make the necessary scheduling changes to accommodate.”; and

**Whereas**, on March 18, 2020, the Harris County District Courts Trying Criminal Cases issued a Joint Statement on Felony Court Operations during the COVID-19 pandemic seeking, with exceptions relating to preliminary assigned court appearances, to limit in-court appearances to protect public health and safety while adhering to the concepts of justice and the rule of law (through May 8, 2020 unless later revised) by:

- a. Encouraging remote court appearances and limiting appearances in Court to those matters that are essential or time sensitive and have been docketed;
- b. Encouraging attorneys to request to docket a matter if the parties believe it will lead to the disposition of the case; and
- c. Emphasizing that all efforts must be taken to limit court appearances and that anyone appearing before the Court in person must make the Court aware of whether he or she is sick or experiencing any symptoms that may risk their safety or the safety of others; and

**Whereas**, on March 19, 2020, Governor Abbott issued the first Public Health Disaster Declaration released in the State of Texas since 1901 and an Executive Order which, among other things, prohibits Texans from gathering in groups of more than ten persons; and

**Whereas**, on March 19, 2020, the Texas Court of Criminal Appeals and the Texas Supreme Court issued their Third Emergency Order regarding the COVID-19 State of Disaster, stating that Governor Abbott declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic and providing, in pertinent part, that:

“With respect to the First Emergency Order Regarding the COVID-19 State of Disaster issued March 13, 2020: ... Paragraph 2(d) is amended as follows: Conduct proceedings away from the court’s usual location with reasonable notice and access to the participants and the public; [and] ...

“Courts must not conduct non-essential proceedings in person contrary to local, state, or national directives, whichever is most restrictive, regarding maximum group size.”; and

**Whereas**, on March 23, 2020, the Centers for Disease Control and Prevention issued *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*,<sup>1</sup> which states, in relevant part, that:

- a. “Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors”;
- b. “Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced”;
- c. “Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas. Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions. Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles”;
- d. “Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19. Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread

---

<sup>1</sup> *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, U.S. Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (last visited Mar. 31, 2020).

may be high, potentially creating security and morale challenges. The ability of incarcerated/detained persons to exercise disease prevention measures (*e.g.*, frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants”; and

**Whereas**, on March 29, 2020, Governor Greg Abbott issued Executive Order GA 13 relating to detention in county and municipal jails during the COVID-19 disaster, which provides, in pertinent part, that:

- a. “[N]o authority should release on personal bond any person previously convicted of a crime that involves physical violence or the threat of physical violence, or any person currently arrested for such a crime that is supported by probable cause [, and]
- b. Sections 418.1015(b) and 418.108 of the Texas Government Code are hereby suspended to the extent necessary to preclude any county judge or mayor of a municipality, or any emergency management director, from releasing persons under any circumstances inconsistent with this order”; and

**Whereas**, the suspension of court deadlines and limitations on in court appearances will likely lead to the backlog of individuals incarcerated in the Harris Jail system; and

**Whereas**, the Harris County Commissioners Court “shall provide safe and suitable jails for the county” in accordance with Section 351.001 of the Texas Local Government Code; and

**Whereas**, the Harris County Sheriff “is the keeper of the county jail” and “shall safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court” in accordance with Section 351.041(a) of the Texas Local Government Code; and

**Whereas**, the Harris County Sheriff “has all the powers, duties and responsibilities with regard to ... operating the jail that are given by law in a county operating its own jail” in accordance with Section 351.035 of the Texas Local Government Code;

**Whereas**, the Harris County Sheriff and Harris County are obligated under the United States Constitution to ensure the safe and reasonable medical care of individuals in their custody.

**Whereas**, the Harris County Sheriff operates the third largest county jail system in the United States; and

**Whereas**, approximately 7,791 individuals were detained in the Harris County Jail facilities on March 31, 2020 and the majority of those held are pretrial detainees; and

**Whereas**, the Harris County Jail facilities (collectively referred to as the Harris County Jail system) consist of temporary lockups in four patrol district substations, a downtown Joint Processing Center (located at 700 North San Jacinto) and four housing locations, including the 700

North San Jacinto Joint Processing Center, the 1200 Baker Street Jail, the 701/711 North San Jacinto Jail and the 1307 Baker Street Jail, all located in the local disaster area; and

**Whereas**, the COVID-19 virus is contagious and spreads through person-to-person contact, especially in group settings; and

**Whereas**, the risk posed by COVID-19 in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected. This is due to a number of factors: the close proximity of individuals in those facilities; their reduced ability to protect themselves through social distancing; the lack of necessary medical and hygiene supplies ranging from hand sanitizer to protective equipment; ventilation systems that encourage the spread of airborne diseases; difficulties quarantining individuals who become ill; the increased susceptibility of the population in jails and prisons; the fact that jails and prisons normally have to rely heavily on outside hospitals that will become unavailable during a pandemic; and loss of both medical and correctional staff to illness; and

**Whereas**, the Centers for Disease Control and Prevention (“CDC”) recommends an “All of Community” approach focused on slowing the transmission of COVID-19 through social distancing to reduce illness and death, while minimizing social and economic impacts; and

**Whereas**, detainees in the Harris County Jail system cannot engage in these measures to slow transmission as they are not in control of their physical environment within the jail, nor can the detainees reject touching by Harris County detention officers and other criminal justice system staff; and

**Whereas**, detainees in minimum and medium security settings in the Harris County Jail system are held in close proximity to other prisoners and unable to distance themselves. These detainees spend significant time in communal spaces, including dormitories, eating areas, recreation rooms, bathrooms, and cells or holding areas, and are unable to choose to do otherwise. Further, detainees live in spaces with open toilets within a few feet from their beds, and unable to access a closed toilet that would not aerosolize bodily fluids into their living spaces; and

**Whereas**, individuals in the Harris County Jail system are a vulnerable, at-risk population, given pre-existing health conditions, lack of regular access to health care outside the Harris County Jail system and other factors leading to compromised immune systems; and

**Whereas**, the Harris County Jail system has neither the physical space nor sufficient personal protection equipment nor medical supplies to handle an outbreak of the infection inside the jail, to quarantine exposed individuals, to isolate and treat sick individuals, or to prevent the spread of any outbreak into the broader community; and

**Whereas**, without significant reductions in the current population, the lack of physical space, supplies, and staff to control an infectious outbreak in the Harris County Jail system is likely to spread to the greater Harris County region; and

**Whereas**, more than 3,000 Harris County employees and vendors work in the Harris County Jail system before returning to the community at the end of their workdays; and



**Whereas**, an outbreak of COVID-19 in the Harris County Jail system could devastate Harris County's health care system and the Harris County community at large by overwhelming an already overburdened health care system; and

**Whereas**, on or before March 24, 2020, Dr. Esmaeil Porsa, the President and Chief Executive Officer of the Harris Health System, strongly urged the Harris County Criminal District Court Judges to consider releasing defendants in the Harris County Jail who are charged with non-violent offense, explaining, among other things, that "[t]he Harris County Jail and other large correctional facilities pose a real and immediate danger to the health of the community"; that "[a]n even limited outbreak of COVID-19 in the Harris County Jail has the potential to overwhelm our already overburdened hospital system"; that "[i]f this happened—and the likelihood is high—it could leave many vulnerable people in our community without access to care"; and

**Whereas**, the Harris County Sheriff has publicly advocated the propriety of the issuance of an order or orders providing for the temporary, compassionate release of individuals who, given their charged offenses and backgrounds, appear to pose little or no risk to public safety, and to thereby reduce and control the occupancy of the Harris County Jail facilities and preserve the health of prisoners, Harris County Sheriff's Office staff, vendors and the community at large during this public health disaster; and

**Whereas**, the Governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster and may temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services in accordance with Sections 418.017(a) and (b) of the Texas Government Code; and

**Whereas**, the Governor may recommend the evacuation of all or part of the population from a stricken or threatened area in the state if the governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery in accordance with Section 418.018(a) of the Texas Government Code; and

**Whereas**, the Governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area if the Governor considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery in accordance with Section 418.018(c) of the Texas Government Code; and

**Whereas**, a County Judge acts as the emergency management director for the county and serves as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor in accordance with Section 418.1015(a) and (b) of the Texas Government Code; and

**Whereas**, a County Judge, serving as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, "may exercise the powers granted to the governor under this chapter on an appropriate local scale" in accordance with Section 418.1015(b) of the Texas Government Code; and

**Whereas**, a County Judge, serving as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor,

may use state or federal resources without prior authorization from the division or the state or federal agency having responsibility for those resources in accordance with Section 418.1015(d) of the Texas Government Code; and

**Whereas**, a County Judge, serving as the Governor's designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, is authorized to control ingress to and egress from a disaster area and control the movement of persons and the occupancy of premises on an appropriate local scale in accordance with Sections 418.1015 and 418.018 of the Texas Government Code; and

**Whereas**, upon Declaration of a Local Disaster, a County Judge is authorized to order the evacuation of all or part of the population from a stricken or threatened area under the jurisdiction and authority of the County Judge if the County Judge considers the action necessary for the preservation of life or other disaster mitigation, response, or recovery in accordance with Section 418.108(f) of the Texas Government Code; and

**Whereas**, upon Declaration of a Local Disaster, a County Judge is authorized to control ingress to and egress from a disaster area and control the movement of persons and the occupancy of premises in accordance with Section 418.108(g) of the Texas Government Code; and

**Whereas**, due to the substantial risks to the individuals in the Harris County Jail system, the Harris County Jail staff, contractors, visitors and the public, the following extraordinary measures must be taken to reduce and control the occupancy of the Harris County Jail system in a time of public health disaster to protect the public safety.

**NOW THEREFORE, I, COUNTY JUDGE FOR HARRIS COUNTY, TEXAS, PURSUANT TO THE AUTHORITY VESTED BY TEXAS GOVERNMENT CODE CHAPTER 418, HEREBY FIND AND ORDER:**

**SECTION 1.** That the findings and recitations set out in the preamble to this ORDER are found to be true and correct and they are hereby adopted by the County Judge and made a part hereof for all purposes.

**SECTION 2.** That it is in the public interest to issue an order or orders providing for the temporary release of individuals who are detained pretrial or who have agreed to deferred adjudication, but whose convictions have not become final ("detainees"), and who, given their charged offenses and backgrounds, appear to pose little or no risk to public safety, thereby reducing and controlling the occupancy of the Harris County Jail system in accordance with Sections 418.017, 418.018, 418.1015 and 418.108 of the Texas Government Code so as to mitigate the grave threat posed by a concentrated outbreak of COVID-19 in the Harris County Jail system that could cost lives and overwhelm local hospitals.

**SECTION 3.** That this Order applies to detainees and to persons who are received into custody by the Harris County Sheriff on new charges and who otherwise qualify for release under this Order (collectively referred to as "detainees").

**SECTION 4.** That the actions required by this Order are undertaken in deference to Governor Abbott's Executive Order GA 13 ("EO-GA-13") and are intended to be consistent with EO-GA-13 in all respects.

**SECTION 5.** That this Order does not authorize the release of any person who has previously been convicted of a crime that involves physical violence or the threat of physical violence, or who is currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause.

**SECTION 6.** For purposes of this Order, "non-violent" is defined to include any charge that does not have as an element the use or threatened use of physical force or unwanted sexual touching against another person. The charges that are considered "non-violent" include, but are not necessarily limited to, those listed in Appendix A, as well as their equivalents in Harris County record-keeping systems. The listed offenses' "equivalents" are included in light of the fact that Harris County databases refer to the same statutory offenses using different names.

**SECTION 7.** Effective as of 2:00 p.m. on April 1, 2020, and continuing until 11:59 p.m. on the date the Local Disaster Declaration ends, unless terminated or modified by an earlier or subsequent order, the Sheriff must take immediate steps to reduce and control the occupancy of the Harris County Jail system in accordance with Sections 418.017, 418.018, 418.1015 and 418.108 of the Texas Government Code, by ceasing to enforce orders to hold any detainees in the Harris County Jail system on one or more non-violent charges, so long as the detainee:

1. has not previously been convicted of a crime that involves physical violence or the threat of physical violence;
2. is not currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause;
3. is not the subject of any protective order, including a Magistrate's Order of Emergency Protection; and
4. is not being held on one or more charges of DWI (3rd or more), burglary (habitation), which are exceptions to the release of detainees held on non-violent charges.

**SECTION 8.** The Sheriff shall, as soon as reasonably possible, compile and provide a list (or lists) of detainees who appear to be eligible for release in accordance with Section 7 to designees of the Harris County Justice Administration Department, the Harris County District Attorney, the Harris County Public Defender, and Harris County Community Supervision and Corrections Department ("Criminal Justice Stakeholders") to permit these Criminal Justice Stakeholders the opportunity to provide information to Harris County Pretrial Services identifying any detainees who: (a) have previously been convicted of a crime that involves physical violence or the threat of physical violence; or (b) are currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause.



**SECTION 9.** After the passage of 32 hours from the time the Sheriff provides the list or lists of detainees, the Sheriff will begin releasing the detainees on Personal Bond, in accordance with this Order, unless one of the Criminal Justice Stakeholders has in the meantime identified any detainees who: (a) have previously been convicted of a crime that involves physical violence or the threat of physical violence; or (b) are currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause.

**SECTION 10.** Harris County Pretrial Services is authorized to impose non-financial conditions on detainees as necessary to promote public safety and ensure appearance in Court as to anyone who meets the criteria in Sections 7 and 8 above. Non-financial conditions of release include, but are not limited to, protective orders, drug testing, and GPS monitoring. Detainees released under this Order must agree to the conditions of release in the Personal Bond and sign the Personal Bond in order for the Personal Bond to be valid. Harris County Pretrial Services shall begin providing the Personal Bond release order to the Harris County Sheriff or his designee within 24 hours after the Sheriff's initial distribution of the list(s) to Harris County Pretrial Services and the other Criminal Justice Stakeholders in accordance with Section 8 of this Order.

**SECTION 11.** After receipt of the Personal Bond release orders from Harris County Pretrial Services, the Harris County Sheriff shall release on Personal Bond in accordance with this Order all detainees in custody who: (a) have not previously been convicted of a crime that involves physical violence or the threat of physical violence; (b) are not currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause; and (c) are otherwise subject to release under the terms of this Order.

**SECTION 12.** The Harris County District Clerk's Office shall file records of the Personal Bond prepared by Pretrial Services consistent with their existing policy for filing Personal Bonds.

**SECTION 13.** The detainees approved for release on Personal Bond under the authority of this Order shall be supervised by Pretrial Services.

**SECTION 14.** All detainees released on a Personal Bond shall report/appear back to the Court of Record for which their respective case is pending, as directed by Pretrial Services. Each such detainee released shall adhere to the requirements of his or her Personal Bond, which shall include any non-financial conditions of release previously or subsequently imposed by a criminal court on the person's liberty in the case for which the person was confined to the jail. Each such release shall also adhere to the requirements of Harris County Judge Lina Hidalgo's Stay at Home Orders and any other emergency orders issued and shall not commit any new offense. Each such detainee released may also refer to the Harris County District Clerk's website for information.

**SECTION 15.** Any detainee released in accordance with this Order who is arrested and charged with the commission of a new offense shall not be subject to later release under this Order.

**SECTION 16.** The Harris County Sheriff or his designee must screen individuals qualified under Section 7 of this Order for symptoms of COVID-19 before they can be released. The Sheriff must not release any individuals who present symptoms of COVID-19, as identified by the Centers for Disease Control and Prevention, until they have been cleared by a qualified medical professional.

**SECTION 17.** All detainees released under this Order are required to abide by any previously or subsequently imposed non-financial conditions of release imposed by a hearing officer or court in the case for which the person was incarcerated.

**SECTION 18.** Detainees subject to any hold will follow the normal release procedures of the Harris County Sheriff's Office.

**SECTION 19.** The Sheriff shall have the discretion, continuing until 11:59 p.m. on the date the Local Disaster Declaration ends, to refuse to accept into custody in the Harris County Jail system any person who presents with COVID-19-related symptoms and whose detention may thus threaten the public health of the prisoners, employees or contractors of the Harris County Jail system.

**SECTION 20.** The Harris County Justice Administration Department, the Harris County District Attorney, the Harris County Public Defender, the Harris County Pretrial Services Department, and the Harris County Community Supervision and Corrections Department are cooperating with the Harris County Judge's Office and the Harris County Sheriff's Office to develop a process to operationalize this Order and to protect the public health and wellbeing of Harris County residents by carrying out this Order.

**SECTION 21.** The Harris County Judge will file this Order with the Harris County District Clerk's Office.

**SECTION 22.** The Harris County Judge will post this Order on the Internet. In addition, the Harris County Sheriff is encouraged to post a copy of this Order on the Internet. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remainder of this Order.

**ORDERED** This, the 1st day of April, 2020, in the County of Harris, Texas.

**IT IS SO ORDERED**



---

**LINA HIDALGO**  
**HARRIS COUNTY JUDGE**

## APPENDIX A

### **2<sup>nd</sup> Degree Felonies (2-20 years imprisonment; \$0 to \$10,000 fine)**

- Bigamy (Penal Code § 25.01(e)(1))
- Fraud. Use or Possession of Credit/Debit Information (Penal Code § 32.315)
- Fraud. Use or Possession of Identifying Information (Penal Code § 32.51(c)(3))
- Mail Theft (Penal Code § 31.20)
- Tampering w/Evidence (human corpse) (Penal Code § 37.09(c))

### **3rd Degree Felonies (2-10 years imprisonment; \$0 to \$10,000 fine)**

- Aggravated Perjury (Penal Code § 37.03)
- Bail Jumping (from felony) (Penal Code § 38.10(f))
- Bigamy (Penal Code § 25.01(e))
- Burglary (bldg. with prescription drugs) (Penal Code § 30.02(c-1))
- Burglary of Vehicle (w/drugs) (Penal Code § 30.04(d)(3))
- Credit/Debit Card Abuse (elderly victim) (Penal Code § 32.31(d))
- Electronic Access Interference (Penal Code § 33.022)
- Forgery (Penal Code § 32.21(e))
- Fraud. Use or Possession of Identifying Information (Penal Code § 32.51(c)(2))
- Fraudulent Use or Possession of Credit/Debit Information (Penal Code § 32.315)
- Mail Theft (Penal Code § 31.20)
- Official Oppression (impair school data) (Penal Code § 39.03(d))
- Online Impersonation (Penal Code § 33.07(a), (b) if response by emergency personnel)
- Prohibited Substance/Item in Corr. Fac. (Penal Code § 38.11(g))
- Repeated Violations of Court Order/Bond (Penal Code § 25.072)
- Tampering with Evidence (not corpse) (Penal Code § 37.09)(a), (c), (d)(l))
- Tampering with Voting Machine (attempt) (Penal Code § 33.05(e))
- Tampering with Witness (Penal Code § 36.05) (but see 36.05(d)-(e))

### **State Jail Felony (180 days-2 years imprisonment in State Jail; \$0-\$10,000 fine)**

- Abuse of Corpse (body) (Penal Code § 42.08)
- Burglary (building) (Penal Code § 30.02(c)(1))
- Burglary of Vehicle (3rd or rail car) (Penal Code § 30.04(d)(2))
- Credit/Debit Card Abuse (Penal Code § 32.31(d))
- Criminal Nonsupport (Penal Code § 25.05)
- False Alarm/Report (Penal Code § 42.06(b))
- Forgery (commercial instrument) (Penal Code § 32.21(d))
- Fraudulent Use or Possession of Identification Information (Penal Code § 32.51(c)(1))
- Fraudulent Use or Possession of Credit/Debit Information (Penal Code § 32.315)
- Interference with Emergency Call (Penal Code § 42.062(c))
- Interference w/Radio Frequency (Penal Code § 38.152(b)(1)-(2))
- Interference with Rights of Guardian (Penal Code § 25.10)
- Mail Theft (Penal Code § 31.20)
- Sale or Purchase of Human Fetal Tissue (Penal Code § 48.03)
- Unauthorized Use of Vehicle (Penal Code § 31.07)

### **Class A Misdemeanor (0-1 year imprisonment; \$0-\$4,000 fine)**

- Abuse of Corpse (gravesite) (Penal Code § 42.0B(a)(5))

- Bail Jumping from Class A or B offense) (Penal Code § 38.10(d))
- Burglary of Coin Operated Machine (Penal Code § 30.03)
- Burglary of Vehicle (Penal Code § 30.04(d)(1))
- Criminal Trespass (Penal Code § 30.05(d)(3))
- Escape (misdemeanor arrest) (Penal Code § 38.06(b))
- Evading (no vehicle or injury) ((Penal Code § 38.04(b))
- Failure to Comply with Immigration Detainer Request (Penal Code § 39.07)
- Failure to Identify (false information; fugitive) (Penal Code § 38.02(b), (d)(2))
- Failure to Report Felony (Penal Code § 38.171]
- False Alarm/Report (Penal Code § 42.06(b))
- False Caller ID Display (Penal Code § 33A.051)
- Forgery (Penal Code § 32.21(c))
- Gambling Promotion (Penal Code § 47.03)
- Interference with Emergency Request (Penal Code § 42.062(c))
- Interference w/Radio Frequency (Penal Code § 38.152(b))
- Mail Theft (Penal Code § 31.20)
- Online Impersonation (spoofing) (Penal Code § 33.07(b), (c))
- Operation of a Stash House (Penal Code § 20.07)
- Perjury (Penal Code § 37.02)
- Poss./Manuf. Criminal Inst. for Retail Theft (Penal Code § 31.15)
- Resisting Arrest (Penal Code § 38.03(c))
- Sale or Purchase of Adult Stem Cells (Penal Code § 48.03)
- Sexting (Penal Code § 43.261(b), (c)(2), (d)(2))
- Stealing/Receiving Stolen Check (Penal Code § 32.24)
- Tampering with Evidence (failure to report a corpse) (Penal Code § 37.09(c), (d)(2))
- Unauthorized Transfer of Financial Information (Penal Code § 31.17(b)(2), (c))
- Violation of Court Order/Bond (Penal Code § 25.07(g))
- Violation of Court Order/Bond (hate crime) (Penal Code § 25.071)

**Class B Misdemeanor (0 to 180 days imprisonment; \$0-\$2,000 fine)**

- Contraband in Correctional Facility (by an employee or volunteer) (Penal Code § 38.114(c))
- Criminal Trespass (not habitation) (Penal Code § 30.05(d)(1))
- Disorderly Conduct (Penal Code § 42.01(a)(7)-(8), (d))
- Failure to Identify (Penal Code § 38.02(d)(1))
- False Report to Peace Officer (Penal Code § 37.08)
- Fraudulent Degree (Penal Code § 32.52)
- Fraudulent Military Record (Penal Code § 32.54)
- Issuance of Bad Check or Sight Order (Penal Code § 32.41(f))
- Misrepresenting Child as Family Member at Port of Entry (Penal Code § 37.082)
- Obstructing a Highway (Penal Code § 42.03)
- Silent or Abusive Calls to 9-1-1 Service (Penal Code § 42.061)
- Unauthorized Acquisition of Financial Information (Penal Code § 31.17(b)(1), (c))

**Class C Misdemeanor (0 to 180 days of deferred adjudication; \$0-\$500)**

- Bail Jumping (Penal Code § 38.10(e))
- Contraband in Correctional Facility ((Penal Code § 38.114(c))
- Criminal Trespass (Penal Code § 30.05(d)(2))



- Disorderly Conduct (Penal Code § 42.01(a)(1)-(6), (9)-(11), (d))
- Failure to Identify (Penal Code § 38.02(a), (c)(1))
- False Report of Missing Child or Person (Penal Code § 37.081)
- Gambling (Penal Code § 47.02)
- Issuance of Bad Check or Sight Order (Penal Code § 32.41(f))
- Open Container (Penal Code § 49.031)
- Preventing Execution of Civil Process (Penal Code § 38.16)
- Public Intoxication (Penal Code § 49.02)
- Smoking tobacco or cigarette (Penal Code § 48.01)

**Other Crimes Whose Classification depends on Value**

- Abuse of Official Capacity (Penal Code § 39.02)
- Breach of Computer Security (Penal Code § 33.02(b·2))
- Cargo Theft (Penal Code § 31.18)
- Credit Card Record Laundering (Penal Code § 32.35)
- Criminal Mischief (Penal Code § 28.03)
- Electronic Data Tampering (Penal Code § 33.023)
- False Statement to Obtain Property/Credit (Penal Code § 32.32)
- Forgery (Penal Code § 32.21(e-1))
- Fraudulent Destruction of Writing (Penal Code § 32.47(e))
- Fraudulent Transfer of Motor Vehicle (Penal Code § 32.34)
- Graffiti (Penal Code § 28.08)
- Health Care Fraud (Penal Code § 35A.02)
- Interference with Railroad Property (Penal Code § 28.07)
- Misapplication of Fiduciary Property (Penal Code § 32.45)
- Money laundering (Penal Code § 34.02)
- Organized Retail Theft (Penal Code § 31.16)
- Securing Execution of Document by Deception (Penal Code § 32.46)
- Theft (Penal Code § 31.03)
- Theft of Petroleum Product (Penal Code § 31.19)
- Theft of Service (Penal Code § 31.04)
- Theft of Telecomm. Services (Penal Code § 33A.04)
- Trademark Counterfeiting (Penal Code § 32.23)
- Hindering Secured Creditors (Penal Code § 32.33)
- Illegal Recruitment of Athlete (Penal Code § 32.441)
- Insurance Fraud (Penal Code § 35.02)
- Unauthorized Use of Telecommunication Services (Penal Code § 33A.02)
- Unlawful Decryption (Penal Code § 33.024)

**Other Crimes (Whose Classification depends on Value or Amount), including all non-violent controlled substances or property offenses where a weapon was not used in the commission of the offense, including but not limited to the following:**

- Abuse of Official Capacity (Penal Code § 39.02)
- Breach of Computer Security (Penal Code § 33.02(b·2))
- Cargo Theft (Penal Code § 31.18)
- Credit Card Record Laundering (Penal Code § 32.35)
- Criminal Mischief (Penal Code § 28.03)
- Electronic Data Tampering (Penal Code § 33.023)

- False Statement to Obtain Property/Credit (Penal Code § 32.32)
- Forgery (Penal Code § 32.21(e-1))
- Fraudulent Destruction of Writing (Penal Code § 32.47(e))
- Fraudulent Transfer of Motor Vehicle (Penal Code § 32.34)
- Graffiti (Penal Code § 28.08)
- Health Care Fraud (Penal Code § 35A.02]
- Interference with Railroad Property (Penal Code § 28.07)
- Misapplication of Fiduciary Property (Penal Code § 32.45)
- Money laundering (Penal Code § 34.02)
- Organized Retail Theft (Penal Code § 31.16)
- Securing Execution of Document by Deception (Penal Code § 32.46)
- Theft (Penal Code § 31.03)
- Theft of Petroleum Product (Penal Code § 31.19)
- Theft of Service (Penal Code § 31.04)
- Theft of Telecomm. Services (Penal Code § 33A.04)
- Trademark Counterfeiting (Penal Code § 32.23)
- Hindering Secured Creditors (Penal Code § 32.33)
- Illegal Recruitment of Athlete (Penal Code § 32.441)
- Insurance Fraud (Penal Code § 35.02)
- Unauthorized Use of Telecommunication Services (Penal Code § 33A.02)
- Unlawful Decryption (Penal Code § 33.024)
- Delivery of a Controlled Substance
- Possession of a Controlled Substance



*Harris County Criminal District Court Trial Division*

**ORDER TO DISREGARD DIRECTIVE BY HARRIS COUNTY JUDGE**

On April 1, 2020, Harris County Judge Lina Hidalgo issued an Order , the purpose of which was to release certain prisoners presently housed in the Harris County Jail.

**FINDINGS OF FACT**

The Court makes the following Findings of Fact:

1. Most of the inmates in the Harris County Jail are defendants charged with felony offenses, whose cases are assigned to one of the 22 Felony District Courts, each of which independently lawfully sit and exercise exclusive jurisdiction in such matters in this County;
2. The Felony District Court having jurisdiction over an inmate in the Harris County Jail has properly and lawfully set bail for that defendant's cause of action; and
3. Any Order issued by the County Judge of Harris County Texas to any Harris County agency, pertaining to bonds and/or release of felony prisoners or probationers assigned to a proper Court of felony jurisdiction is ultra vires, VOID ON ITS FACE and of NO FORCE AND EFFECT. See *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999); and
4. Only the State District Judges of the 22 Felony District Courts of Harris County, Texas have exclusive constitutional and statutory jurisdiction over all felony cases assigned to their respective courts, including, but not limited to, the setting, raising and/or denial of bonds in any and all of said Courts, or the incarceration or release of probationers under supervision from said felony courts.

**ORDER**

**THEREFORE, IT IS ORDERED and DECREED** that the Sheriff of Harris County, Texas, as well as Harris County Pre-Trial Services Agency and the Harris County Community Supervisions and Corrections Department, SHALL IGNORE and WHOLLY DISREGARD any order and/or directive from the Harris County Judge regarding the issuance of felony Pre-Trial Bonds or Personal Recognizance Bonds or any other order of release, as the same purports to affect felony inmates or probationers now in custody of the Harris County Sheriff or the Harris County Community Corrections



and Supervision Department, and under the lawful jurisdiction of one of the 22 Harris County State District Courts.

**IT IS FURTHER ORDERED** that Pre-Trial Services Agency shall not prepare nor submit to the Sheriff of Harris County, Texas any bonds or other orders of release at the direction of the County Judge of Harris County, Texas which affect, or purport to affect or release any Harris County inmate held for or charged with any felony offense;

**IT IS FURTHER ORDERED** that the Harris County Community Corrections and Supervision Department shall ignore any and all orders from the Harris County Judge which affect or purport to affect any felony probationer incarcerated in the Harris County Jail or any other facility in which he or she may be housed pursuant to an Order of a Felony District Court; and

**IT IS FURTHER ORDERED** that the Harris County Sheriff shall ONLY release a felony inmate in accordance with and pursuant to a valid Bond or other Order of Release signed by a State District Judge of Harris County, Texas, or by a proper court Order from a Court of Appeals or the Texas Court of Criminal Appeals or by a federal court with lawful jurisdiction of a particular Harris County inmate or inmates.

**THIS ORDER IS EFFECTIVE IMMEDIATELY. EACH VIOLATION OF THIS ORDER MAY RESULT IN CRIMINAL CONTEMPT OF COURT PENALTIES, WHICH MAY INCLUDE UP TO SIX MONTHS' CONFINEMENT IN JAIL AS WELL AS A POSSIBLE FINE NOT TO EXCEED \$500.00.**

SIGNED this 3rd day of April, 2020 at 1:33 P. .m.



Herb Ritchie  
Administrative Judge  
Harris County District Courts Trying Criminal Cases



*Harris County Criminal District Court Trial Division*

**FIRST AMENDED GENERAL ORDER BOND FOR CERTAIN OFFENSES**

In an effort to stem the tide of accused citizens being admitted to the Harris County Jail and to expedite the release of those arrested, the Harris County District Court Judges Trying Criminal Cases have approved a First Amended Order granting a General Order Bond to facilitate the immediate release of people arrested and charged with certain non-violent felony offenses. No person shall be released under a General Order Bond who already has an open, pending felony case, a prior conviction involving a crime of physical violence or the threat of physical violence, or who has an open warrant or hold, or who is on supervised release, such as felony probation or felony deferred adjudication.

Effective immediately, upon identification by the Harris County District Attorney's Office and before the matter is placed on the Hearing Officers' docket, Harris County Pretrial Services is **ORDERED** to process the immediate release of the following persons under a General Order Bond, to be supervised by Pretrial Services:

**Any person booked into the Harris Joint Processing Center, arrested for the offenses listed below, who is not already on felony probation or felony deferred adjudication, or does not have another warrant, hold, or does not have a prior conviction involving a crime of physical violence or the threat of physical violence, or does not have a pending felony charge:**

- Abuse of Official Capacity 39.02(c)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Aggravated Perjury 37.03 (3<sup>rd</sup> Degree)
- Bigamy 25.01(e) (3<sup>rd</sup> through 1<sup>st</sup> Degree)
- Breach of Computer Security 33.02(b-2)(4),(5) (SJF and 3<sup>rd</sup> Degree)
- Bribery 36.02 (2<sup>nd</sup> Degree)
- Burglary of a Vehicle 30.04(d)(2) and (3) (SJF and 3<sup>rd</sup> Degree)
- Commercial Bribery 32.43 (SJF)
- Credit Card Transaction Record Laundering 32.35(e)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Credit or Debit Card Abuse 32.31(d), if victim not elderly (SJF)
- Criminal Mischief, 28.03(b)(4) (SJF)
- Delivery or Offer of Delivery of Dangerous Drug 483.042 (SJF)
- Drug-Free Zones 481.134 (SJF through 2<sup>nd</sup> Degree)
- Electronic Access Interference, 33.022 (3<sup>rd</sup> Degree)
- Electronic Data Tampering 33.023(d-1)(4),(5) and (d-2)(1-2) (SJF and 3<sup>rd</sup> Degree)
- Evading 38.04(b)(1) or (b)(1)(a) (SJF – second offender only)
- False Statement to Obtain Property or Credit, 32.32(c)(4) (SJF)

**FILED**  
Marilyn Burgess  
District Clerk

**APR 02 2020**

Time: \_\_\_\_\_  
Harris County, Texas  
By \_\_\_\_\_  
Deputy

- Forgery 32.21(d) and (c-1)(4) (SJF)
- Fraud 481.129 (SJF through 2<sup>nd</sup> Degree)
- Fraudulent Filing of Financial Statement 37.101(b) (SJF and 3<sup>rd</sup> Degree only)
- Fraudulent Transfer of a Motor Vehicle, 32.34(f)(1) (SJF)
- Fraudulent Use or Possession of Identifying Information, 32.51(c)(1)(2) (SJF and 3<sup>rd</sup> Degree)
- Graffiti, 28.08(b)(4) and (d) (SJF)
- Health Care Fraud, 35A.02(b)(4)-(6) (SJF through 2<sup>nd</sup> Degree)
- Hindering Secured Creditors 32.33(d)(4-5) and (e)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Illegal Divulgence of Public Communication 16.05(d) (SJF)
- Illegal Recruitment of an Athlete 32.441(e)(4-7) (SJF through 1<sup>st</sup> Degree)
- Insurance Fraud, 35.02(c)(4)-(6) and (d) (SJF through 2<sup>nd</sup> Degree)
- Interference with Railroad Property 28.07(e)(3) (SJF)
- Manufacture of Dangerous Drug 483.043 (SJF)
- Manufacture, Possession, or Delivery of Unlawful Telecommunications Device, 33A.03 (3<sup>rd</sup> Degree)
- Money Laundering 34.02(e)(1-3) (SJF through 2<sup>nd</sup> Degree)
- Official Oppression 39.03(d) (3<sup>rd</sup> Degree)
- Online Impersonation 33.07 (3<sup>rd</sup> Degree)
- Organized Retail Theft 31.16(c)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Possession, Transport Certain Chemicals with Intent to Manufacture CS 481.124 (SJF -- 2<sup>nd</sup> Degree)
- Possession, Use, Manufacture, Delivery, Sale of Substances 481, 482, 483, 484, 485 (SJF - 2<sup>nd</sup> degree)
- Prostitution 43.02(c)(2) and (c-1)(1) (SJF)
- Securing Execution of Document by Deception 32.46(b)(4-6) (SJF through 2<sup>nd</sup> Degree)
- Tampering with a Governmental Record 37.10 (3<sup>rd</sup> and 2<sup>nd</sup> Degree)
- Theft, 31.03(e)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Theft of Service, 31.04(e)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Theft of Telecommunications Service, 33A.04(b)(3-4) (SJF and 3<sup>rd</sup> Degree)
- Trademark Counterfeiting 32.23(e)(4-5) (SJF and 3<sup>rd</sup> Degree)
- Unauthorized Absence from Community Corrections Facility 38.113 (SJF)
- Unauthorized Disclosure of Information 481.127 (SJF)
- Unauthorized Use of Telecommunications Service, 33A.02(b)(3-4) (SJF and 3<sup>rd</sup> Degree)
- Unauthorized Use of a Vehicle 31.07 (SJF)
- Unlawful Access to Stored Communication 16.04(d) (SJF)
- Unlawful Decryption 33.024(b-1)(4),(5) and (b-2)(1-2) (SJF and 3<sup>rd</sup> Degree)
- Unlawful Interception, Use, Disclosure of Wire, Oral, Electronic Communication 16.02 (d)(f)(g) (SJF)
- Unlawful Use of a Criminal Instrument or Mechanical Security Device 16.01 (SJF)

This ORDER supersedes the Order granting General Order Bond for Certain Offenses that was signed and entered March 20, 2020.

Signed the 2<sup>nd</sup> day of April, 2020



Herb Ritchie  
Administrative Judge  
Harris County District Courts Trying Criminal Cases

**From:** Brown, Judge Susan (DCA) <[susan\\_brown@justex.net](mailto:susan_brown@justex.net)>  
**Sent:** Monday, March 30, 2020 6:04 PM  
**To:** Ritchie, Judge Herb (DCA); Teachey, Lisa (DCA); Wells, Ed (CCL); Mullinix, Brenda; Ellisor, John; Wallace, Toni; Grady, John; [jgilbert@brazoria-county.com](mailto:jgilbert@brazoria-county.com); [jeremyw@brazoria-county.com](mailto:jeremyw@brazoria-county.com); Randy M. Clapp; Craig Estlinbaum  
**Cc:** Lance Long ([attorneylancelong@gmail.com](mailto:attorneylancelong@gmail.com))  
**Subject:** Update on Gov. Abbott's Executive Order. Sorry it's long

Please forward to all of your judges handling criminal cases as soon as possible.

All,

Due to the questions about the recent Executive Order regarding PR bonds the presiding judges participated in a zoom call with OCA this afternoon. We have been advised that the executive order suspends 17.03 and orders that no authority, **including judges**, may release a person who has a previous conviction for a crime involving physical violence or the threat of physical violence or is charged with a crime involving physical violence or the threat of physical violence on a PR bond.

That said, the judge may grant a PR bond if the court finds on an individualized basis a health or medical reason after a hearing with notice to the DA. This would preclude a blanket order for release which many counties use on a regular basis.

Please be mindful that the order does not allow magistrates, jps, county judges or anyone else to make this determination.

This order includes both misdemeanors and felonies.

I would also remind you that this applies only to offenses that involved violence or threat of violence or folks who have a conviction for such.

I just wanted everyone to be aware as my earlier email gave so what different information. I hope this clears up any questions, but please feel free to email or call if needed,

Susan Brown  
Presiding Judge 11th Administrative  
Judicial Region  
301 Fannin Houston, Texas  
832-927-6600

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

---

RUSSELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

---

Case No. 4:19-cv-00226

(Class Action)

The Honorable Lee H. Rosenthal

U.S. District Judge

**DECLARATION OF ALEX BUNIN, HARRIS COUNTY CHIEF PUBLIC DEFENDER**

1. My name is Alex Bunin. I am the Chief Public Defender for Harris County. I have practiced in the Harris County criminal courts since 2011, and before that from 1986-1993. I have been licensed in Texas since 1986 and I am certified in Criminal Law and Criminal Appellate Law by the Texas Board of Legal Specialization.
- I. First Opportunity for an Adversarial Bail Hearing is typically 2 to 4 Weeks After Arrest**
2. Based upon court records I have reviewed and reports from lawyers in my office, at least since Hurricane Harvey struck Houston in August 2018, it has been practically impossible for a person arrested for a felony offense to obtain an adversarial, individualized bail hearing before a felony district court judge for, typically, two to four weeks after arrest.
3. At the hearing before this Court on Friday, April 3, 2020, the Court heard about a docket referred to locally as the Preliminary Assigned Court Appearance (“PACA”) or Preliminary Initial Appearance (“PIA”) docket, and which is required by local rules to occur on the first business day following a person’s arrest.
4. The terms PACA and PIA are used interchangeably to refer to the next-business-day court setting that is listed in court records.
5. In fact, people arrested for felony offenses do not typically “appear” physically at the PACA/PIA docket. Since Hurricane Harvey and especially in light of current exigencies due to COVID-19, people arrested for felonies who are detained in the jail typically are not transported to the court for the PACA/PIA docket. Even when they are, they are kept in the lockup outside the courtroom.

6. Regardless of whether individuals appear at the PACA/PIA docket, that court setting is not an opportunity for an adversarial bail hearing. Although a judge might informally decide at PACA/PIA to modify bail conditions, any person who wishes to have an adversarial hearing with evidence, witnesses, and findings must file a written motion and then must wait two to four weeks under current conditions for an individualized adversarial hearing to occur.
7. Sometimes a Criminal District Court Judge will increase the bail amount set by a Criminal Law Hearing Officer or revoke a personal bond granted by a Criminal Law Hearing Officer, before counsel is appointed, without the person arrested being present and without any adversarial proceeding. If a judge increases the money bail or revokes a personal bond in a case involving a person who was released prior to PACA/PIA, that person will be taken into custody when they come to court for their first court appearance.

**II. The District Attorney's Office Relied on the Governor's Executive Order to Object to the Release of Named Plaintiff Johnnie Pierson**

8. Named Plaintiff Johnnie Pierson has been detained in the jail since March 6, 2020. He would be released if he could pay two secured bonds totaling \$50,000.
9. Mr. Pierson was identified by the Harris County Sheriff's Office as a person eligible for release pursuant to County Judge Hidalgo's order, and pursuant to the efforts of the Parties in this case and other system stakeholders, because of his nonviolent current charges.
10. The District Attorney's Office objected to releasing him pursuant to the Governor's Executive Order because of a prior, purportedly "violent" conviction. As a result, he has not been released by the Sheriff.
11. As of Monday morning, April 6, 2020, Mr. Pierson is still in the Harris County jail. Online court records previously showed that Mr. Pierson would have a court setting today (Monday). However, this weekend, the court setting was changed to May 18, 2020. Online court records also show that there has been no adversarial, individualized bail hearing since he was taken into custody on March 6.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability

/s/ Alex Bunin  
Alex Bunin



April 6, 2020  
DATE

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

---

RUSSELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

---

Case No. 4:19-cv-00226

(Class Action)

The Honorable Lee H. Rosenthal

U.S. District Judge

**DECLARATION OF COLE LAUTERMILCH**

1. My name is Cole Lautermilch. I am an investigator for Civil Rights Corps.
2. On April 3, 2020, Senior Attorney Elizabeth Rossi requested that I and my colleague, Arjun Malik, who is an Investigative and Research Fellow at Civil Rights Corps, review the electronic case files for criminal cases recently filed in Harris County to determine how long a person arrested must wait for an adversarial hearing before a criminal district court judge.
3. I reviewed online case records for numerous cases filed on March 31, April 1, and April 2, involving a person who, at the time Mr. Malik or I retrieved the record, was required to pay secured money bail to be released, was not subject to any other apparent “holds,” was detained in the jail, and whose case was active.
4. Through my review, I identified approximately 20 cases in which the next court appearance was scheduled for sometime between May 6 and June 23, 2020. In each of these cases, a Preliminary Assigned Court Appearance (“PACA”) had been set within three calendar days of arrest, and there were no other scheduled appearances between the PACA and the court appearance scheduled for May or June.
5. In making these observations, Mr. Malik and I engaged in the following process.
  - a. We used the Harris County District Clerk electronic records website, [hcdistrictclerk.com](http://hcdistrictclerk.com), to search for public electronic records of criminal cases filed on March 31, April 1, or April 2, 2020, in Harris County.
  - b. We limited our search to active cases in which the person arrested was still detained in the Harris County Jail.



- c. We identified people in custody who were required to pay secured money bail as a condition of release and who were not subject to any other apparent “holds.”
  - d. For a subset of cases described in Paragraph 5(c), I observed the dates of each person’s arrest, Preliminary Assigned Court Appearance (“PACA”), and next scheduled court appearance to identify approximately 20 in which the next court appearance was scheduled for May or June.
6. Mr. Malik and I used the “Print All” function to generate and preserve electronic copies of the online case records, as they existed at the time we viewed them, for each of the cases referenced in Paragraph 4 above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability

*Cole Lautermilch*  
NAME

04/06/2020  
DATE