

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

DWIGHT RUSSELL, et al.

Plaintiffs,

v.

HARRIS COUNTY, TEXAS, et al.

Defendants.

Case No. 4:19-cv-00226

(Class Action)

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

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Thousands of people are detained pretrial in the Harris County Jail every day because they cannot afford to pay secured money bail.¹ No judicial officer has made the finding that their pretrial detention is necessary.²

I. The Post-Arrest Process for People Arrested in Harris County.

¹ Ex. 1 (Expert Report of Jennifer Copp, Ph.D., Nov. 17, 2022 (“Copp Expert Report”)) ¶¶ 36–37, 40 (analyzing data and finding that, from 2015 through 2021, over 85,000 felony arrestees had money bail set in their case and were detained at the time that their case was disposed).

² Ex. 14 (Declaration of Sarah Wood, then-Policy Director of the Harris County Public Defender’s Office, Mar. 26, 2020 (“First Wood Decl.”)) ¶ 45 (“Hearing Officers continue to require secured financial conditions of release without making findings concerning ability to pay, the necessity of pretrial detention, or the adequacy of alternative conditions, and without application of the clear-and-convincing-evidence standard or a statement of reasons concerning why a particular financial condition or pretrial detention is necessary.”); Ex. 25 (Transcript, Deposition of Chief Criminal Law Hearing Officer Courtney St. Julian in her individual capacity and her capacity as corporate representative of Harris County, Mar. 25, 2021 (“St. Julian Dep.”) at 141:11–17) (“There are no policies requiring that hearing officers examine the same factors or make the same findings as they would in a misdemeanor case.”); Ex. 26 (Transcript, Deposition of then-Criminal Law Hearing Officer Jennifer Gaut, Mar. 23, 2021 (“Gaut Dep.”) at 115:8–13) (“Q: And so when you make a decision to require that a felony defendant receive a secured bail amount that the person cannot afford, is it your practice to make a finding that it is necessary to detain that person? A: No, it’s not.”).

2. There are two types of bonds created explicitly by Texas law: a “bail bond” and a “personal bond.”³ Throughout Texas, people arrested for a criminal offense who are released from custody prior to disposition are released on either a bail bond or a personal bond.⁴

3. A bail bond, also called a secured bond, requires an up-front cash payment, either of the full bond amount (known as a “cash bond”) or of a non-refundable fee paid to a bonding company in exchange for the company’s promise to pay the full amount if the person misses court and their bond is forfeited (known as a “surety bond”).⁵

4. For decades, bonding companies were free to make deals with people seeking release from jail, reducing the fee, or offering them low or no down payments and putting them on payment plans for the remainder of the fee.⁶ Following a new regulation encouraged by the Harris County Commissioners Court and passed by the Harris County Bail Bond Board, bonding companies are now required to charge at least 10% of the total bail amount for a surety.⁷

³ Tex. Code Crim. P. Ann. § 17.01; *see also* Ex. 14 (First Wood Decl.) ¶ 39 (“Hearing Officers sometimes recommend defendants for release on ‘personal bonds,’ a term Defendants use to describe unsecured release without requiring an up-front payment prior to release, i.e., without a secured financial condition of release.”).

⁴ Tex. Code Crim. P. Ann. § 17.01; Ex. 1 (Copp Expert Report) ¶¶ 33, 38 (finding that, between 2015 and 2021, 53% of people arrested for a felony were released before trial, of whom 56% were released on a bail bond and 23% were released on a personal bond).

⁵ Tex. Code Crim. P. Ann. § 17.02.

⁶ Nicole Hensley & Samantha Ketterer, *As Harris County judges take heat for felony bonds, critics point to unnoticed culprit: The bondsmen*, Houston Chron. (Oct. 14, 2021), bit.ly/3VTARau

(“The Houston Chronicle reviewed hundreds of court records and found that bail bondsmen for years have been granting less than 10 percent rates on surety bonds . . . sometimes as small as 1 or 2 percent, at times on more violent crimes.”); Ex. 31 (Transcript, Deposition of Judge Brian Warren, Apr. 5, 2021 (“Warren Dep.”) at 321:12–15) (“On a Secured Bond of 50,000, there’s some bondsman who will take 1,500 on payment plans, without putting a property up.”).

⁷ Local Rule 19, Harris County Bail Bond Board (adopted June 8, 2022), at 9, *available at* bit.ly/3VODk68 (requiring a 10% premium for all surety bonds posted in “serious violent or sexual offenses”); Matt Harab & Paul Debenedetto, *Harris County officials set 10% bail bond minimum to limit people released from custody*, Houston Public Media (Apr. 14, 2022), bit.ly/3Y01A74.

5. A personal bond, also known as an unsecured bond, does not require an up-front cash payment but instead constitutes a promise by the person accused of a crime to pay if they do not appear for court and their bond is forfeited.⁸

6. Every person who is booked into the Harris County Jail will be transported to the Joint Processing Center.⁹ The Joint Processing Center is part of the Harris County Jail and is run by the Harris County Sheriff's Office.¹⁰

7. Individuals in Harris County may be arrested pursuant to a pre-existing warrant or with warrantless probable cause to arrest.¹¹

8. If a person is arrested without a warrant, the arresting officer will call a hotline staffed by attorneys at the Harris County District Attorney's Office. The arresting officer describes the allegations to the prosecutor on duty, who makes an initial charging decision over the phone.¹²

9. If the prosecutor on duty decides not to pursue charges, they tell the arresting officer to release the individual.¹³ If the prosecutor does decide to pursue the charges, the arresting officer types a summary of the facts giving rise to the arrest and submits it into the J-WEB or Justice Information Management System.¹⁴

⁸ Tex. Code Crim. P. Ann. § 17.03; Ex. 1 (Copp Expert Report) ¶ 10.

⁹ Ex. 22 (Transcript, Rule 30(b)(6) Deposition of Harris County Sheriff's Office, Major Patrick Dougherty as corporate representative, Mar. 10, 2021 ("HCSO 30(b)(6)") at 48–49); Ex. 14 (First Wood Decl.) ¶¶ 12–14 ("About 75% of people arrested for felonies . . . are taken directly after arrest to the Joint Processing Center ("JPC") in downtown Houston. People arrested by other agencies are sometimes taken to 'field stations' before being transported to the JPC.").

¹⁰ Ex. 22 (HCSO 30(b)(6) at 50:3–10); *id.* at (199:20–200:5).

¹¹ Ex. 23 (Transcript, Deposition of Assistant District Attorney Jennifer Keith in her individual capacity and her capacity as corporate representative of the Harris County District Attorney's Office, Mar. 22, 2021 ("2021 Keith Dep.") at 84:6–24).

¹² Ex. 14 (First Wood Decl.) ¶ 15; Ex. 22 (HCSO 30(b)(6) at 27:16–29:11).

¹³ Ex. 22 (HCSO 30(b)(6) at 32:19–23); Ex. 14 (First Wood Decl.) ¶ 15.

¹⁴ Ex. 14 (First Wood Decl.) ¶ 16; *see also* Ex. 23 (2021 Keith Dep. at 102:17–103:3, 191:10–17); J-Web Criminal System Orientation Manual (Oct. 2016), at 6, 21, bit.ly/3F1MLZm.

10. The written summary then will be transmitted to the intake division of the District Attorney's Office where a prosecutor will formally accept charges.¹⁵ The District Clerk's Office then files the case, creates a case number, and assigns the case to the jurisdiction of a particular felony court judge.¹⁶

11. If a person is arrested on a warrant, probable cause has already been found and a case already exists. The arresting officer does not call the District Attorney's office prior to taking the person into custody.¹⁷

II. People Arrested in Harris County for Felony Offenses Are Typically Detained Prior to a Magistration Hearing.

12. For decades, Harris County used a predetermined secured money bail schedule to determine financial conditions of pretrial release for felony arrestees.¹⁸

¹⁵ Ex. 23 (2021 Keith Dep. at 102:17–103:3, 191:10–17); Ex. 14 (First Wood Decl.) ¶ 16 (“If the DAO wants to accept the charge, the officer submits a probable cause statement and the DAO eventually files a complaint with the District Clerk who then creates a case number and assigns the case to a specific judge’s courtroom.”).

¹⁶ Ex. 14 (First Wood Decl.) ¶ 16 (“If the DAO wants to accept the charge, the officer submits a probable cause statement and the DAO eventually files a complaint with the District Clerk who then creates a case number and assigns the case to a specific judge’s courtroom.”); Ex. 34 (Direct Filing Order) ¶ I(A)(3) (“upon the filing of said complaint, jurisdiction is vested in the district court...”).

¹⁷ Ex. 22 (HCSO 30(b)(6) at 32:8–10) (“[I]f it’s a warrant, it’s a whole different process. You don’t call the DA on a warrant.”).

¹⁸ Ex. 14 (First Wood Decl.) ¶ 5; Ex. 38 (Harris County Felony Bail Schedule, Effective July 29, 2017; Aug. 22, 2017); Ex. 43 (Binder of Written Court Directives) 93–94 (prior District Court bail schedules).

13. The predetermined secured money bail schedule was promulgated through administrative order by the Criminal District Court Judges (“Felony Judges”).¹⁹ The Felony Judges most recently updated the felony bail schedule in 2017.²⁰

14. The money bail schedule dictated detention or bail conditions based on the level of the charged offense and a risk score generated by Harris County Pretrial Services.²¹

15. When the District Attorney’s Office accepts charges and a case number is created, Pretrial Services enters the accused person’s information into a program that runs an algorithm to create a “risk assessment” score.²² Up until recently, Pretrial Services then applied the Felony Judges’ bail

¹⁹ Ex. 14 (First Wood Decl.) ¶ 5; Ex. 27 (Transcript, Rule 30(b)(6) Deposition of Harris County, Chief Public Defender Alex Bunin as corporate representative, Mar. 15, 2021 (“Harris County 30(b)(6)”) at 73:4–8) (Q: “Mr. Bunin, do you recognize this document?” A: “That’s the felony bail schedule.” Q: “Who promulgated this document?” A: “The Criminal District judges.”); Dkt. 181-1 (Judge Chuck Silverman’s Memorandum in Support of Motion to Intervene (“Silverman Mot. to Intervene”)) at 6 (“Judge Silverman is one of the felony judges who promulgates Harris County’s predetermined money bail, which sets the financial conditions of pretrial release for nearly all felony arrestees in Harris County.”); Ex. 138 at 3 (July 16, 2017 email from Judge Kelli Johnson to other judge members of the Standing Bail Bonds Committee) (“We are the committee actually responsible for the bond schedule, the presumptive pretrial felony bonds, etc.”); Ex. 26 (Gaut Dep. at 32:21–25) (“Q: Who promulgated the felony bond schedule? A: [M]y understanding is that it was from the felony district court judges, the ones who were presiding.”).

²⁰ Ex. 38 (Felony Bail Schedule).

²¹ *Id.*; Ex. 14 (First Wood Decl.) ¶ 17 (“Pretrial Services runs the person’s information through an algorithm to create a “risk assessment” score and applies the felony judges’ bail schedule by using the charged offense and the person’s “risk” score to identify the scheduled amount of money required by the felony judges for release.”).

²² Ex. 28 (Transcript, Rule 30(b)(6) Deposition of Harris County Pretrial Services, Spurgeon Kennedy as corporate representative, Mar. 11, 2021 (“March Pretrial Services 30(b)(6)”) at 90:12–91:12); Ex. 3 (Expert Report of Melissa Hamilton, Ph.D., Aug. 29, 2022 (“Hamilton Expert Report”)) ¶ 38 figs. 1-3 (showing the “weight” given to each predictive factor that makes up the risk tool); Ex. 14 (First Wood Decl.) ¶ 17.

schedule, entering the result on a “bond recommendation” form.²³ The bail schedule recommended a money bail amount for most people charged with felonies.²⁴

16. Pretrial Services then sent the risk assessment and “bond recommendation” to a prosecutor in the District Attorney’s office, who reviewed them, corrected errors (such as a bond amount that did not match the bail schedule), and entered the bail amount required by the schedule onto the charging document.²⁵ Using this process, a person could learn the amount of money required for release pursuant to the bail schedule within hours of arrest.²⁶

17. At the time this lawsuit was filed, anyone who was arrested for a felony offense and who had a secured bond set—either pursuant to the Felony Judges’ bail schedule or, if the person was arrested pursuant to a warrant, by the judicial officer who issued the warrant—was immediately released by the Sheriff and County if they could pay the amount required, unless there was an independent basis for detention.²⁷

18. If a person was subject to an independent basis for detention, such as an immigration or parole “hold,” or an arrest warrant issued by another county, that person was eligible for transfer

²³ Ex. 185 (Bond Recommendation Form); Ex. 14 (First Wood Decl.) ¶ 17; Ex. 24 (Transcript, Deposition of Assistant District Attorney Jennifer Keith in her individual capacity and her capacity as corporate representative of the Harris County District Attorney’s Office, Mar. 10, 2022 (“2022 Keith Dep.”) at 22:15-19); Ex. 23 at (2021 Keith Dep. at 89:13-21).

²⁴ Ex. 38 (Felony Bail Schedule); Ex. 14 (First Wood Decl.) ¶ 7 (“For most felony arrestees, money bail is automatically set at the scheduled amount at the time charges are filed”); Ex. 1 (Copp Expert Report) ¶ 39 (examining data from 2015-2021 and finding 60% of cases had a money bond amount set on the complaint following arrest).

²⁵ Ex. 24 (2022 Keith Dep. at 17:20-23) (“Once the log manager receives the electronic file, they then review the public safety assessment and bond recommendation forms that constitute the entire document prepared by Pretrial Services.”); Ex. 23 (2021 Keith Dep. at 178:13-16); *id.* (89:5-12); Ex. 28 (March Pretrial Services 30(b)(6) at 42:9-12).

²⁶ Ex. 22 (HCSO 30(b)(6) at 47:9-22).

²⁷ Ex. 27 (Harris County 30(b)(6) at 67:15-20) (“Q: If the person could pay that amount of money on the charging document and they don’t have any other holds, would they be released from Harris County custody before the 15.17 hearing? A: Yes.”); Ex. 25 (St. Julian Dep. at 32:21-33:1); Ex. 14 (First Wood Decl.) ¶ 18.

to the jurisdiction where the hold was operative as soon as she paid the amount required by Harris County.²⁸ Typically, there is a set time period within which the holding jurisdiction can come and pick up the arrested person.²⁹ That time period does not begin unless and until the person pays the amount required by the secured bond set in their case.³⁰

19. The County and Sheriff detained any person who did not pay.³¹

20. The other way for someone to be released prior to a hearing was through Early Presentment.³²

21. Early Presentment describes a process during which a Criminal Law Hearing Officer reviews a person's charging documents and criminal history and considers whether to issue a personal bond prior to an initial magistration hearing.³³ No lawyers for the state or defense participate in Early Presentment.³⁴ Typically, hearing officers consider only those individuals who

²⁸ Ex. 14 (First Wood Decl.) ¶ 20 (“If a person pays the amount required for release in the felony case but is subject to detention for any other reason, such as a hold from another jurisdiction, that person will be eligible for release, subject to the other basis for detention.”).

²⁹ *Id.* ¶ 21; *see also* Tex. Code Crim. P. Ann. § 15.21 (ten days for out of county warrants); 8 C.F.R. 287.7(d) (two days for ICE hold).

³⁰ Ex. 14 (First Wood Decl.) ¶ 21 (“The time period by which the holding jurisdiction must take custody of the person does not begin to run until bail is posted on Harris County charges.”).

³¹ *Id.* ¶ 8 (“Those who cannot pay the predetermined amount will be detained”); Ex. 27 (Harris County 30(b)(6) at 67:21–25) (“Q: And do you routinely meet people before the 15.17 hearing who are detained because they cannot afford to pay the amount printed on the charging document? A. Yes.”); Ex. 22 at (HCSO 30(b)(6) at 42:9–13) (“Q. And if they can't pay the amount required by the bail schedule, then they remain in jail, correct? A. Correct. If they – If they refuse to pay or they can't pay.”).

³² Ex. 135 (Standard Operating Procedures Manual for Early Presentment Process, Apr. 4, 2018).

³³ Ex. 25 (St. Julian Dep. at 28:4–15) (describing early presentment process); Ex. 26 (Gaut Dep. at 20:5–8); Ex. 16 (Third Declaration of Sarah Wood, General Counsel of the Harris County Public Defender's Office, Nov. 18, 2022 (“Third Wood Decl.”)) ¶ 4(c).

³⁴ Ex. 16 (Third Wood Decl.) ¶ 4(c).

were charged with certain low-level offenses for release at Early Presentment.³⁵ The Early Presentment process has been in use since 2017 and remains in use today.³⁶

22. On March 20, 2020, under pressure to reduce the jail population in light of the COVID-19 pandemic, the Felony Judges promulgated a generally applicable order designating certain categories of people for immediate release on unsecured bail.³⁷

23. On March 29, 2020, Texas Governor Greg Abbott promulgated Executive Order GA-13, which prohibited pretrial release on unsecured bail for large categories of people accused of crimes across Texas.³⁸

24. On April 1, 2020, Harris County Judge Lina Hidalgo issued a temporary emergency order directing the expedited release of certain non-violent individuals from the Harris County Jail.³⁹ This order was consistent with GA-13.⁴⁰

25. On April 2, 2020, in response to Executive Order GA-13, the Felony Judges promulgated an Amended General Order Bond, which added additional offenses to the list of offenses eligible for immediate, pre-hearing release on an unsecured bond.⁴¹ Consistent with GA-13, the Amended

³⁵ *Id.*; Ex. 25 (St. Julian Dep. at 29:16–30:7) (stating that the Felony Judges require that the people listed on page 2 of the bail schedule “were the persons who would be brought to us early[] and the request was that we grant them a pretrial release bond early because they'd been assessed as being low risk and it's a low-level offense”).

³⁶ Ex. 16 (Third Wood Decl.) ¶ 4(c).

³⁷ Ex. 32 (General Order Bond For Certain Offenses signed by Judge Herb Ritchie, Mar. 20, 2020 (“General Order Bond”)); Ex. 14 (First Wood Decl.) ¶ 9 (“On March 20, in the midst of the global Covid-19 pandemic, the felony judges promulgated an order requiring the release of certain people arrested for any of a list of 20 enumerated state jail felony offense”); Ex. 26 at (Gaut Dep. at 196:3–6) (“Q. Does a hearing officer have discretion to impose a secured bail amount on someone who is eligible for a general order bond? A. No.”).

³⁸ Ex. 39 (Executive Order GA-13, Mar. 29, 2020).

³⁹ Ex. 40 (Order of County Judge Lina Hidalgo, Apr. 1, 2020).

⁴⁰ *Id.* at 8 (“the actions required by this Order are . . . intended to be consistent with EO-GA-13 in all respects”).

⁴¹ Ex. 33 (First Amended General Order Bond for Certain Offenses, Apr. 2, 2020 (“Amended General Order Bond”)); Ex. 25 (St. Julian Dep. at 187:2–7) (Q: “Is the amended general order bond an order from the

General Order Bond excluded anyone with “a prior conviction involving [] physical violence or the threat of physical violence,” among others.⁴²

26. On April 3, 2020, Judge Herb Ritchie, the Administrative Judge for the Felony Judges, ordered the Sheriff, Pretrial Services, and the Community Supervisions and Corrections Department to “ignore and wholly disregard” the County Judge’s temporary emergency release order.⁴³ Citing the Felony Judges’ “exclusive constitutional and statutory jurisdiction over all felony cases,” Judge Ritchie’s order threatened to hold the agencies in contempt if they complied with the County Judge’s order.⁴⁴ The release of certain individuals pursuant to the County Judge’s order was immediately halted.⁴⁵

felony judges that for those arrestees who are eligible they be released immediately on a general order bond before ever seeing a hearing officer for a 15.17 hearing?” A. “That is my understanding.”); Ex. 139 (Apr. 3, 2020 email from Judge Kelli Johnson to Stephanie Armand (JAD) et al.) (“Yesterday the Board of Judges Trying Criminal Cases approved an Amended GOB Order . . .”).

⁴² Ex. 33 (Amended General Order Bond); Ex. 25 (St. Julian Dep. at 176:18–24) (“I do recall distinctly that any person that had a previous conviction for a, quote, violent offense . . . those people were no longer qualified to receive a pretrial release bond.”); Ex. 140 at 3 (Mar. 30, 2020 email from Judge Susan Brown to other Felony Judges) (“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 of 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”).

⁴³ Ex. 37 (Order To Disregard Directive by Harris County Judge, Apr. 3, 2020).

⁴⁴ *Id.* (“EACH VIOLATION OF THIS ORDER MAY RESULT IN CRIMINAL CONTEMPT OF COURT PENALTIES”); Ex. 30 at (Transcript, Deposition of Harris County Sheriff Ed Gonzalez, Mar. 29, 2021 (“Sheriff Gonzalez Dep.”) at 61:1–63:1) (testifying that he was required to comply with Judge Ritchie’s order under pain of contempt).

⁴⁵ Ex. 139 (Apr. 3, 2020 email from Jim Bethke (JAD) to Judge Kelli Johnson et al.) (“All operations pursuant the County Judge’s Temporary Emergency Order were abated upon issuance of Judge Ritchie’s order. I witnessed it all. The persons that were at final step of the process were all sent back to cell.”); Ex. 15 (Second Declaration of Sarah Wood, then-Policy Director of the Harris County Public Defender’s Office, Apr. 10, 2020 (“Second Wood Decl.”)) ¶ 7 (“After Judge Ritchie issued his April 3 Order to the Sheriff (Dkt. 66-2), the Sheriff stopped releasing people under Judge Hidalgo’s Order (Dkt. 66-1).”).

27. The Felony Judges' general orders did little to decrease the jail population because of their many exclusions.⁴⁶ The bail schedule continued to apply to everyone else.⁴⁷

28. Up until the end of 2021, the bail schedule and the General Order Bonds determined whether a felony arrestee was released or detained before a magistration hearing.⁴⁸

29. On September 17, 2021, Texas Governor Greg Abbott signed into law Senate Bill 6, also known as the "Damon Allen Act" or "S.B. 6," which made several changes to the state's bail laws.⁴⁹

30. The new statute imports GA-13's requirement that secured bail be mandatory for certain types of offenses. It bars pretrial release on unsecured bond for anyone charged with certain enumerated offenses purportedly "involving violence," or with any felony while released on bail

⁴⁶ Ex. 1 (Copp Expert Report) ¶ 42 (finding General Order Bonds accounted for just 10% of all bonds posted between March 20, 2020 and December 31, 2021); Ex. 141 (Apr. 24, 2020 email from Hearing Officer Jennifer Gaut to Judge Frank Aguilar) ("I set bail at \$10K but did not approve a PTRB because of GA-13."); Ex. 142 (Apr. 30, 2020 email from Hearing Officer Jennifer Gaut to Judge Greg Glass) (describing defendant who scored "below average risk" on the PSA with no prior felony or violent convictions or FTAs, and noting that "I did not approve her for a PTRB per GA 13 but set bail at \$5,000."); *see also* Harris County Office of Justice and Safety, *Jail Population History*, bit.ly/3Hhrwp7 (showing the jail population was 8,368 on March 20, 2020, and 8,538 on December 31, 2021); Ex. 15 (Second Wood Decl.) ¶¶ 12–14 (explaining in April 2020 that, of 1470 people identified as potentially eligible for release on PR or lower financial condition bonds, the District Attorney's Office had opposed the release of 1333); Ex. 190 (May 15, 2020 email from Scott Durfee (DAO)) ("I do think . . . that the state district court's exclusion orders - to the extent that they effectively prevent the defendants *from any access to court proceedings at all* - may prompt a reaction from Judge Rosenthal" (emphasis in original)).

⁴⁷ Ex. 14 (First Wood Decl.) ¶ 11 ("As the order only applies to certain offenses, large categories of people are still subject to detention because they cannot afford money bail and without a constitutionally adequate hearing to determine ability to pay or whether detention is necessary.").

⁴⁸ Ex. 16 (Third Wood Decl.) ¶ 4(a) ("Up until late 2021 . . . people who were arrested for a felony in Harris County could be released before a hearing if they either paid a secured bond that had been automatically set pursuant to the felony judges' bail schedule or if they received a personal bond issued pursuant to one of the felony judges' general orders."); Ex. 14 (First Wood Decl.) ¶¶ 7–11.

⁴⁹ Damon Allen Act, S.B. 6, 87th Leg. (Tex. 2021), *available at* bit.ly/3Y83m6d.

or community supervision for such an offense.⁵⁰ Judges in Texas must require payment of secured-money bail in all such cases, even when, based on their individualized assessment, they do not believe a secured bond is necessary to address a risk of flight or danger.⁵¹ Those provisions went into effect on December 1, 2021.⁵²

31. S.B.6 further requires judges and hearing officers, when determining bail conditions, to consider a “Public Safety Report” consisting of a person’s criminal history.⁵³ Local officials in Harris County have interpreted this provision to prohibit pre-hearing release based on standing orders like the bail schedule and the General Order Bonds.⁵⁴ Based on this interpretation, local officials no longer permit people arrested for felonies in Harris County to be released prior to judicial review, whether by paying secured bail according to the bail schedule or on a personal bond issued pursuant to the Amended GOB.⁵⁵

32. Thus, the Judges’ bail schedule and General Order Bonds, which together allowed for substantial numbers of people to be released prior to a magistration hearing, are no longer in effect

⁵⁰ Tex. S.B. 6, §§ 6–7; Ex. 13 (Fourth Declaration of Alex Bunin, Harris County Chief Public Defender, Nov. 22, 2022 (“Fourth Bunin Decl.”)) ¶ 9; Ex. 16 (Third Wood Decl.) ¶ 5(a); *but see id.* ¶ 5(b) (“Nothing in the law prohibits secured bail from being set at a nominal amount, such as \$1.”).

⁵¹ Tex. S.B. 6, §§ 6–7; Ex. 13 (Fourth Bunin Declaration) ¶ 9; Ex. 16 (Third Wood Decl.) ¶ 5.

⁵² Tex. S.B. 6, § 25(a).

⁵³ Ex. 13 (Fourth Bunin Decl.) ¶ 10; *see also, e.g.*, Ex. 105 (J.S. Case Records) at 6 (bail order Aug. 4, 2022 stating “Pursuant to Texas Code of Criminal Procedure art. 17.022 . . . I hereby certify that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System.”).

⁵⁴ Ex. 13 (Fourth Bunin Decl.) ¶ 10; Ex. 16 (Third Wood Decl.) ¶ 4(b).

⁵⁵ Ex. 13 (Fourth Bunin Decl.) ¶ 10; Ex. 16 (Third Wood Decl.) ¶ 4(b) (“[T]he bail schedule and general orders no longer dictate conditions of release prior to judicial review.”).

in Harris County, and all people arrested for felony offenses are considered individually for release—subject to the state law prohibition on personal bonds for numerous offenses.⁵⁶

33. Accordingly, apart from a limited number of people who receive personal bonds at “Early Presentment” (when a hearing officer considers release on unsecured bond for a small group of people based solely on the charging documents and criminal history report), every person arrested in Harris County for a felony offense is now detained until magistration.⁵⁷

34. S.B. 6 does not require any on-the-record finding regarding why pretrial detention is necessary, does not require that findings meet a certain evidentiary standard, and “may not be construed as requiring the court to hold an evidentiary hearing that is not required by other law.”⁵⁸

35. Due to S.B. 6, the post-arrest process has slowed down dramatically, leading to massive overcrowding, additional system delays, and the deaths of 27 people in Harris County custody in just the first eleven months of 2022.⁵⁹

⁵⁶ Ex. 13 (Fourth Bunin Decl.) ¶ 10 (“All people arrested for felonies are now detained until judicial review.”); Ex. 16 (Third Wood Decl.) ¶ 4 (“Since portions of Senate Bill 6 (S.B. 6) went into effect in late 2021, people arrested for felonies in Harris County are now detained until judicial review.”).

⁵⁷ Ex. 13 (Fourth Bunin Decl.) ¶ 10; Ex. 16 (Third Wood Decl.) ¶ 4(c).

⁵⁸ Tex. S.B. 6, § 5.

⁵⁹ Ex. 172 (Supplemental Report of Krishnaveni Gundu, Dec. 7, 2022 (“Supp. Gundu Report”)) ¶ 4; Ex. 16 (Third Wood Decl.) ¶ 16; Ex. 13 (Fourth Bunin Decl.) ¶ 11 (“Local officials’ interpretation of S.B. 6, and the continued arrest and prosecution practices of the Houston Police Department, Harris County Sheriff’s Office, and Harris County District Attorney’s Office have caused overcrowding, particularly in the Joint Processing Center, and increased delays in appointment of counsel and court appearances.”); Lucio Vasquez, *Senate Bill 6 may be contributing to a record number of deaths at Harris County Jail*, Houston Public Media (Nov. 3, 2022), bit.ly/3Byne9h (“They’re right. SB 6 has contributed to the backlog that we’re seeing at the county jail,” [Jason Spencer, Chief of Staff at the Harris County Sheriff’s Office] said. “There are administrative delays that you can attribute to SB 6 as well that slow down the process.”); *see also* Ex. 2 (Expert Report of Krishnaveni Gundu, Aug. 15, 2022) ¶ 11 (“Since January 2020, at least 40 people have died in Harris County Jail custody, most of whom were being jailed pretrial. For perspective, in the same time period, the state of Texas executed 7 people.”).

III. During the Booking Process in the Jail, Pretrial Services and the Public Defender's Office Collect Information to Be Used at Bail Hearings.

36. In Harris County, most people arrested for felonies appear at hearings where Criminal Law Hearing Officers make bail decisions, inform them of certain rights, and provide them with an opportunity to request appointment of counsel if they cannot afford to hire a lawyer.⁶⁰ These hearings are referred to locally as “magistration hearings,” “15.17 hearings,” or “bail hearings.”⁶¹

37. At some point after a person arrives at the Joint Processing Center—and usually before the person is assigned to a housing unit—the person will be taken by Sheriff's Office employees to a courtroom in the jail with other recent arrestees to appear at magistration.⁶²

38. From 2015 through 2021, more than 14,000 people waited more than 48 hours after arrest to receive a bail determination at magistration.⁶³

39. Before they appear for magistration and a bail determination, people arrested for felony offenses are typically interviewed twice, albeit briefly each time, while they wait: by a representative of Pretrial Services⁶⁴ and by a lawyer with the Public Defender's Office.⁶⁵

⁶⁰ Tex. Code Crim. P. Ann. § 15.17.

⁶¹ Ex. 14 (First Wood Decl.) ¶ 22; *id.* ¶¶ 25-26; Ex. 17 (Declaration of Former Hearing Officer Colin Amann, Oct. 18, 2022) ¶ 3; Ex. 26 (Gaut Dep. at 11:21–12:18) (“A. . . . I preside over what we call AB felony docket which means Class A and B misdemeanors and felonies. During the docket I make a probable cause finding. I have a bail hearing. I set bail, decide whether to approve personal bonds and conditions of bond, protective orders.”).

⁶² Ex. 14 (First Wood Decl.) ¶ 22 (“Sometime after a person arrives at the JPC—and usually before the person is assigned to a housing unit—the person will be taken by Sheriff's Office employees to a courtroom in the jail with other recent arrestees to appear before a Hearing Officer, who will determine probable cause for warrantless arrests and set conditions of release.”).

⁶³ Ex. 1 (Copp Expert Report) ¶ 27.

⁶⁴ Ex. 28 (March Pretrial Services 30(b)(6) at 49:25–50:5).

⁶⁵ Ex. 27 (Harris County 30(b)(6) at 51:4–10); Ex. 16 (Third Wood Decl.) ¶ 6.

a. Interview by Pretrial Services

40. Harris County Pretrial Services is a County agency with a director who is appointed and can be removed by the Harris County Commissioners Court.⁶⁶

41. Despite the fact that the County can hire and fire the Director of Pretrial Services, the elected judges in Harris County have historically exercised de facto control over the policies and practices of the agency.⁶⁷ For example, the judges developed the questions included in the financial affidavit that Pretrial Services administers to arrestees, and they control its content.⁶⁸

42. People arrested on a new felony charge are interviewed by Pretrial Services.⁶⁹ The Pretrial Services interview is conducted using a standardized form, which provides places for the interviewer to enter information about the person's medical history, prior arrests, prior convictions, marital status, education level, employment, finances, and number of dependents supported.⁷⁰

⁶⁶ Ex. 28 (March Pretrial Services 30(b)(6) at 50:15–22).

⁶⁷ *Id.* at (61:11–62:15) (stating that changing the interview process would require the Felony Judges' input). Ex. 32 (General Order Bond) (“[T]he Harris County District Court Judges Trying Criminal cases have approved a General Order Bond . . . Effective immediately . . . Harris County Pretrial Services is ORDERED to process the immediate release of the following persons under the General Order Bond.”); Ex. 151 (May 5, 2020 email from Pretrial Services Deputy Director Dennis Potts to Kelvin Banks) (forwarding message from Sylvia Cherry (OCM) stating that “The county and district court judges approved a few changes to the joint bond conditions order” and attaching revised bond condition forms); Ex. 37 (Order To Disregard Directive by Harris County Judge, signed by Administrative Judge Herb Ritchie); *see also e.g.*, Ex. 43 (Binder of Written Court Directives) at 44 (2016 emails between a felony judge and Pretrial Services regarding when PR bonds are permitted).

⁶⁸ *Id.* (131:22–132:3) (“[T]he financial affidavit, the information included, the questions included, were developed by both felony and misdemeanor judges. So they do have control over that content. If they wanted to change questions asked, they could certainly do that.”); *id.* (132:9–12) (Q: “So judges control the substance of the affidavit. Would that be fair to say?” A: “Yes.”); Ex. 29 (Transcript, Rule 30(b)(6) Deposition of Harris County Pretrial Services, Spurgeon Kennedy as corporate representative, May 4, 2021 (“May Pretrial Services 30(b)(6)”) at 138) (“We did develop that affidavit in consultation with the misdemeanor and felony court divisions and their counsel regarding the format and actually the content”); *id.* (69:18–21) (Q: “And it’s still true that the judges control the substance of the affidavit; Pretrial Services controls the format of the affidavit?” A: “Right.”).

⁶⁹ Ex. 28 (March Pretrial Services 30(b)(6) at 37:15–18).

⁷⁰ *Id.* (38:22–24, 75:3–76:13, 96:9–17).

43. The arrested person's financial information is also added to an affidavit used by the hearing officers at magistration.⁷¹ Although the misdemeanor judges have instructed Pretrial Services to ask misdemeanor arrestees how much money they can afford to pay at the time of the hearing,⁷² the Felony Judges have instructed Pretrial Services not to ask that same question of people arrested for felonies.⁷³ If the Felony Judges directed Pretrial Services to amend the financial affidavit to ask that same question to felony arrestees, Pretrial Services would comply.⁷⁴

44. Pretrial Services does not interview people who are rearrested on a pre-existing felony charge (for example, because they are accused of violating a bond condition).⁷⁵ Pretrial Services cannot change that practice without the input of the Felony Judges.⁷⁶

45. In July 2017, at the same time the Felony Judges promulgated a new secured bail schedule,⁷⁷ they approved implementation of a new risk assessment tool, the Public Safety

⁷¹ *E.g.*, Ex. 123 at 9–10 (O.G. financial affidavit).

⁷² Local Rule 9.12.4, Harris County Criminal Courts of Law (2021), at 22, bit.ly/3Bk11vb. (“In every case in which a judicial officer is contemplating secured money bail as a condition of release, the arrestee must be asked, under penalty of perjury, the amount of money she can afford to pay from any lawful source at the time of the hearing”).

⁷³ *E.g.*, Ex. 123 (O.G. Case Records) at 10 (financial affidavit stating that ability to pay question is “FOR MISDEMEANOR ONLY OR FOR MISDEMEANOR AND FELONY ONLY”); *see also* Ex. 134 (JPC Interview Process Instructions) (“What is the most money you could reasonably pay to get out of jail within 24 hours of your arrest’ should only be asked to defendants that have **MISDEMEANORS**.” (emphasis in original)).

⁷⁴ Ex. 28 (March Pretrial Services 30(b)(6) at 131:22–132:8) (“[The judges] have control over that content. If they wanted to change questions asked, they could certainly do that . . . So judges do have the ability to change that affidavit.”); *see also id.* at (94:1–4) (“Given that they’re the primary decision-makers when it comes to bail, we do seek out their input when it comes to information that we supply to them.”).

⁷⁵ *Id.* (68:15–71:4) (explaining that Pretrial Services only interviews felony arrestees on new charges and changing that policy would involve the Felony Judges).

⁷⁶ *Id.* (70:21–71:4).

⁷⁷ Ex. 38 (Felony Bail Schedule).

Assessment (“PSA”).⁷⁸ From that point on, the County began using the PSA to generate “risk scores” for each person arrested for a felony offense.⁷⁹

46. There is a vigorous and ongoing debate about the harms of pretrial risk assessment tools, including whether they exacerbate racial disparities in pretrial decisions.⁸⁰

47. The PSA uses nine factors to generate risk scores that purport to predict three outcomes—failure to appear in court (“FTA”), a new criminal arrest while on pretrial release (“NCA”), and a new “violent” criminal arrest while on pretrial release (“NVCA”).⁸¹

48. Each score on the three PSA scales represents a predicted percentage risk of the specified outcome occurring: for instance, according to the PSA, if a person scores a 3 on the FTA scale (which has scores ranging from 1 to 6), it means that the person shares certain characteristics with a group of individuals, 22% of whom, when observed in the past and without interventions such as court reminders or transportation assistance, missed a court date while on pretrial release.⁸²

⁷⁸ Ex. 29 (May Pretrial Services 30(b)(6) at 67:4–5) (“I do know that we adopted the PSA around July of 2017.”); Ex. 28 at (March Pretrial Services 30(b)(6) at 61:9–16) (Q: “And did the decision to use the PSA in particular require the approval of these other parties?” A: “I think it required the buy-in of all the other parties, yes.” Q: “And that includes the felony judges, correct?” A: “Yes.”).

⁷⁹ Ex. 28 (March Pretrial Services 30(b)(6) at 137:23–138:5) (Q: “And the – and Pretrial Services is the agency who administers the PSA for felony arrestees?” A: “Yes.” Q: “And Pretrial Services currently does not administer the PSA for misdemeanor arrestees, correct?” A: “For misdemeanors, yes.”); Ex. 27 (Harris County 30(b)(6) at 75:6–14) (“The biggest changes [to the bail schedule] were when we adopted the Public Safety Assessment. And then it added the language – for instance, on there it talks about an [NVCA] flag or risk score. Those types of things were not taken into account prior to the Public Safety Assessment. Average risk, below average, those things were not considered.”).

⁸⁰ Ex. 1 (Copp Expert Report) ¶ 81(a) (citing studies); *see also* Ex. 3 (Hamilton Expert Report) ¶ 15 (“The [Pretrial Justice] Institute highlights that predictors involving the presence of a pending charge at the time of arrest, prior violent convictions, and previous sentences involving incarceration, result in racial bias in pretrial decision-making because pending criminal cases take longer periods to resolve for Black men, violent arrests are disproportionately made from police sweeps of neighborhoods of color, and Black men are more likely than white men when sentenced to be given a penalty involving a period of incarceration.”).

⁸¹ Ex. 3 (Hamilton Expert Report) ¶¶ 11, 38, Figs. 1–3; Ex. 28 at (March Pretrial Services 30(b)(6) at 155:3–6) (Q: “And are these nine risk factors the factors that the PSA considers?” A: “These are the PSA’s risk factors, yes.”).

⁸² Ex. 3 (Hamilton Expert Report) at 27, Fig. 8; *id.* ¶¶ 21–23 (explaining difference between group data and individual likelihood); *id.* ¶ 23 (“The score of 6 means that Smith is part of a group of people assigned a

49. Pretrial decision-makers, namely Harris County judges and hearing officers, are meant to use the PSA scores to identify individuals who may benefit from appropriate services and support to help them succeed on pretrial release.⁸³ Instead, people who scored higher on the PSA received higher secured bond amounts and were more likely to be detained at disposition.⁸⁴

50. However, when Harris County implemented the PSA, it made substantial modifications that did not comport with the empirical foundations of the tool.⁸⁵

51. Harris County officials misused the PSA in conjunction with the felony bail schedule, before S.B. 6 halted the use of the schedule.⁸⁶

- a. Although the PSA is not designed, authorized, or validated for use with a bail schedule or to otherwise set financial conditions of release, Harris County officials incorporated the PSA into the Felony Bail Schedule (1) to determine which categories of people arrested for felony offenses would be detained prior to an Article 15.17 hearing and (2) to set presumptive bail amounts for people who were determined eligible for release, regardless of the individual's ability to pay.⁸⁷
- b. When someone was arrested, Pretrial Services used the PSA to generate a "risk score" for that person. Pretrial Services then referred to the bond schedule to determine the bond amount that corresponded to that charge and PSA score. Pretrial Services would place the resulting recommendation on a "bond recommendation form," which was then reviewed by an employee of the District Attorney's office and printed on the criminal charging document.⁸⁸ If a person could pay the secured

similar risk score. In the past, 40% of people with a similar risk score, and who were not offered any support services or other interventions, were rearrested while on pretrial release."); *but see id.* ¶ 21 ("It is a misuse of the tool to use the recidivism rate of a *group of people* to describe the likelihood of *an individual* behaving in a certain way (e.g., one cannot accurately say that 'the score of 6 means that there is a 40% likelihood of Defendant Smith will reoffend while on pretrial release').") (emphasis in original)).

⁸³ Ex. 28 (March Pretrial Services 30(b)(6) at 190:7–15) ("Q: Is it accurate to state that the PSA's main role is in identifying people who might need additional services or support to get out of court or stay out of trouble?" A: "If by 'services' you mean conditions of supervision . . . yes.").

⁸⁴ Ex. 1 (Copp Expert Report) ¶ 86.

⁸⁵ Ex. 3 (Hamilton Expert Report) ¶ 43.

⁸⁶ *Id.* ¶¶ 43–46.

⁸⁷ *Id.* ¶¶ 43–44; *id.* ¶ 26 ("Risk assessment tools, including the PSA, have no ability to recommend as a condition of release money bail, let alone to recommend a specific amount of money bail.").

⁸⁸ Ex. 23 at (2021 Keith Dep. at 97:18–98:1).

bond amount pre-printed on their charging document, they were released before a hearing.⁸⁹

52. Although S.B. 6 ended the County’s use of the felony bail schedule to set pre-hearing release conditions, the County continues to misuse the PSA. The Felony Judges created and rely on “risk categories” (specifically, “below average,” “average,” “above average,” and “high”) associated with combined scores from the three PSA scales,⁹⁰ even though there is no empirical support for or validation of the creation and use of these risk categories in connection with the PSA.⁹¹ Harris County officials—hearing officers, prosecutors, defense attorneys, and judges—continue to misuse these categories in the pretrial system to assess “risk” and determine financial conditions of release.⁹²

53. Harris County officials do not know how the labels of the PSA’s risk categories were created (other than that they were devised by the Felony Judges), what likelihood of success or

⁸⁹ *Id.* at (96:9-13).

⁹⁰ Ex. 27 (Harris County 30(b)(6) at 137:25–138:5) (Q. “And is that true – is it true for all of these categories – below average risk, average risk and above average risk – that they were policy decisions made by the felony judges in issuing this bond schedule?” A. “Yes.”).

⁹¹ Ex. 3 (Hamilton Expert Report) ¶ 7(b); *id.* ¶ 46 (“The “risk categories” Harris County officials created (e.g., below average, average, above average) are unsupported by PSA guidance or standard risk assessment principles. The labels attached to Harris County’s risk categories were not driven by the original PSA, nor are the categories recognized by the owner and developer of the tool. I am not aware of these risk categories being used in any other PSA jurisdiction.”); Ex. 29 (May Pretrial Services 30(b)(6) at 110:14–15) (“As far as I understand, there are no empirical reasons for those – those designations.”); *id.* (165:15–20) (“Q. Are there any empirical bases for the terms below average, average, and above average, as used on the felony bond schedule? A. As used as part of the PS – or to identify or – or designate PSA level placements, there’s nothing empirical to support it.”); Ex. 28 (March Pretrial Services 30(b)(6) at 208:18–21) (“[T]hose are not categories that are defined by Arnold Ventures or would have been defined by our agency.”).

⁹² *See, e.g.*, Ex. 23 (2021 Keith Dep. at 101:1–9) (“If an amount is recommended on the Public Safety Assessment, it corresponds to the Bail Schedule based on the level of the offense, not the specific offense charged, but the level, first, second – second, third, State Jail, and that defendant’s risk level, below average, average, or above average risk.”).

failure is reflected by those labels, or how the likelihood of success or failure could reasonably be used to justify the scheduled bail amounts.⁹³

54. Numerous additional problems with the PSA undermine its reliability:

- a. The PSA relies on criminal history to generate risk scores, which introduces racial, gender, and socioeconomic bias into the PSA's results.⁹⁴
- b. The PSA relies on bond forfeiture data to generate the "FTA" score, even though bond forfeitures are a crude and inaccurate proxy for nonappearance, negating any utility of the FTA score in Harris County.⁹⁵
- c. The PSA cannot accurately predict the results the system cares most about—flight and serious violent behavior—because these outcomes are so rare.⁹⁶

⁹³ Ex. 3 (Hamilton Expert Report) ¶ 60 ("The deposition testimony I reviewed demonstrated a consistent and significant lack of understanding among the Public Defender's Office, the District Attorney's Office, and two hearing officers about PSA outcomes, Harris County's risk categories, and distinctions between different PSA outcomes and risk categories."); Ex. 27 (Harris County 30(b)(6) at 78:10–78:13) (stating "I don't know" when asked what the NVCA flag represents in terms of "how likely is it that that the person is going to commit a new violent crime"); *id.* (77:12–15) ("I don't even know what the definition [of failure to appear] is."); *id.* (138:6–9) (responding "I don't know" when asked "Do you know whether 'average' means most people have a score of 3 or 4, or whether 'average' refers to the mean?"); Ex. 23 (2021 Keith Dep. at 181:14–25) (describing what an "average" risk level means as "I don't want to classify it by percentage, but a more-than-some-but-less-than-others risk of re-offending and failing to appear"); *id.* (183:12–17) (confirming that Ms. Keith had not "been trained on or provided a definition for" Harris County's risk categories); *id.* at (188:18–25) (stating she had "no knowledge of how the Public Safety Assessment is generated or how categories are defined and set."); *id.* (190:13–191:9) ("As far as what specific difference between 1 and 2, and 3 and 4, and 5 and 6 . . . I don't know with respect to a specific defendant what the differences in those scores would be."); Ex. 24 (2022 Keith Dep. at 23:1–6, 23:14–20) (agreeing it was her understanding that the PSA itself "produces a recommended bond amount or a referral to [a] 15.17 hearing[]" and that she had trained other intake lawyers in the District Attorney's Office that the "PSA produces an actual recommendation as to a numerical bond amount or a referral to a 15.17 hearing"); Ex. 143 at 2 (July 19, 2017 email from Judge Kelli Johnson to Virginia Ryan (HCSO)) ("[O]n the PSA, how do I know what risk level the person is? Low, medium, high? . . . [W]hat constitutes for example a medium level? I just want to be able to quickly look at [the PSA] and tell the level."); *id.* (July 19, 2017 email from Virginia Ryan (HCSO) to Judge Kelli Johnson) ("It doesn't make ANY SENSE that [the risk category] isn't on [the PSA].").

⁹⁴ Ex. 3 (Hamilton Expert Report) ¶¶ 14–18.

⁹⁵ *Id.* ¶¶ 47–50; *see also* Ex. 1 (Copp Expert Report) ¶ 94(a)(i) ("[A] judge's decision to forfeit a bond is inherently discretionary based on a number of circumstances related to whether the person's absence is excusable.").

⁹⁶ Ex. 3 (Hamilton Expert Report) ¶ 20.

- d. PSA scores are conveyed in misleading ways: judicial officers in Harris County appear to not understand that the PSA does not predict an *individual's* risk as opposed to *group* risk.⁹⁷
- e. Harris County generates risk scores for juveniles and uses juvenile criminal history to calculate risk scores for adults, even though the tool is not approved for either such use.⁹⁸
- f. The PSA as applied in Harris County disproportionately scores male and Black arrestees into higher “risk” categories.⁹⁹

55. The only validation study that has been performed on the PSA in Harris County suffers from methodological problems and a financial conflict of interest that render its results biased and likely inaccurate—it was funded by the same organization that created the PSA. Yet even that study does not support the continued use of the PSA in Harris County for any purpose.¹⁰⁰

56. In sum, Harris County’s use of the PSA is unscientific, irrational, results in unnecessary detention, and exacerbates racial disparities in pretrial detention. By violating key principles of risk assessment implementation and making unintended, unauthorized, and unvalidated use of the PSA, Harris County officials have increased the likelihood that more individuals are given high bond amounts, resulting in detention, than is necessary from a risk perspective.¹⁰¹ Based on the data, it is highly likely that this effect is felt disproportionately by poor people and people of color.¹⁰²

⁹⁷ *Id.* ¶¶ 45–46, 60–61.

⁹⁸ *Id.* ¶ 52; *id.* ¶ 28 (“[B]est practices, including those guiding use of the PSA, rule out using a risk tool designed for adults on those under 18 or including juvenile offense data in an individual’s risk profile.”).

⁹⁹ *Id.* ¶ 54.

¹⁰⁰ *Id.* ¶¶ 55–59.

¹⁰¹ *Id.* ¶ 9.

¹⁰² *Id.*

b. Interview by the Public Defender

57. In addition to the Pretrial Services interview, an arrested person is typically interviewed by an attorney with the Public Defender's Office.¹⁰³

58. The Felony Judges have authorized the Public Defender's Office to represent felony arrestees at magistration hearings for the limited purpose of arguing bail.¹⁰⁴

59. Relying on information obtained from Pretrial Services and the PSA score, the public defender asks the arrested individual about their ability to return to court—specifically, their access to housing, childcare, and transportation—as well as their criminal history and appearance record.¹⁰⁵ The public defender is often rushed to interview everyone on the docket before magistration begins.¹⁰⁶ The interviews typically last less than 15 minutes.¹⁰⁷ The public defenders do not have time to work with investigators or social workers to contact witnesses or gather evidence for use during the magistration hearing.¹⁰⁸

IV. Magistration Hearings are Held Before Hearing Officers Who are Employees of the Judges.

60. At the Joint Processing Center, individuals arrested for felony offenses who are not released on secured bail (an option up through December 1, 2021) or on a personal bond (at Early

¹⁰³ Ex. 27 (Harris County 30(b)(6) at 51:4–10); Ex. 16 (Third Wood Decl.) ¶ 6.

¹⁰⁴ Ex. 36 (Joint Administrative Order No. 2017-01: Order Appointing Public Defender for Art. 15.17 Bail Hearings); Ex. 14 (First Wood Decl.) ¶ 28 (“By order of the judges, the PDO is appointed for the limited purpose of arguing bail and is not authorized to represent the person during the portion of the hearing in which probable cause is determined.”).

¹⁰⁵ Ex. 27 at (Harris County 30(b)(6) at 56:12–58:16).

¹⁰⁶ Ex. 16 (Third Wood Decl.) ¶ 6.

¹⁰⁷ Ex. 27 at (Harris County 30(b)(6) at 53:16–20); Ex. 16 (Third Wood Decl.) ¶ 6.

¹⁰⁸ Ex. 27 at (Harris County 30(b)(6) at 95:14–17) (stating that investigators are not often used prior to bail hearings “[b]ecause at that point you’re usually talking about something that would take significant time, and time is limited”); Ex. 16 (Third Wood Decl.) ¶ 6 (“They do not have time to contact potential witnesses or collect evidence.”).

Presentment) are presented for a bail proceeding inside the jail.¹⁰⁹ Individuals arrested in connection with pre-existing charges—for example, on a motion to revoke bond or a motion to adjudicate—do not appear at this bail proceeding; their bail determination is left to the felony judge assigned to the case.¹¹⁰

61. At the bail proceeding, also known as a magistration or Article 15.17 hearing, a Harris County Criminal Law Hearing Officer considers conditions of release.¹¹¹

62. Hearing officers in Harris County are appointed by quorum of a board composed of three felony judges, three misdemeanor judges, and three justices of the peace, “with the consent and approval of the commissioners court.”¹¹² Hearing officers may be terminated at any point through

¹⁰⁹ Ex. 14 (First Wood Decl.) ¶ 22 (“Sometime after a person arrives at the JPC—and usually before the person is assigned to a housing unit—the person will be taken by Sheriff’s Office employees to a courtroom in the jail with other recent arrestees to appear before a Hearing Officer, who will determine probable cause for warrantless arrests and set conditions of release”).

¹¹⁰ Ex. 27 (Harris County 30(b)(6) at 86:25–89:8) (The hearing officers and Judges “traditionally . . . expected that if someone were to commit a new offense or abscond while they were under the supervision of a court, then it’s up to that court to decide whether they should be released or not,” and that that person would not be “eligible to get released” at the 15.17 hearing.).

¹¹¹ Ex. 14 (First Wood Decl.) ¶ 22; *id.* ¶¶ 24–26 (“The first post-arrest hearing before a judicial officer is referred to locally by a variety of terms, including ‘magistration,’ ‘Article 15.17 hearing,’ ‘bail hearing,’ and ‘probable cause hearing.’ Each of these terms refers to the initial hearing before a Criminal Law Hearing Officer, which occurs inside the JPC.”).

¹¹² Tex. Gov’t Code Ann. § 54.852 (“(a) A board composed of three judges of the district courts of Harris County trying criminal cases, three judges of the county criminal courts at law, and three justices of the peace in Harris County may appoint criminal law hearing officers, with the consent and approval of the commissioners court, to perform the duties authorized by this subchapter. A quorum is two-thirds of the members of the board.”); Ex. 41 (State Commission on Judicial Conduct Documents (“SCJC Docs”)) at 30 (“Hearing Officers are appointed by a nine member board made up of three judges of the district courts of Harris County trying criminal cases, three judges of the County Criminal Courts at Law, and three Justices of the Peace in accordance with § 54.852 of the Government Code.”); Ex. 42 (State Commission on Judicial Conduct Documents Part II (“SCJC Docs II”)) at 71 (“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.”).

the same process.¹¹³ This board chooses each year whether to renew each hearing officer's contract.¹¹⁴

63. The duties and powers of Criminal Law Hearing Officers are set forth in Texas law.¹¹⁵ They include reviewing and signing warrants, and “magistrating” people arrested for class A and B misdemeanors and felonies by determining whether or not probable cause exists and determining bail.¹¹⁶

64. Prior to S.B. 6, when cases were filed, people who appeared at the magistration hearings typically already had bond set on their cases pursuant to the felony bail schedule, and the hearing officers considered whether to adjust the predetermined amount of bail.¹¹⁷ They rarely did.¹¹⁸

65. Following S.B. 6, all felony arrestees who are not released through Early Presentment are detained until magistration, where hearing officers consider setting bail in the first instance.¹¹⁹ When hearing officers impose a secured bail amount, it is often consistent with—or in excess of—

¹¹³ *Id.* (“(d) A criminal law hearing officer appointed under this subchapter may be terminated at any time in the same manner as appointed.”).

¹¹⁴ Tex. Gov’t Code § 54.852 (“(c) A criminal law hearing officer serves a one-year term and continues to serve until a successor is appointed.”); *see also* Ex. 43 (Binder of Written Court Directives) at 290 (email to new hearing officers stating “You may never, never, ever give a PR bond to a defendant in any of the district courts. This would probably get you fired. So don’t.”); Ex. 26 (Gaut Dep. at 11:16–20) (Q: “All right. Now, who has the authority to hire and fire you?” A: “My understanding is that it is the judges, the justice of the peace, county criminal court and district court judges.”); Ex. 144 at 2 (Jan. 14, 2020 email from Ed Wells (DCA) to members of Hearing Officer Hiring Committee) (regarding hiring new hearing officers); *id.* at 2 (telling hearing officers “you are employees of the Hearing Officer Committee”).

¹¹⁵ Tex. Gov’t. Code § 54.858 (laying out “Duties and Powers” of criminal law hearing officers).

¹¹⁶ Ex. 26 at (Gaut Dep. at 11:21–12:18); Ex. 17 (Amann Decl.) ¶ 3.

¹¹⁷ Ex. 14 (First Wood Decl.) ¶ 32; Ex. 1 (Copp Expert Report) ¶ 39 (finding 60% of cases had a secured bond amount set on the complaint); *id.* ¶ 26 (finding 82% of people arrested for felonies remained detained at magistration).

¹¹⁸ Ex. 1 (Copp Expert Report) ¶ 48(a) (finding that, in 85% of cases where a bond amount was set on the complaint, the bond amount was not modified before the case was disposed); *see also id.* ¶ 48 (“Overall, bond was modified in 31% of cases.”).

¹¹⁹ Ex. 16 (Third Wood Decl.) ¶ 4(c).

the amount prescribed by the bail schedule.¹²⁰ People who cannot afford the financial condition of release are detained at least until their first appearance in a district court, which can be a week or more after arrest.¹²¹ They often do not have the assistance of counsel during that time.¹²²

66. Texas law and County policies require probable cause determinations to occur within 48 hours of a warrantless arrest for a felony offense.¹²³ However, people arrested for felony offenses regularly wait longer than 48 hours after arrest before appearing before a hearing officer.¹²⁴

67. A hearing officer's job comes with "challenging conditions:"¹²⁵

- a. Hearing officers must contend with crowded magistration dockets that leave only a few minutes to admonish each person about their rights, determine probable cause, and make a bail determination.¹²⁶

¹²⁰ *Id.* ¶ 9 ("Even though the Felony Bail Schedule is no longer automatically applied, Hearing Officers generally impose secured bail amounts that are consistent with—or in excess of—the amount called for under the schedule.").

¹²¹ *Id.* ¶ 10 ("[P]eople who cannot afford the amount set by a Hearing Officer are detained until at least their first appearance in the trial court. They are often scheduled to appear in District Court on the next business day after magistration, but that does not mean they will appear in court. Sometimes they are not actually brought to the trial court for weeks or months after arrest."); *id.* ¶ 11 ("Sometimes, first appearances in the trial court are reset or 'rolled' to the next day repeatedly when the in-custody arrestee is not brought to the courthouse. Other times, they are reset for weeks or months in the future.").

¹²² Ex. 1 (Copp Expert Report) ¶ 31(b) (finding that 44% of felony detainees did not have counsel appointed until after their first appearance); *see, e.g.*, Ex. 16 (Third Wood Decl.) ¶ 19 ("Another deceased person, N.H. (SPN 02623034), also never had bail set and never had counsel appointed during the 11 days between his arrest and his death.").

¹²³ Tex. Code Crim. P. Ann. § 17.033(b); Ex. 14 (First Wood Decl.) ¶ 26 ("Defendants attempt to provide defendants with a probable cause and 15.17 hearing within 48 hours of arrest.").

¹²⁴ Ex. 1 (Copp Expert Report) ¶ 27 (from 2015 through 2021, over 14,000 people were detained for more than 48 hours between arrest and magistration); Ex. 146 (Dec. 16, 2020 email from Sylvia Cherry (Office of Court Management) to representatives from the hearing officers, Pretrial Services, the Sheriff's Office, the District Attorney's Office, and the Public Defender's Office) (expanding the number of people on each magistration docket due to the long waits defendants faced).

¹²⁵ Ex. 17 (Amann Decl.) ¶ 4.

¹²⁶ *Id.*; *see also id.* ¶ 10 ("The nonstop sense of urgency pervading each of my shifts as a hearing officer was one of my primary reasons for leaving the job. I couldn't bear going to work because from the moment I arrived to the moment I left it couldn't be characterized as anything but a fire drill. I was not the only officer to leave.").

- b. Hearing officers receive no formal training for the position.¹²⁷
- c. Hearing officers receive no sick leave or vacation time.¹²⁸
- d. Hearing officers serve yearly terms and can be fired mid-term without any formal process.¹²⁹ They have no written employment contract.¹³⁰
- e. Hearing officers are never informed of any system or criteria on which their job performances are evaluated.¹³¹
- f. Hearing officers are “employees” of the committee of judges.¹³² They do not know how long they will be employed, and face the constant threat that they might lose their jobs if the judges do not agree with their bail determinations.¹³³

68. In addition to the judges’ instructions, criticism from the District Attorney and other public officials affects the hearing officers’ bail decision-making and has led to higher bond amounts in recent months.¹³⁴

¹²⁷ *Id.* ¶ 7.

¹²⁸ *Id.* (“If we could not make our shift for any reason, we had to convince one of our fellow officers to cover for us or leave our shift partner to go it alone and do double the work.”); *id.* ¶ 8 (describing hearing officers’ unsuccessful attempts to arrange for substitute hearing officers that would allow them to take time off).

¹²⁹ *Id.* ¶ 6.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Ex. 144 at 2 (Jan. 14, 2020 email from Ed Wells (DCA) to members of Hearing Officer Hiring Committee) (forwarding email telling hearing officers “you are employees of the Hearing Officer Committee”).

¹³³ Ex. 17 (Amann Decl.) ¶ 6 (“We were never informed of any system or criteria by which we were evaluated and we could be fired in the middle of a term without any formal process. The other hearing officers and I often spoke about the possibility that our contracts might not be renewed for the following year, particularly if the judges did not agree with the decisions we were making or how we performed our jobs. None of us ever knew for sure how long we would be employed.”); Ex. 145 (May 7, 2020 email from Judge Holly Williamson to members of the Hearing Officer Committee) at 2 (distributing complaint letter against Hearing Officer Jennifer Gaut); *see also* Ex. 43 (Binder of Written Court Directives) at 290 (email to new hearing officers stating “You may never, never, ever give a PR bond to a defendant in any of the District courts. This would probably get you fired. So don’t.”).

¹³⁴ Ex. 17 (Amann Decl.) ¶ 13 (“I occasionally felt outside pressures that influenced my thinking.”); *id.* ¶¶ 13–14 (describing public backlash to a bond decision as “a warning to all of the hearing officers about what happens if our decisions draw the ire of law enforcement officials”); *see also* Adam Zuvanch, *How rhetoric about bail reform is shaping the upcoming election in Harris County*, Houston Public Media (Oct. 4, 2022), bit.ly/3VwflDc (quoting District Attorney Kim Ogg saying “there’s a lot of concern about the judicial

69. As soon as a felony case is filed, it is assigned to one of the elected Felony Judges.¹³⁵ At the time a hearing officer holds a magistration hearing, they know which judge has authority to make the ultimate bail decision in each case.¹³⁶

70. For decades, the hearing officers set bail in accordance with the written and unwritten preferences of the judge with final authority over the case.¹³⁷

release of violent repeat offenders on bail. And I think the message has gotten through.”); *id.* (“[President-elect of the Harris County Criminal Lawyers Association Murray] Newman agreed with [District Attorney Kim] Ogg’s claim that judges have altered their behavior in response to criticism by her and others, saying they are ‘definitely more sensitive about the decisions they’re making.’ He said he’s seen a greater number of higher bonds and less tolerance even when it comes to relatively minor offenses.”); Editorial Board, *Editorial: We recommend Hilary Unger for the 248th Criminal District Court*, Houston Chron. (Oct. 16, 2022), bit.ly/3h41mLN (quoting Judge Hilary Unger stating that “[t]here wasn’t a spotlight on the bonds the same way that there is now and I hate to say this, but the bonds that we’ve been setting now are significantly higher than they ever were.”).

¹³⁵ Ex. 34 (Direct Filing Order) ¶ I(A)(3) (Upon the filing of said complaint, jurisdiction is vested in the district court sitting as a magistrate to which the case has been pre-assigned.”).

¹³⁶ Ex. 26 (Gaut Dep. at 24:13–18) (“And so I tell the defendant before court . . . [y]our case is assigned to – I tell them whatever court. You tell them what judge it is.”); Ex. 17 (Amann Decl.) ¶¶ 18–19.

¹³⁷ Ex. 27 (Harris County 30(b)(6) at 108:21-25) (“[T]here have always been instructions in some form from felony judges to the criminal law hearing officers about their preferences of how bail should be handled in their cases.”); Ex. 14 (First Wood Decl.) ¶¶ 40–44 (describing decades of instructions from the Felony Judges to the hearing officers); Ex. 26 (Gaut Dep. at 59:21–24) (Q: “Does it state, ‘The district judges shall enter a written general order setting the initial amount of bail of any person charged with a felony offense’? A: “Yes”); *id.* (60:17–22) (Q: “Does this mean that an arrestee must pay the amount required by the bail schedule in order to be released before a 15.17 hearing unless a district judge dictates some other bail amount or requires the person to be detained?” A: “Yes.”); Ex. 41 (SCJC Docs) at 32 (written testimony of former Hearing Officer Hagstette submitted to the Judicial Ethics Commission) (“[A]s the cases I see already are assigned to a particular court and judge, I believe that judge has the choice as to what matters to refer to the Hearing Officers, and District Judges have within their discretion to not refer consideration of a personal bond.”); *id.* at 30, 40, 49 (“Until March 27, 2017, several of the District Court Judges did not permit Hearing Officers to grant personal bonds[.]”); *id.* at 186–211 (chart of written instructions from Felony Judges to hearing officers); *id.* at 190 (authorizing personal bonds only for defendants who are “not homeless.”); *id.* (authorizing personal bonds only for defendants who have “no prior criminal history”); *id.* at 191 (authorizing personal bonds only for defendants who have a “confirm[ed] place to live”); *id.* at 186–211 (showing multiple judges answering “No.” to the question “Can the Hearing Officers grant pretrial bonds?”); *id.* at 189 (authorizing personal bonds for some “[f]ull time students”); *id.* at 187 (“I don’t want any bonds lowered at [the magistration hearing]. Ok to raise it, but no lowering.”); *id.* at 188 (“Please set bond for felon in poss. of a weapon. Habitual offenders should be held w/out bond.”).

71. Even after the Judges “withdrew” their directives on how to set bail, the hearing officers continue to take note of the judge a case was assigned to, and consider the judge’s preferences when setting bail.¹³⁸ One hearing officer also reported multiple felony judges calling him in recent years to tell him how to set bail in certain cases assigned to their courts.¹³⁹

V. Hearing Officers Consider Release Conditions at Perfunctory Magistration Hearings.

72. When this case was filed, the Assistant District Attorney on duty for the docket would read the probable cause statement at the beginning of the individual hearing.¹⁴⁰ Then, a hearing officer would make a finding of probable cause.¹⁴¹ At that point, the hearing officer would ask the person if they would like the assistance of the Public Defender’s Office for purposes of determining bail.¹⁴² Some hearing officers would prevent the defense attorney from making any arguments

¹³⁸ Ex. 17 (Amann Decl.) ¶ 18 (describing a “cheat sheet that showed which court number was associated with which felony judge. Referring to it, a hearing officer could tell which judge a particular arrestee’s case was going to after magistration. The cheat sheet was taped to the side of the computer monitor that we used when doing the 15.17 dockets. I understood this information, which allowed me to know which judge would ultimately preside over a case, to be relevant only so that the hearing officers could apply the judges’ preferences.”); *see also* Ex. 61 ([K-D.S. Bail Hearing](#), Nov. 7, 2019) (prosecutor telling hearing officer that “Judge Roll does not allow PR bonds on aggravated cases”); Ex. 25 (St. Julian Dep. at 227:20–23) (“Very rarely do we actually receive an e-mail [directive], like a forwarding of the messages. It’s just kind of like passed along, pass it on to the next person, pass it on to the next person.”).

¹³⁹ Ex. 17 (Amann Decl.) ¶ 16 (former hearing officer detailing 2019 phone call from Judge Ramona Franklin instructing him not to set a bond on certain types of felony assault or family violence cases assigned to her courtroom); *id.* ¶ 17 (describing 2020 phone call from Judge Randy Roll instructing him not to set a bond in a particular case assigned to his courtroom).

¹⁴⁰ Ex. 14 (First Wood Decl.) ¶ 32 (“An ADA, who appears by video, reads the allegations in the law enforcement officer’s probable cause statement. In cases involving warrantless arrests, the Hearing Officer decides whether there is probable cause.”).

¹⁴¹ *Id.*

¹⁴² Ex. 36 (Order Appointing Public Defender for Art. 15.17 Bail Hearings); Ex. 27 (Harris County 30(b)(6) at 47:4–11) (Q: “Is it true that in the 15.17 hearings for felony defendants a Hearing Officer will first determine probable cause and then ask the defendant if the defendant wishes to be represented by the Public Defender’s Office?” A: “Often that’s the way they do it, yes.”); Ex. 26 (Gaut Dep. at 21:22–22:3) (“I tell them that I’m going to ask if they want the Public Defender’s Office to represent them in their bail hearing, that it doesn’t cost them anything. And if they do, then the public defender will speak for them about the

about probable cause, even in relation to the bail determination, understanding the Felony Judges not to have authorized the Public Defender's Office to address probable cause.¹⁴³

73. Currently, probable cause determinations are made by hearing officers *in camera*, prior to magistration, and the probable cause statement is typically not read during the hearing at all.¹⁴⁴

74. If probable cause is found, the hearing officer asks the parties for their positions on bail. The Assistant District Attorney will highlight past “failures to appear” (which are actually prior bond forfeitures, because Harris County does not track failures to appear or nonappearance), the nature of the accusations, and a “high” score on any of the PSA scales.¹⁴⁵ The ADAs routinely misstate facts, including that a “violence flag” on the PSA indicates that the person arrested is “likely” to commit a new violent crime, when in fact it indicates that there is a 90% chance that the person will not be arrested for *any* offense.¹⁴⁶ The ADA virtually never consents to an

issue of bail, but that the public defender is not going to represent them in their criminal case after the bail hearing is finished.”).

¹⁴³ Ex. 27 (Harris County 30(b)(6) at 46:16–18) (“Some criminal law Hearing Officers have cited that as a reason not to allow public defenders to argue probable cause, yes.”); Ex. 25 (St. Julian Dep. at 77:2–8) (“Q. Now, speaking about today specifically, does the public defender have any role to play in the probable cause determination? . . . A. No. In fact, it is my understanding that their appearance – the purpose of their appearance is limited only to make bond arguments.”); Ex. 14 (First Wood Decl.) ¶ 28 (“By order of the judges, the PDO is appointed for the limited purpose of arguing bail and is not authorized to represent the person during the portion of the hearing in which probable cause is determined.”).

¹⁴⁴ Ex. 23 (2021 Keith Dep. at 191:25–192:9); Ex. 26 at (Gaut Dep. at 24:8–12); Ex. 16 (Third Wood Decl.) ¶ 7 (“Hearing Officers now determine probable cause on most cases in chambers prior to a hearing, based on the police statement entered into the ‘DIMS’ system[.]”).

¹⁴⁵ See, e.g., Ex. 44 (Bail Hearing Video Index), row 20 (M.A.A.); Ex. 63 ([M.A.A. Bail Hearing](#), Sept. 12, 2022) (state requested \$50,000 bond where M.A.A., an indigent mother of three, was arrested for the first time and received the lowest possible risk score with no NVCA flag; the hearing officer denied her an unsecured bond, instead granting the ADA's request and setting a \$50,000 secured bond).

¹⁴⁶ Ex. 3 (Hamilton Expert Report) ¶ 8(a) (“I reviewed videos of bail hearings in which a representative of the District Attorney's Office proffered that a particular PSA outcome (an NVCA flag[]) indicated that an individual is ‘likely’ to violently reoffend if released even though there is actually a 90% likelihood of success for the group in question. In these hearings, neither the Hearing Officer, Assistant Public Defender, Pretrial Services representative, nor anyone else corrected this misstatement.”); *id.* ¶ 61 (citing examples).

unsecured bond.¹⁴⁷ The defense attorney then provides the court with its argument, typically requesting release on a personal bond or an affordable amount of secured bail.¹⁴⁸

75. The hearing officer then enters an order determining whether and on what conditions release is permitted.¹⁴⁹

76. For decades, the hearing officers set release conditions by strictly applying the Felony Judges' secured bail schedule and adhering to other written and oral directives from the Judges,¹⁵⁰

¹⁴⁷ Ex. 16 (Third Wood Decl.) ¶ 8 (“[T]he District Attorney’s Office files a “Motion for Sufficient Bond” requesting secured bail at the same time as the charging document in nearly every case, including those for which a personal bond is not prohibited by law. I do not recall any cases in recent memory where the prosecutor did not oppose a personal bond at magistration.”); Alex Hannaford, *Harris County D.A. Ran as a Reformer. So Why is She Pushing High Bail for Minor Offenses?*, The Appeal (Aug. 9, 2018), bit.ly/3Bk0wBj (describing D.A. Ogg’s Dec. 21, 2017 email “directive” to intake prosecutors that they should “be on record requesting a high bond” in several categories of cases and endorsing “the felony bond schedule as a guide.”); *see also, e.g.*, Ex. 72 (Index of Cases), row 45 (M.A.A.); Ex. 116 (M.A.A. Case Records) at 7 (bond order showing ADA opposed personal bond and requested \$50,000 secured bond for indigent mother with no prior arrests, three children, and no New Violent Criminal Activity flag and lowest possible risk score; hearing officer granted ADA’s request and set bond at \$50,000); Ex. 72 (Index of Cases), row 43 (M. C-A.); Ex. 114 (M. C-A. Case Records) at 7 (bond order showing ADA opposed personal bond and requested \$50,000 secured bond for employed father supporting wife and two children with lowest possible risk score who possessed only \$100); Ex. 72 (Index of Cases), row 56 (R.R.H.); Ex. 127 (R.R.H. Case Records) at 8 (bond order showing ADA opposed personal bond and requested \$45,000 secured bond for man with a 2-1 (second-lowest possible score) on the Public Safety Assessment, no New Violent Criminal Activity flag, and who possessed only \$281).

¹⁴⁸ Ex. 26 (Gaut Dep. at 25:10–14).

¹⁴⁹ *E.g.* Ex. 85 (B.L.M. Case Records) at 6 (bail order); Ex. 81 (A.R. Case Records) at 6 (bail order); Ex. 87 (C.C. Case Records) at 7 (bail order).

¹⁵⁰ Ex. 14 (First Wood Decl.) ¶ 40 (“For decades, Hearing Officers adhered strictly to written and oral directives regarding the money bail–setting process issued by the Felony Judges, who control their employment”); *id.* ¶ 45 (“Although the Felony Judges purportedly rescinded these instructions in 2017 with the implementation of a new felony bond schedule and expanded the Hearing Officers’ authority to determine money bail amounts and other conditions of release, Hearing Officers continue to require secured financial conditions of release without making findings concerning ability to pay, necessity of pretrial detention, or the adequacy of alternative conditions, and without application of the clear-and-convincing evidence standard or a statement of reasons concerning why a particularly financial condition or pretrial detention is necessary.”); Ex. 27 (Harris County 30(b)(6) at 179:11–15) (Q: “[Y]ou’re aware that such instructions, preferences and guidance continue to be made known by judges to hearing officers up until the present day, correct?” A: “I believe that’s true.”); Ex. 25 at (St. Julian Dep. at 191:14–21) (“[W]hen I became a hearing officer, I was told, And here’s the chart that we refer to. And I hate to say it but at the time it never did actually cross my mind that, Wait a minute, this isn’t what the law says, you know, because I thought that we were to follow those orders because that’s that judge’s policy.”); Ex. 26 at (Gaut Dep. at 234:25–235:8) (Q: “On the same page beginning on line 15 Mr. Hagstette further states, ‘We had written

who control their employment.¹⁵¹ There was an informal practice among hearing officers of printing emailed directives from the Judges; a binder of such written directives was kept in the

instructions’ – a little bit later he says, ‘We were obligated to follow with regard to whether we could approve personal bonds, whether we could raise bonds, whether we could lower bonds, whether we could do any number of things as far as bonds were concerned.’” A: “I agree with that statement, that that’s how things were at the time.”); Ex. 41 (SCJC Docs) at 31 (“(Written testimony of former Hearing Officers Hagstette, Wallace and Licata submitted to the Judicial Ethics Commission) (‘Until March 27, 2017, several of the District Court Judges did not permit Hearing Officers to grant personal bonds, instructing that personal bond applications be referred to the assigned trial court for consideration. Most of the District Court Judges also had specific rules to follow in consideration of bond. Included with this response are representative copies of charts outlining the specific instructions’)); *id.* at 186–211 (chart of written instructions from Felony Judges to hearing officers); *id.* at 190 (authorizing personal bonds only for arrestees who are “not homeless.”); *id.* (authorizing personal bonds only for arrestees who have “no prior criminal history”); *id.* at 191 (authorizing personal bonds only for arrestees who have a “confirm[ed] place to live”); *id.* at 186–211 (multiple judges answering “No.” to the question “Can the hearing officers grant pre-trial bonds?”); *id.* at 189 (authorizing personal bonds for some “[f]ull time students”); *id.* at 187 (“I don’t want any bonds lowered at [the magistrate hearing]. Ok to raise it, but no lowering.”); *id.* at 188 (written instructions from 185th District Court Judge to hearing officers) (“Please set bond for felon in poss. of a weapon. Habitual offenders should be held w/out bond.”); Ex. 42 (SCJC Docs II) at 11 (written instructions from District Court Judge Joan Huffman to the hearing officers: “No pre-trial bonds; no lowering of bonds.”); Ex. 43 (Binder of Written Court Directives) at 249–51 (2017 chart of instructions from the District Court Judges to the hearing officers).

¹⁵¹ Ex. 42 (SCJC Docs II) at 13, 17–18, 23 (State Commission on Judicial Conduct finds that Hearing Officers Hagstette, Licata and Wallace violated 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.” The Hearing Officers’ “conduct was motivated by direct instructions from individual judges who played a role in [their] continued employment.”); Ex. 41 (SCJC Docs) at 35 (Hagstette: “The Hearing Officers serve many masters. The Hearing Officers exercise the discretion they can within the bounds set.”); Ex. 42 (SCJC Docs II) at 11, 16, 21 (“[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.”); *id.* at 11 (Hearing officers could “be dismissed at any time by the same board that appoints us.”); *id.* at 11, 16, 21 (from 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.”); *id.* at 12 (hearing officers “didn’t write the policies, but we had to follow them.”); “Could I do something? Probably by law, I could have. I don’t know if it would have been good for my career.”).

hearing officers' office.¹⁵² However, most instructions from the judges were "passed along" verbally from one hearing officer to another.¹⁵³

77. Although the Felony Judges purportedly rescinded their explicit written instructions in 2017—in the middle of the *ODonnell* litigation challenging the misdemeanor bail system in Harris County—their well-known preferences and implicit instructions continue to play a significant role in the hearing officers' bail decisions.¹⁵⁴

¹⁵² Ex. 43 (Binder of Written Court Directives); Ex. 25 at (St. Julian Dep. at 196:3–5) ("I know these documents to be documents that were in a very large binder that was in the hearing officer's office or chambers"); *id.* at (206:8–18) ("I don't have the ability to confirm that [all of these documents were in the binder in the hearing officer's chambers] because, again, that binder contained hundreds of documents; and I never reviewed them thoroughly. . . . But I will say that this is the type of documentation that was contained within those binders, correspondence from particular judges, Pretrial Services, sometimes with the hearing officers setting certain policies regarding pretrial release bonds and, looks like, setting certain bond amounts as well.").

¹⁵³ Ex. 25 (St. Julian Dep. at 227:20–23) ("Very rarely do we actually receive an e-mail, like a forwarding of the messages. It's just kind of like passed along, pass it on to the next person, pass it on to the next person.").

¹⁵⁴ Ex. 27 (Harris County 30(b)(6) at 119:7–11) ("[A]t times there have been explicit instructions, but there has – a culture has developed over time that you don't have to be told exactly to know that [a personal bond is] not favored."); Ex. 25 at (St. Julian Dep. at 227:20–23) ("Very rarely do we actually receive an e-mail, like a forwarding of the messages. It's just kind of like passed along, pass it on to the next person, pass it on to the next person."); Ex. 27 (Harris County 30(b)(6) at 174:3–175:5) (Q: "[T]here are some cases in Harris County in which a hearing officer will not consider a PR bond?" A: "Yes." Q: "And is that based on instruction from the felony judges?" A: "I don't know of explicit instructions to those magistrates." A: "So can you explain . . . ?" Q: "[W]hen persons are released, judges can do, like I was discussing, can revoke them. And those actions become known to the criminal law hearing officers and they realize that, in those types of cases, letting folks out is not going to be sustained by the presiding judge. And so to stay, you know, within what they believe those judges want, they're going to keep people in custody rather than do something that's going to be overruled the next day."); Ex. 17 (Amann Decl.) ¶ 19 ("I started hearing stories about district court judges immediately revoking bonds granted during 15.17 dockets and I became worried. I would ask myself, if I set a low bond and this person makes it and is released, when they go to their district court appearance are they just going to be taken back into custody, lose the deposit they paid to a bail company, and then have to try to come up with even more money to pay for a second bond? As a result of these concerns, I began to take note when people facing certain felony charges were headed before district court judges who I knew had a propensity for revoking bonds in that type of case."); Ex. 26 (Gaut Dep. at 151:6–152:9) ("[F]or several months beginning in the summer of 2020 . . . when defendants would get arrested on felony arrest warrants . . . [J]udge Ramona Franklin was . . . setting the bail amount at zero and doing a court directive that said the bail amount had been set at zero. This was before a person had come into custody, you know, before they had a lawyer without a bail hearing. So then when the person would get arrested on that arrest warrant, their case would appear on our docket because it's a new arrest warrant. But I did not feel that I had the authority to change that bail amount or approve that person for a personal bond because the Court had already issued a court directive setting bail at zero."); Ex. 17 (Amann Decl.)

78. The document the Judges promulgated that purports to rescind those prior written instructions issues its own instructions to the hearing officers, including to “refer all assaultive cases to the presiding judge assigned to the case pursuant to the Harris County Direct Filing Order,” and stating that “PR Bond is favored in all cases in which the defendant is determined to be low risk.”¹⁵⁵ The document further reminds the hearing officers to “Refer to Bail Guidelines” when setting bail amounts.¹⁵⁶

79. Hearing officers continue to require secured financial conditions of release without making findings as to ability to pay, whether pretrial detention is necessary, or the adequacy of alternative conditions; without applying any evidentiary standard to any facts; and without explaining how any facts support any finding.¹⁵⁷

80. The Felony Judges have also preserved a written order on their County website stating that at a bail hearing, hearing officers “shall set bail in accordance with the Bail Schedule.”¹⁵⁸ From 2015 through 2021, where a secured bail amount was set on a complaint pursuant to the bail schedule, in 85% of cases the bail amount was not changed before the case was resolved.¹⁵⁹

81. In many cases, the person arrested is not even present at their magistration hearing. Thousands of people miss these hearings because they are in medical, experiencing a mental health crisis, or because sheriff’s deputies designate them “disruptive.”¹⁶⁰ Since the County began

¶¶ 15–17 (describing two occasions when “felony judges reached out and personally contacted me to instruct me how to set bail on a certain case or type of cases”).

¹⁵⁵ Ex. 35 (Recommended Standard Bail Practices, Mar. 23, 2017).

¹⁵⁶ *Id.*

¹⁵⁷ See n. 179, 189, 198, 202, *infra*.

¹⁵⁸ See Ex. 34 (Direct Filing Order) at 5, also available at bit.ly/3VJvQla (last visited Dec. 7, 2022).

¹⁵⁹ Ex. 1 (Copp Expert Report) ¶ 48(a).

¹⁶⁰ Ex. 27 (Harris County 30(b)(6) at 40:25–41:5) (“In some cases, the person hasn’t been brought to the hearing. It may be a medical condition. They might be in the hospital. Sometimes the deputies say they’ve been disruptive and they don’t bring them”); Ex. 25 (St. Julian Dep. at 118:18–121:13) (outlining different

collecting data in July 2018, 9%, or over 8,000 people, were marked as not present when the hearing officer determined bail.¹⁶¹ In many, if not most, of those cases, the hearing officer does not receive a financial affidavit.¹⁶²

82. The misdemeanor judges have authorized the Public Defender's Office to represent misdemeanor arrestees who are not present at magistration but the Felony Judges have not authorized them to represent felony arrestees who are not present.¹⁶³ Thus, when a person arrested

reasons an arrestee may not be present in court for their 15.17 hearing); Ex. 26 (Gaut Dep. at 126:8–12) (“Yes. We have had – I’ve seen a few examples where defendants have been ordered for an evaluation and then they get taken to the mental health unit. So then they don’t make it to – and then they can’t come to a 15.17 hearing until they’ve been cleared.”); Ex. 153 [filed under seal at Felony Judges’ request per the Protective Order, Dkt. 276] (2020 email from Hearing Officer to Judge) (Bates No. “Felony Judges 0003228”) (discussing defendant who was marked absent and did not receive a bond because there was no language interpreter for him); Ex. 154 (Aug. 22, 2020 email from Hearing Officer Lisa Porter to Judge Danilo Lacayo) (asking “what would you like me to do with the bond” where 70-year-old defendant with “considerable medical problems which requires a home healthcare nurse” was not present at 15.17 hearing because he was in the medical unit); Ex. 157 (Apr. 23, 2020 email from bonding agency to District Court Administrator Vanessa Guerrero) (indicating they were prepared to post bond for defendant, but that defendant was not brought to the 15.17 hearing and remains in jail with no bond); Ex. 155 (Aug. 14, 2020 email from Hearing Officer Jennifer Gaut to Pretrial Services Officer Luis Zelaya) (concerning defendants not being present at 15.17 hearings because they’ve been labeled “combative,” noting that “when we check into it, the person has (oftentimes) just been taken over to housing”); Ex. 156 at 2–4 (Dec. 18, 2020 emails between defense attorney and court clerk) (regarding a pregnant arrestee who was not present at magistration because she was “in medical,” resulting in her personal bond not being entered for over a month); Ex. 158 at 2–6 (Sept. 29, 2019 emails between hearing officers) (concerning someone not being magistrated because there was no language interpreter, and about the practice of delaying hearings until an interpreter can be found); Ex. 159 (Nov. 2019 emails from Hearing Officer Lisa Porter to Felony Judges) (concerning defendants who weren’t present at magistration because of “mental health”); Ex. 160 (Mar. 16, 2021 email from Judge DaSean Jones to Pretrial Services staff) (setting bond at \$15,000 while arrestee was “in holding”).

¹⁶¹ Ex. 1 (Copp Expert Report) ¶ 28 (“Among the 95,109 individuals for who individual magistration hearing data was available, almost one in ten (9% or 8,229 people) were marked not present.”); *see also* Ex. 19 (Declaration of Cole Lautermilch, Mar. 31, 2021) ¶ 11 (estimating that felony arrestees were absent from magistration hearings in approximately 1,500–2,000 cases in 2020).

¹⁶² Ex. 161 at 2 (Nov. 7, 2018 email between Pretrial Services staff Troyce Carter and Dennis Potts) (“[N]ot everyone on the 15.17 hearing will have an affidavit. These include: . . . defendants we did not have access to (i.e. combative, segregated, medical)[.]”).

¹⁶³ Ex. 27 (Harris County 30(b)(6) at 124:21–126:3) (explaining that the PDO does not represent people arrested for felonies who are not physically present at the 15.17 hearing because, unlike in misdemeanor cases where the misdemeanor judges have authorized the PDO to represent misdemeanor arrestees who are not present, the Felony Judges have not authorized the PDO to represent felony arrestees who are not present); Ex. 14 (First Wood Decl.) ¶ 38 (“The County’s protocol generally prohibits assistant public

for a felony offense is not present at magistrature for any reason, the person typically has no procedural protections, no counsel, and a personal bond is unlikely.¹⁶⁴

83. Magistrature hearings conducted in the arrestee's absence routinely result in the prolonged pretrial detention of people who are too poor to pay.¹⁶⁵

84. Hearing officers believe they must impose secured bail—and cannot issue personal bonds—in certain categories of cases.¹⁶⁶ As the Chief Public Defender stated, “over time there has

defenders from representing people on felonies who are not present at the hearing. In these cases, the money bail amount is set without any argument on the arrestee's behalf.”).

¹⁶⁴ Ex. 26 (Gaut Dep. at 136:20–137:7) (“What happens often is that people are taken to mental health or medical. . . . Then in those situations then the person at some point, they get put on the docket, but they haven't met with pretrial to do a financial affidavit. They haven't met with the Public Defender's Office, you know, to do an interview. So if they're still not present for the docket, we don't have that additional information either.”); Ex. 25 (St. Julian Dep. at 121:14–18) (“Q. So in your personal capacity in those instances where someone is not present but the hearing must move forward, are those people represented by lawyers at the hearing? A. No, they are not.”); *id.* (125:10–126:2) (stating that she might issue a personal bond to someone who has a low risk score and no or little criminal history who is not present, but that she would otherwise need more information that would be unavailable without counsel); *e.g.*, Ex. 44 (Bail Hearing Video Index), row 8 (C.C.); Ex. 51 ([C.C. Bail Hearing](#), June 6, 2019); Ex. 72 (Index of Cases), row 16 (C.C.); Ex. 87 (C.C. Case Records) at 6–7 (hearing officer required a \$20,000 secured money bond at hearing without C.C. present or represented by counsel); Ex. 44 (Bail Hearing Video Index), row 11 (D.V.); Ex. 54 ([D.V. Bail Hearing](#), Jan. 19, 2019); Ex. 72 (Index of Cases), row 21 (D.V.); Ex. 92 (D.V. Case Records) at 6–7 (hearing officer required a \$15,000 secured money bond without D.V. present or represented by counsel); Ex. 72 (Index of Cases), row 38 (K.F.); Ex. 109 (K.F. Case Records) at 6 (hearing officer required a \$30,000 secured bond without K.F. present); Ex. 72 (Index of Cases), row 49 (M.W.); Ex. 120 (M.W. Case Records) at 12 (bail order form reads “Def not present but deputies aren't sure where he's at”); Ex. 72 (Index of Cases), row 20 (C.P.); Ex. 91 (C.P. Case Records) at 12–13 (hearing officer required \$50,000 secured bond for 22-year-old autistic woman at hearing where she was not present); Ex. 26 (Gaut Dep. at 137:8–138:8) (acknowledging people who are “not present” for their 15.17 hearings do not receive admonitions regarding their rights from the hearing officers, and that she does not know whether they ever receive a similar admonition from the calendar judge); Ex. 22 (HCSO 30(b)(6) at 154:23–155:7) (explaining that, if a person who misses their 15.17 hearing is still in the medical or mental health unit at the time of the first appearance before a Felony Judge, the judge will decide whether and when to set another bail hearing).

¹⁶⁵ Ex. 27 (Harris County 30(b)(6) at 153:19–25) (Q: “[I]f a person misses their 15.17 hearing, will they be placed on another docket for a 15.17 hearing?” A. “Probably not. Probably they would simply have their initial appearance before the presiding judge whenever they're able.”); *see, e.g.*, Ex. 44 (Bail Hearing Video Index), row 16 (J.S.); Ex. 59 ([J.S. Bail Hearing](#), Aug. 5, 2022); Ex. 72 (Index of Cases), row 34 (J.S.); Ex. 105 (J.S. Case Records) at 5–6 (J.S. remains in jail four months after a hearing officer required a \$25,000 secured bond at magistrature where he was not present).

¹⁶⁶ Ex. 27 (Harris County 30(b)(6) at 118:18–22) (“Q. Are there categories of people arrested for felony offenses today who the hearing officers are not permitted to release on a personal bond at a 15.17 hearing?

developed an understanding among the criminal law hearing officers when it is appropriate and when it is not appropriate to give personal bonds, regardless of what the law allows.”¹⁶⁷

85. For example, even before S.B. 6 prohibited personal bonds for large categories of people arrested, hearing officers routinely cited a Texas statute that they and the Judges interpreted to bar hearing officers from releasing certain people on personal bonds.¹⁶⁸ Hearing officers would often set secured financial conditions while stating that they were “referring” the personal bond decision to the judge.¹⁶⁹ Hearing officers also do not consider personal bonds for people who have a secured bond amount set on a warrant by a felony judge.¹⁷⁰

A. I believe there are.”); Ex. 14 (First Wood Decl.) ¶ 34 (“Hearing Officers believe that they are not permitted to impose non-monetary conditions of release in certain cases”); Ex. 162 (Sept. 5, 2019 email from Hearing Officer Lionel Castro to other hearing officers) (“I have been denying bond on these guys[.]”); Ex. 165 (Mar. 24, 2020 email from Hearing Officer Courtney St. Julian to Hearing Officer Diana Olvera) (“Hearing Officers do not have the authority to grant General Order Bonds”); Ex. 164 (Feb. 10, 2020 email from Hearing Officer Lionel Castro to Hearing Officer Courtney St. Julian) (“Do we, have we, should we ever grant PR bonds on OOC felony or misdemeanor warrants?”); Ex. 163 (Sept. 13, 2019 email from Hearing Officer Jennifer Gaut to Lisa Teachey (DCA)) (addressing hearing officers’ purported inability to set bond on warranted felony defendants).

¹⁶⁷ Ex. 27 (Harris County 30(b)(6) at 120:6–12).

¹⁶⁸ Tex. Code Crim. P. Ann. § 17.03; *e.g.*, Ex. 72 (Index of Cases), row 35 (J.S.B.); Ex. 106 (J.S.B. Case Records) at 7 (bond order in which hearing officer wrote “can not approve PRBD per CCP 17.03”); Ex. 27 (Harris County 30(b)(6) at 121:1–9) (stating that hearing officers most likely will not grant personal bonds for people arrested for offenses listed in Texas Code of Criminal Procedure 17.03); *id.* (113:2–8) (Q. “[W]hy would they follow instruction from the felony judges not to grant a personal bond in assaultive cases? A. Well, the interpretation is the statute requires them to refer it to them. I don’t agree with that, but that’s what – that’s how they’ve interpreted that.”); *id.* (158:10–16) (Q. “So is it the hearing officer’s interpretation or the judge’s interpretation, or both, that 17.03 prohibits hearing officers from issuing personal bonds? . . . [A.] I think it’s both.”); Ex. 25 (St. Julian Dep. at 93:14–94:2) (outlining her understanding that Art. 17.03 of the Texas Code of Criminal Procedure prohibits hearing officers from granting personal bonds for certain felony offenses).

¹⁶⁹ *See, e.g.*, Ex. 72 (Index of Cases), rows 3 (J.P.), 51 (N.E.A.), 55 (R.M.); Ex. 45 ([Johnnie Pierson Bail Hearing](#), Jan. 18, 2019) (hearing officer “referred” personal bond decision to the trial court, saying “When you get to court . . . you can talk to the judge about any other considerations.”); Ex. 66 ([N.E.A. Bail Hearing](#), June 7, 2020) (hearing officer “referred request for lower bond or personal bond to Judge Glass. . . .”); Ex. 70 ([R.M. Bail Hearing](#), June 4, 2020) (hearing officer “refer[red] the matter of a pretrial release bond to 339th [on the felony charge]”).

¹⁷⁰ Ex. 27 (Harris County 30(b)(6) at 120:20–25) (Q. “In your experience, do hearing officers consider personal bonds for people who had bonds set on a warrant by a felony judge? A. To override the recommendation of – no, they would not do that.”).

86. When a hearing officer does not consider a personal bond, the officer's order to detain stays in place.¹⁷¹ Each hearing officer bail decision constitutes a detention order for people who cannot pay: in every case on the magistration docket, the hearing officer signs a document stating, "The Court ORDERS the defendant committed to the custody of the Sheriff . . . until he posts the required bond or until further order[.]"¹⁷²

87. Thus, the decision to "refer" a decision on personal bond is often a decision to detain the person until their first appearance in a District Court, which can be a week or more after arrest.¹⁷³

88. Under Rule 9, promulgated by the local County Criminal Court at Law Judges, and the *ODonnell* Consent Decree, hearing officers are required by both state and federal law to make certain substantive findings and provide certain procedural protections when considering release conditions *for misdemeanor arrestees*.¹⁷⁴ No similar policy exists for felony arrestees.¹⁷⁵

¹⁷¹ See, e.g., Ex. 72 (Index of Cases), row 39 (K.S.); Ex. 110 (K.S. Case Records) at 5 (setting a \$15,000 money bond while "ORDER[ing] the defendant committed to the custody of the Sheriff . . . until he posts the required bond or until further order[.]").

¹⁷² See, e.g., Ex. 72 (Index of Cases), rows 14 (B.L.M.), 32 (J.M.); Ex. 85 (B.L.M. Case Records) at 5–6; Ex. 103 (J.M. Case Records) at 7–8 (examples of magistration bail orders).

¹⁷³ Ex. 16 (Third Wood Decl.) ¶ 10 ("[P]eople who cannot afford the amount set by a Hearing Officer are detained until at least their first appearance in the trial court."); e.g. Ex. 72 (Index of Cases), row 23 (E.K.); Ex. 94 (E.K. Case Records) at 3 (18-year-old arrested on August 7, 2022 was not brought to court for scheduled first appearance on August 9, with the docket entry noting "DEF IN PROCESS"; his first appearance was reset for February 2, 2023, nearly six months later).

¹⁷⁴ Rules of Court, Harris County Criminal Courts of Law (Oct. 22, 2021) at 18, bit.ly/3Bk11vb (Pursuant to *ODonnell v. Harris County* . . . , the Harris County Criminal Court at Law Judges ('CCCL Judges') order these policies be applied to all persons arrested for a misdemeanor offense.").

¹⁷⁵ Ex. 25 (St. Julian Dep. at 65:15–20) (Q: "And are there any particular rights that misdemeanor arrestees who appear at the AB felony docket are entitled to that you describe to them that felony defendants are not entitled to?" A: That would be the application of Local Rule 9 because that only applies to misdemeanor bond hearings."); see also *id.* at 88:10–16 (Q: "Is there a policy requiring that the hearing officers consider whether a person is able to afford the amount of bail that hearing officers set in individual cases?" A: "In felony cases, no." Q: "How about in misdemeanor cases?" A: "Yes. That is Local Rule No. 9."); Ex. 26 (Gaut Dep. at 156:4–6) (Q: "Now, do you follow the procedures of 9.12.6 for felony defendants at magistration?" A: "No."); *id.* At (157:2–5) (Q: "And do you take [Rule 9.12.7] into consideration for felony defendants who appear at magistration?" A: "No.").

89. Rule 9 was promulgated in January 2019 by the County Criminal Court at Law Judges, who preside over misdemeanor cases.¹⁷⁶ A slightly amended version of Rule 9 was then incorporated into the federal consent decree in *ODonnell v. Harris County*, No. 4:16-cv-01414 (S.D. Tex. 2016), which this Court entered in November 2019.¹⁷⁷ Defendants in this case agreed in *ODonnell* that many of the same practices Plaintiffs challenge in this case were unconstitutional as applied to misdemeanors.¹⁷⁸

90. Hearing officers, who preside over bail hearings for misdemeanor and felony arrestees, make different substantive findings and provide different procedural protections depending on whether the person appearing before them is charged with a misdemeanor or a felony.¹⁷⁹

¹⁷⁶ Ex. 136 (Administrative Order No. 2019-01, Order Amending Local Rule, Harris County Criminal Courts at Law, Jan. 17, 2019) at 1 (amending Local Rule 9).

¹⁷⁷ *ODonnell v. Harris County*, 4:16-cv-01414, Dkt. 617-1 (Consent Decree) at 12, 16–25.

¹⁷⁸ *ODonnell v. Harris County*, 4:16-cv-01414, Dkt. 617 (Joint Motion and Memorandum in Support of Joint Motion for Preliminary Approval of Proposed Consent Decree and Settlement Agreement [] for Approval of Class Notice) at 3, 41 (County and Sheriff acknowledge, “For decades prior to this lawsuit, Defendants evaded the substantive findings and procedural protections required for lawful pretrial detention by using predetermined secured financial conditions of release to detain arrestees solely because of their inability to pay.”); *id.* at 2–3 (County and Sheriff acknowledge due process requires “notice, an opportunity to be heard and to present and confront evidence at a hearing with counsel, meaningful consideration of less-restrictive alternatives, and, before secured bail can be required as a condition of release, findings on the record by clear and convincing evidence that the person can afford to pay the amount required or that detention is necessary to meet a compelling government interest in public safety or to prevent flight from prosecution.”).

¹⁷⁹ Ex. 17 (Amann Decl.) ¶ 11 (“During my time as a hearing officer, I followed the procedural requirements of Rule 9 in misdemeanor cases once it was promulgated. However, since there was no equivalent rule governing felony cases, I did not make the same findings or provide the same procedures in the course of setting bail for felony arrestees.”); Ex. 25 (St. Julian Dep. at 123:4–124:14, 154:1–9, 156:3–157:4) (explaining examples of constitutional protections provided to individuals charged with misdemeanors, but not felonies); Ex. 195 (May 12, 2020 email from Chief Hearing Officer Courtney St. Julian to other hearing officers) (“Local Rule 9 requires a finding of clear and convincing evidence anytime a misdemeanor bond is set in an amount the Defendant cannot afford.”); Ex. 25 (St. Julian Dep. at 152:21–24) (“Q: Is there any policy requiring hearing officers to make this finding for felony defendants at magistration?” A: “There is not.”); Ex. 26 (Gaut Dep. at 22:25–23:6) (“I give the admonishment required by federal consent decree related to misdemeanors, that I can’t require them to pay more money than they can afford unless I make a finding by clear and convincing evidence on the record that there are no nonfinancial conditions I can give them to either assure their flight from prosecution or the safety of the community”); *id.* at (143:13–21) (stating that she is required to make an indigency finding by clear and convincing evidence in misdemeanor cases but not in felony cases); *id.* at (154:7–155:11) (“Q. Are the requirements of Rule 9.12.5 . . . mandated

91. The Felony Judges have not promulgated a version of Rule 9 that would apply to felony arrestees. Hearing officers would follow such a rule if it existed.¹⁸⁰

a. Hearing officers provide different admonitions of rights to people charged with misdemeanors than they do to people charged with felonies.

92. Hearing officers give one set of admonishments to misdemeanor arrestees to notify them of their rights at the hearing, as required by Rule 9.¹⁸¹ They give a different, less-thorough set of admonishments to felony arrestees.¹⁸²

93. Hearing officers state that they would provide the same additional admonishments to felony arrestees that they already provide to misdemeanor arrestees if the Felony Judges required them to do so.¹⁸³

of hearing officers to follow in felony defendants' cases in 15.17 hearings? A. No, they are not. There's no formal requirement."); Ex. 137 (misdemeanor bail order form) (requiring a finding by clear and convincing evidence that a defendant either can afford the bail amount set by the hearing officer or that no alternative nonfinancial condition could reasonably prevent flight from prosecution and/or reasonably protect the safety of the community).

¹⁸⁰ Ex. 17 (Amann Decl.) ¶ 12 ("If the felony judges had issued a rule that forced hearing officers to treat felonies the same way that they treated misdemeanors, I would have followed that rule. I am confident that my fellow hearing officers would have done the same."); Ex. 26 (Gaut Dep. at 105:3–13) ("Q. So if the felony judges issued a similar order [to Amended Rule 9] requiring you to make findings on the record about the felony defendant's ability to pay the financial conditions of their release, would you follow that order? A. Of course. . . . [Q.] And why would you follow that order? . . . A. Because it's a court order."); *see also id.* at (154:12–22) (Q: "Now, if the felony judges promulgated a similar rule to Rule 9.12.5, would you comply with it? . . . A. Of course. Q. . . . How about if the felony judges instructed you to comply with the similar procedures describes in Rule 9.12.5, would you follow those instructions? . . . A. Yes."); *id.* at (156:4–157:22) (acknowledging that she does not follow procedures laid out in 9.12.6, 9.12.7 for felony arrestees, but would if directed to do so by the Felony Judges).

¹⁸¹ Local Rule 9.12.2–3, Harris County Criminal Courts of Law (2021) at 20–22, bit.ly/3Bk11vb.

¹⁸² Ex. 26 at (Gaut Dep. at 139:12–19) ("[M]isdemeanors are given the additional, I guess, admonishment. I tell them that I am required basically to approve them for a personal bond unless I make this finding on the record by clear and convincing evidence. And I give them the standard, that there are no nonfinancial conditions I can give them to assure their flight from prosecution or the safety of the community."); *id.* at (64:9–15) ("I specifically say, If you are charged with a misdemeanor. You know, and then I tell them that I can't require them to pay more money than they can afford unless I make the finding by clear and convincing evidence on the record, you know, et cetera, et cetera, et cetera . . .").

¹⁸³ Ex. 17 (Amann Decl.) ¶ 12 ("If the felony judges had issued a rule that forced hearing officers to treat felonies the same way that they treated misdemeanors, I would have followed that rule. I am confident that my fellow hearing officers would have done the same."); Ex. 25 (St. Julian Dep. at 155:13–16) (stating in

b. Hearing officers apply different rules concerning disclosure of discovery for people charged with misdemeanors and people charged with felonies.

94. Hearing officers are required to ensure that all the information they consider in making bail determinations for misdemeanor arrestees is provided to defense counsel in advance of the hearing.¹⁸⁴ They are not required to ensure the same exchange of discovery in felony cases or to make that same finding in felony cases, and typically do not.¹⁸⁵

95. Hearing officers state that they would ensure discovery is provided to defense counsel in felony hearings, as they already do in misdemeanor hearings, if the Felony Judges required them to.¹⁸⁶

c. Hearing officers are required to make a finding of misdemeanor arrestees' ability to pay before setting a financial condition of release, but they do not make any such finding for people charged with felonies.

96. Hearing officers are required to inquire into and make findings concerning each misdemeanor arrestee's ability to pay.¹⁸⁷

her individual capacity that she would adhere to “this type of rule [like misdemeanor Rule 9] in felony cases” if such a rule “were issued and those rules were . . . found to be constitutional”).

¹⁸⁴ Local Rule 9.12.6, Harris County Criminal Courts of Law (2021) at 23, bit.ly/3Bk11vb (“The arrestee must have access to all of the evidence and information considered at the bail hearing, including any criminal history from the National Crime Information Center (‘NCIC’) and Texas Crime Information Center (‘TCIC’).”).

¹⁸⁵ Ex. 26 (Gaut Dep. at 141:25–142:9) (Q: “Now, [the form] says, ‘All information I considered in determining bail conditions, including criminal history, was provided to the defense prior to the hearing.’ And there is a check box next to that. Is that right?” A: “Yes.” Q: “Are you required as a hearing officer to make this particular evidentiary finding for felony defendants at their 15.17 hearing?” A: “No.”); Ex. 25 (St. Julian Dep. at 142:16–24) (stating that hearing officers are not required to make a finding that all the information they considered in determining a defendant’s bail conditions was provided to defense counsel); *id* at (143:18–21) (stating in her personal capacity she does not make that finding); Ex. 147 (Oct. 8, 2020 email from Texas Department of Public Safety Division Chief to Harris County Justice Administration Department staff Jim Bethke) (stating that criminal defense attorneys do not have direct access to defendants’ criminal history during bail hearings).

¹⁸⁶ Ex. 26 (Gaut Dep. at 142:17–143:1) (Q: “Could the felony judges require you to make this finding if they wanted to?” A: “Yes.” Q: “If the felony judges required you to make this particular finding that you provided all discovery to the defense prior to the hearing, would you comply with that order?” A: “Yes.”).

¹⁸⁷ Local Rule 9.12.5, 9.12.7, Harris County Criminal Courts of Law (2021), at 22–23 bit.ly/3Bk11vb.

97. Hearing officers are not required to make an ability-to-pay finding for felony arrestees,¹⁸⁸ and they typically do not make findings as to what amount a person can pay or whether they can afford to pay a secured bail amount.¹⁸⁹ Pretrial Services does not ask people arrested for felonies how much they can pay to secure release.¹⁹⁰ Although former Hearing Officer Jennifer Gaut asked that the ability-to-pay question be asked of felony arrestees—like it is asked of misdemeanor arrestees—the Felony Judges have not made that change.¹⁹¹

¹⁸⁸ Ex. 25 (St. Julian Dep. at 152:16–24) (Q: “What does Rule 9.12.4 require hearing officers to do with respect to misdemeanor defendants?” A: “To ask the defendant under penalty of perjury the amount of money the defendant can afford to pay from any lawful source at the time of the hearing.” Q: “Is there any policy requiring hearing officers to make this finding for felony defendants at magistrations?” A: “There is not.”).

¹⁸⁹ Ex. 14 (First Wood Decl.) ¶ 29 (Hearings Officers do not make findings “as to whether a person can pay any particular amount of money before requiring secured money bail as a condition of release” or “as to whether an order to pay secured bail will operate to detain the person because the person cannot pay it.”); Ex. 26 (Gaut Dep. at 104) (“Q: Do you make findings on the record concerning your own determination of whether a felony defendant can afford to pay the secured bail amount that you’re setting?” A: “I do not.” Q: “Why not?” A: “It just has never been – it’s never been part of my practice. It wasn’t what I was taught to do. And it’s just not something I’ve done.”); *id.* at (156:4–10) (Q: “Now, do you follow the procedures of 9.12.6 for felony defendants at magistrations?” A: “No.” Q: “And is this because the felony judges have not required you to follow the procedures?” A: “Yes, that’s correct.”); Ex. 17 (Amann Decl.) ¶ 11 (“I did not make the same findings or provide the same procedures [as in misdemeanors] in the course of setting bail for felony arrestees.”); Ex. 16 (Third Wood Decl.) ¶ 9 (stating hearing officers do not apply the Rule 9.12.6 procedures in felony cases); *see, e.g.*, Ex. 72 (Index of Cases), row 14 (B.L.M.), row 10 (A.R.), row 16 (C.C.); Ex. 85 (B.L.M. Case Records) at 6 (bail order); Ex. 81 (A.R. Case Records) at 6 (bail order); Ex. 87 (C.C. Case Records) at 7 (bail order).

¹⁹⁰ Ex. 123 (O.G. Case Records) at 10 (financial affidavit stating that ability to pay question is “FOR MISDEMEANOR ONLY OR FOR MISDEMEANOR AND FELONY ONLY”); Ex. 134 (JPC Interview Process Instructions) at 8 (“What is the most money you could reasonably pay to get out of jail within 24 hours of your arrest’ should only be asked to defendants that have **MISDEMEANORS**.” (emphasis in original)); Ex. 27 (Harris County 30(b)(6) at 60:19–24) (Q: “And do you know why there would be a question on the financial affidavit that’s directed only to people who are arrested for misdemeanors?” A: “I assume that the felony judges did not agree.”); Ex. 26 (Gaut Dep. at 95:2–10) (“Although for felony defendants – so on the financial affidavit, the Pretrial Services – pretrial officers are required to ask misdemeanor defendants their bail amount. Or if they’re charged with a felony and have a misdemeanor, they’re required to ask them – not their bail amount, how much they can afford. There is not a requirement that they ask people just charged with felonies.”).

¹⁹¹ Ex. 149 (Aug. 18, 2020 email from Hearing Officer Jennifer Gaut to Pretrial Services staff) (“Do PTS Officers ask defendants charged with a felony the can afford for bail? If not, can PTS start . . . ? It would help us in making our bail decisions in felony cases.”); *id.* (Aug. 19, 2020 email from Pretrial Services staff person Estella Fisher to Hearing Officer Jennifer Gaut) (explaining that Pretrial Services only asks about ability to pay for people charged with a misdemeanor); Ex. 150 (Aug. 20, 2020 email from Pretrial Services

98. Hearing officers state that they would make a finding of ability-to-pay in felony cases if the Felony Judges required them to do so.¹⁹²

d. Hearing officers are required to allow misdemeanor arrestees the opportunity to challenge the state’s evidence and present evidence of their own, but they do not provide that opportunity to felony arrestees.

99. Hearing officers are required to allow misdemeanor arrestees the opportunity to challenge the state’s evidence against them and present evidence of their own in support of pretrial release.¹⁹³

100. Felony arrestees do not receive an opportunity at magistration to challenge the state’s evidence, or to present their own evidence in support of an argument for release.¹⁹⁴ As one hearing officer stated, “[W]e don’t hold full evidentiary hearings.”¹⁹⁵

Division Manager Troyce Carter to Hearing Officer Jennifer Gaut) (agreeing to forward Gaut’s request that the felony ability-to-pay question be added to the affidavit to the Felony Judges).

¹⁹² Ex. 25 (St. Julian Dep. at 155:8–18 (stating that she would adhere to “this type of rule [like misdemeanor Rule 9] in felony cases” if such a rule “were issued and those rules were [] found to be constitutional”); Ex. 26 (Gaut Dep. at 90:5–9) (Q: “If the felony judges instructed you to make that specific factual finding about one’s ability to pay, would you comply with that instruction?” A: “Of course.”); Ex. 17 (Amann Decl.) ¶ 12 (“If the felony judges had issued a rule that forced hearing officers to treat felonies the same way that they treated misdemeanors, I would have followed that rule. I am confident that my fellow hearing officers would have done the same.”).

¹⁹³ Local Rule 9.12.5, Harris County Criminal Courts of Law (2021), at 22 bit.ly/3Bk11vb; Ex. 25 (St. Julian Dep. at 153:24–154:9) (Q: “What does Rule 9.12.5 require hearing officers to do?” A: “To ensure that the defendant has an opportunity to present evidence, to make any argument concerning issues that the State might raise and, of course, that the defendant have access to all of the information and evidence that’s going to be considered during the hearing.”).

¹⁹⁴ Ex. 17 (Amann Decl.) ¶ 5 (“I never saw someone call a witness in a 15.17 hearing. Although I am not aware of any rule prohibiting it, it was commonly understood among the hearing officers, attorneys, and members of the sheriff’s office that the 15.17 hearing was not an opportunity to present evidence other than the probable cause statement by the arresting officer or complaining witness.”).

¹⁹⁵ Ex. 152 (Dec. 14, 2019 email from Ed Wells (CCL) to County and District Court Judges) (conveying text message from Hearing Officer Colin Amann to Wells).

101. Unless and until the Felony Judges require that felony arrestees receive an opportunity to present evidence, any request to present evidence in a felony case would be denied.¹⁹⁶

- e. Hearing officers are required to make a substantive finding that detention is necessary before imposing unaffordable bond in misdemeanor cases, but they do not make a similar finding for people charged with felonies.**

102. Hearing officers are required to make a substantive finding that pretrial detention is necessary to achieving state interests, and that no alternatives to detention will suffice, before imposing an unaffordable bond in misdemeanor cases.¹⁹⁷

103. Hearing officers do not consistently make a finding regarding whether detention is necessary, or whether less-restrictive conditions would be adequate, before imposing release conditions for felony arrestees.¹⁹⁸

¹⁹⁶ Ex. 17 (Amann Decl.) ¶ 5 (“Because Rule 9 requires that misdemeanor arrestees be given the opportunity to present evidence in the 15.17 hearing, if someone had asked me to present a witness or other evidence in support of a bail argument in a misdemeanor case, I would have attempted to accommodate them. With no rule requiring me to allow similar presentations in felony cases, I couldn’t have allowed it, even if I thought it could have helped inform my bail decision. If I had allowed the presentation of witness testimony or other live evidence in felony cases, which made up the majority of my dockets, the time that it would take me to complete each docket—and the resulting delay and pileup of dockets—would have brought the 15.17 process to a standstill, preventing most people from receiving probable cause and bail determinations before they appeared in district court.”).

¹⁹⁷ Local Rule 9.12.6, Harris County Criminal Courts of Law (2021), at 23 bit.ly/3Bk11vb; Ex. 25 at X (St. Julian Dep. at 156:3–157:4) (explaining the findings and procedures mandated by Rule 9.12.6 that hearing officers must make prior to setting bail in misdemeanor cases).

¹⁹⁸ Ex. 26 (Gaut Dep. at 115:8-13) (Q: “And so when you make a decision to require that a felony defendant receive a secured bail amount that the person cannot afford, is it your practice to make a finding that it is necessary to detain that person?” A: “No, it’s not.”); Ex. 25 (St. Julian Dep. at 156:25–157:4) (Q: “And is there any policy issued by felony judges to the hearing officers requiring that hearing officers make those findings for felony defendants during 15.17 hearings?” A: “There is not.”); Ex. 14 (First Wood Decl.) ¶ 29 (“Hearing Officers routinely do not make findings that detention is necessary to meet a compelling government interest or that less-restrictive conditions are inadequate to meet a compelling government interest.”); *id.* ¶ 45; Ex. 16 (Third Wood Decl.) ¶ 9.

104. Hearing officers would make findings of necessity prior to imposing an unaffordable secured bail amount in felony cases if the Felony Judges required them to do so.¹⁹⁹

f. Hearing officers are required to make each factual finding in misdemeanor cases by a standard of clear and convincing evidence, but they do not apply any standard in felony cases.

105. In misdemeanor cases, hearing officers are required to make each of the aforementioned factual findings by a standard of clear and convincing evidence.²⁰⁰ They are not required to meet any particular evidentiary standard in felony cases.²⁰¹

106. Hearing officers do not make these findings in felony cases, and therefore do not apply any particular evidentiary standard to any factual finding.²⁰²

107. Hearing officers would apply a heightened evidentiary standard in felony bail hearings if the Felony Judges required them to do so.²⁰³

¹⁹⁹ Ex. 17 (Amann Decl.) ¶ 12; Ex. 26 (Gaut Dep. at 116:7–14) (“So based on that practice in the misdemeanor courts of requiring you to make a finding of necessity to detain a misdemeanor defendant, is it also your understanding that the felony judges could issue a similar order requiring you to make those findings for felony defendants? . . . A. Yes.”).

²⁰⁰ Local Rule 9.12.6, Harris County Criminal Courts of Law (2021), at 23 bit.ly/3Bk11vb; Ex. 26 (Gaut Dep. at 143:13–21) (stating that hearing officers make a finding of indigency by clear and convincing evidence in misdemeanor cases, but not in felony cases).

²⁰¹ Ex. 26 at X (Gaut Dep. at 143:18–21) (“Q. Are you required to make a finding of indigence by clear and convincing evidence for the felony defendants who appear in your court for a 15.17 hearing? A. No.”); Ex. 17 (Amann Decl.) ¶ 11 (stating he did not follow the requirements of Rule 9 in felony cases);

²⁰² Ex. 14 (First Wood Decl.) ¶ 29 (“Hearing Officers do not apply any evidentiary standard to any factual finding.”); Ex. 26 (Gaut Dep. at 115:8–16) (“[Q.] And so when you make a decision to require that a felony defendant receive a secured bail amount that the person cannot afford, is it your practice to make a finding that it is necessary to detain that person? A. No, it’s not. Q. Why not? A. It’s not something I was taught to do, and it just has not been my practice.”).

²⁰³ Ex. 26 (Gaut Dep. at 143:13–144:12) (stating that she would comply with an order from the Felony Judges to make findings by clear and convincing evidence that less-restrictive conditions are inadequate because it would be “a court order”); Ex. 17 (Amann Decl.) ¶ 12.

VI. Videos of the Magistration Hearings Illustrate the Setting of Bail.

108. Videos of magistration hearings held in the jail since the lawsuit was filed illustrate the following facts:²⁰⁴

- a. **Hearing officers refuse release on unsecured bail or non-financial conditions in cases where detention is obviously likely to result without any finding that such detention is necessary.**

109. In nearly every felony case, hearing officers set secured money bail without considering alternatives like unsecured or non-financial conditions of release.²⁰⁵

110. For example, in the magistration hearing of Named Plaintiff Joseph Ortuno, the hearing officer refused to consider a personal bond despite being aware that Ortuno, who was 18

²⁰⁴ The bail hearing videos and exhibits referenced herein are publicly available. A majority of the cited bail videos are already in the record. *See* Dkt. 214-2 (State Intervenor’s Mot’n to Dismiss, Ex. B); Dkt. 259-1 (Plaintiffs’ Omnibus Response to the 20 District Judges’ and the State Intervenor’s Motions to Dismiss, Ex. A1-18); Dkt. 592 at 8 (Plaintiffs’ Response in Opposition to the Harris County District Attorney’s Office’s Mot’n to Quash) (containing link to bail hearing of Ka’Darian Smith). Plaintiffs submit several additional, more recent, hearings which, like the others, are recorded by Harris County and available publicly. *See* Ex. 20 (Declaration of Priyanka Shetty, Nov. 17, 2022) (describing process of clipping videos for use as exhibits); Ex. 45–71 (bail hearing videos), *available at* bit.ly/3HkNc3u.

²⁰⁵ Ex. 21 (Declaration of Holly McGowan, Nov. 16, 2022) ¶ 5 (“Among all 53 individual hearings occurring between January 1 and May 7, 2022 that I reviewed, I did not witness a single hearing in which an arrestee accused of a felony offense ever received an unsecured (or “personal”) bond at their 15.17 hearing.”); Ex. 20 (Shetty Decl.) ¶¶ 4–7 (describing videos provided to Ms. McGowan for review); *e.g.*, Ex. 44 (Bail Hearing Video Index), row 2 (Johnnie Pierson); Ex. 45 ([Johnnie Pierson Bail Hearing](#), Jan. 18, 2019) (hearing officer “referred” personal bond decision to the trial court, saying “When you get to court . . . you can talk to the judge about any other considerations”); Ex. 44 (Bail Hearing Video Index), row 27 (R.M.); Ex. 70 ([R.M. Bail Hearing](#), June 4, 2020) (hearing officer said he would “refer the matter of a pretrial release bond” to the felony judge despite being aware that R.M. had been homeless for the past year and had no violent convictions and no violence flag on the risk assessment tool); Ex. 44 (Bail Hearing Video Index), row 19 (M.C-A.); Ex. 62 ([M. C-A. Bail Hearing](#), June 6, 2020) (hearing officer stated that she “[could not] approve a personal bond” and that Mr. C-A. could address both the amount of bond and issue of personal bond with the district court); Ex. 44 (Bail Hearing Video Index), row 15 (J.M.); Ex. 58 ([J.M. Bail Hearing](#), Apr. 22, 2022) (hearing officer denied request for a personal bond despite J.M. being charged with a non-violent property offense and taking care of his sick mother); Ex. 44 (Bail Hearing Video Index), row 5 (A.R.); Ex. 48 ([A.R. Bail Hearing](#), May 6, 2022) (hearing officer denied A.R. personal bond despite being charged with a non-violent property offense, relying on food stamps, and caring for a daughter undergoing chemotherapy); Ex. 44 (Bail Hearing Video Index), row 20 (M.A.A.); Ex. 63 ([M.A.A. Bail Hearing](#), Sept. 12, 2022) (state requested \$50,000 bond where M.A.A., an indigent mother of three, was arrested for the first time and received the lowest possible risk score with no NVCA flag; the hearing officer denied her an unsecured bond, instead granting the ADA’s request and setting a \$50,000 secured bond).

years old and in the 11th grade, had at most \$100 to devote to bail. The hearing officer required a \$30,000 secured bond, stating, “[I] will defer any further decision as to personal bond to the court.

... You can talk to the judge when you get to court next week.”²⁰⁶

b. Hearing officers require secured money bail from people who are not present at magistration.

111. Hearing officers frequently require secured money bail from people who are not present in the courtroom for their magistration hearing.²⁰⁷

c. Hearing officers require secured money bail without an inquiry into or findings concerning ability to pay, including in cases where they are aware of an arrestee’s indigence or when indicators of poverty make it clear that detention is likely.

112. Hearing officers do not inquire into or make a findings concerning a felony arrestee’s ability to pay before imposing bail that may serve to detain them.²⁰⁸ Hearing officers

²⁰⁶ Ex. 44 (Bail Hearing Index), row 3 (Joseph Ortuno); Ex. 46 ([Joseph Ortuno Bail Hearing](#), Jan. 19, 2019).

²⁰⁷ See, e.g., Ex. 44 (Bail Hearing Index), row 51 (C.C.); Ex. 51 ([C.C. Bail Hearing](#), June 6, 2019) (hearing officer required a \$20,000 secured money bond at hearing where C.C. was not present or represented by counsel); Ex. 54 ([D.V. Bail Hearing](#), Jan. 19, 2019) (hearing officer required a \$15,000 secured money bond at hearing where D.V. was not present or represented by counsel because he was in “medical”); Ex. 44 (Bail Hearing Video Index), row 16 (J.S.); Ex. 59 ([J.S. Bail Hearing](#), Aug. 5, 2022) (hearing officer required a \$25,000 secured bond at hearing where J.S. was not present; his next court appearance was scheduled for two months later, in October); Ex. 44 (Bail Hearing Video Index), row 21 (M.W.); Ex. 64 ([M.W. Bail Hearing](#), Apr. 23, 2020) (not present at magistration in April 2020 because “deputies [weren’t] sure where he’s at . . .”); see also Ex. 72 (Index of Cases), row 38 (K.F.) (hearing officer required a \$30,000 secured bond without K.F. present); Ex. 72 (Index of Cases), row 49 (M.W.); Ex. 120 (M.W. Case Records) at 11–12 (bail order form reads “Def not present but deputies aren’t sure where he’s at”); Ex. 72 (Index of Cases), row 20 (C.P.) (hearing officer required \$50,000 secured bond for 22-year-old autistic woman at hearing where C.P. was not present); see also Ex. 1 (Copp Expert Report) ¶ 28 (finding that, among the 95,109 individuals for whom valid magistration data was available, almost one in ten (9% or 8,229 individuals) were marked not present for their hearing).

²⁰⁸ See, e.g., Ex. 44 (Bail Hearing Video Index), row 23 (N.E.A.); Ex. 66 ([N.E.A. Bail Hearing](#), June 7, 2020) (hearing officer did not make an ability-to-pay finding before requiring a \$35,000 secured bond despite being aware that N.E.A. had “no cash on hand, no money in her checking or savings account” and “refer[red] any request for a lower bond or a personal bond to Judge Glass”); Ex. 44 (Bail Hearing Video Index), rows 24–25 (O.G.); Ex. 67–68 ([O.G. Bail Hearing Part 1 & Part 2](#), Aug. 9, 2022) (hearing officer did not make an ability-to-pay finding before requiring a \$5,000 secured bond on a non-violent charge despite being aware that O.G. supported three minor children and had only part-time employment earning \$300 per month); Ex. 44 (Bail Hearing Video Index), row 48 (A.R.); Ex. 48 ([A.R. Bail Hearing](#), May 6, 2022) (hearing officer did not make an ability-to-pay finding before imposing a \$20,000 secured bond

impose secured bail despite being informed of an arrestee's indigence or being aware that an arrestee's charge clearly relates to their poverty.²⁰⁹

d. Hearing officers require secured money bail without determining whether detention is necessary or whether alternative less-restrictive conditions would adequately meet the government's interests, and without applying any evidentiary standard, let alone a clear and convincing evidence standard.

113. Hearing officers do not typically make any findings that pretrial detention of an individual is necessary before imposing secured bond that may serve to detain them, and they do not apply a clear and convincing evidentiary standard or any other evidentiary standard.²¹⁰

(twice as high as the State's request) on a non-violent property offense despite being aware that A.R. relied on food stamps and cared for a daughter undergoing chemotherapy); Ex. 44 (Bail Hearing Video Index), row 22 (N.A.); Ex. 65 ([N.A. Bail Hearing](#), Oct. 25, 2020) (hearing officer required a \$10,000 secured bond despite being aware that N.A. had no prior convictions, and was 17 years old, the mother of a one-year-old, lived with her father and step-mother, and attended school full time); *see also* Ex. 72 (Index of Cases), row 45 (M.A.A.); Ex. 116 (M.A.A. Case Records) (hearing officer required a \$50,000 secured bond despite being aware that it was M.A.A.'s first arrest, that she was indigent with three kids, and that she scored a 1-1, the lowest possible score, on the risk assessment).

²⁰⁹ *See, e.g.*, Ex. 44 (Bail Hearing Index), row 12 (E.A.); Ex. 55 ([E.A. Bail Hearing](#), Jan. 18, 2019) (hearing officer did not make an ability-to-pay finding before requiring a \$20,000 secured bond for man who allegedly stole a soda and pushed the shop owner with his hand, despite knowing that he was homeless, a lifelong Houston resident, and had no money for bond); Ex. 44 (Bail Hearing Video Index), row 27 (R.M.); Ex. 70 ([R.M. Bail Hearing](#), June 4, 2020) (hearing officer did not make an ability-to-pay finding before requiring a \$7,500 secured bond for man who allegedly tried to steal coins from a Watermill Express hut, despite being aware that R.M. had been homeless for the past year and had no violent convictions and no violence flag on the risk assessment tool).

²¹⁰ *See, e.g.*, Ex. 44 (Bail Hearing Video Index), row 26 (R.J.M.); Ex. 69 ([R.J.M. Bail Hearing](#), July 29, 2022) (in a hearing lasting 70 seconds, hearing officer made no findings and provided no explanation why denying a personal bond and imposing a \$10,000 secured bond was necessary); Ex. 44 (Bail Hearing Video Index), row 48 (A.R.); Ex. 48 ([A.R. Bail Hearing](#), May 6, 2022) (in a hearing lasting under two minutes, hearing officer made no findings and provided no explanation why denying a personal bond and imposing a \$20,000 secured bond (twice as much as the State's request) was necessary); Ex. 44 (Bail Hearing Video Index), row 15 (J.M.); Ex. 58 ([J.M. Bail Hearing](#), Apr. 22, 2022) (hearing officer made no findings and provided no explanation for why it was necessary to deny a personal bond and imposing a \$25,000 secured bond despite J.M. being charged with a non-violent property crime and being the caretaker of his sick mother); *see also* Ex. 16 (Third Wood Decl.) ¶ 9 ("Hearing Officers routinely impose secured bond amounts that keep people detained without making any findings regarding why less-restrictive conditions are insufficient.").

VII. First Appearances in a District Court Are Routinely Delayed and Do Not Provide an Opportunity for an Adversarial Bail Hearing with Evidence and Findings on the Record.

114. If, after magistration, a person arrested for a felony offense is still unable to purchase release from jail, they will be automatically scheduled for a “Preliminary Assigned Court Appearance” (“PACA”) in District Court within a few days.²¹¹ Between 2015 and 2021, 68% of felony arrestees were still detained at the time of this scheduled court setting.²¹²

115. Although detained people are automatically *scheduled* to appear in court within a few days of magistration,²¹³ they often do not appear at that scheduled first appearance.²¹⁴ Sometimes, the scheduled settings do not happen at all, and the first appearance is rescheduled.²¹⁵ Other times, the setting happens, but the person is not transported from the jail to the courthouse.²¹⁶ In such cases, the person will not meet their lawyer even if the lawyer is appointed that day.²¹⁷

²¹¹ Ex. 9 (Declaration of Alex Bunin, Harris County Chief Public Defender, Apr. 6, 2020 (“First Bunin Decl.”)) ¶ 3 (noting local rules require a “Preliminary Assigned Court Appearance” be scheduled for the next business day following a person’s arrest); Ex. 16 (Third Wood Decl.) ¶ 10.

²¹² Ex. 1 (Copp Expert Report) ¶ 29.

²¹³ *Id.* ¶ 30 (finding that between 2015 and 2021, 81% of people arrested for felonies were scheduled for a first appearance within five days of arrest); *but see* Ex. 11 (Supplement to Second Declaration of Alex Bunin, Harris County Chief Public Defender, Apr. 7, 2020 (“Supp. Bunin Decl.”)) ¶ 5(a) (“[I]t can take more than one business day for a detained person to have a PACA/PIA setting.”).

²¹⁴ Ex. 9 (First Bunin Decl.) ¶ 5 (“In fact, people arrested for felony offenses do not typically “appear” physically at the PACA/PIA docket.”); Ex. 16 (Third Wood Decl.) ¶ 10 (“They are often scheduled to appear in District Court on the next business day after magistration, but that does not mean they will appear in court.”).

²¹⁵ Ex. 16 (Third Wood Decl.) ¶ 11 (“Sometimes, first appearances in the trial court are reset or “rolled” to the next day repeatedly when the in-custody arrestee is not brought to the courthouse. Other times, they are reset for weeks or months in the future.”); *see, e.g.* Ex. 72 (Index of Cases), row 34 (J.S.); Ex. 105 (J.S. Case Records) (no evidence of court appearance or meeting attorney through present, more than four months after arrest).

²¹⁶ Ex. 14 (First Wood Decl.) ¶ 52 (“Detained individuals typically remain in lock-up outside of the courtroom and are not brought into the courtroom on this court date”); Ex. 9 (First Bunin Decl.) ¶ 5 (“People arrested for felonies who are detained in the jail typically are not transported to the court . . . Even when they are, they are kept in the lockup outside the courtroom”).

²¹⁷ Ex. 16 (Third Wood Decl.) ¶¶ 13–14.

116. Even when people are brought to the courthouse for first appearance, detained individuals are typically kept in a holding cell outside the courtroom.²¹⁸

117. These individuals are often assigned a lawyer at this first appearance, but not always.²¹⁹ And even if they meet their lawyer, they will not be able to have confidential conversations because of how many people are crowded into the holding cell and the presence of sheriff's deputies, other lawyers, and even co-defendants.²²⁰

²¹⁸ Ex. 27 (Harris County 30(b)(6) at 161:3–7) (Q. “Has it been typical for defendants to remain in lockup outside of the courtroom during the first appearance, from 2015 to the present? A. And long before that. Yes.”); Ex. 14 (First Wood Decl.) ¶ 52 (“Detained individuals typically remain in lock-up outside of the courtroom and are not brought into the courtroom on this court date”); Ex. 9 (First Bunin Decl.) ¶ 5 (“People arrested for felonies who are detailed 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.”); Ex. 7 (Declaration of Christopher Clack) ¶ 6 (“[T]he only time I recall being brought to court was on March 12, 2020. I was kept in the lock-up the entire time and never saw the judge.”); *e.g.*, Ex. 72 (Index of Cases), row 92 (D.V.); Ex. 92 (D.V. Case Records) at 4–5, 7–8 (bond was set at \$15,000 in D.V.’s absence, he had no lawyer at magistration, and he was “not brought up” at his first appearance when counsel was appointed).

²¹⁹ Ex. 1 (Copp Expert Report) ¶ 31(b) (analyzing data from 2015 through 2021 and finding that 44% of felony detainees did not have counsel appointed until after their first appearance); Ex. 189 (Sept. 9, 2020 email from court coordinator Mindy Ochsner to Sheriff’s Office staff and others) (attaching a chart showing multiple defendants scheduled for first appearances without an attorney appointed); *see also* Ex. 18 (Declaration of Defense Attorney Brent Mayr, Sept. 7, 2022) ¶ 8 (noting that, when arrested people are released from custody before their first appearance before the District Court, “many defendants appear at this court setting without a lawyer”).

²²⁰ Ex. 16 (Third Wood Decl.) ¶ 14; Ex. 27 (Harris County 30(b)(6) at 52:8–13) (“[Public defenders’ interviews with clients] are marginally confidential . . . typically no one was in earshot when we speak to clients”); Ex. 17 (Amann Decl.) ¶ 21 (“[T]he conversation is always rushed and it does not take place in a confidential setting.”).

118. Even when counsel is assigned and present, and the person is brought to court from jail, there is typically no review of the money bail amount or conditions of release.²²¹ If and when a review of bail does take place, the judge typically does not make any on-the-record findings.²²²

119. First appearances take place off-the-record.²²³ Felony Judges do not hold formal adversarial bail hearings, allow for evidence, apply an evidentiary standard, or make findings concerning conditions of release or a decision to detain. It is not possible to have a formal, on-the-record, adversarial bail hearing at that time.²²⁴

²²¹ Ex. 1 (Copp Expert Report) ¶ 49 (finding only 7% of felony cases had a notation of a “bail review” setting since the County began collecting data in April 2020); *e.g.*, Ex. 72 (Index of Cases), row 23 (E.K.); Ex. 94 (E.K. Case Records) (E.K. was arrested on August 7, 2022 for a non-violent property offense, given a \$25,000 money bond, and scheduled for a “bail review” setting over a month later; however, on the day the “bail review” was scheduled, it was reset to February 2, 2023, at which point E.K. will have been detained pretrial for nearly six months).

²²² Ex. 16 (Third Wood Decl.) ¶ 9 (“If and when the trial courts review the amount of secured bail, they also do not make any findings, even when they increase the amount of bail.”); Ex. 10 (Second Declaration of Alex Bunin, Harris County Chief Public Defender, Apr. 6, 2020 (“Second Bunin Decl.”)) ¶ 20 (“These informal requests are simply not the type of individualized bail hearings the Constitution requires. They are not even close—perhaps most importantly, because the arrested individual is not present, there is no record, there are no findings entered, and there are no legal or evidentiary standards articulated.”).

²²³ Ex. 18 (Mayr Decl.) ¶ 17 (“As a matter of routine practice, Judge Franklin and the other District Judges do not conduct first appearances on the record, including bond discussions and revocation proceedings.”); Ex. 10 (Second Bunin Decl.) ¶¶ 17–20 (contrasting informal bail requests and on-the-record evidentiary bail hearings).

²²⁴ Ex. 14 (First Wood Decl.) ¶ 50 (“Although an informal, off-the-record request for a reduction in the amount required may theoretically occur at first appearance, the Felony Judges do not provide for an adversarial 15.17 hearing on the record at that time”); Ex. 9 (First Bunin Decl.) ¶ 6 (“[PACA/PIA] is not an opportunity for an adversarial bail hearing.”); Ex. 10 (Second Bunin Decl.) ¶ 13 (same); Ex. 11 (Supp. Bunin Decl.) ¶ 5(b) (“[W]hen the DAO states that ‘any defendant’ can request a ‘bail review’ and will have one ‘within days,’ the DAO is referring to the informal discussions The DAO does not mean that there are individualized hearings on the record with an opportunity to make evidence, or that findings are made if the judge refuses to order release on a personal bond or lowered bail amount.”); Ex. 30 (Sheriff Gonzalez Dep. at 39:8–11) (“In my opinion, their first look before their home judge, in my opinion, should be a robust bail review and instead, in my belief, it’s not.”); Ex. 166 (June 12, 2020 email from Judge Brian Warren) (“The practice in Harris County has been that most lawyers approach informally about bond and judges then act on the information that was given to them. Its [sic] been this way since I began practicing in 2001.”); Ex. 167 (March 23, 2020 email from court coordinator for Judge Danilo Lacayo) (“I am not docketing any bond reduction motions” and that the defense attorney should file her motion and speak with the judge on the phone the following day); Ex. 168 (Apr. 17, 2020 email from Judge Chuck Silverman) (“This week I haven’t had any ‘formal’ hearings (evidence, witnesses, record) however, I have had many daily informal requests to address bail and I resolve these immediately or within the same or next business day of being

120. After first appearance, the case is almost always “reset,” meaning that another setting is scheduled, typically weeks or months in the future.²²⁵

121. Thus, people who cannot pay for their release, if they are brought to the courthouse at all, nevertheless remain in detention after first appearance, usually without ever having been brought into the courtroom to be face-to-face with a judge.²²⁶

122. Anyone who is released after the magistration hearing is instructed to appear on a certain day and time in a particular courtroom.²²⁷

123. Some judges have a practice of revoking bonds set by hearing officers without notice or an individualized hearing to determine whether detention is necessary, even when the person has complied with all of their bond conditions and appeared in court as required.²²⁸

requested. Specifically, this week I conducted 10 informal hearings.”); Ex. 169 (Apr. 17, 2020 email from court coordinator Ana Melendez to Judge Chuck Silverman) (“I don’t have scheduled bond hearings[.] [W]e address all hearings via email.”); Ex. 170 (Apr. 17, 2020 email from District Court staff Vicki Long to Judge Chuck Silverman) (“[t]hey are wanting us to make sure we document formal hearings. I realize these rarely happen,” with Judge Silverman replying “[m]uch ado about nothing.”); Ex. 171 (June 26, 2020 email from Judge Amy Martin to Virginia Ryan (HCSO)) (“I didn’t have a bond hearing, the attorneys just approached, as usual.”).

²²⁵ Ex. 14 (First Wood Decl.) ¶ 54 (“As a result, individuals who cannot pay money bail remain in detention after first appearance and are returned to the Harris County Jail, often without ever having been brought into the courtroom.”); Ex. 27 (Harris County 30(b)(6) at 161:17–25) (Q: “Is it true that cases are routinely reset multiple times?” A: “Sure.” Q: “And does that mean that a – a court setting occurs and then another court setting is scheduled for some period after that? Correct?” A: “True.”).

²²⁶ Ex. 16 (Third Wood Decl.) ¶ 13 (“Even as judges and lawyers have returned to courtrooms, arrestees accused of felony offenses are often not transported to the court from the jail. When they are brought to the courthouse, they are typically kept in the “holdover” jail cells outside the courtroom.”); Ex. 14 (First Wood Decl.) ¶ 54 (“As a result, individuals who cannot pay money bail remain in detention after first appearance and are returned to the Harris County Jail, often without ever having been brought into the courtroom.”).

²²⁷ Ex. 27 (Harris County 30(b)(6) at 167:24–168:11) (“Is it accurate that many people are released after a felony arrest? Correct? A. Released on bail? Q. Yes. A. Yeah. A significant amount are released on bail. Q. And those individuals are required to appear in a felony judge’s courtroom sometime after they’re released from Harris County custody, correct? A. Many times the next day but, yes, after release.”).

²²⁸ Ex. 27 (Harris County 30(b)(6) at 168:12–170:17) (describing judges’ practice of revoking bonds from people who have been released from custody and show up to court for first appearance); Ex. 10 (Second Bunin Decl.) ¶ 27 (noting judges routinely “revoke bonds and detain people who have been released after arrest and who appear in court as required, with no notice or individualized hearing to determine whether detention serves any government purpose.”); Ex. 17 (Amann Decl.) ¶ 19 (describing his concerns as a

124. Revocations often occur without any allegation that the released person has violated a condition of release, and bonds are sometimes revoked by the judge *sua sponte*, without a motion filed by the District Attorney’s office.²²⁹

125. For example, in December 2019, a hearing officer ordered Ka’Darian Smith released on a personal bond following a hearing. Three minutes later, after the district attorney on duty at the bail hearing reported to the Felony Judge assigned to Mr. Smith’s case that the hearing officer had issued a personal bond, while the same docket of bail hearings was still ongoing—and without notice or another hearing for Mr. Smith—the Felony Judge revoked the personal bond.²³⁰

126. Revocation at first appearance is traumatic for individuals who believe they have complied with their bond conditions and have no expectation of being taken into custody on the day of the hearing.²³¹

hearing officer that setting an affordable bond in certain cases might cause the person to lose their deposit and be taken back into custody if the felony judge then revokes the bond); *id.* ¶ 23 (“On multiple occasions, I’ve represented clients who had a bond revoked *sua sponte* by a district court judge. This has happened to me in cases before Judge Robert Johnson and Judge Nikita Harmon.”); Ex. 18 (Mayr Decl.) ¶ 25 (“In October 2020, I submitted an open records request for a list of all cases in which Judge Franklin revoked a defendant’s bond. In January 2021, the District Clerk sent me a list of all such cases from 2020. According to that document, Judge Franklin revoked bond in 322 cases in 2020 alone. While I cannot confirm how many of these cases involved *sua sponte* revocations with no procedural safeguards, like Mr. Gomez’s case, I observed her court almost every day for several months and observed the same *sua sponte* revocations without due process or following the rules of evidence every week in dozens of cases.”); *id.* ¶ 28 (“[O]ther Judges revoke and unconstitutionally raise bond in a similar manner as Judge Franklin.”); *id.* at 21–49 (Ex. B to declaration, ethics complaint against Judge Franklin) (describing her routine practice of revoking bond *sua sponte*).

²²⁹ Ex. 10 (Second Bunin Decl.) ¶¶ 24–26 (providing examples of revocations that “reflect routine practice”); Ex. 18 (Mayr Decl.) ¶¶ 9–13 (describing *sua sponte* bond revocation practices of Judge Ramona Franklin); Ex. 173 (July 16, 2018 email from Pretrial Services employee Carolina Castro to Luis Zelaya et al.) (personal bond revoked without a hearing hours after it was issued after Sheriff’s deputies told the hearing officer that the arrestee “was now suicidal” without further explanation, the hearing officer said “to just take the bond back,” and the felony judge signed revocation paperwork).

²³⁰ Ex. 44 (Bail Hearing Video Index), row 18 (K-D.S.); Ex. 61 (Video of K-D.S. Bail Hearing); *see also* Ex. 72 (Index of Cases), row 37 (K-D.S.); Ex. 108 (K-D.S. Case Records).

²³¹ Ex. 18 (Mayr Decl.) ¶ 11 (“Thus, people show up, as required, at first appearance with no advance warning that they are likely to be taken back into custody. Many have just scraped together money to pay a non-refundable fee to a commercial bonding company to secure their release—money that they may have

127. Additionally, as a result of the short time frame between an arrestee's release from custody and the first appearance before the District Court, often just a few days,²³² many people appear at this court setting without yet having retained a lawyer.²³³ Although the judge may appoint a lawyer on the day of the hearing, the lawyer will not be one selected by the arrestee, will not be made aware in advance of any potential bail proceeding, and will have had no time at all to meet and interview the client or prepare for a bond revocation hearing.²³⁴ Often, the defense counsel appointed to represent people at these hearings perform no advocacy whatsoever.²³⁵

128. Like other bail proceedings, there is seldom any written record or opportunity to present evidence before a bond is revoked or forfeited.²³⁶ Instead of an adversarial, evidentiary, on-the-record hearing, discussions before a bond is revoked at first appearance are typically

chosen not to pay if they knew the bond could be revoked, and the payment wasted, just a day or two later.”).

²³² *Id.* ¶ 7 (“Typically, the person is ordered to appear before a District Court judge for his or her first court appearance the business day after magistration. But because it can take well over 12 hours to be released from the jail after an order of release is issued, people who are released often end up having to appear in the District Court just a few hours after they get out of jail.”); Ex. 9 (First Bunin Decl.) ¶ 4 (“The terms PACA and PIA are used interchangeably to refer to the next-business-day court setting that is listed in court records.”).

²³³ Ex. 18 (Mayr Decl.) ¶ 8 (“As a result of the short time frame between the defendant’s release from custody and the first appearance before the District Court, many defendants appear at this court setting without a lawyer.”); Ex. 1 (Copp Expert Report) ¶ 31(b) (analyzing data from 2015 through 2021 and finding 44% of detained individuals did not have counsel appointed until after their first appearance).

²³⁴ Ex. 17 (Amann Decl.) ¶ 23 (“In each case, my client was given no notice that the appearance would involve a reconsideration of their bail. I was not appointed as counsel until that appearance. My first chance to meet and talk to my client was moments before the judge ordered them re-detained. Without any chance to prepare, I was unable to present witness testimony or other evidence in favor of continued bail for my client.”).

²³⁵ Ex. 18 (Mayr Decl.) ¶ 19; *see also* Ex. 1 (Copp Expert Report) ¶ 31(b) (analyzing data from 2015 through 2021 and finding 44% of detained individuals did not have counsel appointed until after their first appearance).

²³⁶ Ex. 18 (Mayr Decl.) ¶ 33 (“[T]here is seldom any written record of the revocation or other bail decisions in District Court.”); *id.* ¶ 12 (“Before revoking bond, Judge Franklin does not conduct an adversarial, evidentiary, on-the-record hearing. Instead, the hearings are informal, off-the-record, devoid of legal or evidentiary argument, and do not result in any findings or statement of reasons, let alone findings on the record or findings that meet a heightened evidentiary standard.”).

informal, off-the-record, devoid of legal or evidentiary argument, and do not result in any findings or statement of reasons.²³⁷ A Texas appellate court recently held that revoking bonds and detaining people in this way—without notice, an on-the-record hearing, evidence, effective assistance of counsel, or findings—does not violate state law.²³⁸

129. If a detained person wishes to have an evidentiary hearing concerning the appropriateness of the secured bond amount in their case, or the need to keep them in a jail cell pending resolution of the case, or whether less-restrictive conditions of release are available, the person’s lawyer must file a written petition seeking a writ of habeas corpus and have a court proceeding scheduled for a later date.²³⁹

130. Prior to the COVID-19 pandemic, when an attorney requested an evidentiary bail hearing, it was not likely to occur for at least two to four weeks.²⁴⁰ Delays worsened during the first year of the pandemic, as hearings were held months out, if at all.²⁴¹ To this day, if a detained

²³⁷ *Id.* ¶ 12.

²³⁸ *Ex parte Gomez*, 624 S.W.3d 573 (Tex. Crim. App. 2021); *see also Ex parte Gomez*, No. 01-20-00004-CR, 2022 WL 2720459 (Tex. App. July 14, 2022) (holding on remand that an arrestee may not challenge the trial court’s failure to adhere to the Texas Rules of Evidence when revoking bond through pretrial habeas corpus petition because a new hearing “would not result in immediate release”); *but see also id.* at *5 n. 2 (“[W]e note that the procedure by which the trial court increased the amount of bail in the wake of the Gomez’s family’s posting bail in the amount set by the magistrate is the opposite of a transparent judicial process. Because the court need not make findings of fact or in any way explain why it increased bail and because the defendant has the burden of proof to demonstrate that bail is excessive, the trial court’s determination to increase the amount of bail is unreviewable, even if it were, in fact, an arbitrary decision.”).

²³⁹ Ex. 16 (Third Wood Decl.) ¶ 23; Ex. 10 (Second Bunin Decl.) ¶ 21 (“Even under pre-COVID-19 circumstances, if a lawyer sought to have such an individualized bail hearing after being appointed, the lawyer would need to file a written petition seeking a writ of habeas corpus (referred to locally as a ‘writ’).”); *see, e.g.*, Ex. 174 (petition for writ of habeas corpus seeking bond reduction for Zachary Green, Apr. 21, 2020).

²⁴⁰ Ex. 10 (Second Bunin Decl.) ¶ 21 (“Such writs were not heard promptly. My office recently served as amicus in an appeal of a writ in a case that our lawyers believe reflects the felony judges’ routine practice. In that case, a hearing was scheduled four weeks after it was requested and five weeks after the person’s arrest.”).

²⁴¹ *Id.* ¶ 22 (declaring on April 6, 2020 that “[i]n the current context of COVID-19, for people arrested now, the first opportunity for an individualized hearing with counsel and an opportunity to present evidence, will

arrestee typically must wait over a month for their first theoretical opportunity for an individualized on-the-record hearing with counsel and an opportunity to present evidence. A sample of habeas petitions ruled on by a District Court between March and October of 2022 found that “after an arrestee filed a petition for a writ seeking a hearing on bail, they waited an average of 52 days before a hearing was held.”²⁴² In one illustrative example, T.D. filed a habeas petition regarding bail on June 20, 2019, but more than five months later, she still had not received a hearing. Ex. 12 (Third Declaration of Alex Bunin, Apr. 23, 2020) ¶ 17; *see also* Ex. 12 (Third Bunin Decl.) ¶ 18 (noting that, of the cases cited by the District Attorney in an April 2020 filing (Dkt. 126) to purportedly show that hearings happen quickly, the only person who received an on-the-record hearing at which he was present waited two and a half months from when the hearing was requested).

generally be May or June”); Ex. 12 (Third Declaration of Alex Bunin, Harris County Chief Public Defender, Apr. 23, 2020 (“Third Bunin Decl.”)) ¶ 18 (observing that, of the 22 cases listed by the District Attorney, only one person received an on-the-record hearing on a motion to reduce bail at which he was present, and that occurred two and a half months from the time he filed his motion); *see* Ex. 176 (Apr. 21, 2020 email from defense attorney to Felony Judge Silverman’s court staff) (requesting a bail hearing on a writ of habeas corpus and May 13, 2020 correspondence from the defense attorney requesting the hearing be moved forward from June 22, 2020); Ex. 177 (Dec. 11, 2020 email from Clay Bowman to ABC13) (using COVID-19 to partially explain why reports show “an 82% average increase in Harris County felony caseloads from December 2018–November 2020”); Ex. 178 ((Dec. 9, 2020 email from Clay Bowman to Judge Herb Ritchie et al.) (including data showing there was about an 80% increase in active pending cases from 2018 to 2020); Ex. 179 at 3 (June 30, 2020 emails between Felony Judges and clerks) (concerning delays caused by COVID-19, with Judge Ritchie noting that “each criminal district judge has complete discretion and authority to address this matter as he or she sees fit.”); *e.g.*, Ex. 196 (July 6, 2020 Hrg. Tr. at 16) (discussing delays that “may exceed constitutional limits”); Ex. 197 (May 28, 2020 Hrg. Tr. at 9–14) (adversarial hearings may not occur until May or June 2020).

²⁴² Ex. 16 (Third Wood Decl.) ¶ 24; Ex. 13 (Fourth Bunin Decl.) ¶ 7 (agreeing with the findings in Sarah Wood’s declaration); Ex. 18 (Mayr Decl.) ¶ 37 (“[I]t typically takes weeks and sometimes over a month to get an on-the-record hearing on a habeas petition, and that hearing still takes place before the same judge. Faced with this procedural morass, many detained defendants will simply plead guilty or wait for trial.”); *see also* Ex. 16 (Third Wood Decl.) ¶ 25 (explaining that D.H. filed a petition on April 27, 2022, asking the Court to set an evidentiary hearing on the amount of his bonds—a hearing was not held until September 16, over four months later); Ex. 10 (Second Bunin Decl.) ¶ 21 (“My office recently served as amicus in an appeal of a writ in a case that our lawyers believe reflects the felony judges’ routine practice. In that case, a hearing was scheduled four weeks after it was requested and five weeks after the person’s arrest.”).

131. For someone who is arrested and unable to pay the money bail, this hearing would be the first opportunity to challenge the de facto order of pretrial detention.²⁴³ It would also be their first opportunity to present witnesses or other evidence and the first time a judge even conceivably makes findings on the record regarding pretrial release or detention.²⁴⁴ Even then, judges routinely fail to provide constitutionally adequate protections.²⁴⁵ A Texas appellate court has held that challenges to the procedural protections provided in imposing pretrial detention are “not cognizable in a pretrial habeas corpus application.”²⁴⁶

132. People who cannot pay secured bail wait weeks or months after arrest for any hope of an adversarial hearing to challenge pretrial detention.²⁴⁷ This delay in the first conceivable

²⁴³ Ex. 9 (First Bunin Decl.) ¶ 6; Ex. 10 (Second Bunin Decl.) ¶¶ 8–10.

²⁴⁴ Ex. 14 (First Wood Decl.) ¶ 49 (“There is typically no review of the money bail amount previously imposed at [first appearance], except that some judges routinely revoke personal bonds or increase the monetary amount set by the magistrate and without notice or a formal hearing.”); Ex. 9 (First Bunin Decl.) ¶ 6 (“[T]hat court setting is not an opportunity for an adversarial bail hearing. Although a judge might informally decide . . . to modify bail conditions, any person who wishes to have an adversarial bail hearing . . . must file a written motion and then must wait two to four weeks under current conditions”); Ex. 12 (Third Bunin Decl.) ¶¶ 12–18 (rebutting the District Attorney’s claims to show that individualized adversary hearings, about reducing bail, are rare in Harris County criminal district courts, and when they do occur, it takes many weeks or months for a hearing to be scheduled).

²⁴⁵ Ex. 10 (Second Bunin Decl.) ¶ 18 (“Judges use the term ‘hearing’ to refer to any informal request to a judge for relief.”); *id.* ¶ 20 (“These informal requests are simply not the type of individualized bail hearings the Constitution requires. They are not even close – perhaps most importantly, because the arrested individual is not present, there is no record, there are no findings entered, and there are no legal or evidentiary standards articulated.”); *see also* Ex. 16 (Third Wood Decl.) ¶ 23 (“Lawyers sometimes file unappealable motions to reduce bail, but they typically do not result in an on-the-record evidentiary hearing.”); Ex. 72 (Index of Cases), row 25 (G.M.); Ex. 96 (G.M. Case Records) (“bail review” not scheduled until four weeks after G.M.’s attorney filed a bail motion); Ex. 72 (Index of Cases), row 13 (B.J.); Ex. 84 (B.J. Case Records) (B.J.’s attorney filed a “Motion to Set Reasonable Bond” on April 20; the court set B.J. for a “bail review” four times on May 7, May 18, May 27, and May 28, but no evidence in the public record suggests a “bail review hearing” was ever held).

²⁴⁶ *Ex parte Gomez*, No. 01-20-00004-CR, 2022 WL 2720459 (Tex. App. July 14, 2022).

²⁴⁷ Ex. 14 (First Wood Decl.) ¶¶ 53–54 (“The case is almost always then “reset,” meaning that another hearing is scheduled, typically weeks in the future. As a result, individuals who cannot pay money bail remain in detention after first appearance and are returned to the Harris County Jail, often without ever having been brought into the courtroom.”).

opportunity for a person detained pretrial to have an individualized bail hearing is caused by the Felony Judges' failure to promulgate policies to assure more expeditious bail hearings.²⁴⁸

133. The Sheriff's Office detains people throughout the entire pretrial period solely because they cannot afford to pay secured bail amounts set by hearing officers and Judges without an inquiry into or findings concerning ability to pay, without consideration of alternatives to detention or findings that detention is necessary, and at proceedings that are often not on the record and where no evidentiary standard is applied, let alone a heightened standard.²⁴⁹

134. The Sheriff is aware that these settings do not pass constitutional muster.²⁵⁰ He agreed that virtually the same deficiencies in the misdemeanor system constituted constitutional violations and agreed to a resolution of that lawsuit that required him to release anyone who was being detained without the constitutionally required findings and procedural protections.²⁵¹

²⁴⁸ Ex. 10 (Second Bunin Decl.) ¶ 10; *see also* Ex. 175 (June 5, 2020 email from DCA Staff Attorney Lisa Teachey to the Felony Judges) (describing the development of technical procedures for automatically setting "a bail hearing," noting the procedures were based on "[Judge] Rosenthal's criteria" such that "only nonviolent, nonsexual offenses are eligible").

²⁴⁹ *E.g.* Ex. 72 (Index of Cases), row 54 (R.J.M.); Ex 125 (R.J.M. Case Records) (66-year-old jailed 132 days and counting because he cannot afford the payment for a \$10,000 bond); Ex. 72 (Index of Cases), row 9 (A.P.); Ex. 80 (A.P. Case Records) (71-year-old jailed 270 days and counting because she cannot afford the payment for a \$20,000 bond); Ex. 72 (Index of Cases), row 17 (C.E.); Ex. 88 (C.E. Case Records) (68-year-old jailed 118 days because he could not afford the payment for a \$10,000 bond; C.E. pleaded guilty and was sentenced to 120 days) (last updated Dec. 7, 2022).

²⁵⁰ Dkt. 197 (Sheriff's Answer) at 3 (alleging that alleged that "new rules and procedures" are required to "satisfy the plaintiffs' request for a system that complies with constitutional requirements," to promote safety and court appearance, and to reduce the jail population).

²⁵¹ *ODonnell v. Harris County*, 4:16-cv-01414, Dkt. 618-1 (Aug. 1, 2019) (signed settlement agreement); *id.* at Dkt. 617 (Aug. 1, 2019) (Joint Motion and Memorandum in Support of Joint Motion for Preliminary Approval of Proposed Consent Decree and Settlement Agreement [] for Approval of Class Notice); Cameron Langford, *Pressure Mounts Against Bail System in Houston*, Courthouse News (Mar. 7, 2017), bit.ly/3FyFyKk (quoting the Sheriff: "I believe that the current operation of the money bail system, including the sheriff's active participation in that system, violates the United States Constitution.").

135. The Sheriff is further aware that thousands of people in his custody would be released if only they could afford the amount required.²⁵² Throughout this litigation his office has repeatedly prepared and circulated lists of people in his custody detained on low bond amounts and without holds for the Judges to consider for release.²⁵³

VIII. The Felony Bail System Results in Arbitrary Pretrial Detention.

136. The examples selected and described below are representative of how the felony bail system in Harris County works, at least for those who are poor.

a. People are often not present in the district court when bail is set or modified.

137. People arrested for felony offenses are typically not physically present in the district court when bail is set or modified.²⁵⁴ For instance, S.P. who was arrested for allegedly shoplifting

²⁵² Michael Hardy, *In Fight Over Bail's Fairness, Sheriff Joins the Critics*, N.Y. Times (Mar. 9, 2017), bit.ly/3UG5PIK (quoting Sheriff Gonzalez saying "When most of the people in my jail are there because they can't afford to bond out, and when those people are disproportionately [B]lack and Hispanic, that's not a rational system."); Cameron Langford, *Texas Sheriff Among Critics of His Own Bail System*, Courthouse News (Mar. 9, 2017), bit.ly/3HfOexI (quoting Sheriff Gonzalez's testimony in federal court, in which he stated, "When we look at equal protection, in my opinion it should be equal protection for everyone, but statistically speaking it doesn't bear that out. When I see that many of the people inside the jail, on any given day an average of 9,000, are just poor and can't bond out, and I look at racial disparities, disproportionally communities of color, then that's very concerning to me."); Ex. 30 (Sheriff Gonzalez Dep. at 54:25–55:7) ("If somebody has the ability to pay, no matter how egregious the alleged crime was, as long as they can pay they can get out . . . in my opinion, it really doesn't create a safer community."); *id.* at (63:2–5) (Q: "Are there currently case backlogs that are causing people to stay in jail longer because they cannot afford pretrial bail?" A: "I believe so."); Dkt. 197 (Sheriff's Answer) at 1 ("The Sheriff continues to believe it is wrong to detain an arrestee in jail merely because the arrestee is too poor to post a bond. There must be a different system that determines whether and on what terms public safety requires pre-trial detention, separate from an ability to pay.").

²⁵³ Dkt. 194 (Report of Sheriff Ed Gonzalez, June 26, 2020) at 1 ("Of the 525 inmates in the jail . . . charged with non-violent offenses and having no prior violent convictions, 87 have been released."); Dkt. 205 (Report of Sheriff Ed Gonzalez, July 6, 2020) at 1–2 ("[T]he HCSO generated new lists for each felony court of persons charged with non-violent crimes and no prior convictions. The DA's office promptly vetted the list of 538 inmates and informed all participants about the inmates for whom that office had no objection to release. That number: 12."); Dkt. 219 (July 21, 2020 Report of Sheriff Ed Gonzalez) at 1 ("We will begin with the bad news. Now well into the fourth month of the COVID-era, in spite of the coordination and prodding from this Court, the situation regarding jail releases has not appreciably changed.").

²⁵⁴ Ex. 16 (Third Wood Decl.) ¶ 13 ("Commonly, the only time an arrestee accused of a felony offense in Harris County personally appears in a courtroom before the judge is to plead guilty."); *e.g.*, Ex. 72 (Index of Cases), row 59 (T.C.); Ex. 130 (T.C. Case Records) at 21–23 (not present for February 2020 district

bread, cheese, and other personal items, received a \$10 secured bond in his case at magistration. The following day, at S.P.’s “first appearance” in district court, the felony judge in his case raised the secured money bond amount to \$1,000. Court forms indicate S.P. was not brought from the jail to the courthouse and was not present when his bond was raised.²⁵⁵

138. Since S.B. 6 went into effect in 2022, the resulting increase in bookings has overloaded the jail, causing individuals to spend days in “processing” before they are actually moved into housing.²⁵⁶ The Texas Commission on Jail Standards recently found the delays in the Harris County Jail’s booking practices to violate state-wide standards of care.²⁵⁷ People who are not yet in housing cannot be brought to their first court appearance. These scheduled appearances are reset, and may result in people not seeing a felony judge for weeks or even months.²⁵⁸

139. For example, J.S., an 18-year-old, was arrested for a non-violent property offense and booked into the Joint Processing Center on August 4, 2022. J.S. was not present at magistration, where a hearing officer set a \$25,000 secured money bond in his case. J.S. was not

court setting where the DAO filed a motion to increase his bond or for April 2020 appearance where his bond was subsequently lowered).

²⁵⁵ Ex. 72 (Index of Cases), row 58 (S.P.); Ex. 129 (S.P. court records).

²⁵⁶ Ted Oberg & Sarah Rafique, *Harris Co. inmates wait too long to get into jail, fix costs you millions*, ABC13 (Aug. 28, 2022), bit.ly/3iKwwZ9 (finding 14% of people arrested and brought to the joint processing center this year through Aug. 4 waited 48 hours or longer before getting booked).

²⁵⁷ Ex. 16 (Third Wood Decl.) ¶ 12 (citing Texas Commission on Jail Standards, *Letter to Lina Hidalgo and Ed Gonzalez* (Sept. 7, 2022), attached as Exhibit A to her declaration).

²⁵⁸ See, e.g., Ex. 72 (Index of Cases), row 24 (G.F.); Ex. 95 (G.F. Case Records) (56-year-old man arrested on August 1, 2022 was in processing and not brought to court for scheduled first appearances on August 3, August 8, or August 12—he remains detained as of Dec. 7, 2022); Ex. 72 (Index of Cases), row 23 (E.K.); Ex. 94 (E.K. Case Records) at 3 (18-year-old arrested on August 7, 2022 was not brought to court for scheduled first appearance on August 9, with the docket entry noting “DEF IN PROCESS”; his preliminary appearance was reset for nearly six months later, on February 2, 2023—he remains detained as of Dec. 7, 2022).

taken to court for his scheduled first appearance because he was still in “processing.” As of December 7, J.S. remains in jail and has apparently still not seen a judge.²⁵⁹

b. People arrested for felony offenses are detained for weeks without counsel.

140. Recently arrested individuals are detained for days and sometimes weeks before counsel is appointed to represent them.²⁶⁰ For example, J.R. was arrested on December 20, 2019 for a non-violent property state jail felony charge and he was required to pay a \$40,000 secured money bond, which he could not afford.²⁶¹ Counsel was not appointed to assist J.R. until over two weeks later, on January 6, 2020.²⁶²

c. Lawyers routinely fail to visit clients.

141. Once appointed, attorneys rarely visit or speak with their detained clients.²⁶³ For example, after over a year of pretrial detention, C.J. wrote a letter to the judge in his case advising that he had never been to court and never met his lawyer. A few months later, he pleaded guilty and was sentenced to 364 days in jail with credit for 454 days served. C.J.’s appointed attorney’s

²⁵⁹ Ex. 72 (Index of Cases), row 34 (J.S.); Ex. 105 (J.S. Case Records).

²⁶⁰ *See, e.g.*, Ex. 72 (Index of Cases), row 24 (G.F.); Ex. 95 (G.F. Case Records) at 4 (arrested on August 1, 2022; counsel not appointed until over two weeks later on August 17); Ex. 72 (Index of Cases), row 28 (J.B.); Ex. 99 (J.B. Case Records) at 5 (arrested on February 29, 2020; counsel not appointed until six weeks later on April 15).

²⁶¹ Ex. 72 (Index of Cases), row 33 (J.R.); Ex. 104 (J.R. Case Records).

²⁶² *Id.*

²⁶³ *See, e.g.*, Ex. 72 (Index of Cases), row 36 (J.W.); Ex. 107 (J.W. Case Records) at 6–7 (J.W.’s attorney never visited him during the six months he was in jail on unaffordable bail awaiting trial, according to fee voucher); Ex. 72 (Index of Cases), row 42 (L.J.C.); Ex. 113 (L.J.C. Case Records) at 12–13 (L.J.C.’s attorney did not visit or speak with him during the 18 months he spent detained before pleading guilty, according to a pro se motion he filed); Ex. 72 (Index of Cases), row 38 (K.F.); Ex. 109 (K.F. Case Records) at 24–25 (K.F.’s attorney never visited her in the four months she was detained before pleading guilty, according to fee voucher); Ex. 72 (Index of Cases), row 49 (M.W.); Ex. 120 (M.W. Case Records) at 9–10, 13 (M.W.’s attorney did not visit or speak with him during the 105 days he spent detained on \$200 bond before pleading guilty, according to fee voucher and letter sent to the court).

fee voucher indicates that he spent a total of two out-of-court hours working on the case, and does not claim he ever visited or spoke with C.J. during the nearly 15 months C.J. spent detained.²⁶⁴

d. Lawyers routinely fail to file bail motions.

142. Court-appointed lawyers rarely file motions asking the court to set an affordable bail or release their clients on unsecured bond.²⁶⁵ J.A.M. has been detained for four and a half years without bond on two non-violent charges. Arrested in 2018, there is no evidence in the public record that J.A.M. has ever received a formal or informal bail hearing, and no evidence that J.A.M.'s lawyer has ever filed a motion requesting one. As of December 7, 2022, he remains detained in the jail.²⁶⁶

²⁶⁴ Ex. 72 (Index of Cases), row 18 (C.J.); Ex. 89 (C.J. Case Records).

²⁶⁵ *See, e.g.*, Ex. 72 (Index of Cases), row 7 (A.C.); Ex. 78 (A.C. Case Records) (jailed for two and a half months on a \$43,000 money bond, A.C.'s attorney ever moved for a bond reduction; A.C. filed a pro se motion to reduce bond with the court and 16 days later, the court granted personal bonds on his charges and he was released); Ex. 72 (Index of Cases), row 60 (T.H.); Ex. 131 (T.H. Case Records) (detained for six weeks with no bond set; attorney never filed a bail motion); Ex. 72 (Index of Cases), row 49 (M.W.); Ex. 120 (M.W. Case Records) (detained for 105 days on \$200 secured bond for two state jail felony charges of forgery; attorney never filed a bail motion); Ex. 72 (Index of Cases), row 50 (N.A.); Ex. 121 (N.A. Case Records) (jailed for over three months on \$10,000 secured bond; attorney never filed a bail motion); Ex. 72 (Index of Cases), row 20 (C.P.); Ex. 91 (C.P. Case Records) (23-year-old autistic woman jailed for 15 months with \$50,000 bond; attorney never filed a bail motion); Ex. 72 (Index of Cases), row 32 (J.M.); Ex. 103 (J.M. Case Records) (detained for five months on a \$25,000 secured bond for a non-violent property crime; attorney never filed a bail motion); Ex. 72 (Index of Cases), row 40 (K.T.); Ex. 111 (K.T. Case Records) (detained for over a year, K.T. has filed eight pro se motions, including several seeking a bond modification; her attorney has never filed a bail motion); Ex. 72 (Index of Cases), row 57 (S.B.); Ex. 128 (S.B. Case Records) (detained for over six months on \$75,000 secured bond, S.B.'s attorney has never filed a bail motion); Ex. 72 (Index of Cases), row 8 (A.L.); Ex. 79 (A.L. Case Records) (remained in jail for over a month after receiving a personal bond in her only case; A.L.'s attorney never filed a motion for her release); Ex. 72 (Index of Cases), row 9 (A.P.); Ex. 80 (A.P. Case Records) (71-year-old jailed 270 days and counting because she can't afford the payment for a \$20,000 bond, wrote a letter to the court saying she could make bond if it were reduced to \$15,000; her attorney has never filed a bail motion) (last updated Dec. 7, 2022).

²⁶⁶ Ex. 72 (Index of Cases), row 27 (J.A.M.); Ex. 98 (J.A.M. Case Records).

e. Felony judges ignore people’s requests to terminate their lawyers.

143. Without any contact from their lawyers for months, many detained individuals ask the felony judge assigned to their case to appoint new counsel. The Felony Judges ignore or deny those requests.²⁶⁷

144. Detained for two months on an unaffordable money bond, K.F. filed a pro se motion asking the court to replace her lawyer, who had never visited her or even contacted her. In communications with a local advocacy group, K.F. indicated that she had received exculpatory evidence in her case, which she sent to her lawyer, and which her lawyer ignored. She further wrote, “I’m at a lost if I never get a chance to go to court to change counsel or lower my bond How am I ever going to get a chance to Prove im inosent?” [sic] The court did not act on the motion. Soon thereafter, K.F. pleaded guilty.²⁶⁸

f. Felony judges continuously reset cases for months and months.

145. Felony judges continuously reset detained individuals’ case settings—often without the person present in court—until the person pleads guilty or their case is dismissed.²⁶⁹

²⁶⁷ See, e.g., Ex. 72 (Index of Cases), row 42 (L.J.C.); Ex. 113 (L.J.C. Case Records) (detained on an unaffordable \$20,000 money bond for over a year without any contact from his attorney, 66-year-old L.J.C. filed two motions asking the court to dismiss his court-appointed counsel and appoint a new attorney; the motions were never addressed by the court and L.J.C. later pleaded guilty); Ex. 72 (Index of Cases), row 33 (J.R.); Ex. 104 (J.R. Case Records) (after being detained on an unaffordable secured bond for over 14 months, J.R. filed a motion with the court noting a lack of contact with his attorney and asking the court to dismiss his court-appointed counsel and appoint a new attorney; the motion was never addressed by the court and J.R. later pleaded guilty); Ex. 72 (Index of Cases), row 11 (B.A.); Ex. 82 (B.A. Case Records) (detained for two months without any contact from his attorney, B.A. filed a motion asking the court to dismiss his court-appointed counsel and appoint a new attorney; the motion was never addressed by the court and B.A. later pleaded guilty).

²⁶⁸ Ex. 72 (Index of Cases), row 38 (K.F.); Ex. 109 (K.F. Case Records) at 11.

²⁶⁹ See, e.g., Ex. 109 (K.F. Case Records) at 10 (writing after four months of detention that “I have been reset 5 times and have had no contact with a lawyer...I have yet to see anyone about my case...”; a week later, K.F. pleaded guilty and was sentenced to 123 days in jail with credit for 125 days served); Ex. 72 (Index of Cases), row 18 (C.J.); Ex. 89 (C.J. Case Records) (detained for over a year on \$5,000 bond without being brought to court, filed a pro se motion for a speedy trial before pleading guilty three weeks later); Ex. 72 (Index of Cases), row 16 (C.C.); Ex. 87 (C.C. Case Records) (detained on \$20,000 money bond,

146. For example, M.C. was arrested and charged with felony DWI third in 2018, and detained for three and a half years awaiting trial. M.C.'s case was reset at least 14 times while he was detained, and he repeatedly wrote to the court asking why his trial date continued to be reset. M.C. was 65 years old when he was arrested and 69 years old when, in February 2022, the State dismissed its case against him.²⁷⁰

g. Felony judges revoke bonds set by hearing officers without allegations of any violation of conditions, and without notice or a hearing.

147. Felony judges regularly revoke bonds set by hearing officers without allegations of a violation of a release condition, and without notice or a hearing.²⁷¹

C.C.'s case was reset five times between August 2019 and February 2020; six months later, C.C. pleaded guilty); Ex. 72 (Index of Cases), row 31 (J.A.G.); Ex. 102 (J.A.G. Case Records) (arrested at 19-years-old and detained for five years, waiting to go to trial as his case was continually reset); Ex. 72 (Index of Cases), row 33 (J.R.); Ex. 104 (J.R. Case Records) (arrested for a non-violent state jail felony charge in 2019, J.R. was detained for 2 years as his case was reset at least 11 times before he was eventually brought to court and pleaded guilty); Ex. 72 (Index of Cases), row 27 (J.A.M.); Ex. 98 (J.A.M. Case Records) at 4–5 (reset at least 10 times over 18 months); Ex. 72 (Index of Cases), row 20 (C.P.); Ex. 91 (C.P. Case Records) (a 22-year-old autistic woman arrested in May 2021 for allegedly threatening someone with a screwdriver, C.P. has been detained for over 16 months with no bail hearing as the court continues to reset her cases) (last updated Dec. 7, 2022).

²⁷⁰ Ex. 72 (Index of Cases), row 46 (M.C.); Ex. 117 (M.C. Case Records).

²⁷¹ See, e.g., Ex. 72 (Index of Cases), row 37 (K-D.S.); Ex. 108 (K-D.S. Case Records); Ex. 44 (Bail Hearing Video Index), row 18 (K-D.S.); Ex. 61 ([K-D.S. Bail Hearing](#), Nov. 7, 2019) (after a hearing officer issued K-D.S. a personal bond at the magistration hearing, the courtroom prosecutor alerted Judge Randy Roll through an ex parte communication, who revoked the personal bond within 10 minutes of it being issued without notice or a hearing); Ex. 72 (Index of Cases), row 62 (Z.G.); Ex. 133 (Z.G. Case Records) (a hearing officer set a \$7,500 secured bond at the magistration hearing; seven hours later, the judge revoked the bond and denied bail without notice or a hearing); Ex. 72 (Index of Cases), row 26 (H.L.); Ex. 97 (H.L. Case Records) (charged with a state jail felony for allegedly stealing clothing and a backpack, H.L. was released on a personal bond; a week later, when he appeared in court for arraignment, Judge Ramona Franklin revoked his personal bond without notice or an adversarial hearing, set a \$15,000 secured bond, and H.L. was taken into custody); Ex. 72 (Index of Cases), row 40 (K.T.); Ex. 111 (K.T. Case Records) at 10 (two weeks after a hearing officer issued K.T. a personal bond, Judge Greg Glass revoked it without notice or a hearing and set K.T.'s case at no bond; over a year later, she is still detained); Ex. 72 (Index of Cases), row 57 (S.B.); Ex. 128 (S.B. Case Records) at 8 (three days after a hearing officer issued S.B. personal bonds on his charges, Judge Ramona Franklin revoked his bonds—without any allegation he had violated his conditions, any notice, or any hearing—set his bonds at a total of \$75,000, and remanded him into custody); Ex. 180 (Jan. 12, 2019 email from Peyton Peebles to Kelvin Banks & Dennis Potts) (judge erroneously issued arrest warrant listing “no bond” without a hearing or notice to defense attorney based on mistaken *ex parte* communication from Pretrial Services describing alleged violation that occurred the year before

148. Released from custody after his parents spent their entire savings to pay a non-refundable fee to a private bonding company, J.G. went straight from the Joint Processing Center to his first appearance in district court. There, without notice or a hearing, the judge assigned to his case revoked J.G.'s bonds *sua sponte*, raised the bail amounts on his cases from \$40,000 to \$150,000, and remanded him into custody, where he remained detained for nearly nine months.²⁷²

h. Felony judges rarely hold adversarial bail hearings, even when detained people file motions requesting them.

149. Detained individuals do not receive adversarial bail hearings, on the record with the opportunity to present evidence, even when they file letters or motions requesting them.²⁷³

150. A 66-year old veteran, J.S.B. was arrested on August 14, 2021 and a hearing officer set a \$10,000 secured bond in his case. J.S.B. submitted two pro se requests to the judge in his case requesting a personal bond, but no bail hearing was ever set. For at least three months, J.S.B. remained detained without receiving an in-person adversarial bail hearing on the record. Upon receiving notice from Plaintiffs' counsel that J.S.B. was being detained without a constitutional

arrestee was placed on supervision. After arrest, defense attorney informed judge of the error and arrestee was released); Ex. 181 (Oct. 8, 2019 email from Bertina Johnson to Pretrial Services staff) (warning that a Pretrial Services staff member at the front desk may have been erroneously telling arrestees they could leave the office without seeing a supervision officer, resulting in at least one revocation).

²⁷² Ex. 72 (Index of Cases), row 30 (J.G.); Ex. 101 (J.G. Case Records).

²⁷³ See, e.g., Ex. 72 (Index of Cases), row 29 (J.B.C.); Ex. 100 (J.B.C. Case Records) (a 68-year-old homeless veteran detained for over a year on a \$5,000 bond, J.B.C. sent at least three letters to the court stating that he was never arraigned and asking to be released, but there is no evidence he received a bail hearing or was brought to court until he pleaded guilty months later); Ex. 72 (Index of Cases), row 15 (B.Y.); Ex. 86 (B.Y. Case Records) (after filing a pro se motion for a personal bond, there is no evidence B.Y. received a bail hearing or was brought to court until he pleaded guilty several months later); Ex. 72 (Index of Cases), row 38 (K.F.); Ex. 109 (K.F. Case Records) (after filing multiple pro se motions for personal bond, there is no evidence K.F. received a bail hearing or was brought to court until she pleaded guilty); Ex. 72 (Index of Cases), row 27 (J.A.M.); Ex. 98 (J.A.M. Case Records) (detained for four and a half years without any evidence of an informal or formal bail hearing).

bail hearing, the judge released J.S.B. on a personal bond—but only after he had been detained for over three months.²⁷⁴

i. When felony judges do hold adversarial on-the-record hearings to review bail, they occur weeks or even months after an attorney’s initial request.

151. Individuals do not receive adversarial bail hearings, on the record, with the opportunity to present evidence, unless their attorneys specifically request them.²⁷⁵ And when an attorney does file a petition requesting such a hearing, it typically does not occur for weeks or even months.²⁷⁶

j. Felony judges routinely release people, including many with violent charges, who have been detained on unaffordable bail as soon as they plead guilty—often with credit for time they spent in jail pretrial that exceeds the length of their sentence.

152. Felony judges frequently release people who are detained on unaffordable bail as soon as they plead guilty.²⁷⁷

²⁷⁴ Ex. 72 (Index of Cases), row 35 (J.S.B.); Ex. 106 (J.S.B. Case Records).

²⁷⁵ Ex. 16 (Third Wood Decl.) ¶ 23; *see also* Ex. 9 (First Bunin Decl.) ¶ 6 (“[PACA/PIA] is not an opportunity for an adversarial bail hearing.”); Ex. 10 (Second Bunin Decl.) ¶ 18 (“[T]he judges use the term ‘hearing’ to refer to any informal request to a judge for relief.”); *id.* ¶ 20 (“These informal requests are simply not the type of individualized bail hearings the Constitution requires. They are not even close—perhaps most importantly, because the arrested individual is not present, there is no record, there are no findings entered, and there are no legal or evidentiary standards articulated.”); Ex. 18 (Mayr Decl.) ¶ 36 (“These ‘hearings’ are typically held off the record, without reference to the rules of evidence, without the opportunity to call witnesses, and are not subject to any specific standard of proof.”); Ex. 1 (Copp Expert Report) ¶ 49 (finding only 7% of felony cases had a notation of a “bail review” setting since the County began collecting data in April 2020).

²⁷⁶ Ex. 10 (Second Bunin Decl.) ¶ 9 (“[I]f such hearings occur at all in a case, it typically will be between two and four weeks after arrest”); Ex. 18 (Mayr Decl.) ¶ 37 (noting that “it typically takes weeks and sometimes over a month to get an on-the-record hearing on a habeas petition”); Ex. 16 (Third Wood Decl.) ¶ 24 (reviewing petitions seeking a bail hearing and finding an average of 52 days between an attorney filing a petition and a hearing taking place); *id.* ¶ 25 (D.H. waited over four months for a hearing); *id.* ¶ 26 (R.B. waited 56 days for a hearing); Ex. 72 (Index of Cases), row 44 (M.A.); Ex. 115 (M.A. Case Records) (court scheduled bail hearing 40 days after M.A.’s attorney filed an application for a writ of habeas corpus seeking release on a personal bond or, in the alternative, a bail review hearing).

²⁷⁷ Ex. 30 (Sheriff Gonzalez Dep. at 43:19–23) (“Q. Is it a common occurrence that the individuals who are being detained as public safety risks pretrial are then later eventually released on time-served sentences? A. Yes.”); *see, e.g.*, Ex. 72 (Index of Cases), row 22 (E.A.); Ex. 93 (E.A. Case Records) (after being detained

153. J.B.C, a 68-year-old homeless veteran, was arrested in December 2020 for allegedly stealing a bottle of wine from CVS and threatening to strike a person with the bottle. J.B.C. was detained for over a year due to his inability to pay \$5,000. In January 2022, after more than a year of pretrial detention, J.B.C. pleaded guilty to a reduced misdemeanor charge. He was sentenced to 180 days in jail, with credit for the 382 days he had spent in custody since arrest—more than twice the length of his sentence. He was then released from jail.²⁷⁸

k. People die in jail because they are too poor to afford release.

154. Each year, people die in jail because they cannot afford the price of secured financial conditions that would allow them to walk free.²⁷⁹

155. K.S. was a single, disabled, unemployed mother of four who supported herself and her children on disability payments when she was arrested in April 2022. Despite knowing this, a

on unaffordable bail for 147 days, E.A. pleaded guilty; on June 13, 2019, he was sentenced to 100 days in jail, less than he had already spent in jail, and was released); Ex. 72 (Index of Cases), row 16 (C.C.); Ex. 87 (C.C. Case Records) (after being detained on unaffordable bail for 455 days, C.C. pleaded guilty; on September 2, 2020 she was sentenced to one year in jail, less than she had already spent in jail, and was released); Ex. 72 (Index of Cases), row 38 (K.F.); Ex. 109 (K.F. Case Records) (after being detained on unaffordable bail for 125 days, K.F. pleaded guilty; on December 15, 2020, she was sentenced to 123 days in jail, less than she had already spent in jail, and was released); Ex. 72 (Index of Cases), row 59 (T.C.); Ex. 130 (T.C. Case Records) (after being detained on unaffordable bail for 373 days, T.C. pleaded guilty; on January 28, 2021, he was sentenced to 365 days in jail, less than he had already spent in jail, and was released); Ex. 72 (Index of Cases), row 18 (C.J.); Ex. 89 (C.J. Case Records) (after being detained on unaffordable bail for 454 days, C.J. pleaded guilty; on November 4, 2021, he was sentenced to 364 days in jail, less than he had already spent in jail, and was released); Ex. 72 (Index of Cases), row 36 (J.W.); Ex. 107 (J.W. Case Records) (after being detained on unaffordable bail for 183 days, J.W. pleaded guilty; on January 5, 2022, he was sentenced to 180 days in jail, less than he had already spent in jail, and was released); Ex. 72 (Index of Cases), row 17 (C.E.); Ex. 88 (C.E. Case Records) (after being detained on unaffordable bail for 118 days, C.E. pleaded guilty and was sentenced to 120 days in jail).

²⁷⁸ Ex. 72 (Index of Cases), row 29 (J.B.C.); Ex. 100 (J.B.C. Case Records).

²⁷⁹ Ex. 16 (Third Wood Decl.) ¶ 16 (stating she has reviewed the case records of each of the 24 people to have died in Harris County custody, finding that at least eleven people “had a secured financial condition set in their case which, if met, would have allowed for their release”); Ex. 172 (Supp. Gundu Report) ¶ 4 (“[T]he total number of in-custody deaths since January 2020 [is] 64. Just this calendar year, 27 people have died in Harris County custody, the most since the Texas Commission on Jail Standards began tracking deaths 13 years ago. Each of these 27 people was being held pretrial.”).

hearing officer required a \$30,000 secured bond in her case, an amount she could not afford. K.S. died in the jail 32 days after her arrest. She never appeared in the trial court, never had her bail reviewed, and never received an evidentiary bail hearing. Three days after K.S. died, the district court signed an order lowering her bail to \$5,000. She was 38 years old.²⁸⁰

156. M.S. was arrested in March 2022 and received personal bonds on his Harris County charges, but the County continued to detain him on a \$10,000 secured bond for an out-of-county DWI charge. M.S., who was unemployed, could not afford the \$1,000 required to pay for a surety. Five days later, M.S., who was diabetic, was found unresponsive in his cell and died later that day. The medical examiner states that he died of diabetic ketoacidosis, a condition linked to a lack of insulin. A lawyer still had not been appointed in his case. He was 28 years old.²⁸¹

157. L.F., who was homeless, was detained for 587 days pretrial because he could not pay a \$50,000 secured bond in his case. He never received an adversarial bail hearing. L.F. died in the jail on June 15, 2022. He was 43 years old.²⁸²

158. V.S. was arrested by Houston Police Department in September 2022 and detained in the jail on a warrant from Fort Bend County for possession of less than one gram of a controlled substance, a state jail felony. Fort Bend case records show that she would have been released if she had paid \$5,000. She was found unresponsive in her cell on October 2, 2022. She was 42 years old.²⁸³

²⁸⁰ Ex. 16 (Third Wood Decl.) ¶ 20; Ex. 72 (Index of Cases), row 39 (K.S.); Ex. 110 (K.S. Case Records).

²⁸¹ Ex. 72 (Index of Cases), row 48 (M.S.); Ex. 119 (M.S. Case Records); *see also* Ted Oberg & Sara Rafique, *13 Investigates: Decade-high inmate deaths just one concern at Harris Co. jail*, ABC13 (Nov. 16, 2022), bit.ly/3haS40E.

²⁸² Ex. 72 (Index of Cases), row 41 (L.F.); Ex. 112 (L.F. Case Records).

²⁸³ Ex. 72 (Index of Cases), row 61 (V.S.); Ex. 132 (V.S. Case Records).

159. F.H., a teenager with a long history of intellectual and developmental disabilities lived in a group home. He had never been arrested before. In October 2021, he was arrested for the first time and, despite having no criminal history, no allegations of failing to appear in court, no pending charges, and scoring “low risk” on the PSA, the hearing officer required a \$20,000 secured bond. F.H. remained in jail because neither he nor his family could afford to pay the fee required for release. Three weeks after his arrest, F.H. was reportedly beaten, kicked and stabbed to death. He was 19 years old.²⁸⁴

160. E.L. was detained for three months on a \$35,000 money bond. E.L. sent a letter to the court saying his attorney had told him his bond was lowered to \$15,000, an amount he could afford, but the system still listed the old bond amount. He asked the court to “please check it and fix it in the system . . . so I can post bail and get back to my family.” In March 2022, E.L. was suddenly transported to an outside hospital, where he fell into a coma and died. He was 31 years old.²⁸⁵

161. P.C. was charged with burglary for allegedly stealing lawn equipment and frozen meat. He spent three and a half months in the Harris County Jail awaiting trial because he was unable to pay the \$100 fee required to satisfy his \$1,000 bond.²⁸⁶ P.C. died from COVID-19 complications in August 2020. He was 64 years old.²⁸⁷

²⁸⁴ Ex. 2 (Gundu Expert Report) at 18–20; Greg Groogan, *19-Year-Old Jail Beating Victim Dead; Family Donates His Organs*, FOX 26 Houston (Nov. 6 2021), bit.ly/3FsMiRl.

²⁸⁵ Ex. 16 (Third Wood Decl.) ¶ 17; Jessica Wiley, *'Harris County jail has failed': Mom wants answers after inmate son was put on life support*, ABC13 (Mar. 24, 2022), bit.ly/3B6o7Ft.

²⁸⁶ Court records state that P.C. was also subject to a parole hold during that time (based on publicly available records, he was likely on parole due to a 1991 burglary-with-intent-to-commit-theft conviction that resulted in a 25-year sentence), but no lawyer challenged the hold. *See* Ex. 124 (P.C. Case Records).

²⁸⁷ Ex. 72 (Index of Cases), row 53 (P.C.); Ex. 124 (P.C. court records).

162. B.D. was arrested in February 2022 for allegedly “evading arrest” over a year earlier. B.D. was homeless and indigent, but bond was set at \$75,000 secured. He never received a bail hearing. B.D. was sent to LaSalle Correctional Facility in Louisiana, where he died 19 days after his arrest. He was 35 years old.²⁸⁸

163. None of the 24 people who died in Harris County custody in the first ten months of 2022 had any indication in the record that a formal, evidentiary bail hearing had occurred.²⁸⁹

IX. The Named Plaintiffs Were Each Detained Due to Inability to Pay Money Bail.

164. On January 21, 2019, Dwight Russell, Johnnie Pierson, and Joseph Ortuno filed this civil rights class action on behalf of themselves and a class of similarly situated people.²⁹⁰

165. At that time, each was being detained due to inability to pay a secured money bail amount.²⁹¹

166. In Mr. Russell’s case, the hearing officer required a \$25,000 secured bond. Mr. Russell was unemployed, with no income other than food stamps. He could not afford the amount required for release.²⁹²

167. In Mr. Pierson’s case, the hearing officer required a \$15,000 secured bond. Mr. Pierson worked part-time, received food stamps, and struggled to pay for life’s basic necessities. He had no way to pay the amount required for release.²⁹³

²⁸⁸ Ex. 72 (Index of Cases), row 12 (B.D.); Ex. 83 (B.D. court records).

²⁸⁹ Ex. 16 (Third Wood Decl.) ¶ 21.

²⁹⁰ Dkt. 1 (Complaint).

²⁹¹ Ex. 4 (Declaration of Dwight Russell) ¶ 4; Ex. 5 (Declaration of Johnnie Pierson) ¶ 5; Ex. 6 (Declaration of Joseph Ortuno) ¶ 4; *id.* ¶¶ 12–13.

²⁹² Ex. 4 (Russell Decl.) ¶ 4; *id.* ¶ 7 (“My only income is from food stamps. I am not employed and have not been employed for years. I live with my sister, who provides me with financial support. She can’t afford to pay the money bail amount required for my release.”).

²⁹³ Ex. 5 (Pierson Decl.) ¶¶ 4–5; *id.* ¶¶ 8–10 (“I struggle to meet the basic necessities of life. I survive on food stamps and work part-time when I can on cars. I don’t have any other income. I live with my girlfriend.

168. In Mr. Ortuno's case, the hearing officer required a \$30,000 secured bond. An 18-year-old high-school student who lived with his mother, Mr. Ortuno could not afford to pay for his release or borrow that sum from someone else.²⁹⁴

169. In each Named Plaintiff's case, no judge made a finding that pretrial detention was necessary to serve any government interest.²⁹⁵

170. Each Plaintiff faced weeks of detention prior to any opportunity to challenge those conditions on the record with evidence and argument.²⁹⁶

171. While detained, Mr. Pierson did not receive enough to eat, and missed his granddaughter's birthday.²⁹⁷ Mr. Russell, who was 61 years old, was forced to sleep in a top bunk despite giving jail staff a doctor's note saying that his health issues required him to sleep on a bottom bunk.²⁹⁸ Mr. Ortuno, just 18 years old at the time, was crowded in with adults much older than he was, separated from his family, friends, and education.²⁹⁹

She survives on government assistance. I do my best to support her with food stamps and part-time work, but we still struggle. My girlfriend cannot afford to pay the money required for me to be released.”).

²⁹⁴ Ex. 6 (Ortuno Decl.) ¶ 4 (“On January 19, 2019, a judge at the jail told me that I would have to pay \$30,000 to be released. I cannot afford that amount of money. I can’t even afford to pay a bondsman to get out. No one I know has enough money to help me. I can’t borrow from anyone to pay enough to get out.”); *id.* ¶ 6 (“I am currently enrolled in high school.”); *id.* ¶¶ 12–13 (“I cannot afford to purchase my release from jail. Any money I could scrape together would come from money I need to pay for basic necessities to survive. I am in here because I can’t afford the \$30,000 I have to pay to get out.”).

²⁹⁵ Ex. 4 (Russell Decl.) ¶¶ 5–6; Ex. 5 (Pierson Decl.) ¶¶ 6–7; Ex. 6 (Ortuno Decl.) ¶ 5.

²⁹⁶ Ex. 73 (Russell Case Records) at 2 (noting “Complaint Filed” on Jan. 19, 2019 and “Judgment” on Mar. 11, 2019); Ex. 74 (Pierson Case Records) at 6 (noting “Complaint Filed” on Jan. 18, 2019 and “Bond Made” on Jan. 31, 2019); Ex. 75 (Ortuno Case Records) at 3–4 (noting “Complaint Filed” on Jan. 18, 2019 and “Bond Made” on Apr. 5, 2019); *see also* Ex. 10 (Second Bunin Decl.) ¶ 9 (“[I]f such hearings occur at all in a case, it typically will be between two and four weeks after arrest”); Ex. 16 (Third Wood Decl.) ¶ 24 (reviewing petitions seeking a bail hearing and finding an average of 52 days between filing and a hearing).

²⁹⁷ Ex. 5 (Pierson Decl.) ¶¶ 11–12.

²⁹⁸ Ex. 4 (Russell Decl.) ¶¶ 1, 8.

²⁹⁹ Ex. 6 (Ortuno Decl.) ¶¶ 1, 10–11.

172. Plaintiffs moved for class certification concurrent with filing the complaint.³⁰⁰

173. On May 6, 2020, Plaintiffs amended their Complaint to add two Named Plaintiffs—Christopher Clack and Maurice Wilson.³⁰¹

174. At the time they sued, Mr. Clack and Mr. Wilson were each detained in the jail, could not afford to purchase release, and were subject to the same policies as the three original named Plaintiffs.³⁰²

175. Mr. Clack, Mr. Wilson, and Mr. Pierson were also prohibited from release on a personal bond as a result of the Governor’s Executive Order GA-13, which was issued on March 29, 2020.³⁰³

176. Each Plaintiff eventually was released from pretrial custody.³⁰⁴

X. The Felony Bail Process Affects Thousands of People Every Day, Is Replete With Lengthy Delays, and Disproportionately Harms Poor People.

177. The Harris County Jail is the largest jail in Texas and the second largest jail in the United States, behind only the Los Angeles County Jail.³⁰⁵

³⁰⁰ Dkt. 2 (Motion to Certify Class); *see also* Dkt. 11 (Amended Motion to Certify Class); Dkt. 503 (Second Amended Motion to Certify Class); Dkt. 622 (Order) at 1 (denying motion to certify class as moot and ruling, “plaintiffs may file an amended motion for certification after the threshold issues have been resolved.”).

³⁰¹ Dkt. 140-1 (First Amended Complaint) at 1, 11.

³⁰² Ex. 7 (Declaration of Christopher Clack) ¶¶ 3–5, 22 (unable to pay money bail set at \$17,500, which was set without any finding of necessity or consideration of alternatives); Ex. 8 (Declaration of Maurice Wilson) ¶¶ 4, 14 (unable to pay money bail set at \$10,000, which was set without any finding of necessity or consideration of alternatives).

³⁰³ Ex. 9 (First Bunin Decl.) ¶¶ 8–11; Ex. 76 (Clack Case Records) at 3; Ex. 77 (Wilson Case Records) at 5.

³⁰⁴ Ex. 73 (Russell Case Records) at 1 (noting “Judgment” on Mar. 11, 2019); Ex. 74 (Pierson Case Records) at 6 (noting “Bond Made” on Jan. 31, 2019); Ex. 75 (Ortuno Case Records) at 3-4 (noting “Bond Made” on Apr. 5, 2019); Ex. 76 (Clack Case Records) at 5-6, 12 (noting guilty plea and related dismissal on Aug. 14, 2020); Ex. 77 (Wilson Case Records) at 2-3 (noting “Judgment” on June 22, 2020).

³⁰⁵ Zhen Zeng & Todd D. Minton, *Census of Jails, 2005-2019 – Statistical Tables*, U.S. Department of Justice, Bureau of Justice Statistics 2 (Oct. 2021), bit.ly/3uoCocX (finding that, in 2019, “[f]our jail

178. Over the last two years, the jail’s average daily population has increased by 24% and nearly 2,000 people.³⁰⁶ The average daily jail population between July 1 and October 31, 2022 exceeded 10,000.³⁰⁷ According to Sheriff Gonzalez, “It’s the first time that we’ve had over 10,000 inmates in more than a decade.”³⁰⁸

179. The main driver of the overcrowding at the Harris County Jail is people detained while awaiting trial. In July 2022, this group of people accounted for 81% (8,082 persons) of the average daily jail population.³⁰⁹ The number of people detained on misdemeanor charges has declined since the *ODonnell* Consent Decree.³¹⁰ Over 96% of the average daily jail population (7,792 persons) was accused of a felony offense.³¹¹

180. The population of people detained charged only with a “state jail” felony averaged 534 persons in July.³¹² State jail felonies are the least serious class of felony charges in the Texas criminal legal system. They consist mostly of non-violent offenses and, in many instances, they are simply misdemeanor offenses enhanced by the existence of prior misdemeanor convictions.³¹³

jurisdictions held more than 7,000 jail inmates—Los Angeles County (17,385), Harris County (TX, 8,883), Maricopa County (7,873), and New York City (7,341).”).

³⁰⁶ Ex. 1 (Copp Expert Report) ¶ 19(a) (observing an increase in the average daily jail population from 8,026 in July 2020 to 9,986 in July 2022).

³⁰⁷ *Id.* ¶ 18.

³⁰⁸ Gerald Harris, *Sheriff Ed Gonzalez proposes new Harris County jail*, KHOU (Sept. 24, 2022), bit.ly/3FaSpse.

³⁰⁹ Ex. 1 (Copp Expert Report) ¶ 19(b).

³¹⁰ Ex. 186 (Expert Report of Michael Jones, Ph.D., Aug. 24, 2022 (“Jones Expert Report”)) ¶ 60(a) (summarizing *ODonnell* monitor’s finding that 18,000 fewer people were detained prior to a hearing in 2021 than in 2015).

³¹¹ Ex. 1 (Copp Expert Report) ¶ 19(c).

³¹² *Id.* ¶ 19(d).

³¹³ *See, e.g.*, Ex. 72 (Index of Cases), row 26 (H.L.); Ex. 97 (H.L. Case Records) (charged with state jail felony of third-offender theft (an enhanced misdemeanor) for allegedly stealing two jackets, four hats, and a backpack).

181. The Sheriff has stated that overcrowding is “a symptom of a criminal justice system that has slowed down.”³¹⁴ Thirty-three percent of felony cases—over 13,000—have been pending for over 360 days.³¹⁵ The Sheriff has suggested that Harris County judges address the backlog by working longer hours, releasing people who are being detained on \$10,000 or less, and expediting transfers for people in jail waiting for treatment beds to open up.³¹⁶

182. Most felony cases do not end in conviction. Only 38% of people arrested on felony charges from 2019 through 2021 saw their cases resolved by conviction.³¹⁷ By contrast, 60% avoided a conviction either because their charges were dismissed, resulted in deferred adjudication (meaning the person pled guilty, but was not found guilty, and was released into the community subject to conditions), or were acquitted.³¹⁸

³¹⁴ Editorial Board, *Editorial: \$30 million to send Harris County jail inmates to West Texas -- the cost of a broken system*, Houston Chron. (Aug. 1, 2022), bit.ly/3UzgDlx (quoting the Sheriff as saying “It’s very disappointing . . . It’s not a jail issue but a symptom of a criminal justice system that has slowed down.”).

³¹⁵ Harris County District Courts, *November 2022 Dashboard*, bit.ly/3h8ksAm (last visited Dec. 7, 2022); see also Zach Despart & Samantha Ketterer, *Idea to reduce backlog by dismissing thousands of felony cases proves too far for Harris County*, Houston Chron. (Sept. 19, 2021), bit.ly/3VQLwmn (“The number of criminal cases pending before Harris County courts stands at more than 94,000. . . . Forty-six percent of these cases are considered backlogged — defined as misdemeanors pending more than six months and felonies older than one year — beyond which the likelihood of conviction plummets as investigators retire, victims withdraw and witnesses’ memories fade.”).

³¹⁶ Sheriff Ed Gonzalez (@SheriffEd_HCSO), Twitter (July 20, 2022 at 5:20 p.m.), bit.ly/3VTiani (“I hope this moment can lead us to reimagine our local criminal justice system. Many things to consider. In no particular order: night/weekend dockets, 1000 defendants are in jail on \$10k bond or 5/10 less, I estimate another 200 are sitting in jail just waiting for a treatment center elsewhere.”).

³¹⁷ Ex. 1 (Copp Expert Report) ¶ 69.

³¹⁸ *Id.* ¶ 69(a) (2019: 38% convicted, 30% dismissed, 30% deferred, <1% acquitted); *id.* ¶ 69(b) (2020: 36% convicted, 35% dismissed, 27% deferred, <1% acquitted); *id.* ¶ 69(c) (2021: 38% convicted, 32% dismissed, 28% deferred, <1% acquitted); see also *id.* ¶ 70 (“Across the entire observation period, most disposed cases did not end in conviction. The share of disposed felony cases ending in conviction has decreased over time, while the share of dismissed cases has increased.”); St. John BARNED-SMITH, *After a String of High-Profile Losses, Harris County DA Kim Ogg is Left to Battle Critics on all Sides*, Houston Chron. (Mar. 17, 2022), bit.ly/3XYOes4 (“In 2021, for example, prosecutors worked about 38,000 active felony cases. Some 14,000 ended with convictions, nearly 6,500 in deferred adjudication probation, and 50 in acquittals. Another 46 percent — about 17,500 cases — were dismissed.”).

183. Only a small share of arrestees receive unsecured bonds. From 2015 through 2018, only 6% of people arrested for felonies received unsecured bonds.³¹⁹ From 2019, when Plaintiffs filed this lawsuit, through December 2021, about 26% were released on unsecured bonds.³²⁰

184. Money bail continues to be required as a condition of release for the overwhelming majority of felony arrestees, meaning that these arrestees are eligible for release, but will be released only if they can make an up-front monetary payment.³²¹ Those who are too poor to pay must stay in jail cells.³²²

185. According to data provided by the County, as of December 7, 2022, almost 1,500 people were being detained on bonds of \$20,000 or less, which would enable them to be released if they paid \$2,000 to a for-profit bonding company.³²³ Over half of them were being detained on bonds of \$10,000 or less, including 364 people whose bonds were \$5,000 or less.³²⁴ There were 446 people in the jail charged only with a non-violent theft or drug possession charge with total bond amounts of \$20,000 or less.³²⁵

³¹⁹ Ex. 1 (Copp Expert Report) ¶ 41.

³²⁰ *Id.*

³²¹ *Id.* ¶¶ 10, 40 (“69% of people arrested for felonies had secured bonds set in their cases. Only around half made the required bond amount.”).

³²² *Id.* ¶¶ 10, 40(b) (“45% (85,665 people) arrested for felonies with secured bonds set in their cases were detained at case disposition.”); *see also* Ex. 29 (May Pretrial Services 30(b)(6) at 175:9–14) (“[In my personal capacity,] [w]hen you look at detention pretrial across the country, the main driver of detention are defendants who are unable to post money bond. So Harris County, like many other jurisdictions, the driver seems to be the use of money in the system.”).

³²³ Ex. 191 (Felony Total Bond Spreadsheet, Dec. 7, 2022); *see also, e.g.*, Ex. 72 (Index of Cases), row 54 (R.J.M.); Ex. 125 (R.J.M. Case Records) (66-year-old jailed 132 days and counting because he cannot afford the payment for a \$10,000 bond); Ex. 72 (Index of Cases), row 9 (A.P.); Ex. 80 (A.P. Case Records) (71-year-old jailed 270 days and counting because she cannot afford the payment for a \$20,000 bond); Ex. 72 (Index of Cases), row 17 (C.E.); Ex. 88 (C.E. Case Records) (68-year-old jailed 118 days because he could not afford the payment for a \$10,000 bond, C.E. pleaded guilty and was sentenced to 120 days) (last updated Dec. 7, 2022).

³²⁴ Ex. 191 (Felony Total Bond Spreadsheet, Dec. 7, 2022).

³²⁵ *Id.*

186. According to felony case data provided by the Sheriff and the County, between January 1, 2015 and December 31, 2021:

- a. 82% of people arrested for felonies remained detained at magistration.³²⁶ The share of cases released prior to magistration has grown over time, but, based on the interpretable data available, was still only 29% in 2021.³²⁷ Since S.B.6 went into effect, no one is released prior to magistration or Early Presentment review.³²⁸
- b. Although Texas law requires people arrested for felonies to be magistrated within 48 hours of arrest, over 14,000 people waited longer than 48 hours for magistration.³²⁹
- c. 9% of felony arrestees were not present at magistration.³³⁰
- d. 68% of people remained detained at the time of their scheduled first appearance in the District Court.³³¹
- e. 44% of detained individuals did not have counsel appointed until after their first appearance. Five days after arrest, 25% of felony arrestees still did not have counsel appointed.³³²
- f. The median monthly income of people who were interviewed by Pretrial Services and who reported their income was \$200.³³³
- g. Unsecured bonds were uncommon until the current litigation. From 2015 through 2018, 6% of people arrested for felonies were released on unsecured bonds.³³⁴
- h. During the time the Amended General Order Bond was in effect, between April 2, 2020 and December 31, 2021, 11% of all bonds filed were GOBs. 70% of people who received a GOB were released in under 24 hours and 95% were released in 48 hours or less.³³⁵

³²⁶ Ex. 1 (Copp Expert Report) ¶ 26.

³²⁷ *Id.* ¶ 26(a) (examining only warrantless arrests due to incomplete data).

³²⁸ Ex. 16 (Third Wood Decl.) ¶ 4.

³²⁹ Ex. 1 (Copp Expert Report) ¶¶ 23, 27.

³³⁰ *Id.* ¶¶ 23, 28.

³³¹ *Id.* ¶ 29.

³³² *Id.* ¶ 31.

³³³ *Id.* ¶ 80.

³³⁴ *Id.* ¶ 41.

³³⁵ *Id.* ¶ 42.

- i. Prior to magistration, 60% of felony cases had money bail set on the complaint. The other 40% were ineligible for pre-hearing release.³³⁶
- j. Once bond was set, it usually remained at that level until the case was resolved. Overall, bond was modified in 31% of cases. Where a secured bail amount was set on a complaint (pursuant to the bail schedule), in 85% of cases it was not changed before the case was resolved.³³⁷
- k. About 69% of people arrested for felonies had money bail set in their case.³³⁸
- l. Since the County began tracking bail review hearings in April 2020, only 7% of felony arrestees received one,³³⁹ though even these hearings are not uniformly on-the-record, and findings are rarely if ever made.³⁴⁰
- m. Overall, between 2015 and 2021, 47% of people arrested on felony charges were detained at disposition.³⁴¹
- n. 64% of homeless arrestees remained in jail at the time of disposition as compared to 36% of those not identified as homeless.³⁴²
- o. When detained people charged with lower level felonies resolved their cases at early court appearances, they were typically released within two weeks, before they would be likely to have a subsequent setting. This data suggests that the fastest way out of jail for people who cannot afford to pay bail is to plead guilty.³⁴³
- p. People who remained detained were significantly more likely to plead guilty in a given case than people who were released pretrial (57% of detained cases vs. 28% of released cases).³⁴⁴

³³⁶ *Id.* ¶ 39.

³³⁷ *Id.* ¶ 48.

³³⁸ *Id.* ¶ 40.

³³⁹ *Id.* ¶ 49.

³⁴⁰ Ex. 9 (First Bunin Decl.) ¶ 6 (“[PACA/PIA] is not an opportunity for an adversarial bail hearing.”).

³⁴¹ Ex. 1 (Copp Expert Report) ¶ 59.

³⁴² *Id.* ¶ 88.

³⁴³ *Id.* ¶ 61.

³⁴⁴ *Id.* ¶ 67(b).

- q. People who remained detained were significantly less likely to have their case dismissed than people who were released pretrial (18% of detained cases vs. 28% of released cases).³⁴⁵
- r. People who remained detained were significantly more likely to receive a custodial sentence requiring them to spend time in jail or prison than were people who were released pretrial (70% of detained cases vs. 39% of released cases).³⁴⁶
- s. People released on unsecured bonds were more likely to resolve their cases within a year than people released on secured bonds.³⁴⁷

XI. The Judges Exercise Close Control Over the Post-Arrest Process.

187. The elected Felony Judges play a central role in Harris County’s felony pretrial detention system by “oversee[ing] and implement[ing] policies and procedures governing release and detention.”³⁴⁸

188. Texas law grants judges broad discretion to promulgate post-arrest policies for their jurisdictions that are consistent with Texas law’s broad provisions regarding pretrial release and detention.³⁴⁹ The Judges promulgate formal and informal rules that the Sheriff, Pretrial Services, hearing officers, defense attorneys, and all other actors involved in the post-arrest process must follow.³⁵⁰

³⁴⁵ *Id.* ¶ 67(c).

³⁴⁶ *Id.* ¶ 67(d).

³⁴⁷ *Id.* ¶ 68.

³⁴⁸ Dkt. 181-1 (Silverman Mot. to Intervene) at 3; Dkt. 192 (Memorandum in Support of Intervention by Judge Brian Warren) at 2 (adopting analysis in Judge Silverman’s intervention motion); Ex. 182 (June 25, 2020 email from Judge Brian Warren to Texas Ethics Commission) (requesting an advisory opinion regarding representation as an intervenor, stating, “[a]s elected Harris County District Judges, we oversee and implement policies and procedures governing release and detention of individuals arrested for felony crimes in Harris County”); *see, e.g.*, Ex. 183 (July 9, 2019 email from Judge Kelli Johnson to Kelvin Banks (PTS) et al.) (discussing a policy for addressing bail in cases where a “non-arrest” felony warrant is issued, and noting “I think we need to readdress this type of situation in the Standing Committee maybe”).

³⁴⁹ Tex. Gov’t Code § 74.093 (“The district and statutory county court judges in each county shall, by majority vote, adopt local rules of administration.”); *see also id.* § 74.092.

³⁵⁰ Ex. 30 (Sheriff Gonzalez Dep. at 97:21–98:3) (A: “We follow the directives of the judges.”; Q: “So if the schedule provides for a certain level of bond . . . are you obliged to release a defendant who posts that level of bond . . . per the schedule?” A: “Yes.”); *id.* at (90:12–15) (Q: “[I]s the Sheriff’s Office obliged to

189. The Judges maintain a standing “Bail Bond Committee” that proposes specific changes to bail policy for the rest of the Judges to vote on.³⁵¹

190. The Judges and other local officials have publicly described numerous ways that the Judges exert administrative control over the felony bail process,³⁵² for example:

- a. For decades, the Felony Judges issued specific instructions about how hearing officer should set bail for cases assigned to their courtrooms, including prohibiting the hearing officer from issuing personal bonds to people charged with certain

follow the provisions of the General Order Bond?” A: “Yes.”); *id.* at (99:15–18) (testifying that the Judges make decisions regarding the timing of court proceedings, whether an arrestee is transported from the jail to the courthouse, and whether an arrestee who is transported to the courthouse remains in the lock-up outside of the courtrooms); Ex. 28 (March Pretrial Services 30(b)(6) at 69:2–71:1–4) (testifying that Pretrial Services only interviews people arrested on new charges, as opposed to, for example, motions to adjudicate or motions to revoke; that Pretrial Services could change its practice and interview other arrestees; but that such a policy change would require input from the Felony Judges); *id.* at (177:10–25) (testifying that the Judges and the District Attorney’s Office developed the language of the recommendations produced by the Public Safety Assessment, and the language could not be changed without the Judges’ input); Ex. 36 (Order Appointing Public Defender for Art. 15.17 Bail Hearings) (appointing the Public Defender’s Office to represent people at magistration hearings but failing to clearly authorize the PDO to make arguments relating to probable cause and the strength of the state’s evidence); *see also* Ex. 25 (St. Julian Dep. at 155:13–16) (stating in her individual capacity that she would adhere to “this type of rule [like misdemeanor Rule 9] in felony cases” if such a rule “were issued and those rules were . . . found to be constitutional”); Ex. 26 (Gaut Dep. at 105:3–13) (“Q. So if the felony judges issued a similar order [to Amended Rule 9] requiring you to make findings on the record about the felony defendant’s ability to pay the financial conditions of their release, would you follow that order? A. Of course. . . [Q.] And why would you follow that order? . . . A. Because it’s a court order.”).

³⁵¹ Ex. 138 at 3 (July 16, 2017 email from Judge Kelli Johnson to other judge members of the standing Bail Bond Committee) (“We are the committee actually responsible for the bond schedule, the presumptive pretrial felony bonds, etc.”); *see also* Ex. 31 (Warren Dep. at 65:12–15) (“We [Felony Judges] need 15 to adopt any rule. So we – we just need the 15 of 22 judges to vote in favor of any rule, that’s binding on any of the other judges.”).

³⁵² Dkt. 197 (Answer of Sheriff Ed Gonzalez and Request for Declaratory Relief) at 3 (“The felony judges in Harris County are the true policymakers regarding bail practices, both in terms of setting rules and procedures and in applying those rules and procedures in individual cases.”); Dkt. 181-1 (Silverman Mot. to Intervene) at 6 (“The criminal district judges have full discretion consistent with state and federal law to determine policies relating to post-arrest release and detention. . . . Under this framework, Judge Silverman, along with the other Harris County District Court Judges, is one of the key stakeholders in promulgating bail procedures and processes to determine which arrestees are eligible for release on non-financial conditions, the findings required to justify pretrial detention, and the procedural safeguards required in bail hearings. Judge Silverman is one of the felony judges who promulgates Harris County’s predetermined money bail, which sets the financial conditions of pretrial release for nearly all felony arrestees in Harris County.”); *id.* at 9 (“The plaintiffs, pretrial felony detainees, cannot adequately represent the interests of someone [Judge Silverman] who is charged with administering the pretrial detention system.”); Dkt. 192 (Warren Mot. to Intervene) at 2 (adopting analysis in Judge Silverman’s intervention motion).

crimes or with certain criminal histories, not giving personal bonds to people experiencing homelessness, and mandating specific secured bail amounts be set in certain types of cases. Hearing officers treated these instructions as binding.³⁵³

- b. The Felony Judges issued the 2006 Direct Filing Order, stating that “[t]he criminal law hearing officer shall set bail in accordance with the Bail Schedule established by the Board of District Judges Trying Criminal Cases.”³⁵⁴ This Direct Filing Order was incorporated into a March 2017 Order that purportedly rescinded certain other instructions from the Judges to the hearing officers.³⁵⁵
- c. The Felony Judges authorized use of the PSA to assess “risk” and determine financial conditions of release.³⁵⁶
- d. At the beginning of the COVID-19 pandemic, the Felony Judges identified categories of people who would be released on a personal bond prior to magistration by promulgating the General Order Bond³⁵⁷ and the Amended General Order Bond.³⁵⁸
- e. The Felony Judges determine the contents of the bail orders hearing officers issue following magistration hearings.³⁵⁹

³⁵³ Ex. 25 (St. Julian Dep. at 171:13–18) (Q: “So those charts that you saw when you started as a hearing officer, do you understand those be instructions regarding how to set bonds in the cases that those courts presided over?” A: “That is how I interpreted them at the time, yes.”); *id.* at (190:2–8) (saying that she was aware of instructions from the felony judges about how to set bail); *id.* at (197:8–12) (Q: “And do you know if the messages from Pretrial Services . . . appear to convey preferences or instructions from judges about bail and personal bonds?” A: “Yes it does”); *id.* at (214:5–7) (“Yes. I would agree that the district court judges had specific instructions in place regarding setting bail and personal bonds.”).

³⁵⁴ Ex. 34 (Direct Filing Order) at 5; *see also* Ex. 27 (Harris County 30(b)(6) at 116:9–18) (testifying that the Felony Judges’ Direct Filing Order from 2006 is still in effect).

³⁵⁵ Ex. 35 (Recommended Standard Bail Practices).

³⁵⁶ Ex. 28 (March Pretrial Services 30(b)(6) at 60:9–16) (Q: “And did the decision to use the PSA in particular require the approval of these other parties?” A: “I think it required the buy-in of all the other parties, yes.” Q: “And that includes the felony judges, correct?” A: “Yes.”).

³⁵⁷ Ex. 32 (General Order Bond) (“[T]he Harris County District Court Judges Trying Criminal Cases have approved a General Order Bond . . . Effective immediately . . . Harris County Pretrial Services is ORDERED to process the immediate release of the following persons under the General Order Bond.”).

³⁵⁸ Ex. 33 (First Amended General Order Bond) at 2 (“Harris County District Court Judges Trying Criminal Cases have approved a First Amended General Order Bond. . . Effective immediately . . . Harris County Pretrial Services is ORDERED to process the immediate release of the following persons under a General Order Bond.”); Ex. 139 (Apr. 3, 2020 email from Judge Kelli Johnson to Stephanie Armand (JAD) et al.) (“Yesterday, the Board of Judges Trying Criminal Cases approved an Amended GOB Order that includes 51 offenses for immediate release. The Judiciary is very interested that the defendants are released as soon as possible.”).

³⁵⁹ Ex. 151 (May 5, 2020 email from Pretrial Services Deputy Director Dennis Potts to Kelvin Banks) (forwarding message from Sylvia Cherry (OCM), stating, “The county and district court judges approved

- f. The Felony Judges control whether and to what extent the Public Defender's Office can represent people at magistrature hearings.³⁶⁰
- g. The Felony Judges issued an order purporting to rescind previous instructions from various Felony Judges to hearing officers on how to make particular bail determinations, and in that order issued "recommendations":
 - i. that hearing officers "refer all assaultive cases to the presiding judge assigned to the case pursuant to the [2006] Harris County Direct Filing Order";
 - ii. that "PR Bond is favored in all cases in which the defendant is determined to be low risk; and
 - iii. that the hearing officers "[r]efer to Bail Guidelines" when setting bail amounts.³⁶¹
- h. The Felony Judges determine the specific procedural protections that are provided to people arrested for felony offenses at magistrature hearings.³⁶²

a few changes to the joint bond conditions order" and attaching revised bond condition forms); *see also* Ex. 26 (Gaut Dep. at 150:6–11) (Q: "If the felony judges drafted a new probable cause and bail order form for hearing officers to use at their 15.17 hearings, would you use it?" A: "Of course.").

³⁶⁰ Ex. 36 (Order Appointing Public Defender for Bail Hearings) (appointing the Public Defender's Office to represent people at magistrature hearings but failing to expressly authorize the PDO to make arguments relating to probable cause and the strength of the state's evidence); Ex. 27 (Harris County 30(b)(6) at 46:16–18) ("Some criminal law Hearing Officers have cited that [Order Appointing Public Defender for Art. 15.17 Bail Hearings] as a reason not to allow public defenders to argue probable cause, yes"); Ex. 26 (Gaut Dep. at 73:24–74:8) ("Q. Could the felony judges promulgate an order setting the scope of the public defenders' representation at 15.17 hearings to include that they be allowed to make probable cause arguments? A. I would think so. Q. And could the felony judges also promulgate an order that would eliminate any ambiguity or doubt about whether the public defenders are allowed to make those arguments in 15.17 hearings? A. I would think they could.").

³⁶¹ Ex. 35 (Recommended Standard Bail Practices).

³⁶² Ex. 26 (Gaut Dep. at 156:4–10) (Q: "Now, do you follow the procedures of 9.12.6 for felony defendants at magistrature?" A: "No." Q: "And is this because the felony judges have not required you to follow the procedures?" A: "Yes, that's correct."); Ex. 148 (Aug. 18, 2020 email from Hearing Officer Jennifer Gaut to Pretrial Services staff asking, "Do PTS Officers ask defendants charged with a felony how much they can afford for bail? If not, can PTS start . . . ? It would help us in making our bail decisions in felony cases."); Ex. 150 (Aug. 20, 2020 email from Troyce Carter (Pretrial Services) to Hearing Officer Jennifer Gaut) (saying he will forward the felony ability-to-pay question to the Felony Judges); Ex. 25 (St. Julian Dep. at 124:22–24) (Q: "And is it your understanding that Rule 9 was promulgated in the criminal court by law judges?" A: "That is my understanding."); *id.* at (157:13–158:1) (Q: "Now, if the felony judges did issue a policy requiring that hearing officers follow 9.12.6 for felony defendants, would the hearing officers follow that policy?" A: ". . . If a rule is promulgated and it was verified that the district court judges had the authority to promulgate such a rule directing hearing officers to make these findings, I would follow that order because, again, it's in line with my current practice.").

- i. The Felony Judges determine what, if any, substantive finding must be made before a hearing officer can impose an unaffordable bail amount resulting in pretrial detention.³⁶³
- j. The Felony Judges authorized the use of a financial affidavit prior to magistration and control the content and wording of the affidavit, including refusing to allow Pretrial Services to ask felony arrestees a question that the agency asks of all misdemeanor arrestees: what specific amount of money can the person afford to pay at the time of the hearing?³⁶⁴
- k. The Felony Judges determine the timing of bail hearings and other court proceedings in their own courtrooms.³⁶⁵
- l. The Felony Judges decide whether to conduct bail hearings virtually or to require a defendant to appear in person.³⁶⁶

³⁶³ Dkt. 181-1 (Silverman Mot. to Intervene) at 6 (describing the Felony Judges as “key stakeholders in promulgating bail procedures and processes to determine which arrestees are eligible for release on non-financial conditions, the findings required to justify pretrial detention, and the procedural safeguards required in bail hearings”).

³⁶⁴ Ex. 28 (March Pretrial Services 30(b)(6) at 131:22–132:3) (“[I]nvolving the financial affidavit, the information included, the questions included, were developed by both felony and misdemeanor judges. So they do have control over that content. If they wanted to change questions asked, they could certainly do that.”); Ex. 27 (Harris County 30(b)(6) at 60:19–24) (Q: “And do you know why there would be a question on the financial affidavit that’s directed only to people arrested for misdemeanors? A: “I assume that the felony judges did not agree.”); *id.* (64:1–7) (Q: “Do you recall believe [sic.] [the wording of the financial affidavit] would require [the Felony Judges’] approval in some other manner?” A: “. . . I would assume as a matter of oversight that it wouldn’t be done without [the Felony Judges’] knowledge and permission.”).

³⁶⁵ Ex. 30 (Sheriff Gonzalez Dep. at 99:25–100:11); Ex. 10 (Second Bunin Decl.) ¶¶ 10–11 (describing Felony Judges’ scheduling policy); *id.* ¶ 12 (“Because the judges alternate weeks for jail dockets, that second docket could occur up to four weeks after arrest.”); Ex. 9 (First Bunin Decl.) ¶ 2 (“Based upon the records I have reviewed and reports from lawyers in my office, at least since . . . 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.”); *id.* at ¶ 6 (“[T]hat court setting is not an opportunity for an adversarial bail hearing. Although a judge might informally decide . . . to modify bail conditions, any person who wishes to have an adversarial bail hearing . . . must file a written motion and then must wait two to four weeks under current conditions”); Ex. 179 at 3 (June 30, 2020 emails between Felony Judges and clerks) (concerning delays caused by COVID-19, with Judge Ritchie noting that “each criminal district judge has complete discretion and authority to address this matter as he or she sees fit.”).

³⁶⁶ Ex. 22 (HCSO 30(b)(6) at 120:25–121:4) (stating that “[e]ach . . . judge has their own policies” that the Sheriff’s Office must follow regarding virtual hearings).

- m. The Felony Judges decide whether a person will be brought from the jail to the courthouse for a court setting, and whether an arrestee who is transported to the courthouse remains in the lock-up or is brought into the courtroom.³⁶⁷
- n. The Felony Judges control the timing of appointment of counsel and have not authorized hearing officers to appoint counsel, which delays representation by days, a week, or longer.³⁶⁸
- o. The Felony Judges determine whether bail proceedings in their courtrooms are on the record.³⁶⁹

³⁶⁷ Ex. 30 (Sheriff Gonzalez Dep. at 100:12–101:8) (testifying that the Judges make decisions regarding whether an arrestee is transported from the jail to the courthouse, and whether an arrestee who is transported to the courthouse remains in the lock-up outside of the courtrooms); Ex. 14 (First Wood Decl.) ¶ 52 (“Detained individuals typically remain in lock-up outside of the courtroom and are not brought into the courtroom on this court date”); Ex. 9 (First Bunin Decl.) ¶ 5 (“[P]eople arrested for felony offenses do not typically “appear” physically at the PACA/PIA docket . . . people arrested for felonies who are detained in the jail typically are not transported to the court . . . Even when they are, they are kept in the lockup outside the courtroom”); Ex. 187 at 3 (May 14, 2020 email from Judge Greg Glass to Victoria Jimenez (HCSO) et al.) (“I have already entered an order that no inmate who has tested positive for COVID-19 shall be transported to the 208th holdover”); Ex. 190 at 3 (May 15, 2020 email from Scott Durfee (DAO) to Chris Wells and Lisa Teachey) (“I do think . . . that the state district court’s exclusion orders - to the extent that they effectively prevent the defendants *from any access to court proceedings at all* - may prompt a reaction from Judge Rosenthal” (emphasis in original)).

³⁶⁸ Tex. Code Crim. P. Ann. § 26.04 (giving the Felony Judges the authority to authorize the hearing officers to appoint counsel); Ex. 1 (Copp Expert Report) ¶ 31 (analyzing data from 2015 through 2021 and finding counsel was appointed after first appearance in 44% of cases); Ex. 27 (Harris County 30(b)(6) at 169:6–7) (“I’m familiar with cases where [bonds] were revoked [by felony judges] without a lawyer being there”); Ex. 189 (Sept. 9, 2020 email from court coordinator Mindy Ochsner to Sheriff’s Office staff and others) (attaching chart showing numerous defendants scheduled for first appearances without an attorney appointed).

³⁶⁹ Ex. 14 (First Wood Decl.) ¶ 50 (“Although an informal, off-the-record request for a reduction in the amount required may theoretically occur at first appearance, the felony judges do not provide for an adversarial bail hearing on the record at that time.”); Ex. 166 (June 12, 2020 email from Judge Brian Warren) (“The practice in Harris County has been that most lawyers approach informally about bond and judges then act on the information that was given to them. Its [sic] been this way since I began practicing in 2001.”); Ex. 27 (Harris County 30(b)(6) at 169:14–19) (“Q: Do those bond revocation hearings typically occur on the record? A: No. Q: They typically occur not on the record, correct? A: Correct.”); Ex. 9 (First Bunin Decl.) ¶ 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 . . . to modify bail conditions[.]”); Ex. 167 (Mar. 23, 2020 email from court coordinator for Judge Danilo Lacayo) (stating “I am not docketing any bond reduction motions” and that the defense attorney should file her motion and speak with the judge on the phone the following day); Ex. 168 (Apr. 17, 2020 email from Judge Chuck Silverman) (“This week I haven’t had any ‘formal’ hearings (evidence, witnesses, record) however, I have had many daily informal requests to address bail and I resolve these immediately or within the same or next business day of being requested. Specifically, this week I conducted 10 informal hearings.”); Ex. 169 at 2 (Apr. 17, 2020 email from court coordinator Ana Melendez to Judge Chuck Silverman) (“I don’t have scheduled bond hearings, we address all hearings via email.”); Ex. 170 at 2 (Apr. 17, 2020 email from District Court staff to Judge Chuck Silverman) (stating, “They are wanting us to make sure we document

- p. The Felony Judges must approve any changes in 15.17 docket times, changes in docket numbers, conditions of bond forms in languages other than English, and changes to the bond condition form for people who do not receive personal bonds.³⁷⁰
- q. The Felony Judges directed the Sheriff, Pretrial Services, and the Harris County Community Corrections and Supervisions Department to disregard an emergency release order signed by the Harris County Judge and even threatened the Sheriff with contempt for failure to comply with their policies relating to who is released or detained after arrest.³⁷¹
- r. The Felony Judges promulgated the felony bail schedule which, until a new state bail law went into effect, required the pre-hearing detention of those who could not afford pre-determined secured bail amounts.³⁷²

XII. Harris County’s Money-Based Post-Arrest System Imposes Substantial Human and Economic Costs.

191. Even brief periods of pretrial detention inflict significant harm on people who are detained and the surrounding community.³⁷³

formal hearings. I realize these rarely happen,” with Judge Chuck Silverman replying, “Much ado about nothing.”); Ex. 171 (June 26, 2020 email from Judge Amy Martin to Virginia Ryan (HCSO)) (“I didn’t have a bond hearing, the attorneys just approached, as usual.”); Ex. 194 (Dec. 2020 emails between Felony Judges, the Sheriff’s Office, and defense attorneys) (constituting an off-record bond reduction hearing).

³⁷⁰ Ex. 26 (Gaut Dep. at 48:14–51:24) (describing examples of actions that the Judges must approve).

³⁷¹ Ex. 37 (Order To Disregard Directive by Harris County Judge, signed by Administrative Judge Herb Ritchie); Ex. 30 (Sheriff Gonzalez Dep. at 61:1–63:1) (testifying that he was required to comply with Judge Ritchie’s order under pain of contempt); *see also* Dkt. 197 (Sheriff’s cross-claim against the Felony Judges) at 3 (noting he is “dutybound to carry out orders of the felony judges”).

³⁷² Ex. 38 (Felony Bail Schedule); Ex. 138 at 3 (July 16, 2017 email from Judge Kelli Johnson to other judge members of the Standing Committee) (“We are the committee actually responsible for the bond schedule, the presumptive pretrial felony bonds, etc.”); Dkt. 181-1 (Silverman Mot. to Intervene) at 9 (“Judge Silverman is one of the felony judges who promulgates Harris County’s predetermined money bail, which sets the financial conditions of pretrial release for nearly all felony arrestees in Harris County.”); Ex. 26 (Gaut Dep. at 32:21–25) (“Q: Who promulgated the felony bond schedule? A: . . . [M]y understanding is that it was from the felony district court judges, the ones who were presiding.”); Ex. 14 (First Wood Decl.) ¶ 5.

³⁷³ *See generally*, Ex. 2 (Gundu Expert Report); Ex. 186 (Jones Expert Report) at 5–10 (summarizing empirical research demonstrating pretrial detention’s strong negative consequences for the community, justice system, and defendants); Dkt. 181-1 (Silverman Mot. to Intervene) at 2 (“As the plaintiffs have rightly pointed out, pretrial detention has real—sometimes devastating—consequences.”).

192. Empirical studies demonstrate that pretrial detention leads to:
- a. Harsher case outcomes for those who are detained, including increased likelihood of convictions, guilty pleas, sentences to incarceration, longer sentence length, and greater jail and prison crowding.³⁷⁴
 - b. Wrongful convictions of people who plead guilty to get out of jail.³⁷⁵
 - c. Racial disparities in jail population and convictions.³⁷⁶
 - d. Increased collateral harms, including family separation, negative effects on employment, housing, and the ability to care for dependent family members.³⁷⁷

³⁷⁴ Ex. 186 (Jones Expert Report) ¶¶ 18, 26–33; *id.* ¶ 26 (“There is strong evidence from several studies with rigorous research designs, as summarized below, that defendants detained pretrial, often because they did not post their secured money bail, are more likely to plead guilty and/or be convicted than are released defendants with similar demographics, charges, and criminal history (Petersen, 2019; Heaton et al., 2017; Stevenson, 2017; Leslie & Pope, 2017; Lum et al., 2017; Dobbie et al., 2018; Gupta et al., 2016). Given the strength of this research finding, the use of secured money bail in Harris County (and the unnecessary pretrial detention that results) is likely contributing to harsher case outcomes for people who are detained because they do not post money bail.”); *id.* ¶ 31 (“Pretrial detention results in a greater likelihood that a defendant will be sentenced to jail and that the sentence will be longer.”); *id.* ¶ 69; *see also* Ex. 1 (Copp Expert Report) ¶ 56 (finding that felony arrestees who remained detained pretrial in Harris County experienced substantially worse case outcomes than those who were released pretrial: they were twice as likely to plead guilty (57% vs. 28%), less likely to have their case dismissed (18% vs. 28%), and more likely to receive a custodial sentence (70% vs. 39%)).

³⁷⁵ Ex. 1 (Copp Expert Report) ¶ 67 (analyzing data and finding that people who were detained were considerably more likely to plead guilty than people who were not detained); *id.* ¶ 65 (concluding that pretrial detention is a powerful tool that weakens an individual’s position in plea bargaining negotiations and places pressure on them to plead guilty); Ex. 186 (Jones Expert Report) ¶ 29 (summarizing Heaton et al. 2017 findings that suggest a causal link between pretrial detention and (1) pleading guilty and (2) harsher sentences).

³⁷⁶ Ex. 186 (Jones Expert Report) ¶ 17; *id.* ¶ 61(h) (“As a result of the [*ODonnell*] injunction, an additional 11% of Black defendants were released within 24 hours (compared to an additional 8% of white defendants). The conviction rates for Black defendants decreased by 13 percentage points (compared to a 9 percentage point decrease for white defendants).”; *see also* Ex. 30 (Sheriff Gonzalez Dep. at 37:24–38:6) (“I review our population numbers . . . pretty much daily, and routinely the African-American population is almost always consistently at around 50%. Our Latino population is, give or take, another 20, 25%. So on any given day, over 70%, the vast majority, are held from communities of color.”).

³⁷⁷ Ex. 186 (Jones Expert Report) ¶¶ 34–35; *id.* ¶ 34 (Pretrial detention for even three days or less has been shown to negatively influence defendants’ employment, financial situation, and residential stability, as well as the well-being of dependent children. This negative impact worsened for defendants who were detained pretrial for more than three days (Holsinger, 2016b)).

193. In Harris County, pretrial detention also regularly exposes detainees to violence and death.³⁷⁸ As of December 7, 2022, 27 people have died in County custody during this calendar year, the highest number of in-custody deaths in at least 13 years.³⁷⁹ Each person who died in the County’s care was detained while awaiting trial.³⁸⁰ At least 11 of these individuals were in jail because they could not afford the money bail release condition set in their case.³⁸¹ None of the cases of those who died in 2022 had any indication in the record that a formal, evidentiary bail hearing had occurred.³⁸²

194. Pretrial detention in Harris County reduces access to quality legal representation.³⁸³

195. Harris County Jail conditions cause detrimental long-term health impacts and accelerate decompensation of people with mental illness and disabilities.³⁸⁴ Roughly 80% of the

³⁷⁸ Ex. 2 (Gundu Expert Report) ¶ 11 (“Since January 2020, at least 40 people have died in Harris County Jail custody, most of whom were being jailed pretrial.”).

³⁷⁹ Ex. 172 (Supp. Gundu Report) ¶ 4 (“Just this calendar year, 27 people have died in Harris County custody, the most since the Texas Commission on Jail Standards began tracking deaths 13 years ago. Each of these 27 people was being held pretrial.”); Ex. 16 (Third Wood Decl.) ¶ 16; *see also* Shaila Dewan, *Jail Is a Death Sentence for a Growing Number of Americans*, N.Y. Times (Nov. 22, 2022), [bit.ly/3F6mDfR](https://www.nytimes.com/2022/11/22/us/politics/harris-county-jail-deaths.html); Lucio Vasquez, *Senate Bill 6 may be contributing to a record number of deaths at Harris County Jail*, Houston Public Media (Nov. 3, 2022), [bit.ly/3Byne9h](https://www.houstonpublicmedia.org/articles/news/politics-government/legislation/senate-bill-6-may-be-contributing-to-a-record-number-of-deaths-at-harris-county-jail/2022/11/03/1011111); Krish Gundu & Eric Reinhart, *Why Are In-Custody Deaths Surging at Houston’s Harris County Jail?*, Slate (Oct. 25, 2022), [bit.ly/3Fs00DR](https://www.slate.com/articles/health-and-science/2022/10/25/harris-county-jail-deaths.html).

³⁸⁰ Ex. 16 (Third Wood Decl.) ¶ 16.

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ Ex. 27 (Harris County 30(b)(6) at 38:9–11) (“[Pretrial detention] impairs the ability to raise their innocence. It impairs the ability to investigate their cases.”); Ex. 2 (Gundu Expert Report) at 4–10; *id.* ¶ 30 (“J.A. sent us a letter dated 12/28/20 about how they were detained for 5 months. The pandemic caused their court dates to be continuously reset, and they could not contact their lawyer, even when his mother was admitted to the Intensive Care Unit with a life-threatening condition.”); *see also supra* Section VIII(c)-(e) (describing lack of meaningful access to counsel).

³⁸⁴ Ex. 2 (Gundu Expert Report) ¶ 57 (“My staff and I regularly receive letters from pretrial detainees detailing medical neglect. For example, many, such as R.W. describe backlogs of several days to even weeks before the jail will respond to requests for sick calls”); *id.* ¶¶ 38–45 (recounting story of A.D.W., a Marine veteran and father of three, who was diagnosed with epilepsy and, although he gave jail staff a prescription from his doctor for his required medication, jail staff refused to give him the medication as ordered, causing him to experience multiple seizures); *id.* ¶¶ 49–50 (“M.M. suffered from Type 1 diabetes. By the time I spoke with him, he had already fallen unconscious on four different occasions at the Harris

people detained in Harris County custody at any time have a mental health indicator in their file and approximately 30% are on psychotropic medication.³⁸⁵

196. Pregnant people who are detained in Harris County receive minimal food,³⁸⁶ are denied necessary medication,³⁸⁷ are housed in dirty and dangerous conditions,³⁸⁸ and are at heightened risk of adverse health outcomes, including miscarriage.³⁸⁹ As of August 1, 2022, there were at least 50 pregnant people detained in Harris County.³⁹⁰

197. Pretrial detention in Harris County Jail harms detainees' families, housing stability, and financial security.³⁹¹ For example, studies show that an arrestee detained for even a few days

County Jail due to lack of food, lack of insulin or being given the wrong dosage of insulin. On one occasion it took the jail staff over 24 hours to administer M.M.'s insulin. His blackouts led to severe memory loss. By the time of his post-release interview on December 11, 2020 he had collapsed and passed out at the jail on at least five different occasions.”).

³⁸⁵ Harris County Office of Justice and Safety, *Jail Population*, bit.ly/3uxeGve (last visited Dec. 7, 2022).

³⁸⁶ Ex. 2 (Gundu Expert Report) ¶ 70 (“N.A. was hungry and thirsty. Her only access to water was a faucet attached to the toilet. During our phone call she stated: ‘For breakfast, it’s two pieces of bread, a little packet of jelly and a little pint of butter. It’s like nothing, barely enough to keep you alive.’”).

³⁸⁷ *Id.* ¶ 83 (“When I was later able to interview Q.G, I learned that, on several occasions, her asthma attacks went untreated by the jail medical staff and became so severe that she was unable to breathe. She was rushed to Ben Taub Hospital when it was clear that she was in distress and in danger of losing her fetus.”).

³⁸⁸ *Id.* ¶¶ 68–69 (“On July 15th 2020, I received a phone call from 28-year-old N.A. who was seven months pregnant in a solitary quarantine cell in Harris County Jail. Through sobs and moans, N.A. described the blood and feces on the floors and walls of her cell. She neither had a proper mattress nor a blanket, despite the fact that TJP fought and won for the right of pregnant people in county jails to receive extra mattresses in 2009.”).

³⁸⁹ *Id.* ¶ 85 (“As recently as June 23rd of this year, I learned of yet another pregnant person M.S. in the Harris County Jail who was three and a half months pregnant with twins. M.S. stated that she was roughed around by two jailers, shackled at least once - in violation of state law, confined in solitary under extremely unsanitary conditions, dehydrated and devoid of mandated prenatal care. She eventually miscarried one fetus and required hospitalization for three days. On a subsequent visit to the hospital, she was given an abortion without her consent, for the other fetus.”).

³⁹⁰ Texas Commission on Jail Standards, *Pregnant Females Booked In Texas County Jails for 8/1/2022*, bit.ly/3W0kSrh.

³⁹¹ Dkt. 181-1 (Silverman Mot. to Intervene) at 3 (“As the plaintiffs have rightly pointed out, pretrial detention has real—sometimes devastating—consequences. . . . Pretrial detainees can lose their jobs; their physical and mental health may suffer; they may lose access to housing; they are separated from friends and family; and they are exposed to crowded conditions—all while presumed innocent.”); Ex. 2 (Gundu Expert Report) ¶ 87 (“My staff and I have listened to hundreds of people express panic about their family’s

risks losing her job, housing, and/or custody of her children.³⁹² Krishnaveni Gundu, Executive Director of Texas Jail Project, states “My staff and I have listened to hundreds of people express panic about their family’s worsening financial situation after their incarceration deprived their household of an income that kept a roof over their head and food in their pantry.”³⁹³

198. C.W., a Black veteran, lost his job as he spent two years in the Harris County Jail waiting for a trial, throwing his family into financial tumult and forcing them out of their home.³⁹⁴ As he told the staff at Texas Jail Project, “Being detained pretrial has robbed me of my job, my housing, my car and most tragic of all, my health.”³⁹⁵

199. Since March 2020, people detained in the Harris County Jail have also faced a heightened risk of contracting COVID-19. The Jail is ill-equipped to prevent the virus from spreading.³⁹⁶ As of April 1, 2022, per data released by the Sheriff’s office, at least 4,450

worsening financial situation after their incarceration deprived their household of an income that kept a roof over their head and food in their pantry.”); Ex. 188 at 2 (Mar. 16, 2021 email from Harris County Pretrial Services Deputy Director Dennis Potts to Interim Director Spurgeon Kennedy et al.) (“A requirement that defendants pay a fee to a commercial bonding company to secure release may render the affected defendants less stable, in that they may be less able to afford household expenses, transportation, childcare, attorney fees, fines, court costs, and other expenses.”).

³⁹² Ex. 186 (Jones Expert Report) ¶ 34.

³⁹³ Ex. 2 (Gundu Expert Report) ¶ 87.

³⁹⁴ *Id.* ¶ 88 (“One such person was our Black veteran client C.W., who spent two years in the Harris County Jail waiting for a trial. His pretrial incarceration caused him to lose his job, which threw his family into financial tumult and forced them to move out of their home. He lost his driver’s license, birth certificate, and social security card during the move.”).

³⁹⁵ *Id.* ¶ 90; *see also id.* ¶ 91 (“C.A. provides another example. She is a mother who was held pretrial because she could not afford her bond on a substance-dependency-related charge. My staff and I sat in quiet silence when we opened her letter. She wrote: ‘Today marks another day of sadness for me. My dog died, so I’ve lost my house, truck, [belongings], and now my dog - how much more do I have to go through here? I don’t wanna be here for the Holidays, I have a daughter out there who needs me - everyday I pray that nothing happens to her.’”).

³⁹⁶ St. John BARNED-SMITH, *A third Harris County jail inmate sick with COVID-19 has died*, Houston Chron. (May 13, 2020), bit.ly/3UCZ57P.

incarcerated people have tested positive for COVID-19 in the Harris County Jail and at least 10 have died from the virus.³⁹⁷

200. The sudden spread of monkey pox now presents an additional looming threat.³⁹⁸ The Sheriff has confirmed that the virus has entered the jail.³⁹⁹

201. As a result of COVID-19, trials were suspended, court hearings slowed down, people are routinely not brought to court, and the rate at which cases are resolved slowed dramatically.⁴⁰⁰

202. On top of all this, local officials' interpretation of S.B.6, and the aggressive arrest and prosecution practices of Houston Police Department, Sheriff's Office, and District Attorney's Office, have caused overcrowding, particularly in the Joint Processing Center, and further delays in appointment of counsel and court appearances.⁴⁰¹

³⁹⁷ Ex. 2 (Gundu Expert Report) ¶ 96 (citing data released by the Harris County Sheriff's Office).

³⁹⁸ Centers for Disease Control and Prevention, *2022 U.S. Map & Case Count*, bit.ly/3VxeOXx (noting over 2,800 confirmed cases in Texas) (last visited Dec. 7, 2022).

³⁹⁹ Adam Zuvanich, *Harris County Jail, with population of nearly 10,000, reports first case of monkeypox*, Houston Public Media (Aug. 26, 2022), bit.ly/3VD9odx; *see also* Stephen Neukam, *Harris County residents with monkeypox dies, marking first death in the U.S. linked to the virus*, Tex. Tribune (Aug. 30, 2022), bit.ly/3VUE61I.

⁴⁰⁰ Ex. 187 at 3 (May 14, 2020 email from Judge Greg Glass to Victoria Jimenez (HCSO) et al.) ("I have already entered an order that no inmate who has tested positive for COVID-19 shall be transported to the 208th holdover"); Ex. 196 (July 6, 2020 Hrg. Tr. at 16) (discussing delays that "may exceed constitutional limits"); Ex. 197 (May 28, 2020 Hrg. Tr. at 9–14) (adversarial hearings may not occur until May or June 2020); Ex. 10 (Second Bunin Decl.) ¶¶ 14–16; *see also* Ex. 176 (Apr. 21, 2020 email from defense attorney to Felony Judge Silverman's court staff) (requesting a bail hearing on a writ of habeas corpus and May 13, 2020 correspondence from the defense attorney requesting the hearing be moved forward from June 22, 2020); Ex. 177 (Dec. 11, 2020 email from Clay Bowman to ABC13) (using COVID-19 to partially explain why reports show "an 82% average increase in Harris County felony caseloads from December 2018–November 2020"); Ex. 178 (Dec. 9, 2020 email from Clay Bowman to Judge Herb Ritchie et al.) (including data showing there was about an 80% increase in active pending cases from 2018 to 2020); Ex. 179 at 3 (June 30, 2020 emails between Felony Judges and clerks) (concerning delays caused by COVID-19, with Judge Ritchie noting that "each criminal district judge has complete discretion and authority to address this matter as he or she sees fit.").

⁴⁰¹ Ex. 13 (Fourth Bunin Decl.) ¶ 11.

203. In December 2021, the County signed a 14 million dollar contract to send nearly 600 pretrial detainees to LaSalle Correctional Center, a privately operated jail in Alexandria, Louisiana, five hours from Houston.⁴⁰²

204. At least one man has died in the privately run jail in Louisiana. B.D. was arrested in February 2022 on a felony warrant for “evading arrest,” which alleged that he drove away from a police officer over a year earlier, in 2021. Secured bond was set at \$75,000. B.D. could not pay for release—court records indicate he was homeless and had no income—and he was sent to LaSalle. Fifteen days after being arrested, he was found dead in his cell.⁴⁰³

205. In July, the County voted to spend an additional \$25 million to send 500 people to the privately run Giles W. Dalby Correctional Facility, in Post, Texas, over 500 miles—approximately eight hours—away from Houston.⁴⁰⁴ Beds became available when the Federal Bureau of Prisons discontinued its contract with the Dalby facility this past February.⁴⁰⁵

206. In sum, the County is spending \$39 million to house over one thousand Harris County arrestees, each of whom is presumed innocent,⁴⁰⁶ far from family, friends, and legal

⁴⁰² Andrew Schneider, *Up to 500 people in Harris County jail will be moved to reduce overcrowding*, Houston Public Media (Dec. 15, 2021), bit.ly/3VF2jcE; Harris County Officer of Budget and Management, *Harris County Proposed Budget: Fiscal Year 2023*, at 15, bit.ly/3HcuH1k (“Additionally, in response to the spike in population, we have been forced to outsource 600 inmates to LaSalle Correctional Center at a cost of \$7.6M in SFY22 and a cost of \$14M in FY23, funded through General Fund reserves.”).

⁴⁰³ Leah Brennan, *Harris County Jail inmate who was recently transferred to Louisiana correctional center has died, authorities say*, Houston Chron. (Mar. 2, 2022), bit.ly/3iFpMvC.

⁴⁰⁴ Jen Rice, *Harris County approves \$25M plan to house jail inmates at West Texas facility*, Houston Chron. (July 20, 2022), bit.ly/3UsLShT; Harris County Officer of Budget and Management, *Harris County Proposed Budget: Fiscal Year 2023*, at 15, bit.ly/3HcuH1k (“This Summer’s surge of inmates necessitated the need to outsource an additional 600 inmates to Garza County at an expected cost of \$2.3M in SFY22 and \$23.3M in FY23, funded through ARPA.”).

⁴⁰⁵ KCBF Staff, *Bureau of Prisons will not renew contract with Dalby facility in Garza County* (Feb. 18, 2022), bit.ly/3unLGpG.

⁴⁰⁶ Ex. 193 (Mar. 25, 2020 email from Judge Kelli Johnson to the Houston Chronicle) (“We all have to remember, pretrial detainees are people that are presumed innocent.”).

counsel,⁴⁰⁷ in addition to the more than \$200 million it spends to jail people in the County's Houston facilities.⁴⁰⁸

XIII. Non-Financial Alternatives to Secured Conditions of Release Perform As Well As, or Better Than, Secured Bail in Every Important Way.

207. There is no well-founded reason for preferring secured bail to less-restrictive alternatives that do not result in the mass pretrial detention of people who are poor.⁴⁰⁹

a. The available evidence suggests that unsecured financial conditions of release are at least as effective as secured financial conditions at mitigating the risks of non-appearance.

208. Empirical studies demonstrate that secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring public safety or assuring appearance in court.⁴¹⁰

209. Nonfinancial conditions of release—like court-date reminders and risk-based pretrial monitoring—ensure court appearance and reduce recidivism better than secured bail while avoiding the significant costs associated with secured bail.⁴¹¹

⁴⁰⁷ Jen Rice, *Harris County may pay \$25M to house jail inmates at West Texas lockup*, Houston Chron. (July 18, 2022), bit.ly/3h15KLr (“Combined, Harris County's existing contract with the LaSalle Detention Center in Louisiana and the new contract with the Giles Dalby Correctional Facility in Post will cost nearly \$40 million.”).

⁴⁰⁸ Harris County Office of County Administration, *Harris County Adopted Budget SFY22 & FY23* (Feb. 8, 2022) at 45, bit.ly/3Fp9M9U (the Sheriff's detention budget for FY 2021-22 was \$244,906,152).

⁴⁰⁹ Ex. 186 (Jones Expert Report) ¶¶ 64–65 (expressing expert opinion that secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring public safety and law-abiding behavior or at assuring appearance in court).

⁴¹⁰ *Id.*

⁴¹¹ *Id.* ¶¶ 66–67.

210. Because secured money bail cannot be forfeited in Texas for new criminal activity,⁴¹² it cannot function as a financial incentive for law-abiding behavior.⁴¹³

211. The only risk that could be even theoretically mitigated by the imposition of secured money bail in Texas is the risk of non-appearance. However, the link between paying secured money bail (even for those who can afford to pay it) and court appearance is not established, and there is certainly no evidence that secured bail performs better when compared to evidence-based use of unsecured or non-financial alternatives and pretrial supervision.⁴¹⁴

212. Studies that evaluated the effects of policy and practice changes in eight jurisdictions (ten counties in Colorado; Jefferson County, Colorado; Yakima County, Washington; Philadelphia, Pennsylvania; New York City, New York; the state of New Jersey; Mecklenburg County, North Carolina; and Harris County, Texas) all provide robust empirical evidence that non-financial or unsecured pretrial release conditions are more effective than secured money bail at meeting the government's three interests of maximizing pretrial release, maximizing public safety and law-abiding behavior, and maximizing court appearance.⁴¹⁵

213. For instance, Brooker et al., 2014 and M. Jones, 2013 show that secured money bail detains more defendants in jail and delays their release, if they are released, than does unsecured

⁴¹² Tex. Code Crim. P. Ann. § 22.01; Ex. 31 (Warren Dep. at 320:7–10) (Q. “Does a person forfeit their bond if they commit a new crime on pretrial release?” A. “No. Bonds are forfeited for non-appearances.”).

⁴¹³ Ex. 186 (Jones Expert Report) ¶ 65(b) (“Moreover, research does not support that secured money bail as a condition of release incentivizes law-abiding behavior or is otherwise relevant to public safety (see, for example, Ouss & Stevenson, 2020; Brooker, 2017). This is readily apparent in jurisdictions like Harris County and all other Texas jurisdictions where money bail is not forfeited as a result of new criminal activity. Therefore, there is no legal or scientific basis to require a secured payment as a condition of release if the person's pretrial risk is to a victim, witness, or other person(s) in the community.”).

⁴¹⁴ *Id.* ¶¶ 62, 64–65.

⁴¹⁵ *Id.* ¶ 62.

bail, and does so without improving either public safety/law-abiding behavior or court appearance rates.⁴¹⁶

214. To the contrary, research shows that even short periods of money-based pretrial detention lead to decreased rates of court appearance and law-abiding behavior in the short term⁴¹⁷ and increased rates of recidivism in the long term.⁴¹⁸

215. The negative future effects of pretrial detention for inability to pay bail are even greater for people deemed low risk.⁴¹⁹

216. Thus, “[t]he practice in Harris County of setting secured money bail for defendants and then releasing some of these defendants after more than 24 hours of pretrial incarceration likely contributes to these defendants committing more crimes in the longer-term.”⁴²⁰

b. In jurisdictions that have shifted from money-based systems to risk-based systems, including the Harris County misdemeanor system, rates of failures to appear and new criminal activity have decreased.

217. In Harris County, a federal monitor of the *ODonnell* consent decree found that reform to the misdemeanor bail system resulting in a steep decrease in the use of secured bail has

⁴¹⁶ *Id.* ¶¶ 13, 48.

⁴¹⁷ *Id.* ¶¶ 19–23.

⁴¹⁸ Ex. 186 (Jones Expert Report) ¶¶ 24–25; *id.* ¶ 24 (“Defendants who are released within 2 to 3 days are 17% more likely to engage in new criminal activity up to two years later compared to comparable defendants released within 24 hours. For those held 4 to 7 days, this longer-term recidivism worsens to 35%, and when release is delayed for 8 to 14 days, the recidivism rate further increases to 51%.”).

⁴¹⁹ Ex. 186 (Jones Expert Report) ¶ 20 (“Lower-risk defendants who are detained for two to three days after arrest are 39% more likely to be arrested for new pretrial criminal activity than are comparable lower-risk defendants who are released immediately (within one day). As the delay in release becomes longer (5-7 days), the chance of pretrial failure (new arrest) for lower-risk defendants becomes more likely (by 50%). This likelihood increases to 56% for lower-risk defendants when release is delayed for 8 to 14 days (Lowenkamp et al., 2013a).”); *id.* ¶ 22 (“[T]he longer that lower-risk defendants are kept in pretrial detention beyond one day, the greater the likelihood that they will fail to appear in court after they are eventually released, again, when controlling for other relevant characteristics.”).

⁴²⁰ *Id.* ¶ 25.

saved the County millions without compromising the government's interests in court appearance and public safety:⁴²¹

- a. Fewer people are charged with misdemeanors and detained pretrial: 47% of individuals arrested for a misdemeanor were detained until a hearing in 2015; for the last three years, between 78-83% of such people have been released. This translates to approximately 18,000 fewer people being detained prior to a hearing in 2021 than in 2015.⁴²²
- b. Fewer misdemeanor convictions: in 2015, 61% of cases resulted in conviction; by 2019, only 29% of cases resulted in conviction. Conversely, the rate of dismissal/acquittal more than doubled over the same time period from 31% to 68%. This resulted in a decrease of approximately 37,000 convictions in 2015 to approximately 13,000 convictions in 2019.⁴²³
- c. Shorter periods of detention: From 2015 to 2021, the percent of misdemeanor defendants detained for more than 7 days dropped from 19% to 7% while the share of defendants released within 2 days increased from 61% to 88%.⁴²⁴
- d. Pretrial failure rates (estimated as a combination of bonds revoked for nonappearance, new arrest, or another reason) have continued to decline since 2018.⁴²⁵
- e. And even as more people have been released, there is no evidence that the Harris County bail reforms have led to an increase in pretrial crime.⁴²⁶
- f. The monitor of the consent decree calculated the financial costs of pretrial detention to Harris County misdemeanor defendants from 2015 through 2021. They reported that had certain pretrial practices enacted after the Consent Decree been in place since 2015, the benefits to misdemeanor defendants would have been valued at an

⁴²¹ *Id.* ¶ 60; Ex. 192, Brandon L. Garrett et al., *Monitoring Pretrial Reform in Harris County: Fourth Report of the Court-Appointed Monitor* (Apr. 18, 2022), available at bit.ly/3UrbR9C.

⁴²² Ex. 186 (Jones Expert Report) ¶ 60(a).

⁴²³ *Id.* ¶ 60(d).

⁴²⁴ *Id.* ¶ 60(b).

⁴²⁵ See Ex. 192, Garrett et al., *Monitoring Pretrial Reform in Harris County: Fourth Report of the Court-Appointed Monitor* vii (“The overall bond failure rate (i.e. the combined rate of bond forfeitures and bond revocations) rose from 17% in 2015 to 29% in 2018 (prior to the date the current misdemeanor judges took the bench), and has gradually declined since then, reaching 22% in 2020”).

⁴²⁶ Ex. 186 (Jones Expert Report) ¶ 60(c) (“This measure of a law-abiding rate has remained unchanged despite a decrease in pretrial jail use, indicating that the changes to pretrial practice have not contributed to an increase in crime.”).

average of over \$79 million per year through 2021 (the most recent year of data collection), totaling over \$477 million.⁴²⁷

- g. The monitor also calculated preliminary cost savings for the criminal justice system in Harris County. They reported that had certain pretrial practices enacted after the Consent Decree been in place since 2015, the County might have saved approximately \$15.6 million each year through 2021, totaling over \$93.4 million.⁴²⁸

218. An independent study conducted by Paul Heaton and the University of Pennsylvania's Quattrone Center for the Fair Administration of Justice echoed the *ODonnell* monitor's findings, including that Harris County's misdemeanor bail policies do not compromise public safety.⁴²⁹

219. Heaton's study used data from multiple agencies (police, Sheriff, Pretrial Services, courts) for over 500,000 misdemeanor and felony cases to measure the impacts of the *ODonnell* federal injunction in 2017.⁴³⁰ Controlling for all relevant variables available in Harris County's data, Heaton found, as a result of the injunction and consistent with research from other jurisdictions, that:

- a. A larger number of misdemeanor defendants were released from jail pretrial, and were released more quickly.⁴³¹
- b. Guilty plea rates decreased by 15%.⁴³²
- c. 9% of defendants avoided a conviction on their criminal record.⁴³³

⁴²⁷ *Id.* ¶ 35 (describing the monitor's estimates of alleviated costs related to loss of earnings, partner benefits, child support, and exposure to violence during pretrial detention).

⁴²⁸ Ex. 186 (Jones Expert Report) ¶ 39 (describing the monitor's estimates of savings due to changes in arrest, booking, pretrial screening, bond hearing, and detention practices).

⁴²⁹ *Id.* ¶ 61; Ex. 184, Paul Heaton, *The Effects of Misdemeanor Bail Reform*, Quattrone Center for the Fair Administration of Justice (Aug. 16, 2022), at 39-40, *also available at* bit.ly/3H857dK.

⁴³⁰ Ex. 186 (Jones Expert Report) ¶ 61.

⁴³¹ *Id.* ¶ 61(a).

⁴³² *Id.* ¶ 61(b).

⁴³³ *Id.* ¶ 61(c).

- d. The likelihood of a jail conviction decreased by 17%.⁴³⁴
- e. Upon conviction, the average sentence length was 15% lower.⁴³⁵
- f. There was no measurable increase in criminal activity, as measured by new case (including felonies) filed on defendants in Harris County within 1 year of their original misdemeanor filing. There was actually a modest decrease of 6% in criminal activity (including felonies) among defendants 3 years after the original filing.⁴³⁶
- g. Case resolution, used as an estimate of appearance in court, remained above 95% before and after the injunction.⁴³⁷
- h. Additionally, Black defendants benefitted the most from the pretrial changes. As a result of the injunction, an additional 11% of Black defendants were released within 24 hours (compared to an additional 8% of white defendants). The conviction rates for Black defendants decreased by 13 percentage points (compared to a 9 percentage point decrease for white defendants).⁴³⁸

220. Harris County has not studied the comparative efficacy of secured and unsecured conditions of release.⁴³⁹ Harris County data does not permit robust findings on comparative rates of pretrial misconduct.⁴⁴⁰ However, bond forfeiture rates were similar regardless of whether the individual was released on a secured or unsecured bond.⁴⁴¹

⁴³⁴ *Id.* ¶ 61(d).

⁴³⁵ Ex. 186 (Jones Expert Report) ¶ 61(e).

⁴³⁶ *Id.* ¶ 61(f).

⁴³⁷ *Id.* ¶ 61(g).

⁴³⁸ *Id.* ¶ 61(h).

⁴³⁹ Ex. 29 (May Pretrial Services 30(b)(6) at 175:15–23) (Q: “Do you believe that using money to determine who will and will not be released is an empirically justified practice, in your personal capacity?” A: “In my personal capacity and speaking beyond Harris County, if you look at how money is used and if you look at jurisdictions that don’t use money, I think it’s – it’s clear that you can get successful result and persons coming to court and remaining risk free without the use of a money-based system.”); *id.* (88:23–25) (Q: “Is Harris County’s decision-making framework validated? A: “No, it has not been validated.”); *see also* Ex. 23 (2021 Keith Dep. at 285:6–14) (Q: “Have you done any sort of empirical or quantitative study of whether or not imposing a secured bond, as opposed to an unsecured personal bond, reduces the likelihood that someone will be arrested for a new crime?” A: “No I have not.”).

⁴⁴⁰ Ex. 1 (Copp Expert Report) ¶ 94.

⁴⁴¹ *Id.* ¶ 95 (“20% of people released on personal bonds, 20% of people released on General Order bonds, and 19% of people released on surety bonds had their bond forfeited.”); Ex. 31 (Warren Dep. at 129:15-17)

221. Sheriff Gonzalez has recognized that the felony bail practices suffer from the same flaws as the misdemeanor system.⁴⁴² He has stated that “new rules and procedures” are required to “satisfy the plaintiffs’ request for a system that complies with constitutional requirements,” to promote safety and court appearance, and to reduce the jail population.⁴⁴³ The Sheriff made it clear that he was “dutybound to carry out orders of the felony judges” until those changes occurred, either voluntarily or through this litigation.⁴⁴⁴

(“They certainly haven’t re-offended at higher rates or absconded at higher rates than people on surety bonds.”).

⁴⁴² Dkt. 197 (Sheriff’s Answer) at 1 (“The Sheriff continues to believe it is wrong to detain an arrestee in jail merely because the arrestee is too poor to post a bond. There must be a different system that determines whether and on what terms public safety requires pre-trial detention, separate from an ability to pay.”).

⁴⁴³ *Id.* at 3.

⁴⁴⁴ *Id.*

Date: December 9, 2022

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CERTIFICATE OF SERVICE

I certify that on December 9, 2022 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/ Jeremy Cutting
Jeremy Cutting