UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, *et al.*, *Plaintiffs*,	§	
v.	§	Case No. 4:19-cv-00226
HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§	

STATE INTERVENORS' RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

Plaintiffs seek to authorize what amounts to a mass release of arrestees—including those charged with dangerous felonies or with a history of criminal violence. Not only does the relief sought violate the Fifth Circuit's holding in *ODonnell v. Harris County*, 892 F.3d 147, 163-66 (5th Cir. 2018) ("*ODonnell I*"), it would upset the status quo by overturning a bail system intended to protect the safety of the general public while still respecting the constitutional rights of those charged with crimes.

A preliminary injunction, all by itself, "is an extraordinary remedy never awarded as of right." *Benisek* v. *Lamone*, 138 S. Ct. 1942, 1943 (2018) (per curiam) (quotation omitted). Plaintiffs' ask the Court to violate the general rule that the "purpose of a preliminary injunction is merely to preserve the relative positions of the parties." *Id.* at 1945. And Plaintiffs' underlying challenge seeking a substantive right to release has already been rejected by the Fifth Circuit. *Cf. Wis. Right to Life, Inc.* v. *Fed. Election Comm'n*, 542 U.S. 1305, 1305-06 (2004) (Rehnquist, C.J., in chambers). If a preliminary injunction is appropriate only in a "rare" case, this one is not it.

Plaintiffs here ask for relief that the Fifth Circuit already said this Court cannot give. In *ODonnell* v. *Harris County*, 892 F.3d 147, 163-66 (5th Cir. 2018) ("*ODonnell I*"), the Fifth Circuit provided clear guidance about the procedures necessary to satisfy the Constitution in bail proceedings. When this Court provided substantive—not just procedural—relief by ordering mandatory release in certain scenarios, the Fifth Circuit reversed, and instructed the Court to implement the relief the *ODonnell I* panel ordered. *ODonnell* v. *Goodhart*, 900 F.3d 220, 225-26, 228 (5th Cir. 2018) ("*ODonnell II*"). To stave off challenges just like this one, the Fifth Circuit

reminded this Court and others that those decisions "bind[] the district courts in this circuit." *ODonnell* v. *Salgado*, 913 F.3d 479, 482 (5th Cir. 2019) ("*ODonnell III*"). Plaintiffs' underlying suit seeks to relitigate issues that the Fifth Circuit has already decided.

More fundamentally, this Court lacks subject-matter jurisdiction to entertain it at all. As the parties' pleadings and discussion at telephonic conferences make clear, Plaintiffs ask this Court to revise or review *past* bail determinations made by state courts: Namely, they ask this Court to release them and thousands of other felony arrestees even though state courts have set bail and remanded them to custody. As the *Rooker-Feldman* doctrine instructs, however, this Court lacks jurisdiction to do so. Even if this Court ignores Plaintiffs' pleas for release from past bail orders and recasts their complaint as seeking equitable relief reforming bail policies for *future* bail determinations, Plaintiffs' lack an Article III injury in fact under binding Supreme Court precedent. Far from awarding preliminary injunctive relief, all this Court has power to do is dismiss this suit.

Even ignoring binding Fifth Circuit precedent and a lack of subject-matter jurisdiction, a host of other factors caution against awarding the preliminary relief that Plaintiffs seek. In the realm of equity, the public interest is paramount. Here that factor weighs in support of the State Intervenors—as the chorus of declarations from state and local law enforcement groups confirms.

The Chiefs of Police for Houston, Allen, Arlington, Frisco, Carrollton, Deer Park, Ft. Worth, Frisco, Grand Prairie, Irving, Lewisville, Pearland, and Plano, all

agree that the relief Plaintiffs seek will harm the public during this pandemic.[1] To be sure, arrestees with a violent history pose an acute risk if released. But as the officials note, violence is not the only harm the public faces during this crisis in which individuals are vulnerable, stores are closed, and streets are empty. Ex. 1, *Acevedo Dec.*; Exhibit 14, *Declaration of Gregory W. Rushin*. This Court should not consign homeowners, businesses, the elderly, and others to their fate by accepting Plaintiffs' suggestion that, say, burglary is *just* burglary—especially when law enforcement resources are already stretched thin in response to the coronavirus. The Director of the Texas Attorney General's Law Enforcement Division[2], the Director of the Department of Public Safety[3], the President of the Texas Police Chiefs Association[4], the President of the National Narcotic Officers' Associations' Coalition[5], and Crime Stoppers of Houston[6] (the Nation's largest victims' advocacy group) echo the same theme.

Finally, even if this Court were still inclined to award preliminary relief, local officials are currently considering measures that might obviate the need for this Court to act. As discussed on this Court's most recent telephonic meeting, County

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[1] Ex. 1 *Declaration of Houston Chief of Police Art Acevedo*; Ex. 2 *Declaration of Allen Police Chief Brian Harvey;* Ex. 3 *Declaration of Arlington Police Chief Will Johnson*; Ex. 4 *Declaration of Police Chief Derick Miller*; Ex. 5 *Declaration of Deer Park Chief of Police Gregg Grigg*; Ex. 6 *Declaration of Frisco Police Chief David Shilson*; Ex. 7 *Declaration of Fort Worth Police Chief Edwin Kraus*; Ex. 8 *March 31, 2020 Letter from Garland Police Department; Ex.* 9 *Declaration of Daniel Scesney*; Ex. 10 *Declaration of Irving Police Chief Jeff Spivey*; Ex. 11 *Declaration of Lewisville Police Chief Kevin Deaver*; Ex. 12 *Declaration of Pearland Police Chief Johnny Spires*; Ex. 13 *Declaration of Plano Police Chief Ed Drain*.

[2] Ex. 15 *Declaration of David Maxwell*.

[3] Ex. 16 *Declaration of Director of Department of Public Safety Steven McCraw*.

[4] Ex. 17 *March 31, 2020 Letter from Gene Ellis, President, Texas Police Chiefs Association.*

[5] Ex. 18 *Declaration of Bob Bushman.*

[6] Ex. 19 *Declaration of Andy Kahan.*

Judge Hidalgo is preparing an order that would likely cover the same individuals this Court is inclined to provide relief. The Court was right to observe that "obviously it is preferable" for "politically responsible" state and local authorities to address any problems (real or perceived) rather than a Federal District Court. Taking that route here would not only reinforce important federalism principles but would also avoid other serious problems like this Court's lack of jurisdiction and its independent inability to award class-wide relief without first certifying a class in compliance with Rule 23(b)'s strictures.

For all these reasons along with those set out below, the State Intervenors respectfully request this Court decline to release these felons and, instead, dismiss this entire action for lack of subject matter jurisdiction.

PRELIMINARY INJUNCTION STANDARDS

Injunctive relief "is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries the burden of persuasion." *White* v. *Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989) (quoting *Holland Am. Ins. Co.* v. *Succession of Roy*, 777 F.2d 992, 997v (5th Cir. 1985)). While issuing preliminary injunctive relief is designed primarily to freeze the status quo until a full hearing permits final relief, "[m]andatory preliminary relief . . . goes well beyond simply maintaining the status quo" and is "particularly disfavored." *Martinez* v. *Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976) (citation omitted). And when altering the status quo may prejudice an important "public interest," a court "'should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.'" *Salazar* v. *Buono*, 559 U.S. 700, 714 (2010) (quoting *Weinberger v.*

Romero-Barcelo, 456 U.S. 305, 312 (1982)). "Only in rare instances is the issuance of a mandatory preliminary injunction proper." *Martinez*, 544 F.2d at 1243..

To obtain preliminary injunctive relief, the applicant must show (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) that his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) that granting the relief will serve the public interest. *Planned Parenthood of Houston & Southeast Tex.* v. *Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005).

ARGUMENT

A. Plaintiffs are unlikely to succeed on the merits.

1. This Court cannot issue the requested relief of release under *ODonnell*.

Plaintiffs allege three constitutional violations to support their request for a temporary restraining order. They argue that procedural and substantive due process require "notice, an opportunity to be heard and to present and confront evidence at a hearing with counsel, and findings on the record by clear and convincing evidence explaining the basis for detention." ECF No. 32 at p. 23-24.[7] And they assert that the Equal Protection Clause provides a substantive right. *Id.* at p. 25. In sum, Plaintiffs allege that Harris County felony arrestees' due process and equal protection rights are violated because Defendants do not provide the procedural safeguards necessary to meet constitutional minimums. Additionally, Plaintiffs invoke the COVID-19

[7] The cited pagination refers to the CM/ECF page numbering.

coronavirus pandemic as an emergency that entitles them to unsecured pretrial release en masse. They are wrong at every turn.

First, the procedural remedies Plaintiffs seek in this lawsuit have already been put into place in Harris County as a result of the Consent Decree, *ODonnell, et al. v. Harris Cty., Tex., et al.*, No. 16-cv-1414, (S.D. Tex. Nov. 21, 2019), ECF No. No. 708 (consent decree); *see also* Memorandum and Opinion Approving the Proposed Consent Decree, *ODonnell*, *et al.* v. *Harris Cty., Tex., et al.*, No. 16-cv-1414, 2019 WL 6219933 (S.D. Tex. Nov. 21, 2019) (approving proposed consent decree). Plaintiffs make clear that this case raises the same constitutional issues previously raised in *Odonnell*. ECF No. 32 at p. 24. Plaintiffs seek the same procedural remedies adopted by this Court in the *ODonnell* consent decree, but the County has already extended those procedural remedies to felony arrestees. *See* Exhibit 21, *Affidavit of James Leitner*. Because the County has already provided ample procedural remedies addressing Plaintiffs' *ODonnell*-style claims, they are not substantially likely to succeed in proving their claim asking for what they already have.

Second, because this case mirrors *ODonnell*, Plaintiffs' request for substantive relief runs headlong into the Fifth Circuit's instruction that substantive remedies, like releasing arrestees, is improper. *See ODonnell II* ("The grant of automatic release smuggles in a substantive remedy via a procedural harm."). Put plainly, the Fifth Circuit has already rejected Plaintiffs' requested remedy.

2. The procedural due process remedy Plaintiffs seek has already been adopted by the County.

This Court presided over the *ODonnell* litigation for nearly four years, and recently concluded the litigation by approving a consent decree. *See Consent Decree, ODonnell* v. *Harris County*, No. 16-cv-1414, ECF No. 708 (S.D. Tex. Nov. 21, 2019) (consent decree); *see also ODonnell, et al.* v. *Harris Cty., Tex., et al.*, No. 16-cv-1414, 2019 WL 6219933 (S.D. Tex. Nov. 21, 2019) (approving proposed consent decree). The procedural remedies adopted through the consent decree included adoption of Harris County's Local Rule 9,[8] a sweeping recitation of amended bail practices in Harris County. *ODonnell* v. *Harris County*, No. 16-cv-1414, ECF No. 708 at 16-24. (S.D. Tex. Nov. 21, 2019). Those procedures easily satisfy the model injunction provided by the Fifth Circuit.

The same bail practices this Court adopted in *ODonnell* for misdemeanor arrestees have been extended to felony arrestees. Ex. 21, *Leitner Aff*. ("This probable cause and bail hearing process is the same for the process utilized for misdemeanor defendants who are not released under a General Order Bond."). The process starts with assignment of counsel, if requested, and interviews with both defense counsel and the Harris County Pretrial Services to gather personal and financial information about the arrestee. *Id.* at p. 2. Based upon information gathered from the interview and other research, Pretrial Services uses a risk assessment tool to develop a Public

[8] Administrative Order Number 2019-01, *available online* at https://hccla.org/wp-content/multiverso-files/829_56990d05d6719/AdminOrder-MISD.pdf (last visited Mar. 30, 2020).

Safety Assessment score ("PSA"). *Id.* at p. 3. The PSA score ranges from 1-6 on two different scales, and places assigns an arrestee a risk category. *Id.*

At the probable cause hearing, a hearing officer provides warnings and explains the process to the arrestee. *Id.* at p. 2. An assistant district attorney then presents the case for finding probable cause. *Id.* If probable cause is found, the arrestee proceeds to a bail hearing. *Id.* The bail hearing involves both the assistant district attorney and the assistant public defender for the arrestee. *Id.* The attorneys for the State and the arrestee, respectively, are given opportunities to present evidence and argument on what amount of bail or other conditions of pretrial release, if any, should be set. *Id.*

Hearing officers routinely set bonds lower than the amount recommended by the felony bail schedule when an arrestee's PSA score recommends a lower amount. *Id.* at p. 3. Hearing officers also routinely set bail in the amount requested by the assistant public defender, which often is lower than the amount recommended by either the felony bail schedule or the arrestee's PSA score. *Id.* After setting bail, hearing officers explain their decisions and inform the arrestees that they can seek a bail reduction from the judge presiding over the case. *Id.*

The procedural remedies currently provided to felony arrestees satisfy the *ODonnell* requirements of "notice, an opportunity to be heard and submit evidence within 48 hours of arrest, and a reasoned decision by an impartial decisionmaker. *ODonnell I*, 892 F.3d at 163; *see also ODonnell II*, 900 F.3d at 227 ("Those who cannot afford the set bail are entitled to an individualized hearing within 48 hours to

determine whether lowering that bail would be release on sufficient sureties."). Because Plaintiffs received everything the law requires, there is no likelihood that Plaintiffs can put on a successful case. Indeed, Judge Hanks reached that conclusion in denying a preliminary injunction on felony arrestees' Fourteenth Amendment claims after Galveston County adopted bail procedures mirroring those that the Fifth Circuit endorsed in *ODonnell*. *See Booth* v. *Galveston Cty., Tex.*, No. 3:18-cv-00104, 2019 WL 3714455, at *7-8 (S.D. Tex. Aug. 7, 2019).

3. Because each arrestee already receives sufficient process only rational basis review applies, a standard that is easily met.

Despite Plaintiffs' claims to the contrary, "[d]etention of indigent arrestees and release of wealthier ones is not constitutionally infirm purely because of the length of detention." *ODonnell II*, 900 F.3d at 227. "An Equal Protection Claim that an indigent person spends more time incarcerated than a wealthier person is reviewed for a rational basis." *Id.* at 226 (citing *Doyle* v. *Elsea*, 658 F.2d 512, 518 (7th Cir. 1981); *Smith* v. *U.S. Parole Comm'n*, 752 F.2d 1056, 1059 (5th Cir. 1985); *McGinnis* v. *Royster*, 410 U.S. 263, 270 (1973)); *see also Walker* v. *City of Calhoun*, 901 F.3d 1245, 1262 (11th Cir. 2018) ("Such scheme does not trigger heightened scrutiny under the Supreme Court's equal protection jurisprudence").

Heightened scrutiny is applicable only when a bail system includes the *automatic* imposition of secured bail without meaningful consideration of other alternatives—in other words, an absolute deprivation of a right *because* of poverty without sufficient procedural safeguards. *Walker*, 901 F.3d at 1261; *ODonnell II*, 900 F.3d at 230. That is not the situation here.

As explained above, Harris County's bail process does not automatically impose bail and includes the meaningful consideration of alternatives: an initial individual assessment and hearing with the assistance of counsel. *See ODonnell I*, 882 F.3d at 546-549. Under this process, a poor arrestee suffers no "absolute deprivation" of the benefit of being bailable upon sufficient sureties. *Walker*, 901 F.3d at 1261-1262. Instead, he "must merely wait some appropriate amount of time to receive the same benefit as the more affluent." *Id.*. Therefore, Harris County's bail process does not trigger heightened scrutiny under the Supreme Court's equal protection jurisprudence. *See M.L.B.* v. *S.L.J.*, 519 U.S. 102, 127 (1996) (explaining that wealth-based sanctions are impermissible when they are "not merely disproportionate in impact," but "[r]ather, they are wholly contingent on one's ability to pay"); *Ross* v. *Moffitt*, 417 U.S. 600, 616 (1974) (explaining that in a proceeding that involves indigents, "[t]he duty of the State . . . is not to duplicate the legal arsenal that may be privately retained by a criminal defendant . . ., but only to assure the indigent defendant an adequate opportunity to present his claims fairly"); *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 24 (1973) (noting that mere diminishment of a benefit was insufficient to make out an equal protection claim: "[A]t least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages"); *McGinnis*, 410 U.S. at 270 (examining a wealth based system that did not result in an absolute deprivation under rational basis).

Because Harris County's bail process does not cause an absolute deprivation and heightened scrutiny is inapplicable, the current bail system must be reviewed only for a rational basis. *ODonnell II*, 900 F.3d at 226 (applying rational basis review to post *ODonnell I* bail system "because it is premised solely on inability to afford bail, as distinguished from inability to afford bail plus the absence of meaningful consideration of other possible alternatives").

Harris County undoubtedly has "a compelling interest in assuring the presence at trial of persons charged with crime." *Pugh* v. *Rainwater*, 572 F.2d 1053, 1056 (5th Cir. 1978); *Ex parte Anderer*, 61 S.W.3d 398, 404-05 (Tex. Crim. App. 2001) (en banc). Harris County may "requir[e] a bail bond or the deposit of a sum of money subject to forfeiture" as a condition of pretrial release in appropriate circumstances. *Stack* v. *Boyle*, 342 U.S. 1, 5 (1951); *see also* TEX. CONST. art. I, § 11.. This use of bail is so "basic to our system of law" that the Texas Constitution specifically allows for release conditioned upon sufficient sureties. *Schilb* v. *Kuebel*, 404 U.S. 357, 365 (1971); *see also* TEX. CONST. art. I, § 11. In carrying out this legitimate interest, Harris County has implemented the same procedural safeguards approved by the Fifth Circuit in *ODonnell*. For Plaintiffs to succeed on their procedural claim, they must prove not only that the current bail system in Harris County lacks a rational basis, but also that the identical system created by the Fifth Circuit and this Court fails to meet that deferential standard as well—something they simply cannot do.

In light of these procedural safeguards, Plaintiffs' only remaining argument is that some arrestees, after receiving the benefits of Harris County's process, may still

not be able to afford bail. Yet "that is an equal protection claim consistently rejected on rational-basis review." *ODonnell II,* 900 F.3d at 227 (citing *McGinnis*, 410 U.S. at 270; *Smith*, 752 F.2d at 1059). In fact, *ODonnell I* "found that the substantive right to release on 'sufficient sureties' is 'not purely defined by what the detainee can afford' and 'does not create an automatic right to pretrial release.'" *ODonnell II*, 900 F.3d at 226 (citing *ODonnell I*, 892 F.3d at 158). In short, indigent arrestees have no absolute right to unsecured pretrial release; they have only the right to procedures that provide notice, individualized consideration of their arguments and evidence for unsecured release, and a reasoned decision by an impartial magistrate. Of course, if any individual arrestee believes that the magistrate's bail decision was erroneous, he can challenge that decision by seeking a pretrial writ of habeas corpus. *See* TEX. CODE CRIM. PROC. ART. 11.24.

At bottom, because Harris County has already implemented procedures sufficient to meet the constitutional minimums, Plaintiffs are unlikely to succeed on their claims and the Court should deny the request for injunctive relief.[9]

B. Regardless, substantive relief is unavailable.

1. Plaintiffs cannot plead around the Eighth Amendment to assert an excessive-bail claim as a substantive due process claim.

The gravamen of Plaintiffs' substantive due process claim is that money bail in Harris County is being set too high for indigent felony defendants, resulting in their detention where wealthier arrestees would go free, thus infringing their pretrial

[9] Because Plaintiffs are already receiving all of the process required under *ODonnell* this case is also moot, which deprives this Court of subject-matter jurisdiction. *Yarls* v. *Bunton*, 905 F.3d 905, 907-08 (5th Cir. 2018)..

right to liberty. *See, e.g.*, ECF No. 32 at 23. Plaintiffs seek to mandate a rule by which felony arrestees be released under alternative systems of bail. *E.g.*, *id.* at 26-42. That claim falls squarely in the wheelhouse of the Eighth Amendment, which provides that "[e]xcessive bail shall not be required." U.S. CONST., AMEND. VIII.

The Supreme Court has foreclosed Plaintiffs' chosen path. A plaintiff cannot invoke substantive due process to seek relief that can be addressed by more specific constitutional guarantees. *Graham* v. *Connor*, 490 U.S. 386, 395 (1989); *accord Portuondo* v. *Agard*, 529 U.S. 61, 74 (2000); *Conn* v. *Gabbert*, 526 U.S. 286, 293 (1999); *County of Sacramento* v. *Lewis*, 523 U.S. 833, 842 (1998); *United States* v. *Lanier*, 520 U.S. 259, 272 n.7 (1997); *see also Stop the Beach Renourishment, Inc.* v. *Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 721 (2010) (plurality op.). This accords with the Court's longstanding "reluctan[ce] to expand the concept of substantive due process." *Collins* v. *City of Harker Heights*, 503 U.S. 115, 125 (1992). That doctrine, after all, has often been treated as an invitation for freewheeling judicial inquiry, with "guideposts for responsible decisionmaking in this unchartered area . . . scarce and open-ended." *Id.*

In *Graham* v. *Connor*, the Court rejected the approach then employed by the "vast majority of lower federal courts"—a "four-part 'substantive due process test'"—to analyze section 1983 constitutional claims. 490 U.S. at 393. Instead, the Court instructed, the analysis of a claim for which there is "an explicit textual source of constitutional protection" must be guided by that source, "not the more generalized notion of 'substantive due process.'" *Id.* at 395. In *Graham*, it was the Fourth Amendment that provided the "explicit textual source of constitutional protection"

because the claim was one sounding in excessive force. *Id.* But the Court recognized that the Eighth Amendment could likewise supply the explicit textual source for claims based on individuals' interactions with the justice system. *Id.* at 394.

Graham's holding that courts cannot use substantive due process to enlarge more specific constitutional guarantees remains good law. Indeed, the Fifth Circuit has repeatedly observed that *Graham* continues to apply when plaintiffs attempt to invoke substantive due process, with its "purpose" being to "avoid expanding the concept of substantive due process where another constitutional provision protects individuals against the challenged governmental action." *John Corp.* v. *City of Houston*, 214 F.3d 573, 582 (5th Cir. 2000); *see, e.g.*, *Jones* v. *Perez*, 790 F. App'x 576, 582 (5th Cir. 2019). And it has done so even in the Eighth Amendment context. *See, e.g.*, *Austin* v. *Johnson*, 328 F.3d 204, 210 n.10 (5th Cir. 2003).

This approach is fully consistent with *ODonnell I.* There, the Fifth Circuit observed that "when a constitutional provision specifically addresses a given claim for relief under 42 U.S.C. § 1983, a party should seek to apply that provision directly." 892 F.3d at 157 (citing *Graham*, 490 U.S. at 394). The panel observed the former-Fifth Circuit's 1978 en banc decision in *Rainwater* allowed ODonnell to raise claims of equal protection and *procedural* due process instead of grounding those claims in the Eighth Amendment. *Id.* (citing *Rainwater*, 572 F.2d at 1057). But the explicit textual source rule is concerned with invoking the "more nebulous" *substantive* due process concept in the face of another concrete textual provision. *Jones*, 790 F. App'x at 582. Naturally, *ODonnell* did not—because it could not—conflict with Supreme

Court precedent on that score. *See, e.g., Graham*, 490 U.S. at 393-95; *John Corp.*, 214 F.3d at 582; *Austin*, 328 F.3d at 210 n.10.

So too in *Rainwater*, which like *ODonnell I*, did not involve a substantive due process claim. The claims there were based on equal protection and procedural due process. The *Rainwater* court vacated a panel opinion purporting to apply strict scrutiny to Florida's bail system, holding that the Equal Protection Clause did not require Florida to adopt a presumption against money bail for indigents. 572 F.2d at 1056. The court then held that so long as there were procedural mechanisms in place that ensured individualized consideration when setting secured money bail, the use of a bail schedule was constitutional. *Id.*, 572 F.2d at 1057.

In any event, although *Rainwater* binds this Court, it is binding only to the extent that it is not contradicted by "an intervening decision by the Supreme Court," *United States* v. *Setser*, 607 F.3d 128, 131 (5th Cir. 2010), *aff'd*, 566 U.S. 231 (2016). Thus, to the extent of any conflict between the 1978 decision in *Rainwater* and the 1989 decision in *Graham*—to say nothing of later Supreme Court and circuit cases reaffirming the central holding in *Graham*—*Graham* controls. *Cf. Graham*, 490 U.S. at 393 (observing that, at the time of the Court's decision, the "vast majority of lower federal courts" were inappropriately entertaining claims for substantive due process in addition to or instead of the applicable amendment in the Bill of Rights).

The Fifth Circuit has long recognized that the Eighth Amendment does not provide a right to affordable bail, and the mere inability to pay does not render bail excessive and thus invalid under the Eighth Amendment. *See, e.g.*, *United States* v.

McConnell, 842 F.2d 105, 107 (5th Cir. 1988) ("[A] bail setting is not constitutionally excessive merely because a defendant is financially unable to satisfy the requirement"). Other circuits concur. *See, e.g.*, *Walker*, 901 F.3d at 1258; *United States* v. *Cordero*, 166 F.3d 334, at *2 (4th Cir. 1998) (per curiam) (citing *United States* v. *Wright*, 483 F.2d 1068, 1070 (4th Cir. 1973)); *United States* v. *Mantecon-Zayas*, 949 F.2d 548, 550 (1st Cir. 1991) (per curiam); *White* v. *Wilson*, 399 F.2d 596, 598 (9th Cir. 1968); *Hodgdon* v. *United States*, 365 F.2d 679, 687 (8th Cir. 1966)

Moreover, it is well settled that excessive bail claims are subject to review only for reasonableness, not heighted scrutiny. *See, e.g.*, *Stack*, 342 U.S. at 5 (holding that "excessive" bail under the Eighth Amendment is bail set at a higher figure than the amount reasonably calculated to assure the accused will stand trial). This recognizes the longstanding, legitimate "practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture," which "serves as additional assurance of the presence of an accused." *Id.* Thus, only when bail is "set at a higher figure than an amount reasonably calculated to fulfill this purpose" can any particular bail amount be thought of as "'excessive' under the Eighth Amendment." *Id.*

Plaintiffs recognize that any Eighth Amendment claim would fail. That is why they are forced to seek substantive relief by relying on the (faulty) assumption that strict scrutiny applies to the incidental detention of arrestees who cannot afford bail. *See, e.g.*, ECF No. 32 at n.72 (suggesting that "heightened" scrutiny is a euphemism for "strict" scrutiny).

2. There is no substantive due process right for indigents to obtain affordable bail.

Plaintiffs attempt to distinguish *ODonnell I* from this case by invoking the Equal Protection Clause. ECF No. 44 at p. 5. But that alternative argument ignores that the Fifth Circuit addressed an equal protection claim in *ODonnell*. In doing so, the court pointed to the same line of cases as relevant to its equal protection and due process analysis, for which it crafted only *procedural* remedies. 892 F.3d at 161-62 & n.6 (discussing *Tate* v. *Short*, 401 U.S. 395, 397-99 (1971); *Williams* v. *Ill.* 399 U.S. 235, 241-42 (1970); *Rainwater*, 572 F.2d at 1057). And *ODonnell I* held that a limited set of "constitutionally-necessary procedures" would "cure the constitutional infirmities arising" from the failure to take account of indigents' ability to make bail. *Id.* at 163. What's more, the Fifth Circuit subsequently explained that the *ODonnell I* panel did not extend any substantive relief. *See ODonnell II*, 900 F.3d at 220 ("The grant of automatic release smuggles in a substantive remedy via a procedural harm.").

Plaintiffs' misconstruction of *ODonnell I* aside, numerous other courts have held that there is no substantive due process right to affordable bail conditions. "Substantive due process analysis," the Supreme Court has cautioned, "must begin with a careful description of the asserted right." *Reno* v. *Flores*, 507 U.S. 292, 302 (1993). The alleged liberty interest must be "carefully formulat[ed]" and must be "deeply rooted in this Nation's history and tradition." *Washington v. Glucksberg*, 521 U.S. 721, 722 (1997). Plaintiffs' claimed liberty interest in affordable bail for the indigent is neither.

In Plaintiffs' telling, however, Chief Justice Rehnquist's 1987 opinion for the Court in *United States* v. *Salerno*, 481 U.S. 739 (1987) ushered in a sea change in the law, which—for some unexplained reason—lay dormant for three decades. Plaintiffs assert that, in the guise of *rejecting* a constitutional challenge to provisions in the federal Bail Reform Act allowing for pretrial detention, the Supreme Court actually set a high, substantive bar for the imposition of money bail, focused myopically on defendants' ability to pay; implicitly mandated strict scrutiny for instances of pre-trial wealth-based disparate impact; and invalidated, *sub silentio*, scores of state bail laws in the process. *See* ECF No. 32 at 28-31.

Plaintiffs misread *Salerno*. The *Salerno* Court was pellucid as to its liberty-interest holding: "[W]e cannot categorically state that pretrial detention offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Salerno*, 481 U.S. at 751 (quotations omitted). The defendant there challenged his outright denial of bail under the Bail Reform Act, claiming that that denial violated his interest in pretrial liberty. *Id*. at 744-45. The Court rejected that argument. While "conced[ing]" "the 'general rule' of substantive due process that the government may not detain a person prior to a judgment of guilt in a criminal trial," the Court recognized that bail decisions fell within the "well-established authority of the government, in special circumstances, to restrain individuals' liberty prior to or even without criminal trial and conviction." *Id.* at 749. Thus, in accordance with the Bail Reform Act, federal courts properly consider a multitude of factors when setting or denying bail, including dangerousness to the

community. *Id.* at751-52. If the right against pretrial detention *without bond* is not a fundamental substantive due process liberty interest, then pretrial detention *with bond* certainly cannot be.

3. Plaintiffs are also unlikely to succeed because this Court lacks subject-matter jurisdiction.

Subject-matter jurisdiction implicates "the courts' statutory or constitutional *power* to adjudicate the case." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). Because it is "always an antecedent question," this Court must address subject-matter jurisdiction before addressing anything else. *Id.* at 101. Jurisdiction is based on the facts at the time Plaintiffs filed their complaint. *Grupo Dataflux* v. *Atlas Global Grp., L.P.*, 541 U.S. 567, 574 (2004). And Plaintiffs "must demonstrate standing separately for each form of relief sought." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 352 (2006).

This Court lacks subject-matter jurisdiction for two independent reasons. First, insofar as Plaintiffs seek relief from their past bail hearings through a federal-court order changing their existing bail determinations, the *Rooker-Feldman* doctrine bars this suit. Lower federal courts are powerless to revisit individual state-court decisions setting bail. Second, while *Rooker-Feldman* does not prevent a litigant from challenging a state policy or practice as opposed to a particular state-court decision, Plaintiffs' challenge to Harris County's bail practices is based on a future injury that is pure "speculation and conjecture." *O'Shea* v. *Littleton*, 414 U.S. 488, 497 (1974). Plaintiffs therefore lack an Article III injury in fact. And in a putative class action

like this one, "federal courts lack jurisdiction if no named Plaintiff has standing." *Frank* v. *Gaos*, 139 S. Ct. 1041, 1046 (2019).

C. The *Rooker-Feldman* doctrine deprives this Court of jurisdiction over a suit challenging past bail orders.

In their complaint, all three named Plaintiffs admit that they have already been through bail proceedings, had bail set by state courts, and been remanded to custody. *See* Compl., ECF No. 1 at 11-13 (describing past bail proceedings for Plaintiffs Russell, Pierson, and Ortuno). They ask this Court to award:

> a. A declaratory judgment that Defendants violate the Named Plaintiffs' and Class members' constitutional rights by operating a system of wealth-based detention that keeps them in jail solely because they cannot afford to pay secured money bail amounts required without findings concerning ability to pay, without consideration of or findings concerning non-financial alternatives, without findings that pretrial detention is necessary to meet a compelling government interest, and without safeguards to ensure the accuracy of that finding; [and]
>
> b. An order and judgment permanently enjoining Defendants from operating and enforcing a system of post-arrest detention that keeps Named Plaintiffs and Class members in jail because they cannot pay a secured financial condition of release required without findings concerning ability to pay, without consideration of or findings concerning nonfinancial alternatives, without findings that pretrial detention is necessary to meet a compelling government interest, and without safeguards to ensure the accuracy of those findings[.]

Compl., at 42. This prayer reads like a request to have Plaintiffs' existing bail orders redetermined—either by reducing the amount of secured bail or ordering unsecured bail instead. The Court apparently reads Plaintiffs' request the same way. *See* Order, ECF No. 34 at 1 (noting that Plaintiffs seek relief ordering that they be "promptly released" or have "their current bail status reheard").

That, of course, is problematic. "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions." *Atl. Coast Line R.R. Co.* v.

Bhd. of Locomotive Eng'rs, 398 U.S. 281 (1970). The *Rooker-Feldman* doctrine thus bars a lower federal court from entertaining a suit that "seek[s] federal-court review and rejection of" a state-court decision. *Skinner* v. *Switzer*, 562 U.S. 521, 531 (2011). Simply put, Plaintiffs may not "seek review of the . . . application [of Harris County's bail procedures] in a particular case." *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 286 (2005).

D.C. Court of Appeals v. *Feldman*, 460 U.S. 462 (1983), is a classic example. There, the D.C. Court of Appeals refused to admit Marc Feldman, *id.* at 465-68, and Edward Hickey, *id.* at 470-72, to the D.C. bar because they had not graduated from ABA-accredited law schools. The would-be lawyers then sued in federal district court, arguing that the D.C. Court's policy violated federal law and asking the federal court to order the state court to admit them to the bar, or at least permit them to sit for the D.C. bar exam. *Id.* at 468-73. The Supreme Court held the district court lacked jurisdiction because federal law authorizes only the Supreme Court to review state court decisions. *Id.* at 486 (citing 28 U.S.C. § 1257). Because Feldman and Hickey "sought review in [federal district court] of the [state court's] denial of their" requests for bar admission, "the District Court lacked subject matter jurisdiction." *Id.* at 482. That was true *even though* their "challenges allege[d] that the state court's action was unconstitutional." *Id.* at 486.

This principle applies here. State courts have already made bail determinations for Russell, Pierson, and Ortuno, and remanded them to custody. Compl., ECF No. 1 at 11-13; *see* TEX. CODE CRIM. PROC. ARTS. 16.20(6), 17.25, 17.27.

Under state law, an arrestee can obtain review of that decision only in state habeas proceedings. *See* TEX. CODE CRIM. PROC. ART. 11.24; *accord Schall* v. *Martin*, 467 U.S. 253, 280-81 (1984). Insofar as the named Plaintiffs ask this Court to order the state courts to revisit those determinations, they ask this "Court to overturn the injurious state-court judgment" rendered as to them. *Skinner*, 562 U.S. at 531. In other words, this Court "is in essence being called upon to review the state court decision[s]" setting Plaintiffs' bail. *Feldman*, 460 U.S. at 482 n.16. That is exactly what *Rooker-Feldman* says this Court has no power to do.

What Plaintiffs seek to do here—use § 1983 to obtain class-wide relief from felony arrestees' existing bail orders—is unprecedented in the Fifth Circuit. But persuasive caselaw from other jurisdictions addresses this exact issue. Courts across the Country recognize that *Rooker-Feldman* bars a plaintiff from seeking relief that would require a federal district court to revisit a state court's decision setting bail and remanding him to custody. *See, e.g.*, *Ingram* v. *Fish*, No. 09-204, 2010 WL 3075747v, at *4 (W.D. Pa. Aug. 5, 2010) (holding *Rooker-Feldman* barred suit "essentially asking this Court to conduct a *de novo* review of the bail order to determine whether it is unconstitutionally excessive and, if so, to order [the state court] to re-set bail at a lesser, more 'reasonable' amount"); *Brown* v. *City of New York*, 210 F. Supp. 2d 235, 240 (S.D.N.Y. 1999) (holding *Rooker-Feldman* "bars the Plaintiff's prayer for declaratory relief" regarding state court bail decision); *Mounkes* v. *Conklin*, 922 F. Supp. 1501, 1508-10 (D. Kan. 1996) (holding *Rooker-Feldman* barred federal court

jurisdiction to review state court "decisions that have required 'cash only bonds' and the condition that the cash must be posted by the accused").

Because Plaintiffs seek a federal district court decision ordering state courts to "promptly release[]" the Plaintiffs or have their "current bail status reheard," *Rooker-Feldman* bars this suit.

D. No named Plaintiff has Article III standing to seek relief based on future bail orders.

Plaintiffs might counter that the *Rooker-Feldman* doctrine does not prohibit them from challenging a state-court *policy*, as opposed to a state-court *decision*. That much is true. Lower federal courts may entertain a Plaintiff's challenge to the validity a state-court policy "so long as the plaintiff[] d[oes] not seek review of the [policy's] application in a particular case." *Exxon Mobil Corp.*, 544 U.S. at 286; *see also Feldman*, 460 U.S. at 482-85. So, Plaintiffs will likely argue that they seek a declaration and an injunction ordering Harris County to reform its bail practices *going forward*—i.e., prospectively and not retroactively. Compl., ECF No. 1 at 42.

But if that is right, then this lawsuit still fails. If the policies that Plaintiffs challenge are untethered from their past application in Plaintiffs' underlying bail determinations, then those policies could affect Plaintiffs only in the future. But whether those bail policies would ever be applied to Plaintiffs is a purely hypothetical proposition. Plaintiffs must speculate that—at some unknown time—they will again be arrested in Harris County, encounter (allegedly) unlawful bail practices, have secured bail set, and still be unable to afford a bond to secure their release.

Future injuries, however, must be "*certainly* impending" to confer Article III standing. *Ctr. for Biol. Diversity* v. *U.S. Envt'l Prot. Servs.*, 937 F.3d 533, 537 (5th Cir. 2019). The Supreme Court has repeatedly found that future injuries like Plaintiffs' are insufficient. *See, e.g.*, *Clapper* v. *Amnesty Int'l*, 568 U.S. 398 (2013) (future government surveillance); *Whitmore* v. *Ark.*, 495 U.S. 149 (1990); *City of Los Angeles* v. *Lyons*, 461 U.S. 95 (1983) (future chokeholds); *Rizzo* v. *Goode*, 423 U.S. 362 (1976) (future mishandling of police misconduct complaints).

But this case does not even require the application of established legal principles to a new context. The Supreme Court has applied these principles in a nearly identical case—one involving indigent Plaintiffs' challenge to bail procedures. In *O'Shea*, 414 U.S. 488, a putative class of plaintiffs, who had been subjected to (allegedly) unlawful bail procedures in the past, sued under § 1983 on behalf of "financially poor persons . . . unable to afford bail" for declaratory and injunctive relief requiring changes to bail procedures. *Id.* at 491-92. Because past bail proceedings were insufficient to justify prospective relief, the plaintiffs necessarily relied on a future injury. *Id.* at 495-96 . The Supreme Court noted:

> [H]ere the prospect of future injury rests on the likelihood that respondents will again be arrested for and charged with violations of the criminal law and will again be subjected to bond proceedings, trial, or sentencing before petitioners. . .. Apparently, the proposition is that *if* respondents proceed to violate an unchallenged law and *if* they are charged, held to answer, and tried in any proceedings before petitioners, they will be subjected to the discriminatory [bail] practices that petitioners are alleged to have followed.

Id. at 496-97. That injury, the Court said, "takes us into the area of speculation and conjecture." *Id.* at 497. It was therefore "too remote to satisfy the case-or-controversy requirement and permit adjudication by a federal court." *Id.* at 498.

As in *O'Shea*, each of the named Plaintiffs has already been subjected to the challenged bail procedures and, in fact, are no longer in custody. *Id.* at 495-96. As in *O'Shea*, any relief altering those bail procedures could therefore affect them only in the future. *Id.* at 496. And as in *O'Shea*, any such future injury is pure "speculation and conjecture." *Id.* at 497. Plaintiffs' future injury depends on this Court speculating that at some unknown time (1) they will commit criminal acts (2) in Harris County (3) be arrested (4) have secured bail set (5) pursuant to an unlawful policy (6) at amounts they cannot pay (7) because they remain too poor to pay a bondsman. That is not "*certainly* impending." *Ctr. for Biol. Diversity*, 937 F.3d at 537. Concluding otherwise would fly in the face of *O'Shea*.

E. Any arguments Plaintiffs might offer in response fail.

Plaintiffs will likely argue that this Court cannot consider the jurisdictional issues discussed here because it entertained similar challenges in the *ODonnell* case. They may also suggest that the class-action nature of this case somehow alters the jurisdictional analysis, or that finding a lack of jurisdiction unfairly forecloses all avenues to relief. These arguments fail.

Plaintiffs may argue that the *ODonnell* case, which adjudicated similar claims, settles the question of subject-matter jurisdiction. But no party—either in this court or in the Fifth Circuit—ever raised the jurisdictional defects identified here. And a jurisdictional defect "neither noted nor discussed" in a prior decision does not permit a court to ignore the limits of subject-matter jurisdiction in a later case. *Ariz. Christ. Sch. Tuition Org.* v. *Winn*, 563 U.S. 125, 144-45 (2011). Even "drive-by jurisdictional rulings" in an earlier decision by the Supreme Court itself "have no precedential

effect." *Steel Co.*, 523 U.S. at 91. The existence of any latent jurisdictional defects "neither noted nor discussed" in the course of the *ODonnell* proceedings therefore does not permit this Court to ignore the limits of subject-matter jurisdiction here.

Alternatively, Plaintiffs may argue that the jurisdictional analysis is somehow different because this is a putative class action. That is also wrong. "That a suit may be a class action . . . adds nothing to the question of standing." *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996). Just last year, in a putative class action like this one, the Supreme Court held that "federal courts lack jurisdiction if no named Plaintiff has standing." *Frank*, 139 S. Ct. at 1046. Simply put, "if none of the named Plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea*, 414 U.S. at 494. That is why the mootness exception for injuries capable of repetition yet evading review in class action cases, *see Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975), "is not implicated" here, *Stringer v. Whitley*, 942 F.3d 715, 724-25 (5th Cir. 2019). "Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum." *Friends of the Earth, Inc.* v. *Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 191 (2000). This result is only compounded by the fact that Plaintiffs have made no efforts, outside of filing their initial motion, for well over a year to have this Court certify their putative class.

Finally, Plaintiffs may argue that this outcome is simply unfair because no one can pursue their claims. Even if that were true, it would not matter. The absence of a party with standing to sue "is not a reason to find standing." *Valley Forge Christian Coll.* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 489 (1982). In any case, Plaintiffs *had* other routes open to them. For example, they might have been able to seek money damages based on their past injuries. *See Lyons*, 461 U.S. at 105. They could have filed their complaint seeking prospective relief after arrest but before their bail proceedings commenced, at which time a future injury might not have been speculative. *See O'Shea*, 414 U.S. at 495-96. Or they could have challenged their bail orders in state habeas proceedings. The Supreme Court has pointed to state habeas review "on a case-by-case basis" as an adequate mechanism for pressing bail challenges. *Martin*, 467 U.S. at 280-81. And Texas prisoners routinely seek (and obtain) relief in state court. *See, e.g.*, *Ex parte Clark*, 537 S.W.2d 40, 42 (Tex. Crim. App. 1976) (reducing bail from $40,000 to $10,000); *Ex parte Sellers*, 516 S.W.2d 665, 666 (Tex. Crim. App. 1974) (vacating and remanding with instructions to consider evidence of ability to pay).

Federal habeas review, moreover, is a noted exception to the *Rooker-Feldman* doctrine. *In re Reitnauer*, 152 F.3d 341, 343 n.8 (5th Cir. 1998). But habeas petitioners must proceed on an individual basis—not as a class. *See, e.g.*, *Norton* v. *Parke*, 892 F.2d 476, 478 (6th Cir. 1989); *Rouse* v. *Mich.*, No. 2:17-CV-12276, 2017 WL 3394753, at *1 (E.D. Mich. Aug. 8, 2017) ("It is improper for different petitioners to file a joint habeas petition."); *United States ex rel. Bowe* v. *Skeen*, 107 F. Supp. 879, 881 (N.D.

W.Va. 1952) ("Several applicants can not join in a single petition for a writ of habeas corpus.").

On this Court's March 31, 2020, conference call, the Court observed that it was "not sure why the[] [Plaintiffs] relied on" 42 U.S.C. § 1983, rather than seeking habeas corpus relief. The previous paragraph suggests the answer: Habeas review provides the only way around the jurisdictional defects that bar this suit, but Plaintiffs' counsel likely knew they could pursue habeas relief only as individuals in separate habeas petitions. Unwilling to seek relief for individual plaintiffs, Plaintiffs' counsel took a gamble on a class-action under § 1983 instead. And because Plaintiffs are "the master[s] of the complaint," *Holmes Grp., Inc.* v. *Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002), this Court may not award habeas relief they never asked for, *see* Compl., ECF No. 1 at 8 (nowhere listing a cause of action under 28 U.S.C. § 2241). In any event, even if this Court could *sua sponte* treat Plaintiffs' complaint as a habeas corpus "application," 28 U.S.C. § 2242, it could not award habeas relief on a class-wide basis, much less on an uncertified class.

Because this Court lacks subject-matter jurisdiction over any of the named Plaintiffs' claims for relief, it should not only deny injunctive relief, but also dismiss this suit in its entirety. *See* Fed. R. Civ. P. 12(b)(1).

F. Releasing felons during a time of public crisis endangers public safety and, therefore, is not in the public interest.

"The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction." *R.R. Comm'n of Tex.* v. *Pullman Co.*, 312 U.S. 496, 500 (1941). Accordingly, federal courts often

consider two factors—the balance of the equities and the public interest—together. *See, e.g.*, *Winter* v. *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26-31 (2008); *see also Weinberger*, 456 U.S. at 312.

Public safety is a paramount public interest. *Winter*, 555 U.S. at 23, 25 (holding that public interest in safety and security "plainly outweighs" countervailing environmental interests, "even if plaintiffs have shown irreparable injury"); *see also Houston Chronicle Pub. Co.* v. *City of League City, Tex.*, 488 F.3d 613, 622 (5th Cir. 2007) (recognizing "public safety" as "a compelling interest at the heart of government's function"). The requested injunctive relief will imperil public safety.

On March 31, 2020, news broke that Harris County Judge Lina Hidalgo intended to order the release of pre-trial arrestees that the County considered low-risk. Judge Hidalgo excluded from this list those arrestees previously convicted of a crime that involves physical violence or the threat of physical violence; those currently arrested for a crime that involves physical violence or the threat of physical violence that is supported by probable cause; and those not being held on one or more charges of DWI (3rd or more) or burglary (habitation).

When asked by this Court if they would be satisfied with Judge Hidalgo's generous proposal, Plaintiffs balked, making it clear that they also wanted the arrestees excluded from the proposed order released. Thus, while they do not want to acknowledge as much, *Plaintiffs apparently seek to release violent felons, burglars, and habitual drunk drivers back into our communities during a pandemic.* That cannot conceivably be in the public interest.

What Plaintiffs fail to understand is that unleashing these felons at this critical time endangers public safety, strains already limited police resources, and places victims back in harm's way. *See* Ex. 1, *Acevedo Dec.;* Ex. 2, *Harvey Dec.;* Ex. 3, *Johnson Dec.*; Ex. 4, *Miller Dec.*; Ex. 5, *Grigg Dec.*; Ex. 6, *Shilson Dec.*; Ex. 7, *Kraus Dec.*; Ex. 8, *Mar. 31, 2020 Letter from Garland Police Dep't; Ex.* 9, *Scesney Dec.*; Ex. 10, *Spivey Dec.*; Ex. 11, *Deaver Dec.*; Ex. 12, *Spires Dec.*; Ex. 13, *Drain Dec.* A recent study conducted by a former federal judge shows that the unsecured pretrial release of arrestees pursuant to bail-reform efforts in Chicago, Illinois has already led to an increase in violent crimes there. *See* Paul G. Cassell & Richard Fowles, *Does Bail Reform Increase Crime?* (Univ. of Utah Coll. of Law, Research Paper No. 349, Mar. 2, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541091; Paul Cassell, *Bail Reform in Chicago Appears to Have Increased Crime*, Volokh Conspiracy (Feb. 19, 2020), https://bit.ly/3b3eRm9.

Recent events in Texas confirm what this new study suggests. Just last month, Jacques Dshawn Smith murdered two people one week after being having bail set in Dallas County. Ex. 3, *Johnson Dec.* ¶ 8. Smith was released on secured bail of $15,000. But this this example highlights the kind of arrestees that Plaintiffs want released into our communities. That is plainly unacceptable, as the Dallas community's reaction demonstrates. This double homicide has drawn "additional attention to a larger trend in the bail system in Dallas County, which was the subject of very vocal frustration in the Dallas City Council's Public Safety and Criminal Justice Committee." Charity Nicholson, *Dallas County Bail Reform Policies Scrutinized*

Following Increase in Homicides, The Texan (Feb. 26, 2020), https://perma.cc/A397-MUKW; *cf.* Katie Honan, *NYPD Officials Say New Bail Law Is Leading to a Crime Increase*, Wall St. J. (Mar. 5, 2020), https://on.wsj.com/2IWFai1.

The threat to public safety is particularly acute for victims of domestic violence. Arrestees that this Court orders released would be required to stay at home under existing shelter-in-place orders. That will expose domestic violence victims—a spouse, a child, an elderly relative—to further violence at the hands of the same attacker. *See* Ex. 1, *Acevedo Dec.* ¶ 12; Ex. 19, *Kahan Dec.* ¶7 ; Ex. 3, Johnson Dec. ¶ 10. That tragic story is already playing out across the world. *See* Emma Graham Harrison et al., *Lockdowns Around the World Bring Rise in Domestic Violence*, Guardian (Mar. 28, 2020), https://bit.ly/2xsxyBs; Marissa J. Lang, *Domestic Violence Will Increase During Coronavirus Quarantines and Stay-at-Home Orders, Experts Warn*, Wash. Post (Mar. 27, 2020), https://wapo.st/2QRVOn4. Domestic violence is a significant driver of homicides. Ex. 1, Acevedo Dec. ¶ 12.

But the risks posed by to the public is not limited to those arrestees with a history for violence. Burglary of Habitation, Burglary of a Building, Burglary of a Motor Vehicle, Unauthorized use of a Motor Vehicle, DWI, Theft, and a multitude of other offenses wreak more havoc on a community than most violent crimes. Ex. 19, *Kahan Dec.* ¶ 9; Ex. 14, *Rushin Dec.* ¶ 7. These communities are "being repeatedly victimized by the same offenders who were often released before the paperwork was even filed." *Id.* Under Plaintiffs' requested relief, burglars would be free to roam the streets committing numerous offenses. Since 2015, law enforcement officers in Harris

County arrested 1,697 individuals who were charged with either a burglary or robbery offense and then released on bond. Ex. 16, *McCraw Dec.* ¶ 8. Those same 1,697 suspects were arrested and charged with 2,374 new felony crimes committed after their release. *Id.* Releasing such individuals during the coronavirus pandemic presents a "target rich environment" for burglars to exploit as businesses are closed pursuant to governmental mandates and proprietors are encouraged to stay home with a diminished ability to monitor their closed storefronts. *See* Ex. 1, *Acevedo Dec.* ¶ 8.

Likewise, released fraudsters will be presented with new opportunities to prey on Texans, especially the elderly, during this pandemic. Zack Friedman, *Beware These Coronavirus Scams*, Forbes (Mar. 20, 2020), hhttps://bit.ly2xzJT6B. And habitual DWI offenders certainly endanger the public through intoxicated driving—something that is especially troubling in light of the fact that Houston, Harris County, and Texas already lead the nation in DWI injury and fatal crashes. Ex. 1, *Acevedo Dec.* ¶ 12.

The requested relief would further threaten public safety by placing additional strain on already limited law enforcement resources and divert them from aiding with the pandemic control efforts. *See Id.* at ¶ 5; Ex. 3, *Johnson Dec.* ¶ 3; Ex. 4, *Miller Dec.* ¶ 3. The risk of this harm is compounded by the likelihood that law enforcement officers will contract COVID-19 by having to apprehend recidivists released from a jail population known to be at risk for having contracted the virus. As of March 29, 2020, 11 Houston Police Department officers have tested positive for COVID-19

related to their duties, with close to 50 more awaiting test results. Ex. 1, *Acevedo Dec.* ¶ 6. The general population would likewise face a heightened risk of infection by the hasty mass release requested by Plaintiffs.

The impact is not limited to Houston. Although Pearland is in Harris, Brazoria, and Ft. Bend Counties, 41 percent of arrests there involve arrestees from Houston. Ex. 12, *Spires Dec.* at ¶ 6. And communities in the Dallas-Fort Worth Metroplex have also fallen victim to gangs that travel from Houston to victimize innocent locals. Ex. 14, *Rushin Dec.* at ¶ 8.

The Director of Law Enforcement for the Office of the Attorney General (and former Texas Ranger) David Maxwell states that "[t]he State of Texas has a critical problem with apprehending felons across this state on several levels. Most of the local agencies do not have the man power and resources to actively pursue violators as they are consumed with answering the daily crimes being reported and pursuing fugitives that are not showing up for court dates arising out of local charges. To release more criminals back on the streets would only exacerbate an already difficult problem." Ex. 15, *Maxwell Dec.* at ¶ 7.

Finally, the requested injunction will disserve the public interest by releasing felony arrestees without proper consideration of the safety, wellbeing, and legal rights of victims. Ex. 11, *Deaver Dec.* ¶ 9. The mass release of felons without an individualized assessment by a judge and input by victim advocates will undoubtedly put victims at risk and create future victims. Ex. 19, *Kahan Dec.* ¶ 14. For example, DPS Troopers and Special Agents have arrested 373 robbery suspects in Harris

County since April 2017 in support of local law enforcement agencies in Harris County at the direction of the Governor. Ex. 16, *McCraw Dec.* ¶ 7. These 373 robbery suspects belong to 188 robbery crews that were responsible for 620 armed robberies. *Id.* Members of these robbery crews tend to be career criminals who present a high probability of quickly reoffending upon release. *Id.* Several of the robbery suspects were on bond at the time of their arrest. *Id.*

In sum, the State Intervenors have grave concerns about the increased risk of harm to the public and the additional burden on already-strained law enforcement resources. It is no response to say that these "concerns about the preliminary injunction [are] 'speculative.'" *Winter*, 555 U.S. at 27. As the Supreme Court has noted, this kind of uncertainty in uncharted waters "is almost always the case when a plaintiff seeks injunctive relief to alter a defendant's conduct." *Id.* Instead, this Court should "defer to [the state] officers' specific, predictive judgments about how the preliminary injunction" would impact public health, public safety, law enforcement, and State's criminal justice system. *Id.*

G. Plaintiffs' Supplemental Brief Confirms that this Court May Not Grant Relief.

Much of what Plaintiffs offer in their supplemental brief hurts them and helps the State Intervenors.

In their supplemental brief, Plaintiffs dial up the rhetoric in an effort to release thousands of felony arrestees from custody. Suppl. Br. 1, 8 (ECF No. 44). But they endeavor to assure the Court that the emergency relief they seek is "limited" and "temporary" and could easily and quickly be undone. *Id.* at 1-2.. The supposed

exigencies, which today are "a matter of life and death," *Id.* 8, "could dissipate in short order" only days from now, *Id.* at 1.

This argument demonstrates the fundamental flaw in Plaintiffs' request for emergency relief. Even if they otherwise satisfy the preliminary injunction factors, the relief Plaintiffs request is improper because it seeks to deviate from—not preserve—the *status quo ante*. It is black letter law that a temporary restraining order or a preliminary injunction is designed to *preserve* the preexisting state of affairs, not bring a new state of affairs into being. *See* 11A WRIGHT & MILLER, FED. PRAC. & PROC. CIV. §§ 2948, 2951 (3d ed.) (noting "the purpose of the preliminary injunction is the preservation of the status quo" and "[t]he [TRO] is designed to preserve the status quo"); *see also Heckler* v. *Redbud Hosp. Dist.*, 473 U.S. 1308, 1313-14 (1985) (Rehnquist, J., in chambers).

Decades of Fifth Circuit precedent establishes this principle. *See, e.g, Sorenson* v. *Raymond*, 532 F.2d 496, 498-99 (5th Cir. 1976) (holding an earlier preliminary injunction could not ground collateral estoppel "because the judge in a preliminary injunction hearing seeks only to preserve the status quo"); *Mercury Motor Exp., Inc.* v. *Brinke*, 475 F.2d 1086, 1095 (5th Cir. 1973) (noting "[t]he intended function of a preliminary injunction is to preserve the status quo" and affirming district court's decision denying an injunction because that "would best preserve the status quo"); *Brannen* v. *Willoughby*, 257 F.2d 580, 581 (5th Cir. 1958) (per curiam) (noting the "sole function [of a temporary or preliminary injunction] is to preserve the status quo"); *Exhibitors Poster Exch., Inc.* v. *Nat'l Screen Serv. Corp.*, 441 F.2d 560, 561 (5th

Cir. 1971) (noting "[t]he purpose of a preliminary injunction is to preserve the status quo"); *Hoeme* v. *Jeoffroy*, 100 F.2d 225, 226 (5th Cir. 1938) (noting the effect of granting the requested injunction "would not have been to preserve the status quo pending suit, [but] would have been . . . to destroy it").

The status quo as of today is that thousands of putative class members are in custody. Plaintiffs admit that they ask to change that status quo by seeking to be released from custody. That simple fact demonstrates why preliminary relief is inappropriate because "[t]he function of a preliminary injunction is merely to preserve the status quo." *Morgan* v. *Fletcher*, 518 F.2d 236, 239 (5th Cir. 1975). But it also demonstrates why Plaintiffs' suggestion that this Court could easily "revisit" any temporary relief is a false promise. Suppl. Br. 2. If the Court releases thousands of felony arrestees tomorrow, how will it ensure that law enforcement authorities will ever get them back? Because the *new* status quo that Plaintiffs seek requires a loss of control, this Court could not easily unwind that relief. In this case, therefore, "the status quo, which a preliminary injunction seeks to maintain, would best be preserved by keeping the parties in their present positions." *Am. Family Life Assurance Co. of Columbus* v. *Aetna Life Ins. Co.*, 446 F.2d 1178, 1180 n.6 (5th Cir. 1971).

More fundamentally, Plaintiffs have not addressed the impossibility of awarding class-action relief in this procedural posture. This Court cannot award class-wide relief without first certifying a Plaintiff class. *See* Fed. R. Civ. P. 23(a)-(b). And this Court cannot certify a class without first holding a robust class certification

hearing. A plaintiff must "affirmatively demonstrate his compliance with" Rule 23, *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 348-50 (2011), in order to justify a departure from "the usual rule that litigation is conducted by and on behalf of the individual named parties only," *Califano* v. *Yamasaki*, 442 U.S. 682, 700-01 (1979). Just last week, the Fifth Circuit "cautioned that a district court must conduct a rigorous analysis of the rule 23 prerequisites before certifying a class." *Cruson* v. *Jackson Nat'l Life Ins. Co.*, — F.3d —, 2020 WL 1443531, at *7 (5th Cir. Mar. 25, 2020).

There is simply no way that this Court could, in compliance with Rule 23, order preliminary injunctive relief for thousands of prisoners two days from now and without formally "'find[ing],' not merely assum[ing], the facts favoring class certification." *Unger* v. *Amedisys Inc.*, 401 F.3d 316, 321 (5th Cir. 2005). That problem is independent of Plaintiffs' other shortcomings. In other words, even if this Court ignores the Fifth Circuit's decisions in the *ODonnell* case, looks past the subject-matter jurisdiction defects that plague this suit, and finds that Plaintiffs satisfy the preliminary injunction factors, all that this Court would have power to do is award preliminary relief to *the three named Plaintiffs*. (Of course, the Court could not do even that because as their counsel admitted yesterday, all three were released from custody weeks ago.)

It is true that a court need not certify a class before awarding relief that may *incidentally* benefit third parties that are not before the court. *See* 7AA WRIGHT & MILLER, FED. PRAC. & PROC. CIV. § 1785.2 (3d ed.); *Kans. Health Care Ass'n* v. *Kans.*

Dep't of Social Rehab., 31 F.3d 1536, 1548 (10th Cir. 1994). But this Court's order demonstrates that is not what is at stake here. *See* Order, ECF No. 34 at 1 (noting that Pseek relief ordering that they be "promptly released" or have "their current bail status reheard"). Plaintiffs ask this Court to order state courts to revisit their past bail determinations. As already explained above, this Court has no power to do so under the *Rooker-Feldman* doctrine. But even assuming that problem away, ordering new bail determinations for the named Plaintiffs could not incidentally aid the putative class. Plaintiffs may respond that this Court could award declaratory or injunctive relief directing County officials to alter a policy going forward. That policy might incidentally benefit third parties who may later be subject to bail proceedings. But as already discussed above, Plaintiffs lack Article III standing to seek that relief.

Plaintiffs' supplemental response essentially admits that they have a separate Article III standing problem. Namely, Plaintiffs admit that the only defendants they sued "have no state-law authority . . . to act at all." Suppl. Br. 4. Those defendants therefore cannot redress the harm that Plaintiffs fear. Article III standing, however, requires a plaintiff to show that is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (quotation omitted). Plaintiffs' own pleadings affirmatively demonstrate the opposite. This subject-matter jurisdiction problem is over and above the *Rooker-Feldman* bar and the lack of an injury in fact detailed above.

Plaintiffs also baldly assert that "there are no other options." Suppl. Br. 4. As this Court has recognized, that is untrue. Plaintiffs do not allege that they even

tried to obtain habeas relief for any of the named Plaintiffs. Without trying, it is impossible to know whether state courts are incapable of affording relief. That is precisely why federal habeas review requires state petitioners to exhaust state court remedies before coming to federal court. *See* 28 U.S.C. § 2254(b)(1)(A); *Rose* v. *Lundy*, 455 U.S. 509, 515-19 (1982). Here by contrast, Plaintiffs did the opposite—they ran to federal court seeking an injunction on behalf of 4,000 people without even trying to obtain habeas relief on behalf of a single class representative. If, as Plaintiffs admit, "it is unclear whether, when, or how bail hearings will occur," Suppl. Br. 5, that is because they have not even tried that route. Plaintiffs cannot turn that vice—their failure to exhaust available state remedies—into a virtue.

The discussion at this Court's most recent telephonic hearing is a perfect example. County authorities are working to quickly reduce the jail population by providing a one-to-one remedy. At the start of the call, the Court explained that it is not contemplating any relief that is barred by Governor Greg Abbott's recent executive order. *See* Executive Order GA 13, Office of Tex. Governor (Mar. 29, 2020). Counsel for Judge Hidalgo confirmed that Judge Hidalgo intends to issue an order to the same effect. Further discussion confirmed that the County Judge's order "includes those individuals" for whom this Court is contemplating relief and may even "go beyond" them. Recognizing that state and local authorities are potentially remedying the wrongs this Court would remedy, Plaintiffs' counsel was forced to admit that they *do* seek the release of violent felony arrestees. The fact that Plaintiffs' counsel presses

on while admitting it is "unclear" which individuals may obtain relief from local officials demonstrates their disregard for federalism.

On the merits, Plaintiffs simply ignore *ODonnell II* when they claim they are entitled to the substantive right to be released. Suppl. Br. 5-6. As noted above, the Fifth Circuit has already rejected that argument. This Court knows the story well. After the Court initially expanded the scope of injunctive relief to include mandatory release in certain scenarios, the Fifth Circuit reversed and ordered the Court to comply with *ODonnell I*. *See ODonnell II*, 900 F.3d at 225-26, 228. It held that this Court's injunction "smuggl[ed] in a substantive remedy" for a non-existent substantive right. *Id.* at 228. Plaintiffs, apparently realizing that free-standing substantive due process is out of bounds, make a pass at repackaging their claim for substantive relief under the Equal Protection Clause. Suppl. Br. 5. But of course, the Equal Protection Clause was at issue in *ODonnell*, and the Fifth Circuit rejected it as a basis for substantive relief: "The due process *and equal protection relief* found sufficient in *Odonnell I* did not contemplate release, and it follows that such relief is improper." *ODonnell II*, 900 F.3d at 228; *see also ODonnell I*, 892 F.3d at 152, 161-63. *ODonnell* forecloses Plaintiffs' attempt to wrest substantive relief from the Equal Protection Clause.

Finally, Plaintiffs point to a recent Sixth Circuit decision. Suppl. Br. 7 (citing *McNeil* v. *Cmty. Probation Servs.*, 945 F.3d 991 (6th Cir. Dec. 23, 2019)). But that case seemingly had none of the subject-matter jurisdiction problems that plague this case. Standing was not even litigated in *McNeil*, perhaps because some of the named

plaintiffs (unlike here) obviously had it: When the complaint was filed, a judge had issued a warrant ordering Indya Hilfort's arrest and imposing secured bail, but Hilfort had not yet been arrested but remained out on probation. *McNeil*, 1:18-cv-00033, ECF 41 at 63-64, ECF 212 at 3-4. An order enjoining the sheriff, then, would have remedied Hilfort's certainly impending future injury. (But Plaintiffs have no such injury here.) And it would have encountered no *Rooker-Feldman* shoal because there, unlike here, the federal court was not asked to revisit the previous bail determination.

CONCLUSION

The Court should deny Plaintiffs' request for preliminary injunctive relief. Indeed, it should dismiss this suit in its entirety for lack of subject-matter jurisdiction.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

ERIC A. HUDSON
Special Counsel
Special Litigation Unit
Texas Bar No. 24059977
Southern District ID: 1000759
Eric.Hudson@oag.texas.gov
P.O. Box 12548, Capitol Station Austin, Texas 78711-2548
(512) 936-1414 | FAX: (512) 936-0545

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief for General Litigation Division

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS
Special Litigation Counsel
Attorney-in-Charge
Texas Bar No. 24077727
Southern District No. 2964087
Adam.Biggs@oag.texas.gov

MATTHEW BOHUSLAV
Assistant Attorney General
Texas Bar No. 1303218
Southern District ID: 1303218
Matthew.Bohuslav@oag.texas.gov

DOMINIQUE G. STAFFORD
Assistant Attorney General
State Bar No. 24079382
Southern District ID: 3195055
Dominique.Stafford@oag.texas.gov
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 | FAX: (512) 320-0667

COUNSEL FOR THE STATE INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent by electronic notification through ECF by the United States District Court, Southern District of Texas, Houston Division, on April 1, 2020 to all parties of record.

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS
Special Litigation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, *et al.*, *Plaintiffs*,	§	
v.	§	Case No. 4:19-cv-00226
HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§	

EXHIBIT LIST

Exhibit No.	Description
1	Declaration of Houston Chief of Police Art Acevedo
2	Declaration of Allen Police Chief Brian Harvey
3	Declaration of Arlington Police Chief Will Johnson
4	Declaration of Police Chief Derick Miller (City of Carrollton)
5	Declaration of Deer Park Chief of Police Gregg Grigg
6	Declaration of Frisco Police Chief David Shilson
7	Declaration of Fort Worth Police Chief Edwin Kraus
8	March 31, 2020 Letter from Garland Police Department
9	Declaration of Daniel Scesny (City of Grand Prairie)
10	Declaration of Irving Police Chief Jeff Spivey
11	Declaration of Lewisville Police Chief Kevin Deaver
12	Declaration of Pearland Police Chief Johnny Spires
13	Declaration of Plano Police Chief Ed Drain
14	Declaration of Gregory W. Rushin (City of Plano)
15	Declaration of David Maxwell (Texas Attorney General's Office)
16	Declaration of Director of Department of Public Safety Steven McCraw
17	March 31, 2020 Letter from Texas Police Chiefs Association
18	Declaration of Bob Bushman (National Narcotic Officers' Associations' Coalition)

Exhibit No.	Description
19	Declaration of Andy Kahan (Crime Stoppers of Houston)
20	Resolution - Major County Sheriffs of America
21	Affidavit of James Leitner (Harris County District Attorney)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF HOUSTON CHIEF OF POLICE ART ACEVEDO

1. My name is Art Acevedo. I currently serve as Chief of the Houston Police Department. I have served in this role since November 30, 2016.

2. I lead a department of 5,300 sworn law enforcement officers and 1,000 civilian support personnel. In addition to my role as Chief of Police, I am the President of the Major Cities Chiefs Association ("MCCA"). MCCA is a professional association of Chiefs and Sheriffs representing the largest cities in the United States and Canada. MCCA membership is comprised of Chiefs and Sheriffs of the sixty-nine largest law enforcement agencies in the United States and nine largest in Canada.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an extraordinary and unprecedented order from this Court to release over 4,000 felons from the Harris County Jail.

4. It is also my understanding that they seek to release all inmates age 55 or older regardless of the crimes for which he or she is charged or consideration of prior criminal history. This specific population includes extremely violent individuals whose release would pose a serious threat to their victims, victims' families, and the extended community. A representative sample of the crimes and number of individuals charged per category is as follows:

- Murder 16
- Aggravated assault with a deadly weapon 96
- Aggravated assault of a family member 44

- Aggravated assault of a peace officer 16
- Aggravated sexual assault of a child under 14 24
- Assault of family member with previous conviction 27
- 3rd time DWI 37
- Failure to comply sex offender 21
- Felon in possession of a firearm 16
- Indecent sexual contact with a child 17

5. Based on my training, experience, and understanding of the current circumstances on the ground, I believe that such a mass release of felons would not only fail to serve the public interests, but furthermore make our streets less safe. This would put additional strain on already limited law enforcement resources and divert them from aiding with the pandemic control efforts. This strain will not only be felt in Houston, but also throughout the entire State of Texas and nation because Plaintiffs' request does not include safeguards for ensuring these suspects and felons remain in Houston after their release.

6. We are in an unprecedented time for our country, state and Harris County. The men and women that serve on the police department here have risked their lives to protect and serve during these trying times. The police department is working on limited resources. As of this draft, 11 Houston Police Department officers have tested positive for COVID-19 related to their duties, with close to 50 more awaiting test results. If Harris County releases high-level offenders from jail, our resources will be stretched even further. We should all be concerned about the wholesale release of individuals charged with violent crimes. There is a high likelihood that some actors that are released will subsequently commit more crimes. We must prevent this from occurring. We will not be able to keep up with demand and the high likelihood of repeat offenses.

7. It is my understanding that low-level, non-violent offenders have already been released from jail and that the jail is already close to empty of these offenders, which only leaves the violent and pervasive offenders. Thousands of persons charged with serious felony offenses remain behind bars and that is appropriate. These are the people that Plaintiffs want to release without a proper judicial risk assessment balancing the alleged risk of harm to them due to the coronavirus versus the risk of harm to public safety if they are released or the consideration of other alternatives like testing and isolation of positive inmates within the jail or the opening of another jail facility.

8. Those who remain are awaiting trial for violent crime or are habitual offenders. These offenders must not be released without a assessment by a judge to ensure that we weigh the risks posed to public safety and security on an individual case-by-case basis. The last thing our community needs are decisions that further exacerbate public anxiety and risk to the people we serve. Releases of persons charged with high-level offenses place the community in grave danger and must be prevented. Violent and habitual offenders (especially burglars) need to remain in quarantine in jail. With many

businesses closed due to the Harris County mandated shutdown, the last thing these businesses need is the release of habitual burglars to a target rich environment.

9. There are some public officials who believe no one should be in jail pre-trial. Using the pandemic to advance that agenda is wrong, and counter-productive to legitimate criminal justice reform efforts and public safety.

10. For example, it is my understanding that David Cruz, a man charged with murder, was recently released on a PR bond solely due to the current COVID-19 concerns in the jail population. This is extremely disturbing. Imagine how the victim's family members and witnesses feel, not to mention the unnecessary anxiety caused to the general public on hearing that murder suspects are being released without proper consideration for its safety. We cannot forget about the plaintiffs that are not in this lawsuit, the victims.

11. As illustrated above, release orders based solely on the amount of bail would place the public at risk. I agree with Plaintiffs that generally people should not be held behind bars simply because of their inability to post a bail. Instead, an assessment of the risk to public safety, risk of reoffending, and risk of flight, should be the determining factors. In Harris County, it is common knowledge that too often magistrates and judges fail to assess these risk factors and arbitrarily assign PR and low bond in cases where the individuals are facing charges for violent crimes, have previous convictions for violent crimes, and/or are habitual offenders.

12. Likewise, releasing felons accused of domestic violence and forcing them under the shelter in place order to stay in their homes with their victim(s) is not only dangerous, but also cruel. This is especially true at this moment in time, when we are experiencing an uptick in domestic violence; sadly, domestic violence is a significant driver of homicides.

13. The danger is not limited to violent offenders. Take for example felony DWI offenses. Putting people accused of habitual drunk driving or intoxication manslaughter on the roads where they are free to drink and drive again places everyone at risk. I find it important to note that our city, county, and state are tragically already national leaders in DWI injury and fatal crashes.

14. In closing, I respectfully urge the Court to require a process which is transparent, includes all of the aforementioned considerations, and also includes these measures: testing for COVID-19 to ensure that we are not spreading the virus unwittingly by releasing infected individuals out of a controlled and isolated environment; assurance of housing for those being released; and appropriate supervision. I would also urge that Harris County review alternatives to a mass release of dangerous persons as requested by the Plaintiffs, such as activating a standalone jail facility for isolation purposes. COVID-19 is not the only infectious disease that afflicts county jails. The type of drastic measures requested by the Plaintiffs should not be granted without first considering other options.

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

Date: March 29, 2020

Art Acevedo
Houston Police Chief
Houston Police Department

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF ALLEN POLICE CHIEF BRIAN HARVEY

1. My name is Brian Harvey. I currently serve as Chief of the Allen Police Department in Collin County, and have served in this role since February 2012.

2. I lead a department of 141 sworn law enforcement officers and 60 civilian support personnel. In addition to my role as Police Chief, I am a past president of the North Texas Police Chief's Association and currently a Regional Director, Legislative Coordinator and Violent Crime Committee member with the Texas Police Chief's Association.

3. As the number of coronavirus cases explodes across the nation, an increasing number of police departments around the country are experiencing shortages in staffing and resources, as police ranks become sick with or exposed to the coronavirus. This concerning trend raises the issue of how Texas police agencies may hold steadfast to safeguard their communities, even as the virus spreads among law enforcement officers whose work puts them at increased risk of infection.

4. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons on personal recognizance bonds from the Harris County Jail.

Exhibit 2

5. Pursuant to Governor Greg Abbott's executive order issued on March 29th, 2020, I understand that no authority may release any person, who is arrested or previously convicted of a crime that involves physical violence or the threat of physical violence, on personal bond, and I believe low-level, non-violent inmates have already been released from the Harris County Jail, leaving only the violent and pervasive felony offenders.

6. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain already limited law enforcement resources and pose a danger to all Texans.

7. Even though this pandemic is unprecedented, the release of potentially dangerous felons at a time when law enforcements agencies are limited in staffing and resources does not appropriately serve the public at large.

8. I believe these felons, if released, would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the local population. In my 40 years of experience in law enforcement, I know that the unsecured pretrial release of individuals without any bond conditions, especially those accused of serious felonies, directly leads to an increase in violent crime within surrounding communities. For example, in February of 2020, Jacques Dshawn Smith murdered two people and injured an infant in the Dallas Fort Worth metroplex, within one week after being released on bail in Dallas County. Similarly, in November of 2019 Damon White was released on a $1,500.00 bond for Violation of Protective Order and Fleeing. The next day in Allen, Texas he was arrested while planning to inflict harm with a weapon on the same victim and is currently in jail for F/3 Stalking with a $550,000.00 bond.

9. Protecting local Texas communities from recidivistic crime is paramount during this time in which members of the public are particularly vulnerable, including the elderly, victims of domestic violence and burglaries, given that food, shelter, and essential items to carry on a normal quality of life, such as vehicles and money, are limited during this rapidly developing pandemic. Priority safety considerations must also be given to the victims and witnesses of these arrested suspects and convicted offenders, since the unrestricted release of these inmates directly jeopardizes their wellbeing.

10. The release of felons, who were arrested or convicted of domestic violence, inevitably forces victims to shelter in place within the same homes as their abusers, leading to dangerous escalations in life-safety issues for a multitude of victims as well as their minor children.

Exhibit 2

11. Upon their release, arrested or convicted felons of non-violent offenses, such as burglaries of habitation, building, or vehicle, are provided with a target-rich environment in the Dallas Fort Worth metroplex, since many, if not all, non-essential business operations are presently suspended and unmanned.

12. The general Dallas Fort Worth population is susceptible to new online or telephone scams involving the coronavirus, since residents around the metroplex are currently under sheltering in place orders at home. Released fraudsters are, therefore, presented with new opportunities to prey on these Texans, in particular the elderly, during this epidemic.

13. The personal recognizance bond release of felons from the Harris County Jail, who were arrested or convicted of either violent or non-violent crimes, severely compromises the orderly operation of the Texas criminal justice system and wholly contradicts the requirements established by the Code of Criminal Procedure, which mandates bond conditions must be imposed for certain crimes. Such a release also threatens the safety of Texas communities with recidivistic crimes and unjustly disregards the wellbeing of crime victims and witness.

14. For these reasons, I believe releasing felons into the community would not serve the best interest of the public in our current environment and endangers the public, further straining already limited resources.

Date: March 31, 2020

Brian Harvey

I have read the 3 page(s) of this statement and hereby certify that the information contained herein is true and correct to the best of my knowledge.

SWORN AND SUBSCRIBED TO BEFORE ME THIS 31st DAY OF MARCH, 2020.

DEBORAH A GOPLIN
Notary ID #125680896
My Commission Expires
May 4, 2022

Affiant Brian Harvey

Notary Public, State of Texas

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs,* v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants.*	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF ARLINGTON POLICE CHIEF WILL JOHNSON

1. My name is Will Johnson. I currently serve as Police Chief of the Arlington Police Department, and I have served in this role since March of 2013.

2. I lead a department of 680 sworn law enforcement officers and 202 civilian support personnel. In addition to my role as Police Chief, I am a subject matter expert for the Department of Justice and an Executive Fellow for the Police Executive Research Forum. I am also the Vice President of the International Association of Chiefs of Police ("IACP"), which is the world's largest professional association for police leaders with more than 30,000 members in over 160 countries, and I serve on the executive board for the Major Cities Chiefs Association which is comprised of the largest police agencies in the United States and Canada.

3. As the number of coronavirus cases explodes across the nation, an increasing number of police departments around the country are experiencing shortages in staffing and resources, as police ranks become sick with or exposed to the coronavirus. This concerning trend raises the issue of how Texas police agencies may hold steadfast to safeguard their communities, even as the virus spreads among law enforcement officers whose work puts them at increased risk of infection.

4. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons on personal recognizance bonds from the Harris County Jail.

5. Pursuant to Governor Greg Abbott's executive order issued on March 29th, 2020, I understand that no authority may release any person, who is arrested or previously convicted of a crime that involves physical violence or the threat of physical violence, on personal bond, and I believe low-level, non-violent inmates have already been released from the Harris County Jail, leaving only the violent and pervasive felony offenders.

6. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain already limited law enforcement resources and pose a danger to all Texans.

7. Even though this pandemic is unprecedented, the release of potentially dangerous felons at a time when law enforcements agencies are limited in staffing and resources does not appropriately serve the public at large.

8. I believe these felons, if released, would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the local population. In my 26 years of experience in law enforcement, I know that the unsecured pretrial release of individuals without any bond conditions, especially those accused of serious felonies, directly leads to an increase in violent crime within surrounding communities. For example, in February of 2020, Jacques Dshawn Smith murdered two people and injured an infant in the Dallas Fort Worth metroplex, within one week after being released on bail in Dallas County.

9. Protecting local Texas communities from recidivistic crime is paramount during this time in which members of the public are particularly vulnerable, including the elderly, victims of domestic violence and burglaries, given that food, shelter, and essential items to carry on a normal quality of life, such as vehicles and money, are limited during this rapidly developing pandemic. Priority safety considerations must also be given to the victims and witnesses of these arrested suspects and convicted offenders, since the unrestricted release of these inmates directly jeopardizes their wellbeing.

10. The release of felons, who were arrested or convicted of domestic violence, inevitably forces victims to shelter in place within the same homes as their abusers, leading to dangerous escalations in life-safety issues for a multitude of victims as well as their minor children.

11. Upon their release, arrested or convicted felons of non-violent offenses, such as burglaries of habitation, building, or vehicle, are provided with a target-rich environment in the Dallas Fort Worth metroplex, since many, if not all, non-essential business operations are presently suspended and unmanned.

12. The general Dallas Fort Worth population is susceptible to new online or telephone scams involving the coronavirus, since residents around the metroplex are currently under sheltering in place orders at home. Released fraudsters are, therefore, presented with new opportunities to prey on these Texans, in particular the elderly, during this epidemic.

13. The personal recognizance bond release of felons from the Harris County Jail, who were arrested or convicted of either violent or non-violent crimes, severely compromises the orderly operation of the Texas criminal justice system and wholly contradicts the requirements established by the Code of Criminal Procedure, which mandates bond conditions must be imposed for certain crimes. Such a release also threatens the safety of Texas communities with recidivistic crimes and unjustly disregards the wellbeing of crime victims and witness.

14. For these reasons, I believe releasing felons into the community would not serve the best interest of the public in our current environment and endangers the public, further straining already limited resources.

Date: 3/31/2020

[Signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF POLICE CHIEF DERICK MILLER

1. My name is Derick Miller and I am Chief of the Carrollton (Texas) Police Department. I began my career with this department in September 1993 as a police officer and I worked my way through the ranks, serving in almost every aspect of the police department. I was appointed Chief over two years ago. I hold a master's degree in criminology and criminal justice from the University of Texas - Arlington as well as being a graduate of the FBI National Academy, the Senior Management Institute of Policing and the Institute of Law Enforcement Administration. I hold a Master Peace Officer's Certification from the Texas Commission on Law Enforcement.
2. I am in support of the Attorney General's Office and Chief Art Acevedo of the Houston Police Department in vehemently opposing the release of over 4,000 felons from the Harris County Jail in this lawsuit.
3. Based on my on my training, experience and understanding of the current circumstances on the ground throughout the State, I believe that such a release would strain the already limited law enforcement resources and pose a danger to law-abiding citizens. I believe if released, these felons would endanger their communities and put a bigger strain on the community. The strain will not only be felt in Houston, but also throughout the entire State of Texas as well as the nation because the request does not include safeguards for ensuring these suspects and felons remain in Houston after their release.
4. I believe that we are in unprecedented times and the men and women serving in the police department are risking their lives to protect and serve during these trying times. If these high-level offenders are released, the current limited resources will be stretched even further, possibly to a breaking point. There is a high probability that some of the inmates

EXHIBIT 4

who are released will subsequently commit more crimes. We must prevent this from occurring as we will be unable to keep up with this high likelihood of repeat offenses.

5. I believe the offenders who remain in the jail should not be released without an individual judicial risk assessment balancing the alleged risk of harm to the offender due to COVID-19 versus the risk of harm to public safety if released. Moreover, consideration of other alternatives such as testing and isolation of positive inmates within the jail or the opening of another stand-alone jail facility should be considered before releasing these inmates.
6. I would respectfully urge the Court to require a process which is transparent, includes all of the aforementioned considerations and includes measures for testing inmates for COVID-19 to avoid spreading the virus unwittingly by releasing infected individuals out of a controlled and isolated environment. I would urge the Court to review alternatives to a mass release of dangerous persons as requested by this lawsuit, such as activating a stand-alone jail facility for isolation purposes. The type of drastic measures requested by the Plaintiffs in this lawsuit should not be granted without first considering all other options.

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

Derick Miller
Chief of Police
Carrollton Police Department

March 31, 2020

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF DEER PARK CHIEF OF POLICE GREG GRIGG

1. My name is Greg Grigg. I currently serve as Chief of the Deer Park Police Department. I have served in this role since January 5, 2009.

2. I lead a department of 65 sworn law enforcement officers and 32 civilian support personnel. In addition to my role as Chief of Police, I am the President of the Houston Area Police Chiefs Association (HAPCA). HAPCA is a professional association of representing Chiefs, Sheriff's, Command Staff, and line officers of local city, county, state, federal, college/university, transit police, medical center police, school districts, and special law enforcement agencies from seven (7) counties in the Houston metropolitan area. This organization was formed in 1988.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an extraordinary and unprecedented order from this Court to release over 4,000 felons from the Harris County Jail.

4. It is also my understanding that they seek to release all inmates age 55 or older regardless of the crimes for which he or she is charged or consideration of prior criminal history. This specific population includes extremely violent individuals whose release would pose a serious threat to their victims, victims' families, and the extended community. A representative sample of the crimes and number of individuals charged per category is as follows:

- Murder 16
- Aggravated assault with a deadly weapon 96
- Aggravated assault of a family member 44

EXHIBIT 5

- Aggravated assault of a peace officer 16
- Aggravated sexual assault of a child under 14 24
- Assault of family member with previous conviction 27
- 3rd time DWI 37
- Failure to comply sex offender 21
- Felon in possession of a firearm 16
- Indecent sexual contact with a child 17

5. Based on my training, experience, and education, I believe that such a mass release of felons would not only fail to serve the public interests, but furthermore make our streets less safe. This would put additional strain on already limited law enforcement resources and divert them from aiding with the pandemic control efforts. This strain will not only be felt in Houston, but also throughout the entire State of Texas and nation because Plaintiffs' request does not include safeguards for ensuring these suspects and felons remain in Houston after their release.

6. We are in an unprecedented time for our country, state and Harris County. The men and women that serve on the police department here have risked their lives to protect and serve during these trying times. The police department is working on limited resources, and due to our size, and the size of many of the departments represented by HAPCA, a couple of exposures could greatly reduce our ability to respond to basic calls for service. If Harris County releases high-level offenders from jail, our resources will be stretched even further. We should all be concerned about the wholesale release of individuals charged with violent crimes. There is a high likelihood that some actors that are released will subsequently commit more crimes. We must prevent this from occurring. We will not be able to keep up with demand and the high likelihood of repeat offenses.

7. It is my understanding that low-level, non-violent offenders have already been released from jail, and that the jail is already close to empty of these offenders, which only leaves the violent and pervasive offenders. Thousands of persons charged with serious felony offenses remain behind bars and that is appropriate. These are the people that Plaintiffs want to release without a proper judicial risk assessment balancing the alleged risk of harm to them due to the coronavirus versus the risk of harm to public safety if they are released or the consideration of other alternatives like testing and isolation of positive inmates within the jail or the opening of another jail facility.

8. Those who remain are awaiting trial for violent crime or are habitual offenders. These offenders must not be released without an assessment by a judge to ensure that we weigh the risks posed to public safety and security on an individual case-by-case basis. The last thing our community needs are decisions that further exacerbate public anxiety and risk to the people we serve. Releases of persons charged with high-level offenses place the community in grave danger and must be prevented. Violent and habitual offenders (especially burglars) need to remain in quarantine in jail. With many

businesses closed due to the Harris County mandated shutdown, the last thing these businesses need is the release of habitual burglars into a target rich environment.

9. There are some public officials who believe no one should be in jail pre-trial. Using the pandemic to advance that agenda is wrong, and counter-productive to legitimate criminal justice reform efforts and public safety.

10. For example, it is my understanding that David Cruz, a man charged with murder, was recently released on a PR bond solely due to the current COVID-19 concerns in the jail population. This is extremely disturbing. Imagine how the victim's family members and witnesses feel, not to mention the unnecessary anxiety caused to the general public on hearing that murder suspects are being released without proper consideration for its safety. We cannot forget about the plaintiffs that are not in this lawsuit, the victims.

11. As illustrated above, release orders based solely on the amount of bail would place the public at risk. I agree with Plaintiffs that generally people should not be held behind bars simply because of their inability to post a bail. Instead, an assessment of the risk to public safety, risk of reoffending, and risk of flight, should be the determining factors. In Harris County, it is common knowledge that too often magistrates and judges fail to assess these risk factors and arbitrarily assign PR and low bond in cases where the individuals are facing charges for violent crimes, have previous convictions for violent crimes, and/or are habitual offenders.

12. Likewise, releasing felons accused of domestic violence and forcing them under the shelter in place order to stay in their homes with their victim(s) is not only dangerous, but also cruel. This is especially true at this moment in time, when we are experiencing an uptick in domestic violence; sadly, domestic violence is a significant driver of homicides.

13. The danger is not limited to violent offenders. Take for example felony DWI offenses. Putting people accused of habitual drunk driving or intoxication manslaughter on the roads where they are free to drink and drive again places everyone at risk. I find it important to note that our city, county, and state are tragically already national leaders in DWI injury and fatal crashes.

14. We must consider the impact emptying the jail will have on those offenders who will consider this a time of King's X. With the policy of emptying the jail where will the police take a violent offender caught in the act? I do not see how we can let all of the violent offenders go to protect their health, and then put more people back in jail. And, it is a certainty offenders will think they can commit more crimes without being held accountable.

15. In closing, I respectfully urge the Court to require a process which is transparent, includes all of the aforementioned considerations, and also includes these measures: testing for COVID-19 to ensure that we are not spreading the virus unwittingly by releasing infected individuals out of a controlled and isolated environment; assurance of housing for those being released; and appropriate supervision. I would also urge that Harris County review alternatives to a mass release of dangerous persons as requested by the Plaintiffs, such as activating a standalone jail facility for isolation purposes. COVID-19 is not the only infectious disease that afflicts county jails. The type of drastic measures requested by the Plaintiffs should not be granted.

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

Date: March 31, 2020

Gregory L. Grigg
Chief of Police
HAPCA President
Deer Park Police Department

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF FRISCO POLICE CHIEF DAVID SHILSON

1. My name is David Shilson. I currently serve as Chief of the Frisco Police Department, and I have served in this role since November 1, 2019.

2. I lead a department of 220 sworn law enforcement officers and 112 civilian support personnel. In addition to my role as Police Chief, I am a member of the International Association of Chief's of Police(IACP), Texas Police Chief's Association (TPCA), North Texas Police Chief's Association (NTPCA), Member of the Texas Municipal Police Officer's Association (TMPA), and member of the Police Executive Research Forum (PERF).

3. As the number of coronavirus cases explodes across the nation, an increasing number of police departments around the country are experiencing shortages in staffing and resources, as police ranks become sick with or exposed to the coronavirus. This concerning trend raises the issue of how Texas police agencies may hold steadfast to safeguard their communities, even as the virus spreads among law enforcement officers whose work puts them at increased risk of infection.

4. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons on personal recognizance bonds from the Harris County Jail.

5. Pursuant to Governor Greg Abbott's executive order issued on March 29th, 2020, I understand that no authority may release any person, who is arrested or previously convicted of a crime that involves physical violence or the threat of physical violence, on personal bond, and I believe low-level, non-violent inmates have already been released from the Harris County Jail, leaving only the violent and pervasive felony offenders.

6. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain already limited law enforcement resources and pose a danger to all Texans.

7. Even though this pandemic is unprecedented, the release of potentially dangerous felons at a time when law enforcements agencies are limited in staffing and resources does not appropriately serve the public at large.

8. I believe these felons, if released, would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the local population. In my 20 years of experience in law enforcement, I know that the unsecured pretrial release of individuals without any bond conditions, especially those accused of serious felonies, directly leads to an increase in violent crime within surrounding communities. For example, in February of 2020, Jacques Dshawn Smith murdered two people and injured an infant in the Dallas Fort Worth metroplex, within one week after being released on bail in Dallas County.

9. Protecting local Texas communities from recidivistic crime is paramount during this time in which members of the public are particularly vulnerable, including the elderly, victims of domestic violence and burglaries, given that food, shelter, and essential items to carry on a normal quality of life, such as vehicles and money, are limited during this rapidly developing pandemic. Priority safety considerations must also be given to the victims and witnesses of these arrested suspects and convicted offenders, since the unrestricted release of these inmates directly jeopardizes their wellbeing.

10. The release of felons, who were arrested or convicted of domestic violence, inevitably forces victims to shelter in place within the same homes as their abusers, leading to dangerous escalations in life-safety issues for a multitude of victims as well as their minor children.

11. Upon their release, arrested or convicted felons of non-violent offenses, such as burglaries of habitation, building, or vehicle, are provided with a target-rich

environment in the Dallas Fort Worth metroplex, since many, if not all, non-essential business operations are presently suspended and unmanned.

12. The general Dallas Fort Worth population is susceptible to new online or telephone scams involving the coronavirus, since residents around the metroplex are currently under sheltering in place orders at home. Released fraudsters are, therefore, presented with new opportunities to prey on these Texans, in particular the elderly, during this epidemic.

13. The personal recognizance bond release of felons from the Harris County Jail, who were arrested or convicted of either violent or non-violent crimes, severely compromises the orderly operation of the Texas criminal justice system and wholly contradicts the requirements established by the Code of Criminal Procedure, which mandates bond conditions must be imposed for certain crimes. Such a release also threatens the safety of Texas communities with recidivistic crimes and unjustly disregards the wellbeing of crime victims and witness.

14. For these reasons, I believe releasing felons into the community would not serve the best interest of the public in our current environment and endangers the public, further straining already limited resources.

Date: 3/31/2020

[Signature]

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF FORT WORTH POLICE CHIEF EDWIN KRAUS

1. My name is Edwin Kraus. I currently serve as Chief of the Fort Worth Police Department, and I have served in this role since May, 2019.

2. I lead a department of 1,712 sworn law enforcement officers and 512 civilian support personnel.

3. As the number of coronavirus cases explodes across the nation, an increasing number of police departments around the country are experiencing shortages in staffing and resources, as police ranks become sick with or exposed to the coronavirus. This concerning trend raises the issue of how Texas police agencies may hold steadfast to safeguard their communities, even as the virus spreads among law enforcement officers whose work puts them at increased risk of infection.

4. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons on personal recognizance bonds from the Harris County Jail.

5. Pursuant to Governor Greg Abbott's executive order issued on March 29th, 2020, I understand that no authority may release any person, who is arrested or previously convicted of a crime that involves physical violence or the threat

of physical violence, on personal bond, and I believe low-level, non-violent inmates have already been released from the Harris County Jail, leaving only the violent and pervasive felony offenders.

6. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain already limited law enforcement resources and pose a danger to all Texans.

7. Even though this pandemic is unprecedented, the release of potentially dangerous felons at a time when law enforcements agencies are limited in staffing and resources does not appropriately serve the public at large.

8. I believe these felons, if released, would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the local population. In my twenty-seven years of experience in law enforcement, I know that the unsecured pretrial release of individuals without any bond conditions, especially those accused of serious felonies, directly leads to an increase in violent crime within surrounding communities. For example, in February of 2020, Jacques Dshawn Smith murdered two people and injured an infant in the Dallas Fort Worth metroplex, within one week after being released on bail in Dallas County.

9. Protecting local Texas communities from recidivistic crime is paramount during this time in which members of the public are particularly vulnerable, including the elderly, victims of domestic violence and burglaries, given that food, shelter, and essential items to carry on a normal quality of life, such as vehicles and money, are limited during this rapidly developing pandemic. Priority safety considerations must also be given to the victims and witnesses of these arrested suspects and convicted offenders, since the unrestricted release of these inmates directly jeopardizes their wellbeing.

10. The release of felons, who were arrested or convicted of domestic violence, inevitably forces victims to shelter in place within the same homes as their abusers, leading to dangerous escalations in life-safety issues for a multitude of victims as well as their minor children.

11. Upon their release, arrested or convicted felons of non-violent offenses, such as burglaries of habitation, building, or vehicle, are provided with a target-rich environment in the Dallas Fort Worth metroplex, since many, if not all, non-essential business operations are presently suspended and unmanned.

12. The general Dallas Fort Worth population is susceptible to new online or telephone scams involving the coronavirus, since residents around the

metroplex are currently under sheltering in place orders at home. Released fraudsters are, therefore, presented with new opportunities to prey on these Texans, in particular the elderly, during this epidemic.

13. The personal recognizance bond release of felons from the Harris County Jail, who were arrested or convicted of either violent or non-violent crimes, severely compromises the orderly operation of the Texas criminal justice system and wholly contradicts the requirements established by the Code of Criminal Procedure, which mandates bond conditions must be imposed for certain crimes. Such a release also threatens the safety of Texas communities with recidivistic crimes and unjustly disregards the wellbeing of crime victims and witness.

14. For these reasons, I believe releasing felons into the community would not serve the best interest of the public in our current environment and endangers the public, further straining already limited resources.

March 31, 2020

Chief Edwin Kraus
Fort Worth Police Department

EXHIBIT 7

GARLAND
POLICE

Garland Police Department
1891 Forest Lane
Garland, Texas 75042
972-485-4846

Jeff Bryan
Chief of Police

March 31, 2020

TO THE HONORABLE JUDGE LEE H. ROSENTHAL,

I am writing this letter in support of Chief Art Acevedo of the Houston Police Department. It is my understanding that there is a lawsuit pending in the United States District Court Southern District of Texas, Houston Division in Case No. 4:19-cv-00226 (Class Action) seeking to release over 4,000 felons from the Harris County Jail.

Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such release would strain the already limited law enforcement resources and pose a danger to Texans. I believe if released, these felons would endanger their communities that stretch the limited resources of police departments, putting a bigger strain on the community. The strain will not only be felt in Houston. Historically our jurisdiction has been impacted by organized crime crews from Houston and Harris County traveling to our community committing jugging offenses, burglaries and burglaries from motor vehicles, theft offenses, and a wide range of organized criminal activities. The release of inmates in Harris County will ultimately have an adverse impact on our community and throughout Texas, because the request does not include safeguards for ensuring these suspects and felons remain in Houston after their release.

We are in unprecedented times and the men and women serving in the police department have risked their lives to protect and serve during these trying times. Police departments are working on limited resources. If these high-level offenders are released, the resources will be stretched even further. There is a high likelihood that some of the prisoners that are released will subsequently commit more crimes. We must prevent this from occurring. We will not be able to keep up with demand and the high likelihood of repeat offenses.

The offenders that remain in the jail should not be released without an individual judicial risk assessment balancing the alleged risk of harm to the offender due to the Coronavirus versus the risk of

EXHIBIT 8

harm to public safety if they are released or the consideration of other alternatives like testing and isolation of positive inmates within the jail or the opening of another jail facility.

We urge the Court to require a process which is transparent, includes all of the aforementioned considerations, and includes measures for testing inmates for COVID-19 to avoid spreading the virus unwittingly by releasing infected individuals out of a controlled and isolated environment. We urge the Court to review alternatives to a mass release of dangerous persons as requested by this lawsuit, such as activating a standalone jail facility for isolation purposes. The type of drastic measures requested by the Plaintiffs in this lawsuit should not be granted without first considering other options.

Thank you for your consideration,

Jeff Bryan
Chief of Police

Garland Police Department
Garland, Texas
1891 Forest Lane
Office (972) 205-2011
Email: bryanj@garlandtx.gov

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF DANIEL SCESNEY

1. My name is Chief Daniel Scesney, I have been a Texas Peace Officer for approximately nineteen years and currently serve as the Chief of Police for the City of Grand Prairie, Texas.

2. It my understanding that Harris County officials have evaluated inmates and released those offenders whose release without a bond was deemed appropriate. It is also my understanding that the Plaintiffs in this lawsuit are seeking an order requiring the release of the remaining Harris County jail inmates who are habitual offenders awaiting trial and inmates awaiting trial for felony offenses.

3. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain the already limited law enforcement resources and pose a danger to Texans. This pandemic is like nothing we have ever seen before but releasing potentially dangerous felons will not serve the public at large.

4. Every Texas peace officer is charged with the duty of preserving peace within their jurisdiction. As this unprecedented pandemic has limited resources available to first responders, that duty hasn't changed. More first responders are diagnosed with COVID19 every day, yet police officers continue to put

themselves at risk as they protect and serve the public. I believe if released, these felons would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the community.

5. A portion of those inmates who are housed in the jail do not have a home to go to or a job to provide for their basic needs. During this time many hotels have closed or have very limited operations. In addition, many inmates are without the financial resources to afford the other limited housing options, so those inmates who are without homes would likely be living out on the street. This not only increases their community contact and chance of contracting and spreading COVID19, it also increases the chance of those individuals committing offenses to provide for their needs.

6. In addition, law enforcement has continued to see a rise in violent crime over the past month, specifically child abuse and aggravated assault. Many of these are domestic related as families are staying at home in accordance their jurisdiction's orders. The release of inmates, who were arrested for domestic violence and not subject to a protective order, would inevitably place the lives of their victims, including their minor children, at risk as the inmates return home. The release would essentially force those victims to stay in close quarters with their abuser and send the message to the victims that police can't help because the jail has a revolving door. For those inmates who are subject to a protective order preventing them from going home, they would likely be forced to live on the street or violate the protective order which would further place the victim at risk.

7. Releasing "non-violent" habitual offenders such as burglars and fraudsters would also place the public at great risk. As businesses are closed and law enforcement resources are limited, businesses are prime targets for looting and burglary. As departments operate with minimal staffing, responses to violent offenses must take priority over those relating to property. This increases the risk of damage to business owners who are already struggling due to required closures. In addition, members of the public are struggling as layoffs and business closures continue to rise. These circumstances create a perfect environment for seasoned fraudsters to take advantage of innocent citizens who are just trying to survive. In addition, individuals who are facing felony DWI charges due to their prior convictions have shown they are unwilling to stop driving drunk. Not only are a significant number of officers killed every year due to drunk drivers, drunk drivers pose a significant risk to the driving public as they frequently cause crashes. Every time first responders must respond to a vehicle crash, they must come in close contact with a person thereby increasing the risk of exposure and further transmission of COVID19.

8. Furthermore, approving the plaintiff's request would empower criminals to commit more offenses as it would essentially tell offenders the jail has a revolving door and they can't be held during the pandemic.

9. Finally, the courts have previously ruled that that an individualized assessment should be conducted to determine the appropriate bond, and a pandemic does not change the need for an individualized assessment. Bonds are meant to secure appearance at court. Inmates who do not have ties to the community or who have ties to foreign countries are significantly less likely to comply with an order to appear in the future and more likely to move to other jurisdictions to continue their criminal actions.

10. I believe releasing those inmates for whom probable cause exists to believe they have committed felony offenses into the community without an individualized risk assessment would not serve the best interest of the public in our current environment. On the contrary, it would place countless domestic violence victims at risk of being repeatedly victimized, endanger the public at large, and strain the already limited public safety resources.

Date: 3-31-2020

Daniel Scesney, Chief of Police
Grand Prairie, Texas

SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs,*	§	
v.	§	Case No. 4:19-cv-00226 (Class Action)
HARRIS COUNTY, TEXAS, *et al.*, *Defendants*	§	

DECLARATION OF IRVING CHIEF OF POLICE JEFF SPIVEY

1. My name is Jeff Spivey. I currently serve as Chief of the Irving, Texas Police Department. I have served in this capacity since March 2017. Prior to my appointment as Chief of Police, I have served with the Irving Police Department since 1986 in numerous roles, including narcotics investigator and investigator of Crimes against persons.

2. I have read the Declaration of Chief Art Acevedo pertaining to the lawsuit pending in the United States District Court Southern District of Texas, Houston Division in Case No. 4:19-cv-00226 (Class Action) seeking to release over 4,000 felons from the Harris County Jail. I agree with his concerns in all respects for the following reasons.

3. Based on my training, experience, and understanding of the current circumstances throughout the State, I believe that such release would strain the already limited law enforcement resources and pose a danger to Texans. I believe if released, these felons would endanger their communities that stretch the limited resources of police departments, putting a bigger strain on the community.

4. Historically our jurisdiction has been impacted by organized crime crews from Houston and Harris County traveling to our community committing jugging offenses, burglaries and burglaries from motor vehicles, theft offenses, and a wide range of organized criminal activities. Accordingly, the strain will not only be felt in Houston, but also throughout the entire State of Texas and nation because the request does not include safeguards for ensuring these suspects and felons remain in Houston after their release.

5. Apart from concerns about the likely increase in crime if these inmates are released, any inmate presently infected with COVID-19 who is released would greatly contribute to the further spread of the virus throughout the state. These inmates are currently in a controlled and isolated environment where medical care is available. Releasing any inmate without prior testing for the COVID-19 virus would enhance the risk of spread throughout the community, and would also

place the infected inmate in greater danger because he would not likely have the same access to medical care in the community at this time.

6. The men and women serving all communities in Texas - in law enforcement as well as in health care - are risking their lives and their health protecting and serving during this period. Our police departments are working on limited resources. If these high-level offenders are released, our resources will be stretched even further.

7. In order to protect the citizens of Texas and to avoid further taxing law enforcement's already strained resources, no offenders remaining in the Harris County jail should be released without an individual judicial risk assessment balancing the alleged risk of harm to the offender due to the Coronavirus against the risk of harm to public safety if they are released. Alternatively, the Court should consider other alternatives, such as testing and isolation of positive inmates within the jail, or opening another jail facility.

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my ability.

Executed in Dallas County, State of Texas, on the 31st day of March, 2020.

Jeff Spivey, Declarant

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF LEWISVILLE POLICE CHIEF KEVIN DEAVER

1. My name is Kevin Deaver. I currently serve as Chief of the Lewisville Police Department, and I have served in this role since August 2018.

2. I lead a department of 175 sworn law enforcement officers and 81 civilian support personnel. In addition to my role as Police Chief, I am a member of the Texas Police Chiefs Association and the International Association of Chiefs of Police, along with other local civic groups.

3. As the number of coronavirus cases explodes across the nation, an increasing number of police departments around the country are experiencing shortages in staffing and resources, as police ranks become sick with or exposed to the coronavirus. This concerning trend raises the issue of how Texas police agencies may hold steadfast to safeguard their communities, even as the virus spreads among law enforcement officers whose work puts them at increased risk of infection.

4. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons on personal recognizance bonds from the Harris County Jail.

5. Pursuant to Governor Greg Abbott's executive order issued on March 29th, 2020, I understand that no authority may release any person, who is arrested or previously convicted of a crime that involves physical violence or the threat of physical violence, on personal bond, and I believe low-level, non-violent inmates have already been released from the Harris County Jail, leaving only the violent and pervasive felony offenders.

6. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain already limited law enforcement resources and pose a danger to all Texans.

7. Even though this pandemic is unprecedented, the release of potentially dangerous felons at a time when law enforcements agencies are limited in staffing and resources does not appropriately serve the public at large.

8. I believe these felons, if released, would endanger their communities and further stretch the limited resources of police departments, putting a bigger strain on the local population. In my 32 years of experience in law enforcement, I know that the unsecured pretrial release of individuals without any bond conditions, especially those accused of serious felonies, directly leads to an increase in violent crime within surrounding communities. For example, in February of 2020, Jacques Dshawn Smith allegedly murdered two people and injured an infant in the Dallas Fort Worth metroplex, within one week after being released on bail in Dallas County.

9. Protecting local Texas communities from recidivistic crime is paramount during this time in which members of the public are particularly vulnerable, including the elderly, victims of domestic violence and burglaries, given that food, shelter, and essential items to carry on a normal quality of life, such as vehicles and money, are limited during this rapidly developing pandemic. Priority safety considerations must also be given to the victims and witnesses of these arrested suspects and convicted offenders, since the unrestricted release of these inmates directly jeopardizes their wellbeing.

10. The release of felons, who were arrested or convicted of domestic violence, inevitably forces victims to shelter in place within the same homes as their abusers, leading to dangerous escalations in life-safety issues for a multitude of victims as well as their minor children.

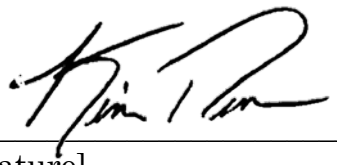
11. Upon their release, arrested or convicted felons of non-violent offenses, such as burglaries of habitation, building, or vehicle, are provided with a target-rich environment in the Dallas Fort Worth metroplex, since many, if not all, non-essential business operations are presently suspended and unmanned.

12. The general Dallas Fort Worth population is susceptible to new online or telephone scams involving the coronavirus, since residents around the metroplex are currently under sheltering in place orders at home. Released fraudsters are, therefore, presented with new opportunities to prey on these Texans, in particular the elderly, during this epidemic.

13. The personal recognizance bond release of felons from the Harris County Jail, who were arrested or convicted of either violent or non-violent crimes, severely compromises the orderly operation of the Texas criminal justice system and wholly contradicts the requirements established by the Code of Criminal Procedure, which mandates bond conditions must be imposed for certain crimes. Such a release also threatens the safety of Texas communities with recidivistic crimes and unjustly disregards the wellbeing of crime victims and witness.

14. For these reasons, I believe releasing felons into the community would not serve the best interest of the public in our current environment and endangers the public, further straining already limited resources.

Date: March 31, 2020



[Signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF PEARLAND CHIEF OF POLICE JOHNNY SPIRES

---

1. My name is Johnny Spires, I currently serve as Chief of the Pearland Police Department. I have served in this role since June 1, 2017.

2. As Chief for the Pearland Police Department I lead a department of 240 personnel.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons from the Harris County Jail. It is also my understanding that they seek to release all inmates 55 or older, regardless of the crimes for which he or she is charged or consideration of their prior criminal history. This specific population includes extremely violent individuals whose release would pose a serious threat to their victims, victims' families, and the communities at large.

4. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain the already limited law enforcement resources and pose a danger to Texans including the citizens of Pearland.

5. This pandemic is like nothing we have ever seen before but releasing potentially dangerous felons cannot serve the public at large.

6. I believe if released, these felons would endanger their communities that stretch the limited resources of police departments, putting a bigger strain on the community. Although Pearland is in Harris, Brazoria, and Ft. Bend Counties, 41 percent of all our arrests are from Houston. If released, many of these accused will re-offend in our city and further tap our already strained resources.

7. It is my understanding that misdemeanor offenders have already been released and the jail is nearly void of these offenders. It is my belief that these offenders will already create a strain on my Departments resources as many of them will re-offend.

8. It is my belief that a mass release of felons into the community, some of them violent and/or habitual, without an assessment by a judge, will be a detriment to the community. It is also my belief that releasing these felons would further intensify the public's anxiety which is already at a high level due to the COVID-19 Pandemic.

9. In closing, I respectfully urge the Court to disallow any release without individual judicial review and if release is approved, to require COVID-19 testing to ensure we are not releasing infected individuals into the public.

Date: 3-31-2020

[Signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al,* *Plaintiffs,* v. HARRIS COUNTY, TEXAS, *et al,* *Defendants.*	§ § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF PLANO POLICE CHIEF ED DRAIN

1. My name is Ed Drain. I started my law enforcement career in 1994 with the Plano Police Department. I worked through the ranks and was appointed Assistant Chief in 2006. From June 2015 to September 2015, I served as the Interim Police Chief for the Murphy Police Department, while still employed by the City of Plano. In October 2016, I was appointed as the Police Chief for the Amarillo Police Department. In October 2020, I returned to Plano as the Police Chief.

2. I lead a department of 414 sworn law enforcement officers and 257 civilian support personnel. My job duties consist of leading the department to accomplish our mission statement of providing outstanding police services, in partnership with the community, to maintain a safe environment that contributes to the quality of life.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons from the Harris County Jail.

4. Based on my training, experience, and understanding of the current circumstances on the ground throughout the State, I believe that such releases would strain the already limited law enforcement resources and pose a danger to Texans.

EXHIBIT 13

5. This pandemic is like nothing we have ever seen before but releasing potentially dangerous felons cannot serve the public at large.

6. I believe if released, these felons would endanger their communities that stretch the limited resources of police departments, putting a bigger strain on the community and the State as a whole as there would not be a requirement that the released prisoners remain in Houston after their release.

7. Even the release of "non-violent" offenders would endanger our communities. Burglaries are violent invasions of people's homes to steal from or assault the owner. With "shelter in place" orders and people being in their homes, the likelihood of violence and confrontation is increased. Additionally, scams related to the pandemic are on the rise, and the release of identity thieves would only further escalate a growing problem.

8. Organized criminal elements form the Harris County area are frequently engaged in illegal activity in other jurisdictions hundreds of miles from Harris County. For approximately the last ten years, numerous Asians residents in the City of Plano, have been victimized by an organized criminal element who specialize in burglarizing homes of Asians. In cases where we have been able to arrest suspects involved in these crimes, we usually can trace their origins to the Harris County area.

   Over approximately the last five years, we have seen an increase in criminal activity that involves criminals identifying bank customers who have made large cash withdrawals. The criminals follow the victim's vehicle and steal the cash whenever the customer makes a stop. This criminal activity is referred to as "jugging". We consistently discover suspects we arrest for these offenses are from the Harris County area.

   During the time I served as the Police Chief in Amarillo, almost all suspects we arrested involved in placing skimmers on gas pumps to steal victims' credit/debit card information, were from the Harris County area.

9. Harris County has the largest county jail in the state. A mass release of felons without an individual assessment by a judge evaluating the risks posed to public safety and security would put communities in Harris County and other jurisdictions across the state in grave danger and must be prevented

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

Signature: _____ Date: 3/31/2020

Ed Drain
Chief of Police
Plano, Texas

EXHIBIT 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF GREGORY W. RUSHIN

1. My name is Gregory W. Rushin. I currently serve as Deputy City Manager over Public Safety for the City of Plano, Texas. Prior to this appointment as Deputy City Manager, I served with the Plano Police Department for nearly 34 years and as Police Chief for approximately the last 18 years. During my time as Police Chief, I held numerous leadership positions in both state and national law enforcement organizations, to include President of the Texas Police Association and an Executive Board Member of the International Association of Chiefs of Police. I am also a former FBI Special Agent that served in the Washington, D.C. Metro Field Office.

2. As Deputy City Manager, I am responsible for the Police Department, Fire Department, Emergency Management, Public Safety Communications, and Animal Services.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an order to release over 4,000 felons from the Harris County Jail based on the COVID-19 outbreak.

4. The Plano Police Department has had four police officers test positive for the COVID-19 virus so far. This has led to the exposure of many other police officers and civilian staff within the department that were required to be

quarantined. Also, much of our officers and civilian staff time is now being spent on COVID-19 related work, instead of their normal law enforcement functions.

5. Based on my training, experience, and understanding of the current circumstances throughout the State, I believe that such a release would strain the already limited law enforcement resources throughout the State and pose a danger to the citizens of Texas.

6. This pandemic is like nothing we have ever seen before, but releasing potentially dangerous felons will not serve the public at large.

7. The wholesale release of prisoners in this current environment would add a much greater burden to law enforcement. "Non-violent" offenders include those arrested for crimes such as burglary (including burglary of a habitation, building, and vehicle), fraud, felony DWI (3rd or more), and bail jumping. Each of the offenders charged with these offenses may pose a much greater risk than the charge would suggest.

   Burglary - Many times burglaries elevate to assaultive crimes when the owner comes home during the crime, or the owner is initially undetected in the home before entry. These offenders create this risk every time they commit a burglary, and cause a loss to victims.

   Fraud - Everyone is a target of fraud, but seniors are particularly vulnerable. These crimes can take a senior's life savings and ruin their lives. The age of seniors places them in a higher risk category to COVID-19, so they are asked to stay home and not take risks. This makes for a target-rich environment for fraudsters, at a time where law enforcement is stretched thin.

   Felony DWI - These offenders endanger all of us who drive, and those arrested for felony DWI have demonstrated an ongoing and pervasive threat to the safety and property of our community.

   Bail Jumping and Failure to Appear - Offenders who fail to abide by a court order demonstrate they must be incarcerated to facilitate the justice process. The initial arrest of felons is dangerous and can take an extraordinary amount of police resources. It poses a significant danger to law enforcement when there is a need to re-arrest these offenders. Releasing felons back into our communities would be extremely detrimental to law enforcement efforts, and would be exacerbated more in our current environment with COVID-19.

8. Plano is a Dallas suburb, but we do have many felony offenders who travel to our city from Houston, to commit criminal offenses. Two examples we have historically encountered are organized crime groups from Houston. The first group targets Asian households for the purpose of stealing jewelry. The second group targets victims who withdraw large sums of money from local banks and will steal the money from the victim's vehicle or rob the victim after they leave the bank.

9. In conclusion, I believe releasing felons into the community would not serve the best interest of the public in our current environment by endangering the public and straining already limited resources.

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

Date: 03-31-20

Gregory W. Rushin
Deputy City Manager – Public Safety
Plano, Texas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*,	§	
v.	§	Case No. 4:19-cv-00226 (Class Action)
HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§	

DECLARATION OF DAVID MAXWELL

1. I, David Maxwell, have served in the role of Director of the Law Enforcement Division at the Texas Attorney General's Office since 2010. I began my career in law enforcement in November of 1972 with the Texas Department of Public Safety. I spent eight years as a Trooper in Harris County, Texas, five years as an Investigator in the Narcotics Division and twenty-five years as a Texas Ranger. This is my forty-eighth year with the state of Texas.

2. My job duties consist of providing assistance to other state and local authorities in conducting complicated criminal investigations and pursuing dangerous fugitives across the State of Texas. Our Fugitive Unit was formed in 2003 and has to this date arrested over 12,000 dangerous fugitives. Our experience has taught us that these individuals continue to victimize the citizens of Texas while they remain free on our streets avoiding apprehension. Our first duty is to be the voice of the victims in Texas and act as their advocate. I don't take this responsibility lightly.

3. The men and women who work for me are passionate in protecting the citizens of Texas by arresting these fugitives. The Fugitive Unit routinely arrests on average from 100 to 150 fugitives a month.

4. To release serious felons back onto the streets of Texas without an individualized assessment of their risk by a judge would be a huge injustice, a strain on already taxed law enforcement resources, and endanger law enforcement, especially those tasked with apprehending absconding fugitives.

5. We are living in an increasing violent world as police officers. Many of these fugitives that we pursue are using deadly force to avoid apprehension more often than anytime I have seen during my career.

6. Prior to December 2018 no officer with the Texas Attorney General's Office had been wounded in the line of duty by deadly force. While pursuing a fugitive in the Houston area with the Harris County Sheriff's Office the arrest team was ambushed by the fugitive wounding our Captain and a Deputy Sheriff. Captain Hensley was shot nine times by the fugitive and the Deputy was shot in his right hand, shattering his hand. Captain Hensley has recovered from his wounds and is back to work.

7. The State of Texas has a critical problem with apprehending felons across this state on several levels. Most of the local agencies do not have the man power and resources to actively pursue violators as they are consumed with answering the daily crimes being reported and pursuing fugitives that are not showing up for court dates arising out of local charges. To release more criminals back on the streets would only exacerbate an already difficult problem.

8. Based on my forty-eight years of experience, I firmly believe that the release of inmates would not be in the public interest.

SIGNED this 31st day of March, 2020.

DAVID MAXWELL
Director of the Law Enforcement Division
Office of the Attorney General of Texas

EXHIBIT 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF DIRECTOR OF DEPARTMENT OF PUBLIC SAFETY STEVEN MCCRAW

1. My name is Steven McCraw, I currently serve as the Director of the Texas Department of Public Safety. I have served in this role since August 2009. I began my law enforcement career with DPS in 1977 as a Trooper in the Texas Highway Patrol and later as a DPS Narcotics Agent. In 1983, I became a Special Agent in the Federal Bureau of Investigation and served in Dallas, Pittsburgh, Los Angeles, Tucson, San Antonio, and Washington, DC. In 2004 I retired as an Assistant Director from the FBI to become the Texas Homeland Security Director in the Office of the Governor where I served for five years.

2. The mission of the Texas Department of Public Safety is to protect and serve Texas and as Director and Colonel for the Department, I am responsible for all department operations and personnel throughout the state.

3. Texas faces the full spectrum of threats to public safety and has limited law enforcement resources at the local, state and federal level to protect people and property from harm. The current COVID-19 pandemic has further diminished law enforcement capacity throughout the state at a time when more law enforcement resources are needed to address crime.

4. Major urban areas in the state have experienced an increase in violent crime over the last year including serial robberies conducted by crews or small units of gang members. Armed robberies are a significant problem in Harris County. Takeover-style robberies in which armed gangs storm into businesses occupied by the public for the purposes of robbing the business and customers have been

especially concerning. As a result, Governor Abbott directed DPS to assign DPS Special Agents, Troopers, Analysts and Aircraft to provide direct support to local law enforcement agencies in Harris County in order to reduce the number of gang-related takeover robberies and other violent crimes threatening public safety.

5. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felony arrestees from the Harris County Jail.

6. Based on my training, experience, and understanding of the current circumstances in Harris County and throughout the State, I believe that such releases would strain the already limited law enforcement resources and pose an increased danger to Texans.

7. For example, DPS Troopers and Special Agents have arrested 373 robbery suspects in Harris County since April, 2017 in support of local law enforcement agencies in Harris County at the direction of the Governor. These 373 robbery suspects belonged to 188 robbery crews that were responsible for 620 armed robberies. Members of these robbery crews tend to be vocational criminals who present a high probability of quickly reoffending upon release. Several of the robbery suspects described in the paragraph were on bond at the time of their arrest.

8. I believe releasing felony arrestees into the community undermines public safety in the best of circumstances, but doing so during a pandemic is particularly dangerous. DPS officers are involved heavily in responding to the public health crisis. For example, DPS officers are involved in the enforcement of Executive Orders issued by the Governor in response to the pandemic. Additionally, law enforcement agencies in Texas have seen commissioned officers become unavailable for service because of illness and the need to self-isolate after exposure to the coronavirus. As law enforcement expends resources to support the public health response, our ability to address the new crimes that will be committed by released felons becomes more limited. The current crisis presents an especially dangerous moment to release felony arrestees into our communities.

Date: 03-31-2020

Steven C. McCraw

Steven McCraw
Director
Texas Department of Public Safety

EXHIBIT 16

TEXAS POLICE CHIEFS ASSOCIATION

P.O. Box 819
Elgin, Texas 78621

Phone: 512-281-5400 • 1-877-7 POLICE • Fax: 512-281-2240
E-Mail: info@texaspolicechiefs.org • Web Page: www.texaspolicechiefs.org

Chief James McLaughlin, Jr. (Ret.)
GENERAL COUNSEL -
EXECUTIVE DIRECTOR

March 31, 2020

TO THE HONORABLE JUDGE LEE H. ROSENTHAL,

As the President of the Texas Police Chiefs Association and a Chief of Police in the State of Texas, I am sending this letter in support of Chief Art Acevedo of the Houston Police Department. We are concerned about a lawsuit pending in the United States District Court Southern District of Texas, Houston Division in Case No. 4:19-cv-00226 (Class Action) that seeks to release thousands of felons from the Harris County Jail.

The Texas Police Chiefs Association is the largest professional association of law enforcement executives in Texas and represents over 1,500 members. We believe a release of thousands of felony defendants in any county in our state will strain the already limited law enforcement resources and pose a danger to all Texans. The strain and safety concerns will be felt well beyond the Houston area.

Police departments across our state have risked their lives to serve their communities during these unprecedented times. Many departments are already working with limited resources and they could be hampered even more with the release of criminals back on the streets of our communities. The likelihood of recidivism is high for some of the prisoners proposed to be released from the Harris County Jail. Additional crimes will be committed and innocent civilians will be endangered.

We recommend an individual judicial risk assessment for any offender prior to release. This risk assessment should balance the risk of harm to the offender from COVID-19 versus the risk of harm to public safety if they are released. We also support alternatives to release that include testing and isolation of positive inmates within the current jail or an alternate facility.

EXHIBIT 17

We urge the Court to consider alternates to a mass release being proposed by the Plaintiffs. Alternates should be transparent and include measures for testing inmates for COVID-19 to avoid spreading the virus unwittingly by releasing infected individuals out into the public. We further urge the Court to consider other alternatives to a mass release of dangerous persons that do not cause an unnecessary risk to the general public.

Thank you for your consideration,

Chief Gene Ellis
TPCA President
Chief of Police
Belton, Texas

EXHIBIT 17

United States District Court,
Southern District of Texas,
Houston Division

RUSSELL, *et al.*,
Plaintiffs,

v. **Case No. 4:19-cv-00226**
(Class Action)

HARRIS COUNTY,TEXAS, *et al.*,
Defendant.

Declaration of Bob Bushman, President of the National Narcotic Officers' Associations' Coalition

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1. I am Bob Bushman, President of the National Narcotic Officers' Associations' Coalition (NNOAC). Our membership consists of State Narcotic Officers Associations and partner organizations across the United States, representing about 55,000 law enforcement officers, including the Texas Narcotic Officers Association. The NNOAC vigorously opposes the wholesale release of inmates from the Harris County jail, or any other jail or correctional facility, in response to the COVID-19 pandemic. The NNOAC believes that Government's obligation to protect citizens from violent criminals is just as vital as it is to protect our citizens from pandemic disease.

2. While the NNOAC agrees that there may be some low level arrestees posing minimal risks to the public that may be released, that is not true for the many violent and habitual offenders who have committed serious crimes, victimizing many of our citizens. Offenders do not find their way into our jails accidentally. They have violated laws which have been designed to protect our citizens and our communities. Many jurisdictions have already released offenders that they have identified as low level, non-violent offenders. Most of those remaining in the jails are violent criminals and habitual offenders.

3. The NNOAC believes that there must be a transparent risk assessment process for determining which offenders pose substantial, harmful risks to the community. Those offenders must be evaluated on an individual, case-by-case basis. Offenders that have committed crimes of violence, including drug trafficking, those who are habitual offenders, and those who are likely to fail to appear for subsequent court proceedings and hearings, must remain incarcerated to protect the public.

4. Wholesale releases of violent criminals and repeat offenders have the potential to cause more harm than the COVID-19 virus itself. For, unlike the COVID-19 virus from which many of those infected will recover, many crime victims never recover from the injuries, death and addiction inflicted by the violent criminals, drug traffickers and the habitual offenders that do not respect or obey our laws, and who prey upon our citizens to support their criminal livelihoods. Those violent and repeat offenders must not be released.

5. Current release guidelines often require offenders to be supervised by probation officers and to participate in alternative programs such as specialty courts and drug treatment programs. Given the current efforts by federal, state and local entities to slow the spread of the COVID-19 virus, it is simply unworkable to add more offenders to court supervision and other programs that are already at capacity, and where effectiveness and oversight is diminished by decreased personal interaction between program providers, staff and the offenders, all of whom are required to comply with social distancing practices and possible quarantines.

6. Due to the growing demands on law enforcement and first responder services by the rapidly expanding COVID-19 infections, the release of violent criminals and recidivists will add an unnecessary burden to an already overwhelmed public safety system. As the COVID-19 virus continues to spread throughout our country, it must be a priority for law enforcement agencies to be available to assist with pandemic issues. Releasing large numbers of dangerous criminals and repeat offenders into the communities will needlessly divert law enforcement agencies and their officers from availability for pandemic response in their communities.

7. The NNOAC urges the Court to deny the plaintiffs' petition to release violent and repeat offenders on a broad scale basis, and instead, to implement a risk assessment process to ensure that offenders being considered for release do not include those offenders who are violent criminals, habitual offenders or flight risks, and, that such offenders remain incarcerated in the best interests of public safety and protecting our citizens. Further, that Harris County be directed to explore alternatives that will allow for continued incarceration of such offenders in an environment that will also provide for measures to help prevent and slow the spread of the COVID-19 virus within the inmate population.

These statements are true and correct to the best of my ability.

Date: March 31, 2020

Bob Bushman, President

on behalf of the
National Narcotic Officers'
Associations' Coalition

EXHIBIT 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RUSSELL, *et al.*, *Plaintiffs*, v. HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§ § § § § § § § § § § §	Case No. 4:19-cv-00226 (Class Action)

DECLARATION OF Andy Kahan

1. My name is Andy Kahan, I currently serve as Director of Victim Services and Advocacy for Crime Stoppers of Houston. I have served in this role since June 2018. Prior to that I was the Victim Advocate for the Mayor of Houston and the Houston Police Department from 1992-2018. During my tenure I have enacted over 20 Legislative Bills to enhance victims' rights and public safety. I have been recognized for my work as a Victim Advocate from the United States Department of Justice-Office for Victims of Crime as the first recipient of The Ronald Reagan Public Policy Award. I have also been the recipient of The Foundation for Improvement for Justice Award, The National Office of Victim Assistance Office-The Marlene Young Distinguished Leadership Award and The National Organization of Parents of Murdered Children Allied Professional Award.

2. My primary job responsibilities at Crime Stoppers are to assist victims of crime navigate through the criminal justice system, advocate on their behalf in regards to parole reviews and bring attention to unsolved cases utilizing Crime Stoppers tip line.

3. It is my understanding that the Plaintiffs in this lawsuit are seeking an order releasing over 4,000 felons from the Harris County Jail.

4. Crime Stoppers focus is on public safety, justice and the rights of crime victims. During the COVID-19 crisis regarding the potential 'compassionate' release of thousands of accused offenders not once has there been any input sought by the powers to be from victim service providers and or advocates regarding the rights of crime victims and how such a massive release would no doubt jeopardize their safety in a myriad of ways.

5. I believe that such releases would have a harmful effect on victims and in particular domestic violence victims who have courageously sought and received protective orders only to discover the offender has been released on a PR bond. You can't imagine the emotional turmoil a majority of our law-abiding citizens are undergoing as a result of this national pandemic only to be compounded with the potential release of thousands of felons.

6. The Texas Code of Criminal Procedure Chapter 56 Article 56.02 titled Crime Victims Rights specifically states (a) (2) the right to have a magistrate take the safety of the victim and or their family into consideration as an element in fixing the amount of bail for the accused in addition to the right to be informed by the District Attorney's Office of relevant court proceedings. A mass release would no doubt potentially violate the above and place an undoable burden on the criminal justice system to try to enforce Crime Victims Rights as per the Texas Code of Criminal Procedure.

7. Releasing offenders who have been charged with cases directly implicated in Domestic Violence will undoubtably and inevitably result in re-victimization for segments of our population. The Montgomery County District Attorney's Office reports an approximately 35% increase in Domestic Violence cases filed in March 2020 compared to March 2019. No doubt the rise may be due to increased stress and more access to victims by offenders.

8. Crime Stoppers has uncovered numerous examples of Felony Violent Offenders being released on PR Bonds within the last week. In some cases, offenders were already on PR Bonds for other cases, yet were inexplicably granted another PR Bond. One case was an offender charged with Murder that was released on a PR Bond strictly due to fear of contacting COVID-19. Adam Campuzano was granted a Felony PR Bond for Felon in Possession of a Weapon (firearm) and Evading Arrest on March 23. Believe it or not he was already on a PR Bond for Harboring a Runaway Child and has 3 prior Felony Convictions of which 2 resulted in being sent to prison. Chaison Turner was granted Deferred Adjudication for Assault with Bodily Injury. While on deferred probation he was granted a PR Bond for Carrying a Handgun in January 2020. He was again given a PR Bond March 20th, for Aggravated Assault of a Peace Officer. Somehow, he still remains on Deferred Adjudication for Assault with Bodily Injury. Other examples can be provided upon request.

9: The definition of non-violent offender needs to be clarified. Burglary of a Habitation, Burglary of a Building, Burglary of a Motor Vehicle, Unauthorized use of a Motor Vehicle, DWI, Theft and a multitude of other offenses wreck more havoc on a community than most violent crimes. Several months ago, an overflow room of business owners packed a Heights neighborhood meeting with police officials complaining about being repeatedly victimized by the same offenders who were often released before the paperwork was even filed. By releasing offenders who are classified as 'Non-Violent' would be simply to invite more victimization of the law-abiding public.

10: Crime Stoppers is of the firm believe a mass release of felons from prison would continue to wreak havoc on our community, especially considering the turmoil all of us are under based upon COVID-19. During the past year, Felony District Court Judges have taken the

Misdemeanor Bond Reform of which we totally support and have used the Federal Court decision to grant PR Bonds to repeat felons who in some cases have continued their criminal career. Some of these decisions have led to the death of our citizens. We are respectfully requesting on behalf of our constituents, i.e. the public that a mass release of felons will simply endanger lives and put us all at risk.

11: We firmly believe elected District Judges should be able to look at each case in their domain to determine suitability for release back to the community. To remove discretion is not in the interest of public safety and certainly not in the best interest of those who have been victimized by offenders now considered for release by this edict.

12: Crime Stoppers of Houston mission is to solve and prevent serious crime in Harris County in partnership with residents, media and law enforcement. We are the nations largest and most successful public safety/crime prevention non-profit nationally. We strongly believe the mass release of felons back into the community, especially under the current circumstances would not be in the best interest of public safety.

13: The community is already on edge about the prospect of looters and becoming a victim of a crime of opportunity (burglars (habitation, building, and vehicle) fraudsters). Releasing these type of offenders will only increase the anxiety of the community possibly creating tragic “stand your ground” situations.

14: A mass release of felons without an assessment by a judge and input by victim advocates will undoubtedly put victims at future risk and will create future victims.

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

Andy Kahan
Director of Victim Services and Victim Advocacy
Crime Stoppers of Houston
713-923-5601

Major County Sheriffs of America
RESOLUTION
Regarding the Release of Inmates During the COVID-19 National Emergency

WHEREAS, the Major County Sheriffs of America (MCSA) is a professional law enforcement association of the largest elected sheriffs' offices representing counties or parishes with 500,000 population or more, representing over 100 million Americans; and

WHEREAS, MCSA is dedicated to preserving the highest integrity in law enforcement, corrections, and the elected Office of the Sheriff; and

WHEREAS, the COVID-19 pandemic is affecting significantly the lives and routines of everyone in the United States including sheriffs' office personnel and incarcerated individuals; and

WHEREAS, MCSA members operate our nation's largest correctional facilities and have undertaken protocols to ensure the safety and health of those who are incarcerated, the safety and health of our staff, and the safety of the general public; and

WHEREAS, certain advocacy organizations have called for policy changes at the local, state, and federal levels to allow for broad release of inmates to prevent COVID-19 spread in correctional facilities; and

WHEREAS, overly broad release policies in response to the current pandemic fail to consider the safety of the public; and

WHEREAS, when a determination is made to release individuals from jail, it is important to consider individualized treatment plans that assist individuals reentering communities with medical, mental health, housing and workforce needs;

THEREFORE, BE IT RESOLVED, that the Major County Sheriffs of America opposes broad inmate release policies in response to COVID-19 which fail to consider the safety of the public, and

BE IT FURTHER RESOLVED, that MCSA supports a thoughtful approach to examine whole jail populations and make release determinations on a case-by-case basis that includes consideration of an individual's conviction for violent crime offenses or arrest based on probable cause for violent crime offenses;

BE IT FURTHER RESOLVED, that MCSA supports close collaboration among local officials to include law enforcement, prosecutors, and the courts to establish clear and transparent policies in response to the COVID-19 pandemic that considers the health and safety of the entire community.

4/1/2020

EXHIBIT 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, *et al.*, *Plaintiffs*,	§	
v.	§	Case No. 4:19-cv-00226
HARRIS COUNTY, TEXAS, *et al.*, *Defendants*.	§	

ORDER DENYING PLAINTIFFS' MOTION FOR PROTECTIVE ORDER AND PRELIMINARY INJUNCTION

Before the Court is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction. After consideration of the motion and all responses thereto, the Court is of the opinion that the motion does not have merit and should be DENIED.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction is DENIED.

SIGNED on this the _____ day of _____, 2020.

LEE H. ROSENTHAL
CHIEF UNITED STATES DISTRICT JUDGE

COUNTY OF HARRIS §
§
STATE OF TEXAS §

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared James Leitner, who upon being duly sworn, deposed and stated as follows:

My name is James Leitner. I am over eighteen years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated, which are true and correct.

I am a lawyer in good standing with the State Bar of Texas, licensed since May 9, 1975. I am an assistant district attorney employed by the Harris County District Attorney's Office, currently assigned to serve as the Chief of the Intake Bureau. I have been in this position since January of 2017 and am very familiar with the current practices for screening of criminal charges and the manner in which bail is set by Harris County criminal law hearing officers ("hearing officers") in felony cases in Probable Cause Court.

I provide the following overview of the current procedures in which hearing officers set bail in Harris County.

All defendants charged with felony offenses in Harris County, Texas are brought before a hearing officer for a determination of probable cause and a bail hearing, all of which is video and audio-recorded and has been for approximately ten years. This probable cause and bail hearing process is the same for the process utilized for misdemeanor defendants who are not released under a General Order Bond ("GOB").

Prior to an appearance in Probable Cause Court, if a hearing officer pulls a case for Early Presentment, a hearing officer may release a felony defendant either on a finding of "No Probable Cause," if the facts provided in the District Attorney Intake Management System ("DIMS") summary are not sufficient to support probable cause, or on a personal recognizance bond ("PR bond") at the discretion of the hearing officer

based on his or her review of the DIMS summary and all available information provided to them about the defendant by Harris County Pretrial Services.

Prior to the recorded Probable Cause Court hearing, both Pretrial Services and an assistant public defender interview the defendant. The Harris County Public Defender's Office represents all misdemeanor defendants and felony defendants if they consent to representation by the Public Defender. The Pretrial Services interview with the defendant gathers both financial and personal information about the defendant in order to assist the hearing officer in the determination of the appropriate bond in a given case and how much a defendant can afford towards the bail amount that is ultimately set. The assistant public defender interview with the defendant yields more personal information about the defendant, such as his or her ties to the community and familial/social/educational/ occupational information, all of which the assistant public defender then presents orally to the hearing officer during the bail hearing.

At the Probable Cause hearing itself, the hearing officer reads all of the defendants their legal warnings and explains how the hearing will be conducted. Part of this presentation includes an explanation that the proceedings are being recorded and that defendant can appeal any decision made by the hearing officer at the Probable Cause hearing to the sitting judge in the court where their case is assigned.

Once the warnings are given and the process explained, the hearing officer calls each defendant's case individually for the presentation of probable cause by an assistant district attorney ("ADA"). The ADA provides factual information sworn to by the arresting/investigating officer in order for a finding of probable cause to be made. If there is a finding of No Probable Cause, the hearing ends for that defendant and the defendant is released unless there are additional holds. If the hearing officer finds probable cause, the hearing officer then conducts a bail hearing.

During the bail hearing, the hearing officer gives both the ADA and the assistant public defender an opportunity to argue the appropriate type and amount of bail for the particular defendant. When requesting a

specific amount of bail and whether to oppose or not oppose a PR bond, the hearing officer permits the ADA to argue the facts of the case as provided in the statement of probable cause; the defendant's local, state, and federal criminal history, if any; and any concerns for the safety of any specific victim and public safety generally. The hearing officer also permits the ADA to file and urge any motions regarding the amount of bail and any conditions of bail that the ADA feels is necessary to ensure the safety of any specific victim and the public general, and to assure the defendant's appearance in court. In turn, the assistant public defender presents the information he or she obtained during the above-described interview with the defendant.

Although there is a felony bail schedule issued by the District Court judges in Harris County, the most recent of which went into effect August 22, 2017, the majority of the hearing officers routinely set bonds lower than the amount recommended by the schedule per the defendant's score on the Public Safety Assessment ("PSA").

The PSA is a tool used by Pretrial Services to attempt to predict the likelihood of a defendant to reoffend and to appear in court. The PSA uses an algorithm to generate a score of 1-6 on two different scales, New Criminal Activity ("NCA") and Failure to Appear ("FTA"). Each score places a defendant into one of three risk categories: below-average (1-2), average (3-4) or above-average (5-6). The felony bail schedule then assigns an amount for all felonies below first degree for each range.

In a large number of cases, the hearing officer will either set the bail amount as requested by the assistant public defender or at an amount lower than what the felony bail schedule recommends for that particular defendant's offense and PSA score.

After setting the bail amount and making the determination whether a PR bond will be granted, most of the hearing officers will provide some type of an explanation as to their decision. If a PR bond is denied, the hearing officer again advises the defendant that the sitting judge in the court where their case is assigned has the final say as to the type and amount of bail to be set in their case.

JAMES LEITNER

SWORN TO AND SUBSCRIBED before me on this the 31st day of March, 2020.

JEAN DELGADO LEIJA
Notary Public, State of Texas
Comm. Expires 12-05-2020
Notary ID 130920869

NOTARY PUBLIC,
in and for Harris County, Texas

Exhibit 21