UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

Aaron Booth,
on behalf of himself and all others similarly situated,

Plaintiff,

v.

Galveston County *et al.*,

Defendants.

Civil Action No. 3:18-cv-0104
Class Action

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW[1]

I. The Named Plaintiff

1. Aaron Booth was arrested on April 8, 2018, for an alleged felony and booked into Galveston County Jail.[2] When Mr. Booth was booked into jail, his arresting officer wrote a bail amount of $20,000 on a preprinted bail order.[3] This bail amount was

[1] Plaintiff's Exhibits A through T were appended to Plaintiff's Motion for Preliminary Injunction, ECF No. 3, and Exhibits U through PPP were filed as a supplement in advance of the preliminary injunction hearing, ECF No. 185. The appendix to Plaintiff's Reply in Support of the Preliminary Injunction Motion, ECF. No. 120, consisted of exhibits that were inadvertently labeled with numbers 1 through 4 rather than continuing the letter system. To avoid confusion, Plaintiff relabeled and refiled the exhibits from the reply with the supplemental exhibits at ECF No. 185, resulting in one set of exhibits continuously labeled A through PPP. Plaintiff also cites the transcript of the preliminary injunction hearing, ECF No. 184 ("Hr'g Tr.").

[2] Galveston County Jail Inmate Detail, Ex. B; Declaration of Aaron Booth ("Booth Decl."), *id.* Ex. A, ¶ 3.

[3] Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC; *see* Deposition Transcript: Dianna Reyna-Valdez, Ex. BB ("Reyna-Valdez Tr.") 42:15-18; Deposition Transcript, Hon. Kerri Foley, Ex. GG ("Foley Tr.") 86:7-22.

set by the on-duty intake prosecutor in accordance with the District Attorney's minimum felony bail schedule.[4]

2. After he was booked into Galveston County Jail, Mr. Booth appeared at a proceeding in Galveston County Jail referred to as "magistration."[5] Magistration is a legal proceeding where magistrates issue bail orders for people who were recently arrested for criminal charges and booked into Galveston County Jail.[6]

3. Magistrate Judge Foley read Mr. Booth his charge and the $20,000 bail amount preprinted on his bail order.[7] The magistrate signed the order, requiring Mr. Booth to post a $20,000 bond to be released from the jail pending resolution of his criminal case.[8]

4. Neither the magistrate nor her staff asked Mr. Booth whether he was able to pay his bail amount.[9] The magistrate signed Mr. Booth's bail order without any

[4] Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC; Letter from Kevin Petroff to Trisha Trigilio Enclosing Felony Bail Schedule (Jan. 1, 2017) ("Felony Bail Schedule"), Ex. E 5-6; Hr'g. Tr. 216:13–217:10 (testimony of Aaron Booth describing arresting officer phone call). *See also* Reyna-Valdez Tr. 50:5-21.

[5] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Galveston County Indigent Defense Plan (2016), Ex. J.

[6] *Id.*

[7] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Booth Decl., ECF No. 3-2 ¶¶ 5-6; Deposition Transcript: Aaron Booth, Ex. DD ("Booth Tr.") at 90:18-21; Hr'g Tr. 183:13–16, 185:7–9.

[8] Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC at 6; Hr'g Tr. 185:15–17.

[9] Booth Decl., ECF No. 3-2 ¶¶ 5-6; Booth Tr. 90-91:22-2; Hr'g Tr. 185:18–19 (Judge Foley: "I don't remember asking Mr. Booth about his financial situation."); Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL.

information about whether Mr. Booth was able to pay the bail amount, and without meaningfully considering any alternatives to secured bail.[10]

5. Mr. Booth did not receive notice that his right to pretrial liberty was at stake at magistration.[11] He did not have an opportunity to present evidence or argument in his defense, or to confront the facts (if any) the magistrate relied on to support his bail order.[12] The magistrate did not make any findings, on the record or otherwise, concerning Mr. Booth's ability to pay or supporting deprivation of Mr. Booth's right to pretrial liberty.[13] No lawyer was appointed to represent Mr. Booth.[14]

6. At the time this case was filed, Mr. Booth was detained in Galveston County Jail because he was unable to pay the amount required for his release.[15] If Mr. Booth had paid the amount required for their release, he would have been released from Galveston County custody.[16]

---

[10] *See id.*; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Hr'g Tr. 217:14–218:17.

[11] Booth Decl., ECF No. 3-2 ¶¶ 5-6; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Booth Tr. 90:18-91:5; Hr'g Tr. 217:14–218:17.

[12] Booth Decl., ECF No. 3-2 ¶¶ 5-6; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Booth Tr. 90:18-91:5; Hr'g Tr. 217:14–218:17.

[13] Booth Decl., ECF No. 3-2 ¶¶ 5-6; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Booth Tr. 90:18-91:5; Hr'g Tr. 217:14–218:17, 209:15–20 (Judge Foley: "No, I didn't make any record.")

[14] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Hr'g Tr. 218:5-10.

[15] Booth Decl., ECF No. 3-2 ¶¶ 9-10; Galveston County Jail Inmate Detail, Ex. B; Hr'g Tr. 218:20–21:13.

[16] Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC at 6.

7. Immediately following magistration, Mr. Booth requested a court-appointed attorney by completing a "pauper's oath" form that stated his financial status.[17] A felony judge later found Mr. Booth to be indigent and appointed an attorney to represent him in his criminal case.[18]

8. Despite this finding of indigence, and despite the fact that Mr. Booth remained in jail, no Galveston County official took action to review Mr. Booth's secured money bail amount that had been summarily ordered at magistration.[19] Mr. Booth remained detained under that order for 54 days, until a bail reduction hearing was held on motion of his court-appointed attorney.[20]

II. Galveston County Pretrial Detention Practices

A. Practices at the Time of Filing

9. The following findings concern standard operating procedure in Galveston County at the time this action was filed.

1. Booking

10. In accordance with an administrative order issued by the Galveston County felony judges, in order to book an arrestee into Galveston County Jail, arresting officers must complete a preprinted bail order listing each of the arrestee's charges and a bail amount for each charge.[21]

---

[17] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC at 4–5.

[18] Aaron Booth's Criminal Case File (Apr. 8 – Aug. 3, 2018), Ex. CCC at 10–11.

[19] *Id.* at 1-3.

[20] *Id.* at 1-3.

[21] Galveston County Indigent Defense Plan (2016), Ex. J at 3-4; Exemplars of Statutory Warnings, Ex. L.

11. For each felony charge, the arresting officer calls the Galveston County prosecutor on duty to describe the charges, the prosecutor tells the officer a bail amount, and the officer writes the bail amount on the form.[22]

12. The duty prosecutor sets the bail amounts for the felony charges by referring to the bail schedule.[23] The bail schedule lists minimum bail amounts.[24] The bail amounts are set without taking account of the arrestee's ability to pay.[25]

13. The amounts on the bail schedule have not changed for sixteen years.[26]

14. The District Attorney provided no explanation for how the bail amount recommendations on the Felony Bond Schedule ensured appearance in court.[27]

---

[22] Deposition Transcript: Paul Ready, Ex. KK ("Ready Tr.") 124:11-21 ("A. There is an on-call district attorney all the time who pre-clears felony charges. And that means that they receive phone calls from the field from police officers who will describe a prospective felony arrest, and the assistant district attorney who's on call will make a decision as to whether they're going to accept charges on the case, and at the same time, they will inform the officer of what their bail recommendation is. Q: And is it your understanding that they use that bail schedule to make that recommendation? A: Yes."). *See also* Declaration of Kristie Lynn Walsdorf ("Walsdorf Decl."), Ex. D, ¶¶ 6-7, 9; Hr'g Tr. 389:19–390:10 ("Q: The bond amount next to each charge will be filled out when you receive this form, for the most part; is that correct? Ms. Reyna-Valdez: Yes, ma'am. Q: For felony charges, it's your understanding that the bond amount on the form is chosen by the A.D.A.; is that right? Ms. Reyna-Valdez: It's a recommended bond. Q: Uh-huh. And that recommendation comes from the A.D.A.? Ms. Reyna-Valdez: Yes.").

[23] Felony Bail Schedule, Ex. E; Walsdorf Decl., Ex. D ¶ 9; Hr'g Tr. 410:8-17; Ready Tr. at 124:11-21.

[24] Felony Bail Schedule, Ex. E; Walsdorf Decl., Ex. D ¶ 9.

[25] Hr'g Tr. 461:23–462:4, 468:16– ("The Court: . . . [H]ow can you make a recommendation on what the bail amount would be to ensure that someone is going to come back for a future court proceeding if you don't know what their financial condition is? . . . Mr. Roady: Judge, if we were the ultimate decider of that number then yes, we would , but our role as an advocate for the State of Texas is to protect public safety and also to act on the information that is known to us that might not be known to the magistrate . . . .").

[26] Hr'g Tr. 474:7-14 ("Q: Let me ask, why didn't -- had you looked at the amounts that are recommended here from time to time? Mr. Roady: Yes, sir. Q: Why haven't you ever changed them? Mr. Roady: I did not believe it was necessary to change them. Q: Okay. Mr. Roady: I believe they're appropriate. Q: Okay.").

[27] Hr'g Tr. 461:23–462:4, 468:16–469:7 ("The Court: . . . [H]ow can you make a recommendation on what the bail amount would be to ensure that someone is going to come back for a future court proceeding if you don't know what their financial condition is? . . . Mr. Roady: Judge, if we were the

15. Although the District Attorney considers public safety as a basis for the bail amount recommendations, bond amounts are not forfeited for a new arrest.[28]

16. Neither the magistrate judge, nor any of the magistrate's staff, asks the arrestee whether the arrestee can afford the bail amount set.[29]

2. Magistration

17. Magistration is generally conducted the same way every day.[30] Within 24 hours of booking, all new arrestees are brought into a room at the jail for magistration.[31]

18. Before magistration, the magistrate on duty receives a magistration packet for each arrestee.[32] The packet contains a temporary order of commitment, a probable cause affidavit, and a preprinted bail order. [33] The packet does not contain criminal

---

ultimate decider of that number then yes, we would, but our role as an advocate for the State of Texas is to protect public safety and also to act on the information that is known to us that might not be known to the magistrate . . . .").

[28] Hr'g Tr. 134:2-5 ("[I]t is unjustifiable just by common sense to use secured money bail to try to prevent new criminal activity because money bail can never be forfeited for new criminal activity."); Tex. Code Crim. Proc. Art. 22.01 (permitting forfeiture only when a defendant "fails to appear").

[29] *See* Reyna-Valdez Tr. 110:17-21 (neither Judge Baker nor Judge Foley asks); Deposition Transcript: Hon. Stephen Baker, Ex. EE ("Baker Tr.") at 24:16-21, 65:9-19 ("Q:…So if you could rewind in your head back to about April of 2018….[D]id you ask arrestees if they could afford the bond amounts that you set? A. I did not specifically ask them that question."); Foley Tr. 51:5-13; Henry Tr. 91:4-23.

[30] Recordings of May 2017 Magistrations, Ex. M Attachs. 1–5; Hr'g Tr. 390:21–23; Reyna-Valdez Tr. at 116:13–23 ("Q:…does Judge Foley do anything materially different from the way we just talked about Judge Baker conducting magistration? A: Everything is normally the same unless she specifies that they're responsible for paying the pretrial fee. Q: Okay. So other than that specification, magistration generally proceeds the same way? A: Yes, ma'am. Q: Between Judge Baker and Judge Foley? A: Yes, ma'am.").

[31] Galveston County Indigent Defense Plan (2016), Ex. J at 4-5.

[32] Reyna-Valdez Tr. 87:19-22; Foley Tr. 37:12-20; Baker Tr. 57:8-13.

[33] Reyna-Valdez Tr. 88:25-89:7, 126:6-127:11; Foley Tr. 39:3-6; Baker Tr. 57:8-58:14, 78:12-79:15.

history information, financial information, or any other individualized information about the arrestee.[34]

19. The magistrate begins proceedings by telling arrestees that they will be informed of their charges and read their rights.[35] The magistrate reads each person's name, the charges against them, the bail amount written on their preprinted bail order, and whether the amount is secured (requiring a payment before release) or unsecured (requiring a promise to pay if the arrestee fails to appear in court). An unsecured bond is commonly referred to as a "pretrial release bond" or "personal bond."[36] Then the magistrate reads a list of rights as required by the Texas Code of Criminal Procedure.[37]

20. Thereafter, the magistrate and a clerk each call people forward separately to answer three questions: Are you a United States citizen? Have you served in the armed forces? Are you out on bail for another offense?[38] When the magistrate and clerk call people forward, arrestees generally speak only with the person that calls them forward, i.e., those called by the clerk usually speak only to the clerk, not the magistrate; and those called by the magistrate speak only to the magistrate, not the clerk.[39]

---

[34] Reyna-Valdez Tr. 88:25-89:7, 126:6-127:11; Foley Tr. 18:9-10 ("I used to have to beg for the criminal history"), 39:3-9; Baker Tr. 57:8-58:14, 78:12-79:15; Hr'g Tr. 186:25–187:14, 194:21–25, 209:12, 280:14–19.

[35] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Galveston County Indigent Defense Plan (2016), Ex. J at 5-6.

[36] Personal bonds can also require a payment before release, depending on whether the magistrate requires the arrestee to pay the 3% administrative fee up front or as court costs. Tex. Code Crim. Proc. Art. 17.03(g), 17.42; Additional Administrative Orders by Galveston County Judges, Ex. MM.

[37] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Galveston County Indigent Defense Plan (2016), Ex. J at 5-6.

[38] *Id.*

[39] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL.

21. After arrestees answer these questions, magistration is over.[40] The proceeding typically takes less than sixty seconds for each person.[41]

22. At magistration, the magistrates almost always sign the preprinted bail orders as secured bail orders.[42] magistrates have the authority to check a box to issue the orders as unsecured, which they refer to as "authorizing pretrial release," but the magistrates refuse to grant unsecured bail in the majority of cases.[43]

23. The weight of the evidence and testimony presented overwhelmingly indicate that it is customary for the magistrates to adopt the preprinted bail amounts set by the District Attorney:

a. The revised bail procedures, a document authored by counsel for the County, explicitly assumes that "pre-scheduled" bail amounts are adopted at magistration.[44]

b. Judge Cox testified at his deposition that magistration is a ministerial function.[45]

c. Magistrate Judge Foley testified that she signs the preprinted bail orders as a first step, and returns to adjust them only if time permits.[46]

---

[40] *Id.*

[41] *Id.*

[42] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Declaration of Paul Zurek, Ex. W ("Zurek Decl.") Ex. 1; Supplemental Expert Report of Michael Jones, Ph.D., Ex. Y ("Jones Supp.") ¶¶ 14-15; Walsdorf Decl., ECF No. 3-5 ¶ 16.

[43] *Id.*

[44] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ at 5 (describing procedure at bail review hearing "[i]f the decision-maker declines to lower bail from the pre-scheduled amount").

[45] Deposition Transcript and Video Recording: Hon. Obie Alonzo Cox, Jr. (Sept. 14, 2018), Ex. CC ("Cox Tr.") at 24:18–25:4.

d. Each of the magistrates who testified at the hearing, while insisting that they always exercise independent judgment, struggled to explain what the purpose of the preprinted bail amount was.[47] Magistrate Judge Baker testified in his deposition that he does not know where the preprinted bond amounts come from.[48] Magistrate Judge Foley was evasive, and ultimately lacked credibility, about her knowledge of where the preprinted amount came from and how often preprinted amounts actually appeared on the forms before her.[49]

e. Judge Foley volunteered that she "generally" imposes a $20,000 bail amount for "felony drug charges" against a person with "criminal history," which

---

[46] Foley Tr. 149:7–22 ("Q: Is it true that in Mr. Booth's case you did, in fact, consider raising his bail amount? Judge Foley: I considered raising it, yes. . . . Q: But for whatever reason, you just decided not to? Judge Foley: Honestly, I think, given the exhibits that I've seen today, it looks like April the 8th was a pretty busy day. And he probably got lucky by benefit of the fact that I was overwhelmed with people to see, and he probably got lucky in that regard and that's why I didn't raise it."), 159:5-13 (Judge Foley: And--and it happens regularly, especially when we have a really busy day, that I will do the paperwork, but I will hold--I will, in the back of my mind, think, 'I'm going to go back and revisit that.' . . . [A]nd [I] probably just didn't because we--it was a busy day."); Hr'g Tr. 206:14–15 (Judge Foley: "Had the day not been so busy, he might have had a different result.").

[47] Hr'g Tr. 212:12–15 (Judge Foley: "I really don't know. I really don't know. . . . I don't know why it's there."), 408:407:24–408:7 ("The Court: What is your understanding as to why the Assistant District Attorney or the arresting officers includes a proposed amount on the sheet that's provided to you before magistration? Judge Hindman: Why do they do that? The Court: Yes. Judge Hindman: Because it's always been done. The Court: Okay.").

[48] Baker Tr. 90:18–20.

[49] *Compare* Hr'g Tr. 182:8–183:12 (Judge Foley: "Honestly, I don't know whether the officer put it on there or the clerk put it on there. . . . Q: . . . I can show you the deposition if it's helpful--you said, 'I believe the arresting officer puts that information.' Judge Foley: Maybe the--I don't know whether it's the arresting officer or the--it was--when I got it, the paper, it was already on there. Q: Okay. A: Sometimes. Not all the time, but sometimes it was on there.") *with, e.g.*, Foley Tr. Exs. 2–5, 9–11 (statutory warnings forms from the day Mr. Booth was magistrated, each of which has a preprinted bail amount); Baker Tr. 53:5–12 ("Q: . . . I'm wondering--referring to the blank that says 'charge number' and 'bond amount' next to numeral 1, whether those blanks are preprinted for you before magistration begins? . . . Judge Baker: When--they come preprinted to--yes.").

is the pre-scheduled bail amount for a state jail felony (the offense level for simple possession of many drugs) if the arrestee has a prior felony conviction.[50]

f. A random sample of bail orders signed over the course of a week shortly before this case was filed indicates that magistrates adopted the preprinted amounts in nearly every case.[51] While Defendants contend that this sample includes bail amounts that the magistrates did not have jurisdiction to change, the evidence shows that the magistrates' practice was almost always the same, whether they believed had jurisdiction or not.

g. The Court does not credit Defendants' evidence that the magistrate judges coincidentally conclude, as a matter of their independent judgment, that the bail amount preprinted on the statutory warnings form was the exact bail amount merited by the evidence in almost every case.[52]

---

[50] Hr'g Tr. 211:5–19 (The Court: Okay. And what—did you give that amount any relevance, any detail, any credence? Judge Foley: Generally, for a felony drug offense, 20,000 was where I would set it if there as criminal history. Generally. The Court: Okay. So, what you're saying is that, generally speaking, if it was a felony offense for a drug charge and the preprinted amount was 20,000, that's what you would respect that decision. . . . Judge Foley: And with the lengthy criminal history. With the criminal history [indic.] they had."). *Compare* Letter from Kevin Petroff to Trisha Trigilio Enclosing Felony Bail Schedule (January 1, 2017) (scheduling $20,000 bail amount for state jail felony charges against a person with a felony conviction).

[51] Dr. Zurek's spreadsheet indicates whether there was a handwritten change to any preprinted bail amount on the statutory warning form. Supplemental Declaration of Paul Zurek (Jan. 11, 2018), Ex. X ("Zurek Supp.") Ex. 1. No change necessarily implies that the magistrate adopted the preprinted amount. But even if there is a handwritten change, that doesn't necessarily indicate that the magistrate exercised her independent judgment. A handwritten change can indicate that the magistrate changed the bail amount to *conform to* the District Attorney's "recommendation." The magistrate clerk testified that this happens when the arresting officer makes an error on the paperwork, and the bail amount in the probable cause affidavit doesn't match the bail amount preprinted on the warnings form. Reyna-Valdez Tr. at 61:13-25.

[52] For example, the District Attorney responded to a question from the Court as follows: "The Court: assume for the sake of argument that in selected weeks 75 percent of the district attorney's recommendations are being adopted by the magistrates. Does that surprise you? Mr. Roady: . . . If our recommendation happens to line up with the independent judgment of the magistrate based on the facts

24. It is uncontested that magistrates do not give arrestees notice that their liberty is at stake at magistration.[53] magistrates do not inquire into arrestees' ability to pay the bail amount.[54] magistrates do not give arrestees an opportunity to present evidence or argument in their defense, or to confront the facts (if any) used to support their respective bail orders.[55] magistrates do not make any findings, on the record or otherwise, concerning ability to pay or supporting deprivation of the right to pretrial liberty.[56] The County does not provide defense counsel to represent arrestees at magistration.[57]

3. Post-Magistration Procedures

25. Immediately following magistration, the magistrate or clerk gives a "pauper's oath" form to anyone who requests appointed counsel. [58] By completing a

---

known to the magistrate, then that's not necessarily wrong." Hr'g Tr. 476:6–15. It is wholly implausible that the prosecutors' recommendations, which are based on a bail schedule, would be the same as the individualized bail amounts independently determined by a magistrate, which are theoretically independent of the schedule, in three quarters of cases. Such an outcome should surprise Mr. Roady, and the fact that it does not is indicative of the systemwide understanding that magistrates defer to preprinted bail amounts.

[53] Declaration of Trisha Trigilio (Apr. 8, 2018), Ex. M, Atts. 1–5 (recordings of May 2017 magistrations); Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (April 2018 recordings).

[54] Declaration of Trisha Trigilio (Apr. 8, 2018), Ex. M, Atts. 1–5 (recordings of May 2017 magistrations); Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (April 2018 recordings); Hr'g Tr. 179:14–25 (Judge Foley: "I'm telling them they have the right to remain silent . . . . I didn't feel like it was proper then for me to come back and start quizzing them."), 180:1–4, 392:13–19.

[55] Declaration of Trisha Trigilio (Apr. 8, 2018), Ex. M, Atts. 1–5 (recordings of May 2017 magistrations); Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (April 2018 recordings).

[56] Recordings of May 2017 Magistrations, Ex. M, Attachs. 1–5; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (April 2018 recordings).

[57] Reyna-Valdez Tr. 115:24–116:2; Hr'g Tr. 178:4–24.

[58] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL; Galveston County Indigent Defense Plan (2016), Ex. J; Walsdorf Decl., Ex. D.

pauper's oath, an arrestee documents detailed financial information about themselves and swears that they cannot afford to hire an attorney.[59]

26. The magistrate typically leaves the room before each arrestee has completed their pauper's oath.[60]

27. In 40% of felony cases, arrestees have to wait 48 hours or more after magistration for a felony judge to rule on the arrestee's pauper's oath and appoint defense counsel.[61]

28. The first court appearance for felony arrestees may be delayed days or weeks after magistration.[62]

29. Judges typically do not hold hearings on bail reduction motions for three days or more after a written motion is filed.[63]

4. Rationale Behind, and Impact of, Galveston County's Reliance on Secured Bail

30. There is no evidence that Galveston County's use of secured money bail serves a legitimate government interest. Plaintiff's empirical evidence and expert testimony about the ineffectiveness and harms of secured money bail is persuasive and unrebutted.

---

[59] Galveston County Indigent Defense Plan (2016), Ex. J at 5; Walsdorf Decl., Ex. D ¶ 17.

[60] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL.

[61] Texas Indigent Defense Commission Limited Scope Policy Monitoring Review - Galveston County, ECF No. 3-10 ("TIDC Report") at 8.

[62] Walsdorf Decl., Ex. D ¶¶ 25, 30.

[63] Zurek Decl. Ex. 1, Ex. W; *see also* Walsdorf Decl., Ex. D ¶ 28.

31. Professor Stephen Demuth and Dr. Michael Jones offered expert opinions on secured money bail and pretrial release practices.[64]

32. Professor Demuth is a professor of sociology who researches the influence of race/ethnicity, gender, and social class on decisions and outcomes at the pretrial and sentencing stages of criminal cases, and more recently, the collateral consequences of criminal system involvement on later-life outcomes. As Professor Demuth explained in his declaration and his testimony, his opinions are based on studies of robust data sets and an understanding of the reliability of principles and methods for drawing conclusions from that data.[65]

33. Dr. Michael R. Jones is the founder and president of a consulting company that provides technical assistance and advice to jurisdictions seeking to reform their pretrial practices to conform to the most up-to-date research on best practices. He has spent a seventeen-year career studying pretrial release and helping jurisdictions implement pretrial reforms to reduce detention and improve rates of court appearance and public safety. As Dr. Jones explained in his declaration and his testimony, his opinion is based on his own and others' studies using robust data sets and an understanding of the reliability of principles and methods for drawing conclusions from that data.[66]

34. The Court credits both of these experts' opinions as follows.

[64] Expert Report of Prof. Stephen Demuth (July 13, 2018), Ex. V ("Demuth Decl."); Jones Decl, Ex. U.; Jones Supp., Ex. Y.

[65] Demuth Decl. ¶¶ 9-11

[66]Jones Decl. ¶ 12. Dr. Jones also agreed with opinions expressed in Professor Demuth's live testimony. Hr'g Tr. 94:14–15 ("I thought he gave a very fair and accurate summary of that research.").

35. **First**, secured bail is no more effective than unsecured bail or nonfinancial conditions of release at assuring appearance in court or public safety. The few studies that have reached a contrary conclusion were flawed for the reasons Professor Demuth and Dr. Jones discussed in detail.[67] The Court agrees with Professor Demuth's and Dr. Jones's opinions, based on their review of a series of recent, rigorous empirical studies reaching the same conclusion, and their testimony regarding the same.[68]

36. As Professor Demuth and Dr. Jones testified, this opinion is generalizable to all jurisdictions, including Galveston County.[69] There is no meaningful way for Galveston County to dispute this conclusion and justify their widespread use of secured money bail. Galveston County officials do not track rates of failure to appear.[70] Galveston County officials have not assessed the relative efficacy of secured versus unsecured bond at securing court appearance.[71]

37. **Second**, the use of secured money bail increases pretrial detention rates, resulting in an extremely high risk that less-wealthy arrestees are unnecessarily detained.

---

[67] Demuth Decl. ¶¶ 17–20; Jones Decl. ¶¶ 30–32 (citing a literature review Dr. Jones coauthored on this subject, Bechtel, K. *et al.*, Pretrial Justice Institute, *Dispelling the Myths: What Policy Makers Need to Know About Pretrial Research* (2012), https://pdfs.semanticscholar.org/199c/ed3713d5dbe7b5ffd3b3db121c184274e316.pdf).

[68] Demuth Decl. ¶¶ 13–25; Hr'g Tr. 53:22–54:7 ("A: …There's a number of studies, two in particular, that have looked specifically at comparing the outcomes in terms of failures to appear in court and new criminal activity that compares secured and unsecured bonds to each other and they find that when you make an apples to apples comparison of people who have the same risk profile, that … secured bail is no more effective than unsecured bail at achieving court appearance and minimizing new criminal activity. Q: And based on that research, what have you concluded? A: I've concluded that secured money bail is not necessary to achieve the goals of the court[.]).

[69] Hr'g Tr. 64:17–20.

[70] Council of State Governments Justice Center, Galveston County System Review: Findings and Recommendations (Nov. 13, 2017), Ex. YY ("CSG Final Report") at vii-viii; Hr'g Tr. 364:24–365:12.

[71] *Id.*; Henry Tr. 37:14-19.

Requiring payments before release results in longer periods of pretrial detention and a lower likelihood of release before case disposition. Because personal (unsecured) bond is just as effective as secured bail, these extended periods of pretrial detention serve no legitimate purpose.[72] The unnecessary pretrial detention caused by the use of secured bail falls disproportionately on people of color, who are disproportionately less wealthy and less able to afford secured money bail than white people arrested for the same crimes and with the same criminal history.[73]

38. The conclusion that secured bail results in unnecessary pretrial detention is bolstered by the arbitrary way in which Galveston County sets secured bail amounts, which guarantees that arrestees are unnecessarily detained.

a. Bail amounts all originate from the duty prosecutor referencing the felony bail schedule.[74] The amounts in the bail schedule are arbitrary. They were derived from the Montgomery County bail schedule.[75] They have not changed for at least sixteen years.[76] They were not derived from any empirical study, nor could they

[72] Demuth Decl. ¶¶ 26-32; Hr'g Tr. 54:10–16.

[73] Demuth Decl. ¶ 30 ("[A] major driver of racial and ethnic disparities in pretrial release is that minorities are disproportionately less wealthy and less able to afford secured money bail than whites arrested for the same crimes and with the same criminal history."); Hr'g Tr. 56:1–8 ("They don't have cash and so that's one group. So people who are socioeconomically disadvantage[d,] but also disproportionately racial and ethnic minorities because they are disproportionately disadvantaged as well. . . . [A]bout half of that race gap in pretrial detention is explained by socioeconomic status . . . .").

[74] Letter from Kevin Petroff to Trisha Trigilio Enclosing Felony Bail Schedule (January 1, 2017), Ex. E. The Court is skeptical that, although the bail schedule was explicitly a "minimum" schedule, it functioned only as a suggestion. But this point is irrelevant. The administrative policy as written was official Galveston County policy, and as a result of that policy, prosecutors set pre-scheduled bail amounts that were automatically adopted.

[75] Email from Kevin Petroff to Jessica Tyler (Mar. 29, 2017), Ex. QQ.

[76] Hr'g Tr. at 474:7-14 ("Q: Let me ask, why didn't -- had you looked at the amounts that are recommended here from time to time? Mr. Roady: Yes, sir. Q: Why haven't you ever changed them? Mr.

have been--research shows that the offense charged is not an accurate predictor of a defendant's risk.[77]

b. The face of the schedule demonstrates that bail amounts are arbitrary. A prior felony conviction can increase the standard bond amount *tenfold*, without any regard for the age or nature of the conviction.[78] Bail amounts for "controlled substances" (the type of offense is undefined) in "large amounts" (also undefined) merit a bail amount of "double street value" (again undefined). Offenses that are "gang related" (undefined) merit triple the normal bond. And the schedule specifies that bond for anyone with a prior felony conviction cannot be "lower than previous bond," again without regard to the age or nature of the conviction.[79]

c. Even if a prosecutor deviated from the bail schedule, the resulting bail amount would be no less arbitrary. Prosecutors have no financial information about arrestees, and thus have no basis to conclude that a bail amount that is is necessary or sufficient to motivate an arrestee to return to court.[80]

Roady: I did not believe it was necessary to change them. Q: Okay. Mr. Roady: I believe they're appropriate. Q: Okay.").

[77] Jones Decl. ¶ 39(b)-(c); ("If current charge is predictive of risk, it plays an incomplete and relatively small role. . . . [M]onetary bail schedules assume that more serious charges place defendants at higher risk, and that higher monetary bail amounts are needed to manage this risk. . . . [T]his assumption is flawed . . . [T]here is no evidence from any study from within or outside of Galveston County that the particular monetary bail amounts scheduled (or set in court) are either necessary for or effective in reducing pretrial misconduct."); Hr'g Tr. 100:7 - 101:12; Demuth Decl. ¶ 15.

[78] This was the case for Mr. Booth, whose bail amount for a state jail felony drug possession charge increased from $2,000 to $20,000 based on a felony shoplifting charge from his teenage years. Jt. Def. Ex. 16 at 35; Hr'g Tr. at 216:13–25.

[79] Letter from Kevin Petroff to Trisha Trigilio Enclosing Felony Bail Schedule (January 1, 2017), Ex. E at 6.

[80] Hr'g Tr. 461:23–462:4, 468:16–469:8 ("The Court: . . . [H]ow can you make a recommendation on what the bail amount would be to ensure that someone is going to come back for a future court

d. Bail amounts deviating from the schedule are also arbitrary because of the way they are aggregated. For arrestees with multiple charges, the prosecutor sets a different bail amount for each charge, and those bail amounts are simply aggregated to determine a total bail amount.[81] This practice is based on the flawed assumption that people with more than one charge require higher bail amounts.[82]

e. As the Court found above, it is customary for the magistrates to adopt these arbitrary preprinted bail amounts set by the District Attorney.

39. The conclusion that secured bail carries an extremely high risk of unnecessary pretrial detention is reinforced by the composition of Galveston County's jail population, which includes 71% pretrial detainees--a "much higher proportion than in similar counties."[83]

40. **Third**, not only is the increased pretrial detention resulting from secured bail unnecessary, it is demonstrably *harmful* to both appearance and recidivism rates, and is extremely harmful to both the arrestee and the community. Pretrial detention of low- or moderate-risk arrestees increases the likelihood that they will fail to appear in court after

---

proceeding if you don't know what their financial condition is? . . . Mr. Roady: Judge, if we were the ultimate decider of that number then yes, we would, but our role as an advocate for the State of Texas is to protect public safety and also to act on the information that is known to us that might not be known to the magistrate . . . .").

[81] Training Materials for magistrates (June–September 2018), Ex. HHH, Attachment 5 (Oct. 19, 2018 email from Paul Ready on allocating bail amounts); Jones Supp. ¶¶ 18-19; Hr'g Tr. 108:4-110:24; Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ, App'x C.

[82] Hr'g Tr. 100:17–23 (Dr. Jones: "[T]hat practice of adding or summing together separate money bail amounts when defendants have more than one charge . . . . it's just based . . . on the flawed assumption that more money bail is needed to manage the assumed higher risk of persons with more than one charge."); 106:13–16 (same).

[83] Council of State Governments Justice Center, Galveston County System Review: Findings and Recommendations (Nov. 13, 2017), Ex. YY at 3.

they are released,[84] and that they will be rearrested after they are released from court.[85] Both of these effects are detectable with arrestees who have been detained for just 24 hours, and these effects continue to get worse the longer an arrestee's detention goes on.[86] Pretrial detention also prejudices arrestees' criminal cases: arrestees who are detained are likelier to plead guilty, to be convicted, to be sentenced to prison, to be sentenced to spend a longer time in prison, and to be sentenced to pay more fines and fees. [87]

41. The conclusion that secured bail causes unnecessary pretrial detention, which, in turn, raises rates of recidivism among the lowest-risk arrestees, is consistent with Galveston County's experience. Galveston County engages in widespread use of

[84] Jones Decl. ¶ 20; Hr'g Tr. 141:15-18 (Dr. Jones: "[R]esearch has failed to support to show that any particular money bail amount is effective in returning defendants to court who are charged with certain crimes."); Demuth Decl. ¶¶ 38-39; Hr'g Tr. 79:11-80:5; (Prof. Demuth: "[A]nd so what they found was that the people who were detained for two to three days already had a higher risk of failure to appear and new criminal activity than people who were detained less than that.")

[85] Jones Decl. ¶¶ 19-22; Demuth Decl. ¶¶ 33-37; Hr'g Tr. 57:1–9. 13–16 (Prof. Demuth: "[P]eople who are detained are more likely to be unemployed as a result. They're actually more likely to commit crime. . . . [E]xperimental techniques show that the detention itself is creating a situation where someone is actually at a greater risk of future crime. . . . in many respects the detention is actually creating the kind of instability that is trying to be avoided that leads to these negative consequences."), 77:13–25.

[86] Hr'g Tr. 60:15–18 (Prof. Demuth: "[J]ust going from one day to two to three days [of pretrial detention], you actually saw statistically significant increase in the risk of failing to appear and an increase in the risk of new criminal activity."); 79:22–80:5 (Prof. Demuth: "[T]he general conclusion is . . . consistent with what we know which is that detention is destabilizing and that restraint is important because the longer someone's detained, the more of a consequence that has. And given that those effects were strongest for the people who are the least risky, that's consistent with what we know about how the system can be very damaging to people who don't have experience in that environment. And so the longer the time that goes on, the more damage[] can be done."), 95:6–7 (Dr. Jones: "[D]elayed release times, when someone is released pretrial as a defendant are associated with reduced pretrial outcomes.").

[87] Jones Decl. ¶¶ 23-26; Demuth Decl. ¶¶ 34-37; Hr'g Tr. 77:16-20 (Prof. Demuth: "[B]eing detained increases your likelihood of a conviction because people feel compelled to plead guilty; they want to get out…').

secured bail, and experiences a high rate of recidivism among people released from Galveston County Jail.[88]

42. The conclusion that secured bail causes unnecessary pretrial detention, which, in turn, raises rates of recidivism among the lowest-risk detainees, is consistent with Galveston County's experience. Case outcomes for people who can afford their bail are markedly different from those who cannot.[89] For example, 44.7% of felony arrestees who post bail are sentenced to probation or deferred adjudication, compared with just 25.0% of felony arrestees who are detained at the time of sentencing.[90]

43. **Fourth and finally**, there are readily available alternatives to Galveston County's use of secured bail that can effectively manage defendants' risk. Most failures to appear are not willful,[91] they are caused by some complication--and interventions that help defendants get to court are extremely effective. Simple and inexpensive alternatives, like affirmatively reminding defendants of their court dates, dramatically decrease rates of failure to appear.[92] In fact, court date reminders are the single most effective pretrial

[88] Council of State Governments Justice Center, Galveston County System Review: Findings and Recommendations (Nov. 13, 2017), Ex. YY at vii.

[89] TIDC Report at 21-26; Hr'g Tr. 56:20–25 (Prof. Demuth: "[B]eing detained has this snowball disadvantage where people who are detained have worse case outcomes so they're more likely to be convicted, more likely to plead guilty, more likely to get a longer sentence, more likely to get incarcerative sentences, more likely to accumulate debt from the system.").

[90] *Id.* at 25-26.

[91] Hr'g Tr. 62:5–18 ("The research shows that most people who don't show up to court aren't willfully failing to appear. . . . [W]hat the research shows is that . . . if somebody doesn't show up the first time they might show up the second time: they didn't have a ride or they had to . . . risk [] losing their job . . . their lives are more—just become more complicated.").

[92] Jones Decl. ¶ 41 ("I have worked with practitioners in multiple jurisdictions that have implemented such reminder systems and who reported to me that they prefer reminders systems because, unlike monetary bail, they are relatively low cost, they do not result in any unnecessary pretrial detention . . . , they are free of racial/ethnic bias, and/or they greatly improve the desired outcome of court appearance.");

risk management intervention for reducing failures to appear.[93] But despite this simple, inexpensive, and readily available alternative, the County does not inform defendants when court dates are scheduled; instead, defendants must call the personal bond office once a month to ask.[94] Pretrial monitoring also reduces failure to appear for moderate-to-high arrestees, may reduce their likelihood of rearrest,[95] and is cheaper than relying on secured bail,[96] but the County has no meaningful form of pretrial monitoring available.

44. Unnecessary pretrial detention, and the resulting collateral harm, impact a great deal of people. Galveston County magistrates approximately 25 people per day.[97] A significant number of arrestees cannot afford bail amounts set at magistration, and as a result, Galveston County holds them in jail.[98] Galveston County Jail holds over 1000 people.[99]

Hr'g Tr. 62:22–63:3 (Prof. Demuth: "[J]ust trying to remind people, remind the arrestees that they have a court date and how to get there and why not showing up is a problem . . . actually has dramatic effects on reducing failures to appear. So some of these studies show reductions of 40 percent in nonappearance just by notifying people, reminding them with text messages.").

[93] Jones Decl. ¶ 41.

[94] Hr'g Tr. 305:12–17 (Mr. Oliphant: "[T]hey're supposed to call in to my office and find out their next court date, if they have one, and then their next reporting date. If they're given that information, when they call in, if they call in, and they don't show up to their court date, then it's up to the Judge on if they want to revoke that person's bond for failure to appear."), 319:4–9 ("Q: [W]hen a court date is set, do you call the . . . defendant and [let] them know when their court date is? Mr. Oliphant: No. Part of their condition of the bond is that they're to call in every thirty days.").

[95] Jones Decl. ¶ 42.

[96] Jones Decl. ¶ 43 (describing $2 million in annual savings for City and County of Denver).

[97] Reyna-Valdez Tr. 118:22-119:1.

[98] Galveston County Bail Review Spreadsheet (Dec. 31, 2018), Ex. LLL; TIDC Report at 6; Hr'g Tr. 55:19–22 (Prof. Demuth: "There was a report from the federal reserve just last year that said that it's something like 40% of people in society couldn't come up with $400 in a 24-hour period without having to either sell something or borrow money . . . .").

[99] Hr'g Tr. 339:22-23.

III. Acquiescence in Galveston County's Pretrial Detention Practices

45. The felony judges, including the Local Administrative Judge, know that the magistrates typically adopt the secured bail amounts set by prosecutors under the bail schedule. They know that these bail amounts are set without any inquiry into or findings concerning ability to pay, flight risk, dangerousness, or less restrictive alternatives. They also know that these bail amounts are set at hearings where arrestees are not represented by counsel. They have the authority to permanently change Galveston County's bail practices and have failed to do so.

46. When County Judge Mark Henry was first elected to office in 2010, it was widely known that jail overcrowding was a major issue facing Galveston County.[100]

47. In 2012, the Commissioners' Court hired a consulting firm, Griffith Mosely Johnson, to assess the problem.[101] The report found that magistrates automatically ordered secured money bail for anyone who fell within a list of "reasons for rejection" for personal bond, in accordance with a standing order issued by the felony judges.[102] The report suggested that the County study ways to hold pretrial detainees for shorter periods

---

[100] Henry Tr. 10:5-21; Hr'g Tr. 339:22–23 (Judge Henry: "The jail was built for capacity of approximately 1,190, I believe it is. And we constantly flirt with that number.").

[101] Henry Tr. 14:12-20.

[102] Griffith Mosely Johnson & Associates, Criminal Justice System Assessment (April 25, 2014), Ex. NN; Additional Administrative Orders by Galveston County Judges, Ex. MM; Hr'g Tr. 359:14–360:6.

of time.[103] The felony judges refused to attend meetings to discuss the results of the report, but they were well aware of its contents.[104]

48. In 2014, the Commissioners' Court hired a second consultant, Patricia Grady, to assess the County's pretrial release system.[105] Her report recommended that the County convene a coordinating council to facilitate policy changes, but no County official convened the council.[106]

49. In 2016, both the District Attorney and the County Judge were informed of a written complaint that a local criminal defense attorney made to the Texas Indigent Defense Commission.[107] The complaint stated that:

a. Personal bonds are "virtually never granted," and as a result, clients plead guilty merely so they can get out of jail.[108]

b. The County jails defendants who are unable to pay their court costs for extra days,[109] in plain disregard of the right against wealth-based detention.

c. Caseloads for court-appointed defense attorneys in Galveston County make it difficult for appointed counsel to devote adequate time to each client,[110]

---

[103] Griffith Mosely Johnson & Associates, Criminal Justice System Assessment (April 25, 2014), Ex. NN at 28.

[104] Henry Tr. 51:4-6, 74:24-75:3; Lonnie Cox, *Commissioners Continue Meddling and Wasting Taxpayer Money, Galveston County Daily News* (Feb. 28, 2017), Ex. P at 20-21; Hr'g Tr. 359:14–360:6.

[105] Hr'g Tr. 360:7–18.

[106] *Id.*

[107] Email from Linda Liechty to Hon. Jack Roady and Hon. Mark Henry Attaching Complaint to Texas Indigent Defense Commission (June 28, 2016), Ex. OO at 3.

[108] *Id.*

[109] *Id*. at 4–5.

[110] *Id*. at 5–6.

indicating that appointed counsel cannot realistically file timely bail reduction motions.

50. In 2016, the Commissioners' Court attempted to take control of the personal bond office from the felony judges. In October 2016, the felony judges retaliated by revoking a standing order that authorized some arrestees to be released on personal bond before magistration, increasing the number of people held in Galveston County Jail. Judge Cox also interfered with the operations of the personal bond office, and with the release of detainees for whom personal bond had already been granted.[111] This episode demonstrates the felony judges' indifference to—and active participation in—unnecessary pretrial detention.

51. Local reporting also demonstrates that County officials were well aware of how the system functioned. Judge Cox was quoted discussing "standard bond amounts" in the Galveston County Daily News, and multiple officials commented that there were pretrial detainees in the jail who should be released.[112]

52. In 2017, the Commissioners' Court hired a team from the Council of State Governments Justice Center, led by Dr. Tony Fabelo, to conduct a third assessment of its justice system. Dr. Fabelo and Galveston County policymakers openly discussed the constitutional problems with Galveston's bail system.

---

[111] Henry Tr. 148-50; Additional Administrative Orders by Galveston County Judges, Ex. MM; Email from Linda Liechty to Hon. Jack Roady and Hon. Mark Henry Attaching Complaint to Texas Indigent Defense Commission (June 28, 2016), Ex. OO; Narrative of Hon. Lonnie Cox's Interference with Personal Bond (Oct. 2016), Ex. PP.

[112] Assorted Newspaper Sources, Ex. P. at 11.

53. Dr. Fabelo emailed the District Attorney about *ODonnell v. Harris County*, No. 16-cv-1414 (S.D. Tex.), repeatedly.[113] When the district court issued its injunction, Dr. Fabelo noted all the ways in which Harris County's system was actually *better than* Galveston's system, concluding "Galveston has none of the above."[114]

54. Dr. Fabelo's preliminary report was officially published in June 2017.[115] The report specified that:

a. Pretrial detainees constituted 71% of the County's jail population.[116]

b. The County does not track failure to appear rates or otherwise assess the relative efficacy of secured bond versus personal bond.[117]

c. There is a high recidivism rate among people released from the County jail.[118]

d. Pretrial release is driven mainly by the bail schedule, without any individualized consideration.[119]

---

[113] In one email, he asked, "Houston drama headed your way too?," highlighting passages including: "the county's bail system violates the rights of poor people facing misdemeanor charges by enforcing a rigid bail schedule that does not take into account a person's ability to pay." Email from Tony Fabelo to Hon. Jack Roady (Mar. 29, 2017), Ex. RR at 2–3 (highlighting in original).

[114] Email from Tony Fabelo to Hon. Jack Roady (Apr. 29, 2017), Ex. SS. Specifically, Dr. Fabelo wrote: "Note that Harris County has a pretty good system of 'direct filing' so cases don't linger in jail without charges and a well operated Pretrial Trial office that interviews all those arrested, administer a risk assessment, make recommendations for pretrial release by the first probable cause hearing and provide pretrial supervision for those released of PR bond. Harris also has 25/7 magistration; clear policies on setting bail; an integrated information system that allows all judicial players to have the right information for the case in front-of-them; and, a few other features to make the system operate efficiently. Galveston has none of the above." *Id.* at 1.

[115] Council of State Governments Justice Center, Galveston County Justice System Assessment: Preliminary Findings for Review by Local Officials (June 22, 2017), Ex. VV.

[116] Ex. VV at vii, 1.

[117] *Id.* at 17.

[118] *Id*.

e. The magistrate sets bail amounts from the bail schedule based on the District Attorney's "recommendations."[120]

f. The County does not offer any meaningful pretrial supervision other than attempts to collect money.[121]

g. The preliminary recommendation for fixing these problems is to convene an interagency coordinating council.[122]

55. The same month, the Texas Indigent Defense Commission issued a report on its audit of the indigent defense system in Galveston County, which was conducted in response to the earlier complaint from a local defense attorney. The report found that arrestees who could not afford to post their bail had significantly worse case outcomes.[123] The County Judge's chief of staff forwarded it to the District Attorney personally.[124]

56. The next month, July 2017, the ACLU of Texas sent a letter summarizing its ongoing investigation to officials including the County Legal Department, Judge Cox, and the District Attorney.[125] The letter reiterates findings of automatic wealth-based detention consistent with Dr. Fabelo's report, details the trial court's ruling *ODonnell v.*

---

[119] *Id*. at 6.

[120] *Id*.

[121] *Id*. at 16.

[122] *Id*. at 39.

[123] Texas Indigent Defense Commission Limited Scope Policy Monitoring Review: Galveston County (June 2017), Ex. I at 25 (As to felony outcomes, a large portion of bonded defendants received probation or deferred adjudication. When defendants did not make bail, a larger percentage of defendants pled to terms of confinement exceeding one year.").

[124] Email from Tyler Drummond to Hon. Jack Roady Attaching Texas Indigent Defense Commission Report (June 2, 2017), Ex. UU.

[125] Letter from Trisha Trigilio to Myrna Reingold (July 20, 2017), Ex. WW.

Harris County, 251 F.Supp.3d 1052 (S.D. Tex. 2017), and specifically notes that the County's pretrial detention practices are unconstitutional.[126] The ACLU of Texas later followed up with two additional letters urging interim fixes and reiterating the need for prompt action.[127]

57. In November 2017, Dr. Fabelo personally presented his final report at a meeting of the board of judges.[128] The report's findings and recommendations did not differ materially from the preliminary report; the report's preliminary recommendation was still to convene an interagency coordinating council for all stakeholders to collaboratively design changes to the County's bail system.[129] The County had failed to convene the coordinating council in the five months since Dr. Fabelo's preliminary report in June 2017, and again failed to convene the council in November 2017.[130]

58. In December 2017, the County failed to convene the coordinating council.[131]

59. In January 2018, the County failed to convene the coordinating council.[132]

---

[126] Letter from Trisha Trigilio to Myrna Reingold (July 20, 2017), Ex. WW.

[127] Letter from Trisha Trigilio to Hon. Lonnie Cox et al. (Aug. 4, 2017), Ex. XX; Letter from Trisha Trigilio to Galveston County Criminal District Judges and County Court at Law Judges (Nov. 21, 2017), Ex. ZZ.

[128] Council of State Governments Justice Center—Galveston County System Review: Findings and Recommendations (November 2, 2017), Ex. YY; Letter from Trisha Trigilio to Galveston County Criminal District Judges and County Court at Law Judges (Nov. 21, 2017), Ex. ZZ.

[129] *Id.* at xv-xvi.

[130] Hr'g Tr. 360:19–361:14.

[131] *Id.*

[132] Hr'g Tr. 360:19–361:14.

60. In February 2018, the Fifth Circuit issued its opinion in *ODonnell v. Harris County*, 882 F.3d 528 (5th Cir. 2018), invalidating Harris County's bail system. The County failed to convene the coordinating council.[133]

61. In March 2018, the County failed to convene the coordinating council.[134]

62. In April 2018, Mr. Booth was jailed under the system described in Dr. Fabelo's reports.[135] Mr. Booth filed this class-action lawsuit for injunctive relief. The first meeting of the coordinating council was not even scheduled—much less held—at the time this lawsuit was filed.[136]

63. In addition to failing to convene a coordinating council, throughout this years-long period of repeated studies, the felony judges failed to:

a. Pass local administrative rules governing procedures for magistration.

b. Promulgate standing orders correcting constitutional deficiencies at magistration. The felony judges promulgated other standing orders governing procedures for magistration,[137] and putting substantive limits on pretrial

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*; Letter from Bob Boemer to Galveston County Officials (Apr. 24, 2018), Ex. DDD (sending invitation for first coordinating council meeting to be held in May 2018).

[137] *See, e.g.,* Amended Galveston County Indigent Defense Plan (October 28, 2016), Ex. J at 1 (describing the document as "GALVESTON COUNTY PLAN INCLUDING STANDING RULES AND ORDERS FOR PROCEDURES"), 5 ("At the magistrate's hearing the responsible Magistrate shall perform the following duties…").

detention,[138] but they did not correct the constitutional deficiencies Plaintiff challenges here.

c. Facilitate pro se bail reduction motions. Judge Cox also testified that felony judges have jurisdiction over habeas corpus petitions for bail reduction.[139] There is no evidence that the felony judges have taken any steps, such as providing pro se bail reduction forms to arrestees following magistration, to facilitate arrestees' filing bail reduction motions with the felony judges.[140]

IV. Changes to Galveston County's Practices

A. Continued Defense of the Prior System

64. Galveston County and the Defendant officials have consistently refused to admit that the system under which Mr. Booth was magistrated was unconstitutional.[141]

65. For example, Magistrate Judge Foley testified that in light of Mr. Booth's prior failure to appear, "his financial situation, while it might be relevant, would not have

[138] Additional Administrative Orders by Galveston County Judges, Ex. MM at 4, 7.

[139] Hr'g Tr. 433:18–23, 454:4–6.

[140] Notably, this is another way that the felony judges could solve what they have inappropriately treated as the intractable problem of jurisdiction over arrestees who were magistrated in another jurisdiction.

[141] Hr'g Tr. 38:22–39:1 ("The Court: [T]he process that was in place before the lawsuit was filed, did that suffer from any constitutional problems? Mr. Nixon: In my opinion, I don't believe it did."), 40:3–10 ("The Court: [H]ow Mr. Booth was treated, you believe that under *O'Donnell* that system that was in place was constitutionally permissible . . . ? Mr. Nixon: That's correct because Mr. Booth—Mr. Booth had an individualized bail hearing."), 41:10–11 (Mr. Nixon: "I don't believe there was a constitutional infirmity in that process."), 42:23–43:2 (Mr. Poole: "It would be awkward for these magistrates to [] start questioning the arrestee about his financial information and such. So that was a flaw exposed and highlighted by *O'Donnell*. Whether it's to a level of being a constitutional infirmity, someone smarter than me will have to say . . . ."), 48:3 (Mr. Biggs: "You're going to hear evidence today from the plaintiffs that Mr. Booth was previously treated unfairly in their view under a previous system. Well, for the district judges that doesn't matter . . . . [C]urrent process is all that matters for the district judges.").

changed my outcome."[142] But without understanding an arrestee's finances, the magistrates have no basis on which to conclude that any given bail amount will function to ensure the arrestee's future appearance in court.[143]

66. Both the magistrates and Judge Cox emphasized their ultimate fidelity to the Constitution, while simultaneously insisting that the system under which Mr. Booth was magistrated was constitutional.[144]

B. Revised Bail Procedures Document

67. Despite maintaining that the County's prior system was constitutional, counsel for the County authored a "revised bail review procedures" document after this case was filed.[145]

68. The document is arbitrarily dated August 8, 2018: it reflects some procedures that were already in place on that date, and many procedures that had yet to be implemented—most significantly, the bail review hearings.[146] The document appears

[142] Hr'g Tr. 207:23–25.

[143] Hr'g Tr. 154:16–22 (Dr. Jones: "[W]hat's the purpose of the money bail? It's to get the guy back to court. . . . [H]ow do we figure out what amount is going to motivate an individual defendant [to return to court]? Do we use our schedule? . . . [T]hat doesn't make sense because it's just looking at the defendant's charges.")

[144] Baker Tr. 109:18–24 (Q: "Do you intend to comply with the procedures outlined here under Section 10 Examining Court? Judge Baker: I intend to comply with the Constitution and the state laws and quite frankly my understanding of the 5th Circuit's decision in O'Donnell is what I intend to try to follow."); Hr'g Tr. 202:21–22 (Judge Foley: "I'm always going to follow the law, and I'm always going to follow the constitution . . . ."), 435:21–25 (Judge Cox: "I'm a state District Judge and we're sworn to preserve, protect, and defend the Constitution and laws of the United States and the state of Texas, not following processes or procedures dictated, initiated, written by Commissioner's Court.").

[145] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ. To the extent that the coordinating council had any role in preparing this document, the council is not a policymaking body. Bylaws of Galveston County and Judicial Criminal Justice Coordinating Advisory Council (July 19, 2018), Ex. III.

[146] Hr'g Tr. 193:1–21 (Judge Foley: "It was a process, Judge . . . .").

to have been dated August 8, 2018, and adorned with the County seal, in order to give the appearance of longstanding formal changes.

69. The changes in the document have not been formally announced by the County, nor have they been adopted by the felony judges.[147] Judge Cox, the Local Administrative Judge, is only partially familiar with the document's contents.[148] The felony judges refuse to incorporate these procedures into the Galveston County Local Rules of Administration or codify them in a standing order.[149]

70. The Commissioners' Court has not taken any formal action to adopt the changes in this document. County Judge Mark Henry concedes that the Commissioners' Court does not have legal authority to adopt the document as official County policy,[150] and that the procedures could be overruled by the felony judges.[151] A memorandum from the County characterizes these procedures to the magistrate judges as advisory rather than mandatory.[152]

---

[147] Hr'g Tr. 48:22–24 (Mr. Biggs: "[T]here's going to be an absolute[] absence of fingerprints on this process from the district judges except for appointment of counsel . . . ."), 428:24-429:6 ("Q: Did you create this new process? Judge Cox: No. Q: Who created this new process? As far as you know. Judge Cox: I think it came out of the Commissioners' Court or employees in the Commissioners' Court. Q: Do you have any reason to believe the other District Judges created this new or current bail system? Judge Cox: I'm confident that they did not.").

[148] Hr'g Tr. 428:21–23 ("Q: [A]re you familiar with every aspect of this new process? Judge Cox: No.).

[149] Hr'g Tr. 445:3-24.

[150] Hr'g Tr. 356:2–4 (Judge Henry: "[A]s I've tried to make clear, the Commissioners' Court only has a small—well, we have a piece of the puzzle but not all of it.").

[151] Henry Tr. 127:1-5.

[152] Training Materials for magistrates (June–September 2018), Ex. HHH at 1–3 ("[P]lease observe . . . ," "You might . . . ," "[Y]ou may find the following guidelines helpful . . . ," "It may be preferable . . . .").

71. There is considerable acrimony between the felony judges and the Commissioners' Court. Judge Henry agreed that their relationship is "open and notoriously adverse."[153] The felony judges are not supportive of the revised bail procedures, and they refuse to attend coordinating council meetings where stakeholders discuss changes to the County's pretrial release system.[154] Judge Cox, specifically, is so opposed to changes by Judge Henry and the Commissioners' Court that he has interfered with arrestees' release on personal bond, going so far as to interrupt normal court administration and issue a blanket order revoking personal bonds that Judge Henry issued in his capacity as magistrate.[155] Dr. Fabelo has reported that he "can't get anywhere with Judge Cox."[156]

72. Judge Cox testified that he "had not seen evidence in twenty-five years of any defendant's constitutional rights being denied in Galveston County."[157]

73. Judge Cox testified that the system under which Mr. Booth was jailed had no constitutional defects whatsoever.[158]

74. Judge Cox testified that he is not required to "follow[] processes or procedures dictated, initiated, [or] written by Commissioners' Court."[159]

[153] Hr'g Tr. 377:21-25.

[154] Hr'g Tr. 362:18–20, 368:18-369:11; Henry Tr. 47:16-22, 48:1-5, 74:24-75:3; Ready Tr. 114:6-19, 144:11-13.

[155] Hr'g Tr. 371:2-373:2.

[156] Hr'g Tr. 369:12-25.

[157] Hr'g Tr. 449:1–4.

[158] Hr'g Tr. 448:1–19 ("Q. This morning in his opening statement, the Counsel for Galveston County . . . said that the felony bail policy or procedure that existed here in Galveston County prior to this lawsuit being filed, had no constitutional defects whatsoever. You agree with that statement, don't you? . . . Judge Cox: I get to answer that? I think he's correct in that.").

75. Judge Cox testified that he believes it would be unlawful to codify the bail review hearing process in the local rules of administration.[160]

76. Judge Cox testified that he believes the revised bail procedures to be unlawful to the extent that they call for felony judges to hold automatic bail review hearings.[161]

77. The magistrates do not consider the revised bail procedures to be binding on them, and instead insist that their only obligation is to follow state law and the Constitution. [162]

C. Post-Litigation Implementation of Revised Bail Procedures

78. County officials have adopted some of the procedures memorialized in the revised bail review procedures document, and they have not adopted others.

79. In June 2018, the Commissioners' Court entered into an interlocal agreement to use the City of Hitchcock to hire magistrates for Galveston County.[163] The agreement can be terminated for convenience.[164]

80. In July, the Personal Bond Office began holding interviews with arrestees to help them complete a detailed financial affidavit, and including the affidavit in a

---

[159] Hr'g Tr. 23–25.

[160] Hr'g Tr. 453:11–19.

[161] Hr'g Tr. 447:10-25.

[162] Baker Tr. 109:18–24 (Q: "Do you intend to comply with the procedures outlined here under Section 10 Examining Court? Judge Baker: I intend to comply with the Constitution and the state laws and quite frankly my understanding of the 5th Circuit's decision in O'Donnell is what I intend to try to follow."); Hr'g Tr. 202:21–22 (Judge Foley: "I'm always going to follow the law, and I'm always going to follow the constitution . . . ."), 435:21–25.

[163] Interlocal Agreement between Galveston County and City of Hitchcock (June 19, 2018), Ex. GGG.

[164] *Id.* at 1.

packet presented to magistrates before magistration.[165] The financial interviews are not consistently conducted.[166]

81. The Personal Bond Office does not follow procedural requirements for the financial interview, and other evidence indicates that arrestees do not receive adequate notice that the affidavit impacts their potential release from jail:

a. There is no written script or set of guidelines specifying the notice that the Personal Bond Office must give to arrestees who agree to the financial interview.[167] The revised bail procedures document simply states that officers "explain to arrestee the nature and significance of the financial interview."[168]

b. The Personal Bond Office director, Dylan Oliphant, testified that he tells arrestees that the affidavit "is essentially there to help them," and that they have to give truthful statements—but not that the statements will be used to determine their bail amounts, or whether they qualify for a bail review hearing.[169]

---

[165] Hr'g Tr. 392:6–8 ("Q: [T]hat [financial] affidavit was not introduced until July of this year? Ms. Reyna-Valdez: July of 2018."). Agenda for Stakeholder Meeting (June 7, 2018), Ex. EEE at 2 (June 2018 agenda showing that financial affidavit "will be" implemented). Foley Tr. 20:16-19 ("Q. …[H]ow long has this process been in place, the new process you described to us whereby you're getting this additional financial information? A. Beginning of July maybe, end of June."); Deposition Transcript: Hon. Mark Henry, Ex. HH ("Henry Tr.") at 91:4-21.

[166] Hr'g Tr. 412:15–20 (Judge Hindman: "[T]he financial statement is bright yellow and if it's not in that packet, we know immediately there's something missing. Okay. . . . [M]any times we've had to have the interviewers go back and interview and then bring it back to us.").

[167] Hr'g Tr. 319:13–320:4.

[168] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ at 2. The instructions cite Appendix F, which is the script to read if arrestees *decline* the interview. There is no script to read for arrestees who agree.

[169] Hr'g Tr. 288:21–289:13 (Mr. Oliphant: "[W]e basically tell them that the financial screening is essentially there to help them. That it cannot hurt them in any way. That it is voluntary and they don't have to do it. But, if they do do it, that it is a sworn statement that it it's of the utmost importance that they answer each question as truthfully as possible."). Notably, answers that arrestees give in the financial

c. Magistrate Judge Hindman testified that arrestees can dramatically overestimate the amount they can raise to pay for release within 24 hours,[170] which effectively excludes them from the bail review process. Magistrate Judge Hindman also testified that arrestees often do not remember, or are not sure, what their estimate was.[171]

d. Multiple declarations from arrestees who were jailed under unaffordable secured bail amounts set at magistration, without any bail review hearing, indicated that they had not been asked whether they could afford their bail—even though these arrestees had been through the financial interview with the personal bond office.[172]

e. The revised bail procedures include a script to read if an arrestee declines the financial interview,[173] but the Personal Bond Office does not follow it.

---

interview *can* hurt them, whether by encouraging magistrates to set a higher bail amount, inappropriately excluding the arrestee from the bail review process, or otherwise admitting something inculpatory. For example, the financial affidavit asks how much money arrestees spend per month on "cigarettes, alcohol and drugs." Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ, App'x G at 3.

[170] Hr'g Tr. 401:1–5 (Judge Hindman: "Sometimes they put . . . 5,000 when they can really only afford zero.").

[171] Hr'g Tr. 404:20–21 (Judge Hindman: "[I]n reality, Judge, a lot of time, they don't remember what they've written or they're not sure.").

[172] Declarations of Arrestees Who Did Not Receive Bail Review Hearings (November–December 2018), Ex. AA (*e.g.* Bond Dec. ¶ 3 ("It seemed like some type of application, but I wasn't sure what it was for."), Wyles Dec. ¶ 4 ("[S]omeone sat in a booth with me and asked me questions about my finances. I do not remember the interviewer asking me how much I could pay for bond. The interviewer was filling out the papers for me.")); Declarants' Case Files, Defendants' Supplemental Exhibits D-24–D-33; Ready Tr. 158:10–159:4.

[173] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ at App'x F. ("You must participate in an interview and complete an Affidavit of Financial Condition to have your individual financial circumstances considered by the Magistrate when your bail is set. . . . If you do not participate . . . the magistrate will set your bail without considering your individual financial circumstances and you will not be entitled to a bail review hearing . . . . This will be your only opportunity . . . .").

Specifically, personal bond officers do not read aloud the text of the declination form, which warns the arrestee of the consequences of declination (e.g., forfeiting consideration of ability to pay bail, and the possibility of a bail review hearing).[174]

82. Magistrates continue to conduct magistration in largely the same manner they did at the time this case was filed.[175] They do not follow the script dictated by the revised bail review procedures.[176]

a. Magistrates continue to operate from a presumption of secured money bail[177] and continue their widespread practice of adopting preprinted bail amounts:

---

[174] Hr'g Tr. 289:24–290:8 (Q: If someone declines to proceed with the financial interview, what does a Personal Bond Officer do? Mr. Oliphant: At that point we basically ask the defendant if they're sure if they want to decline, just to reiterate that the interview cannot hurt them and that it is meant to help them. And just to more or less ask them are you sure that you want to decline this. And at that point if their answer is still yes, then we fill out the form, then they sign and date where it says arrestee's signature, and then we sign and date it.").

[175] *Compare* May 2017 Magistration Recordings, Ex. M, Attachs. 1–5, *and* Add'l Video Recordings, Ex. LL (April 2018 Recordings) *with* Add'l Video Recordings, Ex. LL (October–December 2018 Recordings).

[176] Hr'g Tr. 43:7–11 (Mr. Poole: "That was all fixed . . . with these financial information forms that are now part of the magistration packet. So they don't have to ask questions. They have the information they need . . . ."), 189:20–190:8 ("Q: These new procedures include . . . a script that magistrates are supposed to use when they're performing a magistration but you did not actually use that script in your magistrations. True? Judge Foley: That's true. Q: You were comfortable doing magistration the way you'd done it previously. Judge Foley: Right. I at that point had been a magistrate for nearly 15 years, and I think that the defendants prefer if you have more one-on-one interaction with them rather than just standing and reading a script. And, so, that's the way I handled it."), 412:4–5 (Judge Hindman: "I started out with a script but I since memorized it and kind of made it easier for the Defendants to understand it.").

[177] Jones Suppl. Decl. ¶ 16, Ex. Y; Hr'g Tr. 114:16–17 (Dr. Jones: "[T]here is a presumption that it is always cash or surety unless told otherwise."), 134:6–8 (Q: And is it your presumption that Galveston County is still relying on the presumption of secured money bail? Dr. Jones: Yes, that's very clear in all their materials."), 301:23–302:1: (Mr. Oliphant: "[S]ay the[y] go to Magistrate and the Judge doesn't authorize them for pretrial release, then at that point we then automatically select cash or surety, or type in cash or surety.");

i. The revised bail procedures, a document authored by counsel for the County, explicitly assumes that "prescheduled" bail amounts are adopted at magistration.[178]

ii. Each of the magistrates who testified at the hearing, while insisting that they always exercise independent judgment, struggled to explain the purpose of the preprinted bail amount.[179] Magistrate Judge Baker testified in his deposition that he does not know where the preprinted bond amounts come from,[180] and on a video recording told an arrestee that he could not get a bond reduction until the case was before the trial court.[181] Judge Hindman claimed at first that she does not rely on the preprinted amount at all, but later admitted that she did.[182]

iii. Prosecutors continue to rely on the bail schedule and "recommend" bail amounts in the exact same manner.[183] The District Attorney has not changed the preprinted bail amounts.[184]

---

[178] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ at 5 (describing procedure at bail review hearing "[i]f the decision-maker declines to lower bail from the prescheduled amount").

[179] Hr'g Tr. 212:12–15 (Judge Foley: "I really don't know. I really don't know. . . . I don't know why it's there.").

[180] Baker Tr. 90:18–20.

[181] May 2017 Magistration Recordings, Ex. M, Attach. 5 at 39:35–39:55 (Arrestee: "Can I also ask for a bond reduction?" Magistrate: "You can ask for one, but no sir, I won't grant one. You can talk to your attorney about that. You can file one with the court as soon as the case is filed.").

[182] Hr'g Tr. 408:23 (disclaiming reliance on the preprinted amount), 409:9–12 (Judge Hindman: "I see it and I consider it that it's a recommendation but that's the—actually a minute part of what I consider.").

[183] Ready Tr. 123:24-124:21; Hr'g Tr. 389:23-390:3.

[184] Hr'g Tr. at 474:7-14 ("Q: Let me ask, why didn't -- had you looked at the amounts that are recommended here from time to time? Mr. Roady: Yes, sir. Q: Why haven't you ever changed them? Mr.

iv. The revised bail procedures incorporate the exact same preprinted bail orders.[185]

v. Magistrate Judge Hindman was evasive about how she makes a meaningful bail determination at magistration for someone whose financial affidavit states that they can't afford to make a payment.[186] She suggested that arrestees simply "have to end up at the bail review" to receive a meaningful bail determination, and that the preprinted bail amount is a "bond set" that she needed grounds to "reconsider."[187] Judge Hindman's testified unpersuasively that she has never, and would never, set bail for the purpose of detaining an arrestee.[188] The record shows that she sets secured

Roady: I did not believe it was necessary to change them. Q: Okay. Mr. Roady: I believe they're appropriate. Q: Okay.").

[185] Galveston County Revised Bail Procedures (Aug. 2018) App'x C, Ex. J.

[186] Hr'g Tr. 403–407. Judge Hindman avoided the Court's question five times (404:5–10, 404:19–23, 405:14–15, 406:13–21, 407:6–17), twice answering "I try to make it low and try to do a pretrial," and "Most of the time, I authorize pretrial with no fees up front. So it doesn't cost them anything to get out." 405:23–24, 407:21–23. The exchange made Judge Hindman's ultimate answers less than credible.

[187] Hr'g Tr. 404:12–19 ("The Court: In answer to that question, right, how much can you put up or could you obtain from family and they say zero, do you look at any other information or how do you determine what the amount—Judge Hindman: At the bail review? The Court: At the magistration. Judge Hindman: No, not at the magistration."), 406:11–21 ("The Court: If that comes back with all zeros, then help me out on how you assess what could happen. Judge Hindman: Then I would reconsider it but I just don't—The Court: Well, help me out. When you say 'reconsider' but you haven't made a decision. Judge Hindman: That's right. I haven't yet. The Court: How can you reconsider something you haven't decided? Judge Hindman: There's several times I've reconsidered. There's a bond set."), 407:11–16 (Judge Hindman: "[S]ome of them have to end up at the bail review where we can get the correct information to review what they've put because if they have that many assets and they're putting zero, there's—it's inconsistent . . . .").

[188] Hr'g Tr. 416:21–417:4.

bail amounts for arrestees who affirm they cannot afford any bail amount, which necessarily detains them.[189]

vi. A sample of bail orders signed in October 2018 indicates that magistrates still adopt the preprinted amounts in most cases.[190] While Defendants contend that this sample includes bail amounts that the magistrates did not have jurisdiction to change, the evidence shows that the magistrates typically did not change the bail amounts when they did have jurisdiction.

vii. The Court does not credit testimony that the magistrates independently conclude that the preprinted bail amount was correct in the majority of cases.[191]

b. Magistrates do not give arrestees notice of the rights at stake or the issues to be decided at magistration, nor do they allow arrestees to make argument or present evidence in their favor.[192]

---

[189] Hr'g Tr. 407:11–16 (Judge Hindman: "[S]ome of them have to end up at the bail review where we can get the correct information to review what they've put because if they have that many assets and they're putting zero, there's—it's inconsistent . . . .").

[190] Supp. Zurek Decl. Ex. 1, Ex. X.

[191] For example, the Court's exchange with the District Attorney: "The Court: I guess in many cases you'd be surprised if the magistrate simply adopted your number or your recommendation because the magistrate would be the one in possession of the knowledge about the person's financial condition, not you. Right or Wrong? . . . Mr. Roady: [N]ot necessarily . . . . My only concern is that they take the information that we're recommending and then apply their independent determination taking into consideration the information that they have. And whether that matches up or not doesn't make their decision right or wrong in my opinion; my only concern is that they are doing their job appropriately in making their own decision." Hr'g Tr. 469:22–470:5. The implication that magistrates frequently, independently settle on the exact bail amount the prosecutor "recommends" based on a bail schedule, after the magistrate makes an individualized determination based on detailed financial information that was unavailable to the prosecutor, is ludicrous.

c. Most importantly, both witness testimony and video recordings demonstrate that, at magistration, magistrates do not ask arrestees whether they can afford the bail amount set.[193] This violates the revised bail procedures.[194]

83. In October, the County Commissioners Court started including criminal history reports in magistration packets and holding magistration and bail review hearings twice a day.[195] The Commissioners Court has made the necessary staffing and infrastructure changes to hold these hearings consistently, and to accommodate more robust pretrial supervision.[196] Judge Henry agrees that improving the amount and quality of information that magistrates receive could reduce pretrial detention rates by as much as 50%, resulting in significant cost savings and better outcomes for arrestees.[197]

---

[192] Hr'g Tr. 391:6-20.

[193] Hr'g Tr. 390:24–391:1 ("Q: They don't have a script they follow when they conduct magistration; is that right? Ms. Reyna-Valdez: Not to my knowledge, no."), 392:9–12 ("Q: During magistration, neither Judge Baker nor Judge Foley asks anyone about their ability to afford their assigned bond amounts, correct? Ms. Reyna-Valdez: Correct."), 404:12–19 ("The Court: In answer to that question, right, how much can you put up or could you obtain from family and they say zero, do you look at any other information or how do you determine what the amount—Judge Hindman: At the bail review? The Court: At the magistration. Judge Hindman: No, not at the magistration."); Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (October through December 2018).

[194] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ at 3-4 ("The on-duty magistrate . . . asks whether the arrestee can afford bail [citing script at App'x H]"), 28 (script requiring magistrates to ask "individual questions" including "Will you be able to make bail within 24 hours?" and "What is the most you think you could come up with?").

[195] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ; Ready Tr. 176:5-25; Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL.

[196] Henry Tr. 209:22–211:17; Hr'g Tr. 344:8-12, 354:21–22, 345:16-18 (Judge Henry: "We have already scaled the skeleton crew. We have an idea of what it's going to take.").

[197] Hr'g Tr. 353:19–354:18, 355:6–12 (Judge Henry: "[T]he next phase, we should realize some dramatic cost savings. . . . It's not just a fiscal benefit to us. I do agree that it's a community benefit to have the pretrial arrestees back at their jobs, back with their families. . . . [B]etween [state] jail felonies and nonviolent pretrial felonies, it's probably close to half [the county jail population]. Q: Okay. For a lot of drug use issues? Judge Henry: Yes. Q: Are those better served—in your opinion as County Judge, are those better served if you can get them out of jail? Judge Henry: That would be my preference, yes.").

84. Arrestees who receive bail review hearings are provided with defense counsel, given the opportunity to present and contest evidence, and, in rare cases, receive findings on the record.[198] But there are many flaws in the bail review process.

85. The revised bail procedures require the magistrates to state findings on the record "explaining the reason for the decision,"[199] but the procedures do not impose any evidentiary standard or substantive standard for those findings. As a result, magistrates state factors they have considered, rather than findings, such as "this stuff's adding up" or "criminal history, et cetera."[200] Magistrates also impose secured bail to manage the risk that the arrestee will harm someone,[201] even though secured bail cannot be forfeited for any reason other than failure to appear in court.[202]

86. There is evidence that defense counsel are instructed not to make arguments related to the allegations against the arrestee, even though the Texas Rules of Criminal

---

[198] Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (October through December hearings).

[199] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ.

[200] *E.g.*, Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL. Connery Bail Review by Mag. Nelson, 2018-10-01 PM, Connery Bail Review, 1# Magistrate Camera 3 at 4:20–4:40 ("I think it's prudent, given your criminal history, et cetera, that that be taken into consideration. The bond is reduced to $5000 [a still-unaffordable amount]."), Douglas Bail Review by Mag. Nelson, 2018-10-02 PM, Douglas Bail Review, 1# Magistrate Camera 3 at 4:42–4:55 ("I'm gonna leave it as it is and I'm not gonna authorize pretrial based on his felony charge with the previous history."), Fuentes Bail Review by Mag. Goldsberry, 2018-11-21 PM, 4# Magistrate Camera 4 at 43:24–45 ("Miss Fuentes, this stuff's adding up. It's gonna keep adding up. I'm—I'm reducing your bond but not very much. I'm gonna reduce it to $30,000. . . . You're not authorized for pretrial release.").

[201] Hr'g Tr. 133:10–135:5 ("Q: [D]id you see judges state their findings on the record? Dr. Jones: Yes in a very vague way. They would set an amount and say because of the defendant's criminal history. . . . [But] it is unjustifiable just by common sense to use secured money bail to try to prevent new criminal activity because secured money bail can never be forfeited for new criminal activity.").

[202] Tex. Code Crim. Proc. Art. 2201 (authorizing forfeiture only if the defendant "fails to appear").

Procedure require judges to consider the nature and circumstances of the offense in setting bail.[203]

87. The hearings the County provides are unnecessarily delayed.

a. Rather than fixing the inadequacies of magistration, the County has largely maintained its original system.[204] The County continues to set secured bail amounts at magistration that are automatically adopted without hearings or counsel, and now offers subsequent bail review hearings up to 48 hours after arrest.[205] Arrestees are thus detained under unaffordable bail amounts between magistration and bail review.

b. The majority of people who receive bail review hearings are subsequently released, either because their secured bail amounts are lowered to an affordable amount, or because the magistrate grants them personal bond.[206] This indicates that the majority of people who receive bail review hearings are detained after magistration under unnecessarily high secured bail amounts.

[203] Email from Kevin Petroff to Hon. Jack Roady *et al.* (June 8, 2018), Ex. FFF.

[204] *Compare* Video Recordings of May 2017 Magistrations, Ex. M Attachs. 1–5 *and* Additional Video Recordings of Magistration and Bail Review Hearings, Ex. LL (April 2018 Magistration Videos) *with id.* (October–December Magistration Videos). *See also* Zurek Supp. Decl. Ex. 1, Ex. X; Jones Supp., Ex. Y ¶¶ 14–17.

[205] Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ ¶ 11(a).

[206] Council of State Governments Justice Center—Galveston County System Review: Findings and Recommendations (November 2, 2017); Galveston County Bail Review Spreadsheet (Dec. 31, 2018), Ex. LLL. Ex. KK 197:9–20, 200:20–201:1 & Ex. 18 (Fabelo Presentation) at 13 (reporting that 90% of bail review hearings resulted in the arrestee's subsequent release). *See* Jones Decl., Ex. U ¶¶ 14–16 (discussing high risk of unnecessary pretrial detention); Demuth Decl., Ex. V ¶¶ 26–29 (same); Jones Supp., Ex. Y ¶¶ 18–19 (discussing irrational aggregation of bail amounts), ¶ 26 (finding 86% of bail reduction hearings resulted in lower bail amount or personal bond).

c. There is no legitimate purpose for this two-step process and resulting delay. The County has presented a great deal of evidence that the infrastructure and funding is in place to hold counseled bail hearings at an individual's first appearance before a judge within 12 to 24 hours of arrest.[207] Doing so would largely eliminate the need for a second hearing to review bail.[208]

d. One illegitimate purpose of delaying a robust bail hearing was suggested by Magistrate Judge Woltz, who stated that even though bail setting within 24 hours of arrest makes sense "for simplicity and convenience," "I've already run into some pretty shady '1st offenders' that I that I wish I had a bail bond for, so I make the 24 hr. [probable cause] finding on time without formally 'magistrating' them, hoping they want to get out bad enough to get a bail bond before the magistrate has to give them PR! . . . I've even tried to school some of the officers to quit assuring freshly arrested Defs that they will get a PR bond as soon as they see the Judge, so they have some time to make the 'window' bond if they want out right away."[209] Magistrate Judge Woltz thus deliberately delays setting bail because, even though personal bond is ultimately required under the law, he wants to

[207] Henry Tr. 209:22–211:17, Ex. HH; Jt. Def. Exs. D1–D12.

[208] Jones Supp. Decl. ¶¶ 26–27, Ex. Y ("[B]ail review hearings should rarely ever occur. They are inefficient and an indication of ineffective pretrial decision-making from the outset. There would be no need for additional review hearings if unaffordable secured money bail amounts were not set at magistration as they are in Galveston County. . . . When judicial officers reduce the money bond amounts in 86% of review hearings, that is an indication that the original amounts are unnecessarily high. . . . Bail review hearings . . . are a system inefficiency that increases workload for . . . staff. ").

[209] Email Correspondence between Hon. James Woltz and Hon. David Salinsky (Apr. 2, 2018), Ex. BBB.

pressure first-time arrestees whom he considers to be "shady" to pay a pre-scheduled bail amount out of desperation.

88. Many arrestees who cannot afford bail are categorically excluded from the bail review process without any means for requesting a bail review hearing.[210]

a. The County does not provide bail review hearings for arrestees whose "cost of release"[211] is equal to or less than the amount they estimate in their financial affidavit that they can pay within 24 hours of arrest. This practice excludes arrestees who overestimate the amount they can raise, which is common.[212] For example, this may have been the cause of Mykayla Brown's detention: Ms. Brown's bail was set at exactly ten times what she estimated that she could

[210] The County determines which arrestees qualify for a bail review hearing by using a spreadsheet containing formulas that implement the rules described below to automatically populate the "bail review required" column with "yes" or "no." Galveston County Bail Review Spreadsheet (Dec. 31, 2018), Ex. LLL; Hr'g Tr. 309:3–6 (Mr. Oliphant: "[W]hat triggers a bail review, is if in Column G the answer is yes, and then the affidavit amount is less than the cost of release amount, then that individual needs to go to bail review."). There is no way to request a hearing. Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ; Hr'g Tr. 316:1–317:15, 332:25–333:11 ("The Court: [W]hat is the procedure someone goes about requesting a bail review? Mr. Oliphant: "It's not really so much [] a request. . . . If you meet the criteria that triggers a bail review . . . it happens. . . . [A request for a hearing] is not my part of the process.")

[211] These rules automatically populate the "cost of release" column in the bail review spreadsheet. Hr'g Tr. 321:17–322:4, 323:24–25; Galveston County Bail Review Spreadsheet (Dec. 31, 2018), Ex. LLL; Galveston County Revised Bail Procedures (Aug. 2018), Ex. JJJ.

[212] Hr'g Tr. 119:16–23 (Dr. Jones: "[I]n my experience, that is very unreliable. . . . . Defendants . . . tend to be very poor guessers of what they or their family can afford."), 152:21–25 (Dr. Jones: "I think the data in Galveston County shows that there are defendants who are poor estimators because there are times where they estimate the amount they can pay yet they're still in jail . . . . That means it was off at the outset."), 328:18–329:18 (Q: [B]ecause the assumed cost of release is less than what [the arrestee] estimated he could pay within twenty four hours, the bail review column populated no automatically, is that right? Mr. Oliphant: Correct. . . . Q: If it turns out . . . he can't pay any money to get out of jail, he's not going to get a bail review hearing, is he? Mr. Oliphant: Correct."), 400:9–401:5 (Judge Hindman: "[S]ome of the people that come in are angry when they're interviewed by bail review or they're still high or they're still drunk . . . . Sometimes they put . . . 5,000 when they can really only afford zero.").

afford.[213] Yet she remained detained on drug possession charges, unable to afford her release, for 41 days before her charges were dismissed by the prosecutor.[214] She never received a bail review hearing.[215]

b. This practice also excludes arrestees who cannot secure a commercial bail bond at a 10% rate--which the "cost of release" assumes to be available--but is not always available to arrestees.[216] For example, Cody Bond's bail amount was set at exactly ten times what he estimated he could afford.[217] He was unable to secure a commercial bail bond at a 10% rate, and he remained detained for days, causing him to miss his son's first birthday.[218] He did not receive a bail review hearing.[219]

c. The County does not provide bail review hearings for people who are arrested on warrants, or who are booked into Galveston County Jail after they are magistrated in a municipality other than the City of Hitchcock.[220] For example,

---

[213] Mykayla Brown Cert. Crim. File at 7, 9, Jt. Def. Ex. 33.

[214] *Id.* at 1–2, 20; Brown Decl. ¶ 3, Ex. AA.

[215] Brown Cert. Crim. File at 1–2, Jt. Def. Ex. 33.

[216] Galveston County Bail Review Spreadsheet (Dec. 31, 2018), Ex. LLL; Hr'g Tr. 126:18–19, 127:8–24, 136:13–16 (Dr. Jones: "This spreadsheet assumes that it's 10 percent. In my experience that's not always the case. . . . There's no guarantee that any commercial bail bonding company would negotiate a contract for . . . any amount. . . . No jurisdiction should assume that 10 percent is the cost of release."), 304:23–25, 331:23-332:7 (Mr. Oliphant: "[T]he typical percentage is either ten to fifteen percent depending on what bondsman company that you go through. . . . Q: Now, suppose the Magistrate sets their cash or surety bond at exactly ten times that amount [they can afford]. . . . Do you know whether the bail review column automatically populates a yes or no . . . ? . . . Mr. Oliphant: As far as I know it doesn't populate a yes. . . . Q: [T]he assumption here is that [the arrestee] is going to get a commercial bail bond at a ten percent rate, is that correct? Mr. Oliphant: Correct.").

[217] Cody Bond Cert. Crim. File at 7, 9, Jt. Def. Ex. 29.

[218] *Id.* at 1–2; Bond Decl. ¶¶ 5, 7–8, Ex. AA.

[219] Cody Bond Cert. Crim. File at 1–2, Jt. Def. Ex. 29.

[220] Hr'g Tr. 281:13–20 (Lt. Cagnon: "Those would be Class C charges, individuals who are arrested on warrants already signed by judges. . . . [Also] other individuals that are Magistrated in other

Timothy Harrison's bail amount was set at 200 times what he estimated he could pay within 24 hours.[221] He did not receive a bail review hearing because he was arrested on a warrant. He remained detained for weeks without a bail review hearing, despite the fact that he filed a pro se bail reduction motion--which was ignored.[222]

d. The County does not provide bail review hearings for people who are receiving medical care or on suicide watch at the time of magistration, even after their medical care or suicide watch has ended.[223]

e. There is also evidence of repeated failures in the County's administrative system for determining who should get a bail review hearing, leaving people who are otherwise entitled to a review hearing, or authorized for personal bond, detained with no recourse.[224]

---

municipalities."), 298:1–14, 299:5–9 ("Q: [W]hat kind of individuals receive a no in column G? Mr. Oliphant: Individuals who come in on old charges, like for instance warrants. . . . Q: What about somebody who's been Magistrated in League City? Mr. Oliphant: Yes. Then they would also be a no.").

[221] Timothy Harrison Cert. Crim. File at 7, 9, Jt. Def. Ex. 24.

[222] *Id.* at 1–2; Harrison Decl. ¶¶ 3, 6, Ex. AA.

[223] Hr'g Tr. 325:19–326:15 (Mr. Oliphant: "If they're in med, and they need their bail set, and their bail is not set? In those situations, like if someone is in med or say FSP [full suicide prevention], then we as Bond Officers cannot get to them to conduct the interview. So, what happens is before they got to magistrate or the magistrate themselves can request that an interview be conducted before they are actually magistrated. Q: And if that interview doesn't happen, . . . [the arrestee is]never copied and pasted out of your spreadsheet, right? Mr. Oliphant: Into the bail review? Q: That's right, because the bail review column doesn't automatically populate yes, is that correct? Mr. Oliphant: Correct. Q: So the truth is you don't really have any idea whether [an arrestee labeled "in med"] had any sort of process to set his bail, as far as your office is concerned, is that right? Mr. Oliphant: Based off the information that is here, correct.")

[224] McCarthy Decl. & Ex. 1, Ex. Z.

V. Adequacy of Class Representative

72. At the outset of this case, Mr. Booth agreed to be a class representative.[225] He agreed to maintain communication with his counsel, to respond to discovery requests, and make himself available for meetings and legal proceedings as needed.[226] He is willing to serve as a representative for all class members, even people facing serious charges.[227]

73. Mr. Booth understands that his role is as a representative for other class members, not merely to represent his own interests.[228] He is not expecting any special benefit for volunteering to serve as class representative.[229]

74. Mr. Booth's counsel have significant experience litigating complex civil rights actions like this one, and they have committed considerable resources to investigating and litigating this case.[230] Mr. Booth and his counsel have met regularly, both while he was incarcerated and after he was released, to prepare discovery responses and otherwise manage this litigation.[231]

75. Mr. Booth is knowledgeable about the nature of the claims in this case, the class he seeks to represent, the officials against whom this case was filed, and the nature of the relief this case seeks.[232] He is familiar with the status of this case since it was filed.[233]

---

[225] Hr'g Tr. 225:21–22.

[226] Hr'g Tr. 225:16–22.

[227] Hr'g Tr. 242:11–12 (Mr. Booth: ""They're only charged with it. There's no final judgment.").

[228] Hr'g Tr. 226:1–6.

[229] Hr'g Tr. 225:23–25.

[230] Mot. for Class Cert. Exs. 1–3, ECF No. 2-1 to 2-3.

[231] Hr'g Tr. 221:45–222:22, 222:23–223:23, 224:19–24.

[232] Hr'g Tr. 226:10–227:13.

76. Mr. Booth has already responded to written discovery requests and sat for a deposition.[234] He has agreed to answer personal questions about his criminal history, his finances, and his family.[235]

77. Mr. Booth is willing to continue serving as a class representative for the duration of this case.[236] He is committed to seeking change in Galveston County's pretrial detention practices.[237]

Proposed Conclusions of Law

I. Preliminary Injunction Standard of Review

78. Plaintiff's motion merits a preliminary injunction because he has shown: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). Plaintiff has met this standard.

---

[233] Hr'g Tr. 227:6–14.

[234] Hr'g Tr. 223:7–224:18.

[235] Booth Tr., Ex. DD at 43:3–5 ("Mr. Biggs: Then, so like on days where you get paid $30, do you try to send stuff back to Oklahoma for your kids?"), 131:2–3 (Mr. Biggs: "Does your mom have any criminal history?"), 197:12 (Ms. Olalde: "How much did you spend on food?"), 254–260 (asking about people who Mr. Booth ostensibly should have borrowed money from: "Ms. Olalde: And are you still close with your grandmother? Mr. Booth: Yeah. Q: Do you talk to her on the phone? A: Occasionally, when her dementia allows it. . . . Q: Does she remember who you are when you call her? A: Sometimes. . . . Q: Okay. Michael Lunsford, do you know who that is? A: That's my brother [who died]. Q: Okay. I'm sorry. A: I haven't heard his name in a long time. . . . Q: David Shepard? . . . A: He's no longer with us. . . . Q: Rockie Lee Langston? A: That's my uncle. He committed suicide several years ago.").

[236] Hr'g Tr. 227:15–228:16

[237] Hr'g Tr. 228:5–16.

II. Likelihood of Success on the Merits[238]

A. Automatic Imposition of Unaffordable Bail Violates Equal Protection and Due Process

1. Wealth-Based Pretrial Detention is Unconstitutional Without an Individualized Substantive Finding of Necessity

79. Plaintiff seeks a preliminary injunction protecting arrestees at Galveston County Jail from deprivation of the right against wealth-based detention and the fundamental right to pretrial liberty under the federal Constitution. *Bearden v. Georgia*, 461 U.S. 660, 666-67 (1983); *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc); *United States v. Salerno*, 481 U.S. 739, 750 (1987).

80. The right against wealth-based detention prohibits "imprisoning a defendant solely because of his lack of financial resources." *Bearden* 461 U.S. at 660 (The right to be free from pretrial detention arises out of a "converge[nce]" of equal protection and due process.); *see Tate v. Short*, 401 U.S. 395, 397–98 (1971) (holding that a person may not be "subjected to imprisonment solely because of his indigency"); *Williams v. Illinois*, 399 U.S. 235, 242–4 (1970) (holding that the state may not impose different consequences on persons simply because one can pay a monetary sum and another cannot); *ODonnell v. Harris Cnty.*, 892 F.3d 147, 161 (5th Cir. 2018) (holding that a "custom and practice result[ing] in detainment solely due to a person's indigency because the financial conditions for release are based on predetermined amounts beyond

---

[238] The following sections concern Galveston County's practices at the time of filing, which are controlling unless Galveston County meets its burden to demonstrate voluntary cessation (Sections A and B). Galveston County has not met its burden to demonstrate voluntary cessation for the reasons outlined in Section C.

a person's ability to pay and without any 'meaningful consideration of other possible alternatives' . . . . [is] unconstitutional").

81. Deprivation of the right against wealth-based detention triggers strict scrutiny. *Bearden*, 461 U.S. at 665, 672 (holding wealth-based detention is "fundamentally unfair" unless "the [] court determines that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest"), *Pugh v. Rainwater*, 572 F.2d 1053, 1057–58 (5th Cir. 1978) (requiring a finding that secured money bail "is necessary to reasonably assure defendant's presence at trial," and appearance could not "reasonably be assured by one of the alternate forms of release"); *Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972) (asking whether wealth-based detention is "necessary to promote a compelling governmental interest").

82. Galveston County's practices also deprive Plaintiff of his fundamental interest in pretrial liberty, arising under the due process clause. *Salerno*, 481 U.S. at 746–47, 750–51 (1987). A fundamental liberty interest can be infringed by the government only if the deprivation is "narrowly tailored to serve a compelling state interest." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993))); *see also Washington v. Harper*, 494 U.S. 210, 220 (1990) (quoting *Mills v. Rogers*, 457 U.S. 291, 299 (1982)).

83. At a minimum, wealth-based pretrial detention requires a substantive finding of "individualized, case-specific reasons" for imposing unaffordable bail. *ODonnell*, 892 F.3d at 160. And the reasons the magistrate cites can't be *any* reasons. Rather, to justify wealth-based detention, the magistrate must make a finding that

alternatives to jail are "inadequate." *Bearden*, 461 U.S. at 665. Similarly, to deprive an arrestee of her fundamental right to liberty, the magistrate must make a finding that jail is necessary to either protect someone from an "articulable threat" of danger, or to reasonably assure the arrestee's appearance in court. *Salerno*, 481 U.S. at 748–51 (permitting pretrial detention that "narrowly focuses" on a "compelling" government interest); *see Reno v. Flores*, 507 U.S. 292, 302 (1993) (interpreting and applying Salerno as requiring strict scrutiny); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780–81 (9th Cir. 2014) (en banc) (recognizing pretrial freedom as "fundamental liberty interest," and applying strict scrutiny). These findings are required because determination of the "contours of the substantive right"—whether the magistrate can legally deprive the arrestee of her liberty—"involves a definition of th[e] protected constitutional interest, as well as identification of the conditions under which competing state interests might outweigh it." *Harper*, 494 U.S. at 220. If a magistrate fails to make a substantive finding that pretrial detention is narrowly tailored to the state's competing interests in safety or court appearance, she has failed to determine whether she can legally deprive the arrestee of her liberty. *See also* Pl.'s MTD Opp. at 21–23 (ECF No. 111); Pl.'s PI Reply at 8– 9 (ECF No. 120).

84. Galveston County detains arrestees under arbitrarily selected, automatically adopted bail amounts. The County jails people without any individualized inquiry or substantive finding whatsoever. This practice violates the right against wealth-based pretrial detention.

2. Procedural Due Process

85. "[I]dentifying the contours of the substantive right," as discussed above, is "distinct from deciding what procedural protections are necessary to protect that right." *Harper*, 494 U.S. at 220. Procedural protections are intended to ensure that the magistrate's substantive finding is accurate. *Id.* ("The procedural issue concerns the minimum procedures required by the Constitution for determining that the individual's liberty interest actually is outweighed in a particular instance.") (citation omitted). Even when the government is permitted to deprive people of their constitutional rights—when the government satisfies strict scrutiny—these deprivations "must be implemented in a fair manner." *Salerno*, 481 U.S. at 746. This requires adequate procedural protections that balance the private interest at stake, together with the risk of a wrongful deprivation without a given procedural protection, against the government's interest in a rights deprivation without that procedure. *Mathews v. Eldridge* 424 U.S. 319, 335 (1972).

86. The Court here must balance putative class members' private interest--their fundamental right to the presumption of innocence and physical liberty, *Salerno*, 481 U.S. at 749–51; *Stack v. Boyle*, 342 U.S. 1, 4 (1952); *Rainwater*, 572 F.2d at 1056–57--and the risk of its erroneous deprivation against the government's interest.

87. The Court will not be writing on a clean slate. In *Salerno*, 481 U.S. 739, the Supreme Court upheld a specific set of procedures as sufficient for deprivation of pretrial liberty. In *Bearden*, 461 U.S. 660, the Court described minimum procedures necessary before imposing wealth-based detention in a criminal case. And in various other contexts where even incarceration is at stake—civil contempt, civil commitment, and revocation

of probation, parole, and good time credits—the Court has identified minimal procedural protections that will necessarily apply to pretrial detainees, whose liberty interest is the same or even stronger. *Turner v. Rogers*, 564 U.S. 431, 442 (2011) (imprisonment for civil contempt); *Foucha v. Louisiana*, 504 U.S. 71, 86 (1992) (imprisonment of insanity acquittee); *Bearden*, 461 U.S. at 672 (probation revocation for failure to pay; noting probationer's "conditional freedom"); *Addington v. Texas*, 441 U.S. 418 (1979) (civil commitment); *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974) (revocation of prisoners' good time credits; noting prisoners' liberty interest "subject to restrictions" of a prison regime); *Gagnon v. Scarpelli*, 411 U.S. 778, 789 (1973) (probation revocation; noting probationer's private interest is merely a "limited due process right" in conditional liberty); *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972) (parole revocation; noting parolee's "conditional liberty"). These protections include:

88. **Advance written notice**: due process requires "clear notice" of the "critical question[s]" at the bail hearing—ability to pay bail, risk of flight or dangerousness, and the least restrictive conditions that will address that risk *Turner*, 564 U.S. at 449; *see Wolff*, 418 U.S. at 563–64 (discussing importance of written notice); *Gagnon*, 411 U.S. at 786; *Morrissey*, 408 U.S. at 489.

89. **A prompt appearance**: The Supreme Court has upheld pretrial detention only where there is a robust detention hearing "immediately upon the person's first appearance." 18 U.S.C. § 3142(f); *Salerno*, 481 U.S. at 747 (upholding detention scheme based in part on the "prompt detention hearing" required by § 3142(f)). Moreover, courts must conduct an ability-to-pay hearing *before* imposing any period of wealth-based

detention. *Bearden*, 461 U.S. at 672–73 (prohibiting courts from depriving a person of liberty "simply because, through no fault of his own, he cannot pay . . . .").

90. **An adversarial hearing**: Court has required an "opportunity to be heard in person and to present witnesses and documentary evidence . . . [and] the right to confront and cross-examine adverse witnesses . . . ." *Morrissey*, 408 U.S. at 489; *see also Turner*, 564 U.S. at 448; *Salerno*, 481 U.S. at 751; *Gagnon*, 411 U.S. at 786.

91. **Reasoned written findings on the record that imprisonment is the least restrictive alternative**: the Court has also required a "written statement by the factfinders as to the evidence relied on and reasons for" imprisonment. *Gagnon*, 411 U.S. at 786; *see also Salerno*, 481 U.S. at 752; *Wolff*, 418 U.S. at 564–65; *Morrissey*, 408 U.S. at 489. The Court must consider alternatives, such as a lower bail amount: "the court must consider alternate measures . . . other than imprisonment. Only if alternate measures are not adequate to meet the State's interests . . . may the court imprison" a person who is unable to pay. *Bearden*, 461 U.S. at 672.

92. **Findings by clear and convincing evidence**: The Supreme Court has only approved of pretrial detention orders where the government proves its case by clear and convincing evidence. *Salerno*, 481 U.S. at 752; *see also Foucha v. Louisiana*, 504 U.S. 71, 86 (1992); *Santosky v. Kramer*, 455 U.S. 745, 756 (1982) ("This Court has mandated an intermediate standard of proof—'clear and convincing evidence'—when the individual interests at stake in a state proceeding are both 'particularly important' and 'more substantial than mere loss of money.'").

93. The Supreme Court has repeatedly held that the Due Process Clause requires the foregoing procedures, at a minimum, before depriving someone of their physical liberty. In each of these cases, the risk of wrongful imprisonment was the same or even lower than the near-certainty of wrongful imprisonment associated with the complicated nature of secured bail determinations. *E.g.*, *Turner*, 564 U.S. at 446 (describing question at issue as "straightforward"); *Gagnon*, 411 U.S. at 787 (describing mitigating evidence in most parole revocation cases as "simple").

94. There are no government interests warranting departure from these precedents. Any argument about the cost of these additional procedures rings hollow, given the costs of jailing arrestees, resulting increases in rates of recidivism with concomitant law enforcement and jail costs, and lower rates of court appearance for people who manage to pay for their release, perhaps as a "reaction to arbitrariness" that the Supreme Court has recognized in the parole revocation context. *Morrissey*, 48 U.S. at 484 & n.11 ("[F]air treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness"); *ODonnell*, 251 F. Supp. 3d at 1121–22. Galveston County's bail practices are also a financial drain on low-income communities, imposing further economic costs on Galveston County. *Id.* at 1122.

95. These considerations indicate that, if anything, Galveston County *shares* an arrestee's interest in robust procedural protections for pretrial release. Aside from the economic cost of wrongful pretrial detention, the County has an independent interest in ensuring that County residents maintain a "normal and useful life within the law" and that they are treated with "basic fairness." *Morrissey*, 408 U.S. at 484. The procedural

protections Plaintiffs seek more than satisfy the *Mathews* balancing test—they are a win-win.

B. Galveston County is Liable for its Unconstitutional Bail Practices

96. A county is liable under § 1983 when its policies deprive a plaintiff of his constitutional rights. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690–91 (1978). County liability has three elements: a policymaker, a policy, and a constitutional violation resulting from that policy. *Id.*; *Hampton Co. Nat'l Surety v. Tunica Cnty*., 543 F.3d 221, 227 (5th Cir. 2008). An official's status as a county policymaker is "a question of state law." *ODonnell*, 892 F.3d at 155 (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)).

97. County policymakers may adopt a "policy" without issuing a formal written document. *Id*. (quoting Johnson v. Moore, 958 F.2d 92, 94 (1992)). Instead, when county policymakers "acquiesce[] in a longstanding practice or custom which constitutes the standard operating procedure" of the county, they effectively adopt that standard operating procedure as county policy. *Id*. (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)).

98. It is the law of the case that the Felony Judges, the Local Administrative Felony Judge, and the District Attorney are policymakers for Galveston County. ECF No. 151 at 38–39.

99. Galveston County's bail practices are widespread and "so common and well settled as to constitute a custom that fairly represents municipal policy." *ODonnell*, 882 F.3d at 538 (quoting *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992)). The

evidence in this case demonstrates that magistration is a ministerial adoption of bail amounts set by a prosecutor in accordance with the District Attorney's arbitrary bail schedule. Magistration happens the same way every day. Multiple officials testified that these practices have been in place for years--in some cases, decades. In one video recording, the clerk literally describes the process as "customary."[239] Because the bail-setting and magistration processes constitute "standard operating procedure" in Galveston County, the Local Administrative Judges have incurred liability for Galveston County. *ODonnell*, 882 F.3d at 538 (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)).

100. The County's policy is the "moving force" resulting in class members' unconstitutional detention. *See Piotrowski v. City of Houston*, 237 F.3d 567, 580 (5th Cir. 2001) (quoting *Monell*, 436 U.S. at 694).

C. Galveston County Has Not Met Its Burden to Demonstrate Mootness

1. It is the County's Heavy Burden to Demonstrate Mootness

101. "A party seeking to moot an issue in litigation through its own 'voluntary conduct' bears a 'heavy,' 'stringent,' and 'formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.'" *Friends of the Earth v. Laidlaw Envt'l Servs. (TOC), Inc.*, 528 U.S. 167, 189–90 (2000).

[239] May 2017 Video Recordings of Magistration, Ex. M, Attach. 3 at 25:40–25:44 (Arrestee: "Did the officer request for the bond request?" Magistrate: "Yes, ma'am. It's customary.").

2. The County is Not Entitled to a Presumption of Good Faith

102. The County is not entitled to a presumption of good faith. Governmental defendants are entitled to a "presumption of good faith" only if they make "formally announced changes to official governmental policy." *Yarls v. Bunton*, 905 F.3d 905, 911 (5th Cir. 2018) (noting that the presumption applied because both parties agreed the challenged practice had ended, and the defendants conceded that the challenged practice was unconstitutional); *Sossamon v. Texas*, 560 F.3d 316, 325 (5th Cir. 2009) (holding presumption applied where relevant policymaker officially rescinded the challenged policy statewide). *Accord Miraglia v. Bd. of Supervisors*, 901 F.3d 565, 572 (5th Cir. 2018) (holding that the defendant had demonstrated compliance with the law by filing uncontroverted proof that all necessary disability accommodations had been installed); *Allied Home Mortg. Corp. v. U.S. Dep't of Housing & Urban Dev.*, 618 F. App'x 781, 786 (5th Cir. 2015) (holding that HUD had demonstrated compliance by officially withdrawing the suspensions at issue). Galveston County's revised bail procedures document does not make any change to official policy, let alone a formally announced one. The procedures are a suggestion authored behind closed doors. The felony judges have not incorporated them into the local rules of administration or a standing order.

3. The Revised Bail Procedures Do Not Remedy the Constitutional Problems with the County's Bail Practices

103. The revised bail procedures do not impose any evidentiary standard or substantive rule of decision for findings justifying pretrial detention. As a result, to the extent magistrates make any record at bail review hearings, they are stating factors they

consider rather than stating individualized reasons why they find pretrial detention meets strict scrutiny by clear and convincing evidence.

104. The bail review hearing is unnecessarily delayed. A delay in this post-deprivation hearing is not warranted upon consideration of "the importance of the private interest and the harm to this interest occasioned by delay; the justification offered by the Government for delay and its relation to the underlying governmental interest; and the likelihood that the interim decision may have been mistaken." *FDIC v. Mallen*, 486 U.S. 230, 242 (1988); *accord Armstrong v. Manzo*, 380 U.S. 545, 551–52 (1965) (striking down post-deprivation process as unreasonably delayed because "the petitioner was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by [a] judge" which denied him of the "opportunity to be heard . . . at a meaningful time and in a meaningful manner.").

105. Here, the private interest, physical liberty, is extraordinarily high, and the harm occasioned by more than 24 hours of delay is significant for both the arrestee *and* the County. The County has offered no justification for this two-step process, which is simply a system inefficiency; in fact, the County has itself introduced evidence of its ability to offer counseled bail hearings within 24 hours of arrest. And finally, the likelihood of wrongful pretrial detention following magistration is extraordinarily high--approaching 90%. Due process requires a bail-setting hearing within 24 hours of arrest to protect arrestees from wrongful pretrial detention.

106. The County categorically excludes arrestees from the financial affidavit and/or bail review processes, including arrestees who overestimate what they can pay

within 24 hours, who cannot secure a commercial bail bond at a 10% rate, who are arrested on a warrant that has an associated suggested secured bail amount, whose bail is set at an Article 15.17 hearing in another jurisdiction, and who are designated for "full suicide prevention" status[240] or receiving medical care.

107. The County does not give arrestees notice of the nature and significance of the financial interview. Arrestees are simply told that the financial interview can only help them, which is both false and not sufficient to put arrestees on notice of the consequences of declining.

108. In light of the foregoing deficiencies in the revised bail procedures and their implementation, together with the informal nature of the bail procedures, the County has not satisfied its "heavy burden" to show that it is "absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth*, 528 U.S. at 189–90 (citations omitted).

III. The Plaintiff Class Faces a Substantial Threat of Irreparable Injury, and the Balance of Harms and the Public Interest Favor an Injunction

109. "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *ODonnell v. Harris Cnty.*, 251 F. Supp. 3d 1052, (S.D. Tex. 2017), *aff'd as modified*, 892 F.3d 147 (5th Cir. 2018) (quoting Wright & Miller, Fed. Prac. & Proc. Civ. 3d § 2948.1). *Accord Elrod v.* Burns, 427 U.S. 347, 373 (1976) (plurality opinion) (holding a First Amendment violation, even "for even minimal periods of time, unquestionably constitutes irreparable

---

[240] There is no evidence of the process for designating an arrestee for such status, and no evidence that arrestees so designated are incompetent to execute a financial affidavit or participate in a hearing.

injury”); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting the same language as *ODonnell*); *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 630 n.12 (5th Cir 1985) (noting that harm is irreparable “where the rights at issue are noneconomic, particularly constitutional rights”). Plaintiff has demonstrated that Galveston County’s bail practices put the class at substantial risk of violation of their equal protection and due process rights.

110. “When plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.” Wright & Miller, Fed. Prac. & Proc. Civ. 3d § 2948.2. There is no reason to deviate from the ordinary rule in this case, particularly because Galveston County already has the infrastructure in place to provide bail review hearings that, according to the County, almost always occur less than 24 hours after arrest. Moreover, providing prompt, constitutionally adequate bail setting hearings is more cost-effective than the County’s current system, and it is in both the arrestees’ and the County’s interest to minimize recidivism caused by unnecessary pretrial detention.

111. “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *ODonnell*, 251 F. Supp. 3d at 1159 (citation omitted); *Daves v. Dallas Cnty.*, 341 F. Supp. 3d 688, 697 (N.D. Tex. 2018). *Accord Jackson v. Women’s Health Org.*, 940 F. Supp. 2d 416, 424 (5th Cir. 2013) (holding public interest prong is “an element that is generally met when an injunction is designed to avoid constitutional violations”). The public has an interest in more than just finances; it benefits the public to operate a fair criminal legal system, account for arrestees’ personal dignity, and preserve

family unity. *Wilbur v. City of Mt. Vernon*, 989 F. Supp. 2d 1122, 1133 (W.D. Wash. 2013). *Cf. Knowles v. Horn*, No. 08-cv-1492, 2010 WL 517591, *8 (N.D. Tex. Feb. 10, 2010) ("The public interest cannot be measured solely in financial increments and must account for the dignity of life and the preservation of families.").

IV. Class Certification is Warranted

112. Class certification is warranted because: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the named parties are typical of the claims or defenses of the class; and (4) the named parties will fairly and adequately protect the interest of the class. Fed. R. Civ. P. 23(a).

113. Courts entertaining class actions to vindicate civil rights should not apply rules about the burden of proof "rigidly or blindly." *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (quoting *Jones v. Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975)). While the Court must perform a "rigorous analysis" to determine whether to certify a class, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011), the Court may not require the plaintiff to establish his claims at the class certification stage. S*ee Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 466 (2013) ("Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."). At the certification stage, the plaintiff only needs to provide

evidence to demonstrate that Rule 23 is satisfied, not a "dress rehearsal for the merits." *In re Deepwater Horizon*, 739 F.3d 790, 811 (5th Cir. 2014).

114. In this case, "joinder of all members is not "practicable in view of the numerosity of the class and all other relevant factors." *Zeidman*, 651 F.2d at 1038 (quoting *Phillips v. Joint Legislative Comm.*, 637 F.2d 1014, 1022 (5th Cir. 1981)). These other relevant factors include "the geographical dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each plaintiff's claim." *Id*. Certification here would facilitate "judicial economy arising from the avoidance of a multiplicity of actions." *Id*. Finally, "the fact that the class includes unknown, unnamed future members also weighs in favor of certification." *Pederson v. La. State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000) (citing *Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974)). And joinder is presumptively impracticable because this class consists of forty members or more. *Mullen v. Treasure Chest Casino, LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (citing Newberg on Class Actions, supra, § 3:11).

115. The number of pretrial detainees in Galveston County jail far exceeds 40 people making joinder presumptively impracticable: Galveston County jail is one of the largest in the state and at any given time over 700 people are detained pretrial.

116. Furthermore, additional factors make joinder impracticable. The class is fluid and constantly changing. Litigating these claims individually would be unnecessarily resource-intensive for the defendants and the courts, and practically impossible because of the class members' lack of resources. These types of classes are well-suited for certification under Rule 23. *See Pederson*, 213 F.3d at 868 n.11; *see also*

Jones, 519 F.2d at 1100 (reminding that even a small class can satisfy numerosity where "the plaintiff is seeking injunctive relief on behalf of future class members as well as past and present members"); *Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974) (discussing impracticability of joinder of unknown persons).

117. The claims asserted on behalf of the proposed class include common questions of law and fact that satisfy Rule 23(a)(2). Here, the class members' claims "depend on a common contention" such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. This case raises common questions "to generate common answers apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 349 (emphasis in original) (quoting Richard A. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N.Y.U. L. Rev. 97, 132 (2009). Many common questions of both law and fact are dispositive to resolving class members' claims. Among the most common questions of fact with respect to the class are:

- Whether magistrates have a widespread, well-settled practice of setting secured bail without inquiry into ability to pay or consideration of alternatives less restrictive than unaffordable secured bail, without the presence of counsel;
- Whether magistrates have a widespread, well-settled practice of setting secured bail without adequate procedural protections including notice, an opportunity to present and contest evidence, appointment of counsel, reasoned findings based on clear and convincing evidence on the

record that unaffordable secured bail is the least restrictive means of mitigating an individual's flight risk or danger;

- Whether magistrates conduct bail hearings without the presence of counsel for the defendant;
- Whether magistrates' secured bail orders result in pretrial detention;
- Whether unaffordable secured bail undermines the fairness of plea bargaining or trial; and
- How long class members must wait in jail after arrest before they have an opportunity to raise their inability to pay for their release or to request alternative, non-financial conditions.

118. Among the most common questions of law with respect to the class are:

- Whether imposing unaffordable secured bail without an ability to pay hearing violates the Fourteenth Amendment Due Process and Equal Protection Clauses;
- Whether imposing unaffordable secured bail without adequate procedural protections including notice, an opportunity to present and contest evidence, appointment of counsel, and reasoned findings on the record that unaffordable secured bail is the least restrictive means of mitigating an individual's flight risk or danger violates the Fourteenth Amendment's Due Process Clause; and
- Whether denying counsel at a bail hearing violates the Sixth Amendment's Right to Counsel Clause.

119. "[T]he test for typicality is not demanding." *Mullen*, 186 F.3d at 625. Here, the named plaintiff's claims must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Typicality does not require a complete identity of claims." *James v. Dallas*, 254 F.3d 551, 571 (5th Cir. 2001), *abrogated on other grounds in In re Rodriguez*, 695 F.3d 360 (5th Cir. 2012) (citing 5 James Wm. Moore et al., Moore's Federal Practice ¶ 23.24[4] (3d ed. 2000) [hereinafter Moore's Federal Practice]). "[T]he critical inquiry is whether the class representative's claims have the same essential characteristics of those of the putative class. If the claims arise from a similar course of conduct and share the same legal theory, factual differences will not defeat typicality." *James*, 254 F.3d at 571 (citing Moore's Federal Practice, *supra*, § 23.24[4]).

120. Plaintiff's claim meets this standard. His claim is based on his pretrial detention pursuant to Galveston County's Bail Schedule Policy, which applies in the same manner to each class member. The named Plaintiff has not received any unusual treatment at the Jail that affects the typicality of his claims. His claims arise from the same course of conduct and are brought under the same legal theory.

121. The named Plaintiff also fulfills the final requirement under Rule 23(a): he "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Mr. Booth has demonstrated significant willingness and ability to take an active role in the litigation and protect the interests of other class members and the alignment of interests between the representatives and other class members. *See Slade v. Progressive Sec. Ins. Co.*, 856 F.3d 408, 412 (5th Cir. 2017) (citing *Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 130 (5th Cir. 2005)). He has "familiarity with the complaint and the concept of a

class action." *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 484 (5th Cir. 1982). Mr. Booth also has the support of counsel with significant experience in litigating complex civil rights actions like this one. Mr. Booth is dedicated to fulfilling the role and duties of a class representative protecting class members' fundamental constitutional rights. He is part of the class, shares the class's interests, and suffers the same injuries as other prospective class members.

122. Mr. Booth has satisfied the requirement of Rule 23(b)(2) by showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The requirement of a generally applicable set of actions "ensures that the class's interests are related in a manner that makes aggregate litigation appropriate . . . and therefore efficient." *Id*. Thus, "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 360. Civil rights class actions seeking injunctive and declaratory relief are "prime examples" of the types of actions that Rule 23(b)(2) is meant to capture. *Dukes*, 564 U.S. at 361. Rule 23(b)(2) classes seek "an indivisible injunction benefitting all its members at once," individualized inquiries into "whether class issues predominate" are unnecessary, and "[p]redominance and superiority are self-evident." *Id.*, 564 U.S. at 362–63.

123. Plaintiff has demonstrated that Defendants have acted on grounds that apply generally to the class—the County's unconstitutional policies and practices apply to every arrestee who is or will be detained in the Galveston County Jail before trial

because they cannot afford the secured financial conditions required for their release. *See Casa Orlando Apartments, Ltd. v. Fed. Nat'l Mortg. Ass'n*, 624 F.3d 185, 198 (5th Cir. 2010) ("[Rule] 23(b)(2) requires common behavior by the defendant towards the class."). Furthermore, it is far more efficient for this Court to grant injunctive and declaratory relief protecting all of the class members than to extend that relief piecemeal through individual suits.

124. Class counsel are capable of fairly and adequately representing the interests of the class, considering 1) "the work counsel has done in identifying or investigating potential claims in this action;" 2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" 3) "counsel's knowledge of the applicable law;" and 4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1). The declarations filed by Plaintiff's counsel and their representation of the class to date demonstrate that they are adequate.

Respectfully Submitted,

/s/ Trisha Trigilio

Trisha Trigilio, attorney-in-charge
Texas Bar No. 24075179
S.D. Tex. Bar No. 2461809
ttrigilio@aclutx.org
Adriana Piñon
Texas Bar No. 24089768
S.D. Tex. Bar. No. 1829959
apinon@aclutx.org
Andre Segura
Texas Bar No. 24107112
S.D. Tex. Bar No. 3123385
asegura@aclutx.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
5225 Katy Freeway, Suite 350
Houston, Texas 77007
Tel: 713-942-8146

/s/ Kali Cohn
Kali Cohn
Texas Bar. No. 24092265
S.D. Tex. Bar No. 3053958
kcohn@aclutx.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
6440 N. Central Expressway
Dallas, TX 75206
Tel: 214-346-6575
Fax: 713-942-8966

/s/ Brandon J. Buskey
Brandon J. Buskey, admitted pro hac vice
Alabama Bar No. ASB-2753-A50B
bbuskey@aclu.org
Twyla Carter
Washington State Bar No. 39405
tcarter@aclu.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION CRIMINAL LAW REFORM PROJECT
125 Broad Street, 18th Floor
New York, NY 10004
Tel: 212-284-7364
Fax: 212-549-2654

/s/ Christopher M. Odell
Christopher M. Odell
Texas Bar No. 24037205
S. D. Tex. Bar No. 33677
christopher.odell@arnoldporter.com
Hannah Sibiski
Texas Bar No. 24041373
S.D. Tex. Bar No. 559957
hannah.sibiski@arnoldporter.com
Andrew D. Bergman
Texas Bar No. 24101507
S.D. Tex. Bar No. 3169886
andrew.bergman@arnoldporter.com
ARNOLD & PORTER KAYE SCHOLER LLP

700 Louisiana Street, Suite 4000
Houston, TX 77002-2755
Tel: 713-576-2400
Fax: 713-576-2499

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I filed this motion via the ECF system, which serves this motion on all counsel of record.

/s/ Trisha Trigilio
Trisha Trigilio (Attorney-in-Charge)
Texas Bar No. 24075179
S.D. Tex. Bar No. 2461809
ttrigilio@aclutx.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
5225 Katy Freeway, Suite 350
Houston, TX 77007
Tel: 713-942-8146
Fax: 713-942-8966