

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

MARANDA LYNN O'DONNELL, *et al.*

Plaintiffs

vs.

HARRIS COUNTY, TEXAS, *et al.*,

Defendants.

CIVIL ACTION NO. 4:16-CV-1414

Brief of Amicus Curiae
Harris County Precinct 3 Commissioner Steve Radack

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Brief of Amicus Curiae Commissioner Steve Radack
Statement of Interest

Commissioner Radack is not supporting the position of either of the litigants on the merits, at this stage of the proceedings. He supports the Harris County Court at Law Judges’ Administrative Order Number 2019-01, Amending Local Rule 9.1 (Document 557-1) – period.

Summary of Argument

The core of Commissioner Radack’s objections are threefold: (1) collusion between the parties to the proposed consent decree, (2) overreach and prohibitive costs of the current proposed consent decree, and, (3) legitimate law enforcement concerns for the safety and security of the general population of Harris County.

Reasons for Amending the Parties Proposed Consent Decree

“A consent decree, although founded on the agreement of the parties, is a judgment.”¹ Thus, a court “must not merely sign on the line provided by the parties. Even though the decree is predicated on consent of the parties, the judge must not give it perfunctory approval.”² When presented with a proposed consent decree, a court must ascertain that the settlement is “fair, adequate and reasonable” and is not

¹ *United States v. City of Miami*, 664 F.2d 435, 439 (5th Cir. 1981) (citing *United States v. Kellum*, 523 F.2d 1284, 1287 (5th Cir. 1975)).

² *Id.* at 440–41.

the product of “fraud, collusion, or the like.”³ “The court must also consider the nature of the litigation and the purposes to be served by the decree. If the suit seeks to enforce a statute, the decree must be consistent with the public objectives sought to be attained by Congress.”⁴

Collusion – winning by losing.

Democrats swept the 2018 elections to the Harris County Courts-at-Law, unseating 14 incumbents. They also gained a 3/2 majority in the Harris County Commissioners’ Court. Elections have consequences. The relevant consequence was the adoption of Harris County Court at Law Judges’ Administrative Order Number 2019-01, Amending Local Rule 9.1 (Document 557-1), specifically citing the case-at-bar in their Order:

“Amended Rule 9.1 is intended to remedy the constitutional violations identified by the federal district court in *O Donnell v. Harris County*, 251 F. Supp. 3d 1052 (S.D. Tex. 2017) and the Fifth Circuit in *O Donnell v. Harris County*, 892 F.3d. 147 (5th Cir. 2018).”

Similarly, the Harris County Commissioners Court voted, 3 to 2, to approve the current proposed Consent Decree – which grants the plaintiffs excess procedures, personnel, and funding. The following links to news accounts show members of

³ *Id.* at 441; *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977).

⁴ *Id.*

Commissioners’ Court extolling the plaintiffs’ positions, and offering expansion of remedies far beyond the scope of the original relief sought – including Commissioner Ellis’ remark in open Court that “. . . felonies are next.”⁵

<https://www.youtube.com/watch?v=6Sva5vhRpFI>

<https://www.youtube.com/watch?v=m0o85KRYwLE>

<https://www.youtube.com/watch?v=p5yknAPpkX8>

Also, see Exhibit A, an interview with Commissioner Ellis in the National Association of Counties Newsletter, dated August 19, 2019, publicly presuming this Court’s approval – after admitting support for, and collusion with the plaintiffs in drafting the expanded Consent Decree – even comparing the proposed agreement to *Brown v. Board of Education*.⁶

But see Horne v. Flores, 557 U.S. 433, 448–50, 129 S. Ct. 2579, 2594–95, 174 L. Ed. 2d 406 (2009):

Finally, the dynamics of institutional reform litigation differ from those of other cases. **Scholars have noted that public officials sometimes consent to, or refrain from vigorously opposing, decrees that go well beyond what is required by federal law.** See, e.g., McConnell, Why Hold Elections? Using Consent Decrees to Insulate Policies from Political Change, 1987 U. Chi. Legal Forum 295, 317 (noting that government officials may try to use consent decrees to “block ordinary avenues of political change” or to “sidestep political constraints”);

⁵ Third clip, at 2:02 of 2:20.

⁶ Ex. A. p. 1.

Horowitz, Decreeing Organizational Change: Judicial Supervision of Public Institutions, 1983 Duke L.J. 1265, 1294–1295 (“Nominal defendants [in institutional reform cases] are sometimes happy to be sued and happier still to lose”); R. Sandler & D. Schoenbrod, Democracy by Decree: What Happens When Courts Run Government 170 (2003) (“**Government officials, who always operate under fiscal and political constraints, ‘frequently win by losing’ ” in institutional reform litigation**).

See also, Exhibit B, The Commissioner’s Court of Harris County, Texas, Transcript of Proceedings, Regular Meeting, July 30, 2019, page 3, Commissioner Ellis’ Comments:

I want to thank Alec whose last name I’m going to pledge to figure out how to pronounce it after this lawsuit. I just call him Alec Karakatsanis

But some of my colleagues were wondering --- did I encourage him to sue. Yes I did. And I wished that I’d been on this commission and would have been bold enough to suggest that he sue Harris Count back then when I was a Senator. But I thank him for doing it. I appreciate Neil Manning. . . .

As the Court knows, Alec Karakatsanis and Neal Manne are the attorneys for the plaintiffs. There is no better example to show the lack of arms-length negotiation of this proposed Consent Decree. The Court should trim the collusion fat and limit the Consent Decree to remedies necessary to cure Constitutional violations.

Overreach and prohibitive costs of the current proposed consent decree.

Constitutional violations that led to the filing of this original suit were resolved by the adoption and implementation of the new Rule 9.1 (Document 557-1). A Court decree that orders Harris County to abide by this new Amended Rule 9.1, prevents any backtracking. *This is all the law requires.*

The multi-million-dollar boon incorporated into the proposed Consent Decree, Document 617-1, p. 30, captioned “Determination and Mitigation of Actual Causes of Nonappearance in Harris County” is a glaring example of colluded political excess incorporated into this proposed consent decree. This prospective provision exceeds the need and scope of indigent inmate bail reform – and costs the citizens of Harris County millions of dollars to fix a problem that has been fixed by Amended Rule 9.1.

Sufficient reform was enacted by Amended Rule 9.1, “. . . to remedy the constitutional violations identified by the federal district court in *O’Donnell v. Harris County*, 251 F. Supp. 3d 1052 (S.D. Tex. 2017) and the Fifth Circuit in *O’Donnell v. Harris County*, 892 F.3d. 147 (5th Cir. 2018).”

3. The parties’ proposed Consent Decree poses legitimate law enforcement concerns for the safety and security of the general population of Harris County.

Catch-and-release has a component of peril to the public – as recently demonstrated by Exhibit C, Julian Gill’s article in the Houston Chronicle, dated August 18, 2019, **“Pasadena slaying spotlights debate over bail reform.”**

In the wake of Guajardo’s arrest in the slaying, Pasadena Police Chief Josh Bruegger declared in a YouTube video he was “outraged” because Guajardo was released on a personal bond when he allegedly killed his wife, adding that “bail reform seems to have neglected the rights of crime victims and overall safety of the public.”

Houston Police Chief Art Acevedo and Houston Police Officers Union President Joe Gamaldi also cited the case to cast doubt on the county’s misdemeanor bail system.

True, one incident is not statistically significant, unless it happens to your family member. Then, one is far too many. There is the possibility of balancing the genuine interests of the general public with reasonable bail restrictions that do not offend the Constitutional rights of inmates – and it should be done.

The plaintiffs distort “presumption of innocence” to contend that indigent misdemeanants often plead guilty unnecessarily – because they cannot post bail. What no one knows, or can know, is how many of these plead guilty because they are guilty – and for no other reason. Common sense dictates that there are some.

The proposed consent decree dictates equal treatment of misdemeanants, regardless of class.⁷ The Texas Penal Code, however, divides misdemeanants into three distinct classes.⁸ Class “A” offenses include: § 42.105 Cockfighting; § 42.075 Disclosure of Confidential Information Regarding Family Violence or Victims of Trafficking Shelter Center; § 38.123 Unauthorized Practice of Law; § 38.17 Failure to Stop or Report Aggravated Sexual Assault of Child; § 22.012 Indecent Assault; § 71.021 Violation of Court Order Enjoining Organized Criminal Activity; § 38.13 Hindering Proceedings by Disorderly Conduct; § 38.111 Improper Contact with Victim; § 36.09 Offering Gift to Public Servant; § 38.171 Failure to Report Felony; § 36.04 Improper Influence; § 42.08 Abuse of Corpse; § 43.02. Prostitution (with one prior conviction); § 38.05 Hindering Apprehension or Prosecution; § 46.06 Unlawful Transfer of Certain Weapons; § 42.10 Dog Fighting; § 38.07 Permitting or Facilitating Escape; § 42.09 Cruelty to Livestock Animals; § 43.24 Sale,

⁷ Doc 617-1, Proposed Decree, p. 13, Sec. IV, h, “Indigent” refers to *any misdemeanor arrestee* who cannot afford to pay the cost of secured bail or a fee or cost associated with a condition of pretrial release . . . “

⁸ V.T.C.A., Penal Code § 12.03.
(a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:
(1) Class A misdemeanors;
(2) Class B misdemeanors;
(3) Class C misdemeanors.
(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.
(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Distribution, or Display of Harmful Material to Minor; § 38.04 Evading Arrest or Detention; § 47.03 Gambling Promotion; § 25.06 Harboring Runaway Child; § 39.03 Official Oppression; § 43.23 Obscenity; § 47.04 Keeping a Gambling Place; (ironically) § 38.10 Bail Jumping and Failure to Appear; § 22.05 Deadly Conduct; § 21.07 Public Lewdness; § 46.02 Unlawful Carrying Weapons.

There are more, but they belabor the point – Class A misdemeanors include many crimes of violence and dangerous criminal activities.

The consent decree does not balance indigent offenders’ rights with a respect for the fundamental human rights of victims, and the public-at-large. Automatic early release of indigent offenders is laudatory in principle but ignores the practical reality of serious, ongoing criminal activity and retaliation.

The National Association of Counties Newsletter, dated August 19, 2019⁹ compares this proposed consent decree to the bail reforms in Cook County. This is no endorsement – since certain areas of Chicago are like war zones. But it does emphasize an often-overlooked fact, acknowledged by Commissioner Ellis’ comparison of this case to *Brown v. Board of Education*. Many indigent misdemeanants return to underprivileged, high-crime minority communities. There are areas in South Houston that are infested with gangs, open street drug use, street prostitution, theft, assaults, and other open-obvious misdemeanor crimes.

⁹ Exhibit A, p. 3.

Yet, many hard-working, God-fearing, law-abiding people also live in these underprivileged communities. It is their voice that has been ignored in this drawn-out debate over revolving-door misdemeanor bond issues. Simply put, the wealthy communities in Houston/Harris County will feel little, if any, impact from indiscriminate release of misdemeanants. But the poor, mostly minority communities will. See Chicago.

Texas Penal Code § 12.43, enhances punishments for repeat misdemeanor offenders. The consent decree's personal recognizance scheme does not.

Law enforcement's concerns were underscored by Alex Guajardo's senseless murder of Caitlyne Ross Infinger, and her unborn child. After three days in jail for punching Infinger in the face, a Magistrate issued a protective order and released Guajardo on a personal bond. Two days after his release Guajardo stabbed Infinger about 20 times in the belly and killed her.

Caitlyne is the first – but will not be the last system-victim. There must be a better screening process that balances early release and the possibility of retaliation.

Conclusion

This is not a “one size fits all” proposition. Law enforcement's concerns are legitimate and should be considered before any final decree is signed. “Street sense” sometimes balances impersonal statistical analyses. There is no perfect system, but this can be better.

A Court decree that orders Harris County to abide by Amended Rule 9.1 prevents any backtracking. *This is all the law requires.* All else is superfluous, collusive, and should be legislated, not decreed.

The Court should either strike the proposed Consent Decree and continue arms-length litigation addressing the issues of all affected parties, or, trim this Decree to fit Constitutional parameters.

Respectfully submitted,

s/ *Fred A. Keys, Jr.*

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Certificate of Service

I certify that on August 22, 2019, a true and correct copy of this Notice of Appearance of Counsel was served by electronic notice to all parties of record.

/s/ *Fred A. Keys, Jr.*
FRED A. KEYS, JR.

Harris County settles bail case, reforms system

By [Charlie Ban](#) Aug. 19, 2019



Harris County Commissioner Rodney Ellis confers with NACo Past President Greg Cox at the 2019 Annual Conference. Photo by Denny Henry

🐦 Harris County settled a lawsuit targeting its misdemeanor bail practices, cementing reforms to the justice system in the nation's third-largest county <<https://ctt.ac/Aa4fP>>

In a case Commissioner Rodney Ellis called as big as *Brown v. Board of Education*, Harris County, Texas has settled a lawsuit alleging the unconstitutionality of its bail system for misdemeanor offenses and committed to changes, in place since March, that eliminate money bond for misdemeanors.

The county will increase funding for public defenders, increase court hours for administrative work to clear or prevent warrants and a notification system to communicate with people charged with misdemeanors, all of which could cost \$97 million to implement. The pending settlement of *ODonnell v. Harris County* ends a three-year battle brought by a woman who spent three days in jail because she couldn't afford the \$2,500 bail for driving without a valid license.

"This is the first time the equal protection clause and the due process provisions of the constitution were used as they relate to cash bail," Ellis said. "It's the same theory that Thurgood Marshall used to integrate the schools, something the Constitution didn't bring about when it was written, that legislation had brought about."

Learn More

National Symposium on Pretrial Justice summary report on proceedings
<<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=a67b7c24-c6ab-f9db-9f94-ddfa189a9596&forceDialog=0>>

What's Happening in Pretrial Justice <<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=2237e951-8073-c702-f63d-c009075a76cd&forceDialog=0>>

Reducing Fines and Fees in County Justice Systems <<http://bit.ly/2KAK1qN>>

Jail Population Management: Elected County Officials' Guide to Pretrial Services
<<https://www.naco.org/sites/default/files/documents/Jail%20Population%20Management%20Guide.pdf>>

Harris County spent almost \$10 million in legal fees trying to fight the lawsuit, but it was inevitable, Ellis said, that the county was bound to lose.

It's also one of the more substantial changes among the bail reform efforts playing out across the country, with state and local governments, judiciaries and prosecutors driving policy changes from different angles. In Harris County, more than 80 percent of misdemeanor defendants will be released, which Ellis acknowledges is already drawing opposition from the bail bonds industry.

"This isn't an accident, there's a lot work over 10 years to go into something that seems like spontaneous combustion," said Cherise Fanno Burdeen, chief executive officer of the Pretrial Justice Institute, whose organization tracks bail reform measures and lobbies others, including NACo on the issue. "What you've seen is a successful implementation of a set of recommendations by a coalition that included NACo and other organizations" following the U.S. Department of Justice's 2011 National Symposium on Pretrial Justice.

"If you're going to look at the charge, anyone charged with a misdemeanor, those are mostly probation-presumptive cases. Why are we putting anyone in jail in the first place? The minute they take a plea we'll say 'Great, now you're out on probation.' If they were dangerous Tuesday and not dangerous Wednesday, what changed?"

She said the ability to pay rarely matches the risk of reoffending, and flight risk is something that should be determined subjectively by a judge.

"The vast majority of people show up for court either when they were supposed to or they show up for having missed court," she said. "It's really a 'missing an appointment' issue and not a fugitive issue. Meanwhile, when a guy offers to put up \$7 million - \$8 million, everybody knows that figure means nothing to him, he can just fly to a non-extradition country."

Ellis was empathic when the Harris County Commissioner's Court voted on the settlement July 30.

"Nobody should be in jail because they're broke, and it's not just here, it's all around the country," he said.

Discussion of Misdemeanor Bail Reform Settlement at Harris Cou...



Dallas and Galveston counties are also facing heat for their bail practices. Dallas County District Attorney John Creuzot will no longer prosecute marijuana possession cases for first-time offenders outside of drug-free zones, misdemeanor criminal trespass cases that do not involve a residence or physical intrusion into property, and he launched other initiatives, including diversion programs for people caught driving on suspended licenses, expungement programs and re-graded probation guidelines.

Many changes are happening in some of the country's largest counties. Harris County is the third-largest, with 4.65 million residents. The second-largest, Cook County, Ill. (5.2 million residents) also saw some recent changes to bail policy. In 2017, Chief Judge Timothy Evans instructed judges to set more reasonable bail amounts, including for felony charges, an area Harris County didn't include. A report released in May 2019 comparing 15-month periods before and after that change showed no significant increase in public safety risk.

Elsewhere in the country:

The mayor and Commission of Athens-Clarke County, Ga. eliminated cash bond for low-level offenses.

Pima County, Ariz. has built a temporary screening facility next to its jail and county officials hope that by screening 400–500 misdemeanor defendants a month, the county will be able to save \$1.5–\$1.9 million a year in unnecessary detention costs.

A federal injunction is requiring the independent city of St. Louis to give fair bail hearings within 48 hours of an arrest and a hearing within one week.

Colorado Gov. Jared Polis signed legislation requiring courts to release people on personal recognizance who are charged with misdemeanors.

New Hampshire Gov. Chris Sununu signed legislation prohibiting courts from using homelessness and substance misuse as the sole factors when considering how dangerous someone is.

The jury is still out in Jersey

New Jersey's bail elimination effort is almost three years old, and while counties have seen their jail populations reduced, New Jersey Association of Counties Executive Director John Donnadio said it hasn't added up to cost savings for his members yet.

"We've certainly seen a reduction in the county jail population, so from that point, it's reached its intended purpose," he said. "The counties are still processing the same number of prisoners. The majority of the cost-drivers at the county level were increasing county prosecutor office staffing, investing \$50 million in hiring prosecutors, investigators; there was very little investment going into the county jails. We haven't seen any jail layoffs, we may see some attrition in a few years, but ... we're still processing the same number of prisoners.

"We thought we might see some nominal cost-savings five years down the road, but we haven't yet."

Even though the measures haven't produced savings yet, Donnadio said they were successful.

"It was, philosophically, the right thing to do. Operationally, there are other issues."

For all the merits of community-based human service delivery, Donnadio said county jails were still helping get help for inmates on a regular basis.

"These same prisoners who couldn't make bail were reviving mental health services in the jail and now they're back in the community," he said, "It's something our jail wardens, our welfare folks, our human services folks are talking about. We're struggling with what to do with the folks who were receiving mental health services in jail and now they're not. We're processing more prisoners than in the past but turning them around."

Donnadio also said the technology upgrade costs might force an increase in court filing fees.

"If any states are looking at bail reform, I can tell you it's going to cost a lot more money than they think it will."

Fines, fees also cause problems

Bail isn't the only financial consideration facing people in the justice system. Fines and fees can include traffic citations, penalties for conviction and court costs.

These fines are intended as a revenue source, in addition to a penalty, but low collection rates stymie that effort. Partially, it's a matter of a disproportionate number of low-income people being affected. The Prison Policy Initiative found that the median monthly income for incarcerated people is less than \$2,000. Texas Appleseed found that between 20-50 percent of people are in jail because of failure to pay fines.

And the effort involved in trying to recover those fines can be fruitless. Los Angeles County ended up spending \$3.9 million to collect \$3.4 million in probation fees.

NACo's publication *Reducing Fines and Fees in County Justice Systems* <<http://bit.ly/2KAK1qN>> offers a variety of approaches for holding people accountable for minor infractions while improving outcomes:

- Inquiring about a person's ability to pay financial obligations
- Reducing penalties by a flat amount or by using a graduated scale
- Creating flexible payment plans
- Eliminating fees
- Prohibiting warrants and jail time for unpaid fees
- Adopting practices that can help minimize failures to pay or appear in court

ABOUT CHARLIE BAN [\(Full Bio\)](#)

COUNTY NEWS DIGITAL EDITOR & SENIOR WRITER

Charlie Ban is the County News digital editor and senior writer.

[News from Across the Nation - Aug. 19](#)

[Burning Man gathering in Nevada desert poses challenges, opportunities for surrounding counties](#)



THE COMMISSIONERS COURT OF HARRIS COUNTY, TEXAS

TRANSCRIPT OF PROCEEDINGS

Regular Meeting - July 30, 2019

MEMBERS IN ATTENDANCE:

COUNTY JUDGE LINA HIDALGO

COMMISSIONER RODNEY ELLIS, Precinct 1

COMMISSIONER ADRIAN GARCIA, Precinct 2

COMMISSIONER STEVE RADACK, Precinct 3

COMMISSIONER R. JACK CAGLE, Precinct 4

MEMBERS ABSENT:

ATTENDING CLERK OF THE COURT

James E. Hastings, Jr.

TO ALL INTERESTED PARTIES:

Attached is an unofficial transcript of a meeting of the Harris County Commissioners Court. The transcript is furnished by the court in the public interest as the best interpretation from the recording made of the meeting. An attempt was made to record accurately the comments of all individuals, but it is possible that errors may exist. The official minutes of court meetings are recorded and kept by the County Clerk.



William J. Jackson
Executive Director, Budget Management,
and County Budget Officer

* Denotes subject matter may be condensed or is not clearly audible.

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(This transcript covers a discussion pertaining to item "II.10." under Emergency/supplemental items from the July 30, 2019 Commissioners Court meeting)

PROCEEDINGS

MS. HIDALGO: All right. We'll now take item "[II.]11." in the Supplemental Agenda. Page 37. And before we go any further, I'd like to say a few words. This is on our---"[II.]11." on the Supplemental Agenda misdemeanor bail the ODonnell ***---[II].10. Excuse me.

MR. SOARD: [Item] "[II.]10."

MS. HIDALGO: Item "[II.]10."

II. Emergency/supplemental items

10. Request by the County Attorney for an executive session pursuant to §§ 551.071, Government Code, for consultation with the County Attorney concerning ODonnell vs Harris County, a case pending in the United States District Court and for possible action upon return to open court, including settlement of the case.

MS. HIDALGO: With respect to our misdemeanor system of justice, we're here after quite a marathon. And we'll be hearing from community members and speakers and we'll be hearing from the members of this Commissioners Court. And of course we'll still have to hear from Judge Rosenthal who ruled on this case. Nonetheless it's an incredibly significant day. An incredibly significant day to make a decision on one of the key civil rights issues of our time. Judge Rosenthal who's yet to review this had deemed our system of bail so discriminatory as to be unconstitutional. The most conservative appeals court in the nation upheld her ruling finding us in violation of the Constitution of the United States. And today we have the opportunity to lead in something that will mark change not only for our community but for our country. To bring a day in which no person goes free simply because they can't pay or stays in jail simply because they don't have cash in their wallet. To build a system in which fairness and justice are preeminent but also we are smarter and we are safer. There are some famous words

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urging us toward the day in which people are judged by the content of their character and that takes work. It takes work. It takes dedication. We're just starting but this is a proud beginning and one that's taken many, many people advocating and working together. That's what we're considering today. With that let me open it up to any comments folks have. We do have several speakers on this item so---yes Commissioner Ellis.

MR. ELLIS: Judge, I want to echo your comments. It is a historic day and I think criminal justice reform is as you said the civil rights issue of this generation. I don't want to repeat all of the things you said. I do want to say that Judge Rosenthal wrote a very thoughtful interim opinion. It's an issue that all of us around this table felt very strongly about. Some of us were dealing with it over a number of years. It took a long time for this system to get put in place. So this is a system, a very oppressive system has existed for decades. And I don't point an accusative finger at anyone but it did I think indicate a certain blind indifference than what was going on. And I think it's incumbent upon us to admit that. A lot of changes were put in place along the way particularly after the interim ruling. It is important that the Fifth Circuit historically known as the anti-civil rights circuit in the country. That's the circuit court which we're part of that Thurgood Marshall always tried to avoid unless a fact pattern was just so outrageous it was the best case to take, like the one that integrated the University of Texas. Sweatt vs. Painter where I went to graduate school. That fact situation was just so bad that Thurgood Marshall decided he'd run the wrath of the Fifth Circuit. And that was the precursor to the historic Brown vs. The Board of Education case. I mention that because this case is just as big as Brown vs. The Board of Education. I think a few thank yous are appropriate. I want to thank the plaintiffs for being bold enough to step up and lead to what was a class certification. You've not heard a lot from them because it's hell being poor period and particularly in Harris County. So Ms. ODonnell, I asked my staff a couple of days ago, I'd like to have her come and say something. But her situation is still a difficult one. And when you're in that position just like

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Linda Brown in Brown vs. the Board. That was Reverend Brown's daughter. She was a little kid from a household of some privilege because her dad was a prominent minister. But so she laid back later on in life she became somewhat of an iconic figure. But I want to thank those plaintiffs. I want to thank Alec whose last name I'm going to pledge to figure out how to pronounce it after this lawsuit. I just call him Alec Karakatsanis. However you say it. But what a brilliant young man to use the same two legal theories that Thurgood Marshall used to integrate America. The equal protection clause that due process provisions of the Constitution. And Justice Sotomayor used them to give women most of the rights that they have. Judge to pave the way for you to be here and preside. Same theory. And when I met him some years ago in the legislature it always just struck me---I kept noticing, you know, he looked so young and I was thinking this is nice. He'd gotten a few victories in Alabama maybe some smaller counties in the south. But some of my colleagues were wondering---did I encourage him to sue. Yes I did. And I wished that I'd been on this commission and would have been bold enough to suggest that he sue Harris County back then when I was a Senator. But I thank him for doing it. I appreciate Neil Manning. Because in addition to the work that this small civil rights advocacy group would do. What a grant. Judge might I add, one of those genius grants. You know, like they should have given you. He had a genius grit. That's what I called him. Harvard's Law School for \$250,000, a quarter of a million dollars to go out and figure out how to do something good with that elite Ivy League education. And he teamed up with a colleague and started his civil rights corps and they have made a difference. I want to thank the TOP folk here. Because some advocacy was needed here on the local level to help push this issue and help educate the community. Neil Manning and the other lawyers who were involved did a great job. I want to thank all our staffs. Even some of my colleagues that I may disagree with from time to time. Their staff sat in the room. Your staff. Commissioner Garcia's staff and mine. I don't know all of the names---don't want to call them out, but look it took a lot of work to get here. I have no idea what will happen when this goes

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back to Judge Rosenthal but it's a big deal. It's a thoughtful consent decree where we touched on a number of important issues. It took decades, maybe a century to put this system in place that has been ruled unconstitutional. And we needed to make sure we were thoughtful with what we do to change it. Because you cannot dismantle a system like this overnight. I'm sure Thurgood Marshall had the option of settling *Brown vs. The Board of Education*, he ended up with much more than all deliberate speed in the year I was born in 1954 and we know the public schools still haven't gotten quite to what he anticipated. But it is a big day and I just don't think we ought to let this moment be lost on us. The provisions for a monitor are important. It's a seven year consent decree. There's latitude so that if we disagree with something the monitor suggests, we can go to court. If the plaintiffs disagree, they can go to court. There's a comprehensive provision in there about indigent defense because so much of what happens when somebody walks into a courtroom is based on the quality of legal representation. I see one of the judges in the back; I want to thank all of them. One is here who's going to speak. But all of them made a difference. These judges got elected, the new group of judges, and in 30 days adopted a role that was really a big part of what led to this consent decree. A couple of names and I'll be quiet. I want to thank the Sheriff. Because when I was elected, when the new DA was elected, when some judges were elected, in particular Judge Darrell Jordan. I was told by the plaintiff's council that they could no longer meet with me about this litigation unless the County Attorney's Office agreed. And of course they said, we assume that they would agree because we think you can help get this settled. As it turned out, I was not given permission to meet with them. So I asked the new DA elect, one judge because I knew him when he was a young man before he got a law degree, and I asked the Sheriff to meet with the plaintiffs and we did in Neil Manning's law office. And there was an effort to take the Sheriff out of the process. It was a big part of the process. And Sheriff Ed Gonzalez campaigned and said I think the Sheriff ought to be in this lawsuit. The Sheriff ought to play a role because it's such an important part of public safety. And

when a consent decree or a lawsuit is decided, public safety is at the heart of what we're talking about. Fairness is a part of it, but public safety is always a big part of it. So the Sheriff did an affidavit before he got into office saying "I think the Sheriff ought to remain in it." And Judge Jordan if you read that 190 page interim ruling it's replete with references to Judge Jordan. So I want to thank all of the judges in particular singling out Judge Jordan. Thank you.

MS. HIDALGO: Let me note that we do need to take this item along with item---on Commissioner Precinct 4 item on page 36, item "[22.e.]1."

22. **Commissioners Court**

e. **Commissioner, Precinct 4**

1. Request for a public discussion on the bail bond reform lawsuit and settlement.

MS. HIDALGO: As well as Supplemental Item "[II.]8." on page 37 by Commissioner Radack.

II. **Emergency/supplemental items**

8. Request by the Commissioner of Precinct 3 for a public discussion concerning the settlement of the bail bond lawsuit and its impact on:
 - a. Any funds or services that victims of crime will receive.
 - b. Exactly how much money will be spent to help the alleged criminals.
 - c. The public safety of the people of Harris County

MR. GARCIA: Judge, thank you very much. And Commissioner Ellis you started some of your remarks by saying some thank yous are in order. Well a very big thank you to you. To you for staying steadfast on this landmark effort to bring justice to Harris County. A county that's been known for a different infamy, a not so pleasant one. A thank you to you for--- because in the early days of your work on this you and I had conversations. And we had not yet thought through the total context of how this would happen. But you stood fast and I'll just say that it is life and fate are an interesting thing. Because I remember when you and I had these conversations. I brought it up at the Criminal Justice Coordinating Council. And said, you know, Senator Ellis', you know, talking about bail reform and there's a possibility of a suit. And I think

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we'll lose. Did not get a whole lot of attention. No output to the fact that we should be preemptive in understanding the premise of the suit and decide what would be the right thing to do. And it's interesting that you would evoke Brown vs. The Board of Education because I'm a product of Brown vs. The Board of Education. In fact the Houston version of Brown vs. The Board of Education started between my elementary school and Crawford Elementary. And because Hispanics at the time were classified as white, we settled Brown vs. The Board of Education by sending some little darker white kids to Crawford Elementary. But very few people remember that because we settled that. We understood the right thing to do and we settled that. And so I for all of the work that has gone into this this is a very, very---this is going to be---look, we've had the Astrodome, we've had the Port of Houston, we've got the Medical Center but we also have this settlement. This is an important part of Harris County's history and so Commissioner Ellis, Senator Ellis, civil rights advocate, and leader Rodney Ellis, I want to say thank you to you. For your steadfast work on this. But I also want to say thank you to Judge Hidalgo. Although new to the local political arena coming in, I'm not sure whether you've slept much since January 1st. But I know that many of those waking hours were spent on getting this process resolved, keeping the parties together, and making sure that we did not lose our focus and that this did not get pushed to the back burner as it could have happened if not for your commitment and your leadership. And so to my colleagues, I just want to say thank you; this is important.

MS. HIDALGO: Thank you Commissioner. And for guiding us with your law enforcement experience *** spent your life in law enforcement with the Sheriff.

MR. ELLIS: Judge.

MS. HIDALGO: Yes.

MR. ELLIS: I want to echo the thanks to you and I forgot to mention that I couldn't call you Commissioner Garcia through this process. I could talk to both of you

before you took the oath. But I haven't had much of a conversation with you at all about this subject since then. But, you know, the running joke is you and the Judge don't wake up early. And so I got a call, I don't know, it seems like it's two weeks ago, might have been a week ago I can't even remember Judge. But I got a call about 7:00 in the morning Saturday, I think two weeks ago and I knew this thing had blown up. I think some of the Judges might be in the room. They were getting a little tired of one another and, you know, they were going on. Our staffs, I walked in one day I knew they were negotiating in this back room. And I wanted to come in and claim victory and my staff said don't come in now because it just blew up. So I took a flight, I was going to Washington on my way to somewhere, New York I think to give a speech. And I see this call on my phone from Judge Hidalgo at 7 in the morning and I'm thinking this is a hurricane or something. I'm being asked to come back. If she's up that early in the morning and she said "hey, you know, I'm sure your staff told you it's blown up". And her comment was I just think we're too close, we've come too far to not try and do something. I was in D.C. I knew Alec K. lived there and I did text him before I got on a plane and said "hey, why don't we visit tomorrow." He was in a ditch. And I had a good talk with the Judge and she encouraged me to don't just go by his house, so I did spend about two or three hours with him, called her. And we encouraged our staffs to, you know, try---all of the folks kind of put aside all those awful things people say Judge in the middle of a negotiation, but thank you Judge.

MS. HIDALGO: Thank you.

MR. ELLIS: As I said many times, you're wise beyond your years.

MS. HIDALGO: Well thank you Commissioner for your commitment to civil rights. Let's hear from some of our speakers because we do have folks signed up for this item.

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V. Appearances before court

The Clerk of the Court or another person designated by the presiding member of the court shall keep the time for speakers. Those persons who do not conduct themselves in an orderly and appropriate manner will be ordered to leave the meeting and recognition to speak may be refused at subsequent meetings of the court. Refusal to abide by the court's order may result in a Contempt of Court Citation.

1. 3 minutes

A speaker whose subject matter as submitted relates to an identifiable item of business on this agenda will be requested to come to the podium where they will be limited to three minutes. A speaker whose subject matter as submitted does not relate to an identifiable item of business on this agenda will be limited to three minutes if they have not appeared at any of the three preceding court meetings on the same issue.

2. 1 minute

A speaker whose subject matter as submitted does not relate to an identifiable item of business on this agenda and who has appeared at any of the three preceding court meetings on the same issue will be limited to one minute.

MS. HIDALGO: So I'll call Judge Franklin Bynum first if he's in the room, Judge Bynum. And speaking of folks working day and night, coming home from vacations, cancelling vacations, working on weekends, all the Judges, the Sheriff. Thank you Judge Bynum for your dedication to this ***.

MR. BYNUM: Thank you Judge Hidalgo, Commissioners. Thank you for having me. I'm Franklin Bynum. I'm the Judge of County Criminal Court #8. My first job with the county was at the Public Defender's Office where many, many mornings I would spend walking into a full holdover tank attached to a courtroom where 50 or so people were stacked up and almost always they were all the majority overwhelmingly black and brown people. But one thing that they all had in common was they were all poor. They all couldn't afford to pay to get out. That's why they were in the tank. And my job as their lawyer within that farce was since they couldn't pay money to get out they had to pay with their lives and their reputation. And I did those papers for them so they could plead guilty to get out of jail. When my 14 colleagues and I joined Judge Darrell Jordan in January. We elected Judge Jordan to be our presiding judge and we right of way implemented temporary measures to solve the constitutional violations that had been happening repeatedly in this county and that were the subject of this lawsuit. Judge

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Jordan and I personally supervised bail reform at the Joint Processing Center making sure that our rule was followed. Before we implemented the rule, I went down there once it opened almost every night to catch people from falling through the cracks. But once we implemented the rule, we made sure that everyone understood the importance of it and that people needed to be released and that no one was going to be held because they couldn't afford to pay. And now I look at the holdover tank in my court and there are often no more than three people in it. And you multiply that by the 15 other county criminal courts and that is what reform looks like. People are free to go home to their families, to not miss a pick up from school, to not miss a rent check, or a bill, not have their lives spiraled more into chaos. What this agreement before you does is it takes our temporary measures that we implemented, that work, that are working, that we've shown to work and make them permanent. So that that full holdover of people who were there because they were for no other reason than they could not afford to pay to get out---that that will never happen again in Harris County. And so this agreement adds support, training, oversight, accountability, transparency to the bail reform that we've already done to make it permanent and I thank you all for your leadership. And I'm also proud to say as a native Houstonian that we lead the nation now in how we handle reform and so I want to thank you all for that.

MR. GARCIA: Amen.

MS. HIDALGO: Thank you Judge.

MR. ELLIS: Thank you Judge.

MR. BYNUM: Thank you.

MS. HIDALGO: Judge.

MR. CAGLE: Judge. Judge. A quick question.

MR. BYNUM: Yes.

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MR. CAGLE: Did you need Judge Rosenthal's Order to tell you how to run your court?

MR. BYNUM: Yes. Yes. I mean, I think that the federal courts tell us what the federal law is especially when we are so outrageously out of compliance with it. That's our constitutional system that when states fall short of the constitutional guarantees that we are all guaranteed, then federal courts step in and that's what happened here. Now, I'll say this. Federal Courts, Brown vs. Board, I like Commissioner Ellis am a student of Brown vs. The Board of Education. Right. And one of the reasons I ran for this whole office was to get involved in this litigation because I know that federal courts are good at disrupting systems of control and oppression but they're not good at the follow through. And so I knew it was up to us to do the follow through, right based on local practices, local standards, local customs. Right. And that's what we've been working so hard for months to do is to make an agreement that---they're great plaintiffs, right, but they don't know Harris County not like we in this room do. And it takes time to take something that was so old and so broken and make it right. So, yes I do need federal courts to tell me what federal law is and I'm happy to follow it.

MR. ELLIS: Judge.

MR. CAGLE: Thank you.

MS. HIDALGO: Yes Commissioner.

MR. ELLIS: Along the same lines, do you think that a Federal Judge had to tell us that in Sweatt vs. Painter it was okay for somebody that looks like me to go to the University of Texas or to integrate the public schools, or that women ought to be respected under the equal protection clause just like men?

MR. BYNUM: You know, federal courts, bless them, are often the last to the party about historical injustice that we all know. And in fact sometimes often they're first wrong. Right? Before they come around and do the right thing. Right? And so yes we need the

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federal courts to do better. We need the federal courts to provide strong oversight of local governments, and I'm very thankful that we got it in this case. And I'm very thankful for the opportunity to make something that is something really to be proud of.

MR. ELLIS: Judge, I heard you at one of the negotiating sessions that I stepped in talk about the power of the bail industry. As I mentioned, Senator Whitmire, a number of people around the country have tried to do bail reform. On the state level, it's a very difficult issue. Just comment briefly on who are the bail bondsmen. Where does all that money come from?

MR. BYNUM: It's really important to understand that the bonding industry worked hand in hand with elected officials in this county over many decades to create something of a gift, right. Where they were teaming up to detain people at mass numbers and the ones that could afford it, right, paid you serious interest rates. And if you look at these bonding companies, they're all named, going back to the Yellow Pages, right, AA Bail Bonds, AAAA Bail Bonds, right, with a # at the beginning right, because maybe that'll rise it to the top. 1-2-3 Bail Bonds, but if you look at the list provided by the County Bail Bond Board about who these bonding companies are, the parentheses will show you that they are the same big money, big corporate, big bank interest that you see in other areas of our society. Right. It's Lloyds, it's Travelers, it is big, big money sucking money out of our communities in Harris County to the tune of hundreds of millions of dollars over time. Probably I'd be safe to say billions of dollars just sucked out of our communities up to large banks and insurance companies for no sensible reason.

MR. ELLIS: Thank you.

MS. HIDALGO: Thank you. We have---thank you so much Judge for your leadership. We have Roseanna Ruiz, followed by Steven Halvorson, and Mario Garza. Okay, go ahead Ms. Ruiz.

MS. RUIZ: Come up here?

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MS. HIDALGO: Yes. Thank you.

MS. RUIZ: How are you all doing today?

MR. GARCIA: Great.

MS. HIDALGO: Good, if you'll state your name and affiliation for the record.

MS. RUIZ: **(Aspired to Win Director spoke about consequences of being in jail for a small misdemeanor.)*

MS. HIDALGO: Thank you so much.

MR. ELLIS: Thank you.

MR. GARCIA: Rosie, let me just say thank you for all you have done for so many years. Thank you for recognizing that people still need a hand up not a hand out. And so we're very, very proud of your work and just so grateful to watch you lead from your heart recognizing that there's still value in everybody that's amongst us.

MS. RUIZ: Absolutely. Thank you, Commissioner.

MR. ELLIS: Judge, I just want to point out...

MS. RUIZ: Last thing I --- sir?

MR. ELLIS: ...the opinion is lengthy, but when you read it it's very thoughtful. Judge Rosenthal criticized Harris County policymakers for the belief that money bail was---somehow made us safer and didn't have evidence to make that case. She also cited the Heaton Study. Heaton from the University of Pennsylvania Law School did the most comprehensive study on a bail system in the country and it was Harris County. And he found that of those released between 2008 and 2013, of those released they would have committed 1,600 fewer felonies, 2,400 fewer misdemeanors in the 18 months following pretrial release if they'd not been detained because they didn't have money. So somebody's life, a poor person spiraled

out of control and he documents that crimes were committed because these folks were in--- because they didn't have money...

MR. GARCIA: Just what you're saying.

MS. RUIZ: And I think it's...

MR. ELLIS: ...before being convicted and their life spiraled out of control.

MS. RUIZ: ...and I think it's wonderful that you all are working to make more PR bonds available to people and some of the other measures you're making. I think it's a very important step because it affects our children, it affects our community as a whole. And the last thing I want to say quickly sometimes people don't show up for court or they don't reschedule out of fear. Because fear of the unknown, they don't know what's gonna happen to them and fear of losing their job or fear of losing their children. So thank you so much for allowing me this time to share with you.

MS. HIDALGO: Thank you.

MR. GARCIA: Thank you.

MS. RUIZ: God bless you and have a wonderful day.

MR. GARCIA: God bless you. Thank you Rosie.

MS. HIDALGO: Thank you for your work. All right Steven Halvorson, Mario Garza, Ebonolua Akinola.

MR. HALVORSON: **(Spoke about bail reform and the cost of working families involved in misdemeanor crimes.)*

MS. HIDALGO: Thank you.

MR. HALVORSON: **(Continued speaking.)*

MR. GARCIA: Great. Steve, thank you for being here and get well soon, man.

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MR. HALVORSON: Okay, all righty, we'll see ya.

MS. HIDALGO: Thank you for coming, thank you so much. Is Mario Garza here?

MR. GARZA: Here.

MS. HIDALGO: Please be sure to state your name and affiliation for the record. And then it will be Ebonolua Akinola, and Felicia Lacy.

MR. GARZA: **(Harris County Professional Bondsman Association President spoke about accountability and balance, you can't lock them all up, and you can't let them all out.)*

MS. HIDALGO: Thank you.

MR. GARZA: Thank you.

MR. GARCIA: Mario, thank you for coming down. And I just want to say that although you may not have the settlement in hand, there's a great deal of balance in this from where we were at to where we want to get to that keeps those guys from recycling through our door as much as yours. So thank you for coming down.

MR. GARZA: Thank you. Thank you guys.

MS. HIDALGO: Thank you. Felicia Lacy followed by Monique Joseph. I may be mispronouncing that.

MS. LACY: **(Texas Organizing Project member spoke about a new era in justice in Harris County, and her son.)*

MS. HIDALGO: Thank you.

MS. LACY: So, thank you.

MR. GARCIA: Thank you.

MS. HIDALGO: Thank you so much. Monique Joseph, Tania Ingram, and Rosie McCutcheon, Dianna Williams.

MS. MCCUTCHEON: **(Texas Organizing Project member spoke about criminal justice reform.)*

MS. HIDALGO: Thank you.

MS. JOSEPH: **(Spoke about criminal justice reform, overturned convictions, innocence and the bond system.)*

MS. HIDALGO: Thank you.

MR. GARCIA: Thank you Monique.

MS. WILLIAMS: **(Texas Advocates for Justice, Houston Chapter spoke about bail reform and civil rights, and settlement.)*

MS. HIDALGO: Thank you.

MR. GARCIA: Thank you.

MS. HIDALGO: Henry Price, Diana Alexander, and Ken Good.

MR. PRICE: **(Pastor and TOP member spoke about Sunnyside crime and the unfair cash bail/jail system and criminal justice reform)*

MR. ELLIS: Judge.

MS. HIDALGO: Yes Commissioner.

MR. PRICE: I'm out of time.

MR. ELLIS: Pastor being from Sunnyside, I'm going to let you wrap that up. You're a very good spokesperson so if you want to close your comments.

MR. PRICE: **(Continued speaking about the wealth test.)*

MS. HIDALGO: Thank you so much. Thank you.

MR. ELLIS: So now and if I might Judge. So our folks who are here, Pastor, let the house say Amen.

MR. GARCIA: Amen.

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MR. ELLIS: So if ya'll want to vote before noon, if you're for the settlement he said it all. So let's get to voting. So maybe all of us don't have to say it again. You got my drift.

MS. HIDALGO: All right, thank you so much Pastor for being here.

MR. PRICE: Amen, thank you.

MS. ALEXANDER: **(Spoke about the bail bond reform package, equal protection, justice and equality.)*

MR. GARCIA: Thank you.

MS. HIDALGO: Thank you. I believe Ken Good, oh and two more speakers, all right. Thank you.

MR. GOOD: **(Spoke about violation of Chapters 14 and 15 of the Texas Code of Criminal Procedure and going before a magistrate.)*

MR. GARCIA: Thank you.

MS. HIDALGO: Thank you.

MR. RADACK: Thank you.

MS. HIDALGO: Yes. Go ahead. And let me actually just put that to bed. Both Chapters clearly state that defendants can be advised of their constitutional rights without seeing a magistrate. So releasing people on PR Bonds is perfectly legal and this codified something that has been in place since January and that the federal court has already approved. So just to make sure that we're clear on the facts.

MR. ELLIS: Judge, I would just add---I know when we get to the substance of it we'll talk about it. This court spent close to \$10 million on fighting the defendant and an *** system. And I know that the bail bondsmen are detractors who will look for any legal argument they can dream up to fight this and I for one will be prepared to spend what is necessary to defend this settlement.

MR. AKINOLA: That's sad, yes sir. **(Fifty Followers Movement Leader spoke about jail murders, and do not forget about people in the system.)*

MS. HIDALGO: Thank you.

MR. AKINOLA: And I'm glad for what you all do. Thank you.

MR. GARCIA: Thank you.

MR. AKINOLA: Thank you all.

MS. HIDALGO: Thank you so much. Is Joe Estelle here? Joe Estelle?

MR. ESTELLE: **(TOP member spoke about bail reform, the poor and mass incarceration, and the federal lawsuit.)*

MS. HIDALGO: Thank you.

MR. ELLIS: Thank you.

MS. HIDALGO: Is Tania Ingram here? I believe that's it for speakers. Do you have a comment Commissioner Cagle?

MR. CAGLE: Well whenever it's time for us to start discussion, I do have a few things.

MS. HIDALGO: Please, go ahead.

MR. CAGLE: I don't want to cut off the magic moment of ...

MR. GARCIA: I thought you were going to ask for the two minute break.

MR. CAGLE: ... we're getting close to there but I think we're okay. But I don't want to cut off.

MS. HIDALGO: Go ahead.

MR. CAGLE: Your Honor I have six observations that I would like to make in this process. First of all, I agree with Commissioner Ellis when he says public safety should be the heart of any settlement. And I don't know that we're achieving that goal but I like those words. Secondly, Your Honor, no one, no one should be in jail merely because they're

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poor. Let me repeat that again. No one should be jailed merely because they're poor. That has always been my thought. That has been my advocacy. That has been our approach. When we were passing around thanks earlier, we neglected to mention someone who began this process for us on this court and that was El Franco Lee, who was the one that I think with your help Commissioner Ellis reached out to the McArthur Foundation, worked with the Arnold Foundation, developed the Arnold Tool that was about to go into effect just a couple of months before---after Judge Rosenthal issued her order. And that tool was a tool that was going to be employed so that we would be able to make sure that we were not on a wealth based system, but that we were on a risk based system. So that those as some of the speakers talked about if someone this was their first offense, or if they were someone who was not a danger or a risk to others would not be put into the prison system with those who were a risk to society, or as the pastor mentioned earlier. You don't want the people who are going to hurt you on the streets. You want the ones who are going to hurt you to be in the jail. You want the ones who can be productive and pay their child support when they can. And they may have a different set of needs. I think that the Arnold Tool *** McArthur Foundation that we were working towards that direction long before the lawsuit was a process that we were beginning. My colleague says we were going too slow. And I understand that but the lawsuit was filed, but I think we still need to remember our pioneer in this which was Commissioner El Franco Lee who began us on this journey. Number four, Your Honor, I agree with Mr. Garza's comment about balance in the system. And in our system of jurisprudence, we have a firmly entrenched doctrine of separation of powers, so that we can have a balance in our system. You have judges that do the judging. You have the legislature that does the legislating and then you have the executive branch which does the executing of our laws. In our system, we as Commissioners Court have sort of a dual function of being both in the Executive Branch and in being in the Judicial Branch with regard to the rules that we do. We have judges and then clearly in the Executive Branch would be the

Sheriff's Office. One of the problems that I've had with Judge Rosenthal's orders is that there seems to be a confusion at times in the separation of powers. The Sheriff was given judicial powers to review, draft documents, and to approve of things that should have been done by judges. And Your Honor, I am consistent in my belief that at the core of the system we need to have judges to be able to review every case, case by case to decide who are the ones who are at risk who could hurt somebody else and who are the ones who could be better off helping society with a little assistance with their families, with their pastors, with their other folks and be at large and not hurt others. In the old days, pastor, they used to ask you for your coat but they give it to you at night so you wouldn't freeze. You remember that from your Bible, from your scripture. These days it may be that all we need to do is tell somebody if you don't come to court when you're supposed to, or if you act up we're going to take your cell phone away from you. That might be incentive enough. But I think a judge needs to be making that decision case by case and not a stamp or a Sheriff or a federal judge. We need to have a local judge that the populous elects. The obvious, I'm a Republican. But I'm still advocating for the Democrat judges that have been in office to be making the case by case decisions to decide who needs to be out there, not in the system, but free. And we need to make sure that what are procedures and all are are ones that can help folks do this the best. Get the ones who are at risk where they don't hurt others or they show up like they're supposed to. Use systems that are there. And as we talk about balance one of the things we're gonna---and that's my next point in a moment Your Honor. We're talking about a lot of money for this but nothing in this when we're talking about balance and judicial reform is we are neglecting the civil rights of people who are victims in the community. If you have one of your parishioners who was beaten, and the person goes in and then they're back out on the street again just because they happen to beat them at such a level to where it was a misdemeanor instead of a felony, then within 24-hours they're back on the front lawn and now they're mad. And you've got a bigger problem than you had in the beginning.

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That is not a public safety moment. That is a moment to where we have now done the opposite of what the reverend was saying that we need to do. Let's make sure that we protect society, get the dangerous ones off the streets for as long as we need to until we can get them to where they're safe, and protect those who are behind. And Your Honor, in this civil justice reform we are neglecting the civil justice rights of the victims. In the process, they're the only ones who were involuntary to the process. They didn't have a choice if they'd been robbed, or beaten, or hurt or injured. And so we need to make sure that we are protecting the civil rights. And Judge, we've got a lot of stats about how many people that are incarcerated who are of minority persuasion, but we've not been listening to the stats of how many people are from the minority communities, the disadvantaged communities, the underserved communities who are the victims of the crime. And I think that some of our pastors and other folks can tell you that there is a greater disproportionate issuance of folks who are the victims of crime in our underserved communities than in those privileged communities to where we get to have the bars in the front of the neighborhood to protect their selves and the extra security that's there. And so Judge if we are going to go far in this criminal justice reform, we need to make sure we maintain the balance and not forget the women who are the victims of human trafficking, the individuals who are the victims of domestic abuse. That we do not forget the poor woman who has been beaten and robbed who now is not going to be able to feed her children because she doesn't have the money to feed her children anymore. Because the rich person when they're robbed, they get to go the bank at the ATM and pull out some more money. But if you're a poor person and you were robbed, you lose your job. You can't feed your family anymore and so in this system because we're advocating legislative change we need to make sure that we keep the balance and make sure that we do not forget the civil rights of the victims of crime. Next is the cost. Judge, in this order and I received the proposed order 10:30ish on Sunday morning. I'm not as fast as I used to be in reviewing things but I've been trying to do my best---I did and I want to thank you. I had

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the opportunity to go to a meeting earlier last week for a few moments to see what some of the touch points were. And I thank you for your courtesy Judge in allowing me to participate in at least seeing where some of the issues were. But we're paying for a lot of things that I don't know that we need to be doing through a court order. Now, maybe I'm biased. You know I believe judges should be making the decisions in many of these instances. I think judges should be allowed to have that discretion but when we are legislating stuff, it would be nice to know what some of the terms are and who is going to decide some of these things and what it is going to cost. Judge, we're going to be spending in this order, I'm trying to find it now, some \$6.2 million on mitigating causes of non-appearance. But we don't define what that's going to be. At one time, we had talked openly about having Uber Rides and cell phones and day care for those who are the accused in the criminal justice system. If we're going to be spending \$6.2 million for the folks who are the accused, if they show up for trial and the victim doesn't show up for trial, the case is dismissed. That's not fair to the victim who has to have their day in court. And if we're going to do something for those who are the accused, Judge we need to do at least the same thing to make sure that we protect victims. Part of the order it seemed to say that we were going to provide special rooms so that those who are accused in the process wouldn't feel bad and would feel comfortable. Well what about the victims who oftentimes are stuck in a hall having to face the person that violated them and they're needing a safe place to be in that process, a comfortable place in that process. Bring balance to the order. And to that end Judge is where I come to my next point. Of the 51 pages that we're dealing with, with all of these costs and we could spend a lot of time going through each item of the cost, I think the total price tag is \$54 million. It's almost a million dollars a page in this order. But if we and as I said I'm a little biased as an old judge, but usually when we had a consent decree it was the parties agree to this and it was usually pretty short. It wasn't 51 pages long. We are having Judge Rosenthal legislate and have all kinds of, you know, this went on in the trial. That went on in the trial. Judge, in this order, the

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sections that deal with Rule 9. That's what we need to have. And that's just a couple of pages. The rest of it are things that we could handle here in Commissioner's Court. But we don't need a federal judge telling everybody what to do. Because I believe that the best place to make the decisions is at the lowest level to where, whether you be TOPS or whether another organization you could advocate your judges to say "let these people go, put these people off of the streets". And to have your justice be at the closest level to the people as possible so that we're not now having to go through unknown. Who do we decide who the monitors are going to be and who are these monitors? And who chooses the monitors? And how are they going to be paid? We know that we're going to pay them a whole lot of money. But let us empower the judges. I'm a Republican; all of our judges right now are Democrats. But let them at the lowest level to the population, the closest to the people, they've been elected to do this job. Let them do their job and allow them to hear from the public that we need for you to be able to make---and if they're doing a bad job, well elections have consequences. And so Judge those are my points.

MS. HIDALGO: Thank you.

MR. CAGLE: Public safety should be heart. No one should be jailed merely because they're poor. A tip of the hat to how we started this process. Balance in the system, separation of powers, letting judges do the judges job. The cost Judge and there are parts of this that we don't even know what the costs are just yet. It's just \$54 million that we've been able to assess so far and that our order, Judge should just be limited to Rule 9. And the rest which are just bells and whistles are things that perhaps we may want to do. But we need to do it ourselves and not be told to do it by a Judge in a federal court. Because what if we wanted to do something better later on, we'd have to go back and get permission, all that kind of stuff back with the federal judge. Allow us to do our jobs as we need to. And I think that with the three of you that I don't think that there's going to anybody that's going to say that they won't listen to

these folks here if you're not giving them what they want. But let's do it in the right house. Not over in the judicial house. And those are my six comments, Your Honor.

MS. HIDALGO: Thank you so much Commissioner. I do want to talk to you...

MR. ELLIS: Judge.

MS. HIDALGO: Yes.

MR. ELLIS: I was going to respond I just didn't know if---I want to pay homage to the Dean of the Court if Commissioner Radack was right to say something. I'm just assuming the comments may be somewhat similar and I would be happy to respond to both.

MR. RADACK: You want to respond to him, go ahead.

MR. ELLIS: Okay. I want to first walk through what the consent decree calls for. It calls for a remedy that is systemic and it will make us curious of long standing constitutional violations. It will create an enforceable Constitution and transparent pre-trial detention program. It will promote governments compelling interest in court appearance and public safety. It would ensure public access to information and be transparent about it. It will set forth the charges and investments required to ensure that the new policies and pretrial policies are implemented. And it will protect against going back to the way things used to be. And I know it's probably difficult sometimes for people to realize that it takes an effort to bring about change but that's the reality of it. Some of the conversation today reminds me of how long I've lived. Having been born in April of 1954, I think Brown vs. The Board [of Education] came down in May just in time for me. But being older by the time the Singleton Court ruled to integrate the schools in Houston, Commissioner Garcia, I was in the tenth grade at Worthing High School. Thanks to Judge Singleton we had a grand total of three white kids in my high school. And it was a great experience for me to be in that environment, and also for them. But I also lived long enough to see the walls of apartheid come down in South Africa. An amazing thing to me is that

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when the walls came down when I go to South Africa everybody would talk about how they were never really for it. And it would make one ask the question, well how did it last so long once change comes about. Some of this discussion today reminds me Commissioner Cagle when I was in law school. And I remember being at the University of Texas Law School in 1977. We had a record number of African Americans and Hispanics who were in that class. And when we got to what are considered the great civil rights cases, you'll remember this experience in constitutional law, Slaughterhouse case in particular. I saw some of my classmates who would just bow their heads. Some in anger and some in disgust wondering how such remarkably intelligent people could use such creative language in such cogent logic until you got to the end of the opinion and you saw that they were justifying outright bigotry. That is the real challenge for us in public policy because as I told you many times, our words are powerful things. They can be used to persuade. They can be used to hurt. They can be used to preserve the status quo. Or they can be used to change it. You made the comment and the previous court members would say it all the time, no one should be in jail because they're broke. But there are thousands of people...

MR. GARCIA: But they were.

MR. ELLIS: ...who are in jail because they're broke. And the court found thousands of constitutional violations where people were in jail because they were broke. And it's not just here, it's all around the country. You made a reference to my dear friend, our dear friend El Franco Lee. El Franco would take the same position on these issues that I'm taking but he didn't have the votes. And I want to tell you---we can differ on it, we'll have to ask him when we get on the other side. I hope you'll get there before I do, but surely we will all get there. But look, Commissioner Garcia was Sheriff Garcia when I think Franco sent it---or did I send a letter or did he send out a letter saying you're going to get sued.

MR. GARCIA: Yeah.

MR. ELLIS: I mean look at every angle I could find to try to nudge this system in Harris County...

MR. GARCIA: It didn't move.

MR. ELLIS: ...on the State level, I tried. But colleague these current systems are hard to change. For a while, this court didn't even want to take anyone and apply for the McArthur grant again. Oh yes that came up before the Coordinating Council while you and I sat here. An intern on my staff found out about MacArthur and I wrote---I called Franco and he said hey don't do your ranting and raving, tone it down. Get somebody to write a letter send it over here and I'll pass it out. You were sitting in the room. Eventually, folks applied. When it was their political advantage, you all had a big press conference. Pat yourselves on the back, you going after a MacArthur Grant. MacArthur gave us a third of what they would have given us, this county, because they didn't believe we were really serious about making changes. You made some reference to separation of powers. That argument to me is akin to states' rights. I'm all for states' rights until the states do the wrong thing and then I'm against them. I'm all for separating the powers until separating the powers violates the Constitution. If the founding fathers didn't mean it when they said equal protection under the law, they shouldn't have said it. And they darn should not have written it into the Constitution of the United States. You can't defend a system with the people on this side of the room have money, same profile. Everybody in the room has the same profile. You on the left side, you get out if you can post bail. If you're on the right side, you're staying. The due process provisions---the reason the old court jumped in to give people lawyers at the magistration hearings is because they were running an assembly line. It's documented. These folks from TOP and others went over there and made the recordings public. It was shameful. And everybody who was a part of it bears some responsibility including me. Twenty six years being a Texas Senator. But here's the difference. Some people will put blinders on. For this system to last this long, there were people in power who either didn't know that it

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was wrong or they just didn't care. And whichever shoe fits, put it on. You talk about victims. If we believe people are innocent until they are proven guilty, if we believe that, those people are victims as well. You talked about the cost. This court spent \$9 million, it's hard to figure out the exact number, I voted against the legal fees until I got here. I think I voted for it the last two times. That tab might be well over \$10 million. And I'm sure the old court would have gone all the way to the United States Supreme Court. Money would not have been a factor. It's a well-reasoned decision that Judge Rosenthal wrote. So well-reasoned even that historic, anti-civil rights Fifth Circuit would not shut it down. So look I'll close on this. I said to you when we were here before the two new members of this court joined even if I'd be penalized for it, hey even if I was disliked and folks find other little old crafty ways to get at me, I won't be on the wrong side of history. And I hope you won't either. The reason we need a monitor, the reason this is seven years there are things in here that we could do that the old court should have done. The old judges could have adopted a rule to remedy a lot of this. And this court sat here in blind indifference. And I want a system in place so even if Lina Hidalgo and Adrian Garcia and Rodney Ellis are not here, whoever comes after us will have to put as much effort into trying to go back to the good old days as folks put in to putting it there. So that's why at the appropriate time Judge I will be honored to make the motion....

MR. GARCIA: And I'll second.

MR. ELLIS: ...to approve this item. Thank you.

MS. HIDALGO: Thank you. Commissioner.

MR. GARCIA: Judge thank you and Commissioner Ellis thank you for that rebuttal and explanation and point of historical reference. Which I think is all valuable and important to digest so that we keep things in context. And, you know, Commissioner Cagle your points that you laid out are---I think they're succinct. I think they have value as presented. And I'd always said when you were appointed to this body that I had particular hope for

Commissioners Court to have someone with a constitutional judgeship perspective on this. But I will say that to fulfill your promise, you got to be at the table. And a lot of people for the concern of maybe the presumption that there is no balance or the presumption that public safety is not being focused on, which is not accurate. For the presumption that crime victims have been forgotten about, which is not accurate. You know I couldn't be in all of the negotiations for the settlement. But I was in many of the meetings and my staff was in all of the meetings. And where we disagreed because there were points of disagreement. This settlement could have likely looked a lot different had not we focused on Rule 9 and said everything else we need to look at differently and study it and understand how to approach it. But Commissioner Cagle, I think you went to one of the meetings and your staff went to a couple of the meetings. But you didn't present anything to help the settlement move along. And so that's where the work is done. That's where it is difficult work to be done. Because you're close to the argument, you have the opportunity and the power to affect change but when you don't speak up at that table, this is the table for those who have spoken up and have shaped the agreements and the settlements. This is the table where we ratify the negotiations and the conversations that were had. So I want to thank all of the staff that contributed to this settlement. And shaped it in a way that fits where Harris County believes that it's at. Shaped it so that it is a fiscally responsible settlement. Shaped it so that crime victims are thought about through and through the process. Shaped it so that public safety is the principal goal of the settlement. And understanding, look, you know when you get the cost. You just reminded me Commissioner Ellis that I was Sheriff Garcia at one point and in 2009 when I became Sheriff, I inherited a county jail with 12,400 inmates. I remember when my chief of staff and I looked at the budget of the Sheriff's Office, Judge. We paid in the year that I was coming in almost \$40 million in overtime. Most of that was in the jail. Why, because with a chronically overcrowded jail we had to spend more money to be compliant with state jail standards. Cause we had people sleeping on low-riders in an unsafe condition. Harris County

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was leading the nation in deaths in custody in the county jail. And this table maybe before you Commissioner Cagle, but this table actually with your predecessor Commissioner Eversole, big champion of lucrative contracts with private jails. Where we were shipping Harris County folk out to Louisiana at an overall cost of \$60 million. There was never a complaint about cost then and that was just one year. It took me a couple of years to get out from under those contracts and there was complaint then. Why are we getting out of those contracts? And imagine from the days of Alberti to today. Actually a few years ago because Sheriff Gonzalez---I'm proud of his leadership and his commitment to justice and public safety. But he also inherited an overcrowded jail, which we got back into those private jails and there was no complaint then. And so if the largest county in Texas with NASA in our backyard, with the Port of Houston in our backyard, with the premiere medical center of the world in our backyard, are only good enough to warehouse then we're not living up to our promise. And so if we want to complain about costs let's look at the cost that we wasted taxpayers over probably decades. And let's not lose sight of the fact that crime rates didn't plummet when we were warehousing people to our fullest extent. So let's complain about those things but I think that this settlement you know, if we had heeded Senator Ellis' signal that there was something wrong with our system, if we had heeded and listened in spite of our political differences, if we had heeded all those things, we wouldn't have--we probably wouldn't have this settlement today. We probably would have saved a lot more money then. But we're at where we're at and so now we have the opportunity to be leaders, to be committed to the Constitution, and to be on the right side of history. Thank you.

MS. HIDALGO: As we discuss the cost---thank you Commissioner Garcia. And ultimately we're stewards of the county's finances. So I do want to go over the cost implications of this with folks on the ***. And to be clear this is something that's costs us as we said over \$10 million because we've been fighting it for three years. And the cost of an unconstitutional system are untold. With that said, Bill your office provided the County Attorney

and the court with a conservative estimate of what this would cost. I have it down here. A pretty wide range from between \$55 million to \$89 million or more total. Around \$7 million annually and it's a seven year period. Is that right?

MR. JACKSON: That's correct.

MS. HIDALGO: To put that into context, this is a very small fraction of how much we spent on the administration of justice in Harris County annually. Annually the cost of the administration of justice fiscal year 2019-2020 was \$514 million and as Sheriff Garcia said, we spent tens of millions of dollars warehousing people, shipping them out of state. Thank you for working on that estimate. I know it took some number crunching. As I understand the budget could end up being less than what we've noted but that's the best estimate we can work with. Correct?

MR. JACKSON: The range.

MS. HIDALGO: The range and I'm gathering that ultimately the court will have to sit down with you and with departments for budgetary allocations during our budget process. I know that consent decree includes recommendations from the monitor. Is that right?

MR. JACKSON: That's correct. The process would be that during the budget hearing, departments that were affected by this would have to come in and basically present where they thought their cost was. What resources they needed to this court and it'd be approved at that time for next year. If there were some for this year, we'd still ask them to come in and give us those costs. Because these costs were so rough of an estimate, we don't know what the number of people that will come in---how much the jail population will go down. And so we are basically banking that into our budget system for next year to allow you to discuss that with each department that's affected.

MS. HIDALGO: So we'll discuss this---thank you---during the Budget Hearings. There's a constitutional question here for Mr. Soard. As I understand from the County

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Attorney, we need to develop a good faith budget estimate to satisfy the Texas Constitution, Article 11. Can you explain how this budget satisfies that?

MR. SOARD: Yes ma'am. In effect, the Constitution does not allow county governments to spend money in future budget years unless they go through a particular process to establish a tax---to levy a tax is what the Constitution says. So you can either spend the money in the future tax years by levying the tax by agreeing to levy the tax or you can avoid that by allocating money from the current budget year, the current revenue and reserves to pay for this consent decree. That is a requirement of the Texas Constitution. It's binding on this court and because the law simply does not allow this court to make promises for future Commissioners Courts. This court may make a promise and pay for it if you're using current revenues or you go to the next step and levy the tax which is how you issue bonds in those long-term commitments.

MS. HIDALGO: So we're not allowed to encumber future courts according to the Constitution. And it should be clear---without a tax increase.

MR. SOARD: Right, not even a tax increase. Promising or committing those courts to levying the tax to pay for this.

MS. HIDALGO: Right.

MR. SOARD: That's how bonds are dealt with.

MS. HIDALGO: Bill just to clarify, we have the funds to comply with the constitutional mandates and not encumber future courts.

MR. JACKSON: So the range that we have provided, which is an estimate for \$59-97 million. So, to comply with this we'd have to be on, I guess, the high end is my understanding and so we would have to have \$97 million. We have a public contingency fund, which is the money that we put aside for events that occur during the year that we couldn't have anticipated at the beginning of the year. And this was not something in the budget process we

anticipated. So we would basically, working with Mike Post, we would be able to say that we do have \$97 million, the high end in the bank now. Now, right now we have \$214 million in the bank in the public contingency fund. But there are uses for that fund and that's the working capital that help us recover from Harvey. But I think we could manage to do both of these things and just hope we don't have a hurricane this year. But at this time, we have sufficient funds in that account to take care of this.

MS. HIDALGO: Commissioner Ellis.

MR. ELLIS: My preference would be the route that locks us in. And if there is some other issue that comes up, we could make a decision then if need additional revenue. But I would prefer the route that locks us in. We have it for since so long so many folk prior to being convicted were locked up. I want to lock us up. I want to lock us in to doing this. So my route would be to work with the Auditor and do that. We have the funds to do it now.

MS. HIDALGO: Let me just confirm before we move further in this conversation. So the idea is that we need to confirm that we have the funds so as not to encumber future courts. Is that our County Auditor, Mike, is that something you can confirm that we have those funds?

MR. POST: Yes what I was envisioning was that we would transfer this money into a special fund that would be designated for this purpose. Once that transfer takes place then I would be happy working with Robert and working with the Budget Office to sign a certification that this money has been set aside. And I think that way---it's apparent that we've taken that step and we've put that money in a very separate location.

MS. HIDALGO: Commissioner Radack.

MR. RADACK: Okay, Robert and Mike we've talked about this stuff, not all three together, but I want to touch on this seven year period. Seven years, right? Is that the number?

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MR. SOARD: Yes.

MR. RADACK: The seven year period and the fact that, you know, Commissioners Court certainly can change. And there could be a Commissioners Court that may not agree with the settlement who that Commissioners Court could in fact try to change it, review it, go to the courts over it. And in my opinion, there's one way to lock in the money, the \$97 million that the Commissioners Court couldn't get their hands on. And that would be to take \$97 million and give it to Judge Rosenthal and to the registry of the court. It's locked in. It's gone. It's there. That is the way to do it if the court's going to do the settlement.

MR. GARCIA: Is that a motion?

MR. RADACK: No it's not a motion.

MR. GARCIA: Oh.

MR. ELLIS: Oh I was going to second it.

MR. GARCIA: Yeah, me too.

MR. RADACK: So....

MR. CAGLE: Well before you do that if I could just add a...

MR. RADACK: Go ahead.

MR. ELLIS: It won't be a motion don't worry about it.

MR. CAGLE: If we're going to lock \$97 million away I want to add \$6.2 million to it so that we're giving the same amount of money to victims as we are to assist those who are non-appearance. If we're going to be doing that so I want to add the \$6.2 so we're doing the same for the balance, where ever the Reverend is, for the balance.

MR. RADACK: Okay. Now...

MR. ELLIS: Judge if I might I just want to ask, Judge. With legal because I know our colleague, I learned our colleague is such a *** on posting items. Is that item posted?

MR. SOARD: I believe it is, I mean if you want to settle the case it's certainly reasonable to the extent of that.

MR. ELLIS: But the victims.

MR. SOARD: The victim's part?

MR. ELLIS: That's separate from this. Is that posted? I know the part on the settlement is posted. But I don't believe he's posted...

MR. SOARD: To the extent the consent decree helps victims then in my view it is posted. So if the purpose of the consent decree is community safety, public safety then it's adequately posted and can be dealt with. He's simply adding money to the consent decree is what the Commissioner's trying to do.

MR. RADACK: It's clearly posted...

MR. ELLIS: *** add money to my budget as well while we're at it. While we're just...

MR. SOARD: If it's pursuant to the consent decree. If it touches on that.

MR. RADACK: It's clearly posted because it's posted under my item which talks about any funds or services that victims of crimes will receive. It asks specific questions exactly how much money will be spent to help the alleged criminals and the public safety of the people of Harris County. It's posted. Okay. May I continue?

MS. HIDALGO: Yes please.

MR. RADACK: All right so that locks it in. You agree?

MR. SOARD: I agree.

MR. RADACK: You agree?

***: ***

MR. RADACK: And so we don't have to worry about it anymore. We just have to come up with the money for all kind of other things that we may need. Now, I want to

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thank the people that have come today because it's pretty amazing to see people that some of you who have gone through the criminal justice system and find out how deplorable it can be. And have the *** fortitude to walk up here and say hey I did this, I did that, I've learned from it and I try to help people and keep them from trying to do it in the future. In my 45 years of working between the city and the county in government, 15 of those years in law enforcement. I've seen some real crap. I've seen deplorable things that just make you sick, absolutely sick. I've seen things in the jail whether it be at the City of Houston or here that were just deplorable. And I've seen incredible people that work at the city and the county doing amazing things. But there's some people that necessarily don't do what they should do. And I have sat there in disgust and see the misery of people and you sit there and you try to figure out what you can do about it. Well what I started trying to do about it because I recognized a problem in the Harris County Jail about getting a jail administrator that would be independent to really work in the jail. Even this year we've had to pass out money if things that happened in the Harris County Jail where you had a person who was drug out of their cell and a high ranking official said it was a perfect take down. Only problem was the guy was dead after they got through taking him down. A perfect take down which cost us a bunch of money. I'll just say millions. Is that illegal to say millions? And so therefore, there are other things that happen in the jail. It seems to me it happens to blacks more than anybody else and that really irritates me. So I want to say this. It takes guts to come in here and say hey I've done something wrong. Have I been a perfect County Commissioner? No. I've tried, I've tried to express my opinion. I've tried to listen to people. And hey people from TOP, hey I'll listen to TOP, I'll listen to whoever. But here's just something I want to say. There is a balance and it bothers the heck out of me that there are---in comparison to victims there are very few criminals. There's a heck of a lot more victims than criminals. And it bothers me that we don't do more for the victims and it should bother you and I bet it does. But where we're going with this settlement is somewhere I don't think's a great place

to go. And that is hey go. Put \$97 million---put it over there and let's do some of these programs which I think some of them aren't worth a damn. You know it was said a while ago about the table. This is a public table. This is the public table, not a few people from the Commissioners offices and whoever behind closed doors with our attorneys and the plaintiffs' attorneys sitting there and discussing what we're going to do for all of us. That's ridiculous. And now the combination of these thoughts of a few people are now before a public table. It should have been before the public table the whole time. There's nothing in any statute that says when somebody sues somebody and somebody's defending somebody that everybody can't get together in an open room and talk about it. But it's secret isn't it. It's kind of secret. Matter of fact, wherever the hell it is, right here. All of this every single page, every single page what does it say. Draft to be submitted for Commissioners Court. Confidential. Confidential. Confidential. And I think that sucks. So I want to make that clear. This is being too confidential. I think we should start do a month or so and let's have a whole bunch of meetings where everybody can come so everybody can understand. Has anybody in this room seen this?

MS. HIDALGO: It's been posted since last week Commissioner. And let's be careful with our public table also. I will just say when we've be bang it.

MR. RADACK: This has been posted, the settlement agreement has been posted for the public to review.

MR. SOARD: Since Saturday morning.

MR. RADACK: Saturday morning.

MS. HIDALGO: As soon as it was done so we could have it ready for the judge because the hearing is tomorrow.

MR. RADACK: Okay. I'll stop continuing.

MR. GARCIA: Judge.

MS. HIDALGO: I think he wasn't done let's make sure he's finished.

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MR. GARCIA: Oh.

MR. RADACK: So my point does it make any sense to you all that you should have had a little more information than you're finding out right now. Since most of you--- have any of you read this? Do you think you should have a chance to read it? Do you think this is a perfect document? I guarantee it's not a perfect document. And because it's not a document that's been reviewed by people like you in this room. I'm not going to vote for the settlement but if you all give a little input and you all see who's really giving the money. Who's really giving the money and how much it's going to help some of the people you're in here advocating for. Thank you.

MS. HIDALGO: Thank you Commissioner. Did you have a comment?

MR. GARCIA: Yes. Judge I just want to add. Commissioner Radack, you've always been quick to jump whenever we start discussing things that maybe shouldn't be-- -wasn't posted properly or maybe should be in executive session. And I think it's very disingenuous to say that we should settle lawsuits every time at the table. We've got some pending lawsuits, I would ask the County Attorney to bring every lawsuit to this table. We can start settling them up front. It's never been done before, you've been here what 28 years. It's never been done before. It's a little late to come to the table. A jail administrator is a novel idea, but that is just in recent---very, very recent history to your history at this table. It hasn't been--- there haven't been other reforms before. So I appreciate the commentary but you know, in 2009 or about [20]10 when Senator Ellis brought the idea of needing a bail reform, I didn't have a vote at all. But I raised the issue in the Criminal Justice Coordinating Council and there wasn't a peep from you or anybody else to make any reforms or study, or understand, or create a public conversation. None. None. So, you know, I appreciate the passion, it would have been nice to have that passion all along.

MS. HIDALGO: Let' just---this was posted with an executive session mentioned. Does anybody need to go to executive session on this items?

MR. RADACK: We do that too much.

MS. HIDALGO: All right. Let's...

MR. ELLIS: So Judge.

MS. HIDALGO: Yes.

MR. ELLIS: I just want to ask to make sure. So when a motion is made, it's just to adopt the settlement under item [II.]10., or does that need to...

MR. SOARD: It will be whatever the motion is. I mean it will have to be very...

MR. ELLIS: I want to make sure.

MR. SOARD: And I want to know to make sure that we write it down so we know what the motion is.

MR. ELLIS: So Judge just to make sure I get it right...

MS. HIDALGO: Yeah.

MR. ELLIS: ...or I'll let you say it and I'll make a motion.

MS. HIDALGO: No, go ahead. Yeah.

MR. ELLIS: But so I'm assuming---do we need to get into the financial issue or do we leave that broad?

MR. JACKSON: A little bit.

MS. HIDALGO: I think we can table that. Yes.

MR. JACKSON: Can I say just a couple things?

MS. HIDALGO: Of course.

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MR. JACKSON: If we are going to transfer \$97 million to the courts, then they would need to release on the first day of each fiscal year one-seventh of it back to us so that we can pay for these things and...

MR. ELLIS: Well and I don't know that we go there. I mean, I think when we submit a settlement to the court that part is worked out later. I just don't---maybe Mr. Soard knows when we've had settlements in the past, and I'm going back to Alberti I guess that was the state, but I don't know that that's necessary.

MS. HIDALGO: Mike already explained how we do it right. You were proposing...

MR. POST: I was proposing that we do it without sending the money to the court. That we would establish this internal fund and then from that we would allocate over the seven years. Commissioner Radack introduced a different idea.

MR. ELLIS: I don't think he's going to make a motion on that.

MR. POST: I have a lot of knowledge about how all that would work.

MR. JACKSON: So if we're tying up \$97 million, because there's other things that we need ***.

MS. HIDALGO: Bill I think the idea's to do...

MR. POST: Through the settlement. Yeah.

MS. HIDALGO: ...what everybody discussed which is what Mike is proposing and nothing that hasn't been done. I mean we're not trying to...

MR. JACKSON: Well this is news to me this morning that we would actually move the money to a separate account.

MS. HIDALGO: We're not...

MR. ELLIS: Let me suggest this.

MR. JACKSON: That's what Mike has said.

MS. HIDALGO: Oh.

MR. ELLIS: With the legal department. The Judge---you and I were in the courtroom at least when the county attorneys were there and the other attorneys and the Judge asked for a status update. And so we said the court would approve the settlement. I don't think that we need to try to prejudge what the court would require beyond that today. We could, but I'm suggesting Judge Hidalgo unless you disagree. We simply approve the settlement, submit that to the court. That's our commitment and we figure out the other issues at the appropriate times.

MR. SOARD: We may need to go into executive session on that particular item.

MR. ELLIS: And talk, okay. When do you want to do that?

MR. SOARD: Very briefly.

MR. CAGLE: Judge while we're discussing I know that we keep talking about \$97 million. I have two motions one of which I think or I'm hoping would be successful. And that is that we would add the \$6.2 to the \$97 [million] settlement instead of talking about \$97 million we're talking about \$103.2 [million]. And that \$6.2 being that we have a fund for the victims who are the witnesses who are trying to get to the court and other issues to try to assist the victims in the same process that we're talking about the accused.

MR. ELLIS: Can I ask a question, Judge?

MS. HIDALGO: Yes go ahead.

MR. ELLIS: So Commissioner Cagle, are you planning on voting in favor of the settlement?

MR. CAGLE: I'm planning on.

MR. ELLIS: Or are you just trying to get a ride.

MR. CAGLE: No.

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MR. ELLIS: Okay.

MR. CAGLE: I'm planning on...

MR. ELLIS: So the only reason I ask is because if there's a victims fund and we're going to do something with it that ought to be thought out. And if you lay that out with all of the bells and whistles that you were complaining about as it relates to this settlement. I might vote for that, but you bring it back.

MS. HIDALGO: Well or you could have suggested it, or you staff could have in the many, many meetings that went into this settlement.

MR. GARCIA: Amen.

MS. HIDALGO: My question for both of you guys...

MR. RADACK: Secret meetings.

MS. HIDALGO: ...everything that's brought up---which your staff I believe attended, I mean folks that were at that meeting did Commissioner Radack ever send somebody to that meeting?

MR. RADACK: Yes I did.

MR. GARCIA: They weren't so secretive if we found our ways there.

MR. RADACK: You wouldn't let certain people in the door.

MR. GARCIA: Their invitations ***.

MS. HIDALGO: Okay, we have a motion---can we---Robert just so I understand.

MR. SOARD: I need to clarify the authority of the court to enter into agreements without having adequate funding and I'd like to do that in executive session.

MS. HIDALGO: All right, let's go to executive session then.

MR. GARCIA: Second.

MS. HIDALGO: All right so it's 12:25 [p.m.] and we'll go to executive session on this issue of the funding.

MR. GARCIA: May we have a county break?

*****Executive Session was held from 12:25 p.m.-12:43 p.m.*****

MS. HIDALGO: Okay so it's 12:43 [p.m.] we're back from executive session. I know before we left it seemed like there was a motion.

MR. ELLIS: And Judge...

MS. HIDALGO: Yes.

MR. ELLIS: ...in executive session, I think I came to an understanding that it's better if I had let the County Attorney use the language and then I'll make the motion so that it's proper.

MR. SOARD: And we do have an order that says that. And I've been reminded when I said it was Saturday morning when this item was posted, I was mistaken. It was later in the day it was 4:38 [p.m.]

MR. JACKSON: It was 4:38 [p.m.]

MR. RADACK: So it's not properly posted.

MR. ELLIS: Do you know if it was...

MR. SOARD: Well the...

MR. RADACK: 72-hours it was not properly posted.

MR. SOARD: I understand. Yeah.

MR. RADACK: All right I have another question. Isn't it clear in the consent decree that Harris County government can go and ask for this thing to be reconsidered?

MR. SOARD: Yes sir.

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MR. RADACK: So I want everybody to understand that even though everybody thinks this is all done for seven years Harris County Commissioners Court at any time can go ask for it to be reconsidered. In other words, it's not locked in.

MR. SOARD: That's correct.

MR. ELLIS: Judge if I might. That's why it also makes the case that there are consequences to elections. And that is why it's so important that people exercise their right to vote. They ought to vote for people who share their values and share their vision. And if Mr. Soard will get me the language, I'll make the motion.

MR. SOARD: Yes sir, what we're asking for is that the Harris County Commissioners Court approve the settlement agreement and consent decree that has been submitted to the court. That it will last for seven years at an estimated maximum cost of \$97 million. We also need a finding from the court that there's been a good faith estimate of the maximum cost the county will incur and that amount is \$97 million. That's the motion.

MR. ELLIS: So Judge, on behalf of the thousands of people whose constitutional rights were violated here in Harris County, I'd proudly make that motion.

MR. GARCIA: Second.

MR. CAGLE: Your Honor, before we vote...

MS. HIDALGO: Yes.

MR. CAGLE: ...may I ask a question?

MS. HIDALGO: Of course.

MR. CAGLE: When we're dealing with specific amounts of money now, was this specific amount of money properly posted so that our vote on this---whether it's yes or no---that our vote on this \$97 million is in compliance with the Texas Open Meetings Act?

MR. SOARD: We believe it is, because it does relate to the subject matter of the item. We do not believe it was necessary to post the amount of money.

MR. CAGLE: And the consent decree was publicly posted on Sunday morning?

MR. SOARD: Saturday afternoon, I understand, by the time it got around to being posted. Now, it is also our belief that it is better practice to post such things and give the public as much notice as possible. But it's not necessary to post the terms of the consent decree to comply with the Texas Open Meetings Act. The subject matter of this item was posted more than 72 hours in advance.

MS. HIDALGO: Okay...

MR. ELLIS: Judge...

MS. HIDALGO: We have a motion and second.

MR. ELLIS: Yeah, before we vote on it, I just wanna raise the point---ask a question Mr. Soard. If the interpretation that my colleagues are advancing were implemented, do you have any idea of the thousands of items that I can go back and challenge that this court has voted on and approved were general postings went back in the days when the court was meeting for 20 minutes for about 20 years and then walking out of here.

MR. SOARD: Well and it's a little bit off topic, but it's a good question. It's our view that the Texas Open Meetings Act does allow general postings of most items. Those post---those items of wide community interest should be more specific, and we're striving to achieve that goal. But we're very confident that the posting on this item is adequate. It describes the lawsuit. It talks about a settlement.

MR. RADACK: And I wanna ask you this question. When it was posted on the website, wasn't it posted as a confidential draft?

MR. SOARD: Shouldn't have been, but I don't know...

MR. RADACK: Would it matter?

MR. SOARD: ...I did not do the posting.

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MR. RADACK: Would it matter?

MR. SOARD: I don't think it would matter, as long as the words...

MR. RADACK: So the public...

MR. SOARD: ...and the consent...

MR. RADACK: ...viewed a confidential draft.

MR. SOARD: Well certainly it's---well, and...

MR. GARCIA: If you posted it with that marking, then you effectively release the confidentiality of it.

MS. HIDALGO: I think from the comments on the table, it's clear where my colleagues stand on this issue. And the point is this has been a system that's been unconstitutional and fundamentally un-American. We've talked about balance. We've talked about how we spend our funds. This is a decision to spend law enforcement public safety dollars on law enforcement and public safety. Not on putting somebody in jail because they have a mental health issue and walked into a restaurant. Not because somebody took an eyeliner, but because they're a danger to the community. We've talked about safety and we talk about how it makes people safe. It creates fewer criminals. It creates fewer victims to spend our limited dollars on going after and holding people who need to be held because they're a danger to the community. Not people who are simply held because their wallets are empty and who---for whom there is no case of being a threat to the community. We've talked about judicial discretion and had our lawyers speak about their work with the Sheriff, about their work with the different stakeholders in designing a draft that is adequate. And before we vote, let me be clear what this is. This is a decision to enshrine the process that the judges came up with to make sure that Harris County complies with the laws of the Constitution of the United States. That is what we're doing, is complying with our constitution, and the rights that we all hold dear. It is also our ability to build systems that will allow us to succeed in that process. And it's a commitment to

being smart, and it's a commitment to be transparent. In this settlement, in this agreement is requirements for data, is requirements for questions that we'll say "okay, what brings people to court?" Once we find what brings people to court, let's do what the data says. Let's do what the numbers say, and let's do this in front of the community. It's a first step, but it's a big step to criminal justice reform, to a fairer system, and yes to a safer system. As you can see according to the judge's decision, to the academics that have studied this, and to the public testimony that's been here today. So with that I know Commissioner Ellis you made a motion.

MR. GARCIA: Second.

MR. CAGLE: Judge.

MS. HIDALGO: Yes.

MR. CAGLE: For clarification. What Robert just read dealt with the funds. Are we voting on the funds, or are we voting on the funds and the consent decree?

MR. ELLIS: Both.

MS. HIDALGO: Both. Do we need...

MR. CAGLE: 'Cause I've only heard...

MS. HIDALGO: ...to read it again, Commissioner Cagle, for your benefit?

MR. SOARD: I intended to read all of it, and I thought I did. That you're voting to approve the proposed consent decree and settlement that was submitted to Commissioners Court. And at the same time you're making a finding that there are those many funds available. And let me be clear, you're not voting to pay that much. You're voting that you have made a finding---a judicial finding that that money is readily available out of current resources to fund this decree.

MR. CAGLE: Okay. With that in mind Your Honor, I would make an amendment. And my amendment would be that we approve the consent decree with Paragraphs 1 and 2, and Paragraphs 30-36, which are the portions that deal with Rule 9. But that we do not

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approve the remainder portions, which I think constitute what Judge Rosenthal referred to as the bells and whistles.

MS. HIDALGO: Is the---Robert, if we did that---it would be modifying---we'd have to go back and change the consent decree essentially...

MR. SOARD: We---in order---I mean we could certainly submit to Judge Rosenthal whatever this Commissioners Court approved, or directed us to. If you...

MS. HIDALGO: I think...

MR. SOARD: ...have an amendment and you might wanna vote on the amendment, then vote on the motion itself.

MS. HIDALGO: Commissioner Cagle, as you know this was the result of careful negotiation by the Sheriff and the judges. And I would be hesitant to make edits to the agreement that they've reached after months and months of night and day work. I will also say to your point about bells and whistles. This is nothing to do with bells and whistles. This is simply getting at the constitutionality---getting us to be in compliance with the constitution and making sure that we succeed in that process. And in doing so, asking the question if we need to make sure that innocent people aren't held in jail and forced to plead guilty. How do we ensure that? Let's study it and figure it out and lead the nation. If we need to make sure people come to court, how do we do that? Let's study it, figure it out, and lead the nation. That's what's in there. It is---as Commissioner Sheriff---former Sheriff, Commissioner Garcia said "as close to smart and trimmed down as something can be". But I appreciate your comment. Is there a second...

MR. ELLIS: Is there a second?

MS. HIDALGO: ...to the motion?

MR. GARCIA: Second.

MS. HIDALGO: All in favor of Commissioner...

MR. SOARD: Wait a minute. Wait a minute.

MS. HIDALGO: Yeah.

MR. SOARD: I've got an amend...

MR. ELLIS: it's just an amendment.

MR. SOARD: ...I heard an amendment.

MS. HIDALGO: Yeah.

MR. SOARD: Was there a second to the amendment? *(No Response)*

Okay. So you should vote on the amendment, which means that you---if you don't want to change the consent decree, you would vote no on the amendment.

MS. HIDALGO: Right. So...

MR. SOARD: Okay. I'm just wanting to clarify...

MS. HIDALGO: ...Commissioner Cagle has placed an amendment on the table. All in favor of this amendment...

MR. CAGLE: And my amendment to be clear is that we adopt Paragraphs 1 and 2, and Paragraphs 30-36, but that the rest that we leave off. And that affirms the court rulings of Judge Rosenthal.

MS. HIDALGO: We have a motion and a second for an amendment. All in favor of Commissioner Cagle's motion?

MR. ELLIS: No.

MR. CAGLE: Aye.

MR. RADACK: Aye.

MS. HIDALGO: All opposed?

MR. ELLIS: No.

MR. GARCIA: No.

MS. HIDALGO: Opposed. That motion fails. Now we'll go back to the initial motion.

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MR. ELLIS: So moved.

MR. GARCIA: Second.

MS. HIDALGO: This is motion that Commi---that Robert had already read.

MR. GARCIA: That covers the decree and the funding.

MS. HIDALGO: That's right. All in favor of that motion?

MR. GARCIA: Aye.

MR. ELLIS: Aye.

MS. HIDALGO: Aye. All opposed.

MR. RADACK: Nope.

MR. CAGLE: No.

MS. HIDALGO: Motion carries. Thank you folks. Now we cannot---as much

as this is something to celebrate we have to take a lunch break----there's another important issue we have got to consider before lunch, and this is something to do---if I can remind you all---when we---you had to do this quick court filings during ITC and the KMCO fires, and we had to make sure the County Attorney could get to the court so as to meet a deadline. We have something like that on the agenda here today, and I wanna make sure we take it up before...

Whereas the Commissioners Court Meeting of July 30, 2019 adjourned at 6:29 p.m.

Tiffany A. Williams
Tiffany A. Williams, Recorder

OFFICIALS AND EMPLOYEES PARTICIPATING IN THE MEETING:

FRANKLIN BYNUM, County Criminal Court at Law No. 8 Judge

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WILLIAM J. JACKSON, Budget Management Executive Director/County Budget Officer

MIKE POST, County Auditor

ROBERT SOARD, First Assistant County Attorney

Others:

Ebonolua Akinola

Joe Estelle

Mario Garza

Ken Good

Steven Halvorson

Monique Joseph

Felicia Lacy

Rosie McCutcheon

Henry Price

Roseanna Ruiz

Dianna Williams

HOUSTON

Pasadena slaying spotlights debate over bail reform

Julian Gill | on August 18, 2019



Photo: Pasadena Police Department

IMAGE 1 OF 2

Alex Guajardo, 22, has been charged with capital murder after stabbing his pregnant ex-wife in their Pasadena home, police said.

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Caitlynne Rose Infinger was awakened last month by her allegedly drunken ex-husband.

Alex Guajardo, 22, was accused of punching the pregnant woman in the face three times in the Pasadena home they shared, leading to a misdemeanor charge of assault of a family member. He was released three days later Aug. 1 on a personal bond, meaning he was not required to pay up front, and a magistrate granted a protective order barring him from going near the woman.

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Two days later, police say he stabbed Infinger about 20 times around the stomach, killing her and their unborn child.

Guajardo's bonds were quickly revoked with the filing of a new capital murder charge. He remains in Harris County Jail, court records show.

The Pasadena case quickly caught the attention of Houston-area police officials who blasted Guajardo's case as an example of what they consider lenient bail policy. It also spotlighted a broader debate over whether cash bail systems should be phased out to prevent poor, nonviolent defendants from being kept in jail.

The changes have sparked criticism from local law enforcement officials around the nation. Some see the push toward no-cash bonds as dangerous because suspects have fewer hurdles to secure their release.

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In the wake of Guajardo's arrest in the slaying, Pasadena Police Chief Josh Bruegger declared in a YouTube video he was "outraged" because Guajardo was released on a personal bond when he allegedly killed his wife, adding that "bail reform seems to have neglected the rights of crime victims and overall safety of the public."

Houston Police Chief Art Acevedo and Houston Police Officers' Union President Joe Gamaldi also cited the case to cast doubt on the county's misdemeanor bail system.

However, several states, including California, New Mexico and New Jersey, have all recently adopted new rules eliminating or curtailing the use of cash bail. Federal judges have also deemed cash bail practices for minor offenses in Dallas and Harris counties discriminatory against poor criminal defendants who can't pay for their release.

While newly elected Harris County judges this year unveiled bail protocols that release more misdemeanor defendants on no-cash bonds — and Harris County commissioners recently approved a landmark bail settlement — legal scholars and policymakers say Guajardo's alleged killing wasn't a direct result of the new rules or the bail deal.

"Instead of getting out on personal bond, this guy might have had to pay a \$2,000 or \$5,000 bond, and he would have paid that, and he would have gotten out anyway," said Sandra Guerra Thompson, a former prosecutor and law professor at the University of Houston.

"Cases like this are always frustrating," she acknowledged.

Harris County's system

Harris County's misdemeanor bail system has changed dramatically since a federal judge ruled in 2017 that the county's practices violated equal protection and due process, causing "irreparable harm" to thousands of people presumed innocent. The judge said the old system unfairly targeted poor people accused of crimes and amounted to "wealth-based detention."

One major shift has been the increase in personal bonds issued by misdemeanor judges. Personal bonds, in contrast to cash or surety bonds, mean a person can leave detention without paying cash. However, judges can and often do set conditions of release — including ankle monitoring or breathalyzer tests.

Under the new rules, judges have more discretion to grant or deny bonds based on their analysis of the defendants' criminal history and the likelihood they will appear in court.

In 2016, before any changes were implemented, judges issued personal bonds to 2,311 misdemeanor defendants, according to data from Harris County Criminal Courts of Law. Since the new rules were implemented Feb. 16 this year, judges have already issued personal bonds to 6,008 defendants as of Aug. 5, the data shows.

In the same period, judges have also issued general order bonds — a new option that doesn't require cash up front — to another 11,562 defendants.

Thompson said money usually doesn't make a difference when it comes to bond violations. She said other defendants in Harris County have been charged with violent crimes when they were released on a money bond before the bail system overhaul.

She pointed to Dante Thomas, who in 2015 was accused of murdering his great-aunt while free on a \$50,000 bond from a previous charge of stabbing his live-in girlfriend to death. Other nonviolent defendants, she said, have stayed in jail for minor crimes simply because they couldn't afford to get out.

"The goal is to try to structure the law in a way that minimizes public risk but doesn't end up incarcerating all the poor people without justification, and that's what the money bail system was doing," she said. "Under a money bail system, you end up holding people for the wrong reasons, and you're not improving public safety."

Guajardo's hearing

In his YouTube video, Bruegger said he wasn't against personal bonds "for appropriate cases" but was in Guajardo's case. To make his point, he highlighted the two misdemeanor charges in May for which Guajardo was released on a personal bond — a

During the probable cause hearing for that charge, prosecutors said Guajardo was intoxicated and punched his ex-wife in the face three times while she was 16 weeks pregnant. The couple also share an 8-month-old daughter.

Infinger first referred to Guajardo as her ex-husband when she reported the alleged assault, prosecutors said, but it's unclear whether they are currently divorced.

Bruegger said police were dispatched to the home based on a report that Guajardo killed a cat, but that information was not in the charging document presented to the magistrate during the hearing.

The state requested a \$5,000 bond for Guajardo, whose public defender said was unemployed at the time. Guajardo previously worked as a mechanic at a Pep Boys and had transportation to get to and from court, the public defender said.

"The two cases he's on bond for arose from the same incident, and they're not violent," the public defender said. "So it's not like he was on bond for one and picked up a new case then picked up this."

The magistrate granted a \$5,000 personal bond, meaning Guajardo would have to post the money if he missed future court appearances. The magistrate also granted a protective order, which prohibited Guajardo from going within 200 feet of his ex-wife's home or place of work, among other conditions.

About five days after his release, police said Guajardo admitted to the stabbing.

"In my opinion, these bail decision are at least in part responsible for the death of Caitlynn Guajardo last weekend," Bruegger said in the YouTube video.

Darrell Jordan, the presiding judge of the Harris County Criminal Courts at Law who helped craft the bail reform settlement, said he couldn't comment on Guajardo's case specifically but questioned the chief's logic.

"The ultimate question is, if the person had been given a \$2,000 bond under the old system and paid \$200 to get out, would this have prevented a crime from happening?" He said. "Does money make you a safer person or a better person?"

He also noted that misdemeanor judges' dockets are filled with assault cases each day, and holding all those defendants in jail would result in overcrowding.

"We would have to be shipping people to Louisiana to be housed," he said.

Scott Henson, a Texas criminal justice policy expert who runs the popular blog Grits for Breakfast, concurred with the judge.

He said the underlying issue was the enforcement of Guajardo's protective order.

"We have people who get out and make bail, and then the question becomes how do you enforce a protective order?" He said. "That's the piece we're not good at. And we're not good at it whether were out on a personal bond or whether the guy had money to post bail."

'Change is hard'

Different versions of bail reform have been introduced in the the last two sessions of the Texas Legislature, though lawmakers have yet to pass a major statewide reform bill.

State Sen. John Whitmire, chair of the Senate Criminal Justice Committee, said he's been trying to expand pretrial release

He said that will continue to be one of his top priorities in the next legislative session.

“It’s an imperfect system, but you do the best you can,” he said. “I do not believe for a minute that anyone would have given (Guajardo) a personal bond if they would have assessed him as likely or even probable that he would go kill his wife and unborn child.”

“No one can predict what someone will do when they leave a courthouse,” he said.

As more states and counties move away from cash bail systems, it’s not unusual for police in large metro areas to criticize bail reform.

In Chicago, 19 people had been arrested in one weekend in June on gun-related charges, according to WBBM-TV. The majority had been released the following Monday on “I-bonds,” which also allow defendants to be released without paying cash up front.

“We know who a lot of these people are,” Chicago Police Superintendent Eddie Johnson said in a press conference. “And how do we know that? Because we keep arresting them over and over and over and over and over again. And it’s just a vicious cycle.”

Michele Deitch, a senior lecturer at the Lyndon B. Johnson School of Public Affairs at the University of Texas, said violent cases will crop up under any circumstance, and there’s always a level of risk when it comes to releasing people accused of crimes.

“I think we’re seeing a lot of resistance on the part of police agencies to a number of reforms, bail reforms being one of them,” she said. “And I think there’s a tendency to just fear what is going to happen if these reforms pass.”

“The change is hard,” she said. “And these agencies are very used to the way the systems have been in place for a long time.”

Gabrielle Banks contributed to this report.

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