

Exhibit 2

DECLARATION OF COUNTY CRIMINAL COURT AT LAW NO. 14
JUDGE MICHAEL FIELDS¹

I. Introduction

1. My name is Michael Fields. I was elected in 1998 by the citizens of Harris County, Texas to serve as Judge of Harris County Criminal Court at Law No. 14. On January 1, 1999, I began my term as Judge of Court No. 14.

2. Prior to beginning my service as Judge of Harris County Criminal Court No. 14, I maintained a private criminal law practice. Additionally, I served as an Assistant Attorney General for the state of Texas and as an Assistant District Attorney for Harris County, Texas. I was also appointed by the Supreme Court of Texas to serve as a member of the State Commission on Judicial Conduct, where I served for nearly seven years.

3. I am familiar with the claims made by Judges 1–13 and 15 (“the Fourteen Judges”) that the preliminary injunction issued in this case “has created a law enforcement and public safety crisis” and that “[r]oughly *half* of all unsecured release bonds issued pursuant to the preliminary injunction have been forfeited because the arrestee failed to appear for his or her court date.” I believe the data buttressing that claim can be easily misinterpreted.

4. In my opinion, the Harris County Criminal Court at Law Judges have implemented policies that, when coupled with other factors, have resulted in the artificial inflation of bond-forfeiture statistics, thereby making it look like people released on unsecured bond pursuant to the federal order are failing to appear in droves, and that the federal court order is “wreaking havoc” on the County. The truth, however, is much more nuanced. The elevated bond-forfeiture rate for people released on unsecured bail, to the extent it exists, is more fully explained, by a number of factors, including policy decisions, agency regulations and a catastrophic weather event.

II. Harris County Criminal Court at Law Judges Have Discretion to Decide When to Forfeit Bonds

A. A “Bond Forfeiture” Is Not a “Failure to Appear”

5. Before addressing the judges’ policies, it is crucial to, first, understand the terminology that is being employed. Primarily, there have been indications that the federal district Court’s order has resulted in an elevated “bond forfeiture” rate for people released on unsecured bond.²

¹ Submitted in *ODonnell v. Harris County*, Case No. 16-cv-01414 (S.D. Tex. 2016), No. 17-20333 (5th Cir. 2017).

² When a person is released pursuant to the federal court’s order, the bond type is referred to as an “unsecured bond.” When a person is ordered released by a judge or magistrate, the bond type is referred to as a “personal bond” (though personal bonds are also technically unsecured bonds: personal bonds do not require an up-front payment, but the person will be required to pay the unsecured amount if the bond is forfeited).

6. The term “bond forfeiture” is not the same as “failure to appear.” “Bond forfeiture” is merely the rough proxy that my colleagues and I use for “failure to appear”—and it is easy to manipulate. Although the judges and the County have apparently begun to track failures to appear, they have not, to my knowledge reported those statistics to the court, only the statistics for bond forfeitures.

7. One reason the bond-forfeiture numbers are misleading is that one defendant may be charged with multiple cases. For example, a person who is homeless and is repeatedly arrested for trespassing in the location where she sleeps at night will be given a bond each time she is arrested. Since the federal court order went into effect, those bonds are likely to be unsecured bonds. As the Houston Chronicle reported in January 2018, according to the public defenders who staff the bail hearings, “[t]he mentally ill homeless generally don’t get the personal bonds. They get unsecured release because they’re considered high risk.”³

8. Because Judges tend to consolidate court dates for multiple open cases, a person will typically be required to appear on a single date to address each of the open cases. If the person does not appear at a *single* court date, *multiple* bond forfeitures will be entered: one for each open case. My understanding of the bond forfeiture statistics reported by my fourteen colleagues suggests that the bond forfeiture rates are being reported by case and not by defendant. As a result, a single defendant may be counted as having forfeited multiple times, when in actuality, the defendant has only failed to appear on one court date.

9. Additionally, Texas law may be another reason that “bond forfeitures” are a very poor proxy for failures to appear. State statutes set forth a number of procedural rights and broad substantive defenses to forfeiture. Surety companies are aware of these laws and, as experienced, routine players in our system, they often hire lawyers to represent them in forfeiture proceedings. Because the statutory defenses are broad, surety companies are often able to evade forfeiture, even when the defendant did in fact fail to appear.

10. As a result of these defenses and surety companies’ ability to take advantage of them by hiring lawyers and fighting the forfeiture, the *absence* of a forfeiture of a surety bond does not mean that the person released on that surety bond appeared in court for all of her court appearances.

11. By contrast, people released on unsecured bonds or personal bonds may not know that such defenses to forfeiture exist, partly because the judges are not required to inform them of their defenses to a bond forfeiture. As a result, the people who benefit from defenses to forfeiture are overwhelmingly people released on surety bonds.

12. For these reasons, “bond forfeiture” rates are a very poor proxy for non-appearance rates.

³ Meagan Flynn, *Harris County bail system offers little help to defendants who most need it* (Jan. 22, 2018), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-bail-system-shortchanges-defendants-12516456.php>.

B. The Judges Have Different Bond-Forfeiture Policies

13. We judges all handle missed appearances and bond forfeitures differently in our respective courts.

14. Over the years, I have developed policies and practices for my courtroom that take into account some of the mundane reasons defendants miss court such as their car broke down, they did not have money for the bus or a cab, they were unable to arrange child care, they or a family member had a medical emergency, or they simply forgot.

15. It has been my experience that people must sometimes choose between appearing in court for a scheduled court date or attending a medical appointment or a shift at a new job that will be the difference between paying rent that month or being homeless. It is my preference that a person keep their job and reschedule the court date.

16. In my experience—and especially in misdemeanor court—people charged with crimes often lead chaotic lives and are struggling with addiction or to make ends meet. Consequently, court dates might not always be the greatest emergency for people who are unsure whether they will have shelter that night or food for themselves and their children.

17. I believe bond-forfeiture policies and practices should reflect an understanding of the realities faced by people charged with misdemeanor offenses.

18. Some of my colleagues' policies and practices are different from mine. Some judges may forfeit a bond if someone is late to court, i.e. if they do not answer docket call at 8:30 a.m. Other judges will not forfeit a bond the first time a person misses court and will “roll over” the case to the next day, giving the person another chance to appear, but will forfeit the bond if the person does not appear the next day. Sometimes judges give people a few days to appear.

19. Because our policies vary widely, the “bond forfeiture” rate conveys very little about the failure-to-appear rate, even though the data provided by my colleagues imply that they are the same. A single bond forfeiture sometimes reflects a single non-appearance, and sometimes it reflects two or more instances of non-appearance. It all depends on the judge and her practices.

III. The Bond Forfeiture Rate for Unsecured Bonds Are Impacted by Policy Decisions

A. Next-day settings for people released on unsecured bonds have resulted in Inflated “Bond Forfeiture” Numbers for People Released on Unsecured Bond

20. First, the Judges have a policy of requiring people released on unsecured bonds pursuant to the federal court order to appear in court on the docket immediately following the day a person is ordered released on an unsecured bond. This requirement has resulted in an elevated number of bond forfeitures.

21. This next-day-court-setting policy matters because it is extremely difficult for people to get to court the day immediately after, or in many cases, the same morning a release is granted.

22. One reason people, likely, miss the next-day setting is because they are *released mere hours before* they are supposed to appear in a County Court at Law. The Harris County jail routinely releases people onto the streets of Houston very late at night, and even in the early hours of the morning, without money or transportation. These individuals—many of whom cannot afford to live in downtown Houston and do not have reliable transportation—are, apparently, faced with a choice between sleeping on the sidewalk outside the courthouse so they do not miss their court date, or finding their way home and then trying to get back downtown by docket call. Understandably, many people may choose to return home to have a meal, see their family, take a shower, and sleep in their own beds. If they are unable to get back to the courthouse in time, they will miss their court date. The net result is that local policies are resulting in missed court appearances. It is troubling that this information was not presented in the materials supplied to the Court.

23. It is my opinion that the policy of requiring next-day settings for people released on unsecured bonds has resulted in a manipulation of the bond-forfeiture numbers.

24. The *stated* reason for the next-day settings is apparently that we must comply with a requirement of the Texas Indigent Defense Counsel (“TIDC”) that Judges determine an *incarcerated* arrestee’s eligibility for counsel and appoint counsel within 24 hours of the person’s request for counsel.

25. But if the requirement to appoint counsel within 24 hours of a request is intended to insure that defendants are provided counsel to argue for release on bail, the requirement of a next-day setting need not apply if the person is released. And even if the requirement must apply, there is no discernible reason to apply different policies to people released on different types of bonds.

26. The TIDC rule appears to be a pretext for a policy designed to make it more likely that those released on an unsecured bond will miss court. As previously stated, this policy artificially inflates the bond-forfeiture numbers for people released pursuant to the federal court order. It is reasonable to assume the purpose is to give the impression there’s a catastrophe in Harris County.

B. Misinformation About Court Dates

27. People released on unsecured bond have been systemically misinformed of their next-day court setting. The new policy of requiring next-day settings for those people released on unsecured bond has generated tremendous confusion among jail officials and court employees.

28. In many cases, even though judges set court dates for the day after the bond is issued, the computer records indicate that the released arrestees must return to court in seven days. The jail

informs the people they release that they must return in seven days, which was the practice that was in effect for many years prior to the federal district court's injunction, and the policy that applies to people released on other bond types.

29. As a result, it is likely some people released on unsecured bond miss court because they are confused as to when they are supposed to show up.

30. I do not feel this information, concerning bond forfeiture rates, has been fully disclosed to the courts.

C. Confusion Caused by Hurricane Harvey

31. Hurricane Harvey has also contributed to confusion in the court system.

32. When the hurricane struck at the end of August, it flooded the courthouse, and the County had to set up courtrooms in various other locations. My colleagues and I have been sharing courtrooms, and have presided over our dockets in those shared courtrooms at designated times of day.

33. As a result, some people who thought they knew when to appear and where to go, have missed court because the location of their assigned court and their scheduled appearance time changed.

D. Failure to Supervise People Released Pursuant to the Federal Court Order

34. Additionally, policies have been implemented which have the net result of funneling people who have the greatest likelihood of non-appearance into the group of people released pursuant to the federal court's order.

35. Since July 1, 2017, the County has used a pretrial assessment tool to determine the amount of "risk" an arrestee poses of not appearing for court. My belief is, the higher a person's risk score, the more likely it is that, *absent intervention* (such as text message reminders or transportation assistance), the person will not appear. Accordingly, the higher the person's "risk" score, the greater the person's need for pretrial assistance to get to court.

36. Pursuant to the injunction, misdemeanor arrestees are given an opportunity to state how much money they can afford to pay to be released. If a Hearing Officer or a Judge then requires a money bail amount that exceeds the amount the person can afford, the Sheriff converts the secured amount to unsecured and releases the person.

37. Since the injunction went into effect, Hearing Officers and Judges have granted release on personal bond—with supervision by pretrial services and court reminders—to an increasing number of people deemed "low risk" by the pretrial assessment tool.

38. However, they have continued to impose unaffordable money bail amounts as a condition of release for people deemed “high risk” by the pretrial assessment tool. Prior to the injunction, these higher “risk” arrestees would have been detained due to their inability to pay the amount of money required for release. Now, because of the injunction, these arrestees may not be kept in jail due to inability to pay, and the Sheriff releases them—as required—on unsecured bail.

39. Despite the fact that higher risk arrestees are being released on unsecured bonds pursuant to the injunction, Pretrial Services has yet to provide the identical level of supervision to people released on unsecured bonds as those released on pretrial release bonds.

40. Additionally, several of my colleagues have refused to require non-financial conditions (unless statutorily required) that have been proven to increase court appearance rates.

41. At the same time, greater supervision and court reminders are being provided to other arrestees, even though they are less in need of assistance getting to court (according to the County’s pretrial assessment tool).

E. ICE Custody

42. The federal court’s preliminary injunction requires the Sheriff to automatically convert a secured money bail a person cannot afford to unsecured bail and release the person. If the person is subject to an “ICE detainer,” ICE is notified to come and pick up the person from the jail to be transported to a federal immigration detention facility as soon as an unsecured bond is granted.

43. But, to my knowledge, there is no system in place to adequately facilitate communication between the Harris County court system and ICE. As a result, when people who are in ICE detention do not come to court for their misdemeanor case, their bonds are subject to forfeiture.

F. Counting *Bonds Not People*

44. It is also important, in my opinion, to note that statistics which purport to identify the number of *bonds* that have been forfeited must also indicate the number of defendants represented by that number. (I have not independently verified that the data actually produce the numbers that have been presented.) But as previously mentioned, arrestees are given a bond for each open case. Therefore, a single missed court appearance can translate to multiple bond forfeitures.

45. This results in a relatively small number of people may being responsible for a large number of bond forfeitures.

IV. What the Data Does Not Show

46. It is important to take a moment to identify specifically what the data presented may *not* show.

47. Most importantly, it does not report the number of people who have missed court dates, or the number of court dates a particular person has missed.

48. It is my belief that data which does not give as full a picture as possible is unreliable.

V. Conclusion

49. Based on everything I have observed, there is no way to credibly illustrate that the federal court injunction alone has increased failure to appear rates or caused any public safety crisis. Rather, there is adequate reason to believe that the numbers cited by my colleagues are equally as likely the result of policy decisions, the federal district Court's order and the difficult circumstances caused by hurricane Harvey.

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



Judge Michael Fields

5/14/2018 7:31:17 PM PDT

Date