

**Kate David**  
Direct Dial: 713.276.5461  
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September 18, 2017

Chief Judge Rosenthal  
US Southern District Court of Texas  
515 Rusk Street  
Houston, Texas 77002

Re: Case No. 4:16-cv-1414; *ODonnell v. Harris County, Texas*; In the Southern District of Texas – Houston Division

Dear Chief Judge Rosenthal:

This letter responds to Plaintiffs' September 18, 2017 letter.

**A. Pretrial Services's notice is sufficient, but, in any event, Plaintiffs' request for Court intervention is premature.**

Plaintiffs' request for Court intervention regarding Pretrial Services's disclaimer is premature—the parties have not meaningfully conferred on this issue.

To be clear, Plaintiffs did not raise concerns about the disclaimer language until September 8, 2017, many months after the Court's order took effect. (Ex. A, Email E. Rossi to P. Morgan, 9/8/2017.) It was discussed for the first time on Wednesday, September 13, 2017. At that time, Harris County informed Plaintiffs that, while the current disclaimer is adequate, it was willing to work with Plaintiffs to find a mutually agreeable solution. In an effort to work with Plaintiffs, Harris County requested that Plaintiffs propose language they thought was satisfactory. Plaintiffs provided proposed language Wednesday evening. (Ex. B, Email E. Rossi to P. Morgan, 9/13/2017.) At that time, Plaintiffs demanded an agreement on the language by noon Friday—one and a half business days later. We informed Plaintiffs on Friday that we were optimistic about coming to an agreement without wasting the Court's time, but that we could not meet with our clients until this Wednesday, September 20 (**not** next week, as the Plaintiffs stated in their letter) because Pretrial Services is still in the process of relocating its offices in the wake of Hurricane Harvey's devastation of the Criminal Justice Center. (Ex. C, Email P. Morgan to E. Rossi, 9/15/2017.) In fact, the Criminal Justice Center is expected to be out of use for between 12 and 18 months, necessitating the relocation of all occupants of the building.

It is unreasonable for Plaintiffs to expect a change to Harris County's system in a day and half—a change that, if even required, will most likely involve more than simply altering the

words read to the accused.<sup>1</sup> It is also unreasonable and not in the spirit of the meet and confer requirement to file a letter regarding this issue without allowing Harris County a reasonable amount of time to discuss this issue with its client.

Harris County anticipates having a response to Plaintiffs by the end of this week and asks that the Court not intervene until we have had the opportunity to meet with our client and meaningfully confer with Plaintiffs.

**B. Harris County's discovery responses.**

At the outset, Plaintiffs fail to mention that Harris County has gone out of its way to give Plaintiffs special access to its databases. Plaintiffs are running a program every evening from 6 pm to 7 am that gathers all of the information that they need to ensure compliance with the Court order. In fact, Plaintiffs fail to identify any specific item that they need and to which they are lacking access.

Moreover, there is no trial setting, and oral argument in the Fifth Circuit is not until October 3, 2017, with a ruling from the Fifth Circuit not likely coming until December at the earliest. Plaintiffs have no immediate need for this data, and Plaintiffs are not prejudiced or harmed in any way by the short delay in production.

Putting the above issues aside, two requests for production are outstanding: (1) Plaintiffs' Supplemental Data Request served on all Defendants, and (2) Plaintiffs' Sixth Set of Requests for Production served on Harris County.

*a. Plaintiffs' Supplemental Data Request.*

Harris County is diligently working on Plaintiffs' Supplemental Data request and has promised production no later than September 29, 2017, and hopefully earlier. While it is taking more time than we would like to gather this data, this data is not gathered as a matter of course and pulling the data in an understandable, useable form is a time consuming and complex process. The system in which the data is kept requires a specialized knowledge that few in the County have. As Harris County did not take the lead in responding to the last such request, we have had to essentially start from scratch, which has led to some technical hiccups.

Harris County has been working on gathering the data and has pulled a data set. (Ex. C, Email P. Morgan to E. Rossi, 9/15/2017.) But there are issues with completeness and usability and we feel confident that Plaintiffs would not be satisfied with the data gathered so far. Harris County is working to ensure that the data set it produces is complete and usable. It is in

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<sup>1</sup> Currently, the interview and affidavit are one process. If a person refuses the interview, they are also refusing the opportunity to execute the affidavit. The combining of this process is plainly allowed under the Court's order, which requires that the affidavit be available "to interviewed misdemeanor arrestees." (Docket No. 304.) The Plaintiffs' proposed language separates the process into two discrete parts, such that a person can refuse the Pretrial Services interview but still have the opportunity to execute the affidavit. Plaintiffs also ask for substantial changes to the software, by asking that Harris County track the reason given for refusal, which would also lengthen the interview process.

everyone's best interest for Harris County to take additional time to make sure that it is fully and completely responding to Plaintiffs, as opposed to producing data that will have limited value.

Moreover, while Plaintiffs assert that the responses are thirty days late, in reality, the responses are actually two weeks late. As the Court is well aware, Hurricane Harvey shut down Houston for well over a week. Harris County's operations were particularly hard hit. It should go without saying that Harris County's primary obligations in the wake of the greatest natural disaster to ever strike Harris County are to the citizens of Harris County. Harris County was in the process of working on these data requests before the storm, and, once normal operations resumed, Harris County restarted its work on these requests. A 30-60 day extension of time to produce the data is not unreasonable given that Plaintiffs have continuous access to most if not all of the data they seek, the voluminous nature of the data, and the delays caused by the hurricane.

*b. Pretrial Services Data*

Harris County objected to Plaintiffs' requests for Pretrial Services's data because they were vague and overbroad. These objections were remedied at the meet and confer on September 13, 2017. Immediately after the meet and confer, Harris County contacted Pretrial Services and provided Plaintiffs a timeline of production. Nearly all of the requested information was to be produced within about thirty to forty-five days from the date that the objections were resolved. Pretrial Services's productivity is severely hampered by being in a temporary facility, and Pretrial Services is working to produce the data as quickly as possible under the current circumstances. Of course, if the data is ready sooner, Harris County will produce it. But placing an artificial deadline of September 22, 2017 for this data is unreasonable.

Moreover, the Pretrial Services data requested has no bearing on Harris County's compliance with the Court order, which Plaintiffs claim motivates the immediate need for this information. Instead, as Plaintiffs explained in the meet and confer, the data goes to Harris County's merits-based claims that implementation of the Arnold Tool would remedy the issues in this lawsuit (which is now less certain given the impacts of the Court's order discussed below). Because Plaintiffs' need for the Pretrial Services data goes to the merits of this case, not to compliance with the Court order, and because any such trial setting would likely not be until early 2018, producing the data in October, as proposed, will have no impact in this case.

**C. Plaintiffs' "other" issues.**

The purpose of Plaintiffs' third section is entirely unclear. It appears to be a pre-emptive strike to discredit statistics on the failure to appear rate for those released by the Sheriff, which is completely inappropriate for a discovery letter. But, since Plaintiffs have opened the door, the Court should be aware of the extraordinarily high failure to appear rates of those released pursuant to the Court's order. (Ex. D, Memo from Budget Management Regarding Post-Federal Order Misdemeanor Release Information, 6/26/2017); (Ex. E, Memo from Budget Management Regarding Post-Federal Order Misdemeanor Release Information, 7/28/2017).

The failure to appear rate for those released by the Sheriff, from June 6 through July 11, was 34.62%. This is three times higher than the failure to appear rate for cash and personal bonds, and over six times higher than those released on surety bonds during that same period. As Dr. VanNostrand testified, these figures are consistent with the culture of non-accountability observed in Lucas County, Ohio. (Ex. F, Excerpt from Hearing, Docket No. 277.)

Plaintiffs try to offer a series of arguments for why the data is somehow not accurate. Each of Plaintiffs' arguments is baseless—the statistics are an accurate reflection of the unintended consequences of the Court's order.

Plaintiffs first state, without explanation, that the data is “grossly misleading.” Plaintiffs have had the underlying data for the June Report for many weeks (Plaintiffs also now have all the data for the July report too). Plaintiffs also have access via their data mining program to the very same data set used to create the failure to appear rates in these reports. Plaintiffs have yet to explain how the information is in any way misleading.

Next, Plaintiffs complain that Harris County's choice not to use two-way text messaging is to blame. Harris County had been using one-way text message reminders long before the Court order and the failure to appear rates were reasonable. The choice not to use two-way text messaging has no correlation to the 34.62% failure to appear rate for those released by the Sheriff. (As an aside, Plaintiffs' letter is the first time that Plaintiffs have offered to “fully fund” a two-way text messaging service.)<sup>2</sup>

Finally, Plaintiffs allege that a next day court setting is somehow to blame for the high failure to appear rates of those released by the Sheriff. This argument makes no sense given that *all* arrestees, including those released on personal bonds, surety bonds, and cash bonds, have a next day setting. The failure to appear rate for surety bonds was only 5.84%, while it was 34.62% for the same period for those released by the Sheriff.

This data is distressing to Harris County as well, but unfortunately, the culprit is neither the text messaging program nor the next-day setting.

Sincerely,



Kate David

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<sup>2</sup> It is unclear what Plaintiffs are saying they will fund. The cost of the service is only one component of the expense. A live person has to be on the other end of the text messages to respond. Harris County suspects that Plaintiffs are not agreeing to pay the salaries associated with responding to these text messages.

# EXHIBIT A

## Morgan, Philip J

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**From:** Elizabeth Rossi <elizabeth@civilrightscorps.org>  
**Sent:** Friday, September 08, 2017 8:52 AM  
**To:** Morgan, Philip J; David, Katharine; Stafford, Mike  
**Cc:** Neal S. Manne; Lexie White; Michael Gervais; Alec Karakatsanis; Susanne Pringle; Rebecca Bernhardt  
**Subject:** Discovery issues - scheduling a meet and confer

Phil, Kate, Mike,

Plaintiffs would like to meet and confer with the County to address the County's "General Objections" and the issues listed below related to the County's responses to Plaintiffs' discovery requests. The explanations are not exhaustive but identify the key issues relating to each item:

1) Plaintiffs would like to clarify those requests the County found vague or confusing, including:

a. RFP 6-1 (risk assessment data): Plaintiffs are requesting updated data identical to what was provided in rm\_risk2.txt and the codebook, which were provided in support of Robert Morris's report, plus the recommendation of pretrial services. Regarding the Arnold tool, Plaintiffs are requesting the raw data used to determine the value for each of the 9 items in the Arnold tool, the scores calculated for each of the items in the tool, and the total Arnold tool risk score for each misdemeanor arrestee. Plaintiffs are also requesting the bail schedule's recommendation for each arrestee.

b. Various data requests including:

(j) Plaintiffs are requesting the bail amount set on the complaint, i.e., the data provided in Column H of the initial spreadsheet Defendants produced in December 2016;

(q) and (w) (whether Hearing Officer granted unsecured bail): Plaintiffs understand "personal bonds" to be "unsecured bonds" based on the terminology used throughout this court and Defendants' testimony during the preliminary injunction hearing. To the extent there is a difference between "personal bonds" and "unsecured bonds," please clarify.

(t) (date/time of attorney appointment): Plaintiffs want to know when an attorney is appointed to represent the person in their case.

(dd), (ee), and (ff) (regarding "supervision"): Plaintiffs are referring to pretrial supervision.

Plaintiffs would like the opportunity to discuss any further clarifications to ensure that all requested data is produced quickly.

2) Some of the County's responses were insufficient or confusing, including:

a. Rog 14 (regarding the text message vendors): The County's response fails to explain how the product works in Harris County, including whether arrestees in Harris County can text responses, and, if they can, whether arrestees are aware of that fact, and whether and how the responses are used to move court dates.

b. Rog 15 (regarding the number of arrestees who have refused to sign an affidavit): The County's response does not provide the number of misdemeanor arrestees, and the phrase "close approximation" is ambiguous and nonresponsive. The response also does not provide information through the current date.

c. Rog 16 (regarding the "disclaimer"): The disclaimer does not clearly provide the notice required by the Court. Plaintiffs are willing to work with the County to expeditiously revise the language, or will seek clarification from the Court. Plaintiffs consider this issue to be particularly urgent.

d. Rog. 17 (supervision of people released pursuant to the federal court order): The County's response does not indicate whether arrestees who appear before a Hearing Officer and are subsequently released by the Sheriff pursuant to the preliminary injunction are subject to non-financial conditions.

e. Various data requests:

(h) (pending felony cases): Plaintiffs believe this data is available: the Judges stated in their discovery response that the County has this data, and in the data spreadsheet produced to Plaintiffs in December 2016, column AK was entitled "Felony\_Pending\_Cases."

(k) (whether each arrestee was given an opportunity to complete the affidavit): This data is highly relevant to whether Defendants are complying with the injunction, which requires misdemeanor arrestees to be given an opportunity to complete an affidavit.

(s) (date/time of "bail review"): Please explain why an arrestee would not have a bail review setting given that the Rules require a mandatory bail review.

(kk) (whether an arrestee was re-arrested following release): Plaintiffs clarify this request as follows: Please produce all data that will show whether an arrestee commits, or is accused of, new criminal activity while on pretrial release. Defendant's claim that it does not exist is confusing given that this information has been produced to the Harris County Commissioners Court.

3) Plaintiffs would like to explain the relevance of requests the County claimed were irrelevant, including:

a. RFP 6-2 (training materials): This information is relevant to implementation of the Court's order. It is also relevant to various legal issues in the case. These materials are not privileged, nor did the County identify any possible privilege or provide a privilege log. Dr. Van Nostrand's own attorney stated that "she has not been a consulting expert in the litigation." Tr. 3/21/17 at 9; *see also* Tr. 3/21/17 at 10 (THE COURT: "She is not a consulting expert. . . ."). If the County is withholding materials on the basis of privilege, a privilege log must be produced.

b. RFP 6-3 (pretrial services reports): These reports are highly relevant to show how the system functioned before the Court's order went into effect: that is the system Plaintiffs' lawsuit challenges. Reports from after June 6, 2017 will show how the system is currently functioning. Given that the County is claiming that an injunction is not in the public interest because of the reforms, the County cannot prevent Plaintiffs from the documents and information necessary to understand those reforms.

c. Various data requests:

(l) (which agency provided the affidavit): This information is relevant to how the Court's order is being implemented.

(x), (y), (z) (whether non-financial conditions were imposed; if so, which ones, and on what date): This information is relevant to Defendants' claims about the superior efficacy of secured financial conditions and to Defendants' claim that the injunction is not in the public interest.

(jj) (info about violations of bond conditions): This information is relevant because it will allow Plaintiffs to analyze whether violations of conditions of release lead equally to bond failures regardless of whether the person was released on cash bail, secured money bail, or a personal bond.

- 4) The County has an obligation to provide certain items, but have not done so. Plaintiffs would like to discuss a date by which the County will provide the following data and documents:
- a. RFP 6-1 (risk assessment data)
  - b. RFP 6-2 (training materials)
  - c. RFP 6-3 (pretrial services reports)
  - d. RFP 6-4 (any and all data related to FTAs, NCA, violations, and bond failures): Plaintiffs believe the County has not provided the underlying data for the report provided to Commissioners Court on July 28.
  - e. Data

Would Monday at 2 pm EST, or Tuesday at 11 am EST work for a meet and confer?

Thanks,

Elizabeth

Elizabeth Rossi  
Attorney  
Civil Rights Corps  
[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
202-681-2721  
<http://www.civilrightscorps.org/>

\*Admitted solely to practice law in Maryland; not admitted in the District of Columbia. Practice is limited pursuant to D.C. App. R. 49(c)(3).\*



# EXHIBIT B

## **Morgan, Philip J**

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**From:** Elizabeth Rossi <elizabeth@civilrightscorps.org>  
**Sent:** Wednesday, September 13, 2017 2:54 PM  
**To:** Morgan, Philip J  
**Cc:** David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle  
**Subject:** Re: Discovery issues - scheduling a meet and confer

Hi everyone,

I'm writing to summarize the meet and confer we just had:

- 1) RFP 6-1: Plaintiffs clarified the request for risk assessment data. By Friday at noon, the County will tell Plaintiffs when the data will be produced.
- 2) Data request (j): The County will find out whether, following implementation of the new bail schedule, some misdemeanor arrestees are being held without bail prior to the Hearing Officer hearing.
- 3) Rog 14: The County will clarify its response regarding Voice4Net and will supplement it as necessary.
- 4) Rog 15: The County will amend its response to provide the number of misdemeanor arrestees who refused the pretrial services interview. The affidavit and pretrial-services interview processes have merged. There is no way to complete the financial affidavit while refusing the pretrial services interview.
- 5) Rog 16: Regarding the "disclaimer." Plaintiffs will send proposed revised language as soon as possible, likely by tomorrow morning. The County will review the language with its clients. The parties will determine by noon on Friday whether they will be able to work out a mutually agreeable amendment. Otherwise, Plaintiffs will seek clarification from the Court.
- 6) Rog 17: The County will clarify its response by noon on Friday to explain that arrestees released pursuant to the federal court order are not being supervised by pretrial services and are not subject to non-financial conditions.
- 7) RFP 6-2: The County will certify that it is not withholding any responsive documents.
- 8) RFP 6-3: Plaintiffs agreed to accept pretrial services interview reports for June 8-10, July 8-10, Aug. 8-10, and Sept. 8-10, and for the 1-3 of every month beginning in October. The County will inform Plaintiffs by noon on Friday when Plaintiffs can expect to receive the reports for the dates in June - Sept.
- 9) RFP 6-4: The County will provide the data underlying the July 28 report to Commissioners Court early next week.
- 10) Supplemental Data Request: The County will inform Plaintiffs by the end of Friday when they will produce the data.

Please let me know if I've missed or misunderstood anything we discussed.

Best,  
Elizabeth

Elizabeth Rossi  
Attorney  
Civil Rights Corps  
[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
202-681-2721  
<http://www.civilrightscorps.org/>

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On Wed, Sep 13, 2017 at 9:38 AM, Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:  
My apologies. 1:30 cst is fine.

Phil

-----Original Message-----

From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
Sent: Tuesday, September 12, 2017 9:56 PM  
To: Morgan, Philip J  
Cc: David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle  
Subject: Re: Discovery issues - scheduling a meet and confer

Phil,

I want to clarify the time of our call. The calendar invite was for 2:30 CST, but I had actually proposed 2:30 EST. We can make either one work, though 2:30 EST is better. Are you all free at 2:30 EST / 1:30 CST? If not, we can leave it as you've scheduled it.

Thanks.

Elizabeth Rossi  
Attorney  
Civil Rights Corps  
[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
202-681-2721  
<http://www.civilrightscorps.org/>

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On Tue, Sep 12, 2017 at 6:31 PM, Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:  
> Yes. I will send a calendar invite.  
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> Phil  
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> From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
> Sent: Tuesday, September 12, 2017 10:02 AM  
> To: Morgan, Philip J  
> Cc: David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White;  
> Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle  
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> Subject: Re: Discovery issues - scheduling a meet and confer  
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> No problem. Can we do tomorrow at 2:30 pm EST?  
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> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
> [elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
> [202-681-2721](tel:202-681-2721)  
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> \*Admitted solely to practice law in Maryland; not admitted in the  
> District of Columbia. Practice is limited pursuant to D.C. App. R.  
> 49(c)(3).\*  
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> On Tue, Sep 12, 2017 at 10:07 AM, Morgan, Philip J  
> <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)>  
> wrote:  
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> Elizabeth,  
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> My apologies, our plans have changed—3:30 won't work. However, we are  
> now free all day tomorrow. Is there a time tomorrow that works.  
> Thursday at  
> 11:30 cst also still works.  
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> Phil  
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> From: Morgan, Philip J  
> Sent: Monday, September 11, 2017 10:42 AM  
> To: 'Elizabeth Rossi'; David, Katharine; Stafford, Mike  
> Cc: Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne;  
> Rebecca Bernhardt; Susanne Pringle  
> Subject: RE: Discovery issues - scheduling a meet and confer

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> Yes. 3:30 cst works. I will send around a dial in.

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> Phil

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> From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
> Sent: Friday, September 08, 2017 3:31 PM  
> To: David, Katharine; Morgan, Philip J; Stafford, Mike  
> Cc: Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne;  
> Rebecca Bernhardt; Susanne Pringle  
> Subject: Re: Discovery issues - scheduling a meet and confer

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> Hi Phil,

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> Does Tuesday at 4:30 est / 3:30 cst work for you?

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> Elizabeth

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> On Fri, Sep 8, 2017 at 3:17 PM Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:

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> Elizabeth,

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> We are traveling on Monday and in a meeting Tuesday morning. We could  
> do Tuesday afternoon any time. We are tied up Wednesday, but could

> also do Thursday 11:30-12:30 cst.

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> Let me know what works.

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> Phil

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> Phillip J. Morgan

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> t 713.276.5168 f 713.276.6168

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> 1000 Louisiana Street, Suite 2000, Houston, Texas 77002

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> A U S T I N | D A L L A S | D E N V E R | H O U S T O N | M E X I C  
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> LinkedIn | Twitter | Bio | vCard

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> Sent: Friday, September 08, 2017 8:52 AM  
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> Cc: Neal S. Manne; Lexie White; Michael Gervais; Alec Karakatsanis;  
> Susanne Pringle; Rebecca Bernhardt  
> Subject: Discovery issues - scheduling a meet and confer  
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> Phil, Kate, Mike,  
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> Plaintiffs would like to meet and confer with the County to address  
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> a. RFP 6-1 (risk assessment data): Plaintiffs are requesting updated  
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> which were provided in support of Robert Morris's report, plus the  
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> i.e., the data provided in Column H of the initial spreadsheet  
> Defendants produced in December 2016;  
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> (q) and (w) (whether Hearing Officer granted unsecured bail):  
> Plaintiffs understand "personal bonds" to be "unsecured bonds" based

- > on the terminology used throughout this court and Defendants'
- > testimony during the preliminary injunction hearing. To the extent
- > there is a difference between "personal bonds" and "unsecured bonds," please clarify.
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- > (t) (date/time of attorney appointment): Plaintiffs want to know when
- > an attorney is appointed to represent the person in their case.
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- > referring to pretrial supervision.
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- > affidavit): The County's response does not provide the number of
- > misdemeanor arrestees, and the phrase "close approximation" is
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- > c. Rog 16 (regarding the "disclaimer"): The disclaimer does not clearly
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- > d. Rog. 17 (supervision of people released pursuant to the federal court



> order): The County's response does not indicate whether arrestees who  
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> e. Various data requests:

> (h) (pending felony cases): Plaintiffs believe this data is available:  
> the Judges stated in their discovery response that the County has this  
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> 2016, column AK was entitled "Felony\_Pending\_Cases."

> (k) (whether each arrestee was given an opportunity to complete the  
> affidavit): This data is highly relevant to whether Defendants are  
> complying with the injunction, which requires misdemeanor arrestees to  
> be given an opportunity to complete an affidavit.

> (s) (date/time of "bail review"): Please explain why an arrestee would  
> not have a bail review setting given that the Rules require a  
> mandatory bail review.

> (kk) (whether an arrestee was re-arrested following release):  
> Plaintiffs clarify this request as follows: Please produce all data  
> that will show whether an arrestee commits, or is accused of, new  
> criminal activity while on pretrial release. Defendant's claim that  
> it does not exist is confusing given that this information has been  
> produced to the Harris County Commissioners Court.

> 3) Plaintiffs would like to explain the relevance of requests the County  
> claimed were irrelevant, including:

> a. RFP 6-2 (training materials): This information is relevant to  
> implementation of the Court's order. It is also relevant to various  
> legal issues in the case. These materials are not privileged, nor did  
> the County identify any possible privilege or provide a privilege log.  
> Dr. Van Nostrand's own attorney stated that "she has not been a  
> consulting expert in the litigation." Tr. 3/21/17 at 9; see also Tr. 3/21/17 at 10 (THE COURT:

- > “She is not a consulting expert. . .”). If the County is
- > withholding materials on the basis of privilege, a privilege log must be produced.
- >
- >
- >
- > b. RFP 6-3 (pretrial services reports): These reports are highly
- > relevant to show how the system functioned before the Court’s order
- > went into effect: that is the system Plaintiffs’ lawsuit challenges.
- > Reports from after June 6, 2017 will show how the system is currently functioning.
- > Given that the County is claiming that an injunction is not in the
- > public interest because of the reforms, the County cannot prevent
- > Plaintiffs from the documents and information necessary to understand those reforms.
- >
- >
- >
- > c. Various data requests:
- >
- >
- >
- > (l) (which agency provided the affidavit): This information is
- > relevant to how the Court’s order is being implemented.
- >
- >
- >
- > (x), (y), (z) (whether non-financial conditions were imposed; if so,
- > which ones, and on what date): This information is relevant to
- > Defendants’ claims about the superior efficacy of secured financial
- > conditions and to Defendants’ claim that the injunction is not in the public interest.
- >
- >
- >
- > (jj) (info about violations of bond conditions): This information is
- > relevant because it will allow Plaintiffs to analyze whether
- > violations of conditions of release lead equally to bond failures
- > regardless of whether the person was released on cash bail, secured
- > money bail, or a personal bond.
- >
- > 4) The County has an obligation to provide certain items, but have not
- > done so. Plaintiffs would like to discuss a date by which the County
- > will provide the following data and documents:
- >
- > a. RFP 6-1 (risk assessment data)
- >
- > b. RFP 6-2 (training materials)
- >
- > c. RFP 6-3 (pretrial services reports)
- >
- > d. RFP 6-4 (any and all data related to FTAs, NCA, violations, and bond
- > failures): Plaintiffs believe the County has not provided the
- > underlying data for the report provided to Commissioners Court on July 28.
- >

> e. Data  
>  
>  
>  
> Would Monday at 2 pm EST, or Tuesday at 11 am EST work for a meet and  
> confer?  
>  
>  
>  
> Thanks,  
>  
> Elizabeth  
>  
>  
>  
>  
> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
> [elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
> 202-681-2721  
> <http://www.civilrightscorps.org/>  
> \*Admitted solely to practice law in Maryland; not admitted in the  
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> 49(c)(3).\*  
>  
> --  
>  
>  
> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
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> 49(c)(3).\*  
>  
>

# EXHIBIT C

## Morgan, Philip J

---

**From:** Morgan, Philip J  
**Sent:** Friday, September 15, 2017 11:55 AM  
**To:** 'Elizabeth Rossi'  
**Cc:** David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle  
**Subject:** RE: Discovery issues - scheduling a meet and confer  
**Attachments:** Gardere01 10634392\_1 Fifth ROGs.DOCX

Elizabeth,

I am writing to follow-up on our meet and confer call and your email below:

- Amended Interrogatory responses are attached.
- Per the new misdemeanor bail schedule there are a handful of carve out misdemeanors where bail is not set until the 15.17 hearing.
- As you are aware, the Criminal Justice center was hit hard by Harvey, forcing Pretrial Services to move facilities. This is putting a strain on personnel and on the technology. With that said, we can produce the information from Pretrial Services on the following timelines:
  - Risk Assessment file like that provided to Morris (from Jan. 1 through implementation of PSA, which is a longer period than initially requested): October 13, 2017
  - PSA Score: October 20, 2017
  - PTS interview forms: November 3, 2017
- As for the supplemental data request: September 29, 2017.
- Data from July 28 Commissioners report: September 19, 2017.
- Next week is the earliest Pretrial Services could meet with us to discuss the disclaimer. We are optimistic that we will be able to resolve this issue with Plaintiffs without court intervention.

If information is available earlier, we will produce it sooner. Finally, as to the PSA training materials (RFP No. 6-2), we will provide a supplemental response by September 22, 2017.

I believe that covers everything. Please let me know if you have any questions.

Phil

**Phillip J. Morgan**

t 713.276.5168 f 713.276.6168

1000 Louisiana Street, Suite 2000, Houston, Texas 77002

## GARDERE

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**From:** Elizabeth Rossi [mailto:elizabeth@civilrightscorps.org]

**Sent:** Wednesday, September 13, 2017 2:54 PM

**To:** Morgan, Philip J

**Cc:** David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle

**Subject:** Re: Discovery issues - scheduling a meet and confer

Hi everyone,

I'm writing to summarize the meet and confer we just had:

- 1) RFP 6-1: Plaintiffs clarified the request for risk assessment data. By Friday at noon, the County will tell Plaintiffs when the data will be produced.
- 2) Data request (j): The County will find out whether, following implementation of the new bail schedule, some misdemeanor arrestees are being held without bail prior to the Hearing Officer hearing.
- 3) Rog 14: The County will clarify its response regarding Voice4Net and will supplement it as necessary.
- 4) Rog 15: The County will amend its response to provide the number of misdemeanor arrestees who refused the pretrial services interview. The affidavit and pretrial-services interview processes have merged. There is no way to complete the financial affidavit while refusing the pretrial services interview.
- 5) Rog 16: Regarding the "disclaimer." Plaintiffs will send proposed revised language as soon as possible, likely by tomorrow morning. The County will review the language with its clients. The parties will determine by noon on Friday whether they will be able to work out a mutually agreeable amendment. Otherwise, Plaintiffs will seek clarification from the Court.
- 6) Rog 17: The County will clarify its response by noon on Friday to explain that arrestees released pursuant to the federal court order are not being supervised by pretrial services and are not subject to non-financial conditions.
- 7) RFP 6-2: The County will certify that it is not withholding any responsive documents.
- 8) RFP 6-3: Plaintiffs agreed to accept pretrial services interview reports for June 8-10, July 8-10, Aug. 8-10, and Sept. 8-10, and for the 1-3 of every month beginning in October. The County will inform Plaintiffs by noon on Friday when Plaintiffs can expect to receive the reports for the dates in June - Sept.
- 9) RFP 6-4: The County will provide the data underlying the July 28 report to Commissioners Court early next week.
- 10) Supplemental Data Request: The County will inform Plaintiffs by the end of Friday when they will produce the data.

Please let me know if I've missed or misunderstood anything we discussed.

Best,  
Elizabeth

Elizabeth Rossi  
Attorney  
Civil Rights Corps  
[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
202-681-2721  
<http://www.civilrightscorps.org/>

\*Admitted solely to practice law in Maryland; not admitted in the District of Columbia. Practice is limited pursuant to D.C. App. R. 49(c)(3).\*

On Wed, Sep 13, 2017 at 9:38 AM, Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:  
My apologies. 1:30 cst is fine.

Phil

-----Original Message-----

From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
Sent: Tuesday, September 12, 2017 9:56 PM  
To: Morgan, Philip J  
Cc: David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle  
Subject: Re: Discovery issues - scheduling a meet and confer

Phil,

I want to clarify the time of our call. The calendar invite was for 2:30 CST, but I had actually proposed 2:30 EST. We can make either one work, though 2:30 EST is better. Are you all free at 2:30 EST / 1:30 CST? If not, we can leave it as you've scheduled it.

Thanks.

Elizabeth Rossi  
Attorney  
Civil Rights Corps  
[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
202-681-2721  
<http://www.civilrightscorps.org/>

\*Admitted solely to practice law in Maryland; not admitted in the District of Columbia. Practice is limited pursuant to D.C. App. R. 49(c)(3).\*

On Tue, Sep 12, 2017 at 6:31 PM, Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:  
> Yes. I will send a calendar invite.  
>  
>  
>  
> Phil

>  
>  
>  
> From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
> Sent: Tuesday, September 12, 2017 10:02 AM  
> To: Morgan, Philip J  
> Cc: David, Katharine; Stafford, Mike; Alec Karakatsanis; Lexie White;  
> Michael Gervais; Neal S. Manne; Rebecca Bernhardt; Susanne Pringle

>  
>  
> Subject: Re: Discovery issues - scheduling a meet and confer

>  
>  
>  
> No problem. Can we do tomorrow at 2:30 pm EST?

>  
>  
>  
> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
> [elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
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> 49(c)(3).\*

>  
>  
>  
> On Tue, Sep 12, 2017 at 10:07 AM, Morgan, Philip J  
> <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)>  
> wrote:

>  
> Elizabeth,

>  
>  
>  
> My apologies, our plans have changed—3:30 won't work. However, we are  
> now free all day tomorrow. Is there a time tomorrow that works.  
> Thursday at  
> 11:30 cst also still works.

>  
>  
>  
> Phil



>  
>  
>  
> From: Morgan, Philip J  
> Sent: Monday, September 11, 2017 10:42 AM  
> To: 'Elizabeth Rossi'; David, Katharine; Stafford, Mike  
> Cc: Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne;  
> Rebecca Bernhardt; Susanne Pringle  
> Subject: RE: Discovery issues - scheduling a meet and confer

>  
>  
>  
> Yes. 3:30 cst works. I will send around a dial in.

>  
>  
>  
> Phil

>  
>  
>  
> From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
> Sent: Friday, September 08, 2017 3:31 PM  
> To: David, Katharine; Morgan, Philip J; Stafford, Mike  
> Cc: Alec Karakatsanis; Lexie White; Michael Gervais; Neal S. Manne;  
> Rebecca Bernhardt; Susanne Pringle  
> Subject: Re: Discovery issues - scheduling a meet and confer

>  
>  
>  
> Hi Phil,

>  
>  
>  
> Does Tuesday at 4:30 est / 3:30 cst work for you?

>  
>  
>  
> Elizabeth

>  
>  
>  
> On Fri, Sep 8, 2017 at 3:17 PM Morgan, Philip J <[pmorgan@gardere.com](mailto:pmorgan@gardere.com)> wrote:

>  
> Elizabeth,

>  
>  
>  
> We are traveling on Monday and in a meeting Tuesday morning. We could  
> do Tuesday afternoon any time. We are tied up Wednesday, but could  
> also do Thursday 11:30-12:30 cst.

>  
>  
> Let me know what works.  
>  
>  
>  
> Phil  
>  
>  
>  
>  
>  
> Phillip J. Morgan  
>  
> t 713.276.5168 f 713.276.6168  
>  
> 1000 Louisiana Street, Suite 2000, Houston, Texas 77002  
>  
>  
> AUSTIN | DALLAS | DENVER | HOUSTON | MEXIC  
> O CITY  
>  
>  
> LinkedIn | Twitter | Bio | vCard  
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> \*\*\*\*\*  
>  
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> should be construed as a digital or electronic signature, nor is it  
> intended to reflect an intention to make an agreement by electronic means.  
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>  
>  
> From: Elizabeth Rossi [mailto:[elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)]  
> Sent: Friday, September 08, 2017 8:52 AM  
> To: Morgan, Philip J; David, Katharine; Stafford, Mike  
> Cc: Neal S. Manne; Lexie White; Michael Gervais; Alec Karakatsanis;  
> Susanne Pringle; Rebecca Bernhardt  
> Subject: Discovery issues - scheduling a meet and confer  
>  
>  
>  
> Phil, Kate, Mike,  
>  
>  
>  
> Plaintiffs would like to meet and confer with the County to address  
> the County's "General Objections" and the issues listed below related  
> to the County's responses to Plaintiffs' discovery requests. The  
> explanations are not exhaustive but identify the key issues relating to each item:  
>  
> 1) Plaintiffs would like to clarify those requests the County found  
> vague or confusing, including:  
>  
>  
>  
> a. RFP 6-1 (risk assessment data): Plaintiffs are requesting updated  
> data identical to what was provided in rm\_risk2.txt and the codebook,  
> which were provided in support of Robert Morris's report, plus the  
> recommendation of pretrial services. Regarding the Arnold tool,  
> Plaintiffs are requesting the raw data used to determine the value for  
> each of the 9 items in the Arnold tool, the scores calculated for each  
> of the items in the tool, and the total Arnold tool risk score for  
> each misdemeanor arrestee. Plaintiffs are also requesting the bail schedule's recommendation for each  
> arrestee.  
>  
>  
>  
> b. Various data requests including:  
>  
>  
>  
> (j) Plaintiffs are requesting the bail amount set on the complaint,  
> i.e., the data provided in Column H of the initial spreadsheet  
> Defendants produced in December 2016;  
>  
>  
>  
> (q) and (w) (whether Hearing Officer granted unsecured bail):  
> Plaintiffs understand "personal bonds" to be "unsecured bonds" based  
> on the terminology used throughout this court and Defendants'  
> testimony during the preliminary injunction hearing. To the extent

> there is a difference between “personal bonds” and “unsecured bonds,” please clarify.

>  
>  
>

> (t) (date/time of attorney appointment): Plaintiffs want to know when

> an attorney is appointed to represent the person in their case.

>  
>  
>

> (dd), (ee), and (ff) (regarding “supervision”): Plaintiffs are

> referring to pretrial supervision.

>  
>  
>

> Plaintiffs would like the opportunity to discuss any further

> clarifications to ensure that all requested data is produced quickly.

>  
>  
>

> 2) Some of the County’s responses were insufficient or confusing,

> including:

>  
>  
>

> a. Rog 14 (regarding the text message vendors): The County’s response

> fails to explain how the product works in Harris County, including

> whether arrestees in Harris County can text responses, and, if they

> can, whether arrestees are aware of that fact, and whether and how the

> responses are used to move court dates.

>  
>  
>

> b. Rog 15 (regarding the number of arrestees who have refused to sign an

> affidavit): The County’s response does not provide the number of

> misdemeanor arrestees, and the phrase “close approximation” is

> ambiguous and nonresponsive. The response also does not provide

> information through the current date.

>  
>  
>

> c. Rog 16 (regarding the “disclaimer”): The disclaimer does not clearly

> provide the notice required by the Court. Plaintiffs are willing to

> work with the County to expeditiously revise the language, or will

> seek clarification from the Court. Plaintiffs consider this issue to

> be particularly urgent.

>  
>  
>

> d. Rog. 17 (supervision of people released pursuant to the federal court

> order): The County’s response does not indicate whether arrestees who

> appear before a Hearing Officer and are subsequently released by the

> Sheriff pursuant to the preliminary injunction are subject to  
> non-financial conditions.

>  
>  
>  
> e. Various data requests:

>  
>  
>  
> (h) (pending felony cases): Plaintiffs believe this data is available:  
> the Judges stated in their discovery response that the County has this  
> data, and in the data spreadsheet produced to Plaintiffs in December  
> 2016, column AK was entitled "Felony\_Pending\_Cases."

>  
>  
>  
> (k) (whether each arrestee was given an opportunity to complete the  
> affidavit): This data is highly relevant to whether Defendants are  
> complying with the injunction, which requires misdemeanor arrestees to  
> be given an opportunity to complete an affidavit.

>  
>  
>  
> (s) (date/time of "bail review"): Please explain why an arrestee would  
> not have a bail review setting given that the Rules require a  
> mandatory bail review.

>  
>  
>  
> (kk) (whether an arrestee was re-arrested following release):  
> Plaintiffs clarify this request as follows: Please produce all data  
> that will show whether an arrestee commits, or is accused of, new  
> criminal activity while on pretrial release. Defendant's claim that  
> it does not exist is confusing given that this information has been  
> produced to the Harris County Commissioners Court.

>  
>  
>  
> 3) Plaintiffs would like to explain the relevance of requests the County  
> claimed were irrelevant, including:

>  
>  
>  
> a. RFP 6-2 (training materials): This information is relevant to  
> implementation of the Court's order. It is also relevant to various  
> legal issues in the case. These materials are not privileged, nor did  
> the County identify any possible privilege or provide a privilege log.  
> Dr. Van Nostrand's own attorney stated that "she has not been a  
> consulting expert in the litigation." Tr. 3/21/17 at 9; see also Tr. 3/21/17 at 10 (THE COURT:  
> "She is not a consulting expert. . ."). If the County is  
> withholding materials on the basis of privilege, a privilege log must be produced.

>

>

>

> b. RFP 6-3 (pretrial services reports): These reports are highly  
> relevant to show how the system functioned before the Court's order  
> went into effect: that is the system Plaintiffs' lawsuit challenges.  
> Reports from after June 6, 2017 will show how the system is currently functioning.  
> Given that the County is claiming that an injunction is not in the  
> public interest because of the reforms, the County cannot prevent  
> Plaintiffs from the documents and information necessary to understand those reforms.

>

>

>

> c. Various data requests:

>

>

>

> (l) (which agency provided the affidavit): This information is  
> relevant to how the Court's order is being implemented.

>

>

>

> (x), (y), (z) (whether non-financial conditions were imposed; if so,  
> which ones, and on what date): This information is relevant to  
> Defendants' claims about the superior efficacy of secured financial  
> conditions and to Defendants' claim that the injunction is not in the public interest.

>

>

>

> (jj) (info about violations of bond conditions): This information is  
> relevant because it will allow Plaintiffs to analyze whether  
> violations of conditions of release lead equally to bond failures  
> regardless of whether the person was released on cash bail, secured  
> money bail, or a personal bond.

>

> 4) The County has an obligation to provide certain items, but have not  
> done so. Plaintiffs would like to discuss a date by which the County  
> will provide the following data and documents:

>

> a. RFP 6-1 (risk assessment data)

>

> b. RFP 6-2 (training materials)

>

> c. RFP 6-3 (pretrial services reports)

>

> d. RFP 6-4 (any and all data related to FTAs, NCA, violations, and bond  
> failures): Plaintiffs believe the County has not provided the  
> underlying data for the report provided to Commissioners Court on July 28.

>

> e. Data

>

>  
>  
> Would Monday at 2 pm EST, or Tuesday at 11 am EST work for a meet and  
> confer?

>  
>  
>  
> Thanks,

>  
> Elizabeth

>  
>  
>  
> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
> [elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
> [202-681-2721](tel:202-681-2721)  
> <http://www.civilrightscorps.org/>  
> \*Admitted solely to practice law in Maryland; not admitted in the  
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> 49(c)(3).\*

>  
> --

>  
>  
> Elizabeth Rossi  
> Attorney  
> Civil Rights Corps  
> [elizabeth@civilrightscorps.org](mailto:elizabeth@civilrightscorps.org)  
> [202-681-2721](tel:202-681-2721)  
> <http://www.civilrightscorps.org/>

>  
> \*Admitted solely to practice law in Maryland; not admitted in the  
> District of Columbia. Practice is limited pursuant to D.C. App. R.  
> 49(c)(3).\*

# EXHIBIT D





June 26, 2017

From: Budget Management - Justice  
 Re: Post-Federal Order Misdemeanor Release Information  
 Report for Commissioners: Frequently Asked Questions (FAQ)

Since a Federal Order went into effect on June 6, 2017, requiring the Harris County Sheriff to begin releasing certain defendants from the jail within 24 hours without an order from the County Court, questions have arisen about the individuals released, the related charges, and other outcomes.

At the request of the County Attorney's Office, Budget Management prepared the following report, in the form of an FAQ sheet, for the County Commissioners.

Q: How many people have been released on the Sheriff's Unsecured Bond?

A: From 6/6/2017 through 6/23/2017, 978 people have been released unsecured per Federal Court Order. There are 1275 County Court cases related to the unsecured releases. (For the same time period, there are 1070 cases related to surety releases.)

Q: On charges are people are being released on the Sheriff's Unsecured Bond, compared to charges for those released on Surety?

A: The following tables breakdown the offenses and respective bond release types between 6/6/2017 and 6/19/2017:

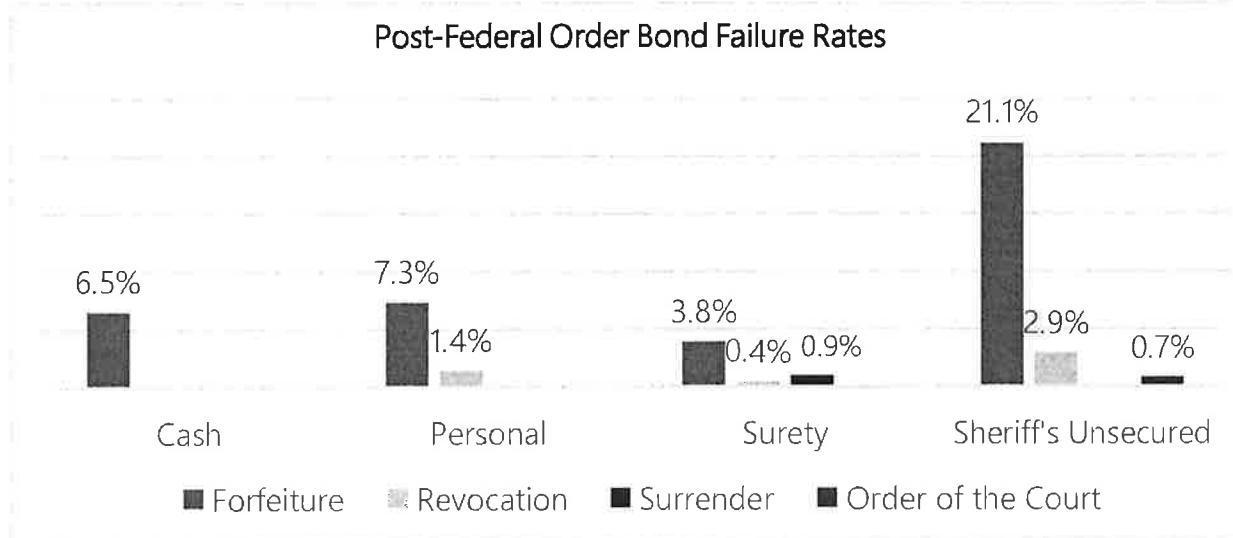
Sheriff's Unsecured Bond Release Offense Distribution		Surety Bond Release Offense Distribution	
Criminal Trespass	21.9%	Drugs	29.7%
Criminal Mischief, Evading Arrest, Failure to I.D.	20.5%	Criminal Mischief, Evading Arrest	15.4%
DUI/DWI	11.3%	DUI/DWI	14.7%
Traffic	9.2%	Traffic	12.8%
Drugs	9.2%	Assault-Family Member	11.6%
Theft-Fraud	9.0%	Theft-Fraud	7.2%
Assault-Family Member	9.0%	Deadly Conduct, Discharge	
Assault	5.3%	Firearm in Metro	2.9%
Burglary MV	3.0%	Assault	2.5%
Deadly Conduct, Discharge Firearm in Metro	1.4%	Burglary MV	2.5%
		Criminal Trespass	0.6%

Q: How many people released on a Sheriff's Unsecured Bond have prior convictions?

A: Of those released unsecured, between 6/6/2017 and 6/19/2017, about 80% had prior criminal convictions. By comparison, 70 % of those released on surety bonds, but otherwise eligible for unsecured bond, had prior criminal convictions.

Q: What is the bond failure rate of those released on a Sheriff's Unsecured Bond? (combining failure to appear, failure to obey bond conditions, and failure to obey laws)

A: County Court data show a bond failure rate of 24.7% (308 failures out of 1245 cases) on the cases of those released by Sheriff's Unsecured Bond, between 6/6/2017 and 6/23/2017. Sheriff's Unsecured Bond failure rate is more than four times greater than the Surety Bond failure rate of 5.13% (55 failures out of 1070 cases) and about three times greater than the Personal Bond failure rate of 8.7%.



Q: Of those released on Sheriff's Unsecured Bond, how many have been charged with new criminal offenses?

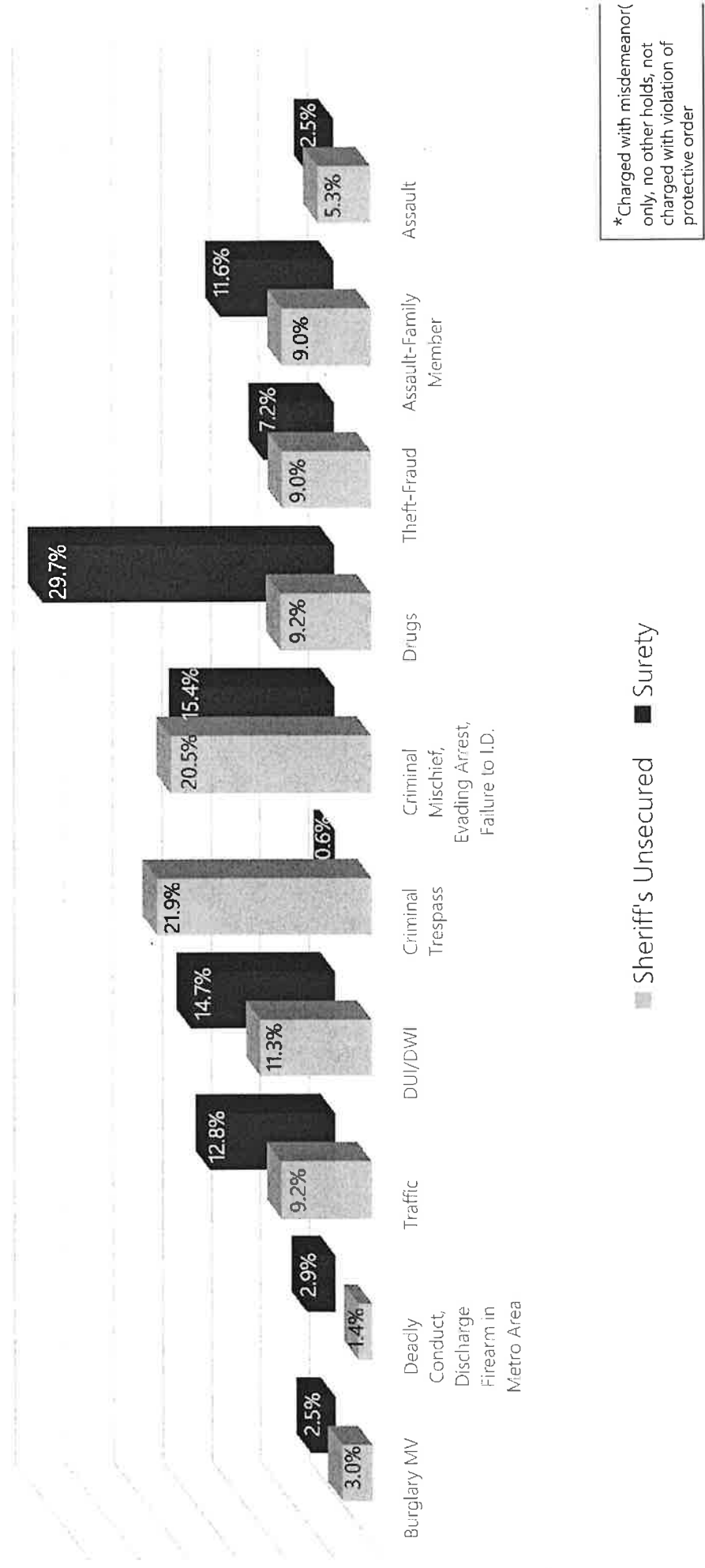
A: Of those released unsecured between 6/6/2017 and 6/23/2017, 40 people (about 3%) were charged with new criminal offenses. Of those released on surety bonds, six people (1%) were charged with new criminal offenses.

Sample size  
= 1040

6/6/2017  
through  
6/19/2017

# Post-Federal Order Misdemeanor Offense Distribution

## Comparison of Sheriff's Unsecured and Surety Releases\*



# EXHIBIT E



July 28, 2017

To:	Commissioners Court	From:	Budget Management - Justice
Re:	Post-Federal Order Misdemeanor Release Information June 6 thru July 11, 2017		

A Federal Order went into effect on June 6, 2017, requiring the Harris County Sheriff to begin releasing certain defendants on unsecured bond without an order from the County Court. According to the Harris County Sheriff's Office, 1,731 people were released on a Sheriff's Unsecured Bond between June 6, 2017 and July 11, 2017, per Federal Court Order.

As a follow up to previous information provided to Commissioner's Court, Budget Management assembled the following tables using data provided by County Court Administration and JIMS.

Note: While the Sheriff's Office data focus on tracking individual people from entry to release, the Court data reflect its chief task of processing cases and tracking the related judicial decisions. So the Court focuses on cases and bond decisions. An individual defendant may have multiple cases which also generates multiple bond decisions. When reviewing the data, it is important to note whether the data refers to the person, the case, or the bond decision.

Q: What are those released on the Sheriff's Unsecured Bond charged with, compared to charges for those released on other Bond types in the same period?

A: The following table shows, by offense, how many bonds of each type were approved between June 6 and July 11, 2017.

<b>Offense</b>	<b>Cash</b>	<b>Personal</b>	<b>Surety</b>	<b>Unsecured</b>	<b>Total</b>
DWI/DUI	116	170	754	263	1,303
Theft	37	122	284	204	647
Trespass of Property or Building	5	55	43	375	478
Possession of Marijuana (under 2 oz up to 28 grams) & other Drug Offenses	11	71	203	186	471
Driving While License Suspended/Invalid	10	120	180	135	445
Assault of a Family Member	7	38	171	216	432
Assault (Bodily Injury, Terroristic Threat, Deadly Conduct)	2	29	115	172	318
Other property offenses (incl. Criminal Mischief, Burglary of Vehicle)	13	31	94	145	283
Other Public Administration Offenses (incl. Failure to ID to Police Officer, Interfering with duties of a Public Servant)	8	58	72	145	283
Prostitution	43	46	83	59	231
Carrying Handgun in a Motor Vehicle, Other Weapons Offenses	1	33	122	74	230
Traffic	15	28	92	39	174
Failure to Stop & Give Info After Accident with Damage	5	22	64	31	122
Evading Arrest/Detention	1	16	41	62	120
Other Public Order & Indecency Offenses	9	6	50	44	109
Other Misdemeanors	5	9	51	17	82
Trespass of a Habitation or Shelter	0	7	14	49	70
Misc. Alcohol Offenses	3	0	17	5	25
<b>Total</b>	<b>291</b>	<b>861</b>	<b>2,450</b>	<b>2,221</b>	<b>5,823</b>

Q: What is the failure rate for those released with misdemeanor charges between June 6, 2017 and July 11, 2017?

A: The following table shows failure rates by bond type.

Bond Description	Warrant Activity	# of Approved Bonds	# of Bond Failures	Failure Rate %
CASH	Bond Forfeiture	291	26	8.93%
	Bond Revocation	291	5	1.72%
				10.65%
PERSONAL	Bond Forfeiture	862	72	8.35%
	Bond Revocation	862	28	3.25%
				11.60%
SURETY	Bond Forfeiture	2,450	107	4.37%
	Bond Surrender	2,450	22	0.90%
	Bond Revocation	2,450	14	0.57%
				5.84%
UNSECURED-SHERIFF	Bond Forfeiture	2,221	706	31.78%
	Bond Revocation	2,221	55	2.48%
	Order of the Court	2,221	8	0.36%
				34.62%

**Warrant Activity definitions provided by County Courts Administration:**

- Bond Forfeiture - Alias Capias issued by the Court for the defendant because the defendant forfeited bond (didn't show up to court as ordered)
- Bond Revocation - Alias Capias issued by the Court for bond revocation (violated a condition of release)
- Bond Surrender - Alias Capias issued by the Court for bond surrender (surety asked permission to surrender the bond)
- Order of the Court - Alias Capias issued by the Court

Q: Of those released on bond with misdemeanor-only charges between June 6, 2017 and July 11, 2017, how many have been charged with new criminal offenses?

A: New law violations for misdemeanor-only releases between 6/6/17 and 7/11/17 are shown below. A list of the new law violations is attached as Appendix I.

	Cash	Personal	Surety	Unsecured	Total
# of People Released	131	727	1,023	1,731	3,612
# of <u>people</u> with new criminal offenses	2	18	15	115	150
% of <u>people</u> with a new charge(s)*	1.5%	2.5%	1.5%	6.6%	4.2%
*Some people have multiple charges					
# of new criminal offenses (charges)	2	21	19	138	180

Note: The Sheriff's Office identified 1,731 people released on unsecured bond vs. 1,763 from Budget Management's report from JIMS. The Sheriff's figure is used here.

# APPENDIX I

## New Law Violations for People Released on Misdemeanor-Only Charges

June 6, 2017 through July 11, 2017

Originally Released on Cash Bond (2 people, 2 new charges)

Person ID (SPN)	New Charges
02908216	POSS CS PG 1 <1G
02909353	FSGI ACC ATTEND DAMAGE VEH>=\$2

Originally Released on Personal Bond (18 people, 21 new charges)

Person ID (SPN)	New Charges
01524886	TRESPASS PROP/BLDG-NO FORB ENT
01576231	POSS CS PG 1 <1G
01580448	TRESPASS PROP/BLDG-NO FORB ENT
01728268	VIOL PROTECTIVE ORDER
02124029	RESIST ARR-SEARCH
02374003	POSS CS PG 1 1 - 4 GRAMS
02567726	FELON POSS WPN
02638517	POSS SYNTH CANNABINOIDS >2OZ<=
02659111	POSS MARIJUANA UNDER 2 OZ (HSC
02692579	VIOL PROTECTIVE ORDER
02842347	INTERFER W/EMER TEL CALL W/PRE
02842347	INTERFERENCE W/EMERGENCY TELEP
02865488	THEFT <\$100 W/PREV CONVICTION
02866397	DRV W/LIC INV W/PR CN/SUS/W/O
02892621	UNAUTH USE OF VEHICLE
02907849	AGG ASSAULT-FAMILY MEMBER
02907849	ASSAULT-FAMILY MEMBER
02907849	ASSAULT-FAMILY MEMBER
02907854	TRESPASS PROP/BLDG-NO FORB ENT
02908369	DRIVING WHILE INTOXICATED
02911915	ASSAULT-FAMILY MEMBER

Originally Released on Surety Bond (15 people, 19 new charges)

Person ID (SPN)	New Charges
01079502	ASSLT INT/RCK/IMP/BRTH/CIRC/PR
01495341	BURGLARY OF HABITATION
01928503	DRIVING WHILE LIC SUSPENDED -
02498788	DRIVING WHILE LIC SUSPENDED
02498821	CRIM TRES HAB/SHLTR/SUPRFUND/I



Person ID (SPN)	New Charges
02549714	INJURY CHILD UNDER 15 B/INJURY
02613526	AGG ASSAULT-FAMILY MEMBER
02726945	BURG OF VEHICLE W/2 OR MORE CO
02726945	ENGAGING IN ORG CRIM ACTIVITY
02726945	ENGAGING IN ORG CRIM ACTIVITY
02738026	POSS CS PG 3 <28 GRAMS
02780432	THEFT >=2,500 <30,000
02854049	AGG ROBBERY-DEADLY WPN
02876331	CRIMINAL MISCHIEF >=\$750<\$2,50
02876331	POSS MARIJUANA UNDER 2 OZ (HSC
02891323	ASSAULT-FAMILY MEMBER
02891815	VIOL PROTECTIVE ORDER
02891815	VIOL PROTECTIVE ORDER
02901005	THEFT >=\$100<\$750

Originally Released on Unsecured Bond (115 people, 138 new charges)

Person ID (SPN)	New Charges
00202757	TRESPASS PROP/BLDG-NO FORB ENT
00465424	TRESPASS PROP/BLDG-NO FORB ENT
00478549	DWI THIRD
00636454	DRV W/LIC INV W/PR CN/SUS/W/O
00724952	STALKING
00817600	POSS CS PG 1 <1G
00850642	FAIL TO ID TO P.O. FALSE INF/F
00941665	TRESPASS PROP/BLDG-NO FORB ENT
00948599	EVAD ARREST/DETENTION W/PREV C
00984571	AGG ASSAULT W/DEADLY WEAPON
00984571	FELON POSS WPN
00990205	TRESPASS PROP/BLDG-NO FORB ENT
01092961	TRESPASS PROP/BLDG-NO FORB ENT
01092961	TRESPASS PROP/BLDG-NO FORB ENT
01177717	EVAD ARREST/DETENTION W/PREV C
01177717	VIOL PROTECTIVE ORDER
01214963	CRIM TRES HAB/SHLTR/SUPRFUND/I
01234946	BURGLARY OF A BUILDING
01427430	UNAUTH USE OF VEHICLE
01580448	TRESPASS PROP/BLDG-NO FORB ENT
01726945	EVADING ARREST/DETENTION
01770068	CRIM TRES HAB/SHLTR/SUPRFUND/I
01770068	CRIM TRES HAB/SHLTR/SUPRFUND/I

## Originally Released on Unsecured Bond (Continued)

Person ID (SPN)	New Charges
01770756	POSS CS PG 1 <1G
01772305	TRESPASS PROP/BLDG-NO FORB ENT
01777514	BURGLARY OF VEHICLE
01817854	TERRORISTIC THREAT
01817854	VIO ORDER ENJOIN ORG CRIM ACT
01823226	ASSAULT-FAMILY MEMBER
01840564	FORGERY
01840564	TRESPASS PROP/BLDG-NO FORB ENT
01862191	POSS CS PG 1 1 - 4 GRAMS
01908843	TRESPASS PROP/BLDG-NO FORB ENT
01987245	TRESPASS PROP/BLDG-NO FORB ENT
02029555	PUBLIC INTOX W/3 PRIOR CONVICT
02068223	POSS CS PG 1 <1G
02071102	FAIL TO ID TO P.O. FALSE INF
02071792	AGG ASSAULT-FAMILY MEMBER
02091663	TERRORISTIC THREAT
02124029	TRESPASS PROP/BLDG-NO FORB ENT
02146506	ATT TAMPER WITH PHYSICAL EVIDE
02146506	EVADING ARREST/DETENTION
02188077	CREDIT/DEBIT CARD ABUSE
02206381	TRESPASS PROP/BLDG-NO FORB ENT
02217845	TERRORISTIC THREAT
02273333	ASSAULT-FAMILY MEMBER
02281833	CRIM TRES HAB/SHLTR/SUPRFUND/I
02303566	ASSAULT-BODILY INJURY
02310625	EVADING ARREST/DETENTION
02319628	TRESPASS PROP/BLDG-NO FORB ENT
02333561	FAIL IDENT TO P-O-FUGITIVE
02333561	PUBLIC LEWDNESS
02333561	TRESPASS PROP/BLDG-NO FORB ENT
02347850	RESIST ARR-SEARCH
02367443	ENDANGERING A CHILD
02406488	THEFT >=\$100<\$750
02416357	POSS CS PG 1 <1G
02420350	POSS CS PG 2 <1GRAM
02424998	FAIL TO ID TO P.O. FALSE INF/F
02424998	TRESPASS PROP/BLDG-NO FORB ENT
02427840	ASSAULT-BOD INJ-PUB SERV/RETAL
02427840	POSS CS PG 1 <1G
02471138	TRESPASS PROP/BLDG-NO FORB ENT

## Originally Released on Unsecured Bond (Continued)

Person ID (SPN)	New Charges
02486169	POSS CS PG 1 <1G
02489622	FAIL TO ID TO P.O. FALSE INF/F
02490846	UNAUTH USE OF VEHICLE
02501083	ASSAULT-FAMILY MEMBER
02525531	DWI W/CHILD UNDER 15 YOA
02526075	EVADING ARREST/DETENTION
02548940	UNAUTH USE OF VEHICLE
02592360	BURGLARY OF HABITATION
02592360	CRIM TRES HAB/SHLTR/SUPRFUND/I
02593457	FORGERY GOVT FINANCIAL INST
02598327	VIOL PROTECTIVE ORDER
02603513	BURGLARY OF HABITATION
02610091	TRESPASS PROP/BLDG-NO FORB ENT
02611702	TRESPASS PROP/BLDG-NO FORB ENT
02623528	CRIM MISCH >=100 <\$750
02623528	TRESPASS PROP/BLDG-NO FORB ENT
02623528	TRESPASS PROP/BLDG-NO FORB ENT
02636684	THEFT >=\$750 <\$2,500
02669215	THEFT >=\$100<\$750
02669215	TRESPASS PROP/BLDG-NO FORB ENT
02692901	ASSLT FAM/HOUSEHOLD MEM W/PREV
02692901	HARASSMENT OF PUBLIC SERVANT
02696851	ASSAULT-FAMILY MEMBER
02702681	TRESPASS PROP/BLDG-NO FORB ENT
02726003	ASSAULT-BODILY INJURY
02728529	THEFT <\$2,500 2/MORE PREV CONV
02731737	SEX ASSLT CHILD 14-17
02733673	EVADING ARREST/DETENTION
02733673	POSS CS PG 1 <1G
02735888	AGG ASSAULT W/DEADLY WEAPON
02756822	AGG ASSAULT W/DEADLY WEAPON
02760791	ATT BURGLARY HABITATION
02763808	TRESPASS PROP/BLDG-NO FORB ENT
02770132	TRESPASS PROP/BLDG-NO FORB ENT
02783275	BURGLARY OF A BUILDING
02800116	ASSAULT-BOD INJ-PUB SERV/RETAL
02800116	CRIMINAL MISCHIEF >=\$750<\$2,50
02800116	DRIVING WHILE INTOXICATED
02820421	ASSAULT-BOD INJ-PUB SERV/RETAL
02825038	ASSLT FAM/HOUSEHOLD MEM W/PREV

## Originally Released on Unsecured Bond (Continued)

Person ID (SPN)	New Charges
02830939	HARASSMENT OF PUBLIC SERVANT
02838563	THEFT >=\$750 <\$2,500
02842333	THEFT <\$2,500 2/MORE PREV CONV
02846309	THEFT >=\$100<\$750
02849939	UNAUTH USE OF VEHICLE
02851567	TRESPASS PROP/BLDG-NO FORB ENT
02857156	TRESPASS PROP/BLDG-NO FORB ENT
02857156	TRESPASS PROP/BLDG-NO FORB ENT
02857906	THEFT >=\$30,000 <\$150,000
02865488	THEFT >=\$100<\$750
02877092	MAN/DEL CS PG I <1GRAM
02899361	POSS MARIJUANA UNDER 2 OZ (HSC
02904973	FRAUD/USE/POSS ID INFO-LESS 5
02905130	TRESPASS PROP/BLDG-NO FORB ENT
02905996	FALSE REPORT TO POLICE OFFICER
02906547	TRESPASS PROP/BLDG-NO FORB ENT
02906547	TRESPASS PROP/BLDG-NO FORB ENT
02907456	ROBBERY-BODILY INJURY
02908019	THEFT >=\$100<\$750
02908032	DEL SYNTH CANNABINOIDS <1 GRAM
02908279	POSS CS PG 3 <28 GRAMS
02908357	THEFT >=\$100<\$750
02908485	AGG KIDNAPPING
02908485	AGG KIDNAPPING
02908590	UNAUTH USE OF VEHICLE
02908789	THEFT >=\$750 <\$2,500
02908789	THEFT >=2,500 <30,000
02908868	FORGERY
02908957	DRIVING WHILE INTOXICATED
02909276	TRESPASS PROP/BLDG-NO FORB ENT
02909676	TERRORISTIC THREAT
02910122	DEL SYNTH CANNABINOIDS <1 GRAM
02911508	SEX ASSLT CHILD 14-17
02911738	UNAUTH USE OF VEHICLE
02911865	TRESPASS PROP/BLDG-NO FORB ENT

# EXHIBIT F

*Ms. David Cross of Marie VanNostrand, Ph.D.*

1 detention is allowable in that state, it will say release not  
2 recommended. If preventive detention is not allowed in that  
3 state, it will say release with maximum conditions, and those  
4 terms and conditions are left to the discretion of the Court.

5 THE COURT: Putting aside in the states that you know  
6 of that distinguish between its application, tools application  
7 and felony versus misdemeanor pretrial arrests, are you aware  
8 of any of those?

9 THE WITNESS: I'm not aware of any that distinguish  
10 between misdemeanors and felonies.

11 THE COURT: For those that don't distinguish, they are  
12 measuring both, are you aware of any states that measure the  
13 percentage falling within the red on the lower right-hand side?

14 THE WITNESS: I believe the one is -- I'm looking at  
15 her because I think there was something introduced into  
16 evidence. The one where we had pretty comprehensively studied  
17 it was in Lucas County, Ohio. I don't have that number  
18 memorized, but if we can look at that.

19 THE COURT: That would be helpful.

20 MS. DAVID: Exhibit 119. Can you pull up the bullet  
21 points? It might be helpful to see the numbers.

22 THE WITNESS: I was thinking more about a PowerPoint  
23 presentation.

24 MS. DAVID: That's 120.

25 THE WITNESS: Can go to slide 20?

*Ms. David Cross of Marie VanNostrand, Ph.D.*

1 With these data, risk levels are essentially in  
2 the red, Your Honor. So with this population, misdemeanor and  
3 felonies, it is 26.9 percent. And so in Lucas County, Ohio --

4 THE COURT: Either FTA or NVCA, that is failure to  
5 appear?

6 THE WITNESS: Yes.

7 THE COURT: That's a risk of failure?

8 THE WITNESS: Those people who were released failed at  
9 a rate of 47 percent, so almost half actually did.

10 THE COURT: That's not really my question.

11 THE WITNESS: Your question is how many are  
12 categorized as the highest level, and according to these data,  
13 it is 26.9 percent.

14 THE COURT: And these would be getting the highest  
15 level of -- highest terms and conditions?

16 THE WITNESS: Correct.

17 THE COURT: And the risk of -- and the actual  
18 experience of any failure is, in fact, higher. It is  
19 47.1 percent and they have been released?

20 THE WITNESS: Correct. About half of the people who  
21 were at risk level six were released before the disposition of  
22 their case and they failed to appear or committed a new crime  
23 or both at a rate of 47 percent, so about half. So they are  
24 the highest-risk population compared to the risk level ones who  
25 make up 15 percent of the population and they don't appear just

*Ms. David Cross of Marie VanNostrand, Ph.D.*

1 under 20 percent.

2 THE COURT: So half and half basically?

3 THE WITNESS: Yes.

4 THE COURT: Okay. And the lowest levels of release --  
5 the lowest risk level is 15.2 percent of the population,  
6 86.9 percent of them get released and of that number,  
7 approximately 19 percent has any failure?

8 THE WITNESS: Correct.

9 THE COURT: Within the pretrial period?

10 THE WITNESS: Yes. Prior to the disposition of their  
11 case.

12 THE COURT: That is very helpful. Thank you. And do  
13 you know -- that's what pretrial services knows. If they make  
14 this risk level -- if they assign a risk level to a given  
15 arrestee, do you have any numbers that tell you in what  
16 percentage of those cases the judge will treat that person as  
17 being in a different risk level in terms of whether there is  
18 release or not and the stringency of the conditions, including  
19 whether there is a financial condition imposed?

20 THE WITNESS: We target what we call sort of a  
21 consistency rate of about 85 percent.

22 THE COURT: Which means it is the same at the end of  
23 the process as it is at the beginning, the judge hasn't  
24 changed?

25 THE WITNESS: No, it means that the judge followed the