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March 11, 2021

Harris County Criminal District Judges
Criminal Justice Center
1201 Franklin Street
Houston, TX 77002

Dear Honorable Harris County Criminal District Judges:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I respectfully urge you to hold emergency jail release hearings immediately to release at least 4,000 detained individuals to help remedy the human rights crisis that is currently underway in the Harris County Jail. Correctional facilities and detention centers, including the Harris County Jail, have been ravaged by the COVID-19 pandemic across the country, but the statewide power outage in Texas has made the situation even more dire. This unprecedented moment demands bold and swift action to prevent further suffering in the jail’s deplorable conditions. We thus join local and national advocacy organizations in a call for the immediate release of 4,000 people to alleviate this ongoing crisis.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is the nation’s oldest civil and human rights law organization. Since its founding more than eighty years ago, LDF has worked at the national, state, and local levels to pursue racial justice and eliminate structural barriers for Black Americans in the areas of criminal justice, economic justice, education, and political participation. As part of its criminal justice advocacy, LDF has long been concerned about the racial inequities pertaining to incarceration, including pretrial detentions. For example, in 2017, LDF submitted an amicus curiae brief with Harris County Commissioner Rodney Ellis in *ODonnell v. Harris County, Texas*, 16-cv-1414 (S.D. Tex.), to support a legal challenge to the pretrial detention of individuals charged with misdemeanor offenses based solely on their inability to pay bail. Our amicus brief raised grave concerns about the racial disparities in Harris County’s pretrial detention. While Black people made up 18% of the Harris County’s adult

population, they comprised 48% of the adult jail population in Harris County.¹ Moreover, although Black people constituted the highest percent of misdemeanor arrestees in Harris County among all racial groups, they had the “lowest pretrial release rate for misdemeanor offenses.”² In fact, “white defendants were released on bond about 70% of the time for misdemeanor offenses and 44% for felonies,” compared to Black people who “were released only 45% of the time for misdemeanors and 30% for felonies.”³ These racial disparities persist in the jail to the present day.⁴ Thus, we regard the current humanitarian crisis in the Harris County Jail as a racial justice crisis given its disparate harms on Harris County’s Black residents.

As of March 8, 2021, there are 8,923 people incarcerated in the Harris County Jail—7,801 of whom are detained pretrial and thus presumed innocent of the crimes charged.⁵ One-half of the jail population is comprised of people detained for nonviolent offenses.⁶ Within the jail’s congregate setting, there have been 2,819 reported COVID-19 infections and eight deaths.⁷ While the viral spread and significant risk of serious COVID-19 illness or death alone constitute a public health crisis, the power outage in Texas last month elevated the crisis to an even greater emergency. As a winter storm swept through Houston, the power outage led to frozen pipes, a

¹ Brief of *Amici Curiae* NAACP Legal Defense and Educational Fund, Inc., and Harris County Commissioner Rodney Ellis in Support of Plaintiffs’ Amended Motion for Preliminary Injunction (D.E. 143), 4:16-cv-1414 (S.D.N.Y. Mar. 27, 2017), ECF No. 261-1, at 8 & n.10 (citing Texas Joint Hearing of the Committees on County Affairs and Criminal Jurisprudence, Testimony by Professor Sandra Guerra Thompson, University of Houston Law Center, Sept. 21, 2016, at 5).

² *Id.* at 8 & n.11 (citing Marcia Johnson & Lockett Anthony Johnson, *Bail: Reforming Policies to Address Overcrowded Jails, the Impact of Race on Detention, and Community Revival in Harris County, Texas*, 7 *NW J. L. & Soc. Pol’y* 42, 67–68 (2012) (footnotes omitted)).

³ *Id.*

⁴ See, e.g., Harris County, Texas Current Jail Population, Mar. 8, 2021, at <https://charts.hctx.net/jailpop/App/JailPopCurrent> (indicating Harris County jail population is 48% Black, Non-Hispanic, compared to 25% White, Non-Hispanic); see also Will Dobbie & Crystal Yang, *Proposals for Improving the U.S. Pretrial System*, The Hamilton Project (Mar. 2019) at 50, https://www.hamiltonproject.org/assets/files/DobbieYang_PP_20190319.pdf (“Controlling . . . for observable characteristics of defendants, Harris County in Texas, . . . is 34 percent more likely to detain black defendants compared to white defendants with the same observable characteristics . . .”).

⁵ Harris County, Texas Current Jail Population, *supra* note 4.

⁶ Harris County, Texas Current Jail Population, *supra* note 4.

⁷ *8th prisoner dies of COVID-19 in Harris Co. Jail*, Katy Times (Mar. 3, 2021), <http://katytimes.com/stories/8th-prisoner-dies-of-covid-19-in-harris-co-jail,2368>.



lack of running water, feces-filled toilets, and freezing cells.⁸ As one person detained in the jail commented, “It’s just not right—it’s like we’re not even human.”⁹

Pretrial detention and the rising jail population have been a longstanding problem in Harris County, but the COVID-19 pandemic and the recent power outage are a wakeup call for officials to finally address the overincarceration of Black people and other people of color who become enmeshed in the criminal justice system. Thus, LDF joins local and national advocacy organizations to call upon you to reduce the jail population by 4,000 people as soon as possible. Specifically, you must:

1. Immediately expand the General Order Bond to include and apply retroactively to all people charged with a drug or theft offense, thus reducing the jail population by over 600 individuals.
2. Immediately hold emergency bail hearings via videoconference for each person assigned to your court and held in pretrial detention, prioritizing those individuals who have not had motions filed within the past six months and requiring argument from defense counsel, in order to release approximately 3400 individuals.

This period of public health emergency requires that officers of the courts take affirmative measures to ensure the protection of the civil and human rights of those held in state custody. I thus respectfully urge you to use your authority to lessen, to the fullest extent possible, the untold human suffering that is taking place in the Harris County Jail by releasing at least 4,000 individuals in the coming days.

Respectfully,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn A. Ifill
President and Director-Counsel

⁸ Katie Shepherd, *Texas inmates stuck with clogged toilets, freezing cells, advocates say: ‘So cold that their bodies are numb,’* Washington Post (Feb. 19, 2021), <https://www.washingtonpost.com/nation/2021/02/19/texas-jails-power-water-outage/>.

⁹ Paulina Smolinski & Justin Carissimo, *“It’s like we’re not even human”;* Texas inmates face frigid temperatures during weather crisis, CBSNews.com (Feb. 20, 2021), <https://www.cbsnews.com/news/texas-power-outage-jails-prisons-winter-storm/>.