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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

THE PHILADELPHIA
COMMUNITY BAIL FUND, by and
through its Trustees, Candace McKinley
and Lauren Taylor,

THE YOUTH ART & SELF-
EMPOWERMENT PROJECT, by
and through its Trustees, Sarah Morris
and Joshua Glenn,

M.W., an individual being held on bail
he cannot afford,

P.R., an individual being held on bail he
cannot afford,

G.T., an individual being held on bail
he cannot afford,

T.J., an individual being held on bail he
cannot afford,

No.

S.T., an individual being held on bail he cannot afford,

D.M., an individual being held on bail he cannot afford,

K.B., an individual being held on bail she cannot afford,

J.H., an individual being held on bail he cannot afford, and

H.J., an individual being held on bail he cannot afford,

Z.L., a minor being held on bail he cannot afford, by and through his mother **A.B.**,

Petitioners,

v.

**ARRAIGNMENT COURT
MAGISTRATE FRANCIS
BERNARD** of the
COMMONWEALTH OF
PENNSYLVANIA,

**ARRAIGNMENT COURT
MAGISTRATE JANE RICE** of the
COMMONWEALTH OF
PENNSYLVANIA,

**ARRAIGNMENT COURT
MAGISTRATE SHELIA BEDFORD**
of the COMMONWEALTH OF
PENNSYLVANIA,

**ARRAIGNMENT COURT
MAGISTRATE KEVIN DEVLIN** of

the COMMONWEALTH OF
PENNSYLVANIA,

**ARRAIGNMENT COURT
MAGISTRATE JAMES O'BRIEN** of
the COMMONWEALTH OF
PENNSYLVANIA,

**ARRAIGNMENT COURT
MAGISTRATE ROBERT STACK** of
the COMMONWEALTH OF
PENNSYLVANIA,

Respondents.

**CLASS ACTION COMPLAINT AND
PETITION FOR WRIT OF MANDAMUS**

Introduction

1. Every day, hundreds of individuals—charged with but not convicted of crimes—languish in Philadelphia’s jails for the sole reason that they are unable to afford the bail that Respondents Bernard, Rice, Bedford, Devlin, O’Brien, and Stack—the Arraignment Court Magistrates of the First Judicial District—have imposed on them. The Pennsylvania Constitution and the Rules of Criminal Procedure promulgated by this Court are designed to prevent this outcome and to safeguard the presumption of innocence. Only if cash bail¹ is necessary to ensure a

¹ By “cash bail,” Petitioners mean “release on a monetary condition,” a requirement that a defendant pay some amount of cash to the court prior to being released. Pa. R. Crim. P. 524. In the First Judicial District, if a magistrate imposes cash bail, the defendant may obtain his release by paying 10% of the bail amount, plus a \$10.00 administrative fee, up front. If bail is forfeited, the defendant will owe the full amount of the bail. As an alternative, a magistrate may set a dollar figure for bail, but allow the defendant to obtain his release by signing a bond for the full amount,

defendant's appearance at trial may an Arraignment Court Magistrate impose a monetary condition on release—and even then, only after inquiring into the defendant's ability to pay. Cash bail may never be used for the purpose of ensuring that a defendant remains incarcerated until trial.

2. But Respondents routinely fail to abide by these mandates.

Respondents' disregard for the Pennsylvania Constitution and the Rules of Criminal Procedure, and for the rights of the individuals that appear before them, results in the unjustified pretrial detention of countless defendants in Philadelphia, and inflicts serious, irreparable harm on those unlawfully detained. Even short periods of detention place individuals' health and livelihoods—and the well-being of their families—in jeopardy.

3. Apparently indifferent to their duties and to the circumstances of the individuals who appear before them, Respondents regularly impose cash bail upon indigent defendants like the Individual Petitioners here, all of whom are currently held on bail they cannot afford. Respondents impose such bail without any inquiry into those individuals' ability to pay, or whether available alternative conditions on release would serve the primary purpose of bail—ensuring the defendant's appearance at future court dates. In fact, Respondents routinely appoint counsel on

a practice known as “release on unsecured bail bond,” “Sign Own Bond,” or “SOB.” As noted below, magistrates also have the ability to set non-monetary conditions of release.

the basis of a defendant's indigence in one breath, then set thousands of dollars in bail in the next, without investigating whether the defendant can afford the bail.² In many cases with more serious charges, Respondents impose high cash bail *specifically to ensure* that defendants remain incarcerated pending trial, thus using an illusory condition of release as a de facto detention order.

4. Upon information and belief, Respondents assigned bail in excess of \$100,000 to several Petitioners for the purpose of keeping those Petitioners incarcerated until trial. Although these Petitioners face serious charges, that alone does not justify using bail as a detention order, setting bail so high as to preclude all possibility of release.

5. What is more, Respondents conduct these proceedings without any of the hallmarks of due process, and, at times, in an abusive fashion. Respondents make these bail determinations in cursory "hearings" that last on average three minutes or less, and at which the defendant typically can neither hear nor be heard. Respondents threaten to impose higher bail on defendants who complain that they cannot afford the bail set; they have told others to "grow up" and stop complaining.

² Petitioners acknowledge that a person may be too poor to pay for private defense counsel, but still able to pay a 10% deposit on a reasonable bail. Without inquiry into this question, however, no magistrate can assume that a person who is too poor to pay for counsel nonetheless has the immediate resources to purchase his freedom.

6. As a result of Respondents' systemic failure to carry out their mandatory duties, thousands of people who should be released on non-monetary conditions are assigned cash bail that they cannot afford and, as a result, are—for days or months—unjustly deprived of their pretrial liberty. In many instances, defendants qualify for Early Bail Review by a judge of the Municipal Court five or more days after their preliminary arraignment. Of those who receive Early Bail Review, 87% are released, a staggering figure that confirms the unreliability and unfairness of Respondents' initial and cursory decisions.³

7. Whether held for five days or five months, defendants who are assigned unaffordable cash bail by Respondents suffer severe repercussions, including the loss of jobs, housing, and separation from their children.

8. Community advocates such as the Philadelphia Community Bail Fund and the Youth Art & Self-Empowerment Project, along with academics, philanthropic organizations and many government officials have, for years, called out the substantial harms caused by Respondents' illegal imposition of unaffordable cash bail.⁴ Despite the chorus of voices for reform, Respondents have persisted in the illegal practices described herein.

³ See MacArthur Foundation Safety and Justice Challenge, *Philadelphia's Application for Renewal Funding*, at 25 (Oct. 24, 2018), <https://www.phila.gov/media/20181023152228/Renewal-Application-Final-10.22.18.pdf>.

⁴ See, e.g., Hayden Mitman, *Philadelphia is Looking to Skip Bail*, Philly Voice (Aug. 12, 2016),

9. With modest changes to the current preliminary arraignment system, Respondents could both protect defendants' right to pretrial release and accommodate the high number of defendants who pass through Philadelphia's arraignment court. The First Judicial District already employs many of the required processes at later stages in a criminal case.⁵

<https://www.phillyvoice.com/could-philadelphia-prisons-do-away-bail/>; Kyrie Greenberg, *Civic Leaders Host Forum to End Cash Bail in Philadelphia*, WHYY (Apr. 7, 2017), <https://why.org/articles/civic-leaders-host-forum-to-end-cash-bail-in-philadelphia/>; Victoria Law, *Taking on the Criminal Justice System After Spending 18 Months in Jail for a Crime He Didn't Commit*, Everyday Democracy (Sept. 6, 2017), <https://www.everyday-democracy.org/news/taking-criminal-justice-system-after-spending-18-months-jail-crime-he-didnt-commit>; Samaria Bailey, *Mama's Day Bailout Reunites Families for Mother's Day*, The Philadelphia Tribune (May 12, 2018), http://www.phillytrib.com/metros/mama-s-day-bailout-reunites-families-for-mother-s-day/article_d1bff99d-90ca-527a-96b7-9c5ba120b1b0.html.

⁵ For the many defendants for whom Release on Recognizance, or else a nominal bail, is the expected result, the preliminary arraignment can be very quick and proceed immediately, as happens now.

In other cases, the Commonwealth may seek additional conditions of release, or the magistrate may determine “that it is necessary to impose conditions of release in addition to the conditions required in [Rule 526](A) to ensure the defendant's appearance and compliance.” Pa. R. Crim. P. 526(B). In those cases, magistrates have several options to avoid money bail: they can Release on Special Conditions (ROSC), release on unsecured bond, and assign nominal bail. Philadelphia has a robust and successful Pretrial Services program that uses phone calls, text messages and other notifications to remind defendants of their court dates and the program has achieved a 95% appearance rate for those under its supervision. If these conditions are not seen as sufficient, the magistrate may inquire into the defendants' ability to pay a reasonable bail, or may reschedule the preliminary arraignment for a later sitting to allow the public defender time to communicate with the defendant and the Commonwealth concerning conditions of release (as noted, preliminary arraignments are heard in Philadelphia six times each and every day). The current Early Bail Review program provides a model for such hearings, which are generally uncontested and quick.

Finally, there will be cases in which the Commonwealth or the magistrate believes that the defendant should be detained pretrial because “no other condition or conditions can reasonably assure safety of any person and the community.” Pa. Const. Art. 1 § 14. In those cases, the magistrate should conduct the preliminary arraignment, but schedule the defendant for a full adversarial hearing, where the defendant has meaningful representation by counsel, the opportunity to testify, present witnesses, and cross examine the witnesses against him, as well as other protections. *See United States v. Salerno*, 481 U.S. 739, 742 (1987). The Philadelphia Municipal

10. Petitioners have no alternative path to relief and, therefore, respectfully ask this Court to issue a Writ of Mandamus requiring Respondents Bernard, Rice, Bedford, Devlin, O'Brien, and Stack to fulfill their mandatory responsibilities under the Constitution and the Rules of Criminal Procedure. In particular, Petitioners seek a Writ directing Respondents that they may not impose cash bail: (1) without exploring whether alternative conditions of release will ensure the defendant's appearance for trial; (2) without inquiring into the defendant's ability to pay the bail; or (3) for the purpose of ensuring that the defendant remains incarcerated until trial. If the Commonwealth seeks an order to detain a defendant pretrial, it must prove, at a hearing conducted with full due process, that "no other condition or conditions can reasonably assure safety of any person and the community," as required by our Constitution.

Jurisdiction

11. This Court has "original but not exclusive jurisdiction of all cases of ... [m]andamus or prohibition to courts of inferior jurisdiction." 42 Pa. Cons. Stat. §721(2). Where no appeal is pending before the Commonwealth Court of Pennsylvania or the Superior Court of Pennsylvania, this Court's jurisdiction to issue a writ of mandamus to an inferior tribunal is exclusive. *See Mun. Publ'ns, Inc. v.*

Court judges perform a similar function when they hear motions to reduce bail at the time of a defendant's preliminary hearing, but a detention hearing should occur sooner than the ten to twenty days between a defendant's arrest and preliminary hearing.

Court of Common Pleas, 489 A.2d 1286, 1288 (Pa. 1985); *Commonwealth ex rel. Stedman v. Duncan*, 147A.3d 57, 62 (Pa. Commw. Ct. 2016) (en banc). These principles extend to writs of mandamus directed at judicial officers of inferior tribunals. *Kneller v. Stewart*, 112 A.3d 1269, 1271 (Pa. Commw. Ct. 2015). This Court has exclusive jurisdiction over this petition for a writ of mandamus because Respondents “shall be deemed to be officers and employees of the judicial branch of the government of the Commonwealth of Pennsylvania.” Phila. M.C.R. Crim. P., A.C.M., Sec. 1.02.

Parties

12. Petitioner the Youth Art & Self-Empowerment Project (“YASP”) is an organization devoted to ending the practice of trying and incarcerating young people as adults. Every Saturday, members of YASP conduct art and poetry workshops at Riverside Correctional Facility in Philadelphia for young people who are awaiting trial as adults. Most of these young people are detained because they are unable to afford the cash bail amount imposed.

13. YASP also devotes significant resources to obtaining pretrial release for young people who are charged as adults, and in supporting young people who are charged as adults while they await trial. All of that work is made more difficult by the high bails routinely assessed these young people, virtually all of whom are indigent.

14. After young people are released from the adult prison system, YASP helps them find employment, continue their education, and apply for college. YASP staff dedicate time and energy to assisting young people in navigating obstacles to re-enrolling in school after periods of pretrial incarceration, a process that becomes more difficult the longer a young person has been held in adult jail.

15. YASP is also involved in activism and organizing against laws that allow youth to be automatically charged as adults and held pretrial in adult jails.

16. Petitioner the Philadelphia Community Bail Fund (“PCBF”) is a volunteer-run organization with a mission to end cash bail and pretrial detention in Philadelphia. PCBF raises funds and expends resources to post bail for incarcerated poor Philadelphians who cannot afford to purchase their freedom. Since its inception in May 2017, PCBF has raised over \$300,000 and posted bail for more than 100 people.

17. In addition to this direct service work, PCBF devotes resources to advocacy and community organizing to end mass incarceration. PCBF seeks to raise awareness of the racism embedded within the criminal justice system and bring to light the devastating impact cash bail has on individuals, families, and communities of color.

18. Petitioner M.W.⁶ is 18 years old. He was arrested on March 6, 2019 and appeared for preliminary arraignment on March 7, 2019. Magistrate Devlin imposed cash bail in the amount of \$7,500. M.W. does not have the financial ability to pay the \$760 required for his release and, as a result, he remains incarcerated.

19. Petitioner P.R. is 54 years old. He was arrested on March 4, 2019. At his preliminary arraignment, Magistrate O'Brien imposed cash bail in the amount of \$10,000. P.R. does not have the financial ability to pay the \$1,010 required for his release and, as a result, he remains incarcerated.

20. Petitioner G.T. is 52 years old. He was arrested on March 4, 2019. At his preliminary arraignment Magistrate Bernard imposed cash bail in the amount of \$250,000. G.T. does not have the financial ability to pay the \$25,010 required for his release and, as a result, he remains incarcerated.

21. Petitioner T.J. is 22 years old. He was arrested on two separate cases and appeared for preliminary arraignment on March 3, 2019, at which time Magistrate Stack imposed \$100,000 cash bail in each case. T.J. does not have the financial ability to pay the \$20,020 necessary to secure his freedom and, as a result, remains incarcerated.

⁶ The individual Petitioners are all facing criminal charges now pending in the First Judicial District and, therefore, will be required to appear before judges of the First Judicial District as their cases proceed. For that reason, Petitioners will file a motion for permission to proceed by pseudonym.

22. Petitioner S.T. is 19 years old. He was arrested on February 28, 2019 and charged in two cases. After recovering from injuries in the hospital, he appeared for preliminary arraignment on March 2, 2019. Magistrate Rice imposed cash bail in the amounts of \$15,000 and \$200,000. S.T. does not have the financial ability to post the \$21,520 required for his release and, as a result, he remains incarcerated.

23. Petitioner D.M. is 24 years old. He was arrested on March 1, 2019 and appeared for preliminary arraignment the following morning, when Magistrate Devlin imposed cash bail in the amount of \$300,000. D.M. does not have the financial ability to pay the \$30,010 required for his release and, as a result, he remains incarcerated.

24. Petitioner K.B. is a 27-year-old mother of two. At her preliminary arraignment on March 8, 2018, Magistrate O'Brien imposed cash bail in the amount of \$10,000. K.B. does not have the financial ability to pay the \$1,010 required for her release and, as a result, she remains incarcerated.

25. Petitioner J.H. is 32 years old. He was arrested on March 6, 2019 and appeared for preliminary arraignment the following day. Magistrate Bedford imposed cash bail in the amount of \$150,000. J.H. does not have the financial ability to pay the \$15,010 required for his release and, as a result, he remains incarcerated.

26. Petitioner H.J. is 29 years old. He appeared for preliminary arraignment on March 1, 2019, when Magistrate Stack imposed cash bail in the amount of

\$20,000. H.J. does not have the financial ability to pay the \$2,010 required for his release and, as a result, he remains incarcerated.

27. Petitioner Z.L. is 16 years old. He appeared for preliminary arraignment on February 27, 2019, when Magistrate Devlin imposed cash bail in the amount of \$300,000. A juvenile, Z.L. does not have the financial ability to post the \$30,010 required for his release and, as a result, remains incarcerated.

28. Petitioner A.B. is Z.L.'s mother. A.B. brings this action on behalf of her minor son, Z.L.

29. Respondents Sheila Bedford, Francis Bernard, Kevin Devlin, James O'Brien, Jane Rice, and Patrick Stack currently serve as Arraignment Court Magistrates for the First Judicial District.

30. In their capacity as Arraignment Court Magistrates, Respondents preside over preliminary arraignments at which initial bail determinations are made.⁷ Arraignment Court Magistrates are judicial officers and employees of the First Judicial District. Phila. M.C.R. Crim. P., A.C.M., Sec. 1.02.

31. Arraignment Court Magistrates are appointed by the Philadelphia Municipal Court President Judge and a majority of the judges of the Philadelphia

⁷ Act 98 of 2008 changed the term "bail commissioner" to "arraignment court magistrate." Act of Oct. 9, 2008, P.L. 1352, No. 98. However, the term "bail commissioner" is still frequently used.

Municipal Court. 42 Pa. Cons. Stat. § 1123(a)(5); Phila. M.C.R. Crim. P., A.C.M., Sec. 1.00(a).

32. To be considered for appointment, Arraignment Court Magistrates must be members in good standing of the Bar of the Supreme Court of Pennsylvania for at least four years *or* complete a training court and pass an examination prior to assuming office. Phila. M.C.R. Crim. P., A.C.M., Sec. 1.00(b)(3); 42 Pa. Cons. Stat. § 3112.

33. Upon information and belief, Respondents are not members of the Bar of the Supreme Court of Pennsylvania.

Legal Framework

34. In Pennsylvania, the right to pretrial release is defined and framed by the Constitution, which mandates that all prisoners, with very narrow exceptions, “shall be bailable by sufficient sureties.” Pa. Const. art. 1 § 14. The right to pretrial liberty is “fundamental because it promotes the presumption of innocence, prevents the imposition of sanctions prior to trial and conviction and provides the accused the maximum opportunity to prepare his defense.” Ken Gormley, *The Pennsylvania Constitution: A Treatise on Rights and Liberties*, 533-34 (2004).

35. Unless the individual faces a capital offense or life imprisonment, a court may not refuse to release a person facing criminal charges unless “no other condition or conditions can reasonably assure safety of any person and the

community” and the “proof is evident or presumption great.” Pa. Const. art. 1 § 14. In all other cases, there is a presumption that the defendant is entitled to pretrial release. When the government seeks to deny pretrial release, due process requires a full adversarial hearing, where the accused has meaningful representation by counsel, the opportunity to testify, present witnesses, and cross examine the witnesses against him, as well as other protections. *See United States v. Salerno*, 481 U.S. 739, 742 (1987).

36. This Court promulgated the Rules of Criminal Procedure governing bail to “reaffirm that the purpose of bail is to ensure the Respondent’s appearance and that Pennsylvania law favors the release, rather than detention of an individual pending a determination of guilt or innocence.” 25 Pa. Bull. 4100, 4116 (Sept. 30, 1995).

37. The rules were also designed to “encourage the use of conditions of release ... other than those requiring a deposit of money, thereby deemphasizing the concept of finance loss as the primary means of ensuring a Respondent’s appearance and compliance with the conditions of bail bond.” *Id.*

38. Rule 523 provides that, when considering what conditions, if any, to impose upon a defendant’s release, the court “*shall* consider all available information as that information is relevant to the Respondent’s appearance or nonappearance at subsequent proceedings, or compliance or noncompliance with the

conditions of the bail bond, including information about” ten enumerated factors. Pa. R. Crim. P. 523(A) (emphasis added). The court “*must consider all* the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the Respondent is a nonresident.” Pa. R. Crim. P. 523 (comment) (emphasis added).

39. Rule 524 allows several types of release conditions to be placed on an individual to ensure his or her appearance at trial. They are: release on recognizance, release on nonmonetary conditions, release on unsecured bail bond, release on nominal bail, or release on payment of a monetary condition (cash bail). Pa. R. Crim. P. 524(C).

40. The comment to Rule 524 makes clear that “[n]o condition of release, whether nonmonetary or monetary should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial.”

41. Rule 528 provides that, before a monetary condition of bail is imposed, the court “*shall consider*” both “(1) the release criteria set forth in Rule 523; and (2) financial ability of the Respondent.” Pa. R. Crim. P. 528(A) (emphasis added). When cash bail is imposed, the amount “*shall be reasonable.*” Pa. R. Crim. P. 528(B) (emphasis added). The amount “*shall not be greater than is necessary to reasonably ensure the defendant’s appearance and compliance with conditions of the bail bond.*” Pa. R. Crim. P. 524 (C)(5) (emphasis added).

Statement of Facts

A. The Initiation of a Criminal Case and the Preliminary Arraignment Process in Philadelphia

42. In Philadelphia, following an arrest, the defendant is generally transported to the nearest police station and an arrest report is prepared in a database called the Preliminary Arraignment Reporting System (“PARS”). An assistant district attorney reviews the arrest report and determines what charges, if any, will be filed.

43. Individuals who will be charged with a felony or misdemeanor are transported to one of seven “Divisional Booking Centers” where they are fingerprinted and photographed.

44. During this time, representatives of the Pretrial Services Division, a department within the First Judicial District, may interview defendants via videoconference. Pretrial Services Division representatives gather and enter into PARS basic information about individual defendants’ demographics, residence, employment, and education. Pretrial Services Division representatives may attempt to verify this information by calling references provided by individual defendants.

45. Once the charges are set, Pretrial Services Division representatives use PARS to calculate the “Guideline Category” under the pretrial release guidelines (often referred to as “bail guidelines”). The result of this calculation and the defendant’s biographical information are compiled on a standardized Pretrial

Services Investigation Report form and the individual is marked as ready for preliminary arraignment.

46. Upon information and belief, preliminary arraignments in Philadelphia generally occur no later than twenty hours after arrest.

47. In Philadelphia, preliminary arraignments are held in the basement of the Juanita Kidd Stout Center for Criminal Justice approximately every four hours, seven days a week, 365 days a year. In 2017, 38,480 new criminal cases were filed in Municipal Court.⁸

48. For each listing of preliminary arraignments, the Arraignment Court Magistrate on duty, a representative from the Defender Association of Philadelphia,⁹ and a representative from the District Attorney's Office are physically present in the courtroom. A court clerk is also present to operate the videoconference equipment and enter information related to the bail determination. On rare occasions, private counsel retained by defendants attend and participate in the hearing.

⁸ The First Judicial District, *The First Judicial District 2017 Annual Report* 130 (2017), <https://www.courts.phila.gov/pdf/report/2017-First-Judicial-District-Annual-Report.pdf>.

⁹ At this point, most defendants have not had the chance to speak with anyone from the Defender Association, and the Defender Association representative who attends pretrial arraignments has no information about the defendant that is not also available to the magistrate and the representative from the District Attorney's office. The Defender Association representative, therefore, is not able to provide representation in any traditional sense to the person being arraigned, although that representative will advocate for less onerous conditions of release in some cases.

49. The individual being arraigned remains at the Divisional Booking Center and “appears” by videoconference. The defendant is not in a private room, but rather in a large, noisy room within a police station that contains other defendants and at least one police officer. The defendant watches the hearing on a video screen divided into four camera views, one each for the magistrate, the clerk, the representative from the Defender Association, and the representative from the District Attorney’s Office.

50. The courtroom is open to the public and anyone in attendance sits in the gallery behind a glass wall. Microphones used by the Arraignment Court Magistrate, Defender Association representative, and District Attorney representative ostensibly transmit sound to the defendant and the gallery. In fact, the participants other than the magistrate frequently do not speak directly into the microphones, and may even angle the microphones away from themselves, and cannot be heard by either the defendant or the public.

51. Respondents do not take the minimal step of ensuring that hearings are audible to defendants.

52. Defendants who indicate that they cannot hear the proceedings are usually met with silence. For example:

- a. The defendant stated, “I can’t hear you” as Magistrate Devlin and the District Attorney representative discussed the factual allegations in the

arrest report and the proper bail determination. Magistrate Devlin ignored the defendant and did not respond.¹⁰

- b. After Magistrate O'Brien read the charges, the defendant stated, "I can't hear you? What?" Magistrate O'Brien ignored the defendant and did not respond.¹¹

53. Respondents further compound the audibility issues created by the videoconference equipment by discussing the facts alleged in the arrest report, some facet of the defendant's background, or the intended bail determination outside the defendant's presence. These conversations often occur while the previous person being arraigned is signing paperwork, while the next person is being called to the videoconference station, or when the court clerk is switching the connection to the next Divisional Booking Center.

54. The typical preliminary arraignment hearing lasts just minutes. Since March 2018, the American Civil Liberties Union of Pennsylvania has observed and documented more than 2,000 preliminary arraignments, including hearings conducted by each of the six Respondents.¹² The average length for the preliminary

¹⁰ Observation from January 30, 2019 at 9:04 p.m.

¹¹ Observation from November 14, 2018 at 12:57 p.m.

¹² The ACLU tracked court observations using the defendant's name and case number. However, in this Complaint, observations are noted according to the date and time of observation to avoid using identifying information of non-parties. The ACLU is prepared to provide corresponding docket numbers at the Court's request.

arraignments observed was 2.9 minutes. A substantial number of hearings (27 percent) lasted *one minute or less*.¹³

55. Hearings at which Respondents imposed cash bail were not meaningfully longer or more substantive than other hearings. Of the 1,745 observed hearings for which precise times were recorded, the Respondent both appointed counsel and assigned cash bail in 599 hearings. The average length of each of these hearings was 3.8 minutes; the median length was 3 minutes. 72 of these hearings (12 percent of the total) lasted one minute or less.

56. During these brief hearings, Respondents inform the defendant of the charges, (sometimes) provide a brief summary of the facts alleged, assign bail, warn of the consequences should the defendant fail to appear, announce the next court date, and state whether counsel will be appointed or the defendant must hire counsel. These proceedings routinely occur without any direct input from the defendant.

¹³ In each of six daily sittings, the magistrate will hear up to thirty cases. Sittings rarely last more than two hours. The First Judicial District employs six full-time arraignment court magistrates who earn a salary of over \$90,000 per year. *See* 42 Pa. Cons. Stat. Ann. § 1123(a)(5); 204 Pa. Code § 211.2 (2017). Upon information and belief, the attendance at arraignment court for a few hours a day and the review of requests for search or arrest warrants are the primary, if not the sole, work of the arraignment court magistrates.

B. Respondents Bernard, Rice, Bedford, Devlin, O'Brien, and Stack Routinely Fail to Comply with the Mandatory Rules Governing Preliminary Arraignments

57. During the preliminary arraignment hearings, Respondents fail to consider most of the factors that Pennsylvania Rule of Criminal Procedure 523 requires them to consider in deciding whether to release a defendant and what conditions, if any, to impose on release.

58. Nor, in determining the amount of any monetary conditions on release, do Respondents assess the individual defendant's financial ability to make bail, as required by Pennsylvania Rule of Criminal Procedure 528(A).

59. In fact, Respondents have acknowledged that they set bail based on the charge alone and/or adhere to categorical rules for what bail they will set. For example, after imposing \$25,000 cash bail on a defendant charged with failing to comply with sexual offender registration requirements, Magistrate O'Brien explained to the Defender Association representative:

Actually, the guidelines haven't been calculated because the offense came after the guidelines were made, so then you have to look to the intent of the legislature, which was keeping sex offenders from reoffending ... So when the Megan's law came down, we didn't really know what we should be assigning, so me and my colleagues, we sat down and talked it through, so that we could be doing it with some consistency. That's what we do in Harrisburg, we've met with the legislators and everything. We have trainings and all. Anyway, 25,000 is a number we felt comfortable with, that's where that comes from.¹⁴

¹⁴ Observation from July 19, 2018 at 2:24 p.m.

60. Every day, Respondents impose monetary bails that defendants are unable to pay. Frequently, Respondents appoint the public defender based on a finding of indigence, and then immediately proceed to impose cash bail. Of the 2,010 observed hearings, monetary bail was assigned 850 times, approximately 42 percent of the total. Of those hearings in which monetary conditions were assigned, counsel was also appointed 735 times. In other words, 86 percent of defendants who were assigned monetary bail had already been found to be indigent. Even the required ten percent deposit is out of reach for most indigent defendants – it can be difficult for the average family to come up with \$500 to cover an emergency.¹⁵

61. Almost without exception, Respondents fail to inquire whether the individual being arraigned can afford cash bail.¹⁶ In 2010 preliminary arraignments observed, Respondents imposed cash bail 850 times. In 767 of those hearings or 90 percent of the time, Respondents failed to conduct the mandatory inquiry into financial ability to pay prior to imposing cash bail.

62. The Pretrial Services Investigation Reports that Respondents receive contain very limited information about a defendant's finances, usually weekly wages

¹⁵ Maggie McGrath, *63% of Americans Don't Have Enough Savings to Cover a \$500 Emergency*, Forbes (Jan. 6, 2016), <https://www.forbes.com/sites/maggiemcgrath/2016/01/06/63-of-americans-dont-have-enough-savings-to-cover-a-500-emergency/#73856cab4e0d>.

¹⁶ Observers noted that Magistrate Bedford inquired into defendants' ability to pay in a few instances.

and whether the defendant pays child support. The reports do not reveal whether the defendant has savings or liquid assets that could be used to pay bail. Therefore, without further inquiry or evidence, Respondents have no basis to conclude that the defendant has the present ability to post bail.

63. Conversely, Respondents impose cash bail even when the Pretrial Services Investigation Report or other evidence demonstrates that a particular defendant is unable to post cash bail:

- a. Magistrate Rice imposed \$500 cash bail after learning that the defendant was homeless and staying at a shelter.¹⁷
- b. Magistrate O'Brien imposed \$10,000 cash bail after learning a defendant receives social security disability.¹⁸
- c. Magistrate Devlin imposed \$20,000 cash bail after learning a defendant receives social security disability.¹⁹
- d. Magistrate Rice imposed \$25,000 cash bail after learning that the defendant was unemployed and receiving food stamps.²⁰
- e. Magistrate Bedford imposed \$50,000 cash bail after learning that the defendant recently lost his job and the building in which he lived burned down.²¹
- f. Magistrate Rice imposed \$450,000 cash bail after learning that the defendant was unemployed.²²

¹⁷ Observation from February 8, 2019 at 9:00 a.m.

¹⁸ Observation from November 14, 2018 at 10:11 a.m.

¹⁹ Observation from November 7, 2018 at 8:42 a.m.

²⁰ Observation from June 13, 2018 at 4:33 p.m.

²¹ Observation from December 5, 2018 at 2:23 p.m.

²² Observation from August 15, 2018. No time was recorded for this hearing.

64. Similarly, Respondents routinely ignore defendants' objections that they are unable to pay the cash bail imposed. The following examples are illustrative:

- a. After discussion regarding a defendant's receipt of public assistance, Magistrate Devlin assigned \$3,700 cash bail. After the defendant heard the amount, he asked Magistrate Devlin, "How do I come up with bail?" Magistrate Devlin asked no questions, made no reply, and made no modification.²³
- b. After Magistrate Stack imposed \$7,500 bail, the defendant stated, "I can't afford that." Magistrate Stack asked no questions, made no reply, and made no modification.²⁴
- c. After Magistrate Devlin imposed \$15,000 cash bail, the defendant stated, "Can I say something? I don't have nothing. I can't pay. I am homeless."²⁵ Magistrate Devlin asked no questions, made no reply, and made no modification.
- d. After Magistrate Stack imposed \$20,000 cash bail, the defendant stated that he did not have money to post bail and that he watched his son and daughter while his girlfriend worked. Magistrate Stack responded, "Call family and friends. I can't help you with that."²⁶

65. Respondents' failure to conduct meaningful assessments of defendants' financial ability to post bail violates Respondents' mandatory obligations to conduct

²³ Observation from May 4, 2018 at 9:21 a.m.

²⁴ Observation from September 24, 2018 at 8:53 a.m.

²⁵ Observation from November 7, 2018 at 8:49 a.m.

²⁶ Observation from November 21, 2018, 8:33 a.m. *Cf. Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. Ct. 2018) (holding that it is improper to consider family and friend's resources when assessing a respondent's ability to pay under a provision governing fines and costs).

such an inquiry under Rule 528(A) of the Pennsylvania Rules of Criminal Procedure.

C. Respondents Unlawfully Use Cash Bail to Ensure Pretrial Detention

66. Further, Respondents also routinely impose high cash bail in cases with serious charges to ensure pretrial detention. This practice plainly violates the prohibition on imposing any condition of release for the purpose of ensuring that a defendant remains incarcerated pending trial. *See* Pa. R. Crim. P. 524 (comment); Pa. R. Crim. P. 524(C)(5); Pa. Const. art. 1 § 14.

67. As noted above, pretrial detention is only allowed in homicide cases or when “no other condition or conditions can reasonably assure safety of any person and the community.” Pa. Const. art. 1 § 14. Before a court denies pretrial release, due process requires that the court conduct a full adversarial hearing, where the accused has meaningful representation by counsel, the opportunity to testify, present witnesses, and cross examine the witnesses against him, as well as other protections. *See Salerno*, 481 U.S. at 742. Respondents never conduct such hearings, but instead use unaffordable cash bail as de facto detention orders.

68. Even where defendants face serious charges, that alone does not justify using bail as a detention order. The nature of the charge is just one of the facts that Respondents are required to consider under Rule 523. The court “*must consider all* the criteria provided in this rule, rather than considering, for example, only the

designation of the offense or the fact that the Respondent is a nonresident.” Pa. R. Crim. P. 523 (comment) (emphasis added).

69. In 163 hearings observed, Respondents assigned cash bail of \$100,000 or more without explaining the need for such high bail, considering alternative conditions of release, or acknowledging, when presented, evidence that the defendant was unable to pay. The following examples are illustrative:

- a. After appointing the public defender and learning that the defendant was unemployed, Magistrate Bedford imposed \$350,000 cash bail.²⁷
- b. After appointing the public defender, Magistrate Rice assigned a sixteen-year-old defendant \$300,000 cash bail.²⁸
- c. After appointing the public defender and learning that the defendant received public assistance, Magistrate O’Brien imposed \$500,000 cash bail.²⁹
- d. After appointing the public defender, Magistrate Bedford assigned \$400,000 cash bail to a sixteen-year-old defendant.³⁰

70. In fact, Respondents explicitly impose or threaten to impose cash bail in order to detain individuals:

²⁷ Observation from December 5, 2018 at 2:02 p.m.

²⁸ Observation from December 13, 2018 at 1:14 p.m. A Municipal Court judge reduced the bail amount to \$75,000 on January 3, 2019. On January 9, 2019, the Philadelphia Community Bail Fund posted bail on behalf of the defendant. (This is actually 2 cases—the initial \$150,000 in each case was reduced to \$37,500 in each case.)

²⁹ Observation from July 2, 2018 at 1:52 p.m.

³⁰ Observation from October 5, 2018 at 9:42 a.m. Subsequently, a Court of Common Pleas judge permitted the defendant to sign his own bond in the amount of \$400,000 and ordered his release on electronic monitoring on January 10, 2019.

- a. Magistrate Rice stated that she was being generous in contrast to the District Attorney representative's request for \$50,000 cash bail and that the defendant would not make the bail she set anyway.³¹
- b. After imposing \$50,000 cash bail and a stay-away order, Magistrate O'Brien informed the defendant that, if he violated the terms of a stay-away order, his bail would be raised "high enough" that the defendant "won't be able to post bail."³²

71. The hearings in which Respondents issue or threaten to issue de facto detention orders are not markedly longer nor more substantive than an average hearing described above.

D. Respondents Fail to Provide Defendants Any Opportunity to Consult with Counsel or Participate Meaningfully in the Proceedings.

72. The preliminary arraignments conducted by Respondents do not provide defendants any opportunity to consult with counsel or participate meaningfully in the proceedings.

73. The use of videoconferencing prevents defendants from consulting with the Defender Association representative. The inability to consult with counsel limits defendants' ability to understand what evidence they possess that may be relevant to the bail determination, and to ask questions outside of the hearing of the Arraignment Court Magistrate, District Attorney representative, and the police

³¹ Observation from January 9, 2019 at 1:22 a.m.

³² Observation from July 31, 2018 at 1:12 p.m.

officers and other individuals waiting to be arraigned at the Divisional Booking Center.

74. Arraignment Court Magistrates do not take steps to address this problem and fail to provide defendants with any opportunity to consult with counsel either before or during the preliminary arraignment process.³³

75. When defendants attempt to speak on own their behalf or ask questions, Respondents routinely ignore or affirmatively silence defendants. In doing so, Respondents fail to carry out their duty of providing defendants the opportunity to be heard.³⁴ The following hearings are illustrative of this practice:

- a. Magistrate O'Brien instructed an interpreter that the interpreter should "not interpret anything the defendant says because the defendant should not be speaking."³⁵

³³ In an attempt to address the lack of a meaningful opportunity to consult with the Defender Association representative during preliminary arraignments, on April 12, 2017, the Defender Association launched a pilot program called "Pretrial Bail Advocates." A representative of the Defender Association is stationed at the Police Detention Unit, one of the Divisional Booking Centers, during standard business hours, interviews individuals, and transmits this information to the Defender Association representative staffing the preliminary arraignment room. While laudable, this program reaches only a small fraction of the individuals who are seen in arraignment court. In the program's first year, approximately 1,500 people were interviewed. Keir Bradford-Grey, Chief Defender, *Philadelphia City Council Budget Testimony*, at 5 (Apr. 24, 2018), <http://phlcouncil.com/wp-content/uploads/2018/04/Defender-Budget-Council-Testimony-2019.pdf>. More fundamentally, the Defender Association's attempts to protect defendants' rights does not absolve Respondents of their obligations to inquire into the Rule 523 factors.

³⁴ Pennsylvania Code of Judicial Conduct 2.6(A) provides that "[a] judge shall accord to every person or entity who has a legal interest in a proceeding, or that person or entity's lawyer, the right to be heard according to law."

³⁵ Observation from July 2, 2018 at 1:01 pm.

- b. After \$25,000 cash bail was imposed, the defendant attempted to say something in response to the bail determination but was silenced by both Respondent Stack and the Defender Association representative.³⁶

76. When Respondents do respond to defendants' comments or questions, it is often to direct abuse or ridicule at them.³⁷ The following examples illustrate the scorn, derision, and impatience which characterizes many of the interactions

Respondents have with defendants and their counsel:

- a. When the defendant responded to \$10,000 cash bail being imposed, Magistrate O'Brien threatened to raise the amount if the defendant did not stop speaking.³⁸
- b. After Magistrate O'Brien imposed \$7,500 cash bail, the defendant began to cry and protest. Magistrate O'Brien responded by threatening to raise the amount to \$25,000.³⁹
- c. Magistrate Rice described a defendant as a "train wreck."⁴⁰
- d. Magistrate Bedford yelled at a defendant, "Number 1: You gotta grow up. You're a mother of three children, you need to grow up!"⁴¹ Observers noted numerous other instances of Magistrate Bedford telling defendants to "grow up."⁴²

³⁶ Observation from June 15, 2018 at 12:20 p.m.

³⁷ *Cf.* Phila. M.C.R. Crim. P., A.C.M., Sec. 6.05(c) ("An Arraignment Court Magistrate shall be patient, dignified and courteous to litigants, witnesses, lawyers and other with whom he deals in his official capacity, and shall require similar conduct of other parties in the courtroom.").

³⁸ Observation from November 14, 2018 at 9:32 a.m.

³⁹ Observation from November 14, 2018 9:30 a.m.

⁴⁰ Observation from November 13, 2018 at 12:58 p.m.

⁴¹ Observation from November 6, 2018 at 2:44 p.m.

⁴² Observations from May 17, 2018 at 10:14 a.m., June 14, 2018 at 1:57 p.m., and November 8, 2018 at 10:41 a.m.

- e. When the defendant tried to explain why he had failed to appear on a prior occasion, Magistrate O'Brien responded, "Don't act like it's our fault that you're going to jail."⁴³
- f. When a defendant began crying, Magistrate Devlin asked, "Are you disappointed in yourself? Is that why you're crying? If I'm sitting in your seat, I would do that."⁴⁴
- g. In response to the Defender Association representative's statement that the police report suggested the incident was a family dispute and that there were inconsistent accounts from those involved, Magistrate Rice told the police officer at the Divisional Booking Center to call her if the defendant called his mother or father to post his bail and that she would raise his bail.⁴⁵
- h. Mocking an argument made by the Defender Association representative, Magistrate Rice stated, "Poor little kid who's growing up like this! That's YOUR point of view."⁴⁶

E. Subsequent Opportunities to Review Arraignment Court Magistrates' Determinations Do Not Mitigate the Harm Caused by Respondents' Illegal Actions.

77. The rules allow for an immediate appeal from the Arraignment Court Magistrate's bail determination to the emergency Municipal Court Judge on duty. Phila. M.C.R. Crim. P. 21; Phila. M.C.R. Crim. P., A.C.M., Sec. 8.00(b). In practice, this procedure is rarely invoked.

78. As part of the MacArthur Foundation Safety and Justice Challenge Grant, the First Judicial District implemented an Early Bail Review pilot program in

⁴³ Observation from November 14, 2018 at 10:01 a.m.

⁴⁴ Observation from June 8, 2018 at 9:12 a.m.

⁴⁵ Observation from December 13, 2018 at 2:00 p.m.

⁴⁶ Observation from December 13, 2018 at 1:14 p.m.

July of 2016. Pursuant to this program, individuals who are held in jail on cash bail amounts of \$50,000 or less, charged with non-violent offenses and have no other holds (i.e. detainers or bench warrants), are scheduled for a hearing within five business days of preliminary arraignment.⁴⁷ Upon information and belief, Early Bail Review hearings are generally held at least five business days after preliminary arraignment and not sooner.

79. 87% of individuals who received an Early Bail Review hearing obtained release.⁴⁸ Of the Early Bail Review hearings conducted between July and December of 2016, the “bail type” was changed in 74% of cases; in 10% of cases cash bail remained but the amount was reduced.⁴⁹ The initial bail determination was left undisturbed in only 16% of cases.⁵⁰

80. 89% of those individuals who secured their release appeared at their next court date.⁵¹

⁴⁷ In January or February 2019, the eligibility criteria were expanded to include some defendants held on bail amounts of \$100,000 or less.

⁴⁸ MacArthur Foundation Safety and Justice Challenge, *Philadelphia’s Application for Renewal Funding*, at 25 (Oct. 24, 2018), <https://www.phila.gov/media/20181023152228/Renewal-Application-Final-10.22.18.pdf>.

⁴⁹ First Judicial District, *The First Judicial District Annual Report 2016*, at 116 (2016), <https://www.courts.phila.gov/pdf/report/2016-First-Judicial-District-Annual-Report.pdf>.

⁵⁰ *Id.*

⁵¹ MacArthur Foundation Safety and Justice Challenge, *Philadelphia’s Application for Renewal Funding*, at 25 (Oct. 24, 2018), <https://www.phila.gov/media/20181023152228/Renewal-Application-Final-10.22.18.pdf>.

81. On average, individuals who are released as a result of Early Bail Review are released after spending six days in jail.⁵² That release often comes too late to mitigate the serious harms unjustified pretrial incarceration inflicts on defendants' health, family, and livelihoods. As discussed below, six days of pretrial incarceration can have a profound and devastating impact on a person's life.

F. Respondents Have Ignored Numerous Calls for Reform.

82. In 2016, the MacArthur Foundation awarded the City of Philadelphia a \$3.5 million grant to fund initiatives to reduce the City's jail population by thirty-four percent over three years and reduce racial disparities. Many of the initiatives targeted the City's high rate of pretrial detention. The MacArthur Foundation awarded the City an additional \$4 million in October 2018.

83. On February 1, 2018, Philadelphia City Council passed a resolution recognizing that, despite reform efforts, people remained in the custody of the Philadelphia Department of Prisons "solely because they cannot afford to post their bail" and calling on the First Judicial District, among others, to take action to address the ongoing problem. Phila. City Council Res. 180032 (Pa. 2018).

84. On September 11, 2018, the American Civil Liberties Union sent a letter to the then-president judges of the Court of Common Pleas for Philadelphia

⁵² First Judicial District, *The First Judicial District Annual Report 2017*, at 132 (2017) <https://www.courts.phila.gov/pdf/report/2017-First-Judicial-District-Annual-Report.pdf>.

County and of the Philadelphia Municipal Court, outlining how initial observations revealed that Respondents were systematically violating the Rules of Criminal Procedure as well as the state and federal constitutional rights of defendants.⁵³

85. On October 15, 2018, the Philadelphia Bail Fund and Pennsylvanians for Modern Courts released a report “synthesiz[ing] the feedback of more than 75 volunteers who observed over 600 bail hearings at the Juanita Kidd Stout Center for Criminal Justice between April 19, 2018 and August 31, 2018.”⁵⁴ The report documents significant concerns, including Respondents’ failure to assess defendants’ ability to pay, consider the release criteria contained in Rule 532(A), or address the systemic audibility issues.⁵⁵

86. Despite this notice and more than adequate opportunity to change their practices, Respondents continue to willfully ignore the mandates imposed upon them by the Constitution and by the Rules promulgated by this Court.

⁵³ Since sending its letter of September 11, 2018, the ACLU has observed and documented over 1,000 additional hearings. These observations show no change in Respondents’ practices.

⁵⁴ The Philadelphia Bail Fund and Pennsylvanians for Modern Courts, Philadelphia Bail Fund and Pennsylvanians for Modern Courts Release Philly Bail Watch Report (Oct. 16, 2018), <https://www.phillybailfund.org/bailreport>.

⁵⁵ See The Philadelphia Bail Fund and Pennsylvanians for Modern Courts, *Philadelphia Bail Watch Report* (Oct. 15, 2018), <https://bit.ly/2EKvQwq>.

G. Pretrial Detention, even for Short Periods, Has Devastating, Often Irreparable Impacts on People in the Criminal Justice System.

87. It is well understood that wealth-based pre-trial detention imposes serious harms on individuals and families, and profoundly harms low-income communities, especially low-income communities of color.

88. In Philadelphia, numerous organizations, including Petitioners the Philadelphia Community Bail Fund and the Youth Art & Self-Empowerment Project have for years called attention to the substantial harms caused by Respondents' pre-trial detention practices and led a chorus of voices calling for reform.⁵⁶

89. People detained for even a few days may lose employment, their homes, and access to their children, as the experience of several Petitioners demonstrates.⁵⁷ Even if pretrial detention lasts only a few days, this has “serious

⁵⁶ See, e.g., Hayden Mitman, *Philadelphia is Looking to Skip Bail*, Philly Voice (Aug. 12, 2016), <https://www.phillyvoice.com/could-philadelphia-prisons-do-away-bail/>; Kyrie Greenberg, *Civic Leaders Host Forum to End Cash Bail in Philadelphia*, WHYY (Apr. 7, 2017), <https://why.org/articles/civic-leaders-host-forum-to-end-cash-bail-in-philadelphia/>; Victoria Law, *Taking on the Criminal Justice System After Spending 18 Months in Jail for a Crime He Didn't Commit*, Everyday Democracy (Sept. 6, 2017), <https://www.everyday-democracy.org/news/taking-criminal-justice-system-after-spending-18-months-jail-crime-he-didnt-commit>; Samaria Bailey, *Mama's Day Bailout Reunites Families for Mother's Day*, The Philadelphia Tribune (May 12, 2018), http://www.phillytrib.com/metros/mama-s-day-bailout-reunites-families-for-mother-s-day/article_d1bff99d-90ca-527a-96b7-9c5ba120b1b0.html.

⁵⁷ See, e.g., *Curry v. Yachera*, 835 F.3d 373, 377 (3d Cir. 2016) (while detained pretrial on bail he could not afford, “Curry missed the birth of his only child, lost his job. ... Curry feared losing his home and motor vehicle.”); Erika Kates, *Moving Beyond Incarceration for Women in Massachusetts: The Necessity of Bail/Pretrial Reform*, Wellesley Centers for Women, 2, 4-5 (March 2015) (survey of women in pretrial detention demonstrated that almost half were at risk of losing their home); Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am. Econ. Rev. 201, 204 (2018) (“Initial pretrial release increases the probability of employment in the formal labor market

deleterious effects ... on outcomes such as job loss, residential instability, negative financial impacts and loss of social support.⁵⁸

90. In one study, after three days, 30% of incarcerated parents were concerned about their ability to support their children and 16.5% of incarcerated parents feared losing custody of their children.⁵⁹

91. Pretrial detention has such a profoundly destabilizing impact on a person's life that pretrial incarceration for as little as two to three days actually *increases* the likelihood of future criminal activity by 40% for low-risk defendants.⁶⁰

92. Many detainees who suffer from chronic illnesses or mental health issues experience gaps in medication and lose access to their medical providers.

93. Given the interruption in medical care and the stress caused by admission, suicide is the leading cause of death in local jails and is more prevalent in local jails than state prisons.⁶¹ Nationwide, three quarters of jail deaths occur among

three to four years after the bail hearing by 9.4 percentage points, a 24.9 percent increase from the detained defendant mean.”).

⁵⁸ Alexander Holsinger, *Analyzing Bond Supervision Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, Crime and Justice Institute (June 2016), http://www.crj.org/assets/2017/07/13_bond_supervision_report_R3.pdf.

⁵⁹ *Id.*

⁶⁰ Chris Lowenkamp *et al.*, The Laura and John Arnold Foundation, *The Hidden Costs of Pretrial Detention*, at 3 (Nov. 2013), <https://bit.ly/2u0Lj5d>; Margaret Talbot, *The Case Against Cash Bail*, *The New Yorker* (Aug. 25, 2015), <https://www.newyorker.com/news/news-desk/the-case-against-cash-bail>.

⁶¹ Margaret E. Noonan, U.S. Dep't of Justice, Bureau of Justice Statistics, *Mortality in Local Jails and State Prisons, 2000-2013 - Statistical Tables 1*, 20 (Aug. 2015), <https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf>.

people in pretrial detention. And importantly, more than one third of jail deaths occur *within the first seven days of incarceration*.⁶²

94. Detention also negatively affects the families of those who are detained. Detention of a parent is linked to food insecurity for the family.⁶³ For instance, families with an incarcerated parent are almost 1.5 times more likely to suffer food insecurity than families that do not report a parental incarceration.⁶⁴

95. Social science research documents the many ways pretrial detention inflicts significant harm on the lives of those detained. The research also demonstrates that these harms disproportionately affect communities of color.⁶⁵

⁶² Margaret E. Noonan, U.S. Dep’t of Justice, Bureau of Justice Statistics, *Mortality in Local Jails, 2000-2014 - Statistical Tables 2* (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/mlj0014st.pdf>; Maurice Chammah & Tom Meagher, *Why Jails Have More Suicides Than Prisons, Marshall Project* (Aug. 4, 2015), <https://www.themarshallproject.org/2015/08/04/why-jails-have-more-suicides-than-prisons> (“One reason why jails have a higher suicide rate ... than prisons ... is that people who enter a jail often face a first-time ‘shock of confinement’; they are stripped of their job, housing, and basic sense of normalcy. Many commit suicide before they have been convicted at all.”).

⁶³ See Robynn Cox & Sally Wallace, *Identifying the Link Between Food Security and Incarceration*, 82 S. Econ. J. 1062, 1074 (2016).

⁶⁴ *Id.*; see also Colorado Criminal Defense Institute, *The Reality of Pre-Trial Detention: Colorado Jail Stories*, 6-9 (2015), <https://bit.ly/2Hr8Jst> (collecting testimony about the effects of detention on families including creating confusion in children, separation of families, and loss of home).

⁶⁵ See, e.g., Jessica Eaglin & Danyelle Solomon, Brennan Ctr. for Justice, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice*, at 19-20 (2015), <https://bit.ly/1fGM4XN> (surveying research documenting the existence of racial disparities in pretrial detention); Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 Just. Q. 170, 181-83 (2005); David Arnold *et al.*, *Racial Bias in Bail Decisions*, (Nat’l Bureau of Econ. Research, Working Paper No. 23421, 2017), <http://www.nber.org/papers/w23421>.

96. Pretrial detention also leads to worse case outcomes. In a study of Philadelphia court records from 2006 to 2013, researchers found that pretrial detention leads to a 13% increase in the likelihood of being convicted of at least one charge and an increase of 124 days in the length of the maximum incarceration sentence, a 42% percent increase over the mean.⁶⁶

97. Studies analyzing court data from other jurisdictions have similarly found that pretrial detention is associated with higher rates of conviction and longer sentences.⁶⁷

98. These connections are not surprising because, if detained pretrial, an defendant “is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense,”⁶⁸ and pretrial detention induces people to plead guilty.⁶⁹

⁶⁶ Megan T Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J.L. Econ. & Org. 511, 512-13, 534-535 (2018).

⁶⁷ See, e.g., Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 713-15 (2016) (respondents detained on misdemeanor charges in Harris County are 25% more likely than similarly situated releases to be convicted); Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from NYC Arraignments*, at 3 (Aug. 2017), http://econweb.umd.edu/~pope/pretrial_paper.pdf (New York City pretrial detention increases the probability that a felony Respondent will be convicted by thirteen percent); Christopher T. Lowenkamp et al, Laura & John Arnold Foundation *Investigating the Impact of Pretrial Detention on Sentencing Schemes*, at 14 (Nov. 2013, <https://bit.ly/2VLUYZc> (“[C]ontrolling for the effects of all other predictors in the model, Respondents detained for the entire pretrial period received jail sentences that were 2.78 times longer than sentences received by Respondents who were released at some point”).

⁶⁸ *Barker v. Wingo*, 407 U.S. 514, 533 (1972).

⁶⁹ Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. Legal Stud. 471, 473 (2016) (“Many Respondents who are detained on money bail before trial may

Class Action Allegations

99. Pursuant to Pennsylvania Rules of Civil Procedure 1701, et seq., named individual Petitioners bring this suit on behalf of themselves and all others similarly situated who are or will in the future be subject to Respondents' failure to conduct preliminary arraignments in accordance with the mandates of the rules.

100. The class shall be defined as: all defendants in Philadelphia who have appeared or will appear for a preliminary arraignment in the First Judicial District.

101. The proposed class action satisfies the requirements of Pennsylvania Rule of Civil Procedure 1702.

102. First, the class is so numerous that joinder of all members is impracticable, as the class includes thousands of current and future defendants who will be subject to Respondents' failure to conduct preliminary arraignments in compliance with the rules. In 2017 alone, 38,480 new criminal cases were filed in Municipal Court.⁷⁰ The number of individuals who have been or will in the future be subject to Respondents' failure to act in accordance with the mandates of the rules is substantial. Pennsylvania courts have determined that joinder is impracticable for putative classes with far fewer members.

consequently choose to plead guilty to avoid or minimize further detention. Prosecutors commonly offer detained Respondents a plea of 'time-served,' where Respondents will receive credit for time already spent in detention and will therefore be released immediately upon conviction.").

⁷⁰ First Judicial District, *The First Judicial District 2017 Annual Report*, 130 (2017), <https://www.courts.phila.gov/pdf/report/2017-First-Judicial-District-Annual-Report.pdf>.

103. Second, there are questions of law and fact common to the class.

104. Common questions of fact include but are not limited to: whether Respondents (1) consider all information relevant to the release decision, including the factors enumerated in Rule 523(A); (2) abide by Rule 524's prohibition against imposing any condition of release for the purpose of ensuring that a defendant remains incarcerated pending trial; (3) conduct Rule 528(A)'s mandatory assessment of an defendant's financial ability to pay prior to imposing cash bail; (4) carry out their duty under Rule 528(B) and Rule 524(C)(5) to only impose cash bail in reasonable amounts; and (5) afford defendants a full opportunity to be heard.

105. Common questions of law include but are not limited to: whether Petitioners have a clear right to relief, whether Respondents have a duty to act in accordance with the mandates of the rules governing preliminary arraignment processes, and the absence of other adequate remedies.

106. These common questions of law and fact arise from the preliminary arraignment scheme Respondents operate in substantially the same manner every day. The resolution of these factual and legal questions will determine whether all members of the class are entitled to the relief they seek and the relief sought is common to all members of the class.

107. Third, the claims of the named Individual Petitioners are typical of the claims of the class. The failures alleged by the named Individual Petitioners are the

same for all other members of the class and predominate over any individual claims.

In addition, the harms suffered by the Individual Petitioners are typical of those faced by all other members of the class:

a. M.W.

- i. M.W. is 18 years old. He was arrested on March 6, 2019 and appeared for preliminary arraignment on March 7, 2019. M.W. could not hear most of what was said during the hearing. Magistrate Devlin imposed cash bail in the amount of \$7,500. Magistrate Devlin did not ask whether M.W. could afford that or any other amount of bail. M.W. does not have the financial ability to pay the \$760 required for his release and, as a result, he remains incarcerated.
- ii. M.W. has worked for a remodeling company for the past two years. He fears that he has already lost his job because he has missed work since being in jail.
- iii. M.W. lives with his mother as well as his sisters, and brothers, several of whom are still in school. M.W. helps his mother pay the bills. He is concerned about the emotional and financial impact that his incarceration is having on his mother.

b. P.R.

- i. P.R. is 54 years old. He was arrested on March 4, 2019. At P.R.'s preliminary arraignment, Magistrate O'Brien imposed cash bail in the amount of \$10,000. Magistrate O'Brien did not ask whether P.R. could afford that or another amount of cash bail.
- ii. P.R. does not have the financial ability to pay the \$1,010 required for his release and, as a result, he remains incarcerated.
- iii. P.R. has a seasonal job working for an asphalt and concrete company. He stopped working in December when it became too cold to lay asphalt or pour concrete. He has not had any income since December. If he is not released by the time the company resumes work, P.R. will lose his job.
- iv. P.R. is concerned that he will also lose his apartment because he is the only one who can pay his rent.

c. G.T.

- i. G.T. is 52 years old. He was arrested on March 4, 2019. During his interview with Pretrial Services, G.T. stated that he received food stamps and was currently unemployed and homeless. Nonetheless, Magistrate Bernard assigned G.T. cash bail in the amount of \$250,000. Magistrate Bernard did not ask whether G.T. could afford that or any other amount. With the exception of

the bail amount, G.T. could not hear anything that Magistrate Bernard, the Defender Association representative or the District Attorney representative said.

- ii. G.T. does not have the financial ability to pay the \$25,010 required for his release and, as a result, he remains incarcerated.
- iii. G.T. had been living in his car for the three weeks preceding his arrest. Upon his arrest, he was forced to leave his car on the side of a public street. He is worried about the security of his car, which contains all of his belongings. At the time of his arrest, he was trying to find an apartment and had a few leads. Those leads will not be there when he is released.
- iv. G.T.'s mother is dying from cancer and he is distraught that he may be missing what time he has left with her.
- v. As a result of an accident in 2014, G.T. experiences chronic pain and saw a pain doctor every three weeks. His incarceration interrupts that necessary medical care.
- vi. Being in jail is very distressing for G.T. and he is experiencing a great deal of emotional anguish.

d. T.J.

- i. T.J. is 22 years old. He was arrested on two separate cases and appeared for preliminary arraignment on March 3, 2019.
- ii. With the exception of the bail amount, T.J. could not hear what Magistrate Stack, the Defender Association representative, or the District Attorney representative said during the preliminary arraignment hearing. Magistrate Stack imposed \$100,000 cash bail in each of the cases. Magistrate Stack did not ask T.J. whether he could afford to post that or any other amount.
- iii. T.J. is not financially able to pay the \$20,020 necessary to secure his freedom and, as a result, he remains incarcerated.
- iv. T.J. misses his two young children very much. He has told them that he is away on vacation so as not to worry or scare them. T.J. is the primary caregiver for his children because his girlfriend works in the evenings. Before his incarceration, T.J. would meet his children at the bus stop after school. T.J. and his girlfriend have had to rely on other family members to piece together childcare in his absence.
- v. T.J. receives SSI for a chronic health condition. He attends weekly doctors' appointments and was set to start a new medication regime. The interruption in his medical care is

causing his chronic health condition to worsen and he has already lost weight since his arrest.

e. S.T.

- i. S.T. is 19 years old. He was arrested on February 28, 2019 and charged in two cases. After recovering from injuries in the hospital, he appeared for preliminary arraignment on March 2, 2019. Magistrate Rice imposed cash bail in the amounts of \$15,000 and \$200,000. Magistrate Rice did not ask S.T. if he could afford those or any other amounts.
- ii. S.T. does not have the financial ability to post the \$21,520 required for his release and, as a result, he remains incarcerated.
- iii. Prior to his arrest, S.T. had been working at Dunkin' Donuts making \$7.50 per hour. He lost his job as a result of being incarcerated on bail he cannot afford.

f. D.M.

- i. D.M. is 24 years old. He was arrested on March 1, 2019 and appeared for preliminary arraignment the following morning. D.M. could only hear parts of the hearing. Magistrate Devlin imposed cash bail in the amount of \$300,000. Magistrate Devlin did not ask D.M. if he could afford that or any other amount.

ii. D.M. does not have the financial ability to pay the \$30,010 required for his release and, as a result, he remains incarcerated. At the time of his arrest, D.M. was unemployed and searching for work. He was living with his mother and helping her around the house. He can longer do that.

g. K.B.

- i. K.B. is a 27-year-old mother of two. During her interview with Pretrial Services, she stated that she was not working and had no other source of income. Nonetheless, at her preliminary arraignment on March 8, 2018, Magistrate O'Brien imposed cash bail in the amount of \$10,000. Magistrate O'Brien did not ask whether K.B. could afford to pay that or any other amount. Throughout the hearing, K.B. could hear Magistrate O'Brien but only parts of what the Defender Association representative or the District Attorney representative said were audible to K.B.
- ii. K.B. does not have the financial ability to pay the \$1,010 required for her release and, as a result, she remains incarcerated.
- iii. Being separated from her children, ages five and nine, is incredibly painful for K.B. and she is concerned about how long the separation will persist.

h. J.H.

- i. J.H. is 32 years old. He was arrested on March 6, 2019 and appeared for preliminary arraignment the following day. Magistrate Bedford imposed cash bail in the amount of \$150,000. Magistrate Bedford did not ask J.H. if he could afford that or any other amount of bail.
- ii. J.H. does not have the financial ability to pay the \$15,010 required for his release and, as a result, he remains incarcerated.
- iii. J.H. has been employed with a moving company for the past two years. He is very concerned about losing his job while incarcerated. J.H. and his fiancé rent an apartment and without his financial contribution, his fiancé will have significant difficulty paying rent.
- iv. J.H. takes his niece and nephew to school some days of the week because of the hours that his sister works. His family is struggling to find someone to help out while J.H. remains detained pretrial.
- v. J.H. takes prescription medications to cope with chronic pain and he has not received those medications since being incarcerated.

i. H.J.

- i. H.J. is 29 years old. He appeared for preliminary arraignment on March 1, 2019. Although H.J. could hear what Magistrate Stack said, he could not hear what the Defender Association representative or the District Attorney representative said. No one asked H.J. if he had the financial ability to pay bail. Magistrate Stack imposed cash bail in the amount of \$20,000.
 - ii. H.J. does not have the financial ability to post the \$2,010 required to secure his release and, therefore, remains incarcerated.
 - iii. Four months ago, H.J. started a new job with a company that does construction and home improvements. He is at risk of losing his job because of his incarceration. H.J. is certain that he will lose the apartment he rents if he remains incarcerated and continues to be out of work.
 - iv. H.J. has three children and does not expect to see them while he remains incarcerated.
- j. Z.L.
- i. Z.L. is 16 years old. He was arrested on February 26, 2019 and charged as an adult. He appeared for preliminary arraignment on February 27, 2019. Magistrate Devlin imposed cash bail in the

amount of \$300,000. Z.L. could not hear anything that was said during the hearing. He tried to put his ear closer to the videoconferencing screen but it did not make a difference in audibility.

- ii. Z.L. does not have the financial ability to pay the \$30,010 required for his release and, as a result, he remains incarcerated in an adult jail.
- iii. Z.L. is currently in the eleventh grade and plays for his high school's basketball and football teams. He was starting to look at colleges and had hoped to apply to Pennsylvania State University.
- iv. Z.L. fears that he will not graduate from eleventh grade and his college dreams will be over if he remains detained pretrial.

108. Fourth, the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Pennsylvania Rule of Civil Procedure 1709.

- a. Undersigned counsel will adequately represent the interests of the class. Counsel has experience handling class actions and complex litigation and are familiar with the factual and legal issues in this case.

- b. The named Individual Petitioners have no conflicts of interest in the maintenance of the class.
- c. Undersigned counsel is representing the parties *pro bono* and has adequate financial resources to assure that the interests of the class will not be harmed.

109. Fifth, a class action provides a fair and efficient method for adjudication of this controversy pursuant to the criteria established by Pennsylvania Rule of Civil Procedure 1708.

- a. Common questions of law and fact predominate over any individual questions.
- b. While the size of the class is substantial, it is manageable. The names and addresses of all class members are available and easily identifiable through court records.
- c. Trying these actions separately would create a risk of inconsistent and incompatible adjudications with respect to the members of the class, which could lead to Respondents being subject to incompatible standards or procedures.
- d. No litigation has been commenced by or against members of the class involving the same issues.

- e. The Pennsylvania Supreme Court is an appropriate forum for the litigation of the claims of the entire class.
- f. In systematically failing to apply the Pennsylvania Rules of Criminal Procedure that govern bail determinations and preventive detention, Respondents have acted or refused to act on ground generally applicable to all members of the class.

Cause of Action: Mandamus

110. Petitioners incorporate by reference the preceding paragraphs of the complaint as if pleaded in full.

111. “Mandamus is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty” *Cty. of Allegheny v. Commonwealth*, 490 A.2d 402, 408 (Pa. 1985). To justify the use of this remedy, Petitioners must demonstrate “a clear legal right to relief, a corresponding duty to act in the defendant, and the lack of any other adequate remedy.” *Medico v. Makowski*, 793 A.2d 167, 169 (Pa. Commw. Ct. 2002).

112. Petitioners have a clear right to relief. Individual named Petitioners and tens of thousands of other defendants have been subject to Respondents’ failure to conduct preliminary arraignments in accordance with the rules’ mandatory requirements.

113. Petitioners YASP and the Philadelphia Community Bail Fund have a substantial and particular interest in ensuring that Respondents follow the Rules of Criminal Procedure when making decisions about the pretrial liberty of defendants in Philadelphia.

114. YASP and the Philadelphia Community Bail Fund are leaders in the coalition of organizations and individual activists who have called for reforms to Respondents' practices in arraignment court. Both organizations have devoted resources to highlighting and attempting to mitigate the harms caused by Respondents' failure to follow the rules and the use of cash bail in Philadelphia.

115. YASP and the Philadelphia Community Bail Fund are largely volunteer-run and financed by small donations. Respondents' failure to carry out their duties drains the modest resources of both organizations—the Philadelphia Community Bail Fund is forced to expend even larger amounts of money to secure the release of indigent defendants and both organizations are challenged to provide support to more individuals as they try to navigate the damage pretrial detention has caused to their lives.

116. As such, YASP and the Philadelphia Community Bail Fund have an interest, beyond that shared by the public at large, in redressing Respondents' ongoing failure to conduct preliminary arraignments in accordance with the mandates of the rules.

117. The Individual Petitioners bring this suit on behalf of themselves and all others similarly situated who are, or will in the future be, subject to Respondents' failure to conduct preliminary arraignments in accordance with the mandates of the Rules of Criminal Procedure. The Individual Petitioners have a compelling, personal interest in Respondents' compliance with the mandates of the Rules.

118. Respondents have a duty to act. The Pennsylvania Rules of Criminal Procedure and the local Arraignment Court Magistrate Rules impose mandatory, non-discretionary duties upon Respondents when conducting preliminary arraignments. Every day, Respondents fail to carry out these duties.

119. Petitioners have no other adequate remedy at law or equity that can protect their rights and interests. As described above, Respondents have been on notice about their ongoing failure to comply with the rules. Despite this notice and repeated calls for compliance, Respondents have continued to ignore their mandatory duties.

120. As Respondents have refused to conduct preliminary arraignments in accordance with the applicable rules and thereby defendants are denied and will continue to be denied adequate hearings, mandamus is the appropriate remedy under Pennsylvania law to compel Respondents to comply with the rules going forward.

Prayer for Relief

WHEREFORE, Petitioners request that this Honorable Court:

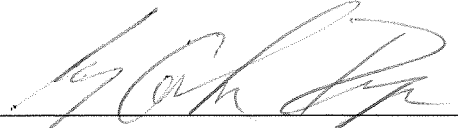
- a. Exercise original jurisdiction over this matter;
- b. Set a date for a hearing on any allegation in the Class Action Complaint and Petition for a Writ of Mandamus that Respondents contest;
- c. Order Respondents to conduct preliminary arraignments in accordance with the mandatory requirements of the Pennsylvania Rules of Criminal Procedure and the local Arraignment Court Magistrate Rules.

Specifically, Respondents must (1) consider all information relevant to the release decision, including the factors enumerated in Rule 523(A); (2) abide by Rule 524's prohibition against imposing any condition of release for the purpose of ensuring that an defendant remains incarcerated pending trial; (3) conduct Rule 528(A)'s mandatory assessment of an defendant's financial ability to pay prior to imposing cash bail; (4) carry out their duty under Rule 528(B) to only impose cash bail in reasonable amounts; (5) afford defendants a full opportunity to be heard.

- d. Order any other such relief deemed appropriate by the Court.

Respectfully submitted,

Dated: March 12, 2019



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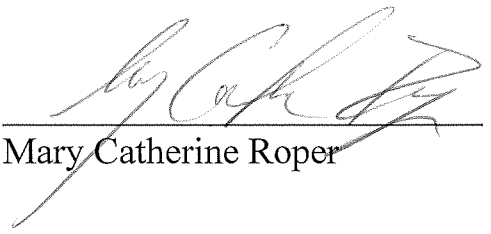
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* Petition to appear *pro hac vice* to be
filed forthwith.

CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

I hereby certify, pursuant to Pa.R.A.P. 127, that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: March 12, 2019



Mary Catherine Roper