

CAUSE NO. _____

TEXAS CRIMINAL DEFENSE §
LAWYERS ASSOCIATION; §
§
CAPITAL AREA PRIVATE §
DEFENDER SERVICE; §
§
AUSTIN CRIMINAL DEFENSE §
LAWYERS ASSOCIATION; §
§
NAACP TEXAS; §
§
HARRIS COUNTY §
CRIMINAL COURT AT LAW JUDGES, §
Hon. Judge Alex Salgado, §
Hon. Judge Ronnisha Bowman, §
Hon. Judge Erica Hughes, §
Hon. Judge Shannon Baldwin, §
Hon. Judge David M. Fleischer, §
Hon. Judge Kelley Andrews, §
Hon. Judge Andrew A. Wright, §
Hon. Judge Franklin Bynum, §
Hon. Judge Toria J. Finch, §
Hon. Judge Lee Harper Wilson, §
Hon. Judge Sedrick T. Walker, II, §
Hon. Judge Genesis E. Draper, §
Hon. Judge Raul Rodriguez, §
Hon. Judge David L. Singer, §
Hon. Judge Tonya Jones, §
Hon. Judge Darrell Jordan, §
§
§
v. §
§
§
GREG ABBOTT, sued in his official §
capacity as Governor of the State of §
Texas; and KEN PAXTON, sued in his §
official capacity as Attorney General of §
the State of Texas, §
§
Defendants. §

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
_____ JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT
INJUNCTION**

I. INTRODUCTION

On March 29, 2020, in response to the COVID-19 pandemic, Governor Abbott issued Executive Order GA-13 (“GA-13” or “Order”). The Order attempts to suspend several articles of the Texas Code of Criminal Procedure, and in so doing reaches beyond the statutory and constitutional authority of the Governor. This case challenges GA-13 for violating the Texas Disaster Act of 1975 (“Disaster Act”) and the Texas Constitution, which carefully limit the Governor’s authority, even in times of crisis.

In just months, the COVID-19 pandemic has transformed our world. Since social distancing is the only way to slow the spread of this deadly virus, people across Texas and the world follow the advice of public health experts by staying home and avoiding interaction with others. Schools, restaurants, stores and courthouses have closed, many people have lost their jobs, and the threat of the virus will cause many more months of economic insecurity, illness, and death. As a result, government officials at all levels have sprung into action to help avoid and mitigate the devastating effects of the virus.

As part of these efforts, local governments across the State have sought to implement the recommendations of public health experts, not only for the general population, but also for those in their custody. Because social distancing is nearly impossible in detention and people in jails are disproportionately at risk for serious complications, the risk of outbreak is especially dangerous for detention facilities, where an outbreak would cripple the healthcare system of the broader

community. As a result, local stakeholders in counties across Texas have been working together to reduce their jail populations—which experts instruct is urgently needed—in ways consistent with both state law and the safety of the community. By suspending provisions of the Code of Criminal Procedure, GA-13 frustrates these efforts and unlawfully undercuts the authority of judges and the Legislature.

The Governor has an essential role to play in protecting the public health and safety of Texans in times of crisis. That role is carefully circumscribed by the Disaster Act and Texas Constitution, both of which GA-13 exceeds. The Disaster Act does not permit the Governor to suspend substantive provisions of criminal law. The Texas Constitution grants that power of suspension only to the Texas Legislature. The Texas Constitution also carefully delineates the roles of the respective branches of government, lines that GA-13 crosses.

Government officials at all levels can, and should, respond to the COVID-19 crisis forcefully and consistently with the law. The Texas Constitution and Disaster Act, however, cabin the Governor’s authority. This Court should declare GA-13 *ultra vires* and unconstitutional.

II. DISCOVERY CONTROL PLAN

1. Plaintiffs intend for discovery to be conducted under Level 3 of Texas Rule of Civil Procedure 190.

III. PARTIES

2. Plaintiff Texas Criminal Defense Lawyers Association (“TCDLA”) is a 501(c)(3) organization based in Austin, Texas, with 38 local affiliate bars and over 3,400 attorney members who reside and practice throughout the State. TCDLA sues on behalf of itself and its members.

3. Plaintiff Capital Area Private Defender Service (“CAPDS”) is a 501(c)(3) organization based in Austin, Texas. It is a managed assigned counsel program that assigns and

supports indigent defense counsel in Travis County. CAPDS sues on behalf of itself and its members.

4. Plaintiff Austin Criminal Defense Lawyer Association (“ACDLA”) is a 501(c)(3) organization based in Austin, Texas. It is a member-supported network that provides education and professional support to lawyers representing accused citizens in Central Texas. ACDLA sues on behalf of itself and its members.

5. Plaintiff Texas State Conference of NAACP Units (“NAACP”) is a 501(c)(4) organization based in Austin, TX. Its thousands of members across Texas are organized to build a society in which all individuals have equal rights without discrimination based on race. It sues on behalf of itself and its members.

6. Plaintiffs Honorable Alex Salgado, Honorable Ronnisha Bowman, Honorable Erica Hughes, Honorable Shannon Baldwin, Honorable David M. Fleischer, Honorable Kelley Andrews, Honorable Andrew A. Wright, Honorable Franklin Bynum, Honorable Toria J. Finch, Honorable Lee Harper Wilson, Honorable Sedrick T. Walker, II, Honorable Genesis E. Draper, Honorable Raul Rodriguez, Honorable David L. Singer, Honorable Tonya Jones, and Honorable Darrell W. Jordan are all Harris County Criminal Court at Law Judges who sue in their official capacity.

7. Defendant Greg Abbott is the Governor of the State of Texas, and is sued in his official capacity only. He may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

8. Defendant Ken Paxton is the Attorney General of the State of Texas, and is sued in his official capacity only. He may be served at the Office of the Attorney General, 300 W. 15th St., Austin, Texas 78701.

IV. JURISDICTION AND VENUE

9. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over this action pursuant to Article V, Section 8, of the Texas Constitution and section 24.007 of the Texas Government Code, as well as the Texas Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code §§ 37.001 and 37.003.

10. This Court has jurisdiction over the parties because all Defendants reside or have their principal place of business in Texas.

11. Plaintiffs seek non-monetary relief.

12. Venue is proper in Travis County because Defendants have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

V. FACTS

A. Judges and Local Officials Are Trying to Curb the Rapid Spread of COVID-19 in Their Communities and Jails in Accordance with Texas Law

13. On March 13, 2020, Governor Abbott declared a State of Disaster for the State of Texas due to the rapid spread of a new, dangerous, and highly-contagious viral infection. COVID-19 has been declared a pandemic, and the State of Texas has registered 8,262 cases of the disease and 154 fatalities by April 7, 2020.¹

14. There is no vaccine or cure for COVID-19. The only way to curtail the virus's spread according to public health experts is to practice social distancing.² For those in state custody, social distancing is nearly impossible, and there are few ways to curb the risk of infection.

¹ *Texas Case Counts: COVID-19*, TEX. DEP'T OF STATE HEALTH SERVS. (last updated Apr. 7, 2020, 11:45 AM), <https://txdshs.maps.arcgis.com/apps/opsdashboard/index.html#/ed483ecd702b4298ab01e8b9cafc8b83>.

² *Coronavirus*, WORLD HEALTH ORG. (last visited Apr. 5, 2020), <https://cutt.ly/ztWyf7e> (“At this time, there are no specific vaccines or treatments for COVID-19.”); Declaration of Dr. Robert B. Greifinger, MD, ¶ 8, *Dawson v. Asher*, No. C20-0409JLR-MAT, 2020 WL 1304557 (W.D. Wash. Mar. 19, 2020) (“Social distancing and hand hygiene are the only known ways to prevent the rapid spread of COVID-19.”).

For these reasons, the World Health Organization and the Centers for Disease Control and Prevention have identified correctional facilities as particularly vulnerable environments for a COVID-19 outbreak and attendant public health crisis.³ This is because “[i]ncarcerated/detained persons live, work, eat, study, and recreate within congregate environments, . . . heightening the potential for COVID-19 to spread once introduced.”⁴ The facts have borne out this danger: at Rikers Island Jail in New York City, for example, the rate of infection among incarcerated people is over seven times the rate of infection in New York City generally, and 25 times higher than the rate in Wuhan, China.⁵

15. An outbreak in a jail poses a danger not only for those confined in it, but those who work in the jail and the surrounding community. An outbreak in a jail also puts enormous pressure on the community health system, threatening its ability to provide care for all who need it.

³ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>; *Preparedness, prevention, and control of COVID-19 in prisons and other places of detention*, WORLD HEALTH ORG. 1 (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1.

⁴ CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 3; see also Sandhya Kajeepeta and Seth J. Prins, *Why Coronavirus in Jails Should Concern All of Us*, THE APPEAL (March 24, 2020), <https://theappeal.org/coronavirus-jails-public-health/> (“[J]ails are short-term facilities and operate as revolving doors, aiding the spread of infectious disease not only within their confines, but also in the community.”).

⁵ These numbers likely underestimate the infection rate on Rikers Island, as they do not include the number of people who contracted COVID-19 on Rikers Island but who have already been released. The rates of infection rely on publicly released data collected by the Legal Aid Society. See *Analysis of COVID-19 Infection Rate in NYC Jails*, LEGAL AID SOC’Y (last visited Mar. 30, 2020, 11:00 AM), <https://cutt.ly/RtYTbWd>.

16. In Texas, jails in Dallas County,⁶ Gregg County,⁷ Harris County,⁸ Bexar County,⁹ Montgomery County,¹⁰ and Bowie County¹¹ have confirmed cases of COVID-19 within their population and staff. By April 7, 2020, at least 21 Harris County inmates and jail staff tested positive for COVID-19.¹² In Dallas County, at least 28 inmates and jail staff tested positive.¹³ These confirmed cases likely undercount the actual number of cases: Harris County has at least 200 additional employees and inmates awaiting test results, experiencing symptoms, or in quarantine.¹⁴

17. Medical and public health experts have stated that to mitigate the threat of coronavirus spread and COVID-19 in jails, jurisdictions must do everything possible to reduce the jail population.¹⁵ According to 75 faculty members of the Harvard T.H. Chan School of Public Health and Harvard Medical School, providing additional sanitation and other measures within a

⁶ Ashley Paredez, *Confirmed COVID-19 cases at Dallas County Jail now up to 28*, FOX 4 KDFW (April 5, 2020), <https://www.fox4news.com/news/confirmed-covid-19-cases-at-dallas-county-jail-now-up-to-28> (28 confirmed cases as of April 5).

⁷ Scott Brunner, *Gregg County Jail inmate tests positive for COVID-19*, LONGVIEW NEWS-J. (Apr. 2, 2020), https://www.news-journal.com/news/coronavirus/gregg-county-jail-inmate-tests-positive-for-covid-19/article_1a3dca84-752a-11ea-abff-c348b9016697.html (one person in jail infected as of April 2).

⁸ *2 additional inmates test positive for COVID-19, Harris Co. reports*, ABC 13 (Apr. 2, 2020), <https://abc13.com/health/harris-co-reports-3rd-inmate-to-test-positive-for-covid-19/6072312/> (three people in jail infected and 30 more showing symptoms awaiting test results as of April 2).

⁹ Fares Sabawi, *Bexar County jailer who tested positive for COVID-19 worked 1 day after feeling sick*, KSAT (APR. 2, 2020) <https://www.ksat.com/news/local/2020/04/02/bexar-county-jailer-who-tested-positive-for-covid-19-worked-1-day-after-feeling-sick/> (one jail employee infected as of April 2).

¹⁰ Dylan McGuinness, *Montgomery County Jail inmate tests positive for COVID-19, two days after giving birth to baby girl*, HOUSTON CHRONICLE (April 4, 2020), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Montgomery-County-Jail-inmate-tests-positive-for-15179373.php> (one jail employee infected as of April 4).

¹¹ Lynn LaRowe, *Bowie County Judge confirms 2 jail employees test positive for COVID-19*, TEXARKANA GAZETTE (Mar. 30, 2020), <https://www.texarkanagazette.com/news/texarkana/story/2020/mar/30/breaking-judge-confirms-2-employees-lasalle-tests-positive-covid-19/822538/> (two jail employees infected as of March 30).

¹² *Number of Harris County Sheriff's Office Employees Positive for COVID-19 Reaches 19*, THE KATY NEWS (April 6, 2020), <https://thekatynews.com/2020/04/06/number-of-harris-county-sheriffs-office-employees-positive-for-covid-19-reaches-18/>.

¹³ Paredez, *supra* note 7.

¹⁴ *Number of Harris County Sheriff's Office Employees Positive for COVID-19 Reaches 19*, *supra* note 13.

¹⁵ Lynn LaRowe, *Bowie County Judge confirms 2 jail employees test positive for COVID-19*, TEXARKANA GAZETTE (Mar. 30, 2020), <https://www.texarkanagazette.com/news/texarkana/story/2020/mar/30/breaking-judge-confirms-2-employees-lasalle-tests-positive-covid-19/822538/> (two jail staff members infected as of March 30).

detention setting is not enough to reduce the risk of an uncontrolled outbreak within a jail.¹⁶ Instead, “Only reducing the size of the incarcerated population will achieve this.”¹⁷

18. Where they considered it appropriate to do so, Texas judges, magistrates, and sheriffs heeded this call. Across the State, these officials exercised their constitutional authority to reduce jail populations, including in Bexar County,¹⁸ Hidalgo County,¹⁹ Tarrant County,²⁰ Galveston County,²¹ Travis County,²² and Hays County.²³ For example, the Hays County District Court Judges took measured steps to reduce the County’s jail population by nearly a third, and released a letter explaining that “[t]he less time spent inside the closely-confined jail by anyone, arrestees or law enforcement employees, the less likely is the chance that any such person might contract and spread COVID-19 outside the jail.”²⁴

¹⁶ Sherar Andalcio, *et al.*, *Letter to Governor Carlie Baker* (March 31, 2020), available at <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2464/2020/03/HCSPPH-HMS-Faculty-Letter-on-COVID-19-in-jails-3-31-20-FINAL.pdf>.

¹⁷ *Id.*

¹⁸ Jacob Beltran, *Bexar sheriff releases more than 200 from downtown San Antonio jail amid coronavirus concern*, SAN ANTONIO EXPRESS NEWS (Mar. 20, 2020), <https://www.expressnews.com/news/local/article/Sheriff-quarantines-11-deputies-releases-more-15144847.php>.

¹⁹ Mark Reagan, *Sheriff: Jail taking steps to prevent COVID-19 from taking hold*, THE MONITOR (Mar. 26, 2020), <https://www.themonitor.com/2020/03/26/sheriff-jail-taking-steps-prevent-covid-19-taking-hold/>.

²⁰ Mitch Mitchell, *Fort Worth-area coronavirus efforts trigger inmate exodus; jail population at 2-year low*, FORT WORTH STAR-TELEGRAM (Mar. 26, 2020), <https://www.star-telegram.com/news/coronavirus/article241511676.html>.

²¹ John Wayne Ferguson, *Cashless bonds offered to some to help clear Galveston County Jail*, GALVESTON CTY: THE DAILY NEWS (Mar. 20, 2020), https://www.galvnews.com/news/free/article_9f474ab5-4c1b-526b-9ee0-cfd21d2978e2.html.

²² Ryan Autullo, *Abbott order limits efforts to prevent coronavirus spread in jails, judges say*, STATESMAN (Mar. 31, 2020), <https://www.statesman.com/news/20200331/abbott-order-limits-efforts-to-prevent-coronavirus-spread-in-jails-judges-say>.

²³ Anita Miller, *COVID-19 threat prompts release of ‘85 to 90’ Hays County inmates*, HAYS FREE PRESS (Apr. 1, 2020), <https://haysfreepress.com/2020/04/01/covid-19-threat-prompts-release-of-85-to-90-hays-county-inmates/>.

²⁴ Staff Reports, *Hays County District Judges Look To Reduce Jail Population During COVID-19 Crisis*, CORRIDOR NEWS (Mar. 24, 2020), <https://smcorridornews.com/hays-county-district-judges-look-to-reduce-jail-population-during-covid-19-crisis/>.

B. GA-13 Limits Local Efforts to Curb Spread of COVID-19

19. On March 29, 2020, Governor Abbott issued Executive Order GA-13, which attempts to curb the lawful authority of judges and local officials to follow the advice of health experts by reducing their jail populations.

20. In five separate instances, the three-page Order explicitly suspends articles of the Code of Criminal Procedure. All five suspensions remove power to deal with the crisis from judges and local officials and, when followed strictly, threaten to explode jail populations during this deadly pandemic. Specifically, the Order purports to suspend:

- i. **Article 17.03 of the Texas Code of Criminal Procedure and all other relevant statutes and rules relating to personal bonds:** This provision of the Order suspends Art. 17.03 and bars judges and magistrates from granting a personal bond to anyone arrested for an offense involving “physical violence or the threat of physical violence.” It also applies to anyone arrested for a non-violent offense, but who at any time in their past received a conviction for an offense involving violence or the threat of violence—no matter how long ago or how minor the charge. This only affects people who cannot afford to pay bond; a similarly-situated wealthy person is still able to purchase release.
- ii. **Article 17.151 of the Texas Code of Criminal Procedure:** This provision bars judges, magistrates, and county officials from enforcing Article 17.151 and granting personal bonds to pre-trial detainees held without charge for a certain number of days because the prosecution is not ready for trial. The Order suspends this Article entirely, so that there is no longer any statutory limit on how long people who cannot afford a monetary bond could be locked in jail with no way to prove their innocence. The suspension of this Article applies to people arrested for any charge, with no caveat regarding violence or a history of violence.
- iii. **Article 15.21 of the Texas Code of Criminal Procedure:** This provision bars judges, magistrates, and county officials from enforcing Article 15.21, which ensures that people are released if they have been arrested on an out-of-county-warrant and have not been picked up by the other county after 11 days. By suspending this Article, the Order traps people who cannot afford to pay money bond in jail indefinitely, with no ability to challenge their charge or confinement.
- iv. **Article 42.032 of the Texas Code of Criminal Procedure, and all other relevant statutes and rules relating to commutation of time:** This provision

of the Order suspends Art. 42.032 and bars counties from releasing people based on credits for “good conduct, industry, and obedience” for all people serving a sentence for a crime involving violence or the threat of violence, and for all people who at some point in their past received a conviction for such a crime. Applied strictly, this provision requires Sheriff’s Offices to comb through the criminal history of every single person sentenced to a term in the county jail in order to release them with good time credit. Sheriffs use good time credit to maintain order and incentivize good behavior in county jails. It is also routinely considered during sentencing and plea-bargaining, which means that many people are currently serving sentences that are suddenly double the length they had been advised they would serve.

- v. **Article 42.035 of the Texas Code of Criminal Procedure:** This provision of the Order suspends Art. 42.035 and bars judges from allowing a person to serve their sentence through an electronic monitoring program instead of in a jail if the person is serving a sentence for a crime involving violence or the threat of violence or has ever been convicted of such a crime.

21. GA-13 also suspends Sections 418.1015(b) and 418.108 of the Texas Government Code to bar local executives from exercising their statutory powers during an emergency “to the extent necessary to preclude any county judge . . . or any emergency management director[] from releasing persons under any circumstances inconsistent with [the] Order.”

22. Finally, the Order contains a single exception, allowing “release on an individualized basis for health or medical reasons, provided that proper notice is given to the district attorney and an opportunity for hearing is given.”

23. Following its issuance, Defendant Paxton publicized his readiness to enforce the Order and threatened that “my office will not stand for any action that threatens the health and safety of law-abiding citizens.”²⁵

24. GA-13 immediately caused turmoil and confusion in the courts by purporting to strip judges and magistrates of their authority to decide individual cases. *See* Declarations of

²⁵ Attorney General Ken Paxton, Twitter (March 30, 2020), available at <https://twitter.com/KenPaxtonTX/status/1244647288976412675>.

Honorable Darrell W. Jordan and Honorable David L. Singer. Plaintiffs in this case include sixteen judges who have been directly harmed by this issuance of this Order and impeded from exercising their judicial authority pursuant to the Texas Constitution. The judges are now caught between fulfilling their obligations to decide bail in individual cases as prescribed by the Constitution and Legislature, or obeying an Executive Order. *See infra*, Section VIII.

25. Criminal defense associations, including Plaintiffs TCDLA, CAPDS, and ACDLA, have also been harmed by the issuance of GA-13. *See* Declaration of Kerri Anderson Donica (TCDLA); Declaration of Steve Brand (ACDLA); Declaration of Bradley Hargis (CAPDS). Since the Order was enacted, many people who would otherwise have been eligible for release are now being detained and denied a personal bond or good-time credit. In response, criminal defense attorneys have sprung into action to respond to GA-13, and many attorneys have been forced to go to jails to secure client signatures for emergency writs and petitions that would otherwise not be needed, putting themselves at additional risk of contracting COVID-19. Plaintiff organizations themselves, including the NAACP, *see* Declaration of Gary Bledsoe, have also been forced to divert immense time and resources to respond to GA-13. *See infra*, Section VIII.

26. With jails across the State confirming cases of COVID-19, time is of the essence. GA-13 ties the hands of judges and local officials precisely when they need to use their statutory and constitutional authorities to take urgent action.

VI. CAUSES OF ACTION

27. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

28. Plaintiffs request declaratory relief under the Uniform Declaratory Judgments Act (“UDJA”).

29. The UDJA is remedial and intended to settle and afford relief from uncertainty and insecurity with respect to rights under state law, and must be liberally construed to achieve that purpose. Tex. Civ. Prac. & Rem. Code. § 37.002. The UDJA waives the sovereign immunity of the State and its officials in actions that challenge the constitutionality of government actions and that seek only equitable relief.

30. Pursuant to the UDJA, Plaintiffs seek a declaratory judgment of the Court that Executive Order GA-13:

- a. Is *ultra vires* and exceeds the Governor’s authority under the Texas Disaster Act of 1975;
- b. Impermissibly suspends state laws in violation of Article I, Section 28 of the Texas Constitution; and
- c. Contravenes separation of powers established by Article II of the Texas Constitution.

31. Plaintiffs also seek declaratory relief under Texas Government Code § 2001.038. *See also id.* § 2001.003(6) (defining a rule as a “state agency statement of general applicability that . . . prescribes law); *id.* § 2001.003(7) (defining a state agency as “a state officer . . . that makes rules”).

32. In order to stop this *ultra vires* and unconstitutional Order from being enforced, Plaintiffs also seek temporary and permanent injunctive relief pursuant to Texas Civil Practices & Remedies Code §§ 37.011 and 65.011.

VII. ARGUMENT

33. GA-13 unlawfully suspends laws and deprives judges, sheriffs, and local governments of the powers and discretion granted to them by the laws of the State.

34. The Disaster Act does not empower the Governor to modify or suspend the targeted sections of the Code of Criminal Procedure. This renders GA-13 unlawful in its entirety, and the Court should invalidate its provisions as *ultra vires* on this basis alone.

35. Further, GA-13 violates Article I, Section 28 of the state Constitution, which prohibits non-legislative suspension of the laws of the State, and Article II, Section 1, which mandates separation of powers between co-equal branches of government. GA-13 is therefore unconstitutional on its face.

A. The Disaster Act Provides No Authority for the Provisions in GA-13

36. The Disaster Act authorizes the Governor to declare a state of disaster, Tex. Gov't Code § 418.014, which activates enumerated authorities related to emergency management, *see id.* § 418.015. The Act aims to “clarify and strengthen the roles of the governor, state agencies, the judicial branch of state government, and local governments in prevention of, preparation for, response to, and recovery from disasters.” *Id.* § 418.002(4).

37. The Act does not permit the Governor to suspend substantive provisions of the Code of Criminal Procedure, which GA-13 seeks to do, for two reasons. *First*, the Act's general provisions do not authorize the specific suspensions and prohibitions proclaimed by GA-13. *Second*, the Act's defined suspension authorities do not authorize GA-13's sweeping prohibitions on judicial and local authority.

1. The Disaster Act Empowers the Governor to Respond to Disasters but Not to Usurp the Roles of the Judiciary and Legislature

38. The Disaster Act carefully enumerates executive powers the Governor may claim during a certified disaster, and provides the conditions under which these powers may be invoked. Tex. Gov't Code Ch. 418. The Act is not a general grant of legislative or judicial authority to the

Governor since all branches and levels of government are explicitly empowered by the Disaster Act.

39. As GA-13 acknowledges, the Disaster Act grants certain powers to the Governor in the event of a disaster as defined by the Act. *See* Order at 1. The Governor is “responsible for meeting . . . the dangers to the state and people presented by disasters,” Tex. Gov’t Code § 418.011; the Governor may issue executive orders, *id.* § 418.012; the Governor can “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business,” *id.* § 418.016(a); the Governor may use resources of the State that are “reasonably necessary to cope with a disaster,” *id.* § 418.017(a); and the Governor “may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area,” *id.* 418.018(c).

40. These provisions do not authorize GA-13’s usurpation of judicial and legislative authority. Instead, the Disaster Act empowers each branch of government to respond to disasters while leaving judicial functions to the discretion of the courts. *See* Tex. Gov’t Code § 22.0035 (recognizing the Supreme Court’s authority to “modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor”); Tex. Gov’t Code § 74.093(c)(4) (enabling district and statutory county court judges in each county to adopt local rules of administration for “a coordinated response for the transaction of essential judicial functions in the event of a disaster”). Each provision of the Disaster Act must be read as a whole, which enumerates specific authorities without fundamentally shifting the roles of government.

2. Section 418.016(a) of the Disaster Act Prohibits the Governor from Suspending the Targeted Provisions of the Code of Criminal Procedure

41. GA-13 purports specifically to “suspend” several provisions of the Code of Criminal Procedural. Section 418.016(a) of the Disaster Act, however, allows the Governor to only “suspend the provisions of any *regulatory statute* prescribing the procedures for conduct of state business . . . if strict compliance with the provisions . . . would in any way prevent, hinder, or delay necessary action in coping with a disaster.” (emphasis added). As set forth below, GA-13 exceeds the Governor’s authority.

42. GA-13 purports to categorically suspend judicial deadlines, restrict judicial discretion to order nonmonetary conditions of release, and preclude sheriffs from commuting sentences for good time. In so doing, GA-13 is not suspending “*regulatory statute[s]* prescribing the procedures for conduct of state business.” Tex. Gov’t Code § 418.016(a) (emphasis added). Instead, in purporting to suspend provisions of the Code of Criminal Procedure, as well as “all other relevant statutes and rules” relating to personal bonds and good time credit, GA-13 far exceeds the Disaster Act’s authority.

43. *First*, the Code of Criminal Procedure provisions at issue cannot be deemed “regulatory” for several reasons. Regulatory statutes must, at a minimum, be laws that govern state agencies. Tex. Gov’t Code § 418.0155 (requiring the governor’s office to compile a list of regulatory statutes and rules that may require suspension, and enabling a “state agency” that would be impacted by suspension to review the list and advise). Such state agencies are under the control of the Executive Branch, which enables the Governor to suspend certain “regulatory statutes” without running afoul of separation of powers. *See infra* Section VII(A)(3). Neither the courts nor any of the local authorities affected by GA-13 are “state agencies” subject to the regulatory statutes. Tex. Gov’t Code § 2001.003(7) (defining a “state agency” as an entity with “statewide

jurisdiction that makes rules or determines contested cases,” and expressly excluding the legislature and courts).

44. Several provisions demonstrate the Legislature’s intention that the Disaster Act’s suspension authority pertains to the exercise of *executive* authority. For example, the Act allows the Governor to suspend municipal enforcement of “on-premise outdoor signs” so that licensed insurance carriers can erect “temporary claims service signage.” Tex. Gov’t Code § 418.016(b). Another section permits, on request of a political subdivision, suspension of *agency* deadlines “including a deadline relating to a budget or ad valorem tax,” but only if “reasonably necessary to cope with a disaster.” *Id.* § 418.016(e).²⁶ These provisions are regulatory in the sense that they concern deadlines and parameters for civil administrative matters.

45. The Disaster Act’s enabling language and prior implementations are also instructive. For example, during a disaster the Governor becomes the commander in chief of all state agencies, Tex. Gov’t Code § 418.015, and the administration of elections is generally the responsibility of the Elections Division within the Office of the Secretary of State. *See* Tex. Elec. Code § 31.001(b). Thus, during declared disasters, the Disaster Act has been interpreted to allow flexibility for postponing special elections and changing deadlines. *Cf. Salmon v. Lamb*, 616 S.W.2d 296, 298 (Tex. Civ. App.—Houston [1st] 1981, no writ) (permitting, pursuant to a hurricane disaster declaration for Galveston County on August 8, postponement of a special election scheduled in League City for August 9, “but only to the next date prescribed” by the Texas Election Code); Tex. Att’y Gen. Op. KP-0191 (2018) (“The state statutes discussed above

²⁶ Further suspension authorities include suspending: transportation and motor carrier registration requirements, Tex. Govt. Code § 418.016(f); the sale or transportation of alcoholic beverages, firearms, and explosives, *id.* § 418.019; public health, safety, zoning, and other requirements if “essential to provide temporary housing or emergency shelter for disaster victims,” *id.* § 418.020(c); under enumerated conditions, deadlines imposed by local law on a political subdivision, including a deadline relating to a budget or ad valorem tax, *id.* § 418.1075; and certain land use or construction standards, *id.* § 418.124.

prescribe deadlines and timing requirements for calling a special election and are therefore regulatory statutes that prescribe ‘the procedures for conduct of state business.’”).

46. Interpreting the Disaster Act’s suspension authority in this way keeps the Executive’s authority in the Disaster Act within constitutional confines, only permitting suspension of laws that relate to the regulatory authority of the Executive. *See infra*, Section VII(A)(3)(b). The Texas Legislature directed the subject provisions of the Code of Criminal Procedure to the Judicial Branch. Compliance with this statutory framework would not have hindered coping with the disaster. *See* Tex. Gov’t Code § 418.016(a) (permitting suspension of rules that “prevent, hinder, or delay necessary action”). Indeed, the Code seeks as its first object “[t]o adopt measures for preventing the commission of crime.” Tex. Code Crim. Pro. Art. 1.03. The Governor cannot claim emergency authority to supplant the authority of the Legislature or the judgment of the Judiciary.

47. *Second*, the subject provisions of the Code of Criminal Procedure do not “prescribe the procedures for conduct of state business.” Tex. Gov’t Code § 418.016(a). Instead, they are based on underlying constitutional concerns about speedy trial, physical liberty, and fair trial protections. The Code of Criminal Procedure affords substantive rights to criminal defendants while delineating categories of who may and who may not be held in detention, striking at the heart of powers reserved for the Judicial and Legislative Branches. *See Vandyke v. State*, 538 S.W.3d 561, 573 (Tex. Crim. App. 2017) (explaining that “the Legislature possesses the sole authority to establish criminal offenses and prescribe punishments” and “[t]he Governor’s clemency power has never extended so far that he may presume to exercise or substantially interfere with the Legislature’s prerogative to make, alter, and repeal laws, let alone define criminal offenses or fix punishment for those offenses”).

48. The Disaster Act has never been interpreted to empower the Governor to interfere with the power of the Judiciary. Until now, no Texas Governor has invoked the Disaster Act to purport to suspend provisions of the Code of Criminal Procedure and effect sweeping changes to criminal law. Because GA-13 seeks to suspend laws that are not “regulatory” as contemplated by the Disaster Act, the Order is *ultra vires* and should be deemed null and void.

3. GA-13 Violates the Constitution and the Governor’s Suspension Authority Must be Interpreted to Avoid Conflicting with the Texas Constitution

49. GA-13 violates constitutional limitations on the Governor’s authority. To the extent there is any ambiguity as to whether GA-13 is *ultra vires* the Disaster Act, this Court should interpret the Act to not permit the suspension of the subject provisions of the Code of Criminal Procedure. *See Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 629 (Tex. 1996) (“When possible, we are to interpret legislative enactments in a manner to avoid constitutional infirmities.”).

a. GA-13 Violates the Constitutional Prohibition on Suspension of Laws

50. The Texas Constitution provides that “No power of suspending the laws of this state shall be exercised, except by the Legislature.” Tex. Const. Art. I, § 28.

51. The Disaster Act does not and cannot empower the Governor to suspend the subject provisions of the Code of Criminal Procedure. Texas Supreme Court has long held that the Legislature cannot delegate “to anyone else the authority to suspend a statute law of the state.” *Brown Cracker & Candy Co. v. City of Dallas*, 104 Tex. 290, 294-95 (1911); *Arroyo v. State*, 69 S.W. 503, 504 (Tex. Crim. App. 1902) (“Under the constitution, the legislature ha[s] no right to delegate its authority . . . to set aside, vacate, suspend, or repeal the general laws of this state.”).

52. Indeed, “prior to 1874 this section was as follows: ‘No power of suspending laws in this state shall be exercised, except by the legislature, or its authority.’” *Arroyo*, 69 S.W. at 504. This constitutional provision was then specifically amended to prohibit the Legislature’s delegation of its suspension authority to remedy “the history of the oppressions which grew out of the suspension of laws by reason of such delegation of legislative authority and the declaration of martial law.” *Id.*

53. Article 28 was, in fact, promulgated in part to address this very context, as a response to then-Governor F.J. Davis “declar[ing] . . . counties under martial law” and depriving of liberty “offenders by court martial in Houston.” George D. Braden, 1 *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 84 (1977).

54. As GA-13 attempts to suspend several provisions of the Code of Criminal Procedure, it is an unconstitutional suspension of the laws. The Order is therefore “null and void.” *See Arroyo*, 69 S.W. at 504.

b. The Executive Order Is an Impermissible Violation of Separation of Powers Established by the Texas Constitution

55. Not only do the provisions of the Order unconstitutionally suspend laws in violation of Article I, section 28, they also infringe on the roles of the coequal branches of the Legislature and the Judiciary.

56. The Texas Constitution divides the government into “three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another.” Tex. Const. art. II, § 1. This Article provides that “no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except

in the instances herein expressly permitted.” *See also In re Dean*, 393 S.W.3d 741, 747 (Tex. 2012).

57. The Texas separation of powers doctrine “prohibits one branch of government from exercising a power belonging inherently to another.” *Id.* Because of the Texas Constitution’s “explicit prohibition against one government branch exercising a power attached to another,” *Perry v. Del Rio*, 67 S.W.3d 85, 91 (Tex. 2001), exceptions to the constitutionally mandated separation of powers may “never [] be implied in the least; they must be ‘expressly permitted’ by the Constitution itself.” *Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 570 (Tex. 2013).

58. Here, this Order seeks to infringe on the constitutionally ascribed powers of the Texas Judiciary. The Texas Constitution explicitly vests the judicial power of the State in the courts. Tex. Const. art. V, § 1. The jurisdiction that the Constitution grants under Article V ensures that “courts are [able] to exercise that portion of the judicial power allocated to them unimpeded by the supervision of any other” authority. *Morrow v. Corbin*, 62 S.W.2d 641, 644 (Tex. 1933). This jurisdiction encompasses the “power to hear and determine the matter in controversy according to the established rules of law.” *Id.* Although the Legislature may “define certain parameters within the operation of the judicial branch” by enacting laws like the Code of Criminal Procedure, neither it *nor* the Governor may “interfere with the powers of the judicial branch so as to usurp those powers.” *Wilson-Everett v. Christus St. Joseph*, 242 S.W.3d 799, 802 (Tex. App.—Houston [14th] 2007, pet. denied).

59. The Texas Constitution also firmly establishes that it is the unique role of the Judiciary to make individualized decisions governing bail and pretrial release. In all cases except for capital offenses, the Texas Constitution provides that “[a]ll prisoners shall be bailable by sufficient sureties.” Art. I, § 11. Section 11 of the Texas Bill of Rights then provides the due course

of law required to deny pre-trial release to individuals accused of “violent crimes,” requiring that the person’s bail may only be denied “by a *district judge* in this State.” Tex. Const. art. I, § 11a (emphasis added). When a pretrial detainee violates their conditions of release, bail may only be rescinded “if a *judge or magistrate* in this state determines by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.” Tex. Const. art. I, § 11b (emphasis added). And even for emergency protection orders involving family violence, someone’s pretrial liberty may only be proscribed if “a *judge or magistrate* in this state determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.”²⁷ Tex. Const. art. I, § 11c (emphasis added).

60. In every case, including for violent offenses, pretrial liberty may only be circumscribed by judges and magistrates in this State—not by the Executive Branch. Under the Texas Constitution, the Governor does not have authority to deny pretrial release, impose blanket restrictions on what judges and magistrates may decide in individual cases, or create new categories of considerations in which to cabin judicial discretion. Because the Constitution entrusts decision-making authority over individual cases to the Judiciary, the Executive Branch may not “encroach on substantive judicial powers” or “interfere with the powers of the judicial branch.” *Wilson-Everett*, 242 S.W.3d at 802.

61. Further, the Order tramples upon the Legislature’s powers by suspending laws enacted by the Legislature, in the absence of legislative authority to do so. Since the Texas Constitution was adopted 175 years ago, it has vested all lawmaking power in the Legislature. This

²⁷ In this section, and in this Petition, petitioners speak generally of State law. However, the Plaintiffs in this case are also bound by the U.S. Constitution and the denial of pretrial liberty must also satisfy federal due process protections.

includes the power to make, alter, and repeal laws, in accordance with the other provisions of the Constitution. *Walker v. Baker*, 196 S.W.2d 324, 328 (1946). The Legislature also “possesses the sole authority to establish criminal offenses and prescribe punishments,” *Vandyke v. State*, 538 S.W.3d 561, 573 (Tex. Crim. App. 2017), and has “complete authority to pass any law regulating the means, manner, and mode of assertion of any of [criminal defendant’s] rights in [] court,” *Johnson v. State*, 58 S.W. 60, 61 (Tex. Crim. App. 1900), provided that those procedures do not violate defendants’ constitutional rights or infringe on the constitutional decision-making authority of the Judiciary. *See Ex parte Ancira*, 942 S.W.2d 46, 48 (Tex. App.—Houston [14th] 1997, no writ) (explaining that the Legislature “wields ultimate constitutional authority over judicial administration” and holding that Article 17.151 of the Code of Criminal Procedure was constitutionally enacted by the Legislature without infringing on the powers of the Judiciary).

62. GA-13 attempts to create new law—sweeping new requirements for detention that deny personal bonds for any Texan currently charged with a crime involving “violence” or with a prior conviction at any time in the past for a crime involving “violence,” regardless of the current charge. On its face, the Order seeks to determine which people accused of crimes may be eligible for certain kinds of release throughout the course of this pandemic. Such authority to make or alter laws and govern judicial procedure falls solely within the province of the Legislature.

VIII. APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

63. In addition to the above-requested relief, Plaintiffs seek a temporary restraining order, temporary injunction, and permanent injunction to stop this *ultra vires* and unconstitutional Order from being enforced by Defendants.

64. A temporary restraining order’s purpose is to maintain the status quo pending trial. “The status quo is the last actual, peaceable, non-contested status that preceded the controversy.”

In re Newton, 146 S.W.3d 648, 651 (Tex. 2004). Until a permanent injunction can be decided on the merits, Plaintiffs are entitled to a temporary restraining order pursuant to Tex. Civ. Prac. & Rem. Code §§ 37.011 and 65.011 to preserve the status quo before the unconstitutional enactment of GA-13.

65. Plaintiffs meet all of the elements necessary for immediate injunctive relief. Plaintiffs state a valid cause of action against each Defendant and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because GA-13 is *ultra vires* the Governor's authority and unconstitutional. Plaintiffs have already been injured by GA-13 and will continue to experience imminent and irreparable harm without injunctive relief.

66. Plaintiffs in this suit include sixteen Harris County Criminal Court at Law Judges whose constitutional and statutory authority have been unilaterally abridged by GA-13 and have already suffered substantial constitutional harms. Absent injunctive relief by this Court, these judges will continue to be imminently and irreparably harmed by the Governor's *ultra vires* actions.

67. Prior to the issuance of GA-13, these judges followed the guidance of the superior courts in responding to this pandemic. Heeding the call of public health experts and local authorities, the judges met on March 27, 2020, to discuss how to reduce the Harris County Jail population, while protecting community safety, and staying within their constitutional and statutory authority. Declaration of Honorable Darrell W. Jordan ¶ 9; Declaration of Honorable David L. Singer ¶ 10. Only two days later, however, the Governor issued GA-13, in an attempt to curtail these judges' legal authority.

68. The issuance of GA-13 caused and continues to spur confusion and turmoil in Plaintiffs' courts. As some prosecutors filed motions pursuant to the Order, others questioned its validity and defense attorneys scrambled to adapt their practices for clients who might otherwise be automatically eligible for release. The chaos caused by GA-13 has bogged down the courts at a time when Plaintiffs urgently need to exercise their authority to respond to COVID-19. Declaration of Honorable Darrell W. Jordan ¶ 14. As Plaintiffs grapple with what this Order means, they are torn between either adhering to criminal procedures set forth by the Texas Constitution, Federal Constitution, Texas laws, and a federal consent decree in *ODonnell v. Harris County*, or complying with the Order, which purportedly has the force of law but requires them to trample on these other requirements. Declaration of Honorable David L. Singer ¶ 18.

69. Because of Plaintiffs' constitutional and statutory obligations, many feel compelled to defy GA-13 but risk imminent and irreparable harm. Members of the Attorney General's office have already attended at least one of Plaintiffs' proceedings to observe and monitor the implementation of GA-13, Declaration of Honorable Darrell W. Jordan ¶ 16, and the Attorney General has declared that his office stands ready to enforce GA-13.²⁸ This threat of enforcement impedes Plaintiffs' constitutional duty to adjudicate individual cases within their legal authority, which is more important than ever when people are detained during a pandemic and otherwise eligible for release.

70. The organizational Plaintiffs and their members have also sustained and will continue to sustain irreparable injury by the *ultra vires* and unconstitutional issuance of GA-13.

²⁸ Attorney General Ken Paxton, Twitter (March 30, 2020), available at <https://twitter.com/KenPaxtonTX/status/1244647288976412675>.

71. Plaintiff TCDLA is a statewide membership organization with over 3,400 criminal defense attorney members working throughout Texas. Declaration of Kerri Anderson Donica, ¶ 3. It employs full-time staff to maintain a statewide forum for its members, providing resources ranging from training to hotlines to resources for spiritual, physical, and financial wellbeing. *Id.* ¶¶ 4-8. GA-13 has caused “a fundamental shift to the landscape of both pretrial and post-conviction criminal procedure in every jurisdiction in which [TCDLA] operate[s],” forcing all of TCDLA’s full- and part-time staff, as well as its dedicated volunteer members, to devote nearly the entirety of their attention and time to responding to the Order. *Id.* ¶¶ 9-18. In addition to providing specific GA-13-related advice to its members dozens of times daily, *id.* ¶ 15, the organization has spent nearly 100 hours developing a training tool for members who have never dealt with the representation issues created by GA-13. *Id.* ¶ 17. This diversion of money, staff time, and volunteer resources has put all of TCDLA’s ordinary operations on hold, including revenue collection, membership drives, its publications, and its advocacy work. Because TCDLA relies on membership drives and subscriptions to its publications to maintain its organization, this diversion of resources and volunteer time is not sustainable. *Id.* ¶ 18.

72. TCDLA’s membership additionally suffers. To be sure, there is additional work required to analyze and adapt to the revised policies of the Code of Criminal Procedure. Declaration of Kerri Anderson Donica, ¶ 13. And the Order’s pretrial provisions result in the detention of clients who might otherwise have been automatically released on personal bond. *Id.* ¶ 12. Due to the Order, TCDLA’s members are forced to meet clients in jail settings to secure their signatures for writs and petitions that they would otherwise not need to file, “putting their own health and the health of jail staff and detainees at risk.” *Id.* Clients’ pretrial detention meaningfully impacts representation: requiring additional time and resources, complicating attorney-client

communication, and undermining outcomes. *See id.* The post-trial provisions of GA-13 likewise have required additional work to represent incarcerated clients who would otherwise have been released. *Id.* ¶¶ 12, 19. “All of this translates to additional work on each case, and this work is not additionally compensated.” *Id.* ¶ 12. Several attorney members are foregoing taking on new cases, or additional hourly opportunities, because of the time required to represent clients due to the provisions of GA-13. *Id.* ¶ 19.

73. Plaintiff CAPDS is a “managed assigned counsel” program created in part with funds from the Texas Indigent Defense Commission (TIDC) and Travis County, Texas. Declaration of Bradley Hargis, ¶ 5. Among other things, it selects private criminal defense attorneys to represent indigent adults in criminal cases, educates attorneys in Travis County on best practices and minimum standards in criminal defense, provides resources to appointed attorneys in the areas of holistic defense, facilitates attorney investigation, and provides attorneys with technology support. *Id.* ¶¶ 5-8, 10. Several provisions of GA-13 “dramatically and irrevocably hamper[]” CAPDS’s work with attorneys and indigent defendants. *Id.* ¶ 12-13. CAPDS has not only seen several policies, procedures, and systems undermined, it has had to work to create a new operative system from the whole cloth for the special hearings mandated by GA-13. *Id.* ¶ 14-15, 17-18, 21, 25, 28.

74. These changes have cost CAPDS staff and attorney members, requiring not only that they do additional work without compensation, but that they put their health and their clients’ health in jeopardy. *Id.* ¶¶ 16, 22, 25-27.

75. Plaintiff ACDLA is a professional organization comprising criminal law practitioners in Central Texas. Declaration of Steve Brand, ¶ 3. The organization exists primarily to educate its members as to the ethics and practices of criminal law. *Id.* ¶¶ 3-5. GA-13

immediately upended criminal law practice in Travis County, resulting in a new category of pretrial detainees and materially reshaping the terms of post-conviction release. *Id.* ¶¶ 6, 10. ACDLA diverted the vast majority of its most substantial resource—the limited time of its volunteers—to address the direct effects of the Governor’s issuance of GA-13. *Id.* ¶¶ 7, 8, 11-13. The Order is additionally causing ongoing and irreparable injury to ACDLA’s members. Members must develop and file writs seeking releases of clients that but-for GA-13 would have been eligible for automatic release on personal bond, *id.* ¶ 14; they must travel to jail facilities, costing them time and putting their safety and the safety of their clients and jail staff in danger, *id.*; they must renegotiate plea agreements due to the suspension of commutation for good time, or seek amended judgments, *id.* ¶ 13. In short, they must spend additional time, for less effect, and no additional compensation. *Id.* ¶ 14. Furthermore, there are direct opportunity costs of the work required by GA-13, as members lose time for additional opportunities. *Id.* ¶ 15.

76. In specific instances, ACDLA members’ clients have been deprived the benefit of plea agreements that contemplated commutation on the basis of good behavior, requiring additional efforts by members to reform judgments and by ACDLA to learn and keep track of the varying procedures across the different courts where their members practice. *Id.* ¶ 12.

77. The Texas State Conference of the NAACP is a statewide organization representing thousands of members throughout Texas. The impact of Executive Order GA-13 on NAACP members and its mission is broad-ranging. Declaration of Gary Bledsoe, ¶ 4. The NAACP’s membership in Texas includes judges, defense lawyers, prosecutors, county commissioners, and jail staff. *Id.*

78. The Executive Order inappropriately constrains them in how they do their work, preventing them from exercising their authority to take action to lawfully release or issue personal

bonds or otherwise release individual detainees from jail. *Id.* The Executive Order also needlessly heightens the health and safety risks for inmates. *Id.* ¶¶ 5-7. People of color, the community the NAACP aims to serve and whose civil rights it aims to advance and protect, are disproportionately represented in the criminal justice system and therefore disproportionately subject to the increased risk of contracting COVID-19 due to the Executive Order. *Id.* ¶ 7. The NAACP has had to dedicate significant time and attention to finding ways to address the impact of the Executive Order on members, their families, and the nonmember minority communities for whom it is its mission to advocate. *Id.* ¶ 9. NAACP officers and staff also have spent hours talking to concerned families and other organizations that support inmates about the Executive Order and its implications. *Id.* ¶¶ 9-11.

79. Additionally, through its Criminal Justice Committee, the Texas State Conference of the NAACP addresses the concerns and complaints of its members related to criminal justice. *Id.* ¶ 8. Each complaint, particularly those relating to health care, requires significant individualized attention by the Committee and appropriate follow up. *Id.* ¶ 10. As a result of the Executive Order and the spread of COVID-19 within Texas jails, the Committee will be inundated with calls for help and complaints of inadequate health care. *Id.* The Executive Order needlessly increases the risk of lethal infection for many NAACP members, their families, and individuals in the communities the NAACP serves. *Id.* ¶ 11.

80. Because of this *ultra vires* executive action, Plaintiffs and their members have all diverted substantial resources and been directly harmed by the enactment of GA-13. But the most drastic effects of the Executive Order are shouldered by Plaintiffs' members and their clients who are held in detention and denied liberty that would otherwise be due to them under the law. The obligation to pay monetary bonds to secure release and the pretrial and post-conviction deprivation of liberty are themselves intolerable to a system of ordered liberty. These deprivations are

exacerbated in the midst of a global pandemic. As local governments, courts, and jail officials grapple with the reality of the current pandemic to safely reduce jail populations and mitigate the high risk of spread, GA-13 has hindered these efforts.

81. Urgent action from this Court is needed. The novel coronavirus spreads exponentially, and every day matters. Given the exigency of this crisis, Plaintiffs request that the Court issue an order restraining enforcement of GA-13.

82. For the same reasons above, Plaintiffs request the Court issue a temporary injunction following a hearing within 14 days and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is necessary to enjoin the enforcement of enforcement of Defendants' illegal policy, preserve the status quo, and ensure justice.

83. Plaintiffs are willing to post a bond if ordered to do so by the Court, but request that no bond be required because Defendants are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

IX. CONDITIONS PRECEDENT

84. All conditions precedent have been performed or have occurred.

X. RELIEF REQUESTED

85. For the foregoing reasons, Plaintiffs request the Court grant the following relief:

- a. A temporary restraining order to preserve the *status quo* and restrain Defendants from enforcing GA-13, while the Order's validity is determined at a hearing to be held within 14 days;
- b. Upon hearing, a temporary injunction prohibiting Defendants from enforcing GA-13;

- c. After trial, a permanent injunction prohibiting Defendants from enforcing GA-13;
- d. Declaratory judgment that GA-13 is *ultra vires* and unconstitutional;
- e. Reasonable and necessary attorneys' fees and costs as are equitable and just under Tex. Civ. Prac. & Rem. Code § 37.009.

Dated: April 8, 2020

Respectfully submitted:

Vince Ryan
Harris County Attorney

Rachel Fraser
Assistant County Attorney

HARRIS COUNTY ATTORNEY'S OFFICE

/s/ Andre Segura
Andre Segura, *Attorney-in-charge*

Adriana Pinon

Brian Klosterboer

David Donatti

ACLU FOUNDATION OF TEXAS, INC.

*Counsel for Harris County Criminal Court
at Law Judges*

Emily Gerrick

Nathan Fennell

Karly Jo Dixon

TEXAS FAIR DEFENSE PROJECT

Arthur Ago*
Edward G. Caspar*
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW

Andrea Woods
Brandon Buskey
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Criminal Law Reform Project

*Counsel for TCDLA, CAPDS, ACDLA, and
NAACP*

**pro hac vice forthcoming*