IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

DAVID DIXON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Case 4:19-cv-00112-AGF
	)	
CITY OF ST. LOUIS, et al.,	)	
	)	
Defendants.	)	

STATEMENT OF UNCONTROVERTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56(c)(1) and Local Rule 4.01(E), Plaintiffs submit the following statement of uncontroverted material facts in support of their motion for summary judgment:

St. Louis Bail Practices At the Time of Filing

1. On January 28, 2019, Plaintiffs filed this suit against Defendants. ECF No. 1.
2. At the time of filing, hundreds of presumptively innocent individuals in the City of St. Louis ("the City") were confined in its jails because they could not afford to pay a cash bond required by the judges of the 22nd Judicial Circuit Court—Defendant Judges here—for their release.[1]
3. Every individual arrested in the City of St. Louis on a state offense was detained in the City Justice Center ("CJC") or the Medium Security Institution ("the

[1] *See* Division of Corrections, Inmate Population Data, https://perma.cc/VD9R-XX5F (providing data on the daily inmate population at the Workhouse and CJC, which shows an average of over 400 inmates per day in December 2018); Close the Workhouse Campaign, *Close the Workhouse* 17 (2018) (stating that over 95% of persons in the Workhouse are detained because they cannot afford bond), *available at* https://perma.cc/ZQ74-RK6V.

Workhouse"), the City's two jails. *See* Ex. 1, Deposition of Donald Kearbey ("Kearbey Dep.") at 65:3-12.

4. At the time this lawsuit was filed, the process for all people who were arrested was as follows:

5. The Bond Commissioner's Office employs Pretrial Release Commissioners, commonly referred to as "Bond Commissioners" or "Bond Officers." *See* Ex. 1, Kearbey Dep. at 12:12-21.

6. Donald Kearbey is the current supervisor of the City's Bond Officers and has been in that supervisory role for years, including at the time this lawsuit was filed. *See* Ex. 1, Kearbey Dep. at 13:5-9, 140:11-14.

7. At the time this lawsuit was filed, Bond Officers would interview some people following their arrest to gather background information and prepare a report. Ex. 1, Kearbey Dep. at 25:7-19.

8. These reports would include recommended conditions of release. *See, e.g.*, Ex. 2, Pretrial Release Commissioner's Report for David Dixon, dated January 10, 2019, at 2; Ex. 3, Pretrial Release Commissioner's Report for Jeffrey Rozelle, dated January 10, 2019, at 5; Ex. 4, Pretrial Release Commissioner's Report for Aaron Thurman, dated January 15, 2019, at 3; Ex. 5, Pretrial Release Commissioner's Report for Richard Robards, dated January 10, 2019, at 2.

9. To train new employees on the bond recommendation process, the Bond Commissioner's Office showed trainees a schedule that included monetary bail amounts derived from charges and criminal history. *See* Ex. 6, Pretrial Release Manual (22nd Judicial Circuit Court) ("Pretrial Release Manual"), at 52-56; *see also*

Ex. 7, Rule 30(b)(6) Deposition of Donald Kearbey ("Kearbey 30(b)(6) Dep.") at 78:1-24.

10. Many individuals were not interviewed before bail was set. *See* Ex. 8, Deposition of Sarah Phillips ("Phillips Dep.") at 29:24-30:11. In a random sample of 222 cases reviewed from September 2018-January 2019, only 9 cases contained Bond Commissioner interviews. Ex. 14, April 3, 2019, Declaration of Elizabeth Forester ("4/3/19 Forester Decl.") ¶¶ 8, 9.

11. In particular, there were no employees working at night, so anybody arrested after hours would not be interviewed. Ex. 7, Kearbey 30(b)(6) Dep. at 19:24-20:5.

12. Interviews might not occur for other reasons, like medical treatment, or insufficient available Department of Corrections staff to bring arrestees for interviews. Ex. 1, Kearbey Dep. at 24:8-18; Ex. 7, Kearbey 30(b)(6) Dep. at 20:6-22:21.

13. Interviews also did not occur for individuals charged with misdemeanor offenses. Ex. 1, Kearbey Dep. at 100:20-23; Ex. 8, Phillips Dep. at 234:16-18.

14. Regardless of whether an individual was interviewed by a Bond Officer, the Bond Commissioner's Office would prepare a report and recommend a bond to the duty judge for each arrestee. Ex. 7, Kearbey 30(b)(6) Dep. at 22:22-23:1, 32:1-6.

15. In the majority of instances, the recommended conditions would include payment of a secured monetary condition of release.[2] Ex. 7, Kearbey 30(b)(6) Dep. at 32:16-20; *see also, e.g.*, Exs. 2-5, Pls' Pretrial Release Reports; Ex. 9, Pretrial Release Commissioner's Report for Andrew Farrar; Ex. 10, Pretrial Release Commissioner's

[2] Secured monetary conditions of release are referred to by a variety of synonyms in deposition testimony, declarations, and briefing, including financial conditions of release, cash bonds, money bonds, cash bail, and money bail.

Report for Meredith McGuire; Ex. 11, Pretrial Release Commissioner's Report for Jonathan M. Brown; Ex. 12, Miscellaneous Pretrial Release Commissioner's Reports.

16. Some Bond Officers referenced the bail schedule used in training when making their recommendations. *See* Ex. 6, Pretrial Release Manual, at 52-56; Ex. 13, Deposition of Nathan Graves ("Graves Dep.") at 29:21-25.

17. If no interview was conducted, the Bond Commissioner's report would typically contain no information about family ties, financial circumstances, character, mental condition, or other factors relevant to conditions of release. Ex. 7, Kearbey 30(b)(6) Dep. at 26:6-25, 27:1-2; Ex. 2, Dixon Bond Commissioner's Report.

18. In such situations, the Bond Commissioner's recommendation would be based on nothing other than the charging documents and some criminal history information that may be gleaned from the police "arrest register." Ex. 7, Kearbey 30(b)(6) Dep. at 26:3-12.

19. Even if an interview was conducted and some financial information was gathered from the arrestee, it was frequently limited to a brief statement (such as just the words "food stamps") and did not contain information about ability to pay. Ex. 7, Kearbey 30(b)(6) Dep. at 27:7-28:1.

20. If an interview was conducted, a Bond Commissioner's report might have contained some information about family ties, character, mental condition, and some other factors, but the recounting of that information could be brief and limited to some basic facts entered into a boilerplate form. *See* Ex. 14, 4/3/19 Forester Decl. ¶ 6; *see also* Exs. 2-5, 9-12, Pretrial Release Reports.

21. Bond Commissioners conducted no outreach to family members or other individuals to gather more information before the initial appearance. Ex. 7, Kearbey 30(b)(6) Dep. at 72:17-73:5.

22. Bond Commissioners' bail amount recommendations were based on their experience and instincts derived from the information they had available to them. Ex. 7, Kearbey 30(b)(6) Dep. at 32:21-25.

23. Ability to pay did not factor into the Bond Commissioners' bail amount recommendation. Ex. 1, Kearbey Dep. at 43:20-44:1.

24. Judges from the 22nd Judicial Circuit Court served as "duty judges" for setting conditions of release on warrants, following a rotating schedule set by the presiding judge. Ex. 13, Graves Dep. at 28:10-15.

25. Prior to the arrestee seeing any judge or appearing in court, a duty judge would place conditions of release on the warrant. Ex. 7, Kearbey 30(b)(6) Dep. at 33:1-4.

26. Most of the time, the conditions of release placed by a duty judge on the warrant consisted of an amount of money that had to be paid before release. Ex. 8, Phillips Dep. at 28:3-7; *see also* Ex. 15, Warrant for David Dixon, dated January 10, 2019; Ex. 16, Warrant for Jeffrey Rozelle, dated January 10, 2019; Ex. 17, Warrant for Aaron Thurman, dated January 15, 2019; Ex. 18, Warrant for Richard Robards, dated January 10, 2019.

27. When judges set a high amount of cash bail, there was an expectation that the arrestee would not be able to pay it and would not be released, although in some rare instances arrestees were able to pay. Ex. 7, Kearbey 30(b)(6) Dep. at 88:2-14.

28. The high cash bail accordingly at times was intended to serve the same purpose as a de jure detention order. Ex. 7, Kearbey 30(b)(6) Dep. at 88:2-14.

29. True de jure detention orders (commonly called "no bonds") were vanishingly rare—of over 200 cases tracked between September 2018 and February 2019, only 3 had a "no bond allowed" set. Ex. 19, March 10, 2021, Declaration of Elizabeth Forester ("3/10/21 Forester Decl.") ¶ 12.

30. In the hearing on the motion to stay or modify the preliminary injunction pending appeal filed by the City of St. Louis and Dale Glass, the attorney for the City defendants testified: "occasionally there would be a no bond; but generally-speaking, the commitment would be based on a cash, a monetary condition of release" and "the commitments that my clients, the City would receive, would almost always be a monetary condition of release, and would seldom be no bond allowed." Ex. 20, Transcript of June 14, 2019, Hearing at 10:3-8, 11:18-19.

31. If a person could pay the bond set on the warrant, they would be immediately released if there was nothing else keeping them in jail. Ex. 7, Kearbey 30(b)(6) Dep. at 33:5-7. Otherwise, the arrestee would remain in jail. Ex. 13, Graves Dep. at 32:5-10, 87:5-10.

32. When setting bail, duty judges often, but not always, had access to and relied on the Bond Commissioner's report and recommended bond amount. Ex. 7, Kearbey 30(b)(6) Dep. at 35:23-36:5.

33. The information available to the duty judge at the time of setting bail was limited to the information in the Bond Commissioner's report (if available), the information in the probable cause statement, basic biographical information on the arrest register, and criminal history information from the Circuit Attorney's Office. Ex. 7, Kearbey 30(b)(6) Dep. at 36:6-38:5.

34. If no interview was conducted, the duty judge would have no information about the individual's financial circumstances or ability to pay bail. Ex. 7, Kearbey 30(b)(6) Dep. at 55:17-25, 56:1-14.

35. In a random sample of 222 cases reviewed from September 2018-January 2019, only 5 cases provided the Judge with any information relating to ability to pay. Ex. 14, 4/3/19 Forester Decl. ¶¶ 8, 9.

36. Even if an interview was conducted and some limited financial information was obtained, the information would likely not be sufficient to determine ability to pay. Ex. 7, Kearbey 30(b)(6) Dep. at 38:19-25.

37. Although duty judges generally did not use a rubric or schedule for setting monetary conditions of release on warrants, some judges would apply a presumptive $30,000 bail amount on warrants for charges that included firearm possession, regardless of other bail factors. Ex. 7, Kearbey 30(b)(6) Dep. at 42:12-25.

38. The duty judge setting bail on a warrant constituted an ex parte proceeding without the participation of the arrestee or defense attorney, even for individuals who had representation. Ex. 7, Kearbey 30(b)(6) Dep. at 45:9-14.

39. In setting the bail amount on the warrant, the duty judge provided no opportunity to be heard or present evidence, and could not make any findings concerning ability to pay, whether alternative conditions of release would serve the government's interests, or findings concerning the necessity of detention, as the judge lacked sufficient information to make such findings. Ex. 7, Kearbey 30(b)(6) Dep. at 36:6-38:25; *supra* ¶¶ 33-34.

40. The first interaction an individual had with a judge was at the initial appearance, a brief video hearing occurring 1-2 days after arrest (which were, vernacularly,

sometimes referred to as arraignments or initial arraignments). Ex. 7, Kearbey 30(b)(6) Dep. at 49:10-18, 50:4-8.

41. Prior to the initial appearances, arrestees were given no notice of the possibility of having their bail considered at the initial appearance. Ex. 7, Kearbey 30(b)(6) Dep. at 91:7-25, 92:1-18.

42. If arrestees did not have a Bond Commissioner interview, they were given no notice regarding the initial appearance at all. Ex. 7, Kearbey 30(b)(6) Dep. at 91:7-25, 92:1-18.

43. If arrestees were interviewed, they would be notified only that they would be going to court and that the information in their interview would be presented to the judge. Ex. 1, Kearbey Dep. at 44:23-45:1; Ex. 7, Kearbey 30(b)(6) Dep. at 90:17-24, 91:17-92:18; *see also* Ex. 21, Rule 30(b)(6) Deposition of George Hayes, Jr. ("Hayes 30(b)(6) Dep.") at 31:16-21.

44. Initial appearances took place in Divisions 25 and 26 of the 22nd Judicial Circuit Court. Ex. 7, Kearbey 30(b)(6) Dep. at 49:19-22. Arrestees were usually not physically brought into court, but rather appeared by video link from a room in the jail. Ex. 1, Kearbey Dep. at 46:12-20; Ex. 22, Deposition of Katina Booth ("Booth Dep.") at 19:18-21.

45. Arrestees brought to attend initial appearances were in the custody of the Sheriff's Department. Ex. 1, Kearbey Dep. at 45:24-46:2; Ex. 13, Graves Dep. at 37:20-25.

46. The Sheriff's Department took custody of arrestees at CJC from the Department of Corrections. Ex. 23, Rule 30(b)(6) Deposition of Dawn Kehoe-Roop ("Kehoe-Roop 30(b)(6) Dep.") at 37:21-38:9.

47. Arrestees were searched by Sheriff deputies before being transported. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 44:10-25, 45:1-4. Each individual was called out of the cell by their name and then lined up against the wall. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 45:5-13.

48. Sheriff's deputies transported arrestees to their initial appearances and guarded them during the video conference. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 33:19-34:9.

49. Transportation consisted of hooking arrestees up to chains, or cuffing them individually, and bringing them to the video courtroom at CJC. Ex. 22, Booth Dep. at 25:3-17; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 46:24-47.

50. The video courtroom consisted of an open-seating room where all detainees on the docket were seated. Ex. 22, Booth Dep. at 26:2-19; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 47:20-48:2.

51. Detainees were then individually escorted by Sheriff's deputies to an adjoining room with video conferencing apparatus for their appearance. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 47:20-48:8.

52. Sheriff's deputies regularly instructed arrestees not to speak to the judge before the initial appearance began, including sometimes specific instructions not to discuss bond. Ex. 24, Declaration of David Dixon ("Dixon Decl.") ¶ 3; Ex. 25, Declaration of Jeffrey Rozelle ("Rozelle Decl.") ¶ 3; Ex. 26, Declaration of Aaron Thurman ("Thurman Decl.") ¶¶ 3, 16; Ex. 27, Declaration of Richard Robards ("Robards Decl.") ¶ 5; Ex. 28, Declaration of James Bracken ("Bracken Decl.") ¶ 5; Ex. 29, Declaration of Reginald Lee ("Lee Decl.") ¶ 3; Ex. 30, Declaration of Jerry Moorehead ("Moorhead Decl.") ¶ 3; Ex. 31, Declaration of Anthony Williams ("Williams Decl.") ¶ 3; Ex. 32, Declaration of William Martin ("Martin Decl.") ¶ 4;

Ex. 33, Declaration of Archie Tinyen ("Tinyen Decl.") ¶ 5; Ex. 22, Booth Dep. at 65:7-11; 69:3-6 (deputies regularly instructed arrestees to let the judge finish speaking before they spoke and not to speak over the judge); Ex. 34, Deposition of Vincent Becker ("Becker Dep."), at 58:5-14 (deputies instructed arrestees not to talk to the judge unless the judge asked them questions about their case and to wait to ask questions at the end), 60:20-61:4 (describing it as a "general practice" to instruct arrestees to "let the judge say what he needs to say. And if you have questions, you can talk to the judge afterwards."); Ex. 233, Deposition of Richard Robards ("Robards Dep.") at 9:24-10:2; 21:9-13 ("the sheriffs, they'd tell us not to--you know, just say yes, ma'am they're just going to read you your charges and tell you your bond and you just step out, so that's what we did."); Ex. 320, Deposition of Aaron Thurman ("Thurman Dep.") at 15:14-17; 20:20-21("They told us that we was going to see the TV judge and that they was going to read us our charges and tell us our bond and we wasn't--we was not supposed to say anything back to the judge.").

53. This practice was picked up by newer deputies from observing senior deputies. Ex. 34, Becker Dep. at 69:10-17.

54. There were multiple Sheriff's deputies—approximately four to five—in the open-seating room during the initial appearances. Ex. 22, Booth Dep. at 27:5-12; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 50:11-22, 51:2-5; Ex. 34, Becker Dep. at 32:16-33:2. There was also a deputy inside the individual room, Ex. 22, Booth Dep. at 27:22-25; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 94:15-17; Ex. 34, Becker Dep. at 33:3-12, and a second deputy on the outside of the door, Ex. 22, Booth Dep. at 28:1-9; Ex. 34, Becker Dep. at 34:1-9.

55. The deputy inside the video room was able to hear what was happening during the initial appearance. Ex. 22, Booth Dep. at 29:25-30:3

56. The open-seating room and individual hearing room were not separated by a closed door. Ex. 22, Booth Dep. at 29:9-14; Ex. 34, Becker Dep. at 33:22-25. Accordingly, it was possible to hear talking in the individual room from the open room, particularly by the deputy stationed right outside the door. Ex. 22, Booth Dep. at 29:15-20; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 50:3-10.

57. Once the judge was done stating bond amount and charges to the arrestee and had picked a subsequent date for the next hearing in the case, deputies removed the arrestee from the video room, even if the arrestee persisted in trying to discuss their bond or their case. Ex. 22, Booth Dep. at 42:16-23, 44:3-7 ("I can just say 'The [initial appearance] is over. The judge is through talking to you. I need you to step out.'"); Ex. 34, Becker Dep. at 46:11-13 ("Once the judge would tell us, you know, 'We're done; give me the next person,' then it was—we would escort that person out.").

58. Deputies are trained not to give legal advice, Ex. 22, Booth Dep. at 77:21-78:4, but the training does not include whether a deputy may instruct arrestees not to speak or raise bond issues at their initial appearances. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 133:18-134:1.

59. Deputies have not been given a specific instruction at any time—even after the preliminary injunction was entered in this case—that they should not tell arrestees not to speak to the judge or ask about their bonds. Ex. 22, Booth Dep. at 79:14-18; Ex. 34, Becker Dep. at 69:18-25.

60. The supervision structure of the Sheriff's Department at the time this lawsuit was filed included line supervision by a sergeant, who reported to a lieutenant, who in turn reported to a major, who reported to the Sheriff's office. Ex. 22, Booth Dep. at 74:2-12.

61. Supervisors, including the sergeant and lieutenant, were periodically present in the rooms where initial appearances were occurring and were aware of what was happening there. Ex. 22, Booth Dep. at 75:3-5, 77:8-12; Ex. 34, Becker Dep. at 62:14-19. Sometimes senior staff, including Sheriff Betts, would walk through and assess what was happening. Ex. 34, Becker Dep. at 64:11-14.

62. Judges with a criminal assignment presided over initial appearances. Ex. 13, Graves Dep. at 34:24-35:6.

63. Initial appearances were not considered bond hearings. Ex. 7, Kearbey 30(b)(6) Dep. at 56:20-23.

64. Initial appearances were not recorded or transcribed in any way. Ex. 35, Rule 30(b)(6) Deposition of Nathan Graves ("Graves 30(b)(6) Dep.") at 18:21-19:10.

65. Arrestees were typically unrepresented at the initial appearances. Ex. 7, Kearbey 30(b)(6) Dep. at 49:23-50:3; Ex. 35, Graves 30(b)(6) Dep. at 30:7-11.

66. Initial appearances typically lasted fewer than five minutes—and often fewer than one minute—for each arrestee. Ex. 36, February 20, 2019, Declaration of Elizabeth Forester ("2/20/19 Forester Decl.") ¶ 6; Ex. 1, Kearbey Dep. at 51:14-16.

67. If an arrestee had been interviewed by the Bond Commissioner before their initial appearance, the judge might have access to the information on the report, but if no interview had taken place, they would have no information other than what was in the probable cause statement and criminal history information (outside of those rare

circumstances where a retained private attorney appeared). Ex. 7, Kearbey 30(b)(6) Dep. at 55:23-56:9, 56:10-14. In particular, the judge would have no information on the arrestee's financial circumstances, community ties, or other factors unrelated to the charge or criminal history. Ex. 7, Kearbey 30(b)(6) Dep. at 55:2-16.

68. At the great majority of initial appearances, there would be no discussion of conditions of release; the arrestee would merely be informed of the bail amount that had been previously set on the warrant by the duty judge. Ex. 7, Kearbey 30(b)(6) Dep. at 51:16-52:3; Ex. 36, 2/20/19 Forester Decl. ¶ 6; Ex. 37, Declaration of Mary Fox ("Fox Decl.") ¶¶ 2, 3, 6; *see also* Ex. 8, Phillips Dep. at 32:10-16 (arrestees "would be on screen in front of the Division 25 or 26 judge and basically get a new court date and then be continued on."); Ex. 34, Becker Dep. at 42:14-21 ("Q. So is it right that for [initial appearances] for people who didn't have lawyers yet, it would mostly be the judge reading the charges and the bond, asking them if they're going to get an attorney and then setting a new date? . . . A. I would say yes.").

69. Judges typically would not ask arrestees about their ability to pay a monetary condition of release. Ex. 7, Kearbey 30(b)(6) Dep. at 53:16-21; Ex. 8, Phillips Dep. at 366-14. Nor would they ask about other factors relevant to conditions of release, including community ties, medical needs, or ability to return to court. Ex. 1, Kearbey Dep. at 55:2-57:4 (admitting that, at initial appearances, judges did not as a matter of course make any inquiries into the arrestee's employment, financial resources, character, mental condition, length of residence in the community, record of convictions, or past failure to appear, even if that information was not in their file and even though consideration of that information was required by state law); Ex. 7, Kearbey 30(b)(6) Dep. at 53:22-54:4.

70. Judges typically simply affirmed the previously set bond without comment, findings, or any other process. Ex. 8, Phillips Dep. at 34:11-17, 36:20-37:3; Ex. 36, 2/20/19 Forester Decl. ¶ 6; Ex. 37, Fox Decl. ¶¶ 2, 3, 6; Ex. 38, Declaration of Daniel Blair ("Blair Decl.") ¶ 5.

71. If an arrestee attempted to speak up on his or her own and raise the issue of bond or their inability to pay, in most instances the judge told the person they needed to wait until their attorney filed a motion on their behalf. Ex. 1, Kearbey Dep. at 58:19-22; Ex. 7, Kearbey 30(b)(6) Dep. at 52:13-24; Ex. 8, Phillips Dep. at 33:25-34:10, 37:10-24; *see also* Ex. 22, Booth Dep. at 40:6-19 ("I don't know about a bond, but the judge would not discuss an individual's case without them having proper legal counsel."), 42:6-12 ("Now, if the individual is just persistent that wants [sic] to talk, to steady go on and the judge informs them that you cannot talk to them without legal counsel and give them the continue date and tell them by then that—about a PD being assigned, and they can discuss the case at a later time."), 62:12-16 ("I constantly saw a judge repeating himself to an individual that they cannot speak on their case without legal counsel."); Ex. 34, Becker Dep. at 44:14-18 ("[A] lot of times they would ask if they can get personal recog bonds or if they can have their bond lowered, and sometimes the judge would say, 'Hey, look, I can't do that until you talk to your attorney.'"); Ex. 14, 4/3/19 Forester Decl. ¶ 6.

72. After the initial appearance, the judge would fill out a form containing boilerplate prewritten language stating that the arrestee had been advised of the amount and terms of the bond that had been previously set. The form did not contain any place to write a bond modification or any evidence or considerations related to conditions

of release. Ex. 7, Kearbey 30(b)(6) Dep. at 51:3-15; Ex. 39, Form Order on Initial Appearance.

73. Arrestees would accordingly have to wait for an attorney in order to have a hearing on their conditions of release. Ex. 8, Phillips Dep. at 139:13-17.

74. For indigent arrestees who required representation by the public defender, the process of having an attorney enter on their case could take weeks. Ex. 8, Phillips Dep. at 39:23-40:1.

75. From September 2018-January 2019, the average wait time to have a public defender enter on a case out of a sample of 215 cases was 26 days. Ex. 14, 4/3/19 Forester Decl. ¶ 6c.

76. One reason for the delay in obtaining a public defender was that some individuals were not even given a public defender application until they were transported from CJC to the Workhouse, which could take up to six days. Ex. 25, Rozelle Decl. ¶ 3-4; Ex. 29, Lee Decl. ¶ 13.

77. Once individuals were able to obtain an attorney—either a public defender or a private attorney—only about half were able to have a bond modification hearing. The average wait for a bond modification hearing for those who received one was 40 days. Ex. 14, 4/3/19 Forester Decl. ¶ 6; Ex. 36, 2/20/19 Forester Decl., ¶ 3. Of the people who had bond modification hearings, about 69% had their bonds reduced or were released on their own recognizance.

78. Arrestees were not feasibly able to file any pro se motions to request a bond modification. Arrestees have no access to documents or assistance before or during the initial appearance. Ex. 21, Hayes 30(b)(6) Dep. at 40:16-43:10; Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 121:24-122:6. Defendants are not aware of any instances

where an arrestee was able to be heard on bail pro se after initial appearances and before their attorney entered the case. Ex. 1, Kearbey Dep. at 59:7-17.

79. The 22nd Judicial Circuit Court's pretrial services coordinator does not believe that the system in place at the time this lawsuit was filed was sufficient to protect a defendant's constitutional rights. Ex. 8, Phillips Dep. at 48:16-21.

Conditions in the City Jails

80. At the conclusion of the initial appearance, individuals who could not pay their money bail would be returned to the custody of Corrections Commissioner Dale Glass in one of the city's jails. *See, e.g.*, Ex. 21, Hayes 30(b)(6) Dep. at 26:22-27:6.

81. Individuals remanded to Commissioner Glass's custody were forced to suffer unsanitary, overcrowded living conditions. *See infra* ¶¶ 82-87.

82. People who were transferred to the Workhouse often waited for up to a week in a holding cell at CJC. The holding cells frequently held 20 to 25 people. Ex. 24, Dixon Decl. ¶ 16 ("At CJC before I was transferred to the Workhouse, conditions were also horrible. There were around 25 people kept in the holding cell, sleeping on concrete"); Ex. 40, Declaration of John Heimberger ("Heimberger Decl.") ¶ 2, 3 ("There are 20 to 25 people in the holding cell that's only about 6 feet across by 14 feet.").

83. People were routinely denied access to showers while being held awaiting transfer. Ex. 40, Heimberger Decl. ¶ 4 ("In the holding cell, people lay on the floor one on top of the other. You can't sleep because it's cold. They won't let us shower the whole time."); Ex. 41, Declaration of India Carter-Stewart ("Carter-Stewart Decl.") ¶

3 (". . . held me for a week at CJC in a small holding cell with so many other people. I wasn't able to shower for a week . . . ").

84. Once transferred to the Workhouse, individuals endured horrible conditions such as moldy living quarters, bug- and rodent-infested cells, leaking toilets, a leaking roof, and extreme temperatures. Ex. 24, Dixon Decl. ¶¶ 12, 13 15; Ex. 25, Rozelle Decl. ¶ 7 ("The Workhouse is horrible. It feels as cold as outside. There is plexiglass falling in. There are rodents. There is mold in the showers."); Ex. 26, Thurman Decl. ¶ 16; Ex. 27, Robards Decl. ¶ 10 ("In here, no one wants to do their job. This place is dirty, with black mold everywhere, with rats and mice. The ceiling fell in upstairs so it is overcrowded downstairs"); Ex. 28, Bracken Decl. ¶ 10; Ex. 29, Lee Decl. ¶ 12; Ex. 30, Moorehead Decl. ¶ 6; Ex. 31, Williams Decl. ¶ 7; Ex. 42, Declaration of Demyron Anderson ("Anderson Decl."); Ex. 43, Declaration of Miqwell Bryant ("Bryant Decl.") ¶¶ 8, 10 ("My cell is very cold. There is mold, rodents, and the water runs black sometimes.").

85. Individuals with medical conditions were also forced to contend with the denial of medication for days on end. Ex. 28, Bracken Decl. ¶ 10; Ex. 43, Bryant Decl. ¶ 3 ("I am mentally challenged. I take medications--but they didn't give it to me for 6 days in here. I finally got my medication last night."); Ex. 44, Declaration of Laura Lehmkuhl ("Lehmkuhl Decl.") ¶ 8; Ex. 45, Declaration of Edna Carter ("Carter Decl.") ¶ 9.

86. In some instances, individuals with medical conditions were also subject to chemical munitions when they asked for necessary medicine. Ex. 29, Lee Decl. ¶ 12 ("They are holding us in horrible conditions at CJC and at the Workhouse. At CJC my friend asked for his diabetic medicine and they maced him."); Ex. 40, Heimberger

Decl. ¶ 5 ("People can't access their medicine from the holding cell. One older man asked for his medication and guards maced him.")

87. Serious medical emergencies were likewise treated with indifference. People who suffered from seizures were dragged from their bunks while handcuffed. Ex. 24, Dixon Decl. ¶ 10; Ex. 43, Bryant Decl. ¶ 4 ("I have seizures. On January 12, I had a seizure while on the top bunk. The CO's dragged me down 16 stairs head first while I was seizing and wrapped in a wool blanket.").

Named Plaintiffs

88. Plaintiff David Dixon was arrested on January 10, 2019 by the St. Louis Police and taken to the CJC. Ex. 24, Dixon Decl. ¶ 2.

89. Without a hearing, a monetary condition of release of $30,000 was set by a duty judge on his warrant. *See* Ex. 24, Dixon Decl. ¶ 5; *see also* Ex. 7, Kearbey 30(b)(6) Dep. at 33:1-4.

90. Mr. Dixon could not afford to pay for his release. Ex. 24, Dixon Decl. ¶ 2.

91. Mr. Dixon was the sole caregiver for his disabled uncle, and he financially supported his 10- and 17-year-old sons. Ex. 24, Dixon Decl. ¶¶ 6-7. He was also the central figure in the lives of his niece's five children. Ex. 48, Declaration of Delilah Harris ("Harris Decl.") ¶ 3.

92. Mr. Dixon had an initial appearance in front of a judge that was conducted through a video link. Ex. 24, Dixon Decl. ¶ 4.

93. He was instructed by a Sheriff's deputy before the initial appearance to "just nod and say yes, sir and then come back out here." Ex. 24, Dixon Decl. ¶ 3.

94. During his initial appearance, Mr. Dixon was notified of his monetary bail amount, and when he attempted to speak to the judge about it, the judge cut him off and told him to speak to an attorney. Ex. 24, Dixon Decl. ¶ 5.

95. Because he was unable to afford his bail, Mr. Dixon remained in the St. Louis jails until he received a hearing on January 31, 2019 as a result of a stipulated agreement with Defendants to resolve Plaintiffs' Motion for a Temporary Restraining Order. *See* Stipulation of the Parties, ECF No. 19.

96. At the hearing, Mr. Dixon's $30,000 condition of release was not modified. Because he was unable to pay the amount, he remained detained in the St. Louis Jail on that condition until February 5, 2019, nearly a month after his arrest, when his bail was paid by a third-party advocacy organization. *See* Status Report, ECF No. 39, ¶ 13.

97. Plaintiff Jeffrey Rozelle was arrested on January 9, 2019, in the City of St. Louis, and a duty judge set a monetary condition of release of $15,000 on his warrant without any prior hearing. Ex. 25, Rozelle Decl. ¶ 2.

98. Mr. Rozelle had an initial appearance in front of a judge by video link.

99. Prior to the initial appearance, he was instructed not to say anything by a Sheriff's deputy. Ex. 25, Rozelle Decl. ¶ 3.

100. Despite the instruction, Mr. Rozelle requested a reduction in the bail amount, but the judge instructed him that he would have to wait for representation by counsel to file a motion to be heard on his conditions of release. Ex. 25, Rozelle Decl. ¶ 3.

101. While incarcerated, Mr. Rozelle was unable to care for his four teenage children. Ex. 25, Rozelle Decl. ¶ 6.

102. Because he was unable to afford his bail, Ex. 25, Rozelle Decl. ¶ 2, Mr. Rozelle remained incarcerated in the St. Louis jails until he had a hearing on January 31,

2019 as a result of a stipulated agreement with Defendants to resolve Plaintiffs' Motion for a Temporary Restraining Order. *See* Stipulation of the Parties, ECF No. 19.

103. At the hearing, Mr. Rozelle's $15,000 condition of release was not modified. Because he was unable to pay the amount, he remained detained in the St. Louis jails on that condition until February 5, 2019, nearly a month after his arrest, when his bail was paid by a third-party advocacy organization. *See* Status Report, ECF No. 39.

104. Plaintiff Aaron Thurman was arrested on January 16, 2019, in the City of St. Louis. Ex. 26, Thurman Decl. ¶ 2.

105. Without any hearing or interview, a duty judge set a monetary condition of release of $30,000 on Mr. Thurman's warrant. He could not afford to pay the condition of release. Ex. 26, Thurman Decl. ¶ 2.

106. Mr. Thurman had an initial appearance before a judge through a video link. Prior to the appearance, he was instructed by a Sheriff's deputy not to say anything. Ex. 26, Thurman Decl. ¶ 3.

107. Mr. Thurman wanted to be heard regarding his bail amount, but he did not say anything because of the Sheriff's deputy's instructions. Ex. 26, Thurman Decl. ¶ 4.

108. At the initial appearance, the judge conducted no inquiry into Mr. Thurman's ability to pay or other factors. Ex. 26, Thurman Decl. ¶ 5.

109. At that time, Mr. Thurman served as the primary caregiver for his sister, who had recently been diagnosed with Stage IV breast cancer, and also helped to care for his own three children and his nieces and nephews. He was prevented from caring for these family members because he was in jail. Ex. 26, Thurman Decl. ¶¶ 13-14.

110. Because he was unable to afford his bail, Mr. Thurman remained incarcerated in the St. Louis jails until he had a hearing on January 31, 2019 as a result of a stipulated agreement with Defendants to resolve Plaintiffs' Motion for a Temporary Restraining Order. At that hearing, his conditions were modified to allow him to be released. *See* Stipulation of the Parties, ECF No. 19.

111. Plaintiff Richard Robards was arrested on January 10, 2019, in the City of St. Louis. Ex. 27, Robards Decl. ¶ 2.

112. Without any hearing or interview, a duty judge set a monetary condition of release on his warrant of $10,000 with 10% secured. Mr. Robards could not afford to pay that bond, and he remained detained in the jail. Ex. 27, Robards Decl. ¶ 7.

113. Mr. Robards had an initial appearance by video link in front of a judge. Before the initial appearance, Mr. Robards was instructed not to speak by a Sheriff's deputy. Ex. 27, Robards Decl. ¶ 6.

114. At Mr. Robards' initial appearance, the judge informed him of his bond and charges. He was not provided any opportunity to ask for a reconsideration of his conditions of release. Ex. 27, Robards Decl. ¶ 6.

115. At that time, Mr. Robards's partner was five months pregnant. As a result of his incarceration, he missed the ultrasound appointment where his partner found out the sex of the baby, as well as other pregnancy milestones. Ex. 27, Robards Decl. ¶¶ 10-11.

116. Because he was unable to afford his bail, Mr. Robards remained incarcerated in the St. Louis jails until he had a hearing on January 31, 2019 as a result of a stipulated agreement with Defendants to resolve Plaintiffs' Motion for a Temporary

Restraining Order. At that hearing, his conditions were modified to allow him to be released. *See* Stipulation of the Parties, ECF No. 19.

117. All the Named Plaintiffs experienced unsanitary and other detrimental conditions while in jail. Ex. 24, Dixon Decl. ¶¶ 10-12; Ex. 25, Rozelle Decl. ¶ 7; Ex. 26, Thurman Decl. ¶¶ 15-16; Ex. 27, Robards Decl. ¶¶ 10

118. Plaintiffs' experiences were typical of other arrestees in the City of St. Louis at the time this lawsuit was filed. *See generally* Ex. 28, Bracken Decl.; Ex. 29, Lee Decl.; Ex. 30, Moorehead Decl.; Ex. 31, Williams Decl.; Ex. 32, Martin Decl; Ex. 33, Tinyen Decl.; Ex. 41, Carter-Stewart Decl.; Ex. 42, Anderson Decl.; Ex. 46, Declaration of Khalil Roy ("Roy Decl."); Ex. 47, Declaration of Maurice Dailey ("Dailey Decl.").

119. Being detained before trial has grave detrimental effects on individuals. It is also counter-productive, as data shows that the longer somebody is held pretrial, the more likely it is that they will recidivate or not appear in court. Ex. 8, Phillips Dep. at 17:10-21. This can occur after just a few days in jail pretrial. Ex. 8, Phillips Dep. at 18:4-7.

120. Individuals detained pretrial suffer irreparable harm, such as loss of jobs and income, loss of public benefits, and increased mental health issues. Ex. 24, Dixon Decl. ¶ 8; Ex. 28, Bracken Delc. ¶ 2; Ex. 29, Lee Decl. ¶ 11 ("I had a good job before I was arrested. I have now lost my job because I haven't been able to talk to anyone about being in here. I feel like I am losing everything in my life."); Ex. 30, Moorehead Decl. ¶ 30; Ex. 31, Williams Decl. ¶ 6; Ex. 41, Carter-Stewart Decl. ¶ 10; Ex. 42, Anderson Decl. ¶ 3; Ex. 46, Roy Decl. ¶ 9; Ex. 49, Declaration of Justin Holman ("Holman Decl.") ¶ 2.

121. This harm is not isolated to those detained pretrial. Friends and family of detained individuals likewise suffer from their loved ones being detained pretrial because those detained pretrial are often relied upon to provide transportation for family members, be caretakers for elderly and disabled family members, are breadwinners for households, parents to young children, and childcare providers for other friends and family members. Ex. 24, Dixon Decl. ¶¶ 6, 7; Ex. 25, Rozelle Decl. ¶ 6; Ex. 26, Thurman ¶¶ 12-14 ("However, my siblings work so the care for both my very sick sister and my siblings' kids falls on me. I am my sister's full time nurse. During the day I do anything she needs and at night I will wake up to get her medication or care for her when she's in pain. I also care for my sister's four children, my other siblings' two kids, and my own three daughters. I am very close with my daughters. In the morning I will get all the kids ready for school, and at night I will prepare dinner, play with them, bathe them, and get them ready for bed. By the end of my days I am exhausted but I know my family needs me."); Ex. 27, Robards Decl. ¶ 12; Ex. 28, Bracken Decl. ¶ 8 ("I live with my mother and my little brother who is 13 years old. I help my mom out and help care for my brother as well. With the money I make at my new job at St. Louis Club Banquet Services, I help with rent, cable bills, clothes, and food for my little brother. I give my mom about $700 a month. Since I'm in jail, my mom is having to get money from others in the family…"); Ex. 29, Lee Decl. ¶¶ 9-10 ("My girlfriend is also relying on me. Since I've been arrested, her utilities were shut off. She has a two-year-old child that is suffering and there is nothing I can do for them."); Ex. 30, Moorehead Decl. ¶ 4; Ex. 32, Martin Decl. ¶ 7; Ex. 33, Tinyen Decl. ¶ 3; Ex. 41, Carter-Stewart Decl. ¶¶ 8-11; Ex. 43, Bryant Decl. ¶¶ 6, 8; Ex. 46, Roy Decl. ¶¶ 8, 9, 11.

122. Without their loved ones around to provide material and non-material support, friends and family members may have to skip work or quit their jobs due to transportation or caretaker issues. They may also suffer without their loved one's care. Ex. 44, Lehmkuhl Decl. ¶¶ 3, 4; Ex. 45, Carter Decl. ¶¶ 3, 4, 6 ("I am disabled and I travel as best as I can, but it is hard to transport the kids back and forth…"); Ex. 48, Harris Decl. ¶¶ 3, 5-7, 9; Ex. 50, Declaration of Adrianna Thurman ("Adrianna Thurman Decl.") ¶¶ 3-6; Ex. 51, Declaration of Andrea Thurman ("Andrea Thurman Decl.") ¶¶ 4-7 ("My oldest daughter was recently diagnosed with Stage 4 Breast Cancer and with her diagnosis Aaron is the person that made sure that his sister's needs were met . . ."); Ex. 52, Declaration of Shenee Thurman ("Shenee Thurman Decl.") ¶¶ 3-7; Ex. 53, Declaration of Malashia Marcum ("Marcum Decl.") ¶¶ 4, 6; Ex. 54, Declaration of Maurice White ("White Decl.") ¶¶ 3, 5, 7; Ex. 55, Declaration of Sheneica Johnson ("Johnson Decl.") ¶¶ 4-8; Ex. 56, Declaration of Martina Lee ("M. Lee Decl.") ¶¶ 3,4.

123. Friends and family members also suffer undue mental distress while their loved ones are incarcerated. Many worry about the conditions their loved ones are forced to endure and experience high levels of stress while trying to adjust to life without their loved one's presence. Ex. 34, Carter Decl. ¶¶ 5, 7-9; Ex. 44, Lehmkuhl Decl. ¶¶ 5-8; Ex. 48, Harris Decl. ¶¶ 3, 4, 8 ("It's also been difficult for the kids because he helps me keep them in order. They look up to him. My youngest two children don't even know where he is because I don't want to tell them. Everyone really misses having him at home."); Ex. 50, Adrianna Thurman Decl. ¶ 7; Ex. 51 Andrea Thurman Decl. ¶ 7; Ex. 52, Shenee Thurman Decl. ¶¶ 5-8; Ex. 53, Marcum Decl. ¶¶ 5, 6, 9; Ex. 54, White Decl. ¶¶ 4-6 ("I really thought the $1000 bond was

extreme. It really has an effect on people when you don't have that money. You are just stuck with it, and you don't know what to do . . . ."); Ex. 55, Johnson Decl. ¶¶ 2, 8, 10; Ex. 56, M. Lee Decl. ¶¶ 3, 6-8.

124. Unnecessary detention also imposes substantial financial burdens on Defendants. An internal study from Defendants reported a cost of $95 per day to detain a person and estimated cost savings of over $2.8 million per year from increased use of release with GPS. Ex. 13, Graves Dep. at 272:21-273:1.

125. Defendants have not performed any data analysis to suggest that money bail is an effective means of protecting public safety or ensuring individuals return to court. Ex. 8, Phillips Dep. at 23:11-3.

126. Other measures, including simple court date reminders and social services, are effective at ensuring that people return to court. Ex. 8, Phillips Dep. at 19:18-20:3.

127. The 22nd Judicial Circuit Court's pretrial services coordinator performed an analysis of whether individuals who had been detained pretrial and subsequently released as a result of the COVID-19 epidemic had reoffended; she found that there were few new arrests and even fewer new charges. Ex. 8, Phillips Dep. at 193:6-18. These releases were in line with the overall trend for persons released pretrial. Ex. 8, Phillips Dep. at 193:6-18.

St. Louis Bail Process Since July 1, 2019

128. On July 1, 2019, new Missouri Supreme Court rules went into effect, including Rule 33.01, related to bail considerations at initial appearances, and Rule

33.05, related to subsequent bond determination hearings if an individual remains detained after their initial appearance.

129. The Supreme Court provided no guidance on the implementation of these rules and has not had any substantive communications with Defendants about the implementation of the rules. Ex. 35, Graves 30(b)(6) Dep. at 119:11-120:17.

130. Judges' training for implementation of the new rules consisted of two events. *See infra* ¶¶ 131-132.

131. The first was a seminar lasting a few hours on a single day in April 2019, delivered by two judges from other jurisdictions (one from Joplin, Missouri and another from Illinois) and a court administrator, about the use of pretrial services. Ex. 7, Kearbey 30(b)(6) Dep. at 106:15-107:2; Ex. 13, Graves Dep. at 14:2-12.

132. The second was a summarization of the new rules by 22nd Judicial Circuit Court Judge Sengheiser that consisted of two one-hour meetings. Ex. 7, Kearbey 30(b)(6) Dep. at 110:25-11:6, 118:4-9; *see also* Ex. 13, Graves Dep. at 14:13-19.

133. There have been no subsequent formal training sessions. Ex. 7, Kearbey 30(b)(6) Dep. at 114:21-23, 118:12-13.

Prior to the Initial Appearance Hearing

134. There have been a number of changes in how Defendant Judges determine conditions of release since this lawsuit was filed on January 28, 2019, and after the new Missouri Supreme Court Rules 33.01 and 33.05 took effect on July 1, 2019. Many of these changes did not occur immediately after the Rules took effect and are not attributable to the Rules.

135. Defendant Judges' internal communications reveal that they took certain changes directly in response to this lawsuit. For example, on August 19, 2019,

Defendant Judge David Roither emailed Defendant Judge Rex Burlison to suggest adding a reference to "clear and convincing" evidence to a form used at initial appearances because "Arch City is already complaining about the lack of findings in some of the defendants orders under the new rules and procedures." Ex. 57, Aug. 13, 2019, Email from D. Roither to R. Burlison. The form now includes that suggested language. Likewise, on May 4, 2020, the pretrial services coordinator emailed the court administrator that she had "read[] through the ACD brief from 4/14" and asked to meet to "address" the issues raised in the brief. Ex. 58, May 4, 2020, Email from S. Phillips to N. Graves.

136. Starting in February 2020, the court hired Sarah Phillips to serve in the new position of pretrial services coordinator. Her duties include attending initial appearance hearings, compiling data, and helping to coordinate arrestees and the court with service providers. *See* Ex. 8, Phillips Dep. at 53:10-54:24.

137. Judges of the 22nd Judicial Circuit Court of Missouri elected Michael F. Stelzer to serve as presiding judge, replacing Circuit Judge Rex M. Burlison, for the 2021 and 2022 calendar years. Ex. 13, Graves Dep. at 16:22-17:2.

138. The same month that this lawsuit was filed, the Bond Commissioner's Office hired an additional person so that interviews could be conducted during the night time. Ex. 7, Kearbey 30(b)(6) Dep. at 46:16-25. The office continued to use the bail schedule when training new employees on how to recommend conditions of release until recently. Ex. 7, Kearbey 30(b)(6) Dep. at 87:3-6.

139. The Bond Commissioner's Office is still not able to interview every arrestee before the duty judge determines conditions of release on the warrant. Ex. 7, Kearbey 30(b)(6) Dep. at 46:11-15; Ex. 35, Graves 30(b)(6) Dep. at 47:2-18. The

number of arrestee interviewed has increased over time. Ex. 7, Kearbey 30(b)(6) Dep. at 46:7-10. No record was made of the percentage of arrestees interviewed in the period after the new rules went into effect. Ex. 35, Graves 30(b)(6) Dep. at 47:19-49:8.

140. For months after the new rules went into effect, Bond Commissioners continued not to obtain or record information about ability to pay during their interviews. Ex. 7, Kearbey 30(b)(6) Dep. at 47:5-24, 48:12-24.

141. Starting in late 2019 or early 2020, when an interview has been conducted, Bond Commissioners began attempting to collect more information about an arrestee's financial circumstances than they did up until that point, including asking a specific question about ability to pay. Ex. 7, Kearbey 30(b)(6) Dep. at 47:5-24, 48:12-24.

142. Other than additional information gathered when there is an interview, there is no difference now in the information available to duty judges at the time that they determine conditions of release on the warrant than there was at the time this lawsuit was filed. Ex. 7, Kearbey 30(b)(6) Dep. at 47:25-48:6.

143. If no interview has been conducted, the duty judge will have no information related to conditions of release, including financial information, and will base conditions of release solely on the charging documents and criminal history information. Ex. 7, Kearbey 30(b)(6) Dep. at 48:7-11; Ex. 35, Graves 30(b)(6) Dep. at 49:12-50:1.

144. As part of this shift, Bond Officers are now also moving from recommending high money bails to recommending no bond orders. Ex. 1, Kearbey Dep. at 77:22-78:10, 84:8-10. This was the result of a decision by the Bond

Commissioner to stop recommending money bail. Ex. 1, Kearbey Dep. at 85:14-17. At the time the new rules went into effect and for some period thereafter, the Bond Commissioner's Office was still recommending cash bonds. Ex. 1, Kearbey Dep. at 87:24-88:3.

145. In approximately June 2020, Bond Officers were instructed to stop using the bail schedule and no longer recommend money bail, and instead to recommend only a recognizance release or no bond, if there was to be any recommendation. Ex. 8, Phillips Dep. at 65:15-66:8.

146. Local nonprofit social service providers periodically also perform interviews of arrestees. Ex. 8, Phillips Dep. at 89:6-10.

147. Service providers are involved in approximately 20% of arrestees' cases. Ex. 59, Deposition of Melinda Gorman ("Gorman Dep.") at 48:24-49:10. Before COVID-19, the number was slightly higher, but always fewer than 50%. Ex. 59, Gorman Dep. at 50:4-14; Ex. 8, Phillips Dep. at 90:23-91:2.

148. The participation of service providers is discretionary and could terminate at any time at the discretion of those providers. Ex. 35, Graves 30(b)(6) Dep. at 53:2-6.

149. Duty judges continue to set conditions of release on warrants in ex parte proceedings with access to only the information provided by the Bond Commissioner, charging information, and probable cause statement. Ex. 7, Kearbey 30(b)(6) Dep. at 36:6-38:25. Since the new Rules took effect, duty judges have continued to routinely set money bail amounts on warrants. Ex. 402, Miscellaneous 2020 Warrants.

Notice of Hearing

150. Arrestees are not informed that their ability to pay will be an important factor in determining their bail at the time of their Bond Officer interview. Ex. 7, Kearbey 30(b)(6) Dep. at 89:10-14.

151. Notice of what is going to take place at the initial appearance is limited to notice of information-gathering by Bond Officers at an interview, if one takes place. Ex. 8, Phillips Dep. at 74:12-75:7.

152. Nothing prevents Bond Officers from explaining to arrestees the factors the judge would consider, the ability to have a lawyer appointed, or the ability to present witnesses and evidence. Ex. 1, Kearbey Dep. at 121:24-122:14.

153. Nonetheless, prior to approximately April 2020, any notice consisted of only the interview questions themselves. Ex. 13, Graves Dep. at 106:21-107:18.

154. Starting in April 2020, the interview instrument was revised to create a short script for interviewers. Ex. 13, Graves Dep. at 156:22-157:15.

155. Since then, the totality of notice regarding the hearing on conditions of release consists of a recitation of the following phrase, when a Bond Commissioner interview occurs:

> "I work for the Pre-Trial Release Office of the courts. I am not a member of the police department or an attorney. I am going to talk to you about yourself and your ties to the community. It is important that the information be true. The information you give me will be given to your attorney, the judge, and the prosecutor for review at your initial appearance hearing. This information may be used to contact you in the future. You do not have to participate in this interview or you may choose not to answer certain questions."

Ex. 60, Current Pretrial Release Report; *see also* Ex. 13, Graves Dep. at 157:1-15 (identifying the phrase as the notice given to arrestees by the bond officer).

156. Nothing in the statement, in the form, or in the standardized interview process actually provides the arrestee notice of what the initial appearance hearing will consist of or look like, the legal standards to be applied, or that they have the ability to be heard and present evidence and witnesses. Ex. 8, Phillips Dep. at 79:23-80:8.

157. Arrestees are also not provided notice that counsel will be present at the hearing. Ex. 8, Phillips Dep. at 80:20-81:2.

158. The Sheriff's Department provides no notice to arrestees about what will happen at their initial appearance. Ex. 23, Kehoe-Roop 30(b)(6) Dep. at 118:1-8.

Timing of Initial Appearance or Rule 33.01 Hearings

159. Initial appearances, also now known as Rule 33.01 hearings, currently occur approximately 48 hours after arrest, and still constitute the first hearing on conditions of release. Ex. 7, Kearbey 30(b)(6) Dep. at 49:10-18; Ex. 13, Graves Dep. at 167:24-168:7.

160. If a person remains detained for the next seven business days, either due to a de jure or de facto detention hearing, they have a subsequent hearing commonly referred to as a Rule 33.05 hearing, a seven-day hearing, or a detention hearing. Ex. 8, Phillips Dep. at 60:2-13.

161. Initial appearances may take place more than 48 hours after arrest, because—since the onset of the COVID-19 pandemic—the initial appearance docket only runs three days a week, on Monday, Wednesday, and Friday. Ex. 1, Kearbey Dep. at 94:9-16; Ex. 13, Graves Dep. at 167:24-168:1-7.

162. If a person is arrested on a Friday after that day's docket has completed, they would not receive their initial appearance until the next week, more than 48 hours after their arrest. Ex. 13, Graves Dep. at 167:24-168:7.

Division 16B and Video Hearings

163. Starting in July 2019, initial appearances were moved from Divisions 25 and 26 to the newly created Division 16B. Ex. 7, Kearbey 30(b)(6) Dep. at 58:9-17. The Division was set up specifically for conducting initial appearances. Ex. 7, Kearbey 30(b)(6) Dep. at 58:14-17.

164. Arrestees continue to not be brought physically to court for their initial appearances. Instead, arrestees are located in the same "video courtroom"—essentially a small room in the jail with video equipment—for their hearings. Ex. 13, Graves Dep. at 176:9-15.

165. Arrestees are brought into the video courtroom one by one. A Sheriff's deputy is present in the room with them. Ex. 13, Graves Dep. at 177:23-178:1.

166. Starting on July 1, 2019, all initial appearances have been recorded by court reporters. Ex. 35, Graves 30(b)(6) Dep. at 19:11-16.

167. In order for a witness or family member to access an initial appearance video conference, they are required to contact somebody from the court to get permission and then receive a link. Ex. 8, Phillips Dep. at 57:1-7; Ex. 13, Graves Dep. at 260:11-20. This rarely occurs. Ex. 8, Phillips Dep. at 57:12-13.

168. The 22nd Judicial Circuit Court's pretrial services coordinator believes the video conference initial appearances make it difficult to humanize arrestees. Ex. 8, Phillips Dep. at 59:13-17.

Contract Attorneys

169. Starting on July 1, 2019, the Defendant Judges entered into a contract with private attorneys to provide representation to arrestees at initial appearances. Ex. 7, Kearbey 30(b)(6) Dep. at 59:5-10; Ex. 35, Graves 30(b)(6) Dep. at 29:2-23.

170. The list of attorneys who are part of this contract has changed over time. Ex. 35, Graves 30(b)(6) Dep. at 29:11-19; Ex. 59, Gorman Dep. at 22:16-4. It currently consists of approximately 10 attorneys. Ex. 59, Gorman Dep. at 22:13-15.

171. The eligibility criteria to provide representation to arrestees at initial appearances are limited to being licensed and in good standing and being current on taxes to the city. There are no minimum skill or experience requirements. Ex. 61, Contract Attorney Memorandum of Understanding; *see also* Ex. 59, Gorman Dep. at 23:21-24:2.

172. Any attorney who meets the criteria for eligibility is allowed to be on the list. Nobody has been turned away. Ex. 59, Gorman Dep. at 23:14-20.

173. The decision to use private attorneys was made by Defendant Burlison, then the presiding judge, in his own discretion. Ex. 35, Graves 30(b)(6) Dep. at 32:14-16.

174. No training is provided to contract attorneys regarding representation of arrestees at initial appearances. Ex. 35, Graves 30(b)(6) Dep. at 64:15-18; Ex. 59, Gorman Dep. at 14:18-15:1. Nor are there any performance evaluations conducted of contract attorneys related to their representation of arrestees at initial appearances. Ex. 35, Graves 30(b)(6) Dep. at 64:19-22.

175. The decision to use private attorneys instead of the Public Defender's Office or a law school clinic was made without consideration of the quality of advocacy. Ex. 35, Graves 30(b)(6) Dep. at 33:10-22; Ex. 62, June 24, 2019, Email from N.

Graves to K. Herman ("6/24/19 Graves Email") ("The system of just having an attorney in there with the defendant on the screen will not be meaningful. Burlison expanded the use of video when he was in [courtroom] 16 so he seems very attached to it even though it seems like herding cattle and they get no contact with the counsel . . . . Because he doesn't trust Mary, he isn't going for the better idea which is for her office to select the person and it keeps the judges out of it . . . .").

176. Representation by the contract attorneys typically begins and ends at initial appearances. Contract attorneys do not provide representation at subsequent Rule 33.05 hearings except under rare circumstances where there is no public defender or retained private attorney. Ex. 59, Gorman Dep. at 16:2-16, 18:3-11.

177. Around 10:00-11:00 A.M. on the day of initial appearances, contract attorneys are able to access online a list of individuals on the docket before their initial appearances. Ex. 59, Gorman Dep. at 34:4-11.

178. The docket provided to the contract attorneys is limited to name, charges, case number, and other basic information. Ex. 35, Graves 30(b)(6) Dep. at 42:21-43:8, 44:9-45:2. The list does not contain additional information relevant to the consideration of bail. Ex. 35, Graves 30(b)(6) Dep. at 43:14-22.

179. It is incumbent on the contract attorney to print out their own list of clients for the day. Ex. 59, Gorman Dep. at 17:12-21.

180. On a busier day, the initial appearance docket could contain 10-20 individuals for a given session of initial appearances. Ex. 35, Graves 30(b)(6) Dep. at 45:14-21.

181. Even when the list is generated a day in advance, the contract attorney will not receive it until that morning, shortly before initial appearances. Ex. 13, Graves Dep. at 117:25-118:11.

182. If a contract attorney so chooses, they may go online to obtain additional information. This additional information is limited to the warrant application, the probable cause statement, and the Bond Officer's interview form, if an interview took place. Ex. 35, Graves 30(b)(6) Dep. at 46:20-47:1; *see also* Ex. 8, Phillips Dep. at 88:18-89:1 ("So all I know that they have access to is the interview that's done by the bond officer, and then any other documents that are in Case.net, such as the probable cause statement, any other filing in there that they would have access to.").

183. Prior to the COVID-19 pandemic, contract attorneys were at times unable to view the Bond Officer's notes until they were physically present in the courtroom. Ex. 59, Gorman Dep. at 35:3-9.

184. Service providers, when they are involved, previously brought notes to give to the contract attorney before court. Currently, those notes are emailed. Ex. 59, Gorman Dep. at 47:5-17; Ex. 8, Phillips Dep. at 90:2-17.

185. Contract attorneys sometimes receive contact information for clients' family members, if such information is included on the interview form. If no interview takes place, there is no contact information. Ex. 35, Graves 30(b)(6) Dep. at 58:5-25.

186. Prior to the COVID-19 pandemic, initial appearances began at 1:00 or 1:30 P.M. Ex. 59, Gorman Dep. at 34:13-19. Since the onset of the COVID-19 pandemic, initial appearances have taken place at noon. Ex. 13, Graves Dep. at 181:18-20; Ex. 35, Graves 30(b)(6) Dep. at 45:3-7.

187. Accordingly, contract attorneys may have as little as an hour, and never more than four hours, between receiving the list of arrestees in the morning and the hearing to meet clients or perform any investigation related to the bail factors. Ex. 35, Graves 30(b)(6) Dep. at 45:8-13.

188. In order to have a conversation with a client about bail considerations before the initial appearance, a contract attorney would have to physically go to the jail to see that client. Ex. 35, Graves 30(b)(6) Dep. at 56:19-57:4; Ex. 59, Gorman Dep. at 33:13-24.

189. It is not realistically feasible for a contract attorney to review documents online, coordinate with the jail, meet each client, contact clients' family members, and perform any necessary investigation between receiving the list of clients around 10:00 or 11:00 A.M. and the hearing itself at noon. Ex. 35, Graves 30(b)(6) Dep. at 57:11-21; Ex. 59, Gorman Dep. at 33:25-34:12, 43:6-14 (noting that a "full blown jail visit" is "kind of impractical if you're not getting the docket until that morning.").

190. As a result, contract attorneys do not meet with their clients before they actually see them on the video screen during the court hearing. Ex. 7, Kearbey 30(b)(6) Dep. at 92:19-93:3; Ex. 35, Graves 30(b)(6) Dep. at 60:13-16; Ex. 59, Gorman Dep. at 33:13-24.

191. The expectation of Defendant Judges was that contract attorneys would not meet with their clients before initial appearances. Nathan Graves, the Court Administrator, described the system as "herding cattle and they get no contact with counsel." Ex. 62, 6/24/19 Graves Email.

192. As before the new rules, arrestees appear in court by video link from the jail. In the several months after the new rules took effect, the video technology was such that arrestees could only hear, and not see, the contract attorneys there to represent them. Ex. 59, Gorman Dep. at 31:12-32:12.

193. This video technology was later updated in 2020 to allow arrestees to see the whole courtroom. Ex. 59, Gorman Dep. at 32:23-33:9.

194. Because hearings are remote, no arrestees are present in the courtroom. Ex. 59, Gorman Dep. at 35:10-14.

195. There is now a phone present in the courtroom for attorneys who are physically present to speak with their clients at the beginning of the hearing. The phone was installed sometime between November 2019, Ex. 13, Graves Dep. at 184:18-22, and May 2020, Ex. 8, Phillips Dep. at 96:23-97:1; Ex. 59, Gorman Dep. at 37:7-17. It is rarely used. Ex. 8, Phillips Dep. at 97:24-25.

196. Typically, attorneys' first contact with their clients is during the initial appearance itself on record in open court. Ex. 8, Phillips Dep. at 96:1-8; *see, e.g.*, Ex. 63 at 20943:21-20944-10 ("MR. MUHLENKAMP: Like the Judge indicated, he appointed me to represent you for today's purposes only. So my job is to get information about your background, your ties to the community. I want them presented to the court to try to get your bond reduced. Do you understand? THE DEFENDANT: Yes, sir. MR. MUHLENKAMP: So I will ask you a number of questions. I just ask you to keep your voice up and obviously tell the truth, okay? THE DEFENDANT: Who can hear me now, you and everybody else? MR. MUHLENKAMP: Yes, me and everybody else. Thanks for asking that."). The contract attorney is often introduced as "the person waving at you." *See, e.g.*, Ex. 64 at 20808:23-20809:2; Ex. 257 at 21012:11-15.

197. In fact, prior to the installation of the phone, the only way that contract attorneys could speak to their clients was over the video during the hearing itself. Ex. 59, Gorman Dep. at 36:24-6.

198. Even after the installation of the phone, contract attorneys typically have conversations with arrestees in open court over video. Ex. 59, Gorman Dep. at 36:24-6.

199. Occasionally, when hearings took place in person, contract attorneys would ask the judge and court staff to clear the courtroom so they could converse privately with their clients through the video. Currently, attorneys can use a "breakout room" through the web application. Ex. 59, Gorman Dep. at 19:11-20:1. But these private conversations have been rare. Ex. 59, Gorman Dep. at 41:22-42:24.

200. It became "immediately apparent" to Defendants that adequate opportunity for contract attorneys to meet with clients before the initial appearance hearing had not been accounted for in the court's process. The 22nd Judicial Circuit Court Administrator expressed concern about this. Ex. 59, Gorman Dep. at 120:15-24.

201. Contract attorneys were also not calling arrestees' contacts or sending emails. Ex. 13, Graves Dep. at 125:16-18.

202. Despite being aware that contract attorneys were not speaking to arrestees before the initial appearances, Defendants took no further steps to facilitate attorney access to their clients prior to representation at the hearings. Ex. 35, Graves 30(b)(6) Dep. at 60:17-21.

203. When Defendant Burlison presided over Division 16B, he would make the offer on the record to contract attorneys that the landline phone in the courtroom could be used to contact arrestees (once it had been installed). He would also recommend that the attorney's personal cell phone could be used to have contact with arrestees by calling the jail. Ex. 35, Graves 30(b)(6) Dep. at 74:15-75:2.

204. There have been no other communications between the presiding judge and the contract attorneys about access to clients or ability to adequately represent clients. Ex. 35, Graves 30(b)(6) Dep. at 72:18-73:10, 75:3-14.

205. Because contract attorneys are unable to meaningfully meet with their clients prior to the initial appearance, they are unable to gather information that is critical to the conditions of release determination, including weight of the evidence, community ties, financial resources, health issues, and ability to get to and from court, among others. Ex. 59, Gorman Dep. at 45:6-3.

206. Instead, contract attorneys are forced to rely only on information in the Bond Commissioner's report (if an interview was conducted) and any notes from interviews conducted by service providers. Ex. 59, Gorman Dep. at 46:21-4.

207. When there is no Bond Commissioner report, contract attorneys are typically required to ask their clients questions about bail factors over the court's video link system at the time of the hearing. This reduces the ability of contract attorneys to gather information to represent their clients. Ex. 59, Gorman Dep. at 55:10-56:4.

208. In fact, all communication with clients usually takes place during the hearing itself. Ex. 59, Gorman Dep. at 59:19-25.

209. This leaves contract attorneys particularly unable to make arguments given the speed at which the judges move through the docket. For example, in Case No. 2022-CR00642, the defendant brought up his significant medical needs. Counsel was unable to find notes for the specific defendant but made an argument anyways without pausing the hearing:

> MR. SELIG: Your Honor, I apologize, I don't -- I can't find any notes from -- from pretrial release. But -- well, no, sorry, I do have some notes. No, sorry, this is for the other -- Tim Jones, not Roy Jones. Your Honor, I guess

> we're just asking for a personal recognizance and for Mr. Jones to be able to get the proper medical care that he needs.

Ex. 65. at 21203:3-9. Counsel was not able to present any kind of alternate plan that would accommodate the defendant's medical needs. The defendant was released to house arrest after spending seven days in jail without medical care. Ex. 66, 2022-CR00642 33.05 Order.

210. Also, when a Bond Commissioner's report contains erroneous information, it is typically handled by attempting to correct it on the fly during the course of the initial appearance, and then only if the arrestee speaks up on their own behalf to identify the incorrect information. Ex. 59, Gorman Dep. at 54:18-55:9.

211. Communication with family members may also occur on the fly during the hearing. Ex. 59, Gorman Dep. at 69:24-11.

212. Contact with service providers does not take place before hearings, instead occurring afterward. Ex. 59, Gorman Dep. at 97:19-98:3.

213. Contract attorneys will advocate for money bail amounts higher than what their clients can pay. Ex. 8, Phillips Dep. at 93:19-22; 94:23-95:9.

214. For example, in Case No. 2022-CR01914:

> [PROSECUTOR]: Well, no bond certainly is wildly inappropriate for this type of case given the current climate. Could he afford a cash bond?
> [CONTRACT ATTORNEY]: Mr. Jennings, what do you think?
> [DEFENDANT]: At this time I'm -- I'm only one working at this time in the household. I'm taking care of two kids. I have a daughter that's going on one coming up on the 18th.
> THE COURT: So, Mr. Jennings, can you afford a $500 cash bond?
> [DEFENDANT]: I could try. I guess I don't have anybody that I can actually ask. It's like a toss up. I don't depend on nobody.
> THE COURT: Mr. Wold?
> [CONTRACT ATTORNEY]: Judge, I'd say that bond makes sense either cash or, you know, $5,000, you know, secured. This case does not look all that bad. His priors are older. Last one is 2018, which admittedly is not great. Big ones he had in his background were many years ago. And from what I can tell, there's no -- there's nothing, you know, that he was being

> threatening to anybody. This was, you know, it's a traffic stop. They pulled the defendant over and they find a firearm in the car. It looks like his last felony was 2014.
> [PROSECUTOR]: Yeah, that's right, and that was just possession of a controlled substance.
> [CONTRACT ATTORNEY]: Right.
> [PROSECUTOR]: The State, I think on this one, would be amenable to recognizance with GPS, possibly, you know, house arrest with ability to go to work.

Ex. 67 at 17232:21-17233:25. Following this exchange, the contract attorney did not make an argument for recognizance despite the State's willingness. The judge imposed a cash bond. Ex. 67 at 17234:1-9.

215. As another example, in Case No. 2022-CR01406, the contract attorney made the following statement after failing to inquire about his client's financial means or to ask his client a single question of any kind:

> [CONTRACT ATTORNEY]: And again, Judge, my thing is that basically if the state is concerned about Mr. Rideout deciding well, you know, just I'll get another recognizance bond, and I'll just do it over again, I would ask -- there is no bond on this. I would ask that a bond be set at one hundred thousand dollars, ten percent, so he has to come up with ten thousand dollars. This time if he's going to play, he's going to pay. And again, if he decides he wants to play again he's going to be out a lot of money, and he'll be in.

Ex. 67 at 17158:25-17159:12.

216. In case No. 2022-CR00324, the defendant said he was unemployed and hoping to get back to working at Goodwill, and the contract attorney asked him, "Do you have any money whatsoever? Have you got a hundred bucks, 200 bucks?" The defendant agreed he would try to "make a call" Ex. 69 at 4245:15-18. The contract attorney reached an agreement that the defendant's bond would be set at $20,000 10%. Ex. at 4246:18-24. But the defendant was unable to post bond and ultimately had to be bailed out by The Bail Project. Ex. 70, Declaration of Mike Milton ("Milton Decl.").

217. Contract attorneys will ask to waive hearings or consent to keeping the conditions of confinement set by the duty judge at the initial appearance because they do not have enough information to advocate for their client. Ex. 400 at 21534:4-21536:2 (contract attorney agrees to continue hearing to a later date, keeping the defendant incarcerated, because the contract attorney did not have the information to contact defendant's mother and confirm a home plan prior to the hearing); *see also infra* ¶ 218.

218. For example, in Case No. 2022-CR00292, the prosecutor presented information on the allegations and priors and—instead of eliciting information about the factors or asking her client any questions—the contract attorney immediately waived the hearing:

> MS. FLINT: Your bond currently you have to come up with $750. It's my advice to you today we don't disturb that bond at all. If you cannot come up with that, it's going to be set for a hearing in another week. We waive your right to this hearing today.
> THE DEFENDANT: Yes, ma'am.

Ex. 71 at 4291, 6:24-25, 7:1-4. In another case, 2022-CR00333, the same contract attorney stopped the hearing after asking a few questions of the defendant:

> MS. FLINT: At this point, Your Honor, I believe that the case could benefit by having some more conversation with the defendant, and perhaps we could just move this for the seven days unless the Court is willing to make some sort of reduction. At this point I don't know what he can make at all. I don't know what to ask for. I don't want to have it reduced from 200,000 to some number, and then someone have to come up with a substantial change in circumstances to ask again.
> THE COURT: That's fine. Are you asking to waive his hearing at this time?
> MS. FLINT: Yes, Your Honor.

Ex. 401 at 4232:8:12-24:

219. Defendants in this case do not believe the current Missouri Supreme Court rules require that attorneys be provided for arrestees at their initial appearance. Ex. 35, Graves 30(b)(6) Dep. at 61:18-21.

220. There are no local rules or policies that require Defendants to provide representation at initial appearances. Ex. 35, Graves 30(b)(6) Dep. at 68:20-25.

221. Funding is currently allocated for contact attorneys through June 30, 2021. Ex. 35, Graves 30(b)(6) Dep. at 62:11-17; Ex. 72, City of St. Louis Detailed Budget Request FY2021.

222. The contract attorney program is entirely within the discretion of the presiding judge. If the presiding judge chose to terminate the program, or reallocate the funds that are currently dedicated to contract attorneys, it would be within his power to do so at any time. Ex. 13, Graves Dep. at 108:11-19; Ex. 35, Graves 30(b)(6) Dep. at 61:1-8.

223. Similarly, should the court's allocated budget for contract attorneys be exceeded, it would be at the discretion of the presiding judge whether to allocate additional funds. Ex. 13, Graves Dep. at 179:17-24.

Initial Appearance / Rule 33.01 Hearing Procedures

224. Judges preside over initial appearances in Division 16B on a weekly rotating schedule. Ex. 8, Phillips Dep. at 59:18-21.

225. Other than information provided by the attorney, if any, judges presiding over initial appearances would have access to only the information in the Bond Commissioner's report as before. Ex. 7, Kearbey 30(b)(6) Dep. at 58:9-25; 68:1-13. From July 2019 until late 2019 or early 2020, the report did not contain information about ability to pay, even if the arrestee had been interviewed. Ex. 7, Kearbey 30(b)(6) Dep. at 38:19-25, 54:8-16. If there was no interview, the report would contain only criminal history information, pending charges, and probation or parole status. Ex. 7, Kearbey 30(b)(6) Dep. at 62:4-15.

226. Judges presiding over initial appearances are provided a template form to use during the hearing. The form currently in use was revised in May 2020. Ex. 73, May 2020 Template 33.01 Order; *see also* Ex. 35, Graves 30(b)(6) Dep. at 77:3-11. A nearly identical form was previously used starting around August 2019. Ex. 74, August 2019 Template 33.01 Order; *see also* Ex. 35, Graves 30(b)(6) Dep. at 78:6-15, 135:1-14.

227. The forms were amended with the approval of Defendant Burlison from a version circulated by the Office of the State Courts Administrator. Ex. 35, Graves 30(b)(6) Dep. at 78:16-23.

228. The only change to the form made in the revised May 2020 version was the addition of a line referring to an additional pretrial referral form for referrals to other service providers. Ex. 35, Graves 30(b)(6) Dep. at 79:5-80:6; Ex. 75, Pretrial Referral Order.

229. Although there is no rule that judges presiding over Division 16B use the forms, all judges have consistently used the standard forms other than during a brief period after July 1, 2019, when there were multiple different forms in use. Ex. 35, Graves 30(b)(6) Dep. at 81:9-82:1, 93:9-15.

230. Judges were provided no training on how to use the new forms. Ex. 35, Graves 30(b)(6) Dep. at 102:11-14.

231. Despite being amended by Defendant Burlison after the implementation of the new rule (which requires judges to place reasons on the record for decisions that result in no bond), the current standard Rule 33.01 order form contains no area designated for a judge to write down her reasoning when setting conditions of

release at initial appearances or denying bond. Ex. 73, May 2020 Template 33.01 Order; *see also* Ex. 35, Graves 30(b)(6) Dep. at 82:19-23, 83:12-15, 83:21-84:3.

232. The current standard Rule 33.01 order form also does not require the judge to record any arguments, evidence, or witnesses considered. Ex. 73, May 2020 Template 33.01 Order; Ex. 35, Graves 30(b)(6) Dep. at 85:20-2, 86:8-11.

233. The current form contains check boxes, including a box stating "after consideration of the arguments made at initial appearance," but no check boxes related to the various factors that judges are obligated to consider under state law. Ex. 73, May 2020 Template 33.01 Order; Ex. 35, Graves 30(b)(6) Dep. at 85:2-13.

234. The form for the subsequent Rule 33.05 hearing does contain a list of the statutory bail factors with space to write in the judge's reasoning. Ex. 76 Template 33.05 Order; *see also* Ex. 35, Graves 30(b)(6) Dep. at 98:3-6; Ex. 1, Kearbey Dep. at 127:10-13 (identifying form as the one used for 33.05 hearings).

235. The current Rule 33.01 form also contains a check box to indicate that the arrestee was allowed to address the court, including a blank space for writing down what the arrestee said. Ex. 73, May 2020 Template 33.01 Order; Ex. 35, Graves 30(b)(6) Dep. at 87:8-11.

236. In some instances, judges have not checked the box indicating that the arrestee was given the opportunity to address the court. Ex. 77, 2022-CR01592 Orders at 15394; Ex. 35, Graves 30(b)(6) Dep. at 89:2-10.

237. Even on the Rule 33.05 form, judges frequently do not check all the boxes or write in information for each of the statutory factors. *See, e.g.*, Ex. 77, 2022-CR01592 Orders at 15395.

238. Judges check boxes when they believe that they are applicable. Ex. 35, Graves 30(b)(6) Dep. at 86:25-87:7.

239. If a box is not checked or if information is not written in for a statutory factor, it indicates that the judge did not consider those factors. Ex. 35, Graves 30(b)(6) Dep. at 99:15-100:10, 100:16-22.

240. Accordingly, all the statutory bail factors may not be considered, even in cases where a no bond is issued. Ex. 35, Graves 30(b)(6) Dep. at 101:18-102:5; *see also, e.g.*, Ex. 77, 2022-CR01592 Orders at 15395-96.

241. Judges typically do not write down their reasons for reaching decisions on conditions of release on the initial appearance forms. Ex. 35, Graves 30(b)(6) Dep. at 84:10-13.

242. The initial appearance form includes a box containing the boilerplate statement that the judge "[d]etermines, upon clear and convincing evidence, that no combination of non-monetary and monetary conditions will secure the safety of the community or other persons and ORDERS the defendant detained **without bond**, pending further bond hearing or trial." Ex. 77, 2022-CR01592 Orders at 15393 (emphasis added).

243. The form contains no similar check box for a finding by clear and convincing evidence regarding flight risk or a finding by clear and convincing evidence that an unaffordable money bail is necessary. Ex. 13, Graves Dep. at 208:19-24; Ex. 77, 2022-CR01592 Orders at 15393.

244. Judges are provided a "bench book" for presiding over initial appearances in Division 16B, which includes boilerplate scripts for a finding of no bond, a money bond, or a recognizance release. Ex. 78, Order Scripts; Ex. 7, Kearbey 30(b)(6) Dep.

at 75:8-20; Ex. 8, Phillips Dep. at 124:5-10; Ex. 13, Graves Dep. at 195:20-24; Ex. 35, Graves 30(b)(6) Dep. at 138:25-139:6. The scripts were given final approval by Defendant Burlison. Ex. 35, Graves 30(b)(6) Dep. at 146:12-13.

245. Judges have used these scripts to recite boilerplate justifications for no bond decisions and money bail decisions, even when there has been minimal presentation on the record of statutory bail factors. *See, e.g.*, Ex. 79 at 19984:20-19985:4 (judge cites the legal standard after hearing the allegations and list of priors, but without hearing any evidence or argument, or in fact any words at all, from defendant or defendant's counsel); Ex. 80 at 20976:16-20, 20977:12-22 (judge recites the legal standard to justify detention despite an almost total lack of argument from the defense counsel, whose internet was going in and out, and without anyone questioning the defendant).

246. Judges have also used these scripts to recite the legal standard to justify a no bond decision, without making a requisite individualized finding. Ex. 65; Ex. 81; Ex. 82; Ex. 83; Ex. 84; Ex. 85; Ex. 86; Ex. 87; Ex. 88; Ex. 89; Ex. 90; Ex. 91; Ex. 92; Ex. 93; Ex. 94; Ex. 95; Ex. 96; Ex. 97; Ex. 98; Ex. 99.

247. Judges have used a rote recitation of the script to justify a bail decision even when the script was nonsensical. Ex. 100 at 4276:5-6 (judge reciting a list of factors in Rule 33.01 and explaining that, "The court has considered any of the following additional conditions of release required pursuant to Rule 33.").

248. Defendant Judges maintain that the new rule does not require a judge to make a finding by clear and convincing evidence to justify a de facto detention by virtue of unaffordable bail. Ex. 35, Graves 30(b)(6) Dep. at 215:13-16.

249. The Bond Commissioner has never seen a judge make a finding upon clear and convincing evidence that no other conditions of release are appropriate when setting an unaffordable cash bond. Ex. 1, Kearbey Dep. at 133:4-17.

250. Defendant Judges acknowledge that a finding by clear and convincing evidence is required to justify a de facto detention via a "no bond" order. Ex. 35, Graves 30(b)(6) Dep. at 215:13-16.

251. But Defendant Judges maintain that other conditions that result in detention do not need to meet the same standard of evidence as "no bond" detentions. Ex. 35, Graves 30(b)(6) Dep. at 214:4-9.

252. In fact, Defendant Judges believe that there is *no standard of evidence at all* that is applied when setting an amount of bail beyond what an individual can afford to pay. Ex. 35, Graves 30(b)(6) Dep. at 215:13-19.

253. Defendant Judges maintain that there are no differences in standards applied when setting conditions of release based on either flight risk or risk of danger to the community. Ex. 35, Graves 30(b)(6) Dep. at 216:15-21.

254. Defendant Judges further maintain that there is no burden of proof on the prosecution to justify conditions of release, even those that result in de jure or de facto detention. Ex. 7, Kearbey 30(b)(6) Dep. at 68:16-69:20; Ex. 35, Graves 30(b)(6) Dep. at 214:10-215:1.

255. Defendant Judges accordingly take the position that there can be a finding of clear and convincing evidence justifying a "no bond" detention when the prosecutor does not present any evidence at all. Ex. 35, Graves 30(b)(6) Dep. at 215:8-12.

256. Judges have continued to refer to the process of review of conditions of release at initial appearances as a question of whether to "modify" the previously set bail, rather than a de novo consideration. Ex. 7, Kearbey 30(b)(6) Dep. at 64:17-23.

257. "Weight"—i.e., a presumption of correctness—has been applied to the bail decision by the duty judge that occurred without any hearing. Ex. 7, Kearbey 30(b)(6) Dep. at 65:11-25; *see also* Ex. 1, Kearbey Dep. at 131:8-11 (clarifying that initial appearance conditions of release decisions are not "setting" bond, as the bond has already been set by the duty judge); Ex. 1, Kearbey Dep. at 132:18-24 ("If the cash bond was initially set, you know like they're going to check the box on that one form that says no modification to bond."). This includes money bail determinations set without consideration of ability to pay, like a $30,000 bail for gun charges. Ex. 7, Kearbey 30(b)(6) Dep. at 65:21-25.

258. For an example of shifting the burden to the defense attorney, see the following comments from the judge in Case No. 2022-01833:

> THE COURT: Okay. So, we are here for an initial appearance matter. I'm going to advise you to not speak. Let Miss Griffin do her job on your behalf. So let me take a look on your case here so I can intelligently talk about it. Give me a second here. It looks like your present bond condition is a no bond allowed. That was issued by Judge Joseph Whyte. It is going to be Miss Griffin's job today, Mr. Rice, to see if she can convince me to set a bond actually in this matter, and so we are going to let her make an argument on your behalf.
>
> Ex. 82 at 20696:6-15.

259. Prosecutors and defense attorneys at times reach agreements on conditions of release before the initial appearance begins. Ex. 8, Phillips Dep. at 91:18-21.

260. If that happens, the defendant is not consulted on this agreement before it is reached, and only sometimes does the judge ask the defendant if he or she consents

to the agreement before entering it. For example, in Case No. 1922-CR03422, the judge, Circuit Attorney, and appointed contract attorney agreed to set a bond for $3,000. Only after the order had been made, with no judicial inquiry into the defendant's ability to pay, the contract attorney asked to speak with the defendant to relay the order:

> MS. GORMAN: Your Honor, if the State's consenting to 30,000, 10 percent, can we make it 3,000 cash only so he's eligible to apply for The Bail Project?
> MR. PAYNE: I'm okay with that.
> THE COURT: Done.
> MS. GORMAN: At this time, we'll waive formal reading and enter a plea of not guilty.
> THE COURT: All right. And with the conditions as stated with regard to Emass. We will set it for November 6th at 10:30 a.m. We will also set it December 2nd in Division 26 at 9:15 a.m.
> MS. GORMAN: May I speak with him briefly, Your Honor?
> THE COURT: Briefly.
> MS. GORMAN: Can you hear me, Mr. Cotton?
> THE DEFENDANT: Yes.
> MS. GORMAN: Okay. I'm going to speak up real loud. The Judge and the State and I have worked out your bond. Your bond has been reduced to 3,000 cash only. That is within the limits that The Bail Project will take. So you need to file an application for their services. Chances are you will be accepted. If not, you will be back on another hearing docket one week from today and your bond can be readdressed at that time. If you should get out, then you need to come back to court on December 2nd of 2019 at 9:15.
> THE COURT: You will receive paperwork with this information. All right. That will end the record.

Ex. 101 at 5358:14-25, 5359:1-19.

Rule 33.05 Hearings

261. Judges have frequently deferred to the subsequent Rule 33.05 hearing because they believe that contract attorneys were inadequately prepared with information to advocate for their clients' release. For example, in Case No. 2022-CR01335, the judge explained the difference between the hearings as such:

> THE COURT: This -- the record will reflect and so that the defendant is clear, Mr. Wafford, this is your 48 hour hearing or what's called an initial

> appearance hearing. The Court is going to appoint the public defender so that someone will come to see you before you have your seven day hearing. The idea of a seven day hearing is that an attorney is going to come to see you. That's the person that you can talk to about the facts of the case and anything that you want the Court to know and then the hearing that you have next Wednesday, August 5th, you will have your own attorney who can argue on your behalf to the Court and so it's a longer proceeding. Do you understand that, sir?
>
> Ex. 102 at 20317:4-11.

262. Both contract attorneys and judges refer to the Rule 33.05 hearing, not the initial appearance, as the "full" or "thorough" bail hearing. In one case, the contract attorney spoke to his client for the first time on the record after the prosecutor had presented his case. The attorney's presentation was limited to what was in the court file and a handful of questions asked of the arrestee on the record during the hearing. In ordering pretrial detention, the judge made the following statement:

> THE COURT: I think [the charges] are somewhat serious, but I agree there are some misdemeanors on there and what I'm going to do today is deny bond right now. I think that, if you have a public defender and they can maybe give some more information and present a fuller picture of where you are right now and how you will be able to show up to court and those kinds of issues, I think that might satisfy the next Judge on a full detention hearing.
>
> Ex. 103 at 20863:19-25, 20864:1. The arrestee was released at the 33.05 hearing after spending an unnecessary extra week in jail. Ex. 104, 1822-CR04040-01 33.05 Order.

263. As another example, in Case No. 1922-CR03416, the Court set a $20,000 10% bond for a man who stated that he was homeless and unemployed, noting the possibility that the defendant could not make the bond:

> THE COURT: And, Mr. Irving, should we set him for one week out just in case. Ms. Fluhr?
> [CONTRACT ATTORNEY]: If he doesn't make the bond. He may not make that bond.
> THE COURT: We have a formal hearing we can set in seven days. Since he may not make this bond yet, we'll set it for that date.
>
> Ex. 105 at 5303:19-25.

264. Those who cannot meet their conditions of release—either because of unaffordable bail or a no bond order—must wait in jail at least another seven working days until their Rule 33.05 hearing. Ex. 13, Graves Dep. at 212:22-213:7 (specifying that it is the practice of the court to hold Rule 33.05 hearings within seven working days of the initial appearance).

265. It is still not feasible for arrestees to file pro se challenges to their conditions of release. *See* Ex. 8, Phillips Dep. at 42:16-44:1.

266. An indigent arrestee who waits for public defender representation typically has an attorney enter on their case by the subsequent Rule 33.05 hearing. Ex. 8, Phillips Dep. at 42:10-20.

267. This is facilitated by the Bond Commissioner offering a public defender application during the interview. Ex. 13, Graves Dep. at 100:9-101:16.

268. The process of earlier provision of public defender applications is within the discretion of the presiding judge and could be terminated at any time. Ex. 13, Graves Dep. at 105:23-106:1.

The Bail Project

269. A non-profit entity, The Bail Project, provides free bail assistance to low-income individuals who are legally presumed innocent and whom a judge has deemed eligible for release before trial contingent on paying bail. Ex. 70, Milton Decl.

270. Judges have set money bail that is unaffordable for arrestees specifically referencing the nonprofit The Bail Project in an expectation that The Bail Project will pay to have the arrestee released. *See infra* ¶¶ 271-273.

271. For example, in Case No. 2022-CR00407, the court stated explicitly that bond would be set so that The Bail Project could pay it: "So here's what I'm going to do. Mr. Keller, I'm going to make your bond 10 percent of $30,000, which might seem like a lot to you, but we have a Bail Project here." Ex. 106. at 4525:22-25.

272. In Case No. 2022-CR00011:

> THE COURT: Mr. Woods, give me just a minute. I got to fill out a new piece of paper so it reflects what I told you, okay. All right, so everything I just said, Mr. Woods, is correct, but I am going to amend your bond. I'm going to authorize -- so it's currently at $30,000. I'm going to authorize the posting of 10 percent, which is $3,000, okay. You know, if somebody can pony up three grand for you and get you out, great. There's also organizations like there's a organization [sic] called The Bail Project which can help people, you know, with the money to put up. I don't know who talks to you. We have somebody from our bond office here in the courtroom. You can't see them, but they're here. But they tell me that the folks from The Bail Project know what's going on and they'll probably come talk to you. . . . I'm not going to put any other special conditions on there because again I mean you've been through this before. I don't think you're a danger to anybody. You know, I don't need you on house arrest or locked up. You just need a little skin in the game, that's all.

Ex. 107 at 20384:21-20385:17.

273. In Case No. 1922-CR02805:

> THE DEFENDANT: Is it possible, sir, Your Honor, I can get a recog because I have no way possible to pay any bond. Like I clean vacant houses for people and they pay me for that. That's what I was doing the day I got locked up. All this occurred when I clearly got a handicap. That's what I do. I'm currently involved in vocational rehab, Criminal Justice Ministries, America Worth Is Still Up. Have you ever heard of those?
> THE COURT: I have, yes, sir.
> THE DEFENDANT: Yeah. Currently I have four applications in for work: One for Yellow Row Company, a company called Heinkel, a place called O'Reilly AutoParts, and I got an application for UPS.
> MS. GORMAN: Mr. Kimbrough, by everything that you're saying, it sounds like you're going to be an excellent candidate for The Bail Project. So when it comes time to make application for your case, make sure that you include all of the things that you just informed the Court of to let The Bail Project know what a great candidate you will be for their program.
> THE COURT: Okay. Mr. Kimbrough, I'm inclined to amend your bond to 3,000 cash only with the hope that The Bail Project will undertake your payment of that bond.

Ex. 108 at 4815:5-4816:3.

274. The Bail Project typically only posts bonds that are under $5,000. Ex. 70, Milton Decl.

275. The Bail Project is not able to pay for every person who asks for assistance. Ex. 8, Phillips Dep. at 120:21-121:1; Ex. 70, Milton Decl.

276. For example, in Case No. 1922-CR03391, the defendant spent at least 270 days in jail on a cash bail set at $25,000, 10%; this was within The Bail Project's range, but The Bail Project did not post this bond. The defendant's case was eventually dismissed. *See* Ex. 109, Miscellaneous Closed Case Dockets at 14942-45.

277. Even when The Bail Project is able to post bond, there is no guarantee they can do so immediately. *See* Ex. 70, Milton Decl.

278. It is fairly typical for The Bail Project to take at least a week to post bail. Ex. 8, Phillips Dep. at 120:10-16.

279. For example, in Case No. 1922-CR03541, The Bail Project did not post bond for the defendant until 77 days had passed from the initial appearance/Rule 33.01 hearing despite his bond being in the eligible range. Ex. 110, October and November 2019 Dockets at 9401-03; Ex. 70, Milton Decl.

280. As another example, in Case No. 2022-CR00417, the defendant's bond was reduced on February 26, 2020, from $15,000 to $50 at his Rule 33.05 hearing. The Bail Project did not post bond until March 3, 2020, so the defendant remained in jail for an additional 6 days because he could not personally afford $50. Ex. 111, December 2019-February 2020 Dockets at 8104-07; Ex. 70, Milton Decl.

281. The Bail Project has posted bail for 557 individuals since July 1, 2019. Ex. 70, Milton Decl.

Hearing Outcomes and Examples

282. The practices of the 22nd Judicial Circuit Court during the COVID-19 pandemic, particularly in Spring 2020, are not fully representative of the circuit's practices, in that there have been fewer arrests and the judges have granted releases specifically due to the pandemic. Ex. 112, June 19, 2020, Email from S. Phillips to R. Burlison ("I haven't done the same [compiled cash bonds] for April and May, as I don't think it speaks to what goes on in a typical month."); Ex. 113, March 27, 2020, 22nd Circuit COVID-19 Response, Procedure for Identifying Confined Individuals and Releasing Them.

283. After the new rules took effect, judges continued to set bail at initial appearances in amounts that arrestees were unable to afford or to refuse to modify bails set by the duty judge that arrestees could not afford. Ex. 7, Kearbey 30(b)(6) Dep. at 64:11-16; Ex. 8, Phillips Dep. at 138:2-6; Ex. 13, Graves Dep. at 220:1-4; Ex. 35, Graves 30(b)(6) Dep. at 184:23-185:1.

284. Arrestees accordingly continue to be detained if they cannot pay. Ex. 35, Graves 30(b)(6) Dep. at 185:2-4.

285. Money bail has been set for arrestees charged with misdemeanors at times since the new rules went into effect. Ex. 1, Kearbey Dep. at 97:18-23.

286. For example, in February 2020, judges set money bail in 40 different cases tracked by Defendant Judges. Of those, 38 were eventually able to make bail, but for over half, this resulted in a delay in release of up to 70 additional days. Ex. 114, February 2020 16B Snapshot; *see also* Ex. 8, Phillips Dep. at 153:18-154:2 (indicating that PreTrial Release Coordinator Sarah Phillips authored this spreadsheet).

287. Judges justify amounts of money bail based on safety to the community, despite the fact that a new arrest or new criminal activity does not lead to forfeiture of the bond. Ex. 1, Kearbey Dep. at 139:6-17; Ex. 35, Graves 30(b)(6) Dep. at 177:10-17.

288. For example, in Case No. 2022-CR00388, the Court stated: "So your attorney has entered a plea of not guilty for you. What I've done is I've kept the bond the exact same. Despite your inability to pay, I found you're a danger to the community, so you're going to have another hearing in this division with a different judge to review your bond again on February 11th." Ex. 115 at 4470:20-25. The case was eventually dismissed after the defendant spent 43 days in jail. *See* Ex. 116, Miscellaneous Dockets at 15853-54.

289. In Case No. 1922-CR03798, the defendant explained that he could not afford a bond because he was homeless. The Court set a cash bond anyway, explaining:

> And you are exactly correct. And that's what I assume when I see this. But the facts is the facts. I can't change those, that you caught a gun case after you caught the drug case. So, you know, the reason why you caught the case back in 2013, you know, it really doesn't matter. The fact is that you caught the case. And I will tell you the only reason why I'm leaving your bond the way it is and not increasing it is because you have shown that once either you do make a bond or get back on the street, for the most part you can do what's asked of you. But like I said, with the history and the concern that I've heard from the alleged victim and again from my perspective hearing about the chase that occurred, you know, in order to make sure that the safety of the public is looked out for, 35,000 ten percent is very reasonable. And it's very doable with some of the organizations here in the City of St. Louis that work with folks to post a bond.

Ex. 117 at 4678:11-25, 4679:1-4.

290. Judges have imposed "no bond" detention on individuals after a finding that they are a flight risk, but not a danger to the community. *See, e.g.*, Ex. 118 at 20167:17-20 ("THE COURT: . . . So I don't see where you have any income coming

in, so I'm going to have to make it no bond allowed because you're not going to appear in court based on the previous failures to appear."); Ex. 119 at 20189:8-12 ("THE COURT: All right. Well, I'm making a finding that there's clear and convincing evidence that you will not return to court. That's my finding. So therefore, I'm setting your case at no bond allowed based on your previous failures to appear and bond forfeiture.").

291. Increasingly in recent months, Defendants have detained arrestees on de jure "no bond" detention orders in situations where they previously would have set high money bail. *See infra* ¶¶ 318-20 (showing an increase in the number of "no bonds" over time); Ex. 394, December 2020 Dockets (showing only a single cash bond was imposed in the month of December 2020).

292. These no bond orders serve the same purpose as high money bail amounts previously did. Ex. 7, Kearbey 30(b)(6) Dep. at 88:2-14.

Statistics from Transcript Review

293. Defendants produced 312 transcripts of initial appearance/Rule 33.01 hearings between July 2019 and February 2021 in which the judge set a cash bail as a condition of release or detained a person on no bond allowed. Ex. 382, Declaration of Shannon Besch ("Besch Decl").

294. Of the 118 transcripts that Defendant Judges produced in which a no bond order was imposed at an initial appearance held after July 1, 2020, the judge failed to make a finding on the record by clear and convincing evidence in 46, or 39%, of such cases. *See* Ex. 92; Ex. 95; Ex. 96; Ex. 98; Ex. 102; Ex. 120; Ex. 121; Ex. 122; Ex. 123; Ex. 124; Ex. 125; Ex. 126; Ex. 127; Ex. 128; Ex. 129; Ex. 130; Ex. 131; Ex.

132; Ex. 133; Ex. 134; Ex. 135; Ex. 136; Ex. 137; Ex. 138; Ex. 139; Ex. 140; Ex. 141; Ex. 142; Ex. 143; Ex. 144; Ex. 145; Ex. 146; Ex. 147; Ex. 148; Ex. 149; Ex. 150; Ex. 151; Ex. 152; Ex. 153; Ex. 154; Ex. 155; Ex. 156; Ex. 157; Ex. 158; Ex. 159; Ex. 160.

295. In 212 hearings, or only 68% of the total transcripts reviewed, the defendant's counsel proposed specific alternative conditions of release that were less restrictive than what the judge imposed. *See* Ex. 63; Ex. 64; Ex. 65; Ex. 69; Ex. 79; Ex. 80; Ex. 83; Ex. 85; Ex. 86; Ex. 87; Ex. 88; Ex. 89; Ex. 90; Ex. 92; Ex. 93; Ex. 94; Ex. 95; Ex. 97; Ex. 98; Ex. 99; Ex. 100; Ex. 102; Ex. 103; Ex. 106; Ex. 115; Ex. 118; Ex. 119; Ex. 120; Ex. 121; Ex. 122; Ex. 123; Ex. 124; Ex. 126; Ex. 127; Ex. 128; Ex. 130; Ex. 131; Ex. 132; Ex. 133; Ex. 134; Ex. 136; Ex. 137; Ex. 138; Ex. 141; Ex. 142; Ex. 143; Ex. 144; Ex. 145; Ex. 146; Ex. 147; Ex. 148; Ex. 149; Ex. 150; Ex. 151; Ex. 152; Ex. 153; Ex. 155; Ex. 156; Ex. 157; Ex. 159; Ex. 161; Ex. 162; Ex. 163; Ex. 164; Ex. 165; Ex. 166; Ex. 167; Ex. 168 (covering two case numbers); Ex. 169; Ex. 170; Ex. 171; Ex. 172; Ex. 173; Ex. 174; Ex. 175; Ex. 176; Ex. 177; Ex. 178; Ex. 179; Ex. 180; Ex. 181; Ex. 182; Ex. 183; Ex. 184; Ex. 185; Ex. 186; Ex. 187; Ex. 188 (covering two case numbers); Ex. 189; Ex. 190; Ex. 191; Ex. 192; Ex. 193; Ex. 194; Ex. 195; Ex. 196; Ex. 197; Ex. 198; Ex. 199; Ex. 200; Ex. 201; Ex. 202; Ex. 203; Ex. 204; Ex. 205; Ex. 206; Ex. 207; Ex. 208; Ex. 209; Ex. 210; Ex. 211; Ex. 212; Ex. 213; Ex. 214; Ex. 215; Ex. 216; Ex. 217; Ex. 218; Ex. 219; Ex. 220; Ex. 221; Ex. 222; Ex. 223; Ex. 224; Ex. 225; Ex. 226; Ex. 227; Ex. 228 (covering two case numbers); Ex. 229 (covering two case numbers); Ex. 230; Ex. 231; Ex. 232; Ex. 233; Ex. 235; Ex. 236; Ex. 237; Ex. 238; Ex. 239; Ex. 240; Ex. 241; Ex. 242; Ex. 243; Ex. 244; Ex. 245; Ex. 246; Ex. 247; Ex. 248; Ex. 249; Ex. 250; Ex. 251; Ex. 252; Ex. 253; Ex. 254; Ex. 255;

Ex. 256; Ex. 257; Ex. 258; Ex. 259; Ex. 260; Ex. 261; Ex. 262; Ex. 263; Ex. 264; Ex. 265; Ex. 266; Ex. 158, Ex. 267; Ex. 268; Ex. 269; Ex. 270; Ex. 271; Ex. 272; Ex. 273; Ex. 274; Ex. 275; Ex. 276; Ex. 277; Ex. 278; Ex. 279; Ex. 280; Ex. 281; Ex. 282; Ex. 283; Ex. 284; Ex. 285; Ex. 286; Ex. 287; Ex. 288; Ex. 289; Ex. 290; Ex. 291; Ex. 292; Ex. 293; Ex. 294; Ex. 295; Ex. 296; Ex. 297; Ex. 298; Ex. 299; Ex. 300; Ex. 301; Ex. 302; Ex. 303; Ex. 304; Ex. 305; Ex. 306; Ex. 307.

296. In 100 of those hearings, or 47% of the hearings in which the defendant or defendant's counsel proposed a less restrictive alternative, the judge denied the less restrictive conditions and failed to find or explain why the less restrictive conditions of release were not acceptable. *See* Ex. 63; Ex. 65; Ex. 80; Ex. 83; Ex. 85; Ex. 86; Ex. 87; Ex. 88; Ex. 89; Ex. 90; Ex. 92; Ex. 93; Ex. 94; Ex. 95; Ex. 97; Ex. 98; Ex. 99; Ex. 103; Ex. 126; Ex. 130; Ex. 137; Ex. 138; Ex. 141; Ex. 144; Ex. 147; Ex. 148; Ex. 149; Ex. 150; Ex. 151; Ex. 153; Ex. 155; Ex. 159; Ex. 163; Ex. 166; Ex. 167; Ex. 168 (covering two case numbers); Ex. 170; Ex. 172; Ex. 173; Ex. 174; Ex. 175; Ex. 182; Ex. 184; Ex. 185; Ex. 187; Ex. 189; Ex. 192, Ex. 195, Ex. 198; Ex. 199; Ex. 200; Ex. 201; Ex. 202; Ex. 203; Ex. 204; Ex. 205; Ex. 206; Ex. 207; Ex. 208; Ex. 209; Ex. 210; Ex. 211; Ex. 212; Ex. 213; ; Ex. 239; Ex. 242; Ex. 249; Ex. 251; Ex. 252; Ex. 253; Ex. 254; Ex. 255; Ex. 256; Ex. 257; Ex. 258; Ex. 259; Ex. 260; Ex. 261; Ex. 262; Ex. 263; Ex. 158; Ex. 272; Ex. 273; Ex. 274; Ex. 275; Ex. 276; Ex. 277; Ex 280; Ex. 281; Ex. 285; Ex. 288; Ex. 289; Ex. 292; Ex. 293; Ex. 295; Ex. 297; Ex. 301; Ex. 303.

297. Of these 312 transcripts, 175 transcripts were hearings in which the judge set a cash bail as a condition of release. *See* Ex. 382, Besch Decl.

298. In 90 instances, or 51% of all cash bond transcripts, the cash bond was set over the amount the defendant stated they could pay. *See* Ex. 105, Ex. 308; Ex. 309;

Ex. 310; Ex. 311; Ex. 312; Ex. 313; Ex. 314; Ex. 164; Ex. 165; Ex. 315; Ex. 168 (covering two case numbers); Ex. 169; Ex. 171; Ex. 172; Ex. 173; Ex. 178; Ex. 179; Ex. 181; Ex. 182; Ex. 316; Ex. 317; Ex. 184; Ex. 186; Ex. 187l Ex. 188 (covering two case numbers); Ex. 190; Ex. 318; Ex. 191; Ex. 192; Ex. 194; Ex. 117; Ex. 195; Ex. 196; Ex. 319; Ex. 237; Ex. 238, Ex. 198; Ex. 199; Ex. 200; Ex. 201; Ex. 207; Ex. 100; Ex. 221; Ex. 208; Ex. 216; Ex. 203; Ex. 224; Ex. 115; Ex. 106; Ex. 225; Ex. 209; Ex. 229; Ex. 321; Ex. 272; Ex. 273; Ex. 322; Ex. 323; Ex. 107; Ex. 303; Ex. 285; Ex. 324; Ex. 325; Ex. 326; Ex. 327; Ex. 166; Ex. 328; Ex. 177; Ex. 189; Ex. 193; Ex. 220; Ex. 202; Ex. 204; Ex. 228 (covering two case numbers); Ex. 241; Ex. 329; Ex. 287; Ex. 290; Ex. 291; Ex. 330; Ex. 301; Ex. 331; Ex. 162; Ex. 174; Ex. 185; Ex. 289.

299. In 63 of those instances where the cash bond was set over the amount the defendant stated they could pay, or 36% of all cash bond transcripts, the person was detained for more than 24 hours because of an inability to post cash bond. *See* Ex. Ex. 105; Ex. 308; Ex. 309; Ex. 310; Ex. 311; Ex. 312; Ex. 313; Ex. 314; Ex. 164; Ex. 165; Ex. 315; Ex. 168 (covering two case numbers); Ex. 169; Ex. 171; Ex. 172; Ex. 173; Ex. 178; Ex. 179; Ex. 181; Ex. 182; Ex. 316; Ex. 317; Ex. 184; Ex. 186; Ex. 187; Ex. 188 (covering two case numbers); Ex. 190; Ex. 318; Ex. 191; Ex. 192; Ex. 194; Ex. 117; Ex. 195; Ex. 196; Ex. 319; Ex. 237; Ex. 238; Ex. 198; Ex. 199; Ex. 200; Ex. 201; Ex. 207; Ex. 100; Ex. 221; Ex. 208; Ex. 216; Ex. 203; Ex. 224; Ex. 115; Ex. 106; Ex. 225; Ex. 209; Ex. 229; Ex. 321; Ex. 272; Ex. 273; Ex. 322; Ex. 323; Ex. 107; Ex. 303; Ex. 285.

300. In 16 instances, or 9% of all cash bond transcripts, the cash bond was set with absolutely no court inquiry into the defendant's ability to pay. *See* Ex. 332, Ex.

101; Ex. 333; Ex. 219; Ex. 71; Ex. 222; Ex. 227; Ex. 210; Ex. 84; Ex. 223; Ex. 239; Ex. 334; Ex. 335; Ex. 336; Ex. 197; Ex. 226.

301. In 10 hearings in which the judge set a cash bail as a condition of release, the contract attorney consented to a cash bond in excess of the amount the defendant stated they would be able to pay. *See* Ex. Ex. 337; Ex. 108; Ex. 338; Ex. 339; Ex. 340; Ex. 67; Ex. 68; Ex. 248; Ex. 341; Ex. 342.

302. In 79 hearings in which the judge set a cash bail as a condition of release, or 45% of all cases in which a cash bail was set, the judge made no written or oral findings on the record supporting the reasons for imposing cash bail as a condition of release. *See* Ex. 105; Ex. 308; Ex. 309; Ex. 343; Ex. 344; Ex. 167; Ex. 339; Ex. 315; Ex. 171; Ex. 172; Ex. 173; Ex. 345; Ex. 178; Ex. 346; Ex. 340; Ex. 180; Ex. 182; Ex. 333; Ex. 347; Ex. 318; Ex. 195; Ex. 101; Ex. 332; Ex.198; Ex. 69; Ex. 71; Ex. 348; Ex. 349; Ex. 350; Ex. 67; Ex. 285; Ex. 351; Ex. 162; Ex. 352; Ex. 353; Ex. 354; Ex. 342; Ex. 334; Ex. 355; Ex. 335; Ex. 336; Ex. 240; Ex. 289; Ex. 215; Ex. 218; Ex. 205; Ex. 324; Ex. 325; Ex. 326; Ex. 327; Ex. 356; Ex. 357; Ex. 358; Ex. 359; Ex. 360; Ex. 361; Ex. 193; Ex. 329; Ex. 362; Ex. 363; Ex. 364; Ex. 341; Ex. 365; Ex. 366; Ex. 68; Ex. 274; Ex. 275; Ex. 276; Ex. 280; Ex. 367; Ex. 368; Ex. 369, Ex. 370; Ex. 371; Ex. 372; Ex. 373; Ex. 374; Ex. 158.

303. In 40 hearings in which the judge set a cash bail as a condition of release, or 22% of all cases in which a cash bail was set, the judge made no findings on the record and gave only a few word statement of reasons for imposing cash bail as a condition of release. *See* Ex. Ex. 338, Ex. 311; Ex. 312; Ex. 313; Ex. 314, Ex. 376; Ex. 175; Ex. 317; Ex. 184; Ex. 186; Ex. 187; Ex. 188 (covering two case numbers); Ex. 190; Ex. 192; Ex. 194; Ex. 319; Ex. 208; Ex. 239; Ex. 210; Ex. 321; Ex. 272; Ex.

273; Ex. 322; Ex. 323; Ex. 377; Ex. 378; Ex. 177; Ex. 183; Ex. 189; Ex. 64; Ex. 248; Ex. 379; Ex. 290; Ex. 301; Ex. 331; Ex. 341; Ex. 380; Ex. 381.

304. Of these 312 transcripts, 137 transcripts were hearings in which the judge detained the defendant on no bond allowed. *See* Ex. 382, Besch Decl.

305. In 31 hearings in which the judge detained the defendant on no bond allowed, or 22% of the no bond hearings reviewed, the judge made no findings on the record supporting the reasons for detention. *See* Ex. 206; Ex. 217; Ex. 140; Ex. 141; Ex. 258; Ex. 154; Ex. 158; Ex. 159; Ex. 126; Ex. 281; Ex. 81; Ex. 82; Ex. 80; Ex. 83; Ex. 84; Ex. 85; Ex. 86; Ex. 87; Ex. 65; Ex. 88; Ex. 89; Ex. 90; Ex. 91; Ex. 92; Ex. 93; Ex. 94; Ex. 95; Ex. 96; Ex. 97; Ex. 98; Ex. 99.

306. In 21 hearings of those hearings in which the judge made no written or oral findings on the record supporting the reasons for detention, the judge instead simply recited the legal standard. *See* Ex. 81; Ex. 82; Ex. 80; Ex. 83; Ex. 84; Ex. 85; Ex. 86; Ex. 87; Ex. 65; Ex. 88; Ex. 89; Ex. 90; Ex. 91; Ex. 92; Ex. 93; Ex. 94; Ex. 95; Ex. 96; Ex. 97; Ex. 98; Ex. 99.

307. In 48 hearings in which the judge detained an individual, or 35% of all cases in which an individual was detained, the judge made no written findings on the record and gave only a minimal statement of reasons for denying any bond or conditions of release. *See* Ex. Ex. 170; Ex. 235; Ex. 144; Ex. 153; Ex. 155; Ex. 160; Ex. 211; Ex. 212; Ex. 213; Ex. 244; Ex. 249; Ex. 103; Ex. 251; Ex. 252; Ex. 253; Ex. 254; Ex. 383; Ex. 255; Ex. 63; Ex. 256; Ex. 151; Ex. 152; Ex. 259; Ex. 260; Ex. 261; Ex. 262; Ex. 263; Ex. 384; Ex. 120; Ex. 125; Ex. 277; Ex. 282; Ex. 128; Ex. 385; Ex. 286; Ex. 293; Ex. 129; Ex. 295; Ex. 119; Ex. 130; Ex. 298; Ex. 137; Ex. 304; Ex. 305; Ex. 292; Ex. 279; Ex. 123; Ex. 79; Ex. 138; Ex. 139.

Docket Statistics

308. Plaintiffs requested that Defendants produce the dockets of all cases in which Defendant Judges imposed a cash bond at an initial appearance between July 1, 2019, and the discovery cut off, December 18, 2020, as well as any associated orders. In response, Defendant Judges produced the dockets of 502 cases in which a cash bond was imposed. As part of that production, Defendant Judges also voluntarily produced 18 cases in which a no bond was imposed at the initial appearance. *See* Exs. 109-11, 116, 386-396.

309. Ex. 397 is a chart that records for each of these 520 cases (1) the case number, (2) the date of the initial appearance, (3) whether a cash bond or no bond was imposed at the initial appearance, (4) the number of days the arrestee was detained in jail because he could not afford the cash bond set at his initial appearance, (5) whether the arrestee had a Rule 33.05 hearing at any time or a hearing on a motion to reduce bond within seven days of the initial appearance, and (6) the result of the Rule 33.05 or bond reduction hearing.

310. As of December 18, 2020, 473 individuals who had a cash bond imposed at the initial appearances spent at least 9,754 days--over 26 total years--detained in jail solely because they could not afford a cash bond.[3] 85 of those individuals eventually won their case, but spent 1,562 days detained in jail solely because they could not afford a cash bond. Exs. 109-11, 116, 386-397.

[3] Plaintiffs write "at least" because certain docket sheets produced by Defendants do not show all docket entries and the dockets have subsequently been sealed from public view, so Plaintiffs do not know if the arrestee was later released prior to December 18, 2020. For these cases, Plaintiffs assumed that the arrestee was released on the last date in which an entry was made on the docket to which Plaintiffs have access, which necessarily results in an undercount.

311. An additional 29 individuals who had a cash bond imposed at the initial appearance were subsequently given a no bond order at their Rule 33.05 hearing. As of December 18, 2020, these individuals spent at least 6,741 days in jail that they would have avoided had they been able to pay the cash bond imposed at their initial appearance. Exs. 109-11, 116, 386-397.

312. 188 individuals were detained in jail for at least seven days solely because they could not afford a cash bond. Exs. 109-11, 116, 386-397.

313. Of those 188 individuals, 53 were detained for at least a month in jail solely because they could not afford a cash bond. Exs. 109-11, 116, 386-397.

314. Of those 54 individuals, 17 languished in jail for half a year or more solely because they could afford a cash bond. Exs. 109-11, 116, 386-397.

315. Of the 470 individuals who had a cash bond imposed at their initial appearance, 145 had a Rule 33.05 hearing where their bond was reviewed. In 32 cases, the cash bond was changed to a recognizance bond. In 44 cases, the cash bond was reduced to a lower cash bond. In 31 cases, the bond was changed to no bond. In 38 cases, the cash bond was upheld. Thus, in 76 percent of cases, the original bond setting was overruled, and in 54 percent of cases, the original bond setting was overruled as too restrictive. Exs. 109-11, 116, 386-397.

316. Of the 18 cases in which a no bond order was imposed at the initial appearance, 9 were reduced to a recognizance bond at the Rule 33.05 hearing, six were changed from a no bond order to a cash bond, and only three no bond decisions were upheld. Exs. 109-11, 116, 386-397.

317. Defendant Judges also tracked the results of initial appearances and Rule 33.05 hearings in "snapshots" for February, March, August, September, and October

2020. *See* Ex. 114, February 2020 16B Snapshot; Ex. 403, March 2020 16B Snapshot; Ex. 404, August 2020 16B Snapshot; Ex. 398, September 2020 16B Snapshot; Ex. 399, October 2020 16B Snapshot.

318. In February 2020, of the 23 no bond orders imposed at initial appearances, five were changed to a recognizance bond at the Rule 33.05 hearing and six were changed to a cash bond at the Rule 33.05 hearing. Thus, 48% of the no bond orders were overturned at a Rule 33.05 hearing. Additionally, another four were later reduced to a recognizance bond after the Rule 33.05 hearing. *See* Ex. 114, February 2020 16B Snapshot. In March 2020, of 21 no bond orders imposed at initial appearances, three were changed to a recognizance bond at the Rule 33.05 hearing and four were changed to a cash bond. Thus, 33% were overturned at a Rule 33.05 hearing. Additionally, another three were later changed to include less restrictive conditions.

319. In August, 2020, of 24 no bond orders imposed at initial appearances, six were changed to a recognizance bond at the 33.05 hearing and five were changed to a cash bond. Thus, in 46% of cases, the no bond imposed at the initial appearances was overruled as too restrictive. Ex. 4040, August 2020 16B Snapshot. In September 2020, of 40 no bond orders imposed at initial appearances, seven were changed to a recognizance or sponsored recognizance bond at the Rule 33.05 hearing, nine were changed to a cash bond, and two hearings were waived. Thus, 42% of no bond orders considered at a Rule 33.05 hearing were overturned after the individual spent a week in jail. *See* Ex. 398, September 2020 16B Snapshot.

320. In October 2020, of the 36 no bond orders imposed at initial appearances, eight were changed to a recognizance or sponsored recognizance bond at the Rule

33.05 hearing, four were changed to a cash bond, and one hearing was waived. Thus, 34% of no bond orders considered at a Rule 33.05 hearing were overturned after the individual spent a week in jail. *See* Ex. 399, October 2020 16B Snapshot.

Examples from Transcript Review

Setting or Increasing Cash Bond in order to Detain

321. In Case No. 1922-cr03752, the judge set a $5,000 cash bond for a woman who stated that she was homeless; the judge explained that she wanted to make the bond high enough that The Bail Project wouldn't be able to post it in order to ensure that the defendant remained detained:

> THE DEFENDANT: All I ask is to have a bus ticket; I'll be here, no problem.
> THE COURT: I don't think anybody is going to help you with a bus ticket. If the Bail Project releases you, you're just out there. Then you're not going to see anybody to give you a bus ticket. That's why I said I hope they don't do it. In fact, I'm just -- I'll just change the bond because I'm afraid that they'll come and try to do that, and then you're going -- that's going to mess you all up. You're not going to be able to get into treatment court. So we'll change it to 5000 secured. Okay. All right. So you'll be interviewed by the treatment court people on Friday, and make sure you act like you want to get into treatment. And when you get to the Workhouse, you'll be allowed to have a phone call, so you need to contact the Queen of Peace people.

Ex. 237 at 4432:7-22.

322. In Case No. 1922-cr02481, the judge ordered a cash bond for a disabled defendant with a mother in hospice and in dire need of the defendant's care at home. The judge noted specifically that he did not believe the defendant could pay the bond amount sought by the State, so he set it at the requested high amount:

> THE COURT: Relative to Cause Number 1922-CR02481, the defendant's request for recog bond is hereby denied. I do see that the defendant has previously been convicted of assault second of a law enforcement officer and got seven years in jail. And the State is requesting an amendment of the

> bond from no bond to that of $50,000, 10 percent authorized. I find that concerning.
> I see that the defendant is on crutches. His mother is in a dire state. I also understand he has some matters in St. Louis County that he must answer to before he hits the street. I do not believe that Mr. [redacted] will be able to post the bond. As a result I will go along with the State's recommendation. Bond will be amended from that of no bond to $50,000, 10 percent authorized.

Ex. 187 at 4595:11-24. The defendant's mother later died while he was detained, according to docket entries in the state Case.net system.

323. In Case No. 2022-CR00350, a public defender asked for a $500 bond to be changed to a personal recognizance because, "[f]rom hearing her today, she does have a home with her sister, some family ties. She's working. Additionally, she's pregnant and jail limited her ability to take care of herself as far as pregnancy goes." Ex. 226 at 4239:19-23. The judge accused the defendant of not coming to court previously, but the defendant stated repeatedly that she had. The public defender offered to "make sure she's getting to court and get her some social work services and make sure she's able to get transportation." Ex. 226 at 4239:12-14. The judge decided to leave the bond, and thus leave the defendant incarcerated, until there was a social service provider involved. Ex. 226 at 4239:12-14. The defendant spent 4 days in jail until bonded out by The Bail Project. Ex. 116, Miscellaneous Docket Sheets at 15811-13; Milton Decl. The case has now been dismissed. Ex. 116, Miscellaneous Docket Sheets at 15811.

Setting Cash Bond Above What the Arrested Individual Could Afford without Justification

324. Judges have set cash bonds without regard to the amount the arrested individual stated he could afford and without justification for that bond amount. *See infra* ¶¶ 325-334.

325. For example, in Case No. 1922-cr02933, after the judge set a $2,500 bond, the arrested individual explained, "I can't make that bond, Judge," and the judge responded "Well, I understand that you can't." Ex. 313 at 4698:9-10. He then spent five days in jail until The Bail Project happened to post his bond. *See* Milton Decl.

326. In Case No. 2022-cr01781, the arrested individual reported on the record that he could afford to post a $500 bond. The judge then set a $30,000 bond without any explanation of why that amount was appropriate. *See* Ex. 321 at 17190:10, 17199:9-11.

327. In Case No. 1922-cr01912, the defendant and his counsel made clear that he could potentially afford only a $1,000 bond. Without any justification, the judge set a $30,000 secured bond, a clear failure to consider the defendant's ability to pay:

> THE COURT: All right. Having heard the arguments of counsel and the -- given the facts of this case, the Court will amend the conditions of bond, and I'll make it 30,000 secured. I don't know if you're going to be able to come up with that money, Mr. Darris, that's up to you, so I'm going to give you two court dates. Your first court date will be next Thursday, September 12th,at 10:30 a.m. If you are still confined, you get an additional bond hearing on that date under Rule 33.05. If you do come up with the money and you make that bond, your next court date will be in Division 26 on October 15th at 9:15 a.m. . . .

Ex. 194 at 5005:5-17.

328. In Case No. 2022-cr00326, the defendant said she could afford to post a $500 bond and explained that she had custody of and cared for her five-year-old grandson. The judge set a $150,000 bond. Ex. 221 at 4280-81. After she spent a week in jail, the defendant was given a recognizance bond at 33.05 hearing. Ex. 221 at 15806-08.

329. In Case No. 2022-cr00427, the judge set the defendant's condition of release as a sponsored recognizance. After a break in the record, the judge added a cash bond requirement for the defendant's mother with no explanation given or any

findings as to why a cash bond for the defendant's mother was necessary. The defendant explained that he had no way to contact his mother, his mother did not have a vehicle, and his mother probably needs financial help herself. The Judge simply stated, "Well I guess you will just sit because those are the requirements." Ex. 198 at 5104:25, 5105:1-2.

330. In Case No. 2022-cr01858, the arrested individual stated that he could not afford a bond, but the judge concluded that he could despite finding that individual credible:

> THE COURT: [Y]ou told me you were employed, you're working good hours, you're making good money. I can't afford a bond? I don't buy it. So here's what we're going to do.
> THE DEFENDANT: I ain't lied about that.
> THE COURT: I ain't saying you lied about it. I'm saying you got a job. I'm saying you're making good money. I'm saying you can afford a bond.

Ex. 303 at 20415:21-20403:2. The arrested individual then remained in jail until a motion to reduce his bond was granted and he was given a recognizance bond. Ex. 392, November 2020 Dockets at 16428-29.

331. In Case No. 2022-cr00302, both the defendant and the defense attorney acknowledged that the defendant had a drug problem and pleaded with the judge for a bond the defendant could afford to allow the defendant to make it to a reserved spot in a rehabilitation center. *See* Ex. 219 at 5:8-25, 6:1-15. The judge went off the record and, when back on the record, announced he was going to keep the duty judge's bond despite knowing it was higher than the defendant could afford, for reasons that he explained to the parties off the record. Ex. 219 at 6:16-25, 7:1-5. The defendant spent 77 days in jail. Ex. 116, Miscellaneous Docket Sheets at 15767-69.

332. In Case No. 2022-cr00342, the defendant explained that he had no financial resources to post bond:

> MR. MUHLENKAMP: Are you able to post any bond?
> THE DEFENDANT: I could try. I could get out and post one. I know I can.
> MR. MUHLENKAMP: I understand. You've got to post it to get out. That's what I'm asking you. As we stand here today, do you have any financial resources to post a bond?
> THE DEFENDANT: No, sir.
> MR. MUHLENKAMP: No money in a bank account, anything like that?
> THE DEFENDANT: No, sir. I don;t have a bank account.
> MR. MUHLENKAMP: Does your wife work?
> THE DEFENDANT: No, sir. We was waiting on income taxes.

Ex. 216 at 4289:20-25, 4290:1-9. The Judge set a cash bond anyways at $5,000, 10%. *See id.* at 11:10-12. The defendant was unable to post bond until The Bail Project stepped in four days later. Ex. 116, Miscellaneous Docket Sheets at 15821-22.

333. In Case No. 1922-cr03416, the defendant's counsel informed the judge that the defendant was both homeless and suffering from mental health and substance abuse issues. The defendant's counsel also offered that there was a place the defendant could live pending trial, programs to " help him, one, get shelter; and number two, get help with drugs and also get help with his mental issues." Despite the defendant's clear inability to pay and less restrictive measures available, the judge set a $20,000 bond with 10 percent surety. The Court specifically noted that the defendant "may not make this bond" and scheduled a Rule 33.05 hearing. Ex. 105 at 5303:19-25.

334. In Case No. 1922-CR03401, the judge never inquired into the defendant's ability to pay besides taking judicial notice of the Bond Commissioner's report, which referenced that the defendant was unemployed. Despite this, the judge set the bond at $75,000, 10%, while recognizing that the defendant may not be able to pay the high amount:

> THE COURT: Okay. All right. Mr. Stallworth, I'm inclined to set a bond on your matter. I will set it at $75,000, 10 percent. And I will set it for November 4th if you're not able to make that bond.
>
> Ex. 326 at 5232:2-6.

335. In numerous instances, judges set unaffordable cash bonds despite testimony that defendants could not afford the bond, with no other justification than the implied belief that The Bail Project might post the bond. *See infra* ¶¶ 336-339.

336. In Case No. 1922-CR02301, a contract attorney appointed to represent the defendant for an initial appearance argued that the defendant could not afford to pay the Circuit Attorney's requested bond amount of $20,000, 10 percent. The contract attorney also said, "if the Court is not inclined to go any lower then, obviously, we will accept the 10 percent by the State so that the defendant can apply with the Bail Project since his bond is under $5,000 and they may be inclined to post it for him." What followed was a lengthy discussion between the judge, bond commissioner, Circuit Attorney, and the contract attorney regarding what amount the Court could set the bond such that the bail would fall within The Bail Project's ability to pay on behalf of the defendant. At the end, the judge set a $5,000 cash-only bond without any justification besides the unspoken assumption that The Bail Project could pay the defendant's bond:

> BOND COMMISSIONER: The only problem I have, Judge, with the bond setting is that the Bail Project, they only post bonds for $5,000 if the bond is $5,000. If it's more than $5,000 whether it's ten percent or not they won't post because their limit is $5,000. If it's 50,000, ten percent, which is 5,000, they won't post it because they have to be concerned about if there's a failure to appear they have to forfeit all that money.
> THE COURT: How long does that process work with the Bail Project?
> BOND COMMISSIONER: They usually come and interview whoever is locked up to see if they're eligible for an opportunity for them to post that bond. I'm sure they'll interview him. They may be making arrangements where somebody would agree to come in and sign for the 20,000 and post 2,000 or however you want to do it.

THE COURT: So you're saying the way they look at it is if it's more than $5,000 --
BOND COMMISSIONER: Total.
THE COURT: Total. If it's 5,000 cash only they'll post --
BOND COMMISSIONER: 5,000 on down.
THE COURT: What if it's $10,000, ten percent?
BOND COMMISSIONER: They won't post it. They will have to make arrangements with someone, a surety, that's willing to come down and sign for that because -- and it's all based on if there's a forfeiture they don't want to be liable for anything over $5,000.
THE COURT: I understand.
MS. GORMAN: Judge, in that case I would ask the Court if they were going to reduce the cash bond to reduce it to a sum of $5,000 or less with cash only and not do the 10 percent bond to make him eligible to use the resource of the Bail Project.
THE COURT: Do we think he will qualify?
BOND COMMISSIONER: Yeah. Yeah. I mean, the thing that's happening now is that because we have these hearings and people are getting out they're more anxious to get people out at that amount and they have the funds to do it.
THE COURT: Great. All right. Is there anything else, Miss Williams?
MS. WILLIAMS: No, Your Honor.
THE COURT: The Court has heard enough evidence from both parties and the defendant in which to render a decision in this matter. Based on the testimony from the parties the Court is going to in a sense, I don't know if it's actually a reduction on paper, but I'm going to modify the bond and make it $5,000 cash only.

Ex. 317 at 10:4-25, 11:1-25, 12:1-2.

337. In Case No. 1922-cr03464, the judge actually asked a defendant about his ability to pay a bail amount agreed to by the Circuit Attorney's Office and his appointed attorney. However, when the defendant stated that he could not afford the bond amount, the Court pointed him to The Bail Project rather than setting an affordable bail:

THE COURT: Mr. Hoelker, your attorney and the State have agreed to some conditions for release that I would like to go over with you. The State has agreed that it's appropriate to release you upon a bond of ten thousand dollars with ten percent cash payment authorized. You would be ordered to report to E-MASS for GPS monitoring, meaning you would have a GPS anklet on. I would make an indigency finding and the cost of that GPS monitoring system would be waived. Do you understand those conditions of your release?

THE DEFENDANT: Yes, sir.
THE COURT: Mr. Hoelker, are you in a position to raise the $1,000 necessary for your release at this time?
THE DEFENDANT: I can't afford the bond.
THE COURT: You would need to go through the bail project for assistance?
THE DEFENDANT: Yes.

Ex. 339 at 3:10-25.

338. In Case No. 1922-cr03192, the Court directly asked the defendant whether she had " any income of any kind," to which she replied, "No." Despite determining her to be indigent, the judge decided to set a bond that he improperly believed would be paid by The Bail Project:

THE COURT: She's on no bond now?
MR. CROWLEY: That's correct.
MS. GORMAN: She's on no bond now, Your Honor.
THE COURT: And five thousand cash, can she make five thousand cash?
MS. GORMAN: That is a bond that the Bail Project will make for someone if they're unable to make it themself. That is their maximum amount that they can apply.
THE COURT: So you think the Bail Project would post her bail?
MS. GORMAN: Bail Project will post any bonds up to five thousand dollars.
…
THE COURT: Ms. Davis, I'm going to set your bond at five thousand dollars.

Ex. 318 at 4859:10-22, 4862:12-22.

339. In Case No. 1922-cr03633, a judge set a $35,000, 10 percent cash bond for a 17-year-old girl who had been homeless since she was 13. The bond amount was set despite obvious testimony that it was far beyond the defendant's ability to pay and ample discussion on less restrictive means to assure her appearance. The judge surmised that the defendant may be able to get her bond amount paid by The Bail Project:

THE COURT: All right. Ms. Woods, I have reviewed your bond conditions, and here's what I'm going to do today. I'm going to do several

> things. I'm going to set your bond at 35,000, ten percent. It's possible that the Bail Project will bond you out but I can't guarantee that. Do you understand that? So you may not bond out on this. Do you understand that?
> THE DEFENDANT: Yes, sir.
>
> Ex. 178 at 5431:22-25, 5482:1-4.

Postponing Consideration of Relevant Facts Until the 33.05 Hearing

340. Judges have required arrested individuals to remain in jail at least a week until their Rule 33.05 hearing to consider all evidence relevant to determining conditions of release because they do not consider the initial appearance a full hearing. *See, e.g.*, Ex. 141 at 20559:22-20560:2 ("So, again, I'll get you in front of another judge a week from today to take a look at your bond again. He'll spend a little bit more time going into the facts and seeing if they can come to a different conclusion in this matter, but the bottom line is your bond is staying where it's at for today."); Ex. 255 at 20924:18-20925:1 ("What I will do for today is deny any bond . . . pending further bond hearing which will happen next week on December 14 at 9:00 -- I'm sorry, at noon. You will have a *full bond* hearing at that time.") (emphasis added); *See infra* ¶¶ 341-345.

341. In Case No. 1822-cr00050-01, the judge concluded that release on GPS would be permissible depending on certain facts, but required the arrested individual wait a week until his Rule 33.05 hearing to determine if those facts existed:

> THE COURT: Here's what I'm going to do. I'm going to deny the request at this time for modification of the bond and leave it where it is. . . . I have put a note on the memo that what I want you to do is I want -- between defense counsel and the ACA, for my money, before I just let him walk out of the building I would want the two of you to determine does he have holds, what is the status of his parole, what is his warrant status. If I -- if we could let him leave on a GPS, that would be fine. But if we let him leave the building – if we think we're letting him leave the building and then he ends up somewhere else or being transported somewhere else or being held, that's not going to work out, especially on a three-year-old case. So I suggest you figure that out between now and next week when we bring him back.

Ex. 281 at 17426:1-18.

342. In Case Nos. 2022-cr00642 and 2022-cr01984, after the judge announced a no bond order, the arrested individual asked to be permitted to post a bond with money in his property. The judge responded:

> THE COURT: Well, here's what you need to do. I've rescheduled you for one week from today. If that's the case, you need to call your sister and see what she can do. Absent that, you need to fill out the paperwork for the public defender. *And I'm hoping that next -- my goal is that next Monday there will be* -- we will have moved the ball down the field a little bit in terms of your having a lawyer, *somebody who can show up and advocate for you* and your medical condition.

Ex. 258 at 2106:20-2107:4 (emphasis added).

343. In Case No. 2022-cr00011, the judge declined to make any findings and instead required the arrested individual to wait for a determination in a week at a Rule 33.05 hearing: "I'm just saying that I'm not going to amend your bond today. I'm going to leave it at $30,000, 10 percent. But like I said, I'm not going to make any findings that you're a dangerous person. I'm going to let all that be. But I am going to get you -- I'm going to have another judge talk to you in about a week, all right." Ex. 302 at 20383:8-14.

344. In Case No. 1922-cr02027, the defendant attempted to interject that she would be unable to pay the amount the judge was ordering. Rather than inquiring into the defendant's ability to pay, the judge responded, "I'll be more than happy to set this matter for a hearing, bond hearing set for next week." Ex. 172 at 4552:23-25, 4553:1-4.

345. In Case No. 2022-CR00199, the judge issued a no bond order, explaining that he wanted the defendant to stay in jail until the defendant was screened for treatment court:

> THE COURT: So Mr. Manning, you're going to be screened for treatment court, and if they accept you, then they'll release you on your own recognizance. I'm not going to release you today. I'm going to let the bond remain until you're interviewed by treatment court. So hopefully they'll interview you Friday. If it's not this Friday the 7th, then it will be next Friday the 14th. And if they accept your case, then you'll get out on a recog.
>
> Ex. 231 at 5085:5-12. The defendant was released seven days later at his Rule 33.05 hearing. Ex. 116, Miscellaneous Docket Sheets, at 15901-03.

Failure to Follow Rule 33.01 Statutory Standards

346. Despite an explicit statutory standard laid out in Rule 33.01, judges have set cash bonds as a condition of release or given no bond orders without reaching the requisite findings. *See infra* ¶¶ 347-349.

347. For example, in Case No. 2022-cr01479, the Court explained:

> THE COURT: All right. So here's what we are going to do, Mr. Day. You know, I can do a couple of things today. I can change your bond. I can not change your bond. I can find that you are so dangerous to everybody in the world that we are going to keep you until you get another hearing or your trial. I am not going to do that. But, I am not going to change your bond. I am not going to make any other findings, though, so that works to your advantage. Like I said earlier, I am going to get you another bond hearing in front of a different judge on November 25th at twelve noon.
>
> Ex. 144 at 20681:14-23.

348. In Case No. 1922-cr03777, the judge eschewed the Rule 33.01 factors, instead informing the defendant that he approaches bond determinations "from a common sense perspective." The judge then went on to set an $80,000 cash bond for a defendant whose only employment was working for a catering company and part time at a local cleaning company:

> THE COURT: Okay. So, Mr. Busby, again the purpose for today is to let you know what you're charged with, to look at your bond to see what we want to do with it. A lot of times everybody assumes that what the judge is going to do is leave the bond where it is or reduce it. I have another option. My other option is to increase it. Now I also tell people that the practice of law, what we're doing right here, is not rocket science. There's a lot of

> common sense. So I try and approach people's bonds from a common sense perspective.
> …
> So I have a concern -- I ain't concerned that you won't be coming back and forth to court. I know you will, because you have shown you can do that. But I'm concerned for the public safety.
> So while my gut tells me to jack up your bond to no bond because that's what's appropriate, I'm going to leave your bond where it is at $80,000 cash only.
>
> Ex. 310 at 4616:16-25, 4617:23-25, 4618:1-4.

349. Judges have also set cash bail amounts unrelated to what was necessary to ensure appearance at trial and public safety. In Case No. 1922-cr03355, the judge explained the bond decision as follows: "I like the idea of having the 4000 cash available because that's the amount that the victim is claiming as lost, so I'll set the bond at $40,000, secured by 10 percent cash only. If you are able to make that bond, you will be required to be on GPS monitoring." Ex. 311 at 4322:6-11. The judge made no record of considering the Rule 33.01 factors in reaching the bond determination. The defendant was unable to make the bond and remained in jail until his bond was reduced after his Rule 33.05 hearing. Ex. 116, Miscellaneous Docket Sheets at 15650-52.

Making a Determination Without Affording the Defendant an Opportunity to Present Evidence and Argument or in Disregard of that Evidence and Argument

350. Judges have determined conditions of release before hearing from the arrested individual or his contract attorney. *See* Ex. 79.

351. Judges have also interrupted arrested individuals who attempt to advocate for themselves. For example, after the prosecutor finished his presentation in Case No. 1922-cr02746, the following colloquy ensued:

> THE COURT: Based on your criminal history, I'm going to have to deny release. It looks like you're on probation out of Jefferson County, you've got a pending UUW in St. Louis County right now, and then you're on probation

here in the city. And then you pick up this case. So I'm going to have to make a –
THE DEFENDANT: Your Honor, may I say something?
THE COURT: Go ahead.
THE DEFENDANT: I just completed ten months, a 120 inside St. Louis County, and they put me on the mental probation for it, and I have always reported, and I never fled. My PO is the one who recommended –
THE COURT: No, Mr. Wright, let me tell you something.
THE DEFENDANT: Yes, ma'am.
THE COURT: You wouldn't have done that 120 if you had been complying with the conditions of your probation. I looked at the case, so we see that you have some issues. So I'm making a finding that upon clear and convincing evidence, no combination of nonmonetary or monetary conditions will secure the safety of the community or other persons, and I'm ordering you detained with no bond. Your next court date is going to be –
THE DEFENDANT: Yes, Your Honor.
THE COURT: -- September 2nd in Division 26.
THE DEFENDANT: Yes, Your Honor.
THE COURT: Okay. You have a good afternoon.
(Hearing concluded.)

Ex. 385 at 20010:8-20011:10; *see also* Ex. 177 at 5544:23-25.

352. And judges have made decisions without regard to the actual evidence in the record. For example, in one case, the judge justified the decision to detain the arrested individual until his Rule 33.05 hearing on the ground that "[w]e need to know that you have somebody that can monitor you to make sure you're taking your medication. We need to know that you have somewhere to stay, and we need to know that you will be able to keep track of your court dates." Ex. 288 at 20047:21-20048:2. The arrested individual then spoke up to correct the judge, explaining that he did not take any mental health medication but was in fact deprived of therapy sessions and could not regulate his diabetes in jail; that he had a home; and that he could contact his brother. Rather than address this evidence, the judge instructed the contract attorney to tell the defendant's brother to hire a lawyer and ended the proceeding. Ex. 288 at 20051:18-25.

353. Case No. 2022-cr01640 provides a similar example. Judge Burlsion required the arrested individual to remain in jail until the Rule 33.05 hearing because he thought it "may help" with a substance abuse issue despite not knowing (or asking) whether "it is alcohol or some other substance." The following colloquy then ensued:

> THE COURT: First thing you need to do is fill out the public defender forms so you can get a public defender to start helping you with that. Next thing there should be social workers that are at the Justice Center that will help you with making those phone calls. I think you are a threat if the only place you have to go is back over there on Chippewa where it is alleged you shot somebody in the face. Do you understand that?
> THE DEFENDANT: Well, I mean, I still have the old apartment that I moved from on Pennsylvania. It is still available. I can go talk to the VA and moved [sic] there for now.
> THE COURT: You try to talk to them between now and your next hearing which is a week from today, okay?
> THE DEFENDANT: No way possible, your Honor, that I can do it today?
> THE COURT: You can make as many phone calls or talk to the social workers as much as you can. Just ask to see a social worker, ask to use the phone. I'm not going to let you out of jail today.

Ex. 279 at 17398:12-17399:11.

354. In Case No. 1922-cr03487, despite the defendant's testimony that he had "no money saved" and that '[he] ha[d] nothing," the judge set the defendant's bond at $10,000, 10 percent:

> THE DEFENDANT: I am going to give a -- if I choose to make a statement on my behalf.
> MR. BARNHART: That's your right. I am telling you not to. I want to focus on your job and your ties to the community and you helping your grandma out.
> THE DEFENDANT: If I am stuck in jail on a $30,000.00 ten percent bond, there will be no job, sir. What part of that don't you understand, Judge?

Ex. 314 at 4754:10-17.

355. In Case No. 1922-cr02482-01, the defendant's counsel argued that the Circuit Attorney's requested bond amount was inappropriate since the "State ha[d]n't

spoken" to the defendant nor "kn[e]w what [the defendant] c[ould] afford." Ex. 173, 4306 at 4308:23-25. The judge went on to set a $25,000, 10 percent in complete disregard of the defendant's ability to pay:

> THE COURT: All right. The Court will modify the bond to $25,000, 10 percent with GPS, so that means you need $2,500, and you're going to have to pay for the GPS monitoring.
> THE DEFENDANT: Okay. What if I can't pay it, Your Honor?
> THE COURT: If you can't pay it, then you're not going anywhere. . . .

Ex. 173 at 4314:18-25.

356. In Case No. 1922-CR02428, the judge set a $5,000 cash-only bond despite evidence that the defendant could not afford a cash bond, partly due to paying funeral costs for multiple recently deceased loved ones, and the appointed contract attorney's request for personal recognizance:

> THE COURT: Mr. Faerber, what are you asking for?
> MR. FAERBER: Your Honor, I would ask for a personal recognizance with GPS monitoring. Monitoring through Emass. I would also ask that fees be waived on that as it doesn't sound like he can afford $300 a month nor could his family. And a condition that he maintain some form of verifiable employment.
> THE COURT: Anything else, Mr. Lake?
> MR. LAKE: No, Your Honor.
> THE COURT: All right. The Court has heard enough testimony from both the State and the defendant in this case. The Court is not convinced by clear and convincing evidence that the defendant is a danger to the community, or witness, or a victim. However, the Court does have grave concerns about the history of missed court dates by this defendant. Therefore, the Court is going to grant the defendant's request to reduce the bond. Bond shall be reduced to $5,000 cash only with the additional condition that he report to Emass, and that he be monitored via GPS. The Court will grant defense's request to waive the fees for that GPS monitoring. That will be the Court's order and that will complete the record in this case.

Ex. 185 at 4973:14-25, 4974:1-11.

Presuming Arrested Individuals Are Guilty and Using Bail Determinations As Punishment

357. Judges have used pretrial detention—through high bail or no bond orders—as a way to punish arrestees for their perceived bad behavior, without applying a presumption of innocence. *See infra* ¶¶ 358-363.

358. Case No. 2022-cr00891 provides an example of this concerning behavior:

> THE DEFENDANT: I've been laid off and I've been on unemployment. I don't have –
> THE COURT: Are you currently employed?
> THE DEFENDANT: No, ma'am.
> THE COURT: When is the last time you were working?
> THE DEFENDANT: It's been like four or five months ago probably.
> THE COURT: So how are you paying for [your lawyer]?
> THE DEFENDANT: My mother, she gave me money, gave him money for me. It was a couple months back, I think.
> THE COURT: Okay. Well, do you think she'll post bond for you?
> THE DEFENDANT: No, ma'am.
> THE COURT: Well, I'm going to leave it at 20,000, cash only, and if it turns out that she's not able to post that, then your attorney can go to the judge and request that it be reduced to something that she can post.
> But I think based on your criminal history, 5000, 10 percent is not a sufficient bond because I'm not sure that you'll return to court based on your criminal history, and I also think based on your continued involvement in criminal activity that *you don't deserve a 5000, 10 percent*.

Ex. 299 at 2048:10-2049:10 (emphasis added).

359. In Case No. 1922-cr02384, the judge initially set a $5,000 bond, and the arrested individual spoke up because he felt that the prosecutor had misrepresented his prior record. In response, the Judge revoked his order and set a no bond instead. And after making that announcement, the judge refused to let the individual respond and ended the proceeding:

> THE COURT: I am now going to reconsider that bond and, in fact, I'm going to rescind my previous order, and I am going to decide that the Court, and the State, and you, Mr. Johnson, have convinced me beyond clear and convincing evidence that no combination of non-monetary conditions and monetary conditions will secure the safety of the community or other persons and, therefore, I'm going to order that you be held with no bond. You are entitled --

> THE DEFENDANT: Your Honor, Your Honor --
> THE COURT: Let me finish. Let me finish. Pursuant to Missouri Supreme Court Rule 33.06 you have a right to a second hearing. This will be set for next Wednesday, which will be August 28, 2019 at 10:30 a.m. That will be the Court's order. That will complete the record.

Ex. 161 at 4889:9-22.

360. Case No. 2022-cr01962 provides another example. In that case Kyri Morgan, a 19-year-old, was accused of participating in the looting of a pawn shop during recent racial justice protests. Ex. 296, 20191 at 20196. His bail had been set at $10,000, 10 percent, by the duty judge, which he had not paid. Ex. 296 at 20198. By the initial appearance, the prosecutor and Morgan's defense attorney had reached an agreement on a recognizance release, because in the words of the prosecutor, "[g]iven the facts of the case, the fact that he doesn't have any history of violence, isn't considered a flight risk, the State felt that [recognizance release] was appropriate." Ex. 296 at 20193. Morgan's mother also appeared in court, and stated that she would be home with him and would monitor him if released. The court disagreed, and, evidently presuming Morgan's guilt, stated that although "he just went in there trying to steal some stuff," Ex. 296 at 20197:24, "releasing him this quickly is not going to do anything. It's not going to serve any purpose." Ex. 296 at 20197:2-4

> Well, you know, [defendant's mother], my problem with it is if he's released so quickly, I don't think that teaches him any lesson whatsoever, and I am just shocked at the prosecutor's recommendation of a personal recognizance. You know, I think he needs to sit a while to meditate on his transgressions.

Ex. 296 at 20198:5-11. The court continued:

> Well, I'm going to leave the bond as it is. I mean, I personally, I want to change it to no bond, but I can't do that. Because I think he needs to sit for a few weeks so it will sink in that this is serious. I mean, he's just building a criminal history for himself.

> But [defendant's mother], if you want to scrape up the thousand dollars, you know, that's your prerogative. But I'm just suggesting that maybe you let him sit a while. . . . I think getting him out so quickly would be a mistake. It just doesn't teach him anything other than my parents are going to get me out of stuff.

Ex. 296 at 20198:13-20199:6. Turning to the defendant, the judge remarked,

> I have advised your mother—but I don't know whether she'll listen to me or not—not to get you out. I'm not reducing your bond. You need to sit and think about your conduct. I don't know what your problem is, but obviously something is not going right in your head with the way you're thinking. You were given the opportunity to do this diversion program, and then while you're on that, you get involved in looting the pawn shop . . . . [Y]ou don't need to go anywhere. I'm not changing it to a personal recognizance, and I hope your mother does not scrape up the thousand dollars to let you out because you need to sit and meditate on your actions.

Ex. 296 at 20199:22-20200:18.

361. In Case No. 2022-CR00370, the defendant was charged with misdemeanor criminal non-payment of child support. The contract attorney asked for a recognizance bond. A witness also testified that the defendant was actually current on his child support. Without explaining why recognizance would not suffice to protect the community and ensure the Defendant's presence in court, the Judge set the bond at $406, which was the amount of child support the defendant allegedly owed: "Well, they say they have the money, so I guess they'll be making the payment. And that will be -- the Court will write an order that the payment go to child support, so you won't be able to get that money back." Ex. 204 at 4475:17-19. This removed the possibility of the defendant mounting a defense to the charges before being forced to pay a fine.

362. In Case No. 1922-cr02454, a defendant repeatedly testified that a $250 bond was well beyond her ability to pay. Her counsel also provided an extensive argument

as to how less restrictive means like EMASS could ensure her appearance. The Court set her bond at $250, saying it was "not unreasonable for the situation":

> THE COURT: The bond is set at $250 cash only. I think that's not unreasonable for the situation.
> MR. [redacted]: Ma'am, can I ask you -- the bond is $250. The friend you were going to stay at, is that a possibility he would help you make that bond?
> THE DEFENDANT: No, sir, I don't have anyone, I don't have any money. I don't have anyone with money and I'm not going to ask anyone for money, absolutely not. If I had the money, I would bond out for sure, but I don't have the money. I don't have a job. I don't have money. I can pay you guys the money back soon as I get a job, but I can;t do it now, no.
> MR. [redacted]: Thank you, ma'am.
> THE DEFENDANT: Thank you.
> THE COURT: The bond will remain after consideration of all the arguments made at the initial appearance, as well as the factors that the Court needs to consider under Rule 33.01. The Court is of the belief that a bond of $250 cash only is reasonable. As a result that will be the bond. The bond remains set at $250 cash only.

Ex. 189 at 4564:13-25, 4565:1-7.

363. In Case No. 2022-CR02063, the judge issued a no bond detainer on a low-level felony despite acknowledging that the man would almost certainly be released pretrial, saying she wanted him to sit and think about his behavior:

> [THE COURT]: … All I have is the probable cause statement and the fact that it is a low-level felony, an E, which is the lowest one. I'm just shocked at the behavior. I have to tell you, I'm just shocked, and the fact that you have an ed -- I think those things work against you, the fact that you actually have a college education or some college. Why should I treat you any differently than I've treated anyone else today on basically the same set of facts? So I'm not going to do it.
> I suggest you get a lawyer, whether it's a public defender or a private lawyer and you're going to come back here in a week and present your case again. I have a feeling at that time that it's going to be a different Judge or maybe you will get a different result and probably get a bond. I don't think seven days here under the circumstances of trying to get some things figured out in your own head, it is mind boggling to me, I'll be honest.
> So at this point I will deny any bond in this matter. The court determines upon clear and convincing evidence that no combination of non monetary or monetary conditions will secure the safety of the community. That is what this is about to me, the safety of the community. I will order that the defendant be detained without bond.

> The court sets this matter for a bond hearing pursuant to Rule 33.05 within seven working days. That is going to be on December 18. That is next Friday in this division on video at noon. I hope within these next seven days because I think you are going to get out Mr. Parker. I hope that you give this some thought.
>
> Ex. 63 at 20953:8-25, 20954:1-20.

Dehumanizing and Abusive Language Towards Defendants

364. In Case No. 1922-CR03819, the judge rejected an agreement made for personal recognizance between the prosecutor and the contract attorney because the defendant had two last names listed in a criminal database and threatened to impose harsher conditions of release if the arrestee spoke:

> THE COURT: . . . In the courtroom today is attorney for the State of Missouri. There's also an attorney that's been appointed to represent you for this bond matter only. The two attorneys in the room have handed me a document that says that they have agreed for you to be let out on a personal Recognizance bond, which is your promise to come back to court. I got to be honest. I don't know if I want to do it, I mean, because my answer is why? If we can't get our names straight and we try to play games with catching cases and with getting booked, I'm afraid for public safety because if I let you out of jail today and you go right onto Grand Center or someplace else and commit a crime, and the next thing you know you're telling me, Judge Colona, and then Judge Colona is booked [sic]. I'm at a loss. So here's what we're going to do. Here's what we're going to do. I'm going to -- I'm going to deny putting you out on recognizance bond.
> Say something. Go ahead and say something and I'll jack your bond up even more, okay? It's my suggestion not to speak. I'm going to leave your bond where it is, all right? So you want to find somebody to post a bond for you, great.
> Now, I also understand that sometimes I might go off the chain for no reason, so I'm going to give you another hearing date on December the 18th at 10:30 in Division 16B where another judge is going to look at your case. Maybe we'll know who you really are by that time.
>
> Ex. 177 at 5544:5-25, 5545:1-7.

365. In Case No. 2022-cr00382, the defendant stated that he was able to post a cash bond of $1,000. The judge incredulously set the bond at $25,000 secured and mocked the defendant for mishearing her:

> THE DEFENDANT: $1000?
> THE COURT: $1000? Are you -- you must be --

THE DEFENDANT: No, I'm asking you is that what you said?
THE COURT: Are you all smoking crack over there? No. Right now it's 25,000 cash. I'll allow you to get a bondsman. I'll do 25,000 secured. That way if you get a bondsman, you can make payments to him.

Ex. 203, at 4:22-25, 5:1-4.

366. In Case No. 1922-cr02219, the judge threatened to change the defendant's bond to no bond because the defendant dared to shake her head:

THE COURT: I think what we are going to do, Mr. Kinnie, we are going to keep you where you are and we are going to try to get you on the docket for this Friday to be assessed by the -- if you keep shaking your head, it's only going to get worse for you, Mr. Kinnie, so I don't appreciate the reaction. If you read the impact statement that I read, it might be a no bond. So, if you want to continue to have a reaction to this proceeding, go ahead. Do you understand me?
DEFENDANT: Yes, sir.

Ex. 174 at 4808:7-18.