

2. Defendant is the current elected district attorney for the 53rd Judicial District, having been elected to that position in 2020. Defendant resides in Travis County.

II. JURISDICTION AND VENUE

3. Pursuant to Texas Local Government Code § 87.015, this cause is being filed in the county of Defendant's residence.

4. The subject matter is within the jurisdiction of this court and all parties are subject to this court's jurisdiction.

5. Pursuant to Rule 47, Plaintiff seeks non-monetary relief that is properly allowed pursuant to article V, § 24 of the Texas Constitution and Chapter 87, Texas Local Government Code.

III. DISCOVERY CONTROL PLAN

6. Discovery will be pursuant to Rule 190.4, Texas Rules of Civil Procedure (Level 3).

IV. INTRODUCTION

7. Plaintiff seeks to remove Defendant from his public office due to incompetency and official misconduct.

8. Since taking office, Defendant has adopted and enforced policies and otherwise acted in violation of legal duties and obligations as follows: (1) Defendant singles-out law enforcement officials by automatically, indiscriminately, presenting charges against them to grand juries; (2) Defendant maintains a "do not call to testify" list of law enforcement officials who he disqualifies from serving as witnesses for the State of Texas; and (3) Defendant refuses to prosecute a class or type of criminal offense under state law.

V. LEGAL AUTHORITY FOR REMOVAL

9. Section 24 of article V of the Texas Constitution authorizes the removal of county officers by district judges for official misconduct and other causes, upon the cause “being set forth in writing and the finding of its truth by a jury.” Section 87.013 of the Texas Local Government Code authorizes removal of a district attorney for specific causes including incompetency and official misconduct.

10. “Incompetency” is defined as “(A) gross ignorance of official duties; (B) gross carelessness in the discharge of those duties; or (C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer’s election.”¹

11. “Official Misconduct” is defined as “intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law.”² The term includes “an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law”³ and, for prosecuting attorneys, an “adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law...”⁴

VI. FACTS

12. In 2020, Defendant was the Democratic Party’s nominee for Travis County District Attorney. He campaigned as a Democratic-Socialist and was substantially funded by political groups advocating radical criminal justice reforms. Defendant told voters that he would

¹ Tex. Loc. Gov’t Code §§ 87.011(2).

² Tex. Loc. Gov’t Code § 87.011(3).

³ Tex. Loc. Gov’t Code § 87.011(3)(A).

⁴ Tex. Loc. Gov’t Code § 87.011(3)(B).

“reimagine” the criminal justice system and promised to implement specific policies if elected, including (1) eliminating cash bail; (2) referring all allegations of misconduct against law enforcement officials to grand juries; (3) refusing to prosecute all drug crimes involving one gram or less of illegal drugs; and (4) establishing a “do not call to testify” list for certain law enforcement officials.

13. On November 3, 2020, Travis County voters elected Defendant and on January 1, 2021, he took the legally required oath of office and assumed duties as district attorney. Defendant established policies he had advocated as a candidate.⁵

14. To serve as district attorney, a person must be a licensed attorney. Defendant is a licensed Texas attorney. To be licensed, an attorney must swear or affirm a statutorily prescribed oath:

I, _____, do solemnly swear (or affirm) that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God.⁶

15. An attorney has a legal responsibility to act ethically. Fundamentally, lawyers are “guardians of the law.”⁷ It is a lawyer’s duty to uphold legal process.⁸ According to the State Bar of Texas, “[l]awyers holding public office assume legal responsibilities going beyond those of

⁵ Qualified voters of Travis County may have declared in favor of Defendant’s fitness for the office but the people of the state have declared, by provision of the constitution, that he is disqualified from holding the office, notwithstanding his election, if he is found incompetent or guilty of official misconduct. Defendant was elected to the office subject to termination. Removal is a proceeding on the part of the state. *See Trigg v. State*, 49 Tex. 645, 669 (1878).

⁶ Texas Gov’t Code § 82.037.

⁷ Texas Disciplinary Rules of Professional Conduct, as amended January 31, 2022, Preamble, par. 1.

⁸ *Id.* at par. 4.

other citizens. A lawyer’s abuse of public office can suggest an inability to fulfill the professional role of attorney.”⁹ An attorney who commits professional misconduct is subject to discipline.¹⁰

16. Before serving as district attorney, a person must swear or affirm a statutorily prescribed oath of office:

I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.¹¹

The oath of office was administered to Defendant on January 1, 2021.

17. Each district attorney has a statutory duty to represent the State of Texas in all criminal cases in the district courts of his district and in appeals therefrom.¹² By law, the primary duty of all prosecuting attorneys is to see that justice is done, not to convict.¹³

A. DEFENDANT’S INTENTIONAL FAILURE OR NEGLIGENCE TO PERFORM A DUTY IMPOSED BY LAW

18. For intentional, unlawful behavior relating to official duties to constitute official misconduct, behavior must be a violation of a statutory duty or obligation.¹⁴ Defendant intentionally and unlawfully violated a statutory duty or obligation by (1) presenting every allegation of excessive use of force or misconduct by law enforcement officials to a grand jury

⁹ *Id.*, Rule 8.04, Comment 4.

¹⁰ Texas Rules of Disciplinary Procedure (including amendments effective June 15, July 1, and August 27, 2021).

¹¹ Tex. Const. art. 16, § 1(a).

¹² Tex. Code of Crim Proc art. 2.01 (2022).

¹³ *Id.*

¹⁴ See *Stern v. State ex rel. Ansel*, 869 S.W.2d 614,619–23 (Tex. App. - Houston [14th Dist.] 1994), writ denied; *State ex rel. Edwards v. Reyna*, 160 Tex. 404, 333 S.W.2d 832, 836 (Tex. 1960).

without exception; and (2) finding persons guilty of wrongdoing and punishing them with placement on a “do not call to testify” list without due process of law.

1. Presenting every allegation of excessive use of force or misconduct by law enforcement officials to a grand jury without exception

19. On April 13, 2021, Defendant publicly stated, “[w]e will continue to fulfill our promise to you to take all officer involved excessive force cases to the grand jury....” (Exhibit A) Defendant’s reports show that even cases still under investigation are to be presented to a grand jury after investigation, without exception.

20. The policy is nondiscretionary, regardless of probable cause. Defendant admits his policy includes cases without probable cause, stating, “we do not expect every case that we present to result in an indictment, however we do believe it is important that it is the grand jury who decides.”

21. As of April 19, 2023, 79 cases against police officers have been presented to a grand jury since January 1, 2021. A no true bill was returned in 48 of those cases. (Exhibit B)

22. Grand juries inquire into offenses and determine whether there is sufficient evidence to indict an accused or suspected person.¹⁵ Grand jury proceedings are ex parte and secret.¹⁶ The Texas Rules of Evidence, with few exceptions, do not apply to grand jury proceedings.¹⁷ the prosecutor exclusively determines what evidence to present to a grand jury.¹⁸

23. A district attorney has prosecutorial discretion whether to present allegations of criminal conduct to a grand jury. Once a decision is made to present allegations to a grand jury, an

¹⁵ Tex. Code of Crim. Proc. art. 20A.051; art. 20A.301.

¹⁶ *Id.* at art. 20A.202.

¹⁷ Texas Rules of Evidence, art. 1, rule 101(e)(2).

¹⁸ Tex. Code of Crim. Proc. art. 20A.104.

indictment is not difficult to obtain. The full power of the state is brought to bear against an accused.

24. Defendant's policy violates a legal obligation not to present cases to grand juries not supported by probable cause.¹⁹ Referral of all cases involving law enforcement persons to a grand jury is prejudicial and necessarily includes cases that lack probable cause.

25. Furthermore, Defendant's policy violates a legal duty not to discriminate. Defendant's policy only refers to one class of persons. For all others, he makes his own probable cause determination before taking a case to a grand jury. Identifying a class of persons for different treatment denies members of that class the same treatment afforded others similarly situated.

26. Government officials have a legal duty to not violate constitutional requirements when acting in their official capacity. The Texas Constitution and United States Constitution guarantee due process and the equal application of laws.²⁰ Defendant's policy violates an official duty imposed by law, memorialized by both statutory oaths taken by Defendant to uphold the Constitutions of the United States and Texas.

2. Finding misconduct and placing a person on a "Do Not Call to Testify" list without affording due process of law

27. Defendant announced the creation of a "do not call to testify" list for law enforcement officers in an official memorandum dated January 29, 2021. (Exhibit C) Under the caption "Civil Rights," Defendant states he is unilaterally placing law enforcement officers on this list when his office has "evidence that an officer's conduct calls into question the integrity of any

¹⁹ Tex. Code Crim. Pro. art 2.01 (2022); Texas Disciplinary Rules of Professional Conduct, Rule 3.09 ("The prosecutor in a criminal case shall: (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause...."). Texas Disciplinary Rules of Professional Conduct, Preamble, par. 4 ("A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others.").

²⁰ Tex. Const. art. 1, §§ 3, 19; U.S. Const. amend. XIV.

case they have previously handled.” Criteria considered by Defendant are not disclosed. Officers determined to have acted wrongfully and placed on the list only have a right to be heard *after* a decision is made and they are added to the list.

28. Any officer placed on the list is effectively deprived from performing authorized law enforcement duties because they will be barred from testifying no matter how credible or material their testimony may be.

29. Law enforcement officials have a right to due process²¹ and a right not to be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law.²² Defendant’s unilateral deprivation of the opportunity to perform authorized law enforcement duties without notice and a prior opportunity to be heard violates these constitutionally protected rights.

B. DEFENDANT’S POLICY OF REFUSING TO PROSECUTE A CLASS OR TYPE OF CRIMINAL OFFENSE

30. In his written policy announcement dated January 29, 2021, Defendant states that his office adopted a blanket non-prosecution policy for some drug offenses. Specifically, he states he is “not prosecuting people who are in possession of a state jail amount of drugs.” Cases of distribution of so-called “small amounts” of drugs also would not be prosecuted “unless there is a threat to public safety, apparently only those where violent conduct is involved. These policies make no distinction for the drugs involved, including fentanyl. A lethal dose of fentanyl is a very small amount, estimated to be 0.002 grams.

²¹ U.S. Const., amend. XIV.

²² Tex. Const. art. 1, § 19; Tex. Code of Crim. Proc. art. 1.04.

31. On June 24, 2022, Defendant released a statement on the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*²³ reversing *Roe v. Wade*²⁴ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.²⁵ Defendant implored people to flout state abortion laws and act “no matter what the law says.” (Exhibit D) He assured the public that abortion laws would not be enforced in Travis County. Using the power and prestige of his office, Defendant intends and expects the public to rely on his policy.

32. On June 27, 2022, Defendant stated publicly “we here in Travis County will not be prosecuting women who seek abortions or medical professionals who provide abortions.”²⁶ On July 2, 2022, Defendant reiterated his policy in a television interview.²⁷ The interviewer reported that Texas district attorneys critical of the *Dobbs* decision announced that they would determine whether to prosecute abortion cases on a case-by-case basis. He apparently assumed Defendant’s position was the same and inquired as to what factors he would weigh in making these decisions. Defendant rejected the premise of the question, asserting “we will not be prosecuting those cases.” When given the opportunity to clarify his response, Defendant remained resolute and reiterated that no one would be prosecuted in Travis County. There was no equivocation whatsoever.

33. Recognizing that Defendant’s policy conflicts with acts of the legislature, the television interviewer asked Defendant if he anticipated any “blowback” from it. Defendant’s response reveals that he *knowingly* defied the state legislature: “I think there is deep concern on

²³ 597 U.S. ____ (2022).

²⁴ 410 U.S. 113 (1973).

²⁵ 505 U.S. 833 (1992).

²⁶ <https://youtu.be/Yiaz41cZfWQ>.

²⁷ <https://youtu.be/Hf6xYoFjOqA>.

the part of the legislature that they are increasingly out of touch with the overwhelming majority of people who live in our state.”

34. Defendant confided that he had already spoken with law enforcement leadership in Travis County about the nonenforcement policy. Accordingly, a policy consistent with his on-air statements had been firmly established by Defendant before the interview.

35. On June 6, 2023, Gov. Greg Abbott signed into law HB17, which was passed in the legislature with bipartisan support. HB17 expressly makes categorical policies not to enforce state laws, such as Defendant’s refusal to prosecute drug and abortion offenses, *official misconduct* and grounds for removal from office. The law took effect September 1, 2023.

36. A prosecutor’s public statement that the prosecutor adopted or enforced, or intends to do so, a policy described by Section 87.011(3)(B) creates a rebuttable presumption that the prosecutor committed official misconduct. Changes in the law effective on September 1, 2023, apply only to an action or statement made on or after that date.

37. Defendant’s policy memorandum dated January 29, 2021, stating Defendant’s refusal to prosecute certain drug offenses, and policy statement dated June 24, 2022, stating Defendant’s policy on abortion cases, remained publicly posted on September 1, 2023. Neither policy has been rescinded by Defendant. Defendant’s stated policies on September 1, 2023, create a rebuttable presumption of official misconduct.

C. DEFENDANT’S SUBVERSION OF THE CRIMINAL JUSTICE SYSTEM AND USURPATION OF LEGISLATIVE AUTHORITY WHEN REPRESENTING TEXAS IS INCOMPETENCE

38. Plaintiff incorporates the preceding paragraphs as if fully repeated here.

39. “Incompetency” is defined, in part, as “gross ignorance of official duties and gross carelessness in the discharge of those duties.”²⁸ Unlike for official misconduct, a violation of a statutory duty or legal obligation is not required to show incompetency.²⁹

40. Defendant swore an oath to faithfully execute the duties of his office and, to the best of his ability, to preserve, protect and defend the Constitution and laws of the United States and of Texas. Defendant’s official conduct conflicts with his ethical and legal obligations to represent the State of Texas in Travis County courts. Instead of enforcing laws of the state, he promises to ignore them. Instead of prosecuting violations of laws, he encourages defiance of laws. Instead of the equal application of the law, Defendant discriminates. Instead of respecting the separation of power Texans established, Defendant usurps it. This conduct demonstrates gross ignorance or gross carelessness in the discharge of his law enforcement duties as district attorney.

VII. CONCLUSION

41. As a lawyer with a duty to represent the State of Texas and as district attorney having a duty to faithfully preserve, protect and defend the Constitutions and laws of the United States and Texas, Defendant’s conduct constitutes official misconduct and incompetency.

42. Because Defendant’s conduct makes him unqualified to serve as district attorney, he should be removed from office.

DECLARATION OF PLAINTIFF

43. Plaintiff swears to the filing of this petition as required by Texas Local Government Code § 87.015(b). Plaintiff’s signed verification form is attached as Exhibit E.

PRAYER FOR RELIEF

²⁸ Tex. Loc. Gov’t Code § 87.011(2)(A)-(B).

²⁹ *Stern v. State*, Ansel, 869 S.W.2d 614, 623 (Tex. App. 1994) (“No violation of a statutory provision is necessary to support a finding of incompetency.”).

WHEREFORE, PREMISES CONSIDERED, the State of Texas through Relator, _____, respectfully requests that:

a. The assigned district judge order that citation and a certified copy of the petition be served on Defendant;

b. The assigned district judge enter an order temporarily suspending Defendant from the public office of district attorney for the 53rd Judicial District during the pendency of this case and appoint another person to perform the duties of that office during that suspension;

c. The assigned district judge, upon the jury trial of this cause, enter a finding that Defendant is incompetent and committed official misconduct, and enter a final judgment permanently removing Defendant from office as district attorney for the 53rd Judicial District; and

d. The assigned district judge award court costs to the State and Relator and any other relief to which it may be entitled.

Respectfully submitted,

Relator

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been delivered to Travis County District Attorney Jose Garza, 416 W. 11th St., Austin, TX 78701, on _____, 2023, via electronic means and by hand delivery.



OFFICE OF THE DISTRICT ATTORNEY

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JOSÉ P. GARZA
DISTRICT ATTORNEY

TRUDY STRASSBURGER
FIRST ASSISTANT

April 13, 2021

To the Travis County Community:

In our first one hundred days, we have made significant progress reshaping our criminal justice system in line with your aspirations. We have begun to make changes that prioritize violent crimes and that treat substance use disorder like the public health crisis that it is. Although we still have much work ahead of us, I am confident that together, we will continue to make changes that make our community more safe and restore faith in our criminal justice system.

As you know, on March 1st we implemented a bail policy that asked our prosecutors to ensure that no one is in our jail simply because they cannot afford to get out. Our policy prioritizes the safety of our community and our prosecutors have been working hard to re-evaluate open cases according to that community safety framework instead of a wealth-based system.

We have worked to ensure that survivors of sexual assault and victims of other crimes are heard and treated with dignity and respect. Our team is working to revamp many of our current victim-witness counselor policies along with our intake procedure to ensure that victims are part of the conversation about their case from the beginning.

We have also greatly expanded diversion eligibility, because making sure that all people have the resources they need, like treatment and counseling, makes us all more safe. As of our first 100 days, we have reviewed more than 1,200 cases and accepted over half of those cases into diversion.

No one should be in jail simply because they can't afford to get out. Anyone who has not yet been convicted of a crime should be in jail only if they pose a threat to the safety of our community. Ensuring our jail is reserved for people who threaten public safety is a shared goal of the District Attorney's Office and County Attorney Delia Garza. Before the pandemic, the jail population was around 2,200 people. On January 1st, when County Attorney Garza and I took office, the jail population was about 1,800 people and now the population is hovering below 1,500 people.

We have continued to prioritize our resources towards prosecuting violent crimes. Since January, we have secured over 300 indictments for crimes of violence including murder, kidnapping, sexual assault, aggravated assault, and violent crimes against children.

Police accountability is critical to the safety of our community because when members of our community trust the police and prosecutors, they are more likely to believe in the fairness of our justice system, seek help, report crimes, and participate in investigations. We will continue to fulfill our promise to you to take all officer involved excessive force cases to the grand jury so that the community can determine whether their actions

constitute criminal conduct. We do not expect every case that we present to result in an indictment, however we do believe it is important that it is the grand jury who decides. A Travis County grand jury has issued indictments against five current and former law enforcement officers for causing injury or death to another while on the job since we took office.

I am proud of our first 100 days, but our work has just begun. As part of our promise to you to reimagine the criminal justice system in Travis County, today we are announcing new initiatives:

Homicide and Major Crimes Unit: In order to prioritize the prosecution of violent crimes, we will be creating a homicide and major crimes unit. This division will be staffed by experienced prosecutors who are experts in the law, well-versed in forensics, have previously handled complicated cases, and can be in regular contact with homicide and major crime detectives. We expect the division to be up and running by July 1, 2021.

Sentencing. When a person commits a crime, our focus is ensuring that it does not happen again and that the victim is safe. To achieve this goal, it is important to address the underlying issue that made the person commit the crime, so it doesn't happen again.

We have distributed sentencing principles and recommendations for our prosecutors to use as a guide when they consider offers and plea bargains. We have asked our prosecutors to incorporate the following principles into their sentencing recommendations:

- **We will treat all victims with dignity and respect, and we will take their needs into account when considering the appropriate sentence.** We will take into consideration what is likely to cause the least amount of harm or trauma to the victim. We will also consider the trauma that victims have endured and we will consider and discuss with victims steps that can be taken to ensure they feel safe, or could be made whole again, in or out of the criminal justice system.
- **Addiction and mental illness, and the offenses that follow from them, should not serve as a justification for imprisonment unless a person poses a danger to our community.** This is true when a person first commits a crime, and while a person is on probation.
- **Diversion should be offered whenever possible.** To prevent crime, we must work to address the underlying causes of crime. If diversion is not appropriate, then community supervision will be offered for as long as is needed to address the underlying cause of the crime unless it is inadequate to protect against the threat of violence to our community.
- **Imprisonment is a last resort,** and it will be utilized if all other interventions and rehabilitative efforts have failed or prove inadequate to protect against the threat of violence to our community.

Collectively, these principles will prioritize the safety of our community and ensure that we center victims, address the root causes of crime, and focus on preventing future violence against our community.

In the coming months, we will continue to reform our criminal justice system so that it meets your aspirations and needs. The change our community has demanded will not happen overnight - but because you continue to make your voice heard, it will happen.



José Garza



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April 19, 2023

Travis County Grand Jury Clears Officers Lehman, Cummins, and Barba in Use of Force Case

Travis County, Tx --- Today, Travis County District Attorney José Garza announced that on Tuesday, April 18, 2023, a Travis County Special Grand Jury concluded its review of the August 19, 2021, shooting incident involving Austin Police Department Officers Derrick Lehman # 6794, Jason Cummins # 6845, and Michael Barba # 5203, and did not return an indictment for the officers.

On August 19, 2021, APD officers responded to a 911 call of a male pedestrian on a high-speed roadway at the 2300 block of South US Highway 183 Northbound. The officers arrived on the scene and located the male, later identified as Lashondell Gillespie, in the middle of the highway. Mr. Gillespie advanced toward the officers with what appeared to be a knife. Officers gave Mr. Gillespie commands to drop the knife. He did not drop the knife and continued to move toward the officers. Officer Lehman and Cummins then discharged their firearms as Mr. Gillespie moved closer to them. Mr. Gillespie sustained injuries and fell to the ground but did not drop the knife. Officers continued to command Mr. Gillespie to drop the knife, but he did not comply. Officer Barba then tased Mr. Gillespie as officers disarmed him. Officers subsequently approached him to render aid. Mr. Gillespie was transported to the hospital and survived his injuries.

“The District Attorney’s office takes the work of presenting all facts and evidence to a grand jury very seriously,” said District Attorney Garza. “In this case, an independent group of members of the Travis County community heard the evidence and law and decided that Officer Lehman’s, Cummins’, and Barba’s conduct was not unlawful.”

Since January 1, 2021, 79 number of cases against police officers have been presented to the grand jury, and including this one, 48 number of times, the grand jury has returned a no true bill.

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TRUDY STRASSBURGER
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January 29, 2021

To the Travis County Community,

When I asked for your vote, I promised you that I would work with you to reimagine our criminal justice system. I believe that together we can build a system that treats all people equally, where our resources are spent fighting violent crimes, and that treats victims with dignity and respect.

We are facing unprecedented times in our criminal justice system. COVID-19 has created a backlog that means victims and people accused may be waiting months, if not years, for justice. Our jail currently houses over 1800 people, many of whom have not been convicted of a crime and are in jail because they are too poor to pay their bail to get out. Due to COVID-19, incarceration has become a potential death sentence. It has also put our public servants who work in jails and prisons, and their families, at risk.

We have much work to do, and change does not come quickly. However, now is the time to roll-up our sleeves and divert as many resources as we can into keeping our community safe. To that end, as of February 1 I am announcing that the following policies will be implemented:

Violent Crimes. Since March, there have been limited grand jury proceedings in Travis County. We are grateful for a group of grand jurors who committed to extending their service through the end of 2020. We will be triaging the backlog of cases to focus on violent offenses that pose a threat to public safety. In the last two weeks, the grand jury has returned over 55 indictments on violent offenses, including charges of murder, kidnapping, sexual assault, aggravated assault, and violent crimes against children.

Victim Services. It is imperative that our victim-witness counselors, who currently have a caseload of up to 800 people each, are able to do their jobs effectively. We have hired an experienced and nationally recognized victim-witness counselor, Neva Fernandez, who will be leading the team and moved the team under the supervision of Erin Martinson. Ms. Fernandez will work to train the counselors and prosecutors on trauma-informed interviewing, implement policies to reduce the counselor caseload, and ensure that all victims are treated with dignity and respect regardless of the facts of their case.

Diversión. In the past, many people who were accepted into pre-trial diversion programs through the District Attorney's Office were accepted because they had hired an attorney and could afford to pay the fees associated with diversion. Many were also excluded based solely on their criminal history. However, pre-trial diversion should recognize that all people are capable of change, and that helping a person through treatment or counseling makes our community more safe than jail or prison.

We have greatly expanded our pre-trial diversion program so that more people will be eligible, and have structured the program so that our prosecutors can seek to find eligible people instead of waiting on defense counsel to ask. We will also be asking stakeholders to work with us to expand services that we can offer. At this moment, a team of experienced prosecutors is reviewing cases to determine if the person is eligible for diversion. In order to fulfill our promise of transparency to you, we will update the community regularly on the number of people who have been accepted for diversion, and the number of people who have successfully completed it.

Bail. Those who have committed heinous crimes and are a danger to the community should remain in custody pending trial. But we must work to ensure that it is not just the wealthy who are given an opportunity to be released when they are not a danger to the community.

While we cannot set bail ourselves, we will be using this analysis to recommend bail to the Judges who make the final determination:

- We will not consider a person who is an attendance risk, meaning they have missed court in the past but have not attempted to evade the police, a flight risk.
- For anyone charged with a State Jail Felony, there will be a presumption of release with no conditions if it is determined that the person poses no threat to community safety or risk of flight.
- For anyone charged with a higher level felony, there will be a presumption of release with the least restrictive condition necessary to ensure that the person is not a risk to the community or risk of flight.
- Anyone who poses a future risk of harm to our community or a risk of a flight that cannot be addressed by conditions other than pre-trial incarceration should remain in custody.

Conviction Integrity. Over the last two decades, our community has learned hard lessons about the factors that can lead to wrongful convictions. We have a duty to ensure that no person who is innocent or is entitled to a new trial due to a wrongful conviction is forgotten in prison. We have created a conviction integrity team lead, and our team of lawyers will create processes and begin a thorough and careful review of past convictions. To this end, our office has been working since January 4th to ensure that a judge could hear evidence of Ms. Rosa Jimenez's innocence and ensure her release.

Soon our office will have a public form for our community to fill out if they have a loved one who needs their case reviewed.

Civil Rights. One of our most important jobs is to work with law enforcement to keep our community safe. That means we must work together to ensure that cases we bring to the point of prosecution have been thoroughly investigated, and we are confident that we are bringing the right person to trial with the right charges. It also means that in order to rebuild community trust and ensure the safety of our community, we must hold law enforcement accountable when they break the law.

If we have evidence that an officer's conduct calls into question the integrity of any case they have previously handled, we will be conducting a review of those cases and we will place them on a "do not call to testify" list. Before the list is made public, the officer will have a right to present evidence that they should be allowed to continue to testify in criminal cases.

Sentencing. I promised you that our practice would not be to seek excessive sentences. This office believes that all people are capable of change, and that we must use data to ensure that we are asking for sentences consistent with when we know that a person's criminogenic risk has been greatly reduced. For that reason, any prosecutor who believes that a sentence longer than twenty years is appropriate must seek permission from the director of the division and our first assistant or myself. Make no mistake, there will be times when a long sentence will be appropriate.

Powerful Actors. We have shifted the focus of the unit formally known as "special prosecutions" to Public Integrity and Complex Crimes. We will be focusing not only on elected officials who have committed crimes that fall under our jurisdiction, but we will be asking community members to come forward and inform us when they have been victims of wage theft, unsafe work conditions that rise to the level of criminal conduct, or landlords who have criminally taken advantage of tenants. We will soon be publishing a form that can be used to report complaints of this nature. We will be actively working with the community to identify these cases, and work to ensure that justice is done and that powerful actors are held accountable.

Drugs. I committed to you that my office would not spend our scant resources prosecuting people who suffer from substance abuse issues instead of using those resources to prosecute crimes like sexual assault and family violence. To that end, we will continue the practice started by the last administration of not prosecuting people who are in possession of a state jail amount of drugs and we will be ending the prosecution of the sale of small amounts of drugs unless there is a threat to public safety. Instead, when someone is arrested for a drug crime, we will prioritize prosecuting only sellers who pose a danger to the community because they engage in violent conduct.

Magistration. Right now, it is the police who decide what charges to file and the magistrates who set the initial bail. This is done without the input of the prosecutor or defense counsel. Our office, along with the county attorney, intends to begin an arrest review process in magistration as soon as we can. This will save time and money for the county, and potentially wasted days in jail, if we can review cases before a person sees a magistrate, and I look forward to working with criminal justice stakeholders to make this happen.

A handwritten signature in black ink, appearing to read "José Garza". The signature is fluid and cursive, with the first name "José" being more prominent and the last name "Garza" written in a smaller, more connected script.

José Garza



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TRUDY STRASSBURGER
FIRST ASSISTANT

June 24, 2022

Travis County District Attorney José Garza Releases Statement on Supreme Court Decision to Overturn *Roe v. Wade*

This morning, the Supreme Court overturned *Roe v. Wade*. This decision eliminated a constitutional right to abortion, creating massive instability for women, their reproductive rights, and our community.

Making abortion illegal will not end abortions; it will simply end safe abortions for too many. Threatening women who seek abortion services and their medical providers with prosecution will only drive women to seek out dangerous alternatives and avoid necessary medical care, which will lead to higher rates of preventable maternal death.

The number one responsibility and job of any district attorney is to keep our community safe. In Travis County, we are squarely focused on holding accountable people who commit acts of violence in our community. Our communities are safer when women and families can make personal healthcare and reproductive decisions without the threat of interference from the state.

While I am aware that our state's "trigger law" goes into effect in 30 days, making performing an abortion a felony, I will not force women into the shadows, especially when they need life-saving medical care. No matter what the law says, I implore you: please, seek medical help if you need it. A prosecutor's job is to protect public safety, and to enforce this law will not only fail to promote or protect public safety but will also lead to more harm.

I know a lot of folks in our community are scared and worried about their safety and the safety of their loved ones. I promise that I will continue to fight for and protect women's rights and use my discretion as the District Attorney to avoid tragedy and preventable harm in our community.

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VERIFICATION

STATE OF TEXAS

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COUNTY OF TRAVIS

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Before me, the undersigned authority, on this day personally appeared _____, the Relator in the above referenced lawsuit, who upon his oath testified as follows:

“My name is _____. I am capable of making this verification. I have read the PETITION TO REMOVE DISTRICT ATTORNEY OF THE 53RD JUDICIAL DISTRICT JOSE GARZA. The facts stated therein are within my personal knowledge or information and belief, and are true and correct.”

SUBSCRIBED TO AND SWORN BEFORE ME, the undersigned authority, on this ___ day of September, 2023.

Notary Public

State of Texas