

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

Petitioner,

§

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v.

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CIVIL ACTION NO. 4:25-cv-2089

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§

**Ben Taub Hospital and City of
Houston**

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Respondent,

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**ORDER FOR THE ISSUANCE OF THE NON-CRIMINAL- WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2254 and 28 U.S.C. § 2241**

On this day, the Court considered the *Emergency Verified Emergency Petition for Writ of Habeas Corpus* filed on behalf of **Tony Underwood**, a critically injured and incapacitated individual currently on life support and under the effective custody and control of state actors (Houston Police Department) and Ben Taub Hospital. The Petition raises urgent constitutional concerns regarding unlawful confinement, denial of legal counsel, familial access, and spiritual advisor and the lack of procedural due process.

After review of the Petition and applicable law, the Court FINDS as follows:

1. The Petition is brought pursuant to **28 U.S.C. §§ 2241 and 2243** and is subject to expedited consideration under **28 U.S.C. § 1657** as it arises under Chapter 153 of

Title 28.

2. Petitioner has alleged sufficient facts to warrant immediate judicial intervention, including the denial of access to counsel, mother, and spiritual advisor while unconscious and critically injured.
3. There is a credible allegation that body camera footage central to the issue of probable cause has not been disclosed.
4. The denial of access and lack of legal representation while in state custody implicates rights secured under the **First, Sixth, and Fourteenth Amendments** to the U.S. Constitution.
5. There exists a mutually recorded telephone conversation between Petitioner's counsel and an HPD detective, in which the detective stated that the Houston Police Department was not denying access to Tony Underwood. This representation is inconsistent with the actual denial of access experienced by counsel and Mr. Underwood's mother, thereby supporting the Petition's allegations of arbitrary and unjustified restrictions on liberty and access.

Accordingly, the Court hereby ORDERS:

- a) Respondents shall immediately produce all body camera footage and supporting materials relevant to the incident involving Mr. Underwood on or about April 30, 2025.
- b) The Court hereby assumes jurisdiction over this matter pursuant to 28 U.S.C. § 2241.

- c) Pursuant to 28 U.S.C. § 1657, this action is granted expedited consideration due to the constitutional nature of the relief sought and Petitioner’s medical condition.
- d) Pursuant to 28 U.S.C. § 2243, Respondents are ORDERED TO SHOW CAUSE within _____ days why the writ of habeas corpus should not be granted.
- e) A Writ of Habeas Corpus shall issue forthwith. Respondents are ordered to either (1) release Petitioner from unconstitutional custody and permit access to counsel and next of kin, or (2) appear before this Court for an expedited evidentiary hearing to show cause for the continued restrictions imposed on Petitioner. Respondents are ENJOINED from further denying Tony Underwood access to:
- His retained legal counsel;
 - His **mother and next of kin**; and
 - His **pastoral advisor or spiritual representative**.

SO ORDERED.

Signed this ___ day of _____, 2025.

United States District Judge

imprisoned by a state actor acting under the color of law. He was taken into custody of Ben Taub Hospital through the Houston Police Department going beyond the limits.

This imprisonment is causing him to suffer irreparable harm by delaying and denying access to counsel, comfort from his family while he suffers serious medical needs after being taken into custody without a warrant or a finding of probable cause that he committed a crime. It has not been determined by any court that there is probable cause to arrest Tony Underwood. He is currently being deprived of his right to travel, familial relations, pastoral and spiritual prayer and support, and liberty.

II. JURISDICTION

This action arises under the Constitution of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 2254 and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the state of Texas, and such custody is in violation of the Constitution, laws, or treaties of the United States. This court has subject-matter jurisdiction over a claim under the federal habeas statutes since the petitioner is in custody pursuant to some government action in violation of the Constitution or laws of the United States.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable since it involves habeas corpus relief relating to an adult temporary guardianship alleging violation of the Fourth amendment.

This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254 (a), and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a native and citizen of the United States. He has spent eight (8) days in unlawful custody of Ben Taub and City of Houston.

Respondent, City of Houston, a.k.a. Houston Police Department, currently engaged in the unlawful detainment of the person of Tony Underwood.

Respondent, Ben Taub Hospital currently engaged in the unlawful and unreasonable detainment of the person of Tony Underwood.

V. FACTS

1. Tony Underwood is a 37-year-old man who was involuntarily placed in the custody of Ben Taub Hospital facility at 1504 Ben Taub Loop, Houston, Texas 77030.
2. On the evening of Wednesday, April 30, 2025, Tony Underwood was shot in the back by a Houston Police Department Officer.
3. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support, rendering his condition critical and raising urgent constitutional concerns regarding his confinement and access to counsel.
4. Tony Underwood is unconscious and entirely incapable of advocating for himself, making immediate court intervention necessary to protect his constitutional rights.

5. He has been denied access to his family, legal counsel, and outside communication, in violation of his First and Fourteenth Amendment rights to familial association, legal access, and due process.
6. His mother, the legal next of kin, has been categorically denied in-person access to her son, despite his extreme critical condition and unconscious state. This is in violation of her Fourteenth Amendment right to familial association and substantive due process.
7. Hospital staff have only contacted her for the limited purpose of obtaining consent for high-risk, life-saving medical procedures. This denies Ms. Underwood, Tony Underwood's mother, the right to meaningful participation in her son's care and infringing on her liberty interest as a parent.
8. There have been several such life-threatening procedures, confirming the seriousness and urgency of his medical condition.
9. She has received no meaningful updates about her son's overall condition, prognosis, or treatment plan, despite repeated inquiries. These actions are depriving her of the ability to make informed medical decisions – core protections guaranteed under the Due Process Clause of the Fourteenth Amendment.
10. This continued denial of access and information deprives her of fundamental parental rights, including the right to familial association and informed medical decision-making.
11. The State's (Houston Police Department) and Ben Taub Hospital's continued refusal to permit access or share critical medical information constitutes an arbitrary and

unjustified interference with her constitutionally protected right to make decisions concerning the care, custody, and control of her child.

12. The State's (Houston Police Department) and Ben Taub Hospital's continued confinement and medical control without legal representation or judicial oversight constitutes a violation of his right to bodily integrity and substantive due process under the Fourteenth Amendment.

13. The State's (Houston Police Department) and Ben Taub Hospital's refusal to permit access by counsel and next of kin is an unconstitutional restriction on Mr. Underwood's right to access the courts and interferes with his ability to seek redress and exercise his habeas corpus rights under Article I, Section 9, Clause 2 of the U.S. Constitution.

14. Furthermore, Counsel engaged in a telephone conversation with the lead Detective, in which the call was mutually recorded and the Detective stated that the Houston Police Department was not denying access to Tony Underwood. Though, when the family went to the police headquarters on May 7th, 2025, the family, specifically Ms. Underwood, was told that access continues to be denied.

VI. CLAIM FOR RELIEF

15. Petitioner realleges and incorporates by reference all paragraphs throughout the Petition. Respondents' continued detention of Petitioner is unlawful and contravenes law.

16. Petitioner continues to languish in detention at a facility, alone, while he fights for his life.

17. He has been detained without due process well over the presumptively reasonable period.

18. Due process would require that he have access to Counsel and his mother, Ms. Patricia Underwood.

19. Accordingly, Respondents' continued detention of Petitioner is contrary to the United States Constitution and human decency.

VII. SUBSTANTIVE DUE PROCESS VIOLATION

20. Petitioner realleges and incorporates paragraphs 1-19 throughout the Petition.

21. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

22. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling government interest. Any interest Respondents have in detaining Petitioner in order to effectuate their "process" does not justify the indefinite detention of Petitioner, life is literally in the balance and could likely die alone.

VIII. PROCEDURAL DUE PROCESS VIOLATION

23. Petitioner realleges and incorporates by reference paragraphs 1-22 throughout the Petition.

24. Under the Due Process Clause of the Fifth and Fourteenth Amendments, Tony Underwood is entitled to a timely and meaningful notice, and a hearing with an

opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity.

25. Petitioner has been denied notice.

26. Petitioner has been denied an opportunity to be heard.

IX. VIOLATION OF SIXTH AMENDMENT

27. Petitioner realleges and incorporates by reference paragraphs 1-26 throughout the Petition.

28. Petitioner has been denied access to counsel, held with no bond.

X. PRAYER FOR RELIEF

29. Petitioner realleges and incorporates by reference paragraphs 1-28 throughout the Petition.

30. Petitioner prays that the Court grant the following relief:

- a. Release of body camera footage to support alleged probable cause;
- b. Assume jurisdiction over this matter;
- c. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- d. Pursuant to 28 U.S.C. § 2243 issue an order directing Respondent to show cause why the writ of habeas corpus should not be granted, since the petition shows Tony Underwood is entitled to;
- e. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from “custody”, or in the alternative, order

that Petitioner be provided an expedited hearing before this court and order to show cause for the detention; and,

- f. Enjoin Respondents from denying access to counsel, access to his mother, access to his pastor.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

Declaration on Petitioner's behalf pursuant to 28 U.S.C. Section 1746 and 28

U.S.C. § 2242

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the

attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 05/08/2025

/s/ Courtney A. Vincent

Courtney A. Vincent

Counsel for Petitioner Tony Underwood

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



TONY UNDERWOOD

Plaintiff(s)

v.

CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) and BEN TAUB HOSPITAL

Defendant(s)

Civil Action No. 4:25-cv-02089

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

BEN TAUB HOSPITAL
BEN TAUB LOOP
HOUSTON, TEXAS 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

VINCENT LAW, PLLC
C/O ATTORNEY COURTNEY A. VINCENT
1035 DAIRY ASHFORD, #145
HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



TONY UNDERWOOD

Plaintiff(s)

v.

CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) and BEN TAUB HOSPITAL

Defendant(s)

Civil Action No. 4:25-cv-02089

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To: (Defendant's name and address) CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) 901 BAGBY HOUSTON, TEXAS 77002

A lawsuit has been filed against you.

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VINCENT LAW, PLLC C/O ATTORNEY COURTNEY A. VINCENT 1035 DAIRY ASHFORD, #145 HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

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I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

versus

§

Case Number: 4:25-cv-02089

§

CITY OF HOUSTON, et al.

§

§

**NOTICE REGARDING CONSENT
TO JURISDICTION OF A MAGISTRATE JUDGE**

This Notice is to remind Parties of their right to consent to the jurisdiction of a Magistrate Judge to preside over all proceedings, including trials, and enter a final judgment in the same manner as a District Judge. Consent to the jurisdiction of Magistrate Judges improves the efficiency of the courts. The Judges of this Court encourage parties to consent to the jurisdiction of Magistrate Judges pursuant to 28 U.S.C. § 636(c).

Upon all parties' consent, the case will be transferred to the Magistrate Judge assigned to this case who will assume all the duties and powers of the District Judge, including the power to preside over jury trials and enter final judgment.

All parties are free to consent or withhold consent to Magistrate Judge jurisdiction without any adverse consequences.

Absent the parties' mutual consent to Magistrate Judge jurisdiction, District Judges may still refer any or all pretrial matters to Magistrate Judges pursuant to 28 U.S.C. § 636(b).

If all parties choose to consent, please execute the attached Consent form, and file it with the Clerk of Court. If all parties do not consent, no further action is necessary.

Date: May 8, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

_____	§	
	§	
Plaintiff(s),	§	
	§	
v.	§	Civil Action No. _____
	§	
_____	§	
	§	
Defendant(s).	§	

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

All parties to this case waive their right to proceed before a United States District Judge and consent to have a United States Magistrate Judge preside over all further proceedings, including the trial and entry of final judgment pursuant to 28 U.S.C. § 636(c).

_____	_____
_____	_____
_____	_____

ORDER OF TRANSFER TO MAGISTRATE JUDGE

This case is transferred to United States Magistrate Judge

to conduct all further proceedings, including final judgment.

Date

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Tony Underwood

§

Petitioner,

§

§

v.

§

§

CIVIL ACTION NO. 4:25-cv-2089

§

**Harris County, a.k.a. Harris
Health System, a.k.a Ben Taub
Hospital, and City of Houston,
a.k.a. Houston Police
Department**

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Respondent.

**SUPPLEMENTED EMERGENCY PETITION FOR -NON-CRIMINAL- WRIT
OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 and 28 U.S.C. § 2241**

Petitioner, Tony Underwood, petitions this Court for an *EMERGENCY Petition for Writ of Habeas Corpus* to immediately remedy his unlawful detention and restraint of his liberty by state actor **City of Houston** located at 901 Bagby, Houston, Texas 77002 and **Ben Taub Hospital (Harris Health System)** carrying out the state actor’s “policy” located at 1504 Ben Taub Loop, Houston, Texas 77030. Petitioner presents to the Court as follows:

I. INTRODUCTION

Petitioner, Tony Underwood (“Petitioner” or “Tony Underwood”) is a 37-year-old Houston area native and citizen of the United States being held and locked in a secured facility at **Ben Taub Hospital**, against his will. He has never been charged with a crime, much less convicted or sentenced; nor is he a pre-trial detainee. Yet, He is being falsely

imprisoned by a state actor acting under the color of law. He was taken into custody of Ben Taub Hospital through the Houston Police Department going beyond the limits.

This imprisonment is causing him to suffer irreparable harm by delaying and denying access to counsel, comfort from his family while he suffers serious medical needs after being taken into custody without a warrant or a finding of probable cause that he committed a crime. It has not been determined by any court that there is probable cause to arrest Tony Underwood. He is currently being deprived of his right to travel, familial relations, pastoral and spiritual prayer and support, and liberty.

II. JURISDICTION

This action arises under the Constitution of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 2254 and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the state of Texas, and such custody is in violation of the Constitution, laws, or treaties of the United States. This court has subject-matter jurisdiction over a claim under the federal habeas statutes since the petitioner is in custody pursuant to some government action in violation of the Constitution or laws of the United States.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable since it involves habeas corpus relief relating to an adult temporary guardianship alleging violation of the Fourth amendment.

This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254 (a), and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a native and citizen of the United States. He has spent eight (8) days in unlawful custody of Ben Taub and City of Houston.

Respondent, City of Houston, a.k.a. Houston Police Department, currently engaged in the unlawful detainment of the person of Tony Underwood.

Respondent, Ben Taub Hospital currently engaged in the unlawful and unreasonable detainment of the person of Tony Underwood.

V. FACTS

1. Tony Underwood is a 37-year-old man who was involuntarily placed in the custody of Ben Taub Hospital facility at 1504 Ben Taub Loop, Houston, Texas 77030.
2. On the evening of Wednesday, April 30, 2025, Tony Underwood was shot in the back by a Houston Police Department Officer.
3. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support, rendering his condition critical and raising urgent constitutional concerns regarding his confinement and access to counsel.
4. Tony Underwood is unconscious and entirely incapable of advocating for himself, making immediate court intervention necessary to protect his constitutional rights.

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14. Furthermore, Counsel engaged in a telephone conversation with the lead Detective, in which the call was mutually recorded and the Detective stated that the Houston Police Department was not denying access to Tony Underwood. Though, when the family went to the police headquarters on May 7th, 2025, the family, specifically Ms. Underwood, was told that access continues to be denied.

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16. Petitioner continues to languish in detention at a facility, alone, while he fights for his life.

17. He has been detained without due process well over the presumptively reasonable period.

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that Petitioner be provided an expedited hearing before this court and order to show cause for the detention; and,

- f. Enjoin Respondents from denying access to counsel, access to his mother, access to his pastor.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

Declaration on Petitioner's behalf pursuant to 28 U.S.C. Section 1746 and 28

U.S.C. § 2242

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the

attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 05/08/2025

/s/ Courtney A. Vincent

Courtney A. Vincent

Counsel for Petitioner Tony Underwood

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



Tony Underwood

Plaintiff(s)

v.

Harris County, a.k.a. Harris Health System, a.k.a Ben Taub Hospital, and City of Houston, a.k.a. Houston Police Department

Defendant(s)

Civil Action No. 4:25-cv-02089

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Harris County (a.k.a. Harris Health System, a.k.a. Ben Taub) 1001 Preston St. Houston, TX 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Vincent Law, PLLC
c/o Attorney Courtney A. Vincent
1035 Dairy Ashford, #145
Houston, TX 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tony Underwood

(b) County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Atty Courtney Vincent, Vincent Law, PLLC 713-223-9300
1035 Dairy Ashford, #145, Houston, TX 77079

DEFENDANTS

City of Houston a.k.a. Houston Police Dept.
Ben Taub Hosnifa

County of Residence of First Listed Defendant Harris
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input checked="" type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254 (a), and the All-Writs Act, 28 U.S.C. § 1651

Brief description of cause:

Plaintiff is in extreme critical medical condition and Defendants are denying Plaintiff access to counsel, mother, and spiritual advisor.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

05/08/2025

SIGNATURE OF ATTORNEY OF RECORD

Courtney A. Vincent

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

Petitioner,

§

§

v.

§

§

CIVIL ACTION NO. 4:25-cv-2089

§

**Harris County, a.k.a. Harris
Health System, a.k.a Ben Taub
Hospital, a.k.a. Harris County
District Attorney's Office and
City of Houston, a.k.a. Houston
Police Department**

§

§

§

§

§

§

Respondent.

**SECOND SUPPLEMENTED EMERGENCY PETITION FOR
-NON-CRIMINAL- WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §
2254 and 28 U.S.C. § 2241**

Petitioner, Tony Underwood, petitions this Court for an *EMERGENCY Petition for Writ of Habeas Corpus* to immediately remedy his unlawful detention and restraint of his liberty by state actor **City of Houston** located at 901 Bagby, Houston, Texas 77002 and **Ben Taub Hospital (Harris Health System)** carrying out the state actor’s “policy” located at 1504 Ben Taub Loop, Houston, Texas 77030. Petitioner presents to the Court as follows:

I. INTRODUCTION

Petitioner, Tony Underwood (“Petitioner” or “Tony Underwood”) is a 37-year-old Houston area native and citizen of the United States being held and locked in a secured facility at **Ben Taub Hospital**, against his will. He has never been charged with a crime,

much less convicted or sentenced; nor is he a pre-trial detainee. Yet, he is being falsely imprisoned by a state actor acting under the color of law. He was taken into custody of Ben Taub Hospital through the Houston Police Department going beyond the limits.

This imprisonment is causing him to suffer irreparable harm by delaying and denying access to counsel, comfort from his family while he suffers serious medical needs after being taken into custody without a warrant or a finding of probable cause that he committed a crime. It has not been determined by any court that there is probable cause to arrest Tony Underwood. He is currently being deprived of his right to travel, familial relations, pastoral and spiritual prayer and support, and liberty.

II. JURISDICTION

This action arises under the Constitution of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 2254 and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the state of Texas, and such custody is in violation of the Constitution, laws, or treaties of the United States. This court has subject-matter jurisdiction over a claim under the federal habeas statutes since the petitioner is in custody pursuant to some government action in violation of the Constitution or laws of the United States.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable since it involves habeas corpus relief relating to an adult temporary guardianship alleging violation of the Fourth amendment.

This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254 (a),

and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a native and citizen of the United States. He has spent eight (8) days in unlawful custody of the City of Houston and Harris County.

Respondent, City of Houston, a.k.a. Houston Police Department, currently engaged in the unlawful detainment of the person of Tony Underwood.

Respondent, Harris County by and through Ben Taub Hospital and the Harris County District Attorney's Office currently engaged in the unlawful and unreasonable detainment of the person of Tony Underwood.

V. FACTS

1. Tony Underwood is a 37-year-old man who was involuntarily placed in the custody of Ben Taub Hospital facility at 1504 Ben Taub Loop, Houston, Texas 77030.
2. On the evening of Wednesday, April 30, 2025, Tony Underwood was shot in the back by a Houston Police Department Officer.
3. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support, rendering his condition critical and raising urgent constitutional concerns regarding his confinement and access to counsel, a violation of his Sixth Amendment rights.

4. Tony Underwood is unconscious and entirely incapable of advocating for himself, making immediate court intervention necessary to protect his constitutional rights.
5. He has been denied access to his family, legal counsel, and outside communication, in violation of his First and Fourteenth Amendment rights to familial association, legal access, and due process.
6. His mother, the legal next of kin, has been categorically denied in-person access to her son, despite his extreme critical condition and unconscious state. This is in violation of her Fourteenth Amendment right to familial association and substantive due process.
7. Hospital staff have only contacted her for the limited purpose of obtaining consent for high-risk, life-saving medical procedures. This denies Ms. Underwood, Tony Underwood's mother, the right to meaningful participation in her son's care and infringing on her liberty interest as a parent.
8. There have been several such life-threatening procedures, confirming the seriousness and urgency of his medical condition.
9. She has received no meaningful updates about her son's overall condition, prognosis, or treatment plan, despite repeated inquiries. These actions are depriving her of the ability to make informed medical decisions – core protections guaranteed under the Due Process Clause of the Fourteenth Amendment.
10. This continued denial of access and information deprives her of fundamental parental rights, including the right to familial association and informed medical decision-making.

11. The State's (Houston Police Department) and Ben Taub Hospital's continued refusal to permit access or share critical medical information constitutes an arbitrary and unjustified interference with her constitutionally protected right to make decisions concerning the care, custody, and control of her child.
12. The State's (Houston Police Department) and Harris County's (Ben Taub Hospital) continued confinement and medical control without legal representation or judicial oversight constitutes a violation of his right to bodily integrity and substantive due process under the Fourteenth Amendment.
13. The State's (Houston Police Department) and Harris County's (Ben Taub Hospital, enforcing Houston Police Departments's unconstitutional policy), refusal to permit access by counsel and next of kin is an unconstitutional restriction on Mr. Underwood's right to access the courts and interferes with his ability to seek redress and exercise his habeas corpus rights under Article I, Section 9, Clause 2 of the U.S. Constitution.
14. Furthermore, Counsel engaged in a telephone conversation with the lead Detective Walker at phone number [REDACTED], in which the call was mutually recorded and Detective Walker stated that the Houston Police Department was not denying access to Tony Underwood. Though, when the family went to the police headquarters on May 7, 2025, the family, specifically Ms. Underwood, was told that access continues to be denied.

VI. CLAIM FOR RELIEF

15. Petitioner realleges and incorporates by reference all paragraphs throughout the Petition. Respondents' continued detention of Petitioner is unlawful and contravenes law.
16. Petitioner continues to languish in detention at a facility, alone, while he fights for his life.
17. He has been detained without due process well over the presumptively reasonable period.
18. Due process would require that he have access to Counsel and his mother, Ms. Patricia Underwood.
19. Accordingly, Respondents' continued detention of Petitioner is contrary to the United States Constitution and human decency.

VII. SUBSTANTIVE DUE PROCESS VIOLATION

20. Petitioner realleges and incorporates paragraphs 1-19 throughout the Petition.
21. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.
22. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling government interest. Any interest Respondents have in detaining Petitioner in order to effectuate their "process" does not justify the indefinite detention of Petitioner, life is literally in the balance and could likely die alone.

VIII. PROCEDURAL DUE PROCESS VIOLATION

23. Petitioner realleges and incorporates by reference paragraphs 1-22 throughout the Petition.

24. Under the Due Process Clause of the Fifth and Fourteenth Amendments, Tony Underwood is entitled to a timely and meaningful notice, and a hearing with an opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity.

25. Petitioner has been denied notice.

26. Petitioner has been denied an opportunity to be heard.

IX. VIOLATION OF SIXTH AMENDMENT

27. Petitioner realleges and incorporates by reference paragraphs 1-26 throughout the Petition.

28. Petitioner has been denied his Sixth Amendment Right to Counsel. Despite his unconscious and life-threatening condition, and the initiation of state investigatory or charging process, Mr. Underwood has not been afforded access to legal counsel or civil or criminal counsel. No criminal cause number is publicly available, no formal notice has been received by him or his next of kin, and no opportunity exists to file a legal appearance on his behalf. This deprivation, while state actors, Harris County District Attorney's Office and the Houston Police Department, move forward with the prosecutorial steps, violates Mr. Underwood's constitutional right to the assistance of counsel as guaranteed by the Sixth Amendment.

29. Further, Mr. Underwood is held without bond.

X. PRAYER FOR RELIEF

30. Petitioner realleges and incorporates by reference paragraphs 1-28 throughout the Petition.

31. Petitioner prays that the Court grant the following relief:

- a. Release of body camera footage to support alleged probable cause;
- b. Assume jurisdiction over this matter;
- c. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- d. Pursuant to 28 U.S.C. § 2243 issue an order directing Respondent to show cause why the writ of habeas corpus should not be granted, since the petition shows Tony Underwood is entitled to;
- e. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from “custody”, or in the alternative, order that Petitioner be provided an expedited hearing before this court and order to show cause for the detention; and,
- f. Enjoin Respondents from denying access to counsel (civil and criminal), access to his mother, and access to his pastor.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC
1035 Dairy Ashford, Suite 145
Houston, Texas 77079

Mailing Address:

P.O. Box 940129
Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

**Declaration on Petitioner's behalf pursuant to 28 U.S.C. Section 1746 and 28
U.S.C. § 2242**

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 05/12/2025

/s/ Courtney A. Vincent

Courtney A. Vincent

Counsel for Petitioner Tony Underwood

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)
_____)
_____)
_____)
Plaintiff(s))

v.)

) Civil Action No.
)
)
)
)
)
)
)
)

_____)
Defendant(s))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,	§	
	§	
Plaintiff(s),	§	
	§	
v. CITY OF HOUSTON, et. al.,	§	Civil Action No. 4:25-cv-02089
	§	
	§	
	§	
Defendant(s).	§	

CONSENT TO PROCEED BEFORE A MAGISTRATE JUDGE

All parties to this case waive their right to proceed before a United States District Judge and consent to have a United States Magistrate Judge preside over all further proceedings, including the trial and entry of final judgment pursuant to 28 U.S.C. § 636(c).

Attorney for Plaintiff Tony Underwood

Courtney A. Vincent

Courtney A. Vincent

_____	_____
_____	_____
_____	_____

ORDER OF TRANSFER TO MAGISTRATE JUDGE

This case is transferred to United States Magistrate Judge

to conduct all further proceedings, including final judgment.

Date

United States District Judge

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



TONY UNDERWOOD

Plaintiff(s)

v.

CITY OF HOUSTON, et. al

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) HARRIS COUNTY
1001 Preston St.
Houston, TX 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

VINCENT LAW, PLLC
c/o ATTORNEY COURTNEY A. VINCENT
1035 DAIRY ASHFORD, #145
HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



Nathan Ochsner, Clerk of Court

Handwritten signature of Nathan Ochsner

s/ M. LaBee
Signature of Clerk or Deputy Clerk

Date: May 12, 2025

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



TONY UNDERWOOD

Plaintiff(s)

v.

CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) and BEN TAUB HOSPITAL

Defendant(s)

Civil Action No. 4:25-cv-02089

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) 901 BAGBY HOUSTON, TEXAS 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

VINCENT LAW, PLLC C/O ATTORNEY COURTNEY A. VINCENT 1035 DAIRY ASHFORD, #145 HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



Nathan Ochsner, Clerk of Court

Date: May 12, 2025

Handwritten signature of Nathan Ochsner

s/ M. LaBee Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

TONY UNDERWOOD)

Plaintiff(s)

v.

CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT) and BEN TAUB HOSPITAL)

Defendant(s)

Civil Action No. 4:25-cv-02089

SUMMONS IN A CIVIL ACTION

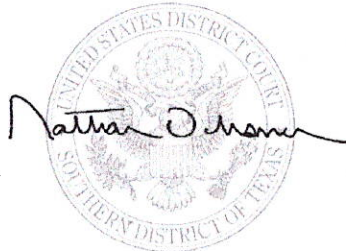
To: *(Defendant's name and address)* CITY OF HOUSTON (HOUSTON POLICE DEPARTMENT)
901 BAGBY
HOUSTON, TEXAS 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

VINCENT LAW, PLLC
C/O ATTORNEY COURTNEY A. VINCENT
1035 DAIRY ASHFORD, #145
HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



Nathan Ochsner, Clerk of Court

Date: May 12, 2025

s/ M. LaBee
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) City of Houston, Houston Police Department
was received by me on (date) 5-12-25.

I personally served the summons on the individual at (place) 901 Bagby Houston, TX 77002
on (date) 5-13-25; or

I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) Troy Lenons, who is
designated by law to accept service of process on behalf of (name of organization) City of Houston
on (date) _____; or

I returned the summons unexecuted because _____; or

Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-12-25

Shawn Morgan
Server's signature

Shawn Morgan
Printed name and title

603 Dalewood Missouri City TX 77489
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

TONY UNDERWOOD)
)
)
)
)
)
)
)
)
)
)
)
)
)
)

Plaintiff(s)

v.

CITY OF HOUSTON, et. al

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* HARRIS COUNTY
1001 Preston St.
Houston, TX 77002

A lawsuit has been filed against you.

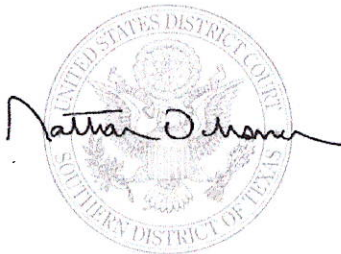
Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

VINCENT LAW, PLLC
c/o ATTORNEY COURTNEY A. VINCENT
1035 DAIRY ASHFORD, #145
HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Nathan Ochsner, Clerk of Court

Date: May 12, 2025



s/ M. LaBee
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Harris County
was received by me on (date) 5-12-25.

I personally served the summons on the individual at (place) _____
_____ on (date) _____; or

I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) Kathryn M Kase, who is
designated by law to accept service of process on behalf of (name of organization) Harris
County Legal Counsel on (date) 5-12-25; or

I returned the summons unexecuted because _____; or

Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-12-25

Shawn Morgan

Server's signature

Shawn Morgan

Printed name and title

403 Delwood Dr Missouri City TX 77489

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

TONY UNDERWOOD)

)
)
)
)
)
)
)
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)
)
)
)

Plaintiff(s)

v.

CITY OF HOUSTON, et. al

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* HARRIS COUNTY
1001 Preston St.
Houston, TX 77002

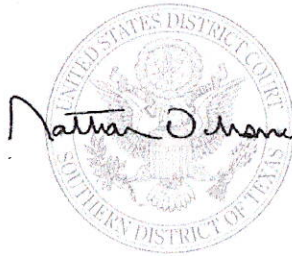
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

VINCENT LAW, PLLC
c/o ATTORNEY COURTNEY A. VINCENT
1035 DAIRY ASHFORD, #145
HOUSTON, TEXAS 77079

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: May 12, 2025



Nathan Ochsner, Clerk of Court

s/ M. LaBee
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Harris Health
was received by me on (date) 5-13-25.

I personally served the summons on the individual at (place) _____
on (date) _____; or

I left the summons at the individual's residence or usual place of abode with (name) _____
_____, a person of suitable age and discretion who resides there,
on (date) _____, and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) SANJUANITA FRANCO, who is
designated by law to accept service of process on behalf of (name of organization) Harris County
Health on (date) 5-13-25; or

I returned the summons unexecuted because _____; or

Other (specify): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 5-13-25

Shawn Morgan
Server's signature

Shawn Morgan
Printed name and title

603 Dalewood Dr Missouri City TX 77489
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Tony Underwood
Petitioner,

v.

Case No. 4:25-cv-02089

City of Houston
Respondent.

NOTICE OF SETTING

PLEASE TAKE NOTICE

HEARING: **Motion Hearing**
RE: Petition for Writ of Habeas Corpus – #1

DATE: **5/15/2025**

TIME: **01:30 PM**

HAS BEEN SET BEFORE

JUDGE KEITH P. ELLISON

ALL PARTIES MAY APPEAR BY TELEPHONE BY CALLING IN
ON THE COURT'S DIAL-IN NUMBER AT +1 669-254-5252.

Enter Meeting ID: 160 7362 7986#

No participant ID – press #, Followed by Passcode: 3716#.

IF THE PARTIES WOULD LIKE TO JOINTLY REQUEST AN IN-PERSON HEARING,
PLEASE NOTIFY ARTURO RIVERA BY EMAIL.

Nathan Ochsner, Clerk

Date: May 14, 2025

By Deputy Clerk, A. Rivera

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

Petitioner,

§

§

v.

§

CIVIL ACTION NO. 4:25-cv-2089

§

§

**Harris County, a.k.a. Harris
Health System, a.k.a Ben Taub
Hospital, and City of Houston,
a.k.a. Houston Police
Department**

§

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§

Respondent.

ORDER

Pending before the Court is Petitioner’s *Motion to Voluntarily Nonsuit/Dismiss Harris Health System And Ben Taub Hospital*

After reviewing the *Motion*, the record and the applicable law, the Court finds that this *Motion* is _____

It is SO ORDERED.

Signed this ___ of _____, 20__.

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

Petitioner,

§

§

v.

§

§

CIVIL ACTION NO. 4:25-cv-2089

§

**Harris County, a.k.a. Harris
Health System, a.k.a Ben Taub
Hospital, and City of Houston,
a.k.a. Houston Police
Department**

§

§

§

§

§

§

Respondent.

**MOTION TO VOLUNTARILY NONSUIT HARRIS HEALTH SYSTEM AND
BEN TAUB HOSPITAL**

Petitioner, Tony Underwood, respectfully asks this Court to *GRANT* his *Motion to Voluntarily Nonsuit Harris Health System and Ben Taub Hospital* as Respondents in this habeas matter.

I. INTRODUCTION

Petitioner Tony Underwood (“Petitioner” or “Mr. Underwood”) is a 37-year-old lifelong Houston resident and a United States citizen who is currently being held in a secured unit at Ben Taub Hospital. On April 30, 2025, Mr. Underwood was shot in the back by an officer of the Houston Police Department. He was transported to Ben Taub Hospital, where he received emergency, life-saving medical treatment. His condition remains critical and life-threatening.

Following the incident, Mr. Underwood was subjected to a form of custodial

detention that has resulted in his isolation from legal counsel, family support, and spiritual guidance, thereby causing irreparable harm while he remains in this precarious medical state. Despite his continued confinement, Mr. Underwood remains deprived of his constitutional rights to familial association—particularly with his mother—religious and pastoral access, and legal counsel, as he is currently being denied access to two of his three attorneys.

Since the initial filing of this habeas petition, criminal charges have been filed against Mr. Underwood. Although his case information only recently became viewable on the Harris County District Clerk’s website, it had remained inaccessible for approximately 15 days following the incident.

Counsel has since learned that neither Harris Health nor Ben Taub Hospital is responsible for denying access to Mr. Underwood. Rather, the restrictions are being enforced at the direction of the City of Houston, the Houston Police Department, and Harris County, who appear to be instructing hospital personnel on limiting access.

II. MOTION TO VOLUNTARILY NONSUIT/DISMISSAL

1. Under *Fed. R. Civ. P. 41(a)(1)(A)(i)*, Petitioner may voluntarily dismiss an action without a court order by filing a notice of nonsuit/dismissal before the opposing party serves either an answer or a motion for summary judgment.
2. As no such responsive pleadings have been filed by the above-mentioned Respondents (Harris Health Systems and Ben Taub Hospital) in this case, Petitioner respectfully request that the Court dismiss as to Harris Health Systems and Ben Taub Hospital without prejudice.

III. EFFECT OF NONSUIT/DISMISSAL

3. Unless otherwise stated, a voluntary nonsuit/dismissal under *Fed. R. Civ. P. 41(a)(1)(A)(i)* of the Federal is without prejudice.
4. Petitioner confirms that this is their first dismissal of claims against the Defendants (*ONLY Respondents* Harris Health Systems and Ben Taub Hospital) in this matter, and no prior federal or state court actions based on the same claims have been dismissed.

IV. CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Court *GRANT* this *Motion to Voluntarily Nonsuit*, dismissing all claims against Defendants Harris Health Systems and Ben Taub Hospital without prejudice.

05/29/2025

Respectfully submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned certifies that on May 29th, 2025, a true and correct copy of the foregoing document was delivered to the following consistent with the *Federal Rules of Civil Procedure*, via the following methods:

Via Electronic Mail:

Michale Fritz

Assist County Attorney

Office of the Harris County Attorney

Counsel for Harris Health

4800 Fournace Place | Bellaire, TX 77401

Office: 346-426-0326

Email: michael.fritz@harrishealth.org

Suzanne Bradley

Senior Assistant County Attorney

Office of the Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Office: 713-274-5330

Email: Suzanne.bradley@harriscountytexas.gov

Christy Martin

Section Chief Torts/Civil Rights

City of Houston Legal Department

P.O. Box 368

Houston, Texas 77002-0368

Office: (832) 393-6270

Email: christy.martin@houstontexas.gov

ENTERED

May 30, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TONY UNDERWOOD,

Petitioner,

VS.

CITY OF HOUSTON, *et al.*,

Respondents.

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CIVIL ACTION NO. 4:25-CV-02089

ORDER

Petitioner Tony Underwood has filed a Motion to Voluntarily Nonsuit Harris Health System and Ben Taub Hospital. ECF No. 14. In accordance with that Motion and Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Petitioner’s claims against Respondent Ben Taub General Hospital are hereby **DISMISSED WITHOUT PREJUDICE**. Plaintiff’s claims against Respondents City of Houston and Harris County remain pending.

IT IS SO ORDERED.

Signed at Houston, Texas on May 30, 2025.



Keith P. Ellison
United States District Judge

AFFIDAVIT

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

PATRICIA ANN UNDERWOOD personally appeared before me and stated under oath:

“My name is **PATRICIA ANN UNDERWOOD** I am over the age 18. I am competent to testify and therefore make this Affidavit. This Affidavit is based on my personal knowledge and the facts are true and correct.

On ^{24 April} ~~May~~ 30th, 2025 my son Tony Underwood was shot by a Houston Police Officer less than a block from my home. Since he was shot, and everything I went to Court May 19th at the 248th and got the judge’s paperwork and I got orders. But when I got to the hospital I got shot-down. They would not let me see my child. It has been one whole month since he was shot and I have not seen him.

On May 20th a chaplain from the sheriff’s department helped me with a video call. I remember her last name was Young. She told me she would help to schedule more videos calls, like once a week. She said she was going to talk to her supervisor but never got back in contact with me. I could not even recognize my child because his face was so swollen and it looked like he had a feeding tube and a trach. On that call, I could read his lips because he could not talk. I read that he was saying “help me”. They called me last Sunday because they had to go back to take fluids from his lungs again. But they did not call when they did code blue this week.

They never told me that my son was code blue this past week and the hospital did not contact me. I have not seen my son physically nor been able to touch him for at least 30 days now. Since he was shot. I want to know why they keep denying me and why I can’t see him. I think they are hiding something from me.

Sign and Date: Patricia Underwood 5/31/2025

(Print Name Here: Patricia Underwood 5/31/2025)

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

SUBSCRIBED AND SWORN TO before me on May 31, 2025.



Carrie Paulling
Notary Public



202533807 - UNDERWOOD, TONY vs. HARRIS COUNTY (Court 164)

[Print All](#) (non-financial)
[Chronological History](#)

- [Summary](#)
- [Appeals](#)
- [Cost Statements](#)
- [Transfers](#)
- [Post Trial Writs](#)
- [Abstracts](#)
- [Parties](#)
- [Court Costs](#)
- [Judgments/Events](#)
- [Settings](#)

Click column headings to sort. Click again to toggle direction.

[Print Settings](#)

Date	Court	Post Jdgm	Docket Type	Reason/ Appearance Court	Results/ Setting Type	Comments	Requesting Party
5/15/2025 01:30 PM	129		Ancillary Docket In Person	TEMPORARY RESTRAINING ORDER (MOTION FOR)	Passed	IN OPEN COURT 5/15	LEWIS, U A

- [Services/Notices](#)
- [Court Registry](#)
- [Child Support](#)
- [Images](#)

COURT DIRECTIVE C87 / BOND SET/MODIFICATION

CAUSE NO. 191455201010

THE STATE OF TEXAS

IN THE 248th DISTRICT COURT

VS.

UNDERWOOD, TONY

OF HARRIS COUNTY, TEXAS

OFFENSE: AGG ASSAULT AGAINST PUBLIC SERVANT

TO THE SHERIFF OF HARRIS COUNTY, TEXAS: GREETINGS

BY ORDER OF THE COURT ON May 19, 2025, A.D. THE FOLLOWING ACTION IS DIRECTED IN THE ABOVE STYLED AND NUMBERED CAUSE:

BOND LOWERED TO \$150,000 BAIL DENIED:

Please select THE COURT HAS ORDERED THE FOLLOWING BAIL OPTIONS:

CONDITIONS OF BOND: Please select

NOTES TO SHERIFF:

WITNESS MY HAND AND SEAL OF OFFICE AT HOUSTON, TEXAS, THIS May 19, 2025 9:42 AM

Marilyn Burgess, DISTRICT CLERK

HARRIS COUNTY, TEXAS

BY: *Yviana Garcia*

V GARCIA

SNU: 997

BOND SET

Unofficial Copy Office of Marilyn Burgess District Clerk



CAUSE NO. 191455401010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 100,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR filed under 191452

Dated: May 19, 2025



Judge Presiding

CAUSE NO. 191455501010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 25,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR provided/filed by Pretrial

Dated: May 6, 2025



Judge Presiding

5/19/2025 10:11 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982036
By: Destinee Soliz
Filed: 5/19/2025 10:11 AM

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

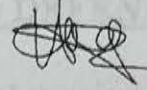
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



Presiding Judge
248th District Court



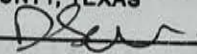
On 19 May 2025, this Court considered an oral motion by Timothy M. Douglas SRN 24079704, to permit the family members of Defendant to have access to a... speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Bea Taub Hosp... Unit, floor 4E, Room 26 in Harris County... treatment. Defendant remains in the custody of the Department or Harris County Sheriff's... officers.

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS



Deputy

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 18881318 DOB 12 AUGUST 1907
2. SON: TONY DEWAYNE UNDERWOOD JR. TXN- 24079704 DOB 13 DECEMBER 2015
3. COUSIN: SHERIAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD 24079704 DOB 18 NOVEMBER 1978

IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents serving Defendant Underwood, Tony Dewayne Underwood, shall be granted... Williams access to and the opportunity to speak with... DEWAYNE UNDERWOOD, SPN 02115800

This order in no way limits the authority of the Houston Police Department and its respective officers...

5/19/2025 10:13 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982238
By: Destinee Soliz
Filed: 5/19/2025 10:13 AM

NO. 1914554

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

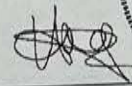
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



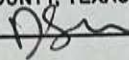
Presiding Judge
248th District Court

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS



Deputy

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

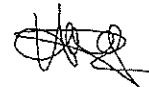
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025. DENIED UNTIL FURTHER NOTICE

Signed:
5/19/2025



Presiding Judge
248th District Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff's Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

**AMENDED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §§ 2254 and 2241
AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF PURSUANT
TO 42 U.S.C. § 1983**

Petitioner, Tony Underwood, and next of kin, his mother, Patricia Underwood, file this Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. §§ 2241 and 2254. Additionally, tony Underwood asserts that under the current conditions that their First, Fifth, Sixth, Eighth, and Fourteen Amendment Rights have either been or are actively and intentionally being violated by the Respondents. Additionally, Patricia Underwood asserts claims for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 for ongoing violations of her First and Fourteenth Amendment rights.

This action seeks to remedy the unconstitutional conditions of confinement and ongoing constitutional violations arising from Tony Underwood’s pretrial detention by state actors Harris County (a.k.a. Harris County Sheriff’s Office), located at 1001 Preston St., Suite #500, Houston, Texas 77002, and the City of Houston (HPD) located at 901 Bagby, Houston, Texas 77002. Petitioner presents to the Court as follows:

I. INTRODUCTION

Petitioner, Tony Underwood (“Petitioner” or “Tony Underwood”) is a 37-year-old Houston area native and citizen of the United States currently held in a secured medical facility as a pretrial detainee, following life-threatening injuries inflicted during an encounter with law enforcement. He was shot in the back while face down on the ground by a Houston Police Department Officer, Palin. He has sustained catastrophic trauma resulting in quadriplegia and remains on life support. He is currently dependent on a respirator and other life-sustaining machines. He slips in and out of consciousness and is unable to speak due to the respirator and likely as a result of prolonged intubation. He has required resuscitation twice, most recently just a few days ago on May 29, 2025, although his mother was not informed until nearly twenty-four hours later, on April 30, 2025. (See Exhibit A – Patricia Underwood’s Affidavit). Apparently, the notification came from Tony’s court appointed attorney via a text message to Ms. Underwood.

Although Tony is now a pretrial detainee, his ongoing confinement within a hospital setting under law enforcement control continues to deprive him of critical constitutional protections. Namely, the leadership of the Houston Police Department from April 30,

2025, through on or about May 18, 2025, AND the Harris County Sheriff's Department from on or about May 18, 2025, to the present. He's being discriminated against for being injured in the hospital. If he were not injured in the hospital, he would be eligible to receive visits from counsel and his family. He has been denied access to legal counsel of his choice, family, and religious pastoral support. Although two criminal defense attorneys and one civil rights attorney have been engaged, only the court-appointed criminal defense attorney, Attorney Tim Donahue, has had limited access to Mr. Underwood.

Patricia Underwood, Tony's mother and legal next of kin, brings this Petition also on the grounds that her individual constitutional rights under the First and Fourteenth Amendments are being independently violated. She has been categorically denied access to her son despite his extreme limited capacity, and at times incapacitation, and medical fragility. The limited communication from the hospital during major health crises has been thin at best, leaving his family in the dark during critical moments. For example, on May 25, 2025, the hospital called Ms. Underwood to obtain consent for lifesaving procedure to drain fluid from Tony's lungs. Since that call no update has been provided to Ms. Underwood regarding the procedure or Tony's recovery status. Also, on May 29, 2025, Tony suffered a code-clue health crisis and Ms. Underwood has yet to be contacted by the hospital regarding this event. As Tony's condition is permanent and he is now quadriplegic, the denial of familial contact is an ongoing infringement of her protected liberty interest in familial association, in addition exclusion from participation in medical decisions.

II. JURISDICTION

This action arises under the Constitution and laws of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 2254; 28 U.S.C. § 1331; and 42 U.S.C. § 1983. Petitioner Tony Underwood is presently in custody under color of state law, and such custody is in violation of the Constitution and laws of the United States. Patricia Underwood brings an independent claim for declaratory and injunctive relief under 42 U.S.C. § 1983 based on the ongoing deprivation of her Fourteenth Amendment rights to familial association and meaningful participation in medical decision-making.

This Court has subject-matter jurisdiction over claims under the federal habeas statutes because Petitioner is in custody pursuant to governmental action in violation of federal law. Additionally, the Court has jurisdiction over Patricia Underwood's constitutional claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), which confer original jurisdiction over actions to redress the deprivation of civil rights under color of state law.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable as it involves habeas corpus relief and constitutional violations arising from custodial detention and related access restrictions, not adjudications that would imply the invalidity of a conviction or sentence under *Heck v. Humphrey*, 512 U.S. 477 (1994). This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254(a), and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a 37-year-old pretrial detainee currently held in medical confinement under the authority of the Respondents. He brings this habeas action pursuant to 28 U.S.C. §§ 2241 and 2254, seeking immediate judicial review of the legality and conditions of his custody.

Petitioner, Patricia Underwood, is the mother and legal next of kin of Tony Underwood. She asserts independent claims under 42 U.S.C. § 1983 for ongoing violations of her constitutional right to familial association and meaningful participation in medical decisions affecting her son.

Respondent, City of Houston, a.k.a. Houston Police Department, had custody of Tony Underwood from April 30, 2025, until on or about May 18, 2025, at which point custodial responsibility was transferred to Harris County.

Respondent, Harris County, a.k.a. Harris County Sheriff's Office, located at 1001 Preston St., Suite #500, Houston, Texas 77002, is a governmental entity and law enforcement agency participating in the custody, control, and enforcement actions following the transfer of custody from the City of Houston involving Petitioner Tony Underwood during his pretrial detention.

V. FACTS

1. Tony Underwood is a 37-year-old man who was placed in the custody of a secured

hospital facility after being shot in the back by Houston Police Officer, Officer Palin.

2. On the evening of Wednesday, April 30, 2025, Tony Underwood was pursued via vehicle, then on foot, by Houston Police Department Officers during an alleged criminal activity.
3. This pursuit ended in Officer Palin, a Houston Police Department Officer, shooting Tony Underwood in the back.
4. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support. The shooting has rendered him a quadriplegic and currently dependent on a respirator and other life-sustaining machines.
5. It is alleged that Tony slips in and out of consciousness. Also, Tony is unable to speak due to the respirator and likely the result of prolonged intubation.
6. Tony is currently housed in a hospital facility (Ben Taub Hospital) but held under the supervision and authority of Harris County as a pretrial detainee.
7. He has been denied meaningful access to legal counsel. Two criminal defense attorneys and one civil rights attorney have been retained, but only the court-appointed attorney, Tim Donahue, has had limited access.
8. Tony has also been denied access to his family and pastoral support.
9. His mother, Patricia Underwood, ***has repeatedly sought to visit him in person but has been denied access.***
10. She has received ***no meaningful nor regular updates about her son's medical status,*** despite his critical condition and ongoing procedures.
11. Communication from the hospital has been sparse, even during major health crises,

leaving her in the dark during urgent developments. *The most recent example occurred on or about May 29, 2025*, Tony suffered a life-threatening medical crisis, coded blue, yet she was not informed by the hospital. It is alleged that a “friend of the family” became aware because of her employment and/or association with the Underwood family and communicated as such to them. The family then called Attorney Donahue, which he was aware of the crisis and did confirm this information regarding Tony’s life-threatening medical crisis.

12. It should be noted that Ben Taub Hospital staff have only reached out for consent to perform life-saving interventions, excluding her from participating in broader decisions about her son’s care. They did not contact her for this most recent code blue medical crisis and this is true for at least one other previous code blue events.
13. These access restrictions and failures to communicate deprive Patricia Underwood of her protected Fourteenth Amendment rights to familial association and informed participation in the care of her child.
14. On May 7, 2025, Patricia visited the Houston Police Department Headquarters and was informed that access to Tony remained restricted, despite a prior, mutually recorded phone call (May 2, 2025) from the Houston Police Department, *Lead Detective Walker stating to Counsel that that the Houston Police Department was not denying access.*
15. On May 8, 2025, after the family was rejected and turned away at the Houston Police Department Headquarters, Detective Walker called Counsel again, this time stating that he “misspoke”. This call was also recorded (both parties were aware of the recording).
16. On May 12, 2025, Attorney U.A. Lewis filed a petition in the Harris County Civil

District Court requesting a temporary restraining order in the matter styled *Underwood v. Harris County*, No. 202533807 (164th Dist. Ct., Harris County, Tex.), seeking the same access that is now at issue in this matter.

17. On May 14, 2025, Counsel for Petitioners contacted the federal court's Case Manager for the Honorable Judge Keith P. Ellison to request a hearing on this matter, which had been set for May 15, 2025.

18. On May 15, 2025, Counsel again contacted the federal court's Case Manager and requested a pause in proceedings pending the outcome of the TRO hearing in Harris County District Court.

19. On May 15, 2025, at a hearing in the *Underwood v. Harris County*, No. 202533807 (164th Dist. Ct., Harris County, Tex.) matter, the Honorable Court "passed" (See Exhibit B – Harris County District Court - TRO "Pass") because the court maintained that they did not have jurisdiction on the matter because there were live criminal proceedings pending against Tony Underwood.

20. It was then the County District Court's judge disclosed to Attorney U. A. Lewis, and Counsel hearing the same because she was present in the courtroom for observation, that (1) there was an active criminal matter pending against Tony Underwood; (2) that charges had been filed against Tony; and, (3) that the matter was not on the public viewing side of the Harris County District Courts website but rather was docketed on a system called DEEDS, an District Electronic Examination Docketing System.

21. The case had been concealed within the restricted DEEDS docketing, which is accessible only to legislatively approved individuals, obstructing retained counsels'

ability to enter an appearance or seek relief in the related criminal proceeding.

22. Further, the Harris County District Court Judge shared with Attorney U.A. Lewis the name of the court appointed criminal defense counsel – Attorney Tim Donahue.

23. This was information learned 15 days after Tony was shot. Not one official contacted Ms. Underwood, Tony's mother and next of kin, (1) regarding Tony's criminal proceedings; (2) that there was a court appointed defense counsel; and (3) the court appointed attorney, Tim Donahue did not know that Ms. Underwood was Tony's next of kin.

24. Both Counsel and Attorney U.A. Lewis researched and located Attorney Donahue's contact information and called him.

25. It was after this contact that both Attorney Lewis and Counsel then came to learn that Honorable Judge Unger of the 248th Criminal Court, Harris County District Court, presiding over Tony Underwood's criminal matters, set Tony's bonds and that the total bond amounts set for the three charges pending against Tony were initially assessed against an aggregated amount of \$425,000.00. The bonds have since been reduced to the aggregated amount of \$275,000.00.

26. Sometime between the conclusion of the May 15, 2025 hearing and May 16, 2025 Tony Underwood's matter magically appeared on the public facing Harris County District Court's website and Attorney U.A. Lewis appeared as Criminal Defense Counsel (Exhibit C - Bonds) for one of the three pending charges against Tony.

27. On May 19, 2025, criminal defense attorney, Attorney Tim Donahue petitioned the Harris County Criminal District Court in Cause Nos. 191455291919 and

191455491919 — *The State of Texas v. Underwood, Tony* for familial access. The court issued orders permitting Ms. Patricia Underwood, Tony Dewayne Underwood Jr. (Tony's son), and Shregal Underwood Williams "*access and opportunity to speak in private* with Tony Underwood." Attorney Donahue provided a copy of the orders to Ms. Underwood. (See Exhibit D – Access Orders & Exhibit E – Denied Until Further Notice)

28. Immediately thereafter, Ms. Underwood, Tony Jr., and Ms. Williams traveled to Ben Taub Hospital. They were initially turned away at the hospital, then recalled back into the building as they were leaving, allegedly by Ben Taub/Harris Health System Security Director, Mr. Steve Brown, only to be made to sit and wait.

29. Ultimately, Harris County deputies and hospital security denied the family access. Ms. Underwood was heartbroken.

30. It appears that sometime between Ms. Underwood leaving the County Courthouse and her arrival at Ben Taub Hospital, the Honorable Judge Unger of the 248th Criminal Court, Harris County District Court, presiding over Tony Underwood's criminal matters, rescinded the Orders with a stamp indicating the Order was "Denied pending further notice." No explanation was offered to Ms. Underwood.

31. Meanwhile, *on May 20, 2025*, Harris County Sheriff's Office Deputy Chaplin N. Young facilitated a video call between Ms. Underwood and Tony. *This was the first time that Ms. Underwood was able to literally put her eyes on Tony since the April 30, 2025, shooting.*

32. Post the video call, Deputy Chaplin Young stated to Ms. Underwood that she would try

to schedule weekly video calls between Ms. Underwood and Tony. (See Exhibit A – Affidavit of Patricia Underwood)

33. Alas, since May 20, 2025, Deputy Chaplin Young has not been in contact, nor any such representative, since May 20, 2025, to follow through.

34. As of the filing of this *Amended Petition*, Tony and his mother, Ms. Patricia Underwood have not been physically connected during this extreme medical crisis as her son lies in a hospital bed alone, fighting for his life without comfort from his mother, sons, spiritual advisors, or other family.

VI. PROCEDURAL HISTORY

35. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

36. In this matter, the Habeas Petition was filed on May 8, 2025; Summonses issued on May 12, 2025 and returned on May 14, 2025.

37. Counsel requested a hearing on May 14, 2025 with a response setting the hearing on May 15, 2025. Counsel requested a pause in the anticipation that matters would be resolved either in the Harris County District Court (Criminal) 248th or in the Civil Proceedings in the 164th. Neither Courts have resolved the matter and furthered the constitutional violations of both Tony Underwood and Patricia Underwood.

38. The now viewable criminal charges and their procedural status against Tony Underwood, only recently uncovered 15 days after Tony was shot (May 15, 2025), form the foundation of this case and illustrate a troubling pattern of concealment and obstruction by the Respondents. This case arises from a deeply disturbing series of

actions taken by the Respondents that have effectively foreclosed Tony and Patricia Underwood's ability to access due process, familial contact, and meaningful legal recourse.

39. On May 12, 2025, Attorney U.A. Lewis filed a petition in Harris County Civil District Court in the matter styled Underwood v. Harris County, No. 202533807 (164th Dist. Ct., Harris County, Tex.), seeking a temporary restraining order to compel familial access.
40. On May 15, 2025, the Harris County Civil District Court declined jurisdiction, citing ongoing criminal proceedings against Tony Underwood.
41. That same day, Counsel had contacted the Case Manager for the Honorable Judge Keith P. Ellison in the United States District Court for the Southern District of Texas, requesting that the federal matter be held in abeyance pending the outcome of the state court hearing. Unfortunately, the outcome was negative because the Harris County Civil District Court did not have jurisdiction.
42. This Amended Petition and Complaint incorporates all subsequent developments and violations occurring through June 1, 2025, including the revocation of previously granted visitation orders by the 248th Criminal District Court, the continued denial of access, and the sustained interference by Respondents with Tony and Patricia Underwood's constitutional rights.

Criminal and Civil Case Summary Chart:

Case No.	Style	Court	Filing Date	Charge / Matter
191455201010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Aggravated Assault Against a Public Servant
191455401010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Unlawful Carry of a Weapon w/ Felony Conviction
191455501010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Evading Arrest/Detention w/ Vehicle
202533807	Underwood, Tony vs. Harris County	164th Civ. Ct.	05/12/2025	Civil TRO – Access and Injunctive Relief

Case No. 191455201010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/02/25: Probable Cause Found.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination; Order Requiring GPS Prior to Release.
- 05/19/25: Bail Order; Order Denying Family Access; Order Sealing Other Documents.
- 05/20/25: Motion to Approve Funds for Defense Investigator.
- 05/21/25: Order Granting Funds for Investigator.

Case No. 191455401010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination.
- 05/19/25: Bail Order; Order Permitting Family Access to Defendant; Additional Order Denying Access; Order Sealing Document.
- 05/20/25: Motion to Approve Funds for Defense Investigator.

Case No. 191455501010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination.
- 05/16/25: Emergency Motion for Attorney and Parent Visitation filed; Emergency Order Granting Access.

- 05/19/25: Order Permitting Access to Counsel; Order Permitting Family Access.
- 05/30/25: Joint Motion to Substitute Counsel and Proposed Order Filed.

Case No. 202533807 (Civil TRO) Activity Summary:

- 05/12/25: Plaintiff's Original Petition, Proposed TRO, and Statement of Inability Filed.
- 05/14/25: Declaration Filed.
- 05/19/25: Deputy Reporter Statement Filed.

**VII. THE VIOLATIONS OF TONY UNDERWOOD'S
CONSTITUTIONAL RIGHTS**

43. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

44. Petitioner Tony Underwood asserts that the following constitutional violations have occurred as a result of his treatment and the conditions of his confinement:

A. Violation of Tony Underwood's Fourteenth Amendment Rights – Substantive Due Process.

By subjecting Tony Underwood to prolonged isolation, denying access to counsel, and failing to provide communication or humane treatment during his medical crisis, Respondents have deprived him of his substantive due process rights. See *Wolfish v. Bell*, 441 U.S. 520, 545 (1979), affirming that pretrial detainees retain rights not to be punished prior to an adjudication of guilt and are *entitled to reasonable access to family, legal counsel, and outside communication*; *Turner v. Safley*, 482 U.S. 78, 89–90 (1987), setting a standard of balancing applies to restrictions on constitutional rights of those in custody (*including association*); *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (establishing that due process *protects pretrial detainees from objectively unreasonable restrictions*).

B. Violation of Tony Underwood’s First and Fourteenth Amendment Rights – Access to Counsel and Courts.

Tony has been denied access to Civil Rights counsel and has only had limited access to Criminal Defense counsel. This deprivation inhibits his ability to seek redress or participate in his own defense. See *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), recognizing the right to communicate with counsel under the First and Fourteenth Amendments.

C. Violation of Tony Underwood’s Sixth Amendment Rights – Right to Counsel.

As a pretrial detainee, Tony is entitled to the effective assistance of counsel in his criminal matters. *Limiting access to only the court-appointed attorney* and obstructing communication undermines this right. See *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963); *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932).

D. Violation of Tony Underwood’s Fourteenth Amendment Rights – Familial Association.

Respondents’ blanket denial of access to Tony’s mother, who is also his legal next of kin, infringes on both their rights to familial association. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Overton v. Bazzetta*, 539 U.S. 126, 131–32 (2003).

E. Violation of Tony Underwood’s First Amendment Rights – Free Exercise of Religion.

By denying Tony access to the pastoral or spiritual advisor of his and his family’s choosing, Respondents have infringed upon his First Amendment rights to

free exercise of religion. The *Constitution does not merely guarantee access to a state-assigned chaplain but protects the individual's right to religious counsel aligned with their personal faith*. See *Walker v. Blackwell*, 411 F.2d 23, 25–26 (5th Cir. 1969); *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948).

F. Violation of Tony Underwood's Eighth and Fourteenth Amendment Rights – Conditions of Confinement.

Although the Eighth Amendment typically applies to convicted prisoners, the Fourteenth Amendment provides equivalent protections to pretrial detainees. The conditions under which Tony is held – isolated, critically injured, denied access and communication, and inadequately represented – constitute punitive and unconstitutional treatment without adjudication of guilt. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015).

G. Violation of Tony Underwood's Procedural Due Process – Purpose of Pretrial Bond.

Pretrial bonds exist to ensure a defendant's appearance at trial, not to inflict punishment or justify restrictions on fundamental liberties. Tony's bonds have been reduced and judicially acknowledged, yet he remains effectively inaccessible to his family and counsel. This frustrates the purpose of bond and results in de facto punishment in violation of procedural due process. See *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding bond conditions only when narrowly tailored to compelling government interests). Given Tony's quadriplegia, he will be in the same place today, tomorrow, next week, and next month, until the State transfers

him to another facility. The constitutional guarantee that a detainee will “appear” for proceedings is not undermined by the fact that Tony is physically unable to flee or move about freely.

45. Petitioner respectfully seeks injunctive and declaratory relief to remedy these violations and to prevent future harm.

VIII. THE VIOLATIONS OF PATRICIA UNDERWOOD’S CONSTITUTIONAL RIGHTS

46. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

A. Violation of Patricia Underwood’s Fourteenth Amendment Rights – Substantive Due Process (Familial Association).

Patricia Underwood, as the mother and legal next of kin of Tony Underwood, possesses a fundamental liberty interest in the care, custody, companionship, and control of her son. The State’s denial of access to her critically injured son, despite his medical incapacitation and ongoing trauma, constitutes an unjustified and arbitrary intrusion upon her familial rights. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Overton v. Bazzetta*, 539 U.S. 126, 131–32 (2003).

B. Violation of Patricia Underwood’s Fourteenth Amendment Rights – Procedural Due Process.

Ms. Underwood was never notified that her son had been charged, that a criminal proceeding had been initiated, or that he had been appointed a public defender. The absence of notice, opportunity to be heard, or meaningful participation in medical or

legal matters involving her son deprives her of procedural due process under the Fourteenth Amendment. Especially given Tony's fragile and grave medical condition and the slew of life-saving interventions that have been implemented to sustain Tony's life. The *Mathews* balancing test requires weighing the private interest affected, the risk of erroneous deprivation through current procedures, and the government's interest.

Here, Ms. Underwood's compelling interest in her son's life and care, coupled with the complete lack of notice and opportunity to be heard, far outweigh any asserted governmental justification. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

C. Violation of Patricia Underwood's Fourteenth Amendment Rights – Right to Participate in Medical Decision-Making.

Although hospital staff intermittently contacted Ms. Underwood for consent to high-risk medical procedures, she has been excluded from broader decision-making concerning Tony's care and has not been informed of urgent medical events, including multiple Code Blue crises. The State's continued concealment and obstruction of information violates her protected liberty interest as next of kin. See *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 281–82 (1990).

D. Violation of Patricia Underwood's First Amendment Rights – Right to Familial and Emotional Support.

The denial of any in-person visitation, even after court authorization and then abruptly and quickly retracted, has deprived Ms. Underwood of her right to provide emotional and spiritual comfort to her son. Such sustained governmental interference

with deeply rooted familial bonds violates the freedom of association under the First Amendment. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618–19 (1984). (holding that choices to enter into and maintain certain intimate human relationships are a fundamental element of personal liberty protected by the First Amendment; such protection extends to familial relationships, ***including the right to maintain close and enduring bonds between parent and child***. The denial of in-person visitation by Ms. Underwood in regards to her son, Tony, must be carefully scrutinized because the state actors are ***infringing upon her fundamental rights without sufficient justification***.

47. Petitioner Patricia Underwood respectfully requests declaratory and injunctive relief to redress these constitutional violations and to secure immediate access to her son and his ongoing care.

IX. CONCLUSION

What the Respondents have done here is not merely bureaucratic failure, it is constitutional betrayal. The City of Houston AND the Harris County Sheriff's Office have weaponized institutional procedure to strip a paralyzed, critically injured pretrial detainee of access to his lawyers, his mother, and his faith. This is not how a civilized government behaves. It is not how any government bound by the Constitution may behave.

Their actions have been marked by obfuscation, concealment, and an alarming disregard for the gravity of Tony Underwood's condition and the humanity of his family. The concealed court docket. The secreted appointment of counsel without notification to his mother, who is next of kin. The rescission of a judge's own visitation order without notice or explanation, just a stamp stating, "denied until further notice".

One can scarcely fathom the hope surging through a mother clutching court orders affirming her right to see her quadriplegic, paralyzed son, only to be turned away at the threshold, her dignity dismissed, and her son left alone. These are not the hallmarks of a system operating in good faith, they are the symptoms of a system weaponized to frustrate access to justice and accountability.

Patricia Underwood, a mother, has been forced to fight through layers of official indifference and institutional gatekeeping just to see her son, her paralyzed son, on a video screen. Only ONE time since April 30, 2025. Even that limited contact has now been denied without explanation or follow-up. The idea that the State may withhold human connection, legal advocacy, and spiritual support from a suffering, immobilized man defies not only law, but conscience.

This Court must send a clear message: constitutional rights do not vanish behind hospital walls, and a badge does not confer the power to isolate, silence, and strip a family of dignity and access. Petitioners urge this Court to exercise the full weight of its equitable and habeas authority to redress these grave wrongs, and to make plain that this conduct will not be tolerated under the United States Constitution.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioners Tony Underwood and Patricia Underwood respectfully request that this Court:

1. ***Issue a Writ of Habeas Corpus*** pursuant to 28 U.S.C. §§ 2241 and 2254, directing the immediate correction of unlawful and unconstitutional conditions of confinement affecting Tony Underwood and ordering that he be provided access to:

- a) All retained and appointed legal counsel, including immediate and confidential attorney-client communication, without interference by Respondents;
 - b) Immediate and sustained in-person visitation with his mother, Patricia Underwood, and other designated family members, consistent with his critical medical condition and immobility;
 - c) Spiritual or pastoral support from an advisor of Tony's choosing—not merely one "available" through institutional convenience; and,
 - d) Open and prompt channels of communication with next of kin regarding all aspects of his medical condition, including immediate notification of any life-threatening or deteriorating changes in status.
2. Declare that the denial of legal counsel, familial access, and pastoral support during Tony Underwood's critical, life-threatening confinement violates his rights under the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
3. Declare that Patricia Underwood's liberty interest in familial association and medical decision-making has been unlawfully and egregiously violated by Respondents, in contravention of her rights under the First and Fourteenth Amendments.
4. Enter injunctive relief ordering Respondents to cease all blanket restrictions on Patricia Underwood's access to her son, and further:
 - a) Require real-time notification to Patricia of any changes to her son's medical condition;
 - b) Require facilitation of scheduled in-person visitation and video communication

during all phases of confinement;

c) Prohibit arbitrary, discretionary, or retaliatory denial of her access.

5. *Set aside, declare void, or enjoin the enforcement of the May 19, 2025, markings and actions by the Honorable Judge of the 248th Criminal District Court* – "denied pending further notice" – which were executed without transparency, justification, or procedural due process and have caused irreparable constitutional harm.
6. Order that *no future restrictions* on in-person visitation, legal access, or medical communication affecting either Petitioner may be imposed without:
 - a) Judicial review;
 - b) Prior notice to retained counsel; and,
 - c) An opportunity to be heard.
7. Issue any additional declaratory or injunctive relief as necessary to safeguard the constitutional rights at stake and to remedy the extraordinary, ongoing deprivation imposed by the Respondents.
8. Award Petitioners costs, attorneys' fees, and other relief deemed just and proper under 42 U.S.C. § 1988.

Respondents have acted with deliberate indifference and willful disregard for the constitutional and human rights of Tony Underwood and Patricia Underwood. This Court's intervention is not only appropriate, it is urgently required.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:
**U.S. District Court, Southern District of
Texas**
SDTX Bar No. 3746531
info@vincentlawpllc.com
VINCENT LAW, PLLC
1035 Dairy Ashford, Suite 145
Houston, Texas 77079
Mailing Address:
P.O. Box 940129
Houston, Texas 77094
Tel: (713) 223-9300
Fax: (832)603-4444
COUNSEL FOR PETITIONERS

**Declaration on Petitioner's behalf pursuant to
28 U.S.C. Section 1746 and 28 U.S.C. § 2242**

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioners because I am one of Tony Underwood's attorney and Ms. Patricia Underwood's attorney. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. Further, she executed an affidavit emphasizing the denial of accesses to her son, Tony Underwood since April 30, 2025. On the basis of discussions with Ms. Underwood and the contents of her affidavit, I hereby verify that the statements made in the attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 06/01/2025

/s/ Courtney A. Vincent
Courtney A. Vincent
Counsel for Petitioners

Tony Underwood and Patricia Underwood

AFFIDAVIT

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

PATRICIA ANN UNDERWOOD personally appeared before me and stated under oath:

“My name is **PATRICIA ANN UNDERWOOD** I am over the age 18. I am competent to testify and therefore make this Affidavit. This Affidavit is based on my personal knowledge and the facts are true and correct.

On ^{24 April} ~~May~~ 30th, 2025 my son Tony Underwood was shot by a Houston Police Officer less than a block from my home. Since he was shot, and everything I went to Court May 19th at the 248th and got the judge’s paperwork and I got orders. But when I got to the hospital I got shot-down. They would not let me see my child. It has been one whole month since he was shot and I have not seen him.

On May 20th a chaplain from the sheriff’s department helped me with a video call. I remember her last name was Young. She told me she would help to schedule more videos calls, like once a week. She said she was going to talk to her supervisor but never got back in contact with me. I could not even recognize my child because his face was so swollen and it looked like he had a feeding tube and a trach. On that call, I could read his lips because he could not talk. I read that he was saying “help me”. They called me last Sunday because they had to go back to take fluids from his lungs again. But they did not call when they did code blue this week.

They never told me that my son was code blue this past week and the hospital did not contact me. I have not seen my son physically nor been able to touch him for at least 30 days now. Since he was shot. I want to know why they keep denying me and why I can’t see him. I think they are hiding something from me.

Sign and Date: Patricia Underwood 5/31/2025

(Print Name Here: Patricia Underwood 5/31/2025)

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

SUBSCRIBED AND SWORN TO before me on May 31, 2025.



Carrie Paulling
Notary Public



202533807 - UNDERWOOD, TONY vs. HARRIS COUNTY (Court 164)

[Print All](#) (non-financial)
[Chronological History](#)

- [Summary](#)
- [Appeals](#)
- [Cost Statements](#)
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- [Post Trial Writs](#)
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- [Parties](#)
- [Court Costs](#)
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[Print Settings](#)

Date	Court	Post Jdgm	Docket Type	Reason/ Appearance Court	Results/ Setting Type	Comments	Requesting Party
5/15/2025 01:30 PM	129		Ancillary Docket In Person	TEMPORARY RESTRAINING ORDER (MOTION FOR)	Passed	IN OPEN COURT 5/15	LEWIS, U A

- [Services/Notices](#)
- [Court Registry](#)
- [Child Support](#)
- [Images](#)

COURT DIRECTIVE C87 / BOND SET/MODIFICATION

CAUSE NO. 191455201010

THE STATE OF TEXAS

IN THE 248th DISTRICT COURT

VS.

UNDERWOOD, TONY

OF HARRIS COUNTY, TEXAS

OFFENSE: AGG ASSAULT AGAINST PUBLIC SERVANT

TO THE SHERIFF OF HARRIS COUNTY, TEXAS: GREETINGS

BY ORDER OF THE COURT ON May 19, 2025, A.D. THE FOLLOWING ACTION IS DIRECTED IN THE ABOVE STYLED AND NUMBERED CAUSE:

BOND LOWERED TO \$150,000 BAIL DENIED:

Please select THE COURT HAS ORDERED THE FOLLOWING BAIL OPTIONS:

CONDITIONS OF BOND: Please select

NOTES TO SHERIFF:

WITNESS MY HAND AND SEAL OF OFFICE AT HOUSTON, TEXAS, THIS May 19, 2025 9:42 AM

Marilyn Burgess, DISTRICT CLERK

HARRIS COUNTY, TEXAS

BY: *Yviana Garcia*

V GARCIA

SNU: 997

BOND SET

Unofficial Copy Office of Marilyn Burgess District Clerk



CAUSE NO. 191455401010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 100,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR filed under 191452

Dated: May 19, 2025



Judge Presiding

CAUSE NO. 191455501010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 25,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR provided/filed by Pretrial

Dated: May 6, 2025



Judge Presiding

5/19/2025 10:11 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982036
By: Destinee Soliz
Filed: 5/19/2025 10:11 AM

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

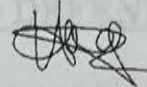
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



Presiding Judge
248th District Court



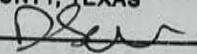
On 19 May 2025, this Court considered an oral motion by Timothy M. Douglas SRN 24079704, to permit the family members of Defendant to have access to a facility in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Bea Taub Hosp... Unit, floor 4E, Room 26 in Harris County treatment. Defendant remains in the custody of Department or Harris County Sheriff's officers

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS



Deputy

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 188813 DOB 12 AUGUST 1907
2. SON: TONY DEWAYNE UNDERWOOD JR. TXN- 2002166 DOB 13 DECEMBER 2005
3. COUSIN: SHERIAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD 2540588 DOB 18 NOVEMBER 1978

IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents serving Defendant Underwood, Tony Dewayne Underwood, shall provide access to and the opportunity to speak with DEWAYNE UNDERWOOD, SPN 02115800

This order in no way limits the authority of the Houston Police Department and its respective officers

5/19/2025 10:13 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982238
By: Destinee Soliz
Filed: 5/19/2025 10:13 AM

NO. 1914554

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

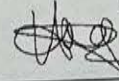
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



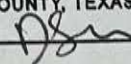
Presiding Judge
248th District Court

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS



Deputy

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

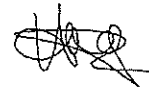
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025. DENIED UNTIL FURTHER NOTICE

Signed:
5/19/2025

A handwritten signature in black ink, appearing to be "J. A. Q.", written over a horizontal line.

Presiding Judge
248th District Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

**ORDER GRANTING WRIT OF HABEAS CORPUS AND DECLARATORY &
INJUNCTIVE RELIEF**

Before the Court is the *Amended Emergency Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief* filed by Petitioners Tony Underwood and Patricia Underwood. Upon consideration of the verified pleadings, the evidence presented, and the record before it, the Court FINDS that Petitioners have demonstrated an ongoing and irreparable deprivation of their rights under the Constitution of the United States.

It is therefore ORDERED that:

1. The Court hereby ISSUES a **Writ of Habeas Corpus** pursuant to 28 U.S.C. §§ 2241 and 2254, requiring that Respondents **immediately correct the unconstitutional conditions of confinement** imposed upon Tony Underwood by providing him with the

following minimum protections:

- a) **Immediate and confidential access to all retained and appointed legal counsel**, including unimpeded attorney-client communications;
 - b) **Regular and sustained in-person visitation with his mother, Patricia Underwood, and other designated family members**, consistent with his immobility and critical medical needs;
 - c) **Pastoral or spiritual visitation with an advisor of Mr. Underwood's choosing**, not merely one provided by institutional convenience or default;
 - d) **Ongoing and real-time communication with his next of kin regarding his medical condition**, including urgent updates about any life-threatening or deteriorating changes.
2. The Court DECLARES that the continued denial of access to legal counsel, family members, and chosen spiritual support constitutes a violation of Tony Underwood's rights under the **First, Sixth, Eighth, and Fourteenth Amendments** to the United States Constitution.
 3. The Court further DECLARES that **Patricia Underwood's protected liberty interest** in familial association and medical decision-making has been unlawfully infringed by Respondents, in violation of her **First and Fourteenth Amendment** rights.
 4. The Court ENJOINS Respondents from imposing blanket restrictions on Patricia Underwood's access to her son and further ORDERS that:
 - a) Patricia Underwood be notified **in real time of any changes** to Tony Underwood's medical condition;

- b) **Regular in-person** and video visitation with Tony Underwood be **scheduled and facilitated** without delay;
 - c) No access may be denied on an arbitrary, discretionary, or retaliatory basis.
5. The Court SETS ASIDE and DECLARES VOID the May 19, 2025, “Denied pending further notice” action issued by the Honorable Judge of the 248th Criminal District Court, on grounds that it was executed without justification, notice, or procedural due process.
6. The Court ORDERS that **no future restrictions on legal, familial, or spiritual access** to Tony Underwood may be imposed unless:
- a) **Reviewed and approved by this Court or a neutral judicial authority;**
 - b) **Notice is provided to retained civil and criminal counsel;** and
 - c) **Petitioners are afforded an opportunity to be heard.**
7. The Court GRANTS such further declaratory or injunctive relief as may be necessary to prevent the continuation or recurrence of constitutional violations, and to remedy the harm sustained by Petitioners.
8. The Court AWARDS costs and reasonable attorneys’ fees to Petitioners pursuant to 42 U.S.C. § 1988.

SO ORDERED.

Signed this ___ day of _____, 2025.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood

§

Petitioner,

§

§

v.

§

§

CIVIL ACTION NO. 4:25-cv-2089

§

**Harris County, a.k.a. Harris
Health System, a.k.a Ben Taub
Hospital, and City of Houston,
a.k.a. Houston Police
Department**

§

§

§

§

§

§

Respondent.

**SUPPLEMENTED EMERGENCY PETITION FOR -NON-CRIMINAL- WRIT
OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 and 28 U.S.C. § 2241**

Petitioner, Tony Underwood, petitions this Court for an *EMERGENCY Petition for Writ of Habeas Corpus* to immediately remedy his unlawful detention and restraint of his liberty by state actor **City of Houston** located at 901 Bagby, Houston, Texas 77002 and **Ben Taub Hospital (Harris Health System)** carrying out the state actor’s “policy” located at 1504 Ben Taub Loop, Houston, Texas 77030. Petitioner presents to the Court as follows:

I. INTRODUCTION

Petitioner, Tony Underwood (“Petitioner” or “Tony Underwood”) is a 37-year-old Houston area native and citizen of the United States being held and locked in a secured facility at **Ben Taub Hospital**, against his will. He has never been charged with a crime, much less convicted or sentenced; nor is he a pre-trial detainee. Yet, He is being falsely

imprisoned by a state actor acting under the color of law. He was taken into custody of Ben Taub Hospital through the Houston Police Department going beyond the limits.

This imprisonment is causing him to suffer irreparable harm by delaying and denying access to counsel, comfort from his family while he suffers serious medical needs after being taken into custody without a warrant or a finding of probable cause that he committed a crime. It has not been determined by any court that there is probable cause to arrest Tony Underwood. He is currently being deprived of his right to travel, familial relations, pastoral and spiritual prayer and support, and liberty.

II. JURISDICTION

This action arises under the Constitution of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), 28 U.S.C. § 2254 and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the state of Texas, and such custody is in violation of the Constitution, laws, or treaties of the United States. This court has subject-matter jurisdiction over a claim under the federal habeas statutes since the petitioner is in custody pursuant to some government action in violation of the Constitution or laws of the United States.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable since it involves habeas corpus relief relating to an adult temporary guardianship alleging violation of the Fourth amendment.

This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254 (a), and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a native and citizen of the United States. He has spent eight (8) days in unlawful custody of Ben Taub and City of Houston.

Respondent, City of Houston, a.k.a. Houston Police Department, currently engaged in the unlawful detainment of the person of Tony Underwood.

Respondent, Ben Taub Hospital currently engaged in the unlawful and unreasonable detainment of the person of Tony Underwood.

V. FACTS

1. Tony Underwood is a 37-year-old man who was involuntarily placed in the custody of Ben Taub Hospital facility at 1504 Ben Taub Loop, Houston, Texas 77030.
2. On the evening of Wednesday, April 30, 2025, Tony Underwood was shot in the back by a Houston Police Department Officer.
3. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support, rendering his condition critical and raising urgent constitutional concerns regarding his confinement and access to counsel.
4. Tony Underwood is unconscious and entirely incapable of advocating for himself, making immediate court intervention necessary to protect his constitutional rights.

5. He has been denied access to his family, legal counsel, and outside communication, in violation of his First and Fourteenth Amendment rights to familial association, legal access, and due process.
6. His mother, the legal next of kin, has been categorically denied in-person access to her son, despite his extreme critical condition and unconscious state. This is in violation of her Fourteenth Amendment right to familial association and substantive due process.
7. Hospital staff have only contacted her for the limited purpose of obtaining consent for high-risk, life-saving medical procedures. This denies Ms. Underwood, Tony Underwood's mother, the right to meaningful participation in her son's care and infringing on her liberty interest as a parent.
8. There have been several such life-threatening procedures, confirming the seriousness and urgency of his medical condition.
9. She has received no meaningful updates about her son's overall condition, prognosis, or treatment plan, despite repeated inquiries. These actions are depriving her of the ability to make informed medical decisions – core protections guaranteed under the Due Process Clause of the Fourteenth Amendment.
10. This continued denial of access and information deprives her of fundamental parental rights, including the right to familial association and informed medical decision-making.
11. The State's (Houston Police Department) and Ben Taub Hospital's continued refusal to permit access or share critical medical information constitutes an arbitrary and

unjustified interference with her constitutionally protected right to make decisions concerning the care, custody, and control of her child.

12. The State's (Houston Police Department) and Ben Taub Hospital's continued confinement and medical control without legal representation or judicial oversight constitutes a violation of his right to bodily integrity and substantive due process under the Fourteenth Amendment.

13. The State's (Houston Police Department) and Ben Taub Hospital's refusal to permit access by counsel and next of kin is an unconstitutional restriction on Mr. Underwood's right to access the courts and interferes with his ability to seek redress and exercise his habeas corpus rights under Article I, Section 9, Clause 2 of the U.S. Constitution.

14. Furthermore, Counsel engaged in a telephone conversation with the lead Detective, in which the call was mutually recorded and the Detective stated that the Houston Police Department was not denying access to Tony Underwood. Though, when the family went to the police headquarters on May 7th, 2025, the family, specifically Ms. Underwood, was told that access continues to be denied.

VI. CLAIM FOR RELIEF

15. Petitioner realleges and incorporates by reference all paragraphs throughout the Petition. Respondents' continued detention of Petitioner is unlawful and contravenes law.

16. Petitioner continues to languish in detention at a facility, alone, while he fights for his life.

17. He has been detained without due process well over the presumptively reasonable period.

18. Due process would require that he have access to Counsel and his mother, Ms. Patricia Underwood.

19. Accordingly, Respondents' continued detention of Petitioner is contrary to the United States Constitution and human decency.

VII. SUBSTANTIVE DUE PROCESS VIOLATION

20. Petitioner realleges and incorporates paragraphs 1-19 throughout the Petition.

21. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

22. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling government interest. Any interest Respondents have in detaining Petitioner in order to effectuate their "process" does not justify the indefinite detention of Petitioner, life is literally in the balance and could likely die alone.

VIII. PROCEDURAL DUE PROCESS VIOLATION

23. Petitioner realleges and incorporates by reference paragraphs 1-22 throughout the Petition.

24. Under the Due Process Clause of the Fifth and Fourteenth Amendments, Tony Underwood is entitled to a timely and meaningful notice, and a hearing with an

opportunity to demonstrate that he should not be detained. Petitioner in this case has been denied that opportunity.

25. Petitioner has been denied notice.

26. Petitioner has been denied an opportunity to be heard.

IX. VIOLATION OF SIXTH AMENDMENT

27. Petitioner realleges and incorporates by reference paragraphs 1-26 throughout the Petition.

28. Petitioner has been denied access to counsel, held with no bond.

X. PRAYER FOR RELIEF

29. Petitioner realleges and incorporates by reference paragraphs 1-28 throughout the Petition.

30. Petitioner prays that the Court grant the following relief:

- a. Release of body camera footage to support alleged probable cause;
- b. Assume jurisdiction over this matter;
- c. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;
- d. Pursuant to 28 U.S.C. § 2243 issue an order directing Respondent to show cause why the writ of habeas corpus should not be granted, since the petition shows Tony Underwood is entitled to;
- e. Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from “custody”, or in the alternative, order

that Petitioner be provided an expedited hearing before this court and order to show cause for the detention; and,

- f. Enjoin Respondents from denying access to counsel, access to his mother, access to his pastor.

Respectfully Submitted,

/s/Courtney A. Vincent

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Admitted:

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COUNSEL FOR PETITIONER

Declaration on Petitioner's behalf pursuant to 28 U.S.C. Section 1746 and 28

U.S.C. § 2242

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the

attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 05/08/2025

/s/ Courtney A. Vincent

Courtney A. Vincent

Counsel for Petitioner Tony Underwood

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

**AMENDED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §§ 2254 and 2241
AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF PURSUANT
TO 42 U.S.C. § 1983**

Petitioner, Tony Underwood, and next of kin, his mother, Patricia Underwood, file this Emergency Petition for Writ of Habeas Corpus under 28 U.S.C. §§ 2241 and 2254. Additionally, tony Underwood asserts that under the current conditions that their First, Fifth, Sixth, Eighth, and Fourteen Amendment Rights have either been or are actively and intentionally being violated by the Respondents. Additionally, Patricia Underwood asserts claims for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 for ongoing violations of her First and Fourteenth Amendment rights.

This action seeks to remedy the unconstitutional conditions of confinement and ongoing constitutional violations arising from Tony Underwood’s pretrial detention by state actors Harris County (a.k.a. Harris County Sheriff’s Office), located at 1001 Preston St., Suite #500, Houston, Texas 77002, and the City of Houston (HPD) located at 901 Bagby, Houston, Texas 77002. Petitioner presents to the Court as follows:

I. INTRODUCTION

Petitioner, Tony Underwood (“Petitioner” or “Tony Underwood”) is a 37-year-old Houston area native and citizen of the United States currently held in a secured medical facility as a pretrial detainee, following life-threatening injuries inflicted during an encounter with law enforcement. He was shot in the back while face down on the ground by a Houston Police Department Officer, Palin. He has sustained catastrophic trauma resulting in quadriplegia and remains on life support. He is currently dependent on a respirator and other life-sustaining machines. He slips in and out of consciousness and is unable to speak due to the respirator and likely as a result of prolonged intubation. He has required resuscitation twice, most recently just a few days ago on May 29, 2025, although his mother was not informed until nearly twenty-four hours later, on April 30, 2025. (See Exhibit A – Patricia Underwood’s Affidavit). Apparently, the notification came from Tony’s court appointed attorney via a text message to Ms. Underwood.

Although Tony is now a pretrial detainee, his ongoing confinement within a hospital setting under law enforcement control continues to deprive him of critical constitutional protections. Namely, the leadership of the Houston Police Department from April 30,

2025, through on or about May 18, 2025, AND the Harris County Sheriff's Department from on or about May 18, 2025, to the present. He's being discriminated against for being injured in the hospital. If he were not injured in the hospital, he would be eligible to receive visits from counsel and his family. He has been denied access to legal counsel of his choice, family, and religious pastoral support. Although two criminal defense attorneys and one civil rights attorney have been engaged, only the court-appointed criminal defense attorney, Attorney Tim Donahue, has had limited access to Mr. Underwood.

Patricia Underwood, Tony's mother and legal next of kin, brings this Petition also on the grounds that her individual constitutional rights under the First and Fourteenth Amendments are being independently violated. She has been categorically denied access to her son despite his extreme limited capacity, and at times incapacitation, and medical fragility. The limited communication from the hospital during major health crises has been thin at best, leaving his family in the dark during critical moments. For example, on May 25, 2025, the hospital called Ms. Underwood to obtain consent for lifesaving procedure to drain fluid from Tony's lungs. Since that call no update has been provided to Ms. Underwood regarding the procedure or Tony's recovery status. Also, on May 29, 2025, Tony suffered a code-clue health crisis and Ms. Underwood has yet to be contacted by the hospital regarding this event. As Tony's condition is permanent and he is now quadriplegic, the denial of familial contact is an ongoing infringement of her protected liberty interest in familial association, in addition exclusion from participation in medical decisions.

II. JURISDICTION

This action arises under the Constitution and laws of the United States. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 2254; 28 U.S.C. § 1331; and 42 U.S.C. § 1983. Petitioner Tony Underwood is presently in custody under color of state law, and such custody is in violation of the Constitution and laws of the United States. Patricia Underwood brings an independent claim for declaratory and injunctive relief under 42 U.S.C. § 1983 based on the ongoing deprivation of her Fourteenth Amendment rights to familial association and meaningful participation in medical decision-making.

This Court has subject-matter jurisdiction over claims under the federal habeas statutes because Petitioner is in custody pursuant to governmental action in violation of federal law. Additionally, the Court has jurisdiction over Patricia Underwood's constitutional claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), which confer original jurisdiction over actions to redress the deprivation of civil rights under color of state law.

Although federal courts are generally precluded from handling probate matters, this case is distinguishable as it involves habeas corpus relief and constitutional violations arising from custodial detention and related access restrictions, not adjudications that would imply the invalidity of a conviction or sentence under *Heck v. Humphrey*, 512 U.S. 477 (1994). This Court may grant relief pursuant to 28 U.S.C. § 2241(c)(3), 28 U.S.C. § 2254(a), and the All-Writs Act, 28 U.S.C. § 1651.

III. VENUE

Venue lies in the United States District Court for the Southern District of Texas, the judicial district where Petitioner currently is in custody.

IV. PARTIES

Petitioner, Tony Underwood, is a 37-year-old pretrial detainee currently held in medical confinement under the authority of the Respondents. He brings this habeas action pursuant to 28 U.S.C. §§ 2241 and 2254, seeking immediate judicial review of the legality and conditions of his custody.

Petitioner, Patricia Underwood, is the mother and legal next of kin of Tony Underwood. She asserts independent claims under 42 U.S.C. § 1983 for ongoing violations of her constitutional right to familial association and meaningful participation in medical decisions affecting her son.

Respondent, City of Houston, a.k.a. Houston Police Department, had custody of Tony Underwood from April 30, 2025, until on or about May 18, 2025, at which point custodial responsibility was transferred to Harris County.

Respondent, Harris County, a.k.a. Harris County Sheriff's Office, located at 1001 Preston St., Suite #500, Houston, Texas 77002, is a governmental entity and law enforcement agency participating in the custody, control, and enforcement actions following the transfer of custody from the City of Houston involving Petitioner Tony Underwood during his pretrial detention.

V. FACTS

1. Tony Underwood is a 37-year-old man who was placed in the custody of a secured

hospital facility after being shot in the back by Houston Police Officer, Officer Palin.

2. On the evening of Wednesday, April 30, 2025, Tony Underwood was pursued via vehicle, then on foot, by Houston Police Department Officers during an alleged criminal activity.
3. This pursuit ended in Officer Palin, a Houston Police Department Officer, shooting Tony Underwood in the back.
4. Tony Underwood's injuries are of such grave and life-threatening severity that he remains on life support. The shooting has rendered him a quadriplegic and currently dependent on a respirator and other life-sustaining machines.
5. It is alleged that Tony slips in and out of consciousness. Also, Tony is unable to speak due to the respirator and likely the result of prolonged intubation.
6. Tony is currently housed in a hospital facility (Ben Taub Hospital) but held under the supervision and authority of Harris County as a pretrial detainee.
7. He has been denied meaningful access to legal counsel. Two criminal defense attorneys and one civil rights attorney have been retained, but only the court-appointed attorney, Tim Donahue, has had limited access.
8. Tony has also been denied access to his family and pastoral support.
9. His mother, Patricia Underwood, ***has repeatedly sought to visit him in person but has been denied access.***
10. She has received ***no meaningful nor regular updates about her son's medical status,*** despite his critical condition and ongoing procedures.
11. Communication from the hospital has been sparse, even during major health crises,

leaving her in the dark during urgent developments. *The most recent example occurred on or about May 29, 2025*, Tony suffered a life-threatening medical crisis, coded blue, yet she was not informed by the hospital. It is alleged that a “friend of the family” became aware because of her employment and/or association with the Underwood family and communicated as such to them. The family then called Attorney Donahue, which he was aware of the crisis and did confirm this information regarding Tony’s life-threatening medical crisis.

12. It should be noted that Ben Taub Hospital staff have only reached out for consent to perform life-saving interventions, excluding her from participating in broader decisions about her son’s care. They did not contact her for this most recent code blue medical crisis and this is true for at least one other previous code blue events.

13. These access restrictions and failures to communicate deprive Patricia Underwood of her protected Fourteenth Amendment rights to familial association and informed participation in the care of her child.

14. On May 7, 2025, Patricia visited the Houston Police Department Headquarters and was informed that access to Tony remained restricted, despite a prior, mutually recorded phone call (May 2, 2025) from the Houston Police Department, *Lead Detective Walker stating to Counsel that that the Houston Police Department was not denying access.*

15. On May 8, 2025, after the family was rejected and turned away at the Houston Police Department Headquarters, Detective Walker called Counsel again, this time stating that he “misspoke”. This call was also recorded (both parties were aware of the recording).

16. On May 12, 2025, Attorney U.A. Lewis filed a petition in the Harris County Civil

District Court requesting a temporary restraining order in the matter styled *Underwood v. Harris County*, No. 202533807 (164th Dist. Ct., Harris County, Tex.), seeking the same access that is now at issue in this matter.

17. On May 14, 2025, Counsel for Petitioners contacted the federal court's Case Manager for the Honorable Judge Keith P. Ellison to request a hearing on this matter, which had been set for May 15, 2025.

18. On May 15, 2025, Counsel again contacted the federal court's Case Manager and requested a pause in proceedings pending the outcome of the TRO hearing in Harris County District Court.

19. On May 15, 2025, at a hearing in the *Underwood v. Harris County*, No. 202533807 (164th Dist. Ct., Harris County, Tex.) matter, the Honorable Court "passed" (See Exhibit B – Harris County District Court - TRO "Pass") because the court maintained that they did not have jurisdiction on the matter because there were live criminal proceedings pending against Tony Underwood.

20. It was then the County District Court's judge disclosed to Attorney U. A. Lewis, and Counsel hearing the same because she was present in the courtroom for observation, that (1) there was an active criminal matter pending against Tony Underwood; (2) that charges had been filed against Tony; and, (3) that the matter was not on the public viewing side of the Harris County District Courts website but rather was docketed on a system called DEEDS, an District Electronic Examination Docketing System.

21. The case had been concealed within the restricted DEEDS docketing, which is accessible only to legislatively approved individuals, obstructing retained counsels'

ability to enter an appearance or seek relief in the related criminal proceeding.

22. Further, the Harris County District Court Judge shared with Attorney U.A. Lewis the name of the court appointed criminal defense counsel – Attorney Tim Donahue.

23. This was information learned 15 days after Tony was shot. Not one official contacted Ms. Underwood, Tony's mother and next of kin, (1) regarding Tony's criminal proceedings; (2) that there was a court appointed defense counsel; and (3) the court appointed attorney, Tim Donahue did not know that Ms. Underwood was Tony's next of kin.

24. Both Counsel and Attorney U.A. Lewis researched and located Attorney Donahue's contact information and called him.

25. It was after this contact that both Attorney Lewis and Counsel then came to learn that Honorable Judge Unger of the 248th Criminal Court, Harris County District Court, presiding over Tony Underwood's criminal matters, set Tony's bonds and that the total bond amounts set for the three charges pending against Tony were initially assessed against an aggregated amount of \$425,000.00. The bonds have since been reduced to the aggregated amount of \$275,000.00.

26. Sometime between the conclusion of the May 15, 2025 hearing and May 16, 2025 Tony Underwood's matter magically appeared on the public facing Harris County District Court's website and Attorney U.A. Lewis appeared as Criminal Defense Counsel (Exhibit C - Bonds) for one of the three pending charges against Tony.

27. On May 19, 2025, criminal defense attorney, Attorney Tim Donahue petitioned the Harris County Criminal District Court in Cause Nos. 191455291919 and

191455491919 — *The State of Texas v. Underwood, Tony* for familial access. The court issued orders permitting Ms. Patricia Underwood, Tony Dewayne Underwood Jr. (Tony's son), and Shregal Underwood Williams "*access and opportunity to speak in private* with Tony Underwood." Attorney Donahue provided a copy of the orders to Ms. Underwood. (See Exhibit D – Access Orders & Exhibit E – Denied Until Further Notice)

28. Immediately thereafter, Ms. Underwood, Tony Jr., and Ms. Williams traveled to Ben Taub Hospital. They were initially turned away at the hospital, then recalled back into the building as they were leaving, allegedly by Ben Taub/Harris Health System Security Director, Mr. Steve Brown, only to be made to sit and wait.

29. Ultimately, Harris County deputies and hospital security denied the family access. Ms. Underwood was heartbroken.

30. It appears that sometime between Ms. Underwood leaving the County Courthouse and her arrival at Ben Taub Hospital, the Honorable Judge Unger of the 248th Criminal Court, Harris County District Court, presiding over Tony Underwood's criminal matters, rescinded the Orders with a stamp indicating the Order was "Denied pending further notice." No explanation was offered to Ms. Underwood.

31. Meanwhile, *on May 20, 2025*, Harris County Sheriff's Office Deputy Chaplin N. Young facilitated a video call between Ms. Underwood and Tony. *This was the first time that Ms. Underwood was able to literally put her eyes on Tony since the April 30, 2025, shooting.*

32. Post the video call, Deputy Chaplin Young stated to Ms. Underwood that she would try

to schedule weekly video calls between Ms. Underwood and Tony. (See Exhibit A – Affidavit of Patricia Underwood)

33. Alas, since May 20, 2025, Deputy Chaplin Young has not been in contact, nor any such representative, since May 20, 2025, to follow through.

34. As of the filing of this *Amended Petition*, Tony and his mother, Ms. Patricia Underwood have not been physically connected during this extreme medical crisis as her son lies in a hospital bed alone, fighting for his life without comfort from his mother, sons, spiritual advisors, or other family.

VI. PROCEDURAL HISTORY

35. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

36. In this matter, the Habeas Petition was filed on May 8, 2025; Summonses issued on May 12, 2025 and returned on May 14, 2025.

37. Counsel requested a hearing on May 14, 2025 with a response setting the hearing on May 15, 2025. Counsel requested a pause in the anticipation that matters would be resolved either in the Harris County District Court (Criminal) 248th or in the Civil Proceedings in the 164th. Neither Courts have resolved the matter and furthered the constitutional violations of both Tony Underwood and Patricia Underwood.

38. The now viewable criminal charges and their procedural status against Tony Underwood, only recently uncovered 15 days after Tony was shot (May 15, 2025), form the foundation of this case and illustrate a troubling pattern of concealment and obstruction by the Respondents. This case arises from a deeply disturbing series of

actions taken by the Respondents that have effectively foreclosed Tony and Patricia Underwood's ability to access due process, familial contact, and meaningful legal recourse.

39. On May 12, 2025, Attorney U.A. Lewis filed a petition in Harris County Civil District Court in the matter styled Underwood v. Harris County, No. 202533807 (164th Dist. Ct., Harris County, Tex.), seeking a temporary restraining order to compel familial access.
40. On May 15, 2025, the Harris County Civil District Court declined jurisdiction, citing ongoing criminal proceedings against Tony Underwood.
41. That same day, Counsel had contacted the Case Manager for the Honorable Judge Keith P. Ellison in the United States District Court for the Southern District of Texas, requesting that the federal matter be held in abeyance pending the outcome of the state court hearing. Unfortunately, the outcome was negative because the Harris County Civil District Court did not have jurisdiction.
42. This Amended Petition and Complaint incorporates all subsequent developments and violations occurring through June 1, 2025, including the revocation of previously granted visitation orders by the 248th Criminal District Court, the continued denial of access, and the sustained interference by Respondents with Tony and Patricia Underwood's constitutional rights.

Criminal and Civil Case Summary Chart:

Case No.	Style	Court	Filing Date	Charge / Matter
191455201010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Aggravated Assault Against a Public Servant
191455401010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Unlawful Carry of a Weapon w/ Felony Conviction
191455501010	The State of Texas vs. Underwood, Tony	248th Crim. Ct.	05/01/2025	Evading Arrest/Detention w/ Vehicle
202533807	Underwood, Tony vs. Harris County	164th Civ. Ct.	05/12/2025	Civil TRO – Access and Injunctive Relief

Case No. 191455201010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/02/25: Probable Cause Found.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination; Order Requiring GPS Prior to Release.
- 05/19/25: Bail Order; Order Denying Family Access; Order Sealing Other Documents.
- 05/20/25: Motion to Approve Funds for Defense Investigator.
- 05/21/25: Order Granting Funds for Investigator.

Case No. 191455401010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination.
- 05/19/25: Bail Order; Order Permitting Family Access to Defendant; Additional Order Denying Access; Order Sealing Document.
- 05/20/25: Motion to Approve Funds for Defense Investigator.

Case No. 191455501010 Detailed Orders:

- 05/01/25: Complaint filed; State’s Motion for Bond Conditions; Motion to Deny Bail.
- 05/05/25: Order Appointing Counsel; Order Permitting Access to Counsel.
- 05/06/25: Bail Order; Order Permitting Access to Defendant for Examination.
- 05/16/25: Emergency Motion for Attorney and Parent Visitation filed; Emergency Order Granting Access.

- 05/19/25: Order Permitting Access to Counsel; Order Permitting Family Access.
- 05/30/25: Joint Motion to Substitute Counsel and Proposed Order Filed.

Case No. 202533807 (Civil TRO) Activity Summary:

- 05/12/25: Plaintiff's Original Petition, Proposed TRO, and Statement of Inability Filed.
- 05/14/25: Declaration Filed.
- 05/19/25: Deputy Reporter Statement Filed.

**VII. THE VIOLATIONS OF TONY UNDERWOOD'S
CONSTITUTIONAL RIGHTS**

43. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

44. Petitioner Tony Underwood asserts that the following constitutional violations have occurred as a result of his treatment and the conditions of his confinement:

A. Violation of Tony Underwood's Fourteenth Amendment Rights – Substantive Due Process.

By subjecting Tony Underwood to prolonged isolation, denying access to counsel, and failing to provide communication or humane treatment during his medical crisis, Respondents have deprived him of his substantive due process rights. See *Wolfish v. Bell*, 441 U.S. 520, 545 (1979), affirming that pretrial detainees retain rights not to be punished prior to an adjudication of guilt and are *entitled to reasonable access to family, legal counsel, and outside communication*; *Turner v. Safley*, 482 U.S. 78, 89–90 (1987), setting a standard of balancing applies to restrictions on constitutional rights of those in custody (*including association*); *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) (establishing that due process *protects pretrial detainees from objectively unreasonable restrictions*).

B. Violation of Tony Underwood’s First and Fourteenth Amendment Rights – Access to Counsel and Courts.

Tony has been denied access to Civil Rights counsel and has only had limited access to Criminal Defense counsel. This deprivation inhibits his ability to seek redress or participate in his own defense. See *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), recognizing the right to communicate with counsel under the First and Fourteenth Amendments.

C. Violation of Tony Underwood’s Sixth Amendment Rights – Right to Counsel.

As a pretrial detainee, Tony is entitled to the effective assistance of counsel in his criminal matters. *Limiting access to only the court-appointed attorney* and obstructing communication undermines this right. See *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963); *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932).

D. Violation of Tony Underwood’s Fourteenth Amendment Rights – Familial Association.

Respondents’ blanket denial of access to Tony’s mother, who is also his legal next of kin, infringes on both their rights to familial association. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Overton v. Bazzetta*, 539 U.S. 126, 131–32 (2003).

E. Violation of Tony Underwood’s First Amendment Rights – Free Exercise of Religion.

By denying Tony access to the pastoral or spiritual advisor of his and his family’s choosing, Respondents have infringed upon his First Amendment rights to

free exercise of religion. The *Constitution does not merely guarantee access to a state-assigned chaplain but protects the individual's right to religious counsel aligned with their personal faith*. See *Walker v. Blackwell*, 411 F.2d 23, 25–26 (5th Cir. 1969); *McCollum v. Board of Education*, 333 U.S. 203, 212 (1948).

F. Violation of Tony Underwood's Eighth and Fourteenth Amendment Rights – Conditions of Confinement.

Although the Eighth Amendment typically applies to convicted prisoners, the Fourteenth Amendment provides equivalent protections to pretrial detainees. The conditions under which Tony is held – isolated, critically injured, denied access and communication, and inadequately represented – constitute punitive and unconstitutional treatment without adjudication of guilt. See *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015).

G. Violation of Tony Underwood's Procedural Due Process – Purpose of Pretrial Bond.

Pretrial bonds exist to ensure a defendant's appearance at trial, not to inflict punishment or justify restrictions on fundamental liberties. Tony's bonds have been reduced and judicially acknowledged, yet he remains effectively inaccessible to his family and counsel. This frustrates the purpose of bond and results in de facto punishment in violation of procedural due process. See *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding bond conditions only when narrowly tailored to compelling government interests). Given Tony's quadriplegia, he will be in the same place today, tomorrow, next week, and next month, until the State transfers

him to another facility. The constitutional guarantee that a detainee will “appear” for proceedings is not undermined by the fact that Tony is physically unable to flee or move about freely.

45. Petitioner respectfully seeks injunctive and declaratory relief to remedy these violations and to prevent future harm.

VIII. THE VIOLATIONS OF PATRICIA UNDERWOOD’S CONSTITUTIONAL RIGHTS

46. Petitioner realleges and incorporates all previous sections and all previous paragraphs of this *Amended Petition*.

A. Violation of Patricia Underwood’s Fourteenth Amendment Rights – Substantive Due Process (Familial Association).

Patricia Underwood, as the mother and legal next of kin of Tony Underwood, possesses a fundamental liberty interest in the care, custody, companionship, and control of her son. The State’s denial of access to her critically injured son, despite his medical incapacitation and ongoing trauma, constitutes an unjustified and arbitrary intrusion upon her familial rights. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Overton v. Bazzetta*, 539 U.S. 126, 131–32 (2003).

B. Violation of Patricia Underwood’s Fourteenth Amendment Rights – Procedural Due Process.

Ms. Underwood was never notified that her son had been charged, that a criminal proceeding had been initiated, or that he had been appointed a public defender. The absence of notice, opportunity to be heard, or meaningful participation in medical or

legal matters involving her son deprives her of procedural due process under the Fourteenth Amendment. Especially given Tony's fragile and grave medical condition and the slew of life-saving interventions that have been implemented to sustain Tony's life. The *Mathews* balancing test requires weighing the private interest affected, the risk of erroneous deprivation through current procedures, and the government's interest.

Here, Ms. Underwood's compelling interest in her son's life and care, coupled with the complete lack of notice and opportunity to be heard, far outweigh any asserted governmental justification. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

C. Violation of Patricia Underwood's Fourteenth Amendment Rights – Right to Participate in Medical Decision-Making.

Although hospital staff intermittently contacted Ms. Underwood for consent to high-risk medical procedures, she has been excluded from broader decision-making concerning Tony's care and has not been informed of urgent medical events, including multiple Code Blue crises. The State's continued concealment and obstruction of information violates her protected liberty interest as next of kin. See *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 281–82 (1990).

D. Violation of Patricia Underwood's First Amendment Rights – Right to Familial and Emotional Support.

The denial of any in-person visitation, even after court authorization and then abruptly and quickly retracted, has deprived Ms. Underwood of her right to provide emotional and spiritual comfort to her son. Such sustained governmental interference

with deeply rooted familial bonds violates the freedom of association under the First Amendment. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618–19 (1984). (holding that choices to enter into and maintain certain intimate human relationships are a fundamental element of personal liberty protected by the First Amendment; such protection extends to familial relationships, ***including the right to maintain close and enduring bonds between parent and child***. The denial of in-person visitation by Ms. Underwood in regards to her son, Tony, must be carefully scrutinized because the state actors are ***infringing upon her fundamental rights without sufficient justification***.

47. Petitioner Patricia Underwood respectfully requests declaratory and injunctive relief to redress these constitutional violations and to secure immediate access to her son and his ongoing care.

IX. CONCLUSION

What the Respondents have done here is not merely bureaucratic failure, it is constitutional betrayal. The City of Houston AND the Harris County Sheriff's Office have weaponized institutional procedure to strip a paralyzed, critically injured pretrial detainee of access to his lawyers, his mother, and his faith. This is not how a civilized government behaves. It is not how any government bound by the Constitution may behave.

Their actions have been marked by obfuscation, concealment, and an alarming disregard for the gravity of Tony Underwood's condition and the humanity of his family. The concealed court docket. The secreted appointment of counsel without notification to his mother, who is next of kin. The rescission of a judge's own visitation order without notice or explanation, just a stamp stating, "denied until further notice".

One can scarcely fathom the hope surging through a mother clutching court orders affirming her right to see her quadriplegic, paralyzed son, only to be turned away at the threshold, her dignity dismissed, and her son left alone. These are not the hallmarks of a system operating in good faith, they are the symptoms of a system weaponized to frustrate access to justice and accountability.

Patricia Underwood, a mother, has been forced to fight through layers of official indifference and institutional gatekeeping just to see her son, her paralyzed son, on a video screen. Only ONE time since April 30, 2025. Even that limited contact has now been denied without explanation or follow-up. The idea that the State may withhold human connection, legal advocacy, and spiritual support from a suffering, immobilized man defies not only law, but conscience.

This Court must send a clear message: constitutional rights do not vanish behind hospital walls, and a badge does not confer the power to isolate, silence, and strip a family of dignity and access. Petitioners urge this Court to exercise the full weight of its equitable and habeas authority to redress these grave wrongs, and to make plain that this conduct will not be tolerated under the United States Constitution.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioners Tony Underwood and Patricia Underwood respectfully request that this Court:

- 1. *Issue a Writ of Habeas Corpus*** pursuant to 28 U.S.C. §§ 2241 and 2254, directing the immediate correction of unlawful and unconstitutional conditions of confinement affecting Tony Underwood and ordering that he be provided access to:

- a) All retained and appointed legal counsel, including immediate and confidential attorney-client communication, without interference by Respondents;
 - b) Immediate and sustained in-person visitation with his mother, Patricia Underwood, and other designated family members, consistent with his critical medical condition and immobility;
 - c) Spiritual or pastoral support from an advisor of Tony's choosing—not merely one "available" through institutional convenience; and,
 - d) Open and prompt channels of communication with next of kin regarding all aspects of his medical condition, including immediate notification of any life-threatening or deteriorating changes in status.
2. Declare that the denial of legal counsel, familial access, and pastoral support during Tony Underwood's critical, life-threatening confinement violates his rights under the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.
3. Declare that Patricia Underwood's liberty interest in familial association and medical decision-making has been unlawfully and egregiously violated by Respondents, in contravention of her rights under the First and Fourteenth Amendments.
4. Enter injunctive relief ordering Respondents to cease all blanket restrictions on Patricia Underwood's access to her son, and further:
 - a) Require real-time notification to Patricia of any changes to her son's medical condition;
 - b) Require facilitation of scheduled in-person visitation and video communication

during all phases of confinement;

c) Prohibit arbitrary, discretionary, or retaliatory denial of her access.

5. *Set aside, declare void, or enjoin the enforcement of the May 19, 2025, markings and actions by the Honorable Judge of the 248th Criminal District Court* – "denied pending further notice" – which were executed without transparency, justification, or procedural due process and have caused irreparable constitutional harm.
6. Order that *no future restrictions* on in-person visitation, legal access, or medical communication affecting either Petitioner may be imposed without:
 - a) Judicial review;
 - b) Prior notice to retained counsel; and,
 - c) An opportunity to be heard.
7. Issue any additional declaratory or injunctive relief as necessary to safeguard the constitutional rights at stake and to remedy the extraordinary, ongoing deprivation imposed by the Respondents.
8. Award Petitioners costs, attorneys' fees, and other relief deemed just and proper under 42 U.S.C. § 1988.

Respondents have acted with deliberate indifference and willful disregard for the constitutional and human rights of Tony Underwood and Patricia Underwood. This Court's intervention is not only appropriate, it is urgently required.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:
**U.S. District Court, Southern District of
Texas**
SDTX Bar No. 3746531
info@vincentlawpllc.com
VINCENT LAW, PLLC
1035 Dairy Ashford, Suite 145
Houston, Texas 77079
Mailing Address:
P.O. Box 940129
Houston, Texas 77094
Tel: (713) 223-9300
Fax: (832)603-4444
COUNSEL FOR PETITIONERS

**Declaration on Petitioner's behalf pursuant to
28 U.S.C. Section 1746 and 28 U.S.C. § 2242**

I, Courtney A. Vincent, am submitting this verification on behalf of the Petitioners because I am one of Tony Underwood's attorney and Ms. Patricia Underwood's attorney. I have personal knowledge of the facts contained herein. I have discussed with the Petitioner's mother the events described in this Petition. Further, she executed an affidavit emphasizing the denial of accesses to her son, Tony Underwood since April 30, 2025. On the basis of discussions with Ms. Underwood and the contents of her affidavit, I hereby verify that the statements made in the attached *Petition for Writ of Habeas Corpus* are true and correct to the best of my knowledge/opinion. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 06/01/2025

/s/ Courtney A. Vincent
Courtney A. Vincent
Counsel for Petitioners

Tony Underwood and Patricia Underwood

CERTIFICATE OF SERVICE

I hereby certify that on June 2nd, 2025, a true and correct copy of the foregoing Amended Petition will be served upon the Respondents via Process Server via Fed. R. Civ. Pro. service of process rules, and alternatively via e-mail and/or facsimile transmission, or certified mail, return-receipt requested.

Dated: 06/01/2025

/s/ Courtney A. Vincent
Courtney A. Vincent
Counsel for Petitioners

AFFIDAVIT

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

PATRICIA ANN UNDERWOOD personally appeared before me and stated under oath:

“My name is **PATRICIA ANN UNDERWOOD** I am over the age 18. I am competent to testify and therefore make this Affidavit. This Affidavit is based on my personal knowledge and the facts are true and correct.

On ^{20 April} ~~May~~ 30th, 2025 my son Tony Underwood was shot by a Houston Police Officer less than a block from my home. Since he was shot, and everything I went to Court May 19th at the 248th and got the judge’s paperwork and I got orders. But when I got to the hospital I got shot-down. They would not let me see my child. It has been one whole month since he was shot and I have not seen him.

On May 20th a chaplain from the sheriff’s department helped me with a video call. I remember her last name was Young. She told me she would help to schedule more videos calls, like once a week. She said she was going to talk to her supervisor but never got back in contact with me. I could not even recognize my child because his face was so swollen and it looked like he had a feeding tube and a trach. On that call, I could read his lips because he could not talk. I read that he was saying “help me”. They called me last Sunday because they had to go back to take fluids from his lungs again. But they did not call when they did code blue this week.

They never told me that my son was code blue this past week and the hospital did not contact me. I have not seen my son physically nor been able to touch him for at least 30 days now. Since he was shot. I want to know why they keep denying me and why I can’t see him. I think they are hiding something from me.

Sign and Date: Patricia Underwood 5/31/2025

(Print Name Here: Patricia Underwood 5/31/2025)

STATE OF TEXAS

§

§

COUNTY OF HARRIS

§

SUBSCRIBED AND SWORN TO before me on May 31, 2025.



Carrie Paulling
Notary Public



202533807 - UNDERWOOD, TONY vs. HARRIS COUNTY (Court 164)

[Print All](#) (non-financial)
[Chronological History](#)

- [Summary](#)
- [Appeals](#)
- [Cost Statements](#)
- [Transfers](#)
- [Post Trial Writs](#)
- [Abstracts](#)
- [Parties](#)
- [Court Costs](#)
- [Judgments/Events](#)
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Click column headings to sort. Click again to toggle direction.

[Print Settings](#)

Date	Court	Post Jdgm	Docket Type	Reason/ Appearance Court	Results/ Setting Type	Comments	Requesting Party
5/15/2025 01:30 PM	129		Ancillary Docket In Person	TEMPORARY RESTRAINING ORDER (MOTION FOR)	Passed	IN OPEN COURT 5/15	LEWIS, U A

- [Services/Notices](#)
- [Court Registry](#)
- [Child Support](#)
- [Images](#)

COURT DIRECTIVE C87 / BOND SET/MODIFICATION

CAUSE NO. 191455201010

T H E S T A T E O F T E X A S

I N T H E 248th D I S T R I C T C O U R T

V S.

U N D E R W O O D , T O N Y

O F H A R R I S C O U N T Y , T E X A S

OFFENSE: AGG ASSAULT AGAINST PUBLIC SERVANT

TO THE SHERIFF OF HARRIS COUNTY, TEXAS: GREETINGS

BY ORDER OF THE COURT ON May 19, 2025, A.D. THE FOLLOWING ACTION IS DIRECTED IN THE ABOVE STYLED AND NUMBERED CAUSE:

BOND LOWERED TO \$150,000 BAIL DENIED:

Please select THE COURT HAS ORDERED THE FOLLOWING BAIL OPTIONS:

CONDITIONS OF BOND: Please select

NOTES TO SHERIFF:

WITNESS MY HAND AND SEAL OF OFFICE AT HOUSTON, TEXAS, THIS May 19, 2025 9:42 AM

Marilyn Burgess, DISTRICT CLERK

HARRIS COUNTY, TEXAS

BY: *Yviana Garcia*

V GARCIA

SNU: 997

BOND SET

Unofficial Copy Office of Marilyn Burgess District Clerk



CAUSE NO. 191455401010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 100,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR filed under 191452

Dated: May 19, 2025



Judge Presiding

CAUSE NO. 191455501010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT
v. §
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, **ORDERS** the defendant be:

- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 25,000
 Conditions
- Personal bond is: Not Approved
 Approved
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

PSR provided/filed by Pretrial

Dated: May 6, 2025



Judge Presiding

5/19/2025 10:11 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982036
By: Destinee Soliz
Filed: 5/19/2025 10:11 AM

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

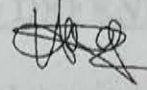
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



Presiding Judge
248th District Court



On 19 May 2025, this Court considered an oral motion by Timothy M. Douglas SRN 24079704, to permit the family members of Defendant to have access to a... speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Bea Taub Hosp... Unit, floor 4E, Room 26 in Harris County... treatment. Defendant remains in the custody of the Department or Harris County Sheriff's... officers.

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS

 Deputy

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 18881318 DOB 12 AUGUST 1907
2. SON: TONY DEWAYNE UNDERWOOD JR. TXN- 24079704 DOB 13 DECEMBER 2005
3. COUSIN: SHERIAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD 24079704 DOB 18 NOVEMBER 1978

IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents serving Defendant Underwood, Tony Dewayne Underwood, shall be permitted to have access to and the opportunity to speak with Defendant TONY DEWAYNE UNDERWOOD, SPN 02115800.

This order in no way limits the authority of the Houston Police Department and its respective officers.

5/19/2025 10:13 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 100982238
By: Destinee Soliz
Filed: 5/19/2025 10:13 AM

NO. 1914554

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

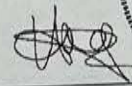
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025.

Signed:
5/19/2025



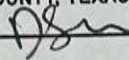
Presiding Judge
248th District Court

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this

5/19/25

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS



Deputy

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

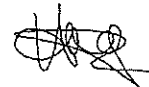
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025. DENIED UNTIL FURTHER NOTICE

Signed:
5/19/2025

A handwritten signature in black ink, appearing to be "J. A. Q.", written over a horizontal line.

Presiding Judge
248th District Court

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

**ORDER GRANTING WRIT OF HABEAS CORPUS AND DECLARATORY &
INJUNCTIVE RELIEF**

Before the Court is the *Amended Emergency Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief* filed by Petitioners Tony Underwood and Patricia Underwood. Upon consideration of the verified pleadings, the evidence presented, and the record before it, the Court FINDS that Petitioners have demonstrated an ongoing and irreparable deprivation of their rights under the Constitution of the United States.

It is therefore ORDERED that:

1. The Court hereby ISSUES a **Writ of Habeas Corpus** pursuant to 28 U.S.C. §§ 2241 and 2254, requiring that Respondents **immediately correct the unconstitutional conditions of confinement** imposed upon Tony Underwood by providing him with the

following minimum protections:

- a) **Immediate and confidential access to all retained and appointed legal counsel**, including unimpeded attorney-client communications;
 - b) **Regular and sustained in-person visitation with his mother, Patricia Underwood, and other designated family members**, consistent with his immobility and critical medical needs;
 - c) **Pastoral or spiritual visitation with an advisor of Mr. Underwood's choosing**, not merely one provided by institutional convenience or default;
 - d) **Ongoing and real-time communication with his next of kin regarding his medical condition**, including urgent updates about any life-threatening or deteriorating changes.
2. The Court DECLARES that the continued denial of access to legal counsel, family members, and chosen spiritual support constitutes a violation of Tony Underwood's rights under the **First, Sixth, Eighth, and Fourteenth Amendments** to the United States Constitution.
 3. The Court further DECLARES that **Patricia Underwood's protected liberty interest** in familial association and medical decision-making has been unlawfully infringed by Respondents, in violation of her **First and Fourteenth Amendment** rights.
 4. The Court ENJOINS Respondents from imposing blanket restrictions on Patricia Underwood's access to her son and further ORDERS that:
 - a) Patricia Underwood be notified **in real time of any changes** to Tony Underwood's medical condition;

- b) **Regular in-person** and video visitation with Tony Underwood be **scheduled and facilitated** without delay;
 - c) No access may be denied on an arbitrary, discretionary, or retaliatory basis.
5. The Court SETS ASIDE and DECLARES VOID the May 19, 2025, “Denied pending further notice” action issued by the Honorable Judge of the 248th Criminal District Court, on grounds that it was executed without justification, notice, or procedural due process.
6. The Court ORDERS that **no future restrictions on legal, familial, or spiritual access** to Tony Underwood may be imposed unless:
- a) **Reviewed and approved by this Court or a neutral judicial authority;**
 - b) **Notice is provided to retained civil and criminal counsel;** and
 - c) **Petitioners are afforded an opportunity to be heard.**
7. The Court GRANTS such further declaratory or injunctive relief as may be necessary to prevent the continuation or recurrence of constitutional violations, and to remedy the harm sustained by Petitioners.
8. The Court AWARDS costs and reasonable attorneys’ fees to Petitioners pursuant to 42 U.S.C. § 1988.

SO ORDERED.

Signed this ___ day of _____, 2025.

United States District Judge

Exhibit 1

Order Denying Family Access in Case No. 1914552

NO. 1914552

STATE OF TEXAS

IN THE DISTRICT COURT

v.

248th JUDICIAL DISTRICT

TONY DEWAYNE UNDERWOOD

HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 19 May 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following named family members of Defendant to have access to and the opportunity to speak in private with Defendant TONY DEWAYNE UNDERWOOD, who is presently hospitalized at Ben Taub Hospital Surgical Intensive Care Unit, Floor 4E, Room 26 in Harris County, Texas receiving medical treatment. Defendant remains in the custody of the Houston Police Department or Harris County Sheriff's Office, respectively, and its officers.

1. MOTHER: PATRICIA ANN UNDERWOOD, TEXAS IDENTIFICATION CARD NUMBER 10060715, DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS, TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979

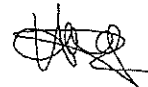
IT IS HEREBY ORDERED that the Houston Police Department and its respective officers, the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to and the opportunity to speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Houston Police Department and its respective officers or the Harris County Sheriff's

Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others. Defendant and counsel must be permitted to communicate in a way that does not compromise the attorney-client privilege and opportunity for Defendant and counsel to engage in confidential communications.

SIGNED AND ENTERED on ____ May 2025. DENIED UNTIL FURTHER NOTICE

Signed:
5/19/2025

A handwritten signature in black ink, appearing to be "J. A. Q.", written over a horizontal line.

Presiding Judge
248th District Court

Exhibit 2

Bail Order and Bond Modification

CAUSE NO. 191455201010

THE STATE OF TEXAS § IN THE 248th DISTRICT COURT Pgs-1
v. § ADDO
UNDERWOOD, TONY § HARRIS COUNTY, TEXAS (993)

BAIL ORDER

On this date the Court, after individualized consideration of all circumstances and of the factors required by Texas Code of Criminal Procedure Article 17.15, ORDERS the defendant be:


- Granted a Personal Bond *without* conditions;
- Granted a Personal Bond with conditions;
- Granted a Surety or Cash Bond *without* conditions;
- Granted a Surety or Cash Bond with conditions; or
- Denied Bail in accordance with the Texas Constitution and other law.

Having informed the defendant in clear and unambiguous language and providing the defendant with information required by law, the Court imposed the least restrictive conditions, if any, set the bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense as follows:

- Bail is set at: No Bail
 150,000
 Conditions
- Personal bond is: Not Approved
 Approved _____
 Conditions

Pursuant to Texas Code of Criminal Procedure art 17.022 and Texas Government Code § 72.038, I hereby certify that in setting this bail that I considered each factor of Texas Code of Criminal Procedure art. 17.15(a), and I certify that I considered the information in the Public Safety Report System. I hereby authorize the Harris County District Clerk to enter the required certification in the Public Safety Report System on my behalf.

Dated: May 19, 2025



Judge Presiding



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 19, 2025

Certified Document Number: 120621696 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

COURT DIRECTIVE C87 / BOND SET/MODIFICATION

CAUSE NO. 191455201010

T H E S T A T E O F T E X A S
VS.
UNDERWOOD, TONY

IN THE 248th DISTRICT COURT
OF HARRIS COUNTY, TEXAS

OFFENSE: AGG ASSAULT AGAINST PUBLIC SERVANT

TO THE SHERIFF OF HARRIS COUNTY, TEXAS: GREETINGS

BY ORDER OF THE COURT ON May 19, 2025, A.D. THE FOLLOWING ACTION IS DIRECTED IN THE ABOVE STYLED AND NUMBERED CAUSE:

BOND LOWERED TO \$150,000 BAIL DENIED:

Please select THE COURT HAS ORDERED THE FOLLOWING BAIL OPTIONS:

CONDITIONS OF BOND: Please select

NOTES TO SHERIFF:

WITNESS MY HAND AND SEAL OF OFFICE AT HOUSTON, TEXAS, THIS May 19, 2025 9:42 AM

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

BY *Yviana Garcia*

V GARCIA

SNU: 997

BOND SET





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 19, 2025

Certified Document Number: 120630041 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

ORDER

This court, having read the motion to dismiss, and any response HEREBY:

GRANTS the motion.

This court lacks jurisdiction to grant a habeas writ. Jurisdiction lies with the state criminal court. This court recognizes that a state civil court has already ruled that the criminal court has sole jurisdiction.

Further none of the bases for the writ exist: Mr. Underwood has been charged and given bond. He has a criminal defense attorney.

IT IS SO ORDERED.

DATE: _____

KEITH P. ELLISON
U.S. DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

§
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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

HARRIS COUNTY’S MOTION TO DISMISS

Harris County files this motion to dismiss under Rules 12(b)(1) and (b)(6) in this federal habeas action and will show the court the following:

I. BACKGROUND

1. Tony Underwood was recently shot by Houston Police. He was arrested and bond was given. *State of Texas v. Tony DeWayne Underwood*, Cause No. 1914552, 248th Criminal Court, Judge Hilary Unger. He is charged with aggravated assault of a public servant. All of this is public record. See **Exhibits 1 and 2**.
2. He is currently in Ben Taub Hospital being treated for his wounds. His family is complaining of a lack of access to him and have fashioned this as a due process violation.
3. He has been appointed a criminal defense attorney, Mr. Timothy Donohue.
4. He is not in the Harris County jail and is not being treated by Harris Health.

5. He is under guard at the hospital with two Harris County deputies, who are governed by the attached criminal court order, signed on May 19, 2025. Exhibit 1. The judge has denied access to the family.

6. Earlier this month, another lawyer, Ms. UA Lewis, filed a habeas petition in state civil court. It was dismissed because the civil court lacked jurisdiction. Ms. Lewis went to the criminal court where Mr. Underwood's charges are pending, and the judge denied the habeas request. **Exhibit 1**.

7. Now, a third lawyer, Ms. Courtney Vincent, has essentially the same habeas action in federal court, even though only the criminal court has jurisdiction.

8. The family's remedy remains in the criminal court where Underwood's charges are pending. But in truth, this is not a habeas proceeding.

II. ANALYSIS

9. Underwood generally alleges he has not been charged. He has. That he has not been given bond. He has. See **Exhibit 2**. He has a criminal attorney, Mr. Donahue.

10. Further, this court lacks jurisdiction; it belongs to the criminal court. Further, Harris County and its deputies are governed by the court's order denying access. The family's remedy is to return to criminal court and seek access. Relatedly, the court has a motion to dismiss Ben Taub and Harris Health. DE 14.

11. Again, there is no factual basis to assert that Mr. Underwood is not properly detained: he was charged and been given a \$150,000 bond by Judge Unger. **Exhibits 1 and 2**. This is not really a habeas issue; only an issue that Mr. Underwood's family has not been allowed to see him.

Habeas is defined this way:

In our own system the Suspension Clause is designed to protect against these cyclical abuses. The Clause protects the rights of the detained by a means consistent with the essential design of the Constitution. It ensures that, except during periods of formal suspension, the Judiciary will have a time-tested device, the writ, to maintain the “delicate balance of governance” that is itself the surest safeguard of liberty. See *Hamdi*, 542 U.S., at 536, 124 S.Ct. 2633 (plurality opinion). The Clause protects the rights of the detained by affirming the duty and authority of the Judiciary to call the jailer to account. See *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) (“**[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody**”); cf. *In re Jackson*, 15 Mich. 417, 439–440 (1867) (Cooley, J., concurring) (“The important fact to be observed in regard to the mode of procedure upon this [habeas] writ is, that it is directed to, and served upon, not the person confined, but his jailer”). The separation-of-powers doctrine, and the history that influenced its design, therefore must inform the reach and purpose of the Suspension Clause.

Boumediene v. Bush, 553 U.S. 723, 745–46, 128 S. Ct. 2229, 2247, 171 L. Ed. 2d 41 (2008), *judgment entered*, No. 07A1011, 2008 WL 11579668 (U.S. June 19, 2008).

12. This federal filing is not an attack on the legality of Mr. Underwood’s custody; just that they have not gotten access. He has been charged, he has a criminal lawyer, and he has been given bond. Again, the family is not without remedy; it lies with the criminal court where Mr. Underwood’s charges are pending. Until the court changes its order – to the extent Harris County is his jailer as he recovers in the hospital – the deputies must abide by it. The court should dismiss this writ and Harris County.

Date: June 2, 2025.

Respectfully submitted,

CHRISTIAN D. MENEFE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE

DEPUTY COUNTY ATTORNEY AND FIRST
ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, &
REAL ESTATE DIVISIONS

By: /s/ Suzanne Bradley
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Suzanne.Bradley@harriscountytexas.gov

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Assistant County Attorney
ATTORNEY TO BE NOTICED
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State Bar No. 24012642
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OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
Tel: (713) 274-5330 (direct)

**ATTORNEYS FOR DEFENDANT
HARRIS COUNTY**

CERTIFICATE OF SERVICE

I certify that, on June 2, 2025, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Suzanne Bradley
Suzanne Bradley

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Tony Underwood
Petitioner,

v.

Case No. 4:25-cv-02089

City of Houston
Respondent.

NOTICE OF SETTING

PLEASE TAKE NOTICE

HEARING: **Motion Hearing**
RE: Amended Complaint/Counterclaim/Crossclaim etc. – #18
Motion to Dismiss for Failure to State a Claim – #19

DATE: **6/3/2025**

TIME: **04:00 PM**

HAS BEEN SET BEFORE

JUDGE KEITH P. ELLISON

ALL PARTIES MAY APPEAR BY TELEPHONE BY CALLING IN
ON THE COURT'S DIAL-IN NUMBER AT +1 669-254-5252.

Enter Meeting ID: 160 7362 7986#

No participant ID – press #, Followed by Passcode: 3716#.

IF THE PARTIES WOULD LIKE TO JOINTLY REQUEST AN IN-PERSON HEARING,
PLEASE NOTIFY ARTURO RIVERA BY EMAIL.

Nathan Ochsner, Clerk

Date: June 3, 2025

By Deputy Clerk, A. Rivera

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Tony Underwood
Petitioner,

v.

Case No. 4:25-cv-02089

City of Houston
Respondent.

NOTICE OF SETTING

PLEASE TAKE NOTICE

HEARING: **Motion Hearing**
RE: Amended Complaint/Counterclaim/Crossclaim etc. – #18
Motion to Dismiss for Failure to State a Claim – #19

DATE: **6/4/2025**

TIME: **01:00 PM**

HAS BEEN SET BEFORE

JUDGE KEITH P. ELLISON

ALL PARTIES MAY APPEAR BY TELEPHONE BY CALLING IN
ON THE COURT'S DIAL-IN NUMBER AT +1 669-254-5252.

Enter Meeting ID: 160 7362 7986#

No participant ID – press #, Followed by Passcode: 3716#.

IF THE PARTIES WOULD LIKE TO JOINTLY REQUEST AN IN-PERSON HEARING,
PLEASE NOTIFY ARTURO RIVERA BY EMAIL.

Nathan Ochsner, Clerk

Date: June 3, 2025

By Deputy Clerk, A. Rivera

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) CITY OF HOUSTON was received by me on (date) 06.02.25.

I personally served the summons on the individual at (place) on (date); or

I left the summons at the individual's residence or usual place of abode with (name), a person of suitable age and discretion who resides there, on (date), and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) TRACY STEWART, who is designated by law to accept service of process on behalf of (name of organization) ADMINISTRATIVE ASSISTANT on (date) 06.02.25; or

I returned the summons unexecuted because; or

Other (specify):

My fees are \$ for travel and \$ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 06.02.25

Server's signature

KEVIN YATES
Printed name and title DSC # 11672 Exp 10.31.26

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 4:25-cv-02089

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (d))

This summons for (name of individual and title, if any) HARRIS COUNTY was received by me on (date) 06.02.25.

I personally served the summons on the individual at (place) on (date) ; or

I left the summons at the individual's residence or usual place of abode with (name), a person of suitable age and discretion who resides there, on (date), and mailed a copy to the individual's last known address; or

I served the summons on (name of individual) SHARON WHIGHAM, who is designated by law to accept service of process on behalf of (name of organization) HARRIS COUNTY PARALEGAL FOR JUDGE HIDALGO on (date) 06.02.25 ; or

I returned the summons unexecuted because ; or

Other (specify):

My fees are \$ for travel and \$ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 06.02.25

Server's signature

KEVIN LYLES Printed name and title

3232 PARKWOOD DR HOUSTON TX 77021 Server's address

Additional information regarding attempted service, etc:

EXHIBIT A



191455201010 - The State of Texas vs. UNDERWOOD, TONY (Court 248)

[Print All](#) (non-financial)

Summary

[Preview DocketSheet](#)

Add docket sheet to basket

[Print Summary](#)

[DA DEFENSE PORTAL](#) – by clicking on this link, you will be leaving the District Clerk site and going to the District Attorney site.

Case (Cause) Summary

Case	191455201010 - 3
File Date	5/1/2025
Case (Cause) Status	Active - CRIMINAL
Offense	AGG ASSAULT AGAINST PUBLIC SERVANT
Last Instrument Filed	Complaint
Case Disposition	
Case Completion Date	N/A
Defendant Status	JAIL
Bond Amount	\$150,000.00
Next/Last Setting Date	6/17/2025

[DA DEFENSE PORTAL](#) – by clicking on this link, you will be leaving the District Clerk site and going to the District Attorney site.

Defendant Details

Race/Sex	B / M	Height/Weight	5'11 / 165 LBS
Eyes	BRO	Hair	BRO
Skin	MED	Build	MED
DOB	8/15/1987	In Custody	Y (Locate)
US Citizen	Yes	Place Of Birth	TX
Address	4222 GUNTER, HOUSTON, TX 77020		

Markings

The Current Presiding Judge

Current Court	248 th
Address	1201 Franklin (Floor: 16) Houston, TX 77002 Phone:8329273875
JudgeName	Hilary Unger
Court Type	Criminal

EXHIBIT B

**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas**

**Independent Auditor's Report and
Financial Statements**

September 30, 2022



**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
September 30, 2022**

Contents

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Schedule of Changes in the System’s Total OPEB Liability and Related Ratios.....	53



14241 Dallas Parkway, Suite 1100 / Dallas, TX 75254

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forvis.com

Independent Auditor's Report

Board of Trustees
Harris County Hospital District
d/b/a Harris Health System
Houston, Texas

Opinions

We have audited the financial statements of the business-type activities and the aggregate discretely presented component units of Harris County Hospital District, d/b/a Harris Health System (the System), a component unit of Harris County, Texas, as of and for the seven-months ended September 30, 2022 and the related notes to the financial statements, which collectively comprise the System's basic financial statements as listed in the table of contents.

In our opinion, based on our audit and the report of other auditors, the accompanying financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities and the aggregate discretely presented component units of the System as of September 30, 2022, and the respective changes in financial position and, where applicable, cash flows thereof for the seven-months then ended in accordance with accounting principles generally accepted in the United States of America.

We did not audit the financial statements of the Harris County Hospital District Foundation (Foundation), a discretely presented component unit of the System, which represents 5.0 percent of total assets, 11.1 percent of net position, and 0.2 percent of revenues of the aggregate discretely presented component units as of and for the seven-months ended September 30, 2022. Those statements were audited by other auditors, whose report has been furnished to us, and our opinions, insofar as it relates to the amounts included for the Foundation, is based solely on the report of the other auditors.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the "Auditor's Responsibilities for the Audit of the Financial Statements" section of our report. We are required to be independent of the System and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Board of Trustees
Harris County Hospital District
d/b/a Harris Health System
Page 2

Emphasis of Matter

As discussed in *Note 2* to the financial statements, on March 1, 2022, the District adopted Governmental Accounting Standards Board (GASB) Statement No. 87, *Leases*. Our opinions are not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the System's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the System's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the System's ability to continue as a going concern for a reasonable period of time.

Board of Trustees
Harris County Hospital District
d/b/a Harris Health System
Page 3

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the pension, and other postemployment benefit information, as listed in the table of contents, be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Management has omitted management's discussion and analysis information that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinions on the basic financial statements are not affected by this missing information.

FORVIS,LLP

Dallas, Texas
February 9, 2023

**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas**

**Statement of Net Position
September 30, 2022
(In thousands)**

	Component Units			
	Harris Health System	Foundation February 28, 2022	Community Health Choice, Inc. December 31, 2021	Community Health Choice Texas, Inc. December 31, 2021
Assets and Deferred Outflows of Resources				
Current Assets				
Cash and cash equivalents	\$ 565,426	\$ 165	\$ 44,217	\$ 383,980
Short-term investments	257,382	-	-	-
Accounts receivable – net of allowance for uncollectible accounts of \$44,138	114,899	-	-	-
Inventories	10,669	-	-	-
Medicaid supplemental programs receivable	481,352	-	-	-
Prepaid expenses and other current assets	29,409	3,899	228,480	82,305
Estimated third-party payor settlements	56,571	-	-	-
Due from Community Health Choice, Inc.	9,465	-	-	63,833
Restricted cash and cash equivalents - Local Provider Participation Fund	71,007	-	-	-
Current portion of assets limited as to use or restricted	7,904	-	-	-
	<u>1,604,084</u>	<u>4,064</u>	<u>272,697</u>	<u>530,118</u>
Assets Limited as to Use or Restricted – Net of Current Portion				
Debt service	25,790	-	-	-
Capital gift proceeds	45,341	-	-	-
Series 2020 capital asset fund	6,196	-	-	-
Other	1,048	33,677	3,325	100
	<u>78,375</u>	<u>33,677</u>	<u>3,325</u>	<u>100</u>
Total assets limited as to use or restricted – net	<u>78,375</u>	<u>33,677</u>	<u>3,325</u>	<u>100</u>

See notes to financial statements

Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Statement of Net Position (Continued)
September 30, 2022
(In thousands)

Assets and Deferred Outflows of Resources (Continued)	Component Units			
	Harris Health System	Foundation February 28, 2022	Community Health Choice, Inc. December 31, 2021	Community Health Choice Texas, Inc. December 31, 2021
Capital Assets				
Land and improvements	\$ 47,449	\$ -	\$ -	\$ -
Buildings and fixed equipment	729,395	-	-	-
Major movable equipment	439,439	-	-	-
Less accumulated depreciation	(801,364)	-	-	-
Total depreciable capital assets – net	414,919	-	-	-
Construction in progress	171,764	-	-	-
Capital assets – net	586,683	-	-	-
Lease Assets, Net	47,888	-	-	-
Other Assets				
Ad valorem taxes receivable – net of current portion and allowance for uncollectible taxes of \$49,748	3,140	-	-	-
Long-term investments	-	-	-	6,223
Other assets	8,040	4,874	-	-
Total other assets	11,180	4,874	-	6,223
Total assets	2,328,210	42,615	276,022	536,441
Deferred Outflows of Resources				
Derivative financial instrument	385	-	-	-
Resources related to pension	72,781	-	-	-
Resources related to OPEB	115,371	-	-	-
Loss on refunding revenue bonds	7,180	-	-	-
Total deferred outflows of resources	195,717	-	-	-
Total assets and deferred outflows of resources	\$ 2,523,927	\$ 42,615	\$ 276,022	\$ 536,441

See notes to financial statements

Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Statement of Net Position (Continued)
September 30, 2022
(In thousands)

Liabilities, Deferred Inflows of Resources and Net Position	Component Units			
	Harris Health System	Foundation February 28, 2022	Community Health Choice, Inc. December 31, 2021	Community Health Choice Texas, Inc. December 31, 2021
Current Liabilities				
Accounts payable and accrued liabilities	\$ 149,543	\$ 145	\$ 19,889	\$ 14,351
Interest payable	1,076	-	-	-
Employee compensation and related benefit liabilities	49,608	-	-	-
Postemployment health benefit liability	17,057	-	-	-
Compensated absences	57,781	-	-	-
Intergovernmental transfer obligation	84,885	-	-	-
Medical claims liability	-	-	73,503	228,466
Premium deficiency reserve	-	-	13,226	843
Experience rebate payable	-	-	-	33,797
Liabilities related to the Affordable Care Act	-	-	11,320	-
Due to Harris Health System	-	-	12,659	-
Due to Community Health Choice Texas, Inc.	-	-	63,833	-
Estimated third-party payor settlements	13,537	-	-	-
Current portion of long-term debt	12,495	-	-	-
Current portion of lease liabilities	8,231	-	-	-
Total current liabilities	394,213	145	194,430	277,457
Other Long-Term Liabilities				
Postemployment health benefit liability	445,471	-	-	-
Net pension liability	155,191	-	-	-
Lease liabilities	40,335	-	-	-
Borrowing payable	7,762	-	-	-
Derivative liability	385	-	-	-
Long-Term Debt				
Series 2010 refunding revenue bonds	77,325	-	-	-
Series 2016 refunding revenue bonds - including premium of \$9,834	144,784	-	-	-
Series 2016 certificates of obligation - including premium of \$4,132	51,537	-	-	-
Series 2020 certificates of obligation - including premium of \$3,222	26,787	-	-	-
Total liabilities	1,343,790	145	194,430	277,457

See notes to financial statements

Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Statement of Net Position (Continued)
September 30, 2022
(In thousands)

	Component Units			
	Harris Health System	Foundation February 28, 2022	Community Health Choice, Inc. December 31, 2021	Community Health Choice Texas, Inc. December 31, 2021
Liabilities, Deferred Inflows of Resources and Net Position (Continued)				
Deferred Inflows of Resources				
Resources related to pension	88,153	-	-	-
Resources related to OPEB	130,542	-	-	-
Total deferred inflows of resources	218,695	-	-	-
Net Position				
Net investment in capital assets	263,716	-	-	-
Restricted for debt service	33,553	-	-	-
Restricted for purchase of capital assets	45,341	-	-	-
Restricted – other	930	38,110	3,325	100
Unrestricted	617,902	4,360	78,267	258,884
Total net position	961,442	42,470	81,592	258,984
Total liabilities, deferred inflows of resources and net position	\$ 2,523,927	\$ 42,615	\$ 276,022	\$ 536,441

Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Statement of Revenues, Expenses and Changes in Net Position
Seven-months Ended September 30, 2022
(In thousands)

	Component Units			
	Harris Health System	Foundation February 28, 2022	Community Health Choice, Inc. December 31, 2021	Community Health Choice Texas, Inc. December 31, 2021
Operating Revenues				
Net patient service revenue	\$ 396,517	\$ -	\$ -	\$ -
Medicaid supplemental programs revenue	583,321	-	-	-
Premium revenue	-	-	794,445	1,381,057
Other operating revenues	61,422	5,257	494	-
Total operating revenues	<u>1,041,260</u>	<u>5,257</u>	<u>794,939</u>	<u>1,381,057</u>
Operating Expenses				
Salaries, wages, and benefits	631,301	497	15,006	59,807
Pharmaceuticals and supplies	162,785	1	2,241	8,223
Physician services	242,500	-	-	-
Medical claims expense	-	-	728,983	1,209,353
Other purchased services	151,623	4,194	63,153	60,568
Depreciation and amortization	42,402	-	-	-
Total operating expenses	<u>1,230,611</u>	<u>4,692</u>	<u>809,383</u>	<u>1,337,953</u>
Operating Income (Loss)	<u>(189,351)</u>	<u>565</u>	<u>(14,444)</u>	<u>43,104</u>
Nonoperating Revenues (Expenses)				
Ad valorem tax revenues – net	2,237	-	-	-
Tobacco settlement revenues	16,745	-	-	-
Investment income	8,990	7,843	6	88
Interest expense	(6,938)	-	(1,154)	-
Capital grants to Harris Health System	-	(45,900)	-	-
Provider Relief Fund revenue	20,893	-	-	-
Other, net	(193)	(182)	-	1,154
Total nonoperating revenues (expenses) – net	<u>41,734</u>	<u>(38,239)</u>	<u>(1,148)</u>	<u>1,242</u>
Changes in Net Position	<u>(147,617)</u>	<u>(37,674)</u>	<u>(15,592)</u>	<u>44,346</u>
Net Position – Beginning of Period	<u>1,109,059</u>	<u>80,144</u>	<u>97,184</u>	<u>214,638</u>
Net Position – End of Period	<u>\$ 961,442</u>	<u>\$ 42,470</u>	<u>\$ 81,592</u>	<u>\$ 258,984</u>

**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Statement of Cash Flows
Seven-months Ended September 30, 2022
(In thousands)**

Cash Flows from Operating Activities	
Receipts from and on behalf of patients	\$ 391,794
Receipts from Medicaid supplemental programs	359,389
Receipts from incentive programs and grants	4,786
Receipts from other revenues	60,325
Payments to suppliers	(549,437)
Payments to employees and for employee benefits	(677,833)
	<u>(410,976)</u>
Cash Flows from Noncapital Financing Activities	
Contributions and other – net	7
Ad valorem taxes – net	25,822
Receipt of Provider Relief Funds	20,453
Interest paid	(475)
Tobacco settlement revenues	16,745
	<u>62,552</u>
Cash Flows from Capital and Related Financing Activities	
Acquisitions and construction of capital assets	(61,959)
Interest paid on long-term debt and leases payable	(7,078)
Principal paid on long-term debt and leases payable	(6,645)
	<u>(75,682)</u>
Cash Flows from Investing Activities	
Receipts of investment income – including realized gains and losses	6,818
Decrease in cash equivalents included in assets limited as to use or restricted	59,077
Purchases of investment securities	(550,574)
Proceeds from sale and maturities of investment securities	765,360
	<u>280,681</u>
Net Decrease in Cash and Cash Equivalents	(143,425)
Cash and Cash Equivalents - Beginning of Period	<u>708,851</u>
Cash and Cash Equivalents - End of Period	<u>\$ 565,426</u>

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Statement of Cash Flows (Continued)
Seven-months Ended September 30, 2022
(In thousands)**

Reconciliation of Operating Loss to Net Cash Used in Operating Activities	
Operating loss	\$ (189,351)
Adjustments to reconcile operating loss to net cash used in operating activities:	
Depreciation and amortization	42,402
Changes in operating assets and liabilities:	
Increase in accounts receivable	12,754
Increase in inventories	230
Decrease in Medicaid supplemental program receivable	(222,289)
Increase in prepaid expenses and other assets	3,243
Decrease in estimated third-party payor settlements	(18,033)
Increase in accounts payable and accrued liabilities	7,705
Decrease in employee compensation and related benefit liabilities	(2,543)
Increase in compensated absences	2,093
Decrease in Medicaid supplemental programs revenue received in advance	(1,643)
Decrease in estimated third-party payor settlements	(30)
Decrease in deferred outflows of resources - pension	(35,053)
Decrease in deferred outflows of resources - OPEB	(10,461)
	<u>(221,625)</u>
Total adjustments	<u>(221,625)</u>
Net cash used in operating activities	<u>\$ (410,976)</u>

Supplemental Disclosures of Noncash Operating, Financing and Investing Activities

Unrealized loss on investments	\$ 100
Amounts related to acquisition of capital assets in accounts payable and accrued liabilities	30,745
Lease obligation incurred for lease assets	4,863

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Note 1: Organization and Mission

Harris County Hospital District, d/b/a Harris Health System, (the System), a component unit of Harris County, Texas, was created by authorization of the legislature of the State of Texas and subsequent approval by the voters of Harris County, Texas, in November 1965. The System provides patient care to the indigent population of Harris County and receives property taxes levied by Harris County for the provision of this care. The System operates two acute care hospitals and a psychiatric unit, with a total of 617 licensed beds. The System also operates 18 primary care health clinics including the nation's first free-standing HIV/AIDS treatment center; three large multi-specialty clinics; five same day clinics; a free-standing dental center; a dialysis center; a geriatric assessment center; six homeless shelter clinics; and a mobile immunization and medical outreach program. The System is exempt from federal income taxes.

The System is a component unit of Harris County, Texas (legally separate from Harris County, Texas) since the members of the System's governing board are appointed by the Harris County Commissioners' Court. The Harris County Commissioners' Court approves the System's tax rate and annual operating and capital budget. Harris County, Texas does not provide any funding to the System, hold title to any of the System's assets or have any rights to any surpluses of the System.

The System's primary mission is to provide quality preventive, medical, hospital and emergency care to the indigent and needy of Harris County and to others with the ability to pay. All activities conducted by the System are directly associated with the furtherance of this mission and are, therefore, considered to be operating activities.

The Harris County Hospital District Foundation (the Foundation), was organized in 1993. The Foundation is a nonprofit, tax-exempt corporation organized under Section 501(c)(3) of the Internal Revenue Code whose primary purpose is to raise funds to support the operations and activities of the System. Although the System does not control the timing or amount of receipts from the Foundation, the majority of resources (or income thereon) that the Foundation holds and invests is restricted to the activities of the System by the donor. Because these restricted resources held by the Foundation can only be used by, or for the benefit of, the System, the Foundation is considered a component unit of the System and is included in the System's financial statements. The Foundation is reported as a discretely presented component unit of the System. Financial reports for the Foundation can be obtained from the Harris County Hospital District Foundation, 4800 Fournace Place, Bellaire, Texas 77401. Attention: Jeffrey Baker, Executive Director (Jeffrey.Baker@harrishealth.org).

Community Health Choice, Inc. and Community Health Choice Texas, Inc. (the HMOs) are Texas not-for-profit corporations organized under Section 501(c)(4) of the Internal Revenue Code to operate as health maintenance organizations. Community Health Choice, Inc. was incorporated on May 8, 1996, licensed by the Texas Department of Insurance on February 27, 1997, and as of December 31, 2021, offered three Medicaid insurance products as well as individual health insurance on the Health Insurance Marketplace. Community Health Choice Texas, Inc. was formed in August 2016 to allow the Health Insurance Marketplace and the Medicaid insurance

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products to be provided and served by separate corporations. Community Health Choice, Inc. is the Health Insurance Marketplace and commercial HMO with 85,005 enrollees as of December 31, 2021, and Community Health Choice Texas, Inc. is the Medicaid Managed Care HMO with 369,520 enrollees as of December 31, 2021. The HMOs are reported as discretely presented component units of the System since the Board of Directors are appointed by the System's Board of Trustees and the System can impose its will on the HMOs. The differences in amounts due to the System and due from the HMOs in the accompanying statement of net position are primarily due to the presentation of the HMOs financials based on their fiscal year-end of December 31. Financial reports for the HMOs can be obtained from Community Health Choice, Inc., 2636 South Loop West, Ste. 125, Houston, Texas 77054, Attention: Anna Mateja, Chief Financial Officer (Anna.Mateja@CommunityHealthChoice.org).

Unless otherwise noted, the following notes do not include the Foundation or the HMOs.

Effective March 1, 2022, the System changed its reporting year end from February 28 to September 30. The accompanying statement of revenues, expenses and changes in net position of the System reflects its activities for the seven-month period ended September 30, 2022. The financial statements of the Foundation are as of and for the year ended February 28, 2022. The financial statements of the HMOs are as of and for the year ended December 31, 2021. These periods are the most recent fiscal years ended for these component units.

Note 2: Summary of Significant Accounting Policies

Basis of Accounting

The accompanying financial statements are prepared on the accrual basis of accounting.

Method of Accounting

Under the provisions of the American Institute of Certified Public Accountants' *Audit and Accounting Guide, Health Care Organizations*, the System is considered a governmental organization and is subject to the pronouncements of the Governmental Accounting Standards Board (GASB).

In accordance with GASB Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, the System's financial statements include the statement of net position; statement of revenues, expenses and changes in net position; and statement of cash flows.

The statement of net position requires that total net position be reported in three components (a) net investment in capital assets, (b) restricted; and (c) unrestricted.

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- "Net investment in capital assets" consists of capital and lease assets, net of accumulated depreciation and amortization, reduced by the amount outstanding for any bonds, notes, or other financing liabilities that were incurred related to the acquisition, construction or improvement of the capital assets.
- "Restricted" consists of restricted assets reduced by liabilities and deferred inflows of resources related to the assets and are primarily for debt service and capital asset acquisition.
- "Unrestricted" is the net amount of the assets, deferred outflows of resources, liabilities and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position.

When an expense is incurred for purposes for which there are both restricted and unrestricted net position available, it is the System's practice to apply that expense to restricted net position to the extent such are available and then to unrestricted.

The Foundation is a private not-for-profit organization that reports under Financial Accounting Standards Board pronouncements. As such, certain revenue recognition criteria and presentation features are different from that of the GASB. The Foundation's financial statement formats were modified to make them compatible with the System's financial statement formats.

The HMOs are licensed only in the state of Texas and report under Governmental Accounting Standards Board pronouncements. The HMOs' financial statement formats were modified to make them compatible with the System's financial statement formats.

Reporting Entity

The financial statements include the accounts of the System, the Foundation and the HMOs, as described in *Note 1*. In accordance with GASB Statement No. 61, *The Financial Reporting Entity: Omnibus – An Amendment of GASB Statements Nos. 14 and 34*, the System reports the HMOs and the Foundation as discretely presented component units in its financial statements. Management of the System believes the separate presentation of the System's statements and of each discretely presented component unit to be the most reflective of the System's activities.

Transactions between the System and its component units include the following:

The System provides certain administrative services to the HMOs including employment of all individuals who perform the day-to-day requirements of the business functions of the HMOs. The HMOs reimburse the System for such salaries, wages and benefits and these costs are reflected as expenses of the HMOs. An additional fee for indirect costs approximating \$1.7 million for the seven-month period ended September 30, 2022 is included as a revenue and expense in the System's financial statements. The System pays a portion of the premiums for enrollees to Community Health Choice, Inc. for insurance coverage under the insurance plans that are offered as part of the HMO's mission. Premiums paid on behalf of enrollees were \$14 million for the seven-month period ended September 30, 2022, which is included as expense and revenue in the System's financial statements.

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The System supports the Foundation with payments for goods and services of approximately \$322 thousand for the seven-month period ended September 30, 2022, which are recognized in the Foundation financial data as in-kind contributions and expenses. The Foundation provided support to the System for projects and grants of \$662 thousand for the seven-month period ended September 30, 2022.

Cash, Cash Equivalents and Short-term Investments

Cash and cash equivalents include cash and investments that are highly liquid with maturities of less than three months when purchased, and excludes cash and cash equivalents that are restricted or limited as to use. Short-term investments are investments with maturities in excess of three months, but less than a year, when purchased.

The System's and HMO's cash, cash equivalents and short-term investments are invested in fully collateralized time deposits, commercial paper, money market mutual funds, investment pools and government securities as authorized by Chapter 281 of the *Texas Health and Safety Codes* and Chapter 116 of the *Texas Local Government Code*, except as disclosed in *Note 6*. Such total collateralization and insurance coverage is required by the Board of Trustees of the System. The Foundation's investments, however, are not subject to these laws.

Investments are reported at fair value, with realized and unrealized gains and losses included in investment income in the statement of revenues, expenses and change in net position.

Foundation Net Position

Gifts of cash and other assets received without donor stipulations are reported as unrestricted revenue and net position. Gifts received with a donor stipulation that limits their use are reported as restricted net position. When a donor stipulated time restriction ends or purpose restriction is accomplished, restricted net position is reclassified to unrestricted net position. The majority of pledges recorded are externally imposed to the System's expansion projects. Pledges are included in other assets in the statement of net position.

Inventories

Inventories are valued at the lower of cost, using the first-in, first-out method, or market and consist principally of pharmaceuticals.

Capital Assets

Property, plant and equipment are carried at cost or acquisition value at the time of donation and include expenditures for new facilities and equipment and expenditures that substantially increase the useful life of existing capital assets. Ordinary maintenance and repairs are charged to expense when incurred. Capitalization is limited to assets with a cost of \$5,000 or greater.

Disposals are removed at carrying cost less accumulated depreciation, with any resulting gain or loss included in other nonoperating revenue and expenses. Depreciation is recorded on the straight-line method over the estimated useful lives of the assets.

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Estimated useful lives for buildings are up to 40 years and for equipment are 2 to 25 years. Equipment under capital leases is amortized on the straight-line method over the lesser of the useful life of the equipment or the lease term. Such amortization is included in depreciation and amortization in the accompanying statement of revenues, expenses and changes in net position.

Lease Assets

Lease assets are initially recorded at the initial measurement of the lease liability, plus lease payments made at or before the commencement of the lease term, less any incentives received from the lessor at or before the commencement of the lease, plus initial direct costs that are ancillary to place the asset in service. Lease assets are amortized on a straight-line basis over the shorter of the lease term or the useful life of the underlying asset. The System has a capitalization policy to only record lease assets related to leases with more than \$5 thousand of payments over the lease term.

Capital and Lease Asset Impairment

The System evaluates capital and lease assets for impairment whenever events or circumstances indicate a significant, unexpected decline in the service utility of a capital or lease asset has occurred. If a capital or lease asset is tested for impairment and the magnitude of the decline in service utility is significant and unexpected, accumulated depreciation or amortization is increased by the amount of the impairment loss. No material asset impairment was recognized during the seven-month period ended September 30, 2022.

Risk Management

The System is exposed to various risks of loss from torts; theft of, damage to and destruction of assets; business interruption; errors and omissions; employee injuries and illnesses; natural disasters; medical malpractice; and employee health, dental and accident benefits. Commercial insurance coverage is purchased for claims arising from such matters other than medical malpractice and employee health claims. Settled claims have not exceeded this commercial coverage in any of the three preceding years.

The System is self-insured for a portion of its exposure to risk of loss from medical malpractice and employee health claims. Annual estimated provisions are accrued for the self-insured portion of medical malpractice and employee health claims and include an estimate of the ultimate costs for both reported claims and claims incurred but not yet reported.

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Compensated Absences

The System maintains a paid time-off plan. Under the paid time-off plan, the cost of all compensated absences is accrued at the time the benefits are earned. At the option of the employee, unused benefits may be liquidated at 50.0 percent or at the time of termination are payable at 75.0 percent. Changes in the System's liability for compensated absences for the seven-month period ended September 30, 2022 are as follows (in thousands).

Beginning of Period Liability	Claims and Change in Estimates	Claim Payments	End of Period Liability
\$ 55,688	\$ 49,797	\$ 47,704	\$ 57,781

Classification of Revenues and Expenses

Operating revenues include those generated from direct patient care and related support services. Nonoperating revenues consist of those revenues that are related to financing and investing types of activities and result from nonexchange transactions or investment income. Operating expenses include those related to direct patient care and related support services. Nonoperating expenses include interest expense and other expenses that are not considered operating.

Net Patient Service Revenue and Accounts Receivable

Net patient service revenue is reported as the estimated net realized amounts from patients, third-party payors, and others for services rendered and includes estimated retroactive revenue adjustments under reimbursement agreements with third-party payors. In recognizing net patient service revenue, estimates are used in recording allowances for contractual adjustments and uncollectible accounts. Allowances for uncollectible accounts are estimated using historical experience, current trend information, aged account balances and a collectability analysis. The System's financial assistance program for uninsured patients classified as self-pay determines expected payments based on the Medicare allowable reimbursement. Charges in excess of the expected payment are reflected as an administrative uninsured discount. The allowance for uncollectible accounts was estimated at \$44 million as of September 30, 2022. The System provides services under contract to patients covered under the Medicare and Medicaid programs. Net revenues from these programs are included in patient service revenue at estimated reimbursement based on customary billing charges, predetermined rates of reimbursement, plus certain adjustments. The amounts due to or from these programs are subject to final review and settlement by the program administrative contractor.

Retroactive adjustments under third-party reimbursement agreements are considered in the recognition of revenue on an estimated basis in the period the related services are rendered, and such amounts are adjusted in future periods as adjustments become known. Laws and regulations governing the Medicare and Medicaid programs are complex and subject to interpretation. As a result, it is reasonably possible that these estimates could differ from actual settlements and thus change in the near term by material amounts.

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Charity Care Policy

The System accepts all Harris County residents as patients regardless of their ability to pay. Harris County residents may qualify for partial financial assistance, on a sliding scale. The extent to which a resident will be financially responsible is determined based upon pre-established financial criteria, which utilize family income and size as it relates to the federal poverty guidelines set by the U.S. Department of Health and Human Services. Charity services are defined as those services for which no payment is anticipated. These amounts are not reported as revenue. The System maintains records to identify and monitor the level of charity care it provides. These records include the amount of charges foregone for services and supplies furnished under the System's Financial Assistance program. The cost of charity care is estimated by applying the ratio of cost to gross charges to the gross charity care charges. The following information measures the level of charity care provided during the seven-month period ended September 30, 2022 (in thousands):

Charges foregone, based on established rates	\$ 620,538
Cost of foregone charges, estimated	456,830

Premium Revenue

Premium revenue is recognized as revenue by the HMOs during the coverage period of the subscriber agreement. For the primary Medicaid business, notification is received throughout the year of any new, removed or revised members and the date of eligibility for coverage. The date of notification may be subsequent to the date of eligibility. The HMOs believe premium revenue has been appropriately recognized for the year ended December 31, 2021, the HMOs fiscal year-end.

Medical Claims Expense

The HMOs arrange for comprehensive health care services to its members primarily through fee-for-service arrangements. The HMOs compensate hospitals on either a discounted fee for service or per diem basis and compensates physicians and other providers primarily on a discounted fee for service basis.

Medical claims expense reserves represent the estimated ultimate net cost of all reported and unreported losses incurred through the end of December and are presented on a discounted basis. The reserves for unpaid medical claims expenses are actuarially estimated based on claims experience and statistical analyses. Those estimates are subject to the effects of trends in loss severity and frequency. Although considerable variability is inherent in such estimates, management believes the reserves for medical claims expenses are adequate. The estimates are continually reviewed and adjusted as necessary as experience develops or new information becomes known; such adjustments are included in current operations.

Contracts are evaluated to determine if it is probable that a loss will be incurred and a premium deficiency reserve is recognized when it is probable that expected future claims, including maintenance costs, will exceed existing reserves plus anticipated future premiums and reinsurance recoveries, without consideration of anticipated investment income.

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For purposes of determining premium deficiency reserves, contracts are grouped in a manner consistent with the method of acquiring, servicing and measuring the profitability of such contracts. As of December 31, 2021, the HMOs fiscal year-end, the HMOs recognized premium deficiency reserve for the Health Insurance Marketplace business of \$14 million. As of December 31, 2021, the HMOs recorded an experience rebate liability of \$34 million.

Changes in the HMO's aggregate liability for medical claims in for the year ended December 31, 2021 is as follows (in thousands):

Liability at December 31, 2020	Medical Claims and Change in Estimates	Claim Payments	Liability at December 31, 2021
\$ 208,406	\$ 1,943,317	\$ 1,849,754	\$ 301,969

In the fiscal year ended December 31, 2021, the HMOs in aggregate paid \$1,673 million in claims related to the current fiscal year and \$177 million in claims related to the prior fiscal year.

The HMOs are a party to a reinsurance agreement to limit its losses on individual claims. Under the terms of the agreement, the reinsurer reimburses the HMOs approximately 90.0 percent, subject to certain limitations as specified in the contract, of the cost of each member's annual inpatient hospital services. For the Medicaid and Children's Health Insurance Program (CHIP) business, the recovery is based on costs in excess of a \$1 million deductible, up to a limitation of \$5 million per member per agreement period. The HMOs also carry coverage for the health insurance marketplace business for which the reinsurer reimburses approximately 90.0 percent of each member's annual inpatient hospital services in excess of a \$750 thousand deductible, up to a limitation of \$5 million per member per agreement period.

Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (ACA)

The HMOs participate in the federally facilitated health insurance exchange in 10 southeast Texas counties. The exchange was created pursuant to the ACA under regulations established by the U.S. Department of Health and Human Services (HHS). Under these rules, HHS pays the HMO a portion of the policy premium, in the form of Advanced Premium Tax Credit (APTC), and part of the health care costs, in the form of Cost Sharing Reduction (CSR), for low income individual exchange members. HHS also administers certain risk management programs as detailed below.

The HMOs recognize premiums received from its exchange members and APTC received from HHS as premium revenue when earned and CSR offsets health care costs when incurred. For 2021, the HMOs recognized \$435 million and \$11 million of APTC and CSR, respectively.

The risk adjustment data validation program was implemented to ensure the integrity and accuracy of risk adjustment transfer amounts. Prior year submission data is audited and adjustments to the receivable or payable transfer amounts are made.

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Subject to this program, the HMOs have recorded a liability of approximately \$11 million at December 31, 2021, which is included as liabilities related to the Affordable Care Act within current liabilities in the accompanying statement of net position.

The ACA established a permanent risk adjustment program which adjusts the premiums that commercial, individual and small group health insurance issuers receive based on the demographic factors and health status of each member as derived from current year medical diagnosis as reported throughout the year. This program transfers funds from lower risk plans to higher risk plans with similar plans in the same state. The risk adjustment program is applicable to commercial, individual and small group health plans (except certain exempt and grandfathered plans) operating both inside and outside of the exchange. A risk score is determined for the entire subject population for each market in each state. Plans with an average risk score below the state average will pay into a pool and health insurance issuers with an average risk score that is greater than the state average risk score will receive money from that pool. The HMOs issues individual plans and is therefore subject to the risk adjustment. At December 31, 2021, the HMOs recorded a risk adjustment receivable of \$169 million, which is included in prepaid expenses and other current assets in the accompanying statement of net position.

Ad Valorem Tax Revenues – Net

Ad valorem tax revenues are recorded in the year for which the taxes are levied, net of provisions for uncollectible amounts, collection expenses and appraisal fees. Harris County Commissioners' Court levies a tax for the System as provided under state law. The taxes are collected by the Harris County Tax Assessor – Collector and are remitted to the System as received. On January 1, at the time of assessment, an enforceable lien is attached to the property for property taxes. Taxes are levied and become collectible from October 1 to January 31 of the succeeding year. Subsequent adjustments to the tax rolls, made by the County Assessor, are included in revenues in the period such adjustments are made by the County Assessor. Harris County also enters into property tax abatement agreements with local businesses under the state Property Redevelopment and *Tax Abatement Act*, Chapter 312, as well as its own guidelines and criteria, which is required under the Act.

Revenue from the calendar year 2021 tax levy was recognized by the System in the fiscal year ended February 28, 2022. Revenue from the calendar year 2022 tax levy will be recognized by the System in the fiscal year ending September 30, 2023 as this is the period for which the taxes were levied. Revenue recognized in the seven-month period ended September 30, 2022 represents the difference between estimated ad valorem taxes receivable due at February 28, 2022 and actual amounts collected subsequent to that date.

Tobacco Settlement Revenues

The System receives a portion of the funds from the settlement between various counties and hospital districts in Texas and the tobacco industry for tobacco-related health care costs. Under the program guidelines, the System is free to use the funds in either the immediate or future periods without restriction. The System recognizes all funds received from the settlement as nonoperating revenue in the period funds are allocated.

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Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the Plan and additions to/deductions from the Plan's fiduciary net position have been determined on the same basis as they are reported by the Plan. For this purpose, benefits payments are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

Postemployment Benefits Other Than Pensions

The System has a single-employer defined benefit other postemployment benefit (OPEB) plan. For purposes of measuring the net OPEB liability, deferred outflows and deferred inflows of resources related to OPEB, and OPEB expense have been determined on the same basis as they are reported by the OPEB plan. For this purpose, the System recognizes benefit payments when due and payable in accordance with the benefit terms.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, deferred inflows and outflows of resources, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

Change in Accounting Principle

On March 1, 2022, the System adopted GASB Statement No. 87, *Leases*, (GASB 87) using a retrospective method adoption to all leases in place and not yet completed at the beginning of the earliest period presented, which was March 1, 2022. The statement requires lessees to recognize a lease liability, measured at the present value of payments expected to be made during the lease term, and an intangible right-to-use lease asset. Adoption of GASB 87 had no effect on beginning net position at March 1, 2022.

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Note 3: Net Patient Service Revenue

The System has agreements with third-party payors that provide for payments to the System at amounts different from its established rates. The amounts by which the established billing rates exceed the amounts recoverable from these programs are written off and accounted for as contractual allowances. A summary of the payment arrangements with major third-party payors follows:

Medicare – Inpatient acute care services and defined capital costs related to Medicare program beneficiaries are paid at prospectively determined rates per discharge. These rates vary according to a patient classification system that is based on clinical diagnostic and other factors. Medicare outpatient services are reimbursed on fee schedules and on a prospective basis through ambulatory payment classifications, which are based on clinical resources used in performing the procedures. The System's Medicare cost reports have been audited by the Medicare administrative contractor through February 28, 2018.

Medicaid – Inpatient services rendered to Medicaid program beneficiaries are paid at prospectively determined rates per discharge similar to those of the Medicare inpatient program. Medicaid outpatient services are paid by fee schedules for specific services, including outpatient surgery, imaging and laboratory services. Other outpatient services are reimbursed on reasonable cost, based on a percentage from the System's most recent Medicaid cost report tentative settlement as of March 1, 2013. The System's Medicaid cost reports have been settled by the Medicaid administrative contractor through February 28, 2017.

In conjunction with the change in fiscal year end, the System also changed its Medicare and Medicaid reporting year end to September 30, effective for the seven-month period ended September 30, 2022.

Cash received from the Medicare program accounted for approximately 47.7 percent of the System's total cash collections for net patient service revenue for the seven-month period ended September 30, 2022. Cash received from the Medicaid program (including managed Medicaid) accounted for approximately 25.1 percent of the System's total cash collections for net patient service revenue for the seven-month period ended September 30, 2022. Cash received from the Medicaid program in the seven-month period ended September 30, 2022 was impacted by the approval of the Comprehensive Hospital Rate Increase Program (CHIRP) in March 2022, which was retroactive to September 1, 2021. See further discussion of CHIRP in *Note 4*.

Compliance with laws and regulations governing the Medicare and Medicaid programs can be subject to future government review and interpretation, as well as significant regulatory action, including fines, penalties and exclusion from the Medicare and Medicaid programs.

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Note 4: Medicaid Supplemental Programs

The Disproportionate Share III (DSH) program was created in fiscal 1992 by the state of Texas to access additional federal matching funds. These funds are distributed to selected hospitals that provide services to low-income and uninsured patients.

The Upper Payment Limit (UPL) program was created in May 2002 with an effective date of July 2001. The UPL program used federal matching funds to raise state Medicaid reimbursement rates to 100.0 percent of equivalent Medicare rates for certain public hospital systems. In December 2011, Texas received federal approval to redirect the funding it would have received under the UPL program. The 1115 Waiver allows the state to expand Medicaid managed care, improve Medicaid services and reward performance. Federal funding that would have been received by hospitals if managed care was not expanded is to be preserved. The UPL program was replaced with two new pools of funding, the uncompensated care (UC) pool and the delivery system reform incentive payment (DSRIP) pool. The UC pool directs more funding to hospitals that serve large numbers of uninsured patients and the DSRIP pool provides incentive payments for health care providers based on improvements in quality of care.

On April 22, 2022, CMS approved an extension of the Waiver through September 30, 2030. The extension provides for the continuation of the UC Pool. The DSRIP pool funding ended on September 30, 2021 and was not renewed as part of the extension. CMS has also approved an expansion of directed payment programs, which transitions participating hospitals away from the DSRIP program. One of the new directed payment programs is CHIRP, which added a quality component to the existing Uniform Hospital Rate Increase Program (UHRIP). Under UHRIP, HHSC directed managed care organizations in a service delivery area to provide a uniform percentage rate increase to all hospitals within a particular class of hospitals. CHIRP also provides for a rate increase similar to UHRIP but also provides for a rate enhancement above the UHRIP rate, based upon a percentage of estimated average commercial reimbursement. Participating hospitals may opt into this second component. The UHRIP program transitioned to the CHIRP program on September 1, 2021. CHIRP will require annual approval by CMS and has been approved through August 31, 2023. The System also participates in other Medicaid Supplemental Payment Programs including the Network Access Improvement Program (NAIP), and the Graduate Medical Education (GME) program.

During the seven-month period ended September 30, 2022, the System began participating in the Public Hospital Augmented Reimbursement Program (HARP). HARP is a statewide supplemental program that provides Medicaid payments to hospitals for inpatient and outpatient services that serve Texas Medicaid fee-for-service patients. The program also serves as a financial transition for providers historically participating in the DSRIP program and provides additional funding to hospitals to assist in offsetting the costs hospitals incur while providing Medicaid services. HARP revenue for the 2022 program revenue was recognized in the seven-month period ended September 30, 2022 due to the timing of program approval.

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The System recognizes all funds received under these programs as operating revenues in the period applicable to the funds. Any amounts related to that year that are not received as of fiscal year-end are recorded as receivables and reflected in other current assets in the accompanying statement of net position. These receivables can be subject to adjustments that are reflected in the period they become known. The System recorded no material adjustments for the period ended September 30, 2022 for prior years' programs. The System's financial statements reflect receivables of \$481 million at September 30, 2022 related to the these programs.

The System also participates in a Local Provider Participation Fund (LPPF) in Harris County. The System acts as the administrator of the LPPF by assessment and collection of mandatory payments from hospitals in Harris County. These payments are to be used to fund intergovernmental transfers representing the state's share of supplemental Medicaid funding programs. As the System acts as a conduit for these funds, the receipts and intergovernmental transfers are not recognized as revenue and expense in the statement of revenues, expenses and changes in net position. As of September 30, 2022, the System held \$71 million in LPPF funds which is reported as restricted cash in the statement of net position. At September 30, 2022 the System had \$85 million in intergovernmental transfer liability of which \$71 million related to LPPF, and the residual related to intergovernmental transfers required for private providers.

Note 5: Assets Limited as to Use or Restricted

Assets limited as to use or restricted represent those assets whose use has been legally restricted related to the 2010 and 2016 refunding and revenue bond issues (50.0 percent of the greatest debt service requirement scheduled to occur); unspent bond proceeds; funds restricted by donors; or funds designated by the board for other uses. Investments in U.S. Treasury, agency and instrumentality obligations with a remaining maturity of one year or less at the time of acquisition and in non-negotiable certificates of deposit are carried at amortized cost.

The System also invests in Texas CLASS and Lone Star Investment pools (collectively, the investment pools), both of which are state investment pools that are considered investments for financial reporting. Investments must be in compliance with the *Texas Public Funds Investment Act* and include obligations of the United States or its agencies, direct obligation of the state of Texas or its agencies, certificates of deposit and repurchase agreements. The System has an undivided beneficial interest in the pool of assets held by the investment pools. The fair value of the position in these pools is the same as the value of the shares in each pool. Both investment pools are rated AAAM by Standard & Poor's. Investments in external investment pools qualifying for amortized cost under GASB Statement No. 79 - *Certain External Investment Pools and Pool Participants*, are carried at amortized cost per share.

All other investments are recorded at fair value. The fair values of securities are based on appropriate valuation methodologies by third parties, quoted market prices and information available to management as of September 30, 2022.

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The components of assets limited as to use or restricted at fair value at September 30, 2022 are as follows (in thousands):

Description of Assets	Total	Restricted Debt Service	Series 2020 Capital Asset Fund	Restricted For Capital Asset Purchases	Restricted Cash and Cash Equivalents LPPF	Other
Money market mutual funds	\$ 71,612	\$ 260	\$ 162	\$ 14	\$ 71,007	\$ 169
Investment pools	52,307	67	6,034	45,327	-	879
United States Treasury obligations	33,225	33,225	-	-	-	-
Cash	142	-	-	-	-	142
	157,286	33,552	6,196	45,341	71,007	1,190
Less funds required for current liabilities	(78,911)	(7,762)	-	-	(71,007)	(142)
	<u>\$ 78,375</u>	<u>\$ 25,790</u>	<u>\$ 6,196</u>	<u>\$ 45,341</u>	<u>\$ -</u>	<u>\$ 1,048</u>

Foundation – Assets limited as to use of \$34 million at February 28, 2022 are restricted subject to donor-imposed stipulations that will be met by actions of the Foundation or the passage of time.

HMOs – Assets limited as to use aggregating \$3 million at December 31, 2021, are restricted as to use and are pledged to satisfy insolvency and other reserves, as required by the Texas Department of Insurance.

Note 6: Investment Risk

GASB Statement No. 40, *Deposit and Investment Risk Disclosures – an Amendment of GASB Statement No. 3*, requires disclosures related to credit risk, concentration of credit risk, interest rate risk, and foreign currency risk associated with interest-bearing investments.

Credit Risk and Concentration of Credit Risk – Credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization (NRSRO).

The System, the HMOs and the Foundation each have formal investment policies adopted by their governing boards, which limit investment in securities based on an NRSRO credit rating. The System's investments are also subject to the *Public Funds Investment Act* (the Act), Texas Administrative Code Section 2256, and the investments of the HMOs are also subject to regulations enumerated in Title 28, Chapter 11 of the Texas Administrative Code and Chapter 20A of the Texas Insurance Code. The Foundation's investments are not subject to these laws.

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The System's investment policy is to be reviewed and approved annually by the Board of Trustees and the Commissioners' Court. The investment policy includes a list of authorized investment instruments, a maximum allowable stated maturity by fund type and the maximum weighted average maturity of the overall portfolio. Guidelines for diversification and risk tolerance are also detailed within the policy.

Additionally, the policy includes specific investment strategies for fund groups that address each group's investment options and describes the priorities for suitable investments.

The System's investment policy establishes minimum acceptable credit ratings for certain investment instruments. Securities of states, agencies, counties, cities and other political subdivisions located in the United States must not be rated less than A, or its equivalent, by a nationally recognized investment-rating firm. Money market mutual funds and public funds investment pools must be rated AAA or its equivalent. Commercial paper with a stated maturity of 270 days or less from the date of issuance, as authorized by the Act, must be rated A-1 or P-1 or its equivalent.

Concentration of credit risk is the risk of loss attributed to the magnitude of an investment in a single issuer. The System mitigates these risks by emphasizing the importance of a diversified portfolio. All funds must be sufficiently diversified to eliminate the risk of loss resulting from overconcentration of assets in a specific maturity, a specific issuer or a specific class of securities. In particular, no more than 25 percent of the overall portfolio may be invested in time deposits, including certificates of deposit, of a single issuer. Concentration by issuer for other investment instruments is not specifically addressed in the investment policy. However, the policy does specify that acceptable investment instruments must have high-quality credit ratings.

GASB Statement No. 40 also provides that securities with split ratings, or a different rating assignment between NRSROs, are disclosed using the rating indicative of the greatest degree of risk.

The following table indicates the fair value and maturity amount of the System's cash equivalents, assets limited as to use and investments as of September 30, 2022, summarized by security type, as well as the percentage of total portfolio, the credit rating of the investment, and the modified duration in years for each summarized security type (in thousands).

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Security	Fair Value	Percentage of Portfolio	Maturity Amount	Modified Duration (Years)	Credit Rating S&P/Moody's
Investment Pools					
Texas CLASS - Pool (Corporate)	\$ 146,985	23.27 %	\$ 146,985	0.003	AAAm
Lone Star - Pool (Corporate)	117,908	18.66	117,908	0.003	AAAm
United States Treasury obligations	142,391	22.54	143,200	0.247	Aaa/AA+
Federal Agency	49,868	7.89	50,000	0.555	Aaa/AA+
Commercial paper					
Mitsubishi UFG Financial Group	58,894	9.32	60,000	0.444	A-1/P-1
Santander BK UK PLC	39,455	6.25	40,000	0.342	A-1/P-1
Money market mutual funds	<u>76,264</u>	<u>12.07</u>	<u>76,264</u>	<u>0.003</u>	AAAm/Aaa-mf
Total cash equivalents, assets limited as to use and investments	<u>\$ 631,765</u>	<u>100.00 %</u>	<u>\$ 634,357</u>	<u>0.164</u>	

Custodial Credit Risk – Custodial credit risk for deposits is the risk that, in the event of failure of a depository financial institution, the System will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, the System will not be able to recover the value of its investment or collateral securities that are in the possession of another party.

Chapter 2257 of the Texas Government Code is known as the *Public Funds Collateral Act*. This act provides guidelines for the amount of collateral that is required to secure the deposit of public funds. Federal Deposit Insurance Corporation (FDIC) insurance is available for funds deposited at any one financial institution up to a maximum of \$250 thousand each for demand deposits, time and savings deposits and deposits pursuant to indenture.

The *Public Funds Collateral Act* requires that the deposit of public funds be collateralized in an amount not less than the total deposit, reduced by the amount of FDIC insurance available. The System's deposits are not exposed to custodial credit risk since all deposits are either covered by FDIC insurance or collateralized with securities held by the System or its agent in the System's name, in accordance with the *Public Funds Collateral Act*.

Interest Rate Risk – All investments carry the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the System manages its exposure to interest rate risk is by purchasing a combination of shorter and longer-term investments and by matching cash flows from maturities so that a portion of the portfolio is maturing evenly over time as necessary to provide the cash flow and liquidity needed for operations.

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According to the System's investment policy, no more than 50.0 percent of the portfolio, excluding those investments held for future capital expenditures, debt service payments, bond fund reserve accounts, and capitalized interest funds, may be invested beyond 36 months. Additionally, at least 15.0 percent of the portfolio, with the previous exceptions, is invested in overnight instruments or in marketable securities that can be sold to raise cash within one day's notice. Overall, the average maturity of the portfolio, with the previous exceptions, shall not exceed three years. The System is also prohibited from investing more than 25.0 percent of the overall portfolio in the time deposits, including certificates of deposit, of a single issuer. As of September 30, 2022, the System was in compliance with these guidelines.

Foreign Currency Risk – Foreign currency risk is the risk that fluctuations in the exchange rate will adversely affect the value of investments denominated in a currency other than the U.S. dollar. The System's investment policy does not list securities denominated in a foreign currency among the authorized investment instruments. Consequently, the System is not exposed to foreign currency risk.

The following table indicates the fair value and maturity amount of the cash equivalents, assets limited as to use and investments of Community Health Choice, Inc. as of December 31, 2021, summarized by security type. Also demonstrated are the percentage of total portfolio and the modified duration in years for each summarized security type (in thousands).

Security	Fair Value	Percentage of Portfolio	Maturity Amount	Modified Duration (Years)	Credit Rating S&P
Certificates of deposit	\$ 3,325	6.99 %	\$ 3,325	0.429	AAA
Money market mutual funds	44,217	93.01	44,217	0.003	AAA
	<u>\$ 47,542</u>	<u>100.00 %</u>	<u>\$ 47,542</u>	<u>0.216</u>	

The following table indicates the fair value and maturity amount of the cash equivalents, assets limited as to use and investments of Community Health Choice Texas, Inc. as of December 31, 2021, summarized by security type. Also demonstrated are the percentage of total portfolio and the modified duration in years for each summarized security type (in thousands).

Security	Fair Value	Percentage of Portfolio	Maturity Amount	Modified Duration (Years)	Credit Rating S&P/Moody's
Municipal bonds	\$ 6,223	1.59 %	\$ 6,107	0.332	AAA/AA+/Aaa/AA
Certificates of deposit	100	0.03	100	0.132	AAA
Money market mutual funds	383,980	98.38	383,980	0.003	AAA
	<u>\$ 390,303</u>	<u>100.00 %</u>	<u>\$ 390,187</u>	<u>0.156</u>	

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The System categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure fair value of the assets. Level 1 are quoted prices in an active market for identical assets, Level 2 are significant other observable inputs and Level 3 are significant unobservable inputs.

Investments in external investment pools qualifying for amortized cost under GASB Statement No. 79, *Certain External Investment Pools and Pool Participants*, are carried at amortized cost per share, thus, they are excluded from fair value reporting below.

The following is a summary of the hierarchy of the fair value of cash equivalents, assets limited as to use, investments, and derivative instrument (*Note 8*) of the System as of September 30, 2022 (in thousands).

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Assets				
Commercial paper	\$ -	\$ 98,349	\$ -	\$ 98,349
United States Treasury obligations	142,391	-	-	142,391
Federal Agency notes	49,868	-	-	49,868
Money market mutual funds	76,264	-	-	76,264
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Total cash equivalents, assets limited as to use and investments by fair value	<u>\$ 268,523</u>	<u>\$ 98,349</u>	<u>\$ -</u>	<u>\$ 366,872</u>
Liabilities				
Derivative financial instrument	<u>\$ -</u>	<u>\$ 385</u>	<u>\$ -</u>	<u>\$ 385</u>

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The following is a summary of the hierarchy of the fair value of investments and cash equivalents of Community Health Choice, Inc. as of December 31, 2021 (in thousands):

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Assets				
Money market mutual funds	\$ 44,217	\$ -	\$ -	\$ 44,217
Total investments and cash equivalents by fair value level	<u>\$ 44,217</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 44,217</u>

The following is a summary of the hierarchy of the fair value of investments and cash equivalents of Community Health Choice Texas, Inc. as of December 31, 2021 (in thousands):

	Fair Value Measurements Using			Total
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Assets				
Municipal bonds	\$ -	\$ 6,223	\$ -	\$ 6,223
Money market mutual funds	<u>383,980</u>	<u>-</u>	<u>-</u>	<u>383,980</u>
Total investments and cash equivalents by fair value level	<u>\$ 383,980</u>	<u>\$ 6,223</u>	<u>\$ -</u>	<u>\$ 390,203</u>

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Note 7: Capital and Lease Assets

The System's capital assets activity for the seven-month period ended September 30, 2022, consists of the following (in thousands):

	2022			Ending Balance
	Beginning Balance	Additions/ Transfers	Retirements	
Land and improvements	\$ 47,316	\$ 133	\$ -	\$ 47,449
Buildings and fixed equipment	728,992	479	(76)	729,395
Major movable equipment	446,786	20,531	(27,878)	439,439
Total historical cost	<u>1,223,094</u>	<u>21,143</u>	<u>(27,954)</u>	<u>1,216,283</u>
Less accumulated depreciation:				
Land and improvements	(15,989)	(519)	-	(16,508)
Buildings and fixed equipment	(439,675)	(15,136)	64	(454,747)
Major moveable equipment	(336,890)	(20,779)	27,560	(330,109)
Total accumulated depreciation	<u>(792,554)</u>	<u>(36,434)</u>	<u>27,624</u>	<u>(801,364)</u>
Construction in progress	129,751	42,013	-	171,764
Capital assets - net	<u>\$ 560,291</u>	<u>\$ 26,722</u>	<u>\$ (330)</u>	<u>\$ 586,683</u>

The System's lease assets activity for the seven-month period ended September 30, 2022, consists of the following (in thousands):

	2022			Ending Balance
	Beginning Balance (As Restated)	Additions/ Transfers	Retirements	
Buildings	\$ 43,183	\$ 2,704	\$ -	\$ 45,887
Equipment	5,811	2,159	(11)	7,959
Total lease assets	<u>48,994</u>	<u>4,863</u>	<u>(11)</u>	<u>53,846</u>
Less accumulated amortization:				
Buildings	-	(3,861)	-	(3,861)
Equipment	-	(2,108)	11	(2,097)
Total accumulated amortization	<u>-</u>	<u>(5,969)</u>	<u>11</u>	<u>(5,958)</u>
Lease assets, net	<u>\$ 48,994</u>	<u>\$ (1,106)</u>	<u>\$ -</u>	<u>\$ 47,888</u>

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Note 8: Long-Term Debt

Long-term debt of the System consists of various issues of Revenue Bonds and Combination Tax and Revenue Certificates of Obligation (Certificates). Revenue Bonds are payable from the pledged revenue generated by the System. Combination Tax and Revenue Certificates of Obligation are payable from the levy and collection of an ad valorem tax, levied on taxable property within the System. Although taxes are levied and collected by Harris County for the System, the Certificates are direct obligations of the System and the holders are not entitled to demand payment from any tax revenue or other revenues of Harris County.

Revenue Bonds

On October 3, 2007, the System issued two Series of Harris County Hospital District Senior Lien Refunding Revenue Bonds (the Bonds). The Series 2007A Bonds, in the amount of \$199 million, were sold to provide funding for expansion and renovation projects, to refund the System's outstanding commercial paper, to fund the Debt Service Reserve Fund, and to pay costs of issuance. The Series 2007B Bonds, in the amount of \$103 million, were used to refund the Series 2000 revenue bonds and to pay costs of issuance. The Series 2007 Bonds were insured by municipal bond insurance policies and secured by a lien on the pledged revenue of the System and certain funds established pursuant to the bond order.

In October 2016, the System refunded and refinanced the Series 2007A Bonds by issuing the \$160 million Series 2016 Senior Lien Refunding Revenue bonds at a premium of \$15 million.

The proceeds of the Series 2016 Bonds and existing debt service and debt service reserve funds covered cost of issuance and defeased the Series 2007A bonds in the principal amount \$178 million. An irrevocable deposit of sufficient funds with trustees was made to pay the principal and interest of the defeased bonds through maturity. In February 2017, the System paid the non-refunded principal balance due and related interest. The Series 2016 Bonds have a final maturity of February 15, 2042. The bonds were issued as serial bonds in the amount of \$106 million maturing February 15, 2036, and \$54 million in term bonds maturing February 15, 2042. The bonds maturing on or after February 15, 2027, are subject to optional redemption on or after February 15, 2026. The term bonds are additionally subject to mandatory sinking fund redemption. The refunding resulted in a net present value economic gain of \$37 million.

The Series 2007B Bonds have a final maturity date of February 1, 2042, and were initially issued as 28-day taxable auction-rate paper, convertible to tax-exempt on August 16, 2010. In April 2008, these bonds were converted from auction-rate securities and reoffered as variable rate bonds bearing interest at a term rate during a term period. The 2007B Bonds Series were hedged with a forward starting swap effective upon the tax-exempt conversion of the bonds.

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In August 2010, the System refunded and refinanced the Series 2007B Bonds by issuing Series 2010 Refunding and Revenue bonds in the amount of \$104 million. The proceeds of the Series 2010 Bonds covered costs of issuance and defeased the Harris County Hospital District Senior Lien Refunding Revenue Bonds, Series 2007B, in the principal amount of \$104 million through the irrevocable deposit of sufficient funds with trustees to pay the principal and interest of such bonds through maturity. Accordingly, these trustee funds and the related defeased indebtedness are excluded from the balance sheet. The refunding resulted in a loss of \$22 million, which includes \$16 million deferred loss on refunding related to the interest rate swap, which has been deferred and is being amortized over the life of the Series 2007B Bond issue. The remaining loss on refunding of \$6 million has been deferred and is being amortized to interest expense over the life of the Series 2010 bond issue. The primary components of this loss were the write-offs of unamortized deferred financing costs and bond premiums, the net deferred amount related to the hedging derivative instrument associated with the 2007B Bonds and the difference between amounts funded for the defeasance and the principal due on the 2007B Bonds. The financial statements reflect deferred outflows-unamortized debt refunding loss of \$7 million at September 30, 2022. Principal amounts of total defeased indebtedness outstanding at September 30, 2022 is \$60 million. The bonds are secured by an irrevocable letter of credit issued by JPMorgan Chase Bank.

The Series 2010 Refunding and Revenue bonds in the amount of \$104 million are variable rate demand bonds maturing through February 15, 2042. The bonds are subject to purchase on the demand of the owner at a price equal to purchase price on any given business day upon irrevocable notice by electronic means to the System's tender agent and remarketing agent.

Under an irrevocable letter of credit issued by JPMorgan Chase Bank, only the tender agent is entitled to draw an amount sufficient to pay the principal amount of the bonds when due, or to pay the portion of the purchase price corresponding to the principal amount upon certain tenders. The letter of credit facility expires on August 12, 2024. Unreimbursed advances will accrue interest at the higher of (i) the Prime Rate, (ii) one-month LIBOR plus 2.5 percent, or (iii) 7.5 percent per annum. The System is also required to pay to the JPMorgan Chase Bank an annual facility fee for the letter of credit of 0.9 percent per annum of the outstanding principal amount of the bonds. No amounts were outstanding on the letter of credit as of September 30, 2022. In addition, the System is required to pay the remarketing agent an annual fee of \$1.00 per \$1,000 of principal amount of the bonds actually remarketed.

Compliance

The System is in compliance with its debt covenants at September 30, 2022.

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Interest Rate Swap

Related Bonds – On September 25, 2007, the System entered into an interest rate swap agreement in connection with its \$104 million Harris County Hospital District Senior Lien Revenue and Refunding Bonds, Series 2007B with the settlement date on October 3, 2007. On August 12, 2010, when the System refunded and refinanced the Series 2007B Bonds by issuing Series 2010 Bonds, the interest rate swap was redesignated and associated with the new debt. The derivative contained an off-market element equal to the value of the swap associated with the Series 2007B Bonds on August 12, 2010. In accordance with GASB Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*, this off-market element is recorded as a borrowing payable and is amortized as an adjustment to interest expense over the life of the swap agreement.

Objective of the Swap – The intention of the swap was to effectively reduce the impact of the System's variable interest rate exposure on the Related Bonds to a synthetic fixed rate of 4.2 percent.

Swap terms:

Trade date	September 12, 2007
Effective date	August 16, 2010
Termination date	February 15, 2042
Initial notional amount	\$103,500,000
District pays fixed	4.218%
Counterparty pays floating	SIFMA Municipal Swap Index
Payment dates	Monthly on the 15th calendar day of every month

As further defined in the confirmation to the swap agreement, the System is subject to an "Annual Counterparty Ceiling" which limits the maximum payment, inclusive of collateral, made by the System in any fiscal year to \$40 million. Subject to cash settlement, the System has the right to terminate the agreement, in whole or in part, on the Effective Date, August 16, 2010, and on any Business Day (as observed by New York and London financial markets) thereafter.

The effectiveness of the interest rate swap has been measured using the regression analysis method. The System has concluded that the transactions are effective.

Fair Value – The redesignated swap that is associated with the new debt had a zero fair value at its inception date and a fair value of \$(385) thousand at September 30, 2022 and is reported as a derivative liability in the statements of net position. The fair value of the swap was determined by calculating the present value of the anticipated future cash flows for both the floating portion and the stated fixed rate portion using discount factors derived from the London Interbank Offered Rate (LIBOR) swap curve.

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Interest Rate Risk – The System is exposed to interest rate risk in that as the variable rates on the swap agreements decrease the System's net payment in the swap agreement could increase.

Basis Risk – The System is exposed to basis risk when the variable interest rate paid to the holders of its variable rate demand obligations is not equivalent to the variable interest rate received from its counterparties on the related swap agreements. When exposed to basis risk, the net interest expense incurred on the combination of the swap agreement and the associated variable rate debt may be higher or lower than anticipated.

Collateral Posting Risk – The risk that the System will be required to secure its obligations under the swap agreement. Any securities posted as collateral would not be available for the System's expenditure or reserve needs, which could adversely impact credit ratings and overall liquidity and budgetary efforts. The System was not exposed to collateral posting risk as of September 30, 2022.

Credit Risk – The risk of a change in the credit quality or credit rating of the System and/or its counterparty. At September 30, 2022, the swap counterparty was rated A- by Standard & Poor's, A2 by Moody's Investor Services, and BBB+ by Fitch. At September 30, 2022, the System was rated AA- by Standard & Poor's, A2 by Moody's Investor Services and AA by Fitch.

Rollover Risk – The System is exposed to rollover risk only on swaps that mature or may be terminated at the counterparty's option prior to the maturity of the associated debt. As of September 30, 2022, the System was not exposed to rollover risk.

Termination Risk – The System's swap agreements do not contain any out-of-the-ordinary termination events that would expose it to significant termination risk. In keeping with market standards, the System or the counterparty may terminate each swap if the other party fails to perform under the terms of the contract. In addition, the swap documents allow either party to terminate in the event of a significant loss of creditworthiness. If at the time of the termination a swap has a negative value, the System would be liable to the counterparty for a payment equal to the fair value of such swap. As of September 30, 2022, termination of the original swap agreement would create a liability of \$8 million and would result in a reversal of the derivative liability related to the redesignated swap, the borrowing payable amount and the unamortized loss on refunding. Any resulting net change would be recorded through nonoperating expenses.

Swap Payments – Using interest rates as of the period ended September 30, 2022, debt service requirements of the System's outstanding fixed and variable-rate debt and net swap payments on the variable-rate debt were as follows (in thousands). As rates vary, variable rate interest rate payments on the bonds and net swap payments will change.

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Annual debt service requirements to maturity as of September 30, 2022 are as follows (in thousands):

	<u>Principal</u>	<u>Interest</u>	<u>Swaps, Net</u>	<u>Total</u>
Years ending September 30:				
2023	\$ 7,080	\$ 9,079	\$ (432)	\$ 15,727
2024	7,400	8,796	(412)	15,784
2025	7,755	8,452	(437)	15,770
2026	8,125	8,115	(351)	15,889
2027	8,510	7,763	(369)	15,904
2028-2032	48,810	32,971	(1,557)	80,224
2033-2037	59,510	21,491	(1,022)	79,979
2038-2042	<u>72,165</u>	<u>7,609</u>	<u>(361)</u>	<u>79,413</u>
Total	<u>\$ 219,355</u>	<u>\$ 104,276</u>	<u>\$ (4,941)</u>	<u>\$ 318,690</u>

Hybrid Instrument Borrowings – The System's interest rate swap includes fixed rates that were off market at the execution of the interest rate swap. For financial reporting purposes, the interest rate swap is considered a hybrid instrument and is bifurcated between borrowings, with an aggregate original amount of \$18 million reflecting the fair value of the instrument at its execution, and an interest rate swap with a fixed rate that was considered at the market at execution.

Activity for the hybrid instrument borrowings for the seven-month period ended September 30, 2022 was as follows (in thousands).

Beginning balance	\$ 8,167
Reductions	<u>(405)</u>
Ending balance	<u>\$ 7,762</u>

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The following table sets forth as of September 30, 2022, the amortization of the hybrid instrument borrowings for the next five years and thereafter (in thousands).

Years ending September 30:	
2023	\$ 677
2024	653
2025	629
2026	604
2027	577
2028-2032	2,448
2033-2037	1,604
2038-2042	<u>570</u>
Total	<u>\$ 7,762</u>

Certificates of Obligation, Series 2016

In August 2016, the System issued Combination Tax and Revenue Certificates of Obligation, Series 2016 in the principal amount of \$63 million. The funds are being used to expand the operative suites and supporting services at Ben Taub Hospital necessary to maintain the facility's Level 1 Trauma status. The bonds mature in February 2036. The System's financial statements reflect \$50 million in outstanding principal and \$4 million in unamortized premium related to this debt at September 30, 2022. No principal was paid in the seven-month period ended September 30, 2022, however interest payments made were \$1 million.

Certificates of Obligation, Series 2020

In April 2020, the System issued the combination tax and revenue Certificates of Obligation, Series 2020 (the 2020 certificates of obligation) in the amount of \$31 million. The 2020 certificates of obligation mature in various amounts annually starting February 15, 2021 through February 15, 2030, with a stated coupon rate of 5.0%. The 2020 Certificates are collateralized by a levy of ad valorem tax revenue and lien on and pledge of surplus revenues. Proceeds from the 2020 Certificates are being used to fund the construction and equipping of certain facilities at Ben Taub Hospital, and the purchase and installation of certain medical equipment in Harris County's jail facilities as well as the purchase and installation of an upgraded electronic medical record system, among other facility improvements. The System's financial statements reflect \$26 million in outstanding principal and \$3 million in unamortized premium related to this debt at September 30, 2022. No principal was paid in the seven-month period ended September 30, 2022, however interest payments made were \$768 thousand.

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Annual debt service requirements to maturity as of September 30, 2022 are as follows (in thousands).

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
Years ending September 30:			
2023	\$ 5,415	\$ 3,213	\$ 8,628
2024	5,685	2,936	8,621
2025	5,970	2,659	8,629
2026	6,240	2,384	8,624
2027	6,520	2,080	8,600
2028-2032	29,410	5,609	35,019
2033-2036	17,145	1,315	18,460
	<u>\$ 76,385</u>	<u>\$ 20,196</u>	<u>\$ 96,581</u>
Total			

Note 9: Employee Benefit Plans

The System currently maintains two benefit plans allowing employees to plan and save for retirement: a defined contribution plan and a defined benefit plan. In October 2006, the Harris County Hospital District Board of Trustees amended the defined benefit pension plan to close enrollment. The amended plan offers employees hired prior to January 1, 2007, a choice to either (1) continue with their current pension plan or (2) elect to participate in the System's enhanced 401(k) retirement savings plan with a match, effective July 2007, of up to 5.0 percent of participant's compensation provided by the System. All new hires and rehires after December 31, 2006, are only eligible for the System's 401(k) retirement savings plan with a match of up to 5.0 percent. The change was designed to safeguard individuals approaching retirement, who had accumulated a large pension benefit in the current plan, while providing employees who planned to work many more years an option for better flexibility and portability in the System's enhanced 401(k) plan.

The System administers the Harris County Hospital District Pension Plan and the Harris County Hospital District 401(k) Plan. The System issues publicly available financial reports that include financial statements and required supplementary information. The financial reports may be obtained by writing to Harris Health System, Human Resources Department, 4800 Fournace Place, Bellaire, Texas 77401.

Defined Contribution Plan

The System has a defined contribution 401(k) plan (which qualifies as a tax-exempt employee benefit plan under Section 401(a) of the Internal Revenue Code) (401(k) Plan) open to all full-time and part-time employees of the System who meet the plan's requirements. It is a single-employer, self-administered, trustee plan to which contributions are made by participants on a bi-weekly basis not to exceed the statutory maximum of \$21 thousand during the calendar year 2022 for all participants. Contributions to the plan cannot exceed the statutory maximum of \$27 thousand

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during the calendar year 2022 for participants age 50 and older. Effective July 2007, the System enhanced the 401(k) Plan with an employer match up to 5.0 percent of the participant's compensation for eligible employees, which is 100.0 percent vested with three or more years of service. The 401(k) Plan is a governmental plan, and as such, is specifically exempt from the reporting and disclosure requirements of Title I of the *Employee Retirement Income Security Act of 1974* (ERISA). Total participant contributions were \$32 million for the seven-month period ended September 30, 2022. Total System contributions were \$15 million for the seven-month period ended September 30, 2022.

Forfeitures under the 401(k) Plan for a plan year will be applied to reduce the System's obligation to make future matching contributions or to pay 401(k) Plan administrative expenses for the 401(k) Plan year. During the seven-month period ended September 30, 2022, System contributions were reduced by approximately \$1 million from forfeited non-vested accounts.

Pension Plan

The System has a noncontributory, defined benefit pension plan (the Plan). It is a single-employer, self-administered, trustee plan for which a separate stand-alone financial report is issued. The Plan is administered by an Administrative Committee appointed by the Board of Trustees of the System, which is responsible for administering the Plan under the terms that are established. The Board of Trustees approves amendments to the Plan. State Street Bank & Trust Co. serves as the trustee and custodian for the Plan. As a unit of local government, the Plan is not covered by ERISA. The Plan is funded through actuarially determined contributions by the System. The entry age normal method is used to determine both the funding and the pension benefit obligation.

Each participant shall have a monthly benefit payable for life equal to the greater of (a) the number of years of service multiplied by 1.5 percent of average monthly compensation (average base compensation received in five highest consecutive calendar years out of the 10 complete calendar years prior to retirement) or (b) the accrued monthly retirement benefit determined as of January 1, 1989, plus the number of years of future service earned after January 1, 1989, multiplied by 1.5 percent of average monthly compensation, subject to a minimum equal to the benefit earned under the Plan prior to the adoption of the 6th Amendment as of September 30, 1991 (applies to non-highly compensated employees only). Monthly benefit payments are subject to a minimum based on the number of years of service multiplied by \$6 and a maximum provision permitted to be paid under Section 415 of the Internal Revenue Code. Participants may also elect to receive their benefits in other optional forms approved by the Administrative Committee.

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As of December 31, 2021 (measurement date), the following employees were covered by the benefit terms:

Inactive employee or beneficiaries currently receiving benefits	3,290
Inactive employees entitled to but not yet receiving benefits	1,333
Active employees	<u>2,014</u>
	<u>6,637</u>

The Harris Health System Board of Trustees establishes the contribution requirements of the System based on an actuarially determined rate recommended by an independent actuary. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability. For the seven-month period ended September 30, 2022, the System contributed \$35 million or 38.3 percent of covered payroll.

Net Pension Liability

The System's net pension liability was measured as of December 31, 2021 and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of those dates. Actuarial assumptions and methods used in the actuarial valuations are as follows.

Valuation date	January 1, 2021
Measurement date	December 31, 2021
Actuarial cost method	Entry age normal
Equivalent single amortization period	20 years, closed
Asset valuation method	Market value
Actuarial assumptions:	
Inflation	2.5%
Investment rate of return (net of expenses)	5.75
Projected salary increases (ultimate rate):	
Initial rate	5.1
Ultimate rate	3.0
Mortality rates:	
Healthy	Pri-2012 Total Dataset Mortality Table, with generational mortality improvement projected after year 2012 using Scale MP-2021
Disabled	Pri-2012 Disability Mortality Table, with generational mortality improvement projected after year 2012 using Scale MP-2021

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The long-term expected rate of return on pension plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target allocation and best estimates of arithmetic real rates of return as of December 31, 2021, for each major asset class are summarized in the following table:

Asset Class	Target Allocation	Long-Term Expected Real Rate of Return
Real estate funds	5 %	6.43 %
Domestic equity-large cap	26	7.14
Domestic equity-small/mid cap	4	7.66
International equity	25	7.74
Fixed income	35	4.13
Hedge funds	5	6.01
	<u>100 %</u>	

The discount rate used to measure the total pension liability was 5.8 percent, net of expenses, as of December 31, 2021. The projection of cash flows used to determine the discount rate assumed that System contributions would be made at rates equal to the actuarial determined contribution and the Plan's fiduciary net position is projected to cover benefit payments and administrative expenses.

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Changes in the net pension liability are as follows (in thousands):

	Increase (Decrease)		
	Total Pension Liability (a)	Plan Fiduciary Net Position (b)	Net Pension Liability (a)-(b)
Balances, beginning of period	\$ 1,038,771	\$ 876,637	\$ 162,134
Changes for the year:			
Service cost	8,601	-	8,601
Interest	64,147	-	64,147
Differences between expected and actual experience	1,782	-	1,782
Changes of assumptions	61,527	-	61,527
Contributions - employer	-	57,000	(57,000)
Net investment income	-	88,725	(88,725)
Benefit payments	(53,264)	(53,264)	-
Administrative expense	-	(2,725)	2,725
Net changes	<u>82,793</u>	<u>89,736</u>	<u>(6,943)</u>
Balances, end of period	<u>\$ 1,121,564</u>	<u>\$ 966,373</u>	<u>\$ 155,191</u>

Sensitivity of the net pension liability to changes in the discount rate – the following presents the net pension liability of the System, calculated using the discount rate of 5.8 percent, as well as what the System's net pension liability would be if it were calculated using a discount rate that is 1.0 percentage point lower (4.8 percent) or 1.0 percentage point higher (6.8 percent) than the current rate (in thousands):

	1% Decrease	Current Discount	1% Increase
System's net pension liability	\$ 289,716	\$ 155,191	\$ 42,201

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Pension Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions

Because the System recognized pension expense for the measurement period ended December 31, 2021 in its entirety during the year ended February 28, 2022, the System did not recognize pension expense in the seven-month period ended September 30, 2022. At September 30, 2022, the System reported deferred outflows and deferred inflows of resources related to pensions from the following sources (in thousands).

	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>
Changes of assumptions	\$ 27,155	\$ -
Differences between expected and actual experience	786	-
Net difference between projected and actual earnings on pension plan investments	-	88,153
Employer contributions remitted subsequent to the measurement date	<u>44,840</u>	<u>-</u>
Total	<u>\$ 72,781</u>	<u>\$ 88,153</u>

At September 30, 2022, the System reported \$45 million as deferred outflows of resources related to pensions resulting from System contributions made subsequent to the measurement date that will be recognized as a reduction of the net pension liability at period ended September 30, 2023.

Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows (in thousands):

Years ending September 30:	
2023	\$ 7,183
2024	(37,827)
2025	(23,321)
2026	<u>(6,247)</u>
	<u>\$ (60,212)</u>

Pension Plan Fiduciary Net Position

Detailed information about the pension plan's fiduciary net position is available in the separately issued Plan financial report.

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Deferred Compensation

The System has a deferred compensation plan for the benefit of its eligible employees under Section 457 of the Internal Revenue Code of 1954. The assets in the Deferred Compensation Plan, which is not recorded in the accompanying statements of net position, are not subject to creditors. The Deferred Compensation Plan assets at September 30, 2022 were approximately \$129 million.

Note 10: Other Postemployment Benefits (OPEB) Health Care Plan

Plan Description and Benefits Provided

The OPEB is sponsored by the System which provides certain health care benefits for retired employees. The System's employees may become eligible for those benefits upon completing 10 years of service. Retiree medical plan participants are provided benefits under the System's self-insured medical plan. The contribution requirements of plan members and the System are established by and may be amended by the System's Board of Trustees. The System funds these benefits on a pay-as-you-go basis, meaning that the System will pay benefits as they come due. For the seven-month period ended September 30, 2022, the System contributed \$13 million to the Plan for current premiums and administrative costs. Plan members receiving benefits during the seven-month period ended September 30, 2022, contributed \$2.7 million, or approximately 20.1 percent of the total premiums, through their required contribution. Plan members that are ages 65 and younger were required to contribute \$71.92 per month for retiree-only coverage and \$444.33 for retiree and spouse coverage for the seven-month period ended September 30, 2022. Plan members that are ages 65 and older were required to contribute \$99.17 per month for retiree-only coverage and \$520.67 for retiree and spouse coverage for the seven-month period ended September 30, 2022. The OPEB does not issue a separate report that includes financial statements. No assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement 75. In an amendment approved by the board on January 25, 2018, employees hired after June 1, 2018 are no longer eligible to participate in the OPEB.

At February 28, 2022 (measurement date), the following employees were covered by the benefit terms.

Inactive employee or beneficiaries currently receiving benefits	2,163
Active employees	6,108
	8,271

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Total OPEB Liability

The System's total OPEB liability of \$463 million as of September 30, 2022 was determined by an actuarial valuation as of March 1, 2021 and rolled forward to the measurement date of February 28, 2022.

The total OPEB liability in the actuarial valuation report was determined using the following actuarial assumptions and the entry age normal actuarial cost method, applied to all periods included in the measurement, unless otherwise specified:

Salary increases	2.5%
Discount rate	2.83%
Health care cost trend rates	6.25% for 2022, decreasing to 5.50% over 3 year and following the Getzen model thereafter

The discount rate used to measure the total OPEB liability was 2.8 percent which is based on the S&P Municipal Bond 20 Year High Grade Rate Index as of February 28, 2022.

Mortality rates for healthy pre-commencement and post-participants were based on Pri-2012 Total Dataset Mortality Table with generational mortality improvement projected using scale MP-2021. Rates for disabled participants were based on Pri-2012 Disability Mortality Table with generational mortality improvement projected using Scale MP-2021.

No formal actuarial experience studies have been performed.

Changes in the Total OPEB Liability (In Thousands)

Total OPEB liability, beginning of period	<u>\$ 588,606</u>
Changes for the year:	
Service cost	13,425
Interest	7,067
Experience gains	7,652
Change of assumptions	(136,204)
Benefit payments	<u>(18,018)</u>
Net changes	<u>(126,078)</u>
Total OPEB liability, end of period	<u><u>\$ 462,528</u></u>

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Sensitivity of the System's Total OPEB Liability to Changes in the Discount Rate and Health Care Cost Trend Rates

The total OPEB liability has been calculated using a discount rate of 2.8 percent. The following table presents the total OPEB liability of the System using a discount rate 1.0 percent higher and 1.0 percent lower than the current discount rate (in thousands):

	<u>1% Decrease</u>	<u>Current Discount Rate</u>	<u>1% Increase</u>
Total OPEB Liability	\$ 536,351	\$ 462,528	\$ 403,224

The following presents the total System's OPEB liability, as well as what the System's OPEB liability would be if it were calculated using health care cost trend rates that are 1.0 percent higher and 1.0 percent lower than the current health care cost trend rates (in thousands):

	<u>1% Decrease</u>	<u>Healthcare Cost Trend Rates (6.25% decreasing to 5.50%)</u>	<u>1% Increase</u>
Total OPEB Liability	\$ 397,071	\$ 462,528	\$ 544,834

OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB

Because the System recognized OPEB expense for the measurement period ended February 28, 2022 in its entirety during the year ended February 28, 2022, the System did not recognize OPEB expense in the seven-month period ended September 30, 2022. At September 30, 2022, the System reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources (in thousands):

	<u>Deferred Outflows of Resources</u>	<u>Deferred Inflows of Resources</u>
Changes of assumptions	\$ 98,534	\$ 113,503
Differences between expected and actual experience	6,376	17,039
Employer benefit payments remitted subsequent to the measurement date	<u>10,461</u>	<u>-</u>
Total	<u>\$ 115,371</u>	<u>\$ 130,542</u>

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Deferred outflows of resources of \$10,461 thousand at September 30, 2022 representing benefits paid from the measurement date through the end of the reporting period will be recognized as a reduction in the OPEB liability during the year ended September 30, 2023.

Amounts reported as deferred outflows of resources and deferred inflows of resources at September 30, 2022 related to OPEB will be recognized in OPEB expense as follows (in thousands):

Years ending September 30,	
2023	\$ 349
2024	349
2025	349
2026	(5,255)
2027	(21,424)
	<u>\$ (25,632)</u>

Note 11: Concentrations of Credit Risk

The System provides services to its patients, most of whom are local residents and may be insured under third-party payor agreements, in accordance with its charity care policy (see *Note 2*). Patient service revenues (see *Note 3*) and the related accounts receivable are reflected in the System's financial statements net of charges for charity care provided. The mix of net receivables from self-pay patients and third-party payors at September 30, 2022 is as follows:

Medicaid	16%
Medicare	51%
Commercial	18%
Self-pay patient	<u>15%</u>
	<u>100%</u>

Note 12: Commitments and Contingencies

At September 30, 2022, the System was a defendant in certain pending civil litigation and has notice of certain claims that have been asserted against it. The System is covered under the *Texas Tort Claims Act* (the Act). Under the Act, any claims and recoveries from pending or possible litigation due to personal injuries are limited to \$100 thousand per person and \$300 thousand per single occurrence of bodily injury or death. Professional liability claims have been asserted by various claimants. The claims are in various stages of processing, and some may ultimately be brought to trial. There are also other known and unknown incidents that have occurred through September 30, 2022, that may result in the assertion of additional claims.

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The System covers its exposure for asserted and unasserted claims through a program of self-insurance and has accrued its best estimate of these contingent losses. In the opinion of the System's management, the outcomes of these actions will not have a material adverse effect on the financial statements of the System.

The System has self-insurance programs for the payment of hospital professional and general liability claims, workers' compensation, and employee health claims. Liabilities related to these programs are accrued utilizing actuarial analyses based on historical claims experience and are undiscounted. Changes in these self-insurance programs for the seven-month period ended September 30, 2022 are as follows (in thousands).

	Beginning- of-period Liability	Current-year Claims and Changes In Estimates	Claim Payments	End-of-period Liability
Hospital professional and general liability:	\$ 2,904	\$ 2,322	\$ 2,023	\$ 3,203
Workers' compensation liability:	\$ 2,291	\$ 599	\$ 599	\$ 2,291
Employee healthcare benefits liability:	\$ 9,796	\$ 90,400	\$ 87,507	\$ 12,689

The reserve for hospital professional and general liability, including malpractice, and the reserve for workers' compensation claims are included in accounts payable and accrued liabilities in the accompanying statement of net position. The reserve for incurred but unreported employee health claims is included in employee compensation and related benefit liabilities in the accompanying statement of net position.

The System is also exposed to various risks of loss related to theft of, damage to, and destruction of assets, errors and omissions, and natural disasters. It is the System's policy to purchase commercial insurance for the risks of these losses. Settled claims have not exceeded this commercial coverage in any of the past three fiscal years.

At September 30, 2022, the System had commitments outstanding in the amount of \$72 million related to improvements at existing facilities and \$6 million related to information technology projects.

The System receives financial awards from federal and state agencies in the form of grants. Expenditures of funds under those programs require compliance with the grant agreements and are subject to audit. Any disallowed expenditures resulting from such audits become a liability of the System. In the opinion of management, such adjustments, if any, are not expected to materially affect the financial condition or operations of the System.

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Note 13: Lease Liabilities

The System, as lessee, leases equipment and office space, the terms of which expire in various years through 2031. Various leases include escalation in payments on the anniversary of the commencement of the lease at various intervals. The leases were measured using the System's incremental borrowing rate as of the lease commencement which ranged from 1.88% to 6.27% based on the commencement date and term of the lease.

During the seven-month period ended September 30, 2022, the System recognized \$4 million of rental expense for variable payments not previously included in the measurement of the lease liability.

The following is a schedule by year of payments under the leases as of September 30, 2022 (in thousands):

<u>Years Ending September 30,</u>	<u>Total to Be Paid</u>	<u>Principal</u>	<u>Interest</u>
2023	\$ 9,740	\$ 8,231	\$ 1,509
2024	8,183	6,912	1,271
2025	7,272	6,044	1,228
2026	6,334	5,468	866
2027	5,894	5,214	680
2028 - 2031	<u>17,663</u>	<u>16,697</u>	<u>966</u>
	<u>\$ 55,086</u>	<u>\$ 48,566</u>	<u>\$ 6,520</u>

The System's lease liability activity for the seven-month period ended September 30, 2022 consists of the following (in thousands):

	<u>Beginning Balance (As Restated)</u>	<u>Additions</u>	<u>Deductions</u>	<u>Ending Balance</u>	<u>Current Portion</u>
Lease Liabilities	\$ 48,994	\$ 4,863	\$ (5,291)	\$ 48,566	\$ 8,231

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Note 14: COVID-19 Pandemic & CARES Act Funding

On March 11, 2020, the World Health Organization designated the SARS-CoV-2 virus and the incidence of COVID-19 (COVID-19) as a global pandemic. Patient volumes and the related revenues were significantly affected by COVID-19 as various policies were implemented by federal, state, and local governments in response to the pandemic that led many people to remain at home and forced the closure of or limitations on certain businesses, as well as suspended elective procedures by health care facilities.

During the seven-month period ended September 30, 2022, the System received \$21 million of distributions from the *Coronavirus Aid, Relief, and Economic Security* (“CARES”) Act Provider Relief Fund. These distributions from the Provider Relief Fund are not subject to repayment, provided the System is able to attest to and comply with the terms and conditions of the funding, including demonstrating that the distributions received have been used for qualifying expenses or lost revenue attributable to COVID-19, as defined by HHS.

The System is accounting for such payments as conditional contributions. Payments are recognized as non-operating revenue once the applicable terms and conditions required to retain the funds have been met. Based on an analysis of the compliance and reporting requirements of the Provider Relief Fund and the effect of the pandemic on the System’s operating revenues and expenses through the seven-month period ended September 30, 2022, the System recognized \$21 million in the period ended September 30, 2022, related to the Provider Relief Fund, and these payments are recorded as Provider Relief Fund revenue in the statement of revenues, expenses and changes in net position.

The System will continue to monitor compliance with the terms and conditions of the Provider Relief Fund and the effect of the pandemic on the Hospital’s revenues and expenses. The terms and conditions governing the Provider Relief Funds are complex and subject to interpretation and change. If the System is unable to attest to or comply with current or future terms and conditions the System’s ability to retain some or all of the distributions received may be affected. Additionally, the amounts recorded in the financial statements compared to the System’s Provider Relief Fund reporting could differ. Provider Relief Fund payments are subject to government oversight, including potential audits.

Note 15: GASB Statements Issued but not yet Effective

GASB Statement No. 94 – *Public-Private and Public-Public Partnerships and Availability Payment Arrangements* (GASB 94) provides uniform guidance on accounting and financial reporting for public-private and public-public partnership arrangements (PPPs) and availability payment arrangements (APAs). As used in GASB 94, a PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use an infrastructure or other nonfinancial asset (the underlying PPP asset) for a period of time in an exchange or exchange-like transaction. GASB 94 also addresses APAs, which are arrangements where a government compensates an operator for services that may include designing, constructing,

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financing, maintaining or operating an underlying infrastructure or other nonfinancial asset for a period of time in an exchange or exchange-like transaction. This statement requires governments to report assets and liabilities related to PPPs consistently and disclose information about PPP transactions. The requirements of GASB 94 are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. The changes would be applied retrospectively, if practicable, for all prior fiscal years presented. PPPs would be recognized and measured using the facts and circumstances that exist at the beginning of the implementation period or, if applicable to earlier periods, the beginning of the earliest period restated. In the year of adoption, the financial statement notes should disclose the nature of the restatement and its effect or the reason for not restating prior years presented.

GASB Statement No. 96 – *Subscription-Based Information Technology Arrangements* (GASB 96) provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; 2) establishes that a SBITA results in a right-to-use subscription asset – an intangible asset - and a corresponding subscription liability; 3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and 4) requires note disclosure regarding a SBITA. To the extent relevant, the standards for a SBITAs are based on the standards established in GASB 87. The requirements of GASB 96 are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.

GASB Statement No. 101 – *Compensated Absences* (GASB 101) updates the recognition and measurement guidance for compensated absences under a unified model. It defines compensated absences and requires that liabilities be recognized in financial statements prepared using the economic resources measurement focus for leave that has not been used and leave that has been used but not yet paid or settled. A liability for compensated absences should be accounted for and reported on a basis consistent with governmental fund accounting principles for financial statements prepared using the current financial resources measurement focus. GASB 101 amends the existing requirement to disclose the gross increases and decreases in a liability for compensated absences to allow governments to disclose only the net change in the liability (as long as they identify it as a net change). In addition, governments are no longer required to disclose which governmental funds typically have been used to liquidate the liability for compensated absences. The requirements of GASB 101 are effective for fiscal years beginning after December 15, 2023, and all reporting periods thereafter. Earlier application is encouraged. The changes adopted at transition to conform to the provisions of GASB 101, should be reported as a change in accounting principle in accordance with GASB Statement No 100, *Accounting Changes and Error Corrections*, including the related display and disclosure requirements.

Required Supplementary Information

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**Schedule of Changes in the System's Net Pension Liability and Related Ratios
December 31,
(Dollar amounts in thousands)**

	2021	2020	2019	2018	2017	2016	2015	2014
Total pension liability:								
Service cost	\$ 8,601	\$ 8,036	\$ 8,057	\$ 8,280	\$ 6,803	\$ 7,232	\$ 7,795	\$ 8,642
Interest	64,147	64,307	63,183	60,495	61,427	59,397	57,482	52,342
Difference between expected and actual experience	1,782	3,807	243	8,000	1,718	(4,063)	4,637	(1,909)
Changes of assumptions	61,527	50,545	23,528	15,748	10,709	-	-	40,689
Benefit payments	(53,264)	(50,184)	(47,367)	(44,712)	(42,563)	(40,178)	(44,023)	(34,444)
Net change in total pension liability	82,793	76,511	47,644	47,811	38,094	22,388	25,891	65,320
Total pension liability – beginning	1,038,771	962,260	914,616	866,805	828,711	806,323	780,432	715,112
Total pension liability – ending (a)	1,121,564	1,038,771	962,260	914,616	866,805	828,711	806,323	780,432
Plan fiduciary net position:								
Contributions – employer	57,000	53,778	33,621	30,984	29,433	32,693	31,759	31,292
Net investment income	88,725	138,087	119,362	(35,426)	107,519	37,401	(4,891)	37,069
Benefit payments	(53,264)	(50,184)	(47,367)	(44,712)	(42,563)	(40,178)	(44,023)	(34,444)
Administrative expense	(2,725)	(2,366)	(3,010)	(2,442)	(2,478)	(232)	(2,389)	(2,302)
Net change in plan fiduciary net position	89,736	139,315	102,606	(51,596)	91,911	29,684	(19,544)	31,615
Plan fiduciary net position – beginning	876,637	737,322	634,716	686,312	594,401	564,717	584,261	552,646
Plan fiduciary net position – ending (b)	966,373	876,637	737,322	634,716	686,312	594,401	564,717	584,261
System's net pension liability – ending (a) – (b)	\$ 155,191	\$ 162,134	\$ 224,938	\$ 279,900	\$ 180,493	\$ 234,310	\$ 241,606	\$ 196,171
Plan fiduciary net position as a percentage of the total pension liability	86.16%	84.39%	76.62%	69.40%	79.18%	71.73%	70.04%	74.86%
Covered payroll	\$ 148,657	\$ 156,479	\$ 163,835	\$ 169,885	\$ 173,272	\$ 182,060	\$ 197,360	\$ 210,728
System's net pension liability as a percentage of covered payroll	104.40%	103.61%	137.30%	164.76%	104.17%	128.70%	122.42%	93.09%

Notes to Schedule:

Changes of assumptions – In 2014, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the RP-2014 bottom quartile mortality tables with generational mortality improvement projected after 2014 with 50% of Scale MP-2014 for purposes of developing mortality rates.

Changes of assumptions – In 2017, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the MP-2017 scale and rate of return on investments from 7.5% to 7.0%.

Changes of assumptions – In 2018, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the RP-2014 total dataset mortality tables with generational mortality improvement projected after 2006 using Scale MP-2018 for purposes of developing mortality rates and change in inflation rate from 3.0% to 2.5%.

Changes of assumptions – In 2019, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the Pri-2012 total dataset mortality tables with generational mortality improvement projected after 2012 using Scale MP-2019 for purposes of developing mortality rates and change in investment return rate from 7.0% to 6.75%.

Changes of assumptions – In 2020, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the Pri-2012 total dataset mortality tables with generational mortality improvement projected after 2012 using Scale MP-2020 for purposes of developing mortality rates and change in investment return rate from 6.75% to 6.25%.

Changes of assumptions – In 2021, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the Pri-2012 total dataset mortality tables with generational mortality improvement projected after 2012 using Scale MP-2021 for purposes of developing mortality rates and change in investment return rate from 6.25% to 5.75%.

**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas
Schedule of System Pension Contributions
September 30,
(Dollar amounts in thousands)**

	2022	2021	2020	2019	2018	2017	2016	2015
Actuarially determined contribution	\$ 36,225	\$ 36,056	\$ 33,621	\$ 30,984	\$ 29,433	\$ 32,693	\$ 31,759	\$ 31,292
Contributions in relation to the actuarially determined contribution	<u>57,000</u>	<u>53,778</u>	<u>33,621</u>	<u>30,984</u>	<u>29,433</u>	<u>32,693</u>	<u>31,759</u>	<u>31,292</u>
Contribution deficiency (excess)	<u>\$ (20,775)</u>	<u>\$ (17,722)</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
Covered payroll	\$ 148,657	\$ 156,479	\$ 163,835	\$ 169,885	\$ 173,272	\$ 182,060	\$ 197,360	\$ 210,728
Contributions as a percentage of covered payroll	38.34%	34.37%	20.52%	18.24%	16.99%	17.96%	16.09%	14.85%

Notes to Schedule:

Valuation date:

Actuarially determined contribution rates are calculated as of January 1, one year prior to the end of the fiscal year in which contributions are reported.

Methods and assumptions used to determine contribution rates:

Actuarial cost method	Entry age normal
Amortization method	Layered over a closed 20-year period
Asset valuation method	Market value, 5-year smoothing
Inflation	2.5%
Salary increases	5.1% initial rate 3.0% ultimate rate
Investment rate of return	5.75%, net of pension plan investment expense, including inflation
Retirement age	Various – Expected retirement ages are adjusted to more closely reflect actual experience
Mortality	Pri-2012 Disability Mortality Table, with generational mortality improvement projected after year 2012 using Scale MP-2021

**Harris County Hospital District
d/b/a Harris Health System
A Component Unit of Harris County, Texas**

**Schedule of Changes in the System's Total OPEB Liability and Related Ratios
February 28,
(Dollar amounts in thousands)**

	2022	2021	2020	2019
Total OPEB liability:				
Service cost	\$ 13,425	\$ 9,895	\$ 9,424	\$ 9,746
Interest	7,067	11,990	15,195	13,820
Experience gains	7,652	(3,056)	(30,004)	-
Changes of assumptions	(136,205)	100,078	63,631	-
Benefit payments	(18,017)	(16,731)	(16,137)	(20,173)
Net change in total OPEB liability	(126,078)	102,176	42,109	3,393
Total OPEB liability – beginning	588,606	486,430	444,321	440,928
Total OPEB liability – ending	\$ 462,528	\$ 588,606	\$ 486,430	\$ 444,321
Covered employee payroll	\$ 432,158	\$ 449,724	\$ 514,871	\$ 491,810
System's total OPEB liability as a percentage of covered payroll	107.03%	130.88%	94.48%	90.34%

Notes to Schedule:

This schedule is presented as of the measurement date.

In an amendment approved by the board on January 25, 2018, employees hired after June 1, 2018 are no longer eligible to participate in the OPEB.

Changes of assumptions – Change in discount rate from 4% in 2018 to 3.21% in 2019

Changes of assumptions – In 2020, amounts reported as changes of assumptions resulted primarily from adjustments to assumed life expectancies as a result of adopting the Pri-2012 total dataset mortality table projected with Improvement Scale MP-2019 as of February 29, 2020.

Additionally, the discount rate was changed to 2.50% and the medical trend assumption was updated from 6.50% grading uniformly to 4.75% over 7 years to 7.50% grading uniformly to 6.75% over 3 years and following the Getzen model thereafter.

Changes of assumptions – In 2021, amounts reported as changes of assumptions resulted primarily from changing the mortality improvement assumption to the Improvement Scale MP-2020.

Additionally, the discount rate was changed to 1.21% and the medical trend assumption was updated from 7.50% grading uniformly to 6.75% over 3 years to 6.50% grading uniformly to 5.75% over 3 years and following the Getzen model thereafter.

Changes of assumptions – In 2022, amounts reported as changes of assumptions resulted primarily from changing the mortality improvement assumption to the Improvement Scale MP-2021.

Additionally, the discount rate was changed to 2.83% and the medical trend assumption was updated from 6.50% grading uniformly to 5.75% over 3 years to 6.25% grading uniformly to 5.50% over 3 years and following the Getzen model thereafter.

No assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement No. 75 to pay related benefits.

EXHIBIT C

CAUSE NO. _____

TONY UNDERWOOD, PATRICIA	§	IN THE DISTRICT COURT OF
UNDERWOOD,	§	
Plaintiffs,	§	
	§	
VS.	§	
HARRIS COUNTY, TEXAS a.k.a.	§	_____ CIVIL DISTRICT COURT
HARRIS DISTRICT HOSPITAL and CITY	§	
OF HOUSTON, a.k.a., CITY OF	§	
HOUSTON POLICE DEPARTMENT,	§	
DET. C WALKER, ERIC	§	
WOHLGEMUTH, AND ADRIANNE	§	HARRIS COUNTY, TEXAS
NICOLE HICKS,	§	
Defendants.	§	

**ORIGINAL PETITION AND EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND INJUNCTIVE RELIEF PENDING RESOLUTION OF
HABEAS PETITION**

Plaintiff, **Tony Underwood, and Patrica Underwood** by and through undersigned counsel, files this **Original Petition** and respectfully moves this Court for a **Temporary Restraining Order (TRO)** and related **preliminary injunctive relief**, enjoining Harris County, a.k.a. HARRIS COUNTY, TEXAS a.k.a. HARRIS DISTRICT HOSPITAL DISTRICT and CITY OF HOUSTON, a.k.a. HOUSTON POLICE DEPARTMENT, DET. C WALKER, and **their agents** from barring access to Tony Underwood from his family and attorneys.

I. INTRODUCTION

1. Mr. Tony Underwood is currently falsely imprisoned at Ben Taub hospital by Houston Police officers, namely Det. C. Walker at the direction of Det. C walker, Eric Wohlgemuth, Adrianne Nicole Hicks, Legal 713 308-2561. Mr. Underwood has been in Ben Taub since April 30, 2025 without a warrant and without his consent to the exclusion of others, including his mother, and attorneys.

I. FACTUAL AND PROCEDURAL BACKGROUND

UNDERWOOD: PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER PAGE 1 OF 6

2. On or about **April 30, 2025**, Tony Underwood was **shot in his back by a Houston Police Officer**, during a time he was no threat of harm to anyone, the shooting resulted in **catastrophic, life-threatening injuries** that left him **unconscious**. He was transported to **Harris County's Harris Health Hospital** and is now **on life support**.
3. Since that time, Mr. Underwood has been **denied access to legal counsel, his mother (next of kin), and spiritual counsel**, in violation of his constitutional rights under the First, Sixth, and Fourteenth Amendments.
4. Despite Mr. Underwood's critical condition and incapacitation, the **Houston Police Department, Det. Walker** and **Harris County District Attorney's Office** have allegedly continued to pursue investigatory or prosecutorial action, including withholding of body camera footage central to any alleged probable cause.
5. Further, **no formal notice has been provided to Mr. Underwood or his next of kin** or any subsequent legal action.
6. Furthermore, **as of the date and time of this filing, there is no assigned Cause Number on the Harris County District Clerk's website**, for any criminal proceedings and there are no outstanding warrants for his arrest. Nonetheless, there has been a representation that there will be a hearing in criminal court on 5/13/25, precluding the ability of any retained criminal defense attorney to file an appearance or motion on Mr. Underwood's behalf, should he or his family elect to secure counsel of choice rather than accept a court-appointed attorney will not only deprive Mr. Underwood of his rights under the sixth amendment.
7. **City of Houston**, has conclusively stated that Mr. Underwood does not have a warrant for any crime but **HPD Detective Walker** continues to deny Mr. Underwood access to his attorney and

familial relationships, with his mother and other concerned family members and the instructions of **Eric Wohlgemuth, and Adrienne Nicole Hicks.**

UNDERWOOD: PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER PAGE 2 OF 6

8. **Harris County** has acted in concert to conspire to false imprison Mr. Underwood while allowing access to HPD officers as well as apprising HPD officers of updates on Mr. Underwood's medical condition in violation of his HIPAA rights through the **Harris County Hospital District-Ben Taub Hospital.**
9. These procedural irregularities—combined with Mr. Underwood's condition and denial of access—underscore the **urgent need for this Court's intervention** to preserve Mr. Underwood's constitutional rights and to **maintain the status quo.**
10. Plaintiff faces imminent, irreparable harm, including potential prosecution and continued deprivation of fundamental constitutional rights **without access to the courts**, unless this Court enjoins the City of Houston, and Harris County from denying Mr. Underwood and his family access to one another. In addition to access to counsel.

CAUSES OF ACTION

False Imprisonment

11. After Tony Underwood's shooting by one currently unknown Houston Police Officer, an immediate seizure, and Det. Walker's subsequent denial of access to legal counsel, family, and spiritual counsel, is a false imprisonment since the officers are actively detaining Underwood without legal justification or authority. Ben Tuab's action of escorting counsel with the threat of force from the hospital demonstrates the conspiracy to violate .
12. Mr. Underwood has been denied access to legal counsel, his mother (next of kin), and spiritual counsel, in violation of his constitutional rights under the United States and Texas Constitution. 13. Despite Mr. Underwood's critical condition, the Houston Police Department, Det. Walker and

Harris County District Attorney's Office have continued to pursue investigatory or prosecutorial action, including withholding of body camera footage central to any alleged probable cause.

UNDERWOOD: PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER PAGE 3 OF 6

14. Further, no formal notice has been provided to Mr. Underwood or his next of kin or any subsequent legal action.
15. Furthermore, as of the date and time of this filing, there is no assigned Cause Number on the Harris County District Clerk's website, for any criminal proceedings and there are no outstanding warrants for his arrest. Nonetheless, there has been a representation that there will be a hearing in criminal court on 5/13/25, precluding the ability of any retained criminal defense attorney to file an appearance or motion on Mr. Underwood's behalf, should he or his family elect to secure counsel of choice rather than accept a court-appointed attorney will not only deprive Mr. Underwood of his rights under the sixth amendment.
16. City of Houston, through their agents have conclusively stated that Mr. Underwood does not have a warrant for any crime but HPD Detective Walker continues to deny Mr. Underwood access to his attorney and familial relationships, with his mother and other concerned family members and the instructions of Eric Wohlgemuth, and Adrienne Nicole Hicks.
17. Harris County has acted in concert to conspire to false imprison Mr. Underwood while allowing access to HPD officers as well as apprising HPD officers of updates on Mr. Underwood's medical condition in violation of his HIPAA rights through the Harris County Hospital District-Ben Taub Hospital.
18. These procedural irregularities—combined with Mr. Underwood's condition and denial of access—underscore the urgent need for this Court's intervention to preserve Mr. Underwood's constitutional rights and to maintain the status quo.

19. Plaintiff faces imminent, irreparable harm, including potential prosecution and continued deprivation of fundamental constitutional rights without access to the courts, unless this Court enjoins the City of Houston, and Harris County from denying Mr. Underwood and his family have access to one another. In addition to access to counsel.

UNDERWOOD: PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER PAGE 4 OF 6

20. The denial of access to legal counsel and family members, as well as the withholding of body camera footage, constitute violations of the Sixth and Fourteenth Amendments, which protect the right to counsel and due process, respectively. Additionally, the denial of spiritual counsel implicates further violations of protection of religious freedom.

21. The Texas Constitution guarantees due process and the right to counsel in criminal prosecutions, as outlined in Tex. Const. Art. I, § 10. The denial of these rights could form the basis for state constitutional claims.

II. LEGAL STANDARD

To obtain a temporary restraining order under *Fed. R. Civ. P. 65*, the movant must demonstrate:

- A substantial likelihood of success on the merits;
- A substantial threat of irreparable harm if the injunction is not granted;
- That the threatened injury outweighs any harm to the non-movant; and
- That the injunction will not disserve the public interest.

See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)(weighing the importance of considering the public interest when deciding to grant an injunction); *Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011)(A district court retains the authority to issue a preliminary injunction to preserve the status quo even where a related motion ... remains pending.)

III. APPLICATION

Plaintiff meets all four requirements:

- (i) **Likelihood of Success:** The habeas petition asserts meritorious constitutional violations, including denial of due process, access to counsel, and liberty without judicial oversight.
- (ii) **Irreparable Harm:** Mr. Underwood is medically unstable, and completely unable to advocate for his medical care or defend against investigatory or prosecutorial conduct.

UNDERWOOD: PETITION AND MOTION FOR TEMPORARY RESTRAINING ORDER PAGE 5 OF 6

- (iii) **Balance of Harms:** Restraining the defendant from denying access to family members to associate causes no harm to Respondents but protects Mr. Underwood's constitutional rights afforded under the 1st and 14th amendments.
- (iv) **Public Interest:** Protecting the rights of Mr. Underwood and detaining individuals is a matter of highest public importance.

IV. RELIEF REQUESTED

Plaintiff respectfully requests that the Court:

- V. Issue a **Temporary Restraining Order** enjoining Respondents from denying Tony Underwood access to his counsel and family;
- VI. Release any body camera footage upon request by public records;
- VII. Maintain the current status quo until this Court resolves the underlying constitutional questions raised in the habeas petition;
- VIII. Schedule a preliminary injunction hearing, if necessary, within the timeframe set by Rule 65.

IX. PRAYER

Plaintiff respectfully prays that this Court:

- **Issue a Temporary Restraining Order** prohibiting Respondents from pursuing any criminal actions, investigative measures, or custodial proceedings against Tony Underwood until the habeas petition is fully adjudicated;

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

PETITIONERS’ RESPONSE TO HARRIS COUNTY’S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THE COURT:

Petitioners Tony DeWayne Underwood and Patricia Underwood respectfully submit this Response in Opposition to Harris County’s Motion to Dismiss and, in support thereof, state as follows:

I. INTRODUCTION

Harris County’s Motion to Dismiss rests on a narrow mischaracterization of this habeas action. Contrary to the County’s assertion, this petition is *not a collateral request for visitation*; it is a constitutional challenge to the conditions and legality of Mr. Underwood’s confinement under state custody. He remains ventilator-dependent and

quadriplegic, under constant armed guard by Harris County deputies, and wholly isolated from legal counsel and next of kin since April 30, 2025.

Harris County falsely contends that Petitioner’s counsel, UA Lewis, “filed a habeas petition in civil court” and that “it was dismissed.” This is patently false. The proceeding filed in Harris County Civil Court was not a habeas petition, but an emergency request for injunctive relief to permit Mr. Underwood’s mother to access him while hospitalized and unconscious, at a time when no formal charges had been filed *nor any information available* about the reason for his detainment. See Exhibit C – *Original Petition and Emergency Motion for Temporary Restraining Order and Injunctive Relief Pending Resolution of Habeas Corpus*. The Harris County Civil Court Judge informed counsel and the family, for the first time, that a single charge for evading arrest had been filed, with a bond set at \$25,000. Mr. Underwood’s mother expressed relief, believing she could afford that amount, and see her son. Only after that hearing did it become apparent that two additional charges had been filed with unreachably high bonds, effectively foreclosing any opportunity for release or visitation.

That the County continues to deny access while claiming this Court lacks jurisdiction reflects not only a misunderstanding of federal habeas jurisprudence, but also a disturbing indifference to the constitutional rights of both Mr. Underwood and his family. The rights of Mr. Underwood’s mother, Patricia Underwood, have also been violated by this blanket denial of contact with her critically injured son. This is not a collateral visitation dispute, *it is a Constitutional Crisis*.

The writ is properly before this Court. The motion to dismiss should be denied.

II. REBUTTAL TO HARRIS COUNTY’S “BACKGROUND” NARRATIVE

A. Custody Is Ongoing and Constitutionally Infirm and Mr. Underwood is Classified as a Jail Inmate.

Mr. Underwood remains in full state custody. Although bond has been set, it has not been posted and remains unattainable. He is confined to a bed at Ben Taub, under continuous armed guard by Harris County deputies, while suffering from quadriplegia and respiratory dependency. The mere presence of bond does not defeat the fact of custody under *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

Contrary to Harris County’s assertion that Mr. Underwood is “not in the Harris County jail” and “not being treated by Harris Health,” the public records of the Harris County District Clerk and Harris County Jail Inmate Search explicitly list Mr. Underwood as “in jail custody.” See Exhibit A – *Charge showing Tony Underwood is in “Jail”*. Furthermore, the County admits that he is under 24-hour guard by Harris County deputies while hospitalized at Ben Taub Hospital, establishing functional custody under Sheriff Ed Gonzalez. Identification and clearance by a metal detector, and property search required to visit. Under Harris County’s rationale none of the hundreds of inmates that are housed in the private for-profit prison, LaSalle are *NOT* in Harris County custody either.

Further, the Ben Taub hospital floor where Mr. Underwood is located is under the control of the Harris County sheriff’s office. Ben Taub is a Harris County hospital. See Exhibit B – *Showing Harris County/Harris Health Systems/Ben Taub Association*.¹

¹ Source Exhibit B, <https://www.harrishealth.org/SiteCollectionDocuments/financials/Harris%20County%20Hospital%20District%20Single%20Audit%20Report%20Final%202022.pdf#search=audits>

Further, the Ben Taub hospital floor where Mr. Underwood is located is under the control of the Harris County Sheriff's Office. Regardless of Mr. Underwood's physical detention confinement location, he is without question in the custody of Sheriff Ed Gonzalez.

B. Access Has Been Systematically and Unconstitutionally Denied.

Mr. Underwood has been held in prolonged, uninterrupted isolation since April 30, 2025. With the sole exception of a single video call on May 21, during which he was unable to speak due to prior intubation and ventilator use, no in-person contact has been permitted with his family or legal counsel. He mouthed the words "water" and "help me" to his mother.

Only his appointed criminal defense attorney, Mr. Timothy Donahue, has been granted access. The two other attorneys of record, Ms. Lewis (who previously filed a habeas petition in state court) and undersigned counsel, have been categorically denied all access, including confidential communication or physical presence. Defense counsel Ms. Lewis and undersigned civil rights counsel have been summarily denied all access to Mr. Underwood. Only Mr. Donahue has had the ability to visit and place his eyes on Mr. Underwood.

At the outset of his representation, Mr. Donahue was not even aware that Patricia Underwood was Tony Underwood's next of kin, despite the Houston Police Department ("HPD") having been informed through direct communication between the family and HPD Detective Walker. HPD could, and should, have relayed that critical information to Mr. Donahue, particularly given the severity of Mr. Underwood's medical condition. The

refusal to permit access by other attorneys of record, combined with this failure to communicate critical next-of-kin information, has eliminated any opportunity for meaningful attorney-client consultation regarding his confinement, medical condition, bond status, or defense strategy. This wholesale denial of counsel violates Mr. Underwood's Sixth Amendment rights. The total *denial of access has also deprived Patricia Underwood of her rights to familial association and informed participation in her son's care and legal defense*, protections secured by the Fourteenth Amendment.

C. The Constitutional Violations Span from City to County Custody.

Mr. Underwood was originally seized and detained by the City of Houston, whose officers initiated the denial of access to family, counsel, and clergy. Those violations continued, unbroken, when custody transferred to Harris County, whose deputies now serve as Mr. Underwood's jailers under the guise of hospital security. This is a continuous constitutional injury with joint responsibility.

In addition, Harris County exercises effective control over the Harris Health System and its facilities, including Ben Taub Hospital, through a nine-member Board of Trustees appointed by the Harris County Commissioners Court. The Harris Health System, established under Chapter 281 of the Texas Health and Safety Code, is a governmental agency of Harris County, making the County directly responsible for policies and operations at the facility where Mr. Underwood remains confined. Harris County is not a passive actor, it has structural, financial, and administrative authority over Ben Taub Hospital and is thus accountable for the conditions of custody occurring therein.

Moreover, the City's efforts to "secret" Mr. Underwood's criminal proceedings from

public view via the restricted DEEDS docket system, coupled with the Harris County District Attorney's Office's participation, are deeply troubling. This tactic has deprived the family of basic access to case information and court oversight. It reflects a broader pattern of concealment that frustrates transparency, accountability, and due process. These attempts to obscure Mr. Underwood's legal status from both his family and the public only compound the constitutional violations at the heart of this habeas petition.

Indeed, the case did not appear on the Harris County District Clerk's public-facing docket system until on or about May 15, 2025. This deliberate delay in transparency prevented Mr. Underwood's family, legal counsel, and the public from accessing even basic information about his charges or case status, compounding the deprivation of meaningful participation and legal oversight noted throughout this action.

III. LEGAL ANALYSIS AND FEDERAL JURISDICTION

Federal habeas relief under 28 U.S.C. § 2241 is specifically available to challenge unconstitutional pretrial confinement, including when the petitioner has not yet been convicted. See *Jones v. Cunningham*, 371 U.S. 236, 238–40 (1963); *Dickerson v. State of Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987). The State's ongoing control over Mr. Underwood, without access to counsel, family, or religious support, plainly falls within that jurisdiction.

The County's *repeated assertion that this is "not really a habeas case"* ignores the *central purpose of the writ*: to challenge unlawful detention and ***deprivation of constitutional rights while in custody***. The fact that only appointed counsel has been allowed access, while other attorneys of record have been entirely barred, underscores the

severity of the constitutional violations and the need for urgent federal review.

Further, the live amended habeas petition, DKT #18, currently before this Court is the *first and only* formal habeas filing concerning the legality of Mr. Underwood's ongoing confinement and the writ of habeas of corpus is not limited to attacking the technical legality of detention, but extends to cases where detention is excessive, arbitrary, or violates fundamental rights, including access to counsel and family.

The criminal court and this court have concurrent jurisdiction. Harris County provides no authority to support its contention that this Court lacks jurisdiction, because it does not.

The state criminal court has not adjudicated any habeas proceedings, nor has the family received any notice of hearing or ruling on the merits. The family has only received an order granting access to their son which was later rescinded after an apparent ex parte hearing before the criminal court judge. The family did not receive notice and promptly made their way to the hospital with the order only to be denied once they arrived based on the rescinded order denying the order they had in hand.

As of today, the only thing keeping Mr. Underwood from his mother, and medical surrogate is money. He is not a flight risk nor a threat to the community nor has the county stated how he could be in any way that a GPS monitor would not resolve.

IV. CONCLUSION

Tony Underwood remains confined by the State, unbonded, under guard, suffering from quadriplegia, and cut off from counsel, family, and public scrutiny. The lone video

interaction on May 21, 2025, during which he was unable to speak, does not cure the systemic deprivation of rights that has occurred since April 30, 2025.

From the City's concealment of proceedings using the restricted DEEDS filing system to their denial of in-person access, then the continued County's denial of in-person access, this is not lawful pretrial detention, it is a continuing, unconstitutional confinement.

The writ is properly before this Court. The motion to dismiss should be denied.

06/03/2025

Respectfully Submitted,
/s/Courtney A. Vincent
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Minnesota Bar No. 0403083
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Southern District of Texas
SDTX Bar No. 3746531
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COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon to the Counsel listed below for this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties. Alternatively, this instrument may be served via e-mail and/or facsimile transmission, or certified mail, return-receipt

requested for those counsel who have not made a formal appearance in this matter.

Respectfully Submitted,

/s/Courtney A. Vincent
Counsel for Plaintiff

Suzanne Bradley

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TONY UNDERWOOD AND PATRICIA §
UNDERWOOD, §

Petitioners, §

v. §

CIVIL ACTION NO. 4:25-cv-2089

HARRIS COUNTY, A.K.A. HARRIS §
COUNTY SHERIFF'S OFFICE AND §
CITY OF HOUSTON, A.K.A. HOUSTON §
POLICE DEPARTMENT, §

Respondents. §

**DEFENDANT CITY OF HOUSTON'S MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(B)(1) FOR LACK OF SUBJECT MATTER JURISDICTION**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, the City of Houston ("the City"), files this Motion to Dismiss the Petitioners' Amended Emergency Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2254 and 2241 and complaint for declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 [Doc. #18] pursuant to Fed. Civ. P. Rule 12(b)(1) for lack of subject matter jurisdiction, respectfully showing the following:

ISSUES PRESENTED

1. Petition under 28 U.S.C. § 2241 must be dismissed for lack of jurisdiction.
2. Petition under 28 U.S.C. § 2254 must also be dismissed for lack of jurisdiction.
3. Petition is moot as to the City of Houston and the Court lacks jurisdiction to grant injunctive or declaratory relief under 42 U.S.C. § 1983.

STANDARD OF REVIEW

A. 12(b)(1) Standard

Federal Rule of Civil Procedure 12(b)(1) requires that a court dismiss a claim if the court does not have subject matter jurisdiction over the dispute. Fed. R. Civ. P. 12(b)(1). "The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction." *Id.* Indeed, a presumption against subject matter jurisdiction exists that "must be rebutted by the party bringing an action to federal court." *Coury v Prot*, 85 F3d 244, 248 (5th Cir 1996). "Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam). Discretion also exists to weigh any competing evidence based on credibility assessments. *Williamson v Tucker*, 645 F2d 404, 413 (5th Cir 1981) (citation omitted). Unlike a court considering a Rule 12(b)(6) or Rule 56 motion, district courts have a "unique power . . . to make factual findings which are decisive of [subject matter] jurisdiction" when considering a motion under Rule 12(b)(1) that raises questions of fact relevant to subject matter jurisdiction. *Id.* at 412-13.

B. Subject Matter Jurisdiction

Article III of the United States Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. "One element of the case-or-controversy requirement is that [plaintiffs], based on their complaint, must establish that they have standing to sue." *Raines v. Byrd*, 521 U.S. 811, 818 (1997) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). The irreducible constitutional minimum of standing

contains three elements. *Lujan*, 504 US at 560–61 (multiple citations omitted). First, the plaintiff must have suffered an "injury in fact," an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not "conjectural" or "hypothetical." *Id.* Second, there must be a causal connection between the injury and the conduct complained of; the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. *Id.* Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *Id.*

"[S]tanding is not, and must not be, a guessing game." *Kumar v. Frisco Indep. Sch. Dist.*, 443 F. Supp. 3d 771, 788 (E.D. Tex. 2020). A plaintiff bears the burden of establishing each element and must clearly allege facts at the pleading stage that demonstrate each criterion. *Id.* (quoting *Warth v Seldin*, 422 U.S. 490, 518 (1975)). Plaintiffs "'must demonstrate standing for each claim that they press' against each defendant, 'and for each form of relief that they seek.'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024) (quoting *TransUnion LLC v. Ramirez*, 594 U. S. 413, 431 (2021)).

Furthermore, in federal question cases such as this one, "District courts lack subject-matter jurisdiction over claims that are wholly insubstantial and frivolous or clearly immaterial and made solely for the purpose of obtaining jurisdiction." *Orosco v. Napolitano*, 598 F.3d 222, 225 (5th Cir. 2010) (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 (1998)). "Determining whether a claim is wholly insubstantial and frivolous necessarily entails consideration of the merits[.]" *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 622 (5th Cir. 2017) (multiple citations omitted) *See also John Corp. v. City of Hous.*, 214 F.3d 573, 576-77 (5th Cir. 2000) (the court "must be clear on what the

complaint alleges, for the ‘first step in any [§ 1983] claim is to identify the specific constitutional right allegedly infringed.’”) (quotation and citations omitted).

ARGUMENT AND AUTHORITIES

I. Petition under 28 U.S.C. § 2241 must be dismissed for lack of jurisdiction.

Challenges raised in a pretrial habeas corpus petition are governed by 28 U.S.C. § 2241. *See Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998). A § 2241 habeas petition is subject to summary dismissal if it appears from the face of the petition that the petitioner is not entitled to relief. *See Wottlin v. Fleming*, 136 F.3d 1032, 1034 (5th Cir. 1998) (affirming summary dismissal of § 2241 petition without ordering an answer from respondent); *see also* Rule 4 of the RULES GOVERNING SECTION 2254 CASES (providing for summary dismissal of a habeas petition).

Pretrial habeas relief is available under 28 U.S.C. § 2241(c) to a person "in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against [him]." *Hartfield v. Osborne*, 808 F.3d 1066, 1071 (5th Cir. 2015) (quoting *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987)). A pretrial detainee, however, must *fully exhaust* available state remedies before seeking federal habeas relief. *Montano v. Texas*, 867 F.3d 540, 542-43 (5th Cir. 2017) (citing *Dickerson*, 816 F.2d at 225). This entails submitting the factual and legal basis of any claim to the Texas Court of Criminal Appeals. *Deters v. Collins*, 985 F.2d 789, 795 (5th Cir. 1993) (citations omitted); *Curtis v. Garza Cty. Jail*, No. 5:18-CV-205-M-BQ, 2019 U.S. Dist. LEXIS 191263, 2019 WL 5698802, at *2 (N.D. Tex. Oct. 8, 2019), *adopting R. & R.*, 2019 WL 5697895 (N.D. Tex. Nov. 4, 2019). Exceptions exist only "where the available . . . remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself

be a patently futile course of action." *Montano*, 867 F.3d 542-43 (internal quotations and quoted case omitted).

In the pre-conviction context, a detainee confined after a felony indictment may file an application for writ of habeas corpus pursuant to Article 11.08 of the Texas Code of Criminal Procedure with the judge of the court in which he is indicted. *See* Tex. Code Crim. Proc. Ann. ART. 11.08. If the trial court denies habeas relief under Article 11.08, the applicant can take a direct appeal to an intermediate appellate court and then petition for discretionary review by the Texas Court of Criminal Appeals. *See, e.g., Ex parte Twyman*, 716 S.W.2d 951, 952 (Tex. Crim. App. 1986) (citing *Ex parte Payne*, 618 S.W.2d 380, 382 n. 5 (Tex. Crim. App. 1981)); *Curtis*, 2019 WL 5698802, at *2.

Underwood has not satisfied the exhaustion requirement, however. A review of the petition purportedly filed on his behalf confirms that he did not file a state habeas application under Article 11.08 in the appropriate court: the criminal district court in which he was indicted. Further, a search of online state court records reflects that no Article 11.08 state habeas application or appeal was filed. As a result, the Texas Court of Criminal Appeals has not had an opportunity to consider the allegations and they remain unexhausted. *See Moore v. Texas*, No. 3:24-CV-1822-X-BK, 2024 U.S. Dist. LEXIS 220552, at *2-3 (N.D. Tex. 2024) (dismissing similar allegations for failure to exhaust state remedies).

For all these reasons, assuming that Patricia Underwood has capacity to bring them, Tony Underwood's habeas corpus petition and request for injunctive relief should be DISMISSED WITHOUT PREJUDICE for failure to exhaust state court remedies.

II. Petition under 28 U.S.C. § 2254 must also be dismissed for lack of jurisdiction.

Under 28 U.S.C. § 2254(b) and (c), a claimant seeking habeas corpus relief in federal

court is required first to exhaust his claims by presenting them for review before the courts of the state in which he is confined. The exhaustion requirement is satisfied only when a petitioner's claims have been properly presented to the state's highest court, either on direct review or on post-conviction attack. *Bufalino v. Reno*, 613 F.2d 568, 570 (5th Cir.1980). As a general rule, federal habeas corpus relief is available on a habeas petition only when all of the claims in the petition have been exhausted through the state courts. *Rose v. Lundy*, 455 U.S. 509, 510, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982). The goal of this doctrine, as stated in *Rose*, is to afford state courts the first opportunity to review claims of constitutional error which promotes comity and ensures a more complete factual record will be developed that will aid federal courts in their review. *Id.* at 518-19. A district court may notice on its own motion a petitioner's failure to exhaust state court remedies. *McGee v. Estelle*, 722 F.2d 1206, 1214 (5th Cir.1984).

III. Petition is moot as to City of Houston and the Court lacks jurisdiction to grant injunctive or declaratory relief under § 1983.

Petitioners' request for declaratory and injunctive relief is moot as to the City of Houston, because the complaint admits that Tony Underwood is not in the City's custody. Tony Underwood is not being held pursuant to a civil order or judgment. His detention is due to pending criminal charges. The relief requested therefore lies in habeas corpus not a restraining order, and Petitioners have not shown state procedures inadequate or unlawful. *Ex parte Bhardwaj*, 575 S.W.3d 915, 920 (Tex. App.—Waco 2019, no pet.). TEX. CODE CRIM. PROC. ART. 11.05. See pretrial release provisions of Tex. Code Crim. Proc. Ann. art. 17.151; bond provisions art. 17.033.

Patricia Underwood is not entitled to declaratory or injunctive relief under the First and

Fourteenth Amendments and § 1983 because (1) the parent of an adult child has no constitutional right to visitation or association; and (2) she has not plausibly established the deprivation of these purported rights.

A parent of an adult child has no constitutional right to visitation with that child. *Bedingfield v. Deen*, 487 F. App'x 219, 232-33 (5th Cir. 2012). *See also Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999) (citation omitted) (“we note that, in a case where a prisoner was denied visitation with his mother, we stated that a prisoner has "no constitutional right to visitation privileges.”"); *see also McCray v. Sullivan*, 509 F.2d 1332, 1334 (5th Cir. 1975) (stating that, in the context of the denial of conjugal visits, a prisoner does not have a constitutional right to visitation).

That Underwood is purportedly incapacitated does not alter this:

It is insufficient to rely upon the broadly framed recognition of a right to family autonomy recognized in cases such as *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972); *Moore v. City of East Cleveland*, 431 U.S. 494, 499, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977). Further, as recently as 2012, in a similar case, the Fifth Circuit found a lack of "caselaw that indicates that a parent of an adult child has a right to visitation with that child." *Beddingfield ex rel. Beddingfield v. Deen*, 487 Fed. Appx. 219, 232-33 (5th Cir. 2012). The court concluded, therefore, that the plaintiffs had not demonstrated the defendants had "violated a clearly established constitutional right to familial association." *Id.* Compelling as Plaintiffs' arguments that Hill's disability renders his relationship to his mother the functional equivalent of that between a minor child and parent may be, Plaintiffs cite no legal support for this contention and fail to address the fact that Hill appears to remain, for legal purposes, a person of full majority, (i.e., there is no indication that he has been interdicted, so as to legally affect his status in this regard).

Hill v. New Orleans City, No. 13-2463, 2015 U.S. Dist. LEXIS 4565, at *61-62 (E.D. La. 2015).

Patricia Underwood petitioned the state criminal district court for access to her son in the hospital, and that request was denied. Ms. Underwood in that petition claimed that bond could not be posted because it had not yet been entered in any bail bond system. Ms. Underwood can post a bond and secure the release of her son from custody and the hospital, if she chooses. Alternatively, she may seek reduction of the bond and release from the appropriate court. Furthermore, Petitioners did not petition for writ of habeas corpus and appeal any denial so as to exhaust state remedies.

Petitioner's purported retained criminal attorneys have not filed a notice of appearance and substitution for Tony Underwood's court appointed criminal defense attorney, and clearly could have done so if Ms. Underwood has the authority to make decisions for her son, and/or if he had actually chosen these lawyers to represent him.

CONCLUSION AND PRAYER

The Petition should be dismissed without prejudice for lack of subject matter jurisdiction.

Respectfully submitted,

ARTURO G. MICHEL
City Attorney

CHRISTY MARTIN
Section Chief Torts/Civil Rights

Date: June 4, 2025.

By: /s/ Melissa Azadeh
MELISSA AZADEH
Attorney in Charge
Texas Bar No. 24064851
Senior Assistant City Attorney
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melissa.azadeh@houstontx.gov
**ATTORNEYS FOR DEFENDANT
CITY OF HOUSTON**

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June 2025, a true and correct copy of the foregoing motion was delivered to all opposing counsel(s) by electronic filing of same in accordance with the District's ECF service rules.

/s/ Melissa Azadeh _____
Melissa Azadeh

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Tony Underwood
Petitioner,

v.

Case No. 4:25-cv-02089

City of Houston
Respondent.

NOTICE OF SETTING

PLEASE TAKE NOTICE

HEARING: **Status Conference**

DATE: **6/5/2025**

TIME: **04:30 PM**

HAS BEEN SET BEFORE

JUDGE KEITH P. ELLISON

ALL PARTIES MAY APPEAR BY TELEPHONE BY CALLING IN
ON THE COURT'S DIAL-IN NUMBER AT +1 669-254-5252.

Enter Meeting ID: 160 7362 7986#

No participant ID – press #, Followed by Passcode: 3716#.

IF THE PARTIES WOULD LIKE TO JOINTLY REQUEST AN IN-PERSON HEARING,
PLEASE NOTIFY ARTURO RIVERA BY EMAIL.

Nathan Ochsner, Clerk

Date: June 4, 2025

By Deputy Clerk, A. Rivera

EXHIBIT A

6/5/2025 10:58 AM
Marilyn Burgess - District Clerk Harris County
Envelope No. 101657464
By: Destinee Soliz
Filed: 6/5/2025 10:58 AM

NO. 1914552

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
v.	§	248 th JUDICIAL DISTRICT
	§	
TONY DEWAYNE	§	
UNDERWOOD	§	HARRIS COUNTY, TEXAS

ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

On 5 June 2025, this Court considered an oral motion by movant, Timothy M. Donahue SBN 24079764, to permit the following family members of TONY DEWAYNE UNDERWOOD (hereinafter "Defendant") to have access to and the opportunity to speak in private with Defendant at the Ben Taub General Hospital or any other rehabilitation facility to which he may later be moved:

1. MOTHER: PATRICIA ANN UNDERWOOD.
TEXAS IDENTIFICATION CARD NUMBER 10060715.
DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL:
50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS,
TEXAS IDENTIFICATION CARD: 39407980; DOB: 18
NOVEMBER 1979

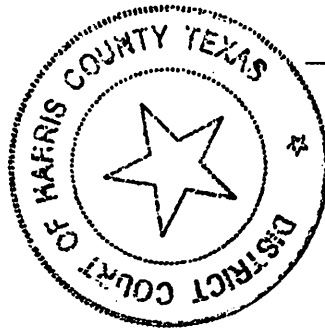
Tony Dewayne Underwood remains hospitalized and continues to receive intensive care at Ben Taub General Hospital Surgical Intensive Care Unit. Defendant remains in the custody of the Harris County Sheriff's Office in lieu of bail in the amount of \$150,000.00.

IT IS HEREBY ORDERED that the Harris County Sheriff's Office and its respective deputy sheriffs, and any and all agents permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams access to visitation, the opportunity to

pray over, and speak in private with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This order in no way limits the authority of the Harris County Sheriff's Office and its respective deputy sheriffs, respectively, to take necessary measures to ensure the safety and security of the Defendant and others.

SIGNED AND ENTERED on 5 June 2025.



Signed:
6/5/2025

Presiding
Judge 248th
District Court

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this

MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

NOTICE OF FILING STATE COURT ORDER
REGARDING VISITATION ACCESS

TO THE HONORABLE JUDGE ELLISON:

Petitioners Tony DeWayne Underwood and Patricia Underwood respectfully file into the record the attached *Order* (See Exhibit A) issued on June 5, 2025, by the Honorable Judge Hilary Unger of the 248th Judicial District Court of Harris County, Texas. The Order addresses visitation access during Mr. Underwood’s confinement and is submitted in accordance with the Court’s request.

The state court *Order* specifically grants the following individuals the right:

“to have access to and the opportunity to speak in private with Defendant [Tony Underwood] at the Ben Taub Hospital or any other rehabilitation

facility to which he may later be moved:

1. Patricia Underwood (mother)
2. Tony Dewayne Underwood, Jr. (son)
3. Shregal Underwood Williams (cousin) ”

A true and correct copy of the Order is attached hereto as **Exhibit A**.

06/08/2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted: **U.S. District Court,**

Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

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Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon to the Counsel listed below for this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties. Alternatively, this instrument may be served via e-mail and/or facsimile transmission, or certified mail, return-receipt

requested for those counsel who have not made a formal appearance in this matter.

Respectfully Submitted,

/s/Courtney A. Vincent

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

ORDER

On this day, the Court considered Petitioners’ *Motion to Voluntarily Dismiss Respondent City of Houston Without Prejudice*. Having considered the motion and the pleadings on file, the Court is of the opinion that the motion should be, and hereby is, GRANTED.

It is therefore ORDERED that Respondent City of Houston is hereby DISMISSED from this action without prejudice.

It is further ORDERED that each party shall bear its own costs and attorneys’ fees related to this dismissal.

SO ORDERED.

SIGNED on this ____ day of _____, 2025.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

PETITIONER’S NOTICE AND MOTION TO VOLUNTARILY DISMISS
DEFENDANT CITY OF HOUSTON WITHOUT PREJUDICE

TO THE HONORABLE OF THE COURT:

Petitioners Tony DeWayne Underwood and Patricia Underwood, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and with respect to this Court’s inherent authority to manage its docket, respectfully move to voluntarily dismiss **Respondent City of Houston** from this action **without prejudice**.

This *Motion* is made in good faith and in the interest of narrowing the contested issues now that access relief is being addressed. Petitioners reserve all rights against other Respondents and make no waiver of arguments against the continued detention or conditions imposed by Harris County.

Petitioners further respectfully request that the Court's order reflect that each party shall bear its own costs and attorneys' fees related to this *Motion*.

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully request that the Court enter an order dismissing the City of Houston as a party to this action without prejudice.

06/08/2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted: **U.S. District Court,**

Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

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Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon to the Counsel listed below for this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties. Alternatively, this instrument may be

served via e-mail and/or facsimile transmission, or certified mail, return-receipt requested for those counsel who have not made a formal appearance in this matter.

Respectfully Submitted,

/s/Courtney A. Vincent

ENTERED

June 12, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TONY UNDERWOOD,

Petitioner,

VS.

CITY OF HOUSTON, *et al.*,

Respondents.

§
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CIVIL ACTION NO. 4:25-CV-02089

ORDER

Petitioner Tony Underwood has filed a Petitioner's Notice and Motion to Voluntarily Dismiss Defendant City of Houston Without Prejudice. ECF No. 27. The Court **GRANTS** the Motion, ECF No. 27, and accordingly **DENIES** as moot Respondent City of Houston's Motion to Dismiss, ECF No. 24. In accordance with Petitioner's Motion and Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, Petitioner's claims against Respondent City of Houston are hereby **DISMISSED WITHOUT PREJUDICE**. Plaintiff's claims against Respondent Harris County remain pending. The Court encourages the remaining parties to discuss voluntarily dismissal of this case and **ORDERS** the remaining parties to file a written status update on whether this case may be dismissed, and all motions denied, as soon as possible, and no later than June 20, 2025.

IT IS SO ORDERED.

Signed at Houston, Texas on June 12, 2025.



Keith P. Ellison
United States District Judge

ENTERED

June 13, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD, et al.,

Petitioners,

v.

HARRIS COUNTY,

Respondent.

§
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CIVIL ACTION NO. 4:25-CV-02089

NOTICE OF TRANSFER TO MAGISTRATE JUDGE

In communications with the Court, the parties have indicated that they wish to waive their right to proceed before a district judge and have consented to United States Magistrate Judge Christina A. Bryan conducting all further proceeding, including trial and judgment. *See* 28 U.S.C. § 636(c). The case will be **TRANSFERRED** to Magistrate Judge Christina A. Bryan unless any party objects to the transfer in writing within ten days from the date of this Order. The parties are advised that no adverse substantive consequences will result from such an objection.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 12th day of June, 2025.



**KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

ORDER

The court on this day considered Harris County’s motion to dismiss Plaintiff’s Tony and Patricia Underwood’s Amended Emergency Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under Section 42 U.S.C. 1983. Docket Entry 18 (DE). Having read the motion and any reply, the court HEREBY:

GRANTS the motion and dismisses this case with prejudice.

This court has no jurisdiction, and finds that the state criminal court is vested with sole jurisdiction.

Further, precedent shows the Underwoods have no shown no violation of their constitutional rights as a matter of law. They have no grounds for a declaratory or injunctive relief. They have no grounds for habeas relief.

IT IS SO ORDERED.

This is a final judgment.

DATE: _____

Christina A. Bryan
U.S. Federal Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

HARRIS COUNTY'S MOTION TO DISMISS

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Harris County files this motion to dismiss Tony and Patricia Underwood's Amended Emergency Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under Section 42 U.S.C. 1983. Docket Entry 18 (DE).

It should be dismissed as this court has no jurisdiction.¹ Rule 12(b)(1) and (b)(6).

I. Background

Mr. Underwood, who was shot by Houston police, is now receiving visitations from his family in Ben Taub hospital, pursuant to the state criminal court's order, which has sole jurisdiction over Mr. Underwood.

He was arrested and bond was given by the court. *State of Texas v. Tony DeWayne Underwood*, Cause No. 1914552, 248th Criminal Court, Judge Hilary Unger. He is charged with aggravated assault of a public servant.

The new order giving the family visitation was signed June 5, 2025, and filed of record in this court. Visitation has been ongoing since. See DE 26-1, signed order.

¹ Under 28 U.S.C. § 2254(b) and (c), a claimant seeking habeas corpus relief in federal court is required first to exhaust his claims by presenting them for review before the courts of the state in which he is confined. The exhaustion requirement is satisfied only when a petitioner's claims have been properly presented to the state's highest court, either on direct review or on post-conviction attack. *Bufalino v. Reno*, 613 F.2d 568, 570 (5th Cir.1980). As a general rule, federal habeas corpus relief is available on a habeas petition only when all of the claims in the petition have been exhausted through the state courts. *Rose v. Lundy*, 455 U.S. 509, 510 (1982). The Underwoods have assiduously avoided the criminal state court where Mr. Underwood is charged.

Prior to this, Harris County and the City of Houston both filed motions telling this federal court it does not have jurisdiction for multiple reasons. Harris County incorporates for all purposes its briefing and the City's briefing regarding jurisdiction. DE 24, City's motion to dismiss.²

It still has no jurisdiction.

The court just signed an agreed order dismissing the City.

What remains is this fatally flawed filing that continues to seek remedy from a federal court that has no jurisdiction.

In addition to the extent Plaintiffs have raised a *Monell* claim against the County, their pleadings are insufficient and must be dismissed.

II. Summary of argument

First, the visitation is moot. The Underwoods are visiting their son. See court order, DE 26-1.

Harris County plans to seek a modification of the state court order in the criminal court, but again that is an issue for the state criminal court. It has no plans to deny visitation.

² Challenges raised in a pretrial habeas corpus petition are governed by 28 U.S.C. § 2241. See *Stringer v. Williams*, 161 F.3d 259, 262 (5th Cir. 1998). A § 2241 habeas petition is subject to summary dismissal if it appears from the face of the petition that the petitioner is not entitled to relief. See *Wottlin v. Fleming*, 136 F.3d 1032, 1034 (5th Cir. 1998) (affirming summary dismissal of § 2241 petition without ordering an answer from respondent); see also Rule 4 of the RULES GOVERNING SECTION 2254 CASES (providing for summary dismissal of a habeas petition).

Next, if the Underwoods want a modification, their remedy is in the state criminal court as well.

Nevertheless, the Underwoods assert their First, Fifth, Sixth, Eighth and Fourteenth amendment rights have been or are actively being violated. And they seek an injunction and habeas.

Their rights have not been violated. They have not show *Monell*.

a. This court has no jurisdiction to rule, grant habeas or an injunction

Harris County refers this court to the prior briefing, as well as the City's briefing. DE 24, city's motion. The state civil district court has already ruled it has no jurisdiction. This federal filing is an end run around the state court criminal system of courts, state criminal court judges and the district attorneys' office. The Underwoods' remedy is with Judge Unger, where it has always been.

Undeterred, the Underwoods demand this federal court grant habeas,³ grant access for counsel, order spiritual support and to "open and (sic) prompt channels of communication with next of kin..." DE 18, page 20-21.

Then the Underwoods want the court to "declare" that their rights have been violated. DE 18, p. 21.

³ *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody"). There is no question that Mr. Underwood has been indicted for assaulting a Houston police officer and is properly in Harris County's custody.

Then grant injunctive relief ordering notifications of her son's condition;

Then set aside the state criminal court's order (there is another order now);

Then order no more restrictions on access to Mr. Underwood. DE 18, p. 22.

Then order judicial review, prior notice to counsel and an opportunity to be heard; and

Then order attorney's fees and costs.

All of this without any jurisdictional power to do so.

b. Injunctive relief is not for this court to grant or deny

The Underwoods want this court, which has no jurisdiction, to enjoin Harris County. It is a legal impossibility.

A party seeking preliminary injunctive relief is required to satisfy the following four elements: (1) there is a substantial likelihood the party will prevail on the merits; (2) a substantial threat exists that irreparable harm will result if the party is denied preliminary injunctive relief; (3) the threatened injury to the petitioner outweighs the threatened harm to the respondent if relief is granted; and (4) granting relief will not disserve the public interest. *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009); *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006).

Arguably these elements ASSUME that the court has jurisdiction to do so.

Injunctions should not be granted if the party has not proved all four elements. *Bluefield Water Association, Inc. v. City of Starkville, Miss.*, 577 F.3d 250, 253 (5th

Cir. 2009); see also, *Oreye v. Low*, No. 1:24CV289, 2025 WL 715742, at *1 (E.D. Tex. Feb. 6, 2025), *report and recommendation adopted*, No. 1:24-CV-289, 2025 WL 714369 (E.D. Tex. Mar. 5, 2025).

The Underwoods now have visitation, which they got from the state criminal court. The injunctive request is moot, under the first two elements. They have no grounds for an injunction, even though this court has no power to grant one. Again, to the extent that there are future visitation issues, the remedy for all parties is before the state criminal court judge.

c. The Underwoods' Fourteenth Amendment rights have not been violated

The Underwoods complain of “prolonged isolation” and failing to “provide communication or humane treatment during his medical crisis.” DE 18, p. 14. To begin, *Bell v. Wolfish* does not help Mr. Underwood. *Bell* concerned a federal prison facility; pre-trial inmates were complaining about everything: overcrowded conditions, undue length of confinement, improper searches, inadequate recreational, educational, and employment opportunities, insufficient staff, and objectionable restrictions on the purchase and receipt of personal items and books. *Bell v. Wolfish*, 441 U.S. 520, 527 (1979).

The Supreme Court **found no violations of rights:**

It is important to focus on what is at issue here. We are not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails. See *Gerstein v. Pugh*, 420 U.S. 103, 114, 95 S.Ct. 854, 863, 43 L.Ed.2d 54 (1975); *United*

States v. Marion, 404 U.S. 307, 320, 92 S.Ct. 455, 463, 30 L.Ed.2d 468 (1971). Neither respondents nor the courts below question that the Government may permissibly detain a person suspected of committing a crime prior to a formal adjudication of guilt. See *Gerstein v. Pugh*, *supra*, 420 U.S., at 111–114, 95 S.Ct., at 861–863. Nor do they doubt that the Government has a substantial interest in ensuring that persons accused of crimes are available for trials and, ultimately, for service of their sentences, or that confinement of such persons pending trial is a legitimate means of furthering that interest. Tr. of Oral Arg. 27; see *Stack v. Boyle*, 342 U.S. 1, 4, 72 S.Ct. 1, 3, 96 L.Ed. 3 (1951). Instead, what *is* at issue when an aspect of pretrial detention that is not alleged to violate any express guarantee of the Constitution is challenged, is the detainee’s right to be free from punishment, see *infra*, at 1872, and his understandable desire to be as comfortable as possible during his confinement, both of which may conceivably coalesce at some point. It seems clear that the Court of Appeals did not rely on the detainee’s right to be free from punishment, but even if it had that right does not warrant adoption of that court’s compelling-necessity test. See *infra*, at 1872–1875. And to the extent the court relied on the detainee’s desire to be free from discomfort, it suffices to say that this desire simply does not rise to the level of those fundamental liberty interests delineated in cases such as *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

Bell, 441 U.S. at 533–35.

And *Turner v. Safley* applied to inmates’ right to marry and exchange inmate-to-inmate letters. It does not deal with the County’s right to secure custody of a hospitalized inmate who has been indicted for assaulting a Houston police officer. It is not an unreasonable restriction to monitor visitation, and it was not unreasonable to enforce the prior court order denying visitation. And again, this court does not have jurisdiction to alter the state criminal court’s orders.

Kingley v. Hendrickson, while it does cite to *Bell*, dealt with excessive force, and also does not help the Underwoods.

... *Bell* itself shows (and as our later precedent affirms), **a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.** Cf. *Block v. Rutherford*, 468 U.S. 576, 585–586, 104 S.Ct. 3227, 82 L.Ed.2d 438 (1984) (**where there was no suggestion that the purpose of jail policy of denying contact visitation was to punish inmates, the Court need only evaluate whether the policy was “reasonably related to legitimate governmental objectives” and whether it appears excessive in relation to that objective**); *Schall v. Martin*, 467 U.S. 253, 269–271, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) (similar); see also *United States v. Salerno*, 481 U.S. 739, 747, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) ...

Kingsley v. Hendrickson, 576 U.S. 389, 398–99 (2015).

It is important to note that Ms. Underwood, is not entitled to declaratory or injunctive relief under the First and Fourteenth Amendments and § 1983 because (1) the parent of an adult child has no constitutional right to visitation or association; and (2) she has not plausibly established the deprivation of these purported rights. A parent of an adult child has no constitutional right to visitation with that child. *Bedingfield v. Deen*, 487 F. App'x 219, 232-33 (5th Cir. 2012). See also *Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999) (citation omitted) (“we note that, in a case where a prisoner was denied visitation with his mother, we stated that a prisoner has ‘no constitutional right to visitation privileges.’ ”); see also *McCray v. Sullivan*, 509 F.2d 1332, 1334 (5th Cir. 1975) (stating that, in the context of the denial of conjugal visits, a prisoner does not have a constitutional right to visitation).

Nevertheless, the Underwoods have visitation per a state court order. Harris County's security concerns were not to punish Mr. Underwood, and they still are not, and there is no evidence otherwise. The family's unhappiness with the original court order is just not evidence that there was not a legitimate governmental objective for security. And they could have immediately gone to the state court criminal judge for any modification. They instead went to a civil state court judge who promptly ruled he had no jurisdiction.

d. Mr. Underwood's access to counsel and courts is not violated

Mr. Underwood complains that he has not had access to Civil Rights counsel and only limited access to Criminal Defense counsel. He says his First, Fourteenth and Sixth Amendment rights are being violated. Mr. Underwood is receiving medical care for significant shooting injuries, and the state court's order only allows family visitation at this point. Counsel's remedy, if any, lies with the state court judge not with this court. Further, Mr. Underwood has a right to counsel is not being abridged by Harris County. He needs to address this with the state court judge. This court cannot do an end run around the criminal court's orders.

e. The Underwoods "familial association" rights are not being violated

These rights have not been violated by Harris County, and the Underwoods cite to cases that do not support their argument. First, *Troxel* has to do with parents' rights regarding minor children. In that case, grandparents sought visitation with their dead son's children. The mother objected to the amount of time that was

sought. The Supreme Court struck the state statute that allowed anyone with interests in the child to get visitation. *Troxel v. Granville*, 530 U.S. 57, 65 (plurality opinion) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997)).

Next, *Overton v. Bazzetta* does not help the Underwoods either. The Supreme Court there upheld the restriction jail visitation for two years in certain contexts.

We have said that the Constitution protects “certain kinds of highly personal relationships,” *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 619–620, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). And **outside the prison context**, there is some discussion in our cases of a right to maintain certain familial relationships, including association among members of an immediate family and association between grandchildren and grandparents. See *Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (plurality opinion); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

This is not an appropriate case for further elaboration of those matters. The very object of imprisonment is confinement. Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate does not retain rights inconsistent with proper incarceration. See *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 125, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977); *Shaw v. Murphy*, 532 U.S. 223, 229, 121 S.Ct. 1475, 149 L.Ed.2d 420 (2001). And, as our cases have established, freedom of association is among the rights least compatible with incarceration. See *Jones, supra*, at 125–126, 97 S.Ct. 2532; *Hewitt v. Helms*, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983). Some curtailment of that freedom must be expected in the prison context.

We do not hold, and we do not imply, that any right to intimate association is altogether terminated by incarceration or is always irrelevant to claims made by prisoners. We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests. This suffices to sustain the regulation in question.

Overton v. Bazzetta, 539 U.S. 126, 131–32 (2003).

Thus, the Supreme Court found a legitimate interest in restricting “intimate association.” In this case, Harris County had a legitimate interest in making sure security protocols were followed because Mr. Underwood was under felony indictment. And his family now has the ability to see him under the new criminal court judge’s order. It is not an unjustified intrusion on family rights, as the Supreme Court has said, when there is a rational reason for the penological interests.

f. Mr. Underwood’s religious rights are not violated

The Underwoods have three attorneys; they all had the SAME path to help their client in the criminal district court. That path is still there and will be until and if he is convicted and sent to state jail. The path is not with this court and will never be, as a matter of law.

Again, Mr. Underwood’s remedy for his right to religious counsel lies with the state criminal court. Not this court. The Supreme Court in the *McCullum* case dealt with the separation of church and state. Not a pre-trial prisoner in the hospital who is under guard by Harris County. See *People of State of Ill. ex rel. McCollum v. Bd. of Ed. of Sch. Dist. No. 71, Champaign Cnty., Ill.*, 333 U.S. 203, 212, (1948).

g. Mr. Underwood’s familial association has not been violated

The Supreme Court has ruled that an inmate “**does not retain rights inconsistent with proper incarceration,**” and “**freedom of association is among the rights least compatible with incarceration.**” *Overton*, 539 U.S. at 131

Moreover, the Supreme Court has explained that “any attempt to forge separate standards for cases implicating the [First Amendment] rights of outsiders [and inmates] is out of step” with Supreme Court precedent. *Thornburgh v. Abbott*, 490 U.S. 401, 410 n.9 (1989); *see also Sealey v. Olszewski*, No. 14-CV-3, 2015 WL 9484521, at *4 (W.D.N.Y. Dec. 29, 2015) (“In the prison-visitation context, the visitor's rights are necessarily tied to the inmate's [rights].” (citations omitted)).

Thus, although the Constitution “protects certain kinds of highly personal relationships” and there exists “a right to maintain certain familial relationships, including association among members of an immediate family,” “[s]ome curtailment of that freedom must be expected in the prison context.” *Overton*, 539 U.S. at 131 (citations and quotation marks omitted).

To the extent a prison procedure curtails a prisoner's freedom to associate, the prisoner’s constitutional right is not violated if the procedure “bear[s] a rational relation to legitimate penological interests.” *Id.* at 132; *see also Patterson v. City of New York*, No. 11-CV-7976, 2012 WL 3264354, at *7 (S.D.N.Y. Aug. 9, 2012) (“[L]imitations on visits that are reasonably related to a legitimate penological interest do not violate a prisoner's constitutional right.”). Moreover, the Court “**must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate**

goals of a corrections system and for determining the most appropriate means to accomplish them.” *Overton*, 539 U.S. at 132.

Simply put, in the wake of *Overton*, it cannot be said that the Supreme Court has recognized a right to visitation, even from a close family member, “or, at the least, that there is such a right that cannot be abridged or suspended by prison authorities for as long as the [seven weeks] at issue in this case.” *Malavé v. Weir*, No. 16-CV-0009, 2018 WL 500644, at *5 (D. Conn. Jan. 22, 2018), *aff’d*, 750 F. App’x 65 (2d Cir. 2019). “Nor has the Second Circuit recognized a right to visitation or telephonic contact between [close family members] where one of the persons is in prison.” *Id.* at *6; *accord Williams v. Ozmint*, 716 F.3d 801, 806 (4th Cir. 2013) (“Williams does not cite any case, or combination of cases, from this [c]ourt, the Supreme Court, or the highest court in South Carolina, that clearly establishes a constitutional right to visitation in prison grounded in the First, Eighth, or Fourteenth Amendments.” (citation omitted)); *Dunn v. Castro*, 621 F.3d 1196, 1202 (9th Cir. 2010) (granting qualified immunity based on the Supreme Court’s “hesitation in articulating the existence and nature of an inmate’s right to receive visits from family members”); *Flynn v. Burns*, 289 F. Supp. 3d 948, 965 (E.D. Wis. 2018) (“Circuit courts have recognized the analytical lacunae left in the wake of *Overton*.”).

h. Plaintiffs have not shown *Monell*

To establish municipal liability under 42 U.S.C. § 1983, a plaintiff must show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right. *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009). The Underwoods have not shown or alleged any of the above three elements.

The Fifth Circuit has emphasized that a policy can be inferred only from a pattern displaying “similarity and specificity.” *Peterson*, 588 F.3d at 851; *Inaimi v. Harris Cnty., Tex.*, No. 4:21-CV-01832, 2022 WL 901556, at *2 (S.D. Tex. Mar. 25, 2022) (Ellison, J.). In other words, “[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts, but rather must point to the specific violation in question.” *Peterson*, 588 F.3d at 851 (quoting *Estate of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005)). Thus, “the prior acts [must] be fairly similar to what ultimately transpired.” *Estate of Davis*, 406 F.3d at 383. A pattern also requires “sufficiently numerous prior incidents, as opposed to isolated instances.” *Peterson*, 588 F.3d at 851; *Inaimi*, 2022 WL 901556, at *2. Here the Underwoods have made no allegations of policy or pattern and practice regarding visitation for inmates being held and treated in the hospital for wounds sustained in a shooting with Houston police.

III. Conclusion

Too much time and energy has been spent on a case whose remedy is with the criminal court. It always has been. It still is.

The court has no jurisdiction.

The Underwoods' rights have not been violated. Supreme Court precedent says so.

This court cannot grant habeas or an injunction. There is no *Monell*.

Dismiss this case.

Date: June 16, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on June 16, 2025, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Suzanne Bradley
Suzanne Bradley

EXHIBIT A



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June 20th, 2025

Filed via CM/ECF system:
Underwood v. City of Houston, et al, 4:25-cv-2089

TO: Honorable Judge Keith Ellison and Magistrate Judge Christina A. Bryan
U.S. District Court, SOUTHERN DISTRICT OF TEXAS (Houston)
Underwood v. City of Houston, et al
CASE #: 4:25-cv-02089
Petition for Writ of Habeas Corpus

**RE: *Status Report* pursuant to the Court's Order, 06/12/2025, signed by
the Honorable Judge Keith P. Ellison**

STATUS REPORT, JUNE 20TH, 2025

TO THE HONORABLE COURT:

Petitioners Tony Underwood and Patricia Underwood provide the following *Status Report* pursuant to the Court's Order, 06/12/2025, regarding Petitioners' *Petition for Writ of Habeas Corpus*, filed on May 8th, 2025.

BACKGROUND

On **April 30, 2025**, Petitioner **Tony DeWayne Underwood** was gravely injured when he was shot by a Houston Police Department officer while he was already prostrate on the ground following a pursuit. The shooting left Mr. Underwood a **ventilator-dependent quadriplegic**. He was admitted to **Ben Taub Hospital** in Houston, Texas, where he remains under custodial supervision and critical medical care.

Mr. Underwood is currently on a **tracheostomy ventilator**, also known as a **trach vent**, which is a form of long-term mechanical ventilation. Unlike short-term intubation via an endotracheal tube, typically inserted through the mouth, a tracheostomy involves a surgically

created opening in the neck directly into the trachea, through which a tube is placed and connected to a ventilator. This method of ventilation is reserved for patients who require **prolonged or permanent respiratory support**, and it is indicative of **severe and chronic medical impairment**. In Mr. Underwood’s case, the use of a trach vent is necessitated by his condition as a **ventilator-dependent quadriplegic**, following a spinal cord injury caused by a gunshot wound. The trach vent supports his breathing on a continuous basis and is not temporary or incidental medical care, it is a **critical and life-sustaining intervention**.

From the date of admission, Mr. Underwood was held under constant guard and partially denied access to some of his legal team and, **more critically all family members**, including his mother, **Ms. Patricia Underwood**. Initially, the Houston Police Department maintained custody and refused all visitation. On or about May 15, 2025, custody was transferred to the Harris County Sheriff’s Office, which continued the denial. During this time, hospital personnel consistently enforced the restrictions on visitation, often citing “law enforcement directives,” without any independent medical justification.

On **May 8, 2025**, Petitioners filed the present **Petition for Writ of Habeas Corpus**, asserting that Mr. Underwood’s conditions of confinement, including the denial of familial and legal access, violated the First, Sixth, Eighth, and Fourteenth Amendments. The Petition also alleges that **Ms. Patricia Underwood**, as his mother and next of kin, suffered violations of her own constitutional rights based on her inability to see or advocate for her son.

On **June 5, 2025**, the Honorable **Judge Hilary Unger** of the **248th Judicial District Court of Harris County** entered an order (Dkt. #26) affirmatively authorizing **in-person visitation** by

Mailing Address:
Office Address:

PO Box 940129, Houston, Texas 77094
1035 Dairy Ashford, Ste #145, Houston, Texas 77079

designated family members: Ms. Patricia Underwood (mother), Tony Underwood Jr. (son), and Shregal Underwood Williams (cousin). This marked the first time in **35 days** that any family member was granted legal access to Mr. Underwood.

POST-ORDER COMPLIANCE AND CONTINUING ISSUES

Despite the Order, implementation by hospital and law enforcement personnel has been **inconsistent, procedurally unclear, and constitutionally problematic**, as outlined below:

June 5, 2025

Ms. Patricia Underwood and Ms. Shregal Williams arrived at Ben Taub Hospital accompanied by Counsel (Attorney Vincent) to visit Mr. Underwood. Upon check-in, they were told to wait, then redirected to the hospital security office in a separate building. This rerouting caused hardship for Ms. Underwood due to her limited mobility from her own chronic health conditions. After a **45-minute delay**, Ms. Underwood and Ms. Williams were escorted to the 4th floor, where Mr. Underwood is being care for by Ben Taub medical professionals. Two deputies were present and appeared to wear **body-worn cameras (BWCs)**. While the deputies did not interfere verbally, they remained so **physically close** that **no privacy** was afforded, in direct violation of the Order's mandate.

June 6, 2025

Tony Underwood Jr., Mr. Underwood's biological son, age 19, made his first solo visit. Four deputies were present, all appearing to wear BWCs. They stood near Tony Jr., again **denying the opportunity for private communication**.

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June 9, 2025

Ms. Underwood and Ms. Williams returned to the hospital. Two deputies initially **denied access**, instructing them to leave the 4th Floor hospital ward, where Mr. Underwood is located. After one of the deputies on duty spoke with their supervisor, **Sergeant Green**, they were readmitted. A **Deputy C. Bough** (spelling is likely not correct) stated that Ms. Underwood and Ms. Williams only had 30-minutes to visit, apologized for the delay, and stated the 30-minute visitation clock would restart. The visit was brief because Mr. Underwood was being prepared for a medical procedure. **The disruption and delay again prevented** Ms. Underwood from spending meaningful time with her son and underscores the emotional and procedural toll imposed by these recurring access denials.

June 11, 2025

Ms. Underwood and Tony Jr. visited without incident. Deputies **R. Locks** and **C. Patino** were present, and the visit proceeded smoothly.

June 13, 2025

Upon arrival, deputies **delayed visitation to "verify" authorization**, despite the standing Order, which had been issued with sufficient lead time for deputies assigned to the detail to be properly briefed. One deputy was identified as **K. Joachimpillai**. Once cleared, the visit occurred without further incident.

June 15, 2025

Ms. Underwood and Tony Jr. were informed at the hospital front desk that they needed a **"code"** to visit Mr. Underwood, a **new and previously unmentioned requirement**, allegedly

imposed by **hospital security and Harris County**. Ms. Underwood had received a phone access code from a nurse on June 5 for checking on Tony's status, but she had not been told it would be required for in-person visitation. After delays and confusion, they were ultimately allowed to proceed.

June 17, 2025

Harris County filed a motion to amend the original visitation Order, seeking to impose a **blanket 30-minute visitation limit**. In support, **County Attorney Bradley** emailed Mr. Underwood's legal team (criminal and civil), claiming the limit was required by **hospital policy**. (See **Exhibit B** – Email from County Attorney Bradley to Underwoods' Counsel). Petitioners reviewed the hospital's published visitation policy and confirmed **no such 30-minute limit exists**.¹ Rather, visitation hours are subject to hospital guidelines and the clinical discretion of physicians or nursing staff based on the patient's health. *(Note: This summary is a paraphrased representation of Ben Taub Hospital's policy, not a direct quotation.)*

Judge Unger's **Amended Order**, entered June 17, 2025, **struck the proposed 30-minute limitation**, rejecting the County's misrepresentation. (See **Exhibit C**, Amended Order dated June 17, 2025).

June 18, 2025

Ms. Patricia Underwood and Ms. Shregal Williams were escorted by hospital security to the 4th floor. One deputy was present during the visit. Mr. Underwood appeared to be **heavily medicated and had a fever**. The deputy allowed for privacy, maintaining appropriate distance

¹ <https://www.harrishealth.org/about-us-hh/news/Pages/visitor-access-policy.aspx>

throughout the visit. Upon check-in, however, the hospital front desk **again requested a “code”** before permitting entry it is still unclear “who” is adding this new layer of visitation participation. The visit was further **disrupted due to a shift change**. It remains unclear whether this shift change involved hospital personnel or **Harris County deputies**, but given the hospital’s standard visiting hours of **10:00 a.m. to 8:00 p.m., seven days a week**, it was **most likely related to a deputy rotation**. As such, visitation was again **interrupted due to law enforcement administrative procedures**.

CONCLUSION

While the June 5, 2025, Order has allowed some access, the **ongoing irregularities in enforcement continue to violate Mr. Underwood’s constitutional rights** and intimates to The routine presence of armed deputies during visits, the denial of privacy, procedural delays, and shifting requirements such as the sudden imposition of a “code,” all illustrate that Mr. Underwood remains functionally isolated and without full constitutional protection.

Moreover, these issues extend beyond Mr. Underwood alone. Ms. Patricia Underwood, as his mother and next of kin, has faced **repeated procedural and logistical barriers** that undermine her ability to participate meaningfully in decisions concerning her son’s care and condition. **Her own familial and constitutional rights have been impaired**.

Additionally, the pattern of inconsistent enforcement and disregard of court-ordered visitation parameters raises concerns that **these ongoing actions verge on contempt of the Order issued by Judge Hilary Unger of the 248th Judicial District Court of Harris County**.

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1035 Dairy Ashford, Ste #145, Houston, Texas 77079

Petitioners respectfully submit this report to inform the Court of the current factual posture and implementation failures. **Petitioners are willing and amenable to submitting further incremental status reports on a schedule determined by the Court**, in the interest of transparency and continued judicial oversight.

With Appreciation,



Courtney A. Vincent
Federal Civil Rights Attorney
Vincent Law, PLLC
PO Box 940129
Houston, Texas 77094
Ph: 713.223.9300 | Fax: 832.603.4444
State Bar No. MN 0403083

Admitted to:

U.S. Federal District & Bankruptcy Courts of the Southern District of Texas
U.S. Federal District & Bankruptcy Courts of the Northern District of Texas
U.S. Federal District & Bankruptcy Courts of the Eastern District of Texas
U.S. Federal District & Bankruptcy Courts of the Western District of Texas
U.S. Court of Appeals, 5th Circuit
U.S. Federal District Court of Minnesota
State of Minnesota
U.S. Court of Federal Claims
U.S. Immigration Courts, U.S. Department of Justice
Social Security Disability Representative

Memberships:

Federal Bar Association
Member Houston Bar Association (HBA)
Member HBA Federal Section; Member HBA Bankruptcy Section
Member Minnesota Bar Association

Mailing Address:
Office Address:

PO Box 940129, Houston, Texas 77094
1035 Dairy Ashford, Ste #145, Houston, Texas 77079

EXHIBIT B



Vincent Law PLLC <info@vincentlawpllc.com>

proposed changes to visitation order

8 messages

Bradley, Suzanne (CAO) <Suzanne.Bradley@harriscountytexas.gov>

Thu, Jun 12, 2025 at 10:37 AM

To: "U.A. Lewis" <myattorneyatlaw@gmail.com>, Vincent Law PLLC <info@vincentlawpllc.com>, "melissa.azadeh@houstontx.gov" <melissa.azadeh@houstontx.gov>, "christy.martin@houstontx.gov" <christy.martin@houstontx.gov>, "tmdonahueatty@hotmail.com" <tmdonahueatty@hotmail.com>

Cc: "Copeland, Kelsie (CAO)" <Kelsie.Copeland@harriscountytexas.gov>

Counsel:

The changes are minor. It allows that the deputies' body cams will be off when they are with the family in the room, at the request of Mr. Donahue. It does add that deputies should be in the room even when family is there for safety reasons and per HCSO policy. It clarifies that visitation is limited to 30 mins a day for the three listed, which is the hospital's policy as well.

If you are opposed, just let me know. If you want to call and discuss please do.

The court as I read the docket entry from June 5, wants a written status report from the parties by June 13, 2025 (tomorrow) regarding whether the case before Judge Ellison can be dismissed. The family now has visitation. The county will argue the court does not have jurisdiction in this matter.

**Suzanne Bradley****Senior Assistant County Attorney**E: Suzanne.bradley@harriscountytexas.gov

P: 713-274-5330

C: 281-840-1886

Office of the Harris County Attorney**Christian D. Menefee**1019 Congress, 15th Floor

Houston, Texas 77002

Cao.harriscountytexas.gov

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2 attachments



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Order Granting Access v7.docx
30K

U.A. Lewis, Esq <myattorneyatlaw@gmail.com>

Thu, Jun 12, 2025 at 11:18 AM

To: "Bradley, Suzanne (CAO)" <Suzanne.Bradley@harriscountytexas.gov>

Cc: Vincent Law PLLC <info@vincentlawpllc.com>, "Azadeh, Melissa - LGL" <melissa.azadeh@houston.tx.gov>, "Martin, Christy - LGL" <christy.martin@houston.tx.gov>, "TMDONAHUEATTY@HOTMAIL.COM" <tmdonahueatty@hotmail.com>, "Copeland, Kelsie (CAO)" <Kelsie.Copeland@harriscountytexas.gov>

Suzanne,

As criminal counsel, I disagree. We had to waste time going back and forth with the criminal court to satisfy an order you could have participated in but chose not to. Judge Unger's order is perfect as it stands, and you can remind your deputies there is no obligation to enforce hospital rules only the law which includes Judge Unger's order. I appreciate you bringing those hospital rules to our attention if you don't mind showing us where we can find them that would be great also. Nonetheless, if the doctor tells them they have to leave in 30 minutes, they will leave in 30 minutes.

Your efforts are unreasonable and borderline evil. I don't know you to be that way so I'm surprised. This quadriplegic young man is not a safety concern, and neither is his elderly mother. She has been safely visiting her son since the order, and your insistence on a 30-minute limit, with guards standing by, is astonishing. It is an intimidation. You have other work besides limiting this mother's access to her son.

U.A. Lewis

Civil Rights/ Accused Defense/Injury Trial Attorney
Appellate Advocate

The Lewis Law Group, PLLC

9:00 AM - 5:30 PM Tues-Thursday

9:00 AM - 12:00 PM Friday

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2 attachments



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20K

Bradley, Suzanne (CAO) <Suzanne.Bradley@harriscountytexas.gov>

Thu, Jun 12, 2025 at 11:39 AM

To: Vincent Law PLLC <info@vincentlawpllc.com>

Cc: "U.A. Lewis" <myattorneyatlaw@gmail.com>, "tmdonahueatty@hotmail.com" <tmdonahueatty@hotmail.com>, "christy.martin@houstontx.gov" <christy.martin@houstontx.gov>, "melissa.azadeh@houstontx.gov" <melissa.azadeh@houstontx.gov>

Ms. Vincent, do you want to weigh in? Or can I file it as opposed. Mr. Donahue?

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3 attachments



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20K



image001.png
51K

U.A. Lewis, Esq <myattorneyatlaw@gmail.com>

Thu, Jun 12, 2025 at 12:00 PM

To: "Bradley, Suzanne (CAO)" <Suzanne.Bradley@harriscountytexas.gov>

Cc: Vincent Law PLLC <info@vincentlawpllc.com>, "TMDONAHUEATTY@HOTMAIL.COM" <tmdonahueatty@hotmail.com>, "Martin, Christy - LGL" <christy.martin@houstontx.gov>, "Azadeh, Melissa - LGL" <melissa.azadeh@houstontx.gov>

I don't know what you're marking me opposed to. I don't know what court you're referencing. Are you talking about the federal case, or are you talking about the state case in Criminal Court? Because I don't have a position as a witness in the federal court, but if you're talking about appearing in the state criminal case, please feel free to quote the relevant sections of my response (not my disappointment in your personal efforts) versus simply marking me as opposed.

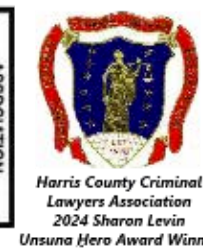
U.A. Lewis

Civil Rights/ Accused Defense/Injury Trial Attorney
Appellate Advocate
The Lewis Law Group, PLLC
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9:00 AM - 12:00 PM Friday
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Vincent Law PLLC <info@vincentlawpllc.com>

Thu, Jun 12, 2025 at 12:27 PM

To: Suzanne Bradley <Suzanne.Bradley@harriscountytexas.gov>

Cc: "Lewis U.A." <myattorneyatlaw@gmail.com>, tmdonahueatty@hotmail.com, christy.martin@houstontx.gov, melissa.azadeh@houstontx.gov

Good Afternoon, Attorney Bradley -

My position is in alignment with Attorney Lewis'. You had had every opportunity to draft an agreed order before this court and allow the family visit under your proposed terms: 30 minutes, with an officer present. In all honesty, at 34 days of not being allowed to see her now quadriplegic son, she would have agreed to anything, even selling her soul, to see him.

Further, you even made a disingenuous representation that there was an order forbidding visits "access denied until further notice" when the motion was merely denied until further notice.

As a result, your offered terms are declined; that opportunity has passed. In fact, you should advise your deputies that they are prohibited from being in the room, as their presence constitutes contempt of Judge Unger's current order. I am certain you are not telling them to ignore the order, because you

would "never have your deputies violate a court order." Whoever is telling them they need to be in the room should inform them that they are violating the court's order, because that is exactly what they are doing and not honoring the family privacy as specified in the order. Also, the 30 min imposition is not an hospital "rule". According to the ward physicians and nurses, they are the authority in implementing and enforcing visitation boundaries within the standard hospital visitation hours. Should you decide to called the existing order, the criminal defense attorneys will require the county to show cause.

Given your assertions, I am opposed and will argue that the federal court does have Habeas jurisdiction and the Court's need for intervention is required to protect both Tony Underwood's and Patrica Underwood's constitutional rights.

With Appreciation,

Courtney A. Vincent, J.D., M.Ed.

P.O. Box 940129

Houston, TX. 77094

Phone: 713.223.9300 (Texas) 651.204.5300 (Minnesota)

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Vincent Law, PLLC

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On Jun 12, 2025, at 11:40 AM, Bradley, Suzanne (CAO) <Suzanne.Bradley@harriscountytexas.gov> wrote:

Ms. Vincent, do you want to weigh in? Or can I file it as opposed. Mr. Donahue?

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Suzanne Bradley

[Quoted text hidden]

<image003.png>

Bradley, Suzanne (CAO) <Suzanne.Bradley@harriscountytexas.gov>

Thu, Jun 12, 2025 at 12:37 PM

To: "U.A. Lewis, Esq" <myattorneyatlaw@gmail.com>

Cc: Vincent Law PLLC <info@vincentlawpllc.com>, "tmdonahueatty@hotmail.com" <tmdonahueatty@hotmail.com>, "christy.martin@houstontx.gov" <christy.martin@houstontx.gov>

You are right. I will be filing this in state criminal court.

But I did want your opinion.

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U.A. Lewis, Esq <myattorneyatlaw@gmail.com> Thu, Jun 12, 2025 at 12:56 PM
To: "Bradley, Suzanne (CAO)" <Suzanne.Bradley@harriscountytexas.gov>
Cc: Vincent Law PLLC <info@vincentlawpllc.com>, "TMDONAHUEATTY@HOTMAIL.COM" <tmdonahueatty@hotmail.com>, "Martin, Christy - LGL" <christy.martin@houstontx.gov>

Also can you point us to the hospital policy of 30 minutes for visitation that you're seeking to enforce?

U.A. Lewis

Civil Rights/ Accused Defense/Injury Trial Attorney
Appellate Advocate
The Lewis Law Group, PLLC
9:00 AM - 5:30 PM Tues-Thursday
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2 attachments



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U.A. Lewis, Esq <myattorneyatlaw@gmail.com>

Thu, Jun 12, 2025 at 5:35 PM

To: "Bradley, Suzanne (CAO)" <Suzanne.Bradley@harriscountytx.gov>

Cc: Vincent Law PLLC <info@vincentlawpllc.com>, "TMDONAHUEATTY@HOTMAIL.COM" <tmdonahueatty@hotmail.com>, "Martin, Christy - LGL" <christy.martin@houstontx.gov>

Any update on the hospital visitations for 30 minutes information? I'll looked through the website and called but nothing.

U.A."Umeka" Lewis

Civil Rights/ Accused Defense/Injury Trial Attorney
Appellate Advocate

The Lewis Law Group, PLLC

9:00 AM - 5:30 PM Tues-Thursday

9:00 AM - 12:00 PM Friday

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4 attachments



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EXHIBIT C

NO. 1914552

STATE OF TEXAS

§
§
§
§
§

IN THE DISTRICT COURT

v.

**TONY DEWAYNE
UNDERWOOD**

248th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

AMENDED ORDER PERMITTING FAMILY ACCESS TO DEFENDANT

This order amends this court’s order entered on June 6, 2025 to allow family access to Mr. Underwood while he is in the hospital.

The Court allowed the following family members of TONY DEWAYNE UNDERWOOD (hereinafter “Defendant”) to visit the Defendant at the Ben Taub General Hospital while in Harris County Sheriff’s Office’s custody:

1. MOTHER: PATRICIA ANN UNDERWOOD. TEXAS IDENTIFICATION CARD NUMBER 10060715. DOB: 13 AUGUST 1965
2. SON: TONY DEWAYNE UNDERWOOD JR, TDL: 50502766, DOB: 13 DECEMBER 2005
3. COUSIN: SHREGAL UNDERWOOD WILLIAMS. TEXAS IDENTIFICATION CARD: 39407980; DOB: 18 NOVEMBER 1979.

The Court ordered that the Harris County Sheriff’s Office and its respective deputies, and any and all its agents, permit Patricia Ann Underwood, Tony Dewayne Underwood Jr., and Shregal Underwood Williams visitation, the opportunity to pray over, and speak with TONY DEWAYNE UNDERWOOD, SPN 02115929.

This Court further ordered that its order in no way limits the authority of the Harris County Sheriff’s Office and its respective deputies to take necessary measures to ensure the safety and security of the Defendant and others.

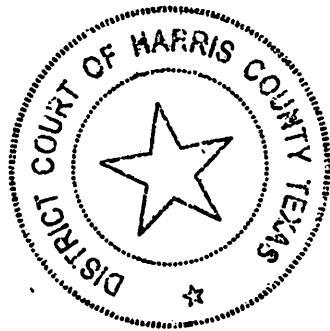
It is therefore ORDERED that the June 6, 2025, order is MODIFIED as follows:

Visitations shall occur at the times and for the durations pursuant to the applicable medical facility's policy regarding visiting hours. A medical facility's own established visitation time limits and guidelines are not affected by this order.

Because the safety and security of the Defendant requires that visitation must be under observation/supervision of an assigned Harris County Sheriff's Office deputy, ~~visit(s) shall also be limited to a combined 30 minutes each day.~~

Handwritten initials

SIGNED AND ENTERED on 6/17/ 2025.



Handwritten signature

Presiding Judge 248th District Court

STATE OF TEXAS
COUNTY OF HARRIS

I, Marilyn Burgess, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this

6/17/25
MARILYN BURGESS, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Handwritten signature

Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

NOTICE OF FILING STATUS REPORT

TO THE HONORABLE COURT:

Petitioners Tony DeWayne Underwood and Patricia Underwood respectfully file into the record the attached *Status Report* (See Exhibit A), in compliance with the Court’s directive that the report be submitted by June 20, 2025.

This filing is made pursuant to the Court’s Order, 06/12/2025, signed by the Honorable Judge Keith P. Ellison.

06/20/2025

Respectfully Submitted,

/s/Courtney A. Vincent
Courtney A. Vincent
Minnesota Bar No. 0403083
Admitted: **U.S. District Court,**

Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon to the Counsel listed below for this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties. Alternatively, this instrument may be served via e-mail and/or facsimile transmission, or certified mail, return-receipt requested for those counsel who have not made a formal appearance in this matter.

Respectfully Submitted,

/s/Courtney A. Vincent

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

§
§
§
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§
§
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§

CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

DEFENDANT HARRIS COUNTY’S STATUS REPORT

Harris County has filed a 30-page motion to dismiss this case, setting out myriad reasons why this court has no jurisdiction. Docket Entry 30, Motion to Dismiss. Rule 12(b)(1) and (b)(6).

Yet Plaintiffs urge this court to maintain some sort of “supervision” over a matter that is improperly before it. Glaringly so.

Again, the Underwoods’ remedies are all before the criminal court judge. This is an end-run around the only court that has jurisdiction, the state criminal court.

This federal case needs to be dismissed.

Date: June 23, 2025.

Respectfully submitted,

CHRISTIAN D. MENELEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND FIRST

ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, &
REAL ESTATE DIVISIONS

By: /s/ Suzanne Bradley
SUZANNE BRADLEY
Senior Assistant County Attorney
ATTORNEY-IN-CHARGE
State Bar No. 00793375
Fed. Bar No. 24567
Tel: (713) 274-5330 (direct)
Suzanne.Bradley@harriscountytexas.gov

FRANK FORD
Assistant County Attorney
ATTORNEY TO BE NOTICED
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OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
Tel: (713) 274-5330 (direct)
ATTORNEYS FOR HARRIS COUNTY

CERTIFICATE OF SERVICE

I certify that, on June 23, 2025, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Suzanne Bradley
Suzanne Bradley

Exhibit 1

THE STATE OF TEXAS
VS.
TONY UNDERWOOD

SPN: 02115079
DOB: B M [REDACTED]
DATE PREPARED: 05/01/2025

D.A. LOG NUMBER: 3151322
CJIS TRACKING NO.: 9272358094A003
AGENCY:HPD
O/R NO: 056025425
ARREST DATE: 04/30/2025 11:28pm

NCIC CODE: 4801 27 RELATED CASES: SD-2F
FELONY CHARGE: Evading Arrest or Detention - Motor vehicle, Watercraft, or Tire Deflation Device

CAUSE NO: 191455501010
HARRIS COUNTY DISTRICT COURT NO: 248
FIRST SETTING DATE: 5/5/2025

COURT ORDERED BAIL: Refer to (15.17)
PRIOR CAUSE NO:
CHARGE SEQ NUM: 3

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, **TONY UNDERWOOD**, hereafter styled the Defendant, heretofore on or about **April 30, 2025**, did then and there unlawfully, intentionally flee from A. Havelka, hereafter styled the Complainant, a peace officer employed by Houston Police Department, lawfully attempting to detain the Defendant, and the Defendant knew that the Complainant was a peace officer attempting to detain the Defendant, and the Defendant used a motor vehicle while he was in flight.

Before the commission of the offense alleged above, (hereafter styled the primary offense), on December 7, 2012, in Cause Number 1175824, in the 178th District Court of Harris County, Texas, the Defendant was convicted of the felony offense of Aggravated Robbery.

Before the commission of the primary offense, and after the conviction in Cause Number 1175824 was final, the Defendant committed the felony offense of Aggravated Assault and was finally convicted of that offense on April 14, 2023, in Cause Number 1750783, in the 338th District Court of Harris County, Texas.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Signed and sworn by me on 05/01/2025

Duly attested by me on 05/01/2025



Gaby Cruz
AFFIANT

Andrew Smith
Assistant District Attorney
Harris County District Attorney's Office
TBC No. 24048100
SMITH_ANDREW@DAO.HCTX.NET

COMPLAINT

Official Governmental Use Only - Do Not Disseminate to the Public - 120322262 - Page 1 of 1



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this June 26, 2025

Certified Document Number: 120323262 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 51.301 and 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TONY UNDERWOOD,
Plaintiff,

v.

HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

UNOPPOSED SUPPLEMENT TO MOTION TO DISMISS

1. As further grounds to dismiss this case, Mr. Underwood is no longer in Harris County custody because the district attorney has dismissed the charges. See attached **Exhibit 1**, dismissal of charges signed by criminal court judge.
2. Because Mr. Underwood is no longer charged with any crimes and thus no longer in the county’s custody, no deputy is outside his door at the hospital or supervising any visitation. There are no issues of visitation now. Rule 12(b)(6) and (b)(1).
3. Regardless, this federal court never had jurisdiction in the first place. The charges were dismissed and signed by the only court that has jurisdiction, Judge Hilary Unger’s state criminal district court.
4. Plaintiff is unopposed to this amendment.

Date: June 27, 2025.

Respectfully submitted,

CHRISTIAN D. MENELEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND FIRST
ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, &
REAL ESTATE DIVISIONS

By: /s/ Suzanne Bradley
SUZANNE BRADLEY
Senior Assistant County Attorney
ATTORNEY-IN-CHARGE
State Bar No. 00793375
Fed. Bar No. 24567
Tel: (713) 274-5330 (direct)
Suzanne.Bradley@harriscountytexas.gov

FRANK FORD
Assistant County Attorney
ATTORNEY TO BE NOTICED
Federal ID No. 565385
State Bar No. 24012642
Tel: (832) 570-7582 (direct)
Frank.Ford@harriscountytexas.gov

OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
Tel: (713) 274-5330 (direct)

**ATTORNEYS FOR DEFENDANTS
HARRIS COUNTY, ED GONZALEZ,
AND JESSE MARTINEZ**

CERTIFICATE OF CONFERENCE

On June 26, 2025, opposing counsel Courtney Vincent emailed that she was unopposed to this supplement to the motion to dismiss.

/s/ Suzanne Bradley
Suzanne Bradley

CERTIFICATE OF SERVICE

I certify that, on June 27, 2025, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Suzanne Bradley
Suzanne Bradley

EXHIBIT A



Vincent Law PLLC <info@vincentlawpllc.com>

Underwood

Vincent Law PLLC <info@vincentlawpllc.com>

Sat, Jun 28, 2025 at 4:05 PM

To: "Bradley, Suzanne (CAO)" <Suzanne.Bradley@harriscountytexas.gov>

Thank you for your condolences. My family and I appreciate them. It appears that my husband and I will be traveling back and forth between Houston and Lousinsanna over the next few weeks to handle family affairs.

Given you just filed a supplemented 12b6, would you be amenable to allowing me an extension to respond/make contemplations regarding this matter until Monday, July 28th?

With Appreciation,

Courtney A. Vincent, J.D., M.Ed.

Federal Civil Rights Attorney

P.O. Box 940129

Houston, TX. 77094

Phone: 713.223.9300 (Texas) 651.204.5300 (Minnesota)

Fax: 832.603.4444

www.vincentlawpllc.com



Vincent Law, PLLC

Access•Advocacy•Justice

Admitted to:

U.S. Federal District & Bankruptcy Court of the Southern District of Texas

U.S. Federal District & Bankruptcy Court of the Northern District of Texas

U.S. Federal District & Bankruptcy Court of the Eastern District of Texas

U.S. Federal District & Bankruptcy Court of the Western District of Texas

U.S. Court of Appeals, 5th Circuit

U.S. Federal District Court of Minnesota

State of Minnesota

U.S. Court of Federal Claims

U.S. Immigration Courts, U.S. Department of Justice

Social Security Disability Representative

Memberships:

Member Federal Bar Association

Member Bar Association of the Fifth Federal Circuit

Member Houston Bar Association (HBA)

Member HBA Federal Section; Member HBA Bankruptcy Section

Member Minnesota Bar Association

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[Quoted text hidden]



Vincent Law PLLC <info@vincentlawpllc.com>

Underwood

Bradley, Suzanne (CAO) <Suzanne.Bradley@harriscountytx.gov>
To: Vincent Law PLLC <info@vincentlawpllc.com>

Mon, Jun 30, 2025 at 8:34 AM

I am unopposed. Please file an agreed motion and order.

[Quoted text hidden]



image001.png
51K

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Tony Underwood	§	
and	§	
Patricia Underwood	§	
	§	
Petitioners,	§	CIVIL ACTION NO. 4:25-cv-2089
	§	
v.	§	
	§	
Harris County, a.k.a. Harris	§	
County Sherriff’s Office	§	
and	§	
City of Houston, a.k.a. Houston	§	
Police Department	§	
	§	
Respondents.	§	

**NOTICE OF AGREED TIME TO EXTEND PETITIONER’S TIME TO
RESPOND TO RESPONDENT’S (HARRIS COUNTY) MOTION TO DISMISS**

TO THE HONORABLE COURT:

Petitioners Tony DeWayne Underwood and Patricia Underwood respectfully file this Notice of Agreed Extension of Time and would show as follows:

I. INTRODUCTION

This action arises under a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2241 and 2254, together with claims under 42 U.S.C. § 1983 and other constitutional provisions. The underlying issues involve unlawful and unconstitutional conditions of confinement, including denial of access to legal counsel and family members.

II. JUSTIFICATION FOR EXTENSION

Petitioner's counsel has recently experienced a death in her immediate family. As a result, additional time is needed to balance urgent family obligations with her professional duties to the Court and her clients. Counsel initiated a request for a modest extension, and following email communications on June 28 and June 30, 2025, Respondent's counsel agreed to the proposed extension. See Exhibit A.

III. CONCLUSION

Accordingly, Petitioner's deadline to file the responsive pleading shall be extended to **July 28, 2025**. This request is made in good faith and not for the purpose of delay, and Respondent is unopposed.

07/04/2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted: **U.S. District Court,**

Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONERS

CERTIFICATE OF CONFERENCE

The undersigned certifies that on 06/28/2025 and 06/30/2025, that Counsel for both the Petitioners and the Respondent conferred regarding Petitioners' request for an extension of time to respond to the two Respondents' *Motion to Dismiss, Dkt. #30* Respondent's Counsel agreed to this request.

Respectfully Submitted,

/s/Courtney A. Vincent
Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon to Counsel for this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties. Alternatively, this instrument may be served via e-mail and/or facsimile transmission, or certified mail, return-receipt requested for those counsel who have not made a formal appearance in this matter.

Respectfully Submitted,

/s/Courtney A. Vincent
Counsel for Petitioners

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Tony Underwood
and
Patricia Underwood**

Plaintiffs,

v.

City of Houston, et al

Defendants.

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CIVIL ACTION NO. 4:25-cv-2089

SUGGESTION OF DEATH UNDER RULE 25(a)

TO THE HONORABLE JUDGE OF THE COURT AND ALL PARTIES:

Pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully notify the Court of the death of Plaintiff Tony Underwood, who passed away on July 18, 2025, as a result of the injuries forming the basis of this action.

Plaintiffs intend to timely move for substitution of parties under Rule 25(a)(1) and will be seeking leave to file an amended complaint asserting appropriate claims on behalf of Mr. Underwood’s estate and next of kin.

Date: July 27, 2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC
1035 Dairy Ashford, Suite 145
Houston, Texas 77079

Mailing Address:

P.O. Box 940129
Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

EXHIBIT A



Vincent Law PLLC <info@vincentlawpllc.com>

Underwood Request for Extension and Leave to Amended Complaint

2 messages

Vincent Law PLLC <info@vincentlawpllc.com>
To: Suzanne Bradley <Suzanne.Bradley@harriscountytexas.gov>

Thu, Jul 24, 2025 at 5:32 PM

Good Evening, Suzanne -

Would you be amenable to an additional 21-day extension to respond to your motion to dismiss? I am also preparing a motion for leave to amend the complaint due to a recent change in circumstances.

Tony Underwood passed away on Friday, and we will need to remove him as a party. Additionally, we are in the process of clarifying which remaining defendants should be named in the case. At this time, it appears Harris County may no longer be appropriate, and we are evaluating whether the City of Houston and its officers should be re-added. I need some time to work through these developments and consult with my clients before finalizing the amendment.

Please let me know your thoughts on the extension.

With Appreciation,
Courtney A. Vincent, J.D., M.Ed.
P.O. Box 940129
Houston, TX. 77094
Phone: 713.223.9300 (Texas) 651.204.5300 (Minnesota)
Fax: 832.603.4444
www.vincentlawpllc.com



Vincent Law, PLLC
Access • Advocacy • Justice

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Vincent Law PLLC <info@vincentlawpllc.com>
To: Suzanne Bradley <Suzanne.Bradley@harriscountytexas.gov>

Sat, Jul 26, 2025 at 9:40 AM

Good Morning, Suzanne -

I am following up with the email I sent this past Thursday. I understand that you are busy or that life happened and the initial message may have slipped by. Could you please provide me with your position regarding the circumstances in the original email?

With Appreciation,
Courtney A. Vincent, J.D., M.Ed.
[P.O. Box 940129](mailto:info@vincentlawpllc.com)
[Houston, TX. 77094](mailto:info@vincentlawpllc.com)
Phone: [713.223.9300](tel:713.223.9300) (Texas) [651.204.5300](tel:651.204.5300) (Minnesota)
Fax: [832.603.4444](tel:832.603.4444)
www.vincentlawpllc.com



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On Jul 24, 2025, at 5:32 PM, Vincent Law PLLC <info@vincentlawpllc.com> wrote:

[Quoted text hidden]

EXHIBIT B



Vincent Law PLLC <info@vincentlawpllc.com>

Underwood Request for Extension and Leave to Amended Complaint

Vincent Law PLLC <info@vincentlawpllc.com>

Sat, Jul 26, 2025 at 9:40 AM

To: Suzanne Bradley <Suzanne.Bradley@harriscountytexas.gov>

Good Morning, Suzanne -

I am following up with the email I sent this past Thursday. I understand that you are busy or that life happened and the initial message may have slipped by. Could you please provide me with your position regarding the circumstances in the original email?

With Appreciation,

Courtney A. Vincent, J.D., M.Ed.

P.O. Box 940129

Houston, TX. 77094

Phone: 713.223.9300 (Texas) 651.204.5300 (Minnesota)

Fax: 832.603.4444

www.vincentlawpllc.com



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On Jul 24, 2025, at 5:32 PM, Vincent Law PLLC <info@vincentlawpllc.com> wrote:

[Quoted text hidden]

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Tony Underwood
and
Patricia Underwood**

Plaintiffs,

v.

City of Houston, et al

Defendants.

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CIVIL ACTION NO. 4:25-cv-2089

**PLAINTIFFS’ RULE 25(a)(1) MOTION FOR SUBSTITUTION PARTIES,
LEAVE TO AMEND COMPLAINT, AND EXTENSION OF TIME TO RESPOND
TO OR TO MOOT DEFENDANT HARRIS COUNTY’S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF THE COURT AND ALL PARTIES:

Plaintiffs file this Motion pursuant to **Federal Rules of Civil Procedure 25(a)(1), 15(a)(2), and 6(b)(1)** and respectfully request:

- (1) Substitution of parties and realignment of claims and defendant parties following the death of Plaintiff Tony Underwood;
- (2) Leave to file an amended complaint reflecting such substitution and material factual developments; and
- (3) An extension of time to respond to, or alternatively, to moot, Defendant Harris County’s pending **Rule 12(b)(6)** Motion to Dismiss given that their response will not align with the amended complaint.

In support thereof, Plaintiffs state as follows:

**I. SUGGESTION OF DEATH AND REQUEST FOR SUBSTITUTION UNDER
RULE 25(a)(1)**

1. Plaintiff **Tony Underwood** passed away on **July 18, 2025** from injuries directly caused by the conduct alleged in this lawsuit. A formal **Suggestion of Death** has been filed concurrently with this Motion (Dkt. 35).
2. Plaintiffs intend to substitute Tony Underwood's surviving heirs and/or estate representatives as proper parties under Rule 25(a)(1) and Texas law. Plaintiffs also intend to pursue claims for wrongful death, survival, and other derivative and constitutional violations stemming from the injuries Mr. Underwood sustained and his eventual death.

II. MOTION FOR LEAVE TO AMEND

3. Plaintiffs seek leave under Rule 15(a)(2) to file a *Second Amended Complaint* that will:
 - (1) Substitute and align the appropriate legal heirs and estate representatives as parties;
 - (2) Replead facts supporting survival and wrongful death claims;
 - (3) Incorporate newly developed facts related to the denial of family access, unlawful isolation, and custodial irregularities prior to Mr. Underwood's passing; and
 - (4) Clarify and expand the bases for Monell and individual liability, including rejoining previously dismissed defendants as appropriate.

4. Rule 15(a)(2) permits amendment “when justice so requires.” The amendments are timely, necessary to reflect material changes in the case’s posture, and will aid in the full and fair adjudication of Plaintiffs’ claims. No prejudice or undue delay will result.

III. EXTENSION OF TIME OR, ALTERNATIVELY, TO MOOT DEFENDANT’S MOTION TO DISMISS

5. Defendant Harris County filed a **Motion to Dismiss pursuant to Rule 12(b)(6)** on June 16, 2025, (Dkt. 30).
6. On July 4, 2025, Plaintiffs and Defendant Harris County agreed to an extension to reply to the Defendant’s *Motion to Dismiss*, (Dkt. 31) due July 28, 2025. The basis for this extension is that Plaintiff experienced an untimely and unexpected death in her family. Defendant’s Counsel was gracious.
7. In light of Plaintiffs’ forthcoming *Second Amended Complaint*, Plaintiffs respectfully request that the Court extend the current deadline to respond to the 12(b)(6) motion until **21 days after the filing of the Second Amended Complaint**.
8. **Alternatively**, Plaintiffs request that the pending motion to dismiss be **denied as moot**, as the new amended complaint will supersede the operative pleading and necessitate a fresh responsive pleading under Rule 12.
9. This request is made in good faith and not for purposes of delay. Plaintiffs’ counsel has been diligently addressing the procedural transitions caused by Mr. Underwood’s death and preparing the necessary revisions to the complaint.

IV. CONCLUSION AND PRAYER

WHEREFORE, Plaintiffs respectfully request that the Court:

10. Substitute the appropriate heirs and/or estate representatives of Tony Underwood as parties pursuant to Rule 25(a)(1);
11. Grant Plaintiffs leave to *file a Second Amended Complaint* in accordance with Rule 15(a)(2);
12. *Extend Plaintiffs' deadline to respond to Harris County's Motion to Dismiss to 21 days after the Second Amended Complaint is filed;*
13. *Alternatively, deny Harris County's current Motion to Dismiss as moot and permit Defendants to reply anew to the Second Amended Complaint;*
14. And grant such other and further relief to which Plaintiffs may be justly entitled.

Date: July 27, 2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

1035 Dairy Ashford, Suite 145

Houston, Texas 77079

Mailing Address:

P.O. Box 940129

Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(D), the undersigned certifies that Plaintiffs' counsel attempted to confer with counsel for Defendant Harris County regarding the relief requested in this motion. Specifically, email correspondence was sent on **July 24, 2025** and again on **July 26, 2025**. As of the time of this filing, no response has been received.

Plaintiffs' counsel extends professional courtesy and understanding, recognizing that circumstances sometimes arise that may delay a response. The motion is therefore submitted in good faith and designated as **opposed or unopposed**, pending any subsequent response.

True and correct copies of the emails are attached hereto as **Exhibit A** (July 24, 2025) and **Exhibit B** (July 26, 2025).

Respectfully Submitted,
/s/Courtney A. Vincent

CERTIFICATE OF SERVICE

I hereby certify that on this **July 27, 2025**, a true and correct copy of the foregoing **Plaintiffs' Rule 25(A)(1) Motion for Substitution Parties, Leave to Amend Complaint, And Extension of Time to Respond to Or to Moot Defendant Harris County's Motion to Dismiss** was served on all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure.

Respectfully Submitted,

/s/Courtney A. Vincent

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Tony Underwood
and
Patricia Underwood**

Plaintiffs,

v.

City of Houston, et al

Defendants.

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CIVIL ACTION NO. 4:25-cv-2089

ORDER

Before the Court is *Plaintiffs’ Rule 25(A)(1) Motion for Substitution Parties, Leave to Amend Complaint, and Extension of Time to Respond To or To Moot Defendant Harris County’s Motion To Dismiss.*

The Court, having considered the motion, the record, and applicable law, finds that the motion should be and is hereby **GRANTED**.

It is therefore ORDERED that:

1. Plaintiffs are AUTHORIZED to substitute the proper parties in accordance with Rule 25(a)(1), based on the death of Tony Underwood and consistent with the representations in the motion.
2. Plaintiffs are GRANTED LEAVE to file an Amended Complaint that includes survival claims, wrongful death claims, and clarifying allegations consistent with the factual developments following Mr. Underwood’s death.

3. Plaintiffs shall file the amended complaint on or before _____ .
4. Defendant Harris County's pending Motion to Dismiss (Dkt. 30) is hereby **DENIED AS MOOT**, subject to refiling or supplementation in response to the forthcoming amended complaint.

SIGNED this ____ day of _____, 2025.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Tony Underwood
and
Patricia Underwood**

Plaintiffs,

v.

City of Houston, et al

Defendants.

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CIVIL ACTION NO. 4:25-cv-2089

ORDER

Before the Court is *Defendant Harris County’s Motion to Dismiss Plaintiffs’ Complaint* pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt. 30), and *Plaintiffs’ Response in Opposition* (Dkt. 38). The Court has further considered *Plaintiffs’ Rule 25(A)(1) Motion for Substitution Parties, Leave to Amend Complaint, and Extension of Time to Respond to or to Moot Defendant Harris County’s Motion to Dismiss* (Dkt. 36).

Having reviewed the filings, the record, and the applicable law, the Court finds that the motion should either be denied on the merits or deemed moot in light of the forthcoming amended complaint.

It is therefore ORDERED that:

1. Defendant Harris County’s Motion to Dismiss (Dkt. 30) is hereby **DENIED; or in the alternative, is deemed MOOT** in light of Plaintiffs’ forthcoming amended complaint permitted under Rule 15(a)(2) and Rule 25(a)(1).

2. Defendant Harris County may refile or supplement its motion, if appropriate, in response to the amended complaint once filed.

SIGNED this ____ day of _____, 2025.

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Tony Underwood
and
Patricia Underwood**

Plaintiffs,

v.

City of Houston, et al

Defendants.

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CIVIL ACTION NO. 4:25-cv-2089

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO HARRIS COUNTY’S MOTION
TO DISMISS UNDER RULE 12(b)(6)**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs file this Response in Opposition to Defendant Harris County’s Motion to Dismiss (Dkt. 30), and respectfully show the Court as follows:

I. INTRODUCTION

Tony Underwood is now deceased. But his death does not mark the end of this case, it marks its escalation. He died on **July 18, 2025** – 79 days after being shot, paralyzed, and subjected to near-total isolation under the authority of Harris County. What was once a living man’s plea for access to counsel, family, and spiritual care has now become a constitutional reckoning. This Court had jurisdiction the day the complaint was filed, and that jurisdiction is not...and cannot be...erased by the very harm that Plaintiffs allege.

It took the filing of this very lawsuit to force the hand of government actors who, for over a month, ignored basic decency and constitutional responsibility. Harris County did not act out of policy, protocol, or penological necessity, it and its own courts acted only under the pressure of federal litigation. Only then, **34 days after Mr. Underwood was critically injured and experiencing quadriplegia**, did the local county government finally issue a valid court order granting his family the right to see him. Thirty-four days of silence, obstruction, and suffering. That delay speaks louder than any motion to dismiss.

Tony Underwood's final months were governed not by medical care, due process, or dignity, but by bureaucratic resistance, deliberate indifference, and institutional evasion. His death did not moot these claims; it solidified and crystalized them. Under long-established federal law, constitutional torts under 42 U.S.C. § 1983 survive the decedent. See *Rhyne v. Henderson County*, 973 F.2d 386, 391 (5th Cir. 1992). So too do the rights of his surviving family to bring wrongful death and familial association claims grounded in fundamental constitutional protections.

Tony Underwood survived for 79 days after being shot. But for nearly half that time, the first 34 days, he remained in complete isolation. He lay immobilized in a hospital bed, heavily medicated, unable to speak, and utterly cut off from his loved ones. His family was robbed of the chance to be by his side during the most critical period of his decline. And even after visitation was finally granted, initial access was erratic, delayed, and mired in bureaucratic confusion.

On July 27, 2025, Plaintiffs filed an omnibus Motion which includes a Motion to Substitute and Realign Parties under Rule 25(a) and realign claims under survival and

wrongful death theories, Motion for Leave to Amend, Extension to Respond to the very Motion to Dismiss that this Response is addressing and, in the alternative to Moot Harris County's Motion to Dismiss, (Dkt. 30). Plaintiffs expect to and pray this Court allows them to more fully detail the systemic and unlawful conduct that continued even after Mr. Underwood's charges were dropped "In the Interest of Justice" and he remained confined, dying, behind layers of security and silence.

Harris County's motion should be denied. If anything, the Court's intervention is now more urgent...not less.

II. BACKGROUND

Tony Underwood was a pretrial detainee shot by law enforcement, specifically Officer Shaun Palin of the Houston Police Department, and subsequently held in near-total isolation while confined (a pre-trial detainee), ventilator-dependent, and experiencing quadriplegia at Ben Taub Hospital. Plaintiffs alleged violations of the First, Sixth, Eighth, and Fourteenth Amendments, along with Monell claims, and sought equitable and declaratory relief while Mr. Underwood remained alive. The District Attorney dropped all criminal charges on June 24, 2025, "In the Interest of Justice". Tony Underwood fought long and hard for his life, soliciting permission from his brother to allow him to let go and rest the day before he died. On the next day, Tony succumbing to his grave injuries, died on July 18, 2025.

Harris County argues that the claims are moot, that no constitutional violations exist, and that the Court lacks jurisdiction. These arguments are flawed in law and fact.

III. LEGAL STANDARD

Under Rule 12(b)(6), dismissal is appropriate only if the complaint fails to state a claim upon which relief can be granted. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Court must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the plaintiffs. *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008).

IV. ARGUMENT

A. The Court Has and Retains Subject-Matter Jurisdiction

Federal courts are not passive observers of constitutional violations; rather, they are active enforcers of civil rights when state institutions fail. This Court possesses original jurisdiction under 28 U.S.C. § 1331 and 1343 to adjudicate claims brought under 42 U.S.C. § 1983 and has longstanding authority to entertain habeas corpus petitions pursuant to 28 U.S.C. §§ 2241 and 2254. That jurisdiction was properly invoked the moment this case was filed. It remains undisturbed.

The jurisdiction of a federal court is assessed at the time the complaint is filed, not retroactively extinguished based on post-filing developments. As the Supreme Court confirmed in *Steffel v. Thompson*, 415 U.S. 452, 460 n.10 (1974), “jurisdiction...must be assessed under the facts existing when the complaint is filed.” This principle is not merely procedural – it is foundational to ensuring that federal courts remain a reliable forum for addressing the constitutional injuries that give rise to federal claims in the first instance.

Harris County’s argument that this Court lacks jurisdiction because of a parallel state proceeding is simply misplaced. As the Fifth Circuit recently held in *Barnes v. Felix*, 84

F.4th 480, 487–88 (5th Cir. 2023), § 1983 and habeas corpus serve distinct purposes: § 1983 addresses unconstitutional conditions of confinement, while habeas challenges the fact or duration of that confinement. This action fits squarely within the former category. The injuries at issue, denial of access to all legal counsel, family visitation, and religious support, do not challenge the validity of Mr. Underwood’s criminal charges or confinement, but rather the manner in which he was held while dying.

Moreover, even if any claim for prospective habeas relief became moot following Mr. Underwood’s death, the remainder of this case emphatically is not. The constitutional violations suffered by Mr. Underwood while alive remain actionable under § 1983, and his passing gives rise to survival and wrongful death claims that the estate and next of kin are entitled to pursue.

Mootness is not triggered by every factual development. A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. *Knox v. SEIU, Local 1000*, 567 U.S. 298, 307 (2012). And as the Supreme Court explained in *Friends of the Earth, Inc. v. Laidlaw Environmental Services*, 528 U.S. 167, (2000), that as long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.

That standard is easily met here. Plaintiffs seek damages for constitutional harms suffered by Mr. Underwood before his death. Those claims are not only alive, they are now bolstered by the indisputable fact that he died as a direct result of the circumstances surrounding his confinement. See *Rhyne v. Henderson County*, 973 F.2d 386, 391 (5th Cir. 1992) (constitutional tort claims under § 1983 survive the death of the plaintiff); *Kitchen*

v. Dallas Cnty., 759 F.3d 468, 478 (5th Cir. 2014) (recognizing both pre-death survival and post-death wrongful death claims under § 1983); see also *Grandstaff v. Borger*, 767 F.2d 161 (5th Cir. 1985) (affirming damages under § 1983 after fatal shooting); *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 n.10 (5th Cir. 2017) (noting distinction under Texas law between wrongful death and survival claims).

Put simply, this Court’s jurisdiction is secure. The case is not moot. The harms inflicted were real, ongoing, and ultimately fatal. The federal courthouse remains the proper place to confront what was done to Tony Underwood, and what continues to be done to others.

B. Death of the Plaintiff Does Not Moot the Case

Constitutional claims survive death. See *Rhyne v. Henderson County*, 973 F.2d 386, 391 (5th Cir. 1992) (“Section 1983 claims survive the death of the plaintiff and may be pursued by the estate”). The injury, the denial of access to all counsel, family, and spiritual care during a prolonged, critical medical state, occurred while Mr. Underwood was alive. His passing gives rise to both survival and wrongful death claims.

C. Plaintiffs Have Plausibly Alleged Monell Liability

Plaintiffs allege deliberate policies and customs by Harris County that obstructed visitation, legal access, and humane treatment for a critically ill pretrial detainee. Harris County’s coordination with hospital security, refusal to communicate with family or all counsel, and obstruction of a state criminal court’s visitation order reflect unconstitutional practices. See *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009); *Kitchen v. Dallas Cnty.*, 759 F.3d 468 (5th Cir. 2014).

Plaintiffs will clarify and expand upon the Monell claims in the amended complaint.

D. The Constitutional Claims Are Legally Cognizable

- **First Amendment:** The denial of pastoral support and spiritual guidance at the end of life violates religious exercise rights. See *Cruz v. Beto*, 405 U.S. 319 (1972).
- **Sixth Amendment:** Tony Underwood was deprived of access to criminal and civil rights counsel while in custody. See *Bounds v. Smith*, 430 U.S. 817 (1977).
- **Eighth & Fourteenth Amendments:** Pretrial detainees are entitled to humane conditions of confinement. See *Kingsley v. Hendrickson*, 576 U.S. 389 (2015). The extended isolation, despite medical incapacity and deteriorating condition, violated basic rights to humane treatment and familial contact.
- **Familial Association:** The **City of Houston**, through its police department, was the **initial custodian** of Tony Underwood following the use of deadly force on **April 30, 2025**, which left him paralyzed, ventilator-dependent, and gravely injured. During this period, while Mr. Underwood lay nonverbal in intensive care, the City permitted no familial access whatsoever. He was not a threat of danger to anyone or anything. He was a pretrial detainee being denied his constitutional and civil rights. Custody was later transferred to **Harris County**, which became the **second and final custodian**, and continued this punitive isolation.

It was not until **May 8, 2025**, when Plaintiffs filed this federal civil rights and habeas action, that serious legal pressure was applied. And yet it still took **nearly a full month** for meaningful change. On **June 5, 2025**, after weeks of obstruction and delay, a state criminal court finally issued a visitation order. Only then, **36 days after Mr. Underwood was shot**, did his family gain access to his bedside. For over a month, Plaintiffs were shut out completely from the life of their dying loved one. That deprivation, prolonged, deliberate, and cruel, was a constitutional violation in its own right.

But the obstruction did not end there. On **June 24, 2025**, the District Attorney's Office dismissed all charges against Mr. Underwood, citing the "**Interest of Justice.**" Yet, just four days later, on **June 28, 2025**, Plaintiffs discovered, without formal notice, that new charges had been secretly refiled. A warrant and citation had been reissued. **Tony Underwood remained physically immobilized and dying**, yet the government had quietly restarted the very criminal machinery that had already been dismissed. The absurdity of re-indicting a dying man suffering from quadriplegia under continuous medical surveillance underscores the arbitrary cruelty at the core of this custodial regime.

Tony Underwood died on **July 18, 2025**, just weeks later. Though limited visitation had been restored during the final phase of his life, the prior **36-day deprivation** cannot be undone, and neither can the ongoing

constitutional insult of surveillance, confinement, and legal manipulation inflicted upon a man already beyond recovery.

These actions, taken in concert by the City and County, violated clearly established constitutional rights to familial association under the Fourteenth Amendment. See *Overton v. Bazzetta*, 539 U.S. 126, 131–32 (2003). Plaintiffs allege no penological, medical, or legal justification for barring a dying, nonverbal man from contact with his closest family. Nor can the refiling of charges after dismissal be justified by any principle of justice or necessity. What occurred here was not a function of criminal process. It was a system of carceral cruelty masquerading as procedure.

V. CONCLUSION

Harris County's motion to dismiss is not merely premature, it is substantively without merit and procedurally unsound. The constitutional injuries at the heart of this case were fully realized while Tony Underwood was alive, and they tragically culminated in his death. That ***death does not divest this Court of jurisdiction. It amplifies the stakes.*** Plaintiffs' claims are not moot, they have evolved into well-founded causes of action under § 1983 for survival damages, wrongful death, denial of familial association, and municipal liability under *Monell*.

The complaint, as currently framed, alleges sufficient facts to survive scrutiny under Rule 12(b)(6). However, in light of the factual developments since the complaint was filed, including:

- Mr. Underwood's extended medical confinement,

- the family’s prolonged exclusion,
- the belated issuance of a visitation order,
- the District Attorney’s dismissal of charges “in the Interest of Justice,”
- the quiet re-filing of new charges and issuance of a warrant, and;
- ultimately, Mr. Underwood’s death

Plaintiffs respectfully request, in the alternative, that the Court defer ruling and grant leave to amend pursuant to **Federal Rule of Civil Procedure 15(a)(2)** and to substitute the proper parties pursuant to **Rule 25(a)(1)** in fulfillment of Plaintiffs’ Motion (Dkt. 36).

Plaintiffs intend to amend the complaint to more fully articulate the scope of the constitutional violations, clarify and expand the *Monell* allegations against the appropriate parties in light of the newest developments, and assert claims for both compensatory and punitive damages under federal and state law. This is not a case to be disposed of at the pleading stage. It is one that requires discovery, evidentiary development, and judicial review on the merits. The Constitution demands no less.

“Constitutional violations do not dissipate with death; they deepen.”

This language is the undersigned’s own adaptation of the principle set forth in Rhyne v. Henderson County, 973 F.2d 386, 391 (5th Cir. 1992) (holding that § 1983 claims survive the death of the injured party and may be pursued by the estate).

Date: July 28, 2025

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

Minnesota Bar No. 0403083

Admitted:

U.S. District Court, Southern District of Texas

SDTX Bar No. 3746531

info@vincentlawpllc.com

VINCENT LAW, PLLC

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Houston, Texas 77094

Tel: (713) 223-9300

Fax: (832)603-4444

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on **July 28, 2025**, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

Respectfully Submitted,

/s/Courtney A. Vincent

Courtney A. Vincent

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

**DEFENDANT HARRIS COUNTY’S DESIGNATION OF
ATTORNEY-IN-CHARGE AND NOTICE OF SUBSTITUTION OF COUNSEL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant HARRIS COUNTY files this Notice of Designation of Attorney-in-Charge and Notice of Substitution of Counsel. HARRIS COUNTY gives notice as follows:

1. Attorney-in-charge will be Joshua Green, Assistant County Attorney. Mr. Green is appearing and substituting as Attorney-In-Charge for HARRIS COUNTY in place of Suzanne Bradley.
2. Frank Ford will remain as Of-Counsel for HARRIS COUNTY.
3. Mr. Green requests and is authorized to receive service of all pleadings, notices, orders and other papers in the above captioned matter. He requests that CM/ECF notification of all filings in this case be sent to him at:

JOSHUA GREEN
Assistant County Attorney
Harris County Attorney’s Office
1019 Congress

Houston, Texas 77002
Joshua.Green@harriscountytexas.gov

4. No prejudice will occur to any of the parties with this filing.

Date: July 30, 2025.

Respectfully submitted,

CHRISTIAN D. MENEFFEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND
FIRST ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT,
& REAL ESTATE DIVISIONS

By: /s/ Joshua Green
JOSHUA GREEN
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FRANK FORD
Assistant County Attorney
ATTORNEY TO BE NOTICED
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Frank.Ford@harriscountytexas.gov
OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
ATTORNEYS FOR DEFENDANT
HARRIS COUNTY

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Joshua Green
JOSHUA GREEN

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

REPLY IN SUPPORT OF HARRIS COUNTY’S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THE COURT:

Defendant Harris County files this Reply to Plaintiffs’ Response (Dkt. 38) and in support would respectfully show as follows:

I. INTRODUCTION

1. Harris County incorporates by reference all arguments and authorities set forth in its Motion to Dismiss (Dkt. 30) and Supplemental Brief (Dkt. 33). Harris County filed a 30-page motion to dismiss in this case, setting out myriad reasons why this Court has no jurisdiction.

2. Plaintiffs’ Response (Dkt. 38) fails to cure the fundamental legal deficiencies raised in Harris County’s Motion to Dismiss. Instead, it relies on emotional assertions, speculation about unfiled amendments, and conclusory inferences unsupported by governing law. Plaintiffs urge this Court to retain jurisdiction and postpone dismissal based on unasserted, anticipated claims and a proposed Rule 25(a) substitution, rather than the live pleading. There is no legal authority that allows a Court to exercise jurisdiction based on claims a litigant has not pled.

3. That procedural posture only underscores the threshold defects requiring dismissal: this Court lacks jurisdiction; Plaintiffs seek equitable relief that is now moot; the real party in interest has not been joined; the constitutional claims remain facially deficient; and the conduct at issue involves judicial actions, not County policymaking.

II. PLAINTIFFS CONCEDE THE CURRENT COMPLAINT IS OBSOLETE

4. Plaintiffs filed a Motion to Amend and Substitute (Dkt. 36) one day before filing their response. That motion acknowledges the current complaint does not reflect the posture of the case following Mr. Underwood's death. It seeks leave to file a "Second Amended Complaint" to realign parties and replead claims, including any *Monell* and wrongful death theories. This concession alone confirms that Plaintiffs' current operative pleadings fail to establish jurisdiction.

III. INJUNCTIVE AND HABEAS RELIEF ARE MOOT

5. Plaintiffs' prayer for injunctive and habeas relief is rendered moot for two independent reasons: (1) Mr. Underwood passed away on July 18, 2025, and (2) all criminal charges against him were dismissed weeks earlier (Dkt. 33-1). There is no longer a custodial relationship between Harris County and Mr. Underwood. No deputies remain posted at Ben Taub, and no legal basis remains for federal intervention into visitation access. See *Knox v. SEIU*, 567 U.S. 298, 307 (2012) ("a case becomes moot when it is impossible for a court to grant any effectual relief whatever to the prevailing party"); *Preiser v. Rodriguez*, 411 U.S. 475 (1973) (holding that habeas relief is available only to challenge the fact or duration of custody, and that federal courts may not intervene unless state remedies are first exhausted). Plaintiffs cannot seek injunctive relief over a relationship that no longer exists.

IV. LACK OF STANDING AND REAL PARTY IN INTEREST

6. Under Federal Rule of Civil Procedure 17(a), this action must be prosecuted in the name of the real party in interest. Tony Underwood, originally a named plaintiff, is now deceased. While Plaintiffs filed a Suggestion of Death (Dkt. 35) and a Motion to Substitute Parties under Rule 25(a)(1) (Dkt. 36), this Court has not granted substitution, and no personal representative of Mr. Underwood's estate has even been identified much less joined as a party. Critically, Plaintiffs have not pled a survival claim under Texas law, nor alleged that an estate exists, has been probated, or has appointed a representative withstanding to prosecute such a claim.

7. To the extent Plaintiffs seek damages for injuries allegedly suffered by Mr. Underwood before his death, those claims belong exclusively to the estate and must be brought by a duly appointed representative. See *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336 n.10 (5th Cir. 2017); *Pluet v. Frasier*, 355 F.3d 381, 383 (5th Cir. 2004). Plaintiffs have not alleged that an estate has been opened, that a representative has been appointed, or that any party currently before this Court has legal capacity to bring such claims on behalf of Mr. Underwood. Moreover, there is no assertion that an estate has been probated or that any will has been filed. Absent such representations, the lawsuit remains procedurally defective under Rules 12(b)(6) and 12(b)(7) for failure to state a claim and failure to join a required party. See *FED. R. CIV. P.* 17(a), 19(a).

8. Accordingly, unless and until a proper legal representative appears and this Court grants substitution under Rule 25(a)(1), all survival-based claims must be dismissed. Standing is a threshold jurisdictional requirement. Because Plaintiffs have not satisfied it, this Court lacks power to adjudicate the decedent's claims, and dismissal is warranted.

V. PLAINTIFFS HAVE NOT STATED A MONELL CLAIM

9. Plaintiffs argue they will “clarify and expand” their Monell allegations in a future amended complaint (Dkt. 38 at 6). That is an admission that they have not done so in the current pleading. Under established Fifth Circuit law, conclusory references to “custom or policy” do not suffice. *Peterson v. City of Fort Worth*, 588 F.3d 838, 850 (5th Cir. 2009) (“[A] plaintiff must show a persistent, widespread practice of municipal officials or employees... that is so common and well settled as to constitute a custom.”). Here, the alleged conduct consists of ad hoc decisions in a high-security hospital setting, in compliance with then-active state criminal proceedings. Nothing in the complaint attributes those actions to a county policymaker or identifies a pattern sufficient to impose municipal liability. Plaintiff was not injured, arrested, prosecuted, or held in custody at the behest of Harris County.

VI. JUDICIAL ACTS ARE NOT COUNTY POLICY

10. Plaintiffs seek to impose *Monell* liability on Harris County based on actions taken during Mr. Underwood’s pretrial detention and medical confinement. But much of the conduct they challenge, including courtroom determinations, custody status, and limitations on access to counsel and family, arises from judicial decisions, not county policy. These are not acts “of the municipality,” but of the state judiciary. Under well-established Fifth Circuit precedent, counties are not liable for the actions of judges or court personnel engaged in judicial functions. See *Quinn v. Roach*, 326 Fed.Appx. 280, 292 (5th Cir.2009) (Because Texas judges are state officers, and counties lack authority to direct or supervise their judicial decision-making, a county cannot be held liable under *Monell* for actions taken by a judge acting in a judicial capacity); *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir.1995) (A county cannot be held liable under *Monell* for actions

that are judicial in nature, even if they occur within the broader framework of the criminal justice system.)

11. To the extent Plaintiffs complain about how Mr. Underwood was ordered detained, transferred, or guarded at a medical facility, those decisions were either judicial or the implementation of court orders. Harris County, as a political subdivision, cannot dictate or override judicial determinations, and *Monell* does not authorize vicarious liability based on such acts. Plaintiffs' attempt to reframe these judicial decisions as county "custom" fails as a matter of law.

VII. NO CONSTITUTIONAL VIOLATION BY HARRIS COUNTY IS PLAUSIBLY ALLEGED

12. Plaintiffs allege violations of the First, Sixth, Eighth, and Fourteenth Amendments, but fail to tie any such violation to County policy or action:

- **First Amendment:** No facts are pled showing Harris County interfered with Mr. Underwood's religious exercise, nor that any denial of pastoral care stemmed from County directive.
- **Sixth Amendment:** Mr. Underwood had retained criminal and civil counsel. The pleadings fail to allege that Harris County obstructed legal representation in a manner that violates established rights.
- **Fourteenth Amendment / Conditions of Confinement:** At all relevant times, Mr. Underwood remained hospitalized with 24-hour medical supervision. Visitation protocols were governed by hospital security, medical conditions, and judicial orders, not punitive County policy. See *Kingsley v. Hendrickson*, 576 U.S. 389 (2015).
- **Familial Association:** Temporary restrictions imposed by hospital or court-supervised deputies do not rise to the level of constitutional deprivation. *Overton v. Bazzetta*, 539 U.S. 126 (2003).

13. Plaintiffs' narrative focuses on administrative delays and institutional confusion but fails to identify any deliberate conduct by a county policymaker that violated clearly established constitutional rights. Further, Plaintiffs erroneously (and perhaps knowingly) conflate the actions of the Houston Police Department, the State of Texas, Harris Health, and/or Harris County—all of which are separate legal entities.

VIII. THIS COURT LACKS JURISDICTION TO GRANT THE RELIEF SOUGHT

14. Even if the claims were factually plausible, Plaintiffs continue to ask this Court to enjoin criminal case procedures, interpret state-court orders, and award equitable relief for a custodial relationship that no longer exists. That effort is both moot and jurisdictionally barred. As previously outlined in Harris County's filings, challenges to pretrial custody, visitation restrictions, or medical confinement arising from ongoing criminal proceedings must be addressed through the state criminal process. See Dkt. 30 at 2–5; Dkt. 32. Plaintiffs cannot now retroactively reframe those concluded circumstances as a *Monell* claim simply because they disagree with how state and county procedures were coordinated.

IX. CONCLUSION

For the foregoing reasons, and those stated in Harris County's original Motion to Dismiss (Dkt. 30) and Supplemental Briefing (Dkt. 33), the Court should dismiss all claims against Harris County with prejudice pursuant to Rules 12(b)(1), 12(b)(6) and 12(b)(7).

Date: August 4, 2025.

Respectfully submitted,

CHRISTIAN D. MENEFE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND FIRST
ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT, &
REAL ESTATE DIVISIONS

By: /s/ Joshua Green
JOSHUA GREEN
Assistant County Attorney
ATTORNEY-IN-CHARGE
State Bar No. 24080915
Fed. Bar No. 1428074
Tel: (713) 274-5229 (direct)
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Assistant County Attorney
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OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
ATTORNEYS FOR DEFENDANT
HARRIS COUNTY

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Joshua Green
JOSHUA GREEN

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE
DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

**DEFENDANT HARRIS COUNTY’S NOTICE OF APPEARANCE BY
ATTORNEY**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Frank Ford, Assistant County Attorney, hereby makes an appearance as additional counsel of record for Defendant Harris County.
2. As additional counsel, Mr. Ford is authorized to receive service of all pleadings, notices, orders, and other papers in the above captioned matter. Mr. Ford respectfully requests that notification of all filings in this case be sent to him electronically or via mail at:

Frank Ford
Assistant County Attorney
1019 Congress
Houston, Texas 77002
Tel: (832) 570-7582 (direct)
Frank.ford@harriscountytexas.gov

3. Joshua Green will remain as Attorney-In-Charge for Harris County.
4. No prejudice will occur to any of the parties with this filing.

Date: August 5, 2025.

Respectfully submitted,

CHRISTIAN D. MENELEE
HARRIS COUNTY ATTORNEY

JONATHAN G. C. FOMBONNE
DEPUTY COUNTY ATTORNEY AND
FIRST ASSISTANT

NATALIE G. DELUCA
MANAGING COUNSEL,
DEFENSIVE LITIGATION, EMPLOYMENT,
& REAL ESTATE DIVISIONS

JOSHUA GREEN
Assistant County Attorney
ATTORNEY-IN-CHARGE
State Bar No. 24080915
Fed. Bar No. 1428074
Tel: (713) 274-5229 (direct)
joshua.green@harriscountytexas.gov

By: /s/ Frank Ford

FRANK FORD
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ATTORNEY TO BE NOTICED
Federal ID No. 565385
State Bar No. 24012642
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Frank.Ford@harriscountytexas.gov
OFFICE OF THE HARRIS COUNTY ATTORNEY
1019 Congress
Houston, Texas 77002
ATTORNEYS FOR DEFENDANT
HARRIS COUNTY

CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Frank Ford

FRANK FORD

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

ORDER

On this day, the Court considered Plaintiffs’ Rule 25(a)(1) Motion for Substitution Parties, Leave to Amend Complaint, and Extension of Time to Respond to Or to Moot Defendant Harris County’s Motion to Dismiss (DE 36). After review of the file, including any responses, the Court is of the opinion that motion should be DENIED.

IT IS THEREFORE, ORDERED that Plaintiffs’ Rule 25(a)(1) Motion for Substitution Parties, Leave to Amend Complaint, and Extension of Time to Respond to Or to Moot Defendant Harris County’s Motion to Dismiss is hereby DENIED.

Signed this _____, 2025 at Houston, Texas.

HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD,
Plaintiff,

v.

**HARRIS COUNTY a.k.a HARRIS
HEALTH SYSTEM, a.k.a BEN TAUB
HOSPITAL, and CITY OF HOUSTON
a.k.a HOUSTON POLICE DEPARTMENT,**
Defendants.

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CIVIL ACTION NO. 4:25-CV-2089

JURY DEMAND

**HARRIS COUNTY’S RESPONSE TO PLAINTIFFS’ RULE 25(a)(1) MOTION FOR
SUBSTITUTION PARTIES, LEAVE TO AMEND COMPLAINT, AND EXTENSION OF
TIME TO RESPOND TO OR TO MOOT
DEFENDANT HARRIS COUNTY’S MOTION TO DISMISS**

TO THE HONORABLE JUDGE OF THE COURT:

Defendant Harris County files this Response to Docket Entry 36 (DE 36) (Plaintiff’s Rule 25(a)(1) Motion for Substitution Parties, Leave to Amend Complaint, and Extension of Time to Respond to or to Moot Defendant Harris County’s Motion to Dismiss), and respectfully requests that the Motion be denied. In support, Harris County would respectfully show the Court as follows:

I. INTRODUCTION

1. Harris County incorporates by reference all arguments and authorities set forth in its Motion to Dismiss (DE 30), its Supplemental Brief (DE 33), and its Reply in Support of Harris County’s Motion to Dismiss (DE. 40).

2. Harris County filed a 30-page motion to dismiss in this case, setting out myriad reasons why this Court has no jurisdiction and why Plaintiffs have not shown *Monell*. Plaintiffs filed this Motion for Substitution and Leave to Amend one day before responding to Defendant’s Motion to

Dismiss. Rather than defend the live pleading, Plaintiffs' motion (DE 36) is an attempt to keep this lawsuit alive by requesting to substitute unnamed heirs, promising future amendments, and asking the Court to postpone consideration of Harris County's fully briefed motion to dismiss. Plaintiff's request rests entirely on intentions, not facts. Plaintiffs' Motion (DE 36) should be denied and Harris County's Motion to Dismiss (DE 30) should be granted.

II. THE COURT'S REVIEW IS LIMITED TO THE OPERATIVE COMPLAINT

3. Plaintiff's Motion (DE 36) and briefing in Response to Harris County's Motion to Dismiss (DE38) rely not on the operative complaint but on promises of what they intend to plead in the future. Plaintiffs state they will identify heirs, they will assert *Monell* allegations, and they will add wrongful death claims. None of these allegations adequately appear in the First Amended Complaint, which remains the operative pleading.

4. Under Rule 12(b)(6), the sufficiency of a complaint is measured solely by the allegations in the complaint itself, along with its proper attachments and documents incorporated by reference. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) ("Generally, a court ruling on a motion to dismiss may rely only on the complaint and its proper attachments. ... [The court] may not consider new factual allegations made outside the complaint, including those made on appeal."); *Fin. Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 286 (5th Cir.2006).

5. The Fifth Circuit has emphasized that jurisdictional and pleading sufficiency questions are evaluated as of the complaint before the court, not based on speculative or future amendments. See *Financial Acquisition Partners LP v. Blackwell*, 440 F.3d 278, 286 (5th Cir. 2006) (Rule 12 dismissal turns on "the complaint as filed"); see also *Whitmore v. Arkansas*, 495 U.S. 149, 155–56 (1990) (standing must exist at the time of filing - Article III standing is measured at the time of

filing, not based on speculative future events. If standing does not exist then, the court lacks jurisdiction and must dismiss.).

6. Plaintiffs therefore cannot avoid dismissal by previewing allegations they may one day assert through their Motion for Substitution of Parties and Leave to Amend. Here, Plaintiffs speak in ambiguous terms and have not even put forth a proposed Second Amended Complaint for judicial consideration.

7. Further, Rule 25 does not operate as a jurisdictional placeholder, and Rule 15 does not retroactively supply standing or capacity where none exists. The Court's task is to assess whether the operative complaint, which was filed before Mr. Underwood's death, states a claim within the Court's jurisdiction. It does not. This Court still lacks jurisdiction. Further, there is no legal authority that allows a Court to exercise jurisdiction based on claims a litigant has not pled, but which they promise they will plead at a future date.

8. Plaintiffs, in DE 36, acknowledges the current complaint does not reflect the posture of the case following Mr. Underwood's death. They are seeking leave to file a "Second Amended Complaint" to realign parties and replead claims, including any *Monell* and wrongful death theories. This concession alone confirms that Plaintiffs' current operative pleadings fail to establish jurisdiction. By admitting the current complaint no longer matches reality, Plaintiffs are essentially conceding that their operative pleading doesn't state a justiciable case or controversy. Federal jurisdiction depends on the live complaint properly alleging facts and claims. If the operative pleading is defective on its face, as they acknowledge, then jurisdiction fails right now.

9. As stated in DE 33 and DE 40 at 2, even before Mr. Underwood's death, this case had already become moot. As Harris County explained in its Supplemental Motion (DE 33), all pending criminal charges against Mr. Underwood were dismissed, and he was no longer in County

custody. At the time of Mr. Underwood's death, there were no ongoing issues of visitation, detention, or habeas relief for this Court to adjudicate. Any remaining allegations of *Monell* were not adequately pleaded. Rule 12(b)(1) and 12(b)(6) independently compel dismissal. Plaintiff's current motion for substitution provides no basis to disturb that conclusion.

III. SUBSTITUTION UNDER RULE 25(A)(1) IS IMPROPER BECAUSE PLAINTIFF HAS FAILED TO PROVIDE EVIDENCE THAT A PROPER PARTY EXISTS

10. Rule 25(a)(1) provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party.” FED. R. CIV. P. 25(a)(1). This provision is narrow. It requires both (1) that the claim itself survives the decedent's death, and (2) that a “proper party” exists who has the legal capacity to be substituted. Plaintiffs satisfy neither requirement.

11. First, Plaintiffs have not pled a survival action under Texas law. Under Texas Civil Practice and Remedies Code § 71.021, only claims that survive death can be prosecuted by the estate. Those claims “survive to and in favor of the heirs, legal representatives, and estate of the injured person.” *Id.* But critically, only the estate's duly appointed legal representative has standing to bring survival claims in court. See *Pluet v. Frasier*, 355 F.3d 381, 383 (5th Cir. 2004) (Survival actions must be brought by the decedent's estate, and only the estate's legal representative has capacity to bring them.). Here, Plaintiffs' operative complaint contains no survival claim, no allegation that an estate has been opened, and no assertion that a legal representative has been appointed. Absent such allegations, the Court has no basis to find that any claim survives to a party properly before it.

12. Second, Plaintiffs' Rule 25 Motion is not ripe as it fails to identify a “proper party” for substitution. The Fifth Circuit has repeatedly held that the “proper party” for purposes of Rule 25(a)(1) is the legal representative of the decedent's estate. See *Pluet*, 355 F.3d at 383; see also *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 850–52 (Tex. 2005) (under Texas law, standing to pursue survival actions belongs only to the estate's legal representative). Plaintiffs here have not

even alleged that Mr. Underwood's estate exists, much less that probate proceedings have begun or that a representative has been appointed by a court.

13. The mere filing of a Suggestion of Death does not satisfy Rule 25. Substitution cannot proceed without a concrete, legally recognized representative to step into the litigation. Plaintiffs' request to substitute "unnamed heirs" or to amend later to identify parties is legally insufficient. Rule 25 does not serve as a jurisdictional placeholder. Plaintiffs' promises to identify heirs or representatives at some future date do not cure the jurisdictional defect before the Court.

14. In short, Plaintiffs' Rule 25(a)(1) motion fails at every step. No survival claim has been adequately pleaded; no estate representative has been identified; and no proper party exists to substitute. As a matter of law, substitution cannot be granted under these circumstances. The motion must therefore be denied at this time.

IV. LEAVE TO AMEND SHOULD BE DENIED

15. Plaintiff also asks for leave to file a Second Amended Complaint to add *Monell* and wrongful death claims. That request should be denied.

16. Rule 15(a) provides that leave to amend "shall be freely given when justice so requires," but it may be denied for undue delay, repeated failure to cure deficiencies, prejudice, or futility. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *U.S. ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 386 (5th Cir. 2003). A plaintiff has "pleaded [their] best case" after being apprised of deficiencies and afforded the opportunity to amend. *Wiggins v. La. State Univ.-Health Care Servs. Div.*, 710 F. App'x 625, 627 (5th Cir. 2017). Once a plaintiff has pleaded their best case, granting further leave to amend is not required. *Id.*

17. Here, Plaintiffs have already amended once and concede their current pleading is obsolete. They now seek to add *Monell* and wrongful-death theories only in response to Harris County's

dispositive motion. But a “bare request in an opposition to a motion to dismiss—without any indication of the particular grounds on which the amendment is sought—does not constitute a motion within the contemplation of Rule 15(a).” *Willard*, 336 F.3d at 386–87 (quoting *Confederate Mem’l Ass’n v. Hines*, 995 F.2d 295, 299 (D.C. Cir. 1993)).

18. Plaintiff, in its motion, makes cursory promises that a Second Amended Complaint will: “(1) Substitute and align the appropriate legal heirs and estate representatives as parties; (2) Replead facts supporting survival and wrongful death claims; (3) Incorporate newly developed facts related to the denial of family access, unlawful isolation, and custodial irregularities prior to Mr. Underwood’s passing; and (4) Clarify and expand the bases for *Monell* and individual liability, including joining previously dismissed defendants as appropriate.” (DE 36) The Motion, however, does not go beyond cursory statements, offers no discussion of factual allegation(s) that they intend to add or revise in any further amended pleading. The Plaintiffs have not provided a proposed Second Amendment. Plaintiff simply promises to expound on these allegations in the future. Courts in this Circuit routinely deny leave where plaintiffs merely state there is “room for improvement” but cannot articulate what specific allegations would cure dismissal. *Wiggins*, 710 F. App’x at 627; *Brewster v. Dretke*, 587 F.3d 764, 768 (5th Cir. 2009). Here Plaintiffs have not alleged with specificity any allegations that would cure dismissal.

19. Moreover, amendment would be futile. The jurisdictional defects in this case cannot be retroactively cured, and Plaintiffs’ *Monell* and wrongful-death claims remain legally deficient for the reasons already shown. Futility under Rule 15 is determined by Rule 12(b)(6) standards; an amendment that would still fail to state a claim is properly denied. *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 872–73 (5th Cir. 2000).

20. Plaintiffs have already pleaded their best case. Further amendment would not cure jurisdictional deficiencies, would prejudice Harris County by prolonging litigation, and would waste judicial resources. The Court should therefore deny Plaintiffs' request for leave.

V. CONCLUSION

21. Plaintiffs' Motion (DE 36) rests on speculation, not law. Substitution is premature, amendment is futile, and delay would be prejudicial. This Court should deny Plaintiffs' Motion in full and dismiss all claims against Harris County with prejudice.

WHEREFORE, Harris County respectfully requests that the Court deny Plaintiffs' Motion (DE 36) and grant Harris County such other relief as justice requires.

Date: August 18, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, pursuant to Federal Rules of Civil Procedure, a true copy of the instrument to which this Certificate is attached was duly served upon each party to this cause on the CM/ECF system, which will automatically serve a Notice of Electronic Filing to the parties.

/s/ Joshua Green _____
JOSHUA GREEN

ENTERED

September 17, 2025

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TONY UNDERWOOD, ET AL.,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION No. 4:25-CV-2089
	§	
HARRIS COUNTY TEXAS, ET AL.,	§	
<i>Defendants.</i>	§	

MEMORANDUM AND ORDER

Plaintiff, Tony Underwood, initiated this case on May 8, 2025 by filing an Emergency Petition for Writ of Habeas Corpus.¹ ECF 1. Plaintiff subsequently voluntarily dismissed claims against all Defendants other than Harris County. ECF 15; ECF 27. Now before the Court is Harris County’s Motion to Dismiss for lack of jurisdiction and failure to state a claim.² ECF 30 (as supplemented by ECF 33). Also before the Court is “Plaintiffs’ Rule 25(a)(1) Motion for Substitution of Parties, Leave to Amend Complaint, and Extension of Time to Respond to or to Moot Defendant Harris County’s Motion to Dismiss.” ECF 36. Having considered the parties’ submissions and the law, the Court grants Defendant’s Motion and denies Plaintiffs leave to file an Amended Complaint.

¹ The parties consented to proceed before the Undersigned Magistrate Judge for all proceedings, including trial and final judgment, pursuant to 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. ECF 29.

² Harris County’s prior Motion to Dismiss (ECF 19) is terminated as moot.

I. Background

Plaintiff was shot by a Houston Police on April 30, 2025. He was taken to Ben Taub Hospital with life-threatening injuries. He was placed under arrest, charged with aggravated assault of a public servant and other crimes in Case No. 191455201010 in the 248th Criminal District Court in Harris County, Texas, and placed on bond. A police officer was posted outside Plaintiff's hospital room and visitors were not allowed. Plaintiff filed this case seeking injunctive relief to allow visitation by family and counsel. On June 5, 2025, the state court judge entered an order permitting family visitation, mooted that aspect of Plaintiff's claim for relief. The Harris County District Attorney dismissed all charges against Plaintiff on June 24, 2025. Regrettably, Plaintiff died on or about July 18, 2025. Harris County moves to dismiss all claims in this case for lack of jurisdiction and failure to state a claim.

II. Motion to Dismiss Standards

A. Rule 12(b)(1)

When subject matter jurisdiction is challenged, the court “is free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has power to hear the case.” *Montez v. Dep't of the Navy*, 392 F.3d 147, 149 (5th Cir. 2004); *Krim v. Pborder.com*, 402 F.3d 489, 494 (5th Cir. 2005). The court may consider any of the following in resolving a Rule 12(b)(1) motion: “(1) the complaint alone; (2) the complaint supplemented by the undisputed facts evidenced in the record; or (3) the

complaint supplemented by undisputed facts plus the court's resolution of disputed facts.” *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008); *see also Schaeffler v. United States*, 889 F.3d 238, 242 (5th Cir. 2018). The plaintiff bears the burden of establishing subject matter jurisdiction. *Exelon Wind I, L.L.C. v. Nelson*, 766 F.3d 380, 388 (5th Cir. 2014). If the plaintiff fails to meet his burden, the case must be dismissed. *Id.*

B. Rule 12(b)(6)

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the conduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), this Court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff. *Alexander v. AmeriPro Funding, Inc.*, 48 F.3d 68, 701 (5th Cir. 2017) (citing *Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). However, the court does not apply the presumption of truth to conclusory statements or legal conclusions. *Iqbal*, 556 U.S. at 678-79.

III. Analysis

A. Subject Matter Jurisdiction is determined based on the Amended Petition and Complaint.

Plaintiff filed an “Emergency Petition for Non-Criminal-Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and § 2254” seeking release from “unlawful detention and restraint of liberty by a state actor.” ECF 1. Regardless of any flaws in the jurisdictional and legal basis for the Emergency Petition, that pleading is irrelevant to the Court analysis at this stage of the proceeding because subject matter jurisdiction is governed by Plaintiff’s operative pleading in federal court. *Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 39 (2025) (holding that federal subject matter jurisdiction depends on the substance of the operative pleading and/or the citizenship of the parties). Plaintiffs’ operative pleading is the “Amended Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. §§ 2254 and 2241 and Complaint for Declaratory and Injunctive Relief Pursuant to 42 U.S.C. § 1983” (Amended Complaint) filed on June 1, 2025. ECF 18. The Amended Complaint adds Patricia Underwood as a Plaintiff, Harris County as a Defendant, and asserts claims pursuant to §§ 2254 and 2241 for unlawful confinement, as well as claims under § 1983 for violation of Tony Underwood’s First, Fourteenth, Sixth, and Eighth Amendment rights and for violation of Patricia Underwood’s First and Fourteenth Amendment rights. *Id.*

B. Harris County’s Motion to Dismiss Plaintiffs’ 28 U.S.C. §§ 2254 and 2241 claims is granted.

Plaintiffs’ claims pursuant to §§ 2254 and 2241 must be dismissed because Tony Underwood is no longer in custody, both because of his death and because all charges against him were dismissed on June 24, 2025. *See* 28 U.S.C. § 2241(c) (providing that the writ of habeas corpus extends only to prisoners in custody); 28 U.S.C. § 2254(a) (providing that habeas relief may be granted only on the ground that petition is in custody illegally); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (explaining that the function of the writ of habeas corpus “is to secure release from illegal custody”); *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976) (holding that the “sole function [of habeas corpus] is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose”).

C. Harris County’s Motion to Dismiss Plaintiffs’ 42 U.S.C. § 1983 claims is granted without prejudice to refiling.

Harris County argues that (1) only the state criminal court in Harris County has jurisdiction to adjudicate Plaintiffs’ claims; (2) Plaintiffs’ requested relief is moot; (3) Patricia Underwood does not have standing to pursue § 1983 claims on behalf of Tony Underwood because that right rests solely with a duly appointed representative of the estate; and (4) Plaintiffs have not stated a plausible claim for relief under *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). *See* ECF 30; ECF 40; ECF 42. Plaintiffs argue that “[u]nder long-established federal law,

constitutional torts under 42 U.S.C. § 1983 survive the decedent,” citing *Rhyne v. Henderson Cnty.*, 973 F.2d 386, 391 (5th Cir. 1992).

Federal subject matter jurisdiction exists for civil rights claims related to a prisoner’s conditions of confinement. *See Orellana v. Kyle*, 65 F.3d 29, 31 (5th Cir. 1995) (holding district court can decide § 1983 claims improperly joined with habeas claims, citing *Serio v. Members of La. State Bd. of Pardons*, 821 F.2d 1112, 1119 (5th Cir.1987)). Nonetheless, “[c]ivil rights claims are not actionable in a federal habeas proceeding because the writ of habeas corpus provides a remedy only for prisoners challenging the ‘fact or duration’ of confinement and is not properly used as an avenue for relief from conditions of confinement.” *Gonzalez v. Hall*, No. CV H-24-3562, 2025 WL 1593128, at *3 (S.D. Tex. June 5, 2025) (citations omitted). Where a petitioner files a petition for habeas relief and joins civil rights claims, a district court may dismiss the § 1983 claims without prejudice to refile in a separate civil action. *Id.*; *see also Drakos v. Gonzalez*, No. CV H-24-531, 2024 WL 5238662, at *3 (S.D. Tex. Dec. 19, 2024) (dismissing civil rights claims without prejudice to refile in a separate action “governed by 42 U.S.C. § 1983 and subject to provisions found in the PLRA” where petitioner attempted to raise claims concerning his conditions of confinement in a habeas corpus proceeding).

Dismissal without prejudice is the proper course of action here because it is impossible for the Court to grant the relief sought in the Amended Complaint. *See*

ECF 18 (seeking Tony Underwood's release from custody and declaratory and injunctive relief allowing "legal counsel, familial access, and pastoral support" to Tony Underwood). Therefore, Plaintiffs' currently pled claims are moot and must be dismissed. *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (holding that "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party" (citations omitted)).

In addition, the Court declines to grant leave to file an amended petition to correct the defects in the current Amended Petition seeking habeas relief. First, in a survival action the "recovery represents the injuries the decedent personally suffered." *Pluet v. Frasier*, 355 F.3d 381, 384 (5th Cir. 2004). As pointed out by Harris County, the proper party to bring any surviving constitutional claims on behalf of Tony Underwood is the duly appointed representative of his estate. *Id.* at 383-84 (holding that 42 U.S.C. § 1988 looks to state common to fill in "gaps in administration of civil rights suits" and the Texas Survival Statute "preserves a claim for the estate rather than creating a new cause of action for those surviving the decedent"). Plaintiffs have made no representation, in response to the Motion to Dismiss or in their Motion for Substitution, that Patricia Underwood is the duly appointed representative of Tony Underwood's estate. The Court takes no position as to whether Patricia Underwood, as Tony Underwood's mother, will be able to state claims for violation of her own constitutional rights or for Tony Underwood's

wrongful death. However, no such claims are currently pled. The operative pleading was filed before Tony Underwood's death and as stated above, seeks only hospital visitation rights. Second, the Amended Complaint is entirely devoid of allegations that state a *Monell* claim against Harris County. Plaintiff's current pleadings and briefing contain no allegations that would support a *Monell* claim even if leave to amend were granted.

In sum, the Court declines to consider Plaintiffs' civil rights claims in the context of the deceased Plaintiff's Amended Petition for Writ of Habeas Corpus. Plaintiffs paid only the \$5.00 filing fee applicable to a writ of habeas corpus and thus dismissal will not cause forfeiture of the usual \$405.00 civil filing fee. The Court concludes that the appropriate course of action in this case is dismissal without prejudice to refile an appropriate civil action as in *Drakos v. Gonzalez*, No. CV H-24-531, 2024 WL 5238662, at *3 (S.D. Tex. Dec. 19, 2024).

IV. Conclusion and Order

For the reasons set forth above, it is

ORDERED that Defendant's Motion to Dismiss is GRANTED. This case is DISMISSED WITHOUT PREJUDICE to refile as a civil rights action.

It is further

ORDERED that "Plaintiffs' Rule 25(a)(1) Motion for Substitution of Parties, Leave to Amend Complaint, and Extension of Time to Respond to or to Moot

Defendant Harris County's Motion to Dismiss" (ECF 36) is DENIED.

Signed on September 16, 2025, at Houston, Texas.

Christina A. Bryan
United States Magistrate Judge