APPENDIX

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT, INCLUDING
THE DISSENT OF JUDGE HIGGINSON
(August 26, 2026)

Case: 26-20337 Document: 46-1 Page: 1 Date Filed: 08/26/2026

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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No. 26-20337

In re Honorable Paula Goodhart; Honorable Jessica Padilla; Honorable Leslie Johnson; Honorable Linda Garcia,

Petitioners.

On Petition for Writ of Mandamus
from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-1414

Before Elrod, *Chief Judge*, and Jones and Higginson, *Circuit Judges*.

Per Curiam:[*]

Four Texas state judges presiding over the Harris County Criminal Courts at Law moved the district court to vacate a federal consent decree that monitors the pretrial imposition of bail in Harris County. With a state judicial election fast approaching, the judges then asked the district court to expedite its consideration of the *Younger* abstention argument in their motion to vacate. The district court declined, instead moving the date of its hearing on the motion to vacate to fall *after* the state election. The four judges now seek a writ of mandamus ordering the district court to act expeditiously in considering the *Younger* argument. Because of the pending state election,

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

and because our decision in *Daves v. Dallas County (Daves II)*, 64 F.4th 616 (5th Cir. 2023) (en banc), declares that this case should not "have been adjudicated in federal court," *id.* at 631, we GRANT the writ of mandamus. We accordingly DENY as moot the pending motion to stay enforcement of the consent decree pending the outcome of this mandamus proceeding.

I

This case has a long history, which we have described before in *ODonnell v. Harris County (ODonnell I)*, 892 F.3d 147 (5th Cir. 2018), *overruled in part by Daves II*, 64 F.4th 616. We repeat here only the salient details.

The plaintiffs brought a class-action lawsuit against Harris County, Texas, and a number of its officials, including, as relevant here, judges of the Harris County Criminal Courts at Law. *Id.* at 152. They alleged that "[t]he County's system of setting bail for indigent misdemeanor arrestees violated Texas statutory and constitutional law, as well as the equal protection and due process clauses of the Fourteenth Amendment." *Id.* The district court granted a preliminary injunction "requiring the implementation of new safeguards and the release of numerous detainees subjected to the insufficient procedures." *Id.* at 155.

On appeal, and as relevant here, we concluded that abstention under *Younger v. Harris*, 401 U.S. 37 (1971), was not appropriate, *ODonnell I*, 892 F.3d at 156. But we vacated the overbroad preliminary injunction and remanded for the district court to "craft a revised injunction." *Id.* at 163–67. We later stayed pending appeal certain sections of the revised injunction. *See generally ODonnell v. Goodhart (ODonnell II)*, 900 F.3d 220 (5th Cir. 2018). In that proceeding, the county judges again raised their *Younger* arguments, but we did not reach them because we stayed the injunction on other grounds.

Id. at 223–24; *see also id.* at 232 (Graves, J., dissenting) ("The judges recycle various arguments based on *Younger*.").

The original county judges "were defeated in the November 2018 elections and, by operation of law, were replaced by" new judges. *ODonnell v. Salgado (ODonnell III)*, 913 F.3d 479, 481 (5th Cir. 2019). On those new judges' motion, we dismissed their appeal. *Id.*

Back in district court, the parties settled and jointly moved for approval of a proposed consent decree, which the district court granted, *ODonnell v. Harris County (ODonnell IV)*, No. H-16-1414, 2019 WL 6219933, at *28 (S.D. Tex. Nov. 21, 2019) (approving consent decree). In early 2020, on the parties' motion, and pursuant to a provision in the consent decree, the district court appointed a consent-decree monitor. The monitor files regular reports in the district court assessing whether the Harris County Criminal Court at Law judges comply with the consent decree; to date, the monitor has filed nine such reports.

Two years after entry of the consent decree, we concluded in *Daves II* that *Younger* "and its progeny required the district court to abstain" in this case. 64 F.4th at 631, 635. We expressly stated that "*ODonnell I*," this very case, "should [not] have been adjudicated in federal court." *Id.* at 631. We overruled *ODonnell I*'s holding against abstention. *Id.* at 631, 635.

Two years later, Judges Paula Goodhart, Leslie Johnson, Jessica Padilla, and Linda Garcia—the four Harris County Criminal Court at Law judges who are petitioners here and whom we call "the four judges"—moved unopposed to substitute as parties for their predecessors in office. The district court granted that motion.

On November 12, 2025, the district court issued a scheduling order requiring, among other things, that the four judges file any motion to vacate the consent decree by December 11, 2025. The four judges did just that,

timely moving the district court to "vacate or, at minimum, modify the Consent Decree to be consistent with State law." Fact discovery opened the next day, and is set to close in late August 2026.

A few months after the four judges moved to vacate the consent decree, in April 2026, the four judges asked the district court to expedite its consideration of the *Younger* abstention argument in their motion to vacate. The district court denied that motion. Instead, it postponed the deadline for the judges' amended motion to vacate until October 1, 2026. The plaintiffs' responses are currently due at the end of October, and the judges' replies on November 6. The district court set the hearing on the motion to vacate to begin on November 16, 2026.

Texas holds elections for judges. One such general election will occur on November 3, 2026. *Important Election Dates*, Tex. Sec'y of State, https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml (last visited Aug. 24, 2026). Thus, per the district court's current schedule, the submission deadline for the four judges' motion to vacate will fall after the election.

The four judges petitioned us for mandamus relief, asking us to order the district court to grant their motion to expedite consideration of their *Younger* abstention argument.[1]

II

Any petitioner seeking mandamus relief must satisfy "three conditions . . . before a writ of mandamus may issue." *In re Westcott*, 135 F.4th 243, 245 (5th Cir. 2025). "First, 'the party seeking issuance of the

[1] After the parties to this mandamus proceeding had completed briefing, we invited (but did not require) the district court to respond to the petition for writ of mandamus. The district court declined to respond.

writ [must] have no other adequate means to attain the relief he desires'—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (alteration in original) (quoting *Kerr v. U.S. Dist. Ct. for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976)). "Second, the petitioner must satisfy 'the burden of showing that [his] right to issuance of the writ is "clear and indisputable."'" *Id.* at 381 (alteration in original) (quoting *Kerr*, 426 U.S. at 403). And third, "even if the first two prerequisites have been met," we, "in the exercise of [our] discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* (citing *Kerr*, 426 U.S. at 403). The four judges readily satisfy all three of these requirements.

A

First, the four judges have no adequate means besides mandamus to obtain the relief that they seek: expedited consideration of their motion to vacate the consent decree. *See id.* at 380–81 (quoting *Kerr*, 426 U.S. at 403). An appeal from the district court's final judgment cannot undo any delay in reaching that final judgment. And there is value here in acting expeditiously: As we noted above, Texas's judicial election will take place this November.

B

The four judges have also shown that they have a clear and indisputable right to the "extraordinary remedy" of mandamus. *E.g.*, *Newsome v. EEOC*, 301 F.3d 227, 231 (5th Cir. 2022) (quoting *Adams v. Ga. Gulf Corp.*, 237 F.3d 538, 542 (5th Cir. 2001)); *see Cheney*, 542 U.S. at 381 (quoting *Kerr*, 426 U.S. at 403). "If the issue 'is one committed to the discretion of the trial court,'" like a district court's management of its docket, "a clear and indisputable right to the issuance of the writ of mandamus will arise only if the district court has clearly abused its discretion, such that it amounts to a judicial usurpation of power.'" *In re Gee*, 941 F.3d

153, 158–59 (5th Cir. 2019) (quoting *In re 1st S. Savs. Ass'n*, 820 F.2d 700, 707 (5th Cir. 1987)); *accord In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir 2008) (en banc); *see In re United States ex rel. Drummond*, 886 F.3d 448, 450 (5th Cir. 2018).

Mandamus relief may issue where the district court unduly delays. *See Drummond*, 886 F.3d at 450. "We recognize that this [case involves] a complex matter and that district court judges have broad discretion in managing their dockets." *Id.* (citing *Sims v. ANR Freight Sys., Inc.*, 77 F.3d 846, 849 (5th Cir. 1996)). "However, discretion has its limits." *Id.* (quoting *Sims*, 77 F.3d at 849).

Again, *Daves II* expressly held that "*ODonnell I*," this very case, "should [not] have been adjudicated in federal court." 64 F.4th at 631. We overruled *ODonnell I*'s holding against *Younger* abstention and concluded that the district court *in this case* should have abstained. *Id.* at 631, 635. This holding, plus the comity and federalism concerns underlying *Younger*, *see id.* at 624–25, should have counseled the district court to expedite consideration of whether to end federal oversight of state procedures—particularly in light of the imminent state judicial election. The district court should not have delayed that consideration such that the hearing on the motion to vacate falls after the state election.

The district court believed that "*Daves II* is not directly controlling" because that case "addressed a *Younger* argument presented and resolved before final judgment," while, here, the four judges "move to vacate a final judgment." *See Daves II*, 64 F.4th at 620–21. This mattered, in the district court's view, because moving to vacate a final judgment "requires the [f]our [j]udges to show under [Federal Rule of Civil Procedure] 60(b) that the equities favor vacating or amending the consent decree"—which, the district court reasoned, required factual development.

But *Daves II* expressly held that "*ODonnell I* . . . should [not] have been adjudicated in federal court" and that the district court should have abstained. 64 F.4th at 631. Again, *ODonnell I is this case*. *Daves II* does not hinge upon factual development or discovery. Moreover, the district court failed to consider one fact that surely looms large in any balancing of equities: the imminent state judicial election, which counseled expedition here.

The district court was also mistaken to the extent it believed that the four judges had waived their *Younger* argument. Of course, *Younger* will not apply if "application of the doctrine was waived." *Daves II*, 64 F.4th at 625 n.16 (quoting *Tex. Ass'n of Bus. v. Earle*, 388 F.3d 515, 519 (5th Cir. 2004)); *see Daves v. Dallas County (Daves I)*, 22 F.4th 522, 545 (5th Cir. 2022) (en banc) ("One result of the principle that abstention under *Younger* is not jurisdictional is that application of the doctrine can be waived." (citing *Tex. Ass'n of Bus.*, 388 F.3d at 519)). The district court suggested that the four judges may have waived *Younger*'s application here because previous Harris County Criminal Court at Law judges had agreed to the consent decree.

But "[c]onsent alone is insufficient to support a commitment by a public official that ties the hands of his successor." *Evans v. City of Chicago*, 10 F.3d 474, 478 (10th Cir. 1993) (en banc) (citing, among other things, *League of United Latin Am. Citizens v. Clements*, 999 F.2d 831, 846 (5th Cir. 1993) (en banc)). This is so because, as we have said, "[c]onsent is not enough when litigants seek to grant themselves powers they do not hold outside of court," *Clements*, 999 F.2d at 846 (citing *People Who Care v. Rockford Bd. of Educ.*, 961 F.2d 1335, 1337 (7th Cir. 1992)), and no public official has the power to bind his or her successor in perpetuity, *see Evans*, 10 F.3d at 478 ("[D]emocracy does not permit public officials to bind the polity forever."). To be clear, this does not mean that "mere transfer of power from one officeholder to another is enough to vacate a consent decree," as the plaintiffs suggest. The decision whether to vacate or modify

a consent decree turns on other factors, such as changed circumstances or a change in law. *See, e.g.*, *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383–90 (1992). *But see id.* at 390 ("While a decision that clarifies the law will not, in and of itself, provide a basis for modifying a decree, it could constitute a change in circumstances that would support modification if the parties had based their agreement on a misunderstanding of the governing law.").

The plaintiffs insist that the four judges waived *Younger*'s application by entering a consent decree because the consent decree reached the merits of their claims. But we have indicated that even "full discovery and fully briefing the merits of the case" does not constitute waiver of abstention arguments where governmental parties "consistently request[] that the district court abstain." *RTM Media, L.L.C. v. City of Houston*, 584 F.3d 220, 229 (5th Cir. 2009); *see O'Neill v. Coughlan*, 511 F.3d 638, 642 (6th Cir. 2008) (explaining that a state must waive *Younger* abstention explicitly and rejecting the argument that "any request that the federal court reach the merits of the lawsuit constitutes waiver"). Here, the state judges consistently urged the district court and our court to abstain. *ODonnell I*, 392 F.3d at 156–57; *ODonnell II*, 900 F.3d at 223–24.

The plaintiffs further maintain that the four judges implicitly waived their *Younger* argument "by waiting over two years" after *Daves II* "to move to vacate." But the four judges apparently could not file such a motion until November 2025, when, as they represent, they were finally able to obtain counsel independent from that of the other twelve Harris County Criminal Court at Law judges, all of whom support the consent decree's continuation. The plaintiffs say that they dispute this account, but before us, they do not show that this version of the facts is incorrect. If the four judges were unable to obtain counsel independent of their judicial colleagues who support the consent decree, we do not see how they could have filed earlier.

C

Finally, we are "satisfied" that mandamus relief "is appropriate under the circumstances." *Cheney*, 542 U.S. at 381 (citing *Kerr*, 426 U.S. at 403). The pending election and *Daves II* make the writ appropriate here for the reasons that we have already discussed.

* * *

We GRANT the writ of mandamus. The district court must consider the four judges' *Younger* abstention argument on an expedited basis, well in advance of the upcoming Texas judicial election on November 3, 2026. We also direct the district court to follow *Daves II*. We DENY as moot the pending motion to stay enforcement of the consent decree pending the outcome of this mandamus proceeding.

STEPHEN A. HIGGINSON, *Circuit Judge*, dissenting:

The majority grants mandamus against a district judge to order expedited consideration of a matter set by that judge in less than three months as part of a full evidentiary hearing.[1] Specifically, the majority uses drastic mandamus power to compel Judge Lee Rosenthal to rule "well in advance of" a fall election and to apply our precedent, but there is no indication that Judge Rosenthal wouldn't faithfully apply the law herself. Because it is inappropriate for us to set a district court's docket, I respectfully DISSENT.

* * *

I voice two primary concerns with the majority's opinion. First, mandamus presents a high bar for relief that the majority neglects and that Petitioners have failed to meet.[2] Second, I disagree with the majority's advisory discussion of *Younger*, in this context, above all where a final consent decree has been in place for over six years.

I.

Mandamus "is a drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (internal quotations and citations omitted). "[O]nly exceptional circumstances amounting to a judicial usurpation of power, or a clear abuse

[1] I note that our court has had this petition for almost two months.

[2] It is not surprising that Judge Rosenthal declined to answer our invitation to respond to the mandamus petition. Why would any district judge not assume we would treat their docket as we do ours? Parties virtually never ask us to expedite our deliberation time; they ask to expedite *their* briefing schedule. They don't ask us to expedite when we will rule, much less think there is controlling law against deliberation time. Ironically, Judge Rosenthal was explicit that she will not expedite a ruling, without fact-finding and evidence, because she likely would commit reversible error if she did.

of discretion, will justify the invocation of this extraordinary remedy." *Id.* (internal quotation marks and citations omitted); *see also In re Volkswagen of Am., Inc.*, 545 F.3d 304, 308 (5th Cir. 2008) (en banc) ("[M]andamus is appropriate when there is a clear abuse of discretion."). "As the writ is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue." *Cheney,* 542 U.S. at 380.

"First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Id.* at 380–81 (alteration adopted; internal quotation marks and citations omitted). "Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable." *Id.* at 381 (alteration adopted; internal quotation marks and citations omitted). "Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances."[3] *Id.*

A.

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[3] I center this opinion primarily on the second prong, where the majority and the parties are focused. But this petition could just as easily be disposed of on the first element—that there will be no other adequate means to obtain relief. Mandamus is not a substitute for direct appeal, "even though hardship may result from delay," or even from "perhaps unnecessary trial." *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964); *In re Willy*, 831 F.2d 545, 550 (5th Cir. 1987). The error addressed by mandamus must be "truly irremediable on ordinary appeal." *In re JPMorgan Chase & Co.*, 916 F.3d 494, 499 (5th Cir. 2019) (internal quotation marks and citation omitted). Disregarding this longstanding requirement, the majority grants relief where the intervenors have simply alleged impatience in waiting for a reasoned ruling on a fully developed record. *See Smith v. Sch. Bd. of Concordia Par.*, 181 F.4th 629, 639 (5th Cir. 2026) (STEWART, J., concurring in part and dissenting in part). If we had let proceedings continue rather than interfering before Judge Rosenthal even had the chance to consider the issues fully, Judge Rosenthal's ruling would have been appealable in the normal course.

With this exceptionality in mind, there is no justification to grant mandamus here, where Petitioners challenge an order denying a motion to expedite—a paradigmatic case management decision. There is nothing more discretionary than a district court's control of its own docket. "District courts have wide discretion in managing their docket, and they do not necessarily deny a motion by failing to rule on a parties' requested timeline." *In re Fort Worth Chamber of Com.*, 100 F.4th 528, 535 (5th Cir. 2024); *see also Smith*, 181 F.4th at 640 (STEWART, J., concurring in part and dissenting in part) (noting that by granting mandamus, the panel majority is "usurping the time-honored power of the district court to manage its own docket"); *Sims v. ANR Freight Sys.*, Inc., 77 F.3d 846, 849 (5th Cir. 1996).[4]

Tellingly, the majority does not quote Judge Rosenthal's introduction or conclusion, where she says only that she will not expedite a ruling about federal court abstention after six years of a consent decree because our precedent for dissolving a consent decree under Rule 60 says facts matter. Further, neither merits briefing on *Younger* was complete, nor even an expedited schedule provided by Petitioners. To understand the unprecedented nature of our use of mandamus power against a district court judge here, I recount the chronology which led to nothing less than Judge Rosenthal's promise to the parties that she *will* rule on the issues before her

[4] Contrastingly, this is not a case like *In re United States ex rel. Drummond*, 886 F.3d 448 (5th Cir. 2018), which the majority relies on, where we granted mandamus when the two pending motions that led the petitioner to seek mandamus had been pending for four years. *Id.* at 450. Here, we have an extension of *less than three months*, after the Petitioners waited over two years to invoke the Fifth Circuit law they now claim controls, without accounting for the case's complicated procedural posture. Petitioners assert that they could not act sooner to intervene because they were unable to obtain independent counsel, but the Attorney General had no such limitation.

promptly, with all the necessary information before her, which the majority fails to acknowledge.

B.

After several years of litigation, including multiple appeals, the parties in this case settled their dispute. The district court held an evidentiary hearing and approved a settlement agreement and consent decree on November 21, 2019. Despite taking no appeal of the entry of the final consent decree, on August 26, 2025—almost six years later and more than two years after our court issued the intervening law that Petitioners now contend is controlling—the Attorney General of Texas (who appeared at the hearing on the consent decree in 2019) moved to intervene and filed a motion asking the district court to terminate or dissolve the consent decree, stating:

> The Court should grant the motion because, as the Fifth Circuit held in *Daves v. Dallas County*, 64 F.4th 616, 631 (5th Cir. 2023) (en banc), the Court should not have exercised jurisdiction, and Senate Bill 6 ("S.B. 6") rendered plaintiffs' claims moot. Alternatively, dissolution is warranted under Federal Rule of Civil Procedure 60(b) given intervening changes in state law.

The district court granted the motion to intervene in part, allowing the Attorney General to move to vacate the consent decree on the basis that the newly enacted state legislation mooted the consent decree. *ODonnell v. Harris County*, 808 F.Supp.3d 738, 745 (S.D.Tex. 2025) (the "Intervention Order"). But, importantly, the district court also found that the Attorney General had no right to intervene to assert *Younger* abstention, and that he had waived the *Younger* arguments made in his motion. *Id.*

Petitioners, four judges of the Harris County court, then filed an unopposed motion to substitute themselves as parties on November 5, 2025, which the district court granted. On November 12, 2025, the district court

held a status conference and the parties discussed how to proceed. The Attorney General posited that no discovery was necessary, and the matter was simply a question of law, but after hearing from all parties, Judge Rosenthal noted that she was being "called on to analyze whether the practices under the consent decree and the practices under the state statutory changes are going to call for an order vacating the consent decree. That's a factual inquiry." She further stated:

> I think discovery is called for in order to [] do an adequate job of determining whether under the existing law, the combination of the record in this case, Fifth Circuit decisions, and the change in the state law, whether the impact of all of those things calls for a vacation, vacatur, of the consent decree. . . . [I]t's a fairly radical step for a Court to tell parties that have entered into what you referred to as a contract to tell the parties that that contract is going to be vacated. Courts generally have a greater respect for contracts, particularly when they have such important public impacts. So, yes, I do think we need that discovery.

Post-conference, on November 12, Judge Rosentahl issued a scheduling order setting December 11, 2025, as the date for Petitioners to file a motion to vacate the consent decree, and for the Attorney General to file an amended motion to vacate that complied with the scope of intervention permitted by the Intervention Order. The scheduling order further set August 27, 2026, for the evidentiary hearing on the motions to vacate, along with discovery and other intermediate deadlines. On November 26, 2025, the Attorney General noticed appeal of the Intervention Order, but before filing his brief in our court, he moved for voluntary dismissal of the appeal, which was granted. (See Case No. 25-20543 at Doc. 20-2.) Thus, the Intervention Order's holding that the Attorney General waived his *Younger* argument is final. Notably, also, no objection was filed by either intervenor to the dates set forth in the initial scheduling order.

On December 11, 2025, Petitioners did file their motion to vacate. Crucially, that motion was quite similar to the motion of the Attorney General, asking for relief under Federal Rule of Civil Procedure 60(b) citing an intervening state law, S.B. 6[5] The motion also raised *Younger* abstention.

It was not until April 16, 2026, over *five months* after entry of the initial scheduling order and status conference at which Judge Rosenthal informed the parties of her common-sense intention to hold an evidentiary hearing on the Rule 60(b) motion, that Petitioners moved for expedited (and separate) consideration of the *Younger* abstention issue. Plaintiffs, joined by Harris County and the Sheriff, opposed the motion to separately decide *Younger* abstention, as well as for expedited consideration of the issue. Simultaneously, the parties also requested a status conference to address discovery.

On May 22, 2026—just three months ago—Judge Rosenthal held that status conference at which the parties discussed the progress of discovery, and whether the August 27 hearing date needed to be pushed back due to the slow pace of discovery.[6] At the status conference, Judge Rosenthal was characteristically thoughtful and practical about how to both move the case along as well as be realistic about confecting a timeline. For example, she stated that wanted to get the parties "best current schedule for getting this

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[5] S.B. 6 became effective as of January 1, 2022—years before the Texas Attorney General filed his motion to vacate, and even before three of the four judges took office on January 1, 2023.

[6] Counsel for the other 12 Harris County judges who oppose Petitioners in this case, noted at the status conference that at least some of the discovery delay was attributable to Petitioners' and the Attorney General's "massive discovery requests" to his clients, which he characterized as retaliatory. Counsel for Petitioners and the Attorney General did not dispute this characterization and instead agreed that October might be an achievable date for the hearing. Transcript at 19; 23.

work done properly." Hearing Transcript ("Transcript") at 22. The Attorney General's counsel even complimented Judge Rosenthal's speed and case management and noted that they wanted to proceed in an "orderly fashion" and were not asking to "rush" resolution. Transcript at 24; 25 ("Your Honor, you've been really prompt in your rulings; and we appreciate that.").

The motion to expedite came up briefly at the status conference. Transcript at 33. Petitioners urged the court to consider the *Younger* issue separately, but they acknowledged that the *Younger* issue was not yet even fully briefed;[7] *id.* at 35-36; rather, what was before the court was simply whether to carve out the *Younger* issue and rule on it in an expedited manner before any evidentiary hearing. *Id.* Further, Petitioners' counsel acknowledged and apologized that they had failed even to attach a proposed schedule to their motion to expedite. *Id.* at 34. Judge Rosenthal recognized that expedited ruling on *Younger* could be complicated, given the case's posture and related issues: "[n]o guarantees, and I'm not sure that it is as easily carved at the joint as some of the arguments have suggested," *Id.* at 33-34, but she also noted that she would "get [the parties] a ruling on the two outstanding legal issues that have been presented as quickly as I can." *Id.* at 39. Importantly, but ironically, counsel for the Attorney General complimented Judge Rosenthal for the promptness of her rulings. *Id.* at 24.

A few days later, Judge Rosenthal entered an order (the "May 26 Order") denying Petitioners' motion to expedite consideration of the *Younger* issue (and ruled on other legal issues), consistent with her earlier promise to act quickly. She also entered a modified scheduling order continuing the evidentiary hearing for less than three months, from August

[7] And today is still not yet briefed by the parties.

27 to November 16, and providing other amended pre-trial deadlines, consistent with the parties' workmanlike attention to all the calendar impediments they went through together at the status conference.

The May 26 Order, in part, specifically considered the motion to expedite Petitioners' *Younger* arguments. The May 26 Order referenced the earlier Intervention Order holding that the Attorney General had waived his *Younger* abstention arguments. The May 26 Order cited the Intervention Order's holding that that *Younger* abstention arguments *can* be waived—and were waived—by the defendants when they agreed to the consent decree. The May 26 Order reserved ruling on Petitioners' *Younger* arguments until the evidentiary hearing:

> *Daves II* did not address how courts should assess attempts under Younger to vacate a consent decree to which the moving parties previously agreed. Because *Younger* abstention is itself an equitable "carveout" from federal-court jurisdiction, this court must decide the Four Judges' arguments and the responses in light of the equities presented in this case, which requires an adequate record. In consultation with the parties, the court has entered an amended scheduling order that will allow the parties to present an adequate record to the court. The court denies the Four Judges' motion to expedite its ruling on *Younger* abstention. (emphasis added).

It is this decision to deny separate consideration of *Younger* abstention prior to the evidentiary hearing on the entire motion to vacate that Petitioners now challenge. The majority contends that Judge Rosenthal "was mistaken to the extent [she] believed that the four judges had waived their *Younger* argument." This is inconsistent with Judge Rosenthal's actual ruling that she must still decide the *Younger* issue at the November 16 hearing she set to decide the motion to vacate, expressing a reasoned preference to rule upon the entire matter together, with all of the facts before her.

C.

This docket management was handled exceptionally well by a district judge with far more docket experience than this panel. It was not an abuse of discretion, nor certainly a patent usurpation. Rather, Judge Rosenthal, attempted, appropriately, to adhere to our court's prior directives to district courts to handle the modification of consent decrees under Rule 60(b). Moreover, to the extent Judge Rosenthal said it was not "guaranteed" she could bifurcate, it was because she and the parties agree Fifth Circuit law requires evidence for a Rule 60(b) motion.[8]

No one disputed the only proper avenue for modifying a final consent decree is through Rule 60(b). *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne* (*LULAC I*), 659 F.3d 421, 437 (5th Cir. 2011); *see also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 378 (1992). We have clearly directed that "[t]he district court must . . . examine the evidence on the record and consider whether the moving party met its burden," when modifying or vacating a consent decree. *LULAC I*, 659 F.3d at 438.

In turn, a district court may modify a consent decree if it "is no longer equitable" to maintain it. *Id.* at 437. To weigh the equities, we use a two-step, fact rich test to determine "whether modification is warranted." *Id.* "First, the party seeking modification must show a significant change either in factual conditions or in law that makes compliance with the decree substantially more onerous or unworkable because of unforeseen obstacles,

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[8] The status conference transcript reflects that Judge Rosenthal's priority was a prompt but thorough ruling, insisting on a calendar that was not rushed but "workable." She even confirmed, "The Court will make itself available" for the parties' dates, while recognizing that expedited ruling on *Younger* could be complicated, given the case's posture and related issues: "I'm not sure that it is as easily carved at the joint as some of the arguments have suggested." Transcript at 32-34.

or when enforcement of the decree without modification would be detrimental to the public interest." *Id.* (internal quotations omitted) (quoting *Rufo*, 502 U.S. at 384). Then, the court must "consider whether the proposed modification is suitably tailored to the changed circumstance." *Id.* (quoting *Rufo*, 502 U.S. at 383). "The burden is on the moving party to prove that modification is warranted, regardless of whether the party seeks to lessen its own responsibilities under the decree, impose a new and more effective remedy, or *vacate the order entirely*." *LULAC I*, 659 F.3d at 438. (emphasis added). "The district court must therefore *examine the evidence on the record* and consider whether the moving party met its burden." *Id.* (emphasis added).

LULAC I provides not only the controlling legal framework but also a close analogy. There, when the district court, after remand, failed to properly allow discovery or conduct an evidentiary hearing, but instead approved a temporary modification of that consent decree—which involved voting—due to an upcoming election, we reprimanded the district court for its failure to develop the factual record as we had directed. *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne* (*LULAC II*), 675 F.3d 433, 439 (5th Cir. 2012). We vacated the modification order, remanded again for development of the factual record, and took the extraordinary step of directing that the election be held six months later than it had been previously scheduled in order to comply with our directive to properly develop the record. *Id.* at 441. The insistence by the *LULAC II* court on a developed factual record is particularly of interest here, because although not advanced by the parties at any stage, the majority grants mandamus in large part because of the

upcoming Texas election, without explaining the significance of a ruling before that date.[9]

As for any relevance to efforts to attain closure of this litigation (pending for over ten years, with a final consent decree in place for over six) prior to a fall election, it was only during the May 22 status conference that anyone even mentioned the election.[10] Even then it was *plaintiffs'* counsel who raised it. Plaintiffs raised it in reference to the practical difficulty of scheduling the depositions of witnesses who would be running for election during the period leading up to the election. Transcript at 23-24. Next, Judge Rosenthal showed careful attention to the date of the election. Therefore, both the plaintiffs and Judge Rosenthal brought up the election before Petitioners' counsel offered any statement about it. *Id.* at 25. Appropriately, Judge Rosenthal clarified that election or not—just like summer or not, holidays or not—the imperative was to ensure creation of "a proper and sufficient record for an accurate ruling to be made." *Id.* at 26. Only then did counsel for Petitioners respond that they would like to have the hearing prior to the election in case some of the judges' seats changed, but they did not press this point or explain in any detail what the difficulty would be.[11] Judge

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[9] Indeed, plaintiffs' counsel recognized that it would be reversible error to proceed without properly developing the record and conducting the Rule 60(b) analyses we set forth in the *LULAC* cases. *See* Transcript at 12 ("[O]ne of the biggest issues the Fifth Circuit has had in these [Rule 60] cases is making sure that there is an adequately developed record"); *id.* at 13 ("[W]e respectfully disagree that . . . you can resolve this on the record that we have right now.").

[10] Revealing that the intervention is ours, there is no mention of the election in Petitioners' motion to expedite, or in the motion to vacate. Let me say that again, there is no mention of the election in Petitioners' motion to expedite, or in the motion to vacate.

[11] Three pages of transcript later, plaintiffs' counsel acknowledged the likelihood of appeal "regardless of how the Court . . . decides the issue," Transcript at 29 (emphasizing the crucial nature of the evidentiary record in this case).

Rosenthal ultimately scheduled the hearing for after the election based on the other pre-trial deadlines that the parties worked through together during the status conference.[12] It is worth highlighting that the entire discussion at the status conference was based on the logistics and practicality of timely accomplishing various pre-hearing tasks, such as discovery and expert reports, not on any party's articulation that there was some special need to conduct the *Younger* abstention hearing before the election. Nor was any legal authority presented that litigation must adjust around an election, nor even to rebut the case law requirement that facts must be assembled to comprehensively resolve the litigation and not truncated because of an election.

The majority admonishes that, "the district court failed to consider one fact that surely looms large in any balancing of equities: the imminent state judicial election, which counseled expedition here." But, it was not until filing the mandamus petition that Petitioners first complained, in writing, and to us, not the district court in the first instance, that the hearing is set after the election. Yet, nowhere in their petition do Petitioners tell us *why* resolving this case before the upcoming election is a legal necessity justifying our seizing control of a district court's docket, much less articulate why the election is a basis to grant mandamus. Neither does the majority. If we are announcing a new rule of law that an upcoming election allows us to mandamus district court dockets, then we must give district courts the courtesy of explaining that rule, which will make their case calendars ours.

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[12] On a practical level, review of the docket sheet shows that the parties appear to be adhering to the amended scheduling order. Pre-hearing status conferences were held on July 17 and August 6. Indeed, as of August 3, Petitioners were still filing discovery motions with the district court. The parties submitted their expert reports on August 10. Close of fact discovery is on August 24. Expert discovery is to close on August 31.

II.

In addition to the inappropriate use of mandamus to supplant a veteran judge's tight, timely docket management, there is a second flaw with the majority's opinion: the unexplained conclusion that *Younger* abstention can be decided with no application of that law to the years of case particularity Judge Rosenthal faces here, without any further case development or analysis.

In *Daves II*, passage of S.B. 6 (the same Texas law at issue here) rendered moot the pending suit over bail procedures. *Daves v. Dallas County* (*Daves II*), 64 F.4th 616, 634 (5th Cir. 2023). At our instruction, the district court there also had considered *Younger* abstention and declined to abstain. *Id.* at 622. But importantly, the district court, which had initially issued a preliminary injunction before the jurisdiction and abstention issues made its way to our court, had entered no final order before the Texas legislature enacted its bail reform legislation. *Daves v. Dallas County* (*Daves I*), 22 F.4th 522, 528 (5th Cir. 2022). Although we agreed that the district court had correctly determined the case was moot, we also chose to opine on *Younger* abstention, holding that *Younger* abstention would have applied. *Daves II*, 64 F.4th at 623-33.

The majority summarily states, "*Daves II* expressly held that '*ODonnell I* should not have been adjudicated in federal court' and that the district court should have abstained," and goes on to emphasize that "*ODonnell I is this case.*" This is, of course, the holding in *Daves II*, but the majority fails to grapple with, let alone acknowledge, the problem addressed by Judge Rosenthal in her denial of expedited consideration. Here, we have a final, post-judgment consent decree, that was not appealed, and over which the district court retained jurisdiction. Even if the case "should not have been adjudicated in federal court," the fact remains that it was. And we cannot

pretend otherwise, particularly where Petitioners did *not* invoke *Daves II* to invalidate this consent decree until over two years after we handed down that decision. They cannot show why it should be applied over six months into consensual discovery, much less on an appellate court's expedited basis.

"[A] consent decree is a final judgment that may be reopened only to the extent that equity requires." *Rufo*, 502 U.S. at 391. The basis for *Younger* abstention is that the matter is more properly litigated in state court. *Younger v. Harris*, 401 U.S. 37 (1971). Petitioners do not explain, procedurally, how a state court could modify a federal court's final order approving a consent decree after the fact.[13] That argument may exist, but even Petitioners, as intervenors, admit that the intervening state law is implicated. Manifestly, the district court must proceed under Rule 60(b) and must do so with deliberation and the application of facts. It is a peculiar rule—with no legal precedent, much less patent and obvious to support mandamus—to hold *Younger* must get accelerated consideration and be applied retroactively to any final consent decree in which *Younger* abstention could have been—or

[13] The only case cited by Petitioners in support of their position that we should now, at this late date, use mandamus to force an earlier *Younger* abstention ruling, is a Tenth Circuit case, *Joseph A.*, that 1) has a different procedural posture, and 2) required application of *Younger* to each part of the consent decree to determine which parts of it might interfere with state court proceedings, not a wholesale vacatur of an entire consent decree. *See Joseph A. ex rel. Corrine Wolfe v. Ingram*, 275 F.3d 1253, 1272 (10th Cir. 2002). As emphasized by the district court, the consent decree in *Jospeh A.* had a specific carve out to allow *Younger* abstention to be raised. *ODonnell v. Harris County*, 808 F. Supp. 3d 738, 758 (S.D. Tex. 2025) (citing, *Joseph A.*, 275 F.3d at 1266 as "permitting *Younger* arguments after the entry of a consent decree because the agreement specifically allowed the defendants to raise 'any . . . defense' after the expiration of a 'one-year "cease fire"' during which 'no defenses could be raised'"). Neither Petitioners nor the majority explain how Judge Rosenthal has committed an abuse of discretion with her logic, much less defied controlling Fifth Circuit law when she refused to guarantee expedited ruling in the middle of discovery exchange and without full briefing.

even was—raised at some time in the past without adhering to the process and requirements for relief under Rule 60(b).

If the consent decree is to be vacated—because our holding in *Daves II* confirms that the passage of S.B. 6 moots the bail reform issues that are the subject of the consent decree—it must be done through deliberate, careful resolution of the pending Rule 60(b) motion.

Clearly, Judge Rosenthal intends to rule on abstention. The matter is set for a hearing on all issues raised in the motion to vacate in less than three months. In this posture, it is inconceivable to me that we would deploy mandamus. Of course, Judge Rosenthal has no reputation for delay; as noted, even the Attorney General's counsel complimented her promptness.

* * *

Judge Rosenthal laboriously took talented lawyers through their own summer and fall calendars to set pre-trial deadlines. As for *Younger* abstention, she promised a ruling but denied a rushed ruling, without the consent decree facts our court requires, and without even having received the plaintiffs' merits response. I do not see these careful judicial steps, done every day by district courts, as usurping or patently defying our law.

Facts matter to district courts. Attorney opportunity to brief and fully argue an issue matters to district courts. These are the everyday building blocks district courts responsibly insist on. They are the building blocks of full, fair, and factual adjudication. We should commend Judge Rosenthal, not seize and force her calendar. It is impatience to treat party presentation, fact development, and a reasoned district court opinion as superfluous.

APPENDIX B

PLAINTIFFS' EMERGENCY MOTION TO STAY
ISSUANCE OF THE MANDATE
(August 29, 2026)

Case: 26-20337 Document: 49 Page: 1 Date Filed: 08/29/2026

No. 26-20337

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

IN RE: HON. PAULA GOODHART, HON. JESSICA PADILLA, HON. LESLIE JOHNSON, AND HON. LINDA GARCIA,
Petitioners,

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Texas, No. 4:16-cv-1414 (Rosenthal, J.)

PLAINTIFFS' MOTION TO STAY THE MANDATE PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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August 29, 2026

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

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United States District Court Judge Hon. Lee Rosenthal U.S. District Court Judge for the Southern District of Texas, Houston Div.	
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/s/ Travis Walker Fife
TRAVIS WALKER FIFE

PLAINTIFFS' MOTION TO STAY THE MANDATE PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

Plaintiffs-Respondents Maranda Lynn ODonnell, Loetha Shanta McGruder, and Robert Ryan Ford respectfully move, under Federal Rule of Appellate Procedure 41(d)(1), to stay the mandate until a petition for a writ of certiorari can be filed and disposed of. Plaintiffs ask the Court to rule on or before September 2, 2026 because two depositions are scheduled for next week, the first of which is set to begin at 9:30 a.m. CT on September 2.

Plaintiffs certify under Fifth Circuit Rules 27.3.2 and 27.4 that Court action is necessary on or before September 2, 2026.

Rule 41(d)(1) permits a party to move to stay the mandate pending the filing of a petition for a writ of certiorari, on a showing "that the petition would present a substantial question and that there is good cause for a stay." Plaintiffs will file a petition for a writ of certiorari. They do not intend to seek panel rehearing or rehearing en banc.

The petition will present two questions of exceptional national importance concerning the nature of official-capacity litigation and the ability of elections to produce changes in government policy. The first is whether, when a state official is sued in his official capacity, his litigation decisions—including a waiver of *Younger* abstention by consenting to federal adjudication and entry of a consent decree—bind

only the individual who happens to occupy the office, or instead bind the office itself. Even under *Daves II*'s unprecedented and erroneous *Younger* holding, the question of an official's waiver has exceptional importance to civil rights plaintiffs, government entities, and the judiciary. The second is whether an incumbent official has a legally cognizable interest in obtaining a judgment before an election precisely because voters may elect a successor who would take a different position on the legal question at issue.

This Court answered both questions in favor of the incumbent officeholders. It held, first, that an officeholder's litigation decisions, even when embodied in a final judgment, do not bind the office. Yet it also held that an incumbent has a legally cognizable interest in obtaining a judgment before voters can choose his successor, so that the judgment may constrain a successor whom the electorate selects to pursue a different position. And it deemed that interest sufficiently weighty to justify mandamus compelling an experienced district judge, Lee H. Rosenthal, to reorder her docket and decide the case before the election. Judge Higginson dissented. Plaintiffs do not restate the merits here.

Good cause exists because the decision is already operating. The Court directed the district court to consider Petitioners' *Younger* argument "on an expedited basis, well in advance of" the November 3, 2026 election. That is a command to act by a date certain, and the actions commanded must precede the

mandate. There is accordingly no course of waiting to comply: forty-eight days separate the September 16 mandate date from the election, and the evidentiary hearing the district court had set falls on November 16, thirteen days after it. A ruling "well in advance of" November 3 is not available to a court that waits. The practical effect of the Court's opinion is the same as if it had ordered the mandate to issue forthwith.

Indeed, in response to the decision the district court has not waited, and could not. The district court held a status conference the day after the decision issued to discuss a new schedule for the motions to vacate. On Monday, Judge Rosenthal will hold another status conference to consider an appropriate schedule to accommodate briefing on forthcoming motions from Petitioners and Intervenor Attorney General. Scheduling, briefing, and deciding these motions "well in advance of" November 3 will inevitably require Judge Rosenthal reordering her docket, not just in this case but in other urgent matters, to effectuate this Court's scheduling command. The district court, then, is reordering its docket now to comply with a decision that is not yet effective. Fed. R. App. P. 41(c).

A stay would put that right. It would tell the district court that it is not obliged to act while the Supreme Court considers whether to review the questions presented, and it would restore the interval Rule 41(d)(1) exists to provide—an interval that is otherwise consumed by the compliance the decision compels.

The relief sought is narrow. A stay would not disturb the consent decree, which remains in force; this Court denied as moot Petitioners' request to stay its enforcement. Nor would it disturb any ruling on the Rule 60(b) motion, which the district court has not made. Nor would it preclude the district court from exercising its discretion to decide these issues in advance of the election notwithstanding this Court's decision to stay the mandate.

CONCLUSION

The Court should stay the mandate until a petition for a writ of certiorari can be filed and disposed of, and should rule on or before September 2, 2026.

August 29, 2026

Respectfully submitted.

/s/ Travis Walker Fife

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CERTIFICATE OF CONFERENCE

Undersigned counsel contacted counsel for all other parties by electronic mail on August 28, 2026, and states their positions as required by Fifth Circuit Rule 27.4. Petitioners oppose the relief requested. Intervenor the Attorney General of Texas opposes. Harris County does not oppose. The twelve non-movant judges of the Harris County Criminal Courts at Law do not oppose. Sheriff Ed Gonzalez does not oppose. No party has advised whether it will file an opposition.

/s/ Travis Walker Fife
TRAVIS WALKER FIFE

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the CM/ECF system, which will serve all counsel of record.

/s/ Travis Walker Fife
TRAVIS WALKER FIFE

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned certifies that this motion complies with the applicable type-volume limitation.

1. Exclusive of the exempted portions, the motion contains 813 words.

2. This motion was prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman font.

/s/ Travis Walker Fife
TRAVIS WALKER FIFE

APPENDIX C

MEMORANDUM AND OPINION OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS ON INTERVENTION
(October 30, 2025)

United States District Court
Southern District of Texas
ENTERED
October 30, 2025
Nathan Ochsner, Clerk

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

MARANDA LYNN ODONNELL, *et al*., on behalf of themselves and all others similarly situated,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. H-16-1414
HARRIS COUNTY, TEXAS, *et al.*,	§	
Defendants.	§	

MEMORANDUM AND OPINION

The Attorney General of the State of Texas seeks to intervene and undo the parties' 2019 consent decree that settled a constitutional challenge to the Harris County bail system. The Attorney General seeks to do so almost a decade after the litigation began and six years after the consent decree went into effect. The results of the consent decree, reported and studied by independent court-appointed monitors, show no significant increases in recidivism; a multi-million-dollar savings to Harris County and some relief from its beyond-capacity jail population; and an improvement to the lives of many arrested for misdemeanor offenses. Despite this record of success, the Attorney General belatedly seeks to intervene to challenge the consent decree that achieved these results.

The Attorney General bases his motion on the Fifth Circuit's en banc decision in *Daves II*,[1] decided over two years ago. That decision, issued in a similar challenge to the Dallas County

[1] *Daves v. Dallas County (Daves II)*, 64 F.4th 616 (5th Cir. 2023) (en banc), *cert. denied*, 144 S. Ct. 548 (2024).

bail system, held that the state defendants could assert *Younger*[2] abstention against the plaintiffs' claims and that a new state law, Senate Bill 6, mooted the case. The Attorney General moves to intervene to argue that this court must also abstain under *Younger* and that Senate Bill 6 and Senate Bill 9, additional bail legislation passed after *Daves II*, moot this case.

After a careful review of the motion to intervene and the opposition, the briefs, the parties' supplemental briefs, the record, and the applicable law, the court grants in part and denies in part the Attorney General's motion to intervene. The court finds that the Attorney General may intervene to move to vacate or amend the consent decree based on Senate Bill 6 and Senate Bill 9, and to argue that these laws moot the consent decree or otherwise require its amendment. The Attorney General did not, however, timely intervene to assert *Younger* abstention, which he could have done beginning in 2018. The Attorney General has no right to intervene to raise *Younger* abstention and, by this point in the litigation, he has waived the *Younger* arguments that he outlines in his motion.

I. The Litigation and Entry of the Consent Decree

Close to a decade ago, Maranda Lynn ODonnell filed a class-action lawsuit challenging Harris County's police and practice of jailing about 40% of people arrested for misdemeanor offenses for the duration of their cases solely because they could not pay money bail, without constitutionally adequate procedures to justify their continued detention. *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1058 (S.D. Tex. 2017), *aff'd as modified*, 892 F.3d 147 (5th Cir. 2018).

The parties vigorously litigated the case before this court and the Fifth Circuit. Harris County, the County Criminal Court at Law Judges, the Criminal Law Hearing Officers, and the

[2] *Younger v. Harris*, 401 U.S. 37 (1971).

Sheriff moved to dismiss the complaint, in part based on *Younger* abstention. (Docket Entry No. 80 at 25–31). The court denied the motion to abstain. (Docket Entry No. 125).

In 2017, the court held an eight-day preliminary-injunction hearing. (Docket Entry Nos. 222, 223, 228–30, 246, 247, 251). In advance of the hearing, several parties, including bail bondsmen whose financial interests supported the bail-bond system, moved to intervene. (Docket Entry No. 202). The Attorney General did not. The court granted the plaintiffs' motion for a preliminary injunction, finding that the County's bail practices likely violated the Constitution's Equal Protection Clause and Due Process Clause, (Docket Entry Nos. 302, 304), and granted the motion for class certification, (Docket Entry No. 303).

The County and the Hearing Officers appealed, asserting again that the district court should have abstained under *Younger*. (Docket Entry Nos. 309, 310). The Attorney General did not intervene, but he did file an amicus brief. *See* Br. for State of Texas et al., *ODonnell v. Harris County*, No. 17-20333, 2017 WL 2861848 (5th Cir. June 26, 2017). The brief argued that the Fifth Circuit should vacate the preliminary injunction but did not raise *Younger* abstention. *See id.*

The Fifth Circuit affirmed this court's decision that *Younger* abstention was improper, that the plaintiffs were likely to succeed on the merits of their claims, and that most of the preliminary injunction was proper. *See generally ODonnell v. Harris County (ODonnell I)*, 892 F.3d 147 (5th Cir. 2018) (opinion on rehearing), *overruled in part by Daves v. Dallas County (Daves I)*, 22 F.4th 522 (5th Cir. 2022), *and by Daves II*, 64 F.4th 616. The Attorney General did not intervene in the appeal and did not seek additional review from the Fifth Circuit en banc or from the Supreme Court.[3] The Fifth Circuit remanded the case to this court.

[3] The defendants only sought review from the Supreme Court in the form of a stay pending appeal from the district court's original preliminary injunction. *See ODonnell v. Harris County*, 260 F. Supp. 3d 810 (S.D. Tex. 2017) (denying a stay pending appeal). Justice Thomas denied the defendants' application for

On remand, the court entered a revised preliminary injunction, (Docket Entry Nos. 426, 427), which the County Judges appealed, (Docket Entry No. 434). The Attorney General again filed an amicus brief, arguing that the Fifth Circuit should vacate the preliminary injunction. Br. for State of Texas et al., *ODonnell v. Goodhart*, No. 18-20466, 2018 WL 4603243 (5th Cir. Sept. 17, 2018). The Fifth Circuit stayed pending appeal portions of the new preliminary injunction. *See generally ODonnell v. Goodhart (ODonnell II)*, 900 F.3d 220 (5th Cir. 2018), *overruled in part by Daves*, 22 F.4th 522.

The parties continued to litigate the case before this court while the County Judges' appeal of the revised preliminary injunction was pending. The parties submitted cross-motions for summary judgment, which included *Younger* arguments. (*See* Docket Entry No. 432). Before those motions were decided, newly elected County Judges took office, withdrew the pending appeal, (*See* Docket Entry No. 551), and began settlement negotiations, (Docket Entry No. 532). The parties routinely updated the court on the status of the settlement negotiations. (*See, e.g.*, Docket Entry Nos. 563, 590, 594). The Attorney General did not seek to intervene when the parties started negotiating settlement; after the district court denied without prejudice the County Judges' motion for summary judgment, which had asserted *Younger* abstention, (Docket Entry No. 540); after the parties notified the court of a new local rule that would provide a foundation for the proposed settlement, (Docket Entry No. 557); after the court ordered the defendants to comply with the new local rule, (Docket Entry Nos. 573, 575); or at any point during the work and public filings that led to the parties' consent decree.

After three years of litigation, including two appeals to the Fifth Circuit, the parties announced a settlement on July 25, 2019. (Docket Entry Nos. 615, 617). The court permitted

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a stay pending appeal. *Harris County v. ODonnell*, No. 16A1204, 2017 WL 11824167, at *1 (U.S. June 7, 2017).

interested individuals and entities to file amicus briefs in support of, or in opposition to, the proposed consent decree to aid in its consideration of the parties' proposal. (Docket Entry No. 643). The Attorney General submitted written testimony arguing that the proposed consent decree was contrary to Texas law, that it was against the public interest because it endangered public safety, and, because the case was moot, that the court lacked subject-matter jurisdiction to enter the consent decree. (Docket Entry No. 689). At the final hearing to determine the fairness of the proposed class settlement and consent decree, the court afforded the Attorney General time to argue his position. (Docket Entry Nos. 692, 700; *see* Docket Entry No. 704 at 58:13–64:5). The Attorney General did not assert *Younger* abstention, even though every other party in the case had abandoned the issue and submitted the constitutional issues to the court for a decision on the merits.

On November 21, 2019, after considering the parties' and amici's submissions and arguments, the court entered the consent decree. (Docket Entry No. 708). In March 2020, the court appointed Professor Brandon Garrett of the Duke University Law School and Professor Sandra Guerra Thompson of the University of Houston Law Center, both well-regarded experts in criminal-justice law, as independent monitors to oversee the consent decree. (Docket Entry No. 714). The monitors have published reports over the past five years, collecting data on Harris County's bail system and documenting the effects of the consent decree. (Docket Entry Nos. 722-1, 725-2, 726-1, 733-2, 734-1, 736-1, 737-1, 739-1). The monitors have consistently found that, under the consent decree, "Harris County and [its] residents" have saved "many millions of dollars" and "the lives of tens of thousands of persons arrested for misdemeanors" have "improved," with "no increase in new offenses by persons arrested for misdemeanors." (Docket Entry No. 739-1 at 5 (Eighth Report of the Court-Appointed Monitor)). In short, the decree has responded to the constitutional violation of holding detainees, charged with misdemeanor offenses

but not convicted, who would have been released from jail but for their inability to post a cash bond, with no increase in new offenses.

In March 2020, the Attorney General moved to intervene in another case before this court raising similar challenges to Harris County's felony, as opposed to misdemeanor, bail system. (*Russell v. Harris County*, Case No. 4:19-cv-226 (S.D. Tex.), Docket Entry Nos. 38, 46). In August 2021, Texas enacted Senate Bill 6, which altered the State's bail laws. *See* S.B. 6, 87th Leg. (Tex. 2021). In January 2022, the Fifth Circuit remanded the *Daves* case to the district court with instructions to address *Younger* abstention and mootness. *Daves I*, 22 F.4th at 548. In July 2022, the district court issued its post-remand opinion in *Daves*, concluding that *Younger* abstention was not required but that the case had been made moot by the Texas legislature's enactment of Senate Bill 6. *Daves v. Dallas County*, No. 3:18-cv-154, 2022 WL 2473364, at *3, *6 (N.D. Tex. July 6, 2022).

In January 2023, the Attorney General moved to dismiss the *Russell* case, arguing that Senate Bill 6 made the challenges to the Harris County bail system moot. (*Russell* Docket Entry Nos. 642, 669). Two months later, in March 2023, the Fifth Circuit issued *Daves II*, which held that Senate Bill 6 mooted the case and that the district court had to abstain from adjudicating the case under *Younger*. *Daves II*, 64 F.4th at 635; *see Russell v. Harris County*, No. H-19-cv-226, 2023 WL 5658936, at *3 (S.D. Tex. Aug. 31, 2023) (discussing *Daves II*). The Attorney General did not move to intervene or to vacate the consent decree in *ODonnell* as these related cases developed.

In June 2025, the Texas Legislature enacted Senate Bill 9, which expanded the bail-system amendments made in Senate Bill 6. *See* S.B. 9, 89th Leg. (Tex. 2025). In August 2025,

the Attorney General moved to intervene and to vacate the consent decree in this case. (Docket Entry Nos. 740, 742). Senate Bill 9 became effective on September 1, 2025.

II. The Legal Standards

The Attorney General moves to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) and moves in the alternative for permissive intervention under Rule 24(b)(1).

"Rule 24(a)(2) governs intervention of right based on an interest in the action." *St. Bernard Par. v. Lafarge N. Am., Inc.*, 914 F.3d 969, 974 (5th Cir. 2019). The Fifth Circuit has established a four-pronged test for intervention under Rule 24(a)(2):

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

Id. (quoting *Sommers v. Bank of Am., N.A.*, 835 F.3d 509, 512 (5th Cir. 2016)). "Failure to satisfy any one requirement precludes intervention of right." *Louisiana v. Burgum*, 132 F.4th 918, 922 (5th Cir. 2025) (quoting *Haspel & Davis Milling & Planting Co. v. Bd. of Levee Comm'rs*, 493 F.3d 570, 578 (5th Cir. 2007)).

Rule 24(b)(1) governs permissive intervention. Under it, a "court may permit anyone to intervene who" files a "timely motion" and "has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1)(B). "Permissive intervention under Rule 24(b) is 'wholly discretionary' and 'may be denied even when the requirements of Rule 24(b) are satisfied.'" *Burgum*, 132 F.4th at 923 (quoting *Turner v. Cincinnati Ins. Co.*, 9 F.4th 300, 317 (5th Cir. 2021)). Only in "extraordinary circumstances" will a district court abuse its discretion in denying permissive intervention. *Edwards v. City of Houston*, 78 F.3d 983, 995 (5th Cir. 1996) (en banc) (citation omitted).

Parties may not have the right to intervene to litigate every issue in a case. "[R]easonable conditions may be imposed even upon one who intervenes as of right." *Beauregard, Inc. v. Sword Servs. LLC*, 107 F.3d 351, 352–53 (5th Cir. 1997); *see* FED. R. CIV. P. 24 advisory committee note to 1966 amendment ("An intervention of right . . . may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings."). Courts may limit intervening parties to making certain motions or addressing specific issues. *See, e.g.*, *Swoboda v. Manders*, 665 F. App'x 312, 313, 315 (5th Cir. 2016) (per curiam); *Brumfield v. Dodd*, 749 F.3d 339, 341, 346 (5th Cir. 2014); *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970); *La. State Conf. of Nat'l Ass'n for Advancement of Colored People v. Louisiana*, No. 19-cv-479, 2022 WL 2663850, at *2 (M.D. La. July 11, 2022); *Blue Spike, LLC v. Audible Magic Corp.*, No. 6:15-CV-584, 2016 WL 3870069, at *2 (E.D. Tex. Apr. 18, 2016); *Swann v. City of Dallas*, 172 F.R.D. 211, 213 (N.D. Tex. 1997); *see also In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 872 F.3d 57, 64 (1st Cir. 2017) ("Courts may further restrict intervention to . . . a particular set of issues" (citing *Harris v. Pernsley*, 820 F.2d 592, 599 (3d Cir. 1987)); *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1291 (D.C. Cir. 1980) (similar).

III. Analysis

The parties do not contest the Attorney General's motion to intervene for the purpose of arguing about the effect of Senate Bill 9 on the consent decree. (Docket Entry No. 751 at 22–23; *see generally* Docket Entry No. 748 (not addressing Senate Bill 9 in particular)). The Attorney General moved to intervene two months after the Texas legislature passed Senate Bill 9 and before the law went into effect. This aspect of the Attorney General's motion was "timely" and presents a "defense" that shares "a common question of law or fact" with "the main action." FED. R. CIV.

P. 24(b)(1)(A). The court grants the Attorney General's motion to intervene to extent he plans to argue that the consent decree conflicts with Senate Bill 9.

The parties dispute whether the Attorney General may intervene, either as of right and permissively, to argue that the court must abstain under *Younger* and that Senate Bill 6 or Senate Bill 9 moots this case or requires amendment of the consent decree. (*See generally* Docket Entry Nos. 740, 748, 751, 752, 755, 760, 761). The court denies the Attorney General's motion to intervene to argue *Younger* abstention but grants the Attorney General's motion to intervene to argue that the consent decree should be vacated or amended based on Senate Bill 6 and Senate Bill 9.

A. Intervention as of Right

The Attorney General does not have a right to intervene to argue *Younger* abstention. But he does have the right to intervene to argue that the case is moot, or that the consent decree must be vacated or changed, based on post-judgment changes in state law.

1. *Younger* Abstention

The Attorney General does not have a right to intervene to raise *Younger* abstention, for two reasons. First, he has not shown that he has a right to intervene under the Fifth Circuit's four-factor test implementing Rule 24(a)(2). Second, the Attorney General's motion to intervene to argue *Younger* abstention is futile. *See Saavedra v. Murphy Oil U.S.A., Inc.*, 930 F.2d 1104, 1109 (5th Cir. 1991); *In re Deepwater Horizon*, 546 F. App'x 502, 504 (5th Cir. 2023) (per curiam).

i. Rule 24(a)(2)

The Attorney General moves to intervene as of right to vacate a consent decree that he argues conflicts with Texas law—Senate Bill 6 and Senate Bill 9—governing bail procedures. As a result, he can establish most of the factors warranting intervention as of right. "States possess a

legitimate interest in the continued enforcement of their own statutes." *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 191 (2022) (cleaned up). Texas charges its Attorney General with enforcing its laws and defending its interests in litigation. TEX. CONST. art. IV, § 22; *see In re Fraser*, 75 F. Supp. 2d 572, 584 (E.D. Tex. 1999). And the current parties in the litigation do not adequately represent the Attorney General's interests because they would prefer the consent decree, as opposed to the allegedly conflicting state law, to continue to govern Harris County's bail practices. *See Berger*, 597 U.S. at 197 (explaining that under Rule 24(a)(2), federal courts must respect the contrasting interests of different elected officials who may take opposing views on the constitutionality and enforcement of state laws); *cf. Haspel & Davis*, 493 F.3d at 579 (concluding that local officials adequately represented state officials' interests because they had the "same ultimate objective" of enforcing state law in the case).

The Attorney General cannot, however, establish a right to intervene based on *Younger* abstention because he asserts this basis for intervention too late. Whether a motion to intervene is timely depends on four factors:

> (1) The length of time during which the would-be intervenor actually knew or reasonably should have known of its interest in the case before it petitioned for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as it knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the would-be intervenor may suffer if intervention is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely.

Sierra Club v. Espy, 18 F.3d 1202, 1205 (5th Cir. 1994) (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264–66 (5th Cir. 1977)). "[A]bsolute measures of timeliness should be ignored" because the "analysis is contextual." *Id.* The timeliness requirement serves to "guard against prejudicing the original parties by the failure to apply sooner." *Id.* (citing *McDonald*, 430 F.2d at 1074). All these factors support finding that the Attorney General's motion to intervene is untimely.

The Attorney General moved to intervene almost seven years after he "became aware that [his] interests would no longer be protected by the original parties." *Sierra Club*, 18 F.3d at 1206 (5th Cir. 1994) (citing *Stallworth*, 558 F.2d at 264). In November 2018, the parties started negotiating a potential consent decree. (Docket Entry Nos. 529, 532, 537). Around the same time, the County Judges abandoned their appeal of the revised preliminary injunction. (Docket Entry No. 551). The Attorney General was fully aware of the issues and interests in the case; he filed amicus briefs in this court and in the Fifth Circuit on appeal. The Attorney General knew that the County Judges had argued *Younger* abstention in the district court and on appeal. However, he did not move to intervene to argue *Younger* abstention when the defendants declined to seek additional review after the Fifth Circuit ruled on this court's first preliminary-injunction order. The Attorney General did not move to intervene during the settlement negotiations or after the parties had filed a proposed consent decree with this court. Nor did he appeal this court's approval of the consent decree. Although the Attorney General saw the defendants abandon their position that this court should have abstained under *Younger* and that the plaintiffs should not succeed on the merits of their claim, he chose not to intervene, either in this court or in the appeal. In short, the Attorney General took no steps to challenge as a party the entry of the consent decree or its implementation during the past six-and-a-half years.

This court has not found a case in which a litigant so tardy has intervened as of right, especially when the motion to intervene is for the purpose of re-raising issues that were thoroughly litigated and then settled by the parties. The Attorney General has not cited such a case. The Fifth Circuit has held repeatedly that even much shorter delays are untimely. In one case, the Fifth Circuit held that a litigant's motion to intervene was untimely when it had "waited nearly 15 weeks after [a] district court entered [a] consent decree" and when the possibility of settlement "was well-

publicized for more than six months before the consent decree was entered." *United States v. Covington Cnty. Sch. Dist.*, 499 F.3d 464, 466 (5th Cir. 2007) (per curiam). In another case, the Fifth Circuit held that the movants' effort to intervene was untimely because they had "waited 18 months" after learning that the parties in the case would not protect their interests. *Rotstain v. Mendez*, 986 F.3d 931, 938 (5th Cir. 2021). The trend in Fifth Circuit case law is that a movant timely intervenes when it seeks to do so within several months of learning that the parties are no longer protecting its interests but that, after close to a year, a motion to intervene will likely be untimely. *Compare Sierra Club*, 18 F.3d at 1206 (a delay of three weeks was timely); *Edwards*, 78 F.3d at 1000 (delays of 37 and 47 days was timely); *John Doe No. 1 v. Glickman*, 256 F.3d 371, 376 (5th Cir. 2001) (a delay of one month was timely), *with United States v. Allegheny-Ludlum Industries, Inc.*, 553 F.2d 451, 453 (5th Cir. 1977) (per curiam) (a delay of seven and a half months was untimely); *Engra, Inc. v. Gabel*, 958 F.2d 643, 645 (5th Cir. 1992) (per curiam) (a delay of eight months was untimely); *United States v. U.S. Steel Corp.*, 548 F.2d 1232, 1235 (5th Cir. 1977) (a delay of almost a year was untimely); *Corley v. Jackson Police Dep't*, 755 F.2d 1207, 1210 (5th Cir. 1985) (a delay of two years was untimely); *Smith v. Missouri Pac. R. Co.*, 615 F.2d 683, 684–85 (5th Cir. 1980) (same); *United States v. Louisiana*, 669 F.2d 314, 315 (5th Cir. 1982) (a delay of four years was untimely); *Jones v. Caddo Par. Sch. Bd.*, 735 F.2d 923, 925–27, 932–33, 932 n.11 (5th Cir. 1984) (en banc) (a delay of seven years was untimely).

This trend is consistent across the courts of appeals. The Eleventh Circuit upheld a district court's determination that a movant's request to intervene one day before the court approved a consent decree was untimely, because the movant had known that the litigants did not represent its interests for over three years. *Hollywood Cmty. Synagogue, Inc. v. City of Hollywood*, 254 F. App'x 769, 770–72 (11th Cir. 2007) (per curiam); *see also Reeves v. Harrell (Reeves II)*, 791 F.2d

1481, 1484 (11th Cir. 1986) (a delay of "two and a half years after the entry of the consent decree" was untimely); *United States v. Jefferson County*, 720 F.2d 1511, 1514–19 (11th Cir. 1983) (a delay of five years, until after the hearing on the proposed consent decree, was untimely); *cf. Howard v. McLucas*, 782 F.2d 956, 960 (11th Cir. 1986) (a delay of six weeks was timely). The Ninth Circuit upheld a district court's denial of a motion to intervene when the movants sought to intervene about a year and a half after learning that the parties began "negotiations" that "might [have] produce[d] a settlement decree to their detriment." *Cal. Dep't of Toxic Substances Control v. Com. Realty Projs., Inc.*, 309 F.3d 1113, 1120 (9th Cir. 2002); *EEOC v. Activision Blizzard, Inc.*, No. 22-55515, 2023 WL 8908774, at *1–2 (9th Cir. Dec. 27, 2023) (mem.) (a delay of five months was untimely). The Seventh Circuit held that a motion to intervene filed towards the end of the parties' negotiations on a consent decree, and nine months after the movant learned of the lawsuit, was untimely. *Illinois v. City of Chicago*, 912 F.3d 979, 983–86 (7th Cir. 2019). And the Third Circuit held that motions to intervene were untimely when they were filed twenty and twenty-two months after the entry of a consent decree. *Delaware Valley Citizens' Council for Clean Air v. Pennsylvania*, 674 F.2d 970, 972, 974 (3d Cir. 1982).

Courts do not consider motions to intervene timely when they are filed months or years after the publicized start of negotiations over a consent decree or the entry of a consent decree. *See, e.g.*, *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 658–59 (9th Cir. 1978) (per curiam); *Mich. Assoc. for Retarded Citizens v. Smith*, 657 F.2d 102, 105 (6th Cir. 1981); *Stotts v. Memphis Fire Dep't.*, 679 F.2d 579, 585 & n.5 (6th Cir. 1982); *Orange County v. Air Cal.*, 799 F.2d 535, 538 (9th Cir. 1986); *In re Dep't of Energy Stripper Well Exemption Litig.*, 864 F.2d 796, 801 (Temp. Emer. Ct. App. 1988); *City of Bloomington v. Westinghouse Elec. Corp.*, 824 F.2d 531, 535–37 (7th Cir. 1987); *Farmland Dairies v. Comm'r of New York State Dep't of Agric. & Markets*, 847

F.2d 1038, 1044–45 (2d Cir. 1988); *United States v. City of Chicago*, 908 F.2d 197, 199–200 (7th Cir. 1990); *United States v. City of Chicago*, 897 F.2d 243, 244 (7th Cir. 1990); *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 71 (2d Cir. 1994); *Afro-Am. Police Ass'n v. City of Memphis*, 61 F.3d 903 (6th Cir. 1995) (per curiam); *United States v. BASF-Inmont Corp.*, 52 F.3d 326 (6th Cir. 1995) (per curiam); *see also Nat'l Wildlife Fed'n v. Gorsuch*, 744 F.2d 963, 969–70 (3d Cir. 1984). The Attorney General waited so long to move to intervene that granting his motion could amount to an abuse of discretion. *See Reeves v. Wilkes (Reeves I)*, 754 F.2d 965, 970, 972 (11th Cir. 1985) (concluding that the district court abused its discretion by permitting intervention "two years and eight months after entry of the consent decree").

The Attorney General responds that he did not know the parties would not adequately protect his interests until the parties did not move to vacate the consent decree after *Daves II*. (Docket Entry No. 740-1 at 6–7). Neither the record nor the case law supports the Attorney General's position. The defendants began working to settle this case in 2018. They abandoned the arguments that the Attorney General now belatedly seeks to assert. By the Attorney General's own benchmark—when "the defendants abandoned their duty to defend against this action," (*Id.* at 7)—he is late by almost seven years. There is no basis in the record to find that the Attorney General reasonably thought that the parties adequately represented his interests until the parties did not seek to vacate the consent decree after *Daves II* was decided.

Nor is there case law supporting the proposition that a litigant may delay intervention until it has affirmatively "realized that [its] interests were not being adequately represented." (Docket Entry No. 752 at 11). In *Covington County School District*, the Fifth Circuit held that a party knew its interests were not being represented when the "possibility" that the parties "might settle was well-publicized." 499 F.3d at 466. The panel rejected the movants' arguments that "they believed

the United States would be pressing for their position," explaining that there was "no evidence that the United States gave them any explicit assurances that it would not compromise to settle the case." *Id.* The facts of this case are indistinguishable. The possibility of settlement in this case was apparent in November 2018, when the parties informed the court that they were beginning negotiations. (Docket Entry Nos. 529, 532, 537). The Attorney General has offered no evidence that any party assured him that they would preserve or not compromise certain issues, including the issue of *Younger* abstention. To the contrary, the parties' settlement, which was filed on the publicly available court docket, (Docket Entry Nos. 615, 617), clearly compromised the *Younger* arguments that the Attorney General now asserts. The defendants did not "induce[]" the Attorney General to refrain from intervening. *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1182 (3d Cir. 1994).

Courts often start the intervention clock when movants learn that the parties are not likely to adequately represent the movants' interests, even if there is a possibility that the parties will ultimately do so. *See Covington Cnty.*, 499 F.3d at 466 (relying on the fact that the "possibility" that the parties "might settle was well-publicized"); *Hollywood Cmty. Synagogue*, 254 F. App'x at 771 (explaining that "the Appellants were aware that the City may not represent their interests as early as February 2003"); *Air Cal.*, 799 F.2d at 538 ("Irvine should have realized that the litigation might be resolved by negotiated settlement."); *Com. Realty Projs.*, 309 F.3d at 1120 ("While Cities were not certain that the consent decree would be adverse to their interests, they had reason to know that negotiations might produce a settlement decree to their detriment."); *Illinois*, 912 F.3d at 985 ("[W]e measure from when the applicant has reason to know its interests *might* be adversely affected, not from when it knows for certain that they will be."); *see also Gabel*, 958 F.2d at 645 (referring to a proposed settlement when assessing timeliness); *U.S. Steel Corp.*, 548 F.2d at 1235

(same); *Corley*, 755 F.2d at 1210 (same); *Pitney Bowes*, 25 F.3d at 71 (same). "[T]he mere fact that the precise outcome of the litigation was unexpected does not restart the timeliness analysis." *Illinois*, 912 F.3d at 985 (citing *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 950 (7th Cir. 2000)).

The courts' consistent approach to determining timeliness is based on good reason and common sense. The approach requires parties to "intervene[] sooner to protect themselves from" the possibility that "negotiations . . . result in a consent decree" that harms their interests, appropriately placing the "risks of waiting" on the litigant that sits on its rights. *Com. Realty Projs.*, 309 F.3d at 1120; *see Air Cal.*, 799 F.2d at 538 ("[T]hey should have known the risks of waiting."). Litigants should intervene after learning about settlement negotiations toward a potential consent decree to ensure "a seat at the settlement table" and "a voice in the litigation." *Babbitt*, 214 F.3d at 950; *see Alaniz*, 572 F.2d at 659 ("To protect their interests, appellants should have joined the negotiations before the suit was settled."). "Had" the Attorney General "intervened when []he should have, []he could have contributed to the settlement process, and quite possibly an agreement—surely different, and not necessarily only in ways favorable to [his] view, than the present one—could have been reached." *Jones*, 735 F.2d at 935. Had the Attorney General timely intervened, there would have been "no consent decree without [his] agreement," requiring continued litigation that could have resulted in his favor. *Id.* The Attorney General "could have moved to intervene" before during settlement negotiations, "but chose to wait until after . . . a long complex negotiation process had taken place." *Jefferson County*, 720 F.2d at 1517; *see Stotts*, 679 F.2d at 584 n.3 (criticizing the movants' "wait-and-see" approach). The Attorney General cannot, through a belated motion to intervene, try to undo litigation decisions made more than half a decade ago.

Permitting the Attorney General to intervene now, years after the consent decree and entry of judgment, to argue issues that could have and should have been raised and litigated before the case was resolved, would substantially prejudice the parties. The Fifth Circuit has cautioned that attempts "to intervene after final judgment" are "ordinarily looked upon with a jaundiced eye." *McDonald*, 430 F.2d at 1072. "Interventions after judgment have a strong tendency to prejudice existing parties to the litigation or to interfere substantially with the orderly process of the court." *U.S. Steel Corp.*, 548 F.2d at 1235.

Interventions around or after the entry of a consent decree amplify these concerns. Consent decrees are "reached after careful consideration by the parties involved; they do not wish, and should not be forced, to defend the decree in [motions] brought long after the decree was signed." *Hefner v. New Orleans Pub. Serv., Inc.*, 605 F.2d 893, 898 (5th Cir. 1979). Intervention "for the purpose of challenging [a] consent agreement" prejudices the parties "by jeopardizing months of negotiations, causing substantial litigation expenses, and even more substantial expenses of implementation." *Allegheny-Ludlum*, 553 F.2d at 453. An intervention to undo the parties' "bargain," *U.S. Steel Corp.*, 548 F.2d at 1235, means that "[a] negotiated settlement of a difficult problem is put at risk, to the disadvantage of the named parties, the class," and, here, Harris County, *Corley*, 755 F.2d at 1210. "To allow a tardy intervenor to block the settlement agreement after all that effort would result in the parties' combined efforts being wasted completely." *Babbitt*, 214 F.3d at 950; *accord Delaware Valley*, 674 F.2d at 975; *Jones*, 735 F.2d at 935; *Air Cal.*, 799 F.2d at 538; *Stripper Well Exemption*, 864 F.2d at 801; *City of Bloomington*, 824 F.2d at 536; *Farmland Dairies*, 847 F.2d at 1044–45; *BASF-Inmont Corp.*, 52 F.3d 326, at *3; *Hollywood Cmty. Synagogue*, 254 F. App'x at 771. Because of this prejudice to the parties, there is a

"presumption that a motion to intervene after entry of a decree should be denied except in extraordinary circumstances." *Delaware Valley*, 674 F.2d at 974.

This case does not present extraordinary circumstances that would justify granting intervention years after the consent decree was entered. *McDonald* is an instructive comparison. That case involved "an injured employee, his employer's workmen's compensation carrier, a third-party tortfeasor, and lawyers who were never able to reach agreement on how to settle the compensation carrier's subrogation interest." 430 F.2d at 1066. The district court entered judgment that created a fund of $19,100. *Id.* at 1067. The compensation carrier moved to intervene one day later, and the trial court denied the motion as untimely. *Id.* at 1066. The Fifth Circuit reversed. *Id*. The compensation carrier "sought to intervene for the limited purpose of protecting its subrogation interest in a fund which had not yet been distributed," did so immediately after the final judgment, and "did not seek to reopen or relitigate any issue which had previously been determined." *Id.* at 1072. Because the movant accepted the court's previous decisions as the law of the case and sought to protect its interests from then on, the motion at most created a "minor inconvenience" for the court and the parties. *Id.* at 1072–73.

The Attorney General's motion to intervene to argue *Younger* abstention would create a major burden and disruption to the parties, not a "minor inconvenience." The Attorney General seeks to "reopen" and "relitigate" issues that the court "previously . . . determined," *id.* at 1072, and that the Attorney General could have litigated had he intervened at that time, *see Jefferson County*, 720 F.2d at 1517; *Jones*, 735 F.2d at 935. The Attorney General's bare assertions that the plaintiffs complain only of the "prejudice they may suffer if intervention is allow[ed]" and that they "fail to show any prejudice resulting from the Attorney General's delay" lack both factual

and legal support. (Docket Entry No. 752 at 12; *see* Docket Entry No. 740-1 at 7).[4] The prejudice that comes from relitigating issues the parties previously explored through discovery, presented by cross-motions and briefs, negotiated, and ultimately settled supports applying the presumption against intervention to challenge a consent decree after it is entered. *Delaware Valley*, 674 F.2d at 974; *accord U.S. Steel Corp.*, 548 F.2d at 1235; *Corley*, 755 F.2d at 1210; *Hefner*, 605 F.2d at 898; *Jones*, 735 F.2d at 935; *see also Jones v. Caddo Par. Sch. Bd.*, 204 F.R.D. 97, 100 (W.D. La. 2001). That prejudice is exponentially increased by an intervention years after the consent decree has been entered and implemented.

The Attorney General does not offer sufficient arguments on the remaining timeliness factors to outweigh the prejudice the parties will suffer if the court overlooks his long delay and grants his belated motion to intervene.

The Attorney General argues in reply that if intervention is denied, he will be prejudiced by being unable to enforce state law. (Docket Entry No. 752 at 7–8). This argument is unpersuasive. The Attorney General does not identify any prejudice if he is unable to intervene to argue *Younger* abstention. "Litigation will have no end if every time the parties resolve amicably (or drop) a point of contention, someone else intervenes to keep the ball in the air." *City of Chicago*, 897 F.2d at 244.

"Congress has prescribed a primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 27 (1994). As a result, a movant suffers prejudice

[4] The Attorney General's argument on this issue is cursory. His opening brief provides two conclusory sentences on the prejudice prong. (Docket Entry No. 740-1 at 7). His reply brief includes two citations to the relevant standard, but it does not include an explanation of how that standard applies to this case or what facts in the record support his position under that standard. (Docket Entry No. 752 at 12). "[A]rguments asserted without citation to authority or left undeveloped are waived." *Wilson v. City of Mission*, No. 7:18-CV-00399, 2020 WL 2079359, at *10 (S.D. Tex. Apr. 29, 2020).

if intervention is denied and he loses "the ability to participate in" the litigation "or to appeal the ruling" of the court. *All. for Hippocratic Med. v. FDA*, No. 2:22-cv-223, 2024 WL 1260639, at *3 (N.D. Tex. Jan. 12, 2024) (cleaned up) (first citing *Glickman*, 256 F.3d at 379; and then citing *Edwards*, 78 F.3d at 1002–03). The Attorney General could have argued *Younger* abstention before the parties settled this case, or he could have intervened to appeal the entry of the consent decree. *Cf. In re Nat'l Prescription Opiate Litig.*, 976 F.3d 664, 670 (6th Cir. 2020) (holding that non-settling defendants have standing to appeal class-certification rulings that harm their interests). Because the Attorney General delayed so long to intervene, any prejudice he suffers is "self-inflicted and, therefore, is not actually the prejudice from which courts should protect" him. *Green v. Serv. Corp. Int'l*, No. H-06-cv-833, 2006 WL 8441295, at *2 (S.D. Tex. June 30, 2006).

A belated intervention to relitigate issues already settled and decided, after a direct appeal, is not meaningfully different from a collateral attack on a court's final judgment seeking "reconsideration of the merits of the claim[s] or issue[s]." *Epstein v. MCA, Inc. (Epstein III)*, 179 F.3d 641, 649 (9th Cir. 1999) (citing *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 483–85 (1982)); *cf. In re Deepwater Horizon*, 819 F.3d 190, 198 (5th Cir. 2016) ("[A] class member who was not truly absent and who received the required notice [is] precluded from challenging the prior class action judgment."). Denying the Attorney General's motion to intervene does not prejudice him; it places him in the position of any litigant who failed to assert his or her rights in the first instance. At a minimum, such "a preventable hardship weighs less heavily in the balance of harms," *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 9 (1st Cir. 2009), that courts must assess in deciding whether a party timely moved to intervene. Crediting as dispositive the prejudice that the Attorney General alleges would depart from the robust precedent affirming

district courts' denials of motions to intervene based on movants' substantial delay and the time and effort that the parties invested in agreeing to a consent decree.

Finally, as noted, there are no unusual or exceptional circumstances that justify departing from the precedents denying similar motions to intervene. Courts have excused substantial delays in intervention when nonparties were deceived or induced into not intervening earlier. *See, e.g.*, *Stallworth*, 558 F.2d at 266–67; *Alcan Aluminum, Inc.*, 25 F.3d at 1182. Courts may also permit post-judgment intervention when parties so move for limited purposes that do not seek to relitigate issues already decided. *McDonald*, 430 F.2d at 1072–73. Neither of those circumstances is present with respect to the Attorney General's *Younger* arguments. The Attorney General argues instead that this case is unusual because the Fifth Circuit ruled in *Daves II* that *Younger* abstention was appropriate in that case. (Docket Entry No. 740-1 at 7; Docket Entry No. 752 at 11–12). *Daves II* does not justify the Attorney General's belated attempt to intervene.

"A consent decree must of course be modified if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under federal law." *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 388 (1992). Or "modification of a consent decree may be warranted when the statutory or decisional law has changed to make legal what the decree was designed to prevent." *Id.* Neither occurred here. As the plaintiffs explain, "*Daves II* did not make it legal to detain poor people pretrial solely because they cannot pay arbitrary amounts of cash." (Docket Entry No. 755 at 2). The Fifth Circuit's *Younger* ruling did not change the fact that Texas's bail procedures did not "sufficiently protect detainees from magistrates imposing bail as an 'instrument of oppression.'" *ODonnell I*, 892 F.3d at 159. Nor did it change the fact that "wealthy arrestee[s]" were "less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration . . . simply because" they have

more money than their poor counterparts. *Id.* at 163. Even after *Daves II*, the consent decree does not "order States or local governments, over their objection, to undertake a course of conduct not tailored to curing a constitutional violation that has been adjudicated." *Rufo*, 502 U.S. at 389.

The holding in *Daves II* on *Younger* rested on the conclusion that detainees have adequate opportunities to raise their constitutional claims in state court, making federal equitable relief unnecessary and shifting the balance of state-and-federal interests toward abstention. *See* 64 F.4th at 624–33. This is "a decision that clarifies the law" and that does "not, in and of itself, provide a basis for modifying a decree." *Rufo*, 502 U.S. at 390. Parties may "settle" a "dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more than the Constitution itself requires" or "more than what a court would have ordered absent the settlement." *Id.* at 389. The Fifth Circuit's determination that *Younger* abstention is appropriate in some bail litigation, and that "errors can be rectified according to state law," as opposed to "virtually immediately," *Daves II*, 64 F.4th at 633, merely clarified that the consent decree accomplishes "more than the Constitution itself requires," *Rufo*, 502 U.S. at 389. Abstention, as discussed in more detail below, does not immediately or necessarily follow from a conclusion that *Younger*'s three-part test is met. *See Texas Ass'n of Bus. v. Earle*, 388 F.3d 515, 519 (5th Cir. 2004). Nothing prevents parties from waiving *Younger* abstention. *Id.* *Daves II* did not hold that this consent decree does something the "Federal Constitution forb[ids]," *Rufo*, 502 U.S. at 389, or targets policies that were "legal" all along, *id.* at 388.

As a result, the *Daves II* holding on *Younger* does not warrant vacating or amending the consent decree. "To hold that a clarification in the law automatically opens the door for relitigation of the merits of every affected consent decree would undermine the finality of such agreements and could serve as a disincentive to negotiation of settlements in institutional reform litigation."

Id. at 389. *Rufo*'s statement compels denying the Attorney General's motion to intervene. His motion could potentially be justified in this circumstance if "the parties had based their agreement on a misunderstanding of the governing law." *Id.* at 390. But this is not such a case. Even after the Fifth Circuit held that *Younger* abstention was likely unnecessary, *ODonnell I*, 892 F.3d at 156–57, the County Judges continued to argue that *Younger* abstention applied because the Fifth Circuit's preliminary *Younger* ruling was inconsistent with the summary-judgment facts and Supreme Court precedent, (Docket Entry No. 432 at 15–16).[5] The consent decree was a compromise to "save . . . the time, expense, and inevitable risk of litigation." *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971). Although the consent decree may have required the parties to "do more than the Constitution itself requires" and "more than what a court would have ordered absent the settlement," both are acceptable aspects of a consent decree. *Rufo*, 502 U.S. at 389. *Daves II* holding on *Younger* is not an unusual or exceptional circumstance that warrants modifying the consent decree, let alone intervention to vacate it. *See Gonzalez v. Crosby*, 545 U.S. 524, 536–38 (2005) (concluding that a post-judgment change in law was "hardly extraordinary" and did not justify relief from a final judgment, especially because the movant lacked "diligence in pursuing review of the" relevant legal "issue").

It is worth highlighting—and an independent reason for concluding that the exceptional-circumstances factor weighs against granting the Attorney General's motion—that *Rufo* is a step removed from the posture of this case. *Rufo* concerned "a motion . . . to modify a consent decree," not a belated motion to intervene to vacate it. 502 U.S. at 371–72. "Had" the Attorney General "intervened when []he should have, []he could have contributed to the settlement process, and

[5] Unfavorable precedent does not excuse the Attorney General's delay in intervening. *See Thompson v. Lynaugh*, 821 F.2d 1054, 1063 (5th Cir. 1987) ("Futility of objection, even in the face of established legal precedent, will not constitute good cause to excuse a procedural default.").

quite possibly" secured "an agreement," *Jones*, 735 F.2d at 935, that would have preserved his ability to modify the consent decree based on later developments in governing law, *see, e.g.*, *Joseph A. ex rel. Corrine Wolfe v. Ingram*, 275 F.3d 1253, 1266 (10th Cir. 2002) (permitting *Younger* arguments after the entry of a consent decree because the agreement specifically allowed the defendants to raise "any . . . defense" after the expiration of a "one-year 'cease fire'" during which "no defenses could be raised"). The current consent decree, "reached after careful consideration by the parties involved," *Hefner*, 605 F.2d at 898, "based their agreement" not "on a misunderstanding of the governing law," *Rufo*, 502 U.S. at 390, but on an appropriate recognition of the governing law at the time, the chance that the law could change on final appellate review, (*see* Docket Entry No. 432 at 16), and the desire to "save . . . the time, expense, and inevitable risk of litigation," *Armour & Co.*, 402 U.S. at 681. *Daves II* does not make this consent decree different from other decrees that resolved thorny issues of constitutional law and federal-court authority. It, and *Rufo*, instead underscore the prejudice to the parties if the court allows the Attorney General to intervene now to argue *Younger* abstention, when he could and should have done so when the case was litigated and before it settled.

Based on the full record, the parties' arguments, and the applicable law, the court concludes that the Attorney General does not have a right to intervene to argue *Younger* abstention because his motion is untimely by many years. He knew that the parties were not protecting his interests almost seven years ago. His intervention now will substantially prejudice the parties by upending a consent decree that has governed the parties' conduct for six years and that, according to the independent monitors, is working very well. The Attorney General could have intervened to argue *Younger* abstention or other points before the consent decree was negotiated and entered, but he

chose not to do so. Allowing him to intervene to do so now would significantly prejudice the parties and, indeed, the public.

ii. Futility

The Attorney General does not have the right to intervene to argue *Younger* abstention for the independent reason that his arguments would be futile. *See Saavedra*, 930 F.2d at 1109; *In re Deepwater Horizon*, 546 F. App'x at 504. First, as discussed, the *Daves II* decision on *Younger* is not a sufficient justification to modify the consent decree. Second, the parties waived *Younger* abstention, and, as an intervenor, the Attorney General would be bound by that waiver. Third, the Attorney General waived *Younger* abstention himself by failing to intervene to argue it until long after the preliminary injunction, consent decree, and appellate review.

Article III extends the judicial power "to all cases, in law and equity, arising under th[e] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." U.S. CONST. art. III, § 2. Congress then vested "district courts" with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. When the Constitution and Congress grant federal courts jurisdiction over a case, those courts have a "virtually unflagging obligation . . . to exercise th[at] jurisdiction." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *see Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.) ("We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given."). Abstention doctrines are limited "federalism-flavored carveouts" to that obligation, created "[o]ut of respect for the legitimate interest of the state, and to avoid needless friction" with their officials. *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1084–85 (5th Cir. 2023).

Younger is one such doctrine. "*Younger* requires federal court abstention when three criteria are met: (1) the federal proceeding would interfere with an ongoing state judicial proceeding; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges." *Daves II*, 64 F.4th at 625 (cleaned up). Its features follow from traditional "court noninterference in equity with state proceedings" and notions of "comity" and federalism that shape the exercise of the federal courts' judicial power. *Id.*

Yet abstention doctrines, including *Younger*, have their own exceptions, when the balance of federal-and-state interests shifts back towards the federal courts exercising their jurisdiction. "[C]ourts may disregard the *Younger* doctrine when: (1) the state court proceeding was brought in bad faith or with the purpose of harassing the federal plaintiff, (2) the [challenged] state statute is 'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence, and paragraph, and in whatever manner and against whomever an effort might be made to apply it,' or (3) application of the doctrine was waived." *Earle*, 388 F.3d at 519 (quoting *Younger*, 401 U.S. at 49).

The third exception is at issue on this motion. Because "abstention under *Younger* is not jurisdictional"—it is, after all, an exception to jurisdiction, rather than a jurisdictional rule itself—"application of the doctrine can be waived." *Daves I*, 22 F.4th at 545. When a "[s]tate voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State's own system." *Ohio Bureau of Emp. Servs. v. Hodory*, 431 U.S. 471, 480 (1977). State defendants may choose, when "faced with the prospect of lengthy administrative appeals followed by equally protracted state judicial proceedings," "to submit . . . constitutional issue[s]" to federal courts "for immediate resolution." *Id.* 479–80; *accord Brown v.*

Hotel Employees, 468 U.S. 491, 500 n.9 (1984); *Sosna v. Iowa*, 419 U.S. 393, 396 n.3 (1975). Litigants waive *Younger* abstention by "explicitly" seeking a court ruling on the merits of a constitutional claim. *RTM Media, L.L.C. v. City of Houston*, 584 F.3d 220, 229 n.15 (5th Cir. 2009) (quoting *O'Neill v. Coughlan*, 511 F.3d 638, 642 (6th Cir. 2008)).

It is less clear whether, or when, parties waive *Younger* by failing to timely raise it. Arguments not timely presented are usually waived. *Dolgencorp, Inc. v. Miss. Band of Choctaw Indians*, 746 F.3d 167, 177 (5th Cir. 2014). This rule does not cleanly apply to *Younger* abstention. Mere failure to raise *Younger* before the district court does not waive the issue. *See, e.g.*, *Boardman v. Estelle*, 957 F.2d 1523, 1535 (9th Cir. 1992) (per curiam) (denial of petition of reh'g en banc); *O'Neill*, 511 F.3d at 641–43. The Supreme Court has recognized that, "in each of the[] cases" finding *Younger* abstention waived, "the State expressly urged" the Supreme Court "or the District Court to proceed to an adjudication of the constitutional merits." *Ohio C.R. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 626 (1986). "[I]n both *Sosna* and *Hodory*, the Supreme Court raised *Younger* abstention *sua sponte* well after the merits of the dispute had been argued and decided, and no suggestion was made that *Younger* had been waived because it was not raised earlier in the proceedings." *O'Neill*, 511 F.3d at 642. A state litigant does not waive *Younger* by failing to raise it in the district court or on direct appeal.

The Attorney General seizes on this precedent to argue that he did not waive *Younger* abstention. (Docket Entry No. 760). In his view, he did not expressly urge this court to adjudicate the constitutional merits, *Dayton Christian*, 477 U.S. at 626, and *Younger* may not be waived "through failure to raise the issue," *Boardman,* 957 F.2d at 1535. (Docket Entry No. 760 at 3–4). The Attorney General's arguments are not persuasive. Waiver as applied to *Younger* is no doubt forgiving. But the facts of this case are far beyond what the Supreme Court cases have permitted.

To hold that waiver did not occur in this case, after this court entered a final judgment and the time to appeal that judgment has passed, would in effect rule that no party may ever waive *Younger*.

The record does not support the Attorney General's arguments. First, the parties "explicitly" requested this court to rule on the merits of the plaintiffs' claims. *RTM Media*, 584 F.3d at 229 n.15 (quoting *O'Neill*, 511 F.3d at 642). The consent decree states that it was "to resolve Plaintiffs' claims and remedy the constitutional violations." (Docket Entry No. 708 ¶ 2). To approve the class-settlement effect of the decree, this court had to find "that it is fair, reasonable, and adequate," taking into account whether the "relief provided for the class is adequate" given the viability of their claims. FED. R. CIV. P. 23(e)(2)(C). This court weighed the "probability of the plaintiffs' success on the merits" as one of "the most important" factors in its decision to approve the consent decree. *ODonnell v. Harris County*, No. H-16-cv-1414, 2019 WL 6219933, at *12 (S.D. Tex. Nov. 21, 2019). This court found that the settlement "was the product of rigorous, hard-fought negotiations conducted at arm's-length." *Id.* at *10. And this court rejected federalism objections to the approval of the consent decree because the decree was "a voluntary agreement" that duly elected officials accepted. *Id.* at *18. The consent decree was a valid exercise of the court's judicial power because it was based on state officials' voluntary agreement, the plaintiffs' constitutional claims, and this court's determination that the agreement met the legal requirements and advanced the objectives of the law on which the plaintiffs' complaint was based. *See id.* at *14 (explaining that consent decrees must "spring from, and serve to resolve, a dispute within the court's subject-matter jurisdiction; must come within the general scope of the case made by the pleadings; and must further the objectives of the law upon which the complaint was based" (quoting *Smith v. Sch. Bd. of Concordia Par.*, 906 F.3d 327, 335 (5th Cir. 2018)). This court

approved the consent decree because the parties, including the defendants, "expressly urged" it "to proceed to an adjudication of the constitutional merits." *Dayton Christian*, 477 U.S. at 626.

By agreeing to the consent decree, the defendants waived *Younger* abstention. *Chisom v. Jindal*, 890 F. Supp. 2d 696, 721 (E.D. La. 2012) (citing *Felder v. Estelle*, 693 F.2d 549, 553 (5th Cir. 1982)); *Se. Pa. Transp. Auth. v. Pa. Pub. Util. Comm'n*, 210 F. Supp. 2d 689, 706–07 (E.D. Pa. 2002), *aff'd sub nom. Nat'l R.R. Passenger Corp. v. Pa. Pub. Util. Comm'n*, 342 F.3d 242 (3d Cir. 2003); *see Duran v. Carruthers*, 678 F. Supp. 839, 849 & n.16 (D.N.M. 1988) (explaining that an agreement to a consent decree waives comity-based objections to its equitable remedies), *aff'd*, 885 F.2d 1485 (10th Cir. 1989); *Off. of Child Advoc. v. Lindgren*, 296 F. Supp. 2d 178, 193–94 (D.R.I. 2004) (same); *see also Armour & Co.*, 402 U.S. at 681 (by agreeing to a consent decree, "[t]he parties waive their right to litigate the issues involved in the case"); *cf. Ingram*, 275 F.3d at 1266 (permitting *Younger* arguments after the entry of a consent decree because the agreement preserved them).

The parties' waiver of *Younger* abstention binds the Attorney General. An intervenor "has no right to relitigate issues already decided," *Sierra Club*, 18 F.3d at 1205 n.3, because he "must accept the proceedings as he finds them," *In re Geisser*, 554 F.2d 698, 705 n.6 (5th Cir. 1977); *see Arizona v. California*, 460 U.S. 605, 615 (1983) (explaining that "permission to intervene does not carry with it the right to relitigate matters already determined in the case"). Intervenors "stand in [the parties'] shoes." *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012). When "the state voluntarily intervene[s]," it takes "the case as it f[inds] it," becomes "a party for all intents and purposes as though an original party," and is "bound by the record at that time." *Kansas ex rel. Beck v. Occidental Life Ins. Co.*, 95 F.2d 935, 936 (10th Cir. 1938) (citing *French v. Gapen*, 105 U.S. (15 Otto) 509, 523 (1881)). The parties already submitted the constitutional issues to the

court for resolution and waived *Younger* abstention. As a late intervenor, the Attorney General could not undo their decision.

Second, independent of the parties' waiver, the Attorney General waived *Younger* abstention himself. Courts have held that waiver "is equally applicable where a state defendant by its consistent conduct over an extended period implicitly indicates a willingness to submit to a federal forum." *Norton v. Town of Islip*, 239 F. Supp. 2d 264, 275 (E.D.N.Y.), *aff'd*, 77 F. App'x 56 (2d Cir. 2003). In *Norton*, the court found that the Town waived *Younger* because it delayed its prosecution of the plaintiff for "five years . . . with the apparent intention of allowing" the court "to first rule on Plaintiff's constitutional claims." *Id.* The court held that the Town could not assert *Younger* after failing to raise the issue "in its motion to dismiss, its answer and its motion for summary judgment." *See id.* at 275–76. The facts here are even more compelling than in *Norton*; the Attorney General did not intervene when he could have and instead waited seven years (not five) to raise *Younger* abstention. He allowed the court to first rule on the merits of the constitutional claims, and when the parties settled, and to enter a final judgment on the merits.

The Attorney General argues that *Younger* abstention can only be waived by an explicit request, not implicitly by failing to raise the issue. (Docket Entry No. 760 at 3). The case law that supports the Attorney General's position traces back to the Supreme Court's opinions in *Sosna* and *Hodory*. *See RTM Media, LLC*, 584 F.3d at 229 n.15 (quoting *O'Neill*, 511 F.3d at 642). In both cases, the Supreme Court raised *Younger sua sponte* on direct appeal. *Sosna*, 419 U.S. at 396 (a direct appeal from a district-court judgment); *Hodory*, 431 U.S. at 475–76 (same); *see also O'Neill*, 511 F.3d at 642. In *Dayton Christian*, the Court emphasized that the findings of waiver in *Sosna* and *Hodory* were based on the fact that the parties "expressly urged" federal courts to proceed to the merits. *Dayton Christian*, 477 U.S. at 626. By contrast, in *Dayton Christian*, the

defendant had "urged . . . abstention in the District Court" and in the Supreme Court. *Id.* at 625–26. The Supreme Court has never held that a party may raise *Younger* abstention after appellate review of a final judgment is complete.

Nor would it make sense for the Supreme Court to so hold. "Allowing" defendants "to at once fully litigate their case in federal court, but then, at the drop of the *Younger* abstention argument, to abandon the federal forum for a state court favors not the worthy principles of comity, but the principles of forum-shopping and judicial inefficiency." *Cradle of Liberty Council, Inc. v. City of Philadelphia*, No. 08-cv-2429, 2010 WL 68874, at *4 (E.D. Pa. Jan. 6, 2010). The Attorney General participated in this case for years as a nonparty before final judgment, including after the the parties abandoned *Younger* abstention. After the time to appeal a final judgment has passed, failure to raise a *Younger* defense does waive that argument. *See Walnut Prop., Inc. v. City of Whittier*, 861 F.2d 1102, 1106 (9th Cir. 1988) (holding that "the City cannot now challenge the first decision of the district court on *Younger* grounds when it failed to confront [the Ninth Circuit] with that issue the last two times the case was before [the Ninth Circuit]"). The Attorney General himself waived *Younger* abstention, independent of the fact that the parties already waived the argument by agreeing to the consent decree.

* * *

The Attorney General does not have a right to intervene to argue *Younger* abstention. His motion is untimely, and it would be futile. The parties waived *Younger* abstention, and the Attorney General would step into their shoes as an intervenor. The Attorney General also waived *Younger* abstention himself because he allowed the court to enter the consent decree, did not appeal it, and did not raise *Younger* on appeal.

2. Mootness and Conflicting State Law

The Attorney General also moves to intervene to argue that the court must modify the consent decree based on new state legislation that may moot the parties' dispute or otherwise require modification of the decree. (Docket Entry No. 740-1 at 1). In *Daves II*, the Fifth Circuit held that the plaintiffs' challenge to Dallas County's bail practices was moot because there was "minimal evidence in the record reflecting what actually happens in Dallas County after the effective date of S.B. 6." 64 F.4th at 634. The Attorney General argues that this court similarly "lost jurisdiction . . . after the passage of S.B. 6" and S.B. 9, (Docket Entry No. 742-1 at 3), which became effective on December 2, 2021, and September 1, 2025, respectively. He also argues that the consent decree conflicts with these recently passed state laws, a change in circumstances that he argues warrants vacating the decree. (*Id.* at 3–5).

The Attorney General has a right to intervene to make these arguments. He has identified his interest in enforcing state laws that the parties are not seeking to assert. *See Berger*, 597 U.S. at 197. The question is whether the Attorney General's motion is timely. His motion was untimely with respect to *Younger* abstention because the parties extensively litigated that issue before settling this case, and the Attorney General's late motion to intervene would prejudice the parties by disrupting the long-standing resolution of the plaintiffs' constitutional claims. No such prejudice exists with respect to the Attorney General's arguments about the recently enacted Senate Bill 6 and Senate Bill 9.

The Attorney General's arguments that these bills make this case moot or conflict with the consent decree address post-judgment changes in state law. Like the arguments of the intervenor in *McDonald*, the Attorney General's arguments are "for the limited purpose of protecting" new state law and do "not seek to reopen or relitigate any issue which had previously been determined."

McDonald, 430 F.2d at 1072. The Attorney General is "accept[ing] the proceedings as he finds them," *In re Geisser*, 554 F.2d at 705 n.6, and arguing for vacatur or modification on grounds that other parties in the action could also raise. The consent decree allows "any party" to move "to modify" the terms of the consent decree "upon a showing of good cause." (Docket Entry No. 708 ¶ 136). The Federal Rules of Civil Procedure also permit parties to move to alter or amend judgments. FED. R. CIV. P. 60(b). The Attorney General has a right to intervene to move to modify or vacate the consent decree based on Senate Bill 6 and Senate Bill 9.

The parties respond that the Attorney General's motion to intervene is still untimely because the Texas legislature passed Senate Bill 6 over four years ago and the Fifth Circuit issued *Daves II* over two years ago. (Docket Entry No. 748 at 15–16; Docket Entry No. 751 at 17–18, 22). But the timeliness inquiry timeliness "is contextual," and "absolute measures of timeliness should be ignored." *Sierra Club*, 18 F.3d at 1205. "When the result to the existing parties would have been the same regardless of whether the motion to intervene was filed earlier, there is no prejudice." *La. Int'l Marine, L.L.C. v. Drilling Rig Atlas Century*, No. 11-cv-186, 2011 WL 13340708, at *3 (S.D. Tex. Dec. 21, 2011), *report and recommendation adopted*, No. CV C-11-186, 2012 WL 13157133 (S.D. Tex. Mar. 19, 2012). If the prejudice that results "would have occurred whether the delay was one week or one year," it is not a reason to deny a motion to intervene. *Glickman*, 256 F.3d at 378; *see Sierra Club*, 18 F.3d at 1206 ("[P]rejudice must be measured by the delay in seeking intervention."). The parties have not identified prejudice that would result from the Attorney General's delay since Senate Bill 6 was enacted. The parties have proceeded consistently under the consent decree since then, and there have been no developments in the litigation that "might have obtained a different result" had the Attorney General "filed its

motion to intervene [based on the recently enacted bills] earlier." *La. Int'l Marine*, 2011 WL 13340708, at *3.

The plaintiffs argue that intervention would be futile because a motion to vacate on mootness grounds under Rule 60(b)(4), (5), or (6), or Rule 12(h)(3), will necessarily fail. (Docket Entry No. 755 at 2–3). Although the plaintiffs appear to argue that the Attorney General's motion to vacate will fail as a matter of law, they explain that at least part of the Attorney General's motion to vacate "requires a fact-intensive inquiry." (Docket Entry No. 755 at 3 n.2). They also note that they "will seek leave to conduct sufficient discovery to ensure the Court has an ample evidentiary record on which to consider the Parties' arguments." (*Id.*). Based on these statements, ruling that the Attorney General's motion to vacate will fail is premature. The court declines to rule that the plaintiffs' motion to vacate for mootness or the consent decree's conflict with state law is futile and will consider the parties' arguments on a full record and with complete briefing of the Attorney General's motion to vacate.

The court grants the Attorney General's motion to intervene to argue that the case is moot or that the consent decree must be vacated or changed based on post-judgment changes in state law.

B. Permissive Intervention

The Attorney General moves for permissive intervention under Rule 24(b). The court denies the motion for permissive intervention to argue *Younger* abstention because it is untimely. FED. R. CIV. P. 24(b)(1), (b)(2). The Attorney General knew that his interest in this issue was at risk in 2018, when the parties began negotiations to settle this case. He could have moved to intervene then to argue *Younger* abstention. His belated motion will prejudice the parties by wasting the time and effort expended in agreeing to and implementing the consent decree. His

motion is also futile because both the parties and he waived *Younger* abstention. Even if the court granted his motion to intervene, his *Younger* abstention argument would fail.

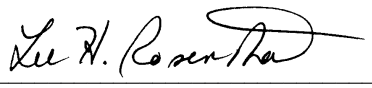
IV. Conclusion

The Attorney General's motion to intervene, (Docket Entry No. 740), is granted in part and denied in part. The Attorney General may intervene to move to vacate or amend the consent decree based on Senate Bill 6 and Senate Bill 9. The Attorney General may make arguments that these new state laws moot the consent decree or otherwise require its amendment. The Attorney General may not intervene to raise *Younger* abstention.

The parties must "confer regarding a scheduling order with respect to the motion to vacate," (Docket Entry No. 744 at 1), and propose a scheduling order within seven days of the issuance of this Memorandum and Opinion.

The parties may email Ms. Hassan at Glenda_Hassan@txs.uscourts.gov to set a scheduling conference if one is necessary.

SIGNED on October 30, 2025, at Houston, Texas.



Lee H. Rosenthal
Senior United States District Judge

APPENDIX D

CORRECTED MEMORANDUM OF THE CLERK OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(August 27, 2026)

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 27, 2026
CORRECTED

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 26-20337 In re: Paula Goodhart
USDC No. 4:16-CV-1414

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bears its own costs on appeal.

P.S. to Parties: Mandate is due to be issued on September 16, 2026.

Sincerely,

LYLE W. CAYCE, Clerk

S. Rasheed

By: _____
Shatyra Rasheed, Deputy Clerk
504-310-7646

Enclosure(s)

Mr. Jeremy W. Brinster
Mr. Travis Walker Fife
Mr. Murray Jules Fogler
Mr. Jonathan Gabriel Chaim Fombonne
Mr. Seth Barrett Hopkins
Mr. Daniel Hu
Mr. Alec George Karakatsanis
Mr. Neal Manne
Ms. Angela K. Olalde
Mr. Joseph R. Russo Jr.
Mr. George Allan Van Fleet
Mr. Daniel Volchok

APPENDIX E

TRANSMITTAL LETTER OF THE CLERK OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
(August 26, 2026)

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 26, 2026

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 26-20337 In re: Paula Goodhart
USDC No. 4:16-CV-1414

Dear Mr. Ochsner,

Enclosed is a certified copy of the opinion issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

S. Rasheed

By: _____
Shatyra Rasheed, Deputy Clerk
504-310-7646

Enclosure(s)

cc:
Mr. Jeremy W. Brinster
Mr. Travis Walker Fife
Mr. Murray Jules Fogler
Mr. Jonathan Gabriel Chaim Fombonne
Mr. Seth Barrett Hopkins
Mr. Daniel Hu
Mr. Alec George Karakatsanis
Mr. Neal Manne
Ms. Angela K. Olalde
Mr. Joseph R. Russo Jr.
Mr. George Allan Van Fleet
Mr. Daniel Volchok

APPENDIX F

SCHEDULING AND DOCKET CONTROL ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, AND THE PARTIES' PROPOSED SCHEDULING ORDER

(November 12, 2025)

United States District Court
Southern District of Texas
ENTERED
November 12, 2025
Nathan Ochsner, Clerk

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

MARANDA LYNN ODONNELL, *et al.*, on behalf of themselves and all others similarly situated,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. H-16-1414
HARRIS COUNTY, TEXAS, *et al.*,	§	
Defendants.	§	

SCHEDULING AND DOCKET CONTROL ORDER
ON THE MOTIONS TO VACATE

The disposition of the recent limited intervention and resulting motions will be controlled by the following schedule:

1. December 11, 2025	**MOTIONS TO VACATE** Deadline for Judges Goodhart, Padilla, Johnson, and Garcia to file a motion to vacate the Consent Decree, and for the Texas Attorney General to file a revised motion to vacate the Consent Decree. The Attorney General's revised motion to vacate will comply with the scope of his intervention. (*See* Docket Entry No. 764).
2. December 12, 2025	**FACT DISCOVERY** Fact discovery will open on this date. Each party may serve ten (10) requests for production, ten (10) interrogatories, ten (10) requests for admission, and to take eight (8) depositions. Absent a further order from the court, Rule 26 will govern the scope and timing of discovery.
3. June 12, 2026	**CLOSE OF FACT DISCOVERY** No discovery may occur after this date.
4. July 13, 2026	**RESPONSES AND REPLIES** Deadline for the non-moving parties to file their response to the motions to vacate.
August 13, 2026	Deadline for the moving parties to file replies in support of their motions to vacate.

August 27, 2026	If necessary, the court will hold a hearing on the motions to vacate.

Any party wishing to make any discovery motions should arrange for a pre-motion conference with the court before the preparation and submission of any motion papers. That includes a motion to compel, to quash, or for protection. Email Ms. Glenda Hassan at Glenda_Hassan@txs.uscourts.gov or fax her at 713-250-5213 to arrange for a pre-motion conference. Notify your adversary of the date and time for the conference.

The Consent Decree remains in effect during the discovery into, and resolution of, the motions to vacate.

SIGNED on November 12, 2025, at Houston, Texas.

Lee H. Rosenthal
Senior United States District Judge

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

MARANDA LYNN ODONNELL, et al., Plaintiffs, vs. HARRIS COUNTY, TEXAS, et al., Defendants.	No. 4:16-cv-01414 (Consolidated Class Action) Honorable Lee H. Rosenthal U.S. District Judge

[PROPOSED] SCHEDULING ORDER

After consideration and good cause appearing, the Court enters the following scheduling order and deadlines in the above-captioned case:

December 11, 2025	Deadline for Judges Goodhart, Padilla, Johnson, and Garcia to file a motion to vacate the Consent Decree, and for the Texas Attorney General to file a revised motion to vacate the Consent Decree.
December 12, 2025	Open of fact discovery. Each party has leave to serve ten (10) requests for production, ten (10) interrogatories, ten (10) requests for admission, and to take eight (8) depositions. Absent a further order from the Court, Rule 26 will govern the scope and timing of discovery.
June 12, 2026	Close of fact discovery.
July 13, 2026	Deadline for non-moving parties to file responses to the motions to vacate.
August 13, 2026	Deadline for moving parties to file replies in support of their motions to vacate.

August 27, 2026 Hearing on motions to vacate.

DATED this _____ day of _____, 2025.

_____
Hon. Lee H. Rosenthal
U.S. District Judge

APPENDIX G

ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
DENYING EXPEDITED CONSIDERATION
(May 26, 2026)

United States District Court
Southern District of Texas
ENTERED
May 26, 2026
Nathan Ochsner, Clerk

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

MARANDA LYNN ODONNELL, *et al*., on behalf of themselves and all others similarly situated,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. H-16-1414
HARRIS COUNTY, TEXAS, *et al.*,	§	
Defendants.	§	

ORDER

This order addresses two pending issues: (1) the Attorney General's objections to the Monitor's ninth report, (Docket Entry No. 801); and (2) the Four Judges' motion to expedite consideration of the *Younger* issue and to stay the consent decree pending resolution of the motion to vacate based on *Younger*, (Docket Entry No. 803). After careful consideration of the motions, the responses, the replies, the record, and the applicable law, the court overrules the Attorney General's objections and denies the Four Judges' motion.

First, the Attorney General is not the appropriate party to object to the court-appointed Monitor's reports. The court granted the Attorney General's motion to intervene "to move to vacate or amend the consent decree based on Senate Bill 6 and Senate Bill 9." *ODonnell v. Harris County*, 808 F. Supp. 3d 738, 764 (S.D. Tex. 2025). The Attorney General's free-standing objections to the Monitor's reports do not fall within the limited purpose for which this court granted his motion to intervene. The Attorney General may make appropriate objections to the Monitor's reports under the relevant Federal Rules and substantive law if and when they are used in the parties' presentations relating to the motions to vacate. *See, e.g.*, FED. R. EVID. 702, 703. The Attorney General's objections, (Docket Entry No. 801), are overruled.

Second, the Four Judges' motion to expedite this court's *Younger* ruling rests on a flawed assumption. The Four Judges argue that *Younger* abstention is an easy question of law because *Daves II* is directly controlling. (Docket Entry No. 803 at 2). But *Daves II* is not directly controlling. It addressed a *Younger* argument presented and resolved before final judgment. *Daves v. Dallas County (Daves II)*, 64 F.4th 616, 620–21 (5th Cir. 2023) (en banc). By contrast, the Four Judges move to vacate a final judgment. That is important for two reasons. First, it requires the Four Judges to show under Rule 60(b) that the equities favor vacating or amending the consent decree. *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 383, 391 (1992). Rule 60(b)'s equitable analysis requires an appropriate factual record. Second, *Younger* abstention can be waived, *see ODonnell*, 808 F. Supp. 3d at 758, and "[b]y agreeing to the consent decree, the defendants waived *Younger* abstention," *id.* at 761. *Daves II* did not address how courts should assess attempts under *Younger* to vacate a consent decree to which the moving parties previously agreed. Because *Younger* abstention is itself an equitable "carveout" from federal-court jurisdiction, *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1084–85 (5th Cir. 2023), this court must decide the Four Judges' arguments and the responses in light of the equities presented in this case, which requires an adequate record. In consultation with the parties, the court has entered an amended scheduling order that will allow the parties to present an adequate record to the court. The court denies the Four Judges' motion to expedite its ruling on *Younger* abstention.

Third, the court denies the Four Judges' request to stay the consent decree pending the resolution of the motion to vacate. The Four Judges do not address the relevant stay factors. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). On the merits, the Four Judges argue only that state laws are generally presumed constitutional. (*See* Docket Entry No. 803 at 4–5). The Four Judges present this principle, correct as a general statement, untethered from the facts of this case. The court cannot adequately consider, much less grant, the Four Judges' motion because they did not

explain how the broad legal principle applies to a consent decree that was entered years before the state statute was enacted to remedy federal constitutional violations. *See Williams v. Lesiak*, 822 F.2d 1223, 1227–28 (1st Cir. 1987) (requiring statute-and-decree specific assessments of motions to vacate or amend a consent decree based on "a state statute adopted long after the court order").

Nor can the court credit the Four Judges' argument that the equities favor a stay because the other parties have threatened to move to enforce the consent decree. (*See* Docket Entry No. 803 at 6–8). A party's threat to move for contempt is not a motion for contempt or a finding of contempt from this court. The Four Judges' concern is at least premature. In addition, the parties agreed to the consent decree, and the equities favor enforcing the parties' agreement until the Four Judges establish a basis for relief under Rule 60(b). *Cf. Trevino v. Cooley Constructors, Inc.*, No. 5:13-CV-00924-DAE, 2014 WL 2611823, at *6 (W.D. Tex. June 9, 2014) ("In all but the most unusual cases, therefore, the interest of justice is served by holding parties to their bargain." (cleaned up)); *Worldwide Detective Agency, Inc. v. Cannon Cochran Mgmt. Servs., Inc.*, 622 F. App'x 383, 386 (5th Cir. 2015) (per curiam) ("When considering [Rule 60(b)] motions, courts are to weigh the equities of relief against 'the great desirability of preserving the principle of the finality of judgments.'" (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981))).

For these reasons, the court overrules the Attorney General's objections, (Docket Entry No. 801), and denies the Four Judges' motion, (Docket Entry No. 803).

SIGNED on May 26, 2026, at Houston, Texas.

Lee H. Rosenthal
Senior United States District Judge

APPENDIX H

AMENDED SCHEDULING ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
(May 26, 2026)

United States District Court
Southern District of Texas
ENTERED
May 26, 2026
Nathan Ochsner, Clerk

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

MARANDA LYNN ODONNELL, *et al.*, on behalf of themselves and all others similarly situated,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. H-16-1414
HARRIS COUNTY, TEXAS, *et al.*,	§	
Defendants.	§	

AMENDED SCHEDULING AND DOCKET CONTROL ORDER
ON THE MOTIONS TO VACATE

The disposition of the recent limited intervention and resulting motions will be controlled by the following schedule. In addition, status conferences are set for July 16, 2026, at 10:00 a.m. CT and September 14, 2026, at 10:00 a.m. CT via Zoom.

1. August 10, 2026 **EXPERT DESIGNATIONS AND REPORTS**
2. August 24, 2026 **CLOSE OF FACT DISCOVERY**
3. August 31, 2026 **CLOSE OF EXPERT DISCOVERY**
4. October 1, 2026 **AMENDED MOTIONS TO VACATE**
5. October 30, 2026 **RESPONSES**
6. November 6, 2026 **REPLIES**
7. November 13, 2026 **PRETRIAL DISCLOSURES**
8. November 16–20, 2026 **HEARING**

Any party wishing to make any discovery motions should arrange for a pre-motion conference with the court before the preparation and submission of any motion papers. That includes a motion to compel, to quash, or for protection. Email Ms. Glenda Hassan at Glenda_Hassan@txs.uscourts.gov or fax her at 713-250-5213 to arrange for a pre-motion conference. Notify your adversary of the date and time for the conference.

The Consent Decree remains in effect during the discovery into, and resolution of, the motions to vacate.

SIGNED on May 26, 2026, at Houston, Texas.

Lee H. Rosenthal
Senior United States District Judge