

In the Supreme Court of the United States

MARANDA LYNN O'DONNELL, ET AL.,

Applicants,

v.

HONORABLE LINDA GARCIA, *ET AL.*,

Respondents.

To the Honorable Samuel A. Alito, Associate Justice of the United States Supreme
Court and Circuit Justice for the Fifth Circuit

**BRIEF OF HARRIS COUNTY, TEXAS IN SUPPORT OF EMERGENCY APPLICATION TO
STAY THE MANDATE AND THE WRIT OF MANDAMUS ISSUED BY THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT PENDING THE FILING AND
DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI**

ABBIE KAMIN
Harris County Attorney

NEAL A. SARKAR
First Assistant County Attorney

LISA LUZ PARKER
Division Director, Appellate & Civil
Rights

SETH HOPKINS
Special Assistant County Attorney

DANIEL DAVID HU
Counsel of Record

OFFICE OF THE HARRIS COUNTY
ATTORNEY
1010 Lamar, 11th Floor
Houston, Texas 77002
(713) 274-5101
Daniel.Hu@harriscountytexas.gov

Counsel for Respondent Harris County, Texas

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT.....	3
ARGUMENT.....	8
I. The Significant Equities at Stake Require that the Mandamus Order Be Stayed.....	8
II. The Mandamus Order Irreparably Harms Harris County by Compelling a Decision Before the Rule 60(b) Record Can Be Made	10
A. A proper record would show that vacating the Consent Decree places public safety at significant risk.	11
B. A proper record would show that vacating the Consent Decree would greatly increase costs to Harris County and its taxpayers.	13
C. A proper record would show that vacating the Consent Decree would place great strain on the bail system as it processes thousands of additional cases.	14
D. A proper record would show that vacating the Consent Decree would impair the administration of justice as more indigent arrestees plead guilty to avoid further detention.	15
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>Daves v. Dallas County</i> , 64 F.4th 616 (5th Cir. 2023).....	2, 8
<i>Cradle of Liberty Council, Inc. v. The City Of Philadelphia</i> , 2010 WL 68874 (E.D. Pa. Jan. 6, 2010).....	9
<i>In re Honorable Paula Goodhart</i> , No. 26-20337, 2026 WL 2517641 (5th Cir. Aug. 26, 2026)	9
<i>In re Lloyd's Register N. Am., Inc.</i> , 780 F.3d 283 (5th Cir. 2015)	8
<i>ODonnell v. Harris County</i> , 892 F.3d 147 (5th Cir. 2018)	2
<i>ODonnell v. Harris County</i> , 251 F. Supp. 3d 1052 (S.D. Tex. 2017)	2
<i>ODonnell v. Harris County</i> , No. 4:16-cv-01414 (S.D. Tex.).....	4, 6, 11
<i>San Jose Silicon Valley Chamber of Com. Pol. Action Comm. v. City of San Jose</i> , 546 F.3d 1087 (9th Cir. 2008)	9
<i>Saqui v. Pride Cent. Am., LLC</i> , 595 F.3d 206 (5th Cir. 2010)	8
<i>Smith v. School Board of Concordia Parish</i> , 181 F.4th 629 (5th Cir. 2026).....	8
<i>Sprint Commc'ns, Inc. v. Jacobs</i> , 571 U.S. 69 (2013)	9
<i>Vernon Smith, etc. v. Sch. Bd. of Concordia Par.</i> , 88 F.4th 588 (5th Cir. 2023).....	5
<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977)	9

Statutes

Federal Rule of Civil Procedure 60(b)	passim
Tex. Code Crim. Proc. Art. 14.06(a)	11
Tex. Code Crim. Proc. Art. 15.17(a)	11

Other Authorities

Brandon L. Garrett & Sanda Guerra Thompson, <i>Bail Reform and Backlash: Litigation, Legislation, and Experimentation</i> , 63 Hou. L. Rev. 975 (2026).	1
Brandon L. Garrett, <i>et al.</i> , <i>Win-Win Misdemeanor Bail Policy: Lessons from Data on Harris County Reforms</i> , 63 Hou. L. Rev. 1015 (2026)	13, 16
Eighth Report of the Court-Appointed Monitor, <i>ODonnell v. Harris County</i> , No. 4:16-cv-01414, ECF No. 739-1 at 5 (S.D. Tex. March 5, 2025)	11
Fifth Report of the Court-Appointed Monitor, <i>Odonnell v. Harris County</i> , No. 4:16-cv-01414, ECF No. 734-1 (S.D. Tex. Sept. 3, 2022)	13
Texas Secretary of State, <i>Ballot Certification Report, 2026 November General Election</i>	6
Texas Secretary of State, <i>Candidate Ballot Order</i>	6

INTRODUCTION

Harris County, Texas, a defendant in the district court proceeding, files this brief in support of the Applicants’ Emergency Application to Stay the Mandate and the Writ of Mandamus Issued by the United States Court of Appeals for the Fifth Circuit Pending the Filing and Disposition of a Petition for a Writ of Certiorari (the “Application”). While Applicants initially brought the district court lawsuit in 2016 against Defendants Harris County and other county stakeholders, including the Sheriff, all 16 County Criminal Court Judges and their Hearing Officers to challenge the county’s misdemeanor bail system under Due Process and Equal Protection claims, the parties amicably resolved the dispute through a 52-page consent decree. When four Harris County Criminal Court at Law judges (the “Four Judges”) requested a writ of mandamus to the Fifth Circuit in an attempt to hasten a ruling on their motion to vacate the consent decree, Harris County opposed. As the party that negotiated the consent decree, paid for its costs, and implemented its numerous reforms, Harris County now joins the Applicants in requesting the Court stay the mandamus order.

For nearly seven years, the consent decree has implemented improvements to the Harris County misdemeanor bail system that have been described by the court-appointed monitors as “the largest scale and farthest-reaching constitutional remedies in a misdemeanor bail system in the country.”¹ Namely, the consent decree created General Order Bonds (“GOBs”), which allows indigent misdemeanor

¹ Brandon L. Garrett & Sanda Guerra Thompson, *Bail Reform and Backlash: Litigation, Legislation, and Experimentation*, 63 Hou. L. Rev. 975, 976 (2026).

arrestees, who are deemed low risk, to be released on a \$100 unsecured bond. In Harris County, there are approximately 50,000 misdemeanor arrests each year² and following the reforms from the consent decree, an estimated 28,000 of these arrestees are released on GOBs each year. Public safety has also greatly improved as there are less misdemeanor arrestees to process and there is more capacity to focus on detaining higher-risk felony arrestees. Harris County enforces the consent decree not only for low-risk arrestees but for residents through the substantial costs that it saves taxpayers. This is not an ordinary consent decree. It has massive significance and implications for Harris County residents and its criminal justice system.

The Fifth Circuit mandamus order, however, is an unprecedented encroachment of a district court's authority that ignores the equities involved. Specifically, the mandamus order directs the Honorable Lee H. Rosenthal to circumvent the procedures for vacating the consent decree under Federal Rule of Civil Procedure 60(b) and instead rule on an abstention issue "well in advance of the upcoming Texas judicial election on November 3, 2026." But this abstention issue has already been litigated, appealed, and settled for years. Notably, the consent decree was entered after the Fifth Circuit initially ruled that abstention was not applicable in the case.³ The mandamus order makes it impossible for the district court to review the Rule 60(b) equities before ruling on the motion to vacate. Otherwise, vacating the

² *ODonnell v. Harris County*, 251 F. Supp. 3d 1052, 1091–92 (S.D. Tex. 2017), *aff'd as modified*, 882 F.3d 528 (5th Cir. 2018), *aff'd as modified sub nom.*, *ODonnell v. Harris County (ODonnell I)*, 892 F.3d 147 (5th Cir. 2018).

³ *ODonnell I*, 892 F.3d 147, *overruled in part by Daves v. Dallas County (Daves II)*, 64 F.4th 616 (5th Cir. 2023) (en banc).

consent decree has grave consequences for Harris County that will not be properly considered. Thus, a stay of the mandamus is necessary to maintain the almost seven-year status quo so that the issues presented by the Application may be reviewed before irreparable harm is done.

STATEMENT

At the time of the filing of the district court proceeding in 2016, Harris County utilized fixed bail schedules to process and administratively release most arrestees without individualized review by a hearing officer. In other words, misdemeanor pretrial release depended almost entirely on the arrestees' ability to pay bail. As a result, nearly a quarter of misdemeanor arrestees were still in custody three days after arrest. Those who could not afford to pay the bond in their case remained in jail and proceeded to a perfunctory bail proceeding in which a hearing officer confirmed or raised the bail amount. This former misdemeanor bail system based on the ability to pay a bond was the crux of Applicants' complaint at the district court.

Following the filing of Applicants' lawsuit, Judge Rosenthal held an eight-day preliminary injunction hearing in March 2017. During the hearing, evidence was presented that the bail system at the time detained 40 percent of all those arrested on misdemeanor charges only, and many of those arrestees were indigent, prolonging their detention for days, if not weeks. *ODonnell*, 251 F. Supp. 3d at 1091–92. In a 193-page decision, Judge Rosenthal ultimately found that the then-policy to detain indigent misdemeanor defendants before trial violated equal protection rights

against wealth-based discrimination and due process protections against pretrial detention without proper procedures or an opportunity to be heard. *Id.* at 1167.

On November 21, 2019, the parties entered the 52-page consent decree that significantly changed how people arrested for low-risk misdemeanors are processed. The consent decree resulted from lengthy deliberations, impacting various offices of Harris County, including the Sheriff's Office, the Public Defender's Office, Pretrial Services, and the District Attorney's Office in addition to the Criminal Court County Judges. Among these stakeholders was a common goal to resolve the constitutional issues with the current bail system. As stated in the consent decree, it "is intended to create and enforce constitutional and transparent pretrial practices and systems that protect the due process rights and equal protection rights of misdemeanor arrests." Consent Decree at 1, *ODonnell v. Harris County*, No. 4:16-cv-01414, ECF No. 708, (S.D. Tex. Nov. 21, 2019).

Following the entry of the consent decree, pre-hearing release now depends on a person's charge and criminal history. The Criminal Courts at Law adopted Local Rule 9 pursuant to their authority under the Code of Criminal Procedure and the Texas Government Code. Rule 9 reduces or eliminates secured money bail for most misdemeanors but allows the judges and hearing officers to use their discretion to impose bail on anyone accused of "carve out" misdemeanors, such as violating court orders or conditions of bond in cases involving family violence, child abuse, sexual assault, indecent assault, stalking, or trafficking. As a result, the consent decree improved outcomes for arrestees and the bail system.

The consent decree significantly reduced secured money bonds for most misdemeanor cases, approximately 28,000, involving arrestees who were deemed not to pose public safety risks and could not otherwise afford bail, last year alone. To further illustrate, ten years ago, 63 percent of the 59,231 or so misdemeanor arrestees that year stayed in jail until their cases were resolved. That figure dropped to 10 percent five years after the consent decree went into effect.

But six years after the consent decree was entered, the Four Judges filed a motion to vacate it. To vacate, Federal Rule of Civil Procedure 60(b) requires the Four Judges to show “a significant change either in factual conditions or in law” through a showing that (1) “changed factual conditions make compliance with the decree substantially more onerous,” (2) the “decree proves to be unworkable because of unforeseen obstacles,” or (3) “enforcement of the decree without modification would be detrimental to the public interest.” *Vernon Smith, etc. v. Sch. Bd. of Concordia Par.*, 88 F.4th 588, 593–94 (5th Cir. 2023). In a sound exercise of her discretion, Judge Rosenthal set a six-month period for discovery and a hearing on the motion to vacate for August 27, 2026. Following a status conference with the parties in May 2026, Judge Rosenthal gave the parties more time to conduct discovery and reset the hearing to November 16, 2026. At that hearing, the district court would decide on the Rule 60(b) equitable factors, as required to vacate the consent decree, and determine the issue of whether *Younger* abstention was waived considering the 2019 consent decree and final judgment, as raised yet again by the Four Judges. As Judge

Rosenthal reasoned, both issues would be based on fully developed facts following a brief discovery period.

When the Four Judges requested an expedited ruling on *Younger* abstention, Judge Rosenthal concluded that 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.” Order at 2, *ODonnell v. Harris County*, No. 4:16-cv-01414, ECF No. 821 (S.D. Tex. May 26, 2026). But the Fifth Circuit did not exercise the same restraint in its mandamus order.

The mandamus order steamrolls the district court’s thorough scheduling order and improperly infringes on the well-established discretion of a district court to manage its docket. In requiring the district court to rule on the *Younger* abstention issue “well in advance of the November election,” the mandamus order did not provide a sound basis. Instead, the Fifth Circuit concluded it was necessary to rule on the abstention issue, and thus, vacate the consent decree, before the Four Judges had their elections. But as the Application lays out, only two of the Four Judges are on the ballot this November⁴, and one judge can continue to challenge the consent decree regardless of the election outcome. Based on a seemingly unsupported assumption

⁴ Texas Secretary of State, *Candidate Ballot Order*, <https://goelect.txelections.civixapps.com/ivis-cbp-ui/candidate-ballot-order> (last visited Sept. 8, 2026); Texas Secretary of State, *Ballot Certification Report, 2026 November General Election*, pp. 571-73, available at https://content.govdelivery.com/attachments/TXSOS/2026/08/28/file_attachments/3762756/2026%20Ballot%20Certification-final.pdf.

that the upcoming election will affect this litigation, the Fifth Circuit overthrew a sound scheduling order to hasten an immediate ruling on the *Younger* doctrine.

As Judge Rosenthal recognized, the *Younger* abstention issue and the motion to vacate are intertwined with the facts such that a bifurcated ruling that prioritizes *Younger*, as the Fifth Circuit is requiring, over the Rule 60(b) equitable factors fails to account for the equities. In fact, none of the equitable factors favor vacating the consent decree. But the mandamus improperly circumvents this procedure. Thus, a stay is required to avoid irreparable harm of vacating the consent decree without a proper record on the equities.

ARGUMENT

I. The Significant Equities at Stake Require that the Mandamus Order Be Stayed

In handling a case with an extensive record and substantial repercussions for Harris County and its residents, Judge Rosenthal properly exercised her broad discretion in setting a 60(b) hearing to hear all the facts before ruling on the motion to vacate. *See Saqui v. Pride Cent. Am., LLC*, 595 F.3d 206, 211 (5th Cir. 2010) (“District court judges have broad discretion in managing their own dockets.”); *see also Smith v. School Board of Concordia Parish*, 181 F.4th 629, 640 (5th Cir. 2026) (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”). While the Fifth Circuit has previously stated that “[i]n recognition of the extraordinary nature of the writ, we require more than showing that the court misinterpreted the law, misapplied it to the facts or otherwise engaged in an abuse of discretion,” the mandamus order required less. *In re Lloyd's Register N. Am., Inc.*, 780 F.3d 283, 290 (5th Cir. 2015); *see also id.* (Elrod, J., dissenting in part) (describing mandamus as an “extraordinary remedy” based on “extraordinary errors” resulting in a “patently erroneous result.”).

The Fifth Circuit relied on the timing of an upcoming election that is of no consequence to this case or the motion to vacate. Under all three requirements to grant mandamus relief, the Fifth Circuit reasoned that the case needed to be resolved by the November election and that the district court had to apply *Daves II*. Ironically, in ordering the district court to expedite a decision, and thus, forgo the 60(b) hearing

in November where a full record would be presented, the mandamus order relies on an undeveloped record. If it had a complete record, the Fifth Circuit may have known that two of the Four Judges were not on the ballot this November. Yet, the Fifth Circuit found that the Four Judges had no adequate means other than mandamus to obtain the relief they sought—expedited consideration of their motion to vacate.

The mandamus order states that “[*Daves II*], plus the comity and federalism concerns underlying *Younger*, 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.” *In re Honorable Paula Goodhart*, No. 26-20337, 2026 WL 2517641, at *3 (5th Cir. Aug. 26, 2026). But “[a]llowing” defendants “to at once fully litigate their case in federal court, but then, at the drop of *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 efficiency.” *Cradle of Liberty Council, Inc. v. The City Of Philadelphia*, 2010 WL 68874, at *4 (E.D. Pa. Jan. 6, 2010); *see also Wooley v. Maynard*, 430 U.S. 705, 710 (1977) (“Under *Younger*, principles of judicial economy, as well as proper state-federal relations, preclude federal courts from exercising equitable jurisdiction to enjoin ongoing state prosecutions.”) (citation modified); *San Jose Silicon Valley Chamber of Com. Pol. Action Comm. v. City of San Jose*, 546 F.3d 1087, 1091–92 (9th Cir. 2008), *abrogation on other grounds Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013)) (“*Younger* abstention is a jurisprudential doctrine rooted in overlapping principles of equity, comity, and federalism”). This is true here. *Younger* principles of

judicial economy and equity do not favor unraveling a seven-year consent decree and a final judgment without a review of the equities based on a thorough record.

For seven years, the consent decree has protected and ensured the constitutional rights of misdemeanor arrestees in Harris County and as a result, further improved the justice system. But the Fifth Circuit's mandamus order fails to consider the impact of vacating the consent decree without a proper hearing on a developed record and without consideration of the Rule 60(b) equities at stake. Thus, without the stay of the mandamus, Harris County will suffer irreparable harm.

II. The Mandamus Order Irreparably Harms Harris County by Compelling a Decision Before the Rule 60(b) Record Can Be Made

The mandamus order disregards the broad harm to Harris County's justice system and its residents that will be shown through a proper consideration of Rule 60(b) equities. Specifically, it hastens a ruling on the *Younger* doctrine, making it impossible for Harris County to build a Rule 60(b) record based on the equities. Such circumvention places Harris County residents and the bail system at a likelihood of irreparable harm if the mandamus order is not stayed. As shown below, the equities at stake are significant and bear on the same principles of equity and judicial economy that arise under the *Younger* analysis. Thus, Rule 60(b) equities should be decided concurrently with *Younger*.

To begin, the positive impacts of the consent decree are well documented and highlight the detrimental impact of vacating the mandamus order. Over the last five years, the court-appointed monitors of the consent decree have filed public reports on the Harris County bail system and the effects of the consent decree. Notably, they

have found that “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.” Eighth Report of the Court-Appointed Monitor at v, *ODonnell v. Harris County*, No. 4:16-cv-01414, ECF No. 739-1 at 5 (S.D. Tex. March 3, 2025). Specifically, since the consent decree went into effect, four significant changes have occurred that should be presented before the district court through a hearing, not sidelined for a hastened *Younger* ruling.

A. A proper record would show that vacating the Consent Decree places public safety at significant risk.

The more arrestees who must be processed through the entire booking process at Harris County’s detention center, the greater likelihood of delays and bottlenecks. But the consent decree has greatly reduced this likelihood. Through the GOBs established by the consent decree and Rule 9, the Sheriff’s Office, who manages the detention center, is better able to expend resources on more dangerous felony cases. State law requires that bail be set within 48 hours for arrestees. Tex. Code Crim. Proc. Art. 14.06(a); Tex. Code Crim. Proc. Art. 15.17(a). Currently, based on the monitor’s data, approximately 28,000 GOB arrestees are released well before any bail hearing is required. As such, the Sheriff’s Office and judges have more capacity to focus on hearings for felony arrestees. For the Sheriff’s Office, it is critically important that they timely and efficiently bring felony arrestees before a judge to have bail set within 48 hours. Otherwise, a high-risk felony arrestee would need to be released.

If misdemeanor arrestees could no longer be released on GOBs, they would continue to be detained along with high-risk felony arrestees and would also require a bail hearing within 48 hours. As of now, processing for non-GOB cases from the time they enter the detention center until they receive a hearing is already 36 hours. It would place public safety at great risk if the Sheriff's Office had to divert significant resources from felony arrestees to secure and transport an additional 28,000 misdemeanor arrestees to their bail hearings. Moreover, this would place hearing officers at risk of being unable to provide meaningful bail hearings and judges at risk of being unable to hold probable cause hearings before release was required.

Currently, the Sheriff's Office may have groups as large as 40 or 50 people on a given day who are entitled to a bail hearing under the law. This demands an immense amount of work to identify, secure, and transport these individuals from the detention center to the courthouse and back. The post-arrest process at the detention center is complex, yet workable because at least 25 percent of arrestees are promptly released within 10-18 hours through GOBs. These individuals are released based on the seriousness of the charge alleged, not their access to cash to post bail. In fact, many misdemeanor arrestees released on GOBs are first-time offenders or individuals with a lower-risk profile compared to other detainees. Eliminating GOBs would create serious safety risk at the detention center because more arrestees will be detained longer, the backlogs would be severe, and arrestees could become more anxious, stressed, or combative as a result.

Importantly, the consent decree has proven that financially secured bonds do not necessarily decrease the risk of new offenses and jeopardize public safety. If secured bonds enhanced community safety, rearrests within three years of the initial detention would be lowest during the pre-reform era, when 89 percent of Harris County defendants faced financial conditions for release. But the opposite has occurred. Over a period when secured bonds fell from 89 percent to 21 percent of cases under Rule 9, the share of comparable cases with future criminal justice involvement declined and remained stable.

B. A proper record would show that vacating the Consent Decree would greatly increase costs to Harris County and its taxpayers.

Second, the consent decree has offset any costs associated with implementing the reforms through savings in the cost of bonds, bookings, pretrial screenings, bond hearings, sentences, fees, and fines. The court-appointed monitors in this case have reported that the policy changes resulting from the lawsuit have reduced overall misdemeanor system costs by 33 percent. Brandon L. Garrett, *et al.*, *Win-Win Misdemeanor Bail Policy: Lessons from Data on Harris County Reforms*, 63 *Hou. L. Rev.* 1015, 1049 (2026). In its first two years alone, it is estimated that the reforms have reduced the cost of arrest and prosecution by more than \$35 million. Fifth Report of the Court-Appointed Monitor at viii, *Odonnell v. Harris County*, No. 4:16-cv-01414, ECF No. 734-1 (S.D. Tex. Sept. 3, 2022). While there were upfront costs in implementing the reforms from the consent decree, demand for costly county processes, such as bookings, screenings, bond hearings and pretrial detention declined.

Yet, without the Consent Decree, Harris County will see significant increases in costs for detaining the approximately 28,000 indigent misdemeanor arrestees who could no longer be released on a GOB. These costs will arise from a significant demand in securing, housing, and feeding these detainees along with providing any health care during their prolonged detention. Consequently, the county will need to employ additional staff to process these individuals. Such costs would be wasteful as these arrestees are generally considered low risk to public safety. The arrestees would also suffer individual costs. For example, an arrestee who is detained for days will likely miss work shifts or be at risk of losing employment.

C. A proper record would show that vacating the Consent Decree would place great strain on the bail system as it processes thousands of additional cases.

Third, with approximately 28,000 individuals being released on GOBs each year, the Public Defender's Office Bail Division has more capacity to represent non-GOB arrestees who remain in detention. If approximately 28,000 people were no longer promptly released on GOBs and suddenly had to be detained until they received a bail hearing, the result would place great strain on the public defenders and the sheriff's office. That's an additional 28,000, who cannot otherwise afford to pay bail, that would need immediate representation because of their detention and would need to be housed.

Since 2017, the Harris County Public Defender's Bail Division has represented every person who is detained up until they appear before a Hearing Office, unless they decline representation. If the Bail Division suddenly had to interview and represent an additional 28,000 people a year, roughly 77 people each day, its staff

could not adequately do their job. As it is, current staff are strained to complete all the necessary interviews, adequately counsel their clients, and represent them in the hearings. Public defendants do not have the staff, space, or time to assume responsibility for the thousands of people currently released on GOBs as well.

The addition of 28,000 people to be processed without GOBs would also greatly strain the resources of Pretrial Services, who currently work with detainees from intake to their magistrate hearing. Unlike those with personal bonds, those released on a GOB are not subject to Pretrial Services oversight. This is because those released on a GOB tend to be lower risk defendants. This allows Pretrial Services to better direct resources and invest in arrestees with more serious, violent charges or who are at risk of failing to appear in court or getting arrested again.

Eliminating GOBs would place a significant demand on Pretrial Services' already strained budget and divert their staff resources away from higher-risk defendants. To illustrate, even if the vast majority of those currently receiving GOBs were released on personal bonds with no conditions beyond appearing in court and no new arrests, Pretrial Services would have to work on an additional 28,000 or cases a year. This strain on its resources would require at least an additional 39 staff employees, which could cost an additional \$4,000,000 or so a year to Pretrial Services alone.

D. A proper record would show that vacating the Consent Decree would impair the administration of justice as more indigent arrestees plead guilty to avoid further detention.

Finally, as the consent decree recognized, prior to reform many people who were detained pretrial pled guilty to receive immediate release, as they were often

given a sentence of time served. Specifically, 58 percent of arrestees pleaded guilty without exercising their right to a trial often because they just wanted to be released. Brandon L. Garrett, *et al.*, *Win-Win Misdemeanor Bail Policy: Lessons from Data on Harris County Reforms*, 63 Hou. L. Rev. 1015, 1057 (2026). By 2023, only 24 percent of arrestees pleaded guilty. *Id.* This consequence reinforces what Harris County public defenders already knew—that many people were pleading guilty to misdemeanor charges solely to get out of jail, in cases that may have been weakened by valid defenses or evidentiary issues and would have been dismissed if they had the opportunity to fight the case from home.

Through the consent decree, the administration of justice has improved. Currently, the District Attorney's Office brings a small percentage of its strongest misdemeanor cases to trial, and between a third and a half of them result in acquittals. As more defendants are released on GOBs, they are better able to defend their cases with greater pretrial liberty and defense advocacy. The data shows that the consent decree has not only saved money but has reduced crime.

Thus, the issues presented in the Application need to be reviewed before the mandamus order causes irreparable harm to Harris County's misdemeanor bail system without a thorough review of the equities. The issues related to an official's waiver of the abstention doctrine binding a successor or the entitlement to mandamus because of an upcoming election have broad and far-ranging consequences for Harris County. And if a stay is not granted, the Fifth Circuit's mandamus order, largely

based on an underdeveloped record and a false assumption about the importance of an upcoming election, will upend a seven-year consent decree.

CONCLUSION

For the foregoing reasons, the Court should stay the court of appeals' mandate and its writ of mandamus pending the filing and disposition of a petition for a writ of certiorari. In the alternative, the Court should treat the application as a petition for a writ of certiorari and grant it.

September 8, 2026

Respectfully submitted,

ABBIE KAMIN
Harris County Attorney

/s/ Daniel David Hu
Daniel David Hu, Counsel of Record
Special Counsel
Daniel.Hu@harriscountytexas.gov

Neal A. Sarkar
First Assistant County Attorney
Neal.Sarkar@harriscountytexas.gov

Lisa Luz Parker
Division Director, Appellate & Civil
Rights Division
Lisa.Parker@harriscountytexas.gov

Seth Hopkins
Special Assistant County Attorney
Seth.Hopkins@harriscountytexas.gov

OFFICE OF THE HARRIS COUNTY
ATTORNEY
1010 Lamar, 11th Floor
Houston, Texas 77002
(713) 274-5101

Counsel for Harris County, Texas