

EXHIBIT B-4

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

MARANDA LYNN O'DONNELL, <i>et al.</i> ,	§	
on behalf of themselves and all others	§	
similarly situated,	§	
	§	
Plaintiffs,	§	CIVIL ACTION NO. 4:16-cv-01414
	§	(Consolidated Class Action)
v.	§	
	§	
HARRIS COUNTY, TEXAS, <i>et. al.</i> ,	§	
	§	
Defendants.	§	
	§	

DECLARATION OF J. WADE BAINUM

1. My name is J. Wade Bainum.

2. I am the Chief of the Bail Division for the Harris County Public Defender's Office, where I oversee the legal representation of every Harris County arrestee who is subject to an article 15.17 bail hearing and not released prior to that hearing in the Joint Processing Center ("JPC").

3. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated, and, if called as a witness, I could and would testify thereto. I am over eighteen years of age and of sound mind to declare to the facts stated herein.

4. Since 2017, I have worked in the Bail Division of the Public Defender's Office, and for the past seven years, I have led this unit, overseeing the day-to-day work of the attorneys who represent arrestees at bail hearings in the jail. The *ODonnell* Consent Decree has positively transformed the quality of early representation that a misdemeanor arrestee receives in the Harris County court system. Moreover, the General Order Bonds, by allowing most people arrested on misdemeanor charges to be promptly released on non-financial conditions, are a critical tool for

preventing overcrowding, reducing delay, and permitting the County to provide the constitutional bail hearings required by the Consent Decree and the Constitution.

I. My Professional Background.

5. I have been licensed to practice law for almost 29 years. Prior to my work for the Harris County Public Defender, I was an assistant federal public defender in Texas and Wyoming. Part of my job as an assistant federal defender was advocating for the pretrial release of my clients, and I became accustomed to a system in which judges make release decisions based on flight risk and community safety without any use of financial conditions to cause preventive detention.

6. In 2017, the Harris County judges ordered (and the County funded) the Harris County Public Defender's Office to begin representing all arrestees at their initial bail hearings. This policy change was in direct response to the *ODonnell* litigation. I accepted a position as an Assistant Public Defender in the newly formed Bail Division. I was one of just six employees, and was closely involved in setting many of the policies and procedures that would go on to become core parts of the Bail Division's work. In 2019, I was promoted to Chief of the Division, a position I have held ever since.

7. The Bail Division exists to represent people in the article 15.17 bail hearings, often called "magistration" hearings, that are held before a Harris County Criminal Law Hearing Officer in the Joint Processing Center, typically within 48 hours of arrest. We represent all felony defendants who do not opt out of representation, and all misdemeanor defendants who are not released on a General Order Bond, regardless of the person's ability to afford counsel. These hearings are the first moment that an arrested person sees a judicial officer, and the release conditions set at those hearings determine whether a person is released on a personal bond, ordered released subject to paying secured bail and/or other non-financial conditions, or will be detained.

8. As Division Chief, my responsibilities include developing the Bail Division's policies and procedures; hiring, training, and supervising attorneys; and working inside the JPC interviewing and representing arrestees myself.

II. The Harris County Post-Arrest Process Unfolds in a Complex and Tightly Coordinated Sequence.

9. To understand the critical importance of the Consent Decree and the General Order Bonds ("GOBs") to the PDO's operations and the constitutional rights of recent arrestees, a brief summary of the post-arrest process is necessary.

10. When a person is arrested in Harris County, the arresting officer brings them into the Joint Processing Center, or JPC, through the sally port downstairs and into intake. There, the person is patted down, evaluated for prosecutorial diversion, briefly checked by medical if necessary, and asked to answer standardized intake questions aimed at determining whether they have any urgent health needs that staff must be aware of.

11. The arresting officer or a detention officer takes the arrested person to be fingerprinted, at which point they are entered into the Automatic Fingerprint Identification System. Once an arrestee is entered into the fingerprinting system, the arresting officer receives a number which they use to submit the probable cause affidavit to the District Attorney Intake Management System ("DIMS"). The arresting officer leaves the arrestee in the custody of the Sheriff's Office staff, who bring the arrestee upstairs to a large open room called "receiving." If needed, the person will be taken straight to the medical unit.

a. District Attorney's Case Filing

12. Once the officer files the probable cause affidavit, the case paperwork is transmitted to the Harris County District Attorney's Office ("DAO") to consider whether to file the case. This is the first time the District Attorney's Office is able to see a written statement of probable case.

The intake prosecutor examines the probable cause affidavit, runs the person's criminal history, and reviews the person's mental health history.

13. If a person is arrested on a warrant, probable cause has already been found, and a case already exists.

14. But if the person was subject to a warrantless arrest, the DAO may do one of three things: They can file the charge, reject the charge, or send the affidavit back to the officer to fix a deficiency in the probable cause affidavit. Hours typically pass between when the arresting officer files the probable cause affidavit and when the DAO decides whether to file the charges on a warrantless arrest.

15. If the DAO files the charges, the case proceeds to the next stage of processing at the jail.

16. If the DAO rejects the charge, the person must be promptly released.

17. If the DAO sends the affidavit back to the officer, the case changes to "unsent" status until the revised probable cause statement is returned to the DAO.

18. A back-and-forth between the DAO and the arresting officer over the content of the probable cause affidavit may extend the arrestee's wait time by hours.

19. The person generally must wait in receiving for that entire time. However, if the number of people in the receiving area exceeds capacity, arrestees will be taken downstairs to the tunnels or moved to a different room. Overcrowding in receiving is a safety concern for my staff and other workers on that floor of the JPC. There is a sign in receiving that says the capacity of the room is 202 persons, including both inmates and detention officers. We are already over that capacity and frequently have over 200 detainees in receiving. I have sent several emails or

messages to my chain of command and had conversations with several people in the HCSO expressing my concern that they are exceeding the room's recommended capacity.

20. After the DAO files a charge, the District Clerk's Office files the case, creates a case number, and assigns the case to the jurisdiction of a particular misdemeanor or felony court judge.

21. Once the case is filed, they will be put in a queue to be called up for their interview with Harris County Pretrial Services ("PTS").

b. Pretrial Services Interview

22. Hundreds of people are arrested and brought to the receiving area of the JPC each day. I can recall a day when 386 people were processed through receiving. Most of them must be interviewed by Pretrial Services.

23. The Pretrial Services interview is conducted in a booth next to receiving by a staff person using a standardized form, which provides places for the interviewer to enter information about the person's medical history, marital status, employment, finances, and number of dependents supported. For those who will have their bail set by a judicial officer, the arrested person's financial information, including their ability to pay a financial release condition, is also added to an affidavit used by the hearing officers at magistration.

24. For felony arrestees, Pretrial Services staff also run something called the Public Safety Assessment ("PSA") on each person they interview. The PSA is an algorithmic risk assessment tool that uses nine factors to generate risk scores that purport to predict three outcomes—failure to appear in court, a new criminal arrest while on pretrial release, and a new "violent" criminal arrest while on pretrial release.

25. It is currently the DAO Intake Division's responsibility to conduct the initial screening to identify people with new charges who are eligible for release on GOBs. If the DAO

marks the person as GOB-eligible, Pretrial Services processes the GOB and—unless there are independent bases for detention, such as an out-of-county warrant, concurrent felony charge, or ICE hold—starts the process of releasing them from the jail. That person will soon leave receiving and be taken by the Sheriff’s Office to an area called “pre-release.”

26. Every person who does not receive a GOB continues to wait in receiving. Each of those people is placed on a docket for an individualized bail hearing, or “magistration.”

c. Public Defender’s Office Interview

27. The Bail Division is tasked with representing every person who is placed on a magistration docket (unless they decline representation). That job begins by interviewing everyone on the docket and preparing to make arguments related to bail at the hearings.

28. The Bail Division typically has one or two attorneys working on interviews, depending on shift staffing. These attorneys review the financial affidavit obtained by Pretrial Services. They ask the arrested person about their ties to the community and ability to return to court—specifically, their access to housing, childcare, and transportation—as well as their criminal history and court appearance record. The purpose of the interview is to gather the information needed to prepare a persuasive bail argument and fulfill our constitutional obligation to provide effective legal representation to each of our clients on the magistration docket.

29. Until recently, Bail Division interviews required around five to seven minutes to complete. However, new bail laws—including Senate Bill 9 and the constitutional amendment, S.J.R. 5—have increased the time required for my staff to complete our interviews. For example, Senate Bill 9 prohibits hearing officers from setting unsecured bond on some offenses and, for certain felony offenses, prohibits hearing officers from setting bond at all. If S.B. 9 applies, our staff now must explain to that person that, although they will see the judge, and although the judge may order conditions that will apply if the person is later released, the judge is not able to set a

secured or unsecured bond in their case, so they will remain detained after the bail hearing. We tell the person that they may be taken to a trial judge to have bond set, or a bond amount may be set remotely by a trial judge without any notice, so they will need to contact their family and instruct them to monitor their case online to see if that happens. They will not be assigned an attorney until their first appearance in the trial court. They often have follow-up questions. The recent increase in ICE holds is another factor that often leads to questions that extend the time required to counsel someone. Now, many of our interviews take 10 to 15 minutes to complete and we have had to increase the minimum number of attorneys on a shift from two to three.

30. The Bail Division also has a social worker on staff. If, during an interview, an attorney believes the social worker could be helpful in finding housing, mental health treatment, or other resources, they will ask the social worker to join the interview. Interviews that include a social worker take longer.

31. After our interviews are complete, we continue preparing for the bail hearings. If the public defender did not have an opportunity to do so before the interview, then after the interview, we print off and review each person's criminal history. We print off the probable cause statement to evaluate whether we can challenge probable cause and request dismissal of the case. We review the financial affidavit collected by Pretrial Services and assess whether the person can afford to pay secured bail and if so in what amount.

32. At magistration, a hearing officer admonishes recent arrestees of their rights and sets their release conditions or refers the case to the assigned judge.

33. Magistration dockets are held in a courtroom within the JPC, adjacent to receiving. They are scheduled to begin every two hours. However, the hearing officers are rarely able to begin their dockets on schedule. Because these magistration dockets are overcrowded and

regularly take more than the allotted two hours to complete, they often run one to two dockets—or two to four hours—behind.

34. Before a hearing officer begins the magistrature hearing, they may consider certain people on the docket for a personal bond based solely on the person's charging documents and criminal history. This process is known as Early Presentment. No lawyers for the state or defense participate in Early Presentment. Typically, hearing officers consider only those individuals who are charged with certain low-level offenses for release at Early Presentment. Since the Bail Division cannot know ahead of time whether someone will receive a personal bond at Early Presentment, our staff still interviews every person on the docket and prepares to argue every case.

35. We also interview people who should have been given a GOB but were not. If the DAO correctly identified the person as GOB-eligible, but the District Clerk entered it wrong in the system, then the PDO notifies the Pretrial Services supervisor on shift and they ask the District Clerk's Office to fix the error. If the DAO incorrectly flagged the person as not eligible for a GOB, the error will not be fixed until the magistrature docket.

36. Hearing officers begin magistrature by advising everyone on the docket as to their rights. The Consent Decree requires the hearing officers to provide notice of the rights at stake during magistrature and other matters for misdemeanor defendants.

37. The hearing officer then calls each person to stand for their bail hearing, one by one. The defendant does not stand next to the public defender. Instead, the person remains standing in the rows of seats behind the bar in the courtroom.

38. For each person, the Hearing Officer first announces whether they have made a finding of probable cause. That finding is typically made prior to the hearing, *in camera*, without

any opportunity for counsel to challenge it. Sometimes, however, there is an opportunity to contest probable cause.

39. If probable cause is found, the hearing officer asks the parties for their positions on bail. The assistant district attorney, appearing remotely, typically references any past missed court appearances and reads a part of the DIMS statement to argue that some amount of secured bail is necessary. The public defender from the Bail Division then delivers their argument, typically requesting release on a personal bond or an affordable amount of secured bail plus any appropriate services or conditions to support the client in making it back to court. The hearing officer then enters an order determining whether and on what conditions release is permitted.

40. Before the Public Defender's Office began representing people in these initial bail proceedings, they were non-adversarial assembly line proceedings completely lacking in due process. People stood before hearing officers without the assistance of an attorney. They were instructed not to speak or ask questions, and could not present any evidence or make arguments about their indigence, community ties, or ability to return to court. Hearing officers followed strict instructions from the misdemeanor and felony courts to set money bail at standardized amounts without regard for whether the amount would result in the person's pretrial detention.

41. Magistration hearings have been completely transformed by the participation of the PDO and by Rule 9 and the Consent Decree. Rule 9 prohibits hearing officers from acting as rubber stamps for the trial court judges and instead sets out clear standards for the limited circumstances when the Constitution permits a presumptively innocent person to be stripped of their liberty before trial. Under Rule 9, the hearing officer must make a finding of each arrestee's ability to pay, and then may impose secured bond only if they determine that the amount will not result in the person's pretrial detention (i.e., that it is affordable), or if they find by clear and convincing

evidence that no less restrictive conditions than pretrial detention can reasonably address the government's interest in community safety and preventing flight from prosecution.

42. Rule 9 is not perfectly applied in every case. But on the whole, people arrested for misdemeanors are given a fair shot to make an argument that they can be safely released and will return for court. Each person gets individualized consideration. The hearing officers know they are ethically and legally required to make individualized decisions in each case. And the hearing officers take their judicial discretion seriously. The process is not perfect. But it is a far cry from the constitutional violations that occurred before *ODonnell* was filed. The PDO plays an important role in ensuring Rule 9 is implemented.

43. After bail decisions are made at magistration, arrestees follow one of two paths. If the hearing officer set an unsecured or affordable money bond, the arrestee begins the process of being prepared for release from the JPC. Pretrial Services reviews bond conditions with each person prior to their release. If the hearing officer set a bond that the arrestee cannot immediately afford, HCSO staff will begin putting the person through medical checks, classification, and other preparations to enter long-term housing in the County's jail system.

44. The Bail Division does not continue to represent a person after magistration. If a defendant is indigent, they will have the option of having an attorney appointed when they are arraigned in the trial court days or even weeks later. In my observation and experience, court appearance would improve and defendants would have notice of other important events in their case if counsel were assigned to indigent arrestees immediately following magistration. That way, appointed counsel could help a detained person prepare evidence and argument for a bail review hearing at their first appearance, or help a released person address any obstacles that make it difficult to appear in court.

III. All Entities Involved in the Post-Arrest Process, Including the Public Defender's Office, Are Overburdened and Contribute to Severe Delays.

45. As explained above, every day, hundreds of people must complete a specific sequence of time-consuming processes before they can be moved out of the JPC—either into housing units, or home to their families. Each agency involved, including the PDO, has limited resources, limited space, and limited staff. Backlogs and chokepoints are inevitable and common.

46. Any agency that is a part of the post-arrest process can create a backlog if it is not adequately staffed, if there is an unusually high volume of intakes, or if a miscommunication, mistake, or incident creates confusion or delay.

47. One regular source of backlogs is the wait for the DAO to file charges. As explained above, every person in receiving must wait until the DAO decides whether to file a charge before they will be interviewed by PTS or the PDO and before they can be magistrates. On a high-volume day, it can take hours for staff in the District Attorney's Intake Division to decide to file charges, and in cases where they return the probable cause affidavit to the officer for correction, it takes even longer.

48. Backlogs can also occur at Pretrial Services. A person cannot be placed on a magistrature docket until they have completed their PTS interview. When PTS is not fully staffed, a common situation on overnight shifts, they can fall behind on their interviews, resulting in people being late in getting onto dockets.

49. My staff are often overextended. We have three to four attorneys on each shift, and one of them is always representing people in an ongoing magistrature hearing. We rush to complete our interviews before the next magistrature docket begins. As it stands, we have no time to contact potential witnesses who could verify a person's address, employment, ties to the community, or availability to help someone get back to court.

50. We also lack sufficient workspace for our staff to do our jobs effectively. As our staffing has grown due to the increased workload demanded by S.B. 9 and S.J.R. 5, our space in the JPC has shrunk. This month, I was informed by HCSO leadership that two of our five workstations are being reallocated, leaving our Division with just three booths for our staff. With four to five staff on every shift, we will always have one or two people without any workspace in which to interview people, review documents, prepare for magistration, or complete other essential work. Our capacity to keep up with our substantial workload will suffer.

51. One of the most common places for the post-arrest process to back up is at the magistration hearing itself. Hearing officers must contend with magistration dockets that leave only a few minutes per person, which is often not enough time. Often hearing officers do not complete their dockets within the allotted two hours, creating a lag that grows throughout the day as they struggle to keep up with the inflow of people on their dockets.

52. I have consistently observed how delays in processing can cause serious problems in receiving. On busy days, receiving is packed with people who may be there for up to two days. It is not uncommon to see people sleeping on the receiving floors. In that environment, it is difficult for County staff to identify people experiencing urgent medical needs. Processing delays layer additional anxiety and frustration to this already tense environment. The frustration builds with every additional hour, and it occasionally boils over and turns into more acute issues like violence to detainees and staff. These harmful effects of processing delays are common knowledge among those of us who work in the JPC.

53. Even with the critical release valve offered by the GOBs, the JPC has attracted state attention for its inability to fix overcrowding or promptly move people through the post-arrest system. I have been informed by leadership of the Harris County Sheriff's Office that the Texas

Commission on Jail Standards has cited them in recent years for taking more than 48 hours to move arrestees through booking and processing (the clock starts from the time they enter the sliding doors of the sally port and stops when the arrestee is either released or moved to housing).

54. Backlogs, tension, violence, and unmet medical needs are not the only signs of a system that is overtaxed. Frequent violations of the Consent Decree are another indicator that agencies and staff are rushing and struggling to keep up with the hundreds of people moving through the JPC each day.

55. During our interviews, Bail Division attorneys regularly encounter people who should have received a GOB but were not properly identified and are stuck in receiving instead of being released. Typically, this is because the DAO miscoded the person as a carveout, or the District Clerk mis-entered it in the system, and no one caught the error before the PDO interview. Sometimes, when I am made aware of these Consent Decree violations, I can speak to someone about changing the designation so the person can begin the release process. Other times, I am unable to get the person's bond status changed before they appear on the magistration docket. In that scenario, I instruct the Bail Division attorney working magistration to bring the error to the hearing officer's attention. Most hearing officers will address that type of error when they become aware of it by releasing the person on a GOB or, sometimes, a personal bond.

56. However, my staff and I regularly see hearing officers violate Rule 9 and the Consent Decree. Sometimes, for instance, when my staff alert the hearing officer to a person who should have been released on a GOB, they will ignore the error and set a secured bond amount in violation of the Consent Decree. Other times, I see hearing officers impose unaffordable secured bond on carveout charges, de facto orders of pretrial detention, without considering and ruling out less restrictive alternatives as the Consent Decree requires. For example, I regularly see hearing

officers impose unaffordable secured bond based on nothing other than one prior missed court appearance, a fact that can clearly be addressed through conditions short of detention.

57. In my observation, some of these Consent Decree violations are related to the extreme time pressure that all agencies in the JPC are under. However, some of them are more likely due to ignorance or disregard of the Consent Decree's requirements. Whatever the reason, automatic systems for identifying and remedying Consent Decree violations are necessary to save everyone time and ensure people are not being detained in violation of their constitutional rights.

IV. Requiring Individualized Review for Every Single Arrestee Would Delay Everyone's Release.

58. Given the current daily influx of arrestees, the Bail Division is stretched to its limit. We are harnessing every resource we have to capably interview and represent each person who is set to appear at magistration because they have not been released on a GOB.

59. On an average day, around 300 people enter receiving and will not leave until they have release conditions set in their case. That includes people charged with both misdemeanors and felonies.

60. People released on a GOB are a significantly lighter lift for the system. The PDO does not need to spend time interviewing them or preparing for argument on their behalf. The HCSO officers do not need to spend time gathering them for magistration or monitoring them during magistration. And the hearing officers do not need to spend time conducting adversarial bail hearings for them.

61. The PDO, other Harris County agencies, and the hearing officers have limited capacity to do our jobs. The GOBs are a commonsense tool that allows us to focus our time on what matters – more serious charges where release conditions may be appropriate and involving clients whom the DAO may seek to detain using unaffordable bail or a transparent detention order.

62. If the County and courts were prohibited from releasing people on GOBs, they would be forced to apply the long version of their post-arrest process to everyone, regardless of the seriousness of their charge. My understanding is that this could mean around 28,000 more people each year who are no longer diverted out of the jail following the PTS interview. Receiving, which is already regularly over its posted capacity, would become even more dangerously overcrowded.

63. If about 28,000 more people must be processed annually, that amounts to around 77 additional people each day whom our Bail Division would be obligated to interview and represent at magistration. But we do not have the staff, space, or time to interview or represent any more people.

64. Without the GOBs, it likely would be impossible for the Bail Division to complete our pre-magistration interviews in accordance with our ethical and constitutional obligations. Even assuming there was funding for it, the JPC cannot accommodate more staff to handle the thousands of additional interviews that would be necessary. There is no space where additional interviews could take place. As it stands, we have fewer workspaces than we have shift staff. Our only recourse would be to curtail our interviews, a choice that would lead to disastrous outcomes. Our interviews would be so rushed and short that we could never be sure we were getting the information necessary to advocate effectively for a client's release, let alone answering the questions of clients whose lives have been disrupted by arrest and family separation. Based on my experience in the Bail Division, and especially the last seven years supervising the attorneys who represent arrestees at bail hearings, I expect that the resulting interviews would make it difficult for the PDO to uphold our constitutional obligation to provide effective counsel to each person who appears at magistration.

65. Similar problems will be certain to occur at magistration itself. Magistration dockets have as many as 15 people on them and, because some hearing officers take more than two hours to complete them, magistration consistently runs one or two dockets behind. Adding six or seven more people to each docket will bring the entire magistration system to a halt. Hearing officers will have to extend the length of each magistration docket by at least an hour—and likely more. They will be pressured to spend less time on people charged with felonies in order to get through the additional misdemeanor cases on their dockets. Given how quickly the hearings will move, I expect hearing officers will impose unaffordable bail amounts in cases where detention is not justified. At the same time, as dockets become increasingly backed up, people who are not magistrated within 48 hours of arrest will be subject to automatic release or will have a bail set automatically instead of appearing before a judicial officer, regardless of the seriousness of the charge against them.

66. It is my opinion that neither the PDO, the hearing officers, nor any of the other agencies involved in the post-arrest system can possibly add the tens of thousands of people who currently receive GOBs to their workload without serious delays. We are consistently behind at least one docket and sometimes two. Adding additional interviews and more people to the dockets would put us even further behind.

67. Eliminating the GOBs would create bureaucratic logjams throughout the JPC, resulting in longer waits by recent arrestees, increased tension and risk of violence to detainees and staff, more frequent neglect of urgent medical needs, diminished quality of legal representation, hurried bail hearings with less considered outcomes, more widespread and unnecessary pretrial detention—including due to inability to pay cash bail, and systemic violation of people's constitutional rights.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.


Wade Bainum (Aug 27, 2026 12:49:38 CDT)

J. Wade Bainum

Date