

Detention Hearings Without Lawyers

An Analysis of Initial Criminal Court Hearings in Travis County, Texas

Currently, people arrested in Travis County, Texas, are forced to appear in initial criminal court hearings — called “magistration hearings” — without an attorney representing them.

As part of the ACLU of Texas’ court watching program, law student volunteers provided by The University of Texas School of Law’s Mithoff Pro Bono Program recorded observations of 686 magistration hearings from January 15 to March 15, 2024.

Based on our analysis of these observations, magistrate judges required a majority of people to pay in exchange for release from jail. Accused people were forced into hearings where their rights were jeopardized, they had difficulty communicating, and they couldn’t contest or even know why judges were keeping them locked in jail.



Key Findings Based on Observations

FINDING #1

Judges required people to pay for release from jail before trial in 66% of magistration hearings.

FINDING #2

People experienced obvious communication problems in more than 10% of magistration hearings.

FINDING #3

People made statements that could harm their criminal case in 29% of magistration hearings.

Analysis

FINDING #1

Judges required people to pay for release from jail before trial in 66% of magistration hearings.

In the magistration hearings of 454 people — two out of every three observed — magistrate judges required a payment in exchange for release from jail. The average bond amount set was \$15,913.69, with a median amount of \$7,500. Personal bonds, which do not require upfront payment before release, were required in 22% of cases.

Uncounseled people who cannot afford to pay for release from jail are left with limited options. They can stay in jail until trial — separated from their children, family support, and jobs — or plead guilty and give up the right to defend themselves at a trial.

Paying for release from jail can be a significant hardship or impossibility for families without access to financial resources. When paying a bondsman, people presumed to be innocent will never get the money back, regardless of the outcome of the case — even if the arrest was a case of mistaken identity or if charges are dropped.

One judge told a person they would need to pay between \$750 and \$1,500 to be released quickly:

“I’ve appointed you an attorney, but it’s Thursday morning, so you’re not likely to see a court-appointed attorney because of this frozen week until Monday or Tuesday, but when he sees you, because of your age and your limited criminal history, he can get you out on bond for free. If you need to get out before Monday or Tuesday, then the going rate to get out of jail is 5-10% of the bond amount, so in your case it would be \$750 and \$1,500 to any attorney or bondsman of your choice. They do work 24 hours a day and you will be given access to the phone now, now that you’ve seen me, to hire them if you choose.”

In 73% of observed hearings, magistrate judges set bond without providing any rationale.

This raises concerns about whether they considered each person’s unique circumstance and ability to pay. The lack of rationale also deprives unrepresented people of an opportunity to argue for release during magistration and at later hearings.

Magistrate judges make bond decisions based on allegations by the police, any complaining witness, and the government's pretrial investigation, which the magistrate does not typically disclose to the unrepresented person. Unrepresented people have no way to know or contest the information that the magistrate is relying on to keep them locked in jail.

Magistrate judges also frequently acknowledged that appointed lawyers could facilitate immediate release without payment. They further acknowledged that delays in access to legal representation would prolong detention.

Magistrate judges told people that only lawyers could make arguments for release on personal bond. For example:

"An attorney can come down here and try to convince me or one of the other judges to give you a personal bond that you aren't able to get on your own. A lawyer can advocate on your behalf, based on the unique facts of your case and your situation and try and get you a personal bond."

FINDING #2

People experienced obvious communication problems in more than 10% of magistrations hearings.

Magistrate judges regularly conducted hearings through videoconference technology, with the uncounseled person in a different room from the judge. In more than 10% of hearings, accused persons and magistrate judges struggled to hear or understand each other.

This figure likely underrepresents the true extent of communication challenges because it only includes instances where audio issues were clearly noticeable. Audio problems that were not obvious went unrecorded.

Other communication barriers were observed. In dozens of instances, a camera was pointed inside a jail cell where people were magistrated virtually. People inside the cells were observed lying or sitting in bed in a cell when their virtual hearing suddenly began. In many cases, jail officials pointed a camera at the meal tray slot in the jail cell door, requiring people to attempt to participate in the virtual hearing while kneeling or contorting their bodies to maintain view of the screen through the narrow hole.



Artistic rendering of an uncounseled person attempting to virtually communicate with a judge by talking to a computer screen through the meal tray slot in a cell.

Court watchers also observed officers speaking on behalf of some individuals. They described:

“The defendant was behind a door and not visible at all times. Her words were communicated through the security officer (the livestream did not pick up any of her voice).”

“The defendant’s communication was not clear and she did not seem to comprehend what the judge was saying. The defendant seemed to not be able to move her jaw to speak. The judge could not understand what the defendant was saying at times and the security officer in the room communicated on the defendant’s behalf to the judge. The defendant also didn’t understand when the judge was asking for someone’s address to verify her address. She understood after the judge expressed shock that she didn’t know her mother’s number.”

FINDING #3

People made statements that could harm their criminal case in 29% of magistration hearings.

Though people have the right to remain silent, judges asked accused people questions during magistration — without a lawyer present who would advise them about whether to speak or what to say.

People made statements about their presence at alleged incidents, their relationship with people involved, their criminal history, their health, their motives, and their state of mind.

In many cases, people made potentially incriminating statements, or statements that could affect their credibility, in response to magistrate judges’ questions that were nearly certain to elicit a detailed response affecting a person’s case.

Magistrate judges asked about relationships with complaining witnesses and other details about the alleged incident, motive for the alleged offense, and United States citizenship.

Examples of magistrate judges' questions that prompted potentially incriminating answers:

"Do you have some good reason for packing heat downtown?"

"I couldn't tell from reading the police report whether you guys knew each other from the past or not. Is there a previous dating relationship connection here?"

"I really have no idea why you two old guys are fighting. Why are you fighting sir?"

"How long have you been in the States?"

Sometimes, judges noted that unrepresented people had made potentially self-incriminating statements:

"This says a lot and you need an attorney. And I think you've kind of already said some things against your self-interest that may be used against you upstairs. So that's why I'm stopping you. You are innocent until proven guilty."

Other Findings From Observations

Without attorneys to advocate on their behalf during magistration hearings, many people — who might otherwise be free while awaiting trial — were locked in jail due to unaffordable bail. Many presumptively innocent people were distressed by the immediate effect pretrial detention would have on their jobs, housing, and families. They were also concerned about the potential long-term consequences, including caretaking responsibilities, guardianship, and employment.

One person, arrested for a minor offense, expressed worry about how pretrial detention would affect their new job:

"I have work I've gotta go to ... I just got the job ... I could lose my job within a day ... I could lose my job today for all I know ... when I'm getting on the right track and I don't do drugs and don't drink alcohol, and don't do none of that and I'm getting back on the right track, it's kind of frustrating."

Considering the individual's employment, the magistrate judge advised discussing a personal bond with an attorney, but noted it could take at least four days before they could consult with their lawyer.

Another person asked for an attorney, distraught at how pretrial detention would affect her housing and family:

“I would like to get an attorney. I’m going through a few things and I’m trying to get my life together. I was just helped out with a business loan and I was going to do some part-time work and I just had found some housing and I’m moving out of town and I’m just trying to get me and my son together.”

Observers documented several instances where unrepresented people were confused about the purpose of magistrations and lack of legal representation.

One person expressed confusion about his participation in a hearing after being asked if he had any questions about his charge or bond amount:

“Why am I here right now? Just to discuss? Just let me know what I’m here for.”

The judge responded:

“So you’re being arraigned, technically, Texas’s version of that right now, but I think what you’re asking me is how soon you’ll go to

court. So you’ll go to court on the rocket docket ... tomorrow, Thursday, or Friday. You’ll go to court, you’ll meet your attorney at that time, and you guys will determine how best to handle this case.”

Methodology

In order to understand how magistrations in Travis County functions, the ACLU of Texas designed a court watching program staffed by 26 law student volunteers from The University of Texas School of Law’s Mithoff Pro Bono Program.

These pro bono court watchers observed publicly available livestreams and recordings of magistrations hearings in Travis County between January 15 and March 15, 2024. For the two month period, volunteers were assigned to observe the livestreams and recordings each day. Most available hearings were observed, but some were not observed due to volunteers’ scheduling conflicts or critical technical issues with the streams, such as entirely missing audio. Court watchers observed the unique magistrations hearings of 686 people during this time. All observed hearings were included in the analysis.

Court watchers were trained by the ACLU of Texas and given standardized forms and detailed instructions for recording and coding their observations. Survey data was reviewed and analyzed.

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