LEGAL UPDATES

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Press and Public Access: Fifth Circuit Rules on Texas Magistrations

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ORFELIO DE OCHOA, JR.
HOUSTON:
713.630.6407
ORFELIO.DEOCHOA@
HUSCHBLACKWELL.COM

On November 18, 2024, in an opinion authored by Judge Vitter, a Fifth Circuit panel made up of Judges Wilson, Douglas, and Vitter upheld a district court's ruling temporarily enjoining Caldwell County's policy of categorically excluding the press and the public from magistrations.

This case involved a First Amendment right of access challenge to a policy in Caldwell County, Texas, which excludes the press and public from observing a criminal proceeding commonly referred to as magistration. "Magistrations" under Article 15.17(a) of the Texas Code of Criminal Procedure refer to a proceeding where an arrested person is brought before a magistrate in the county of arrest within 48 hours. At the magistration, the accused is informed of the charges against them, their rights, and the possibility of admitting the accused to bail if allowed.

The district court held that the county's policy of closing magistrations to the public violated the First Amendment and granted a preliminary injunction. The county appealed the district court's decision and raised two issues: whether *The Texas Tribune, Caldwell/Hays Examiner*, and Mano Amiga had standing; and whether these organizations had substantial likelihood of success on the merits.

The Fifth Circuit held that the organizations had standing because they had "suffered an injury in fact." The organizations are two news outlets and an advocacy organization which rely on access to magistrations to carry out their purposes (reporting and advocacy). The two news outlets report on a broad range of criminal justice issues. The advocacy organization relies on access to magistrations to further their mission of bailing people out of jail, gathering information for the community, and supporting community members.

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Then the Fifth Circuit applied the "experience and logic test" to determine whether the organizations had a "substantial likelihood of success on the merits." The experience prong analyzes whether the location and procedure have traditionally been accessible to the press and the general public. The logic prong examines if public access enhances the function of the particular process. The court reasoned that generally there was a history of open pretrial proceedings. The court reasoned that public access to bail hearings plays a significant positive role because public access helps with transparency, criticism, and proper procedure of trials.

Ultimately, the Fifth Circuit found that magistration proceedings fall under the First Amendment's right of access protections because both prongs of the "experience and logic test" were met. The court noted that while the right to public trials is a right, it is not absolute. There may be situations where the rights of the accused or the government outweigh the public's right.

What this means to you

Texas local governments must provide the public and the media access to magistration proceedings.

Contact us

If you have any questions related to public access of court proceedings, please contact Kate David, Ben Stephens, Orfelio De Ochoa, or your Husch Blackwell attorney.

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