18-8947

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Case #1

Michael-Francis: Palma— PETITIONER

vs.

HARRIS COUNTY APPRAISAL DISTRICT - RESPONDENT

Case #2

Michael-Francis: Palma— PETITIONER

vs.

HARRIS COUNTY REVIEW BOARD - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

First Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

NOTE: In order to simplify and facilitate the courts understanding, items highlighted in yellow and the chart contained herein concerns case #2. All other elements of due process violations are the same in both cases.

A right to hold, or be beneficiary to property, and be secure in one's belongings, especially his shelter, has been held sacred by this court since its beginning. Due process consists of two types. First: Substantive Due Process which focuses on government regulation that deprives a person's fundamental right, which is guaranteed to the person under the U.S Constitution. And second: Procedural Due Process which focuses on fair and timely procedures and may be implicated whenever the government tries to take a life, liberty or property interest of an individual.

Are the following Due Process violations?

1) Is it a due process violation by a state agency to not observe basic statutory code construction and a right recognized in a State code, the 4th and14th Amendments[1] of the Federal Constitution and FRCP 61 when substantive rights apply to property, specifically a home? (Cases #1 and 2)

2) Is it a due process violation by the state judiciary to write opinions that contradict themselves and run afoul of current state and federal case law? (Cases #1 & 2)

3) Once a petitioner, not trained as an attorney, is told that a "motion to amend petition" should have been filed, and subsequently does so, but then is denied is that a due process violation. (Case #2)

Additionally:

4) Is an American's shelter still considered sacred as stated in Boyd v. US when an intruding foot be a government foot, "without his leave"? (Cases #1 and 2)

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

[1] The 14th is the application by the Federal Government to tell the States to uphold not only the Federal Constitution but also to obey its own laws when the right being violated falls within the 4th Amendment.

Table of Contents

Cases

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OPINIONS BELOW

The opinions of the First Court of Appeals in Harris County Texas appears at Appendices A (Case #1) and E (Case #2).

JURISDICTION

The date on which the First Court of Appeals decided the Case #1 was on March 27, 2018. A copy of that decision appears in Appendix A. A timely petition for reconsideration was thereafter denied on May 22, 2018 and a copy of the order denying rehearing appears at Appendix B.

The Texas Supreme Court denied hearing the case at Appendix C on September 7, 2018 and a motion for reconsideration was denied on November 30, 2018 appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including April 29, 2019 on January 1, 2019 in Application No. 18A684.

The date on which the First Court of Appeals decided Case #2 was on July 10, 2018. A copy of that decision appears in Appendix E. A timely petition for reconsideration was thereafter denied on November 29, 2018 and a copy of the order denying rehearing appears at Appendix F.

The Texas Supreme Court denied hearing the case at Appendix G on March 1, 2019 and a motion for reconsideration was denied on April 5, 2019 appears at Appendix H.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

Joinder is proper under Rule 12.4. "When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) 4th and 14th Amendments to the Constitution
2) Texas Tax code §41.41 et seq supported by Texas Government code §311.016 et seq. Appendix V.
3) 42 U.S.C.A. §1983

STATEMENT OF THE CASE

The right to have and hold property without interference is a known legal fact in America. Texas Tax code §41.41 et seq. guarantees that a property owner has the right to contest the inclusion of his or her property onto an appraisal record, or to be more specific – the respondents must prove that it has the jurisdictional authority to include petitioners home on any appraisal record when the hearing is properly requested by the property owner. In no Case was an inclusion hearing held, in Case #1 the requested hearings were "denied", meaning no evidence was ever produced for the requested §41.41(a)(3) hearing and the District only provided evidence that indicated *which* appraisal recorded it should be on. In Case #2 the only hearing held was a value hearing which was not even requested. Petitioner was at all hearings for both cases. The "exclusive remedy" of a property owner is under §41.41 and is clearly shown in Valero Transmission Co. v. Hays Consol. Independent School Dist. (App. 3 Dist. 1985) 704 S.W.2d 857, ref. n.r.e.

The opinion of the Court of Appeals, Appendix A, fails to address the issue of property rights and *why* the property belongs on the appraisal record addressing only *which* appraisal record the property should be on and in point of fact goes out of its way to contradict itself within the document, runs afoul of long standing case law and American traditions. To wit: the court declared the term "residential" irrelevant but then

proceeded to use that term to declare petitioners home as appraisable/taxable – relevant items are highlighted. Petitioner would never use the term "residential" to describe the home as this term is not defined in the Texas Tax code and the courts refused to define the term of art. The opinion discusses "situs," however situs is only where property is located and has not a thing to do with *why* the home should be included on an appraisal record. Situs is found in Texas Tax code §41.42 (Appendix W) to determine *which* appraisal record the property should be on and can only be determined *after* it is found that property must be included on an appraisal record at all. Situs is not a right mentioned in Valero Transmission Co. v. Hays Consol. Independent School Dist. id.

The Texas Supreme Court refused to correct the issue. (Appendices C & D).

The opinion in Case #2 (Appendix E) states that petitioner "...did not develop or properly brief his argument that he was entitled to a situs hearing until his reply brief." This is completely untrue, the record will show that this is exactly what is stated on petitioners' original petition (Appendix S). In point of fact the original petition clearly points out the fact that a situs hearing did not occur. That being said, the original petition should have also included a demand for an "inclusion" hearing but it was because of petitioners' lack of knowledge that petitioner believed that a situs hearing and an inclusion hearing were the same type of hearing. Petitioner now knows better. This opinion also contradicts itself.

The Texas Supreme Court refused to correct the issue. (Appendix G & H).

REASON(S) FOR GRANTING THE PETITION

The right to own and hold property is guaranteed by the protections in the 4th Amendment to the Constitution and enforceable on the Union states under the 14th Amendment to the Constitution, federal law and case law, and was one of the pillars of English Common Law, prior to the founding of the country. Representative cases are

Smith v. Texas, 233 US 630, 636, 58 L.Ed. 1129 (1913) wherein property rights were held as one of the "bundle of rights" protected by the Constitution and as stated in Florida v. Jardines, 133 S. Ct. 1409, 223-224, 569 U.S. Reports 1, 7-8 (2013) "we were careful to note that it was done "in a physically nonintrusive "undoubtedly familiar" to "every American statesman" at the time of the Founding, Boyd v. United States, 116 U. S. 616, 626 (1886), states the general rule clearly: "[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave." Entick v. Carrington, 2 Wils. K. B. at 291, 95 Eng. Rep., at 817." Also stated in Florida v. Jardines: "But when it comes to the Fourth Amendment, the home is first among equals. At the Amendment's "very core" stands "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U. S. 505, 511 (1961)."

In point of fact the Texas Supreme Court has ruled against state agencies from interfering in private homes and land in several cases: Severance v. Patterson, 370 S.W.3d 705, 55, Tex. Sup. Ct. J. 501, Koch v Texas GLO, 273 S.W. 3rd, 451 (Dec, 19 2008), and Bush v. Lone Oak Club, LLC, 546 SW3d 766 (Feb 22,2018) to name a few, but refused to uphold this basic right in both of these cases and the *right* provided in §41.41(a)(3) which is supported by Texas Government code §311.016 et seq. (Appendix V) The long held rights to have and hold property should not be summarily dismissed by any agency, administrative or judicial, in America or the United States.

The "exclusive" rights of property owners are recognized by Texas State in Texas Tax code §41.41 et seq. The failure of a county and state agencies to acknowledge the only right a property owner has to protect his property from government intrusion, §41.41(a)(3), is akin to a due process violation, an unreasonable governmental intrusion

and may also be construed as an involuntary taking of the property's value over time. For Texas agencies, administrative and judicial, in their entirety to disavow that single right contravenes all that has gone before and has now happened for four tax years in a row to this petitioner; there are four more court cases on their way to this Court concerning this one issue. With the knowledge that this is occurring in Harris County, the largest county in Texas, year after year; can there be any doubt that it may also occur in the remaining 253 Texas counties?

The opinion of the Court of Appeals (Case #2), Appendix E, fails to address the primary issue of the right refused under Texas Tax code §41.41(a)(3) and only mentions in passing the fact that a situs hearing under §41.42 was never held (See Appendices N, P, Q, & R). Petitioner is now aware that the two hearings are completely different. That being said, the respondent(s) must have known what was happening; this due to the fact that both respondents prevented not once, but twice a hearing that was never requested from occurring. The first hearing (Appendix N) was stopped by attorney (Appendix O) Scott Hilshire, the second (Appendix P) was stopped due to petitioners actions. However, Mr. Hilshire continued the third value hearing even though he was fully aware that the notice of protest did not asked for that hearing (Appendices Q &R).

Additionally, the fact that the opinion (Appendix E) of the First Court of Appeals goes out of its way to completely avoid the use of the term "residential" is possibly due to the fact that in Case #1, (Appendix A) that same court contradicted itself by calling the term, first "irrelevant" and then using that term to confirm its opinion. The Court goes even further off the rails in the Case #2 opinion because it states "

> "ARB filed a plea to the jurisdiction arguing that the trial court did not have subject matter jurisdiction over Palma's claim because (1) Palma ***did not file a timely notice of situs protest*** for tax year 2016 and (2) Palma is not entitled to a taxable situs protest hearing because the ARB held a hearing and rendered a determination on Palma's ***timely filed value protest*** for the property."

There are several poignant and glaring errors in this statement which petitioner must point out: 1) Appendix L shows that a Notice of Appraised Value was sent to

petitioner on 11/15/2016; 2) Appendix M shows that timely inclusion and situs hearings were requested on 11/29/2016, and 3) Appendix M never requested a value hearing. Hence, not only did the attorney for the respondent in Case #2 withhold exculpatory evidence as he never presented to the district court (Appendices L or M), respondents' attorney's intentionally misled the district court and/or the district court simply ignored both Appendices and both district and appellate courts intentionally violated petitioners rights all the while avoiding the §41.41(a)(3) issue and the term "residential." The appendices presented to this Court are the same as were presented to the state district court; the facts, evidence and tax code itself were simply ignored by the respondents and state courts thereby causing harm to petitioner.[2]

When the opinion in Appendix E was received by petitioner, petitioner did then file a timely motion to amend his brief, Appendix T, however, as petitioner expected, Appendix U shows that this motion was denied.[3]

In order to demonstrate the futility of asking for the §41.41(a)(3), inclusion hearing, petitioner presented to the state district court certified documentation from the Harris County Appraisal District that as far back as the 2011/2012 tax years requests were made for both an inclusion and situs hearing. However not a single requested hearing ever occurred due to a series of errors and missteps of all parties. Once the entire record is forwarded to this court the full scope of due process violations will be brought to light,[4] violations from the both respondent's, the district courts, the district clerk of the county, the court of appeals and the Texas Supreme Court.

To aid this Court in the timeline of proceedings for Case #2 the chart below is included and annotated with the appropriate appendix.

NOAV is Notice of appraised value, NOP is Notice of protest.

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[2] Respondent did discharge the tax under protest for not only these two tax years but also 2017 under fear of further unlawful acts by other county agencies. A tax paid under protest in Texas becomes an involuntary payment.

[3] Further, both the state district court and appellate court judges receive stipends from the county, leaving the taste of either intentional or unintentional bias in his mouth. Not to mention the fact that the tax assessor(s), not only collect for the counties but also pay the salaries of the HCAD who then pays the ARB. The respondents are supposed to be independent agencies. Is there a possibility of collusion to keep the "money train" moving forward despite Constitutional and statutory rights?

[4] These are 2 of 6 cases where due process and rights have been ignored by both administrative and judicial agencies. As they become ripe and fall within the parameters of Rule 12.4 they will also be forwarded to this Court.

Appendix L	11/15/2016	NOAV sent to Palma
Appendix M	11/29/2016	NOP asking for §41.41(a)(3) and §41.42 hearings
Appendix N	12/15/2016	Market value hearing set for 1/4/2017
Appendix O	1/4/2017	Hearing STOPPED by Attorney Scott Hilshire: wrong hearing being held
Appendix P	2/15/2017	Market value hearing set for 3/7/2017
	3/7/2017	Hearing did not occur – wrong hearing set
Appendix Q	3/7/2017	NEW value hearing set for 4/11/17 (why the HCAD kept doing this is unknown)
Appendix R	4/11/2017	Value hearing CONTINUED by Attorney Scott Hilshire under protest by property owner (This is the last formal hearing Palma attended for any year - if the HCAD was not going to hold the requested hearing then why bother showing up?)
Appendix S	5/16/17	Original petition to the state district court
Appendix T	8/17/2018	Petitioners motion to amend brief to Court of Appeals
Appendix U	8/29/2018	Petition to amend denied to Court of Appeals

Justice Kavanaugh stated in his confirmation hearings: "Due process is a foundation of the American rule of law. Due process means listening to both sides," and "We live in a country devoted to due process and the rule of law. That means taking allegations seriously."

A Writ of Mandamus in this instance is sanctioned in both cases for the following reasons:

1. Taxpayer, which fully complied with Property Tax Code in contesting property appraisal, *was deprived of due process when county appraisal review board failed to hear protest.* U.S.C.A. Const. Amends. Harris County Appraisal Review Bd. v. General Elec. Corp. (App. 14 Dist. 1991) 819 S.W.2d 915, writ denied.
2. Ward v. Norwalk, No. 15-3018 from the Sixth Circuit Court of Appeals

> "In Ex parte Young, 209 U.S. 123 (1908), the Supreme Court stated an exception to sovereign immunity that allows individuals to seek prospective relief against state officials who violate federal laws or the Constitution. The Ex parte Young doctrine "rests on the premise—less delicately called a 'fiction[]' . . . —that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes." Virginia Office of

Protection & Advocacy v. Stewart, 563 U.S. 247, 131 S. Ct. 1632, 1638 (2011)."

3. As stated in Hall v. McRaven, 508 S.W.3d 232 (Tex. Jan 27,2017):

> "We recently clarified what it means for an official to act "without legal authority." See Houston Belt & Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 158 (Tex. 2016). We said that "a government officer with some discretion to interpret and apply a law may nonetheless act `without legal authority,' and thus ultra vires, if he exceeds the bounds of his granted authority or if his acts conflict with the law itself." Id. "Ministerial acts," on the other hand, are those "where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." Sw. Bell Tel., L.P. v. Emmett, 459 S.W.3d 578, 587 (Tex. 2015) (quoting City of Lancaster v. Chambers, 883 S.W.2d 650, 654 (Tex. 1994)).
>
> The basic justification for this ultra vires exception to sovereign immunity is that ultra vires acts — or those acts without authority — should not be considered acts of the state at all. Cobb v. Harrington, 144 Tex. 360, 190 S.W.2d 709, 712 (1945). Consequently, "ultra vires suits do not attempt to exert control over the state — they attempt to reassert the control of the state" over one of its agents. Heinrich, 284 S.W.3d at 372.
>
> Heinrich clarified two general means of proving an ultra vires claim: (1) an action "without legal authority" or (2) failure to "perform a purely ministerial act." 284 S.W.3d at 372. In Houston Belt, we addressed what it means to act without legal authority in the context of a particular type of ultra vires claim: an allegation that an official has exceeded his or her granted authority to "interpret and apply a law." 487 S.W.3d at 158, 160-63. We concluded that sovereign immunity "bars suits complaining of an exercise of absolute discretion but not suits complaining of ... an officer's exercise of judgment or limited discretion without reference to or in conflict with the constraints of the law authorizing the official to act." Id. at 163 (emphasis in original). Although not directly applicable, we quoted for comparative purposes the rule that a public officer generally lacks discretion or authority to misinterpret the law. Id. (quoting In re Smith, 333 S.W.3d 582, 585 (Tex. 2011) (orig. proceeding))."

4. Norwalk and McRaven provide this Court the ability to order the non-elected county officials of the respondents[5] to hold the hearings required; while General

[5] Neither department head is an elected official; I believe both are appointed by the County Commissioners Court, this is ironic since the motto on the DC license plate is "No taxation without representation". Respondents therefore have un-elected supreme authority over private (non-commercial) and commercial property thereby controlling a most important right, the private home of an American.

Elec. Corp. and Valero provide several providences for due process violations allowing this Court to order the respondents directly to hold the §41.41(a)(3) hearings.

CONCLUSION

Petitioner humbly asks this body to uphold long cherished rights and to enjoin the respondents to do what they are required to do, hold the §41.41(a)(3) hearing. For doing so will prevent the petitioner's and others in Texas due process rights from being violated, protect property rights, and ensure that the respondent produces suitable evidence to show *why* (§41.41(a)(3)) petitioner's home should be included on any appraisal record and not *which* appraisal record it should be on simply due to its location (§41.42).

If the Justices' will permit me to sum it up this way: The right of an inclusion hearing to protect one's Constitutional Homestead, under the 4th Amendment, and to force the State to prove that it has any jurisdictional authority over it is akin to the Constitutional Second Amendment. For if a State denies access to ammunition it has effectively nullified the Second Amendment and the right to being able to use a firearm to protect one's home – otherwise known as the Castle Doctrine. The denial of a right to a hearing has the same effect as the denial to ammunition; the inability of an American to deny access to his private home to any and all intruders: be they a state or county agency attempting to misapply the law, or a physical intruder. Each right would become nothing more than a Constitutional nullity and Property Rights as Americans have known it, or believed in, since before the founding of the Union will cease to exist. In Texas, the administrative Castle Doctrine is known as an inclusion hearing in §41.41(a)(3) enforceable under the 4th Amendment and is as much a right as is the

Second Amendment is to protect one's property. This Court now has the ability to enforce this right under the 14th Amendment or allow it to be laid to rest along with property rights in general; thereby effectively removing it from America's long held "bundle of rights."

In an abundance of caution petitioner does respectfully ask this Court to order the appraisal district to produce, to a judge and the petitioner, documentation that specifically delineates the reason *why*[6] this private home should be included on any appraisal record at least 20 days prior to the inclusion hearing required under §41.41(a)(3) et seq.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: April 17, 2019

[6] Courts have held that the following are valid reasons why a government can intrude onto private property: 1) eminent domain, 2) a police action, 3) public health hazard, 4) a right retained within the land patent, 5) the property is in or doing business or has some other substantial nexus with the state/county, or 6) the owner voluntarily entered the property into that specific governmental jurisdiction.