

NO. 19-5203

ORIGINAL

Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

RUTH TORRES - PETITIONER

vs.

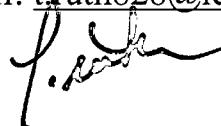
PURSUIT OF EXCELLENCE, INC., ET AL- RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

FIFTH DISTRICT AT TEXAS OF DALLAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Should US Supreme Court resolve denial of due process and equal protections when full release of requested clerk records was denied, then Writs of Mandamus, Injunction & Prohibition were dismissed two (2) days later due to lack of records when unchallenged, timely affidavit of inability to pay is on file and when orders now set new precedence affecting similar situated individuals nationwide?
- II. Should US Supreme Court resolve increasing national issue of use of judicial system to retaliate and violate constitutional rights with over 20 states lacking any protections as well as significant limitations and discrepancies between states with anti-SLAPP legislation?
- III. Should US Supreme Court resolve when lower courts fail to perform duty or abuse its discretion in issuing and allowing orders to stand which violate constitutional rights, when the record was sufficient and which emboldens harm to similar situated pro se and individuals with inability to pay nationwide?
- IV. Should US Supreme Court resolve when the integrity of the judicial system is undermined by order to destroy evidence and remove court records from public view absent compliance with statutorily defined duty?
- V. Should US Supreme Court resolve when lower courts fail to perform duty or abuse its discretion in refusing to grant hearings by Pro Se party for months after motions filing and diligent efforts to schedule or not at all, issuing order prohibiting filing of any documents, then issuing orders within seven (7) days or less of trial or not at all, then issuing and refusing to nullify orders issued during statutorily required stay?
- VI. Should US Supreme Court resolve lower courts issuance of orders striking Entity Answer when jurisdiction is challenged but unanswered and undetermined by the court, even when business entities lack attorney representation, and when claims against business are retaliation for officer of business exercising constitutional right of freedom of speech and participation in government?
- VII. Should US Supreme Court resolve when lower court awards appeals costs against party with unchallenged, timely inability to pay on file, which is contrary to law?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner	<u>Ruth Torres (Pro Se)</u>
	Pursuit of Excellence, Inc.,
	Marie Diaz,
Respondents	Mark Galvan,
	Pursuit of Excellence HR, Inc.,
	Pursuit of Excellence, Northeast, Inc.,
	Pursuit of Excellence Holdings, LLC.,
	Pursuit of Excellence Texas LLC,
	Pursuit of Excellence Texas 2, LLC.,
	Pursuit of Excellence Texas 3, LLC.,
	P4S Consulting, LLC.,
	Cielo Creations, LLC.,
	Cielo Preston Forest, LLC.
	Dallas Fort Worth International Airport Board

REFERENCES:

- Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc. et al, Pursuit of Excellence HR, Inc., Pursuit of Excellence, Northeast, Inc., Pursuit of Excellence Holdings, LLC., Pursuit of Excellence Texas LLC, Pursuit of Excellence Texas 2, LLC., Pursuit of Excellence Texas 3, LLC., P4S Consulting, LLC., Cielo Creations, LLC., Cielo Preston Forest, LLC., et al, are collectively referred to as “POE”.
- Dallas Fort Worth International Airport Board is referred to as “DFW”.
- Fifth Court of Appeals is referred to as (“COA”).

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from the **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at: Ruth Torres v. Marie Diaz, Mark Galvan, Pursuit of Excellence, Inc. Dallas/Ft. Worth International Airport, 05-18-00676-CV (Tex. App. 2018); or,

has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion (orders) of the trial court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 are unpublished.

JURISDICTION

For cases from the **state courts**:

The date on which the highest state court decided my case was April 12, 2019.

A copy of that decision appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

1. In underlying employment case, after employer refused to become legally compliant and warning of reporting of violations, Petitioner retained proof of work performed and employers legal violations (which Respondents allege are their “trade secrets”), reported fire/explosion hazard exposing harm to public and hundreds of workers in 42 story office building, reported illegal acts to government enforcement agencies, informed other workers they were improperly classified in violation of Fair Labor Standards Act, 29 U.S.C. § 203 (“FLSA”) and informed DFW Airport of their contractor, POE’s actions, which provided staffing services as POE’s violations of federal and state law exposed DFW as a co-employer. Employer POE brought claims alleging breach of contract, tortious interference, defamation, misappropriation of trade secrets, HACA, etc. later amending to bring claims against Petitioner’s businesses including a Florida business closed for 5 years prior to filing of claims which never operated or had any contact with the state of Texas and a Texas business which did not exist at the alleged time of causes of action and is only connected as a name included when speaking before the governing body appointed by elected officials to the DFW Airport Board, a government entity.

2. Petitioner initially delayed counter-claims to adhere to strongly held religious beliefs, eventually bringing counter-claims and added parties including DFW,

alleging conspiracy and violations of: ACA, FMLA, TOMA, PIA, TCPA, various state statutes in regards to issuance of \$20+ Million in contracts and various torts.

Question 1

3. Due Process and Equal Protections are guaranteed under U.S. Const. Amend. 14.

Once appellate review is established it must be kept free of unreasonable discriminatory distinctions that can only impede open and equal access to the courts.

Constitutional mandate against discrimination between indigent and rich litigants does not differentiate between civil and criminal cases. *Jones v. Aciz*, 109 R.I. 612 (1972).

4. The denial of records and subsequent dismissal of Writs for lack of adequate record with timely, unchallenged affidavit of inability to pay on file violated Petitioners rights to due process and equal protections guaranteed by the U.S. Const. Amendment 14, further applicable in this case as the underlying orders challenged and relief sought in Petitioners Writs of Mandamus, Prohibition and Injunction involved constitutional rights, including property and privacy rights. Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fourteenth Amendment. U.S. Const. Amend. 14. *Crawford v. Blue*, 271 F.Supp.3d 316 (MA 2017). Intentional infringement on Petitioners rights is further exemplified with intent

to undermine request for rehearing or cure by dismissal of Writs just two days after denial of records and exasperated, by design or accident, by Petitioners failure to receive timely notice of release of order.

5. Petitioner had unchallenged, timely affidavit of inability to pay on file in trial court and COA. Petitioner filed Writ of Mandamus, Injunction and Prohibition disputing 16 state court trial orders. The District Clerk refused to release records requested for Writs alleging inability to pay was not applicable to Writ's but only to Interlocutory and Final Appeals. Petitioner repeatedly moved COA for orders requiring release of all requested records. The District Clerk & Court of Appeals Clerk refused to comply with TRCP 145 and TRAP 20.1, 35.3, and 37.2, contrary to good faith and reasonableness per statutorily defined duty. *C.A. v. Lowndes County Dept. of Family & Children Services*, 93 F.Supp.2d 744 (MS 2000).

6. On October 2, 2018, COA denied Petitioners motions requesting release of full clerk records. The partial records granted by COA was restricted to records released into related interlocutory appeals yet was not satisfactory for records needed for Writs. At the time Petitioner filed last motion for release of records for the Writs, Petitioner was not aware the district clerk had arbitrarily selected which records the district clerk would release in the related interlocutory appeals as the district clerk failed to obtain an order from the COA authorizing only partial release of the Petitioners requested records nor provided notice to Petitioner that only partial records

were released to the related interlocutory appeal cases. Upon Petitioner realizing the clerks also refused to release all requested files in the interlocutory appeals, Petitioner also moved COA for orders requiring the clerk to release records in those cases. COA Dallas refused to perform statutory and ministerial duty to issue order requiring unrestricted release of trial clerk record per TEX. R. CIV. P. 145 and TEX. R. App. P. 20.1, 35.3 and 37.2, which include no restriction on any proceeding nor extend to the clerk or the court any discretion in limiting access to proceedings or records and the notes for which rules specify the intent is to ensure none are deprived adjudication of rights due to inability to pay.

7. On October 4, 2018, COA Dallas denied Petitioners Writs of Mandamus, Prohibition and Injunction based on lack of record, which was due to no fault of Petitioner, allowing all appealed trial orders to stand including void on its face TI and related contempt orders, orders which violate Petitioners constitutional rights and are directly contrary to law. With only two days between the denial for records and the dismissal of Writs, Petitioner was not afforded opportunity to cure.

8. Petitioner did not receive notice of the COA's dismissal of Writs and was completely unaware until on or about January 11, 2019. Petitioner filed for review by Texas Supreme Court on January 21, 2019, which was denied on April 12, 2019.

9. The Texas COA ruling in this case is contrary to every applicable Texas case:

“ Indigency provisions, like other appellate rules, should be liberally construed in favor of a right to appeal yet construed in a manner consistent with their

purposes. See *Jones v. Stayman*, 747 S.W.2d 369, 369-70 (Tex.1987); *In the Matter of C.M.G.*, 883 S.W.2d 411, 413 (Tex.App.-Austin 1994, no writ). The purpose of Rule 20.1 is to allow parties in an appellate court to proceed without advance payment of costs they are financially unable to pay. See TEX.R.APP. P. 20.1(a). Stated another way, **the purpose of the rule is "to make sure that no man should be denied a forum in which to adjudicate his rights merely because he is too poor to pay the court costs."** See *Pinchback v. Hockless*, 139 Tex. 536, 538, 164 S.W.2d 19, 20 (1942) (numerous rules of civil procedure permitting party to prosecute suit through various phases without being required to pay costs are formulated to accomplish same purpose and are entitled to substantially same construction)." *Teague v. Southside*, 257 S.W.3d 726 (Tex. App. 2003).

10. See *Coleman v. Long*, 407 S.W.2d 279 (Tex. App. 1966) (finding it mandatory for a challenge to inability to pay is filed within 10 days to deny appeal, otherwise the case must proceed) as well as closely related case in West Virginia, *Evans v. Sheppard*, 182 W.Va. 259 (W. VA.1989).

11. Despite diligent search, Petitioner can find no ruling, in any jurisdiction, allowing a clerk to act contrary to statute and with discretionary and arbitrary judgment to deny records when unchallenged, timely affidavit of inability to pay for Writs or appeals nor a court order allowing such. The clerks and courts actions demonstrate purposeful intent to interfere with due process. Such obvious error, which has caused Petitioner great and on-going harm is an injustice by which these orders cannot stand. *Childs v. Ballou*, 148 A.3d 291 (Maine 2016).

12. Further, this ruling sets a new and dangerous precedent which impacts all future similarly situated individuals. How quickly bothersome cases by those lacking ability to pay can be disposed by simply denying the record and then dismissing appeals,

writs, or any other procedure, without regard for harm even constitutional violations. The courts resources and discretion to review beyond COA results in what, 90 -99% of appealed cases being denied review? The process being laborious and requiring adequate ability to argue challenging legal points are significant and exhausting barriers by which those abusing the court system for their own agenda are rewarded and emboldened, relying on just these facts.

Question II

13. In support of U.S. Const. Amend. 1, states have enacted Anti-SLAPP statutes meant to extend protection from lawsuits of questionable merit that are often filed to cause fear, intimidate speakers into refraining from criticizing or reporting violations of law, impacting employability and therefore income and reputation, bury them under a pile of attorney's fees and embarrassment until they agree to be quiet because fighting these suits are time-consuming, expensive and exhausting. Anti-SLAPP statutes help to protect the integrity and proper use of the judicial system deterring potential litigants from filing retaliatory lawsuits in the first place and provide quick, effective dismissal to combat such suits.

14. As of June 2019, 29 states have anti-SLAPP statutes: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island,

Texas, Tennessee, Utah, Vermont. The District of Columbia and Guam also have anti-SLAPP statutes. The Washington State statute was declared unconstitutional in 2015. The Minnesota anti-SLAPP statute was declared unconstitutional in 2017. On June 2, 2019, Texas Governor Greg Abbott signed HB 2730 into law effectively gutting Texas' attempted "model" anti-SLAPP statute, Texas Citizens Participation Act ("TCPA") TEX. Govt. Code § 27.001, requiring the claim to be more narrowly "based on" a violation of limited rights, abandoning protections for speech regarding alleged trade secrets, non-disclosure or non-compete agreements, thus allowing employers to intimidate whistleblowers with employment-related suits.

15. The employer-employee or contract worker relationship is one that uniquely provides both opportunity and moral and civil duty to disclose legal violations. The lack of or limitations of anti-SLAPP legislation creates extreme power imbalance undermining moral and civil disclosure due to vulnerability to litigation and all that immediately comes with it, expense, impact to reputation and income because what employer will chance employing a worker which has pending allegations of theft of trade secrets and tortious interference?

16. The scope and application of these anti-SLAPP statutes varies greatly, including process, burden of proof, scope of applicability, impact on discovery process, etc. Some statutes are narrowly written to apply only to actions brought by public applicants against people who have challenged or opposed such applications to government bodies. Other statutes are written to apply to speech seeking to influence

decisions by the legislature or executive branch – and can be narrowly or broadly construed by the courts based on legislative histories and doctrines of statutory interpretation.

17. Under the original Texas Anti-SLAPP legislation applicable in timing to this case, now gutted by HB 2730, was intended to be a “model” Anti-SLAPP legislation and it specifically stated the intent was to be applied liberally and all legal actions extend the deadline for filing dismissal under TCPA. Tex. Civ. Prac. & Rem. Code §27.003(b); *In re Estate of Check*, 438 S.W.3d 829,837 (Tex. App.- San Antonio 2014, no pet.). HB 2730 abandons and limits protections such as communications for purposes of association, whistleblowers and employer-employee related suits, contrarily provided by California. West’s Ann.Cal.C.C.P. § 425.16. In California’s anti-SLAPP statute the defendant is required to make a *prima facie* showing that the plaintiff’s suit arises from an act by the defendant made in connection with a public issue in furtherance of the defendant’s right to free speech under the United States or California constitution, and the burden then shifts to the plaintiff to establish a reasonable probability that the plaintiff will prevail on his or her claim. U.S.C.A. Const.Amend. 1; West’s Ann.Cal.C.C.P. § 425.16. *Mello v. Great Seneca Financial Corp.*, 526 F.Supp.2d 1024 (CA 2007).

18. New York’s law also does not provide the same types of benefits as California’s. It does not stay discovery, nor does it mandate an award of attorney’s fees and

costs. Instead, a successful moving party may, at the court's discretion, recover damages, including costs and attorney's fees, provided that there is a demonstration that the lawsuit was "commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law."

19. Per *Hauxhurst v. Austin's Boat Tours*, No. 03-17- 00288-CV, 2017 WL 1415109 at *3 (Tex. App.—Austin March 22, 2018, n.p.h.) (**motion for sanctions is a "judicial pleading or filing that seeks legal or equitable relief" and, thus, a "legal action" subject to dismissal under the TCPA**); *In re Estate of Check*, 438 S.W.3d 829, 836 (Tex. App.—San Antonio 2014, no pet.) (same). *In re Estate of Check*, 438 S.W.3d 829, 836 (Tex. App.—San Antonio 2014, no pet.) (**observing that "numerous substantive 'pleadings' filed during the course of litigation, e.g., motions for sanctions, motions for summary judgment[,] . do in fact seek legal or equitable relief" and therefore would qualify as "legal actions" under TCPA** but declining to construe amended petition as "legal action" for purposes of extending TCPA deadline for filing motion to dismiss on ground it would lead to absurd results); see also *In re Elliott*, 504 S.W.3d 455, 465 (Tex. App.—Austin 2016, orig. proceeding) (holding that "TCPA's broad definition of 'legal action' encompasses [non-movant's] Rule 202 petition" seeking pre-suit deposition).

20. Therefore, when POE moved the court to strike Entity Answer, orally moved for default judgements, every motion or request for relief, such as holding Petitioner in contempt for void-on-its-face TI, filed by POE or Petitioner, qualified as legal acts making claims subject to dismissal under TCPA. POE's use of the void-on-its-face TI in the related case before Judge Williams to tamper with witnesses and use as cause to withhold discovery in that related case, under the current Texas Anti-SLAPP should be considered "legal actions" for which TCPA would be applicable.

21. On July 2, 2019, on Petitioners Interlocutory Appeal before COA, Case No. 05-18-00676-CV, the court denied appeal finding Petitioner did not assert technical issue caused one day delay in timely filing and therefore not preserve on appeal, although reporter record includes Petitioners assertion of TRCP 21(f)(6) due to technical difficulty in filing motion at hearing. The COA also refused to apply the current active state anti-SLAPP legislation.

22. Further, POE used the void-on-its-face TI disputed in this case, to tamper with witnesses and on January 7, 2019, cited the TI as cause to continue withholding discovery from related case before Judge Williams (DC-17-08581) in responding to Petitioners Motions for Contempt & Sanctions, as already asserted before Judge Goldstein in withholding discovery (trial basis of this Writ: DC-16-08711, which is on statutory hold). Therefore, these NEW "legal actions" provide Petitioner ongoing legal right to dismissal under TCPA which re-starts the filing deadline as soon

as the stay on this case is lifted. Expecting the trial courts continued denial to dismiss, this case will again go through the appellate courts.

23. Recent rulings including *Stephanie Clifford v. Donald J. Trump*, 2:18-cv-06893, (CA 2018), *Knight First Amendment Institute, et al v. Donald J. Trump, et al*, 18-1691-cv, (NY 2019) exemplify the rise and impact of anti-SLAPP legislation. With over half the country using some form of anti-SLAPP, leaving approximately 20 states without protections, the various states applying very different and contradictory terms, inconsistent rulings, abuse of and challenge to the integrity of the judicial system is ripe absent action by this Honorable Court.

24. Additionally, there is a significant trend of employers use of non-compete and non-disclosure agreements to attempt to hide legal violations, typical instruments in both of employees and 1099 contractors. Whistleblowers will no longer have easy remedy to limit themselves from harm under the new revisions per Texas' HB 2730. The promotion of personal and civic accountability, of "see something, say something", is critical to social and political interests. The failure to address mechanisms that threat or prohibit these issues are counter to public interests.

Question III

25. COA's dismissal of Petitioner's Writ's therefore allows trial orders to stand, including orders for which the record was sufficient, orders by which the trial court's actions, or failure to act, was corrupt or malicious or outside of and beyond

the scope of the courts duties, directly created state harm violating Petitioners constitutional rights, orders which are null in being issued during statutorily required stay and sends Petitioner back to a trial court which has blatantly abused its authority and is determined to enforce and threaten Petitioner with incarceration. Detaining Petitioner against her will via orders to submit to 12 hours of deposition in violation of TRCP 199.5(c) (which did in fact occur), refused to allow Petitioner to amend pleading or file any motions or documents in the court and in doing so held Petitioner in contempt.

26. Void-on-its-face Temporary Injunction (“TI”), which was gained due to trial court orally ordering Pro Se Petitioner to agree, ordered Petitioner to submit to unreasonable search and seizure of personal property and invasion of privacy via court appointed agent, “IT Expert” making the IT Expert an agent of the government violating U.S. Const. Amend. 4.

27. In this case, the trial court wholly and exclusively accepting Respondents unsupported claims that Petitioner took Respondents “trade secrets” ignoring the facts and supporting evidence provided to the contrary and relying solely on Respondents conclusory statements and claims that fail to even satisfy the elements of the claims after THREE years of laborious litigation with Respondents answers to Motion to Dismiss and Summary Judgment still failing to even satisfy the elements of any one of Respondents claims, yet the court refused to dismiss. The COA wholly adopted this position failing to provide de novo review of this issue in the

Mandamus proceeding by denying records and then dismissing further exemplified in the background included in the interlocutory appeal Opinion denying TCPA.

28. In the interlocutory appeal under TCPA (05-15-00676-CV) the appellant court also denied finding the pleading was untimely when one day late on newly added claims in Respondents Second Amended Original Petition, although Petitioner informed the court the one day late was due to technical difficulty with e-file system (an issue recognized in Tex. R. Civ. P. § 21 (f) (6)). The COA refused to recognize all other timely “legal actions” defined under TCPA by determining that Respondents pleadings only sought to dismiss the causes of action, not the motion and therefore were not applicable and unnecessary to determine the merits of the pleading. However, TCPA does not specify this restriction or requirement to move against dismissing the “legal actions” not the claim and such would leave the underlying claim intact, which is contradictory to legislative intent.

29. The mere fact that a state has authorized a search or seizure does not render it reasonable under U.S.C.A. Const. Amend. 4., *Sandoval v. County of Sonoma*, 72 F.Supp.3d 997 (CA 2014), *Soldal v. Cook County, Ill.*, 113 S.Ct. 538, (1992), *In Re: J & S Properties, LLC*, 872 F.3d 138 (2017), *U.S. v. Place*, 462 U.S. 696 (1983), *Silverman v. United States*, 365 U.S. 505 (1961), *Katz v. United States*, 389 U.S. 347 (1967).

30. In this case, the court, via agent, took possession of Petitioners personal property

for seven (7) weeks, invaded her privacy in making a mirror image of all contents of Petitioner's electronic devices. Petitioner submitted and property was physically damaged, contents destroyed and the court refused to order its agent to disclose what actions taken with Petitioners property infringed on constitutional rights. Despite multiple pleadings and submission of supporting case law, the court refused to strike or amend the TI.

31. If a temporary injunction is void, it will not support an order of contempt for non-compliance. *Ex parte Lesher*, 651 SW 2d 734, 736 (Tex. 1973). In *Lesher*, a temporary restraining order was void on its face because the trial court waived the bond requirement. The Texas Supreme Court held because order did not comply with Rule 684, which is MANDATORY, it as void on its face and “will not support an order of contempt.” Id at 736.

32. POE and the court argue that since it was an “agreed” TI compliance with statute is moot. Yet, “These procedural requirements are mandatory, and an order granting a temporary injunction that does not meet them is subject to being declared void and dissolved.” *Qwest*, 24 S.W.3d at 337; see *InterFirst Bank San Felipe, N.A. v. Paz Constr. Co.*, 715 S.W.2d 640, 641 (Tex. 1986) (stating that requirements of Rule 683 are mandatory and must be strictly followed); *Conlin*, 419 S.W.3d at 686 (aggregating cases).

33. Further, the Fifth COA found in *The City of Houston v. Downstream Environmental, L.L.C*, NO. 01-13-01015-CV, that although the parties agreed to a TI, it is void as it failed to comply with TEX. R. CIV. P.

34. Per *Ex parte Wilkins*, 665 S.W.2d 760,761 (Tex.1984); see *Ex parte Durham*, 921 S.W.2d 482,486 (Tex. App.-Corpus Christi 1996, orig. proceeding). *Ex parte MacCullum*, 807 S.W.2d 729,730 (Tex.1991); *Ex parte Price*, 741 S.W.2d 366, 367 (Tex.1987); *Ex parte Padron*, 565 S.W.2d 921,924 (Tex.1978); *In re Sellers*, 982 S.W.2d 85,87 (Tex. App.-Houston [1st Dist.] 1998, orig. proceeding)) Contempt orders MUST be in writing, not oral, AND include command language to create an order enforceable by contempt. See *Ex parte Goren*, 595 S.W.2d 841, 845 (Tex. 1979) (orig. proceeding); *Ex parte Padron*, 565 S.W.2d at 924; see also *Ex parte Duncan*, 62 S.W. 758, 760 (Tex. Crim. App. 1901).

35. In this case, no bond was set for the TI. The contempt order is reliant on the TI and based on an act not specified in the TI, and an oral order. The supplemental contempt order was issued for an act which had already occurred prior to issuance. The TI and contempt orders infringe upon Petitioners freedom of speech, participation in government, right to association and petition, constitutional rights protected under the U.S. Const. Amend. 1 and 4, and TCPA.

36. The record was sufficient as the trial orders were included as Writ exhibits and on their face reveal their failure to adhere to law.

37. Petitioner moved the trial court for sanctions multiple times against Respondents and their counsel for multiple constitutional, state, statutory and rules violations including in regards to discovery: 176.3(b), 176.7, 199.2, 199.4, 199.5, 200.1, 200.3(a) and (b), 205.2, 205.3, 501.4(d), to no avail, the court denied or refused to hear or issue order.

38. Per U.S. Const. Amend. 1 and Texas Constitution, Article 1, Sec. 6. Petitioner is entitled to freedom of worship, “none shall control or interfere with rights in matters of religion and imposes a duty to establish laws necessary to protect peaceable enjoyment of worship.”

39. On April 23, 2016 POE issued Notice of Intention to Take Oral Deposition from the non-parties, Petitioners clergy. Subpoenas were outside of discovery period, lacking any cause of action as basis, absent agreement to discovery outside amended discovery period and lacking “reasonable time before the deposition is taken” per Texas Rules of Civil Procedure 199.2, 205.2., and 205.3(a). No Further, communications with clergy are PRIVILAGED, not admissible under Texas Rules of Evidence rule 505. Petitioner’s clergy does not utilize a computer or email, therefore emailing clergy’s assistant merely as a venue to communicate with clergy are privileged.

40. Per Tex. R. Civ. P. 205.2, notice to produce is required at least 10 days **before** service. POE issued subpoenas on April 16, 2018 for oral deposition within **seven days** then accepted affidavit instead without providing questions nor issuing notice to Petitioner in advance, perjuriously filing notice with certification on April 23, 2018. Petitioner was unaware clergy had been served a week prior and POE already had possession of privileged communications when Petitioner moved for protective order on April 26, 2018.

41. Clergy's sworn affidavit provided to avoid deposition, reveals POE's questions. POE is apparently threatening some type of tort action against the church for Petitioner seeking and receiving advisement in applying Biblical Principles to the situation of Petitioner being a party to this litigation.

42. Respondents and their attorney's actions are illegal, immoral and unconscionable in interfering with religious relationship with clergy and church, to seek to use such to interfere with and manipulate Petitioner's application of Biblical Principles, principles and relationships to try and force Petitioner to cease disputing this case, has and continues to cause significant mental, emotional, and physical pain and anguish to Petitioner's life and that of her minor child, exponentially more than all other harm caused in this case.

43. As a result of these improper subpoenas, attorney for clergy noticed Petitioner not to communicate with her clergy any further as subpoena's made

clergy third-party witness to the case and any such communications would result in Petitioners ex-communication from the church! So now, the attack to harm Petitioner and her family in every way cannot be discussed with clergy and interrupts the relationship between Petitioner and her church or any church or clergy because Respondents counsel alleged Petitioner “brought this on herself by naming clergy as individual having information on case during deposition”. Respondents thereby put Petitioner on notice that if Petitioner discussed the case with any clergy, Petitioner would have to update disclosure thereby making any new clergy also 3rd party witnesses to the case. This threat impedes Petitioner from seeking further advisement or prayer from any clergy on this matter because if a mega church with an internationally known pastor would submit to such demands, Petitioner dare not expose another clergy to legal attack.

44. Petitioner made commitment to religious convictions clear from case beginnings. Respondents and their counsel interfered with Petitioner’s religious freedoms resulting on Petitioner leaving the church and prevented Petitioner from seeking religious advisement from any clergy. Respondents and their counsel are the direct cause of Petitioner and her daughter leaving the church, the church which Petitioner left her family in Miami and moved across the country to rejoin, the church Petitioner’s life and that of her daughter had centered around for years. POE and their attorneys conduct violated Petitioner’s and her daughter constitutional rights to freedom of speech. *Caney Hanger, LLP v. Byrd*, 467 S.W.3d 477 (TEX. 2015). The

trial court's refusal to grant Petitioners Motion for Contempt and Sanctions and the COA's dismissal of Writs have allowed ongoing constitutional violations from April 2018 to present is a clear abuse of discretion and actions which undermine the justice in the judicial system.

Question IV

45. Court filings are required to be publicly available absent specific circumstances and/or with redaction per Federal Rules of Civil Procedure, Title II, Rule 5.2 and Texas Rule of Civil Procedure §76a. The public has a right to have access to these records.

46. The trial court's contempt order removed records from public access absent public notice or hearing as required by statute and demanded Petitioner destroy relevant and admissible evidence, threatening incarceration for failure to do so. The District Clerk executed the trials court's order removing numerous records from public view. The courts and clerks have a statutory duty to ensure public access to records and are accountable for doing so. *C.A. v. Lowndes County Dept. of Family & Children Services*, 93 F.Supp.2d 744 (MS 2000), *Doe v. Wake County*, 826 S.E.2d 815 (NC 2019). The records were sufficient to determine this issue in Petitioners Writ of Mandamus.

Question V

47. Further examples of denial of due process to Pro Se Petitioner includes the facts motions were denied hearings for months with some hearings were never set for hearing despite Petitioners diligent requests and contact to court clerks. The court orally ordered Petitioner not to file anything further with the court and held Petitioner in contempt for filing request for hearing on filed motions and for issuance of orders outstanding for over 30 days. Trial orders were not issued for months after hearing, issued less than seven days before trial or never issued and then the court issued six (6) orders during statutorily required stay, including allowed interlocutory appeal and motion for recusal, with recusal denied hearing!

48. If there is no hearing granted, no transcript recorded, no order issued, or the order is issued seven (7) days or less prior to trial the party can not properly report ready for trial. If Petitioner didn't file motion, complying with courts oral order, there is no record and no preservation for appeal. Petitioner filed and was found in contempt for petitioning the court contrary to oral order. No matter what Pro Se Petitioner has done, the court was not pleased and Petitioner was significantly harmed.

49. Following Petitioners submission of appeal on Order Granting Plea to Jurisdiction and Verified Motion for Recusal, stay applied per TEX. CIV.PRAC. & R. §51.014 (b). Per TEX. PRAC. & REM. Code §51.014 (b); *See In Re Marriage of J.B.* 326S.W.3d 654,662 (TEX. App.-Dallas 2010, pet. dism'd). “An order signed during a stay is a ‘legal nullity.’” Per TEX. R. CIV. P. §18a (f): (2) (A) the judge must

take no further action in the case until motion has been decided, except for good cause stated in writing or on the record.

50. Proceedings have shown clerks enter items into the record on the date and sequential order at their discretion. Clerk entries do not trigger notice to parties nor are orders time stamped as are party e-filings. The e-file system used by parties automatically issues notice entering docket after approval of trial clerk, at that time, not the time of submission. The clerks followed orders of the court, even when contrary to statute as evidenced in the removal of records from public view. This undermines transparency and legitimacy when orders are published AFTER notice of appeal and recusal motion.

Question VI

51. POE filed knowingly false claims against Petitioner's entities, reasonable intent is concluded to gain default judgments to undermine any potential jury award on counter-claims. The trial court ordered Petitioners motion challenging jurisdiction stricken. One entity, HR Strategic Consulting, Inc. never operated in the state of Texas nor had any contact with Texas and was DISSOLVED five years prior to claims, which cannot stand per West's F.S.A. §§ 607.1405 (3) and 607.1403.

52. The HR Doctor, LLC. was established over 11 months AFTER the work relationship between Petitioner and Respondent ended on June 28, 2016 and after POE's alleged causes of action occurred. Respondent's sole basis for bringing claims

against The HR Doctor, LLC is because Petitioner included this business name when completing a form to speak before the DFW Airport Board, a government board.

53. POE failed to establish the court's jurisdiction for either entity. The court did not determine it had jurisdiction prior to or following its order to strike. Respondents then filed a complaint of unauthorized practice of law seeking to further harm Petitioner.

54. This is a constitutional and public interest issue if a party can violate constitutional rights using the court system to attack an entity officer to gain default judgments, even when the court lacks jurisdiction, simply because of inability to employ counsel especially when such inability is caused by party bringing claims!

55. The U.S. Supreme Court has ruled that corporations may appear in the federal courts only through licensed counsel (*Rowland v. California Men's Colony*, 506 U.S. 194 (1993)), and courts in other states have also ruled this way (8 ALR 5th 653) including Texas, per case law holding that "[g]enerally a corporation may be represented only by a licensed attorney." However, "generally" means there can be and SHOULD BE exceptions to this rule.

56. In *Moore By and Through Moore v. Elektro-Mobil Technik GmbH*, 874 S.W.2d 324 (Tex. App.- El Paso, 1994), the court found a party enters a general appearance whenever it invokes on any question **other than the court's jurisdiction**. "Once jurisdiction is challenged, **the court cannot proceed** when it clearly appears that the

court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." *Melo v. US*, 505 F2d 1026. Also See *Bradford v. Bradford*, 971 S.W.2d 595 in the Court of Appeals of Texas, Dallas. March 26, -1998, *Id.* (citing *Serna v. Webster*, 908 S.W.2d 487, 492 (Tex. App. San Antonio 1995, no writ).

57. Therefore, since a party's appearance as to a question of the court's jurisdiction does NOT count as appearance, Petitioners appearance challenging jurisdiction on behalf of the entities or to argue the fact the claims are retaliation violating TCPA, should not be prohibited although Petitioner is not an attorney. Jurisdiction should be required PRIOR to any ruling or striking answer challenging jurisdiction.

58. The judiciary system should not be abused to violate or retaliate against the exercise of constitutional rights, even against entities, even due to lack of attorney. This injustice can only be effectively impaired by inclusion with anti-SLAPP legislation.

Question VII.

59. Per FED. R. APP. PROC. §§ 24 and 39, and TEX. R. APP. PROC. § 43.4. **Judgment must not require payment of costs by a party entitled to proceed without payment under Rule 20.1, and a provision in the judgment purporting to do so is void.**

60. COA dismissed related case 05-18-00546-CV on July 3, 2018, which was filed prematurely. Opinion issued determined lack of jurisdiction after denying motions to consolidate with Writ's, share records, rehearing and time extension. Mandate issued October 8, 2018 awarding costs against Petitioner, with unchallenged, timely inability to pay on file, contrary to statute.

REASONS FOR GRANTING THE PETITION

61. Per 42 U.S.C.A. § 1983., the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. When Government official's conduct violates "clearly established law," that official will not be protected by qualified immunity from suit under § 1983 for violating a plaintiff's constitutional rights, if there is sufficient precedent at time of official's action, factually similar to plaintiff's allegations, to put official on notice that his or her conduct is constitutionally prohibited. *In Re: J & S Properties, LLC*, 872 F.3d 138 (2017).

62. Writ is necessary in this case due to numerous national public interest issues affecting all individuals seeking to exercise constitutional rights of freedom of speech, right to association, petition, and participate in government, all

whistleblowers, all indigent in forma pauperis individuals and especially pro se individuals, violating constitutional laws and undermining the integrity of the judicial system.

63. COA's dismissal of Writ's due to lack of record denied due process and equal protections, due to no fault of Petitioner. Writs should have been well taken as no response was issued by Respondents. The COA's ruling is so contradictory to existing Texas cases, even those by the same COA, and no current and directly contradictory cases could be found nationwide. The ruling in this case sets new and dangerous precedents of denying records to dismiss appeals and writs for indigent individuals and in establishing case law which in effect, authorizes clerk's discretion to comply with statue, to differentiate application of unchallenged inability to pay on Writs and interlocutory appeals from final appeals and yet still exercise arbitrary discretion in selection as to what records will be submitted on appeals absent notice to the requesting party or notice or order of the court. This issue harms Petitioner as well as all similarly situated individuals nationwide.

64. The underlying case was initiated after Petitioner exercised moral and civil duty and constitutional right of free speech, including reporting a fire / explosion hazard, with intent to cause fear, prevent further disclosure of legal violations and retaliate against Petitioner. Petitioner has and continues to suffer extreme and irreparable

harm caused by Respondents violation of Petitioners constitutional rights and the state created harm including:

- Freedom of Religion
- Unreasonable search and seizure of personal property
- Invasion of privacy
- Freedom of Speech to report violations of law, participate in government
- Denial of due process by denying ability to amend, file pleadings to the court, to have pleadings heard and orders issued, to obtain discovery or sanctions, etc.

65. The lack of a federal unifying anti-SLAPP legislation as well as lack of or differing state anti-SLAPP legislation allows for continued abuse of the judiciary system to violate constitutional rights undermining and punishing the exercise of moral and civil duty to report illegal acts. This case is the epitome of abuses that should have been protected under anti-SLAPP. Respondents initiation of suit was strategically preemptive and exceptionally successful at harming Petitioner, yet it pales in comparison to the greater injustice directly caused and allowed by the courts. Therefore, the courts became an agent of parties seeking injustice. Despite diligent efforts, the court has refused justice to Petitioner, pro bono and law school legal clinic decline to assist, government enforcement agencies refused to get involved beyond their very limited scope, and even the judicial complaint board dismissed Petitioners complaint. The issues present in this case and the level of their harm coupled with the lack of resources available disproportionately and adversely impacts parties with inability to pay sets precedent and emboldening repetition of such violations.

66. This is a growing trend to use the courts to use the judicial system to retaliate against whistleblowers, including the use of employment or other non-disclosure agreements to hide violations of law, and infringe on all manner of constitutional rights allowing for abusive court proceedings which are expensive, lengthy, exhausting and undermine the trust and integrity of the judicial system, allowing for abuse by the wealthy at the expense of public interests. Currently there is no Federal SLAPP law. At least 29 states and 2 US Territories have enacted anti-SLAPP legislation, however the power and level of protection provided by anti-SLAPP laws varies widely by jurisdiction. As these constitutional issues are such important national issues, these variances should be resolved by the US Supreme Court.

67. Petitioner has already suffered great harm by the trampling of her constitutional rights and absent the US Supreme Court's interference, Petitioner will continue to suffer irreparable harm precluding an adequate remedy by appeal. Further, via the appeals court's allowing these orders which violate Petitioners constitutional rights to stand, it reinforces and emboldens other parties and attorneys to follow these examples and thereby violate the constitutional rights of other vulnerable and similarly situated individuals whom cannot afford an attorney.

68. The ability to bring claims against a business and obtain default judgment when the claims are retaliation for an individual exercising their constitutional rights of

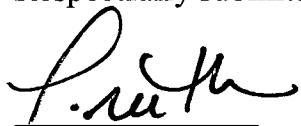
free speech and participation in government, even when the court lacks jurisdiction, simply because the individual lacks the financial ability to employ legal counsel due to offending parties retaliatory actions, is also a matter which affects other similar situated individuals and is a public policy issue with nationwide implications.

CONCLUSION

For obvious errors, which have deprived Petitioner of fair trial and resulted in such a serious injustice that, in good conscience and protecting the integrity of the judicial system, the orders cannot be allowed to stand,

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully submitted,



Ruth Torres

Date: July 11, 2019