NO. _____

In the Supreme Court of the United States

JOHN CHAMBERS,

Petitioner,

V.

STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari to the
Texas Thirteenth Court of Appeals

PETITION FOR WRIT OF CERTIORARI

John T. Hunter*
HUNTER, LANE & JAMPALA
310 S. St. Mary's Street
Tower Life Bldg. – Suite 1740
San Antonio, Texas 78205
Phone: (210)-202-1076
Fax: (210)-880-6162
john@hljdefense.com

Chad P. Van Brunt

**Counsel of Record*

QUESTION PRESENTED

1. Whether the Court of Appeals violated the Due Process Clause of the Fourteenth Amendment by making an unforeseeable and retroactive judicial expansion of the Texas Tampering With a Governmental Record statute.

2. The Texas Tampering with a Governmental Record Statute contains a statutory defense to prosecution that requires acquittal if the false entry could have no effect on the government's purpose for requiring the record. As a matter of law, the government had no legal right to or purpose for the records at issue. By concluding that the evidence was nevertheless legally sufficient, the did the Court of Appeals violate the Due Process Clause of the Fourteenth Amendment by impermissibly shifting the burden of proof on an essential element of the defense to the accused?

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

Page

APPENDIX

TABLE OF AUTHORITIES

CASES Page

STATUTES

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals for the Thirteenth District of Texas, unpublished, *Chambers v. State*, No. 13-16-00079-CR, 2020 Tex. App. LEXIS 2946 (Tex. App. – Corpus Christi 2020, pet. ref'd) (*Chambers III*), appears at page 1 of the appendix hereto. The Texas Court of Criminal Appeals' refusal of John Chambers Petition for Discretionary Review, *Chambers v. State*, PD-0451-20, (Tex. Crim. App. 2020), appears at page 12 of the appendix hereto. The order from the Texas Court of Criminal Appeals denying Petitioner's Motion for Rehearing appears at at page 13 of the Appendix hereto. The Texas Court of Criminal Appeals' opinion on discretionary review prior to remand, *Chambers v. State,* PD-0771-17, 580 S.W.3d 149 (Tex. Crim. App. 2019) (*Chambers II*), appears at page 14 of the appendix hereto. The Opinion of Judge Slaughter, joined by Judge Yeary, dissenting from the Judgment of the Court of Criminal Appeals appears at page 39 of the Appendix hereto. The opinion of the Thirteenth Court of Appeals giving rise to that grant of discretionary review, *Chambers v. State,* 523 S.W.3d 681 (Tex. App.—Edinburg 2017), *aff'd in part & rev'd in part,* 580 S.W.3d 149 (Tex. Crim. App. 2019) (*Chambers I*) appears at page 52 of the appendix.

JURISDICTION

The date on which the Texas Court of Criminal Appeals refused the Petitioner's case was September 16, 2020. A copy of the court's refusal of discretionary review appears at page 12 of the appendix hereto. The Petitioner timely moved for reconsideration of the refusal, which was denied on October 28, 2020. [Appendix at 13]. The Jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). This Petition is filed pursuant to this Court's March 19, 2020 COVID-19 order extending the filing deadlines for all petitions for writs of certiorari due on or after the date of that directive.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment states, in pertinent part:

> Nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

John Chambers was the chief of police for a small municipality called Indian Lakes, which sits on an oxbow lake approximately ten miles north of Brownsville, Texas. The entire community is little more than 1,000 yards wide, and predominately consists of boat houses. Its average population consists of around 600 individuals. [RR Vol. 12 at 8].

Because of its size and corresponding budgetary limitations, Indian Lakes' police department was typically staffed by only one or two paid employees: the chief of police and at times one assistant officer. All other positions in the department consisted of appointed, unpaid reserve officers. [RR Vol. 12 at 9-10]. Many of these volunteers were licensed peace officers, although such individuals are not legally required to be licensed police:

> (a) *The governing body of a municipality may provide for the establishment of a police reserve force.*
> (b) *The governing body shall establish qualifications and standards of training for members of the reserve force*.
> (c) The governing body may limit the size of the reserve force.
> (d) *The chief of police shall appoint the members of the reserve force. Members serve at the chief's discretion.*
> (e) The chief of police may call the reserve force into service at any time the chief considers it necessary to have additional officers to preserve the peace and enforce the law.
> (f) *A member of a reserve force who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties.*
> (g) *An appointment to the reserve force must be approved by the governing body before the person appointed may carry a weapon or otherwise act as a peace officer.* On approval of the appointment of a member who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, *the person appointed may carry a weapon only when authorized to do so by the chief of police* and only when discharging official duties as a peace officer.

TEX. LOCAL GOV'T CODE § 341.012 (emphasis added); *see also* TEX. OCC. CODE § 1701.001(6) (defining a reserve law enforcement officer as, *inter alia,* a person appointed to serve in that capacity under Section 341.012 of the Local Government Code); [Appendix at page 31 *Chambers II,* 580 S.W.3d 149, 158-59 (Tex. Crim. App. 2019).

The Texas Commission on Law Enforcement ("TCOLE") is the licensing agency for the State of Texas that issues licenses to and regulates licensed peace officers and the police departments that employ them. The Commission audits records relating to a wide variety of law enforcement issues, including officer training certifications.[1] In 2015, Agent Derry Minor visited the Indian Lakes Police Department to conduct a "partial audit" of its records. [RR Vol. 10 at 78]. That audit revealed that the department did not have firearms qualification records for eight of its reservist officers. [RR Vol. 10 at 79]. Agent Minor advised Chief Chambers of this and instructed him to submit records proving that the officers had qualified for weapons training within thirty days. [RR Vol. 10 at 69].

Unbeknownst to Agent Minor, the Texas Commission on Law Enforcement had no legal authority to require Chief Chambers to produce these firearms qualification records, because Indian Lakes had no legal obligation to require its appointed reservists to demonstrate firearms proficiency. The Texas Occupations Code only places a firearms training requirement for *employed* peace officers, not *appointed* volunteers:

> An agency that employs one or more peace officers shall designate a firearms proficiency officer and require each peace officer the agency *employs* to demonstrate weapons proficiency to the [department] at least annually. The agency shall maintain records of the weapons proficiency of the agency's *peace officers*.

[1] Prior to 1996, the Commission required departments to mail these records to its office in Austin, Texas. Since 1996, however, officer training records are kept by the department for a traveling agent to review on a periodic basis. [RR Vol. 10 at 80].

TEX. OCC. CODE 1701.355(1) (emphasis supplied). While the interpretation of this statute was heavily contested at the trial of the case, the Texas Court of Criminal Appeals fully endorsed the interpretation advanced by Chief Chambers. The Texas Commission on Law Enforcement "did not have the right or duty to require the [firearms qualification] records, and the records were not required by law to be kept. *Chambers v. State,* 580 S.W.3d 149, 159-60 (Tex. Crim. App. 2019) [Appendix at 30].

Advised by Agent Minor that he needed to correct this purported records deficiency, Chambers instructed reservist officer Fred Avalos to create that documentation. Mr. Avalos testified he was concerned by the Chief's request. Instead of carrying it out, he went to meet with TCOLE agents to report that he'd been instructed to falsify the records. The Commission offered Mr. Avalos the verbal promise of immunity from prosecution if he would go ahead and falsify the documents. [RR Vol. 11 at 32-33]. Ultimately, Avalos created fourteen false qualification records that bore the names of various individual reservists but listed a date of qualification where some of the officers had not attended the firing range, and listed Chief Chambers' gun instead of their own personal weapons. Chief Chambers subsequently submitted these documents to TCOLE.

The Cameron County District Attorney's Office obtained an indictment against Mr. Chambers alleging fourteen (14) counts of Tampering with a Governmental Record pursuant to Section 37.10(a)(1) of the Texas Penal Code. Each count, in pertinent part, alleged that Chambers had, with the intent to harm or defraud the State of Texas, knowingly made a false entry in a governmental record, to wit: a

firearms qualification record. Because each count alleged the additional element of "with the intent to harm or defraud," each count of the indictment charged a state jail felony, which carries a punishment of 180 days to two years in the state jail facility and up to a $10,000.00 fine.

On direct appeal to the Thirteenth Court of Appeals in Edinburg, Texas, Chief Chambers argued that the evidence was legally insufficient to sustain the conviction. First, he contended that the records at the heart of the matter were not governmental records because TCOLE had no legal authority to require them, and he had no legal obligation to keep them. For the same reason, he further contended that he was entitled to a rendered acquittal because the evidence was legally insufficient to refute the defense to prosecution contained within Section 37.10(f) of the Texas Penal Code:

> It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

TEX. PENAL CODE § 37.10(f). Lastly under the heading of legal sufficiency, he argued that the evidence was legally insufficient to support the felony conviction, because there was no evidence to support a finding of guilt on the element of "with the intent to harm or defraud." He also argued that the trial court erred in refusing to instruct the jury on the provisions of the local government code that precluded TCOLE from requiring the qualification records in the first place.

The Edinburg Court of Appeals affirmed Chief Chambers' convictions. [Appendix at 52]. In so doing, the Court of Appeals held that the question of whether the qualification records were legally required to be kept was irrelevant. Under Texas

law, a government record is "anything belonging to, received, by, or kept by government for information" or "anything required by law to be kept by others for information of government." Tex. Penal Code § 37.02(a)&(b). Because Indian Lakes police is a governmental entity, the Edinburg court reasoned, the false records were governmental records the moment they were created, irrespective of whether they were legally required by law to be kept. [Appendix at 59]. Declining to consider Chief Chambers' arguments concerning the Section 37.10(f) statutory defense,[2] the court in Edinburg held:

> Though the [statutory defense] appears to presume that the government has some 'purpose for requiring' the record that was falsified, there is no language anywhere in the statute explicitly stating that the record must be 'required' by a government entity in order for the record to qualify as a 'governmental record.' In any event, the defense set forth in section 37.10(f) serves as a safety valve that would generally prevent conviction in cases where the record at issue, though kept by a government entity 'for information,' is insignificant or otherwise unrelated to the entity's governmental function. The existence of the section 37.10(f) defense therefore undercuts Chambers' argument that a broad interpretation of 'governmental records' would lead to an absurd result.

Id. The Court of Appeals further concluded that Chambers was not harmed by the trial court's failure to instruct the jury that TCOLE had no legal authority to require the production of these qualification records, and that the evidence was sufficient to support a finding that Chambers acted with the intent to harm or defraud. [Appendix at 60; 65].

---

[2] Petitioner's first brief to the Edinburg Court of Appeals in 2017 did not fully delineate between legal insufficiency arguments pertaining to the elements of the criminal offense and the elements of the statutory defense to prosecution. This delineation was made more starkly in his reply brief. The Court of Appeals deemed this insufficient to raise the issue of sufficiency concerning the defense. [Appendix at 59, fn. 4]. The Court of Criminal Appeals disagreed, remanding the case to the Court of Appeals to fully address Chambers' legal insufficiency claim with respect to the statutory defense. *Chambers II,* [Appendix at 37]

Chambers filed a petition for discretionary review, which was granted by the Texas Court of Criminal Appeals. Although the court agreed that firearms qualification records were governmental records, it reversed on three important issues. First, the Court of Criminal Appeals held that the evidence was legally insufficient to support a felony conviction because there was no evidence of an intent to harm or defraud. [Appendix at 34]. The court also held that Chambers' assessment was correct – the Texas Commission on Law Enforcement had no legal right, and thus Chief Chambers had no legal duty, to require firearms qualifications from the Indian Lakes Police Department because it was an appointed reservist police force. Most importantly, it held that the Court of Appeals had failed to consider the sufficiency of the evidence with respect to the Section 37.10(f) statutory defense. In remanding the matter to the Court of Appeals, the Court of Criminal Appeals noted:

> "In effect, as part of its interpretation of the [tampering] statute, the court of appeals acknowledged that the governmental purpose of the records is treated as a defensive issue, but then it did not address Appellant's argument that the State's evidence was insufficient to overcome that defensive issue.

[Appendix at 35].

On remand, the Edinburg Court again affirmed Chambers' convictions – albeit now reduced to misdemeanors by virtue of insufficient evidence of an intent to defraud. [Appendix at 10]. Assuming without deciding that Chambers had met his burden of production under the defense, the court held the evidence nevertheless legally sufficient:

> [A] rational juror could have concluded beyond a reasonable doubt that TCOLE, through its agent, actually 'required' the records, even though it technically lacked legal authority to do so.

[Appendix at 8]. To reach this conclusion, the Court of Appeals reasoned that the word "require," as used in the Section 37.10(f) statutory defense, means simply "to demand as necessary or essential; have a compelling need for." Similarly, "purpose" under the defense means "something set up as an object or an end to be attained." [Appendix at 7] (citing Merriam-Webster Online Dictionary).

Chambers again petitioned for discretionary review, but it was refused. [Appendix at 12]. His timely motion for reconsideration of that decision was similarly denied. [Appendix at 13]. He now seeks a writ of certiorari from this Honorable Court.

REASONS FOR GRANTING THE PETITION

The Thirteenth Court of Appeals' interpretation of Section 37.10(f) of the Texas Penal Code constitutes a retroactive and unforeseeable expansion of Texas' Tampering with a Governmental Record Statute. Its application to John Chambers' case deprived him of due process of law by functionally excising the statutory defense without fair notice. *Bouie v. City of Columbia,* 378 U.S. 347 (1964). Its reading of the statute also converts the statutory defense into an irrebuttable presumption that lessened the State's burden of proof on the essential elements of the crime and the statutory defense. *Sandstrom v. Montana,* 442 U.S. 510 (1979).

I. The Court of Appeals' Analysis Goes Far Beyond a Fair Reading of the Tampering with a Governmental Record Statute.

The Due Process Clause of the Fourteenth Amendment guarantees that a state defendant will not be convicted of a criminal statute without fair notice of what is criminally prohibited. *Sessions v. Dimaya,* 138 S. Ct. 1204, 1225 (2018) (Gorsuch, J. concurring) ("'From the inception of Western culture, fair notice has been recognized as an essential element of the rule of law.'" (quoting Note, Textualism as Fair Notice, 123 Harv. L. Rev. 542, 543 (2009))). This principle precludes the operation of vague laws, but it also ensures that precisely worded laws are not, after a person is convicted, unforeseeably and retroactively expanded by judicial construction. *Bouie v. City of Columbia,* 378 U.S. 347, 352 (1964). In fact, the harm caused by such acts of judicial interpretation is *more* harmful to due process than a law that is simply too vague. A person at least has *some* notice that his conduct *might* be implicated by a vague law; a law that appears limited on its face but is expansively interpreted on appeal "lulls the potential defendant into a false sense of security." *Id* at 352.

In *Chambers I,* the Thirteenth Court described the Section 37.10(f) statutory defense to the Tampering statute as a "safety valve." *Chambers I,* 523 S.W.3d at 687-88 [Appendix at 59]. The court rejected Chief Chambers' argument that the qualification forms were not governmental records by embracing a broad and far-reaching definition of "governmental records." However, it reasoned, the statutory defense protects the statute from unconstitutional vagueness and "absurd results" by ensuring that frivolous or trivial records cannot sound in criminal liability. *Id.* The court then proceeded to completely disregard Chief Chambers' contention that the

evidence was legally insufficient to convict him in light of that statutory defense. *Chambers I,* 523 S.W.3d at 688, fn. 4 [Appendix at 59].

On remand from the Court of Criminal Appeals, the Thirteenth Court was once again tasked with confronting the elephant in the room: because it was outside of the Texas Commission on Law Enforcement's regulatory authority to legally require Chief Chambers to produce qualification records for his volunteer, reservists officers, and thus Indian Lakes PD had no legal duty to curate such records, *how* could the Chief's falsification of those documents have had any effect on the Commission's purpose for requiring those records?

Because, the Court of Appeals concluded, the Government's purposes and requirements are not limited by the laws that give them authority to act, a false entry in a governmental record is criminal if it affects the Government's subjective purposes and objectives, irrespective of whether those purposes are legitimate.

The court did not cite to any legal authority for the proposition that government can nevertheless require something despite lacking the legal power to "demand [it] as necessary" or any legal "object or end to be attained" from keeping it. *Chambers III,* 2020 Tex. App LEXIS at *8 [Appendix at 7]. The dearth of authority for its conclusions is understandable – none exists. The cases that have previously considered the statutory defense codified at Section 37.10(f) have historically grappled with documents that are prepared and kept in the due course of the government's legal functions. *See Baumgart v. State,* No. 01-14-00320-CR, 2015 WL 5634246 (Tex. App.—Houston [1st Dist.] 2015, pet ref'd) (false information entered

by arresting officer on a traffic ticket); *Forkert v. State,* No. 08-05-00224-CR, 2007 WL 2682972 (Tex. App.—El Paso 2007, no pet.) (False entry in connection with applications for food stamps); *Magee v. State,* No. 01-02-00578-CR, 2003 WL 2286244 (Tex. App.—Houston [1st Dist.] 2003, no pet.)(Alteration of filed and sworn police report); *Wingo v. State,* 134 S.W.3d 178, 183 (Tex. App.—San Antonio 2004), *affd* 189 S.W.3d 270 (Tex. Crim. App. 2006) (false entries in a police report).

In *Chambers II,* The Court of Criminal Appeals remanded the case because it perceived the language of the statutory defense to be "unclear in the context of the statute." [Appendix at 37]. Petitioner disagrees with this characterization. At least with respect to this case, the Government either has a purpose for a document or it does not, and there is nothing unclear or ambiguous in the way the statute articulates that binary framework. Indeed, the remainder of *Chambers II,* screams for Petitioner Chambers' interpretation to be applied. Certainly, to the extent that the statutory defense has been addressed in judicial opinion at all, as discussed *supra,* there are no other reasonable conclusions. The tampering statute, including the Section 37.10 statutory defense, have always operated in the context of *legal* government functions – i.e. documents that are part and parcel of the legitimate business of government and thus have an immediately apparent purpose related to such legal duties. *Cf. Peters v. Bowman,* 98 U.S. 56, 60 (1878) ("The law never does or permits a vain thing."). [3]

[3] At trial, the State did not perceive the statutory defense as unclear. Considerable effort was made to establish that firearms qualification records have an important purpose for TCOLE in accordance with its lawful duties in supervising and training peace officers. In closing, counsel for the State stressed this point heavily:

Prior to committing the acts at the heart of this case, John Chambers could reasonably rely on the fact that, no matter how contentious his intergovernmental tête-à-tête with TCOLE became, the Commission was illegally requiring him to produce documents that he had no legal duty to prepare, keep, or produce. The triviality such a dispute implies made the applicability of the Section 37.10(f) statutory defense readily apparent. The Court of Appeals' efforts to stretch the words "purpose" and "require" in the statute to validate its conclusions on legal insufficiency amount to an unforeseeable (even when considering the descriptions of the defense in the prior *Chambers I* opinion) and retroactive diminution of the applicability of a statutory defense that is narrow and precise on its face. *Rogers v. Tennessee,* 532 U.S. 451 (2001) (citing *Bouie,* 378 U.S. at 352).

What is especially egregious about the Court of Appeals' reasoning in this case, however, is that it does not just retroactively pull the statutory defense out from under the feet of John Chambers; it effectively deletes the defense from the Penal Code entirely for future litigants.

> These individuals who came down from Austin representing [TCOLE], they're here for a **purpose**, **because police officers aren't doing things the way they're supposed to**. Because if the police don't do things properly, then why do we even have them? If they don't follow the law, if they don't follow the regulations that are put down for all police officers throughout the State of Texas, then why have them?

RR Vol. 13 at 32. The State could read the plain language of the defensive statute as well as anyone; it was simply incorrect about the state of the law.

II. The Court of Appeals' Interpretation of the Section 37.10(f) Defense Impermissibly Shifts the Burden of Proof on the Defensive Issue to the Defendant.

Under Texas law, a defense – as opposed to an affirmative defense – is put into play if the Defendant can produce *some* evidence that would support the issue. If he meets this minimal burden of production, the burden shifts to the prosecution to prove beyond a reasonable doubt that the defense does not apply. Reamey, Gerald S., CRIMINAL OFFENSES AND DEFENSES IN TEXAS, 3rd Ed. 2000 at pg. 128. (In the case of a 'defense,' the burden of persuasion remains with the prosecution, and the defendant need only raise a reasonable doubt in the mind of the jury or fact finder as to the existence of a defense in order to prevail." (citing TEX. PENAL CODE § 2.03)).

In a prosecution for tampering with a governmental record, the State must prove that the accused (1) knowingly; (2) made a false entry; (3) in a governmental record. TEX. PENAL CODE 37.10(a)(1). Ostensibly, should the accused produce some modicum of evidence that the false entry in question had no effect on the government's purpose for requiring the record, the State would also have to prove the harmful effect of the false entry on the government's purpose for requiring the record in the first instance. TEX. PENAL CODE 37.10(f). As a practical reality, this requires the State to establish that the Government *had* a purpose for the record and that the record itself was legally required.

This conventional understanding of the operation of a defense has been thrown to the wayside by the Court of Appeals' opinion. Instead of giving meaning to each word of the statute, the Edinburg Court held that a governmental record has

whatever purpose the Government says it has, irrespective of what the law does or does not require. This is the equivalent of saying that a record is *presumed* to have a purpose if the Government claims it has a purpose. Employing such reasoning to defeat Chambers' contention that the evidence was legally insufficient to convict him impermissibly shifts the burden of persuasion back onto the Defendant. This undermines Chief Chambers' constitution right to due process of law under the Fourteenth Amendment.

The Constitution requires the State to prove the guilt of the accused as to each element of the offense beyond a reasonable doubt. *In re Winship,* 397 U.S. 358 (1970). Consequently, an attempt to shift the burden of persuasion onto the Defendant violates the defendant's right to due process of law. *Mullaney v. Wilbur,* 421 U.S. 684 (1975) ("The result, in a case such as this one where the defendant is required to prove the critical fact in dispute, is to increase further the likelihood of an erroneous . . . conviction."). While a state legislature has the right to define the criminal elements of an offense as it sees fit, it cannot permit the trier of fact – or the reviewing court – to hold the defendant to an evidentiary burden of proof the law does not require him to bear. *See Patterson v. New York,* 432 U.S. 197, 210 (1970) (But there are obviously constitutional limits beyond which the States may not go . . . '[I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.'" (quoting *McFarland v. American Sugar Rfg. Co.,* 241 U.S. 79, 86 (1916)); *see also McMillan v. Pennsylvania,* 477 U.S. 79, 98 (1986) (Stevens, J. dissenting) ("Nothing in *Patterson* or any of its predecessors authorizes a State to decide for itself

which of the ingredients of the prohibited transaction are 'elements' that it must prove beyond a reasonable doubt at trial.").

The Texas Legislature chose to make Section 37.10(f) a *defense* rather than an affirmative defense. TEX. PENAL CODE § 2.03. Consequently, if the burden of production is met, the State must prove the guilt of the accused by establishing beyond a reasonable doubt all of the constituent elements of the tampering statute *and* that the false entry had no effect on the government's purpose for requiring the record. TEX. PENAL CODE § 37.10(f). In this case, John Chambers produced testimonial evidence that the Texas Occupations Code, by reference to the Local Government Code, did not require the Indian Lakes Police Department to keep firearms qualifications records for its volunteer reservist officers. The Defense also cited these statutes directly to the trial court in its motion for directed verdict. [RR Vol. 11 at 236-40]. On discretionary review, the Texas Court of Criminal Appeals agreed with Chief Chambers that the Texas Commission on Law Enforcement had no legal right to require these documents of Chief Chambers. [Appendix at 33]. In many ways, the Edinburg Court of Appeals on remand in *Chambers III* was *better* equipped, as a matter of law, to review this evidence than the trier of fact was; the trial court denied Chief Chambers' request to instruct the jury on the local government code, but the Court of Appeals had clear guidance on the issue as a matter of law from the higher court.[4]

[4] While the Court of Criminal Appeals agreed with Chief Chambers' interpretation of Local Government Code Section 341.012, it concluded that he was not harmed by the trial court's failure to include the instruction because TCOLE's lack of legal authority for requiring these records did not mean that the documents were not government records. [Appendix at 38]. While Petitioner does not

No rational trier of fact could conclude that Chambers false entry had any effect on the government's purpose for requiring the record because the government *had no purpose* for that information and *could not legally require* the records to be kept. To overcome this logical impediment to conviction, the Court of Appeals took the plain, concise language of the defensive statute and expanded it to the vaguest possible interpretation, as briefed in Issue I, *supra.* In its resulting analysis, it then applied a presumption: there is a purpose for requiring a government record if the government says there is. If the written statutes negating such a purpose are not sufficient evidence to rebut such a presumption, nothing can. But more concerning, the miasma of the court's reasoning forced Chief Chambers into the position of disproving the Government's erroneously held belief about its purposes for requiring the record in the first instance.

The *Jackson v. Virginia* standard is the enforcement arm of the *In re Winship* line of decisions:

> This is the first of our cases to expressly consider the question whether the due process standard recognized in *Winship* constitutionally protects an accused against conviction except upon evidence that is sufficient fairly to support a conclusion that every element of the crime has been established beyond a reasonable doubt. . . . [T]he answer to that question, we think, is clear.

Jackson v. Virgina, 443 U.S. 307, 313 (1979). For this reason, it is just as injurious to the Due Process Clause for an appellate court to fashion a presumption against the accused on an essential element of the State's burden as it is when the jury is so

---

concede this contention, it is important to note that the Court of Criminal Appeals failed to consider whether the denial of this jury instruction harmed Chambers with respect to the Section 37.10 statutory defense.

instructed in the first instance. Absent the court of appeals implementation of a conclusive presumption against John Chambers, there is no evidence that would rationally support the conviction in light of the statutory defense. As Judge Slaughter noted in his dissenting opinion in *Chambers II*:

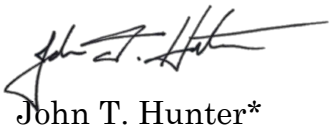
> At trial, the evidence presented demonstrated various reasons why firearms-proficiency records [generally] were useful to TCOLE. Such evidence would be sufficient to show why firearms-proficiency records of 'peace officers' would by kept by TCOLE 'for information.' But it is not sufficient to show why 'reserve law enforcement officers' proficiency records would be useful to TCOLE since TCOLE has no authority to train, supervise, or regulate reserve officers. Tex. Loc. Gov't Code § 341.012. In fact, a reserve officer does not have to be licensed as a peace officer. *Id* § 341.012(g). Further, whether a reserve officer is even allowed to carry a gun is the sole discretionary decision of the police chief. *Id.* . . . Appellant, as the police chief, created the records solely to appease TCOLE. Had TCOLE not demanded these records, they never would have been created.

Chambers II, 580 S.W.3d 149, 165 (Tex. Crim. App. 2019) (Slaughter, J. dissenting). While Judge Slaughter's contention was that the evidence was legally insufficient to convict on the element of "Governmental Record" – a contention Petitioner agrees with in full – his reasoning applies with equal force to the statutory defense. The only reason Chief Chambers' conviction could be affirmed despite the record evidence is that the Court of Appeals placed on Chambers the *added* burden of having to defeat a presumption that the Government has a purpose for the things it asks for, even when the law is clear that it lacks such authority.

CONCLUSION

The Edinburg Court of Appeals' opinion in *Chambers III* retroactively transmogrified the plain and definite language of the Section 37.10(f) defense in such a way as to specifically deny John Chambers the benefit of its protections. In so doing, they expanded the scope of the Tampering with a Governmental Record statute, by subjecting to criminal penalty the very "trivial and frivolous" false entries it originally claimed were exempted from its scope. *Chambers I* [Appendix at 59]. In so doing, it conducted its sufficiency analysis in such a way as to put the burden on Chief Chambers to prove that the Government lacked a purpose for the records at issue; allowing the State to convict Chambers on less than proof beyond a reasonable doubt as to all of the elements necessary to be established. Because this approach in both respects violates the Due Process Clause of the Fourteenth Amendment, Petitioner John Chambers prays that the petition for a writ of certiorari should be granted.

Respectfully Submitted,



John T. Hunter*
Texas Bar No. 24077532
Hunter, Lane & Jampala
310 S. St. Mary's Street
Suite 1740 – Tower Life Bldg.
San Antonio, Texas 78205
(210) 202-1076
(210) 880-6162 (*telecopier*)
john@hljdefense.com

Chad P. Van Brunt
Texas Bar No. 24070784
The Law Office of Chad Van Brunt
3030 Nacogdoches Rd.
Suite 222K
San Antonio, Texas 78217
(210) 399-8669
(210) 568-4927 (*telecopier*)
chad@vanbruntlaw.com

*Counsel of Record