

**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

**RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI**

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QUESTION PRESENTED

Petitioner's petition for a writ of certiorari sets out the following questions 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[n] (sic) 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?

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RESPONSE TO THE PETITION

Petitioner presents one ground for review in his petition with two parts to consider. The first part asks the Court to consider whether the Texas 13th Court of Appeals violated the Due Process Clause of the Fourteenth Amendment in its interpretation of the Texas Tampering with a Governmental Record Statute? And, then:

Secondly, did the Texas Court of Appeals' finding of legal sufficiency violate the Due Process Clause of the Fourteenth Amendment by ostensibly shifting the burden of proving an essential element of the defense to the accused?

Respondent will address the complaint.

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STATEMENT OF JURISDICTION

This appeal is brought under 28 U.S.C.A. § 1257(a) which provides in part: “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari...” Consequently, the matter, as presented by Petitioner, is not ripe for consideration by this Honorable Court. Petitioner has yet to be sentenced; therefore, there is no final judgment for this Honorable Court to consider. As such, Petitioner’s application for writ of certiorari should be denied.

The Texas 13th Court of Appeals “reverse[d] the trial court’s judgment and remand[ed] for a new punishment hearing, for entry of judgment as set forth above, and for further proceedings consistent with this opinion.” *Chambers v. State*, 13-16-00079-CR, 2020 WL 1856465 (Tex. App. Corpus Christi Apr. 9, 2020, pet. ref’d). Specifically, the Texas 13th Court of Appeals directed that “the trial court’s judgment should be reformed to reflect a conviction on fourteen counts of Class A misdemeanor tampering with governmental records. *Chambers v. State*, 13-16-00079-CR, 2020 WL 1856465 (Tex. App. Corpus Christi Apr. 9, 2020, pet. ref’d).

In Texas, a criminal judgment is not final until a sentence is assessed and a final judgment entered. *See Morgan v. State*, 515 S.W.2d 278, 280 (Tex. Crim. App. 1974) (stating “[n]o conviction, final or otherwise, has resulted until the trial court has entered judgment and sentenced the defendant, where sentences are required. Absent a showing that a conviction has resulted, the question of finality of the conviction is not reached.”).

The question of finality is answered only by the exhaustion of litigation. “In general, a ‘judgment’ or ‘decision’ is final for the purpose of appeal only when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined.” *See Parr v. United States*, 351 U.S. 513, 518 (1956); *See also Berman v. United States*, 302 U.S. 211, 213 (1937).

As Petitioner has not been sentenced for any crime, there is no final judgment for this Honorable Court to consider. Thus, denial of the petition for a writ of certiorari is proper. *See Bateman v. Arizona*, 429 U.S. 1302, 1306 (1976)(“In a criminal case, the ‘final judgment’ is, of course, the imposition of a sentence.”).

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STATEMENT OF THE CASE

This case arose out of a dispute between the Police Chief of the Indian Lakes Police Department, a municipal police agency in Cameron County, Texas, and members of the Texas Commission on Law Enforcement (TCOLE). TCOLE regulates licensed peace officers and the police departments and agencies that employ them. In 2015, Agent Derry Minor, of TCOLE, visited the Indian Lakes Police Department and conducted a partial audit of its records. During this audit he discovered that the Police Department did not have firearms qualification records for eight of its reserve peace officers. Agent Minor informed Chief Chambers of these deficiencies, and then instructed him to submit records proving that the officers had qualified for weapons training within the specified time period.

Unknown to Agent Minor, TCOLE had no legal authority to require Chief Chambers to produce the firearms qualification records, because the Indian Lakes Police Department had no legal obligation to require its appointed reservists to demonstrate firearms proficiency.

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 was enhanced to a felony.

The Texas 13th Court of Appeals affirmed Chambers' convictions. In so doing, the Court of Appeals held that the question of whether the qualification records were legally required to be kept was irrelevant. Chambers then filed a petition for discretionary review, which was granted by the Texas Court of Criminal Appeals. That court reversed the lower court on three 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, the element that enhanced the crime to the level of a felony. Second, that TCOLE had no legal right to require firearms qualifications from appointed reservist peace officers. Third, that the lower Court failed to complete the sufficiency of the evidence analysis with respect to the Section 37.10(f) statutory defense. The Texas Court of Criminal Appeals then remanded the case back to the Texas 13th Court of Appeals to determine whether the evidence was sufficient with respect to the Section 37.10(f) statutory defense.

On remand, the Texas 13th Court of Appeals again affirmed Chambers' convictions, albeit now properly reformed to misdemeanors, because the court applied statutory interpretation to the Section 37.10(f) statutory defense, and determined that the jury had implicitly rejected this defense by unanimously rendering a verdict of guilty. The Texas 13th Court of Appeals then remanded the case back to the original district court to hold a new sentencing trial in conformity with the appellate court's finding that the evidence was legally sufficient to find Chambers guilty of fourteen (14) misdemeanor counts of Tampering with a Governmental Record. Importantly, this case is still pending sentencing in the district court, and a final judgment has yet to be reached because no sentence has yet been imposed.

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SUMMARY OF THE ARGUMENT

Pursuant to Supreme Court Rule 10, this Honorable Court should deny Petitioner's petition for writ of certiorari because Petitioner has not alleged any conflict between a state court of last resort, or any important or unsettled federal question, or any relevant decision of this Court. Instead Petitioner is merely alleging a misapplication of a properly stated rule of law. *See* Sup. Ct. R. 10 (Providing that a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.).

Specifically, Petitioner alleges that the Texas 13th Court of Appeals misapplied Section 37.10(f) of the Texas Penal Code in a way that was unforeseeable, and deprived the Petitioner of fair warning to which the Constitution entitles him. However, the Texas 13th Court of Appeals merely applied basic and easily foreseeable statutory interpretation to determine the precise meaning of Section 37.10(f). That Court then used the plain meaning of the words therein to establish that the evidence was legally sufficient to convict Petitioner and overcome his statutory defense. As such, the Texas 13th Court of Appeals did not violate the Due Process Clause of the Fourteenth Amendment because its application of the Texas statute was neither unforeseeable nor a retroactive judicial expansion of law.

Additionally, Petitioner misrepresents that the Texas 13th Court of Appeals shifted the burden of proving an essential element of the defense onto the accused. However, that Court's decision clearly stated that the State maintains the burden of disproving any defense beyond a reasonable doubt, and that the State met its burden of persuasion. Consequently, there exists no violation of due process because the evidence presented at trial was legally sufficient to support the Jury's implicit finding against Petitioner's defensive theory. At all times throughout the trial, the State met its burden of proving every element of the charged offense, and of overcoming any defense to prosecution, beyond a reasonable doubt. Petitioner's claim that the burden of proving any element of the alleged crime, or of any defense thereto, ever shifted onto the accused is simply erroneous.



ARGUMENT

This Honorable Court should deny Petitioner’s ground for review because Petitioner presents no compelling reason for this Court to exercise its judicial discretion in this matter. Petitioner is essentially arguing that the Texas 13th Court of Appeals is misapplying the plain meaning of a Texas statute, despite utilizing the dictionary definition of the ordinary words in that statute, in a way that unconstitutionally precludes definiteness. “The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.” *United States v. Harriss*, 347 U.S. 612, 617 (1954).

Here, the statute in question provided a defense to the prosecution of tampering with a government record where such tampering “could have no effect on the government's purpose for requiring the governmental record.” Tex. Penal Code §37.10(f). The only possible obstacle to definiteness in that statute turns on the interpretation of the phrase “government's purpose for requiring the governmental record.” *Chambers v. State*, 580 S.W.3d 149, 156 (Tex. Crim. App. 2019). The plain language of this statute makes it clear that in order to prosecute this crime the State must prove that the government both “required” the record at issue, and that the government had a “purpose” for requiring the record at issue. Tex. Penal Code §37.10(f).

In order for a person of ordinary intelligence to have fair notice that his contemplated conduct is forbidden by this statute, he would need to understand the meaning of both “required” and “purpose” in the context of the statute. Though neither word is specifically defined by the Texas Penal Code, the ordinary dictionary definition of each word is neither ambiguous, nor does it lead to an absurd result that the legislature could not have possibly intended. *See Ex parte Perry*, 483 S.W.3d 884, 902 (Tex. Crim. App. 2016). Consequently, a person of ordinary intelligence need only consult his nearest dictionary to realize that knowingly falsifying a government record, even one the government lacked any legal authority to keep, violates Texas law. Thus, the lower Court’s interpretation of §37.10(f) was neither unforeseeable nor a retroactive judicial expansion of any crime. As such, this Honorable Court should deny Petitioner’s first ground for review.

Petitioner’s second ground mischaracterizes the lower Court’s decision by inaccurately claiming said Court created a presumption that burdens the accused with proving the defense. However, no such presumption was created, instead the lower Court merely laid out the process for determining how such a defense may be applied. It is “within the power of the State to regulate procedures under which its laws are carried out, including the burden of producing evidence and the burden of persuasion,” and its decision in this regard is not subject to proscription under the Due Process Clause unless “it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Patterson v. New York*, 432 U.S. 197, 202 (1977).

At issue here is the method of presenting a defense to prosecution before the jury. Texas law provides that presenting such a defense places a slight burden on the defense to produce a mere scintilla of evidence supporting the elements of the defense, and the State carrying the burden of proving beyond a reasonable doubt that the defense is untrue. *See Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). This structure is neither novel nor offensive within our common law heritage, indeed it has long been the case that any “circumstances of justification, excuse, or alleviation” rests on the defendant. *Patterson*, 432 U.S. at 202 (Quoting 4 W. Blackstone, Commentaries; M. Foster, Crown Law 255 (1762)). This was as true at the time of the Fourteenth Amendments’ ratification as it is now. Consequently, the criminal procedures adopted by Texas do not violate due process in contravention of the Fourteenth Amendment. Thus, the Texas 13th Court of Appeals’ decision did not impermissibly shift the burden of proof onto the defense. As such, this Honorable Court should deny Petitioner’s second ground for review.



CONCLUSION

In light of the aforementioned arguments, this Honorable Court should give great deference to the Texas Court’s statutory interpretation of Texas law, and to the criminal procedures under which Texas laws are carried out. Thus, this Honorable Court should deny Petitioner’s petition for a writ of certiorari to the Texas 13th Court of Appeals.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I certify that this document was served via electronic case file service of process to the following attorneys for Petitioner, on the 28th day of April, 2021.

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