

22-5056

No. 21A578

IN THE

SUPREME COURT OF THE UNITED STATES

ROSA SERRANO - PETITIONER

VS.

Hon. ALAN D. ALBRIGHT - RESPONDENT

UNITED STATES DISTRICT COURT for the WESTERN DISTRICT
of TEXAS W-19-CA-414-ADA

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
21-50430

PETITION FOR WRIT CERTIORARI

ROSA SERRANO
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FILED

JUN 04 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
ORIGINAL



ISSUES PRESENTED

- 1) Whether an adequate remedy by appeal exists when a ministerial duty imposes respondent of a void judgment to grant relief;
- 2) Whether removal of 2017000317 prior to trial under 28 USC 1443 divested trial court of jurisdiction, and respondent was mandated to grant evidentiary hearing;
- 3) Whether removal of 2017000317 to federal district court on July 27, 2017 to EP-17-CV-221 FM adequately divested trial court of jurisdiction;
- 4) Whether respondent only ministerial duty to declare a void judgment and grant evidentiary hearing to proceed forward of civil rights claim;
- 5) Whether respondent properly to show impartiality when dismissed without a full record, although requested, TDCJ failed to provide the full record.

RELATED CASES

PRIOR TO HABEAS PETITION W-19-CA-414-ADA, CIVIL RIGHTS CLAIMS WERE FILED WHICH WERE DISMISSED WHERE RELIEF WAS SHOWN TO BE UNSUPPORTED. (#21A579)

MANDAMUS IS ADEQUATE WHERE RESPONDENT WAS PRESENTED UNCONTROVERTED EVIDENCE OF REMOVAL, DECLARES A VOID JUDGMENT TO GRANT HABEAS CORPUS AND SUPPLEMENTARY HEARING. 21-50430 IN THE FIFTH CIRCUIT GRANTS RELIEF INSTEAD BY APPEAL OF A HABEAS ACTION (W-19-CA-414-ADA), HOWEVER WAS DENIED.

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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 **federal courts**:

The opinion of the United States court of appeals appears at Appendix J to the petition and is

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☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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☐ is unpublished.

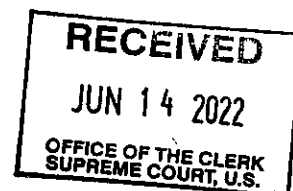
☐ For cases from **state courts**:

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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



JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including April 7, 2022 (date) on June 06, 2022 (date) in Application No. 21 A 578.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

STATEMENT OF JURISDICTION

Petitioner files this writ of certiorari when an undisputed right exists, mandamus becomes necessary to direct district court to grant relief. Court of Appeals, Fifth Circuit, fails to acknowledge the requirement of mandamus when an undisputed right exists. Therefore, Petitioner seeks writ under 28 USC 1254 (1) to decide the mandamus of a district judge who dismisses a habeas action when an undisputed right exists.

Constitutional and Statutory Provisions

28 USC 1443	Removal
28 USC 1447	Remand
28 USC 2106	Reassignment
28 USC 2254	Federal Habeas Corpus of State Judgment
28 USC 1254(1)	Writ of Certiorari
28 USC 1651	All Writs Act
31 USC 3730(h)	Whistle Blower Act
31 USC 3729	False Claims Act
42 USC 1983	Civil Rights Act
42 USC 2000h-1	Double Jeopardy Act
Tax. Gov't Code	51.903 DECLARATION OF DOCUMENT TO ACCORD LIEN

STATEMENT OF CASE

This original proceeding was filed in the Fifth Circuit (21-50430) which was denied on January 06, 2022 and extension to file a writ of certiorari was granted on April 07, 2022 for filing on June 06, 2022. The principle issue presented is a void judgment simultaneously grants mandamus relief. Where undisputed that removal to federal district under 28 USC 1443 of any criminal proceedings direct to state court of jurisdiction, therefore without any adequate remedy available or required, mandamus becomes exclusive and conclusive to all relief. Mandamus was sought of extradition hearing and release from custody under habeas action in W-19-CA-414 AOA.

STATEMENT FACTS

The underlying fact at issue is whether an adequate remedy by appeal exists when a void judgment is present. Provided that Petitioner has an appeal of a habeas action, which should not had not been dismissed, when a void judgment is evident. Placing an impartial adjudication cannot be attained, when an obvious jurisdictional defect grants relief. The mandamus seeks to mandate Hon. Albright (respondent) to grant habeas and evidentiary hearing. By conducting an evidentiary hearing, it will dispose of a void judgment and grant other relief available. Until the primary genuine issue, of fact is revealed, can deny prosecution of Petitioner, and grant relief under a writ action. Because writ permits to investigate the alleged fraud by THHC and Hmas. by non-compliance of the Medicaid Act under 42 USC 1396a and 1396v-2. This Court has long held a fundamental requirement to any judgment is the court empowered by the jurisdiction granted by the constitution. No argument to support this contention is needed when this Court's sage has been ignored and escapes all lower courts, especially state trial court. And Petitioner seeks no relief from a void judgment but constitutional violations, which in turn causes irreparable harm upon children. Under Powers v. Ohio rule, 115 Ct. 1364, 1370 (1991), it permits Petitioner to challenge its conviction by raising the rights of third parties.

But ^{the} most pertinent issue raises removal of state criminal prosecution under 28 USC 1443 divests state court to enter a judgment. This principle is delineated when 28 USC 1447(c) prescribes the use of remand, yet prior to remand any conviction is void. Also, in excess of 30 days does not grant one sponte decision to remand when a remand was never requested ~~by~~ by the prosecuting attorney. Inevitably ^{it} still remains in federal jurisdiction when removal was added to EP-17-CV-221-Fm (habeas action) which cannot entertain removal under 28 USC 1443. This issue certainly raises to a jurisdictional defect when 28 USC 2254 (EP-17-CV-221-Fm) cannot hold a civil rights claim, but a separate cause number and claim to removal. Additionally, an evidentiary hearing is mandated when state habeas action cannot show adequate disposition of the issues for habeas relief from void contempt orders. The void contempt orders incurred felony prosecution (2017000316) to be included in state prosecution (2017000317), thus double jeopardy set forth under 42 USC 2000h-1 raises a civil rights claim to file ~~removal~~ removal under 42 USC 1983 and 28 USC 1443. Meeting all the necessary elements for removal shows Petitioner unconditionally was entitled to relief by removal, and where qui tam action entitles a protected activity by ^{the} whistleblower act, 31 USC § 3730(h). Where Respondent is required to issue federal habeas and not

dismiss upon presentation of supporting authority to grant habeas, it enables Petitioners to seek mandamus prior to dismissal of habeas to grant release of Petitioners by void judgment. Therein, causing the civil rights claims to hold a qui tam action, when federal disbarment from Medicaid and federal programs by OIG when a void conviction was entered. Even though Petitioners raised the jurisdictional defect to the administrative judge for the OIG proceeding to disbar Petitioners from Medicaid, it still denied relief from disbarment. Relatively, no judicial body has observed this Court's insistence of the constitutional provision of jurisdiction to empower a court to set a valid conviction to be rendered. Thereafter, until the court with authority can issue a valid judgment, Petitioners' constitutional right to liberty by due process, and jurisdiction emphasizes the need to authorize a court's adjudication of the prosecution. Thereby, Petitioner civil rights are denied when respondent was only able to grant habeas with an evidentiary hearing and reinstate civil rights claims. Mandamus is necessary, and Fifth Circuit's misuse of 28 USC 1447 prescription of removal is apparent when other circuit courts have observed the jurisdictional element relatively mandated to empower courts. A circuit court's judgments remain undisposed when one circuit acknowledge acceptance of federal statute while the Fifth Circuit ignores its use. Mandamus would

insure that the Fifth Circuit abides to constitutional provisions. This Court's jurisdiction is needed to review a petition for a writ on the merits, as to why one circuit court observes a federal statute and the Fifth circuit ignores it. And Fifth circuit excuses respondent's conduct, to an adequate remedy by appeal, as preposterous to assert a void judgment grants jurisdiction to an appellate court to consider habeas corpus. Where a void judgment avoids the requirement of adequate remedy by appeal, more so when advisory opinions are disallowed. It is significant that this Court's jurisdiction to ultimately settle removal divests state court jurisdiction under 28 USC 1443 and requires a separate cause number for removal rather to federal habeas. Therefore, requiring a certified copy of a certified order of remand to be filed in state court proceeding under 28 USC 1447 (c) in state district clerk's office prior to trial. Until all these requirements are met, the removal is remanded, otherwise remains in federal court's jurisdiction. No requisites were ever done, therefore the removed proceeding in 2017000317 remains in federal court, where reassignment under 28 USC § 2106 mandates to Austin Division to finally show an appearance of impartiality. Where all lower courts have shown a prejudicial conduct to deny Petitioner to an entitled relief, it becomes evident of reassignment. This Court's authority firmly relies upon the constitution and its amendments, but lower courts

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and
seemingly ~~blatantly~~ blatantly ignore its existence. Affirmation by this Court's jurisdiction to settle an uncontested and unambiguous federal statute under a removal of state proceeding to federal district court. Where by the need overly is required when circuit courts but more importantly district courts all are unaware or ill-informed of removal of criminal proceedings from state to district court to review any constitutional violations. At no time has Petitioner has been afforded any due process. The only explanation is unfamiliarity to removal statute of criminal prosecutions to federal district court, and why ignorance prejudices Petitioner ~~by~~ a void conviction. Furthermore, where qui tam 31 USC 3729(a)(1) would be developed from the Attorney General to investigate fraudulent conduct. A protected activity is founded under 31 USC 3730(h) which insures immunity from prosecution, along with Powers, *supra*. However, a deliberate indifference has mainly be used to describe a tort action under a civil rights claim for an Eighth Amendment violation, it has grown into to be affected in this instant case by removal of state proceedings. Even though supporting authority by other sister circuit courts show a jurisdictional defect cannot grant state court conviction to uphold detention of Petitioner. This Court's precedent would establish a final and authoritative process which will negate any doubt as to how proceed of criminal prosecution to federal district court from state court. Also,

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Motion of remand requirement to preserve any waiver of removal to federal district court. Without a motion for remand by prosecuting attorney, the state concedes to removal and a civil rights claim exists, ~~where~~ where a procedural bar serves no impediment. Only where federal court lack of subject matter jurisdiction can only remand proceeding under 28 USC 1447. However, Petitioner's Claim is exceptional rather than distinguishable, when a protected activity by a federal exclusive and original jurisdiction places Petitioner regardless in a federal forum. Qui tam places a federal forum, to which Petitioner can seek under a civil rights claim W-19-CA-163 ADA, where an administrative judge has granted to disbar Petitioner from Medicaid. Therein a qui tam action arises to select a protected activity when Petitioner can provide numerous complaints of non-compliance, and the retaliatory actions upon Petitioner. Yet, prior to prosecution two previous audits showed Petitioner was compliant. Had an administrative hearing had been conducted prior to prosecution, it would show the alleged fraud would require review and oversight by the Attorney General of denial of a federal right to enrollees (Children). The purpose of the prosecution ~~to~~ ^{was to} quiet Petitioner and declare void any claim of FCA (False Claim Act) to which escape use of the Spending Clause of constitutional provision when participation of the Medicaid Act. Until the Attorney General can properly

investigate, and Petitioner's injury to denial of due process projects such requirement to evaluate a constitutional violation by the Spending Clause of federal funding. Therein, the Supremacy Clause sets pace for further development to scrutinizing the Medicaid Act compliance by THSC by prosecution of Petitioner. Powers, *supra*, assertion to a third-party action when the criteria is satisfied. Because the injury incurred, Petitioner has met the first and second criteria of Powers rule, *supra*. But were hindrance of the ability of third-party's inability (children) to protect their federal right under the Act (42 USC 1396a). A challenge can be raised of Petitioner's conviction when the rights of third parties are affected. Conclusive, Respondent's dismissal without due process grants relief from an adequate remedy by appeal when undisputed that a void conviction by removal grants federal habeas with an evidentiary hearing. Writamus was to be issued instantly, and not expect to overcome another obstruction to due process of Petitioner by appeal when undisputed of entitled relief from custody of a void conviction.

STATEMENT OF ARGUMENT

Principle of deficient jurisdiction casts a void conviction, which automatically surrenders validity of an improper conviction entered by state court. A successive habeas action is permitted when 84-17-CV-221-FM could not

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contain the disciplinary cases overturned, when EP-17-CV-221-FM dealt with contempt proceedings. Which eventually became void by lack of appellate counsel under *Coleman v. Thompson* rule, 11154 2546 (1991). Now left with ~~displea~~ disciplinary action by TDCJ for no penological effect, it affected Petitioner's faster release through ^{parole} ~~parole~~. Thus, a successive habeas corpus W-19-CA-414-ADA was granted along with the state appellate's decision in 08-17-00190CR issued after EP-17-CV-221-FM. Again, the contempt orders infected the appeal of a state prosecution, and appellate counsel's refusal to raise the jurisdictional defect compose W-19-CA-414-ADA successive habeas petition. The mandamus was sought in the Fifth Circuit (21-50430) to compel release of Petitioner prior to dismissal by district court, yet Fifth Circuit ~~denied~~ denied relief when an appeal of habeas was awaiting. Yet, an adequate remedy by appeal does not apply when a void conviction is present. All supporting authority supports contention that a void conviction grants mandamus to release Petitioner, and afford all due process protections.

I BUE 1, 2 & 3

On July 27, 2017 Petitioner filed its Notice of Removal under 28 USC 1443 to which other relief could be sought by prosecution from void contempt orders. However, the state court proceeded to trial and a void conviction was entered on August 08, 2017 and sentenced on August 14, 2017.

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Thereby, the issue of a void conviction becomes evident by removal under §1443 to where state court is divested of authority. Unchallenged that conviction is void, it grants relief from custody for Petitioner⁺ seek mandamus to an evidentiary hearing, and hopefully finally receive due process.

"The only vehicle for relief from a remand order is the writ of mandamus." *New Orleans Public Services, Inc. v. Majors*, 802 F.2d 166, 167 (5th Cir. 1986); *J.C. Branch v. Hopfening*, 758 F.Supp 758, 759 (E.D. Tex. 1989)

"A writ of mandamus lies only if the district court 'has affirmatively stated and relied upon a non-1447(c) ground for remand.'" *Majors*, 802 F.2d at 167.

On the notice of removal was filed on July 27, 2017 and remanded or dismissed on November 09, 2017 by federal district court in a habeas action in EP-17-CV-221-FM. Yet, a civil rights claim is not an original proceeding to where relief is possible by an evidentiary hearing, thus requiring severance. District court's dismissal without remand cannot be done, when civil rights claim exists by Double Jeopardy under 42 USC 2000h-1 and affirmation of contempt orders under 28 USC 2254 (EP-17-CV-221-FM) relies on erroneous application of law. *Coleman, supra*, dispels that contempt orders were valid

when actual denial of counsel instantly relieves Petitioner of a void judgment in civil proceedings that procured contempt orders. And grants relief from future prosecution, yet denial of habeas action in EP-17-CV-221-FM places the onerous task to be ~~aff~~ afflicted by residual effect of the contempt orders of the state conviction in 2017000317. In 08-17-00190CR, state appellate court reasoned that Petitioner was never incarcerated for contempt, yet federal district court acknowledges detention in EP-17-CV-221-FM. Where no arrest for contempt orders alleges was done, Petitioner was granted due process for the state conviction. Where Petitioner raised the issue of the incarceration by pointing to the judgment of conviction in a motion for rehearing in 08-17-00190CR, the Eighth District Court of Appeals for Texas, ~~again~~ shifted the issue by forwarding to Criminal Court of Appeals for Texas (PD-1306-19). Wherein, CCA struck the petition as non-compliant of PDR, and decided the motion for rehearing was deemed unwarranted when a PDR was pending. The issue again escaped addressing by state appellate courts. Yet, by this time a successive habeas W-19-CA-414-ADA existed by disciplinary actions, and Petitioner added 08-17-00190CR of the void conviction to W-19-CA-~~414~~⁴¹⁴-ADA. Because of state appellate court's ~~denial~~ actual denial of appellate counsel, a *Stichland v. Washington* violation bestows reversal of contempt orders in 08-17-00044CV, and evidentiary hearing in EP-17-CV-221-FM. Petitioner did raise the

issue in the appeal in 17-51086, it went ignored by Coleman, *supra*. On October 30, 2018, in 17-51086, a decision rendered no constitutional errors, however a fundamental error of appellate counsel missing was raised. Even though state statute prevents any other underlying claim (Exhibit "F") between the parties under Tex. Gov't Code 51.903 (2012 DCV 06341).

Contempt orders are strictly denied when the only capacity to act as a court is a declaration of the document to accord it lien status. Again, due process was denied, and no injunctive relief available in 2012 DCV 06341, it left no TRO to be enforced. Where the capacity to act as a court, a jurisdictional defect developed to which contempt order could be issued. The contempt order became void, although the issue was raised in 17-CV-221-FM and 17-51086 of a jurisdictional defect, apart from the lack of appellate counsel under Coleman, *supra*, in 08-17-00044CV (State habeas action). Where contempt orders could not be appealed, only collaterally attacked, a habeas corpus was the only manner to address the defect. State appellate court instantly denied relief without a hearing in 08-17-00044CV, and adjudged no due process violation existed. Admittedly, it did fail to appoint appellate counsel of a criminal proceeding. Due process was denied, and without an evidentiary hearing in 17-CV-221-FM, it also fully prejudiced to again attain due process. Yet, respondents

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reply in EP-17-CV-221-Fm, that there existed no reason to arrest Petitioner, however where a conviction 2017000317 had been decided and sentenced, all time detained would be given to felony conviction.

"Orders issued after expiration of a trial court's pre-nay power are void for lack of subject matter jurisdiction. State ex. rel. Latty v. Owens, 907 SW2d 484, 486 (Tex. 1995); In re Barrett, 149 SW3d 275, 278 (Tex. App. - Tyler 2004, orig proceeding)

"A trial court clearly abuses its discretion if it reaches a decision 'so arbitrary and unreasonable as to amount to clear and prejudicial error of law.' Walker v. Parker, 827 SW2d 833, 839 (Tex. 1992)

Respondent's response clearly sets that Petitioner's constitutional access to due process will be denied and acknowledges that a constitutional violation exists by punishment of Petitioner prior to being found guilty. Absurdly, all lower courts failed to find a need for an evidentiary hearing. Without any challenge that wrongdoing has occurred by respondents (EP County and TDCJ), it still escapes a due process protection. Yet, sadly all this time as of February 09, 2017, Petitioner has been afforded to an entitled protection of activity for denouncing fraud by THotsc and Hmes.

"The quitam provision has been used in the past, as is presently being attempted, to stop fraud in the medical arena." *United States ex. rel. Glass v. Medtronic*, 957 F2d 605 (8th Cir. 1992); *United States ex. rel. Woodward v. Country View Care Ctr. Inc.*, 797 F2d 888 (10th Cir. 1986)

"... we held that the whistleblower protection provision of the False Claims Act, 31 USC 3730(h), protects internal corporate whistleblowers from retaliation even where a quitam lawsuit is never filed under the Act." *Neal v. Honeywell, Inc.*, 826 F Supp 206, 274 (N.D. Ill. 1993)

"This is because a 'whistleblower' will not be encouraged to come forward with information for fear of being retaliated against." *U.S. v. Texas Tech University*, 171 F3d 279, 284 (5th Cir. 1999)

"Thus, the district court reasoned that sovereign immunity should not prevent the § 3730(h) action against the Texas defendants." *Id.*

Until, Petitioner, a medical provider, is allowed to present a protected activity under the Whistleblower Act under FCA, it denies due process. By simply investigating Petitioner's allegation of denial of services to enrollees which

is protected federal right, it leaves a possibility of denial of due process. This Court's ~~pre~~ precedence in *Wilder v. Virginia Hosp. Ass'n*, 110 S Ct 2510 (1990) and *Blesing v. Freestone*, 117 S Ct 1353 (1997) allows assertion of civil rights claim by a third party.

"The Medicaid providers brought suit in the district court under 42 USC § 1983 alleging... had deprived them of federal rights by violating the Medicaid statute, specifically, 42 USC 1396a (a)(30)(A)." *Evergreen Presbyterian Ministries, Inc., v. Hood*, 116 F Supp 2d 745, 750 (W.D. La. 2000)

"Under this test, we conclude that the Act creates a right enforceable by health care providers under § 1983 to the adoption of reimbursement rates that are reasonable and adequate to meet the costs of an efficiently and economically operated facility that provides care to Medicaid patients. The right is not merely a procedural one that rates be accompanied by findings and assurances (however perfunctory) of reasonableness and adequacy; rather the Act provides a substantive right to reasonable and adequate rates as well." *Wilder*, 110 S Ct at 2517.

Where it is undisputed that Petitioner's complaints about THHSC's failure to comply to Act, raises a ~~adverse~~ ^{adversarial} issue to request close scrutiny of THHSC oversight

of 42 USC 1396v-2, where HMOs are rendering services required under the act, ~~but instead~~ ^{but instead} ~~are~~ depriving enrollees of medical care bestowed as a federal right. Therefore, inclination for state actors to discourage Attorney General's investigation by a void conviction of Petitioner, thus avoids a qui tam claim. Certain that such investigation would result in suspension of federal funding.

"Secretary of Health and Human Services had power to reject state Medicaid plans or to withhold federal funding to State whose plans did not comply with federal law." Wilder, 110 S.Ct. at 2523-24; Blessing v. Freestone, 117 S.Ct. 1353, 1363 (1997)

Hence, an incentive to silence Petitioner's complaints exist and deny an administrative hearing, rather than upon removal of 2017000317 to federal district court on July 27, 2017 would prompt the Attorney General to investigate. Because removable was done under a civil rights claim under 28 USC 1443 to remove state prosecution to federal district court upon 42 USC 2000h-1 claim, ^{it} would also enable a 31 USC 3729 (FCA) claim. Which ultimately would transform to 42 USC 1983 claim to attach a qui tam action, with a protected activity under a whistleblower act 31 USC 3730(h) to immunize Petitioner from prosecution. The philosophy by lower courts, it

is harmless where Petitioner would not be able to present any evidence to further develop the allegation of fraud and deprivation of a federal right to enrollees (children). However, questions remain, where due process would be granted, would Petitioner show support such allegation of misconduct. Let's not risk the possibility, instead suppress and oppress Petitioner's due process by a simulation of procedural duties conducted yet never actually fully implemented to actually direct due process to effectuate an investigation and grant relief to third parties under a federal right. The innocence of a child not to receive a federal right, what assures any person would also to receive such right when brushed aside to create an appearance of coverage without care. Enrollees lack the capacity to complain of payment for providers, only the access to care, but providers can supply both claims, denial of services and claims. Petitioner relies on the constitutional right to due process to be liberated from a void conviction, and also further explore the contention of both FCA and Whistle Blower Act.

ISSUES 4 & 5

Mandamus becomes necessary to carry out a task of a ministerial duty rather than discretionary. Respondent egregiously failed to perform such task, even though Petitioner is entitled relief. There are no issues to dispose as to a matter of law, the effect of removal divested the

Court of jurisdiction. The court unable to act as its capacity when no jurisdiction is apparent by removal, instantly ~~sets~~ sets any conviction as void. No other posture of any underlying claim as an affirmative relief is necessary when jurisdictional defect is present. A claim for ineffective assistance of counsel, impartial tribunal and probable cause are not a preperative degree as the primary one, jurisdiction. Such an undisposed issue of elementary process to first establish jurisdiction of the court, the Constitution grants a right to disposition of issue in a court with jurisdiction, otherwise without jurisdiction effects no enforcement nor execution of conviction. These principled requisites only guarantee an arbitrary and capricious ^{acts} are avoided to grant a fair tribunal on a properly sought indictment. An administrative hearing would prevent and avoid such determination of indictment and request compliance by THHSC to the Act. Yet, however impossible, it is futile to attempt to reason with ~~any~~ anyone whose misconduct is known, yet ignored. But Petitioner's denial of due process masters a degree further than any other, when all the courts seem to ignore the principle of this Court's precedence of due process. Repeatedly this Court's precedence formatively follows constitutional provision of due process, this ^{not} a res nova to any other court to excuse, ignorance of this Court's duty to uphold the constitution, ^{which} is banished under the duties as the primary court to

execute overview of all the elements of a piece of paper written and expressed to our freedom. Where this country acts on judicial laws created by its people, the piece of paper just becomes another artifact when ignored. The power it creates for all to observe is to implement; due process is mandated. Thus, Respondent is mandated to grant relief by evidentiary hearing to proceed forward to civil rights claim and eventually quit tam. Mandamus relies for capricious acts to be closely analyzed of trial judges. The tool to effectuate an accurate, and arrive at discovery of misconduct by denial of federal right, interposes oversight of conduct to deny an enrollee access to medical care. Texas has overwhelming applied mandamus as the tool necessary for discovery of the complaint filed by Petitioner, which creates a third party claim under a Civil Rights Act 42 USC 1983. Simply ruling on the void conviction obstructed due process, overrides any other defense by State, when it evades any insistence by Petitioner of denied federal right.

"Thus, a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion, and may result in appellate reversal by extraordinary writ." *Joachim v. Chambers*, 815 SW2d 234, 240 (Tex. 1991); *Walker v. Packer*, 827 SW2d 833, 840 (Tex. 1992)

"It is accepted Fifth Circuit law that actual or constructive notice of the removal of a case to federal court will satisfy the filings requirement of 28 USC § 1446(e)." *Butler v. King*, 781 F.2d 486, 488 (5th Cir. 1986)

"... it is clear that Congress intended for state court proceedings to be stayed while the merits of removal petitions founded on civil rights claims were considered in federal court." *Butler*, 781 F.2d at 489.

"... conviction in state court while removal petition pending is void." *Hardwick v. Doolittle*, 555 F.2d 292, 296 (5th Cir. 1977); *South Carolina v. Moore*, 447 F.2d 1067, 1072-74 (4th Cir. 1971)

Undisputed, unequivocal, unquestionable, uncontested, and undeniable sets that the conviction is void. Exhibits "A" "B" "C". Provides notice whether actual or constructive of the removal, had Respondent received all the state record or simply reviewed 98-17-CV-221-FM would show that entering the judgment of conviction and guilt assessed where after the notice of removal filed. Additionally, 98-17-CV-221-FM final disposition of habeas action is noted on November 09, 2017, yet dismissed does not equate to remand order required under 28 USC 1447(c). Further, adjectives or adverbs will fail to persuade district court, while Fifth circuit continues to pretend to be a putative court of authority to

removal statutes to construe jurisdiction over Petitioner, ~~and~~ determined no relief is available. While relief is being retained by lower courts to claim due process but omit its use to procedural duty to removal, grants release, and a claim under civil rights for a void conviction by state actors. But also, a qui tam and protected activity of denouncing fraud when a federal right is rejected. Respondent further failed to be impartial to show when a sua sponte order for W-19-CA-163 ADA and W-19-CA-336-ADA would stay proceedings when habeas action in W-19-CA-414 ADA would grant release of Petitioner. There is no mistake as to relief requested in habeas action when Petitioner asserted that 08-17-00190 CR granted due process when no incarceration existed by void contempt orders, where the same ~~app~~ state appellate court denied habeas in 08-17-00044 CV. Therein, Petitioner was incarcerated, (Exhibits "D" "E" "H") by the judgment conviction showing days of incarceration. Again, Petitioner raised the issue of appellate counsel not appointed although required. (Exhibit "I") Where appointment of appellate counsel is not to be requested rather waived when appointed. No waiver exists because appointed counsel was not assigned to address the issues of habeas corpus. Customarily, a habeas corpus grants release, a hearing held and if denied, a Petitioner is arrested again to serve the sentence imposed. Yet, state appellate court failed to execute any relief under habeas corpus in state court proceedings. Instead it

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continued to uphold void convictions of contempt. Undermining the statutory construction of Gov't Code 51.903 and Tex. R. Civ. P. 165a and nonsuit ends any proceeding. Multiple questions arise to pose constitutional adherence of due process. While district court (respondent) fails to show impartial by a stark constitutional violation by an appeal memorandum opinion stating Petitioner was not incarcerated, yet EP-17-CV-221-FM admits incarceration. This sole issue is sufficient to act for release, where due process when denied is a fundamental error.

"Habeas corpus 'is designed to guard against extreme malfunction in state criminal justice systems.'" *Brecht v. Abrahamson*, 113 S Ct 1710, 1719 (1993)

"The Supreme Court has held that state law that conflicts with federal law is 'without effect.'" *Maryland v. Louisiana*, 101 S Ct 2114, 2129 (1981).

"Habeas corpus has long been available to attack convictions and sentences entered by a court without jurisdiction." *United States v. Addonizio*, 99 S Ct 2235, 2240 (1979)

By denial of jurisdiction, a due process element meets to cause a fundamental error. Whereby, a habeas action corrects the conviction wrongly entered. However lower courts fail to apply the reasoning by this Court's precedence to justify

release of Petitioner and evidentiary hearing as a determinant of a civil rights claim. Thus, trial court failed to show an impartiality by dismissal, such semblance provokes reassignment to Austin Division of federal district court for the Western district. Reassignment to finally address an evidentiary hearing to move toward a civil rights claim and launch an investigative proceeding of a qui tam claim. Without such objective construction of impartiality it becomes to resolve the issue of a protected activity to afford Petitioner due process.

"To ensure the use of writs in only 'extraordinary situations,' the Supreme Court has established two prerequisites to the issuance of a writ: (1) that petitioners have no other 'adequate means to attain the [desired] relief, and (2) that petitioners meet its burden of showing that its right to the writ is 'clear and indisputable.'" *Kerr v. United States Dist. Court*, 96 S.Ct 2109, 2114 (1976); *Haines v. Liggelt Group Inc.*, 975 F.2d 81, 89 (3rd Cir. 1992)

"A federal appellate court has supervisory power to do so as part of a remand order." 28 USC 2106; *Johnson v. Sawyer*, 120 F.3d 1307, 1333 (5th Cir. 1997)

"... and our ~~general~~ general supervisory power to 'require such further proceedings to be had as may be just under circumstances', 28 USC § 2106 (1988), allow us to reassign this case

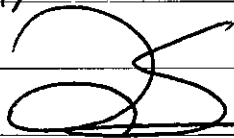
to a different judge on remand." *Litky v. United States*, 114 S.Ct. 1147, 1157 (1994); *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995)

~~Impartiality~~ Impartiality acts to focus on a fair access to court through due process, nonetheless when such interruption causes delay of justice to a protected activity places a miscarriage of justice. Intently, federal habeas of state custody visibly masters the oversight of constitutional errors, principles on due process, until granted will Petitioners obtain relief. Mandamus becomes necessary to grant relief, more so when an apparent void judgment is present.

PRAYER

Wherefore Premises Considered, Petitioners pray writ is ~~granted~~ GRANTED, and brief on the merits is permitted and for any other relief entitled to Petitioners.

Submitted June 04, 2022



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CERTIFICATE OF SERVICE

Notice of the writ was sent to Hon. Alan D. Albright at 800 Franklin Ave, Waco, TX 76701.

