

**IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.**

22-5056

ROSA SERRANO, PETITIONER

V.

**UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT COURT OF TEXAS**

MOTION FOR REHEARING

21-50430

ISSUES PRESENTED

1. Whether jurisdiction by state court was divested by removal under federal statute, and is considered unconstitutional for a reasonable jurist to grant relief under a writ in the appeal, and when denied mandamus becomes necessary;
2. Whether an adequate remedy by appeal in habeas petition 21-50889 is denied, allows for rehearing to grant relief under mandamus proceeding to guarantee a constitutional right provided under a jurisdiction requirement;
3. Whether failure to address the issue of the primary issue of a court's jurisdiction meets a constitutional error to which a writ would grant relief from a void conviction in 21-50889, will mandate relief under mandamus, 21-50430.

LIST OF AUTHORITIES

<i>Brown v. Allen,</i> 344 U. S. 443 (1953)	13
<i>Craig v. Boren,</i> 429 U. S. 190 (1976)	8
<i>Doe v. Bolton,</i> 410 U. S. 179 (1973)	8
<i>Eisenstadt v. Baird,</i> 405 U. S. 438 (1972)	8
<i>Emery v. Johnson,</i> 139 F.3d 191, 195 (5th Cir.1997).....	11
<i>Engels v. Amrine,</i> 155 Kan. 385, 125 P.2d 379, 380 (1942)	14
<i>Fisher v. State of Texas,</i> 169 F. 3d 29)5, 301(5th Cir. 1999)	11
<i>Griswold v. Connecticut,</i> 381 U. S. 479 (1965)	8
<i>Hunt v. Lamb,</i> 427 F.3d 725, 727 (10th Cir. 2005).....	13
<i>McGowan v. Maryland,</i> 366 U. S. 420 (1961)	8
<i>Powers v. Ohio,</i> 111 S.Ct. 1364, (1991)	8
<i>Preiser v. Rodrigues,</i> 93 S. Ct. 1827 (1973)	4

<i>Rachel v. Georgia,</i>	
86 S. Ct. 1783 (1966)	4
<i>Slack v. McDaniel,</i>	
529 U.S. 473, 484 (2000)	12
<i>South Carolina v. Moore,</i>	
447 F.2d 1067, 1070 (4th Cir. 1971).....	9
<i>Stone v. Powell,</i>	
428 U. S. 465, 477 (1976)	13
<i>In re Thompson,</i>	
85 N.J. Eq. 221, 249, 96 A. 102 (1915)	14
<i>Trest v. Cain,</i>	
118 S.Ct. 478, 480 (1997)	11
<i>United States v. Addonizio,</i>	
442 US 178, 185 (1979)	13
<i>United States v. Marcello,</i>	
876 F.2d 1147, 1153 (5th Cir.1989).....	11
<i>Waley v. Johnston, United States v. Marcello,</i>	
316 U. S. 101, 104-105 (1942).....	13
<i>Washington v. Virginia,</i>	
Dist. Court, (ED Virginia 2019).....	9
<i>Ex parte Watkins,</i>	
3 Pet. 193, 202-203 (1830)	13

FEDERAL STATUTES

28 U.S.C. §1443.....	1,3,4,6,7,8,14
28 U.S.C. §1447.....	13,14
28 U.S.C. §1446.....	13
28 U.S.C. §2106.....	7
28 U.S.C. §2254.....	3
28 U.S.C. §2255.....	3
31 U.S.C. §3730(h).....	9
42 U.S.C. §1396a.....	4
42 U.S.C. §1396u-2	8

CERTIFICATE OF COMPLIANCE

I certify the petition for rehearing is presented in good faith and not for delay. And Petitioner files where a decision on 21-50889 was entered on October 07, 2022. Which failed to discuss the issue of a void conviction through removal of state court proceeding under 28 U.S.C. 1443. In 21-50430, mandamus was denied on January 06, 2022, when reliant on the adequate remedy by appeal provision under appeal of denial of the habeas action W-19-CA-414-ADA. However, the adequate remedy by appeal failed to be used, when the Fifth Circuit state that the removal proceeding was not before the court. Because the issue was not previously presented until the decision of the October 07, 2022, decision by the Fifth Circuit, substantial or controlling effect and other substantial grounds for granting the writ of certiorari in a motion for rehearing is deemed necessary for justice.

Certified this day November 30, 2022.


Rosa Serrano

STATEMENT OF FACTS

On October 07, 2022, the Fifth Circuit of Court of Appeals for the United States erroneously issued an order to deny COA, even though any reasonable jurist would acknowledge that a constitutional error exists. Thus, constituting a motion for rehearing to discuss the federal removal statute under 28 U.S.C. § 1443 (*Exhibits “A, B, C”*), to which divests a state court of jurisdiction to enter a state conviction until remanded. Removal was done to federal court, and added to habeas petition (EP-17-CV-221-FM) of a civil rights claim under 28 U.S.C. §1443. However, remand of a civil rights proceeding cannot be done in a habeas petition, when mistakenly added to a habeas petition pending for Petitioner (*Exhibit “D”*). A civil rights notice of removal requires a separate cause number, which was not done, therefore remains unresolved. The notice of removal remains in federal district court of state proceeding 20170D0317. Herein, any reasonable jurist would deduce that removal requires abstention by state court to enter conviction. Plus, the primary provision of the United States Constitution as well precludes a valid conviction cannot be rendered, when jurisdiction is divested by federal removal statute. Because the appeal of the habeas action (21-50889) failed to address the issue of a void conviction, mandamus becomes necessary. This enables for confusion of jurisdiction to be clear and imposing on the court with authority, not to summarily dispose of any issue even though never raised to be considered waived or not before the court. The order of by the Fifth Circuit in 21-50889 lacked disposition on the main topic of a jurisdictional defect imposes the issue, and fails to escape the applicability of waiver. Therein, without discussion of the primary issue of jurisdiction enables to be presented in this Court, whether raised or sua sponte. The decision, of the October 07, 2022 order, that it is not before the court is inane, when a jurisdictional defect is the primary provision in the Constitution, which cannot be ignored, much less brushed aside. Additionally, the State concedes that Petitioner is

innocent although not “actual” innocence justifies granting federal habeas, thus Petitioner is disqualified. Leaving in question no unresolved dispute of the removal was done to divest jurisdiction to state court. The issue remains whether state court met an exemption to the federal statute, which is ordinarily not viewed as acceptable when federal statute is uncompromising to the effect of its intent. No other interpretation is needed when removal signals without authority to proceed. As delineated by the statute to clearly define its prescribed instruction, it is not to be ignored. (Exhibit “F” Doc. No. A-22-CV-523-SH-LY) Without opposing argument to support the conviction was valid to grant authority to state court, it grants Petitioner to seek review by federal habeas, and mandamus exists when no adequate remedy by appeal is accessible.

Enabling the issue of jurisdiction to be before this Court, under a mandamus proceeding, when clearly a jurisdictional defect exists. More so when the conviction without a court’s jurisdiction is rendered void, it becomes inevitable to grant the COA in 21-50889, however it was denied, thus mandamus is appropriate. No adequate remedy by appeal exists, and grants mandamus in 21-50430, and directs district court to grant writ and hold an evidentiary hearing. A constitutional error is evident by the lack of jurisdiction.

While the COA would only entail for briefing on the appeal of the habeas, but sufficient prima facie evidence documents that state court was without jurisdiction, mandamus becomes evident. Even, if not before the court in 21-50889, the issue remains as to whether a jurisdictional defect renders a void conviction to where a writ of habeas corpus permits challenge of the conviction, and release of Petitioner. Thereinafter, mandamus becomes uniquely imperative and the principal issue of determining the conviction void. Since the primary issue is a focus of a constitutional provision that regulates a court, it must first establish jurisdiction, it grants writ to Petitioner along with evidentiary hearing. To simply excuse not before the court is irrelevant, when jurisdiction is

the only principal issue to grant authority. The addition of other issues is insignificant compared to the jurisdictional defect. Without discussing the first issue of jurisdiction, whether, before the court in the petition for a COA, it now grants such issue in the motion for rehearing to discuss and address the jurisdictional defect in mandamus in this motion for rehearing, when no adequate remedy by appeal is evident. Scrutiny of the federal removal statute is required to assess that a valid conviction exists, if not, then a void conviction exists, which any reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. Such element has been met to grant the COA, which would grant jurisdiction to this Court to consider in a petition for certiorari of mandamus proceeding. Ironically, a jurisdictional question is posed for this Court to consider the issue of a void conviction by a jurisdictional defect. When the constitutional error is highly detectable by a jurisdictional defect as instructed by a federal statute under § 1443, it is apparent when COA is required to rule on the merits of the appeal of §§ 2254 or 2255 petition, and until then will jurisdiction be met. A COA is jurisdictional, thus until met, ruling on the merits of the appeal cannot be addressed, the Fifth Circuit applies in a post-conviction proceeding, but it does not apply in a state trial proceeding, to issue relief through a collateral attack of the void conviction. Hence, applicability in federal appellate court applies, but district court application is not apparent, even though shown by federal statutes. Both statutes alike impose a jurisdictional element to move forward, the Fifth Circuit cannot continue until the COA is granted. Likewise, the state court cannot move forward until remand is done, however dismissal in a habeas petition (EP-17-CV-221-FM) does not dispel the removal was remanded. A civil rights petition is separate and apart from a habeas petition, this is overwhelming supported by Supreme Court precedence. *Preiser v. Rodrigues*, 93 S. Ct. 1827, rule interposes the use of separate proceedings and union is denied. Thereby, the dismissal of the habeas petition in EP-17-CV-221-

FM does not remand the removal under §1443, when it is clear that *Rachel v. Georgia* rule, 86 S. Ct. 1783, lists the requirements, and a habeas petition is not one that can contain those requirements, where the purpose is to challenge the conviction of incarceration. Upon removal, Petitioner was not incarcerated for Medicaid Fraud. Thus, the constitutional right to removal where jurisdiction by a civil rights violation is met to grant removal under §1443. Yet, the issues raised by Petitioner all rely on a federal forum, especially when federal issues, subject matter jurisdiction is not lacking but emphasized, when the Spending Clause of the Constitution grants a federal right under 42 U.S.C. §1396a. Undoubtedly, federal jurisdiction is exclusive. And once met it cannot be abrogated by the Fifth Circuit Court, overlooking such infringement of a fundamental requirement, *jurisdiction* (emphasis added). Thereinafter, a motion for rehearing even if not presented in the appeal can address the jurisdictional defect, where it is not waived. The excuse to avoid or elude the scrutiny of the removal statutes fails to adequately apply discussion as to why the conviction is valid without jurisdiction. Not even a procedural bar or default attach to quantify the dismissal of the habeas, and mandamus become necessary to allow a full examination of the removal of the state proceeding, any proceeding prior to remand is equivalent to a court non-existent to issue any order. Herein, no obstacle lies to create any denial to relief and grants COA, even though denied, it now subjects mandamus to issue. With remand to district court to issue release and grant evidentiary hearing. This Court has held the principle of jurisdiction as a necessary element, and until met it renders a void conviction, otherwise reciprocating mandamus to compel strict observance of a federal statute that grants jurisdiction.

STATEMENT OF ARGUMENT

A principle, which is a constitutional section of the Constitution, is not an amendment, which imposes a jurisdictional requirement to secure any detention of a person. Section 8 of the

Constitution develops the use of courts and their direction, it oversees the creation of the rules and laws to be enforced by the courts, and it also firmly establishes a jurisdictional requirement. When jurisdiction is written in the Constitution, not an amendment, it squarely sets the need for this imperative requisite to grant authority. Until met it sets no conviction to be confident to rely on due process. Where jurisdiction is lacking or impeded, it autonomously denies due process. This constitutional amendment is well-known and well addressed in most opinions, not *res nova* to provide an overview of new issues. Simply, no jurisdiction equates to denial of due process, thence a constitutional error upon which any reasonable jurist would find it debatable and wrong.

I. Issue 1

A motion to vacate shows removal was done prior to trial under §1443, and postmark shows receipt of August 23, 2017 to district clerk's office, however not filed until September 14, 2017. (*Exhibit "E"*). The motion vacate provided that removal under §1443 divested state court of jurisdiction, thus necessary to vacate the state conviction. District court denied the motion, also note no cause number was issued when motion to vacate was filed on August 22, 2017, and postmarked August 23, 2017. Plus, now contention by the State that Petitioner is innocent, but not actual innocent to eviscerate an evidentiary hearing nor release of Petitioner to meet the exception of the bar of a successive petition. Yet, the requirement under §2254 does not restrict the distinction between factual and legal sufficiency as predeterminate to grant habeas. Thus, agreement is shown, leaves no other resolution but mandamus to grant the entitled relief. The distinction by innocence or actual innocence is not announced in any precedence by this Court, therefore eliminating any need to further argue the validity of the conviction, when jurisdiction is missing. Therein, uncontroverted that removal was done timely, yet district court failed to file notice of removal. Much confusion exists about the removal of the state proceedings 20170D0317, 20170D0316,

20170D3617 and 20170C0389, where the November 09, 2017, order states the removal occurred and was filed on September 14, 2017. However, the removal was mailed and sent to the district clerk prior to trial as required under §1443, thus divesting jurisdiction to state court to continue to trial. Additionally, court reporter's record notes that the notice of removal was done and informed prosecuting attorney and the state court of the removal. Note exhibits provided as Doc. Nos. 26, 27 and 28 all show dated September 14, 2017. A standing order exists which requires the district clerk to present any document filed with the district court in El Paso to be reviewed prior to filing by Hon. Frank Montalvo. Thus, the delay of recording the notice of removal. Yet, the removal was timely and filed accordingly, therefore removal was initiated to divest the state to proceed forward to trial. Inconsequential of whether state court proceeded to trial or refrained, there is no conviction to hold Petitioner, and the removal remains in district court upon dismissal of habeas. As stated previously, the removal cannot be included in a habeas petition that encompasses the requisites to attain jurisdiction as prescribed within the removal statute. The removal remains pending in district court, however reassignment is necessary under 28 U.S.C. §2106, where district court is unable to assess the jurisdictional defect. While the Austin court would be adequately and customarily be more apt to address the issues of Medicaid compliance and the prosecution of Petitioner. Removal of state proceeding divests the state court of authority, any conviction without authority renders a void conviction. It is well-shown that a court without authority lacks enforceability to enter any order, until it is established that jurisdiction is within the court's capacity to act. Otherwise, the court effectively is rendered to a null activity, which holds no authority to compel to its administrative duty to respect its rendition of the order issued. Federal statute is clear on its objective, by the intent constructed by Congress, any other interpretation provides no structural function. Therefore, immediately placing any deviance to be

unconstitutional, where any reasonable jurist can confer that a constitutional provision is ignored and grants a relief under the writ. Plus, *Powers v. Ohio*, 111 S.Ct. 1364, (1991) permits Petitioner third-party standing, and permits scrutiny of the prosecution.

“We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an ‘injury in fact,’ thus giving him or her a ‘sufficiently concrete interest’ in the outcome of the issue in dispute, *id.*, at 112; the litigant must have a close relation to the third party, *id.*, at 113-114; and there must exist some hindrance to the third party’s ability to protect his or her own interests.” *Id.*, at 115-116. *See also Craig v. Boren*, 429 U. S. 190 (1976). “These criteria have been satisfied in cases where we have permitted criminal defendants to challenge their convictions by raising the rights of third parties.” *See, e. g., Eisenstadt v. Baird*, 405 U. S. 438 (1972); *Griswold v. Connecticut*, 381 U. S. 479 (1965); *see also McGowan v. Maryland*, 366 U. S. 420 (1961). “By similar reasoning, we have permitted litigants to raise third-party rights in order to prevent possible future prosecution.” *See, e. g., Doe v. Bolton*, 410 U. S. 179 (1973).

Undoubtedly, the rights of the enrollee (children) are left indefensible and neglected by a federal right bestowed to their medical care under the Act. Such denial construes civil rights claim upon which a §1443 can be done in removal of a state proceeding, moreover the federal construct of the Act also provides such relief under 42 U.S.C. §1396u-2 (a)(5)(B)(iii), granting standing to Petitioner as a federal right to a civil rights claim. When all factors are considered, standing overwhelming places to seek a federal right asserted by a federal statute, not just by common law.

“Since § 1443 permits the filing of a removal petition at any time before trial in a state court, the conclusion that subsequent proceedings in the state court, before remand, are absolutely void creates a great potential for disruption of judicial proceedings in the state courts.” *South Carolina v. Moore*, 447 F.2d 1067, 1070 (4th Cir. 1971).

“Under § 1443(1), the vindication of the defendant’s federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.” *Washington v. Virginia*, Dist. Court, ED Virginia 2019.

Such denial of jurisdiction by a federal statute is done to embrace that a federal right is preserved, and racial equality is met. However, Petitioner holding a federal protective right can only be

determined under FCA (31 U.S.C. § 3730(h)) to prosecution of state penal code. Uniquely, placing the use of removal strictures as to its purpose to secure a federal right. Petitioner qualifies for removal, but the question remains that a removal withdraws the jurisdiction of state court to proceed forward, and dismissal does not invoke a remand order. It mandates a remand, whereby a remand order is not present, and dismissal of the habeas on November 09, 2017, does not equate to remand. Again, reminding the Court that a civil rights petition is exclusive and precluded from a habeas petition. This decision is evident by Supreme Court precedence.

II. Issue 2

When an adequate remedy by appeal fails to exist, mandamus then becomes primary use of enforceability of entitled right. A procedural bar under *Coleman, supra*, is not available for a dismissal, and a reasonable jurist would deduce that a procedural bar is not an impediment, when jurisdiction is not set. Nevertheless, the only manner to determine, prior to a procedural bar, is first to seek jurisdiction was attained to issue a conviction, otherwise the conviction is void, and no other proceeding and dismissal of this habeas does not invoke a valid conviction. Failure to impose the correct application of removal statute, does not create a valid conviction, and furthermore by the Fifth Circuit stating that it's not before the court is futile to dismiss without discussion. Because a void conviction by lack of jurisdiction, is before the court, whether raised by Petitioner or sua sponte is simply evident by prima facie evidence of the removal.

The state unsuccessful to argue a motion for remand existed, and removal was unchallenged, it places the state proceeding still present in the federal court, where remand order is not evident, and dismissal in habeas action in 2017 does not grant remand. Without a cause number issued for the removed state criminal proceeding, and joinder to habeas is denied, the state conviction remains removed when district court received notice of removal. Both actual and constructive

notice were given to the state. Undisputed that removal was done, and dismissal in habeas does not remand removed proceeding, it leaves the proceeding in district court. District court to attempt to avoid addressing the protected activity under Whistle Blower Act, does not relieve the Fifth Circuit by stating it is not before the court pretext. Mandamus becomes required, when ultimately an adequate remedy by appeal fails to exist.

“The problem with applying the procedural bar to this case, as the state admits in its briefs to this court, is that the state did not argue to the district court that Fisher's claim was procedurally barred. A state waives a procedural bar defense by failing to raise the defense in the district court.” *Emery v. Johnson*, 139 F.3d 191, 195 (5th Cir.1997) (“If the state does not plead procedural bar in the district court, it is waived.”) (citing *United States v. Marcello*, 876 F.2d 1147, 1153 (5th Cir.1989)).

“The Supreme Court held in *Trest v. Cain*, 522 U.S. 87, 118 S.Ct. 478, 480, 139 L.Ed.2d 444 (1997), that a court of appeals is not required to invoke a petitioner's potential procedural default *sua sponte*.” *Fisher v. State of Texas*, 169 F.3d 295, 301(5th Cir. 1999)

However, the state did not raise the procedural bar, a sua sponte order does not validate a void conviction. Convincingly, the only issue in the habeas is whether a void conviction exists for any other proceedings or issues to exist to raise in the habeas. Determination that lack of jurisdiction by removal of state criminal proceeding is preliminary and primary, once established that jurisdictional defect is present, a void conviction exists. This elementary application is set in the constitution to surmise that a constitutional error exists to grant habeas COA and an evidentiary hearing. No further argument is needed to support Petitioner's contention. The argument is unnecessary, when the constitution declares it void as a matter of law and right. The controlling effect that the State (TDCJ) in A-22-CV-SH-LY acknowledges that Petitioner is innocent however not “actual innocence” fails to apply under the Schulp rule, *Schulup v. Delo*. 513 U.S. 298, 329 (1995). This is evident that a court without authority renders any conviction void, thus innocent until the court has acquired jurisdiction. Actual innocence is not formed by the indictment or an

error in the conviction of wrongly convicted person by mistaken identity, it means any innocence is placed on anyone until the jury has determined the conviction, however no jury empowered, and state court not empowered removes the conviction, and Petitioner is innocent.

III. Issue 3

Emphatically, a jurisdictional defect does not develop authority to render a conviction to be enforced. This is well-established precedence and rule raises the one element of this habeas petition, whether the state court could act, it could not. Waiver of a jurisdictional defect can *never* (emphasis added) exist. Thus, a constitutional error exists that imposes review by an evidentiary hearing, mandamus becomes the only manner to challenge the validity of a void conviction, rather than the appeal of a habeas petition. The need to address the merits of the appeal is unnecessary when the prima facie evidence is sufficient to support the contention that the state court proceeding was removed and remains in federal district court. Mandamus thus becomes exclusive of any appeal in 21-50889, and grants relief in 21-50430. EP-17-CV-221-FM notes the removal, and certified copies of the notice of removal filed bestows a void conviction when no remand exists. Again, dismissal in a habeas petition does not exercise a remand order to existence. It simply dismisses the habeas petition, yet a civil rights claim cannot be obtained in a habeas petition.

“a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

“must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. “a substantial showing of the denial of a constitutional right.” *Id.*

Undeniable that a constitutional error exists, when constitutional right is established under the constitution. Enabling a habeas petition, when a jurisdictional defect is evident, automatically placed the issue before the court.

“Habeas corpus has long been available to attack convictions and sentences entered by a court without jurisdiction. See, e. g., *Ex parte Watkins*, 3 Pet. 193, 202-203 (Marshall, C. J.). In later years, the availability of the writ was expanded to encompass claims of constitutional error as well. See *Waley v. Johnston*, 316 U. S. 101, 104-105; *Brown v. Allen*, 344 U. S. 443. But unless the claim alleges a lack of jurisdiction or constitutional error, the scope of collateral attack has remained far more limited. *Stone v. Powell*, 428 U. S. 465, 477 n. 10. *United States v. Addonizio*, 442 US 178, 185 (1979)

Leaving unresolved the question of removal is still pending in district court, and dismissal does not constitute remand, it simply leaves it undisposed in federal district court. Petitioner’s contention is not minimal or strict compliance of the statute, but the only resolution under a federal removal statute. No one negates, nor does the Fifth Circuit Court negate the proceeding was removed, more so when federal district court acknowledges its removal. (*Exhibit “D”*) Dismissal cannot replace a remand order, when habeas action cannot allow removal, otherwise a remand order would exist, federal statute requires a certified copy to the state of the remand, yet this is missing. A civil rights claim affords specific requirements, and remand is a requirement not dismissal, when removed.

"the proper disposition upon a determination of the lack of subject matter jurisdiction is to remand the case to the state court, rather than dismiss the action" (citing 28 U.S.C. §§ 1446(c)(3), (4), 1447(c); *Hunt v. Lamb*, 427 F.3d 725, 727 (10th Cir. 2005)).

Whereupon a dismissal cannot capture the process of remand, it leaves that a state proceeding is pending, not dismissal of a conclusive state adjudication. Federal statute is clear under 28 U.S.C. §§ 1447 and 1443. Refusal of the writ is not an option when a jurisdictional defect exists, mandamus is uniquely placed in extraordinary circumstances, as it is intent set by rules and statutes.

“...refusing to issue writ of habeas corpus when it "is shown as fully by the petitioner as it could appear on the return of the writ" that court lacked jurisdiction)); *Engels v. Amrine*, 155 Kan. 385, 125 P.2d 379, 380 (1942) ("[i]t is the practice in this state to make a preliminary determination as to the propriety of issuing the writ of habeas corpus"); *In re Thompson*, 85 N.J. Eq. 221, 249, 96 A. 102 (1915) ("[H]abeas corpus falls strictly within the definition of a prerogative writ, namely, one that does not issue as of right but at the discretion of the court, that is, one that has to be

allowed by the court or a judge thereof in the exercise of a sound judicial, and not an arbitrary, discretion. Of course habeas corpus is a writ of right when cause appears for its issuance, but cause must always be shown.").

Whereby the writ should issue to grant the relief entitled to Petitioner, not dismissed. The Fifth Circuit fails to act on right granted to Petitioner under the Constitution, both in preamble and amendments. As to whether Petitioner meets the requirement of "Whistle Blower", a protected activity, can be determined in the civil rights petition. No further need is demanded when a jurisdictional defect is present, mandamus is exclusive and extraordinary to grant, once an adequate remedy by appeal fails to exist. In summary, a civil rights claim exists, and Petitioner has standing to represent the federal right of enrollees, and uncontroverted that removal occurred prior to trial, leave no doubt that the conviction is void. Mandamus is essentially evident when a miscarriage of justice is shown and manifestly unjust. The determination that a jurist cannot determine to find Petitioner innocent because of the evidence presented to the court is not before the court until the court is granted jurisdiction under remand. Remand was not done in removal of 20170D0317 under 28 U.S.C. §1446 to designate state court to continue to trial. The alleged flaw by respondent in A-22-CV-523-SH-LY is that void conviction grants no authority to be enforced, Petitioner continues to be restraint by parole of a void conviction and permit an evidentiary hearing to determine that a protected activity under FCA (31 U.S.C. §3730(h)) is afforded to Petitioner prior to remand. Such conduct is protected under the Whistle Blower Act under FCA (31 U.S.C. § 3729), therein indicating an evidentiary hearing on the issue of fraud by THHSC and MCOs to deny a federal right to enrollees. These issues remain unexamined by the court. A need is without any other recourse to scrutinize review of the non-compliance of the Medicaid Act under 42 U.S.C. §§1396a, 1396u-2, to guarantee medical services to enrollees, by evidentiary hearing of A-22-CV-523-SH-LY by the U.S. Attorney's Office to declare Petitioner a protected activity from state prosecution. Until this conduct of investigative inquiry as to the

denied services to enrollees under the Act, can Petitioner be determined “actual innocence” when the evidence will point to fraud by THHSC. Without an impartial trial held on August 04, 2017, and convicted on August 08, 2017, Petitioner is unable to show that the evidence fails to show that Petitioner was denied claims owed by the MCOs and denied services to enrollees. This practice continues with other providers where state Medicaid programs do not participate in the Medicaid Expansion under ACA (Affordable Care Act), therein depriving enrollees of the services by denial of payment for services rendered. Petitioner received the response to the petition by respondent on October 28, 2022, which uncontrovertedly shows that a controlling effect of jurisdiction remains undetermined to which a void conviction remains. Without any legal effect of a void conviction, Petitioner is actually innocent. Mandamus is necessary to cure the defect of jurisdiction grants authority to enter a conviction, otherwise actual innocence remains to grant evidentiary hearing.

WHEREFORE PREMISES CONSIDERED, Petitioner prays that the motion for rehearing is granted, and mandamus is granted, and remand is sent to grant relief entitled to Petitioner, with reassignment under 28 U.S.C. § 2106. And for any other relief entitled to Petitioner.

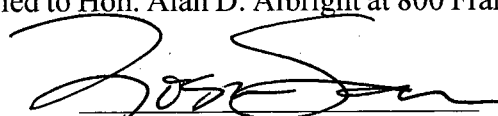
Submitted on this day 28th of October 2022.



Rosa Serrano
P.O. Box 962785
El Paso, TX 79996

Certificate of Service

On this day a copy of the motion for rehearing was mailed to Hon. Alan D. Albright at 800 Franklin Ave., Waco, TX 76701.



Rosa Serrano

**Additional material
from this filing is
available in the
Clerk's Office.**