

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

**22-5601**

**ROSA SERRANO, PETITIONER**

**V.**

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

**MOTION FOR REHEARING**

**19-50667**

**19-50856**

## **STATEMENT OF FACTS**

On November 21, 2022, this Court denied writ of certiorari from the Fifth Circuit of Court of Appeals for the United States, which erroneously denied the appeals of civil rights claims for both TDCJ, state judges, district attorney and UTMB. The denial was set on the failure to pursue the wrongful conviction in the civil rights claim, the purpose for the filing was to assert the wrongful detention of Petitioner when the void conviction eradicated control by TDCJ onto Petitioner to keep in custody. Additionally, state judges and district attorney all participated to deny Petitioner a protected activity under the Whistleblower Act 31 U.S.C. §3730(h). The removal was done to invoke federal jurisdiction onto the US Attorney to investigate whether a claim under the FCA (False Claim Act) 31 U.S.C. §3729 exists to allow third-party standing to enrollees under the Medicaid Act (42 U.S.C. §1396u-2) when enrollees are denied a federal right. Because such right exists, it enables Petitioner to seek standing exclusively in federal court. 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. Plus, failure by the district court in 221-FM constitutes a structural error, which voids the dismissal of the habeas action filed on May 15, 2017, when appellate counsel was denied under *Coleman v. Thompson*, 111 S.Ct. 2546 (1991). Such an exception of appellate counsel systematically voids the contempt orders and state criminal proceeding removed (20170D00317), dismissal is void and no remand shown it compels the removed proceeding in federal district court unresolved. Where contempt orders are not appealable can only be collaterally attack, habeas action, it mandates appellate counsel. Without a hearing and state appellate counsel in 08-17-00044-CV, it instantly grants an evidentiary hearing

to be held in EP-17-CV-221-FM, nevertheless whether an evidentiary hearing was to be given, it still does not dismiss the appointment of appellate counsel in federal habeas. This rule is conclusive to secure a Sixth Amendment right and avoid a structural error. Such error encompasses a void conviction under denial of appellate counsel was done in federal habeas on November 09, 2017. The November 09, 2017 (Exhibit “E”), order in EP-17-CV-221-FM denies appointment of appellate counsel, thereby affirming a structural error whereupon a void conviction exists when Coleman, *supra*, prescribes appointment, apart from notice of removal filed. The order explicitly denies such right and the court acknowledges lack of appellate counsel. Regardless, as to whether removal was done to district court incorrectly or correctly as stated in the dismissal the order is void when district court failed to appoint appellate counsel, where a contempt order only exclusive challenge is through a collateral attack (habeas action). A contempt order does not shield the court nor the adversarial party from exception to validate a void order by denial of appellate counsel for a criminal proceeding. Where state appellate court failed to invoke such constitutional right, it mandates federal district court to apply its use, when denied as this instant case, the dismissal order is void and regardless the removal remains in district court. Needless to pursue anymore clarification of the omission supports a void conviction, but it also prescribes an equal protection of the law by due process, when denied it systematically renders a void conviction. Petitioner has no need to raise the issue on such a primary issue, where district court was keenly aware of the lack of appellate counsel in state habeas under Coleman, *supra*, voids the contempt order, and prescribes an evidentiary hearing in EP-17-CV-221-FM with appointed appellate counsel for contempt orders. Ordinarily, a federal habeas does not appoint legal counsel where a Petitioner has received all the afforded rights of representation under Sixth and Fourteenth Amendments, but 2254 requests the state appellate counsel assigned to the appeal

or habeas proceeding is listed, where none was listed in 221-FM, it placed district court on notice to appoint counsel. It refused to grant this constitutional right in a criminal conviction in contempt proceedings, where state appellate court denied such right. When omitted it automatically centers an inquiry as to whether a Petitioner has been afforded all due process. Such an inquiry would suffice to declare the contempt orders void and request an evidentiary hearing with assignment of counsel. Lacking such fundamental right, it places district court in predicament to explain why the omission of counsel was done where Petitioner was entitled to representation in EP-17-CV-221-FM. 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 “E”*), and void when denied appellate counsel in challenge of contempt orders. 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 civil rights claim exists upon entry of a void conviction, it enables for Petitioner to seek relief under this claim. However, the civil rights claim can hold a qui tam action upon third-party standing. And provide relief from state prosecution when Petitioner is shown to be a protected activity participant under §3730(h). This will enable to allow the US Attorney to investigate and seek relief to enrollees through Petitioner’s prosecution under §3729, and ultimately grant the relief to enrollees to a federal right prescribed by the Act. Therein, without discussion of the primary issue of jurisdiction enables to be presented in this Court, whether raised or *sua sponte*, Petitioner has standing to offer a review of MCOs (Managed Care Organization) practice to deny payment, and denial of service to

enrollees. Furthermore, when 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 redress of third-party standing in civil rights claim for wrongful conviction along with qui tam to examine denial of medical services. 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 of its civil rights claim. The addition of other issues of qui tam and third-party standing, it provides a recourse to an entitled remedy and unequivocally meets the premise of civil rights removal under §1443 of criminal state proceeding to state a claim. 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 a civil rights claim is evident to grant relief to Petitioner and enrollees alike. 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, especially when declared void by structural error. A civil rights petition is separate and apart from a habeas petition, this is overwhelming supported by Supreme Court precedence. *Preiser v. Rodriguez*, 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 for a civil rights claim, but also recovery for wrongful conviction and qui tam as third-party standing. The 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. Failure to state a claim is not met by procedural default when a civil rights claim announces a void conviction when the State concedes Petitioner is innocent. Without any further need to explore or develop failure to state a claim is now erased when respondent in habeas action concedes Petitioner is innocent, however not “actually” innocent. No need is required to delve into the exact use of innocence to grant a habeas petition, simply that a void conviction exists because of legal or factual sufficiency is irrelevant to pose a resolution of a void detention. This Court has held the principle of jurisdiction as a necessary element, and until met it renders a void conviction, otherwise reciprocating a civil rights claim 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 provision 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 and reciprocates a civil rights claim. Also, prosecution of Petitioner permits a FCA claim to be present to secure a federal right to enrollees, and when enrollee is hindered, third-party standing is created. Enabling for Petitioner to seek remedy not exclusive of prosecution but a FCA claim to grant access to a federal right to enrollees under the Act. Without denial or defense that the conviction is void, a civil rights claim exists and failure to state a claim is preclusive for dismissal by district court, and affirmation by the Fifth Circuit.

## **I. Issue 1**

Because a void conviction exists, it now remedies a civil rights claim not exclusive of Petitioner, but alike to third-party standing for enrollees and Texas residents. And, representing a federal right to equal access to medical care under the Act, enables Petitioner under a civil rights claim to seek relief. Dismissal is improper when Petitioner as a convicted felon meets all the federal protections under both federal statutes, it now holds standing to represent a federal right to those unrepresented. Additionally, 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 "D"*). The motion to vacate provided removal under §1443,

along with notice of remand and divested state court of jurisdiction. District court denied the notice of removal, along with the motion to vacate that was filed on August 22, 2017, and postmarked August 23, 2017. Additionally, no motion for remand was filed by the State, therein waiver of the removal is shown and completed, jurisdiction was removed to cast aside any state conviction. This assertion is affirmed by both Petitioner and respondent's response to the habeas petition pending in district court (A-22-CV-523-SH-LY). Yet, the requirement under 28 U.S.C. §2254 does not restrict the distinction between factual and legal sufficiency as predeterminate to grant habeas. Thus, when agreement is shown, leaves no other resolution but a civil rights claim 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 upon receipt. 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. The removal remains pending in district court, however reassignment is necessary under 28 U.S.C. §2106, where district court in El Paso 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-known 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), thereby 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.

“In § 901 of the Civil Rights Act of 1964, however, Congress specifically provided for appeals from remand orders in § 1443 cases, so as to give the federal reviewing courts a new opportunity to consider the meaning and scope of the removal statute.” *Georgia v. Rachel*, 384 U.S. 780, 787, 86 S. Ct. 1783, 16 L. Ed. 2d 925 (1966).

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. Without a remand order the appeal under 1443 could not occur, it then entitles Petitioner to an appeal of the removed proceeding, which was denied under federal statute under 28 U.S.C. 1447 (d), and structurally unsound by its constitutional provision of due process. 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.

## **II. Issue 2**

Where third-party standing is viewed as an exception when the party is hindered by its ability to pursue a federal right, Petitioner’s conviction serves to dispel prosecution and instead provides examination of the hinderance to a federal right. Therefore, the need to explore the practice or conduct by THHSC to liberally and uncontrollably permit MCOs to pay claims subject to their purview of allowed fees, it eliminates the services which were funded by the federal government, in turn creating a FCA claim. Petitioner’s conviction now compels a full investigation not just to determine the “actual” innocence of Petitioner, but rather the most imperative issue of third-party

standing, the denial of a federal right to enrollees secured by federal funding. This creates an outlook of the massive and expansive defrauding of the Medicaid program in Texas with little oversight by THHSC. Otherwise, Petitioner would have never been prosecuted nor audited for the claims that were never paid, and incarceration would be deterred. Unfortunately, Petitioner was not given due process even if incarceration was the resultant of the criminal proceeding, it left Petitioner no recourse to remove the proceeding to federal district court prior to the state trial as mandated under §1443. The Medicaid Act clearly sets the appeal of a denied claim filed by a provider, can assert the rights of the enrollee. This simple provision overrides any other alternative as to dismissing third-party, it in fact empowers Petitioner further, but with the conviction it impels the US Attorney with its regulatory oversight to investigate denial of a federal right. Confirming third-party standing onto Petitioner, as a provider it acquires a protected activity under the Act and Whistleblower Act. No other recourse is left with any capacity to dismiss the civil rights claim, when the State concedes Petitioner is innocent. Furthermore, without a civil rights claim cause number assigned to the removed proceeding on July 27, 2017, any addition to the federal habeas in EP-17-CV-221-FM was without authority. The issues presented in the removal meet the *Rachel v. Georgia* rule for a civil rights claim under §1443, it permits Petitioner as third-party standing to seek relief for others as assigned by federal statutes prescribed. Petitioner is then left with the simple resolution to assist the US Attorney to examine the practice of THHSC to secure compliance through CMS (Centers for Medicaid and Medicare Services) and assure a federal right is granted. Control of the Medicaid program in Texas along with the inclusion of the Medicaid expansion would guarantee access to the federal right. Medicaid is primarily composed of 90% of minor children while the remainder of disabled and elderly that would not have the ability to afford medical care. Nonetheless, Texas limits access to enrollees and its constituents when they pay for

the expansion and do not receive the benefit. Texas does not provide an affordable plan through its inactive participation of the expansion. This is where this Court egregiously failed to protect the civil rights claim of Texans, even if the fraud had not occurred, without affirming, when the expansion grants and raises the qualification for the poverty limit to a higher allowance to participate in Medicaid. By this Court's failure to attain the question that the voluntary participation of the Medicaid Expansion under ACA (Affordable Care Act) mandates no participation, it must require an equal or substitute access to medical care. In other words, because this Court allows each state to decide to participate in the expansion, it eliminates a federal right to that states' constituents. Thus, another issue or claim arises not solely to enrollees but also state's denial of the expansion does not permit for its residents to have equal access to medical care as compared to Medicaid expansion participating states. The person seeking medical care cannot decide to waive a federal right, that right is denied automatically by exclusion of the expansion of Medicaid in that state. Hereinafter, requires this civil rights claim not only for Texas residents, enrollees and Petitioner but for all states who do not participate in the expansion of the Act, and deny any citizen equal access to a federal right. It is not clear if this was argued previously in settling whether the expansion would be mandatory to constitutionally impose upon states not willing to accept its provisions. But whether it was raised by all parties, that denial of the expansion would require a denial of a federal right to equal access to medical care, and hence needing to have a substitute program in place to represent the provisions of the expansion in conformity to the State's need while allowing equal access to a federal right. Instead, Texas decides for all its residents to not participate, and permits MCOs to pay for services deemed necessary and not required under Act as set in the expansion. However, federal funding has increased to allow for the expense, but because Texas has no oversight, it allows MCOs to pay the

rate they would like and reciprocates denial of the service when the provider is unable to meet the expense by the allowance of the service paid. Boren amendment specifically addresses this issue and requires enforcement to secure equal access to medical care and guarantees providers will be given payment for services rendered at an affordable and equitable amount to reimburse the expense of the care.

“The *qui tam* provision has been used in the past, as is presently being attempted, to stop fraud in the medical arena.” *See, e.g., United States ex rel. Glass v. Medtronic*, 957 F.2d 605 (8th Cir.1992); *United States ex rel. Woodard v. Country View Care Ctr. Inc.*, 797 F.2d 888 (10th Cir. 1986); *US ex rel. Foulds v. Texas Tech University*, 980 F. Supp. 864, 867 (N.D. Tex. 1997).

“42 USC § 1396a(a)(30)(A) also imposes an obligation on the state to ensure equal access to medical care under Medicaid. The obligations imposed in the Medicaid statute are unambiguous and mandatory. Therefore, with all elements of the analysis met, it is concluded that plaintiffs have a right of action under section 1983 for violations of section 1396a.” *Evergreen Presbyterian Ministries, Inc. v. Hood*, 116 F. Supp. 2d 745,751 (W.D. La. 2000).

Without such amendment it would simply permit to agree to the terms of the contract and deny medical care to enrollees, thence eroding the use of the Act to grant equal access to medical care. Again, where the amendment exists, it compels this court to analyze whether a civil rights claim exists by exclusion of the Medicaid expansion, when the expansion would quantify and reimburse beyond the amendment. To simply permit the state to excuse the expansion without the examination of equal access to a federal right to that resident is unconstitutional. And Petitioner has standing to represent the issues before this Court to grant certiorari and develop further the argument that an unconstitutional act exists when the expansion is denied.

“Under the Affordable Care Act, Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level.” *Nat. Fedn. of Indep. Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 2606, 183 L. Ed. 2d 450 (2012).

Convincingly, the only issue in the habeas is whether a void conviction exists for any other proceedings or issues to exist to raise. This elementary application is set in the constitution to

surmise that a constitutional error, and civil rights claim exists. 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 *Schulup* 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.

“The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by *habeas corpus*.” *Johnson v. Zerbst*, 304 U.S. 458, 468, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).

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 a habeas petition can address, whether the state court could act, it could not. This grants Petitioner a right to assert a claim for wrongful conviction under 42 U.S.C. §1983 when a void conviction is acknowledged by both parties, the remaining issues are the constitutionality of the denial of the expansion denies equal access to a federal right. Waiver of a jurisdictional defect can *never* (emphasis added) exist. 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. EP-17-CV-221-FM (Exhibit “E”) notes the removal, and certified copies of the notice of removal (“**A, B, C**”) filed bestows a void conviction where no remand exists. It simply dismisses the habeas petition, yet a civil rights claim cannot be obtained in a habeas petition. Undeniable that a constitutional error exists, when constitutional right is established

under the constitution. No one negates, nor does the Fifth Circuit Court negate the proceeding was removed, more so when federal district court acknowledges its removal. (*Exhibit “E”*) Federal statute requires a certified copy to the state of the remand (28 U.S.C. 1447(c), yet this is missing. A civil rights claim affords specific requirements, and remand is a requirement not dismissal, when removed.

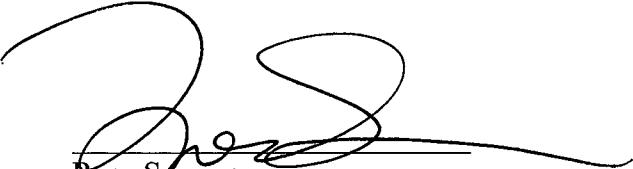
"the proper disposition upon a determination of the lack of subject matter jurisdiction is to remand the case to the state court, rather than dismiss the action" (citing 28 U.S.C. §§ 1446(c)(3), (4), 1447(c); *Hunt v. Lamb*, 427 F.3d 725, 727 (10th Cir. 2005)).

Whereupon a dismissal cannot capture the process of remand, it leaves that a state proceeding is pending. 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, and remand with reassignment is needed to address the civil rights claim for which a constitutional issue remains as to equal access of a federal right when denied Medicaid expansion. Where a state fails to implement a similar plan to the expansion to afford all its residents' access as others participating in the expansion. 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 "Whistleblower", a protected activity, can be determined in the civil rights petition. In summary, a civil rights claim exists, and Petitioner has standing to represent the federal right of enrollees, and uncontested that removal occurred prior to trial, leaves no doubt that the conviction is void. Issues remain unexamined by district 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 for the U.S. Attorney's Office to declare Petitioner as 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 uncontestedly 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. A civil rights claim now exists, where failure to state a claim is denied.

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

Submitted on this day 16<sup>th</sup> of December 2022.



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**Certificate of Service**

On this day a copy of the motion for rehearing was emailed to Edward.marshall@texasattorneygeneral.gov.



Rosa Serrano

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