No.

IN THE

Supreme Court of the United States

PAUL NUNU, PETITIONER

v.

STATE OF TEXAS; HONORABLE MICHAEL B. NEWMAN; HONORABLE JASON A. COX; CHARLES L. NUNU; NANCY NUNU RISK; HOWARD M. REINER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This petition presents one or more questions of exceptional importance of which the Fifth Circuit conflicts with authoritative decisions of this Supreme Court and at least three (3) other Circuit Courts that have addressed the issue, namely whether the *Rooker-Feldman* doctrine bars inferior Federal Courts from voiding State Court judgments that are void *ab initio* under State and Federal law.

The Third, Sixth, and Ninth Circuits recognize the *ab initio* exception to *Rooker-Feldman,* while the Eighth and Eleventh Circuits decline to recognize this exception. See FN 20.

The Fourth and Fifth Circuits neither endorse nor reject this exception, however the Fifth Circuit has recognized the *ab initio* exception in bankruptcy cases, but refused to recognize it in this §1983 case.

Thus, Supreme Court review is necessary to settle this important question of Federal Law and secure and maintain uniformity of the Circuit Court's decisions.

Most importantly, all Texas Courts, and now the U.S. District Court and the Fifth Circuit Court of Appeals *En Banc* have refused review of this facial challenge applying the *Rooker-Feldman* abstention doctrine, thus upholding a State Court permanent injunction that abridges Petitioners' privileges or immunities of speech, expression and to petition the government for redress of grievances through unfettered open court access.

1.Whether the *Rooker-Feldman* doctrine bars inferior Federal Courts from voiding State Court judgments that are void *ab initio* under State and Federal law?

2.A) Does *Rooker-Feldman* overrule the Fourteenth Amendment duty of the Federal Courts to review claims for facial relief; i.e. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States*;
B) Like the rulings in this case, do the inferior Federal Courts suddenly lose jurisdiction to *preserve, protect, and defend* core constitutional freedoms if a citizen challenges State Court judgments that are void *ab initio* under Texas and Federal law?

3. In a case of first impression, whether the Texas Vexatious Litigant Statutes are pre-empted by 42 U.S.C. §1981, and facially unconstitutional as an unlawful prior restraint abridging the core First Amendment privileges or immunities of speech, expression, and to petition?

4. Does the Texas Courts' enforcement of facially unconstitutional statutes constitute a due process violation of the most basic sort actionable under 42 U.S.C.§1983?

STATEMENT OF RELATED CASES

This Federal facial challenge comes after the Texas 14th Court of Appeals and the Texas Supreme Court refused to review Petitioner's facial challenges six (6) times.

The U.S. District Court denied facial review and entered its 20July2021 Memorandum and Order[1] dismissing Petitioners' Complaint upon Fed.R.Civ. P.12(b)(1), expressly finding the United States District Court lacked subject matter jurisdiction under *Rooker-Feldman.*

Petitioner appealed this ruling to the Fifth Circuit[2] which denied facial review affirming *Rooker-Feldman* dismissal in a 17March2022 non-published opinion.[3]

Petitioner then sought *En Banc* rehearing which was denied 20April2022.

After the Fifth Circuit denied review, Petitioner, acting in compliance with the vexatious litigant order, sought permission to file Notice of Appeal and Petition for Writ of Habeas Corpus in the Texas Courts to challenge adverse State Court judgments entered after filing this Federal suit.

The Administrative Probate Court, and the Texas Fourteenth Court of Appeals denied Petitioner permission to file Notice of Appeal and Petition for Writ of Habeas Corpus.[4]

Petitioner then sought relief from the Texas Supreme Court, whose clerk blocked Petitioner from filing the request for relief. There is now pending in

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[1](p.10a-23a).
[2]ROA.21-20446.3493.
[3](p.1a-9a).
[4](p.47a-48a).

the Texas Court of Criminal Appeals Petitioners' request to file Petition for Writ of Habeas Corpus under cause no. WR-29,850-04.

In 2019 Petitioner made facial challenge to the Texas Statutes via Petition for Writ of Certiorari to this Honorable Supreme Court, which denied review, and denied rehearing. *Nunu v. Risk*, *cert. denied*, 140 S. Ct. 1110 (2020), *reh'g denied*, 140 S. Ct. 2706 (2020).

Petitioner made First Amendment facial challenges to the Texas Statutes via three (3) separate appeals to the Texas Fourteenth Court of Appeals[5] and three (3) separate appeals to the Texas Supreme Court,[6] for a total of six (6) facial challenges, with all Texas Courts refusing review of the facial challenge, denying all facial relief six (6) times without comment or decision. *Nunu v. Risk*, 567 S.W.3d 462 (Tex. App.—Houston [14th Dist.] 2019, pet. denied). *Nunu v. Risk*, 062019 TXCA14,14-19-00084-CV(pet. denied); *Nunu v. Risk*, 612 S.W.3d 645 (Tex.App.2020.pet.denied).

The Texas Supreme Court has refused to review every single State and Federal facial challenge to these Statutes, no less than thirty-nine (39) times from 2005 to 2019:

1.*Nunu v. Risk*,TXSC19-0284; 2.*McCann v. Spencer Plantation Investments In re Douglas*, TXSC18-1079; 3.*Vodicka v. A.H. Belo Corp.* TXSC18-0897; 4.*Nixon v. Attorney General of Texas* TXSC*18-1005; 5. Jones v. Anderson* TXSC18-0578; 6.*In re S.V.* TXSC17-0877; 7.*Yazdchi v. BBVA Compass Bank*, TXSC17-0675; 8.*In re Guardianship of Estate of L. S* TXSC17-0429; 9.*Harper v. State* TXSC16-0739; 10.*Yazdchi v. Jones* TXSC16-0844; 11.*Akinwamide v. Transportation*

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[5](Cause No.s 14-18-00109-cv; 14-19-00084-cv;14-19-00564-cv).

[6](Cause No.s 19-0284; 19-0958; 21-0101).

Insurance Co. TXSC16-0962; 12.*McClain v. Dell Inc.*, TXSC15-0872; 13.*Jones v. Markel*, TXSC15-0869; 14.*Judd v. Corey-Steele* TXSC15-0386; 15. *Sparkman v. Microsoft Corp.* TXSC15-0347; 16.*Thomas v. Texas Department of Criminal Justice Officer Adams*, TXSC14-1023; 17.*Thomas v. Texas Department of Criminal Justice-Institutional Division*, TXSC14-0515; 18.*Serrano v. Pellicano Park, L.L.C.*, TXSC14-0455; 19.*Douglas v. Redmond*, TXSC13-0145; 20.*Kastner v. Martin & Drought, P.C.*, TXSC11-0648; 21.*James v. Parish*, TXSC11-0229; 22.*Luckett v. Brinker Restaurant Corp.*, TXSC11-0118; 23.*Jon v. Gaston*, TXSC10-1033; 24.*In re Douglas*, TXSC11-0056; 25.*Salazar v. Service Corporation International* TXSC10-0313; 26.*Sweed v. Nye* TXSC10-0264; 27.*Clifton v. Walters*, TXSC10-0359; 28.*Smith v. Livingston*, TXSC10-0080; 29.*Cantu v. Dominguez*, TXSC10-0218; 30.*Drum v. Calhoun*, TXSC10-0073; 31.*Drake v. Andrews*, TXSC09-0932; 32.*Wanzer v. Garcia*, TXSC09-0710; 33.*In re Kim*, TXSC09-0468; 34.*Akinwamide v. Transportation Insurance Co.* TXSC08-0496; 35.*Wakeland v. Wakeland*, TXSC08-0249; 36.*Brown v. Texas State Board of Nurse Examiners*, TXSC07-1001; 37.*In re Andrews*, TXSC07-0687; 38.*Willms v. Americas Tire Co., Inc.*, TXSC06-0359; 39.*Leonard v. Abbott*, TXSC05-0848.

As shown by the Texas Supreme Court's website, Texas Courts have declared more than 330 United States citizens[7] *"vexatious litigants"*, whose appeals have resulted in no fewer than one hundred-nineteen (119) published Texas Court of Appeals cases,[8] none of

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[7]https://www.txcourts.gov/judicial-data/vexatious-litigants/.

[8]Casemaker Texas search **"vexatious litigant 11.054"**.

which have considered the State and Federal facial challenges presented herein.

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The U.S. District Court denied facial review and entered its 20July2021 Memorandum and Order[1] dismissing Petitioners' Complaint upon Fed.R.Civ. P.12(b)(1), expressly finding the United States District Court lacked subject matter jurisdiction under *Rooker-Feldman.*

Petitioner appealed this ruling to the Fifth Circuit[2] which denied facial review affirming *Rooker-Feldman* dismissal in a 17March2022 non-published opinion.[3]

Petitioner then sought *En Banc* rehearing which was denied 20April2022.

JURISDICTION

This Honorable Supreme Court has jurisdiction over this petition because Petitioner timely filed his 18August2021 Notice of Appeal[4] to the Fifth Circuit Court of Appeals from the United States District Court for the Southern District of Texas, challenging the Honorable U.S. District Judge Gray H. Miller's Memorandum Opinion and Order, and Final Judgment[5] entered 20July2021 applying *Rooker-Feldman* dismissal of all parties and claims contained in Petitioners' Second Amended Complaint Challenging the Constitutionality of the Texas Vexatious Litigant Statutes.[6]

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[1](p.10a-23a).
[2]ROA.21-20446.3493.
[3](p.1a-9a).
[4]ROA.21-20446.3493.
[5](p.10a-23a)(ROA.21-20446.3481)
[6]ROA.21-20446.2496.

This Petition is filed within ninety (90) days of the Fifth Circuit's 20April2022 Order Denying *En Banc* rehearing (p.24a) of its 17March2022 Non-Published Opinion affirming the District Court's *Rooker-Feldman* dismissal.(p.1a-9a).

28 U.S.C.§1254(1) establishes this Court's jurisdiction.

RELEVANT PROVISIONS INVOLVED(see appendix)

NOW COMES Petitioner Paul Nunu, to this Honorable Court of last resort petitioning for *certiorari* to vindicate his Texas and United States constitutional freedoms, and to reverse and vacate the Texas Supreme Court's and Fifth Circuit's *En Banc* refusal to facially review a Texas Statute.

STATEMENT OF THE CASE

This is an appeal from the 20April2022 Fifth Circuit order denying *En Banc* rehearing[7] of the 17March2022 Panel opinion[8] affirming the District Court's Memorandum and Order[9] dismissing Petitioners' 42 U.S.C. §1983 action under Fed.R.Civ.P.12(b)(1)(6) applying *Rooker-Feldman.*

Petitioner, as United States Citizen, invoked State and Federal facial challenges to the Texas Vexatious Litigant Statutes[10] ("the Statutes") as a quasi-criminal statutory abridgment of the United States and Texas Constitution's core freedoms of speech, expression, and

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[7](p.24a)
[8](p.1a-9a).
[9](p.10a-23a).
[10]Texas Civil Practice & Remedies Code Chapter 11, §§11.001 through § 11.104.

to petition the government for redress of grievances through unfettered open court access.

Petitioner has heretofore sought facial review of the Statutes in every possible Texas Court, including the Probate Court and three (3) direct appeals to the Texas 14th Court of Appeals[11] and three (3) appeals to the Texas Supreme Court,[12] for a total of six (6) appellate court facial challenges, with all Texas appellate Courts refusing review of the facial challenges, denying all relief six (6) times without comment or decision.

In this §1983 appeal Petitioner sought declaratory relief against the State of Texas and the Probate Judges that the Texas Statutes abridge and are thus unconstitutionally repugnant to core freedoms guaranteed to all citizens through the United States and Texas Constitutions; and prospective injunctive relief enforcing the mandates of the First and Fourteenth Amendments upon the State of Texas and the Probate Judges; and further declaring that all State Court judgments construing the unconstitutional statutes are void *ab initio* for lack of subject matter jurisdiction.

The District Court dismissed applying *Rooker-Feldman* on the specific grounds that the Fifth Circuit has not yet adopted the *ab initio* exception to *Rooker-Feldman*, except in bankruptcy cases.(p.10a-23a).

Petitioner appealed the District Court dismissal to the Fifth Circuit which also denied facial review *En Banc* applying *Rooker-Feldman.*(p.1a-9a).

This appeal presents for decision the adoption of the *ab initio* exception to *Rooker-Feldman*, in order to be

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[11](Cause No.s 14-18-00109-cv;14-19-00084-cv;14-19-00564-cv).

[12](Cause No.s 19-0284; 19-0958; 21-0101).

consistent with *Feldman* and at least three (3) other sister circuits.[13]

Petitioner is an ethical and responsible forty (40) year Texas Attorney and licensed Certified Public Accountant, who has been a member of the State Bar of Texas since 1982, and the U.S. Supreme Court's Bar since 1994, with no disciplinary or criminal history, who for over ten (10) years has been trying to obtain an accounting and his rightful inheritance from his mother's debtless estate, which efforts the Probate Courts have thwarted through application of these unconstitutional statutes.

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[13]***In the Matter of Cleveland Imaging &Surgical Hospital*** 690 Fed.Appx.283,286(5thCir.2017):
"This court has neither endorsed nor rejected the *ab initio* exception. *See Houston v. Queen*, 606 Fed.Appx. 725, 732-33 (5th Cir. 2015). Our sister circuits are split on the issue. *See Keeler v. Acad. of Am. Franciscan History, Inc.* (*In re Keeler*), 273 B.R. 416, 421 (D. Md. 2002) (" There is a split among the circuits as to whether there is a narrow exception to *Rooker-Feldman* for state judgments that are void *ab initio.*"); *compare James v. Draper* (*In re James*), 940 F.2d 46, 52 (3d Cir. 1991) (recognizing the *ab initio* exception) *and Singleton v. Fifth Third Bank of W. Ohio* (*In re Singleton*), 230 B.R. 533, 538 (B.A.P. 6th Cir. 1999) (same) *and Lake v. Capps* (*In re Lake*), 202 B.R. 751, 758 (B.A.P. 9th Cir. 1996) (same), *with Schmitt v. Schmitt*, 324 F.3d 484, 487 (7th Cir. 2003) ("acknowledging]" but "not endorsing" the void *ab initio* exception) *and Ferren v. Searcy Winnelson Co.* (*In re Ferren*), 203 F.3d 559, 559-60 (8th Cir. 2000) (per curiam) (declining to create a void *ab initio* exception to the *Rooker-Feldman* doctrine when a state court allegedly interfered with bankruptcy court jurisdiction) *and Casale v. Tillman*, 558 F.3d 1258, 1261 (11th Cir. 2009) (declining to adopt a void *ab initio* exception based on the state court's lack of jurisdictional authority) *and In re Thomas*, No. 04-26010, 2006 WL 5217796, at *3 (Bankr. D. Md. Feb. 21, 2006) (" The Fourth Circuit has not addressed a void *ab initio* exception to the *Rooker-Feldman* doctrine.")".

Federal Question Jurisdiction

The U.S. District Court has federal question jurisdiction under U.S. Const. art. III, cl. 2 for claims arising under the Constitution, the Supremacy Clause U.S. Const. art. VI, cl. 2, and 28 U.S.C. §§1331,1343(a).

The Supremacy Clause establishes jurisdiction because all Texas Courts have refused to consider a properly raised constitutional challenge and upheld a permanent injunction that abridges Petitioner's freedoms of speech, expression and to petition with remedy by due process of law.

This "*Breach of Constitution*" civil rights complaint arises under the Constitution and Statutes of the United States and invokes enforcement of the Supremacy Clause against the State of Texas and the Probate Judges that the United States Constitution "*shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding*"; the First Amendment clause "*Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances*" through unfettered Court access; and the Fourteenth Amendment prohibition "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*"; and its statutory counterpart 42 U.S.C §1981 which expressly protects the freedom "*to sue*" and to "*be parties*" "*against impairment under color of State law*", and the Texas Constitution's 'Bill of

Rights' Article 1, §§ 8, 13, 19, and 27 guaranteed privileges or immunities of speech, expression, and to petition the government through unfettered open Court access, and the further guaranteed freedom under Tex.Const.art.1 §29 to have all contrary laws declared void.

Preliminary Statement

Petitioner has been held in direct (criminal) and constructive contempt[14] for exercising the core privileges or immunities of speech, expression, to petition the government for redress of grievances through unfettered open court access seeking access to the rule of law in the Texas Courts.

Now Petitioner's access to the Texas Courts has been completely blocked by the Texas Supreme Court:(p.49a-51a)

> Dear Mr. Nunu:
> You have been determined to be a vexatious litigant and are subject to a pre-filing order pursuant to Texas Civil Practice and Remedies Code Section 11.101. A clerk may not file an action submitted by a person that has been determined to be a vexatious litigant and who is subject to a pre-filing order unless approval is given for filing the action by the local administrative judge. This prohibition on filing actions includes an appeal. Tex. Civ. Prac. & Rem. Code Section 11.103(a). An exception is made to allow a court of appeals clerk to file an appeal from a prefiling order entered under

[14](p.36a-38a)

> Section 11.101. But this exception does not include the Clerk of the Supreme Court of Texas. An order declaring a person a vexatious litigant may also not be reviewed by mandamus at the Supreme Court. See Tex. Civ. Prac. & Rem. Code Section 11.102(f). Therefore, I am prohibited by statute from filing the documents you sent to the Supreme Court of Texas.
>
> Sincerely,
> Blake A. Hawthorne
> Clerk of the Court

Summary of the Argument

The vexatious litigant judgments herein challenged are unconstitutional and void *ab initio* because the Texas Vexatious Litigant Statutes[15] are unconstitutional and void *ab initio*.

The statutes are facially unconstitutional and void because they are *contrary* to the enumerated privileges or immunities of speech, expression, and to petition the government for redress of grievances through unfettered open court access which the Tex. Const.art.1,'Bill of Rights'§§8, 13, 19, & 27 expressly protects.

All laws contrary to the Bill of Rights are expressly declared *void* under Tex.Const.art.1,§29:

> PROVISIONS OF BILL OF RIGHTS
> POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLATE:

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[15]Texas Civil Practice & Remedies Code Chapter 11, §§11.001 through §11.104.

> *"To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void."*

The Texas Supreme Court has construed Tex.Const.art.1,§29 to be self-executing, meaning that statutes that are *contrary* to the "Bill of Rights" are void *ab initio*.

The Statutes Are Void *Ab Initio* Under Texas Law

Tex.Const.art.1,§29 declares the standard of review to determine if a law is void is ***"contrary"*** to the 'Bill of Rights' and must be construed along with the stated purpose that the freedoms protected in the Bill of Rights *"shall forever remain inviolate"*.

The Texas Supreme Court interpreted this Constitutional provision in *City of Beaumont, v. Bouillion*[16]:

> "The guarantees found in the Bill of Rights are excepted from the general powers of government; the State has no power to commit acts contrary to the guarantees found in the Bill of Rights. TEX.CONST.art.1§29. *Section 29 has been interpreted as follows: any provision of the Bill of Rights is self-executing to the extent that anything done in violation of it is void.*

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[16]***City of Beaumont, v. Bouillion,*** 896 S.W.2d 143, 148 (Tex. 1995).

> *Hemphill v. Watson,* 60 Tex. 679,681(1884). *When a law conflicts with rights guaranteed by Article 1, the Constitution declares that such acts are void because the Bill of Rights is a limit on State power.* Id. The framers of the Texas Constitution articulated what they intended to be the means of remedying a constitutional violation. *The framers intended that a law contrary to a constitutional provision is void."*

and *Bell v. Hill:*[17]

> "The privileges guaranteed by the Bill of Rights, however, cannot be destroyed by legislation under the guise of police control. '*Wherever the Constitution makes a declaration of political privileges or rights or powers to be exercised by the people or the individual, it is placed beyond legislative control or interference, as much so as if the instrument had expressly declared that the individual citizen should not be deprived of those powers, privileges, and rights: and the Legislature is powerless to deprive him of those powers and privileges.*'"

Accordingly, under this clear Texas Supreme Court mandate the *rights of the people or the individual are placed beyond legislative control or interference, as much so as if the instrument had expressly declared that the individual citizen* (meaning Petitioner) *should not be deprived of those powers, privileges, and rights.*

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[17]***Bell v. Hill***, 74 S.W.2d 113, 120 (Tex. 1934)

Thus, the Texas Constitution expressly declares the Statutes *VOID ab initio, not voidable* and the Supreme Court declares §29 self-executing.

The statutes are void *ab initio* because *everything in the 'Bill of Rights' is excepted out of the general powers of government,* including subject matter jurisdiction of the Texas Courts to enforce the void statutes.

The statutes grant Texas Courts the power to violate a citizen's constitutional freedoms to speak and petition the government for redress of grievances through unfettered open court access, constitutional freedoms that Tex.Const.art.1,§29 declares *shall forever remain inviolate.*

The Statutes Are Void *Ab Initio* Under Federal Law

The statutes violate the mandates of the First Amendment that *"Congress shall make no law"*, abridging the privileges or immunities of speech, expression, and petition, through open court access, and violates the mandate of the Fourteenth Amendment *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."*

The State of Texas, its Legislature and its Judiciary wholly lack subject matter jurisdiction to *make or enforce any law which shall abridge the privileges or immunities of citizens of the United States*, thus the Statutes are facially unconstitutional and void under both Texas and Federal law, thus the judgments enforcing them are void *ab initio* for lack of subject matter jurisdiction.

The Texas Statutes are *patently unconstitutional* because they have fettered and punished Petitioner, a

natural born citizen, for exercising the guaranteed constitutional freedom of seeking access to the Rule of Law.

The judgments create prior restraint on the exercise of core First Amendment freedoms and are *"presumptively unconstitutional"* under both Texas[18] and Federal law.[19]

This Supreme Court held in *Citizens United v. FEC*[20] that prior restraint on the freedom of speech is facially unconstitutional and *must* be invalidated when demonstrated:

> "The regulatory scheme at issue may not be a prior restraint in the strict sense. ... The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and *must be invalidated where its facial invalidity has been demonstrated*."

In *Davenport v. Garcia*[21] the Texas Supreme Court said:

> *"The presumption in all cases under section eight is that pre-speech sanctions or "prior restraints" are unconstitutional.* . . . Since the dimensions of our constitutionally guaranteed

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[18] *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992).
[19] *Citizens United v. FEC*, 558 U.S. 310, (US 2010).
[20] *Citizens United supra*);
[21] *Davenport v. Garcia* 834 S.W.2d 4, 7 (Tex. 1992)

liberties are continually evolving, today *we build on our prior decisions by affirming that a prior restraint on expression is presumptively unconstitutional.* With this concept in mind, we adopt the following test: a gag order in civil judicial proceedings will withstand constitutional scrutiny only where there are specific findings supported by evidence that (1) an imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute, and (2) the judicial action represents the least restrictive means to prevent that harm. . . . Today we adopt a test recognizing that article one, section eight of the Texas Constitution provides greater rights of free expression than its federal equivalent. . . *We are fully aware that a prior restraint will withstand scrutiny under this test only under the most extraordinary circumstances. That result is consistent with the mandate of our constitution recognizing our broad right to freedom of expression in Texas. An individual's rights under the state constitution do not end at the courthouse door; rather, the courthouse is properly the fortress of those rights.* . . .

"In general, a prior restraint may be justified only if the expression sought to be restrained 'surely [will] result in direct, immediate, and irreparable damage.'" Even "'the interest of the judiciary in the proper administration of justice does not authorize any blanket exception to the first amendment."

Thus, under Texas law, a*n individual's rights under the state constitution do not end at the courthouse door; rather, the courthouse is properly the fortress of those rights.*

Yet the Texas Statutes close and lock the courthouse door to citizens arbitrarily declared vexatious.

As a matter of law, the State of Texas and its Courts have *no arguable basis* for subject matter jurisdiction to *make or enforce* any law that *abridges the privileges or immunities of citizens of the United States,* thus the Statutes, and all judgments enforcing them, are facially unconstitutional and void *ab initio* by Fourteenth Amendment mandate.

The Statutes conflict with 42 U.S.C. §1981, which expressly protects the freedom *"to sue"* and to *"be parties" "against impairment under color of State law"* which renders the Texas Statutes *without effect* because Federal law pre-empts State law.

The entire body of Texas case law construing the Statutes demonstrates Texas Courts' intentional denial of the protections of the United States and Texas Constitutions when construing these statutes.

Constitutional Freedoms Are Not Subject to Balancing Analysis

Every single Texas appellate case that has touched upon the Statutes have relied upon and adopt the reasoning of *Leonard v. Abbott*[22] to conclude the Statutes are constitutional:

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[22]***Leonard v. Abbott,***171 S.W.3d 451,455(Tex.App.—Austin 2005, pet. denied).

> "This Chapter provides a mechanism for courts and litigants to limit frivolous and vexatious litigation. In enacting the Chapter, *"the legislature struck a balance between Texans' right of access to their courts and the public interest in protecting defendants from those who abuse our civil justice system."*

This decision and its progeny are *patently unconstitutional* because the Texas Constitution's 'Bill of Rights' expressly protects a citizens' freedoms of speech, expression and to petition the government for redress of grievances, through unfettered "open" court access, but does not recognize anywhere in the 'Bill of Rights' or the text of the Constitution any reference to a *"public interest in protecting defendants from those who abuse our civil justice system."*

In fact, the opposite is true as Tex.Const.art.1, §29 declares *everything in this 'Bill of Rights' is excepted out of the general powers of government*, specifically protecting the freedoms of speech, expression, and to petition the government as contained in the Texas 'Bill of Rights' unconditionally declaring that such freedoms *shall forever remain inviolate*, not balanced or weighed against other interests or freedoms.

Thus, the fundamental premise upon which the Texas Court decided *Leonard v. Abbott* is *patently unconstitutional* under Texas law, because it declares a *"public interest in protecting defendants"* as a cognate freedom, *weighed, balanced and compromised* against the enumerated cognate freedoms of the 'Bill of Rights', when no such public interest is enumerated anywhere in the 'Bill of Rights' or text of the Constitution.

The Texas Legislature and Texas Courts wholly lack subject matter jurisdiction to "create" a new protected *"public interest in protecting defendants"* that is contrary to the 'Bill of Rights' enumerated freedoms without amending the Constitution, and therefore this judicially created public interest compromising the freedoms of speech, expression, and to petition is void *ab initio* under Tex.Const.art 1,§29.

In finding the Statutes constitutional, *Leonard v. Abbott* and all Texas Appellate Courts that construed the Statutes have unconstitutionally utilized a *"weighing"* or *"balancing"* analysis in order to conclude that the Statutes are constitutional, however, nothing in the Texas or United States Constitutions permits any Court to engage in *weighing or balancing* of the freedoms either Bill of Rights guarantee.

In 2011 this Supreme Court *"emphatically rejected" this "startling and dangerous"* proposition in *Brown v. Entertainment Merchants Association*[23] declaring the First Amendment and the freedoms it guarantees are not subject to any *weighing* or *balancing* analysis:

"The Government argued in *Stevens* that lack of a historical warrant did not matter; that it could create new categories of unprotected speech by applying a "'*simple balancing test*" that weighs the value of a particular category of speech against its social costs and then punishes that category of speech if it fails the test. We emphatically rejected that "*startling and dangerous*" proposition. 'Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But

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[23]*Brown v. Entertainment Merchants Association*, 564 U.S. 786, 792(2011).

without persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription, *a legislature may not revise the 'judgment [of] the American people,' embodied in the First Amendment,' that the benefits of its restrictions on the Government outweigh the cost.*

Thus, every Texas case relying upon *Leonard v. Abbott,* and its progeny, which includes every single Texas case that has touched upon the Statutes, are *patently unconstitutional* under *Brown v. Entertainment Merchants Association,* and should be so declared by this Court.

Petitioner challenges the constitutionality of the Texas Vexatious Litigant Statutes[24] ("Statutes") and related judgments because they mandate forfeiture of Texas and United States guaranteed privileges or immunities, but in no way challenges the inherent power of the Courts to award appropriate sanctions for vexatious conduct, just not forfeiture of a citizen's privileges or immunities to speak and petition the government for redress of grievances through unfettered open court access.

The orders herein challenged are not just unconstitutional, but statutorily prohibited under 18U.S.C.§242 and thus, void for lack of subject matter jurisdiction because no court, State or Federal, has jurisdiction to violate the United States and Texas Constitutions, or Federal criminal law.

The 7June2022 Order (p.45a-46a) enforces the Statutes, and denies Petitioner all opportunity to be heard or to access the rule of law to defend vested property interests against invalid claims, thus

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[24]TexasCivilPractice&RemediesCodeChapter11,§§11.001 through§11.104.

depriving Petitioner due process of law, privileges or immunities, and protected property interests.

These orders have unconstitutionally *"handcuffed"* Petitioner actively restraining him from exercising these guaranteed privileges or immunities of speech, expression, to petition the government for redress of grievances through unfettered open court access, in order to defend vested property interests.

Statement of Facts

Over vehement objection on 12Jan2017 Texas Probate Court Judge the Hon. Loyd Wright entered a judgment *appropriating* Petitioner's Mothers' undistributed estate into a court supervised dependent administration, in direct violation of the Probated Will, final judgment admitting the Will, and Tex.EstatesCode§402.001.

The Probated Will of Petitioner's Mother expressly prohibited the dependent administration via unambiguous command, which command has the force of law through Tex.Estates§401.001.

As a direct result of Petitioner protesting this unlawful action, on 30January2018 then Judge Wright entered the Vexatious Litigant Order declaring Petitioner a *"vexatious litigant"* with pre-filing permanent injunction that required Petitioner to post $15,000 surety bond or the Court would dismiss all claims.(p.25a-27a)

After the 14thCourt's affirmation of the Vexatious Litigant Order, Petitioner sought pre-filing approval to file a meritorious appeal of a $45,712 attorney's fee judgment against his mother's debtless estate, on grounds that Petitioner is a vested heir with statutory

standing to appeal, and that express statutes time bar the claim and bar the claim on the merits.

The Administrative Probate Judge, Respondent, the Hon. Jason Cox, denied Petitioner permission to appeal the attorney's fee judgment entering the Administrative Order: *"the Administrative Judge DENIES Paul E. Nunu permission to proceed with this litigation."*(p.28a-29a)

Immediately thereafter Petitioner retained Attorney Donald Cheatham and filed Notice of Appeal.

Despite active legal representation, Respondent Judge Newman struck Petitioner's Notice of Appeal, re-declared Petitioner a vexatious litigant for filing Notice of Appeal, entered a second permanent pre-filing injunction placing even more onerous conditions upon Petitioner for access to Texas Courts.(p.30a-31a)

Thereafter, the Texas 14thCourt dismissed Petitioner's appeal of the $45,712 attorney's fee judgment on the specific grounds that the Probate Court declared Petitioner a vexatious litigant and struck his notice of appeal.(p.34a-35a)

Petitioner challenged all of these rulings in the 14thCourt and the Texas Supreme Court as unconstitutional deprivation of First and Fourteenth Amendment freedoms, all denied without review or decision.[25]

Petitioner then filed this suit in U.S. District Court naming Respondent Judge Newman as §1983 defendant, making facial challenge to the Statutes.

Since filing the instant suit, Respondent Judge Newman has refused to permit Petitioner to file with the Court Clerk his legal responses in numerous contested matters, and other responsive pleadings

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[25](See FN15&16).

necessary to protect vested property interests, re-declared Petitioner a vexatious litigant for filing a notice of appeal while licensed counsel represented him, has sanctioned Petitioner for challenging the constitutionality of a Texas statute, and imposed other sanctions including direct and constructive contempt without personal service, all in direct violation of State and Federal law and Respondent's non-delegable sworn duty to *preserve, protect,* and *defend* the Texas and United States Constitutions.

Judge Newman has now held Petitioner in "*direct* (criminal) *contempt*", "*constructive contempt*" and fined Petitioner over $15,000, and punitively dismissed "all claims with prejudice."(p.36a-38a).

However, Petitioner did not have any claims to dismiss other than his undistributed inheritance under his Mother's Will, a vested property interest protected by the Texas and United States Constitutions.

Petitioner filed a Motion for Rehearing challenging the Contempt Order and vexatious litigant orders as a violation of State and Federal criminal law and an unconstitutional punishment.

Respondent Judge Newman then issued his *sua sponte* 18October2021 Court's Order to Show Cause commanding Petitioner's involuntary appearance to give testimony.(p.39a-42a).

Upon show cause hearing Judge Newman issued his Sanction Order fining Petitioner $10,000 and further requiring Petitioner to post $20,000 security for costs.(p.43a-44a).

Most recently, Judge Newman entered judgment against Petitioner's inheritance in favor of Respondent Howard Reiner for $71,010 in legal fees despite Petitioner's substantial evidence presented that challenged Reiner's claim as a fraud upon the estate.

At oral hearing to determine the attorney's fee claim, without argument Respondent Judge Newman orally notified the parties that he had granted judgment on Reiner's claim for $71,010 attorney's fees without considering Petitioner's timely filed objections, which should have merit barred the claim.(p.45a-46a).

Judge Newman then *sua sponte* entered the 7June2022 Order (p.45a-46a) abating Petitioner's timely filed objections unless and until Petitioner filed a new "corporate surety bond" in the amount of $15,000.

This oral hearing occurred fifty-six (56) days after entry of the judgment awarding Reiner's claim for $71,010 attorney's fees on 12April2022, which under Texas law could only be corrected via appeal.

Petitioner then sought permission from the Administrative Probate Judge for permission to file a Notice of Appeal and Petition for Writ of Habeas Corpus to challenge the contempt order.

After the Administrative Probate Judge denied permission orally, Petitioner then sought permission from the 14thCourt which then denied Petitioner's *Motion for Emergency Relief to File Notice of Appeal and Petition for Writ of Habeas Corpus,* on 30June2022.(p.47a-48a).

Petitioner then filed for relief from the Texas Supreme Court on 4July2022.

The Clerk of the Texas Supreme Court refused to accept Petitioner's filing solely because Petitioner has been declared a vexatious litigant.(p.49a-51a).

This petition follows.

REASONS TO GRANT RELIEF

The Texas Supreme Court and all inferior Texas Courts are using these Statutes to deny Petitioner

access to the Rule of Law as a defendant to protect vested property interests, thus depriving Petitioner the fundamental right to be heard, which constitutes a due process violation of the most basic sort, through enforcement of these facially unconstitutional Texas Statutes.

The Statutes provide that a Court may declare a citizen a *"Vexatious Litigant"* for filing one (1) offending instrument[26], as occurred in this case, and thereafter to prohibit all *pro se* court access[27] via permanent injunction, punishable by contempt, and preclude a citizen from all further *pro se* access to Texas Courts without first obtaining pre-filing governmental approval, which the Texas Courts have denied Petitioner two (2) times.(p.28a-29a, 47a-48a).

The Texas Statutes are *patently unconstitutional* because they have fettered and punished Petitioner and no less than 330 other United States citizens for exercising First Amendment freedoms by seeking access to the Rule of Law.

This case presents the Texas Court's gross and continuing violation of Petitioner's core freedoms that every Texas and United States citizen enjoys, yet no Texas nor Federal Court will consider Petitioner's facial challenge to these patently unconstitutional statutes.

Petitioner, as United States Citizen, made facial challenges to the Texas Statutes via three (3) separate appeals to the Texas 14thCourt[28] and three (3) separate

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[26]Tex.Civ.Prac.&Rem.Code§11.054.

[27]Tex.Civ.Prac.&Rem.Code§11.102

[28](Cause No.s 14-18-00109-cv;14-19-00084-cv;14-19-00564-cv).

appeals to the Texas Supreme Court,[29] for a total of six (6) facial challenges.

Both the Fourteenth Court of Appeals and the Texas Supreme Court wholly refused review of all of the facial challenges, denying relief six (6) times without comment or decision.

To date all Texas Courts' have refused and continue to refuse to *preserve, protect* and *defend* core State and Federal guaranteed constitutional freedoms when presented with these Statutes.

The Texas Supreme Court has refused to review every single facial challenge to these Statutes, no less than thirty-nine (39) times from 2005 to 2019.

As shown by the Texas Supreme Court's website, the Texas Courts have declared over 330 Texas citizens[30] *"vexatious litigants"*, whose appeals have resulted in no fewer than one hundred-nineteen (119) published Texas Court of Appeals cases,[31] none of which have addressed the Statutes' *voidness* under the Fourteenth Amendment prohibition *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"*, nor abridgment of the core First Amendment and Tex.Const.art.1§27 guaranteed freedoms to *petition the government for redress of grievances* through Tex.Const.art.1§13 open Court access, or Tex.Const.art.1§8 *"Every person shall be at liberty to speak, write or publish his opinions on any subject, . . . and no law shall ever be passed curtailing the liberty of speech or of the press"* nor addressed the *contrary* nature of the Statutes to the Texas 'Bill of Rights' with

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[29](Cause No.s 19-0284; 19-0958; 21-0101).

[30]https://www.txcourts.gov/judicial-data/vexatious-litigants/.

[31]Casemaker Texas search "vexatious litigant 11.054".

Tex.Const.art.1§29 declaring *"all laws contrary thereto, shall be void"*.

Like the First Amendment, 42 U.S.C §1981 expressly protects a citizen's freedom *"to sue"* and to *"be parties"* *"against impairment under color of State law"*, which Federal law pre-empts State law and renders the Statutes *"without effect"*[32], however, despite Petitioner's assertion of §1981 protections, no Texas case has applied the §1981 federal pre-emption to these Statutes.

Moreover, 18 U.S.C. §242 criminalizes State actors *under color of any law willful deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,* thus all of the orders and judgments challenged herein effectuate statutorily prohibited actions and therefore are void for lack of subject matter jurisdiction.

Without unfettered Court access to enforce constitutional freedoms, there is no freedom nor Rule of Law, and the protections of the First and Fourteenth Amendments become meaningless.

The Constitution's First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Fourteenth Amendments, as well as the Constitution's core provisions (*habeas corpus*) encapsulate the broad constitutional freedoms, both express and implied, for unfettered citizen Court access.

Yet to date, no Texas Court nor Federal Court properly reviewed the unconstitutionality of these statutes.

The Statutes create prior restraint on the exercise of core First Amendment freedoms and are

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[32]U.S. Const. art. VI, cl. 2; *Maryland v. Louisiana*, 451 U.S. 725, 746, (1981).

"presumptively unconstitutional" under both Texas and Federal law.[33] [34]

The Supremacy Clause requires State Courts to invalidate state laws that conflict with federal laws, a fundamental constitutional duty the Texas Courts have wholly failed to fulfill.

If Texas Courts can deny citizen access to the Rule of Law even with active legal counsel, then there is no Rule of Law in Texas, nor is there any limitation to the unconstitutional deprivations the State of Texas and its Judiciary can effectuate upon Texas and United States citizens by so denying and punishing Court access.

These Statutes cannot survive constitutional scrutiny, and the Texas Courts should be called out for consciously refusing countless facial challenges under both the United States and Texas Constitutions.

The entire body of Texas case law construing the Statutes demonstrates Texas Courts' conscious disregard of the protections of the United States and Texas Constitutions that this Court must now *preserve, protect and defend.*

The Texas Supreme Court's refusal to review constitutional challenges thirty-nine (39) times abridges the Fourteenth Amendment prohibition that no state *"deny to any person within its jurisdiction the equal protection of the laws."*

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[33] *Davenport v. Garcia*, 834 S.W.2d 4, 10 (Tex. 1992).
[34] *Citizens United v. FEC*, 558 U.S. 310, (US 2010).

History Of The Right To Petition And For Unfettered Court Access

The right of unfettered Court access is the promise for the Rule of Law, without which promise there is no rule of law.

In the Western World from the 1215 ***Magna Carta*** to the 1776 Declaration of Independence to the 1789 First Amendment's core, the unfettered right to petition and access the courts has been a fundamental human right.

The objective historical literature repeatedly identifies as the essential root of the Rule of Law to be the unfettered access to erected tribunals, now our Courts, for the peaceful, logical and reasonable resolution of member disputes and claims.[35]

The 1215 ***Magna Carta***, became the original source for British constitutionalism which represented then and now a social commitment to the Rule of Law, as a promise that even the King was not above the law.[36]

Those who wrote our constitutions, both federal and state, were aware of the jurisprudential concepts, and indeed the language of ***Magna Carta*** and the Common Law.[37]

The English in the course of several civil wars continued to define their natural law Right to Petition and for unfettered access to the Courts.

The 1689 English Bill of Rights provided:

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[35]"The Founders and the Classics", Carl J. Richard, Harvard University Press, 1994; and, "*De Res Publica and De Legibus*", Marcus Tullius Cicero, 54, Loeb Classical Library 1928, trans Clinton W. Keyes, 1928.

[36]"The Roots of the Bill of Rights" Richard Schwartz, Chelsea House Publishers, 1980.

[37] *Id.*

> "That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal."

Thus the 1689 English Bill of Rights explicitly ordained the unfettered right to access the Courts.[38]

For the United States Constitution's drafters, no right was as fundamental to a free society as the unfettered access to the legal system, i.e., to be the beneficiary of a Rule of Law that protects one's rights against the most powerful.

If the Court system is inaccessible, all other natural rights are unable to exist or have meaning.

If the Court system fails to provide a fair and just hearing, as well as result, there is absolutely no Rule of Law.

In reviewing constitutional law, from the earliest days of this Republic, the values and principles of access to justice are present.

Early precedent consistently defines the principles of access to justice as fundamental, although headnote description often defines access to the Courts as "*due process of law*", sometimes classifying it as a "*privilege and immunity*" or terming its denial as a "*violation of equal protection of the law*".

In 1776, the Declaration of Independence cited King George's perceived failure to redress the grievances listed in colonial petitions, such as the 1775 Olive Branch Petition, as a justification to declare independence:

"...In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our

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[38] *Id.*

repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.[39]

These are the principles that the Framers incorporated into the First Amendment freedom to petition.

The First Amendment Right of Unfettered Access to Courts

The cases of *Chambers v. Baltimore*[40], *Thomas v. Collins*,[41] *Mine Workers v. Illinois Bar Assn*,[42] *California Motor Transport v. Trucking Unlimited*,[43] *Bill Johnson's Restaurants, Inc. v. NLRB*,[44] *McDonald v. Smith*[45], *BE&K Construction Company v. NLRB*,[46] and *Borough of Duryea, Pennsylvania v. Guarnieri*,[47] define this Supreme Court's history of the petition clause.

Now Petitioner requests this Honorable Court to vindicate his guaranteed constitutional freedoms and the guaranteed freedoms of 330 other Texas citizens whose First Amendment privileges or immunities have

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[39]Quote from the *Declaration of Independence.*

[40]*Chambers v. Baltimore and Ohio Railroad Company* 207 U.S. 142, (1907).

[41]*Thomas v. Collins*, supra;

[42]*Mine Workers v. Illinois Bar Assn.*,389 U.S. 217,(US 1967).

[43]*California Motor Transport v. Trucking Unlimited,* 404 U.S. 508 (1972).

[44]*Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, (1983).

[45]*McDonald v. Smith* 472 U.S. 479, (1985)

[46] *BE&K Construction Company v. NLRB*, 536 U.S. 516, (2002).

[47] *Borough of Duryea, Pennsylvania V. Guarnieri*, 564 U.S. 379, (2011).

been declared forfeited by the State of Texas, *making* and *enforcing* these facially unconstitutional Statutes.

Petitioner is a natural born citizen of the United States, the greatest country in the history of the world, where the Constitution protects his freedom to exercise the conduct the Texas Courts found vexatious, namely Petitioner's filing of one (1) purportedly offending pleading, or Petitioner filing a Notice of Appeal with counsel, or Petitioner filing a constitutional challenge to a Texas statute with counsel.

The glue that holds our Country together is the Constitution of the United States and "Equal Justice Under Law" which is the supreme law of the land.

If the State of Texas and its Courts can declare forfeit a United States citizens' First Amendment freedoms of speech, and to petition, as in this case, all citizen's constitutional freedoms are in jeopardy.

Punishing a citizen for exercising core freedoms to access the Rule of Law is more than unconstitutional, it freezes and abridges all guaranteed constitutional protections.

Any punishment for exercising constitutional freedoms is *a due process violation of the most basic sort,*[48] *patently unconstitutional*, and *void* because it repugnant to all constitutional freedoms, and this Court must invalidate it.

PRAYER

Petitioner prays that this Honorable Supreme Court will grant *certiorari* and upon final hearing declare void the Statutes, vindicate Petitioner's constitutional freedoms, and the freedoms of all Texas

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[48]***United States v. Goodwin*** 457 U.S. 368, 372 (1982)

citizens so unlawfully restrained, or alternatively remand to the Fifth Circuit for reconsideration, as well as, grant Petitioner whatever other relief at law or in equity to which he might be entitled, or the nature of this cause might require, as this Honorable Court might deem just and proper.

Respectfully submitted,

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Petitioner

United States Court of Appeals, Fifth Circuit.

Paul NUNU, Plaintiff—Appellant,

v.

State of TEXAS; Honorable Michael B. Newman; Honorable Jason A. Cox; Charles L. Nunu; Nancy Nunu Risk; Howard M. Reiner, Defendants—Appellees.

No. 21-20446Summary Calendar
FILED March 17, 2022

Appeal from the United States District Court for the Southern District of Texas, USDC No. 4:21-CV-128, Gray H. Miller, U.S. District Judge

Before Jolly, Willett, and Engelhardt, Circuit Judges.

Opinion

Per Curiam:*

Since 2014, Appellant Paul Nunu has been embroiled in litigation with his siblings Charles and Nancy regarding administration of their late mother's estate. After years of proceedings in Texas probate court, during which Paul's appeals reached the Fourteenth Court of Appeals at least seven times, Paul was declared a vexatious litigant in 2018 pursuant to TEX. CIV. PRAC. & REM. CODE § 11.054, a declaration upheld on appeal. *See Nunu v. Risk*, 567 S.W.3d 462 (Tex. App.—Houston [14th Dist.] 2019, pet. denied), *cert. denied*, 140 S. Ct. 1110 (2020), *reh'g denied*, 140 S. Ct. 2706 (2020).

In January 2021, Paul initiated the present litigation in U.S. district court. He sought "damages for the unlawful conversion of [his] inheritance from an independent administration to a dependent administration" and "the continuing diminution of [his mother's] estate due to gross neglect of dependent administrator," a declaration that "the Vexatious Litigant Statutes" are unconstitutional, and "a permanent injunction barring the State of Texas and the Probate Courts' enforcement." He also requested that the district court "declar[e] void" the Texas courts' orders declaring Paul a vexatious litigant and directing him to pay other parties' attorney fees, as well as the Texas appellate judgments affirming such orders. The district court dismissed Paul's suit in its entirety for lack of jurisdiction, holding that all of his claims were barred by the *Rooker-Feldman* doctrine. *See* No. H-21-128, 2021 WL 3054807 (S.D. Tex. July 20, 2021). Paul appealed. We AFFIRM, albeit for slightly different reasons than those relied upon by the court below.

I

The *Rooker–Feldman* doctrine holds that inferior federal courts lack jurisdiction "to modify or reverse state court judgments' except when authorized by Congress." *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013) (quoting *Union Planters Bank Nat. Ass'n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004)). "A state court judgment is attacked for purposes of Rooker–Feldman when the federal claims are inextricably intertwined with a challenged ... judgment, or where the losing party in a state court action seeks what in substance would be appellate review of the state judgment." *Weaver v. Tex. Capital Bank N.A.*,

660 F.3d 900, 904 (5th Cir. 2011) (cleaned up) (quoting *Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 350 (5th Cir. 2003); *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994)). *Rooker-Feldman* reflects an understanding that errors in state proceedings are to be "corrected by ... state appellate court[s]. Thereafter, recourse at the federal level is limited solely to an application for a writ of certiorari" to the U.S. Supreme Court. *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994).

It is clear at the outset that the district court rightly relied on the *Rooker-Feldman* doctrine in dismissing many of Paul's claims. His demand for "damages for the unlawful conversion of [his] inheritance" and "diminution of [his mother's] estate" is, in substance, an improper "collateral attack[ ]" on the Texas probate court's judgment—which, according to Paul's theory, is itself the act of unlawful conversion. *Id.* Similarly, Paul's demand that the district court "declar[e] void" the Texas courts' vexatious-litigant orders, attorney fees award, and appellate judgments affirming them, is an attempt at modification of state judgments via a collateral federal suit—precisely the type of action forbidden by the *Rooker-Feldman* doctrine. Regardless of whether Paul properly pressed his constitutional challenge to the vexatious-litigant orders during state proceedings, he cannot now advance that challenge in federal court because any such " 'constitutional claim[ ]' " is " 'inextricably intertwined' with the state court's judgment" and thus barred by *Rooker-Feldman*. *Richard*, 355 F.3d at 351 (quoting *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 n.16 (1983)). *See Liptak v. Banner*, 67 F. App'x 252 (5th Cir. 2003) (constitutional challenge to Texas court's

vexatious-litigant order was intertwined with state judgment and thus barred by *Rooker-Feldman* in subsequent federal suit).[1]

Attempting to sidestep *Rooker-Feldman*, Paul argues that an exception to the doctrine allows for collateral review of state court judgments that are void *ab initio* for lack of jurisdiction. "This court has neither endorsed nor rejected [this] exception," and "[o]ur sister circuits are split on the issue." *Matter of Cleveland Imaging & Surgical Hosp., L.L.C.*, 690 F. App'x 283, 286 (5th Cir. 2017). We need not resolve the split here, however, because even if we were to adopt this exception, "the cases that ... recognize" it "indicate that it is presently limited to the bankruptcy context." *Houston v. Venneta Queen*, 606 F. App'x 725, 733 (5th Cir. 2015). What is more, Paul's basis for contesting the Texas courts' jurisdiction is that the vexatious litigant statute is unconstitutional. But a judgment is not void simply because it applied an unconstitutional statute. Under Texas law (which governs whether Texas judgments are subject to collateral attack in federal court, *see United States v. Shepherd*, 23 F.3d 923, 925 (5th Cir. 1994)), "a judgment is void and subject to collateral attack only where it was rendered without 'jurisdictional power' in the sense of lack of subject matter jurisdiction.... [T]he mere fact that [a judgment] is contrary to a statute, constitutional provision or rule of civil or appellate procedure" does not make it void. *Matter of Gober*, 100 F.3d 1195, 1203 (5th Cir. 1996) (cleaned up) (quoting *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990)). Hence, even if we were to recognize an exception to *Rooker-Feldman* for state judgments that are void *ab initio*, Paul could not avail

himself of it because the Texas judgments he attacks are not void.

II

Paul also seeks a declaration that Texas' vexatious litigant statute is "facially unconstitutional" and a permanent injunction barring the law's enforcement. As the district court correctly recognized, the *Rooker-Feldman* doctrine bars collateral challenges to state judgments, but does not bar facial challenges to the underlying rules of law on which those judgments are based. *See Truong*, 717 F.3d at 382. The district court nonetheless held that this qualification did not help Paul because his allegations did not set forth a facial challenge, but rather stemmed only "from the vexatious litigant statute's application to him." 2021 WL 3054807, at *4. We disagree. Paul's complaint calls the statute "facially" unconstitutional at least five times, and requests prospective declaratory and injunctive relief against the law's enforcement. These claims are not barred by *Rooker-Feldman*, and the district court should have recognized as much. Nevertheless, we may affirm the district court's judgment on any ground supported by the record, *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007), and there are alternative grounds to affirm dismissal of Paul's facial challenge for lack of subject-matter jurisdiction.

Paul's demand that the district court declare "unconstitutional the Vexatious Litigant Statutes, and enter a permanent injunction barring the State ... and the Probate Courts' enforcement" is a prayer for relief against Defendant-Appellees the State and Judges Newman and Cox. As for Paul's claims against the

State, we agree with the State that these are barred by sovereign immunity. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 70 n.12 (1996) ("It is not in the power of individuals to call any state into court.") (quoting 3 J. ELLIOT, DEBATES ON THE FEDERAL CONSTITUTION 533 (2d ed. 1836) (J. Madison)). This immunity generally bars suits against non-consenting states, regardless of the form of relief sought. *See id.* at 58.

Furthermore, Paul's claims for declaratory and injunctive relief against the Judges fail for lack of standing.[2] "In order to ... meet the Article III standing requirement when ... seeking [such] relief," a plaintiff must allege that there is "a substantial likelihood that he will suffer injury in the future," and to that end, must set forth "facts from which the continuation of the dispute may be reasonably inferred [T]he continuing controversy ... must ... create a definite ... threat of future injury." *Bauer v. Texas*, 341 F.3d 352, 358 (5th Cir. 2003). We have reviewed Paul's complaint, and we see no allegations suggesting that Paul is likely to be involved in future litigation before Judges Newman or Cox.[3] As in a prior case where we found no standing to seek prospective relief against a judge, we hold that Paul lacks such standing here, since there is no " 'substantial likelihood' " or " 'real and immediate' threat" that Paul "will face injury from [either Judge] in the future." *Id.* Indeed, "[t]his court has often held that plaintiffs lack standing to seek prospective relief against judges where the likelihood of future encounters is speculative." *Id.* "Even assuming, *arguendo*, that the requirements of Article III standing in this respect are minimally met, prudential standing considerations ... dictate the impropriety of declaratory

relief" against state judges, which we have said poses a "danger [of] excessive superintending of state judicial functions." *Id.* at 358–59.

Finally, we acknowledge the Judges' argument in the alternative that federal courts should abstain from exercising jurisdiction over Paul's claims pursuant to *Younger v. Harris*, 401 U.S. 37 (1971).[4] The Judges urge us to take judicial notice of activity on the Texas probate court's docket, citing motions filed by Paul in late 2021 that ask that court to void its prior judgments against him. It is unclear, however, whether state proceedings were "pending at the time the federal action [wa]s instituted" in January 2021—the relevant criterion for application of *Younger* abstention. *Tex. Ass'n of Bus. v. Earle*, 388 F.3d 515, 518 (5th Cir. 2004). If they were not, then there was no need for abstention, and we affirm for the reasons already discussed. Alternatively, if state proceedings were pending, we agree that *Younger* abstention would have been appropriate. Either way, dismissal of Paul's federal action was proper. *See Price v. Porter*, 351 F. App'x 925, 926–27 (5th Cir. 2009) (affirming dismissal on alternative grounds of *Rooker-Feldman* and *Younger*); *Glatzer v. Chase Manhattan Bank*, 108 F. App'x 204, 205 (5th Cir. 2004) (same).

III

For these reasons, the district court's judgment is AFFIRMED.

Footnotes

*Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published

and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

1While unpublished cases issued after January 1, 1996 are not binding, they may serve as persuasive authority. *See Ballard v. Burton*, 444 F.3d 391, 401 n.7 (5th Cir. 2006).

2Insofar as Paul seeks damages against the Judges related to the state judgments he attacks, we agree with the Judges that Paul's claim is barred not only by *Rooker-Feldman* (since such a damages award would effectively invalidate those judgments) but also by absolute judicial immunity. *See Davis v. Tarrant County*, 565 F.3d 214, 221 (5th Cir. 2009).

3The Judges call our attention to Paul's motions filed in late 2021 in the probate court seeking to relitigate the same prior state judgments that he attacks here. To the extent Paul seeks prospective relief preventing Judges Newman and Cox from giving effect to the vexatious litigant statute in the dispute underlying *this* litigation, such relief is barred by *Rooker-Feldman* notwithstanding its forward-looking nature. Because the probate court's "judgment[s] [are] the cause of the prospective injury [Paul] seeks to enjoin," "the prospective relief [he] seeks in [his] federal claim is ... inextricably intertwined with" those judgments. *Bear v. Patton*, 451 F.3d 639, 642 (10th Cir. 2006); *accord Moore v. Tex. Ct. of Crim. Appeals*, 561 F. App'x 427, 431 (5th Cir. 2014). And of course Paul's request for a "declaration that the [statute] is unconstitutional" for purposes of "future cases" fails for "lack[ ] [of] constitutional standing," since "there is no foreseeable prospect that [the statute] will bar some hypothetical future lawsuit" to which Paul will be a party and over which either Judge Newman or Judge Cox will preside. *Winslow v. Stevens*, 632 F. App'x. 721, 723–24 (3d Cir.

2015); *accord Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991); *Brent v. Wayne Cty. Dep't of Hum. Servs.*, 901 F.3d 656, 675 (6th Cir. 2018); *Haas v. Wisconsin*, 109 F. App'x 107, 113 n.7 (7th Cir. 2004); *Earls v. Greenwood*, 816 F. App'x 155 (9th Cir. 2020). Our conclusion finds support in a decision of the Sixth Circuit rejecting a federal challenge to Ohio's vexatious litigant statute via a § 1983 action against state judges. The court reasoned that, "[t]o the extent Plaintiffs seek a declaration that the Statute is unconstitutional as applied in the prior state court proceeding and relieving them from that judgment, ... *Rooker–Feldman* bars their ... challenge.... To the extent [they] ... seek[ ] a declaration that the Statute is unconstitutional ... in future cases, the claim is not ripe because Plaintiffs have not alleged that they have filed or presently intend to file any new lawsuits." *Hall v. Callahan*, 727 F.3d 450, 454–55 (6th Cir. 2013). So, too, here.

4This doctrine holds that federal courts should abstain from enjoining or granting declaratory relief against state litigation if (1) such relief "would interfere with an 'ongoing state judicial proceeding'; (2) the state has an important interest in ... the subject matter of the claim; and (3) the plaintiff has 'an adequate opportunity in the state proceedings to raise constitutional challenges.' " *Bice v. La. Pub. Def. Bd.*, 677 F.3d 712, 716 (5th Cir. 2012) (quoting *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)).

United States District Court, S.D. Texas,
Houston Division.

Paul NUNU, Plaintiff,

v.

State of TEXAS, et al., Defendants.

Civil Action H-21-128
Signed 07/20/2021

MEMORANDUM OPINION AND ORDER

Gray H. Miller, Senior United States District Judge

Pending before the court are four motions to dismiss filed by defendants State of Texas ("the State") (Dkt. 55); the Honorable Michael B. Newman and the Honorable Jason A. Cox ("the Judge Defendants") (Dkt. 56); Howard Reiner ("Reiner") (Dkt. 57); and Charles Nunu ("Charles") and Nancy Nunu Risk ("Nancy") (Dkt. 54).[1] Also pending before the court is Charles's and Nancy's motion for sanctions (Dkt. 27). Having considered the motions, responses, and the applicable law, the court is of the opinion that the defendants' motions to dismiss should be GRANTED, and Charles's and Nancy's motion for sanctions should be DENIED.

I. BACKGROUND

This case is before the court because Paul, a Texas attorney, has been declared a vexatious litigant in Texas state court proceedings, pursuant to Texas

Civil Practice and Remedies Code section 11. Dkt. 52. The court has attempted to piece together the story behind this lawsuit from Paul's second amended complaint and his express incorporation of an order from the Fourteenth Court of Appeals in Houston, Texas. *Id.* at 23 (citing *Nunu v. Risk*, 567 S.W.3d 462, 463 (Tex. App.—Houston [14th Dist.] 2019), *reh'g denied* (Feb. 19, 2019), *review denied* (July 12, 2019), *cert. denied*, — U.S. ——, 140 S. Ct. 1110, 206 L.Ed.2d 181 (2020), *reh'g denied*, — U.S. ——, 140 S. Ct. 2706, 206 L. Ed. 2d 845 (2020)).

Paul, Nancy, and Charles have traveled a "well-worn track through the [Texas] appellate courts" regarding disputes about various state court orders related to the administration of their mother's estate.[2] *Nunu v. Risk*, 612 S.W.3d 645, 650 (Tex. App.—Houston [14th Dist.] 2020), *review denied* (Mar. 26, 2021). After years of litigation in state court during which Paul advanced various arguments about what he contends was the wrongful administration of his mother's estate, Charles and Nancy moved to have Paul declared a vexatious litigant.[3] Dkt. 52. On January 30, 2018, Judge Lloyd Wright granted Charles's and Nancy's motion, declaring Paul a vexatious litigant. *Id.* at 29. On January 15, 2019, the Fourteenth Court of Appeals affirmed the trial court's judgment, noting that "[t]he trial court's vexatious-litigant finding [was] supported by Paul's repeated attempts to relitigate matters that he voluntarily dismissed with prejudice." *Risk*, 567 S.W.3d at 470.

As a vexatious litigant, Paul is required to obtain permission from the appropriate administrative judge before filing new ligation, including new appeals. Tex.

Civ. Prac. & Rem. Code § 11.101. On January 31, 2019, Judge Jason Cox denied Paul permission to appeal a judgment against him that granted attorney's fees to Charles and Nancy. Dkt. 52 at 31. Paul then hired his own counsel and attempted to appeal again, but on April 24, 2019, Judge Michael Newman granted Charles's and Nancy's motion to strike Paul's appeal and added additional conditions for Paul to file new appeals. *Id.* at 31–32. Paul then appealed to the Fourteenth Court of Appeals, but the court dismissed the appeal for lack of jurisdiction, noting that "[b]ecause the trial court struck appellant's first notice of appeal, and because appellant's amended notice of appeal [was] untimely, neither notice of appeal invoked this court's jurisdiction." *Nunu v. Risk*, No. 14-19-00084-CV, 2019 WL 2536598, at *1 (Tex. App.—Houston [14th Dist.] June 20, 2019), *review denied* (Apr. 3, 2020). Paul contends that the vexatious litigant order against him violates both the United States Constitution and the Texas Constitution and asks this court to declare "void and unconstitutional" Texas's vexatious litigant statute. Dkt. 52 at 66. Paul also seeks "damages for the unlawful conversion of [his] inheritance from an independent administration to a dependent administration and the continuing diminution of the estate due to gross neglect of [the] dependent administrator." *Id.* at 65.

MOTIONS TO DISMISS

The defendants filed motions to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).[4] Dkts. 54, 55, 56, 57. The motions are ripe for disposition.

A. Legal Standard

1. 12(b)(1) Motion to Dismiss

Under Federal Rule of Civil Procedure 12(b)(1), a party can seek dismissal of an action for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "In determining whether the court has subject matter jurisdiction, [it] must accept as true the allegations set forth in the complaint." *Crane v. Johnson*, 783 F.3d 244, 251 (5th Cir. 2015). "[A] trial court has the power to dismiss for lack of subject matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Id.* Constitutional standing is a question of subject matter jurisdiction. *Norris v. Causey*, 869 F.3d 360, 366 (5th Cir. 2017). Because standing is jurisdictional, it "should be decided by the court before reaching the merits of the case." *See Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 93–94, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998). "To establish Article III standing, a plaintiff must show[:] (1) an injury in fact; (2) a sufficient causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Crane*, 783 F.3d at 251. "The burden of proof ... is on the party asserting jurisdiction." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

2. 12(b)(6) Motion to Dismiss

Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.' " *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). In considering a Rule 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982). The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955 (citations omitted). The "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

B. Analysis

Paul asserts claims against the State, Reiner, Charles, Nancy, and the Judge Defendants, all of whom argue that Paul's claims are barred by the *Rooker–Feldman* doctrine. Dkts. 54, 55, 56, 57. The *Rooker–Feldman* doctrine is jurisdictional and " 'holds that inferior federal courts do not have the power to modify or reverse state court judgments' except when authorized by Congress." *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382 (5th Cir. 2013) (quoting *Union Planters Bank Nat'l Ass'n v. Salih*, 369 F.3d 457, 462 (5th Cir. 2004)). "One hallmark of the *Rooker–Feldman* inquiry is what the federal court is being asked to review and reject." *Id.* at 382. Federal district courts

lack jurisdiction "over challenges to state court decisions in particular cases arising out of judicial proceedings.' " *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486, 103 S. Ct. 1303, 75 L.Ed.2d 206 (1983). "A state court judgment is attacked for purposes of *Rooker–Feldman* when the federal claims are inextricably intertwined with a challenged state court judgment, or where the losing party in a state court action seeks what in substance would be appellate review of the state judgment." *Weaver v. Texas Cap. Bank N.A.*, 660 F.3d 900, 904 (5th Cir. 2011) (cleaned up). "A federal complainant cannot circumvent this jurisdictional limitation by asserting claims not raised in the state court proceedings or claims framed as original claims for relief." *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir. 1994). The Fifth Circuit has described the *Rooker–Feldman* doctrine as "comprising four elements: '(1) a state-court loser; (2) alleging harm caused by a state-court judgment; (3) that was rendered before the district court proceedings began; and (4) the federal suit requests review and reversal of the state-court judgment.' " *Burciaga v. Deutsche Bank Nat'l Tr. Co.*, 871 F.3d 380, 384 (5th Cir. 2017) (quoting *Houston v. Venneta Queen*, 606 Fed. App'x. 725, 730 (5th Cir. 2015)).

The first three elements of *Rooker-Feldman* are easily satisfied in Paul's case—Paul lost in state court and alleges injuries caused by the state-court judgments against him. *See Burciaga*, 871 F.3d at 384. Additionally, the judgments against him were rendered before the district court proceedings began. Dkt. 52. As to the fourth element of whether Paul's suit seeks review and reversal of the state-court judgment, Paul asks the court to (1) declare as void various orders from

state courts related to Paul's declaration as a vexatious litigant; and (2) award attorneys' fees and costs "incurred challenging the void state court orders." *Id.* at 66–67. Paul also seeks damages for what he contends is the "unlawful conversion" of his inheritance and the "continuing diminution" of his mother's estate "due to gross neglect of [the] dependent administrator." *Id.* at 65. Paul's suit clearly requests review and reversal of the state-court judgments against him, and *Rooker–Feldman* applies; thus, the court does not have jurisdiction.

Paul argues that *Rooker-Feldman* does not apply here because he "in no way seeks" appellate review of the state court decisions and that his challenges are "solely on the legal basis that [the state court decisions] violate guaranteed...[c]onstitutional freedoms."[5] Dkt. 59 at 9. But his arguments and the relief he seeks show otherwise. "[W]here a plaintiff seeks relief that directly attacks the validity of an existing state court judgment," *Rooker-Feldman* applies. *Weaver*, 660 F.3d at 904. Paul essentially asks the court to provide appellate review of the state court judgments against him, and this court does not have jurisdiction to provide appellate review of state court judgments.

Paul cites repeatedly to the Supremacy Clause of the United States Constitution for the proposition that this court has jurisdiction over his claims, and he seemingly contends that this court has jurisdiction over any constitutional claims. Dkt. 52 at 13, 36; Dkt. 59 at 18, 20. But even if a plaintiff challenges the constitutionality of the state court's action as Paul does here, "[a]bsent specific law otherwise providing, [the

Rooker-Feldman] doctrine directs that federal district courts lack [subject matter] jurisdiction to entertain collateral attacks on state court judgments." *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994). "Constitutional questions arising in state proceedings are to be resolved by the state courts." *Id.* If the state trial court errs, "the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court." *Id.* "Thereafter, recourse at the federal level is limited solely to an application for a writ of certiorari to the United States Supreme Court."[6] *Id.*

Moreover, to the extent that Paul asserts new constitutional claims in this case, the court does not have jurisdiction over those claims either—" '[i]f the constitutional claims presented to a United States District Court are inextricably intertwined' with the state court judgment, then the federal district court has no jurisdiction." *Richard v. Hoechst Celanese Chem. Grp., Inc.*, 355 F.3d 345, 351 (5th Cir. 2003) (quoting *D.C. Ct. of Appeals*, 460 U.S. at 483, 103 S.Ct. 1303). In *Liptak*, a case similar to Paul's, the Fifth Circuit rejected the plaintiff's argument that he was entitled to a trial on the issue of whether Texas's vexatious litigant statute was unconstitutional. *Liptak v. Banner*, 67 F. App'x 252 (5th Cir. 2003). The court reasoned that his claims, including his challenge to the vexatious litigant statute, were "inextricably intertwined" with the state court decisions in his case. *Id.* Thus, the court held that the district court had "properly dismissed [his] previously-litigated claims for lack of subject-matter jurisdiction." *Id.*

Like in *Liptak*, this court has no jurisdiction over Paul's claims because his claims are inextricably

intertwined with the state court decisions in his probate case. Paul argues that (1) the Fourteenth Court of Appeals erred because it misinterpreted the vexatious litigant statute; (2) his mother's will was misinterpreted; (3) the Fourteenth Court of Appeal's decision affirming the state trial court's award of attorney's fees to Charles and Nancy is "patently unconstitutional," and attorney's fees were only awarded as "penalty or punishment" against Paul because he exercised his constitutional rights; and (4) the Fourteenth Court of Appeals ignored his constitutional arguments. Dkt. 52 at 24–25, 37–38, 40, 44–45. Paul's claims regarding the constitutionality of Texas's vexatious litigant statute are inextricably intertwined with the state court judgments against him. Thus, the court does not have jurisdiction.

Notably, *Rooker-Feldman* bars as-applied constitutional challenges to a statute but does not bar facial challenges. *Truong*, 717 F.3d at 382. Paul argues that he is challenging the constitutionality of the vexatious litigant statute generally, not only as applied to him. However, an examination of Paul's complaint "belies this contention." *Kastner v. Tex. Bd. of L. Exam'rs*, 278 F. App'x 346, 349 (5th Cir. 2008). Paul's allegations stem from the vexatious litigant statute's application to him. Specifically, he argues that the vexatious litigant statute should not apply to him because (1) only one probate case exists; (2) no evidence was offered at the hearing on this issue; (3) the statute is only being applied to him as retaliation for Paul's discovery of additional evidence in his probate case; (4) the statute only applies to pro se litigants; and (5) the judge who originally declared Paul a vexatious litigant held a personal grudge against Paul and "attack[ed

him] without provocation." Dkt. 52 at 28–29, 32. Paul's complaint does not "adequately set forth a general, facial challenge" to Texas's vexatious litigant statute.[7] *Kastner*, 278 F. App'x at 349. Accordingly, the district court lacks jurisdiction.

III. MOTION FOR SANCTIONS

Nancy and Charles also filed a motion for sanctions pursuant to Federal Rule of Civil Procedure 11. Dkt. 27. Paul responded. Dkt. 37. Rule 11(b) requires that an attorney certify, after a reasonable inquiry, that every pleading, written motion, or other paper submitted to the court (1) is not presented for any improper purpose; (2) contains legal contentions that are "warranted by existing law or by a nonfrivolous argument" that the law should be changed; (3) contains factual contentions that are (or are likely to be) supported by evidence; and (4) contains denials that are warranted by the evidence or based on belief or lack of information. Fed. R. Civ. P. 11(b). The imposition of sanctions under Rule 11 is left to the district court's discretion. *See Marlin v. Moody Nat'l Bank, N.A.*, 533 F.3d 374, 377 (5th Cir. 2008) (stating that the abuse-of-discretion standard applies to the imposition of Rule 11 sanctions); *In re Dragoo*, 186 F.3d 614, 616 (5th Cir. 1999) ("[T]he district court has broad discretion to impose sanctions that are reasonably tailored to further the objectives of Rule 11." (quoting *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 968 F.2d 523, 533 (5th Cir. 1992))). But "a trial court should not impose Rule 11 sanctions for advocacy of a plausible legal theory, particularly where ... the law is arguably unclear." *CJC Holdings, Inc. v. Wright & Lato, Inc.*, 989 F.2d 791, 794 (5th Cir. 1993). "An attorney's conduct is

judged under each standard with an objective, not a subjective, standard of reasonableness." *Snow Ingredients, Inc. v. Snowizard, Inc.*, 833 F.3d 512, 528 (5th Cir. 2016) (citing *Whitehead v. Food Max of Miss., Inc.*, 332 F.3d 796, 802 (5th Cir. 2003) (en banc)). Finally, "[r]easonableness is reviewed according to the 'snapshot' rule, focusing upon the instant the attorney affixes his signature to the document." *Smith v. Our Lady of the Lake Hosp., Inc.*, 960 F.2d 439, 444 (5th Cir. 1992).

In their motion for sanctions, Nancy and Charles contend that sanctions against Paul are appropriate because Paul "continues to relitigate claims he has already lost several times" and "his claims are legally indefensible." Dkt. 27 at 1–3. They argue that courts have repeatedly rejected challenges to the constitutionality of Texas's vexatious litigant statute. *Id.* at 3–4. Moreover, they note that Paul's counsel was even counsel on one of those cases. *Id.* at 3–5 (citing *Guardianship of L.S.*, 14-15-00494-CV, 2017 WL 1416190, at *5 (Tex. App—Houston [14th Dist.] April 18, 2017, pet. denied)). They contend that Paul filed this lawsuit to harass them. *Id.* at 5. The court has strongly considered granting the motion for sanctions in this case but will not do so at this time. However, Paul and his counsel are now WARNED that filing frivolous or meritless pleadings or raising arguments or claims that have been raised and addressed in prior motions before this court will result in the imposition of sanctions against them, including, but not limited to, monetary penalties and limitations on their ability to file lawsuits, motions, or pleadings in the Southern District of Texas.

IV. CONCLUSION

For these reasons, the defendants' motions to dismiss are GRANTED, and this case is dismissed without prejudice.[8] Charles's and Nancy's motion for sanctions is DENIED. The court will issue a final judgment concurrently with this order.

Footnotes

1To avoid confusion, the court uses first names to identify members of the Nunu family throughout this opinion.

2The court only discusses the relevant portions of the lengthy procedural and factual history of the state court proceedings because it is not necessary to lay out a detailed history of those proceedings here. Dkt. 52.

3When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court must "accept the complaint's well-pleaded facts as true and view them in the light most favorable to the plaintiff." *Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004).

4Paul contends that the defendants' motions to dismiss are "sanctionable" as "prohibited demurrer practice." Dkt. 59 at 8. The defendants' motions are not demurrers—the defendants filed motions to dismiss Paul's second amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* Dkts. 54, 55, 56, 57. Accordingly, the court rejects this argument.

5Additionally, Paul seemingly argues that *Rooker-Feldman* does not apply to his case because the state court orders are void for lack of subject matter jurisdiction. *See, e.g.*, Dkt. 59 at 9. He cites no cases for this proposition, but to the extent that he intends to

invoke the purported "void *ab initio* exception" to *Rooker-Feldman*, the court rejects that argument because (1) it is unclear whether the Fifth Circuit recognizes this exception; and (2) "the cases that do recognize this exception ... indicate that it is presently limited to the bankruptcy context." *Houston*, 606 F. App'x at 733; see also *Matter of Cleveland Imaging & Surgical Hosp., L.L.C.*, 690 F. App'x 283, 286 (5th Cir. 2017) ("[The Fifth Circuit] has neither endorsed nor rejected the *ab initio* exception."); *Hix v. Bosque Cty.*, No. A-15-CV-1009-LY, 2016 WL 3688439, at *4 (W.D. Tex. July 6, 2016) (recognizing that the Fifth Circuit has not endorsed this exception and noting that it is presently limited to bankruptcy cases). The court need not determine whether the Fifth Circuit recognizes this exception because Paul's case is not a bankruptcy case. Therefore, this exception does not apply whether the Fifth Circuit recognizes it or not.

6Notably, Paul already petitioned the United States Supreme Court for a writ of certiorari, and the Court denied certiorari on February 24, 2020, and then denied Paul's petition for rehearing on April 20, 2020. *Nunu v. Risk*, — U.S. ——, 140 S. Ct. 1110, 206 L. Ed. 2d 181, *reh'g denied*, — U.S. ——, 140 S. Ct. 2706, 206 L. Ed. 2d 845 (2020).

7Moreover, multiple courts have rejected challenges to the constitutionality of Texas's vexatious litigant statute. *See, e.g., Connor v. Hooks*, No. 03-19-00198-CV, 2021 WL 833971, at *7–9 (Tex. App.—Austin Mar. 5, 2021, pet. filed) (mem. op.) (rejecting plaintiff's challenge to the constitutionality of Texas's vexatious litigant statute and noting that "[t]his court, our sister courts, and federal district courts have repeatedly and consistently rejected constitutional challenges to Chapter 11"); *Caldwell v. Zimmerman*, No. 03-18-

00168-CV, 2019 WL 1372027, at *2–3 (Tex. App.—Austin Mar. 27, 2019, no pet.) (mem. op.) (rejecting plaintiff's argument that Texas's vexatious litigant statute is unconstitutional and noting that "this Court and our sister courts have rejected similar constitutional arguments by vexatious litigants); *Liptak v. Banner*, No. CIV.A. 301CV0953M, 2002 WL 378454, at *3–*5 (N.D. Tex. Mar. 7, 2002) (rejecting First Amendment, Seventh Amendment, and Fourteenth Amendment challenges to Texas's vexatious litigant statute).

8The defendants argue that this court should dismiss Paul's claims with prejudice, but dismissals for lack of subject-matter jurisdiction are without prejudice. *See Yeckel v. The Carl B. & Florence E. King Found. Ret. Pension Plan & Welfare Ben. Program*, No. CIV.A.3:06CV0105-D, 2006 WL 2434313, at *2 (N.D. Tex. Aug. 21, 2006) (noting that, even though the court lacked jurisdiction under *Rooker-Feldman*, "[i]t is well settled ... that a dismissal for lack of subject matter jurisdiction is *without* prejudice"); *Perry v. Brassell*, No. W-18-CV-00062-ADA, 2018 WL 5733173, at *3 (W.D. Tex. Oct. 18, 2018) ("The Fifth Circuit has made it clear that Rule 12(b)(1) dismissals for lack of standing should generally be without prejudice."). That said, should Paul continue to file various iterations of the same lawsuit, the court will consider issuing a pre-filing injunction, which the court has the power to do sua sponte so long as Paul is provided proper notice and a hearing. *See Qureshi v. United States*, 600 F.3d 523, 526 (5th Cir. 2010); *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008).

Date Filed: 4/20/22
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21-20446

PAUL NUNU,
Plaintiff-Appellant,

versus

STATE OF TEXAS; HONORABLE MICHAEL B. NEWMAN; HONORABLE JASON A. COX; CHARLES L. NUNU; NANCY NUNU RISK; HOWARD M. REINER,
Defendants -Appellees.

Appeal from the United States District Court for the Southern District of Texas USDC No. 4:21-CV-128

ON PETITION FOR REHEARING EN BANC

Before JOLLY, WILLETT, and ENGELHARDT, Circuit Judges. PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. App. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

NO. 416,781

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
ROSE FARHA NUNU,	§	NUMBER ONE (1) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER DECLARING PAUL E. NUNU A VEXATIOUS LITIGANT

On this day, came on to be heard the Motion to Declare Paul E. Nunu a Vexatious Litigant (hereinafter referred to as the "Motion") filed by Movants NANCY NUNU RISK and CHARLES L. NUNU (hereinafter referred to collectively as the "Movants"). After consideration of the Motion, the Response, if any, and the arguments of counsel, if any, the Court is of the opinion and finds that Movants' Motion should be **GRANTED** in all respects. The Court finds and declares that Paul E. Nunu is a vexatious litigation and, as such, it is therefore:

ORDERED, ADJUDGED, and DECREED that Paul E. Nunu shall furnish security for the benefit of the Movants, by posting a surety bond with the court clerk in the amount of $ 15,000.00, buy February 16, 2018 at 5.00 p.m. The security is to assure payment to the Movants for reasonable expenses, including the Movants' court costs and attorney's fees. It is further,

ORDERED, ADJUDGED, and DECREED that if Paul E. Nunu does not furnish security within the time limit set by this order, the Court will dismiss all claims filed by Paul E. Nunu in the above numbered and styled cause with prejudice against Paul E. Nunu. It is further,

ORDERED, ADJUDGED, and DECREED that all claims filed by Paul E. Nunu in the above numbered and styled cause are hereby abated until Paul E. Nunu complies with this Order or until the matter is dismissed by further order of this Court. It is further,

ORDERED, ADJUDGED, and DECREED that Paul E. Nunu shall not file, as a pro se party, any new litigation in a court in Texas against Movants, in any capacity, and/or their respective agents, directors, officers, employees, heirs, assigns, attorneys, and/or representatives, without first obtaining permission from the appropriate local administrative judge as required by Texas Civil Practice and Remedies Code Section 11.102(a). It is further,

ORDERED, ADJUDGED, and DECREED that, as required by the Texas Civil Practice and Remedies Code Section 11.104, the court clerk shall provide a copy of this Order to the Office of Court Administration of the Texas Judicial System.

Signed this 30th day of January, 2018.

_____

JUDGE
PRESIDING

Respectfully submitted,

MACINTYRE MCCULLOCH STANFIELD
& YOUNG. LLP

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ATTORNEYS FOR MOVANTS

416,781
1/31/2019

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
ROSE FARHA NUNU,	§	NUMBER TWO (2)
	§	
	§	
DECEASED		HARRIS COUNTY, TEXAS

ADMINISTRATIVE ORDER

On January 30, 2018, Harris County Probate Court No. 1 issued an order declaring Paul E. Nunu to be a vexatious litigant. That order was appealed and on January 15, 2019, the Fourteenth Court of Appeals issued an opinion affirming the order. The Harris County Clerk's Office confirms that a $15,000.00 bond has been posted, as required in the January 30, 2018 order.

As a vexatious litigant, Mr. Nunu must obtain permission from the appropriate administrative judge before filing new litigation, including new appeals, pursuant to Texas Civil Practice and Remedies Code Chapter 11. Mr. Nunu now seeks to file a notice of appeal setting forth his intent to appeal: (1) the Order Awarding Nancy Nunu Risk Necessary Expenses and Disbursements, Including Reasonable Attorney's Fees, as a Result of the Removal Proceedings filed by Paul E.

Nunu Against Nancy Nunu Risk, signed October 19, 2018; and (2) the Order denying Paul E. Nunu's Motion for New Trial to Vacate Judgment for Attorney's Fees, dated January 23, 2019.

After reviewing the Notice of Appeal, the pleadings, the Clerk's record, and the applicable authorities, the Administrative Judge **DENIES** Paul E. Nunu permission to proceed with this litigation.

The Court further **ORDERS** the Harris County Clerk to forward a copy of this Order to the parties in the case or their attorneys of record.

Signed this _____ day of _____, 2019

_____

JASON COX
Administrative Judge, Probate Courts
Harris County, Texas

416,781

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
ROSE FARHA NUNU,	§	NUMBER TWO (2)
	§	
	§	
DECEASED		HARRIS COUNTY, TEXAS

ORDER

On this day came on to be heard and considered Respondents Nancy Nunu Risk and Charles L. Nunu's Objection to and Motion to Strike Paul Nunu's Notice of Appeal and Motion to Supplement the Court's vexatious Litigant Order (hereinafter referred to as "the objection and motion"). The Court, after considering the objection and motion, the response thereto, and hearing the arguments of counsel, is of the opinion that the objection and motion should be granted. It is therefore,

ORDERED, ADJUDGED and DECREED that Paul Nunu's Notice of Appeal is stricken, and the relief requested by Respondents, Nancy Nunu Risk and Charles L. N Respondents' Objection to and lotion to Strike Paul Nunu's Notice of Appeal and Motion to Supplement the Court's Vexatious Litigant Order is GRANTED.

It is further ORDERED, ADJUDGED and DECREED that Paul E. Nunu shall not file, as a pro se party, any new litigation in a court in Texas against Nancy Nunu Risk and Charles Nunu, in any capacity, and/or their respective agents, directors, officers, employees, heirs, assigns attorneys, and/or representatives, without first obtaining permission from the appropriate administrative judge as required by Texas Civil Practice and Remedies Code Section 11.1(

It is further ORDERED, ADJUDGED and DECREED that Paul E. Nunu not only obtain permission from the appropriate administrative judge before filing each new litigation, including appeals, but Paul E. Nunu must post a surety bond with the court clerk in the amount of $15,000.00 before proceeding with each new litigation, if he obtains the necessary permission.

It is further ORDERED, ADJUDGED and DECREED that, as required by Texas Civil Practice and Remedies Code Section 11.104, the court clerk shall provide a copy of this Order to the Office of Court Administration of the Texas Judicial System.

SIGNED this the 24th day of APRIL, 2019.

JUDGE PRESIDING

416,781

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
ROSE FARHA NUNU,	§	NUMBER TWO (2)
	§	
	§	
DECEASED		HARRIS COUNTY, TEXAS

ORDER GRANTING NANCY NUNU RISK' S AND CHARLES L. NUNU'S MOTION FOR RELEASE OF SECURITY BOND

On this day, came on to be heard and considered Respondents Nancy Nunu Risk's and Charles L. Nunu's Motion for Release of Security Bend (hereinafter referred to as the "Motion"). The Court, after considering the Motion, the Response (if any) thereto, and the arguments of counsel, is of the opinion and finds that the Motion should he granted. It is therefore, ORDERED, ADJUDGED and DECREED, the sum of $12,615,00 shall be released from Paul E. Nunu's $15,000,00 surety bond to Respondents (wherein Paul E. Nunu is the Principal and Sam E. Draper is the Personal Surety) for their court.costs and attorney's fees for Appeal No. 14-189-00109-CV,

Signed this 24th day of Aril 2019,

JUDGE PRESIDING

APPROVED:

MACINTYRE MCCULLOCH STANFIELD
& YOUNG. LLP

By: _____

W. CAMERON McCULLOCH
State Bar No. 00788930
2900 Weslayan, Suite 150
Houston, Texas 77027
(713) 572-2900
(713) 572-2902 (FAX)
Cameron.mcculloch@mmlawtexas.com

ATTORNEYS FOR RESPONDENTS

2019 WL 2536598
Only the Westlaw citation is currently available.
SEE TX R RAP RULE 47.2 FOR DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Houston (14th Dist.).

Paul E. **NUNU**, Appellant

v.

Nancy **Nunu** RISK and Charles L. **Nunu**, Appellees

NO. 14-19-00084-CV
Memorandum Opinion filed June 20, 2019

On Appeal from the Probate Court No 2, Harris County, Texas, Trial Court Cause No. 416781

Attorneys and Law Firms

MEMORANDUM OPINION

CURIAM

This is an attempted appeal from a final order awarding attorneys' fees and costs in a probate matter signed October 19, 2018. Appellant has been declared a vexatious litigant, a declaration this court has affirmed. *Nunu v. Risk*, 567 S.W.3d 462, 469 (Tex. App.—Houston [14th Dist.] 2019, pet. filed).

Appellant filed a motion for new trial with respect to the October 19 order on November 16, 2018. Appellant was required to obtain permission to appeal the order, but the administrative judge denied permission. Notwithstanding the denial of permission, appellant filed a notice of appeal on January 31, 2019. After conducting a hearing, the trial court struck appellant's notice of appeal. After the trial court struck

appellant's first notice of appeal, appellant filed an amended notice of appeal outside of the 90-day time period for filing a notice of appeal and beyond the additional 15-day grace period for filing a motion for extension of time to file a notice of appeal. Tex. R. App. P. 26.1(a); *Verburgt v. Dorner*, 959 S.W.2d 615, 617–18 (1997). Because the trial court struck appellant's first notice of appeal, and because appellant's amended notice of appeal is untimely, neither notice of appeal invoked this court's jurisdiction. *See Aziz v. Waris*, No. 01-15-00175-CV, 2015 WL 5076295 at *1 (Tex. App.—Houston [1st Dist.] Aug. 27, 2015, no pet.) (mem. op.) (holding that where trial court struck motion for new trial, appellate timetable by not extended by motion for new trial).

We lack jurisdiction and dismiss the appeal.

9/1/21
NO. 416,781

IN RE: ESTATE OF ROSE FARHA NUNU,
DECEASED
IN THE PROBATE COURT
NUMBER TWO(2) OF
HARRIS COUNTY, TEXAS

ORDER GRANTING MOTION FOR CONTEMPT

On this day, the Court considered the Motion for Contempt for Violations of Court Order and Perpetuating Fraud Upon the Court, and Motion to Dismiss This Litigation and Related Claims with Prejudice (hereinafter referred to collectively as the "motions") filed by Nancy Nunu Risk and Charles L. Nunu (hereinafter collectively referred to as "Movants") against Paul Nunu.

After considering the Motion, any responses and replies, and the arguments of counsel, the Court finds the following:

1. That Paul Nunu has committed direct contempt of court;
2. That Paul Nunu has committed constructive contempt of court;
3. That the Motion for Contempt for Violations of Court Orders should be GRANTED: and
4. That the Motion to Dismiss This Litigation and Related Claims with Prejudice should be GRANTED. It is therefore,

It is ORDERED, ADJUDGED and DECREED that Paul Nunu is ordered to comply with all Orders of this Court and any other Orders that he has thus far failed to follow. It is further,

ORDERED, ADJUDGED and DECREED that Paul Nunu is required to pay $12,615.00 to Movants to reimburse their legal expenses incurred in Paul's failed appeal of the Vexatious Litgant Order within ten (10) calendar days. It is further,

ORDERED, ADJUDGED and DECREED that Paul Nunu is required to pay $2508.00 to Movants to reimburse their legal expenses they have incurred to enforce the Bond Release Order and move for contempt, which shall be paid to Movants within ten (10) calendar days. It is further,

ORDERED, ADJUDGED and DECREED that all of Paul Nunu's claims pending in Cause No. 416,781, the Estate of Rose Faha Nunu, and any related claims or pleadings, shall be DISMISSED WITH PREJUDICE. This Order dismisses only claims belonging to and/or asserted by Paul Nunu. Claims belonging to and/or asserted by Movants remain and shall proceed.

Signed this 30 day of August 2021

Judge Presiding

APPROVED:

MacINTYRE, McCULLOCH & STANFIELD LLP
By:
W. CAMERON MCCULLOCH

State Bar No. 00788930
2900 weslayan, suite 150
Houston, Texas 77027
(713) 572-2900
(713) 572-2902
e-serve@mmlawtexas.com(E-Service Only)
ATTORNEYS FOR MOVANTS

Teneshia Hudpeth
COUNTY CLERK HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

County Probate Court No. 2

PERSONAL CITATION - SHOW CAUSE

The State of Texas County of Harris
Docket No. 416781 Receipt No. No Fee Cash Waived
In the Estate of: Rose Farha Mimi, Deceased

To: Paul E. Nunu 3256 Burke Rd. Pasadena TX 77504.

Greetings:

You are hereby commanded to appear before the Honorable County Probate Court No. 2, of Harris County, Texas, at 1:30 o'clock P.m., at the Courthouse in Houston, Texas on November 11, 2021, then and there to give answer and show Cause as to the allegations sct out in copy of order hereto attached.

Issued and given under my hand of said court at Houston, Texas, this on this tile 28th day of October, 2021.

Teneshia Hudspeth, County Clerk
County Probate Court No. 2
201 Caroline, Room 800
Harris County, Texas 77002

Jocabed Zulay Housley
Deputy County Clerk

Attorney:
County Probate Court No. 2 201 Caroline, 6th Floor
Houston, TX. 77002 832-927-1402

PROBATE COURT 2
CAUSE NO. 416781
IN PROBATE COURT NUMBER TWO(2) OF
HARRIS COUNTY, TEXAS

ESTATE OF
ROSE FARHA NUNU DECEASED

COURT'S ORDER TO SHOW CAUSE

On this day, the Court on its own iniative enters the following show cause order pursuant to Section 10.002(b) as to why Paul E. Nunu's Motion for Rehearing and/or New Trial of Orders Entered 30 August 2021 and Motion to Vacate All Vexatious Litigant Orders was not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation; that each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing or the establishment of new law; that each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery and each denial in the pleading or motion of a factual contention's warranted cm the evidence or for a specifically identified denial, is reasonably based on a lack of information or belief.

It is THEREFORE ORDERED PAUL E NUNU appear in person that the Clerk be, and is

hereby directed, to issue citation to the representative, by personal service at:

PAUL E. NUNU
3256 BURKE RD
PASADENA TX 77504

Pursuant to the Texas Estates Code, the aforesaid PAUL E. NUNU is ordered to appear and show cause in person on November 11, 2021, at 1:30 P.M. in the PROBATE COURT NO. 2 OF HARRIS COUNTY, TEXAS, iocated at the Civil Courthouse, 6th Floor, 201 Caroline, Houston, Texas 77002, in accordance with Section 10.002(b) of the Texas Civil Practice of Remedies Code.

Michael Newman
Presiding Judge Probate Court No. 2
Harris County, Texas

PROBATE COURT 2
CAUSE NO. 416781
IN PROBATE COURT NUMBER TWO(2) OF
HARRIS COUNTY, TEXAS

ESTATE OF ROSE FARHA NUNU DECEASED

ORDER

On this day came on to be heard the following:

1. Nancy Nunu Risk's and Charles L. Nunu's Motion for Sanctions, Request for Issuance of Show Cause Order, and Motion to Post Security for Certs; and
2. Paul E. Nunu's Motion for Rehearing and/or New Trial Challenging the Court's August 30, 2021 Orders

The Court, after considering the Motion for Sanctions, finds that it is meritorious and should be granted. The Court further finds that the Motion for Rehearing and/or New Trial, after consideration, should be in all respects denied. It is therefore,

ORDERED, that Paul E. Nunu shall be sanctioned in the amount of $10,000.00 for violating Chapter 9 or Chapter 10 of the Texas Civil Practice and Remedies Code and Texas Rule of Civil Procedure 13. It is further

ORDERED, that Paul E. Nunu shall post security for costs in the amount of $20,000.00, pursuant to Texas Estaes Code Sec. 53.052 and Tex.R.Civ.P. 143. It is further,

ORDERED, that Paul E. Nunu's Motion for Rehearing and/or New Trial Challenging the Court's August 30, 2021 Order is in all respects denied.

Signed this 11th day of November, 2021

Michael Newman
Judge Presiding

PROBATE COURT 2
CAUSE NO. 416781
IN PROBATE COURT NUMBER TWO(2) OF
HARRIS COUNTY, TEXAS

ESTATE OF ROSE FARHA NUNU DECEASED

ORDER ENFORCING SECURITY FOR COSTS

On January 30, 2018, the Honorable Judge Loyd H.Wright declared Paul E. Nunu, an attorney licensed to practice law in the State of Texas, a vexatious litigant and ordered Paul E. Nunu to furnish security for the benefit of Nancy Nunu Risk and Charles L. Nunu, by posting a surety bond with the Court clerk in the amount of $15,000.00 by February 16, 2018 at 5:00pm. The security was to assure payment to Nancy Nunu Risk and Charles L. Nunu for their reasonable expenses, including their court costs and attorney's fees. As of June 7, 2022, attorney Paul E. Nunu has failed to post a valid surety bond in the amount as previously ordered. It is therefore Ordered, Adjudged and Decreed that Paul E Nunu shall furnish security for the benefit of Nancy Nunu Risk and Charles L. Nunu as previously ordered by Judge Loyd H. Wright on January 30, 2012.

IT IS FURTHER ORDERED that attorney Paul E. Nunu shall post a valid corporate surety bond wit the Court clerk in the amount of $15,000.00 by Monday June 13, 2022 at 5:00 pm as security. IT IS FURTHER

ORDERED , ADJUDGED AND DECREED that all claims and objections filed by Paul E. Nunu in the above numbered and styled cause are hereby

abated until Paul E. Nunu complies with this Order. IT IS FURTHER

ORDERED, ADJUDGED AND DECREED that as required by the Texas Civil Practice and Remedies Code Section 11.104, the court clerk shall provide a copy of this Order to the Office of Court Administration of the Texas Judicial System.

Signed this 7 day of June 2022.

Judge Michael Newman
Presiding

Justices
KEN WISE
KEVIN JEWELL
FRANCES BOURLIOT
JERRY ZIMMERER
CHARLES A. SPAIN
MEAGAN HASSAN
MARGARET "MEG" POISSANT
RANDY WILSON

Chief Justice
TRACY CHRISTOPHER

Clerk CHRISTOPHER A. PRINE
PHONE 713-274-2800

Fourteenth Court of Appeals
301 Fannin, Suite 245
Houston, Texas 77002

Thursday, June 30, 2022

Paul E. Nunu
3256 Burke Rd
Pasadena, TX 77504
DELIVERED VIA E-MAIL

Judge, Probate Court No. 2 201 Caroline
Suite 740
Houston, TX 77002

Howard M. Reiner
3410 Mercer St.
Houston, TX 77027
DELIVERED VIA E-MAIL

William Cameron McCulloch
Kean Miller, LLP
711 Louisiana St,
Ste 1800 South Tower
Houston, TX 77002-2716
DELIVERED VIA E-MAIL

Tracia Y. Lee
Pennzoil South Tower
711 Louisiana Street
Suite 1800
Houston, TX 77002
DELIVERED VIA E-MAIL

Donald Ray Burger
3410 Mercer Houston, TX 77027
DELIVERED VIA E-MAIL

RE: Court of Appeals Number: 14-22-00201-CV Trial Court Case Number: 416,781

Style: In re Paul E. Nunu

Please be advised that on this date the Court DENIED RELATOR'S motion for emergency relief to grant permission to file notice of appeal and petition for writ of habeas corpus in the above cause.

Panel Consists of Chief Justice Christopher, and Justices Wise, and Jewell.

Sincerely,
/s/
Christopher A. Prine, Clerk

Filing Returned for Envelope Number: 65999100 in Case: 65999...

From: no-reply@efilingmail.tylertech.cloud,
To: nunulawoffice@aol.com,
Subject: Filing Returned for Envelope Number: 65999100 in Case: 65999100, for filing Motion for Emergency Relief
Date: Tue, Jul 5, 2022 8:17 am

EFILE TEXAS.gov

Filing Returned
Envelope Number: 65999100
Case Number: 65999100
Case Style:

The filing has been reviewed and returned for correction. Please refile with the corrections indicated below. For instructions on how to retain your original file stamp date, consult with your electronic filing service provider or the clerk's office. An electronically filed document is deemed filed when delivered to the electronic filing service provider, unless it is filed on a Saturday, Sunday, or legal holiday (in which case it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday)-or the document requires a motion and an order permitting the document to be filed.

Return Reason(s) from Clerk's Office
Court:File & Serve
Returned Reason:Other
Returned Comments:You have been determined to be a vexatious litigant and are subject to a pre-filing order pursuant to Texas Civil Practice and Remedies Code Section 11.101. A clerk may not file an action submitted by a person that has been determined to be a vexatious litigant and who is subject to a pre-filing order unless approval is given for filing the action by the local administrative judge. This

prohibition on filing actions includes an appeal. Tex. Civ. Prac. & Rem. Code Section 11.103 (a). An exception is made to allow a court of appeals clerk to file an appeal from a prefiling order entered under Section 11.101. But this exception does not include the Clerk of the Supreme Court of Texas. An order declaring a person a vexatious litigant may also not be reviewed by mandamus at the Supreme Court. See Tex. Civ. Prac. & Rem. Code Section 11.102(f).Therefore, I am prohibited by statute from filing the documents you sent to the Supreme Court of Texas.

To learn how to copy the rejected filing so that you can make changes to refile, click here

Document Details
Case Number:65999100
Date/Time Submitted:71412022 6:34 PM CST
Filing Type:Motion for Emergency Relief
Filing Description:4Ju1y2022 MOTION FOR EMERGENCY RELIEF TO GRANT LEAVE TO FILE NOTICE OF APPEAL AND PETITION FOR WRIT OF HABEAS CORPUS
Activity Requested:EFileAndServe
Filed By:Paul Nunu
Filing Attorney:Paul Nunu

THE SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK
201 West 201 West 14th Street
Post Office Box 12248
Austin, TX 78711
Telephone: 512/463-1312
Facsimile: 512/463-1365

July 5, 2022

Paul E. Nunu
3256 Burke Rd.
Pasadena, Texas 77504

Dear Mr. Nunu:

You have been determined to be a vexatious litigant and are subject to a pre-filing order pursuant to Texas Civil Practice and Remedies Code Section 11.101, A clerk may not file an action submitted by a person that has been determined to be a vexatious litigant and who is subject to a pre-filing order unless approval is given for filing the action by the local administrative judge This prohibition on filing actions inlcudes an appeal. Tex. Civ. Prac. & Rem. Code Section 11.143(a). An exception is made to allow a court of appeals clerk to file an appeal from a prefiling order entered under Section 11.101. But this exception does not include the Clerk of the Supreme Court of Texas. An order declaring a person a vexatious litigant may also not be reviewed by mandamus at the Supreme Court. See Tex. Civ. Prac. & Rem. Code Section 11.102(f). Therefore, I am prohibited by statute from filing the documents you sent to the Supreme Court of Texas.

Sincerely,
Blake A. Hawthorne Clerk of the Court

Amendment I. Religion and Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging* the freedom of speech, or of the press; or *the right of the people* peaceably to assemble, and *to petition the Government for a redress of grievances*.

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

Section. 1. "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

42 U.S.C. §1981. Equal rights under the law
(a) Statement of Equal Rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, *to sue, be parties,* give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(c) Protection against impairment
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

18 U.S.C.§242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District *to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or*

laws of the United States, . . . shall be fined under this title or imprisoned not more than one year, or both.

Tex.Const.art.1§13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. *All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.*

Tex.Const.art.1§8. FREEDOM OF SPEECH AND PRESS; LIBEL

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Tex.Const.art.1§19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW:

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Tex.Const.art.1§27. RIGHT OF ASSEMBLY; PETITION FOR REDRESS OF GRIEVANCES:

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and *apply to those invested with the powers of government for redress of grievances or other purposes, by petition*, address or remonstrance.

Tex.Const.art.1§29. PROVISIONS OF BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT; TO FOREVER REMAIN INVIOLATE:

To guard against transgressions of the high powers herein delegated, we declare that *everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.*

Unconstitutional Statutes

Tex. Civ. Prac. & Rem. Code §11.054. Criteria for Finding Petitioner A Vexatious Litigant

A court may find a Petitioner a vexatious litigant if the defendant shows that there is not a reasonable probability that the Petitioner will prevail in the litigation against the defendant and that:
(1) the Petitioner, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a

pro se litigant other than in a small claims court that have been:
(A) finally determined adversely to the Plaintiff;
(B) permitted to remain pending at least two years without having been brought to trial or hearing; or
(C) determined by a trial or Appellate court to be frivolous or groundless under state or federal laws or rules of procedure;
(2) after a litigation has been finally determined against the Plaintiff, the Plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:
(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or
(3) the Plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.
Tex. Civ. Prac. & Rem. Code §11.101. Prefiling Order; Contempt
(a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order Applies under this section without permission of the Appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.
(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

Tex. Civ. Prac. & Rem. Code §11.102. Permission By Local Administrative Judge

A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of: (a) the local administrative judge;. . .(f) A decision of the appropriate local administrative judge described by Subsection (a)denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus.