No. 22-6544

In the Supreme Court of the United States

BRADLEY B. MILLER, PETITIONER

v.

ANDREA PLUMLEE, RESPONDENT

ON PETITION FOR REVIEW
TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether state court jurisdiction halts during the pendency of a federal removal.

2) Whether any state court proceedings conducted during the pendency of a federal removal are void.

3) Whether Andrea Plumlee acted without jurisdiction and thus has no judicial immunity from suit and damages.

4) Whether Res Judicata and collateral estoppel do not apply because the issue of jurisdiction regarding Plumlee's purported "Order" of November 17, 2016 has never been adjudicated in any court.

5) Whether the 330th Family District Court had no "continuing jurisdiction" over Plumlee's purported "Order" because it was fraudulent and not issued as part of any legitimate court case.

6) Whether Petitioner had standing to bring suit in the trial court.

7) Whether the trial court Defendant's/Respondent's tortious acts fall within the statute of limitations.

8) Whether Miller was suing under a criminal statute. (He was not).

9) Whether Plaintiff's/Petitioner's constitutional claims are valid.

10) Whether Plumlee's arguments regarding jurisdiction are intentionally misleading and therefore represent a fraud upon the court and a violation of the Fourteenth Amendment guarantee of Due Process.

11) Whether judges lack immunity from suit for declaratory and injunctive relief.

12) Whether the trial court erred in its ruling granting Plaintiff's/ Petitioner's plea to the jurisdiction.

(Issues 1, 2, 3, 5, 10, 11, & 12 are briefed herein. The remaining issues are unbriefed.)

LIST OF PARTIES

Petitioner (Texas Supreme Court Petitioner, Texas Fifth District Court of Appeals Appellant, trial-court Plaintiff):

Bradley B. Miller

Respondent (Texas Supreme Court Respondent, Texas Fifth District Court of Appeals Appellee, trial-court Defendant):

Andrea Plumlee

RELATED CASES

United States Supreme Court **22-5041** IFP Motion Denied*
Miller v. Dunn
Dismissed: 10/03/2022
[*Case dismissed under unconstitutional SCOTUS Rule 39.8.]

United States Supreme Court **20-6965** Cert Petition Denied
Miller v. Dunn
Denied: 04/05/2021
Petition for Rehearing Denied: 06/01/2021

United States Supreme Court **18-7450** Cert Petition Denied
Miller v. Texas
Denied: 3/18/2019
Petition for Rehearing Denied: 4/29/2019

United States Supreme Court **17-6836** Cert Petition Denied
Miller v. Dunn
Denied: 1/22/2018
Petition for Rehearing Denied: 3/05/2018

United States Supreme Court **16-9012** Cert Petition Denied
Miller v. Plumlee, et al.
Denied: 10/02/2017
Petition for Rehearing Denied: 11/27/2017

U.S. Fifth Circuit Court of Appeals 16-11817 Appeal Dismissed
Dunn v. Miller
Judges: Jolly, Owen, Haynes
Denied: 8/17/2017

U.S. Fifth Circuit Court of Appeals 18-10897 Appeal Dismissed
Miller v. Texas, and Dunn
Judges: Smith, Higginson, Duncan
Denied: 11/21/2018

U.S. Fifth Circuit Court of Appeals 20-11054 Appeal Successful
Miller v. Dunn, Andrea Plumlee, et. al.
Judges: Wiener, Graves, Duncan
Opinion issued: 06/02/2022
[Dismissal of Miller's Section 1983 civil suit REVERSED and case remanded to NDTX district court. **Opinion invalidated *Hale v. Harney.*** Held: Federal suits cannot be dismissed under *Rooker-Feldman* in situations where a related state case is pending on appeal when the federal suit is filed.]

U.S. District Court (NDTX) **3:16-CV-3213** Case Remanded
Dunn v. Miller
Judge: Sam Lindsey
Dismissed: 11/18/2016
Reconsideration Denied: 12/22/2016
[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX) **3:18-CV-967** Case Remanded
Dunn v. Miller
Judge: Jane J. Boyle
Dismissed: 5/16/2018
[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX) **3:18-CV-1457** Case Remanded
Miller v. Dunn, and Texas
Judge: Jane J. Boyle
Dismissed: 6/29/2018
[Federal removal under 28 U.S.C. § 1443.]

U.S. District Court (NDTX) **3:20-cv-759** Dismissed, appealed.*
Miller v. Dunn, et al.
Judges: Ada Brown, David Horan
Dismissed: 9/17/2020, **Reinstated**: 6/2/2022 (Pending)
Reconsideration denied: 11/05/2020
[Civil suit under 42 U.S.C. § 1983. ***Dismissal reversed on appeal to the U.S. Fifth Circuit Court of Appeals.** Fifth Circuit published Opinion issued on June 2, 2022 in case no. 20-11054.]

Texas Supreme Court **16-0487** Review denied
IN RE BRADLEY B. MILLER
Denied: 10/07/2016
Rehearing Denied: 12/02/2016
[Petition for writ of mandamus.]

Texas Supreme Court **20-0503** Review denied
IN THE INTEREST OF V.I.P.M., A CHILD
Denied: 8/28/2020
Rehearing Denied: 10/16/2020
[Petition for review of Texas 5th District COA ruling. Appealed.]

Texas Supreme Court **22-0500** Review denied
Miller v. Dunn
Denied: 8/26/2022
Rehearing Denied: 10/14/2022
[Petition for review of Texas 5th District COA ruling. Appealed.]

Texas 5th District Court of Appeals **05-22-00090-CV** Pending
Miller v. Andrea Plumlee, et al.
Judges: (Not yet assigned after Justice Dennise Garcia was recused.)
(Filed 01/30/2022.)
[Appeal of trial court's dismissal of civil suit for declaratory judgment.]

Texas 5th District Court of Appeals 05-19-00197-CV Ruling aff'd.
IN THE INTEREST OF V.I.P.M., A CHILD
Judges: Burns, Bridges, Carlyle
Disposed: 03/26/2020
Reconsideration Denied: 05/14/2020

Texas 5th District Court of Appeals 05-15-00444-CV Modified/aff'd.
Miller v. Talley Dunn Gallery, LLC, and Talley Dunn
Judges: Fillmore, Stoddart, O'Neill
Disposed: 03/03/2016
[Gag order issued by Texas 191st Civil District Court struck.]

Texas 9th District Court of Appeals 09-19-00345-CV Ruling aff'd.
Miller v. Dunn
Judges: Golemon, Horton, and Johnson
Disposed: 10/07/2021
Reconsideration Denied: 10/27/2021
[Appeal of trial court's dismissal of Bill of review. Transferred to Texas 9th District COA on 10/09/2019. Appealed to Texas Supreme Court.]

Texas 5th District Court of Appeals 05-21-00431-CV Ruling aff'd.
Miller v. Andrea Plumlee
Judges: Burns, Myers, Molberg
Disposed: 04/08/2022
Reconsideration Denied: 05/09/2022
[Interlocutory appeal of trial court's dismissal of civil suit. Appealed to Texas Supreme Court. **This is the case appealed herein.**]

Texas 5th District Court of Appeals 05-21-00658-CV Ruling aff'd.
Miller v. Danielle Diaz and Dallas County
Judges: Myers, Molberg, Garcia
Disposed: 01/12/2022
Reconsideration Denied: 02/17/2022
[Interlocutory appeal of trial court's dismissal of civil suit.]
[This case involved the same isssues as the case appealed herein. Diaz and Respondent Andrea Plumlee are both defendants in the trial court case. Both Diaz and Plumlee are also both defendants in Miller's pending federal civil suit.]

Texas 191st Civil District Court (Dallas) DC-15-01598 Closed
Talley Dunn Gallery, LLC, and Talley Dunn v. Miller
Judge: Gena Slaughter, Ted Akin
Closed (admin.): 09/10/2015
[Civil suit by Dunn against Miller, requesting a gag order.]

Texas 330th Family District Court (Dallas) DF-13-02616 Pending
IN THE INTEREST OF V.I.P.M, A CHILD
(Open modification suit filed 3/8/2018.)
(Dunn's suit to change surname of child filed May 24, 2022.)
Judge: Andrea Plumlee
(Originally filed in February 2013 as a divorce case.)
[This is the root case from which all of the others stem.]

Texas 330th Family District Court (Dallas) DF-18-06546 Dism'd.
Miller v. Dunn
Judge: Andrea Plumlee
(Opened 2018, dismissed 8/1/2019, reinstatement motion denied 11/19/2019.)
[Bill of Review case. Appealed to the Texas 9th COA, then to SCOTX.]

Texas 116th Civil District Court (Dallas) DC-20-15614 Pending
Miller v. Dunn, et al.
Judge: Tonya Parker
(Opened 10/15/2020. Interlocutory appeal filed 06/11/2021.)
[Civil suit under 42 U.S.C. § 1983 and related torts. **This is the case appealed herein.**]

Texas 134th Civil District Court (Dallas) DC-21-14398 Pending
Miller v. Dunn, et al.
Judge: Dale Tillery
(Opened 09/28/2021. Dismissed 12/31/2021.)
[Civil suit for declaratory judgment under 42 U.S.C. § 1983. Case dismissed for lack of jurisdiction. Appeal filed 01/30/2022.]

Note: ALL of the above cases stem from case number DF-13-02616 in the corrupt 330th Family District Court, Dallas County, Texas.

TABLE OF CONTENTS

(Note: For consistency and clarity of reference, the appendix tab order from the state-court appeals has been preserved herein. The rulings to be reviewed are located at Appendix tabs A, B, C, D, H, and I.)

TABLE OF AUTHORITIES

UNITED STATES CASES

TEXAS CASES

CASES FROM OTHER STATES

STATUTES AND RULES: STATE AND FEDERAL

STATUTES AND RULES: LOCAL

CONSTITUTION

OPINIONS BELOW

The Supreme Court of Texas denied Miller's petition for review without opinion. (App. H). Miller's subsequent motion for rehearing was denied by The Supreme Court of Texas, also without opinion. (App. I). The decision of the Court of Appeals for the Fifth District of Texas denying Miller's appeal in case no. 05-21-00431-CV (*Miller v. Plumlee*, No. 05-21-00431-CV (Tex. App. Apr. 8, 2022)) is attached as App. B. The decision of the Court of Appeals for the Fifth District of Texas denying reconsideration, unpublished, is attached as App. C.

JURISDICTION

The decision of The Supreme Court of Texas was entered on August 26, 2022, and its denial of rehearing was entered on October 14, 2022. (App. H, I). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) for a petition for a writ of certiorari in a civil case after rendition of a judgment or decree by the highest court of a state "...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution" or where any "right, privilege, or immunity is specially set up or claimed under the Constitution".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI § 2 of the United States Constitution provides:

> "This Constitution, and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby...."

The First Amendment to the United States Constitution provides:

> "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."

The Eighth Amendment to the United States Constitution provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution, § 1, provides, in relevant part:

> "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."

Title 18 U.S.C. § 241 provides, in relevant part:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same.... They shall be fined under this title or imprisoned not more than ten years, or both..."

Title 18 U.S.C. § 242 provides, in relevant part:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State...to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section... shall be fined under this title or imprisoned not more than ten years, or both..."

Title 18 U.S.C. § 1513 provides, in relevant part:

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy."

Title 28 U.S. Code § 1446(d) provides:

"Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State

court shall proceed no further unless and until the case is remanded."

Title 28 U.S. Code § 1651(a) provides:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Title 42 U.S. Code § 1983 provides, in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

GLOSSARY OF CITATIONS TO RECORD

The following abbreviations refer to the Record on Appeal in Court of Appeals for the Fifth District of Texas case number 05-21-00431-CV:

C.R. = Clerk's Record

R.R. = Reporter's Record

"App." and "Tab" refer to Appendix tabs in this petition.

STATEMENT

Petitioner Bradley B. Miller sued Respondent Andrea Plumlee, in addition to thirteen other defendants, alleging violations of his constitutional rights, fraud, and conspiracy. (C.R. 39-180).

Miller first filed his suit in federal district court (NDTX case number 3:20-cv-00759) on March 31, 2020. (C.R. 550). The NDTX federal district court dismissed Miller's federal suit under the *Rooker-Feldman* doctrine on September 17, 2020. (*Id.*). [Note: The United States Court of Appeals for the Fifth Circuit reversed this dismissal in case no. 20-11054, and Miller's federal suit was reinstated.] Miller subsequently filed his identical state court suit on October 15, 2020—within 30 days of the dismissal of his federal suit, so that he would preserve his rights under any potential application of the four-year Texas statute of limitations for fraud. (C.R. 551).

Petitioner Miller was divorced from trial-court Defendant Virginia Talley Dunn in 2014. (C.R. 52, 63). Miller alleges that Dunn filed for divorce in order to conceal an affair with married artist David Bates, as well as to move her daughter to the Hockaday School a few years early. (C.R. 52-53, 55, 1157-66, 1170-73). During the divorce case, Miller was

subject to various blatantly unconstitutional court orders—requested by Dunn—imposing prior restraint on his speech. (C.R. 60-63).

When the divorce was final, Miller began speaking out regarding Dunn's unethical and criminal conduct during the divorce. (C.R. 64-65).

Soon after, Dunn filed a civil suit (Texas 191st District Court case number DC-15-01598), in part requesting a gag order against Miller. (C.R. 65-66). After initial hearings before District Judge Gena Slaughter, visiting Judge Ted Akin—a retired Texas Fifth District Court of Appeals Justice—appeared and signed Temporary Orders imposing a broad gag order on Miller. (C.R. 65-69). Judge Akin did not disclose that his daughters had gone to the Hockaday School with Dunn, or that both he and Dunn had belonged to Brook Hollow Golf Club during Dunn's entire childhood. (C.R. 69). The two clearly knew each other. (C.R. 69-70). Miller alleges that Dunn recruited Akin to issue an illegal ruling in Dunn's favor—in part to silence Miller's public criticism of The Hockaday School, where Dunn had been Board Chair during the divorce. (C.R. 71). Miller appealed Akin's gag order, which was overturned by the 5th COA. (C.R. 71, 82-83).

When it became apparent to Dunn that the gag order she had

fraudulently obtained in the Texas 191st Civil District Court was going to be appealed, she filed a custody modification suit in the Dallas County 330th Family District Court. (C.R. 76-77, 79).

A final order-entry hearing in Dunn's custody modification suit (in 330th Family District Court case number DF-13-02616) was scheduled to be held before Respondent (District Judge) Andrea Plumlee at 9:00 a.m. on November 17, 2016. (C.R. 86, 566, 602—i.e. trial-court Plaintiff's *Emergency Motion for Declaratory Judgment*, Exhibit A at 16).

Immediately prior to the final order-entry hearing in the 330th Family District Court, Miller removed his case to federal court. He filed his removal petition in the United States District Court for the Northern District of Texas ("NDTX") at 8:27 a.m. on November 17, 2016, citing numerous constitutional violations in the 330th Family District Court. (C.R. 86, 614-652).

Miller then filed a Notice of Case Removal in the 330th Family District Court at 8:55 a.m. on that same day. (C.R. 86, 653-656). Miller's case was then legally removed to Federal Court, and the state court had no jurisdiction over the case. (C.R. 566, 972).

Miller then proceeded immediately to the door of the 330th Family Court and waited outside the courtroom door for Dunn's attorneys to arrive. (C.R. 566, 972).

At 9:00 a.m. on that same day, trial-court Defendant Patricia Rochelle (counsel for Defendant Dunn) appeared, walking from the elevator alcove to the 330th courtroom door. (C.R. 566). When Rochelle approached, Miller handed Rochelle file-stamped copies of his federal removal petition and the state court Notice of Removal. (*Id.*; C.R. 614-652, 653-656). Miller then informed Rochelle, "This case has been removed to federal court." Rochelle retorted, "I'll tell Judge Plumlee you think you have removed the case. Rochelle then walked into Judge Plumlee's courtroom. Miller left the premises. (C.R. 87, 566-67).

Later that day, Rochelle's office emailed Miller a purported final *Order In Suit To Modify Parent-Child Relationship* signed by Respondent Plumlee. (*Id.*; C.R. 666). The purported "Order" is dated November 17, 2016. (C.R. 666).

This purported "order" of November 17, 2016 contains several injunctions that are violative of Miller's constitutional rights, including prior restraint on his First Amendment rights to free speech and

assembly, and infringements of his Fourteenth Amendment right to parent. (C.R. 663). The purported "order" also imposes a $25,000 legal fees levy against Miller and a $15,000 levy of attorney's fees on appeal, with interest accruing at 5% per year, compounded annually; it also imposes a requirement that Miller post an additional appellate bond of $15,000 prior to any appeal, and it levies $517.33 in court costs against Miller. (C.R. 666). As a direct consequence of this purported "order," **Miller has been subject to an illegal gag order and other serious violations of his constitutional rights for more than five years.** (C.R. 972).

The evidence indicates that trial-court Defendant Rochelle—knowing that Miller had removed his case to federal court, and that the state court had no jurisdiction—submitted a purported "order" to Plumlee, then a false "judge" of a purported court which had no jurisdiction; and Plumlee signed this purported "order" without jurisdiction. Rochelle then electronically transmitted this purported "order" to Miller, falsely claiming it to be a legitimate court document. (C.R. 87-88, 567, 973).

Miller's federal removal case was remanded by the NDTX Federal Court on November 18, 2016, i.e. the following day. (C.R. 88, 667-670, 973; R.R. 17-20).

Thus the 330th Family Court and Respondent (Judge) Plumlee were entirely deprived of jurisdiction in Miller's state Family Court case from 8:55 a.m. on November 17, 2016—prior to the 9:00 a.m. final order-entry hearing at which the purported "order" was signed—until November 18, 2016. Further, Dunn's counsel did not file a certified copy of the remand letter in the state court as required by Tex. R. Civ. Proc. 237a. (C.R. 603). Thus any subsequent default judgment (if any) against Miller would be barred by law. TRCP 237a. (There is no record of any further order in Dunn's 2015 modification suit.) (C.R. 52, 55, 568, 602-603, 973).

The case docket for Miller's Family Court case (DF-13-02616) indicates that the November 17, 2016 order-entry hearing was "canceled". (C.R. 602).

After filing his state-court civil suit to preserve his rights under the statue of limitations—and while his appeal of the dismissal of his federal suit was pending—Miller filed an Emergency Motion to Stay the

trial-court case on April 21, 2021, arguing that he was entitled to his choice of a federal forum for what are clearly federal complaints. (C.R. 32, 550-555). The trial court denied Miller's motion to stay on May 13, 2021. (C.R. 1030).

In the trial court, Respondent/Defendant Plumlee filed a plea to the jurisdiction, which was heard on May 14, 2021. (C.R. 35, 437, 1035; Tab A; R.R. *passim*). The afternoon before that hearing, Plumlee filed a Letter Brief—after having filed a Reply Brief just the day before (i.e. only two days prior to the hearing). (C.R. 1023, 1010). Miller objected to the untimeliness of these two filings under Dallas County Civil Courts Local Rule 2.09. (C.R. 1036-37; R.R. 14). Miller moved to strike these two pleadings, but the trial court denied his motion to strike. (R.R. 14-15).

The trial court granted Plumlee's plea to the jurisdiction without comment on May 14, 2021, dismissing her from the suit. (C.R. 1035). Miller filed a *Memorandum Objecting to Fraud on the Court* on May 17, 2021, complaining of intentional misrepresentations of fact and law made by Plumlee and her counsel. (Tab G). Miller filed his notice of interlocutory appeal on June 4, 2021. (C.R. 1221-23).

The Texas Fifth District Court of Appeals affirmed the trial court ruling on April 8, 2022, on the grounds of judicial immunity. (Tab B). Miller filed a motion for reconsideration and a motion to recuse Justice Ken Molberg, who had previously been recused for bias in another case involving Miller (and who wrote the Texas 5th District COA Opinion in this case). (Tabs E, A). The Texas 5th District COA denied Miller's recusal motion on May 3, 2022 and denied reconsideration on May 9, 2022. (Tabs D, C). The Texas Supreme Court denied review on August 26, 2022, and denied rehearing on October 14, 2022.

REASONS FOR GRANTING THE PETITION

A state judge who holds proceedings and issues so-called "orders" during the pendency of a Section 1443 federal removal is acting in the absence of all jurisdiction and therefore has absolutely no immunity from suit.

Even if a judge *is* acting with jurisdiction, judges have no immunity whatsoever from suits for injunctive and declaratory relief.

Yet, somehow, Miller's suit was dismissed.

It is evident that the trial court judge intentionally ignored the law in order to protect a judicial crony from accountability, and both the

Texas Fifth District Court of Appeals and Texas Supreme Court conspired in this criminal act. The dismissal of Petitioner's trial-court suit thus represents an egregious violation of his Due Process rights under the Fourteenth Amendment. Corruption of this magnitude in America's judiciary cannot be allowed to go uncorrected.

I. State court jurisdiction halts during federal civil removals.

Federal removals are governed by 28 U.S.C. § 1446. 28 U.S.C. § 1446(d) dictates that, once a case is removed, the state court case can "proceed no further unless and until the case is remanded," and the state court loses jurisdiction over the case. 28 U.S.C. § 1446(d); *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 122 (1882). As described above, Petitioner Miller filed his removal petition in the NDTX Federal District Court on November 17, 2016 and subsequently filed his notice of removal in the state court. These filings occurred prior to the hearing in Miller's state court case, and prior to Respondent Plumlee's signing of her purported "order" later that day. Plumlee's acts were done after removal and prior to remand. (C.R. 564-725).

Extensive federal and state precedent has determined and affirmed that these two federal and state filings establish federal jurisdiction,

and remove state-court jurisdiction: "Since the adoption of § 1446, it has been uniformly held that the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971), citing *Hopson v. North American Insurance Co.*, 71 Idaho 461, 233 P.2d 799; *State ex rel. Gremillion v. NAACP*, La.App., 90 So.2d 884; *Bean v. Clark*, 226 Miss. 892, 85 So.2d 588; *State v. Francis*, 261 N.C. 358, 134 S.E.2d 681; *Schuchman v. State*, Ind., 236 N.E.2d 830; *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 5 Cir., 325 F.2d 206.

Miller also served Dunn's counsel, trial-court Defendant Patricia Rochelle, with the removal documents prior to the state-court hearing on November 17, 2016; but according to the ruling in *Moore*, that service was not required to perfect removal. Only the filing of the removal petition in the federal district court and the filing of the notice of removal in the state court are required to remove the case. Miller did both, which "immediately" removed the case. *Moore* at 1073. At that point, the state court lost all jurisdiction; yet the state court then proceeded as if federal law and federal jurisdiction did not apply. The

actions of the state court—and Judge Plumlee—in conducting hearings after Miller's removal were entirely improper and in violation of federal law and Miller's Fourteenth Amendment due process rights. And because Plumlee signed her spurious "Order" "in the complete absence of all jurisdiction," this act was **not** a judicial act taken in her official capacity. *Mireles v. Waco*, 502 U.S. 9, 13 (1991). (*See* C.R. 572-73, 973-75; R.R. 15-20).

II. Any state court proceedings between removal and remand are void.

The United States Court of Appeals for the Fourth Circuit has previously held that, even if a case is eventually ruled to be not removable, **"the proceedings in the state court in the interval between the filing and service of the removal petition and the remand order [are] void."** *South Carolina v. Moore* at 1069. In the same ruling, The Fourth Circuit elaborated that **"any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal petition was ineffective."** *Id.* at 1073; *see also McCauley v. Consolidated Underwriters*, 301 S.W.2d 181, 185 (Tex. Civ. App. 1957). The scenario described in *Moore* exactly

mirrors the situation in the instant case. Even if a federal district court eventually rules that a removal is ineffective—as occurred in Miller's federal removals—**any** interim proceedings in the state court are void, period. (Orders issued without subject-matter jurisdiction are not "voidable"; they are **void**. *Engelman Irrigation Dist. V. Shields Bros., Inc.*, 514 S.W.3d 746, 750 (Tex. 2017); *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (orig. proceeding)).

The Fourth Circuit has reaffirmed its prior decision on this issue in a more recent case. In *Ackerman v. ExxonMobil*, the Fourth Circuit ruled:

> "Because § 1446(d) explicitly states that 'the State court shall proceed no further' once removal is effected, 28 U.S.C. §1446(d), we agree with the Defendants that the statute deprives the state court of further jurisdiction over the removed case and that **any post-removal actions taken by the state court in the removed case action are void ab initio. See *South Carolina v. Moore*, 447 F.2d 1067, 1072-73 (4th Cir. 1971)**; accord *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d 875, 880 (1st Cir. 1983)." *Kenneth Ackerman v. ExxonMobil Corporation*, 12-1103 at 16 (4th Cir. 2013). (Emphasis added.)

The Fourth Circuit went even further regarding the lack of legal authority of continuing state-court proceedings, stating that "Section 1446(d) may be self-acting, in that improper post-removal actions are

void whether or not a court has so declared, see *Polyplastics*, 713 F.2d at 880...". *Ackerman* at 17. But of course the 330th Family District Court and Judge Plumlee believe—however improperly—that these purported "orders" are legitimate; and unfortunately Plumlee has (and frequently abuses) the power to direct armed sheriff's deputies and police officers to enforce them. Miller has been thus subject to these illegal strictures since November 17, 2016.

The United States Court of Appeals for the Fifth Circuit has also reaffirmed the Fourth Circuit's ruling in *Moore*:

> "In *National Steam-Ship Co. v. Tugman*, 106 U.S. 118, 1 S. Ct. 58, 27 L. Ed. 87 (1882), the Supreme Court held that the removal of a case from state court to federal court ends the power of the state court to act.
>
> Upon the filing, therefore, of the petition (for removal) and bond ... the jurisdiction of the state court absolutely ceased, and that of the circuit court immediately attached. The duty of the state court was to proceed no further in the case. **Every order thereafter made in that court was coram non judice, unless its jurisdiction was actually restored.**
>
> 106 U.S. at 122, 1 S.Ct. at 60. See *Johnson v. Estelle*, 625 F.2d 75, 77 (5th Cir. 1980) (per curiam); ***South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971)**; *Allman v. Hanley*, 302 F.2d 559, 562 (5th Cir. 1962). **The jurisdiction of the state court is not restored unless and until the federal court remands the case.** *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), cert. denied, 355 U.S. 842, 78 S. Ct.

> 65, 2 L. Ed. 2d 52 (1957). A state court judgment in a case that has been removed may not foreclose further federal proceedings in the removed case and the federal court may enjoin a party from enforcing the state court judgment. *Adair Pipeline Co. v. Pipeliners Local Union No. 798*, 325 F.2d 206 (5th Cir. 1963); *Roach v. First National Bank of Memphis*, 84 F.2d 969 (5th Cir. 1936)." *E. D. Systems Corporation v. Southwestern Bell Telephone Company*, 674 F.2d 453 at §§ 19-21 **(5th Cir. 1982)**. (Emphasis added.)

The jurisdiction of the 330th Family District Court had certainly not been restored at the time of the November 17, 2016 hearing, so this proceeding was void. The resulting purported "Order" of November 17, 2016 is likewise void, and this Court must declare it so. (*See* C.R. 573-575, 975-77. *See also Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, No. 18-921, 2020 WL 871715 (U.S. Feb. 24, 2020), citing *Kern v. Huidekoper*, 103 U. S. 485, 493 (1881): during removal, the state court "los[es] all jurisdiction over the case, and, being without jurisdiction, its subsequent proceedings and judgment [are] not ...simply erroneous, but absolutely void.")

III. Because Plumlee acted without jurisdiction, she has no judicial or sovereign immunity from suit or damages.

Further, because Respondent Plumlee's signing of the November 17, 2016 post-trial order was done without jurisdiction, Plumlee has no

immunity whatsoever from civil suit because her act was not done in her official capacity. Judges are deemed to be "liable to civil actions" for "acts done by them in the clear absence of all jurisdiction over the subject matter." *Bradley v. Fisher*, 80 U.S. 335 at 351 (1871); *see also Stump v. Sparkman*, 435 U.S. 349 at 356-357, 360 (1978). **Further, a judge "is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity," and "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction."** *Mireles v. Waco* at 11-12. At the time of the November 17, 2016 hearing, the trial court and Respondent Plumlee proceeded while having "clearly no jurisdiction over the subject matter" and with "usurped authority"; thus "no excuse is permissible." *Bradley v. Fisher* at 351-352. (*See* R.R. 25-30).

Therefore, because she was not acting in her official capacity, and because she was acting without jurisdiction, Plumlee has no immunity regarding her signing of the purported "Order" of November 17, 2016, and she is answerable to civil damages under 42 U.S.C. §§ 1983, 1985, and 1986.

Plumlee likewise has no sovereign immunity for her actions. The Texas Supreme Court has ruled that "suits to require state officials to comply with statutory or constitutional provisions are not prohibited by sovereign immunity, even if a declaration to that effect compels the payment of money." *City of El Paso v. Heinrich*, 284 S.W.3d 366 at 372 (Tex. 2009). Miller is of course suing Plumlee to force her to comply with the First and Fourteenth Amendments to the United States Constitution, thus the *City of El Paso* ruling applies. The Texas Supreme Court explained this exception to sovereign immunity: "A state official's illegal or unauthorized actions are not acts of the State. Accordingly, an action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars." *Id.* at 370, quoting *Federal Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997). Plumlee is not the state; she has issued an illicit "Order" without any legal authority; thus she is also deprived of sovereign immunity.

IV. The 330th Family District Court had no "continuing jurisdiction" regarding Plumlee's purported "Order" because it was not part of any legitimate court case.

Petitioner reasserts all paragraphs *supra.*

Respondent Plumlee underhandedly—and spuriously—asserted that Plumlee has judicial immunity because the 330th Family District Court had "continuing jurisdiction" over Miller's divorce case. (C.R. 446—i.e. *Plumlee's Plea to the Jurisdiction* at 10). Nothing could be further from the truth, and Plumlee's attorney (Texas Assistant Attorney General Scot Graydon) knows it. As copious federal precedent has long since established, a federal removal deprives a state judge of ALL jurisdiction. (*See South Carolina v. Moore*, etc.; Section I, *supra*).

Because Respondent Plumlee was acting without jurisdiction, her signing of the fraudulent "Order" of November 17, 2016 was entirely nonjudicial. *See Bradley v. Fisher* at 351; *Stump v. Sparkman* at 356-357, 360; *Mireles v. Waco* at 11-12. Plumlee had no more authority to issue this fraudulent "Order" than a Walmart greeter, a gas station attendant, or a local drug dealer. Thus her "Order" is not an instrument of any legitimate court, and the document does not represent any part of the proceedings in Miller's (eternally) pending 330th Family Court case. Therefore TEX. FAM. CODE § 155.002 does not apply.

Plumlee's purported "Order" was thus void *ab intio*. *See National Steam-Ship Co. v. Tugman*; *South Carolina v. Moore* at 1069; *McCauley* at 185. Because it was issued in the absence of jurisdiction and was not merely the result of judicial error, Plumlee's 2016 "Order" is not merely "voidable". (*See*, e.g.. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex.2010); *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271–73 (Tex. 2012)). It is **void**. *Engelman Irrigation Dist. V. Shields Bros., Inc.*, 514 S.W.3d 746, 750 (Tex. 2017); *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990) (orig. proceeding). And a void judgment can be collaterally attacked "at any time". *In re E.R.*, 385 S.W.3d 552, 566 (Tex. 2012); *Peralta v. Heights Med. Ctr. Inc.*, 485 U.S. 80, 86 (1988). (*See* C.R. 979-80).

V. *Bradt v. West* and similar state precedent do not contravene federal removal laws.

As Miller argued in the trial court (and above), *Bradt v. West* does not apply to this suit because *Bradt* involved a motion to recuse and not a federal removal, which have totally different effects on state court jurisdiction; i.e. recusals do not halt state court jurisdiction, and federal removals certainly **do** deprive state courts of all jurisdiction. (*Bradt v. West*, 892 S.W.2d 56, 67 (Tex. App.—Houston [1st Dist.] 1994, writ

denied); C.R. 1271-74, 1319-22; C.R. 1045-46—i.e. *Plaintiff's Memorandum Objecting to Fraud on the Court* at 10-11; Tab G; R.R. 31-33). The similar state precedent cited in the Texas 5th District COA Opinion is also irrelevant in relation to federal removal laws that unequivocally deprive state courts of jurisdiction. (*See* U.S. CONST. ART. VI, Clause II; *Howlett v. Rose*, 496 U.S. 356, 357 (1990); Tab G).

VI. Judges have no immunity whatsoever from suits for declaratory and injunctive relief.

Even in the event that a judge might have immunity from a suit for damages (which, in this case, Plumlee does not), a judge may still be sued under § 1983 for declaratory and injunctive relief. In *Pulliam v. Allen*, the United States Supreme Court held:

> "We conclude that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984).

Pulliam also holds that judges "may be sued for injunctive and declaratory relief and held personally liable for money judgments in the form of costs and attorney's fees merely on the basis of erroneous judicial decisions." *Pulliam* at 544, *see also* at 527.

Miller's suit against judge Plumlee, filed under Section 1983, requested, *inter alia*, both declaratory injunctive and injunctive relief, as well as attorney's fees. (C.R.46, 47, 48, 155). Section 1983, as held in *Pulliam*, explicitly allows such suits against judges. The Texas Fifth District Court of Appeals' Opinion, of course, entirely ignores federal law and SCOTUS precedent on this issue. (Tab B). The trial court could not properly dismiss Miller's Section 1983 suit for declaratory injunctive relief against judge Plumlee on the basis of immunity, and the Texas Fifth District COA cannot legally affirm the dismissal on the basis of immunity. Both are egregious violations of Miller's Due Process rights under the Fourteenth Amendment.

VII. Plumlee's arguments regarding jurisdiction represent a fraud on the court.

Petitioner reasserts all paragraphs *supra*.

In the trial court, counsel for Respondent Plumlee, Scot M. Graydon, went to great lengths to assert—falsely—that Plumlee was acting within her official judicial capacity when she signed her purported "Order" on November 17, 2016. (C.R. 440-41, 1012-1016, i.e. *Reply Brief for Judge Plumlee's Plea to the Jurisdiction* at 3-7; R.R. 10-13). (Counsel for trial-court Defendants Dallas County and Danielle

Diaz, Earl Nesbitt, made the same spurious argument. *See* C.R. 1268-1275—i.e. *Defendants Danielle Diaz and Dallas County's Plea to the Jurisdiction* at 11-18). Plumlee's *Plea to the Jurisdiction* cites *Bradt v. West*—also disingenuously cited by trial-court Defendants Plumlee, Dunn, Findley, and Rochelle. (C.R. 1261; *Bradt v. West*, 892 S.W.2d 56, 67 (Tex. App.—Houston [1st Dist.] 1994, writ denied); C.R. 1271-74, 1319-22). As Miller argued in the trial court, *Bradt v. West* does not apply to this suit because *Bradt* involved a motion to recuse and not a federal removal, which have totally different effects on state court jurisdiction; i.e. recusals do not halt state court jurisdiction, and federal removals certainly **do** deprive state courts of all jurisdiction. (C.R. 1045-46—i.e. *Plaintiff's Memorandum Objecting to Fraud on the Court* at 10-11; R.R. 31-33.)

Plumlee's counsel also disingenuously cited another inapplicable case, *Parrish v. State* [485 S.W.3d 86 (Tex. App—Houston [14th Dist.] 2015, pet. ref'd)], in attempting to falsely assert that Miller's federal removal was "untimely". (C.R. 1024-25—i.e. *Letter Brief for Judge Plumlee 's Plea to the Jurisdiction* at 2-3; R.R. 12). This proposition is utter nonsense. As Miller argued in the trial court, *Parrish v. State*

applies only to federal removals under the criminal statute 28 U.S.C. § 1455—and NOT to Miller's removal under the civil statute 28 U.S.C. § 1433. (C.R. 1038, 1041-43.) These two federal removal statues have totally different stipulations with regard to timeliness (**and** deprivation of state-court jurisdiction); Miller's removal was timely under 28 U.S.C. § 1433—i.e. the federal statute under which he removed his case. (C.R. 564-579, 1036-1041).

Plumlee also repeatedly attempted to (falsely) assert that Miller's 2016 federal removal was "defective"—which it clearly was not. (R.R. 12-13; C.R. 1014-1016—i.e. *Reply Brief for judge Plumlee's Plea to the Jurisdiction* at 5-7). As Miller has also demonstrated, his federal removals of November 17, 2016 and June 7, 2018 were conducted entirely in accordance with federal law (i.e. 28 U.S. Code §§ 1443 and 1446(d)), were procedurally correct, and were in fact recognized as being procedurally lawful by the NDTX federal district court—as evidenced by that federal court's remand orders. (C.R. 1039-41, 1043-44—i.e. *Plaintiff's Memorandum Objecting to Fraud on the Court* at 4-6, 8-9. *See also* R.R. 16, in which Miller testified that his removal was "not [defective] under procedure". The Court Reporter incorrectly

transcribed this word as "effective".) Obviously, if the cases had not been removed to federal court, the NDTX federal court would not have issued a remand order. The existence of the federal court remand order is proof positive of a legitimate removal—and thus that the case was indeed removed to federal court.

Plumlee also repeatedly (and ludicrously) attempted to claim that she and the 330th Family District Court were not really deprived of jurisdiction during Miller's Section 1443 federal removals, and thus she is immune from suit for actions taken at those times. (R.R. 9-13; C.R. 441-442; C.R. 1014-1016—i.e. *Reply Brief for Judge Plumlee's Plea to the Jurisdiction* at 5-7). As Miller has argued above, federal law is quite clear on the point that, once a state case is removed to federal court, the state court loses ALL jurisdiction over the case until it is remanded. *See* 28 U.S.C. § 1446(d), *National Steam-Ship Co. v. Tugman*, *South Carolina v. Moore*, etc. Federal law is equally clear on the point that a judge who acts in absence of all jurisdiction is liable to both suit and damages. *Bradley v. Fisher* at 351-352; *Stump v. Sparkman* at 356-357, 360; *Mireles v. Waco* at 11-12. (Ironically, all of the case law cited by Plumlee merely reinforces those points.) There is

no legitimate legal argument to the contrary. And there is no different definition of "jurisdiction" in the context of judicial immunity. The U.S. Supreme Court's language and meaning are quite clear on this point.

Plumlee is of course well aware of that legal reality. Her trial-court attorney, Scot M. Graydon, is an Assistant Texas Attorney General, and he is thus familiar with the operation of the law—and with the ethical requirements of his profession. Yet he intentionally misstated the facts of the case—speciously attempting to mischaracterize the nature of Miller's federal removals—in order to keep his client from being held accountable for what are very clearly tortious and illegal acts, performed without jurisdiction, and without immunity. Simply put, Mr. Graydon was lying—and his stammering during the hearing betrayed that fact. (*See* C.R. 1041). This is an unseemly professional conduct for which Mr. Graydon should be ashamed, if he had the capacity to feel shame; but it is clear that he does not.

As the federal 9th Circuit Court of Appeals recently affirmed, "government perjury and the knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth

Amendment's guarantee of Due Process in our courts." *Preslie Hardwick v. Marcia Vreeken*, 15-55563 at 15 (9th Cir. 2017). The *Plea to the Jurisdiction*, *Reply Brief*, and *Letter Brief* submitted by Mr. Graydon—who, as an Assistant Texas Attorney General, is a government employee—are glaring examples of such government perjury. (C.R. 437-459, 1010-1019, 1023-1026). **Miller has objected—and again objects–to Plumlee's intentional, manipulative misrepresentation of facts and misapplication of case law as a fraud on the court, and as a clear violation of Miller's Fourteenth Amendment right to Due Process.** (*See* C.R. 917-919, 1036-1051; R.R. 17-22).

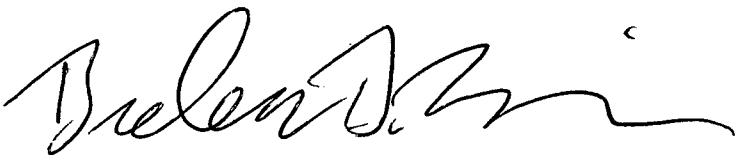
As the United States Supreme Court has ruled, "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v. Throckmorton*, 98 U.S. 61, 64 (1878). The United States Court of Appeals for the Fifth Circuit has also ruled, "Moreover, fraud destroys the validity of everything into which it enters. It affects fatally even the most solemn judgments and decrees...." *Diehl v. United States*, 438 F.2d 705, 709 (1971). If the trial court has relied on the patently specious

arguments of Respondent Plumlee (and others) described above, it will also have taken part in this fraud, and its dismissal of Miller's suit is thus invalid under the Fourteenth Amendment. It is this Court's responsibility to ensure that the trial court follows the law, and that the Petitioner's rights are protected. Do not fail again.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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