No. 23-

IN THE

Supreme Court of the United States

NATIN PAUL,

Petitioner,

v.

ROY F. AND JOANN COLE MITTE FOUNDATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

LISA S. BLATT
AMY MASON SAHARIA
AARON Z. ROPER
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, DC 20024

DAVID GERGER
Counsel of Record
GERGER HENNESSY MARTIN
& PETERSON LLP
700 Louisiana,
Ste. 2300
Houston, TX 77002
(713) 224-4400
dgerger@ghmfirm.com

CYNTHIA E. ORR
GERALD H. GOLDSTEIN
315 E. Commerce St.,
Ste. 301
San Antonio, TX 78205

116864

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

A Texas court permitted a financially interested civil party's lawyer to prosecute his opposing party, petitioner Natin Paul, for criminal contempt. The trial court then sentenced petitioner to jail for 10 days via email, without any opportunity to appear, be heard, or attend with counsel. The Texas Supreme Court subsequently denied a writ of habeas corpus or mandamus by a 5-4 vote.

The questions presented, on which lower courts are squarely divided, are:

1. Whether a criminal-contempt prosecution by an interested private party violates the Due Process Clause.

2. Whether sentencing a criminal defendant to jail via email, in absentia and without the opportunity to address the judge, violates the Due Process Clause or the Sixth Amendment.

RELATED PROCEEDINGS

Natin Paul v. The Roy F. JoAnn Cole Mitte Foundation(No. 03-23-00166-CV) In the Third Court of Appeals at Austin, Texas. Appeal of Sanctions Order dated March 10, 2023.

WC 1st and Trinity, LP, WC 1st and Trinity, GP, LLC, WC 3rd and Congress, LP, WC 3rd and Congress GP, LLC, and Natin Paul v. The Roy F. JoAnn Cole Mitte Foundation(No. 03-21-00502-CV) In the Third Court of Appeals at Austin, Texas. Judgment dated February 8, 2023.

The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, WC 1st and Trinity, GP, LLC, WC 3rd and Congress, LP, WC 3rd and Congress GP, LLC, and Natin Paul(CAUSE NO. D-1-GN-21-003223) 201st Judicial District Court, Travis County, Texas. Judgment: March 10, 2023.

WC 1st and Trinity, LP, WC 1st and Trinity, GP, LLC, WC 3rd and Congress, LP and, WC 3rd and Congress GP, LLC (CAUSE NO. D-1-GN-18-007636) 126th Judicial District Court, Travis County, Texas. Judgment: July 8, 2021.

1st and Trinity Super Majority, LLC and, 3rd and Congress Super Majority, LLC v. Gregory S. Milligan, in his Individual Capacity and as Receiver for WC 1st and Trinity, LP and WC 3rd and Congress, LP; The Roy F. & Joann Cole Mitte Foundation; Stephen Wayne Lemmon; Ray Charles Chester; and Rhonda Bear Mates(CAUSE NO. D-GN-20-003550) 250th Judicial District Court, Travis County, Texas. Judgment: October 9, 2020.

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

Table of Appendices

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Page

Page

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

OTHER AUTHORITIES

PETITION FOR A WRIT OF CERTIORARI

Natin Paul respectfully petitions for a writ of certiorari to review the judgment of the Texas Supreme Court in this case.

OPINIONS BELOW

The order of the Texas Supreme Court (App. 1a) denying the petition for a writ of habeas corpus or mandamus is not yet reported but is available at *In re Natin Paul*, 2024 WL 112520 (Tex. Mar. 15, 2024).The opinion of the Texas Third Court of Appeals in Austin, Texas (Tex. App. – Austin, App. 15a) in *In re Natin Paul*, 03-23-00160-CV (Tex. App. – Austin March 31, 2023. The orders of the 201st District Court *The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP, WC 1st and Trinity GP, LLC, WC 3rd and Congress, LP, WC 3rd and Congress GP, LLC, and Natin Paul*, D-1-GN-21-003223, (201st District Court Austin Texas), finding Natin Paul in contempt of court and sentencing him 10 days incarceration; original Order of Contempt (March 10, 2023 App. 50a), Amended Order of Contempt (March 31, 2023 App. 43a) and Second Amended Order of Contempt (March 18, 2024 App. 36a).

JURISDICTION

The order of the Texas Supreme Court was entered on March 15, 2024. The judgment of the Court of Appeals of Texas was entered on March 31, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Due Process Clause of the Fourteenth Amendment provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

INTRODUCTION

This case presents the Court with the opportunity to resolve two well-recognized, critically important splits of authority in the context of a stunning episode of Wild West justice. This case began as an ordinary real-estate dispute in Texas state court. Petitioner Natin (Nate) Paul was the defendant; respondent Mitte Foundation was the plaintiff. The Foundation accused Mr. Paul of violating a court order requiring him to file periodic reports about his assets. App. 16a-17a.

Then things took a turn for the extraordinary. The trial court appointed the Foundation's private counsel—who stood to be paid from Mr. Paul's assets—to prosecute a criminal-contempt case against him. See Order for Sanctions, App. 61a. See also App. 3a. In other words, the trial court allowed one civil litigant's lawyer to bring criminal charges against his opponent. App. 5a, 51a. The trial court then adjudicated Mr. Paul guilty of criminal contempt via email and ordered him to report to jail for a ten-day sentence. App. 50a, 58a.That criminal-conviction-and-sentence-by-email provided Mr. Paul no opportunity to address the court before sentencing, no right to attend his sentencing, and no right to counsel. App. 50a, 58a.

The vast majority of jurisdictions would not permit such a flagrant miscarriage of justice. This Court has already rejected private criminal-contempt prosecutions by interested parties in federal court as an exercise of its supervisory power. *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 790 (1987). And at least three circuits, two States, and the District of Columbia forbid such prosecutions under the Due Process Clause as well. Only four States, now including Texas, permit otherwise. This Court should grant certiorari to resolve that outcome-determinative split and ensure that interested private litigants cannot bring criminal charges against their civil opponents in all U.S. courts.

Mr. Paul's email sentencing also implicates a second, well-recognized split over whether defendants have the constitutional right to allocute—i.e., to address the court before sentencing. Two circuits, four States, and the District of Columbia hold that the Due Process Clause protects such a constitutional right. Six circuits and three

States hold otherwise. This case cleanly presents that entrenched conflict.

Moreover, the Texas court's in absentia email sentencing defies this Court's precedent recognizing a defendant's due-process right to attend his own sentencing and his Sixth Amendment right to have the benefit of counsel at sentencing. The bedrock of our criminal-justice system is that every man has "a right to his day in court." *In re Oliver*, 333 U.S. 257, 273 (1948). The Texas courts denied Mr. Paul that fundamental right.

As four Justices of the Texas Supreme Court recognized, what happened below threatens "trust and confidence in an independent judiciary." *In re Natin Paul*, 2024 WL 112520 (Tex. Mar. 15, 2024) App. 12a (Bland, J., dissenting). This Court should grant certiorari and reverse.

STATEMENT

Petitioner Natin Paul is a defendant in a long-running civil lawsuit over real estate in Travis County (Austin) Texas. *The Roy F. & Joann Cole Mitte Foundation v. WC 1st and Trinity, LP. et al.*, Cause No. D-1-GN-21003223 (201st Dist. Ct. Travis County, Texas). The litigation began as an arbitration over the management of a valuable property between Mr. Paul and respondent the Mitte Foundation. App. 4a. The Foundation won the arbitration and filed the civil suit to enforce it. App. 4a. The trial court affirmed the award, and Mr. Paul superseded the judgment, posting cash to secure the full amount of the judgment required under Texas law. Nevertheless, the Foundation obtained a post-judgment injunction (1)

forbidding Mr. Paul from transferring assets for less than fair value and (2) requiring monthly reports of any transfers of assets over $25,000. App.16a-17a.

In September 2022, the Foundation moved for a show-cause order, claiming that Mr. Paul violated the injunction by failing to file the required reports. App.17a-18a. The trial judge set a hearing (the "First Contempt Hearing") on November 9, 2022, for Mr. Paul to show cause why he should not be held in contempt for failing to file the required reports. Before the hearing, Mr. Paul several monthly reports. App.18a.

The First Contempt Hearing was prosecuted by the Foundation's counsel. App. 19a. At the end of that hearing, the Foundation's counsel proposed a second show-cause order, this time for "criminal" as well as "civil" contempt. App. 19a. The court set a hearing on the second show cause order on November 17, 2022, but did not indicate in writing that the hearing was for criminal contempt. App. 23a.

The Foundation's counsel prosecuted the second show cause order as well and called Mr. Paul as a witness at the hearing (without any admonishment of his Fifth Amendment right against self-incrimination). App.19a-23a. On March 3, 2023, several months after the second hearing, the trial judge sent Mr. Paul an email stating that he was "guilty" and sentenced him to 10 days in jail—without giving Mr. Paul notice that the court was going to find him guilty and sentence him—much less an opportunity to speak at a sentencing hearing. App. 50a, 58a.

The court followed this email by a written order March 10, 2023, requiring Mr. Paul to surrender to serve a ten-day sentence of incarceration, to begin five days later on March 15, 2023. See email sentence and written order. App. 50a, 58a. That same day, the court ordered Mr. Paul to pay the Foundation double the fees its attorneys incurred in "filing" and "prosecuting" "the motions for contempt and sanctions." App. 61a.

Mr. Paul challenged his convictions and sentence by filing a Petition for Writs of Habeas Corpus and Mandamus in the Texas Court of Appeals. App. 15a. The court of appeals temporarily stayed the criminal contempt order, overturned two of Mr. Paul's contempt convictions, and remanded the case. *See In re Natin Paul*, 03-23-00160-CV (Tex. App. – Austin 2023) App. 15a, 35a.

On remand, again without providing Mr. Paul notice and opportunity to be heard, or the presence of counsel; the trial court removed the two convictions reversed by the court of appeals and imposed the same sentence of ten days incarceration. See March 31, 2023. Amended criminal contempt sentencing order App. 43a.

Mr. Paul then filed a petition for review in the Texas Supreme Court. App. 3a. The petition requested a writ of habeas corpus and mandamus, contesting the convictions and sentence based on an unconstitutional private prosecution by financially interested counsel and the denial of his constitutional rights to be present, allocute, and be represented by counsel at sentencing.

The Texas Supreme Court denied the petition on March 15, 2024, by a 5-4 vote. App. 1a. In an opinion by

Justice Bland, the four dissenting Justices observed that "[p]rosecution of criminal contempt by a judgment creditor in a related civil action is likely a constitutional violation worthy of the Court's attention" and noted that such private prosecutions are forbidden in all federal courts and most states. *In re Paul*, No. 23-0253, *5 (Tex. March 15, 2024) App. 3a, 7a.

On March 18, 2024, the trial court issued a second amended order of contempt, ordering Mr. Paul to surrender for his sentence on April 1, 2024. App. 36a. The Texas Supreme Court stayed the second amended order of contempt on March 19, 2024, pending this Petition. App. 14a.

REASONS FOR GRANTING THE PETITION

This case is an ideal vehicle for resolving two recurring and important questions of criminal law. First, this Court should grant certiorari to decide whether interested private parties may bring criminal-contempt prosecutions against their civil-litigation opponents consistent with the Due Process Clause. The decision below joins the short side of a lopsided split—endorsing a practice accepted by only three other state courts to petitioner's knowledge. By contrast, three circuits, two States, and the District of Columbia all recognize that interested private contempt prosecutions are unconstitutional. This Court's intervention is urgently needed to bring outliers like Texas into line.

Second, this Court should grant certiorari to decide whether courts can sentence criminal defendants to jail via email—without any right to allocute, appear in person,

or have the assistance of counsel. That question implicates a deeply entrenched split involving at least eight circuits, seven States, and the District of Columbia over whether defendants have a constitutional right to address the court, or allocute, before sentencing. And the decision below conflicts with this Court's precedent guaranteeing the right to attend sentencing with counsel. This Court should grant certiorari to ensure the uniformity of federal law on this question too.

I. This Court Should Decide Whether Contempt Prosecutions by Interested Private Parties Are Constitutional

This Court should grant certiorari to decide whether interested private parties may prosecute criminal-contempt cases against their civil opponents. Lower courts are intractably divided on that self-evidently important question. This Court has previously granted a related question in the context of the District of Columbia courts only to dismiss the petition as improvidently granted. *See Robertson v. United States ex rel. Watson*, 560 U.S. 272 (2010). This case presents a clean vehicle to decide once and for all whether a civil litigant can seek to send his opponent to jail.

1. The lower courts are deeply split over whether interested private prosecutors are consistent with due process. The Fourth, Fifth, and Ninth Circuits all hold that they are not. In the Fourth Circuit, "criminal contempt defendants have the right . . . to be prosecuted by an independent prosecutor." *Bradley v. Am. Household, Inc.*, 378 F.3d 373, 379 (4th Cir. 2004). In the Fifth Circuit, "the appointment of a private party's attorney to serve

as a special prosecutor in a criminal contempt action that stems from violation of an injunction entered on behalf of the private party violates the due process rights of the criminal contempt defendant." *United States ex rel. SEC v. Carter*, 907 F.2d 484, 486 n. 1 (5th Cir. 1990); *accord Bhd. of Locomotive Firemen & Enginemen v. United States*, 411 F.2d 312, 319-20 (5th Cir. 1969). And in the Ninth Circuit, "the right to an independent prosecutor" in a criminal-contempt case is part of the "required . . . due process protections." *F.J. Hanshaw Enters., Inc. v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1132 (9th Cir. 2001).

As the Texas Supreme Court dissenters observed, many state high courts agree. App. 3a, 9a & n.17. West Virginia's highest court, for example, has held that private contempt prosecutions by an opposing party's lawyer violate "due process of law," without distinguishing between the West Virginia and federal Constitutions. *Trecost v. Trecost*, 502 S.E.2d 445, 449 (W. Va. 1998). The District of Columbia Court of Appeals has likewise held, citing federal cases, that a criminal prosecution by a "self-interested" prosecutor in a criminal-contempt case "fails to comport with due process guarantees." *In re Taylor*, 73 A.3d 85, 101 (D.C. 2013); *see also Commonwealth v. Ellis*, 708 N.E.2d 644, 650-51 (Mass. 1999) (requiring a disinterested prosecutor under Massachusetts Constitution and observing that this standard "may well be the same as that mandated by the Fourteenth Amendment").

Conversely, as the dissenting Justices below explained, "[a] bare minority of state appellate courts" disagree, "finding no per se due process violation arising from the

private prosecution of criminal contempt by a party's civil opponent." App. 3a, 10a-11a. In Tennessee, "no constitutional principle"—including due process—"automatically disqualifies a private attorney representing the beneficiary of a court order from simultaneously prosecuting a contempt action which alleges a violation of the order." *Wilson v. Wilson*, 984 S.W.2d 898, 905 (Tenn. 1998); *accord Gordon v. State*, 960 So. 2d 31, 40 (Fla. D. Ct. App. 2007) (following *Wilson*); *In re Mitan*, 2002 WL 31082190, at *10 (Mich. App. Sept. 17, 2002) (same). The decision below deepens that split.

2. The question presented is emphatically important and cleanly presented. As several Justices of this Court have observed, private contempt prosecutions raise "a broad array of unsettling questions," including under "the Due Process Clause." *See Robertson v. U.S. ex rel. Watson*, 560 U.S. 272, 277 (2010) (Roberts, C.J., joined by Scalia, Kennedy, and Sotomayor, JJ., dissenting). Court-appointed private prosecutors generally—much less the interested one here—"violate[ ] the due process rights of the accused." *Danziger v. United States*, 143 S. Ct. 868, 870 (2023) (Gorsuch, J., joined by Kavanaugh, J., dissenting from the denial of certiorari) (citation omitted). As the *Robertson* dissenters explained, "[t]he terrifying force of the criminal justice system may only be brought to bear against an individual by society as a whole, through a prosecution brought on behalf of the government." 560 U.S. at 273.

Accordingly, this Court, exercising its "supervisory power," has already "h[e]ld that counsel for a party that is the beneficiary of a court order may not be appointed to undertake contempt prosecutions." *Young v. United*

States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 809 (1987). Because *Young* was based on the supervisory power, its holding is limited to federal courts. But Justice Blackmun would have "go[ne] further" and "h[e]ld that the practice—federal or state—of appointing an interested party's counsel to prosecute for criminal contempt is a violation of due process." *Id.* at 814-15.

Over 16 million new civil cases are filed annually in state courts nationwide—*65 times* the volume of litigation in federal court. Nat'l Ctr. for State Courts, *The Landscape of Litigation in State Courts*, 6 n.36 (2015). Those tens of millions of litigants should not have to fear jailtime at the hands of their litigation opponents when federal litigants are protected. Had Mr. Paul's civil case been filed five blocks away in the U.S. District Court for the Western District of Texas, instead of the Travis County District Court, his prosecution would have been unconstitutional under Fifth Circuit law and an undisputed violation of this Court's decision in *Young*. Mr. Paul's liberty should not turn on the fact that this originally civil dispute began in Texas state court instead.

This Court has already granted certiorari on a variant of this question once, implicitly recognizing its importance. In *Robertson*, a District of Columbia court permitted a civil party to bring a criminal-contempt proceeding to enforce a civil protective order. 560 U.S. at 274 (Roberts, C.J., dissenting). The petitioner sought review of whether "an action for criminal contempt in a congressionally created court may be brought in the name and power of a private person" "consistent with the . . . Due Process Clause." Pet. i, *Robertson*, No. 08-6261 (U.S. Sept. 10, 2008). This Court granted certiorari, but broadened

the question presented to ask whether private contempt prosecutions were "constitutional[ ]" writ large. 558 U.S. 1090, 1090 (2009). That rephrased question led to wide-ranging briefing on, *inter alia*, how separation-of-powers principles apply to the District of Columbia and whether the petitioner's prosecution violated his plea agreement. *E.g.*, *Robertson* Resp. Br. 52-54; *Robertson* U.S. Br. 30-32. As the Chief Justice observed, *Robertson* was "a complicated case," 560 U.S. at 273—which is presumably why this Court dismissed the writ as improvidently granted.

This case contains none of those procedural hurdles. This began as an ordinary state-court civil case between two private parties where one party's lawyer—who stood to be paid from the other party's assets—prosecuted the other party. Petitioner has stridently and consistently objected to this procedure on due-process grounds. App. 5a. As four Justices of the Texas Supreme Court observed, this case presents a "likely . . . constitutional violation worthy of th[at] Court's attention." App. 3a, 7a. This issue likewise warrants *this* Court's attention.

II. This Court Should Decide Whether Sentencing an Individual to Jail by Email Is Constitutional

This Court should also grant certiorari to decide whether a court may impose a jail sentence in absentia without the right to allocution or counsel. Here, the trial court sentenced Mr. Paul to jail via email without a sentencing hearing and then signed written contempt orders that the Foundation's counsel prepared—without any opportunity for Mr. Paul to allocute or appear in person with his attorney. App. 50a, 58a.

1. The Texas court's decision implicates an entrenched, well-recognized split over whether criminal defendants enjoy the due-process right to allocute—*i.e.*, address the judge—before the imposition of a criminal sentence.

This Court has long held that the Federal Rules of Criminal Procedure afford criminal defendants the right, "personally, to have the opportunity to present to the court his plea in mitigation" before the imposition of a criminal sentence. *Green v. United States*, 365 U.S. 301, 304 (1961) (plurality op.); *accord id.* at 307 (Black, J., dissenting) (agreeing on this point); *see* Fed. R. Crim. P. 32(i)(5)(ii) (current rule). As Justice Frankfurter observed, "[t]he most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself." *Green*, 365 U.S. at 304 (plurality op.).

Nonetheless, lower courts have long divided over whether the Constitution protects that same right. In the Fourth and Ninth Circuits, plus the District of Columbia, allocution is a constitutional right protected by the Due Process Clause. *Ashe v. North Carolina*, 586 F.2d 334, 336 (4th Cir. 1978) ("[W]hen a defendant effectively communicates his desire to the trial judge to speak prior to the imposition of sentence, it is a denial of due process not to grant the defendant's request."); *Boardman v. Estelle*, 957 F.2d 1523, 1530 (9th Cir. 1992 ("[W]e hold that allocution is a right guaranteed by the due process clause of the Constitution."); *Warrick v. United States*, 551 A.2d 1332, 1334 (D.C. 1988) (right to allocution "implicates the due process clause").

Several state courts have reached the same conclusion, in the specific context of criminal-contempt proceedings—the same fact pattern as this case. *Schutter v. Soong*, 873 P.2d 66, 87 (Haw. 1994); *State v. Meyer*, 571 P.2d 550, 553 (Ore. App. 1977 ("[D]ue process requires . . . a right of allocution."); *In re DeMarco*, 539 A.2d 1230, 1239 (N.J. App. 1988); *Robinson v. Commonwealth*, No. 2901-01-1, 2003 WL 1701689, at *2 (Va. App. Apr. 1, 2003 (following Fourth Circuit caselaw).

Conversely, the Second, Third, Fifth, Sixth, Seventh, and Eleventh Circuits have all held that the right to allocute is *not* protected by the Constitution. *United States v. Li*, 115 F.3d 125, 132 (2d Cir. 1997) ("[A] defendant's right to a sentencing allocution is a matter of criminal procedure and not a constitutional right."); *United States v. Ward*, 732 F.3d 175, 181 (3d Cir. 2013) ("Although the right of allocution predates the founding of the Republic, it is not a right guaranteed by the Constitution."); *United States v. Reyna*, 358 F.3d 344, 350 (5th Cir. 2004) (en banc) ("[T]he right of allocution is . . . n[ot] constitutional."); *United States v. Coffey*, 871 F.2d 39, 40 (6th Cir. 1989) ("[T]he right of allocution is not of constitutional dimension."); *United States v. Luepke*, 495 F.3d 443, 447-48 (7th Cir. 2007) (agreeing with Fifth Circuit); *United States v. Fleming*, 849 F.2d 568, 569 (11th Cir. 1988) ("[T]he right to allocution is *not* constitutional.").

Among the States, at least Illinois, Tennessee, and Washington take the same approach. *People v. Brown*, 665 N.E.2d 1290, 1317 (Ill. 1996)(denial of allocution before sentencing does not violate the due process clause in a capital murder case); *State v. Stephenson*, 878 S.W.2d 530, 552 (Tenn. 1994) ("[W]e conclude that there is no

. . . constitutional right to allocution in a capital case."), *abrogated on other grounds by, State v. Saylor*, 117 S.W.3d 239 (Tenn. 2003); *In re Echeverria*, 6 P.3d 573, 579 (Wash. 2000) ("Petitioner's right of allocution is nonconstitutional in nature."). In those jurisdictions, absent some statutory or other protection, defendants have no right to allocute at all.

That entrenched division of authority is well acknowledged. As early as 1992, the Ninth Circuit recognized that "our sister circuits have reached conflicting results" over whether "the right of allocution was Constitutionally guaranteed." *Boardman*, 957 F.2d at 1528-29. Numerous other state and federal courts acknowledge the split as well. *Ward*, 732 F.3d at 181 n.5 (acknowledging "some authority in other circuits suggesting that the right of allocution may be protected by the Fifth and Fourteenth Amendments" but declining to "adopt th[at] reasoning"); *Shelton v. State*, 744 A.2d 465, 494 (Del. 2000) ("The federal courts of appeals are split on whether the right of allocution . . . is a right guaranteed by the Due Process Clause."); *Stephenson*, 878 S.W.2d at 551 ("[T]he federal circuits are split on whether the right of allocution . . . is also a right guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution.").

As this Court has emphasized, defendants accused of criminal contempt are entitled to "fundamental due process protections" like everyone else. *Taylor*, 418 U.S. at 500. In *Taylor*, the trial court found the petitioner in criminal contempt during a jury trial but deferred a final conviction and sentence. The court then found the petitioner guilty of contempt at the end of trial and

sentenced him, without permitting him to respond. *Id.* at 490. This Court set aside that contempt judgment, which violated the "minimum requirements of due process of law." *Id.* at 500. Most relevant here, the summary procedure violated the petitioner's right to "present matters in mitigation or otherwise attempt to make amends with the court." *Id.* at 499. This case presents the same fundamental due-process violation.

2. In addition to violating Mr. Paul's specific right to allocution, the decision below conflicts with this Court's precedents recognizing criminal defendants' right to be physically present during sentencing and to have assistance of counsel. This Court's caselaw is crystal clear that "sentencing is a critical stage of the criminal proceeding at which [the defendant] is entitled to the effective assistance of counsel." *Gardner v. Florida*, 430 U.S. 349, 358 (1977). Likewise, "the right to personal presence at all critical stages of the trial" is a "fundamental right[ ] of each criminal defendant." *Rushen v. Spain*, 464 U.S. 114, 117 (1983).

Those rights apply fully to criminal-contempt proceedings. "[C]riminal contempt is a crime in every fundamental respect." *Bloom v. Illinois*, 391 U.S. 194, 201-02 (1968). The Due Process Clause applies to criminal-contempt proceedings. *See Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971). And the right to counsel applies to criminal-contempt proceedings. *See In re Oliver*, 333 U.S. 257, 275 (1948). The decision below flouts those precedents. This Court should grant certiorari to address that flagrant disregard for Supreme Court precedent by the Texas courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LISA S. BLATT
AMY MASON SAHARIA
AARON Z. ROPER
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, DC 20024

DAVID GERGER
Counsel of Record
GERGER HENNESSY MARTIN
& PETERSON LLP
700 Louisiana,
Ste. 2300
Houston, TX 77002
(713) 224-4400
dgerger@ghmfirm.com

CYNTHIA E. ORR
GERALD H. GOLDSTEIN
315 E. Commerce St.,
Ste. 301
San Antonio, TX 78205

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