DOCKET NO.: 23A234

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

Jerry Laza,
Petitioner,

v.

City of Palestine, Texas,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

1. Under 28 U.S.C. Section 1441, does removal of a cause of action divest Texas Courts of jurisdiction until remanded.

2. Whether Texas Courts of Appeals are required to follow This Court's holding in *Johnson v. United States* regarding structural error when a Texas Appellate Court changes a Civil Case into a Criminal Case after the completion of briefing.

3. Whether lawyers are entitled to Constitutional protections, including the First Amendment protections when quoting express terms from a State's High Court.

Proceedings Below

The dispute commenced in the 349th Judicial District in Anderson County, Texas as case number DCCV16-356-349, City of Palestine v. Jerry Laza. On February 19th, 2018, after Plaintiff had removed the case to Federal Court, the Court ordered that the City of Palestine, Texas have and recover from Jerry Laza as **civil penalties** (emphasis added) the sum of one Hundred Sixty-Three Thousand One Hundred Fifty-Five Dollar ($163,155.0).

Jerry Laza's appeal in the Twelfth Court of Appeals was provided case number 12-18-00158-CV. But the case was transferred from the Twelfth Court of Appeals to the Sixth Court of Appeals in Texas by the Supreme Court of Texas's Docket Equalization order on June 19th, 2018. Misc. Docket No.18-9083; www.txcourts.gov/media/1441849/189083.pdf.

On September 18, 2017, Under 28 U.S.C. §§ 1441, and 1446, The City of Palestine, Texas ("Defendant" or " City of Palestine"), Defendant in the cause styled *Jerry Laza v. City of Palestine, Mike Alexander, and Ronald Stutes,* originally pending as Cause No. DCCV16-356-349A, in the 349th Judicial District Court, Anderson County, Texas, ("the "State Court Action"), filed a Notice of Removal to the United States District Court of the Eastern District of Texas, Tyler Division and has been identified as case number 6:17-cv-00533. This Case has yet to be receive a final Judgment.

Petitioner Laza's appeal in the Sixth Court of appeals in Texas, which was given case number 06-18-00051-CV was ruled on August 18, 2022. The Court affirmed the trial Courts judgment that the trial court had jurisdiction to enter judgment and post-judgment orders.

The Texas Court of Criminal Appeals rejected the request for discretionary review, noting that the case was civil, not criminal as the Court of Appeals held. The Supreme Court of Texas denied Petitioner's Motion for Rehearing on June 16, 2023. Laza v. City of Palestine, No. 22-1098, Supreme Court of Texas.

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Opinions Below

Between the various stages of this case, there are multiple intermediate appellate opinions. Initially, the Texas Twelfth Courts of Appeals is *In re Laza*, No. 12-17-00280-CV, 2018 WL 271833 (Tex. App.—Tyler Jan. 3, 2018, no pet.) issued a mandamus order holding that due to the City of Palestine's removal the state courts lacked jurisdiction over this matter. *In re Laza*, No. 12-17-00280-CV, 2018 WL 271833 (Tex. App.—Tyler Jan. 3, 2018, no pet.). Despite that order, the Trial Court proceeded through a civil jury verdict, resulting in an appeal to the Twelfth Court of Appeals. Laza v. City of Palestine, No. 06-18-00051-CV, 2022 WL 3449819 (Tex. App.—Texarkana Aug. 18, 2022, pet. denied). Rather than allowing the elected justices of the Twelfth Court of Appeals rule on the appeal, the Supreme Court of Texas transferred the matter to the Sixth Court of

Appeals. Misc. Docket No. 18-9083. The other relevant orders from the appellate courts are the two spurious ad hominem attacks on counsel for Laza, made without fact, evidence, or basis and the round robin farce of the recusal process. Laza v. City of Palestine, No. 06-18-00051-CV, 2022 WL 258495 (Tex. App.—Texarkana Jan. 26, 2022, no pet.); Laza v. City of Palestine, No. 06-18-00051-CV, 2022 WL 17420805 (Tex. App.—Texarkana Dec. 5, 2022, no pet.). Laza, following the Twelfth Court of Appeals conversion of the civil matter into a criminal appeal, invoked the Texas Court of Criminal Appeals jurisdiction on a petition for discretionary review, this was rejected as that high court determined the matter could not be criminal in nature, despite the Opinion from the Sixth Court of Appeals. App.97. Following that denial Laza petitioned the Supreme Court of Texas who denied the petition. App.48.

However, the case commenced in the 349th Judicial District Court in Anderson County, Texas, where the Court ruled on September 20th, 2017, after Plaintiff removed the case to Federal Court, that the City of Palestine, recover from Jerry Laza as civil penalties the sum of one Hundred Sixty-Three Thousand One Hundred Fifty-Five Dollar ($163,155.0).

Jerry Laza's appeal was filed in the Twelfth Court of Appeals and was provided case number 12-18-00158-CV, however, due to the Supreme Court of Texas's Docket Equalization order on June 19th, 2018, the case was transferred to from the Twelfth Court of Appeals to the Sixth Court of Appeals in Texas. Misc. Docket No. 18-9083; https://www.txcourts.gov/media/1441849/189083.pdf.

The Mandamus opinion from the Twelfth Courts of Appeals is *In re Laza*, No. 12-17-00280-CV,

2018 WL 271833 (Tex. App.—Tyler Jan. 3, 2018, no pet.). Despite the Mandamus from the Twelfth Court of Appeals, the state court action proceeded and resulted in an Appeal transferred from the Twelfth Court of Appeals to the Sixth Court of Appeals by the Supreme Court of Texas, that Opinion is Laza v. City of Palestine, No. 06-18-00051-CV, 2022 WL 3449819 (Tex. App.—Texarkana Aug. 18, 2022, pet. denied). Other citations include the ad hominem attacks on Laza's Counsel by the Court of Appeals and their failure to recuse themselves. Laza v. City of Palestine, No. 06-18-00051-CV, 2022 WL 258495 (Tex. App.—Texarkana Jan. 26, 2022, no pet.); *Laza v. City of Palestine,* No. 06-18-00051-CV, 2022 WL 17420805 (Tex. App.—Texarkana Dec. 5, 2022, no pet.).

After being transferred from the Twelfth Court of Appeals to the Sixth Court of Appeals, the case was given the new case number 06-18-00051-CV. On

August 18th, 2022, the Sixth Court of Appeals in Texas affirmed the trial Courts judgment and ruled as follows:

(1) the trial court had jurisdiction to enter judgment and post-judgment orders,

(2) the trial court did not err in denying Laza's Rule 12 motion to show authority because Respondents attorney was prosecuting a criminal case,

(3) Laza procedurally waived any complaints regarding the trial court's denial of his special exceptions,

(4) Laza failed to preserve his claimed jury charge error,

(5) the motion to recuse was properly denied, and

(6) there is no basis on which to vacate the judgment.

Jurisdiction

This Court has jurisdiction to review the denial or refusal of Laza's Petition for Review by the two High Courts in the State of Texas, the Supreme Court of Texas and the Texas Court of Criminal Appeals under 28 U.S.C. § 1257(a) authorizing a Writ of Certiorari to the Supreme Court of Texas. The Supreme Court of Texas denied Petitioner's Motion for Rehearing on June 16, 2023; while the Texas Court of Criminal Appeals denied the petition for discretionary review. *Laza v. City of Palestine,* No. 22-1098, Supreme Court of Texas; Cite.97. Justice Alito granted an extension of time to file this Petition, extending the time to file from September 14 until October 16, 2023.

Relevant Constitutional Provisions

"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." U.S. Const. amend. I.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V

> 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 defence.

U.S. Const. amend. VI

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. Article III, Section 2, Clause 1

Statement of the Case

The City sued Laza under a criminal ordinance, promulgated under a criminal statute, and enforced under the section that the City Prosecutor enforces all penal ordinances. Following severance of the counterclaims, the City removed to Federal Court.

The Twelfth Court issued an order holding the Respondent's removal divested the state courts of jurisdiction. Following that order, a Texas Jury found Laza guilty and a judgment was entered against Laza. The appeal ensued. Following removal, the Jury entered judgment in the amount of $163,155.00 of penalties.

Following the Mandamus and direct appeal, the trial court created a record, on five separate occasions that was different each time. The Sixth Court of Appeals instigated spurious ad hominem attacks on Petitioner's counsel, then following the completion of briefing converted the civil appeal into a criminal matter.

Reasons for Granting the Petition

Within what should have been a simple case based on the half dozen prior criminal trials against Laza by Respondent and the removal of the entire

matter to federal court, this case has spiraled into a morass of constitutional issues created by the trial and appellate court's failure to apply simple facts and law. One Texas Appellate Court has determined the state courts lack jurisdiction. *In re Laza*, No. 12-17-00280-CV, 2018 WL 271833 (Tex. App.—Tyler Jan. 3, 2018, no pet.). A sister appellate court attempts to overrule that co-equal court of appeals to assert jurisdiction where none exists. *Laza*, 2022 WL 3449819. Following the conversion of a simple civil matter into a criminal appeal, only after the briefing, deprives Laza of numerous constitutional rights deemed structural errors in the process. The Sixth Court of Appeals attempts to cleave themselves from the rest of the United States by refusing to follow any of these constitutional protections delineated by this Court while demonstrating inappropriate bias by personally attacking a lawyer without basis or

supporting facts merely for quoting language from various high courts. Furthermore, demonstrating their bias, the Sixth Court of Appeals determined that lawyers are entitled to no first amendment protections, no due process, no service of process, and no right to an impartial judiciary. Each of these matters standing alone, demonstrates that This Court should take this matter to afford lawyers the same understanding of the boundaries of their rights that George Carlin was afforded almost 50 years ago.

Argument

Issue One: Under 28 U.S.C. Section 1441, does removal of a cause of action divest Texas Courts of jurisdiction until remanded.

Whether a trial court has subject matter jurisdiction is a question of law subject to a de novo standard of review. See *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002)

("subject-matter jurisdiction is a question of law subject to de novo review."); see also *In Interest of H.S.*, 550 S.W.3d 151, 155 (Tex. 2018). Thus, if at the time of any of the actions of the trial court, the court had been divested of jurisdiction by removal or other vehicle, any order or action it took would be void and subject to the same de novo standard. *Id.* Petitioner filed an Original Proceeding for Mandamus in the Twelfth Court of Appeals on September 18, 2017 seeking to order the underlying Trial Court to vacate his order denying the Appellant's Rule 12 Motion and to follow the mandates of Tex. R. Civ. P. 12. *In re Laza*, 2018 WL 271833, at *1. In essence, Appellant sought to compel the Trial Court to grant the Tex. R. Civ. P. 12 Motion, because no evidence was presented proving Appellee had given the City's Attorney authority to prosecute the case. CR1.229. Contemporaneously with that Mandamus, Appellant moved to Stay the actions

in the Trial Court. *In re Laza*, 2018 WL 271833. The Texas Appellate Court denied the first Motion to Stay. *Id.* After the Appellee removed the action to Federal Court, Appellant returned to the Texas Appellate Court with a Second Motion for Emergency Stay. *In re Laza*, 2018 WL 271833. In the Second Motion, Appellant informed this Court of the changes in circumstances, specifically the notice of removal filed in DCCV16-356-349A. The Court of Appeals took no action on the Second Motion "due to the removal of the case to federal court." *Id.* Appellee made no appearance and filed no response to the Mandamus. *Id.* Ultimately, the Texas Appellate Court issued a Memorandum Opinion disposing of the Mandamus for lack of jurisdiction. *In re Laza*, 2018 WL 271833, at *1. In deciding the Mandamus, the Court of Appeals made certain findings on the merits of the case, specifically the lack of Jurisdiction because of

Appellee's removal. *Id.* Texas Appellate Courts have ruled that "Once a notice of removal is filed, it 'shall effect the removal and the State court shall proceed no further unless and until the case is remanded.'" *In re Laza*, 2018 WL 271833, at *1; *citing* 28 U.S.C. § 1446(d); *In re Sw. Bell Tel. Co., L.P.*, 235 S.W.3d 619, 624 (Tex. 2007). The Twelfth Court held that, "the City's notice of removal effected the removal and vested the federal court with exclusive jurisdiction over the case." *In re Laza*, 2018 WL 271833, at *1; citing 28 U.S.C. § 1446(d); *In re Southwestern Bell Telephone Co., L.P.*, 235 S.W.3d at 624. In conclusion, the Texas Twelfth Court of Appeals ultimately held that it lacked jurisdiction over this proceeding. *In re Laza*, 2018 WL 271833, at *1. Petitioner believed this was sufficient to convince the trial court that it was divested of jurisdiction, however, the Trial Court ignored the Twelfth Court's opinion that the state

courts lacked jurisdiction and continued to trial. CR3.260.

The Law-of-the-Case doctrine is based on public policy and seeks to put an end to litigation. *Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986). The Doctrine narrows the issues in various stages of litigation and seeks to maintain a uniformity of decisions, along with preserving judicial economy. *Id.* Law-of-the Case applies only to questions of law and is prudently applied when there is no change in law between the original decision and later decisions. *Id.* Finally, Law of the case is prudently applied when the issues of fact or law are substantially the same between the two appeals. *Id.* Appellant's contentions between the Original Proceeding and this Appeal are substantially similar, as there has been no remand or circumstances that would re-vest the trial court with Jurisdiction in fact or law. See 28 U.S.C. § 1446. The

only factual differences between the Original Proceeding and this Appeal are the Trial Court's continued actions without respect for the Texas Twelfth Court's Memorandum Opinion holding that there was exclusive jurisdiction over the case in Federal Court. *In re Laza*, 2018 WL 271833, at *1. Moreover, there has been no intervening change in the Removal Law or any other action that would vest jurisdiction in the State District Court after Removal. Whether a Court has Subject Matter Jurisdiction is a question of law. *City of Dallas v. Carbajal*, 324 S.W.3d 537, 538 (Tex. 2010); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004); *Texas Natural Resource Conservation Com'n*, 74 S.W.3d at 855. Texas Court's prior ruling holds that "the City's notice of removal effected the removal and vested the federal court with **exclusive jurisdiction** over the case." *In re Laza*, 2018 WL 271833, at *1(emphasis

added). Because Exclusive jurisdiction vested in the federal court following removal, such action precludes any state courts from exercising jurisdiction over the case. *Davis v. State of South Carolina*, 107 U.S. 597, 601 (1883)(After removal advising litigants that subsequent proceedings, trial, or judgment in state court void.); *Carroll v. Carroll*, 304 S.W.3d 366 (Tex. 2010); *Medrano v. State of Tex.*, 580 F.2d 803, 804 (5th Cir. 1978) ("even constructive notice under 28 U.S.C. § 1446(e) would have been sufficient to deprive the state court of jurisdiction, thus making any further proceedings void."); *Iowa Cent. Ry. Co. v. Bacon*, 236 U.S. 305, 309–10 (1915)(" the proceedings in this case show that the case was removed to the United States circuit court, and inasmuch as the state court lost jurisdiction, its subsequent proceedings are null and void."). The Removal Statute itself makes clear that **"the State court shall proceed no further unless**

and until the case is remanded." 28 U.S.C. § 1446(emphasis added).

The law of the case dictates that there was no jurisdiction in the state district court after Appellee's removal to Federal Court and all jurisdiction was vested exclusively in Federal Court. *In re Laza*, 2018 WL 271833, at *1(citing *In re Southwestern Bell Telephone Co., L.P.*, 235 S.W.3d at 624. Despite the Twelfth Court of Appeals' opinion, the Trial Court ignored the order and proceeded to trial. CR3.260. Even if Law of the Case does not apply, the other Appellate Courts are bound by both Federal Law and the Twelfth Court of Appeals determination that the removal divested the state courts of jurisdiction. *In re Laza*, 2018 WL 271833, at *1; Tex. R. App. P. 41.3; see also *Virginia Oak Venture, LLC v. Fought*, 448 S.W.3d 179, 187 (Tex. App.—Texarkana 2014, no pet.); *Brazos*

Elec. Power Coop., Inc. v. Tex. Comm'n on Envtl. Quality, 576 S.W.3d 374, 383 (Tex. 2019).

Because of the removal to Federal Court, and the Twelfth Court's prior opinion that the Federal Court was vested with exclusive jurisdiction, this entire appeal can be disposed of at this point. Adhering to the Supreme Court of Texas's *Freedom Communications* or any other Circuit's removal jurisprudence, the intermediate courts of appeals need only "make appropriate orders based on that determination" that the actions taken by the Trial Court after September 18, 2017 are null and void. *Freedom Communications, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012). Once this determination is made, the Texas Courts must not proceed to the merits of the case and should have vacated and allowed the still pending federal court to acquire complete control of the case. *Id.* Because of this

jurisdictional issue being so well settled outside of East Texas, this Court can and should simply grant certiorari vacate the various orders of the Texas Courts following removal and allow the federal trial court for further proceedings.

Issue Two: Whether Texas Courts of Appeals are required to follow This Court's holding in Johnson v. United States regarding structural error when a Texas Appellate Court changes a Civil Case into a Criminal Case after the completion of briefing.

In addressing the Petitioner's motion to show authority issue on appeal, the Texas Appellate Court held that Respondent's purported counsel was enforcing the *penal* ordinances of the City of Palestine and thus had authority under the City Charter and Ordinances. Op. p. 16&20("The city attorney likewise was charged with the duty to see that all penal ordinances of the city [were] impartially

enforced.");20("An ordinance that makes a violation punishable by a fine or that makes conduct unlawful is penal in nature"); 21("We conclude that the petition filed by *Stutes sought to enforce, at least in part, penal ordinances.* The city charter granted the city attorney the authority to enforce such ordinances."). Spending numerous pages on this issue, the Texas Appellate Court concludes that the plain text of the ordinances shows the underlying action was *criminal* in nature. App.30-34. This holding requires the judgment be reversed as Petitioner was afforded no constitutional protections afforded to persons in criminal trials.

First, the determination that the proceedings were criminal or even quasi-criminal eliminates any waiver or harm analysis from the failure to properly charge the jury. *Johnson v. United States*, 520 U.S. 461, 469 (1997); *Johnson v. State*, 169 S.W.3d 223, 235 (Tex. Crim. App. 2005); see also *Mendez v. State*, 138

S.W.3d 334, 342 (Tex. Crim. App. 2004). Appellant raised structural errors in his opening brief. Appellant's Br. p.59-60. Relying on both *Johnson* cases, Appellant pointed out that the Supreme Court and the Court of Criminal Appeals specifically recognized that the erroneous instruction which lowered the burden on the state is a "structural defect" which affects the "framework within which the trial proceeds." *Johnson*, 520 U.S. at 466. Defective instructions to the jury lowering the burden of proof required by the government is a structural defect which, requires "automatic reversal, with no harm analysis whatsoever." *Johnson*, 169 S.W.3d at 232. Here, as the Texas Appellate Court repeatedly claims the suit was penal or at least in part penal in nature and the burden instructed to the Jury was "preponderance of the evidence." Op. p. 29. This is the incorrect burden on the government. Contrary to the

holdings of the Sixth Court of Appeals, Texas is bound by this Court's holding in *Johnson*, 520 U.S. at 466.

Second, the judgment must be reversed because the prosecutor failed to deliver responsive documents made under a valid Morton Act request. Tex. Code Crim. Pro. Ann. art. 39.14 (West). Laza requested ""all books and records, documents and tangible things related to the prosecution of the defendant, Jerry Laza by the City of Palestine..." CR1.157;160;182;243-246;252-254;259-261. The Court, by granting, even in part, the protective order preventing the required production of exculpatory evidence mandates reversal. CR2.179-180. Under the Michael Morton Act, the prosecutor is required to produce or permit inspection the information covered by the Michael Morton Act. Such a request was made. CR1.157. Failure of the City to produce potentially exculpatory evidence violates due process and the Michael Morton

Act. The Court *must* grant the rehearing and reverse the judgment. *Ex parte Mitchell*, 977 S.W.2d 575, 578 (Tex. Crim. App. 1997).

Third, the City illegally searched Laza's properties without a warrant. U.S. Const. amend. IV. All evidence procured by that illegal action should have been suppressed. *Handy v. State*, 189 S.W.3d 296, 299 (Tex. Crim. App. 2006). The City concedes this argument was raised, the Court was aware of the warrant requirement, and Appellant lodged this argument with the trial court. CR1.54; CR3.247; 202111214.RR18.27:10. There was no warrant, and there was no attempt to secure a warrant.

Fourth, Double Jeopardy precludes the city from prosecuting Laza for the alleged infractions. U.S. Const. amend. V. Laza asserted this defense in the trial court. CR2.236. The Court precluded Laza from raising these issues before the jury or seeking

discovery on those issues. CR2.179; 189; 191; 324; CR3.8. The Constitutional mandate in the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.; Tex. Const. art. I, § 14; *Ex Parte Denton*, 399 S.W.3d 540, 545 (Tex. Crim. App. 2013). Appellee concedes that Laza was charged and tried on numerous occasions. CR.157 ("'The State of Texas vs. Jerry Laza'; and Cause Nos. A104852-01, A1014853-01, A105003-01, A105004-01, A4472-01, A4472F, A4473-01 and A4473F in the Palestine Municipal Court of Anderson County, Texas."). Any one of these referenced cases where a not guilty verdict was reached supports the bar against subsequent prosecutions as described by the Texas Sixth Appellate Court.

These repeated criminal prosecutions, the underlying civil prosecution, and the Sixth Court of

Appeals' conversion of a civil case for one purpose into a criminal case for another purpose demonstrates that numerous constitutional and structural errors permeate this record.

Issue Three: Whether lawyers are entitled to Constitutional protections, including the First and Fifth Amendment protections when quoting express language from a State's two High Courts.

Several Tenants govern the regulation of speech by the Government. "There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1034 (1991). The judicial system [] play[s] a vital part in a democratic state, and the public has a legitimate interest in their operations." *Id.* (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838–839 (1978). "Public awareness and criticism have even greater

importance where, as here, they concern allegations of [] corruption." *Id.* (citing *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 606 (1976)(Brennan, J., concurring in judgment) ("[C]ommentary on the fact that there is strong evidence implicating a government official in criminal activity goes to the very core of matters of public concern")). "Judicial service in Texas is not for the meek or the sensitive. It requires a thick skin and an ability to ignore criticism." *In re Jimenez*, 841 S.W.2d 572, 581 (Tex. Spec. Ct. Rev. 1992). Judges are not "thought police." *Id.* While George Carlin had a list of words he was unable to say on TV, Counsel for Laza does not have the same benefit, even when those words are express quotations from This Court or the Texas High Courts. *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 751 (1978). Here, the Court of Appeals takes upon that mantle and retaliates against Mosser for denying the

allegations the Court spuriously made against him and for conduct that the Clerk of that Court denies occurred, while sanctioning him for quoting the Texas Supreme Court and the Texas Court of Criminal Appeals—or even the Appellate Court's own statements. The Appellate Court's infringement on First Amendment and other rights, cannot be sustained under legal standard.

The test on whether a lawyer is entitled to First Amendment protections, prior to *Bruen*, "requires a court to make its own inquiry into the ***imminence and magnitude of the danger*** said to flow from the particular utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression." *Gentile*, 501 U.S. at 1036(emphasis added); quoting *Landmark Communications, Inc.*, 435 U.S. at 838–839; but see *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142

S. Ct. 2111 (2022). Moreover, judges may not sanction or hold one in contempt "'who ventures to pubish [sic] anything that tends to make him unpopular or to belittle [the judge]." *Craig v. Harney*, 331 U.S. 367, 376 (1947)(quoting *Craig v. Hecht,* 263 U.S. 255, 281 (1923) (Holmes, J Dissenting.). Indeed, the vehemence of the language used is not alone the measure of the power to punish, the "fires it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil." *Craig*, 331 U.S. at 376. However, post-*Bruen*, these sorts of balancing tests have been eroded in favor of the pure constitutional protections afforded to *all* persons. *New York State Rifle & Pistol Association, Inc.*, 142 S. Ct. 2111("The government must demonstrate that the regulation is consistent with this Nation's historical tradition of [free speech].").

The Texas Appellate Court seeks to punish Mosser for critical, though *factual,* statements supported by the record in which the court took offense and for conduct the Clerk of the Texas Appellate Court denies occurred. "[C]ourts no doubt must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice." *Brown v. United States*, 356 U.S. 148, 153 (1958).

In a statement signed only by the Deputy Clerk, The Texas Appellate Court claims that it has issued a show cause "order" on Nicholas D. Mosser through an ancillary proceeding, for the Court's erroneous perception of conduct which "fell 'short of the standards expected of Texas attorneys.'"

However, no justice on the Court signed the "order" nor is there any identity of the justices that participated. Tex. R. App. P. 47.2(a). There is no seal affixed to the "order", and none of the hallmarks of

proper citation or process are present anywhere in any of these documents. See *Frosch v. Schlumpf*, 2 Tex. 422, 423 (1847)("[a] process to answer, without being authenticated by the solemnity of a seal, would not give any validity to the summons and may be treated as absolutely void, and no service of it could exact obedience..."). Moreover, the clerk falsely states that her seal is affixed to the various documents, where it is not, depending on which version of the documents is correct.

Unlike this order, in every other order or opinion from The Texas Appellate Court, the official documents adhere to the basic rules provided by the Texas Supreme Court—they are all affixed with a seal. This "order" and the associate process fail to bear the Court's Seal. Tex. R. App. P. 15.1. the lack of seal on the process or order renders the attempted service void. See *Frosch*, 2 Tex. at 423("[a] process to answer,

without being authenticated by the solemnity of a seal, would not give any validity to the summons and may be treated as absolutely void, and no service of it could exact obedience..."); *Hale v. Gee*, 29 S.W. 44 (Tex. App. 1895, no writ)("[A] citation is required to have the seal of the court impressed thereon, and it has been held that, unless this requirement is complied with, such process is void...").

"Due process requires a court, [] to sign a written judgment or order of contempt and a written commitment order." *Ex parte Barnett*, 600 S.W.2d 252, 256 (Tex. 1980). That order must "clearly state in what respect the court's [earlier] order has been violated." *Id.* (quoting *Ex parte Proctor*, 398 S.W.2d 917, 918 (Tex. 1966)); *Ex parte Shaklee*, 939 S.W.2d 144, 145 (Tex. 1997). The Texas Appellate Court's order does not meet this minimum mandate on specificity. *Id.* This "order" merely claims that some

statements in the briefing "fail[s] to comply with the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyers Creed." However, the Court's "order" does not identify which provision in the Rules or the Creed was violated or how those sections were violated by vehement disagreement with the various Courts' conduct and actions. Such a failure to describe the conduct and which rule the Court believes was violated, again, renders the "order" fundamentally defective. *Ex parte Blanchard*, 736 S.W.2d 642, 643 (Tex. 1987).

Moreover, assuming that the due process requirement on specificity was complied with, the Court fails to personally serve Mosser with the writ, notice, or order. Such defects render any further action by the Texas Sixth Court of Appeals void. *Ex parte Edgerly*, 441 S.W.2d 514, 516 (Tex. 1969). *Ex parte Ratliff*, 117 Tex. 325 (1928); *Ex parte Rust*, 38

Tex. 344, 351 (1873); *Ex parte Testard*, 101 Tex. 250, 251 (1908); *Ex parte Lipscomb*, 111 Tex. 409, 418 (1922); *Ex parte Kilgore*, 1877 WL 8516 (Tex. App. 1877, no writ); *Ex parte Foster*, 44 Tex. Crim. 423 (1903); *Ex parte Landry*, 65 Tex. Crim. 440 (1912); *Ex parte Duncan*, 78 Tex. Crim. 447 (1916); *Ex parte O'Fiel*, 93 Tex. Crim. 214 (1923).

The Texas Sixth Court of Appeals' laundry list of perceived complaints regarding tone or evidentiary statements is woefully insufficient to satisfy due process and all of the statements the Court has chosen to use, omits the very evidentiary support that was included. *Ex parte Edgerly*, 441 S.W.2d at 516(due process of law demands "full and complete notification of the subject matter, and the show cause order or other means of notification must state when, how, and by what means the defendant has been guilty of the alleged contempt."). Without valid notice, service,

process, and comporting with due process any action by Texas Sixth Court of Appeals "is a nullity." *Id.* at 688; *Ex parte Ratliff*, 117 Tex. 325.

Mosser's contention is not his belief or his opinion, but that of the Supreme Court of Texas, "Orders are not required to be filed with the clerk; they ***are signed by the judge*** and entered in the minutes of the court by the clerk." *Walker v. Harrison*, 597 S.W.2d 913, 915 (Tex. 1980)(emphasis added); *Reese v. Piperi*, 534 S.W.2d 329, 331 (Tex. 1976); *McCormack v. Guillot*, 597 S.W.2d 345 (Tex. 1980).

However, if documents do not appear in the public record of the Court, the Court refuses to produce communications and documents that it has, and the Court refuses to provide copies of other orders, it is a fair assertion that the record was improperly sealed. When confronted with this issue, the Court turned around and provided those requested

documents. Appx.21-27. This *only* occurred after the Court's unfounded attacks on Mosser, again a factual statement. Appx.26-27(note the time stamps and subject line).

The Sixth Court of Appeals' baseless concern with quotations from the High Courts of Texas and this Court by referencing "masquerading" or "individual claiming to be a sitting judge" should not result in action against the Lawyer, especially without evidence, due process, or any other meaningful impartiality. A simple search of Texas Case law would reveal that the Texas Court of Criminal Appeals has made this observation:

> There can be no court, in a legal sense, without a judge, and there can be no judge except as he may be elected and chosen under the Constitution and agreeably to law. It therefore results that, however eminent in learning and however fair in fact may be the person who presides over the trial, ***unless he is in a legal sense a district judge the gathering masquerading as a court***

> ***becomes of no higher dignity than the same number of respectable gentlemen gathered by chance on the street corner.***

Oates v. State, 56 Tex. Crim. 571, 584 (1909)(emphasis added).

Moreover, Justices in this Court routinely use the term "masquerading" in opinions. See eg., *Coral Ridge Ministries Media, Inc. v. S. Poverty Law Ctr.*, 142 S. Ct. 2453, 2455 (2022)("New York Times and the Court's decisions extending it were policy-driven decisions masquerading as constitutional law." *McKee v. Cosby*, 139 S. Ct. 675 (2019) (opinion of THOMAS, J.).) Mosser is certainly not claiming to be Justice Thomas but utilizing words in context from the Texas Court of Criminal Appeals and Justice Thomas hardly seems worthy of any sanction.

Additionally, because no justice from the Sixth Court of Appeals signed any of the relevant sanction or show cause order, Counsel recused each of the

justices sitting in that Court. App.59-61. However, despite this and clear law from Texas providing the process for recusal or inability to act, those Justices made a game of the recusal process. The Justices in the Sixth Court of Appeals played a game of round robin, even though they were all recused, each rule on each other's recusal motion. App.59-61. Despite this unseemly game, no order from a non-recused justice has ever been issued by the Court.

Appellate lawyers are not here to serve as amicus for the trial court, condoning improper actions of the trial court, the appellate court, or the trial counsel. *Hardy v. United States*, 375 U.S. 277, 281 (1964); *Ellis v. U. S.*, 356 U.S. 674, 675 (1958). Rather, Appellate lawyers must be able to challenge and correct error below without fear of reprisal for illustrating facts and citing authority to demonstrate the Trial Court erred. *Id.* By personally attacking

Laza's counsel based on made up facts, unsupported by any evidence or witnesses, and then imposing sanctions against Laza and his Counsel for using quotes from the various high courts or illustrating problems with conduct of various judges, the Sixth Court of Appeals seeks to tone police counsel based on their disagreement of the fundamental facts of the case.

The Sixth Court of Appeals not only took issue with words commonly used by various high courts and statutes; but determined that a trial judge changing evidence years after the close of the case and eliciting false testimony from its own witnesses was proper and merely by pointing this fact out Laza's counsel was engaging in improper conduct. To demonstrate this point, after the Texas Judiciary was hacked and a new record was created, some five or more different versions were created, the trial court put a court

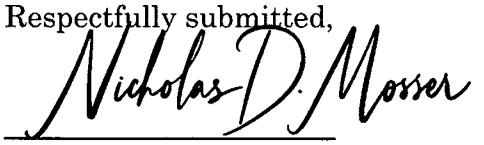
reporter on the stand to testify that "I've got a letter from the court of appeals, March the 10th, 2021...and the court of appeals said they would pull everything and refile." Upon receiving this transcript, counsel requested a copy of that letter sent by the court of appeals to the court reporter. The clerk of the court of appeals failed to timely disclose any documents, and finally when the documents were provided, there was no letter from the court of appeals to the court reporter with any such language within it. Counsel, believing there was a mistake, asked the clerk of the court of appeals to verify this, "So you have no recordings or any other communications that are not publicly available online? Such as: 'MS. VICK: This is Susan Waldrip Vick. I've got a letter from the court of appeals, March the 10th, 2021, where it was filed and then they came back and wanted the index changed, so Volumes 2, 3 and 4, and the court of appeals said

they would pull everything and refile." The Clerk of the court of appeals expressly stated, "we do not have anything else." However, despite this specific question and specific answer, the unsigned justices of the Sixth Court of Appeals imposed sanctions for discussing this exchange. This is but one of numerous problems that underly the actions of the intermediate appellate court and the trial court. If Counsel is unable to use statements of fact, the exact language from the clerks of the courts or the judges themselves, then his role as an appellate advocate is reduced to a mere illusory amicus for the trial court's judgment.

CONCLUSION

Because the Texas Courts should not live in isolation from the rest of the United States and the Constitutional protections apply to both counsel and client; the opinion from the Texas Sixth Court of Appeals must not stand.

Respectfully submitted,



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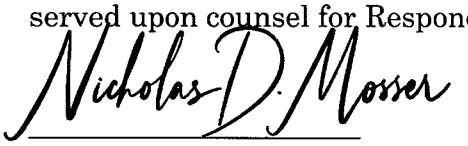
Certificate of Service

I, Nicholas D. Mosser, certify that today, October 16, 2023, a copy of Petitioner's Petition for Certiorari was served upon counsel for Respondent via email.



Nicholas D. Mosser

Certificate of Compliance

I certify that this petition was prepared using Microsoft Word 2023, in Century Schoolbook 12 point font and contains 6,090 words including all sections required to be counted and excluding all sections permissible under the Rules of this Court.

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