11/5/24

No. 24-554

In the Supreme Court of the United States

Conghua Yan,
Petitioner,

v.

Cynthia Favila Terry,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

PETITION FOR A WRIT OF CERTIORARI

Conghua Yan
Pro Se litigant
2140 E Southlake Blvd. Ste L-439
Phone: (214) 228-1886
Arnold200@gmail.com
Southlake, Texas 76092

QUESTIONS PRESENTED

This petition addresses the "privilege" and "suspension" provision under Article I: the Privilege of the Writ of Habeas Corpus shall not be suspended.

Habeas corpus requires a separate proceeding with its own cause number. Petitioner filed a writ of habeas corpus in the Texas district court to challenge a fraudulent restraining order—signed by a judge's master without any pleadings, where no case was pending before her. However, the court neither assigned a case number nor granted a hearing, effectively denying Petitioner's access to the judicial proceeding. The questions presented are:

1. Whether Petitioner's constitutional privilege of habeas corpus is effectively suspended in Texas.

2. Whether one party's access to the Article I privilege of the writ of habeas corpus—a fundamental constitution guarantee—is subject to the discretion of the other party.

3. Whether it constitutes a Due Process violation if a citizen has no mechanism to challenge an order when their core rights are deprived.

PARTIES TO THE PROCEEDING

Petitioner is Conghua Yan.

Respondent is Hon. Judge Cynthia Favila Terry, the presiding judge of trial court 325th Judicial District, Tarrant County, Texas (Respondent in the Petition for Writ of Mandamus filed in the Second Court of Appeals and the Supreme Court of Texas).

Party-in-Interest is Fuyan Wang (Defendant in the 325th Judicial District Court and Real Parties-in-Interest in the Second Court of Appeals and the Supreme Court of Texas).

LIST OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

- IN RE CONGHUA YAN, No. 24-0410, Supreme Court of Texas. Petition for Writ of Mandamus, requesting the Supreme Court to compel the district court to act.
- In re Conghua Yan, No. 02-24-00219-CV, Second Court of Appeals. Petition for Writ of Mandamus, requesting the appellate court to compel the district court to act.
- On April 29, 2024, an application for writ of habeas corpus was filed in the 325th Judicial District, Tarrant County, Texas. No hearing was held, and no cause number was assigned. The district court remained intact.

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OPINIONS AND ORDERS BELOW

The Second Court of Appeals, Texas, refused to hear the Motion for En Banc Reconsideration on June 13, 2024 (Appendix A, p. 1a). On May 16, 2024, it issued a memorandum opinion denying the relief to compel the district court to act without providing reasoning (Appendix B, p. 2a).

On October 4, 2024, the Supreme Court of Texas denied the Motion for Rehearing of the Order denying the Petition for Writ of Mandamus (Appendix C, p. 3a). The original Order, a denial to review without opinion, was entered on August 30, 2024 (Appendix D, p. 4a).

Petitioner filed Writ of Habeas Corpus on April 29, 2024 in the 325th district court. The district court remained intact.

JURISDICTION

The final judgment was entered by the Supreme Court of Texas on October 4, 2024. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

US Constitution, Article I, Section 9, Clause 2:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

STATEMENT OF THE CASE

A. The original proceedings in the Texas district court that led to a fraudulent order entered by the court.

1. On October 15, 2021, Petitioner filed petition for divorce and a temporary restraining order (hereinafter "TRO") against his wife in the 325th district court.

2. On November 8 and 9, 2021, a hearing for Petitioner's petition for a TRO was held in the associate judge's court.

3. Here is an important Texas statutory definition: a Texas family court associate judge's court is a statutory court, a creature of state statute with limited jurisdiction that does not have the general constitutional jurisdiction of the 325th District Court. An associate judge is a statutory judge, not an Article III judge under the Texas Constitution.

4. On November 10, 2021, an associate judge's report was entered; Petitioner's timely filed request for de novo hearing on the same day. Therefore, Petitioner's petition for a TRO was perfectly appealed and moved to the 325th District Court.

5. On December 7, 2021, a de novo hearing was held in the 325th District Court. It was not completed due to time running out. A continuance de novo hearing was scheduled for March 9, 2022

6. On February 14, 2022, an unopposed motion for continuance was filed. The next day, February 15, 2022, the presiding judge of the 325th District Court signed an order to reset the de novo hearing originally scheduled for July 11, 2022.

7. On June 21, 2022, the associate judge and both lawyers committed fraud upon the court by forging Petitioner's signature on a fabricated TRO. This falsified TRO falsely stated that the associate judge's court had heard Petitioner's wife's motion for a TRO on November 7 and 8, 2021, thereby issuing a TRO against Petitioner. Since that date, the scheduled de novo hearing on July 11, 2022, in the 325th District Court disappeared from the court docket and was never held.

8. The associate judge and both lawyers knowingly submitted the fraudulent TRO in person to the court docket, bypassing the Texas e-filing system. While e-filed documents include a process service timestamp on the PDF, in-person

submissions to the district court clerk's office are entered without process service and remain unnoticed. Additionally, in Texas family court, filing records are inaccessible to litigants represented by counsels; only judges and lawyers can view.

9. The fraudulent TRO signed on June 21, 2022, severely violated the due process framework because Petitioner's wife never filed a motion for a TRO in the case. This TRO was issued without any pleading, and as of June 21, 2022, the associate judge's court had no ongoing controversy or pending case. Meanwhile, an incomplete de novo hearing was still pending in the 325th district court. However, the associate judge and both lawyers usurped the district court's jurisdiction by issuing a TRO to substitute the de novo hearing and canceled the hearing without notifying Petitioner.

10. As a result, Petitioner was subjected to a secretly entered TRO filed without pleadings and lacking essential elements of due process, including notice, opportunity to be heard, and an impartial tribunal. Petitioner did not know its existence. His own lawyer never sent him this signed copy.

B. The writ of habeas corpus proceedings and subsequent writ of mandamus tried to challenge the fraud ended with no judicial access.

1. On March 4, 2024, Petitioner became a pro se litigant and gained full access to his case docket. After reviewing prior filings and Texas precedents, he discovered that the June 21, 2022 TRO, which has maintained the status quo against him, is illegitimate.

2. On April 29, 2024, Petitioner filed a writ of habeas corpus to challenge the legitimacy of TRO. A TRO is not appealable per Texas statute, regardless how unlawful, fraudulent or unconstitutional. But Texas statute defines a writ of habeas corpus as an appealable criminal proceeding and a collateral attack, which requires a separate cause number. The district court coordinator refused to act, directing Petitioner to consult the presiding judge. On May 1, 2024, Petitioner hand-delivered the application to the presiding judge of the 325th District Court, who also declined to act.

3. On May 14, 2024, Petitioner filed a Petition for Mandamus with the Second Court of Appeals to compel the district court to grant a cause

number and hearing date. The Second Court of Appeals denied the petition on May 16, 2024.

4. In August, Petitioner filed a Petition for Mandamus with the Supreme Court of Texas, which also refused to intervene.

5. Currently, Petitioner's privilege of the writ of habeas corpus is suspended in Texas. The Texas judiciary has denied him access to the Writ by refusing to assign a case number and a hearing date, preventing him from entering the judicial process.

C. The relevant Texas statutes and precedents.

1. A Texas family court temporary order is not appealable, regardless of how unlawful it is. A writ of habeas corpus is the only mechanism to seek a remedy.

> Tex. Fam. Code § 6.507 - Interlocutory Appeal
>
> An order under this subchapter, except an order appointing a receiver, is not subject to interlocutory appeal.

2. In Texas, the writ of habeas corpus is the remedy used when a person is restrained in their liberty, whether under someone's custody or restraint.

> Tex. Code Crim. Proc. § 11.01 - What Writ Is

> The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to anyone having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint.

3. In Texas, the district court has jurisdiction to issue the writ of habeas corpus.

> Tex. Code Crim. Proc. § 11.05 - By Whom Writ May Be Issued
>
> The court of criminal appeals, the district courts, the county courts, or any judge of those courts may issue the writ of habeas corpus, and it is their duty, on proper application, to issue the writ under the rules prescribed by law.

4. Article I of the Texas Constitution guarantees the writ of habeas corpus and mandates that the courts provide the remedy in a speedy and effective manner.

> TX. Const. art. 1, § 12 - HABEAS CORPUS
>
> The writ of Habeas Corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

5. Article I of the Texas Constitution guarantees that the courts are open for remedies.

TX. Const. art. 1, § 13 - ... OPEN COURTS; REMEDY BY DUE COURSE OF LAW

> ... All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

6. Article I of the Texas Constitution guarantees all laws contrary to Bill of Rights are void.

TX. Const. art. 1, § 29 - BILL OF RIGHTS EXCEPTED FROM POWERS OF GOVERNMENT AND INVIOLATE

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

7. Texas civil rule of procedure requires the court clerk to issue a cause number as a ministerial duty.

Tex. R. Civ. P. 24-Duty of Clerk

> When a petition is filed with the clerk he shall indorse thereon the file number, the day on which it was filed and the time of filing, and sign his name officially thereto.

8. Texas courts were sanctioned for failing to provide a "speedy and effectual" remedy via habeas

corpus. The district court is repeating the same actions for which it was sanctioned in 1967.

> "In sum, in 1967 the Legislature devised and the Court sanctioned by construction a system to render the remedy via habeas corpus "speedy and effectual," consonant with the admonition and mandate of Article I, § 12, of our Bill of Rights. Thus the constitutional provisions guarantee availability of the Great Writ pursuant to legislative enactments designed to enable an applicant to make a collateral attack and to obtain relief against a final judgment of conviction rendered void not only for reasons under the common law but also for want of jurisdiction of the convicting [ruling] court to enter it where conviction [order] was had in violation of due process. Taken literally, they prohibit judicially imposed barriers at the threshold of access to the courts by a convicted felon [restrained person] seeking this "writ of right.(see footnote 12[1])"" (emphasis added) *Ex Parte Banks*, 769 S.W.2d 539, 547 (Tex. Crim. App. 1989).

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[1] Footnote 12: The "open courts" mandate of Article I, § 13 and the "due course" requirements of § 19 seem to **forbid courts from closing their doors to persons** seeking relief from "injury" done to person and from deprivation of liberty. See Interpretive Commentary following § 13 and 19.

9. In Texas, the habeas corpus proceeding is separate proceeding and should be given different cause number.

> "(explaining habeas corpus action is separate action from proceeding from which it arises); ... (noting habeas corpus proceeding is separate proceeding and should be given different cause number than criminal case by clerk of court in which habeas corpus proceeding is filed regardless of style or cause number placed on habeas corpus petition)." *Ex parte Letizia*, NO. 01-16-00808-CR, 4 n.4 (Tex. App. Feb. 14, 2019)..

10. In Texas, the habeas corpus action is a collateral attack.

> "a habeas corpus action as "in the nature of a collateral attack")." *Gray v. Skelton*, No. 18-0386, 3 (Tex. Feb. 21, 2020)..

REASONS FOR GRANTING THE PETITION

This petition is straightforward. Petitioner sought habeas relief against an allegedly fraudulent TRO by filing a writ of habeas corpus. The district court refused to hold a hearing or assign a cause number, effectively shutting the door on the petitioner. Petitioner then filed for mandamus, asking the appellate and Texas Supreme Court to compel the district court to act. Both courts dismissed the plea without giving a reason. This Court should grant the writ to signal that it cares where the state courts did not, as the privilege of the writ of habeas corpus should never be denied, and Petitioner is at least entitled to judicial access, regardless of the merits.

A. This case is of national importance concerning the Article I Suspension Clause where access to the habeas writ is barred by state's ministerial act.

The Founding Fathers included this doctrine in Article I to ensure the privilege of Habeas Corpus would endure.

> "So important was the doctrine of habeas corpus that the founding fathers saw fit to ensure that the privilege of habeas corpus relief would never die: They placed the doctrine in the Constitution of the United States. Indeed, the first congressional grant of jurisdiction

> provided federal courts authority to grant writs of habeas corpus, and by 1807, the United States Supreme Court recognized that such a writ was "a great constitutional privilege."" (emphasis added), *Deters v. Collins*, 985 F.2d 789, 793 (5th Cir. 1993).

Habeas Corpus safeguards individual freedom against arbitrary and capricious state action.

> "The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that: "The Privilege of the Writ of Habeas Corpus shall not be suspended. . . ." U.S. Const., Art. I, § 9, cl. 2. The scope and flexibility of the writ — its capacity to reach all manner of illegal detention — its ability to cut through barriers of form and procedural mazes — have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.
>
> As Blackstone phrased it, habeas corpus is "the great and efficacious writ, in all manner of illegal confinement. (footnote omitted)" As this Court said in *Fay* v. *Noia*, 372 U.S. 391, 401-402 (1963), the office of the writ is "to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints." See *Peyton* v. *Rowe*, 391 U.S. 54, 65-67 (1968)."

> (emphasis added), *Harris v. Nelson*, 394 U.S. 286, 291 (1969).

American Society cannot seek remedy against intolerable restraints when the state judiciary arbitrarily and unlawfully denies a case number.

> "A procedure by habeas corpus ...is inquire why the liberty of the citizen is restrained. We hold that the authority to grant the writ is conferred upon the Court or the judge, and that a proceeding by habeas corpus is a matter for the investigation of the judge. ...the purpose of the writ is to obtain a speedy adjudication of a person's right to be free from illegal restraint" *Ex Parte Ramzy*, 424 S.W.2d 220, 223 (Tex. 1968).

However, the Texas lower court has realized that, to prevent a habeas corpus proceeding from investigating its own fraud, a judge can simply terminate the privilege of the writ by refusing to assign a case number or hold a hearing.

This Court must grant this petition and intervene to restore the constitutional framework. The broken windows theory suggests that visible signs of disorder and misbehavior can lead to further disorder and misconduct within the lower courts.

B. This case is of national importance, requiring an originalist interpretation of the Article I

Privileges Clause, where the states consented upon joining the Union but now abuses judicial discretion to disregard it.

The textual reference to "privilege" appears in Article I twice: once for "Senators and Representatives" and once for the people's "Privilege of the Writ of Habeas Corpus." These two privileges more directly reflect the Founding Fathers' original intent than any other privileges in the amendments.

Habeas Corpus was designed as a "great constitutional privilege" to challenge actions by the executive branch, judicial branch, or private parties.

> "Whether the petitioner had been placed in physical confinement by executive direction alone, by order of a court, or even by private parties, habeas corpus was the proper means of challenging that confinement and seeking release... The writ was given explicit recognition in the Suspension Clause of the Constitution, Art. I, § 9, cl. 2; was incorporated in the first congressional grant of jurisdiction to the federal courts, Act of Sept. 24, 1789, c. 20, § 14, 1 Stat. 81-82; and was early recognized by this Court as a 'great constitutional privilege.'" (emphasis added), *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

The privilege of the Writ of Habeas Corpus can test <u>any</u> restraint contrary to fundamental law.

> "At the time the privilege of the writ was written into the Federal Constitution it was settled that the writ lay to test any restraint contrary to fundamental law, which in England stemmed ultimately from Magna Charta but in this country was embodied in the written Constitution." (emphasis added), *Fay v. Noia*, 372 U.S. 391, 426 (1963).

In *Torres v. Tex. Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022), this Court made it clear that Article I is part of the original Constitution, to which the states consented as part of the Convention's plan to establish unified national sovereignty at the founding. Upon entering the Union, only Congress has the explicit authority to suspend the privilege of the writ of habeas corpus, as "a similar authority in the States would be absolutely and totally contradictory and repugnant." *Id.* at 2462.

Only Congress can suspend the privilege of writ of habeas corpus, this Court must grant this petition and intervene to prevent the lower state court from usurping the suspension authority of Congress.

C. This case is of national importance because justice cannot be achieved if the lower state court disallows judicial access.

Judicial power is not exempt from the challenge of habeas writ mechanism.

> "These concerns have particular bearing upon the Suspension Clause question here, for the habeas writ is itself an indispensable mechanism for monitoring the separation of powers." (emphasis added) *Boumediene v. Bush*, 553 U.S. 723, 727 (2008).

Since 2022, Petitioner has been restrained by a 60-page TRO issued without any element of due process. "Admittedly, if you are unhappy with [a court's] treatment of your case, and if you persist through all [] processes, and if you have enough time and money, you can usually bring your complaint to [higher] court for review before an independent judge. But what are the chances of being able to endure and afford all that?" Neil Gorsuch & Janie Nitze, *Over Ruled: The Human Toll of Too Much Law* [78] (2024).

The 325th District Court is knowingly and intentionally preventing Petitioner from accessing judicial proceedings to challenge its fraudulent order through procedural barriers and formal obstacles. After exhausting the state appellate and supreme courts, Petitioner now turns to this Court.

The liberty is not only the right of free from physical restrain.

> "the 'liberty' mentioned in th[e] [Fourteenth Amendment] means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897).

It is the Congress's intention to give explicit recognition to writ of habeas corpus to ALL cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States.

> "In 1867, Congress extended the protections of the writ to "all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." Act of Feb. 5, 1867, ch. 28, 14 Stat. 385. See Felker v. Turpin, 518 U.S. 651, 659-660 (1996). Habeas corpus is, however, "a writ antecedent to statute, . . . throwing its root deep into the genius of our common law."

> Williams v. Kaiser, 323 U.S. 471, 484, n. 2 (1945) (internal quotation marks omitted). The writ appeared in English law several centuries ago, became "an integral part of our common-law heritage" by the time the Colonies achieved independence, Preiser v. Rodriguez, 411 U.S. 475, 485 (1973), and received explicit recognition in the Constitution, which forbids suspension of "[t]he Privilege of the Writ of Habeas Corpus . . . unless when in Cases of Rebellion or Invasion the public Safety may require it," Art. I, § 9, cl. 2."" (emphasis added), *Rasul v. Bush*, 542 U.S. 466, 473-74 (2004).

In *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice John Marshall wrote: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Id.* at 163.

This Court notes that Blackstone, in the 3rd volume of his Commentaries, stated that "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded." *Id.*

This Court concluded that, "The government of the United States has been emphatically termed a

government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Id.*

This Court must grant this petition and intervene. If refusing to grant a case number can be used as a mechanism to prevent the writ of habeas corpus, then the same mechanism can be used to prevent justice from being sought in any court, whether Article III, statutory, or administrative.

D. This case is an excellent vehicle for this Court to address the need for judicial review to stop unconstitutional judicial conduct, where the lower state court is depriving people of the core rights.

An interlocutory order in Texas family court is literally a blank check that the court can fill with anything short of the death penalty: expulsion from a residence, suspension of the parent-child relationship, confiscation of firearms, gag orders, appointment of a third-party receiver to liquidate assets—you name it. The Texas Family Code expressly bars any interlocutory appeal. Any interlocutory order rendered, no matter how fraudulent, unlawful, or

unconstitutional, cannot be reviewed through appellate judicial remedies. In some cases, the final judgment could be 5 to 10 years away. In practice, an interim, interlocutory, or temporary order is effectively permanent within this timeframe. A writ of habeas corpus is the party's only accessible option to collaterally challenge the court's decision.

Texas judiciary has created a loophole, granting unchecked power to the judicial branch by issuing court orders while denying judicial review by refusing to assign a case number. In Texas, contempt of court can be heard by a judge without a jury, resulting in up to 180 days in jail without bond. The Texas family court effectively acts as the legislative branch (issuing broad orders), the executive branch (enforcing arrests and jailing for contempt), and the judicial branch (ruling on cases). When a cause number is denied, no challenge is possible.

> "The present case is one of the types in which this Court is required to make an independent examination of the facts to determine whether a State has deprived a person of a fundamental right secured by the Constitution. ... There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to [suspend the privilege

> of the writ of habeas corpus] in judicial proceedings." *Craig v. Harney*, 331 U.S. 367, (1947).

"Petitioners' application to a state court for a writ of *habeas corpus* ... was denied. ... This Court granted certiorari." *Id.* at 368. Craig's habeas writ was denied, prompting this Court's intervention. Yan's situation was even worse—he never had the chance to be heard. Seventy-seven years later, does the judiciary now lean toward injustice?

In 1821, Chief Justice Marshall famously proclaimed:

> "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty." (emphasis added), *Cohens v. Virginia*, 19 U.S. 264, 404 (1821).
>
> "The State judges are sworn to support the constitution, which declares them bound by the

> constitution, laws, and treaties. ... The State judges are bound by oath to obey the constitutional acts of Congress." *Id.* at 325.

This Court routinely reviews the constitutionality of laws passed by the legislature and actions taken by the executive branch. But what about the state judicial branch? Are they above the Constitution, exempt from constitutional challenge? Denying this petition will undermine public confidence in judicial integrity. This Court must fulfill its duty.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

/s/ Conghua Yan
Conghua Yan
Pro Se
arnold200@gmail.com
2140 E Southlake Blvd, Suite L-439
Southlake, Texas 76092
Telephone: (214) 228-1886

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