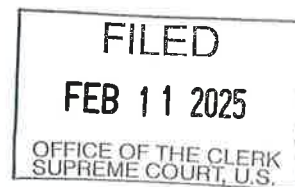


No. 24-6935



IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C.

BILLY MINH TRAN — PETITIONER
(Your Name)

vs.

BOBBY LUMKIN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BILLY MINH TRAN
(Your Name)

899 FM 632
(Address)

KENEDY, TEXAS 78119
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

- (1) Does an elected judge must take the oath of office?
- (2) If yes, then must that judge sign the document in the present of the officer who administer the oath?
- (3) If that judge didn't sign the document, could she still be considered she took the oath of office?
- (4) Can an elected judge have someone else take the oath of office for her?
- (5) If the answer is no, could it be said that that judge took possession of the court through means of fraudulence if she entered the duties of that court without taking the oath of office?
- (6) Would that judge be disqualified if she enter upon the duties of the court without first taken the oath of office?
- (7) Does judge's qualification and jurisdiction of the court be subjected to the AEDPA imposed 1-year limitation, or could it be challenged at any time?
- (8) When the jurisdiction of court being challenged, does court be permit to ignor the issue or the issue must be resolved?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS.

RELATED CASES

COURT OF CRIMINAL APPEALS OF TEXAS
No. WR-26,534-03 and WR-26-534-04
Tr.Ct.No.2015CR12246W-W1 and 2015CR12247W-W2
DENIED without written order on 1/26/2022 and 2/2/2022

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2024 U.S.Dist. LEXIS 53467; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 5, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1/17/2025, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Pursuant to 28 U.S.C. § 1254(1) this Court has Subject-Matter Jurisdiction of this case.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) UNITED STATES CONSTITUTION ARTICLE VI, c13.; ARTICLE IV

(2) UNITED STATES CONSTITUTION AMENDMENT V, XIV

(3) TEXAS CONSTITUTION ARTICLE 16 §1

~~(4)~~ U.S.C. § 2254

(5) U.S.C. 2244(d); §2253(c)(2)

(6) U.S.C. §1331; 28 U.S.C. §1254(1)

(7) Fed.Rule Civ. Pro. 12(b)(1); 12(b)(3); 12(h)(3)

(8) Texas Gov't code §312.011(1); (2).

(9) Texas Criminal Pro.Art. 595 COW.C.P.; 555 C.C.P.

STATEMENT OF THE CASE

Tran was brought in Bexar county district court, 144th judicial district to face charge of a capital murder. Trial judge Lorina rummel hold court and during trial Tran decides not to maintain the defense and took the Nolo Contendere, meaning that he will not contend a charge made by the government. It is not really a plea. Right after, Tran changed his mind and told the judge he want to withdraw his plea of Nolo Contendere because he didn't know what deal he would get in the plea. Trial judge denied. On December 9, 2015, Two documents " Charge by Information" number 2015CR12246W and 2015CR12247W were presented and accepted by judge Rummel who subsequently found Tran guilty and sentenced him to two consecutive life sentence. Tran files a notice to appeal on his own after his court appointed counsel refused to file on his request. On 03/09/2016 Court of Appeals dismissed his appeal hold, that Tran has no right to appeal. Tran files Habeas §11.07 on 09/19/2022, the claims were trial judge was constitutionally disqualified because she did take the oath of office berfore she enter upon the duties of her office, and she commit fraud and tial court lacked jurisdiction for want of authority. The court of criminal appeals dismissed without a written order. Tran files §2254 on 08/30/2023, U.S.D.C denied hold that Tran's petition was untimely filed. Tran files appeal with the 5th Circuit. 5th circuit affirmed the U.S.D.C. decision and denied Tran COA.

REASONS FOR GRANTING THE PETITION

IF IT MAY PLEASE THE COURT,

This Court has Subject-Matter Jurisdiction of this case. Tran's issues concern the Jurisdiction of Trial Court and The Qualification of the Trial Judge preside over his case that the U.S.C.A. 5th Circuit ruled as time barred, and Tran is challenging this ruling. The Supreme Court of the United States ruled in *Arbaugh v. Y&H Corp.*, 546 U.S.500(2006). That "Subject-Matter Jurisdiction, because it involves the court's power to hear a case, can never be Forfeited or Waivered." *United States v. Cotton*, 535 U.S.625,630.

Tran, although he pleaded Nolo Contendere to the alleged charge against him, never waived his rights to challenge his trial court's jurisdiction or the qualification of the trial judge. The Supreme Court also ruled in *Arbaugh v. Y&H Corp.*, Id. "The Objection that a federal court lacks subject-matter jurisdiction, see Fed. Rule Civ. Proc. 12(b)(1), may be raised at any stage in the litigation, even after trial and the entry of judgment, Rule 12(h)(3). see *Kontrick v. Ryan*, 540 U.S. 443,455."

Petitioner Arbaugh sued her former employer, respondent Y&H Corporation, in Federal Court, charging sexual harassment in violation of Title VII and asserting related state-law claims. The case was tried to a jury, which returned a verdict for Arbaugh. After the court entered judgment on that verdict, Y&H moved to dismiss the entire action for want of federal subject-matter jurisdiction, asserting, for the first time, that it had fewer than 15 employees on its payroll and therefore was not amenable to suit under Title VII. Although recognizing the unfairness and waste of judicial resources that granting the motion would entail, the District Court, citing Federal Rule 12(h)(3), considered itself obliged to do so because it the 15-or-more employees requirement to be jurisdictional. Therefore vacated its prior judgment and dismissed Arbaugh's Title VII claim with prejudice.

The Fifth Circuit affirmed based on its precedent holding that unless the employee-numerosity requirement is met, federal-court subject-matter jurisdiction does not exist.

Held: ... " The basic statutory grants of federal -court subject-matter jurisdiction are contained in 28 U.S.C. §1331, which provides for "[f]ederal-question" jurisdiction, A plaintiff properly invokes §1331 jurisdiction when she pleads a colorable claim " arising under " the Federal Constitution or laws. See *Bell v. Hood*, U.S. 678-685.". Tran claims that trial judge violated the United States Const. Art. VI, cl3 for not taking the oath of office, and trial court lacked jurisdiction for want of authority.

The 5th Circuit 's ruling was erroneous for three reasons: (1) It erred applying the AEPAA's statute of limitations, the AEPAA states " Statute of Limitation ... is not Jurisdictional."; (2) It conflicts with the Supreme Court Of the United States's ruling. *Id.*; (3) It precludes Tran's claims from receiving a full and fair review on their merits, thus, violated his Amendments V and XIV of the United States Const.

The theme of Tran's issues here rooted in the trial judge's qualification embedded in clause 3 of the U.S.C. Art. VI which trial judge failed to comply. Because the challenge presented here involves grounds 1 and 2 of his petition §2254, Tran may contemporaneously address them through out this brief. Exhibit 10

ISSUES RELATING TO QUESTIONS PRESENTED #1 and #2

The United States Constitution Article VI, cl3

The Constitution of the United States, with all powers conferred by states, was voluntary acts of people of several states..., is proved by provision of Art. VI, cl3 which requires that members of the state legislatures, and all executives and judicial officers of several states as well as those general government, shall be bound by oath or affirmation, to support the constitution. *Ableman v. Booth*, 62 U.S.506, 16 L.Ed.169, 1858 U.S. Lexis 176(1859); *Speiser v. Randall*, 357 U.S.513, 536, 78

S.Ct.1332,1346(1958).

It should be emphasized that the above clause " and the judges in every state shall be bound..." is the reason [*410] that every judge in every state is required to take the oath[***18] of office that is prescribed by the last paragraph of said Article. State Ex. rel.Irvine v. Dist.Court,125 Mont.398. Mr. Chief Justice, and associate Judges Metcafe and Freebourn, concur.

The Texas Constitution Art.16 §1 supports the U.S.C. Art.VI,cl³: As amended in 1956. " Provides for the oath to be taken by both elected officials and all other appointed officers, before they enter upon the duties of their office. (emphasis added). Also see Art. 595 COW.C.P.; 555 C.C.P.

ANALYSIS OF THE OATH OF OFFICE

By analogy the affidavit and the oath of office are the same, though they serve a difference purpose, they have the same construction and follow the same set of rules. The oath of office has two halves, top and bottom. The top half must have the following elements: The judge's name, his or her court's number, the date the judge sworn in and that judge's signature. The bottom half is called the Jurat and it must have the following elements: State of____; County of____; Sworn to and Subscribed before me ____day of _____, year.; signature of the officer administering the oath, his name and official character or official seal. If the administer of the oath is a notary public, the same must use official notary stamp and sign it. If the administer of the oath is a judge, that judge may use his or her official character. The official character of the judge are his signature, print name and the court number/name where he presides at. If the name or signature is missing on its face, the document could not be an affidavit or oath of office. A perfect example of what the oath of office should look. Please see Exhibit 2, Appendix on page 12 .

ARGUMENT AND AUTHORITIES REGARDING QUALIFICATION OF TRIAL JUDGE

Tran asserts that his trial judge did not take the oath of office before she

enter upon the duties of her office. So the issue here is whether Tran's claim is true?. To prove his contention, Tran asks this Court to take judicial notice of the document, Exhibit 1B, Appendix page 12 , that was filed on July 3, 2014 with the office of the secretary of state of Texas. On the face of the oath of office shows trial judge Rummel didn't sign the document, Chief justice Marion signed on Judge Rummel's behalf. If on June 30, 2014 Judge Rummel took the oath of office then she would have signed it would she not ? What does it mean that Chief Justice marion signed the oath of office on behalf of Judge Rummel? Does it mean Fraudulence? According to Tx.Gov't Code §312.011(2). Wise v. Cain, 212 S.W.880, rel n.r.e (Civ.App. 1948). Held: "A notary certificate on affidavit filed by a

To constitute a notary certificate to an affidavit valid, the affiant must appear personally before the notary and in the absence of personally appearance, the certificate is false and the execution thereof is a criminal offense on the part of the notary and on the part of those participating in the commission of the crime.; also see: Davis V. Sherill, 216, 133 S.W.556, 557 (52 Civ.App. 259) (1908).; Dixon V. Mayfield Bldg Suppl., 543 S.W.2d 5, 7-8 (Tex.App. 1976).

Texas Gov't code §312.011(1): The affiant must be in present of the officer taking it. An affidavit for continuance sworn by one 20 miles away, over the phone and his name subscribed by his authority is not sufficient.; Johnson v. Massey, 2023 U.S. Dist. Lexis 146444. Held: One person is not permit to sign on affidavit attesting to facts on behalf of another person, such document will be a legal Nullity because an affidavit is a written statement made under oath before a notary public. If the person is not present, he can not make an oath before a notary public.

If the Exhibit 1b is any indication, Tran would assert that the trial judge possessed the court by Fraudulent means because she didn't sign it; Chief Justice

Mation signed the document on her behalf. The record clearly showed judge Rummel was exercised the court functions for months without taken the oath of office. She'd failed to comply with the requirement mandated by the U.S. Constitution Art.VI,cl3, and the Texas Constitution Art.16 §1, thus she should be disqualified to hold court.

If a judge can not apply the law on herself, how then can she apply the law on the general societies.

Justice Vinson, writing for America Comm. Ann's v. Douds,339 U.S.382,415,70 S.Ct.674,69 L.Ed.925.

Clearly the Constitution permits the requirement of oath by the office holders to upheld the Constitution itself. The obvious implication is that those unwilling to take the oath are to be barred from holding office.

Tran asserts that judge Rummel does not have jurisdiction of his case; therefore he invokes Article VI, cl3 of the U.S. Constitution and Texas Constitution Art. 16§1 to challenge by what authority does judge Rummel have to hear his case?

ISSUES RELATING TO QUESTIONS PRESENTED #5 to#7

Argument and Authorities on the Imposed AEDPA Statute of Limitation:

The issues here is whether the rulings from the Supreme Court of the United States could be contradicted or overruled by the lower federal courts. Tran's assertions in his petition §2254 were jurisdictional; However, the U.S. District Court and the Fifth Circuit denied on the procedural ground, held that Tran's petition was untimely filed, see Exhibit 3. Because of this Tran respectfully asks this Court to Clarify the language that Dist.Court used in United States v. Gordon, 2020 U.S. Dist. Crt.Lexis 153002. That court held " Jurisdiction can be challenged at any time...". To Tran's understanding of this language " any time" in a legal proceeding would mean " any time during the proceeding, after the proceeding and after judgment had been entered.", and the word " never" would mean " Not Ever".

Nowhere in the AEDPA statute of limitation does it mention jurisdictional challenge subject to the imposed 1-year limitation.

Hagans v. Lavine, 415 U.S. 533, 94 S.Ct. 1372, 39 L.Ed. 2d. 577. Held: There is No Discretion to ignore lack of Jurisdiction.

Joyce v. United States, 474 F.2d. 215. Held: The law provides that once state and federal jurisdiction have been challenged, it must be proven.; also see Clisby v. Jones; Clisby Supra @ 936.

RELATING TO QUESTION PRESENTED #8

The imposed 14 days to file a response to court's order is unconstitutional, because the court did not take into account that the Postal services sometime could take up to ten days to deliver the mails to inmates. As in Tran's case, the court order was issued on December 5, 2024, Tran didn't receive it until December 20, 2024. The reason was, he had to go to the hospital on December 12, 2024 and returned to his unit on December 17, 2024 and didn't get the mail until he was assigned a housing. Tran file his motion for review the same day he received the order but Fifth Circuit denied it for untimely filed. Even he had explained that the circumstance was beyond his control. see Exhibit 4.

CONCLUSION

In 5th Circuit's Unpublished Order, Document: 52-2, page 2, 5th Circuit wrote:

As to the District Court's timeliness determination; Tran contends that his 1 and 2 claims were not subject to 28 U.S.C. § 2244(d) statute of limitation because they are jurisdictional challenges which may be raised at any time and may not be forfeited or waived.

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In order to obtain a COA, Tran must make "a substantial showing of the denial of a Constitutional Right" 28 U.S.C. § 2253(c)(2);...

The above shows that 5th Circuit was not only abused but also overstepping its discretion because 5th Circuit knew Tran was challenging his trial judge's qualification and trial court's jurisdiction, Id. but chose to ignore. 5th Circuit's action violated the Supreme law in Hagans v. Lavine, Id., and also in conflict with Joyce v. United States, Id.; and Cliby v. Jones, Id.

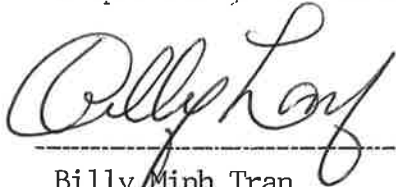
This case may be the first of its kind to visit the Supreme Court of the United States but that should not be the reason for it not deserved addressing. This Court has the power to right the wrong. The United States Constitution should be treated with all seriousness and respect by the judicial officials. It would be a mockery if people who supposed to protect and uphold the Constitution be allowed to treat the Constitution with deliberate indifference because then, our society would be a lawless society because the people in the position of power would do whatever they want.

Could a judge break the law just to permanently take away a U.S. Citizen's Liberty and Freedom? Tran is a United States Citizen and a U.S. Army Veteran but does the United States Constitution protect him from being denied Due Process and equal protection?

PRAYER

Tran prays that after this Court has reviewed all the facts and evidence, this Court would find he is entitled to relief as a matter of law. Tran also asks that if this Court deems he is entitled for any additional relief, this Court would grant it. Thank You.

Respectfully submitted,



Billy Minh Tran
TDC# 2044506
899 FM 632
Kenedy, TX 78119

Date: 23 Feb., 2025