

NO. 24-7283

ORIGINAL

Supreme Court, U.S.  
FILED

MAY - 9 2025  
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

JAMES RUBIO

*Petitioner,*

*Versus.*

MARSHA MCLANE, *Executive Director, Texas Civil Commitment Office*

*Respondent.*

On petition for writ of certiorari to the  
United States Court of Appeals for the Fifth Circuit

---

**PETITION FOR A WRIT OF CERTIORARI**

---

JAMES RUBIO  
Petitioner Acting Pro-Se  
2600 S. Sunset Ave,  
Littlefield, TX 79339

## QUESTION PRESENTED

1. If reasonable jurists from {–this Court ‘*Jackson v. Indiana*’- -the Fifth Circuit ‘*Benham v. Edwards*’- -Texas Federal Courts ‘*Reynolds v Neill, Hitt v McLane*’- -a prior dissenting judge of same Texas court of appeals over this case concerning analogues claim ‘*Beasley v. Molett*,- -and Prior Fifth Circuit Panel issuing COA on same claim here presented ‘*Rubio v. Lumpkin*’-} not only debated, but some, that it violated due process and equal protection where civil commitment statutes withheld from a few, the procedural and substantive standards of protection made available to all others.... Should Rubio had been allowed a COA to fully present his claims?
2. Was the Fifth Circuit’s denial of Habeas Relief and COA, based on an incorrect discretionary reason of the Federal Court -that purposely [1]followed the highest state court of reason’s denial of relief (based on adequate state remedy) yet [2]abandoned that reason to hold it was procedurally defaulted...to unfairly assure that Rubio could not get review of this claim?

## **PARTIES TO THE PROCEEDINGS BELOW**

### **The Parties:**

Petitioner, James Rubio Petitioner/Appellant

Respondent, Marsha McLane (substituted for Bobby Lumpkin)

### **Counsel for the Parties**

**James Rubio pro-se**

**Jessica Manojlovich**  
**Assistant attorney General Tex.**  
**P.O. Box. 2548, Capitol Station**  
**Austin, Texas 78711**

## **CITATIONS OF OPINIONS BELOW**

*Rubio v. Davis*, 907 F.3d 860, 2018 U.S. App. LEXIS 30724 (5th Cir. Tex., Oct. 30, 2018)

*Rubio v. Lumpkin*, No. 20-20158 (5th Cir. 2021) (Slip op)

*Rubio v. Lumpkin*, 2022 U.S. App. LEXIS 12469 (5th Cir. Tex., May 9, 2022)

*Ex parte Rubio*, 2023 Tex. App. LEXIS 5538, 2023 WL 4781646 (Tex. App. Beaumont, July 27, 2023)

*Rubio v. McLane*, No. H-14-1126, (S.D. Tex. July 12, 2024) (Slip-op)

*Rubio v. Lumpkin*, 2024 U.S. App LEXIS 30471 (5<sup>th</sup> Cir. Tex., Dec. 3, 2024)

*Rubio v. Lumpkin* 2025 U.S. App. LEXIS 4113 (5<sup>th</sup> Cir. Tex. Feb. 19, 2025)

## **JURISDICTION**

**On July 12, 2024** the U.S. District Court for the Southern District of Texas, Houston-Division, Denied and Dismissed Rubio's Petition for writ of habeas corpus with prejudice and denied COA pursuant to Rule 11, '28 U.S.C. § 2253' *Rubio v. McLane*, No. H-14-1126, (S.D. Tex. July 12, 2024) (Slip-op)

**On December. 3, 2024** The Fifth Circuit Entered a Single Judge order Affirming denial of COA *Rubio v. Lumpkin*, 2024 U.S. App LEXIS 30471 (5<sup>th</sup> Cir. Tex., Dec. 3, 2024)

**On February 19, 2025** a Panel of the Fifth Circuit denied motion for reconsideration of single judge order *Rubio v. Lumpkin* 2025 U.S. App. LEXIS 4113 (5<sup>th</sup> Cir. Tex. Feb. 19, 2025)

This Court has jurisdiction to review judgment of the court of appeals under 28 USCS § 1254(1)

## TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i.
PARTIES TO THE PROCEEDINGS BELOW.....	ii
CITATIONS OF OPINION AND ORDERS ENTERED BELOW.....	ii
STATEMENT OF JURISDICTION.....	iii
TABLE OF CONTENT.....	.iv
TABLE OF AUTHORITIES.....	v, vi
I. STATEMENT OF THE CASE.....	2
II. CERTIFICATE OF APPEALABILITY .....	
III. REASON FOR GRANTING THIS PETITION.....	5
<b>ARGUMENT 1.</b>	
THE TEXAS'S CIVIL COMMITMENT SCHEME FOR SEX OFFENDERS IS UNCONSTITUTIONAL: IT DOES NOT MEET DUE PROCESS REQUIREMENTS AS IT DENIES (BUT TO ONLY CIVILLY COMMITTED SEX OFFENDERS -LESS THAN 600 PEOPLE) THE SAME PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF CIVIL COMMITMENT THAN THOSE PROVIDED TO THE TENS OF THOUSANDS OF OTHER CIVIL COMMITTEES IN THE STATE.....	6
<b>ARGUMENT 2.</b>	
TO UNFAIRLY ASSURE THAT RUBIO COULD NOT PRESENT HIS CONSTITUTIONAL CLAIMS, THE DISTRICT COURT AGREED WITH THE HIGHEST STATE COURT OF REASON -THAT RUBIO HAD AN ADEQUATE REMEDY UNDER THE LAW- YET ABANDONED THAT REASONING TO HOLD THE CLAIM WAS PROCEDURALLY DEFAULTED-.....	15
IV. THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI .....	16
V. CONCLUSION.....	17

VI. CERTIFICATE OF SERVICE.....17

ITEMS CONTAINED IN THE APPENDIX

**Appendix A - *Rubio v. Davis*, 907 F.3d 860, 2018 U.S. App. LEXIS 30724 (5<sup>th</sup> Cir. Tex., Oct. 30, 2018)**

**Appendix B- *Rubio v. Lumpkin*, No. 20-20158 (5th Cir. 2021) (Slip op)**

**Appendix C-*Rubio v. Lumpkin*, 2022 U.S. App. LEXIS 12469 (5th Cir. Tex., May 9, 2022)**

**Appendix D- *Ex parte Rubio*, 2023 Tex. App. LEXIS 5538, 2023 WL 4781646 (Tex. App. Beaumont, July 27, 2023)**

**Appendix E- *Rubio v. McLane*, No. H-14-1126, (S.D. Tex. July 12, 2024) (Slip-op)**

**Appendix F- *Rubio v. Lumpkin*, 2024 U.S. App LEXIS 30471 (5<sup>th</sup> Cir. Tex., Dec. 3, 2024)**

**Appendix G- *Rubio v. Lumpkin* 2025 U.S. App. LEXIS 4113 (5<sup>th</sup> Cir. Tex. Feb. 19, 2025)**

**TABLE OF AUTHORITIES**

**CASES:**

*In re Commitment of Rubio*, No. 09-11-00602-CV, 2013 Tex. App. LEXIS 1408 (Tex. App.-Beaumont Feb. 14, 2013, pet. denied) (mem. op).....2

*Rubio v. Davis*, 907 F.3d 860, 2018 U.S. App. LEXIS 30724 (5<sup>th</sup> Cir.Tex., Oct. 30, 2018).....3,

*Miller-El v. Cockrell*, 537 U.S. 322 (2003).....5

*Rodriquez v. State*, 525 S.W.3d 734 (Tex. App.-Houston, May 2, 2017).....9

*House v. State*, 2008 Tex. App. LEXIS 4700 (Tex. App. Houston 14th Dist., June 24, 2008).....9, 12

*In re J.H.N.*, 2019 Tex. App. LEXIS 1521 (Tex. App. Eastland, Feb. 28, 2019)....9

<i>In re Gonzales</i> , 2022 Tex. App. LEXIS 985 (Tex. App. Corpus Christi, Feb. 10, 2022).....	9
<i>Campbell v. State</i> , 85 S.W.3d 176, 2002 Tex. LEXIS 135 (Tex., Aug. 29, 2002)...	9
<i>Colorado Republican Federal Campaign Comm. v Federal Election Comm'n</i> , 518 US 604, 622-623 (1996).....	10
<i>Renne v Geary</i> , 501 US 312, 323-324 (1991).....	10
<i>Rubio v. Lumpkin</i> , 2022 U.S. App. LEXIS 12469 (5th Cir. Tex., May 9, 2022)....	6
<i>O'Connor v Donaldson</i> , 422 US 563 (1975).....	9,12
<i>Benham v. Edwards</i> , 678 F.2d 511 (5th Cir. Unit B 1982).....	13
<i>Hitt v. McLane</i> , No. AU-17-CA-289-SS, 2018 U.S. Dist. LEXIS 42891 (W.D. Tex., Mar. 11, 2018).....	12,14
<i>Jackson v. Indiana</i> , 406 U.S. 715 (1972).....	7
<i>Reynolds v. Neill</i> , 381 F. Supp. 1374, 1384-85 (N.D.Tex.1974) (three-judge court).....	12,13
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000).....	6,16
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983).....	16
<i>Beasley v. Molett</i> , 95 S.W.3d 590, 607-08 (Tex. App.-Beaumont 2002, pet. ref'd) .....	10,12
<i>Wyatt v Aderholt</i> , 503 F.2d 1305, 1312 (5th Cir. 1974).....	7
<i>Young v. Weston</i> , 898 F. Supp. 744, 753 (W.D. Wash. 1995).....	8
<i>Seling, v. Young</i> , 531 U.S. 250 (2001).....	8
<i>Humphrey v. Cady</i> , 1972, 405 U.S. 504, 509.....	7
<i>In re Fisher</i> , 164 S.W.3d 637, 647 (Tex. 2005).....	8

<i>Kansas v Hendricks</i> , 521 US 346, 361 (1997).....	15
<i>Kansas v. Crane</i> , 534 U.S. 407, 410 (2002); <i>Seling v. Young</i> , 531 U. S. 250, 261 (2010).....	7

## **STATUTES**

Tex. Health & Safety Code Ch. 841., (SVPA).....	6, 8
Tex. Health & safety Code Ann. § 574.035(a)(2).....	8
Tex. Health & Safety Code Ann. § 574.066(e).....	10
28 U.S.C. § 2254.....	5
28 U.S.C. § 2253(c)(2).....	5
28 U.S.C. § 1746.....	17

IN THE SUPREME COURT OF THE UNITED STATES

---

**JAMES RUBIO**

*Petitioner,*

*Versus.*

**MARSHA MCLANE, Executive Director, Texas Civil Commitment Office**  
*Respondents.*

On petition for writ of certiorari to the  
United States Court of Appeals for the Fifth Circuit

---

**PETITION FOR A WRIT OF CERTIORARI**

---

**I. QUESTIONS TO THE HONORABLE JUSTICES OF THE SUPREME  
COURT OF THE UNITED STATES:**

1. If reasonable jurists from { –this Court ‘*Jackson v. Indiana*’ - -the Fifth Circuit ‘*Benham v. Edwards*’ - -Texas Federal Courts ‘*Reynolds v Neill, Hitt v McLane*’ - -a prior dissenting judge of same Texas court of appeals over this case concerning analogues claim ‘*Beasley v. Molett*,- -and Prior Fifth Circuit Panel issuing COA on same claim here presented ‘*Rubio v. Lumpkin*’-} not only debated, but some held, that it violated due process and equal protection where civil commitment statutes withheld from a few, the procedural and substantive standards of protection made available to all others.... Should Rubio had been allowed a COA to fully present his claims?
  
2. Was the Fifth Circuit’s denial of Habeas Relief and COA, based on an incorrect discretionary reason of the Federal Court -that purposely [1]followed the highest state court of reason’s denial of relief (based on adequate state remedy) yet [2]abandoned that reason to hold it was procedurally defaulted...to unfairly assure that Rubio could not get review of this claim?

## I. STATEMENT OF THE CASE

On September 8, 2011, shortly before he completed his prison sentence for a sex offence, a civil trial was conducted wherein multiple clinical psychologist, and other mental health exerts -paid for by the state-persuaded a court that James Rubio was ill with a mental/behavior abnormality and thus required him to be civilly committed for clinical treatment and supervision pursuant to Tex. Health & Safety Code § 841., aka., the sexually violent predator act (SVPA). Upon release He was transferred to the custody and supervision of the then Texas state agency 'Office of Violent Sexual Offender Management ("OVSOM"). Rubio's state appointed attorney appealed his commitment order to the Texas' 9th District Court of Appeals, but while his appeal was pending, on September 30, 2012, He absconded from treatment removing GPS monitor.

The appeals court Ordered Rubio to return back to custody warning him that his appeal would be dismissed with prejudice if he failed to comply. Rubio failed to comply and therefore his appeal was dismissed with prejudice. See, *In re Commitment of Rubio*, No. 09-11-00602-CV, 2013 Tex. App. LEXIS 1408 (Tex. App.-Beaumont Feb. 14, 2013, pet. denied) (mem. op). Ultimately Rubio took a plea bargain -for the sole crime the state could've charged him with- for ten-years for failure to register as a sex-offender. Thus began the lengthy procedural history of this action.

## A. PROCEDURAL HISTORY

Rubio began seeking habeas relief in the 435th District Court, Montgomery County, Conroe, Texas; cause 08-03-02882; trial cause 11-04-04400-CV, (the court where he was civilly committed) When this cause was originally filed -on March 14, 2014.- The court clerk refused to file the petition and returned the entire filing by mail with the instructions to file a §2254 at the United States Southern District Court. Attempting to comply with the clerk's instruction (which are legally-binding in Texas) Rubio filed this petition in Federal Court who dismissed it on August 30, 2016, for lack of jurisdiction, asserting that he did not meet the custody requirement for habeas relief. The Fifth Circuit disagreed and reversed that decision remanding for further proceedings. *Rubio v. Davis*, 907 F.3d 860 (5th Cir. Tex., Oct. 30, 2018)

The Federal Court dismissed the petition for failure to exhaust state remedies, and on May 29, 2019 he again filed a habeas petition in the 435th District Court, where it stayed on the docket for excess of three years. After filing a mandamus petition in 9th Court of Appeals, the 435th issued a ruling on June 27, 2022, denying the petition. The cause was then appealed to the 9th Texas Court of Appeals, who sua sponte designated the cause an "accelerated appeal" and again, a period of time lapsed, and Rubio filed a motion with the U.S. Dist. Court in accordance with §2254(b)(1)(B). The U.S. District Court again dismissed the

petition for failure to exhaust state remedies, and the Fifth Circuit reversed and the Federal Court indicated a little more time was allowed to the state per 5th Circuit precedence.

On July 27, 2023, the 9th district court of appeals issued a detailed opinion as affirming the denial of Rubio's habeas petition by his committing court, and Rubio sought review of this denial via petition for review in the Texas Supreme Court on August 14, 2023, which the Texas High Court denied without written order, on September 29, 2023.

Rubio then moved to reinstate this action in the Federal Court, where it was reinstated. The respondent filed an answer once again contending that Rubio had failed to exhaust as to the bulk of his claims, and "pertinent here" that Rubio had an adequate state remedy under the civil commitment statute and he must avail himself to those remedies, Rubio argued in his response, that the state remedies are unconstitutional, therefore he need not avail himself to said remedies. Ultimately the District Court agreed with the state, as to denying this claim, yet departed from said reasoning in order to hold this claim was procedurally defaulted.

The District Court denied relief and COA dismissing this cause with prejudice, on July 12, 2024, Petitioner sought a COA in the Fifth Circuit and on December 3, 2024, a single judge denied COA, Rubio filed motion for reconsideration and review of the single judge order by the Panel which was

denied on Feb. 21, 2025. Rubio now seeks writ of Petition For A Writ Of Certiorari by this Honorable Court.

## **II. CERTIFICATE OF APPEALABILITY**

To obtain a certificate of appealability, a habeas corpus petitioner must satisfy the legal standard that is set forth in the amended post 1996 AEDPA; "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Under the controlling standard, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). As This Court has stated in making the COA determination under § 2253(c); "We look to the District Court's application of AEDPA to petitioner's constitutional claims and ask whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it . . . . [A] COA does not require a showing that the appeal will succeed." " *Id. at* 537 U.S. 336 (2003)

### III. REASON FOR GRANTING THIS PETITION

#### ARGUMENT

##### 1.

THE TEXAS'S CIVIL COMMITMENT SCHEME FOR SEX OFFENDERS IS UNCONSTITUTIONAL: IT DOES NOT MEET DUE PROCESS REQUIREMENTS AS IT DENIES (BUT TO ONLY CIVILLY COMMITTED SEX OFFENDERS -LESS THAN 600 PEOPLE) THE SAME PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF CIVIL COMMITMENT THAN THOSE PROVIDED TO THE TENS OF THOUSANDS OF OTHER CIVIL COMMITTEES IN THE STATE

##### A. Prior Grant of COA: *Rubio v. Lumpkin*, No. 20-20158 (5th Cir. 2021)

The Fifth Circuit previously acknowledged; “[A] much narrower set of Rubio’s claims could, with the benefit of further development, raise debatable constitutional claims. Specifically, Rubio contends that: (1) Texas’s civil commitment scheme for sexually violent predators is facially unconstitutional because it does not meet due process requirements” *Rubio v. Lumpkin*, No. 20-20158, Slip-op at., 4 (5th Cir. March 15, 2021). “To obtain a COA Rubio must make a substantial showing of the denial of a constitutional right, which; “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “ ‘adequate to deserve encouragement to proceed further.’ ” *Slack*, 529 U.S. at 484. Rubio has been prevented from the opportunity to present his claims. Please consider the following arguments.

##### B. Constitutionality of Civil Commitment:

###### 1. Governments Interests: Tex. Health & Safety Code Ch. 841.

(a) *Civil commitment* – (b) *public safety* - (c) *long-term treatment*:

(a) *Civil commitment:*

Civil Commitment Civil commitment entails a "massive curtailment of liberty" in the constitutional sense." *Humphrey v. Cady*, 1972, 405 U.S. 504, 509 (1972) Concerning civil commitment *Jackson v. Indiana*, 406 U.S. 715, (1972) held; "The bases that have been articulated include dangerousness to self, dangerousness to others, and the need for care or treatment or training." *Id.*, at 737. Following *Jackson* the Fifth Circuit clearly established that; "the only permissible justifications for civil commitment, and for the massive abridgments of constitutionally protected liberties it entails, were the danger posed by the individual committed to himself or to others, or the individual's need for treatment and care." *Wyatt v Aderholt*, 503 F.2d 1305, 1312 (5th Cir. 1974). Concerning requirements of due process "[w]e have consistently upheld such involuntary commitment statutes" when (1) "the confinement takes place pursuant to proper procedures and evidentiary standards," (2) there is a finding of "dangerousness either to one's self or to others," and (3) proof of dangerousness is "coupled . . . with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'" *Kansas v. Crane*, 534 U.S. 407, 410 (2002);

(b) *public safety* - (c) *long-term treatment:*

Texas has continually maintained that the goal of its civil commitment scheme here is public safety and treatment. Cf. "The legislative findings for the SVP statute state that public safety and long-term treatment-not punishment-are the primary statutory goals

of Chapter 841 of the Health and Safety Code.” *In re Fisher*, 164 S.W.3d 637, 647 (Tex. 2005).

*(b) Public safety:*

Petitioner is confined in total confinement inside: The Bill Clayton Detention: operated as the Texas Civil Commitment Center (TCCC). The TCCC is a maximum security prison, with 2 razor wire motion sensing fences, that are topped with concertina wire. Texas has over 46,000, sex offenders in state prison. Sex offenders do not become more dangerous after they finish their time. “[O]f course, it defies reason to suggest that the mental abnormalities or personality disorders causing violent sexual predation surface only at the termination of a prison term.” *Young v. Weston*, 898 F. Supp. 744, 753 (W.D. Wash. 1995), rev’d on other grounds, *Seling, v. Young*, 531 U.S. 250 (2001) Public safety is satisfied by the prison facility operated as the TCCC

*(c) long-term treatment*

Petitioner receives 6-hours a week of treatment and he assert that it is extremely constitutionality inadequate, herein however this is not the focus of the claim at hand.

C. Texas’s civil commitment scheme for sexually violent predators is unconstitutional facially and as applied because it does not meet due process requirements

Texas has statutory civil commitment procedures for all Texas citizens. And Tens of thousands of Texans are civilly committed who have done horrendous things from murdering infant children or their parents<sup>1</sup> *examples below:*

---

<sup>1</sup> See Tex. Health & safety Code Ann. § 574.035(a)(2) “The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if (2) as a result of that mental illness the proposed patient:(B) is likely to cause serious harm to others.” (Civil Commitment)

*Rodriquez v. State*, 525 S.W.3d 734 (Tex. App.-Houston, May 2, 2017) (Rodriquez murdered her infant child, civilly committed to State Hospital)

*House v. State*, 2008 Tex. App. LEXIS 4700 (Tex. App. Houston 14th Dist., June 24, 2008) ("On December 6, 1996, appellant killed his mother by stabbing her with a knife at least ninety-three times." *Id.* Civilly committed to Rusk State Hospital)

*In re J.H.N.*, 2019 Tex. App. LEXIS 1521 (Tex. App. Eastland, Feb. 28, 2019) ("killed his mother with a butcher knife, almost decapitating her; he also drowned his dog." Civilly committed to Big Springs State Hospital)\

*In re Gonzales*, 2022 Tex. App. LEXIS 985 (Tex. App. Corpus Christi, Feb. 10, 2022) ("Gonzales attacked his then-82-year-old neighbor and was charged with injury to an elderly individual." Civilly committed to the Gulf Bend Center for out-patient treatment later committed to inpatient treatment.)

*Campbell v. State*, 85 S.W.3d 176, 2002 Tex. LEXIS 135 (Tex., Aug. 29, 2002) (Campbell was indicted for aggravated kidnaping and aggravated assault after he attempted to remove his girlfriend's eyes with a knife, ultimately ended up civilly committed at Kerrville State Hospital.)

The list goes on and on....

All of those civilly committed -for whatever reason- are provided -by clearly established law- the same procedural and substantive protections from commitment except sex offenders. There is not a constitutional provision alienating Rubio from his Rights, because sex offence is the "likely" danger he is "likely" to pose according to the state. Danger is danger, harm is harm though sad and drastic, but the degree of stigma attached to the harm does not change or limit the standard of constitutional protection afforded the Civilly Committed Citizen's Liberty Interests "Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty." *O'Connor v Donaldson*, 422 US 563 (1975)

Rubio claimed chapter 841., (SVPA) was facially unconstitutional because it does not meet due process requirements. However, it is both unconstitutional facially and as applied. And this court has held that a facial challenge should not generally be entertained when an as-applied challenge would resolve the conflict. "If, in fact, the Party wants to make only independent expenditures like those before us [facial challenge], its counterclaim is mooted by our resolution of its "as applied" challenge. Cf. *Renne v Geary*, 501 US 312, 323-324 (1991) (facial challenge should generally not be entertained when an "as-applied" challenge could resolve the case) *Colorado Republican Federal Campaign Comm. v Federal Election Comm'n*, 518 US 604, 622-623 (1996)

1. SVPA denies petitioner the statutory protections from commitment and continued confinement that Texas provides for all others in multiple ways this type of statutory differences violates due process unconstitutional.

**(a) TEXAS STATE COURT**

(i). *Beasley v. Molett*, 95 S.W.3d 590 (Tex. App.-Beaumont 2002, pet. ref'd) (Justice Burgess dissent)

A Justice of the 9th Texas Appeals Court Beaumont, discussed the multiple differences in procedural provisions, protections, and requirements from SVPA commitment than those provided for all others *see differences below*

*All other civil commitments in Texas*

- a. In Texas, those who are subject to ordinary civil commitments are entitled to a hearing prior to an order for an extension of their commitment. TEX. HEALTH & SAFETY CODE ANN. § 574.066(e) (Vernon 1992).

- b. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services. *Id.*
- c. At a hearing on an original application for court-ordered extended outpatient mental health services, the proposed patient has the right to a jury and the State must establish commitment criteria by clear and convincing evidence. *TEX. HEALTH & SAFETY CODE ANN. § 574.035(b)(2)* (Vernon Supp. 2003).
- d. Renewal is for no more than twelve months. *TEX. HEALTH & SAFETY CODE ANN. § 574.066(f)* (Vernon 1992).

#### *SVPA Civil Commitment*

- a. As previously noted, under the Act commitment is for an indefinite period. *TEX. HEALTH & SAFETY CODE ANN. § 841.081* (Vernon Supp. 2003).
- b. A person committed under the Act does not receive a post-commitment hearing to determine if he or she still meets commitment criteria unless:
- c. (1) the trial court, in a biennial review, finds that there is probable cause to believe that the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence;
- d. (2) the case manager determines that the person's behavioral abnormality has changed in the same way and the person petitions for release;
- e. (3) the proposed patient files an unauthorized petition for release that the judge does not find to be frivolous; or
- f. (4) the proposed patient files a subsequent unauthorized petition for release and the judge chooses to set a hearing, where there is probable cause to believe that the petitioner is no longer likely to engage in a predatory act of sexual violence. *Id. §§ 841.102(c)(2), 841.121(a)-(c), 841.123(c)-(d). Beasley v. Molett*, 95 S.W.3d at, 617-618, (Justice Burgess dissent) (brokedown)

#### **(b) TEXAS FEDERAL COURTS**

As a U.S. District Court held the Texas dissenting Judge, emphasized the strange fact that the SVPA committing court may deny any-or-all further petitions for release if any prior petition was frivolous:

(i) *Hitt v. McLane*, 2018 U.S. Dist. LEXIS 42891, at \*16 n 5. (W.D. Tex., Mar. 11, 2018)

“[...] Finally, the Court notes the statutory process for reviewing civil committees' petitions for release appears to provide judges with unbridled discretion to deny such petitions even when there is probable cause to believe the committee no longer poses a danger to the public. See Tex. Health & Safety Code § 841.123(d) ("The judge is not required to deny a petition . . . if probable cause exists to believe that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in predatory acts of sexual violence.")

*cf. Beasley v. Molett*, 95 S.W.3d at., 618, (Justice Burgess dissent) “I also note that a trial court, in any subsequent unauthorized petition for release, may deny the petition if a previous petition was frivolous.”

(ii). *Reynolds v. Neill*, 381 F. Supp. 1374, 1384-85 (N.D.Tex.1974) (three-judge court)<sup>2</sup> (3-Judge Panel)

In *Reynolds v. Neill*, a 3-Judge Panel found that the very type of unequal treatment and release requirements for those called (“criminally committed” –not guilty by reason of insanity) from all others civilly committed in the state violated Due Process and Equal Protection Under the Law.

\*\*NOTE in 1974 those who committed the types of criminal acts to be committed under the statute in *Reynolds* was **Rusk State Mental Hospital**. “

“**Rusk is the only state mental hospital** where criminally committed persons are kept.” *Reynolds v. Neill*, at. 1380 n.4. 2: **Rusk is still open** see below

*House v. State*, 2008 Tex. App. LEXIS 4700 (Tex. App. Houston 14th Dist., June 24, 2008) (“On December 6, 1996, appellant killed his mother by stabbing her with a knife at least ninety-three times.” *Id. Civilly committed to Rusk State Hospital*)

---

<sup>2</sup> vacated and remanded for reconsideration in light of *O'Connor v. Donaldson*, supra, 422 U.S. 1050, 95 S. Ct. 2671, 45 L. Ed. 2d 703 (1975), aff'd on reconsideration sub nom. *Reynolds v. Sheldon* 404 F. Supp. 1004 (N.D.Tex.1975)

Due to the differences in procedural protections for criminal committees the Reynolds Court completely enjoined the state from criminally committing anyone under statute in question.

“The state of Texas is hereby enjoined from initiating or continuing treatment promulgated or mandated under Art. 46.02 of the Texas Code of Criminal Procedure. The state is further enjoined from using the release standards set out under Art. 46.02.” *Reynolds v. Neill*, 381 F. Supp. 1374, 1385 (N.D.Tex.1974) (three-judge court) (3-Judge Panel)

### **(c) THE FIFTH CIRCUIT**

#### **(i) *Benham v. Edwards*, 678 F.2d 511(5th Cir. 1982)**

In this class action insanity acquittees challenged the civil commitment statute on due process and equal protection grounds because there was a statutory mandate that insanity committees be presumed insane at the hearings and it was never found rational for the state to not provide the same release standards from continued civil commitment to all others.

“Nevertheless, we are aware of no decision which has upheld such differences in release procedures in a context where the court clearly viewed the statute as intending to treat all acquittees (including those acquitted for crimes not evidencing dangerousness) differently from all M.H.C. committees. Cf., e.g., *Powell v. Florida*, supra (murder); *United States v. Ecker*, supra (rape and murder). See also *Lee v. Kolb*, 449 F. Supp. 1368 (W.D.N.Y.1978) (murder) (dictum); *Allen v. Radack*, 426 F. Supp. 1052 (D.S.D.1977) (murder) (dictum)” *Benham v. Edwards*, 678 F.2d 511, 533 (5th Cir. Unit B 1982)

“[e]qual protection requires that all acquittees be afforded the opportunity to apply for release with the same frequency as permitted M.H.C. committees.” *Id.* at 542-43 (5th Cir. Unit B 1982)

#### **(d) SUPREME COURT OF THE UNITED STATES**

*Jackson v. Indiana*, 406 U.S. 715 (1972).

“As we noted above, we cannot conclude that pending criminal charges provide a greater justification for different treatment than conviction and sentence. Consequently, we hold that by subjecting Jackson to a commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses, and by thus condemning him in effect to permanent institutionalization without the showing required for commitment or the opportunity for release afforded by § 22-1209 or § 22-1907, Indiana deprived petitioner of equal protection of the laws under the Fourteenth Amendment. *Id.* 729-730

Tex. Health & Safety Code Ch. 841.’s, statutory construction clearly violates Petitioners due process rights and denies petitioner equal protection under the law. The hurdles for release make it almost imposable for him to return to his family and continued confinement is the purpose of the statute therefore he need not avail himself to the state post deprivation remedies.

These very remedies have been held unconstitutional *cf.*

“The Court finds Hitt need not utilize the state's postdeprivation procedures in order to bring his procedural due process claim. A plaintiff bringing a procedural due process claim “must either avail himself of the remedies guaranteed by state law or prove that the available

remedies are inadequate." *Hitt v. McLane*, 2018 U.S. Dist. LEXIS 42891 \*15 (W.D. Tex., Mar. 11, 2018) (citing *Hudson v. Palmer*, 468 U.S. 517, 539, 104 (1984)

Texas SVPA is simply an unconstitutional way to continue the confinement of sex offenders after they finished their prison time as noted Justice Kennedy of this very court;

"If the civil system is used simply to impose punishment after the State makes an improvident plea bargain on the criminal side, then it is not performing its proper function". *Kansas v Hendricks*, 521 U.S. 356, 373 (1997) (Justice Kennedy, concurring opinion); "If However, civil confinement was to become a mechanism for retribution or general deterrence, our precedents would not suffice to validate it." *Ibid.*

The Honorable Court should remand to the lower court to issue a COA allowing him to present his claims

## ARGUMENT

### 2.

TO UNFAIRLY ASSURE THAT RUBIO COULD NOT PRESENT HIS CONSTITUTIONAL CLAIMS, THE DISTRICT COURT AGREED WITH THE HIGHEST STATE COURT OF REASON -THAT RUBIO HAD AN ADEQUATE REMEDY UNDER THE LAW- YET DISCRETIONALLY ABANDONED THAT REASONING TO HOLD THE CLAIM WAS PROCEDURALLY DEFAULTED-

#### A. Procedural default

"The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. **We hold as follows: When the district court denies a habeas petition on procedural grounds without**

**reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)**

This construction gives meaning to Congress' requirement that a prisoner demonstrate substantial underlying constitutional claims and is in conformity with the meaning of the "substantial showing" standard provided in *Barefoot, supra*, at 893, and n 4, 77 L Ed 2d 1090, 103 S Ct 3383, and adopted by Congress in AEDPA.

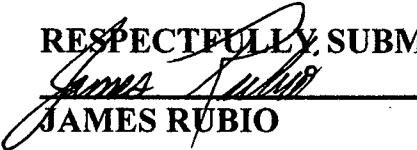
Petitioner makes a substantial showing of the denial of a constitutional right, which; that "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were " 'adequate to deserve encouragement to proceed further.' and according to this Honorable Court's precedent a COA should issue

#### **IV. THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI**

To this Honorable Court James Rubio Prays an honest day in Court. He has a wife and daughter who loves him, and he has completed his prison sentence. Petitioner is not an attorney and has simply and diligently attempted to gain his freedom from unconstitutional depravation of Liberty. Rubio submits this to this

Honorable Court, Praying that the Right to Liberty be protected here as was the intentions of the very people who founded this nation and constitution.  
So Help Me God.

**RESPECTFULLY SUBMITTED**

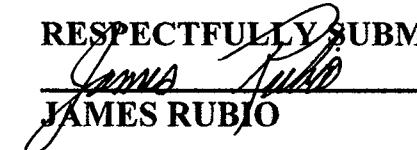
  
**JAMES RUBIO**

#### **V. CONCLUSION**

This Court should grant this petition ~~reverse~~ the lower court's determination and remand issuing James Rubio a COA, to fully and adequately present his claims.

Pursuant to **28 U.S.C. § 1746** I James Rubio hereby declare under the penalty of perjury that the forgoing is true and correct. Executed in Littlefield, TX., and placed in TCCC institutional mail box, on Friday May 9, 2025  
Respectfully submitted

**RESPECTFULLY SUBMITTED**

  
**JAMES RUBIO**

#### **CERTIFICATE OF SERVICE**

I, James Rubio certify that on Friday May 9, 2025 a true and correct copy of this PETITION FOR A WRIT OF CERTIORARI was served upon the following by first class mail, by placing the same in the U.S. postal service pre-stamped.

**Jessica Manojlovich**  
**Assistant attorney General Tex.**  
**P.O. Box. 2548, Capitol Station**  
**Austin, Texas 78711**

  
James RUBIO Pro Se

Executed on this the 9th day of May 2025.