

No. _____

**In The
Supreme Court of the United States**

—◆—
ADAM REPOSA,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

—◆—
**On Petition For Writ Of Certiorari
To The Texas Court Of Appeals,
Third District**

—◆—
PETITION FOR A WRIT OF CERTIORARI
—◆—

CARISSA L. BEENE
Attorney at Law
207 S. Austin Avenue
Georgetown, TX 78626
512-850-0555
carissa.beene@gmail.com
Counsel for Petitioner

May 10, 2018

QUESTION PRESENTED FOR REVIEW

Whether the order from the Texas Court of Appeals unlawfully suspended the right to remedy through writ of habeas corpus in state courts and consequently federal court in violation of the United States and Texas Constitutions.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Adam Reposa, respectfully petitions for a writ of certiorari to review judgment of the Texas Court of Criminal Appeals.

**OPINIONS BELOW**

The notice of allegations of direct criminal contempt by the trial court is reproduced at App. 43. The amended order from the reviewing trial court is reproduced at App. 36. The order from the Texas Third Court of Appeals staying proceedings on Petitioner's application for writ of habeas corpus in District Court is unpublished and reproduced at App. 35. Order denying Petitioner's application for writ of habeas corpus in the Court of Criminal Appeals in cause number WR-86,973-03 is not written, notice is reproduced at App. 10. The Court of Criminal Appeals dissenting opinion is reproduced at App. 11. The Third Court of Appeals order granting writs of mandamus and prohibition in cause number 03-17-0667-CV is unpublished and reproduced at App. 1. The Court of Criminal Appeals denied Petitioner's writ of mandamus in cause number WR-86,973-04 without written order, notice is reproduced at App. 45. The dissenting opinion of Justice Alcala is reproduced at App. 46.



JURISDICTION

The Texas Court of Criminal Appeals entered its Order on January 10, 2018. (App. 45) On March 29, 2018, Justice Alito extended the time to file a petition for writ of certiorari to May 10, 2018. *See* 17A1041. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).



CONSTITUTIONAL PROVISIONS

Article I, section 9 to the United States Constitution

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.

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, section 12 to the Texas Constitution

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.

**STATUTES****28 U.S.C. § 2254**

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A)

the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the Applicant.

Texas Government Code, section 21.002(b)

The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.

Texas Government Code, section 21.002(d)

An officer of a court who is held in contempt by a trial court shall, on proper motion filed in the offended court, be released on his own personal recognizance pending a determination of his guilt or innocence. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to assignment by the presiding judge other than the judge of the offended court to determine the guilt or innocence of the officer of the court.

Texas Government Code, section 21.002(h)

Notwithstanding any other law, a person may not be confined for contempt of court longer than:

(1) 18 months, including three or more periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months, if the confinement is for criminal contempt; or

(2) the lesser of 18 months or the period from the date of confinement to the date the person complies with the court order that was the basis of the finding of contempt, if the confinement is for civil contempt.

Texas Code of Criminal Procedure, article 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 any one 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.

Texas Code of Criminal Procedure, article 11.05

BY WHOM WRIT MAY BE GRANTED. The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper motion, to grant the writ under the rules prescribed by law.

Texas Code of Criminal Procedure, article 11.08

APPLICANT CHARGED WITH FELONY. If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

Texas Code of Criminal Procedure, article 11.09

APPLICANT CHARGED WITH MISDEMEANOR. If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or if there be no county judge in said county, then to the county judge whose residence is nearest to the courthouse of the county in which the applicant is held in custody.

Texas Code of Criminal Procedure, article 11.15

WRIT GRANTED WITHOUT DELAY. The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever.

**STATEMENT OF THE CASE**

Petitioner, a licensed attorney, seeks review of an order from the Texas Third Court of Appeals which prohibited a District Court from issuing a writ of habeas corpus on an order of contempt. A right to writ of habeas corpus shall not be suspended under Article I, sec. 12 of the Texas Constitution and Article I, sec. 9, cl. 2 of the United States Constitution. The Third Court of Appeals order acted to suspend Petitioner's Constitutional, and sole, remedy in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. There exists a

disagreement between Courts about original jurisdiction and proper venue to hear the Great Writ. The state of the law in Texas leaves alleged contemnors without an avenue for meaningful review of contempt orders.

On March 27, 2017, Petitioner was held in direct criminal contempt by Honorable Nancy Hohengarten, presiding judge of County Court at Law Number 5 of Travis County, Texas. Following a two-day trial, the Honorable Paul Davis, sitting by assignment, found Petitioner in criminal contempt and sentenced Petitioner to 180 days confinement. Texas Government Code section 21.001(d) codifies due process afforded to attorneys in contempt proceedings. Petitioner alleged procedural due process requirements in the statute were not followed. In Texas, a contempt order is reviewable only through an application for writ of habeas corpus. *Ex parte Eureste*, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986).

Petitioner filed applications for writs of habeas corpus in the 368th District Court of Williamson County, Texas, and the Texas Court of Criminal Appeals. On October 12, 2017, the Travis County Attorney's Office, filed Petition for Emergency Stay and Writs of Mandamus and Prohibition in the Third Court of Appeals arguing that the Williamson County District Court did not have jurisdiction and prayed that the Court stay the District Court proceedings pending determination of jurisdiction. The Third Court of Appeals granted the State's emergency motion and stayed all proceedings in the 368th District Court. (App. 35). On November 15, 2017, the Court of Criminal appeals

denied Petitioner's Application for writ of habeas corpus without opinion. The dissenting opinion indicates that Petitioner had an adequate remedy at law which would preclude invoking the Court's jurisdiction. (App. 10).

On November 25, 2017, Petitioner filed a writ of mandamus at the Court of Criminal Appeals requesting the Court to order the Third Court of Appeals to lift the stay and allow the Williamson County District Court to hear the application for writ of habeas corpus. On December 11, 2017, the Third Court of Appeals granted the State's petition for writ of mandamus and ordered the Williamson County court to vacate all orders and dismiss Petitioner's application for writ of habeas corpus. (App. 1-9). On December 13, 2017, Petitioner completed his sentence and was released from custody. On January 10, 2018, the Court of Criminal Appeals denied, without written order, the petition for writs of mandamus. (App. 45).

Petitioner believes the Order warrants this Court's review because the order is contrary to Texas law and in violation of the United States and Texas Constitutions. The Order deemed the Court of Criminal Appeals to have original and exclusive jurisdiction over writs of habeas corpus relating to contempt orders. However, the Court of Criminal Appeals articulated a requirement of a showing of no adequate remedy at law before issuance of a writ of habeas corpus. These holdings are at odds with one another – where exclusive jurisdiction exists then there would never be another adequate remedy at law. The Court of

Criminal appeals declined to correct the Order and denied the Petitioner's writ of mandamus as moot. Ultimately, this jurisdiction "hot potato" leaves attorneys without remedy for due process violations, without opportunity for federal review since sentences are generally short, all the while with exposure up to 18 months incarceration.

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ARGUMENT

This case revolves around an order for contempt entered against Petitioner, a licensed attorney in Texas. A contempt order is not subject to direct appeal, rather reviewable only through an application for writ of habeas corpus. *Ex parte Barnett*, 600 S.W.2d 252, 254 (Tex. 1980); *Ex parte Eureste*, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986). A writ of habeas corpus will issue if the trial court's contempt order is void, either because it is beyond the court's power or because the [Petitioner] has not been afforded due process. *Barnett*, 600 S.W.2d at 254.

In this case, Petitioner alleged the order for contempt, by failure of the offended court to summarily punish him, was fundamentally defective and did not comport with Petitioner's due process rights. "Contemnors are entitled to procedural due process protections before they may be held in contempt." *Ex parte Gonzales*, 945 S.W.2d 830, 836 (Tex. 1997). The type and amount of due process required is dependent upon whether the contemptuous conduct is classified as

constructive or direct. Constructive contempt requires proper notice and an opportunity to be heard. *Ex parte Krupps*, 712 S.W.2d 144, 147 (Tex. Crim. App. 1986). Direct contempt, conversely, occurs directly in the court's presence and thus a summary hearing generally satisfies due process. *Id.* But see *Ex parte Pink*, 645 S.W.2d 262, 264 (Tex. Crim. App. 1982) (notice and a hearing may be required to meet due process where the court delays the finding of contempt until after trial). However, in a summary direct contempt proceeding both a written judgment of contempt and a written order of commitment are required by due process to imprison a person for contempt. *Ex parte Amaya*, 748 S.W.2d 224, 224 (Tex. 1988); *Ex parte Wilson*, 797 S.W.2d 6, 7 (Tex. 1990) (acknowledging that a well-established principle in contempt proceedings is that a valid commitment order is essential to satisfy due process requirements).

Additional Due Process requirements for an officer of the court are laid out in section 21.002(d) of the Texas Government Code, which states:

An officer of a court who is held in contempt by a trial court shall, **on proper motion** filed in the offended court, be **released on his own personal recognizance pending a determination of his guilt or innocence**. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to assignment by the presiding judge other than the

judge of the offended court to determine the guilt or innocence of the officer of the court.

§ 21.002(d) (emphasis added).

Under the statute the filing of a “proper motion” acts as a condition precedent to 1) release, and 2) independent review of the guilt or innocence of the alleged contemnor. Implicit in the plain language is that the legislature, by requiring release of an officer of the court on a personal recognizance bond, adopted the common law principle that a commitment order must be contemporaneous with the finding of contempt. A bond is, by definition, a release from commitment and acts to bind a defendant to appear in court to answer for a criminal accusation. *See* Tex. Crim. Proc. Art. 17.01. Secondly, upon the proper motion the statute creates a right for an attorney contemnor to have a de novo review of the judgment, but not the sentence. The words of the statute, read in context with caselaw and construed according to the rules of grammar, support the requirement that the trial court must make a finding of contempt and order for commitment before the statute is triggered.

Petitioner maintains that the “Allegation of Criminal Contempt” is a defective order because, while it only arguably contains a finding of contempt, it is not a proper judgment and it fails to order commitment of Petitioner. This defect in the judgment of contempt violates due process and bars prosecution. *Ex parte Delacourt*, 888 S.W.2d 811 (Tex. 1994). Petitioner,

however, has been deprived of any meaningful review by higher courts and federal courts.

To understand the Constitutional violations, we must first detail the numerous and entangled proceedings. Petitioner first raised the issue of the void contempt order in a writ of habeas corpus filed in the 368th District Court of Williamson County on October 2, 2017, in cause number 17-1228-C368. The case was set for a status hearing on October 13, 2017, and a bench warrant issued to bring Petitioner from Travis County jail to Williamson County jail. On October 12, 2017, the State of Texas through Travis County Attorney, David Escamilla, filed a Petition for Writs of Prohibition and Mandamus, and Emergency Motion for Stay of Bench Warrant at the Third Court of Appeals. The State argued that “the Williamson County District Court lacked jurisdiction, venue, and authority to hear any application for a writ of habeas corpus arising out of the contempt judgment from Travis County.”

The State relied on *Ex parte Eureste*, and *Ex parte Moorehouse* to assert the argument that there are court created jurisdictional limits on habeas corpus relief for contempt. Specifically, the State argued, “the sole course of review from a contempt order entered in a district court is by original application for writ of habeas corpus in the Texas Court of Criminal Appeals.”¹

¹ This is not the actual statements from the Court of Criminal Appeals. The *Eureste* and *Moorehouse* Courts merely stated “[t]he normal course of review from a contempt order entered in a district court is by original application for writ of habeas corpus filed in this court. Article V, sec. 5, Tex. Const., as amended 1977.”

Ex parte Eureste, 725 S.W.2d 214, 216 (Tex. Crim. App. 1986), *Ex parte Moorehouse*, 614 S.W.2d 450, 451 (Tex. Crim. App. 1981). That same day, the Third Court of Appeals granted State’s emergency motion and ordered a stay of all trial court proceedings, including the scheduled hearing on Petitioner’s writ of habeas corpus. (App. 35). This stay remained in place from October 13, 2017 to December 10, 2017.

On October 16, 2017, following the stay issued by the Third Court of Appeals, Petitioner filed an original petition for writ of habeas corpus in the Court of Criminal Appeals. Petitioner has maintained that, in accordance with the Texas Constitution and Article 11 of the Code of Criminal Procedure, that any County Court, District Court, and the Court of Criminal Appeals has jurisdiction to issue the writ and grant relief on the merits. Exclusive jurisdiction of one court does not vest until the writ of habeas corpus has been issued. On November 17, 2017, the Court of Criminal Appeals denied Petitioner’s Motion for Leave to File Writ of Habeas Corpus, without opinion. (App. 10).

Justice Alcala, and joined by Justices Richardson and Newell, in her written dissent states that she disagrees with the Court’s denial of Petitioner’s Motion for Leave to File Writ of Habeas Corpus. (App. 12). Justice Alcala’s alternative, to order Petitioner to submit a supplemental brief addressing the pending litigation

Ex parte Eureste, 725 S.W.2d at 216; *Ex parte Moorehouse*, 614 S.W.2d at 451. “Normal” course commonly indicates a trend in behavior or procedures compared to “sole” which is to the exclusion of other available courses.

in other courts and whether Petitioner has any other adequate remedy at law, elucidates the issues discussed by the Court. (App. 12-13). The dissenting opinion suggests that pending litigation in the 368th District Court was a factor in denying Petitioner's motion.

Presumably at play in the Court of Criminal Appeals decision is the doctrine of comity. However, "no adequate remedy" is not the legal standard for a court to issue a writ of habeas corpus following a contempt order. In fact, Petitioner is permitted to file in every court with original jurisdiction until such time a writ is issued by a court.² This denial from the Court of Criminal Appeals seemingly sends the case back to District Court. Alcala's dissent discusses the case posture with respect to the stay. However, at this time the Court appropriately refrained from an advisory opinion as no motion was pending before the court to address the legality of the stay issued by the Third Court of Appeals. On November 25, 2017, Petitioner filed a

² See, e.g., *In re Piper*, 105 S.W.3d 107 (Tex. App. – Waco 2003) (denying relator's writ of mandamus on the basis that relator did not show that he had no other legal remedy. The Court, first acknowledging that Texas District courts have constitutional and statutory authority to issue writs of habeas corpus, held that "the refusal to issue the writ by one judge is not conclusive against Petitioner, for he may apply to another and have the opinion of one or all of the judges as the legality of his restraint."). See also *Ex parte Ainsworth*, 27 Tex. 731, 732 (1865); *Ex parte Chavfull*, 945 S.W.2d 183 (Tex. App. – San Antonio 1997); *Ex parte Williams*, 786 S.W.2d 781 (Tex. App. – Hous. (1 Dist.), 1990, pet ref'd).

petition for writ of mandamus with the Court of Criminal Appeals. The petition raised two issues:

Issue One: The trial court has no authority to order Relator's sentence to run "day for day."

Issue Two: The Court of Appeals' order staying all matters regarding the contempt interferes with the district court's jurisdiction to grant Relator relief, deprives him of due course of law, and violates the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Meanwhile, at a hearing before the Texas Court of Appeals on December 4, 2017, Justice Puryear admonished attorney for Petitioner:

"Well let me, to the extent it is needed at this point, let me clarify for you. We have stayed underlying proceedings pertaining to the incarceration of Mr. Reposa [Petitioner] pursuant to the contempt conviction that was issued in Travis County. . . . Again, let me assure you the court does not view this order in any narrow way."

The stay was far reaching, continued through the remainder of Petitioner's sentence, prohibited any other action arising from the contempt order. Any action to request review or motions in the trial court would be a violation of the Third Court's Order. Petitioner was deprived of all rights relating to review of his contempt order and sentence.

On December 10, 2017, the Third Court of Appeals granted the State's petition for writs of prohibition and mandamus. (App. 1). The Court held that the Court of Criminal Appeals has exclusive jurisdiction to review contempt orders and ordered the Hon. Rick Kennon of the 368th District Court to vacate all orders relating to Petitioner's writ of habeas corpus. (App. 7-8).

Petitioner completed his sentence on December 13, 2017, following an order from the Third Court of Appeals permitting the trial court to amend the order to remove the unlawful calculation of Petitioner's sentence. On January 10, 2018, the Court of Criminal Appeals denied Petitioner's petition for writs of mandamus. (App. 45). Justice Alcala dissenting as to dismissal rather than denial, explained the issues presented in the writs of mandamus were moot since Petitioner was no longer in custody. (App. 49).

The effect of the stay issued by the Third Court of Appeals, coupled with lengthy periods of judicial inaction, was to suspend Petitioner's Constitutional right to writ of habeas corpus and in violation of Article I, sec. 9, cl. 2 of the United States Constitution and Article I, sec. 12 of the Texas Constitution and in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Petitioner, not entitled to appeal, had only the remedy of the Great Writ.

The Texas Constitution provides that "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.” Tex. Const. Art. I, sec. 12. The Texas legislature in Article 11 of the Code of Criminal Procedure, in accordance with Art. I, sec. 12, has enacted laws limiting the exercise of courts original habeas corpus jurisdiction and prescribing procedures for the exercise of a court to grant habeas corpus relief.

Those who are confined or restrained in their liberty may challenge the legality of the restraint by petitioning a court of competent jurisdiction to issue the writ of habeas corpus, returnable to a place fixed by law. Tex. Crim. Proc. Art. 11.01. “The Court of Criminal Appeals, the District Courts, the County Courts, or any Judge of said Courts, have power to issue the writ of habeas corpus.” Texas Crim. Proc. Art. 11.05. And in fact, those courts have a duty, upon proper motion, to grant writs of habeas corpus. *Id.* Thus, the general rule is that the Court of Criminal Appeals, District Courts, and County Courts have original, but not exclusive, jurisdiction to issue writs of habeas corpus. *In re Piper*, 105 S.W.3d 107 (Tex. App. – Waco 2003). The legislature established limitations on jurisdiction through a statutory structure which requires that return of the writ be made only in certain counties or to certain courts, turning largely on the type of restraint from which relief is sought. In instances where a writ is returnable only to certain courts, the requirement acts to preclude the issuing court from granting relief on the merits. In other words, there is a distinction between the courts that have original jurisdiction to issue the

writ, and a duty to do so, and the courts that may provide relief under the writ by proper return.

A court's issuance of the writ, as opposed to granting or denying relief under it, is an essential prerequisite to the exercise of any court's original habeas corpus jurisdiction; the failure or refusal of a court to issue the writ is not an appealable event. *Ex parte Noe*, 646 S.W.2d 230 (Tex. Crim. App. 1983); *Ex parte Johnson*, 561 S.W.2d 841 (Tex. Crim. App. 1978); *Ex parte Lozano*, 88 Tex. Crim. 112, 225 S.W. 59 (1920); *Ex parte Barnett*, 74 Tex. Crim. 136, 167 S.W. 845 (1914). Where a court denies or refuses to rule on an application for writ of habeas corpus, the Petitioner's only remedy is to apply elsewhere. *Mayes v. State*, 538 S.W.2d 637 (Tex. Crim. App. 1976); *Ex parte Blankenship*, 57 S.W. 646 (Tex. Crim. App. 1900).

The Court of Criminal Appeals has original and appellate jurisdiction to hear writs of habeas corpus. See Tex. Const. Art. V, sec. 5. This distinction between issuing writs and granting relief has become conflated over the last few decades especially in regard to contempt orders. The Court of Criminal Appeals has virtually unlimited authority to issue writs of habeas corpus. *Ex parte Cvengros*, 384 S.W.2d 881 (Tex. Crim. App. 1964). However, the Court of Criminal Appeals may provide relief in limited circumstances: writs made returnable to the Court of Criminal Appeals pursuant to Art. 11.07, sec. 3, and where the law does not expressly prescribe a different place of return. See Tex. Crim. Proc. Art. 11.07.

Absent statutory divestment, a person confined or restrained in his liberty may apply to and receive relief from any court with jurisdiction to issue the writ of habeas corpus. These circumstances include, but are not necessarily limited to, the following:

- (1) A person confined or restrained on a misdemeanor charge and does not apply to the county judge of the county in which the misdemeanor is charged.³
- (2) A person confined or restrained on an indicted felony charge and does not apply to the judge of the court in which he is indicted.⁴
- (3) Under a variety of other circumstances, such as where a person, not charged with a criminal offense, is restrained of his liberty including under an order of contempt.

See Ex parte Renier, 734 S.W.2d 349, 354-74, 356 (Tex. Crim. App. 1987) (Teague, J., dissenting).

The United States Constitution similarly provides protection of the individual from illegal confinement through writ of habeas corpus. U.S. Const. Art. I, sec. 9,

³ *See* Tex. Crim. Proc. Art. 11.09; *see also State ex rel. Rodriguez v. Onion*, 741 S.W.2d 433, 434 (Tex. Crim. App. 1987) (orig. proceeding) (the language of Article 11.09 “is permissive, not mandatory, and is therefore merely advisory in nature” thereby allowing, rather than requiring, a person charged with a misdemeanor to file a writ of habeas corpus in the county of the originating misdemeanor).

⁴ *See* Tex. Crim. Proc. Art. 11.08.

cl. 2. This Court has referred to the writ as “a vital instrument [for securing] freedom from unlawful restraint” and has emphasized that the “privilege of habeas corpus was one of the few safeguards of liberty” provided for directly in the Constitution. *Boumediene v. Bush*, 128 S.Ct. 2229, 2244 (2008). This protection from state denial of due process requires that federal courts be empowered to intervene in state criminal matters. 28 U.S.C. § 2254. However, federal requisites for relief are more narrowly drawn than Texas, requiring: 1) the Petitioner to be in custody and 2) exhaustion of all state remedies. *Id.*

In this case, the Third Court of Appeals rulings was a drastic departure from the law in Texas and had the effect of depriving Petitioner of his due process rights. Petitioner is entitled to procedural due process before he can be held in contempt. *Ex parte Gonzales*, 945 S.W.2d at 836. From the order of contempt, Petitioner had the right to two avenues of review. First, he had the right to relief through a writ of habeas corpus from a County Court, District Court or the Court of Criminal Appeals. The 368th District Court had jurisdiction to issue the writ of habeas corpus on Petitioner’s claims. There is no statutory limitation on where a return must be made on a writ based on a contempt order. The Third Court of Appeals interfered with the District Court’s original jurisdiction to issue and grant relief in this case.

Because any and all judges can refuse to issue the writ of habeas corpus; because attempts to obtain relief can be thwarted by appellate courts; because inaction

by a court will moot a claim; and because there is no consensus between courts on jurisdiction and duty to issue, this remedy at law does not exist in fact. *See, e.g., Ex parte Rodriguez*, 980 S.W.2d 475 (Tex. Crim. App. 1998). This result is amplified where, as is the case here, Petitioner is an officer of the court, a zealous adversary to the County and District Attorneys in Travis County, with allegations that the Travis County judge violated his due process rights. Not many courts, irrespective of duty to issue writs, have no compunction in embroiling themselves in such issues.

The second remedy is to seek federal review through writ of habeas corpus. To begin, we must acknowledge that commitment on a contempt order is between one day and up to six months per allegation with a maximum sentence of eighteen months. *See* Tex. Gov't Code §§ 21.002(b), 21.002(h)(1). Federal Courts have the authority to review State orders through a writ of habeas corpus so long as the contemnor is in custody and has exhausted all state remedies. Whether this is a slippery slope or a natural result, given the short duration of incarceration, unless released on bond pending determination of the merits of a writ of habeas corpus, a federal remedy will not be available. Unavailability of a federal remedy is indubitable where there is inaction by State courts. The jurisdictional run-around, tied up Petitioner in various state litigations waiting for any of the higher courts to issue a ruling until his entire sentence had been served. Consequently, the actions of state courts had the effect

of denying Petitioner any meaningful review of the state order in federal court.



CONCLUSION

Unless the law is clarified, this issue is capable of repetition. Since no appeal is available, a contemnor will have no avenue to review due process violations at the state level or through a federal claim. Stated another way, the issue is whether State of Texas can deprive one's liberty in a summary proceeding without any recourse for due process violations. We respectfully petition this court to review the order of the Third Court of Appeals ruling on jurisdiction to hear a writ of habeas corpus.

Respectfully submitted,

CARISSA L. BEENE

Attorney at Law

207 S. Austin Avenue

Georgetown, TX 78626

512-850-0555

carissa.beene@gmail.com

Counsel for Petitioner

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