No. 25-307

IN THE

# Supreme Court of the United States

ALFONSO E. CHÁVEZ AYUB,

*Petitioner,*

*v.*

ALFONSO CHÁVEZ PACHECO,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT

## PETITIONER'S REPLY BRIEF

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## SUPPLICATIO

Respondent and counsels admit their misconduct by coercing Texas into grave error through record spoliation and deliberate suppression of Georgina's Mexican Will—vitiating her constitutionally protected testamentary intent under the nationality of her choice.[1]

Individual sovereignty cannot be nullified by state parochialism subverting this Court's *mission* to safeguard human rights as affirmed in *Ennis v. Smith*, 55 U.S. 400 (1853), *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) and *Afroyim v. Rusk*, 387 U.S. 253 (1967).

*Certiorari* must reaffirm a premise older than the Republic—recognized from Hammurabi, to Aquinas, to the Founders—that constitutional law and treaties[2] preserve a person's "freedom of disposition"[3] under the testamentary nationality of one's choice.

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1. U.S. Const. art. IV, § 1; art. VI, cl. 2; amend. V; amend. XIV; Const. Pol. Méx. arts. 1, para. 1; 14; 16; 17; 30.

2. Hague Service Convention, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638189, art. 1, 3(1), 4(1); Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261, arts. 5, 35–36(1).

3. Robert H. Sitkoff & Jesse Dukeminier, *Wills, Trusts, and Estates* ch. 1 (11th ed. 2022).

## ARGUMENTS

### A. Knowingly and Intentionally Concealing the Mexican Will and Proceedings Below

First, Respondent and his attorneys[4] concealed Georgina's notarized/apostilled[5] Mexican Will revoking all earlier dispositions, expressly stating:

> "FIRST.—**Appoints and designates as her SOLE AND UNIVERSAL HEIRS of all her property at the time of her death to her three children:** ALFONSO ENRIQUE CHAVEZ AYUB, ESTHER GEORGINA CHAVEZ AYUB AND ALEJANDRA CHAVEZ AYUB jointly but undivided and in equal parts...
>
> FOURTH.—The Testatrix, GEORGINA AYUB AYUB, states that she had not previously granted any Last Will, **but herein revokes and renders null and void any testamentary disposition that could be attributable to her and seemingly granted before this date.**"[6]

Georgina "revoked ... by executing a subsequent will ... expressly" and "intended [the] subsequent will

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4. App. H, at 46a (18 Mexican); 11 U.S. attorneys.

5. Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention), Oct. 5, 1961, 527 U.N.T.S. 189.

6. *Mexican Notarized Will of Georgina Ayub de Chávez*, Deed No. 31,932, Vol. 1631, Lic. Felipe Colómo Castro, Notary Public No. 28, Vol. 471, (Chihuahua, Méx., Apr. 30, 2005); ClkRecVol1 at 83–93 (Tex. App.—El Paso 2023) (emphasis added).

to replace rather than supplement [the Texas will]" by making "a complete disposition of [her] estate." UPC § 2-507(a)(1)(c). Here, Respondent's claim that Clause 1.5 of the *revoked instrument* barred Georgina from exercising her future right of revocation is constitutionally untenable.[7]

Spoliation and suppression are a "deliberately planned and carefully executed scheme to defraud not only the [Petitioner] but the [Supreme] Court." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 245 (1944). Equitable relief includes "setting aside the judgment to permit a new trial, altering the terms of the judgment, or restraining the beneficiaries of the judgment from taking any benefit whatever from it." *Id.* (citing 3 Freeman on Judgments (5th ed.) §§ 1178, 1179). Such duplicity contravenes duties of candor and triggers prohibitions on false statements and perjury in proceedings, and exemplifies "manifestly unconscionable" enforcement of Texas' judgment. *Id.* at 244–45 (citing *Pickford v. Talbott*, 255 U.S. 651, 657 (1912)). *See* 18 U.S.C. §§ 1001, 1621, 1623.

When "*spoliation* is proved plainly...the legatee may properly come here for a decree upon the head of *spoliation* and *suppression*," and if proved, "it will change jurisdiction." *Tucker v. Phipps*, 26 Eng. Rep. 991 (Ch. 1746). Here, omission of availment and records constitutes a criminal act. *See* Tex. Civ. Prac. & Rem. Code § 10.001(3), Tex. R. Civ. P. 13; analogous to Fed. R. Civ. P. 11(b)(3) (prohibiting factual contentions lacking evidentiary support), 11(b)(4) (prohibiting denials made without reasonable belief), and warranting inherent

7. Resp't's Opp'n., at 5.

authority to set aside judgments for "fraud on the court" pursuant to Rule 60(d)(3).

Second, Respondent falsely claims, "Decedent's Mexican Will was admitted to probate in Chihuahua, México ... on December 9, 2021."[8] The record proves Respondent certified probate in México on August 15, 2016, at Notaria 69.[9] There, Respondent invoked *specific* jurisdiction *under* the Fourth Civil Court of the Morelos Judicial District in México, not in the tribunal itself,[10] with Mexican passports.[11] Thus, México sought comity precisely to prevent irreparable injury—"both great and immediate" in both forums. *Younger v. Harris*, 401 U.S. 37, 46 (1971) (citing *Fenner v. Boyklin*, 271 U.S. 240 (1926)).

Finally, bad-faith warrants reversal and corrective intervention. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–46 (1991) (courts possess authority to remediate bad-faith conduct that abuses process); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764–66 (1980) (sanctions appropriate where counsel acts in bad faith); *In re McConnell*, 370 U.S. 230, 233–34 (1962) (no tolerance for intentional obstruction or abuse of judicial proceedings); 18 U.S.C.S. § 401; Fed. R. Crim. P. 42.

As *Chambers* and *Hanna* held, the *Erie/Guaranty Trust* "outcome-determinative" test must be applied

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8. Resp't's Opp'n., at 6.

9. App. H, at 62a, No. 110/2023 (Seventh Ct. App.—Chih., Mex. 2023).

10. *Id.*

11. ClkRecVol.1 at 610, 620, 622, 698, 700, 704, No. 08-23-00072-CV (Tex. App.—El Paso 2023).

under *Erie's* twin aims: preventing forum-shopping and avoiding inequitable administration of the laws. *Chambers*, 501 U.S. at 52–53 (citing *Hanna v. Plumer*, 380 U.S. 460, 468 (1965).

Respondent and counsels did precisely what *Erie* forbids: conceal jurisdiction, spoliate court records, suppress evidence, and weaponize forum shopping to offend due process in both countries.

### 1. Obstructing México's Forum 1 Jurisdiction

Upon Petitioner's counsel discovering Respondent's transnational tax fraud in México, Petitioner acted immediately in Forum 1, which duly ordered him to notify Forum 2. Thus, this matter *arises* from The Fourth Civil Court, Chihuahua, México, No. 699/2021, and Petitioner's reliance on counsel in Texas.

The Seventh Chamber unequivocally upheld México's Forum 1 authority in 2023, denying Respondent's appeal.[12] That ruling is "prima facie evidence" of "the power over the parties and the things in controversy, [which] may be inquired into; and that the judgement may be impeached for fraud." *Hilton*, 159 U.S. at 190. Thus, Respondent's Reply reveals intent to manufacture a parallel record to suppress *specific* jurisdiction. Such conduct constitutes "a wrong against the institutions set up to protect the public," and strikes at the jurisdictional foundation upon which Article III review depends. *Hazel-Atlas*, 322 U.S. at 246; *See Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 461–463 (1939).

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12. App. H, at 62a.

Because the record shows intentional obstruction of Forum 1, Rule 10(a) and 10(c) warrant *certiorari*.

### 2. The Failure to Disclose the Mexican Will is Not Oversight—it is a Confession

Respondent and counsels never disclosed the Mexican Will in the original Texas proceeding and throughout litigation.

Respondent plead that Georgina "anticipated two regimes,"[13] yet Georgina expressly revoked all prior testamentary dispositions.[14] If the Mexican Will truly effectuated a dual-regime framework, its total omission from the Texas record is dispositive evidence of suppression of material evidence.

Under Tex. Disc. R. Prof. Cond. 1.02(c), 3.03(a)(1)-(2), 3.03(a)(3), 8.04(a)(3), attorneys may not "counsel or assist a client to engage in conduct the lawyer knows is criminal or fraudulent," nor "offer evidence the lawyer knows to be false;" and shall take reasonable remedial measures when they know a client has offered false testimony. *Id.*

As evidenced in Mr. Powell's invoice dated November 10, 2022, Respondent-Executor was advised:

> "Client **meeting with Goldfarb Law Firm**; Collective **preparation of an affidavit** to refute the allegations in the Response to the 91a motion to dismiss; Also, **advised the client to**

13. Resp't's Opp'n., at 7.

14. *Supra* note 12.

> **advise their Mexican attorneys not to argue that the Mexican Will revokes the Texas Will in any respect;"**[15]

This directive shows bad faith among Mr. Powell and the Goldfarb Law Firm to conspire in manufacturing an "affidavit," instructing Respondent to obstruct justice in a parallel foreign proceeding. This constitutes subornation of perjury and unlawful concealment *ab initio* under Tex. P. Code §§ 7.02, 32.47, 37.03, 37.09 and 18 U.S.C. §§ 371, 1503, 1622. Such misconduct caused irreparable harm, and the irreparable injury from Texas' error is unconstitutionally cognizable only when it is "both great and immediate." *See Younger*, 401 U.S.; *Fenner*, 271 U.S. Under *Ex Parte Young*, 209 U.S. 123, 155-56 (1908), this Court retains jurisdiction to prevent officers from ongoing violations of federal rights and defiance of federal authority.

Respondent's attorneys had a duty to disclose to U.S. courts under Tex. Est. Code §§ 251.001 and 503.001. This misrepresentation cannot plausibly be attributed to Respondent alone. Interestingly, Mr. Goldfarb, the Estate's lead-counsel since 1981, and his firm, were omitted from this pleading, leaving only Mr. Powell.

Respondent's misrepresentation of Texas law is again indicative of his counsel's lack of candor and continued coverup of a fraud which began in 2016. Only after the appellate court decided that § 501.001 was the only operative statute in Petitioner's only "live" pleading did

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15. ClkRecVol1 at 393, No. 08-23-00072-CV (Tex. App.—El Paso 2023).

the constitutionality of this section arise as a question. It is clear that Petitioner relies on § 501.002(b), and that if this section is applied, there is no unconstitutionality at issue. However, if Respondent's claim that domiciled testators are deprived of probate of foreign wills in Texas is true, then, and only then, is the section unconstitutional.

Thus, the "two regimes"[16] argument is therefore a post-hoc justification devised to mask deliberate suppression. This omission procured judgment by fraud—the very kind of "corruption of the judicial process" condemned in *Hazel-Atlas*, 322 U.S. at 245–46, and codified as grounds for relief under Rule 60(b)(3).

The Constitution forbids extinguishing a decedent's testamentary sovereignty and property rights—or those of her heirs—by judicial coercion. This Court held, the Takings Clause applies equally to "judicial action," *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 715 (2010) (plurality opinion), and no State may deprive any person of property without due process of law. U.S. Const. amends. V, XIV.

### B. Jurisdiction May be Challenged at Any Time and Judgment Entered Without Jurisdiction is Void as a Matter of Law

Respondent's claim that Petitioner "waited too long" or "waived" jurisdictional arguments is foreclosed by this Court's jurisprudence.

Here, "[t]he objection that a federal court lacks subject-matter jurisdiction...may be raised by a party,

16. Resp't's Opp'n., at 7.

or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506–07 (2006). This Court has likewise held that a judgment issued without jurisdiction "is, by definition, a legal nullity." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). Furthermore, "[a] judgment is void... if the court that rendered it lacked jurisdiction of the subject matter." *Id.* (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)).

This doctrine is not limited to federal-question cases. It reflects the principle that judicial power is constitutionally bounded, and anything done without it is a nullity.

In *Grannis*, this Court held that a federal jurisdictional question raised for the first time in a petition for rehearing was fully reviewable: "This is sufficient to confer jurisdiction upon this Court...although raised for the first time on a petition for reargument." *Grannis v. Ordean*, 234 U.S. 385, 395 (1914). State probate regimes that trench on foreign relations are invalid. *See Zschernig v. Miller*, 389 U.S. 429 (1968) (holding state statutes conditioning inheritance rights of foreign heirs on reciprocity and non-confiscation impermissibly intrude into the field of foreign affairs, which the Constitution entrusts exclusively to the federal government). At minimum, comity requires respectful effect for authenticated foreign acts. *Hilton*, 159 U.S. at 163–64, 228.

Due process is satisfied when jurisdiction does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Here, Respondent: availed in México;

hired 18 attorneys; filed answers/defenses; testified; and is currently detained in a judicial proceeding pending adjudication. These actions exceed the constitutional minimum. Thus, Texas lacked power to impair the exercise of Petitioner's and Georgina's constitutional rights. As *Afroyim* holds:

> The Constitution grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power.

*Afroyim*, 387 U.S. at 257.

Finally, in *Steel Co.*, this Court reaffirmed what it called an "inflexible" rule: "The requirement that jurisdiction be established as a threshold matter...is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93–95 (1998) (citing *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). Therefore, Texas may not evade jurisdictional limits by "characterizing" a statutory merits inquiry as jurisdictional, nor may it reach the merits first simply because they are easier to decide or would produce the same outcome. *Id.*

If Congress cannot diminish a citizen's sovereign identity under U.S. Const. amends. I and XIV, neither Respondent nor Texas may nullify the exercise of that identity or the jurisdiction it invokes under México's Const. Pol. art. 1 protections of dignity and personal autonomy.

### C. Fraud Tolls Limitations, Nullifies Judgments, and Warrants Certiorari

*Hazel-Atlas* was codified in Rule 60(d)(3), stating "the court may relieve a party ... [for] fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." This authority is not subject to time limits.

"[U]nder certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry." *Hazel-Atlas*, 322 U.S. at 244. Respondent's argument that jurisdictional objections were "forfeited" is misguided. In fact, "tampering with the administration of justice... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect...the public." *Id.* at 246.

Fraud revives jurisdictional objections even where they otherwise might have lapsed, because: "Fraud vitiates the most solemn judgments and decrees." *United States v. Throckmorton*, 98 U.S. 61, 65 (1878). There, the Court held: 1) procedural deadlines do not apply to fraudulent judgments; 2) *res judicata* cannot attach to fraudulent orders; 3) jurisdiction cannot be conferred by fraud; and 4) courts may reopen judgments at any time. *Id.* Thus, Texas courts may not shield a fraudulently obtained judgment behind state-law deadlines that would otherwise embolden calculated probate piracy. Furthermore, fraud tolls any limitations bar until the fraud is discovered, and this doctrine "is read into every federal statute of limitation." *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946).

Even if Texas limitations applied, fraud cannot insulate a judgment from *certiorari*.

### D. Federal Questions Presented were Raised Below, and were Ever Present Due to the Nature of this Case

Petitioner uncovered extensive spoliation on appeal and repeatedly moved to correct it.[17] Texas courts were given notice, yet declined to act, leaving a knowingly defective record that entrenches the very fraud and injustice at issue.[18] *Certiorari* is proper even under the liberal standards governing *pro se* filings to correct a "miscarriage of justice... or great public concern" and abolish probate piracy. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *In re Daikin Miami Overseas, Inc.*, 868 F.2d 1201, 1207 (11th Cir. 1989).

Federal appellate courts routinely exercise discretion to consider newly raised legal issues when the issue is purely legal; no additional fact-finding is required; the matter raises constitutional questions; or refusing to consider the question would result in manifest injustice or affect the rights of the public. *Readco, Inc. v. Marine Midland Bank*, 81 F.3d 295, 302 (2d Cir. 1996) (pure legal issues may be heard to avoid injustice). *Patriot Portfolio v. Weinstein*, 164 F.3d 677, 685 (1st Cir. 1999) (courts may consider issues of "constitutional magnitude" raised for first time on appeal).

Here, Petitioner's pleadings, originally by counsel—however imperfect yet in good-faith—were entitled to

17. App. S, 110a; T, 112a; U, 116a.

18. App. Z, 152a (affidavit of Hans Herzl-Betz, J.D.)

the deference accorded to well-pleaded allegations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Petitioner raised the issue as to whether the appellate court's endorsement of Respondent's argument, as to the invalidity of the will, would establish—"a precarious precedent that a notarized Mexican Last Will, duly apostilled by the Mexican government, is devoid of legal validity under the [U.S. Const. art. VI, cl. 2] [Supremacy Clause], thus raising a substantial Federal Question concerning the recognition and enforcement of all foreign legal instruments in the United States."[19] To ensure that the appellate court understood the breadth of the federal issues, Petitioner stated, "This case of first impression is pivotal in emphasizing the necessity of preserving the integrity of cross-border judicial documentation, thereby ensure adherence to Constitutional rights, due process, and equitable legal proceedings."[20]

When a will is executed and adjudicated abroad, any ensuing dispute over its effect in the United States *necessarily* implicates federal constitutional questions. This was evident by the probate court's phrasing of the question: "So the question is, can the Mexican courts tell me, 'We have an order. You have to follow it. And you cannot use this will because it was revoked over there'? That's the question."[21]

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19. Pet'r's Mot. filed Mar. 4, 2024, at 13, No. 08-23-00072-CV (Tex. App.—El Paso).

20. *Id.* at 45.

21. Hearing Transcript at 31, No. 2016-CPR00081 (El Paso Cnty. Prob. Ct. No. 2, Tex. Nov. 9, 2022).

Therein, the judicial power of the United States "shall be vested in one Supreme Court" and "shall extend to all cases, in law and equity, arising under this Constitution ... treaties made ... to controversies ... between a state, or the citizens thereof, and foreign states, citizens or subjects." U.S. Const. art. III, §§ 1–2.

Given the totality of the circumstances, probate piracy cannot undermine constitutional authority or principles of fundamental fairness. Testamentary sovereignty, secured by U.S. Const. art. IV, § 1 and binding treaties, obligates the United States to honor and protect the property rights of dual citizen.

## CONCLUSION

*Certiorari* should be granted.

Respectfully submitted,

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