

**25-6777**

Case No. \_\_\_\_\_ (To be assigned)

**ORIGINAL**

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

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**FILED**

**DEC 01 2025**

**OFFICE OF THE CLERK  
SUPREME COURT, U.S.**

**Olda Rachel Guardiola, Petitioner.**

**v.**

**Maricela Rodriguez, Respondent.**

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**Petition for Writ of Certiorari**

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

**No. 25-0353 (Texas Supreme Court)**

**No. 05-24-01016-CV (Fifth Court of Appeals of Texas)**

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**Respectfully submitted,**



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## **QUESTIONS PRESENTED**

- 1. Whether the Fourteenth Amendment permits a state court—after its plenary jurisdiction has expired—to use a nunc pro tunc order to retroactively convert a dismissal for want of prosecution into a dismissal “with prejudice,” a substantive judicial change that Texas law forbids after jurisdiction ends.**
- 2. Whether attorney abandonment—established through disciplinary proceedings and occurring without withdrawal or notice—constitutes “cause” that cannot be attributed to the litigant under this Court’s precedent, including *Maples v. Thomas*, 565 U.S. 266 (2012).**
- 3. Whether due process permits a dispositive hearing to proceed during attorney abandonment, where counsel actively prevented the litigant from communicating with the court (App. 28) and no transcript exists to permit appellate review.**
- 4. Whether due process and meaningful appellate review are denied when a dispositive hearing proceeds with no court reporter because local policy requires litigants to privately hire and pay for one, resulting in the complete absence of a record for appeal.**
- 5. Whether executing an eviction judgment while a related appeal is pending violates the Fourteenth Amendment’s guarantees of due process and access to the courts.**

**PARTIES TO THE PROCEEDING**

**Petitioner is Olda Rachel Guardiola.**

**Respondent is Maricela Rodriguez.**

**No corporate party appears.**

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## Law Review Articles

- Michael Legg, *The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality*, 49 Fed. L. Rev. 161 (2021)..... 14
- Alicia Bannon, *Remote Court*, Nw. U. L. Rev. (2021)..... 14

## **OPINIONS BELOW**

The opinion of the Court of Appeals for the Fifth District of Texas at Dallas in No. 05-24-01016-CV, *Olda Rachel Guardiola v. Maricela Rodriguez*, was issued on March 11, 2025. The opinion is unpublished. The court's April 30, 2025 order dismissing appellant's motion for rehearing is also unpublished. These decisions are reproduced in Appendix A.

The order of the Supreme Court of Texas denying the petition for review in No. 25-0353 was entered on September 5, 2025. The order denying rehearing was entered on October 24, 2025. These orders are unpublished and are reproduced in Appendix B.

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## **JURISDICTION**

The Supreme Court of Texas denied review on September 5, 2025, and denied rehearing on October 24, 2025.

This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

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## **CONSTITUTIONAL PROVISIONS INVOLVED**

U.S. Const. amend. XIV, § 1.

Other relevant constitutional and statutory provisions are reproduced in the Appendix.

## I. Introduction

This petition arises from an **extraordinary collapse of procedural safeguards** across four interdependent state-court proceedings, each compounding the next and together extinguishing Petitioner's ability to obtain **any meaningful appellate review**.

The breakdown began in the title case, **DC-22-03780**, where the district court dismissed Petitioner's claims for want of prosecution **without hearing evidence** and expressly stated the matter was "**just dismissed**"—a dismissal **without prejudice** under Texas law. Months later—**after plenary jurisdiction had expired**—the court issued a **nunc pro tunc** order converting that dismissal into one **with prejudice**, adding new factual assertions never rendered in open court. This was **not a clerical correction**, but a **new judicial act entered without jurisdiction**, directly conflicting with *Escobar* and long-settled finality doctrine. Petitioner appealed.

While that appeal was pending, Petitioner sought a Temporary Restraining Order in **DC-24-17567** to prevent eviction based on the unresolved title dispute. During this critical period, **Petitioner's attorney abandoned her without withdrawal or notice**, leaving her unrepresented in reality while the court continued to treat him as counsel of record. **Email correspondence confirms counsel actively prevented Petitioner from communicating with the court**, instructing her not to submit evidence because it would "get him in trouble." (App.28) This left



Petitioner with **neither counsel nor the ability to protect herself**—the precise form of abandonment this Court recognized in *Maples v. Thomas*.

In this posture, the court held a **remote TRO-dissolution hearing on October 14, 2024**, under Dallas County's policy requiring litigants—not the court—to **privately hire and pay for court reporters** in remote and associate-judge proceedings. **No reporter was present. No recording exists.** The hearing that determined whether Petitioner could remain in her home is **permanently unreviewable**, violating the core requirement of *Griffin v. Illinois* that appellate review must be **real, not theoretical**.

The next morning, the court executed the eviction immediately (**Justice Court JE-24-01684-I**), even though the title appeal remained pending and the TRO application expressly warned that eviction would moot the very dispute under review. Petitioner filed a separate statutory eviction appeal (**05-24-01356-CV**), now set for submission on January 6, 2026.

The collapse continued. On **November 15, 2024**, Petitioner appeared for a scheduled hearing, only to be informed—**without notice**—that it had been canceled. Later that same day, the court issued a **Dismissal for Want of Prosecution**, despite:

1. **Petitioner's in-person appearance;**
2. **her pending motion to reconsider;**
3. **Respondents filed opposition; and**

4. **her notice of appeal filed that same day.**

The dismissal appeared only on the docket sheet and extinguished Petitioner's claims **without the process the Fourteenth Amendment requires.**

Taken together, these four proceedings reveal **not isolated error but a systemic breakdown:**

- **a judgment altered after jurisdiction expired;**
- **attorney abandonment during critical stages;**
- **a dispositive, unrecorded hearing foreclosing appellate review; and**
- **immediate execution of judgment mooting an active appeal.**

Each defect independently raises serious constitutional concerns. **Their convergence demonstrates how easily due-process protections can collapse** for pro se and low-income litigants—especially in remote-hearing systems and jurisdictions that shift the burden of creating a record onto the parties.

**This petition asks the Court to reaffirm that finality, representation, and meaningful appellate review are constitutional mandates—not conveniences subject to local policy or administrative practice.**

**The due-process stakes could not be higher.**

## II. Statement of the Case

This case arises from a property-title dispute the district court dismissed on October 3, 2023, **after hearing no evidence at all**. On the record, the judge stated the matter was **“just dismissed,”** which under Texas law denotes a dismissal **without prejudice**. (App. 4) The court made no merits findings that could support a dismissal with prejudice.

**Seven months later—long after plenary jurisdiction had expired—the court granted Respondent’s request for a nunc pro tunc order converting that dismissal into one “with prejudice.”** The transcript confirms the court never rendered such a ruling in October. The nunc pro tunc order also added new factual assertions—including **“second dismissal,” “day of trial,” and “notice and opportunity to be heard”**—that appear **nowhere** in the transcript and were never stated by the judge. (App. 3-4, 27) The nunc pro tunc therefore functioned as a **new judicial act**, not a clerical correction—precisely the category of post-jurisdiction action *Escobar* and *Casebolt* forbid. (App. 27)

During the same period, **Petitioner’s attorney abandoned her representation entirely**. He stopped communicating, failed to file appellate documents, and never perfected the Temporary Restraining Order (TRO) designed to preserve Petitioner’s possession of her home pending appeal. (App. 11-12) He did not withdraw. The court continued to treat him as counsel of record while Petitioner was, in reality, **unrepresented at every critical moment**. (App.18)

**Email correspondence confirms the collapse.** Counsel instructed Petitioner **not to contact the court herself**, warning her that she would “get him in trouble” if she attempted to submit evidence directly. In one email—sent as the case approached a dispositive hearing—counsel wrote: “**Dammit Rachel you can’t do that! I told you to let me handle it! The judge will be mad at me!**” (App. 28). These instructions prevented Petitioner from alerting the court to critical issues or safeguarding her rights when **counsel had already stopped acting altogether.**

Although counsel told Petitioner months earlier that he was no longer representing her, he continued to act as counsel of record and **instructed her not to communicate with the court**, leaving Petitioner unable to protect her rights in either capacity (App.G; K)

On October 14, 2024, the court held a dispositive remote hearing on Respondent’s request to dissolve the TRO. Dallas County policy requires litigants—not the court—to **privately hire and pay for their own court reporters** in associate-judge and remote proceedings. (App. 9)

**No reporter was present. No recording exists.**

The next day, after the TRO was dissolved, **law enforcement executed the eviction order**, removing Petitioner from her home of thirteen years. (App. 7) Petitioner learned of the ruling **only when officers arrived at her door.** She filed a pro se eviction appeal, which remains pending and is set for submission on January 6, 2026. (App. 15)

On November 15, 2024, the district court issued a **Dismissal for Want of Prosecution (DWOP)**:

- **without notice,**
- **without a hearing,**
- **and while Petitioner's motion to reconsider remained pending.**

(App. 22)

The DWOP appears only on the docket sheet. It was entered **the same day** **Petitioner filed her notice of appeal**, despite active filings and ongoing litigation. This unexplained dismissal extinguished Petitioner's claims **without the process the Fourteenth Amendment requires.**

The Texas Supreme Court denied review on September 5, 2025, leaving unresolved the federal questions presented here:

- **whether a court may retroactively alter a judgment after jurisdiction has expired,**
- **whether attorney abandonment extinguishes a litigant's rights, and**
- **whether recordless remote hearings caused by county cost-shifting policies are compatible with due process.**

Taken together, these events reveal a **cascading breakdown of procedural safeguards** at every critical stage—from dismissal, to representation, to hearing, to appeal. This case presents far more than isolated error; it exposes a **systemic**

**failure** that strikes at the heart of **due process and meaningful access to justice**.

### **III. Summary of the Argument**

This petition presents **five independent constitutional failures** that—individually and collectively—produced a complete collapse of the procedural protections the Fourteenth Amendment guarantees.

**First**, the trial court exceeded its jurisdiction by issuing a nunc pro tunc order **months after plenary power had expired**, retroactively converting a dismissal “without prejudice” into one “with prejudice.” This was not a clerical correction but a **new judicial act**, the precise type of post-jurisdiction alteration that *Escobar* and *Casebolt* forbid. A judgment’s meaning cannot shift after jurisdiction ends. (App.27)

**Second**, Petitioner was left unrepresented during critical stages because her attorney had **abandoned her without withdrawal, notice, or any protection of her rights**. His disciplinary history, cognitive decline, and contradictory communications—including instructing her not to speak to the court (“**Dammit Rachel...**”)—demonstrate that representation had **completely collapsed**. Under *Maples v. Thomas*, such abandonment is an external force that cannot be attributed to the litigant and cannot serve as the basis for forfeiting fundamental rights. (App. 17, 18, 28)

**Third**, due process was violated when a dispositive hearing proceeded **during the period of abandonment**, at a time when counsel had instructed Petitioner not to communicate with the court and had ceased acting entirely. Petitioner was therefore **barred from participating in her own hearing**, denied the ability to present evidence, and prevented from safeguarding her interests. This is a stand-alone constitutional violation: a hearing at which a litigant is neither represented nor permitted to speak cannot satisfy the Fourteenth Amendment. (App.28)

**Fourth**, the same hearing proceeded **without any court-provided recording mechanism**, because Dallas County requires litigants—not the court—to privately hire and pay for their own court reporters in remote and associate-judge proceedings. **No transcript exists**, and appellate review has been structurally foreclosed. This conflicts directly with *Griffin v. Illinois*, which forbids conditioning appellate access on a litigant's wealth or ability to privately create a record. (App. 9)

**Fifth**, the court executed the eviction judgment **while a related appeal was pending**, mooting the very dispute under appellate review and depriving Petitioner of meaningful access to the courts. This Court has repeatedly held that states may not take actions that nullify a litigant's right to appeal before that right can be exercised. (App.11-12, 7)

Each of these defects presents a substantial federal question. But it is their **combined operation**—a judgment altered after jurisdiction expired, an abandoned litigant affirmatively silenced by her own attorney, a recordless hearing

eliminating any possibility of review, and an eviction executed during an active appeal—that produced a **total breakdown of due process**. The hearing that removed Petitioner from her home is **forever unreviewable**.

This petition provides a clean vehicle for resolving these important constitutional questions and reaffirming that **finality, representation, and meaningful appellate review are constitutional mandates—not conveniences of local practice**. The convergence of these failures underscores the profound national stakes for due process and access to justice.

The Fourteenth Amendment does not tolerate a system where final judgments shift after jurisdiction ends, **where abandoned litigants are prevented from speaking**, where appellate rights depend on the size of a wallet, or where eviction moots an appeal before it can be heard. **This Court's review is urgently needed.**



## Reasons for Granting the Writ

### A. Persistent Conflict on the Constitutional Limits of Nunc Pro Tunc Authority

The first question presented exposes a deep, entrenched, and **nationally recurring conflict** over the constitutional **limits of nunc pro tunc authority**. Courts across the country disagree on whether a judge may alter the substantive effect of a **final judgment after jurisdiction has expired**—producing irreconcilable outcomes on a question that strikes at the heart of finality, due process, and appellate integrity.

Many jurisdictions—including Texas—apply the strict rule: **once plenary jurisdiction ends**, a court may correct only clerical mistakes and **may never alter the substance of a judgment**. See *Anderson v. Casebolt*, 493 S.W.2d 509 (Tex. 1973); *In re Daredia*, 317 S.W.3d 247 (Tex. 2010); *Ex parte Wilson*, 716 S.W.2d 953 (Tex. Crim. App. 1986). Under this doctrine, nunc pro tunc authority exists solely to make the written **judgment reflect what was actually rendered**—not to retroactively create a new judgment. See also *In re Marriage of Russell*, 556 S.W.3d 451, 457–58 (Tex. 2018) (**once plenary power expires, the trial court “loses authority to issue any order that alters the substantive rights of the parties”**).

Texas courts further underscore this limit. In *Holt v. D’Hanis State Bank*, the court held that a nunc pro tunc may not **“add findings that were not actually**

**made** nor **“supply omissions or correct judicial reasoning after plenary jurisdiction has expired.”** 993 S.W.2d 237, 240–41 (Tex. App.—San Antonio 1999, no pet.). Holt squarely prohibits the very type of post-hoc insertions at issue here.

Other courts adopt a far more permissive rule, authorizing substantive changes after jurisdiction has expired so long as the court labels them **“clerical,” “clarifications,” or “corrections.”** See *People v. Quintana*, 707 P.2d 355 (Colo. 1985); *Commonwealth v. Borrin*, 12 A.3d 466 (Pa. Super. Ct. 2011), *aff’d*, 80 A.3d 1219 (Pa. 2013).

And still other courts—such as the Oklahoma Court of Criminal Appeals—have issued categorical warnings that **a nunc pro tunc cannot be used to alter judicial reasoning or add findings never made.** See *Stephens v. State*, 285 P.2d 467, 472 (Okla. Crim. App. 1955) (“A nunc pro tunc order **may not be used to supply judicial action that never in fact occurred.**”).

This divergence creates a clear and acknowledged **split**:

- Some jurisdictions prohibit any substantive revision after jurisdiction ends.
- Others permit revisions simply by calling them “clerical.”
- Still others, like *Stephens*, expressly condemn the practice as **unconstitutional.**

Under Rule 10(a) and Rule 10(c), **this conflict warrants this Court’s intervention.**

Here, the transcript **eliminates any doubt** about what the trial court actually rendered. At the October 3, 2023 hearing, the judge stated he “**heard no evidence because the Plaintiff hasn’t appeared.**” (App. 4.) After briefly using the phrase “with prejudice,” he immediately corrected himself and instructed counsel: “**This order doesn’t do what I want it to do... prepare a form of order reflecting the Plaintiff has not appeared and that it is dismissed.**” (App. 4.) Under Texas law, a DWOP entered without evidence is, by rule, **without prejudice.**

The subsequent nunc pro tunc order added judicial findings never made on the record. The transcript contains none of the assertions later inserted into the order—“**second dismissal,**” “**day of trial,**” “**notice and opportunity to be heard.**” (App. 27, 3–4.) **None** were stated in **open court**; **none** were rendered; **none** existed. These additions were drafted by opposing counsel and adopted months after jurisdiction expired—**creating a new judicial ruling, not correcting a clerical error.**

Seven months after losing jurisdiction, **the court reversed itself** and converted a non-merits DWOP into a dismissal **with prejudice**—an act it had **no authority to perform.** The change **contradicted the judge’s own statements,** imposed new legal consequences, and extinguished Petitioner’s right to refile. Under Casebolt, Daredia, Russell, Wilson, and Stephens, such a **post-jurisdiction alteration is void, not voidable.**

This conflict now affects the **stability of final judgments nationwide**. It implicates the boundary between **clerical and judicial authority, the legitimacy of post-hoc alterations, and the constitutional protections that prevent retroactive rewriting of dispositive rulings after jurisdiction has lapsed**. As courts rely increasingly on electronic dockets and remote proceedings, the risks of unnoticed or silent post-jurisdiction “corrections” will only intensify.

Without this Court’s guidance, the meaning of a “**final judgment**” will continue to vary by jurisdiction, undermining uniformity, destabilizing finality, and eroding the due-process guarantees **the Fourteenth Amendment promises**.

#### **B. Nationwide Consequences of Recordless Remote Hearings and Cost-Shifting Policies**

The October 14, 2024 remote hearing dissolving the Temporary Restraining Order exposes a rapidly escalating constitutional crisis: **across the nation, state courts now conduct dispositive virtual proceedings with no official mechanism to create a record**. Dallas County exemplifies this modern failure. Its policy requires litigants—not the court—to **privately hire and pay for court reporters** in associate-judge and remote hearings. (App. 9.) Because Petitioner’s counsel—already abandoning her—did not secure one, **no transcript exists** of the hearing that immediately triggered her eviction.

This Court has long held that **access to appellate review cannot depend on a litigant's wealth**. *Griffin v. Illinois*, 351 U.S. 12 (1956). Yet that is precisely the system Dallas County has created: **only those who can afford to buy a transcript can obtain appellate review at all**. For everyone else, review is impossible.

A dispositive hearing conducted with **no recording mechanism** does not merely inconvenience appeal—it **obliterates it**. The absence of a record is a structural, not technical, defect. No appellate court can meaningfully review a ruling when there is **no record of what occurred, no record of what evidence was offered, and no record of why the court acted**.

The problem is **nationwide and accelerating**. As remote adjudication expands, scholars warn that unrecorded virtual hearings magnify due-process risks and render appellate safeguards “illusory,” particularly for pro se and low-income litigants. See Michael Legg, *Maintaining Open Justice and Procedural Fairness in Online Hearings*, 49 Fed. L. Rev. 161, 164–72 (2021); Alicia Bannon, *Remote Court*, Nw. U. L. Rev. (2021).

Federal courts likewise recognize that meaningful appellate review requires procedures that account for modern remote practice. See *Mays v. Hickenlooper*, 994 F.3d 1182, 1192–94 (10th Cir. 2021). And this Court has underscored the constitutional importance of **transparency and public accountability** in judicial proceedings. *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010).

Here, the **total absence of a record** ensures that no appellate court can ever know what arguments were made, what objections were raised, what evidence was presented, or how the court justified authorizing **immediate eviction** while appeals were pending. Because Dallas County shifts the burden of record-making onto litigants, the hearing determining possession of a home was rendered **entirely unreviewable**.

As jurisdictions increasingly transfer the responsibility of creating a record onto litigants, fundamental constitutional protections—**meaningful appellate review, equal access to justice, and the integrity of judicial proceedings**—now turn on wealth, geography, and administrative convenience.

**That is not due process.**

It is a system in which constitutional rights exist **only for those who can afford to purchase them**. When a litigant's ability to create a record depends on the size of her wallet, the stakes for due process and access to justice could not be higher—and the Constitution cannot permit it.

### **C. Attorney Abandonment and the Denial of Meaningful Appellate Review**

**Attorney abandonment is established as a matter of law.** Prior counsel ceased all communication, failed to file required appellate documents, and never perfected the TRO intended to preserve Petitioner's possession pending appeal. (App. 11–12.)

He did not withdraw, leaving Petitioner outwardly “represented” while, in reality, **she had no functioning advocate at all.** After Petitioner filed a grievance, the State Bar of Texas revoked his license—confirming he was no longer authorized to practice. The Bar expressly stated that dismissal for lack of jurisdiction “does not mean your grievance was without merit.” (App. 17.)

Email correspondence confirms that counsel not only abandoned Petitioner but **affirmatively prevented her from protecting herself.** In one message, counsel instructed her: “Dammit Rachel you can’t do that! I told you to let me handle it! The judge will be mad at me!” (App. 28.) Counsel **silenced her from submitting evidence or notifying the court of critical matters and then took no action whatsoever,** leaving her unrepresented in substance during the most consequential stages of the litigation.

Under this Court’s precedent, these facts constitute **abandonment—not negligence.** In *Maples v. Thomas*, 565 U.S. 266, 281–83 (2012), this Court held that abandonment **severs** the attorney–client agency relationship entirely. Once counsel has effectively disappeared, the client “cannot be charged with the acts or omissions of her attorney.”

Petitioner did not knowingly relinquish the right to representation. A valid waiver requires an “intentional relinquishment of a known right.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Here, representation ended through **misconduct, cognitive**

**decline, and disciplinary revocation**—not through any informed choice by Petitioner. (App. 18.) The result was a **total collapse of the adversarial process**.

The consequences were immediate and devastating. **While unrepresented:**

- **The trial court entered a post-jurisdiction nunc pro tunc** that changed the legal effect of the judgment.
- **Petitioner was forced into an unrecorded** remote TRO-dissolution **hearing**, leaving her unable to participate meaningfully or preserve a record.
- **The court authorized immediate eviction** the same day, and because Dallas County provides no court reporter for such hearings (App. 9), no transcript exists of the proceeding that removed her from her home. (App. 7.) The order is therefore unreviewable.

This sequence violated the most basic due-process guarantees. This Court has long held that appellate review must be real, **not theoretical**. *Evitts v. Lucey*, 469 U.S. 387, 394–400 (1985). And where the absence of a record makes review impossible, the right to appeal becomes a “**meaningless ritual**.” *Griffin v. Illinois*, 351 U.S. 12, 18 (1956).

The constitutional injury deepened when the eviction was executed **while a related appeal was actively pending**, mooted the very dispute under review and extinguishing Petitioner’s ability to obtain meaningful relief. The combination of abandonment, inability to be heard, and immediate enforcement during an active



appeal presents the precise type of **self-executing prejudice** this Court has condemned as incompatible with due process.

The stakes extend far beyond this case. The question presented—**whether due process permits a dispositive hearing to proceed during attorney abandonment and without any mechanism to secure appellate review**—is both recurring and nationally significant. As remote hearings expand, cost-shifting policies proliferate, and counties vary in their recording requirements, abandoned litigants increasingly face the same **structural barriers** Petitioner encountered here.

Without this Court's intervention, the right to meaningful appellate review will continue to depend on a litigant's wealth, access to technology, and the happenstance of counsel's health or collapse, rather than on **constitutional guarantees**. When abandonment is unremedied and appellate review rendered impossible, the stakes for procedural fairness and access to justice could not be more profound.

#### **D. Execution of Judgment During Pending Appeals Inflicted Irreversible Harm and Nullified Appellate Jurisdiction**

The eviction was executed **the day after an unrecorded hearing—while an appeal was actively pending**. (App. 7, 11–13.) The trial court dissolved the TRO

in a **remote proceeding with no recording mechanism** and authorized eviction **the next morning.** (App. 7.) Once the eviction occurred, **possession of the home was permanently lost**, and the pending appeal was deprived of any practical effect. The appellate court was left with a dispute it **could not meaningfully resolve.**

This Court has made clear that the purpose of a stay is to prevent outcomes that are **“irreversible,” risk “mooting the appeal,” or render appellate review “ineffective.”** *Nken v. Holder*, 556 U.S. 418, 427–28 (2009). That is exactly what happened here. **Eviction is uniquely irreversible:** possession of a home cannot be restored retroactively. Once law enforcement removed Petitioner and transferred control of the property, the appellate court’s ability to grant meaningful relief was **severely curtailed—if not extinguished entirely.** This is the quintessential form of **self-executing prejudice** that due process forbids.

The events of November 15, 2024 compounded this constitutional harm. Petitioner **personally appeared** for a scheduled hearing, only to be told—**without notice or explanation**—that it had been canceled. (App. 22.) She was denied **any opportunity to be heard.** Later that same day, the court entered a **Dismissal for Want of Prosecution**, despite:

- a pending motion to reconsider,
- Respondent’s filed opposition, and
- Petitioner’s timely notice of appeal, filed only because she discovered prior counsel

had failed to perfect the appeal and had abandoned her without notice.

(App. 22.)

A hearing canceled without notice, followed by a DWOP despite Petitioner's appearance and active filings, is a **textbook due-process violation**. It punishes a litigant for failing to prosecute a case she was **physically present** to prosecute.

This sequence is not merely irregular—it is **constitutionally indefensible**. An **unrecorded hearing, followed by immediate execution, followed by a case-terminating dismissal without notice**, presents a direct threat to the integrity of appellate review. **When a trial court executes judgment in a manner that moots a pending appeal, the appellate process collapses and the guarantees of the Fourteenth Amendment lose all practical meaning.**

Where judgment is executed in a way that prevents appellate review from ever occurring, the stakes for **due process and access to justice** could not be higher. **The Constitution does not permit rights to evaporate through silence, procedural acceleration, or the happenstance of a single unrecorded hearing.** This Court's intervention is essential.

#### **E. National Importance and Rule 10**

The questions presented raise issues of **exceptional national importance** and fall squarely within **Rule 10(a)** and **Rule 10(c)**. They expose **structural failures**

that recur across jurisdictions and threaten the **uniformity of constitutional protections** in modern state-court practice.

**1. Access-to-justice breakdown caused by unrecorded remote hearings.**

Across the nation, state courts require litigants—not the court—to **privately hire and pay for court reporters** in remote and associate-judge proceedings. Those unable to afford this cost—especially pro se and low-income litigants—are left with **no transcript** and therefore **no meaningful appellate review**, in direct conflict with *Griffin v. Illinois*, 351 U.S. 12 (1956). The dispositive hearing here proceeded with **no recording mechanism**, rendering the eviction order **entirely unreviewable**.

**2. Systemic failures: abandonment, no record, and immediate enforcement.**

Petitioner's case exemplifies a **national pattern**: attorney abandonment, unrecorded dispositive hearings, and **immediate enforcement** that extinguishes appellate rights before review can occur. Under *Maples v. Thomas*, 565 U.S. 266 (2012), abandonment **severs the agency relationship**, and the harms cannot be attributed to the litigant. Under *Evitts v. Lucey*, 469 U.S. 387 (1985), appellate review must be **meaningful, not theoretical**. Yet here, the combination of abandonment and the absence of a record made review **impossible, not merely difficult**.

**3. Fragmented modern procedures undermine uniform constitutional protection.**

As remote hearings expand and counties shift the burden of **creating a record** onto litigants, access to appellate review now depends on **wealth, geography, and local administrative practices**, rather than on the Fourteenth Amendment. This Court warned in *Reid v. Covert* that constitutional rights cannot hinge on “**local procedures**.” The disparities in remote-hearing recording rules raise exactly the type of **non-uniform constitutional risks** that Rule 10 was designed to address.

#### **4. Scholarly commentary confirms the national stakes.**

Researchers have warned that inconsistent recording practices and remote-hearing systems **widen disparities in access to justice and erode procedural fairness**. See Michael Legg, *Maintaining Open Justice and Procedural Fairness in Online Hearings*, 49 Fed. L. Rev. 161 (2021); Alicia Bannon, *Remote Court*, Nw. U. L. Rev. (2021). The scholarship echoes the experience here: **without a guaranteed record, due-process protections evaporate**.

**What is at stake is the uniformity of due-process guarantees in the modern judiciary.**

Without this Court’s intervention, constitutional protections will continue to vary across counties, courtrooms, and resource levels—an **outcome the Fourteenth Amendment does not tolerate**. This case provides the Court with a timely opportunity to restore uniformity, reinforce the requirements of **meaningful appellate review**, and ensure that constitutional rights do not turn on a litigant’s wallet, zip code, or access to technology.

## F. This Case Is an Ideal Vehicle

This case presents an **exceptionally clean vehicle** for resolving the federal questions presented. The operative facts are **undisputed**, and the jurisdictional defect is evident on the face of the nunc pro tunc order, which converted a dismissal into one “with prejudice” **months after plenary power expired**. No further factual development is required to determine that this post-jurisdiction alteration violated **bedrock principles of finality and due process**.

The due-process violations arising from the **unrecorded October 14, 2024 hearing** are equally straightforward. The absence of a transcript is directly attributable to Dallas County’s official policy requiring litigants—not the court—to **privately secure and pay for court reporters** in remote and associate-judge hearings. (App. 9.) The court provided **no recording mechanism**, and the dispositive hearing dissolving the TRO—**immediately preceding eviction**—occurred with no means to preserve a record. The constitutional question is therefore **structural, not fact-dependent**.

Attorney abandonment is also established **as a matter of law**. Prior counsel ceased communication, failed to file required documents, and never perfected the TRO intended to preserve Petitioner’s possession pending appeal. Shortly thereafter, the State Bar of Texas revoked his license, confirming Petitioner had **no functioning representation** during critical stages. (App. 17, 18.) Under *Maples v. Thomas*, 565 U.S. 266 (2012), such abandonment **severs the agency relationship entirely**,

and its consequences cannot be attributed to the client. Petitioner never knowingly waived counsel; she was left unrepresented through **misconduct, cognitive decline, and disciplinary revocation**, not by choice.

**These harms are ongoing.** The altered judgment continues to carry legal effect; Petitioner's separate appeal remains active; and the eviction—executed the same day as the unrecorded hearing—**cannot be reviewed without a transcript**. The case is therefore **not moot**, and each constitutional question arises on a **fully preserved and uncontested record**.

No alternative grounds obscure the issues. The Texas Supreme Court issued an **unexplained denial**. No independent state-law ground supports the judgment. Every federal question flows directly from the court's own actions:

- **the nunc pro tunc order entered after jurisdiction expired,**
- **the recordless hearing,**
- **attorney abandonment, and**
- **the execution of judgment during active appellate proceedings.**

This petition presents **an uncontested record, no procedural obstacles, and questions of immediate and recurring national importance**. It is precisely the type of case **Rule 10** contemplates for this Court's review. Only this Court can restore **uniform constitutional standards** amid divergent and rapidly evolving state practices.

The broader consequences underscore why this is an **ideal vehicle**. As remote hearings expand, as counties shift the burden of record-making onto litigants, and as attorney abandonment becomes more common in high-volume dockets, pro se and indigent litigants nationwide face **structural barriers** that erode finality, fairness, and meaningful appellate review. Without this Court's guidance, constitutional protections will continue to vary by county line, funding level, and access to technology—an **outcome the Fourteenth Amendment does not tolerate**.

Because the issues are **cleanly preserved**, the record **undisputed**, the constitutional harms **ongoing**, and the questions presented carry **profound national significance**, this case is an **ideal and urgent vehicle** for Supreme Court review. There are **no unresolved fact questions**, **no alternative state grounds**, and **no mootness concerns**. All federal issues are **squarely presented and fully preserved**.

The clarity of these constitutional breakdowns underscores the **extraordinary stakes** for due process and access to justice—making this **precisely** the kind of case the Court's **certiorari jurisdiction exists to correct**.

## **Conclusion**

This case presents an **extraordinary convergence of constitutional failures**:



- (1) a final judgment **altered after jurisdiction expired**;
  - (2) **attorney abandonment** during the most critical stages of the litigation;
  - (3) a **dispositive, unrecorded hearing** where no transcript could ever be created;
- and
- (4) the **execution of an eviction judgment while an appeal was still active**.

Appendix J confirms that the nunc pro tunc order inserted **judicial findings the trial court never made**, demonstrating a complete collapse of the safeguards that protect **finality, jurisdictional limits, and meaningful appellate review**.

Each defect **independently violates due process**. Together, they expose a **structural breakdown** that no appellate system—state or federal—can withstand.

These failures are **not isolated** and **not unique** to this case. They recur nationwide as remote hearings expand, counties shift record-making costs onto litigants, and abandoned parties face dispositive proceedings **without counsel and without any means to create a record**. The resulting system makes fundamental rights turn on **geography, technology, and financial means**—precisely what the Fourteenth Amendment forbids.

Petitioner was left **without representation** during the most consequential stages—indeed, counsel's own emails instructed her **to remain silent** while he failed to act at all. (App. 28.) This is attorney abandonment **in its purest form**, and its constitutional consequences cannot be attributed to Petitioner.

The questions presented strike at the **foundations of finality, notice, appellate access, and the minimum procedural safeguards** that ensure appellate review is more than a formality. They reveal **deep conflicts among state and federal courts**, uneven constitutional protections, and widening disparities for pro se and low-income litigants. **Only this Court** can restore uniformity, enforce jurisdictional boundaries, and ensure that constitutional rights do not depend on **local funding choices, remote-hearing logistics, or the happenstance of an attorney's collapse.**

Because the violations are **clear**, the record **undisputed**, the harms **ongoing**, and the national stakes **profound**, the petition for a **writ of certiorari should be granted.**

If left unreviewed, the meaning of a **"final judgment," the right to a record, and the protection from attorney abandonment** will continue to vary by county policy, administrative convenience, or a lawyer's health. **Due process cannot survive on such uncertainty.** Only this Court can restore **uniform constitutional protections** and ensure that the guarantees of the Fourteenth Amendment remain **real for every litigant**, regardless of wealth, geography, or representation.

At its core, this petition asks the Court to reaffirm a simple but essential promise: **due process and access to justice are not optional.** They are the constitutional

guarantees upon which the **rule of law** depends. The stakes—for litigants nationwide—**could not be greater.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Olda', is written over a horizontal line.

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