25A1022

No.

IN THE SUPREME COURT OF THE UNITED STATES

SCOTT EDWARD PALMER,
Petitioner,

vs.

ERIC GUERRERO,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

APPLICATION TO JUSTICE ALITO FOR EMERGENCY INJUNCTIVE RELEASE PENDING APPEAL

SCOTT EDWARD PALMER
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Gatesville, TX 76597

APPLICATION TO
JUSTICE ALITO FOR EMERGENCY INJUNCTIVE
RELEASE PENDING APPEAL

Relief Sought.

Applicant applies to Justice Alito, the Honorable Circuit Justice, pursuant to Rule 22 of the United States Supreme Court Rules for: an order granting applicant's release pending appeal, without security, and with reasonable supervision within 15 days of this Court's commandment.

Relevant Facts Regarding Mr. Palmer.

Mr. Palmer was born a citizen of the United States. He is 69 years-old. Prior to his incarceration in December 2018, he resided in Collin County, Texas. He owned and operated two successful business' for 15 years.

Respondent has custody of Mr. Palmer pursuant to a single judgment and sentence imposed by the 351st District Court of Harris County, Texas. Sentence was imposed at 40 years imprisonment for Theft by Check.

I.

Relevant Facts Necessitating Emergency Review.

Absent the constitutional violation, Mr. Palmer would have been released to his nondiscretionary mandatory supervision on

December 15, 2024. More specifically, the Texas Board of Pardons and Paroles failed to comply with the guarantees of due process in the unlawful recession of his good time credits governing his supervised release. (Cert. at 5 - 6). To avoid repetition and for the sake of brevity, Palmer will refer to his petition for certiorari where a more detailed argument exists for the issues.

II.

Procedural History of Injunctive Relief Below Being Appealed.

Mr. Palmer's amended emergency motion for injunctive relief was submitted to the district court on March 31, 2025. Exhibit 1. This was denied claiming: (1) no violation of due process existed as Palmer was on "inquiry" notice of state law. (Cert. at 18 - 19). (2) Failure to exhaust state court remedies. (Id. at 22 - 23). (3) time barred. (Id. at 24 - 30 and 30 - 34). A timely appeal ensued.

Palmer asserts that his substantively meritorious arguments he presents indisputably warrant relief. The puzzling legal theories lauded by the district court are unequivocally debunked by controlling Texas law jurisprudence and this Court's precedents. He does not blithely make that assertion to this Court.

Respondent (Ms. Hanna) by comparison has merely parroted the district court's theories. She has further inexplicably been limited to one substantive pleading. (Cert. at 28 - 30).

Palmer's Amd. Emerg. Inj. [1] was submitted to the Fifth Circuit on August 20, 2025. Exhibit 2. Correspondence dated August 13th indicated that the Amd. Emerg. Inj. was being recharacterized as a motion for bail and required a certificate of appealability ("COA"). An objection was submitted. Exhibit 3. Mr. Palmer's objection was denied. Exhibit 4. The denial by the Court was a constructive denial of emergency relief. A subsequent order was issued dismissing for want of prosecution for failure to comply with the (erroneous) COA requirements. Exhibit 5.

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[1] The caption of Mr. Palmer's pleading mailed to the Fifth Circuit was titled and specifically formatted as follows:

SCOTT PALMER'S AMENDED EMERGENCY MOTION FOR MANDATORY INJUNCTION RELEASE PENDING APPEAL

Copies purchased from the Fifth Circuit read:

RELEASE PENDING APPEAL

Exhibit 2. By comparison, Palmer's initial emergency motion for injunctive relief submitted on August 4, 2025 was captioned as:

SCOTT PALMER'S EMERGENCY MOTION FOR MANDATORY INJUNCTION RELEASE PENDING APPEAL

It does not take heroic forensic effort to discern that the 1st page of Exhibit 2, in contrast to the subsequent pages has been altered. This Court after further reading of the facts may draw its own conclusions, if any, as to why. However, it would strain reason and defy common sense to suggest that a Clerk on their own volition elected to forge the document.

III.

ARGUMENT FOR ALLOWANCE OF WRIT

I. THE ILLEGAL IMPRISONMENT OF MR. PALMER VIOLATES HIS RIGHT TO SUBSTANTIVE DUE PROCESS BECAUSE HIS RELEASE IS NOT REASONABLY LIKELY IN THE FORESEEABLE FUTURE.

A. The extraordinary reliance by the Court of Appeals on misstatements of law and fact is such an extreme departure from accepted judicial proceedings as to warrant this Court's extraordinary intervention.

1. Standard of Review for Issuance of Writ.

First and foremost, in aid of this Court's jurisdiction Mr. Palmer has submitted his petition for writ of certiorari simultaneously with this application. It is respectfully urged that this Court grant the petition.

Mr. Palmer seeks an injunction against respondent as to his illegal imprisonment pending appeal. "The All Writs Act, 28 U.S.C. 1651(a), is the only source of this Court's authority to issue [such] an injunction." And this Court's Rule require, "that such power is to be used sparingly." Turner Broadcasting System, Inc. v. FCC, 507 U.S. 1301, 1303 (1993)(citation omitted). This Court has explained that "[i]t is only appropriately exercised where (1) 'necessary or appropriate in aid of [or] jurisdictio[n] ... and (2) the legal rights at issue are 'indisputably clear[.]'"

Wis. Right to life, Inc. v. FEC, 542 U.S. 1305, 1306 (2004)(citation omitted). Palmer submits that extraordinary facts and precedent outlined below satisfy this stringent standard.

2. **Sufficiency of Palmer's Emergency Injunctive Motion Below.**

This Court in Harbison v. bell, 556 U.S. 180, 183 (2009) explained that Section 2253(c)(1)(A) only applies to final orders that "dispose of the merits" of a habeas challenge. The Fifth Circuit has held as such. See Topletz v. Skinner, 7 F.4th 284, 293 n. 10 (5th Cir. 2021)(denial of injunctive relief is not "the final order in a habeas corpus proceeding" and "no [COA] is required." (citing 28 U.S.C. § 2253(c)(1)(A) other citation omitted). Yet, here, the Fifth Circuit was adamant that Palmer was required to apply for a COA for his sought after injunction. Exhibits 4 and 5.

Additionally, and fatal to the Fifth Circuit's untenable position is that Palmer's Amd. Emerg. Inj. cited and relied on: (1) Federal Rule of Appellate Procedure 8(a)(2)(A). Ex. 2 at pg. 1. (2) Topletz, 7 F.4th at 293 and Justin Indus., Inc. v. Choctaw, 920 F.2d 262, 268 n. 7 (5th Cir. 1990) for injunctive relief. Id. at pg. 4.

The correspondence from the Fifth Circuit also complained: "your motion doesn't not [sic] state why this is in [sic]

emergency and does not specific [sic] what you are attempting to enjoin." Exhibit 6. This is a serious misstatement of the record. Palmer's Amd. Emerg. Inj. explicitly stated that the basis of his emergency relief was his illegal imprisonment. Exhibit 2 at pg. 2. Similarly, the motion coherently specified that he sought to enjoin the respondent from further illegal imprisonment. Id. and at pg. 27.

Palmer was mistakenly criticized for not complying with 5th Cir. R. 27.3 and 27.3.1. Exhibit 6. Compliance was met for Rule 27.3 in a document "EMERGENCY MOTION FOR MANDATORY INJUNCTION." Family when calling to pay for various copies requested that document and presumed that the fee paid covered it. That document, among others, was never sent. Ironically, Rule 27.3.1 pertains to "Emergency Stays of Deportation." Mr. Palmer was born a citizen of the United States and is not facing deportation.

Viewed against the above backdrop, the Court of Appeals desire to launder Palmer's Amd. Emerg. Inj. as a motion for bail, did not sustain their burden to disprove that Palmer's well pled claims were not "the proper construction of governing law." Kamen v. Kemper Fin. Servs., 500 U.S. 90, 99 (1991).

3. Castro and NASA Contradicts the Fifth Circuit's Reasoning.

The Fifth Circuit's decision in this case elides an important distinction between construing a court filing and

recharacterizing it. See Castro v. United States, 540 U.S. 375, 386 (2003)(Scalia, J., concurring in part and concurring in judgment)(discussing this distinction). Recharacterization occurs when a court treats an unambiguous filing as something it is not. That practice is an unusual one, and should be used, if at all, with caution. Id. at 385-86. Courts should not approach recharacterization with a freewheeling attitude, but with "regard to the exceptional nature of recharacterization within an adversarial system." Id. Recharactererization has, for example, been used "deliberately to override the pro se litigant's choice of procedural vehicle." Id. at 386. (disapproving of the practice). Such is the case here. But it is not the role of courts to "create a 'better correspondence' between the substance of a claim and its underlying procedural basis." id.

Furthermore, the Fifth Circuit's decision undermines the balance inherent in our adversarial judicial system. See NASA v. Nelson, 562 U.S. 134, 137 n. 10 (2011)(Alito, J.)("The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.")(quoting Carducci v. Regan, 714 F.2d 171, 177, 230 U.S. App. D.C. 80 (D.C. Cir. 1983)(Scalia, J.).

How, then, does the Fifth Circuit justify posing as a roving

advocate for Mr. Palmer? Since emergency injunctive relief was the "issue," arguments over its merits ought to have been on the table exclusively. Review should have been made on Palmer's claims actually made, not the ones the Fifth Circuit prefer he had made. Given the totality of the facts outlined in the preceding pages it may be thought that a predetermined outcome is not reasonably debatable.

The facts and applicable law presented above provided a straightforward procedure that was to be followed. The Fifth Circuit has clearly abused its discretion by exceeding the bounds set by relevant statutes and binding precedent. Under the unique circumstances present here, this Court's supervisory power is warranted. See Hollingsworth v. Perry, 558 U.S. 183, 196 (2010) (per curiam).

B. Because Mr. Palmer's illegal imprisonment deprives him of a fundamental liberty interest, it is subject to heightened due process scrunity.

At issue here is the quintessential liberty interest: freedom from confinement. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary government action." Foucha v. Louisiana, 504 U.S. 71, 80 (1992). The infringement of Mr. Palmer's liberty interest must fall unless it is narrowly tailored to

serve a compelling governmental interest. Reno v. Flores, 507 U.S. 292, 302 (1993).

As previously explained, Respondent has not been required to independently address Mr. Palmer's claims without piggybacking on the heels of the district court. Because Palmer has exceeded his mandatory discharge date in excess of 434 days, Ex parte Rivers, 663 S.W. 3d 683, 687 (Tex. Crim. App. 2022), his incarceration is particularly egregious. See Reno, 507 U.S. at 301 - 02.

Therefore, Palmer's continued illegal imprisonment has become excessive to its purpose, and violates his due process right to be free from arbitrary physical restraint. See Jones v. United States, 463 U.S. 354, 361 (1983)(explaining that "a State must have 'a constitutionally adequate [justification] for the confinement.'")(citation omitted). Respondent's justification is?

Furthermore, Mr. Palmer's illegal imprisonment deprives him of income earning, to maintain a meaningful relationship with his fiance and daughters, lack of privacy, and, most fundamentally, the lack of freedom of movement.

That Palmer is convicted and incarcerated for Theft by Check, neither undercuts the fundamental nature of his liberty interest, nor relegates his right to be free from bodily restraint. See Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974)

("There is no iron curtain drawn between the Constitution and the prisons of this country.").

C. Whether the irreparable harm, inadequate remedy factors combined with the balance of equities and public interest tip overwhelmingly in favor of Mr. Palmer.

To be granted injunctive relief, Mr. Palmer "must establish" four factors. See Winter v. Nat. Res. Def Council, Inc., 555 U.S. 7, 20 (2008). In addition, in the context of this proceeding Palmer must also establish that "the legal rights at issue are indisputably clear." Wis. Right to Life, 542 U.S. at 1306.

As to the first factor, Palmer argues that he has fully sustained his burden that he is "likely to succeed on the merits" and that "the legal rights at issue are indisputably clear." (Cert. at pp. 10 - 34).

1. Irreparable Harm/Inadequate Remedy at Law.

In addressing the second factor, Palmer acknowledges this Court's admonishment that "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs against a claim of irreparable har." Sampson v. Murray, 415 U.S. 61, 90 (1974) The factual and legal differences here are extra-ordinary. Mr. Palmer's continued illegal imprisonment is the key

factor.

The Fifth Circuit has hastily denied Palmer's COA, (Cert. at 6 - 8), which tends to mirror its denial of his injunctive relief. Therefore, to require him to proceed through a lenghty appellate process and inevitable remand(s) will have worked irreversible damage and prejudice by the time of final judgment. This is an onerous and inadequate form of relief.

Then, too, any claims for monetary damages against parole officials will be barred by absolute immunity. See Hulsey v. Owens, 63 F.3d 354, 356-58 (5th Cir. 1995)(per curiam)(Board members and their personnel — in their indiviual capacities — are absolutely immune when performing their adjudicative function, which includes the parole revocation procedure and conduct "inexorably connected with the execution of parole revocation procedures.").

Because the lower court's have thus far condoned the TBPP's illegal rewriting of the contract, (Cert. at 12 - 16), Palmer's mandatory release date is now not until February 19, 2031. Without this Court's intervention, Mr. Palmer will continue to lanquish in prison for the foreseeable future without due process of law. See Boumediene v. Bush, 553 U.S. 723, 785 (2008)("Liberty may be violated either by arbitrary imprisonment without law or the apperance of law.")(citation omitted).

Simply put, Mr. Palmer's demonstrable harm warrants relief by this Court. See American Trucking Ass'n v. Gray, 483 U.S. 1306, 1308 (1987)(in chambers)(Circuit Justice Blackman granted injunctive relief recognizing a "significant possibility" of "jurisdiction" and "revers[al]" in addition to a "likelihood that irreparable injury will result if relief is not granted.").

Respondent suffers no cognizable injury when a court halts unlawful agency action. Cf. Starbucks Corp. v. McKinney, 602 U.S. 339, 362 (2024)(Jackson, J., concurring in part and dissenting in part)(Courts may consider an opposing party's harms, but they may not consider a party's desire or interest in continuing to engage "in an alleged violation" of a statute).

The public interest is served when the law is followed. Nobby Lobby, Inc. v. Dallas, 970 F.2d 82, 93 (5th Cir. 1992) ("the public interest always is served when public officials act within the bounds of the law and respect the rights of the citizens they serve"). On the other hand, every day that Mr. Palmer is illegally imprisoned his constitutional rights are violated.

The above factors weigh overwhelming in favor of Palmer's injunctive relief. See Lucas v. Tonsend, 486 U.S. 1301, 1305 (1988). In sum, Palmer asserts that he faces critical and exigent circumstances that supports this Court's emergency

consideration and the attendant interference with the standard review process in the lower courts or "line-jumping justification." Labrador v. Poe, 144 S.Ct. 921, 934 (2024)(Jackson, J., dissenting from grant of stay).

CONCLUSION

The opinions of the lower courts have made legal what the Constitution does not. Precedent further counsels that a court will not lend its assistance in carrying out an illegal contract. Applicant respectfully prays that the Circuit Justice act with reasonable dispatch and grant applicant injunctive relief from his illegal imprisonment.

Dated: February 22, 2026

Respectfully submitted,

Scott Palmer

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EXHIBIT

1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SCOTT EDWARD PALMER, Petitioner,	§	
v.	§	Civil Action No. H-23-4293
ERIC GUERRERO, Director, Respondent.	§	

PETITIONER'S AMENDED EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER * AND PRELIMINARY INJUNCTION WITH BRIEF IN SUPPORT

Scott Palmer, Petitioner, files the instamt motion, and in support shows as follows.

I.

Leave to Amend

Petitioner moves the Court to amend his original motion for emergency preliminary injunction submitted on March 21, 2025. Petitioner's amendments address the substantive law of: (1) the state habeas court disposition was not on the merits making review de novo. (2) the timeliness of his habeas corpus petition.

* The Fifth Circuit has held that when a court hears from both parties the TRO motion is "in substance and result" one for preliminary injunction. Dilworth v. River, 343 F.2d 226, 229 (5th Cir. 1965).

(3) the exhaustion of state remedies, and (4) that Palmer's federal petition is properly brought under § 2241 and not § 2254. Relief requested. See page 29. These amendments are necessary to satisfy the threshold standard for a legally sufficient preliminary injunction review. This proposed leave to amend is appropriate as pled. United States ex rel. Willard v. Humana Health Plan of Texas Inc., 336 F.3d 375, 387 (5th Cir. 2003) ("A formal motion [to amend] is not always required.").

II.

Jurisdiction

Petitioner asserts that this Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241(c)(3).

The Fifth Circuit sitting en banc has held that the federal habeas statute provides a prisoner a "exceedingly powerful injunction (release from custody) ... unique to habeas (and today include[s] AEDPA)." Wilson v. Midland, 116 F.4th 384, 388-89 (5th Cir. 2024); Pierre v. United States, 525 F.2d 933, 935-36 (5th Cir. 1976)("injunctive relief may be necessary to enforce the petitioners' right of liberty").

III.

A. Factual Background

The Director has custody of Palmer pursuant to a single judgment and sentence imposed by the 351st District Court of Harris County, Texas. Sentence was imposed at 40 years of imprison-

ment for Theft by Check. Palmer is not challenging the legality of his conviction or the validity of his initial sentence. He is attacking the manner in which his sentence is being executed. This involves the wrongful recession of 15 years, 5 months, and approximately 23 days of good-time credits which occured without due process of law. The reinstatement of those credits would have resulted in Palmer's mandatory and nondiscretionary release on December 15, 2024. Palmer has no prospective detainers that prohibit his unconditional release.

B. Status of Mr. Palmer

Palmer is a United States citizen, who has resided in Texas almost exclusively since 1974. He is 68 years-old. Prior to Palmer's current incarceration, he owned and operated two local business' in Collin County, Texas for over 15 years. One was Heaven Sent Floor Care which restored natural stone surfaces (e.g., marble, travertine, limestone, slate, terra cotta and onyx). The other business was Heaven Sent Marketing. Palmer would increase a business' visibility on the Internet and enhance their marketing message to consumers. Never has Palmer been involved with drugs in any fashion. Rarely, does he consume alcohol. Mr. Palmer has voluntairly completed a lenghty curriculum of rehabilitative programs while incacerated. Exhibit 1. Palmer is not a career criminal who will re-offend.

IV.

Legal Standard for Preliminary Injunction

To obtain a preliminary injunction order, Petitioner must

establish: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of the injunction will not disserve the public interest. Janvey v. Alguire, 647 F.3d 585, 595 (5th cir. 2011)(citation omitted). To assess the likelihood of success on the merits, the court looks to the standards provided by the substantive law. Id. at 596. Petitioner must "present a prima facie case but need not show that he is certain to win." Id. Palmer "is not required to prove his case in full at a preliminary injunction hearing." Fed. Sav. & Loan Ins. Corp. v. Dixon, 835 F.2d 554, 558 (5th Cir. 1985). The first factor is "the most important." Mock v. Garland, 75 F.4th 563, 587 n. 50 (5th Cir. 2023). But no factor has a "fixed quantitative value." Id. at 587.

Palmer will first address the issue that the state habeas court was not an adjudication on the merits which requires de novo review and address the closely legally related exhaustion issue. Next, Palmer will proceed on to address the remainder of the issues.

V.

1. Palmer's challenge to the state habeas court as being an adjudication on the merits has a substantial likelihood of success on the merits.

The district court conclusorily asserts without elaboration that the state habeas trial court was an adjudication on the merits. Dkt. No. 55 at 2 n. 1. The substantive law for this issue is located in Mercadel v. Cain, 179 F.3d 271 (5th Cir. 1999)(per curiam). The question whether a state court's decision is an adjudication on the merits turns on "the court's disposition of the case - whether substantive or procedural." Id. at 274. The three-factor test considers: (1) what the state courts have done in similar cases; (2) whether the history of the case suggests that the state court was aware of any ground for not adjudicating the case on the merits; and (3) whether the state courts' opinion suggest reliance upon procedural grounds rather than a determination on the merits. Id. at 274 (internal quotation marks omitted).

This circuit in applying this three-factor test have concluded that all three factors need not weigh in favor of a procedural disposition to hold that a claim has not been adjudicated on the merits within the meaning of § 2254. Gallow v. Cooper, 505 F. App'x 285, 290 (5th Cir. 2012)(per curiam)(citing Mercadel, 179 F.3d at 274). For example, in Mercadel, the petitioner filed his application for post-conviction relief in the wrong court - directly to the Louisiana Supreme Court instead of the convicting district court. Id. The Court noted that the Louisiana Supreme Court "consistently refused to consider the merits" in these circumstances, and that Mercadel's petition was denied in a one-word order silent as to the reason. Id. Applying the three-factor test, the Court reasoned that the Louisiana Supreme Court's one-word denial of post-conviction

relief indicated that the third factor favored a merits adjudication, but the first and second factors "weigh[ed] heavily in favor of ... treating the state court denial as a procedural decision," so the Court applied de novo review. Id.

With these principles in mind, we turn to the first factor in Palmer's case.

1. What the Texas Court of Criminal Appeals Have Done in Similar Cases

The first factor weighs in favor of concluding Palmer's Fourteenth Amendment claim for loss of good-time credits received a procedural disposition because the Texas Court of Criminal Appeals ("TCCA") consistently refuse to hear such claims for post-conviction relief. Ex parte Palomo, 759 S.W. 2d 671, 674 (Tex. Crim. App. 1988) (en banc)(recognizing that the TCCA does not entertain "matters such as loss of good time credit ... by way of a writ of [state] habeas corpus" on the "assum[ption] that whatever determination the Director [of the Texas Department of Corrections] makes, he will make in accordance with his authority as set out in [state statute], as well as in accordance with due process ... of law."); Ex parte Brager, 704 S.W. 2d 46 (Tex. Crim. App. 1986)(en banc) (same). In the Fifth Circuit federal courts must defer to the highest court on criminal matters of Texas (i.e., the TCCA) on the state court's interpretation of its own law. Arnold v. Cockrell, 306 F.3d 277, 279 (5th Cir. 2002). The district is bound by prior Fifth Circuit precedent and has no authority to overturn it. See

FDIC v. Abraham, 137 F.3d 264, 270 (5th Cir. 1998). The first factor overwhelmingly favors a procedural disposition.

2. The History of This Case

The second facor, the history of this case indicates that the state court was aware of a ground - specifically, not cognizable based on state law as interpretated by the TCCA. Two facts inexorably lead to this conclusion: (1) Palmer raised his loss of good-time credits in his state post-conviction application, and (2) the state habeas court was clearly aware of this because it mentioned the inapplicability of the claim in its order denying Palmer's relief. The trial court wrote:

> "13. Claims regarding good conduct time are not cognizable in a writ of habeas corpus. Ex Parte Palomo, 759 S.W. 2d 671 (Tex. Crim. App. 1988).
>
> 16. The applicant fails to show his good time credit claim is cognizable in the instant proceeding."

Findings of Fact And Conclusions of Law, signed June 25, 2023 at 2.

This is direct evidence that the state court was aware of a procedural ground for not adjudicating the merits. Thus, the second factor favors concluding that the state court disposed of Palmer's application on procedural grounds.

3. The State Habeas Court's Opinion

finally, the third factor - the state court opinion - does not weigh in favor of either a procedural or merits adjudication. As discussed above, the express reasons articulated in the decision indicate a procedural disposition. On the other hand, the court

also noted that: "17 The applicant fails to show his good time credit was improperly forfeited." Id. This sentence suggests a merits adjudication. Paragraph numbers 13 and 16 appear at odds with 17. Despite this contradiction and binding precedent supporting a procedural disposition, the third factor does not bear on the analysis. See Mercadel, 179 F.3d at 274.

4. Analysis

Because two of the three Mercadel factors favor a procedural disposition, the court must conclude as a matter of law that Palmer's claim was not adjudicated on the merits within the meaning of § 2254. Thus, review is de novo. Id. at 275.

VI.

1. Palmer's challenge that he has exhausted his claim has a substantial likelihood of success on the merits.

The district court complained that Palmer "exhausted his original claim for loss of 1,854 days of good time and work credit," Dkt. No. 21 at 2, but not for the 15 years, 5 months, and approximately 23 days.

As discussed in Section V, the TCCA has explicitly ruled that it will not entertain state habeas corpus for loss of good time and delegated the authority to the Director of TDCJ. Ex parte Palomo, 759 S.W. 2d at 674; Ex parte Brager, 704 S.W. 2d 46 (same). This holding by the TCCA interpretation of its own law is binding on the Fifth Circuit courts. Arnold, 306 F.3d at 279.

In sum, because Palmer filed his TDR he satisfied the exhaus-

tion requirement of § 2254 because there is not an "available State corrective process". See 28 U.S.C. §2254(b)(1)(B)(i). See also Schmidt v. Davis, 768 Fed. Appx. 281, 282 (5th Cir. 2019)(per curiam)(unpublished).

Palmer avows that he has "present[ed] a prima facie case" on this issue.

VII.

1. Palmer's challenge that he is not barred by the statute of limitations under the AEDPA has a substantial likelihood of success on the merits.

The district court quibbled that Palmer's habeas claim is barred under the AEDPA. Dkt. No. 55 at 4-7. But see Dkt. No. 67 ordering the Respondent to file a response to "petitioner's Rule 59(e) motion." No timely response has been received and Palmer has notified the court and respondent of this deficiency.

A. Statutory Tolling

(i) Prison official's failure to mail Mr. Palmer's state post-conviction application represents a state-created impediment.

To establish a state-created impediment, "the prisoner must show that: (1) he was prevented from filing a petition (2) by State action (3) in violation of the Constitution or federal law." Egerton v. Cockrell, 334 F.3d 433, 436 (5th Cir. 2003).

The Fifth Circuit has recognized that "mishandling prisoner filings constitutes a state impediment under 28 U.S.C. § 2244(d)(1)(B)" sufficient to toll the statute of limitations. Critchley v.

Thaler, 586 F.3d 318, 318 (5th Cir. 2009). In Critchley the petitioner attempted to submit a state habeas petition on two occasions, and on both occasions the state District Clerk's office failed to file his application. Id. at 319. After receiving notice that neither application was on file, he attempted to file an amended application, which was not properly filed until five months later. Id. The Fifth Circuit held that the state court's error constituted a "state-created impediment" and the petitioner was entitled to statutory tolling until the date on which the state properly filed his petition. Id. at 320.

The facts here are in accord with Critchley. On Friday, January 27, 2023 prison officials received Palmer's state post-conviction application for mailing to the Harris Cnty. Dist. Clerk's Office. Dkt. No. 38 at 6 citing Exhibit 1 at 7 ¶¶ 24, 25. Palmer believed that the application had been mailed as requested. Id. at 7 citing Exhibit 1 at 7 ¶ 26 citing App. C.

On May 3, 2023 after having not heard from the Clerk regarding his 11.07 application, Palmer sent a letter of inquiry. Id. at ¶ 27. Shortly afterwards Palmer inquired to the Unit Mailroom Supervisor in an attempt to confirm his outgoing legal mail on or around January 27th. There were no entries in the log books. Id. at 8 ¶ 30. On May 16, 2023 Palmer sent another 11.07 to the Clerk. Id. at 8 ¶ 28. Notice from the Clerk was received on May 23rd notifying him of no receipt of his earlier mailing of the 11.07 by prison officials. Id. at 7 citing Exhibit 1, ¶ 29. The failure of prison officials

to process Palmer's legal mail was consistent with prior practices by that department. Dkt. No. 38 at 8 citing Exhibit 1 ¶¶ 1-15 and id. at 4 & 5 ¶¶ 15, 17.

Palmer's right of access to the courts encompasses the ability to "transmit a necessary legal document to a court" including his 11.07 application. Brewer v. Wilkinson, 3 F.3d 816, 821 (5th Cir. 1993), cert. denied, 510 U.S. 1123 (1994). This right prohibits state prison officials from actively interfering with inmates' attempts to prepare or file legal documents. Lewis v. Casey, 518 U.S. 343, 350 (1996). "[T]he [impediment] actually prevented [Palmer] from timely filing his habeas petition." Krause v. Thaler, 637 F.3d 558, 561 (5th Cir. 2011).

Palmer has proven prison officials "mishandling [of his 11.07] filing[] constitutes a state impediment under 28 U.S.C. § 2244(d)(1)(B) which tolled the AEDPA limitations period applicable to [Palmer]." Critchley, 586 F.3d at 318. Therefore, the clock on the AEDPA limitations should be statutorily tolled between January 27, 2023 up to May 16th when Palmer's subsequent 11.07 was submitted, Dkt. No. 38 at 7 citing Exhibit 1 at 8 ¶ 28, rendering it a "properly filed application for State post-conviction ... review[.]" 28 U.S.C. § 2244(d)(2).

B. Equitable Tolling

The district court has determined that Palmer had until February 15, 2024 to satisfy the AEDPA's one-year limitations period after the tolling of the TDR. Dkt. No. 55 at 6. Therefore, accounting for the statutory tolling above Palmer would have had

20 days left in the one-year period after his properly filed state post-conviction 11.07 was filed on May 16, 2023.

The Court in Jackson v. Davis, 933 F.3d 408, 413 (5th Cir. 2019) reasoned that it examines a petitioner's level of diligence, if any, at three distinct stages: (requiring petitioner to show that he had been "diligent [1] before the delay in receiving notice, [2] during the pendency of his state application, and [3] in promptly filing his federal habeas petition after receiving notice").

Turning to the diligence on the front end of filing the state habeas the facts demonstrate Palmer exercised reasonable diligence. The clock started on August 17, 2021 of the AEDPA's one-year limitation period. Dkt. No. 55 at 6. Fifty days had passed when Palmer initiated his diligence to acquire a TDR from prison officials. Dkt. No. 38 at 6 citing Exhibit 1 at 5 ¶ 18. Prison officials stonewalled his efforts for 132 days before a properly submitted TDR was finally acquired and submitted. Id. at 6 ¶¶ 20, 21. This circuit has held that it is unexplained delays or delays of the petitioner's own making do not establish due diligence or rare and extraordinary circumstances. See Coleman v. Johnson, 184 F.3d 398, 403 (5th Cir. 1999). Palmer's substantiated explanation for this 132 day period should not diminish the equitable tolling equation.

There was a 165 day hiatus following the expiration of the TDR tolling before submitting his initial state habeas for mailing. Dkt. No. 38, Exhibit 1 at 7 ¶¶ 24, 25, 26. This hiatus

was inextricably linked to prison officials intent to harass [1] and intimidate Palmer's pursuit of attempting to obtain and file a TDR. Id. Exhibit 1 at 5 ¶¶ 18, 19, 20 and id. at 6 ¶ 20. Compare id. at ¶ 21.

Added to the inequity above, again, the Court should find these facts epitomize the kind of "rare and exceptional circumstances" arising from "external factors beyond [Palmer's] control," In re Wilson, 442 F.3d 872, 875 (5th Cir. 2006), which should not adversely impact a harsh application of the diligence equation for equitable tolling. See, e.g., Doe v. United States, 76 F.4th 64, 72 (2nd Cir. 2023)(a prisoner may show extraordinary circumstances ... where they allege specific facts showing that a reasonable fear of retaliation by their jailers prevented them from filing a timely complaint.).

Turning to the second factor in Jackson Palmer only waited 76 days to inquire on a status update. Dkt. No. 38 at 8 citing Exhibit 1 at 8 ¶ 31. With no notice being received, id. at ¶ 31, he filed an application for mandamus on August 14, 2023. Id. at ¶ 32. Once again, with reasonable diligence on October 16th Palmer inquired as to the status of his mandamus. Id. at 9 ¶ 33. Palmer received notice of the denial of his mandamus on November

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[1] "Harass" and "intimidate" are defined to mean: "to make timid; fill with fear." Random House Dictionary of the English Language 1000 (2d ed. 1987). Palmer's request was: "Law Library: 2nd request for a CL-I47 form to contest the improper taking of my good time credits from parole. Thank you." Response: "You were counseled to address your issue with Unit Parole before we provide a form. Remember, should you file a grievance it will be placed in your parole file and have a negative impact on future reviews." Dkt. No. 38 Exhibit 1 at 5 ¶ 18.

02, 2023. Id. He still had no notice on his 11.07. Id. at ¶ 34. The TCCA was legally obligated to notify Palmer once a decision had been rendered. Jackson, 933 F.3d at 412 & n. 7. Palmer filed his Federal writ on November 03, 2023. Id. at ¶ 34. At every step of the way in his post-conviction proceedings Palmer timely sought status updates and further review of the proceedings. Equitable tolling should apply. Jackson,933 F.3d at 410.

Palmer contends that he has "present[ed] a prima facie case" on this issue.

C. 28 U.S.C. § 2241 Contains No Limitations Requirement

The text of § 2241 contains no limitations requirement on petitioner's seeking federal habeas relief. Numerous district court opinions within the Fifth Circuit and other jurisdictions have sensibly ruled on the statutory question presented here. See Galbraith v. Hooper, 2022 U.S. Dist. LEXIS 55642, *16 & n. 66 (M.D. La. March 9, 2022)(collecting cases)(§ 2241 petitions have no statute of limitations), adopted by, 2022 U.S. Dist. LEXIS 55494 (M.D. La. March 28, 2022).

The appropriate starting point when interpreting any statute is its plain meaning. Davis v. Johnson, 158 F.3d 806, 811 (5th Cir. 1998). As discussed previously, § 2241 is plain and unambiguous with regard to imposing no statute of limitations on petitioners seeking federal habeas relief. Had Congress intended to include such a restriction, "it easily could have drafted language to that effect." Miss. ex rel. Hood v. AU Optronics Corp.,

571 U.S. 161, 169 (2014). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Id. (quoting Dean v. United States, 556 U.S. 568, 573 (2009)); see also D.L. Markham DDS v. Variable Annuity Life Ins. Co., 88 F.4th 602, 611 (5th Cir. 2023)(citing Miss. Poultry Ass'n, Inc. v. Madigan, 31 F.3d 293, 301 (5th Cir. 1994)(en banc).

Therefore, that Congress, in enacting the AEDPA and § 2244(d) omitted language similar in § 2241 is persusaive evidence that Congress did not wish for the Limitations period to apply in those instances. See Hamilton v. Dall. Cnty., 79 F.4th 494, 501 & n. 36 (5th Cir. 2023)(en banc)("Absent persusaive indications to the contrary, we presume Congress says what it means and means what it says."). And where "the statutory language provides a clear answer," the inquiry "ends there." Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1991).

Palmer has sustained his burden of proof on this issue too.

VIII.

1. Palmer's challenge that his claim is cognizable pursuant to 28 U.S.C. § 2241 and not § 2254 has a substantial likelihood of success on the merits.

The district court complained that Palmer's loss of good-time credits was not cognizable under 2241. Dkt. No. 21 at 2-3.

This circuit's precedent on this issue is inconsistent. When confronted by inconsistent precedent, this circuit applies the

rule of orderliness. Konan v. United States postal Serv., 96 F.4th 799, 805 (5th Cir. 2024)(citation omitted). In other words, the rule of orderliness applies when a prior panel decision already answers the issue before the court. See Newman v. Plains All Am. Pipeline, L.P., 23 F.4th 393, 400 (5th Cir. 2022)(explaining the rule of orderliness "binds us to follow a prior panel's decision on an issue.").

Under the rule of orderliness circuit precedent has already answered the issue that Palmer's improper recession of his good-time credits are properly brought under 2241 not 2254. Spaulding v. Scott, 1994 U.S. App. LEXIS 43033, *4 (5th Cir. 1994)(per curiam)(unpublished)[2]; Rome v. Kyle, 1994 U.S. App. LEXIS 42386, *4 (5th Cir. 1994)(per curiam); Johnson v. Scott, 1995 U.S. App. LEXIS 42764, *2, 3 (5th Cir. 1995)(per curiam)(collecting cases).

In Spaulding he was contesting the loss of good-time credits. 1994 U.S. App. LEXIS 43033, *2. The court reasoned because he was not challenging the legality of his conviction or the validity of his initial sentence, but instead focused on the manner in which his sentence is being executed relief was appropriate under § 2241 not § 2254. Id. at *4 (citing United States v. Gabor, 905 F.2d 76, 77, 78 (5th Cir. 1990).

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[2] Unpublishied opinions issued prior to january 1, 1996 are precedential. Fairchild v. Coryell Cnty., 40 F.4th 359, 365 n. 4 (5th Cir. 2022).

Since Spaulding, Rome and Johnson, there has been no intervening change in the law, such as by statutory amendment, or the Supreme Court, or by this circuit's en banc court. Therefore, the rule of orderliness binds this Court and cannot change course.

Palmer again has sustained his burden of proof on this issue.

IX.

1. Palmer's challenge that he was deprived of his good-time credits without due process of law has a substantial likelihood of success on the merits.

Petitioner has stated a due process claim on the State's [3] conduct in violation of his Fourteenth Amendment rights.

The decisive question that has continued to be ignored in the proceedings thus far is:

> (1) When and how was Mr. Palmer accorded notice under due process of law and the contractual obligations of Texas Government Code § 508.154 of the possible loss of his good-time credits?

The Fourteenth Amendment guarantees no state shall "deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV § 1; see also Reed v. Goertz, 598 U.S. 230, 236 (2023)(elements of a procedural due process claim).

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[3] Palmer collectively refrences the "State" herein whether the acts or omissions refer to the Texas Board of Pardons and Parole or TDCJ-CID.

2. "Clearly Established" Supreme Court Precedent

It is well established, that prisoners "may not be deprived of life, liberty, or property, without due process of law." Wolff v. McDonnell, 418 U.S. 539, 556 (1974). The procedural mechanisms for avoiding erroneous deprivations was reaffirmed in Wilkinson v. Austin, 545 U.S. 209, 226 (2005). The Court observed: "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.'" Id. (cases cited therein); Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)(The Due Process Clause requires "that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibted, so that he may act accordingly.").

3. Liberty Interest

In Wilkinson, the Court explained for those who seek to invoke the Fourteenth Amendment's due Process Clause against deprivations of life, liberty, or property must establish that one of those interests is at stake. 545 U.S. at 221.

Palmer's holding offense of Theft by Check was committed in June 1990, and he does not have any offenses rendering him ineligible for mandatory supervision, see, Tex. Gov't Code § 508.149(a); therefore, he has a protected liberty interest in his good-time credits. Teauge v. Quarterman, 482 F.3d 769, 777

& n. 49 (5th Cir. 2007).

3. Process Due

Palmer argues that the State denied him constitutional due process of law in connection with 15 years, 5 months, and approximately 23 days good-time credits he had accurred. Director Guerrero's production of Palmer's Certificate of Parole ("COP") provides the smoking gun evidence of this claim. Dkt. No. 10, Exhibit B. Under well-settled law, this official signed state record is "entitled to a presumption of regularity and accorded great evidentary weight." United States v. McDaniels, 907 F.3d 366, 371 (5th Cir. 2018)(quoting Hobbs v. Blackburn, 752 F.2d 1079, 1081 (5th Cir. 1985)). More specifically, nowhere does the COP provide any notice in accordance with due process of law of the possible loss of good-time credits. Dkt. No. 10, Exhibit B.

Not surprisingly, independent research reveals that the State was aware of their minimum due process obligations for such notification. See Reynolds v. Johnson, 2001 U.S. Dist. LEXIS 25102, * 22 (N.D. Tex. Feb. 20, 2001)(Reynold's certificate of parole states that "all good time credits will be forfeited if a parolee violates the conditions of his parole."); Graham v. Johnson, 2000 U.S. Dist. LEXIS 20272, * 14 -15 (N.D. Tex. Dec. 26, 2000) (Graham's certificate of parole stated "all good time credits will be forfeited if a parolee violates the conditions of his parole.").

The observations in both Reynold's and Graham, coalesce with the unambigious and mandatory provisions in Texas Government Code

§ 508.154. § 508.154 provides the kind of "liberty" interest to which the Due Process Clause grants procedural protection. The State failed to provide the procedure that is constitutionally "due." Swarthout v. Cooke, 562 U.S. 216, 220 (2011)(per curiam) (noting when a state law creates a liberty interest, the Due Process Clause of the Fourteenth Amendment requires fair procedures "and federal courts will review the application of those constitutionally required procedures.").

There can be little question, that the analysis of these cases and the uncontested lack of notice in the COP is fatal to Director Guerrero's defense. Grayned, 408 U.S. at 108 (The fair notice doctrine aims to prevent "trap[ping] the innocent by not providing fair warning."). Indeed, this circuit has reached this exact conclusion "expressly h[olding] that it is a violation of due process to punish inmates for acts which they could not have known were prohibted." Reeves v. Pettcox, 19 F.3d 1060, 1061 (5th Cir. 1994)(per curiam)(citing Adams v. Gunnell, 729 F.2d 362, 369-70 (5th Cir. 1984)). The panel made crystal clear that "[a]n inmate is entitled to prior notice ... of proscribed conduct before a severe sanction," such as deprivation of good-time credits, may be imposed. Id. See also Teauge, 482 F.3d at 778 (Teauge draws a line in the sand: imposing that "when a state has created [] a liberty interest, no amount of good-time credit[] ... may be stripped from an inmate without affording him the protection of due process.").

Further applying due process, here, the correct ultimate outcome becomes obvious: Notably, moreover, this circuit has explicitly ruled that until a potential parolee has signed the COP, he is still an inmate. Clifford v. Beto, 464 F.2d 1191, 1195 (5th Cir. 1972)(holding "until the Certificate of Parole has been signed by the potential parolee, he cannot be said to have been paroled."). It logically follows, that there's not even a fig leaf of doubt that Teauge and Reeves provides an unavoidable rule of law for administering constitutional due process of law regarding the COP too. Then, too, because the COP does not provide prior notice of the possible loss of good-time credits, it fails to prevent arbitrary enforcement. Wolff, 418 U.S. at 558 ("The touchstone of due process is protection of the indiviual against arbitrary action of government.").

4. Statutory Analysis of Texas Government Code § 508.154.

Section 508.154 provides, in relevant part:

> "Contract on Release
> (a) An inmate to be released on parole shall be furnished a contract stating in clear and intelligible language the conditions and rules of parole.
>
> (b) Acceptance, signing, and execution of the contract by the inmate to be paroled is a precondition to release on parole.
>
> (d) A releasee while on parole ... must be amenable to the conditions of supervision ordered by a parole panel."

State-created substantive liberty interests arise when a state places "substantive limitations on official discretion."

Ridgely v. FEMA, 512 F.3d 727, 735 (5th Cir. 2008)(citing Olim v. Wakinekona, 461 U.S. 238, 249 (1983). To determine whether a statute and its regulations limit official discretion, the court must look for "explicitly mandatory language,' i.e., specific directives to the decisionmaker that if the regulations' substantive predicates are present, a particular outcome must follow." Ridgely, 512 F.3d at 735-36 (citing Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 463 (1989).

5. Grammatical Structure

Applying the above standards, Subsection (a) provides that the State "shall [4] [mandatory action] ... furnish[] [5] a contract in clear [6] and intelligible language the conditions and rules of parole." In other words, "notice" [7] in the contract of the possible

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[4] "Shall does not merely suggest or recommend that a thing be done - it commands it done. Shall imposes a duty." Timmins v. State, 601 S.W. 3d 345, 352 (Tex. Crim. App. 2020).

[5] In the dictionary, the verb "furnish" is defined as "provide with what is needed" or "supply; give." Furnish, Merriam-Webster Collegiate Dictionary (10th ed. 2001). The plain meaning of the words is not defined in the statute so resort to dictionary definitions is appropriate. Timmins, 601 S.W. 3d at 351-52.

[6] "Clear" means "unambiguous," "sure," or "free from doubt." Black's law Dictionary 268 (8th ed. 2004).

[7] To state the obvious, from a plain meaning standpoint, the term 'notice,' in and of itself, refers to a "warning of something" "impending" especially to allow preparations to be made. Webster's New Universal Unabridged Dictionary 1326 (2d ed. 1996); New Oxford American Dictionary 1200 (3d ed. 2010).

loss of good-time credits was mandatory leaving no room for discretion. Here, the contract (Dkt. No. 10, Exhibit B) betrays any such clarity of prior notice in clear and intelligible language of the possible loss of good-time credits.

Section (b) reads: "Acceptance, signing and execution of the contract by the inmate to be paroled is a precondition to release on parole." The term precondition or condition precedent are functionally synonmous. EEOC v. Temps. Co., 679 F.3d 323, 331 n. 13 (5th Cir. 2012). A condition precedent is an event that must be performed before a right can accure to enforce an obligation. Anadarko Petrol. Corp. v. Williams Alaska Petroleum, Inc., 737 F.3d 966 (5th Cir. 2013). Additionally, notice of the loss of Palmer's good-time credits obviously was a condition precedent that the State was obligated to furnish before it had a right to enforce its right of forfeiture of Palmer's good-time credits. This was not done. Dkt. No. 10, Exhibit B.

Section (d) of the statute then concludes: "A releasee while on parole ... must [8] be amenable to the conditions of supervision ordered by a parole panel." This provision mandates a particular substantive outcome - release to parole when the relevant mandatory language and substantive predicates are met. See Clifford v. Beto, 464 F.2d at 1195.

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[8] Texas's Code Construction Act instructs that the term "must" reflects a condition precedent. See Tex. Gov't Code § 311.016(3).

Based on the unambigious plain text of § 508.154 and applying the precedent in Ridgely, forces a conclusion that the Texas Legislature has created a liberty interest. Thompson, 490 U.S. at 463.

6. Statutory Purpose of § 508.154

The procedural rights inherent in the statute help to guarantee that the notification process will achieve a fair and accurate result and thus minimize the risk of "substantially unfair or mistaken deprivations" of protected interests. Fuentes v. Shevin, 407 U.S. 67, 81 (1972); Wolff, 418 U.S. at 558 ("The touchstone of due process is protection of the indiviual against arbitrary action of the government.").

7. Judicial Usurpation of Power

The Texas Court of Criminal Appeals has acknowledged "an agreement which violates a valid statute is illegal and void, and cannot be enforced." In re State ex rel. Wice, 581 S.W. 3d 189, 203 & n. 10 (Tex. Crim. App. 2018)(orig. proceeding) (Richardson; Yearly, J., concurring)(quoting Woolsey v. Panhandle Ref. Co., 131 Tex. 449, 116 S.W. 2d 675, 678 (Tex. 1938). In Woolsey, the Texas Supreme Court held that an employee's contract for settlement with the employer was void and unenforceable because it was executed in violation of the Workmen's Compensation Law. Id. at 678. By comparison, the agreement, Dkt. No. 10, Exhibit B, violates § 508.154 making the COP illegal and void which cannot be enforced. Id.

Texas law does hold that "parties have the right to contract as they see fit as long as their agreement does not violate the law or public policy." In re Prudential Ins. Co. of Am., 148 S.W. 3d 124, 129 (Tex. 2004). And "it is by now axiomatic the legislative enactments generally establish public policy." Royston, Rayzor, Vickery, & Williams, LLP v. Lopez, 467 S.W. 3d 494, 504 (Tex. 2015). So when lawmakers impose a statutory restriction, "the issue for the courts is whether it violates public policy." Marsh USA Inc. v. Cook, 354 S.W. 3d 764, 771 (Tex. 2011)(discussing whether the contract meets statutory requirement for enforceability under the Act").

As discussed above, while private parties can contract around many laws, Texas looks to their relationship to determine whether the provisions violate public policy. Crowell v. Hous. Auth. of Dall., 405 S.W. 2d 887, 889 (Tex. 1973). Courts regularly enforce exculpatory agreements between private persons of equal bargaining strength. Id. But when one party (such as Palmer did here) has substantially less bargaining power in the relationship, the exculpatory agreement will be declared void. Id.

In Crowell, the texas Supreme Court held that an exculpatory clause exempting the Dallas Housing Authority ("DHA") from premises liability was against public policy. Crowell, 495 S.W. 2d at 889. The court reasoned that because the DHA's legislative purpose rested on providing safe dwelling accommodations to low-income families, the provision directly violated the nature of the statutory relationship between the contracting parties. Id.

Like the DHA - a creature of specific legislative enactment the State has no freewhelling authority to customization (i.e., omission)of the of the core terms of the contract regarding notice of the possible loss of Palmer's good-time credits because it is prescribed by statute and the Fourteenth Amendment Due Process Clause. Thus, the contract (Dkt. No. 10, Exhibit B) is void not voidable.

8. Ministeral Duty to Release Palmer

Palmer's holding offense of Theft by Check committed in June 1990, and his accumulated credits (including the 15 years, 5 months, and approximately 23 days) provides zero discretion to the Director and the Texas Board of Pardons and Paroles ("TBPP") to deny his immediate release. Teauge, 482 F.3d at 774-75; Ex parte Rivers, 663 S.W. 3d 683, 685, 687 (Tex. Crim. App. 2022). stated differently, the Director and the TBPP have a ministeral duty to release Palmer. State ex rel. Healey v. McMeans, 884 S.W. 2d 772, 774 (Tex. Crim. App. 1994).

The conclusion is irrestible that Palmer was not afforded due process in this case. It is not even a close call. Mr. Palmer's continued overdetention is punishment that is neither authorized by law or justified by any penological interest. Accordingly, Palmer has established a prima facie case that there is a substantial likelihood of success on the merits.

X.

1. There is a substantial threat of irreparable injury if the injunction is not issued.

Here, Palmer asserts that he will continue to face irreparable harm absent injunctive relief because the protracted proceedings in the district court for almost seventeen months and counting offers no avenue for compensation. See Mireles v. Waco, 502 U.S. 9, 11 (1991)(per curiam). His continued illegal incarceration past December 15, 2024 violates his Fourteenth Amendment rights. McNeal v. LeBlance, 90 F.4th 425, 431 (5th Cir. 2024)(per curiam). And claims for money damages against state entites and officials are generally barred by insurmountable immunity defenses. Too, the loss of an opportunity for palmer to pursue his chosen profession can constitue irreparable harm. Burgess v. FDIC, 871 F.3d 297, 304 (5th Cir. 2017).

2. Balance of Equities and Public Interest

The final two factors merge when the nonmovant is the [state]. Crutsinger v. Davis, 936 F.3d 265, 271 (5th Cir. 2019)(citing Nken v. Holder, 556 U.S. 418, 435 (2009). The Director's enjoinment from enforcing an unconstitutional imprisonment of Palmer does not outweigh the fundamental right to uphold the law. See Nobby Lobby, Inc. v. Dallas, 767 F.Supp 801, 821 (N.D. Tex. 1991), aff'd, 970 F.2d 82 (5th Cir. 1992)("Indeed, the public interest is always served when public officials act within the bounds of the law."); Defense Distributed v. United States Dep't of State, 838 F.3d 451, 458 (5th Cir. 2016)("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."). The Director's harm is slight, as he has no discretion to ignore the Texas Legislature's directive found in

Tex. Gov't Code § 508.149 or the mandatory supervision statute outlined in Ex parte Rivers, 663 S.W. 3d at 685 & 687. Neither does the Director have the luxury to disregard the book-end cases of Wilkinson or Grayned. On the other hand, the hardship to Palmer is quite clear: he is harmed every day he is improperly incarcerated. See Gordan v. Holder, 721 F.3d 638, 653 (D.C. Cir. 2013)("[I]t may be assumed that the Constitution is the ultimate expression of the public interest.").

When a petitioner makes a sufficient demonstration on all four factors (three when as here the third and fourth factors are merged), a court "must not shrink from [its] obligation to enforce [petitioner's] constitutional rights," regardless of the constitutional right at issue. Brown v. Plate, 563 U.S. 493, 511 (2011). Palmer has sustained his burden and is entitled to relief.

XI.

Prompt Adjudication

Palmer requires a prompt adjudication of this motion due to his continued overdetention of **106 days and counting as of the date of this mailing.** It remains clear that the writ still offers a remedy, in the form of release, when the underlying cause of detention lacks footing in the law. See Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 106 (2020)("Habeas has traditionally been a means to secure release from unlawful detention"); Boumedienne v. Bush, 553 U.S. 723, 797 (2006)(noting that the writ

is "efficacious ... in all manners of illegal confinement").

WHEREFORE, Scott Palmer moves the Court to: (1) Immediately upon receipt of this Motion to order the Director to respond if he opposes such relief within 14 days. (2) No extensions of time should be granted and will be vigorously opposed. (3) Grant this injunctive relief and provide a **maximum of 30 days** for the Director to release Palmer pending final resolution of all appeals. (4) Pursuant to Rule 52(a) set forth the findings of fact and conclusions of law which constitute the grounds of the Court's action within 7 days of the Director's response, if any. (5) Not require Petitioner to post a bond or other security, see, Fed. R. Civ. P. 65(c); Corrigan Dispatch Company v. Casa Guzman, S.A., 569 F.2d 300, 303 (5th Cir. 1978)(per curiam)(the court "may elect to require no security at all."). (6) And provide such other relief to which petitioner may show himself entitled to under the law or equity.

Respectfully submitted,

Scott Palmer

Scott Palmer #660844
Alfred D. Hughes Unit
3201 FM 929
Gatesville, TX 76597

Certificate of Confrence

I do hereby certify that a confrence is not possible because petitioner is incarcerated in TDCJ-CID, and is proceeding pro se in this case. Petitioner will not speculate as to whether

Respondent will oppose this motion.

Scott Palmer

Certificate of Service

I certify that a true and correct copy [9] of the above document was placed in the prison mailbox on March 31, 2025 first-class mail postage prepaid addressed to: Cara Hanna, Asst. Atty. Gen., P.O. Box 12548, Austin, TX 78711; United States District Court, Clerk, P.O. Box 61010, Houston, TX 77208-1010.

I, Scott Palmer hereby certify that the above facts are true and correct under penalty of perjury. Executed on 03/31/2025.

Scott Palmer

[9] Palmer is unable to provide the Director a copy of Exhibit 1 (Palmer's ITP sheet with programs completed). This stems from this agency not providing inmates the means to make xerox copies of documents. A copy of the original pleading with Ex. 1 is presumably available to the Director via the online portal.

EXHIBIT

1

SID: 01946530 TDCJ: 00660844 NAME: PALMER, SCOTT EDWARD
UNIT: AH HSNG LOC 4E11 05 B ITP DUE: __/__ LAST PRINTED:

(1) REHABILITATION PROGRAMS		(2) WINDHAM SCHOOL DISTRICT		(3) COLLEGE		(4) INTENSIVE VOLUNTEER PROGRAMS	
PRSAP	N	ACADEMIC	_	CA2Y	_	FAITH DORMS	C
IPTC	N	VOCATIONAL	C	BA	_		
DWI	_	COGNITIVE SKL	_	MA	_		
PRTC	N	PARENTING	_	AAS	_		
SOEP	_	ON-THE-JOB	_	COLLEGE VOC	_		
SOTP-9	_	_	_	NCCOLLVOC	_		
SOTP-18	_						
SVORI	_						
FCPRP	_						
VOYAGER	C						
INNERCHANGE	_						
PRE-RELEASE	_						
IPSUTP	_						
LIFESKILLS	_						
IPSUTP-TA	_						

N - NEED IDENTIFIED P - PAROLE VOTED AP - ADMINISTRATIVE PLACEMENT
E - ENROLLED C - COMPLETED

(1) REHABILITATION PROGRAMS: ALL INMATES ARE REVIEWED FOR PROGRAM ELIGIBILITY AND ADMINISTRATIVE PLACEMENT IN THESE PROGRAMS BASED ON THEIR NEEDS. ADDITIONALLY, THE PAROLE BOARD HAS AN OPTION TO REQUIRE AN INMATE TO COMPLETE A REHABILITATION PROGRAM PRIOR TO THEIR RELEASE ON PAROLE (COMMONLY KNOWN AS A PAROLE VOTE). SEND AN I-60 TO THE REHABILITATION PROGRAMS DIVISION FOR MORE INFORMATION.
(2) WINDHAM SCHOOL DISTRICT: SEND AN I-60 TO THE EDUCATION DEPARTMENT ON YOUR UNIT OR WSD FOR INFORMATION ON ACADEMIC, VOCATIONAL, COGNITIVE SKILLS, PARENTING AND ON-THE-JOB TRAINING.
(3) COLLEGE: SEND I-60 TO THE POST SECONDARY EDUCATION DEPARTMENT OR REHABILITATION PROGRAMS DIVISION FOR MORE INFORMATION ON COLLEGE AND VOCATIONAL PROGRAMS.
(4) INTENSIVE VOLUNTEER PROGRAMS: SEND I-60 TO THE UNIT CHAPLAIN FOR INFORMATION BROCHURE ON VOLUNTEER PROGRAMS AVAILABLE ON YOUR UNIT OF ASSIGNMENT.

THE ITP IS AN INDIVIDUALIZED TREATMENT PLAN DEVELOPED TO HELP MEET YOUR REHABILITATION NEEDS. IT LISTS PROGRAMS THAT YOU MAY NEED TO COMPLETE OR HAVE ALREADY COMPLETED. THE COMPLETION OF THESE PROGRAMS COULD BE CONSIDERED DURING THE PAROLE REVIEW PROCESS.

EXHIBIT

2

No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SCOTT EDWARD PALMER,
Petitioner - Appellant

v.

ERIC GUERRERO, Director, Texas Department of Criminal Justice, Correctional Institutions Division,
Respondent - Appellee.

RELEASE PENDING APPEAL

Scott Palmer, Appellant, files the instant motion, and in support shows as follows. See Federal Rule of Appellate Procedure 8(a)(2)(A)(ii), (D).

I.

Necessity of Relief.

The merits determination of Mr. Palmer's claim involves the State's [1] failure to comply with the nondiscretionary statutory authority governing his supervised release. The omission involved his right to fair warning of proscribed conduct in connection with

[1] Palmer collectively refrences the "State" herein whether the acts or omissions refer to the Texas Board of Pardons and Parole ("TBPP") or TDCJ-CID.

the loss of good time and work credits (hereafter "good time"). The contractual terms were memorialized in a document titled Certificate of Parole (hereafter contract). Precedent instructs that the State deprived Palmer of the quanity of process to which he was constitutionally entitled to prior to the deprivation of his protected liberty interest. See Zinermon v. Burch, 494 U.S. 113, 125 (1990) ("The Due Process Clause also encompasses ... a guarantee of fair procedure.").

The unconstitutional recession involves 15 years, 5 months, and approximately 23 days. The reinstatement of those credits would have resulted in Mr. Palmer's mandatory release on December 15, 2024. Palmer has no prospective detainers that prohibit his unconditional release. His continued unlawful overdetention further violates his rights under the Fourteenth Amendment. See, e.g., Neal v. LeBlanc, 90 F.4th 425, 431 (5th Cir. 2024)(per curiam).

The district court denied injunctive relief as briefed below.

II.

Statement of Jurisdiction.

The district court denied injunctive relief on May 2, 2025. Dkt. No. 86. A timely notice of appeal, see, Fed. R. App. P. 4(a)(1)

(A)(i), exclusively for this issue was submitted on May 23rd. Jurisdiction is proper under 28 U.S.C. § 1292(a)(1).

III.

A. Factual Background.

The Director has custody of Palmer pursuant to a single judgment and sentence imposed by the 351st District Court of Harris County, Texas. Sentence was imposed at 40 years of imprisonment for Theft by Check. Palmer is not challenging the legality of his conviction or the validity of his initial sentence. He is attacking the manner in which his sentence is being executed.

B. Status of Mr. Palmer.

Mr. Palmer is a United States citizen, who has resided in Texas almost exclusively since 1974. He is 68 years-old. Prior to Palmer's current incarceration, he owned and operated two local business' in Collin County, Texas for over 15 years. One was Heaven Sent Floor Care which restored natural stone surfaces (e.g., marble, travertine, limestone, slate, and terra cotta). The other business was Heaven Sent Marketing. Palmer would increase a business' visibility on the Internet and enhance their marketing message to consumers. Never has Palmer been involved in drugs. Rarely, does he consume alcohol.

IV.

Standard for Acquiring Injunction.

When a party requests a mandatory injunction[2], the moving party must show "a clear entitlement to the relief under the facts and the law." Justin Indus., Inc. v. Choctaw Secs., L.P., 920 F.2d 262, 268 n. 7 (5th Cir. 1990). Palmer's relief for release pending appeal is to alter the status quo by commanding some positive act. See U.S. v. Texas, 601 F.3d 354, 362 (5th Cir. 2010)(finding order to be mandatory injunction where the order "compels defendants to promptly and affirmatively act in a specific and extraordinary manner."). To obtain injunctive relief in this context Palmer must show "that his habeas petition will be granted on the merits, irreparable injury in the absence of a[n] ... injunction, a balance of hardships favoring the issuance of the injunction, and no adverse effect on the public interest." Topletz v. Skinner, 7 F.4th 284, 293 (5th Cir. 2021)(citation omitted).

All of the district court's rulings involve incorrect conclusions of law which will be the sole focus. E.g., Dkt. No. 83 at 3 and 10.

V.

Statement of the Issues.

1. Whether the district court's ruling that the state habeas court proceeding was an adjudication on the merits incorrect?

2. Was the district court's finding that Palmer failed to exhaust his state remedies an erroneous legal conclusion?

[2] Palmer's motion in the district court should have been denominated a mandatory injunction. See Martinez v. Mathews, 544 F.2d 1233, 1243 (5th Cir. 1976). He still meets the heightened standard.

3. Whether the lower court's failure to allow Mr. Palmer's claim to proceed under 28 U.S.C. § 2241 was an incorrect legal conclusion?

4. Was the district court's finding that there was no constitutional violation in the unlawful recession of Palmer's good time credits an erroneous legal conclusion?

5. Irreparable harm and the balance of equities both tip the scales in favor of providing injunctive relief.

VI.

GROUND ONE

Whether the district court's ruling that the state habeas court proceeding was an adjudication on the merits was incorrect?

STANDARD OF REVIEW[3]

As to each element of the district court's ... injunction analysis the district court's findings of fact are subject to a clearly erroneous standard of review, while conclusions of law are subject to broad review and will be reversed if incorrect. Dennis Melancon, Inc. v. City of New Orleans, 703 F.3d 262, 267 (5th Cir. 2012).

The District Court and Director's Erroneous Assertions.

The district court has repetitively claimed that the State habeas proceedings were an adjudication on the merits. Dkt. No. 21 at 2; Dkt. No. 62 at n. 1; Dkt. No. 83 at 3, 7, and 8. The Director parrots the lower court. Dkt. No. 80 at 10 and 11. This is an unequivocal misstatement of Texas law.

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[3] Due to the standard of review being identical on Grounds 1-4, Palmer will not restate the standard of review on each ground.

A. The Governing Law.

The Texas Court of Criminal Appeals ("TCCA") has explicitly ruled that it will not entertain issues regarding the loss of good time credits in habeas proceedings. Ex parte Palomo, 759 S.W. 2d 671, 674 (Tex. Crim. App. 1988)(en banc)(recognizing that the TCCA does not entertain "matters such as loss of good time credit ... by way of a writ of habeas corpus" on the "assum[ption] that whatever determination the Director [of TDCJ-CID] makes, he will make in accordance with his authority as set out in [Tex. Gov't Code § 501.0081], as well as in accordance with due process.").

This circuit has held that it is not the function of a federal habeas court to review a state court's interpretation of its own laws. See Arnold v. Cockrell, 306 F.3d 277, 279 (5th Cir. 2002)(per curiam)("We will take the word of the highest court on criminal matters of Texas as to the interpretation of its law, and we do not sit to review that state's interpretation of its own law.")(citation omitted). Under the rule of orderliness that ends the matter. Rios v. City of Del Rio, 444 F.3d 417, 425 n. 8 (5th Cir. 2006). The repetitive refrences to the state court record are an improper distraction. The district court and Director have failed to respond to this argument.

1. Analysis of State Habeas Record.

Because Mr. Palmer did mistakenly submit his loss of good time claim to the state court out of an abundance he will address those

proceedings to demonstrate the standard of review will still be de novo.

The substantive law for this issue may be found in Mercadel v. Cain, 179 F.3d 271 (5th Cir. 1999)(per curiam). The three factor test considers: (1) what the state courts have done in similar cases; (2) whether the history of the case suggests that the state court was aware of any ground for not adjudicating the case on the merits; and (3) whether the state court's opinion suggest reliance upon procedural grounds rather than a determination on the merits. Id. at 274 (internal quotation marks omitted). This circuit in applying this three-factor test have concluded that all three factors need not weigh in favor of a procedural disposition to hold that a claim has not been adjudicated on the merits within the meaning of § 2254. Gallow v. Cooper, 505 F Appx 285, 290 (5th Cir. 2012)(per curiam)(citing Mercadel, 179 F.3d at 274). With these principles in mind, we turn to the first factor in Palmer's case.

2. What the Texas Court of Criminal Appeals Has Done in Similar Cases.

The first factor weighs in favor of concluding Palmer's Fourteenth Amendment claim for loss of good time credits received a procedural disposition because the TCCA consistently refuses to hear such claims for post-conviction relief. Ex parte Palomo, 759 S.W. 2d at 674.

3. The History of This Case.

The second factor, the history of this case indicates that the state court was aware the loss of good time credits was not cognizable based on state law as interpreted by the TCCA. The trial court wrote:

> "13. Claims regarding good conduct time are not cognizable in a writ of habeas corpus. Ex Parte Palomo, 759 S.W. 2d 671 (Tex. Crim. App. 1988).
>
> 16. The applicant fails to show his good time credit claim is cognizable in the instant proceeding."

Findings of Fact And Conclusions of Law, signed June 25, 2023 at 2.

This is direct evidence that the state court was aware of a procedural ground for not adjudicating the merits. Thus, the second factor favors concluding that the state court disposed of Palmer's application on procedural grounds.

4. The State Habeas Court's Opinion.

Finally, the third factor - the state court opinion - does not weigh in favor of either a procedural or merits adjudication. As discussed above, the express reasons articulated in the decision indicate a procedural disposition. On the other hand, the court also noted that: "17 The applicant fails to show his good time credit was improperly forfeited." Id. This sentence suggests a merits adjudication. Paragraph numbers 13 and 16 appear at odds with 17. Despite this contradiction and binding precedent supporting a procedural disposition, the third factor does not bear on the analysis. See Mercadel, 179 F.3d at 274; see also

Ex parte Williams, 595 S.W.3d 328, 329 (Tex. App. - Houston [14th Dist.] 2020, pet. ref'd)(finding "under the doctrine of stare decisis[,] once 'the highest court of the State having jurisdiction of a matter decides a 'principle, rule or proposition of law,' that court and all 'other courts of lower rank' must accept the decision as 'binding precedent.'")(authorities cited). Thus, review here would be de novo too. Panetti v. Davis, 863 F.3d 366, 374-75 n. 51 (5th Cir. 2017).

The district court's conclusions of law that there was an adjudication on the merits is incorrect. Melancon, 703 F.3d at 267. This ground demonstrates "a clear entitlement to relief under the facts and the law." Justin Indus., 920 F.2d at 268 n.7.

VII.

GROUND TWO

Was the district court's finding that Palmer failed to exhaust his state remedies an erroneous legal conclusion?

Ground One and Two are inextricably intertwined. The district court has again continuously complained that the 15 years, 5 months, and approximately 23 days loss of good time credits is unexhausted. Dkt. No. 21 at 2; Dkt. No. 67 at n.1; Dkt. No. 83 at 3, 7 and 10.

Because the TCCA will not entertain issues regarding the loss of good time credits, Ex parte Palomo, 759 S.W.2d at 674, there is no forum in which to exhaust the claims via a habeas application. This circuit is barred from reviewing that holding. Arnold, 306

F.3d at 279; see also Schmidt v. Davis, 768 Fed Appx. 281, 282 (5th Cir. 2019)(per curiam)(unpublished but persusaive).

The district court did acknowledge that Palmer exhausted his administrative remedies as required by Tex. Gov't Code § 501.0081. Dkt. No. 55 at 6.

The district court's conclusion of law that Palmer has not exhausted his state court remedies is incorrect. Melancon, 703 F.3d at 267. This ground demonstrates "a clear entitlement to the relief under the facts and the law." Justin Indus., 920 F.2d at 268 n. 7.

VIII.

GROUND THREE

> Whether the lower court's failure to allow Mr. Palmer's claim to proceed under 28 U.S.C. § 2241 was an incorrect legal conclusion?

The district court complained that Palmer's loss of good time credits was not cognizable under 2241. Dkt. No. 21 at 2 - 3.

This circuit's precedent on this issue is inconsistent. When confronted by inconsistent precedent, this circuit applies the rule of orderliness. Rios, 444 F.3d at 425 n. 8 ("where two previous holdings or lines of precedent conflict[,] the earlier opinion controls and is the biding precedent.").

Under the rule of orderliness circuit precedent has already answered the issue that Palmer's improper recession of his good time credits are properly brought under 2241 not 2254. Spaulding v. Scott, 1994 U.S. App. LEXIS 43033, * 4 (5th Cir. 1994)(per curiam)

(unpublished but precedential under Fifth Cir. Local R. 47.5.3); Johnson v. Scott, 1995 U.S. App. LEXIS 42764, *2, 3 (5th Cir. 1995) (per curiam)(collecting cases).

In Spaulding he was contesting the loss of good time credits. 1994 U.S. App. LEXIS 43033, at *2. The court reasoned that because he was not challenging the legality of his conviction or the validity of his initial sentence, but instead focused on the manner in which his sentence is being executed relief was appropriate under § 2241 not § 2254. Id. at *4 (citing United States v. Gabor, 905 F.2d 76, 77, 78 (5th Cir. 1990). In addition, the court observed a CPC [4] was not required because the loss of good time credits did not arise out of process issued by a state court. 1994 U.S. App. LEXIS 43033, at *3. The same result should apply here. This issue was presented in Dkt. No. 31 at 13-15 and Dkt. No. 75 at 15-17.

Palmer's motion to amend pursuant to 2241, Dkt. No. 16, and its denial, Dkt. No. 21 at 2-3, present additional problems for the district court's ruling.

Fed. R. Civ. P. 15(a) provides "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served[.]" The Director had only filed its Motion to Dismiss. Dkt. No. 10. A motion to dismiss is not a "pleading" for

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[4] Although Spaulding and Johnson involved a CPC versus a COA, that is a distinction without a difference. Barber v. Johnson, 145 F.3d 234, 234 n.1 (5th Cir. 1998).

purposes of Rule 15(a). Albany Ins. Co. v. Almacenadora Somex, S.A., 5 F.3d 907, 911 & n. 5 (5th Cir. 1993); Barksdale v. King, 699 F.2d 744, 746-47 (5th Cir. 1983).

Furthermore, when as in this case, Palmer who had a right to amend, petitions the court for leave to amend the district court should have granted the 2241 petition. Zadi v. Ehrlich, 732 F.2d 1218, 1220 (5th Cir. 1984). Therefore, Palmer did not need to obtain permission from the court to proceed under 2241. Barksdale, 699 F.2d at 747.

The district court concedes that the Supreme Court or this Circuit has "never held that § 2241 claims are subject to the one-year limitation applicable to § 2254 petitions." Dkt. No. 83 at 9. Thus, the district court denied Mr. Palmer his avoidance defense to the statute of limitations, Fed. R. Civ. P. 8(c)(1), that was obstinately asserted to time bar this claim under the AEDPA.

Section 2241 does not include (1) the one-year limitations period of § 2244(d)(1), which applies to § 2254; (2) the extremely deferential review standards of § 2254(d)(1), (2). See Martinez v. Caldwell, 644 F.3d 238, 242 (5th Cir. 2011)("[Section] 2254(d) was designed to impose additional burdens on post-conviction habeas petitioners and to effect the gatekeeping function of the [AEDPA.").

The district court's conclusion of law that Palmer was not allowed to proceed under § 2241 and that his claim is time barred

is incorrect. Melancon, 703 F.3d at 267. This ground demonstrates "a clear entitlement to the relief under the facts and the law." Justin Indus., 920 F.2d at 268 n. 7.

IX.

GROUND FOUR

> Was the district court's finding that there was no constitutional violation in the unlawful recession of Palmer's good time credits an erroneous legal conclusion?

Merits Determination.

Standard of Review.

The standard of review is:

> (1) "Whether there exists a liberty interest of which [the inmate] has been deprived"; and, if so, (2) "whether the procedures followed by the State were constitutionally sufficient."

Swarthout v. Cooke, 562 U.S. 216, 219 (2011)(per curiam)(citing Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989). Oddly, at no time does the district court or the Director ever mention any standard of review or apply any such analysis.

A. Palmer's Liberty Interest.

Palmer acknowledges that generally violation of state law does not constitute a basis for federal habeas relief. Wansley v. Miss. Dep't of Corrs., 769 F.3d 309, 312 (5th Cir. 2014)(citation omitted). However, when state law provides a system for earlier release, "such a liberty interest exists that implicates the procedural guarantees of the Due Process Clause." Id. (citation

omitted).

It is settled that "[a] constitutional expectancy of early release exist[ed] in Texas' mandatory supervision scheme in place for crimes committed before September 1, 1996." Malchi v. Thaler, 211 F.3d 953, 957-59 (5th Cir. 2000).

Palmer's offense of Theft by Check was committed in June 1990, and he does not have any offenses rendering him ineligible for mandatory supervision. Tex. Gov't Code § 508.149(a). Accordingly, he has a liberty interest in his good time credits. Teauge v. Quarterman, 482 F.3d 769, 777 & n. 49 (5th Cir. 2007).

B. Analysis of Texas Government Code § 508.154.

Section 508.154 provides, in relevant part:

> "Contract on Release
> (a) An inmate to be released on parole shall be furnished a contract stating in clear and intelligible language the conditions and rules of parole.
>
> (b) Acceptance, signing, and execution of the contract by the inmate to be paroled is a precondition to release on parole.
>
> (d) A releasee while on parole ... must be amenable to the conditions of supervision ordered by a parole panel."

1. Standard of Review for State-Created Liberty Interests.

State-created substantive liberty interests arise when a state places "substantive limitations on official discretion." Ridgely v. FEMA, 512 F.3d 727, 735 (5th Cir. 2008)(citing Olim v. Wakinekona, 461 U.S. 238, 249 (1983). To determine whether a

statute and its regulations limit official discretion, the court must look for "explicitly mandatory language,' i.e., specific directives to the decisionmaker that if the [statute's]' substantive predicates are present, a particular outcome must follow." Ridgely, 512 F.3d at 735-36 (citing Thompson, 490 U.S. at 463).

2. Definitions.

Applying the above standards, Subsection (a) provides that the State "shall [5] [mandatory action] ... furnish[] [6] a contract in clear [7] and intelligible language the conditions and rules of parole (substantive predicate). This section of the statute is also subject to particularized critera. I.e., the "contract [shall state] in clear and intelligible language the conditions and rules of parole." In other words, 'notice' [8] in the contract of the possible loss of good time credits was mandatory leaving no room for discretion.

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[5] "Shall does not merely suggest or recommend that a thing be done - it commands it done. Shall imposes a duty." Timmins v. State, 601 S.W. 3d 345, 352 (Tex. Crim. App. 2020).

[6] In the dictionary the verb "furnish" is defined as "provide with what is needed" or "supply; give." Furnish, Merriam-Webster Collegiate Dictionary (10th ed. 2001). The plain meaning of the words is not defined in the statute so resort to dictionary definitions is appropriate. Timmins, 601 S.W. 3d at 351-52.

[7] "Clear" means "unambiguous," or "free from doubt." Black's Law Dictionary 268 (8th ed. 2004).

[8] To state the obvious, from a plain meaning standpoint, the term 'notice', in and of itself, refers to a "warning of something" "impending" especially to allow preparations to be made. Webster's New Universal Unabridged Dictionary 1326 (2d ed. 1996).

Section (b) reads: "Acceptance, signing and execution of the contract by the inmate to be paroled is a precondition to release on parole." The term precondition or condition precedent are functionally synonmous. EEOC v. Temps. Co., 679 F.3d 323, 331 n. 13 (5th Cir. 2012). A condition precedent is an event that must be performed before a right can accrue to enforce an obligation. Anadarko Petrol. Corp. v. Williams Alaska Petroleum, Inc., 737 F.3d 966 (5th Cir. 2013).

Section (d) of the statute then concludes: "A releasee while on parole ... must [9] be amenable to the conditions of supervision ordered by a parole panel." This provision mandates a particular substantive outcome — release to parole when the relevant mandatory language and substantive predicates are met. See Clifford v. Beto, 464 F.2d 1191, 1195 (5th Cir. 1972).

C. Statutory Purpose of 508.154.

The procedural rights inherent in the statute helped to guarantee that the notification process of any terms and conditions of Palmer's release would achieve a fair and accurate result and thus minimize the risk of "substantially unfair or mistaken deprivations" of protected interests. Fuentes v. Shevin, 407 U.S. 67, 81 (1972); Wolff v. McDonnell, 418 U.S. 539, 558 (1974)("The touchstone of due process is protection of the indiviual against

[9] Texas's Code Construction Act instructs that the term "must" reflects a condition precedent. See Tex. Gov't Code § 311.016(3).

D. Was 508.154 Violated?

Director Guerrero's production of Mr. Palmer's contract provides the smoking gun evidence of this constitutional violation. Dkt. No. 10, Exhibit B. Under well-settled law this official signed document is "entitled to a presumption of regualrity and accorded great evidentary weight." United States v. McDaniels, 907 F.3d 366, 371 (5th Cir. 2018)(quoting Hobbs v. Blackburn, 752 F.2d 1079, 1081 (5th Cir. 1985)).

Independent research reveals that the State was aware of their minimum due process obligations for providing notice of the possible loss of good time credits. See Reynolds v. Johnson, 2001 U.S. Dist. LEXIS 25102, *22 (N.D. Tex. Feb. 20, 2001) (Applying Tex. Gov't Code § 508.154(a) to Reynolds contract states "all good time credits will be forfeited if a parolee violates the conditions of his parole."); Graham v. Johnson, 2000 U.S. Dist. LEXIS 20272, *14-15 (N.D. Tex. Dec. 26, 2000)(same). Palmer's contract contains no such notice. Dkt. No. 10, Exhibit B.

E. Precedent Addressing the Unjustified Violation of 508.154.

The district court has acknowledged the lack of notice in Palmer's contract and the observations in Reynolds and Graham. Dkt. No. 83 at 2.

When Palmer was presented with the contract (upon release), he was still considered an inmate. Clifford, 464 F.2d at 1195 n. 3; Dkt. No. 10, Exhibit B at 1.

This circuit's holding in Adams v. Gunnel, 729 F.2d 362 (5th Cir. 1984) is conceptually similar and instructive in analyzing this case. There, it was found the inmates had violated the rules and imposed sanctions including loss of good time. Id. at 365. However, the panel observed that there was nothing in the prison regulations to suggest that such conduct was prohibited. Id. at 369. Thus, the court found that fair warning was lacking thereby violating "basic due process ... by the eventual imposition of severe punishment no inmate could have known was against prison rules." Id. at 370. By comparison, this Court should find that the conspicious absence of fair warning of proscribed conduct in connection with the loss of Palmer's good time credits in his contract was violated too. See Adams, 729 F.2d at 368-69 (citing Grayned v. City of Rockford, 408 U.S. 104, 108 (1972); Teauge, 482 F.3d at 774 n. 19 (citing Wolff, 418 U.S. at 557).

Significantly, this circuit in Thompson v. Cockrell, 263 F.3d 423, 427-28 (5th Cir. 2001) recognized that "the Supreme Court has required prison officials to present some evidence of its decision to deprive an inmate of his state-created interest." (collecting cases). Here, as in Thompson the "[Director] has not provided any evidence to support its denial of [Palmer's good] time nor does the record contain evidence demonstrating that [Palmer] should not be credited with the time." Id. at 428. The decision to deny Palmer "credit for [good] time was therefore arbitrary and inconsistent with the minimum requirements of

due process." Id. (citation omitted).

Although the panel in Thompson ruled that he was not entitled to his good time credits as he was presumably provided fair warning in compliance with 508.154(a). Id. at 428. As discussed, Palmer was not which distinquishes that aspect of the ruling. Mr. Palmer had an unqualified right to notice by the State. See Shelley v. Kraemer, 334 U.S. 1, 15 (1948)(due process guarantees extend to actions of adminstrative agencies)(citing Binkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 680 (1930).

F. Is There a Legally Enforceable Contract?

The district court has impliedly denied this claim by conclusorily complaining that Mr. Palmer had constructive notice of state forfeiture laws. Dkt. No. 83 at 10.

1. Dkt. No. 10, Exhibit B is Legally Considered a Contract.

"Nonprosecution agreements, like plea bargains, are contractual in nature, and therefore interpreted in accordance with general principles of contract law." United States v. Perry, 35 F.4th 293, 348 (5th Cir. 2022)(citation omitted). Accordingly, general principles of contract interpretation sensibly apply here too.

The above principle is reinforced by 508.154. The title reads: "Contract on Release." Although a statutory title or caption does not limit or expand a statute's meaning, the title can inform the object sought to be attained by the Legislature. Watkins v. State, 619 S.W.3d 265, 273 (Tex. Crim. App. 2021). The fact is that the

Texas Legislature considers what is generically referred to as a Certificate of Parole to legally be a contract. This conclusion is buttressed by the exclusive use of the word contract in both subsection (a) and (b). Id. at 271-72 (Texas courts focus on the statutes literal text).And, each word, phrase, clause, and sentence should be given effect. Id. at 272.

2. Condition Precedent.

"A condition precedent to the formation of a contract prevents the formation of a contract except upon realization of the condition." Crest Ridge Constr. Grp., Inc. v. Newcourt, Inc., 78 F.3d 146, 150 (5th Cir. 1996)(citing Hohenberg Brothers Co. v. George E. Gibbons & Co., 537 S.W. 2d 1, 3 (Tex. 1976). To determine if a condition precedent exists, a court examines the parties' intent as expressed in the contract. Interstate Contracting Corp. v. City of Dallas, 407 F.3d 708, 727 (5th Cir. 2005)(citation omitted). Here, the statute 508.154 is the focus and not the contract to determine the condition precedent.

The Texas Legislature's language is clear, direct, and unambiguous. Again, 508.154(a) reads:

> "An inmate to be released on parole shall be furnished a contract stating in clear and intelligible language the conditions and rules of parole."

Notice of proscribed conduct associated with the loss of good time credits was a condition precedent to the formation of the contract. See Reynolds, 2001 U.S. Dist. LEXIS 25102, at * 22

(applying 508.154(a) to Reynolds contract that states "all good time credits will be forfeited if a parolee violates the conditions of his parole."); Tex. Gov't Code § 498.004(b)("On the revocation of parole ... the inmate forfeits all good conduct time previously accrued."). "[P]arol evidence is always admissible to show the nonexistence of a contract or the conditions upon which it may become effective." Houston Indep. Sch. Dist. v. Simpson, 2013 Tex. App. LEXIS 13581, * 17-18 (Tex. App. — Austin Nov. 1, 2013, no pet.)(mem op.)(citing Baker v. Baker, 143 Tex. 191, 183 S.W. 2d 724, 728 (Tex. 1944).

3. The State's Ministeral Duty Under 508.154.

"An administrative agency ... is a creature of statute and must live within the statutes" entrusted to its administration. Balios v. Tex. Dept. of Pub. Safety, 733 S.W.2d 308, 311 (Tex. App. — Amarillo 1987, writ ref'd)(citing State Department of Public Safety v. Cox, 279 S.W.2d 661, 663 (Tex. Civ. App. — Dallas 1955, writ ref'd n.r.e.). Unquestionably, the Texas Board of Pardons and Paroles and TDCJ-CID are creatures of statute and have a corresponding obligation to live within the statutes entrusted to its administration. Id. The court in Balios further observed "[i]f a statutory procedure is created by the legislature it 'excludes all others, and must be followed.'" Id. (citing Cobra Oil & Gas Corporation v. Sadler, 447 S.W.2d 887, 892 (Tex. 1968)(quoting Foster v. City of Waco, 113 Tex. 352, 255 S.W. 1104 (1923)).

The Court concluded by finding "[o]ne who 'seeks to avail himself thereof must comply with the statutory provisions. These provisions are mandatory and exclusive; and conformity thereto in each and every particular is essential to the exercise of jurisdiction by the agency." Id. (citing Cox, at 663).See also Richardson v. Joslin, 501 F.3d 415, 418 (5th Cir. 2007).

Here, no action was required by Palmer to activate 508.154(a). However, if the State desired to activate its rights under the contract, it was told by the legislature to furnish Palmer with the "conditions and rules of parole." When the State failed to do so, it lost the right to pursue the matter. In sum, the TBPP or TDCJ-CID have no authority to suspend or alter laws of the state. See Brown Cracker & Candy Co. v. City of Dallas, 104 Tex. 290, 137 S.W. 342, 343 (Tex. 1911).

4. Public Policy.

The Texas Supreme Court has held contracts void as against public policy on countless occasions. See, e.g., Zachry Const. Corp. v. Port of Hous. Auth. of Harris Cty., 449 S.W. 3d 98, 116 (Tex. 2014)(no-damages-for-delay provision); Ethyl Corp. v. Daniel Constr. Co., 725 S.W. 2d 705, 708-09 (Tex. 1987)(contract not expressly requiring indemnification for one's own negligence); Crowell v. Hous. Auth of Dall., 495 S.W.2d 887, 889 (Tex. 1973)(lease provision exempting landlord from tort liability to tenants).

The Court should conclude in this case that it is contrary

to public policy to allow the TBPP to proclaim one thing in a contract and then in a classic game of legal "gotcha" use their power and TDCJ-CID to attempt to have the courts gloss over the suspension of the statute. The language in Balios on the motion for rehearing is apropos here too. The Legislature has established a clear and simple procedure for notifying inmates of the possible loss of good time credits. If the State follows that procedure, it can forfeit those credits. If it does not, it cannot. If the court were allow the State to stroll through the statute, calling "shall" directory here and mandatory there as it suits its purpose, then the rule of law is meaningless. The court is going to interpret the statute as it was written by the Legislature.

The district court's implied denial of this claim is patently incorrect. Melancon, 703 F.3d at 267. This ground provides "a clear entitlement to the relief under the facts and the law." Justin Indus., 920 F.2d at 268 n. 7.

G. The District Court's Complaints.

The district court has ignored Mr. Palmer's due process arguments. The court initially cited Tex. Gov't Code § 498.004(b) claiming "following revocation of [Palmer's] parole, [he] forfeited all previously accrued good time credit[.]" Dkt. No. 21 at 2. Palmer addressed the flaw in the district court's theory. Dkt. No. 31 at 26. Next, the lower court shifted its argument and turned to Tex. Gov't Code § 498.003(c). Dkt. No. 62 at n. 1 (complaining "parolees

do not accrue good time credit while released on parole."). Most recently and problematically, the lower court hung its hat on a slightly different theory. The theory lacks any statutory or caselaw support.

> "[Palmer's] credit[s] w[ere] forfeited pursuant to state law, petitioner had fair notice that it would be forfeited if his parole were revoked. Petitioner cites no authority holding that § 498.004(b) is unenforceable, or violates due process ... if its provisions do not appear within the parole contract itself."

Dkt. No. 83 at 10. Both statutes theories as argued by the lower court are doomed for the same reasons outlined below.

Conspicuously, the inferior court tiptoes around ever mentioning 508.154 and its clear and explicit legislative commands. Then, too, the Supreme Court has held in the due process notice context that "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." Mennonite Bd. of Missons v. Adams, 462 U.S. 791, 799 (1983); Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 890 (5th Cir. 1989)(holding that La. R.S. 13:3886 does not shift the constitutional burden of notice to the party desiring to be notified). The panel observed that "Mullane[v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)] remains our trusted guide"). Id. at 887. Once again, the statute (508.154(a)) explicitly places the burden of notice on the State. Lastly, this circuit in an analogous situation found that "parol evidence is inadmissible to prove the meaning of an

unambiguous [] agreement" and the court "will not look beyond the four corners of the document." United States v. Long, 722 F.3d 257, 262 (5th Cir. 2013). The lower court's arguments are unsustainable.

X.
GROUND FIVE

Irreparable harm and the balance of equities both conclusively tip the scales in favor of providing injunctive relief.

A. Irreparable Harm.

A showing of irreparable harm requires a demonstration of "harm for which there is no adequate remedy at law." Louisiana v. Biden, 55 F.4th 1017, 1040 (5th Cir. 2022)(citations omitted). First, to require Mr. Palmer to proceed through a lenghty appellate process and possible remand would be particulary onerous given the overwhelming evidence supporting his grounds for relief and his continued overdetention. Second, it is unlikely any monetary compensation would be available from Texas parole officials. See Littles v. Board of Pardons & Paroles Div., 68 F,3d 122, 123 (5th Cir. 1995)(per curiam)(Parole officers are entitled to absolute immunity from liability for their conduct in parole decisions and in the exercise of their decision-making powers).

As previously discussed, with reinstatement of the unlawful

recession of his good time credits he should have been mandatorily released no later than December 15, 2024. His unlawful over-detention violates his Fourteenth Amendment rights. See, e.g., McNeal, 90 F.4th at 431. "The writ of habeas corpus is the fundamental instrument for safeguarding indiviual freedom against arbitrary and lawless state action." Harris v. Nelson, 394 U.S. 286, 290-91 (1969). Congress's explicit command provides that courts dispose of habeas petitions "as law and justice require." 28 U.S.C. § 2243. Thus, a court may issue an injunction in aid of the writ. See, e.g., Pierre v. United States, 525 F.2d 933, 936 (5th Cir. 1976). In addition, this circuit has held that a mandatory injunction is appropriate where the existing status quo is causing a party to suffer irreparable injury. Canal Authority of Florida v. Callaway, 489 F.2d 567, 576 (5th Cir. 1974).

B. Balance of Equities and Public Interest.

The final two factors merge when the nonmovant is the [state]. Crutsinger v. Davis, 936 F.3d 265, 271 (5th Cir. 2019)(citing Nken v. Holder, 556 U.S. 418, 435 (2009). The TBPP and TDCJ-CID's enjoinment from enforcing an unconstitutional imprisonment of Palmer does not outweigh the fundamental right to uphold the law. See Nobby Lobby, Inc. v. Dallas, 767 F. Supp 801, 821 (N.D. Tex. 1991), aff'd, 970 F.2d 82 (5th Cir. 1992)("Indeed, the public interest is always served when public officials act within the bounds of the law."); Defense Distributed v. United States Dep't

of State, 838 F.3d 451, 458 (5th Cir. 2016)("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."). The State's harm is negligible, as they have no discretion to ignore the Texas Legislature's directive found in Tex. Gov't Code § 508.154(a) or the mandatory supervision statute outlined in Ex parte Rivers, 663 S.W. 3d 683, 685, 687 (Tex. Crim. App. 2022). Mr. Palmer urges this Court to find that he has sustained his burden and is entitled to the relief sought.

CONCLUSION

As of the submission date of this pleading, Mr. Palmer has been unlawfully imprisoned 232 days past his mandatory release date. He asserts that there is no justifiable penological purpose that furthers a legitimate governmental objective in continuing his imprisonment under these conditions.

WHEREFORE, Scott Palmer moves this Honorable Appeals Court to: 1) Immediately upon receipt of this Motion order the Director to respond if he opposes such relief. 2) Grant this injunctive relief and provide the State a maximum of 15 days to release Palmer pending final resolution of all appeals. 3) Not require Palmer to post a bond or other security. 4) Provide such other relief to which Palmer may show himself entitled to.

Respectfully submitted,

Scott Palmer

Scott Palmer #660844
Hughes Unit
3201 FM 929
Gatesville, TX 76597

Certificate of Confrence

I do hereby certify that a confrence is not possible becuase Petitioner is incarcerated in TDCJ-CID, and is proceeding pro se in this case. Petitioner will not speculate as to whether the Director will oppose this motion.

Scott Palmer

Certificate of Service

I certify that a true and correct copy of the above document was placed in the prison mailbox on August 4, 2025 first-class mail postage prepaid addressed to: Cara Hanna, Asst Atty Gen., P.O. Box 12548, Austin, TX 78711.

I, Scott Palmer hereby certify that the above facts are true and correct under penalty of perjury. Executed on 08/04/2025.

Scott Palmer

No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SCOTT EDWARD PALMER,

Petitioner - Appellant

v.

ERIC GUERRERO, Director, Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent - Appellee.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

A. Texas Board of Pardons and Paroles, Austin, Texas

B. TDCJ-CID, Huntsville, Texas

C. Cara Hanna, Assistant Attorney General, P.O. Box 12548, Austin, Texas 78711.

Scott Palmer

Scott Palmer

EXHIBIT

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No. 25-20310

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SCOTT EDWARD PALMER,

Petitioner - Appellant

v.

ERIC GUERRERO, Director, Texas Department of Criminal Justice, Correctional Institutions Division,

Respondent - Appellee.

MOTION TO QUASH ORDER TO APPLY FOR COA FOR INJUNCTION

Scott Palmer, files the instant motion, and shows as follows.

Correspondence from the Clerk's Office dated August 13, 2025 instructed Palmer that he must apply for a certificate of appealability in connection with his appeal regarding an interlocutory order denying a motion for an injunction. This is an incorrect statement of the law as a COA is not required in such circumstances. See Hunt v. Lumpkin, 857 Fed. Appx. 186, 186 (5th Cir. 2021)(per curiam); Woods v. Dretke, 144 Fed. Appx. 410, 411 (5th Cir. 2005)(per curiam)(same).

WHEREFORE, **Scott** Palmer moves the Court to grant this Motion and expeditiously resolve his emergency motion for injunction pending appeal to remedy his current illegal incarceration.

Respectfully submitted,

Scott Palmer

Scott Palmer #660844
Hughes Unit
3201 FM 929
Gatesville, TX 76597

Certificate of Confrence

I do hereby certify that a confrence is not possible because Petitioner is incarcerated in TDCJ-CID, and is proceeding ~~pro se~~ in this case. Petitioner will not speculate as to whether Respondent will oppose this motion.

Scott Palmer

Certificate of Service

I certify that a true and correct copy of the above document was placed in the prison mailbox on August 20, 2025 first-class mail postage prepaid addressed to: Cara Hanna, Asst Atty Gen., P.O. Box 12548, Austin, TX 78711.

I, Scott Palmer hereby certify that the above facts are true and correct under penalty of perjury. Executed on August 20, 2025.

Scott Palmer

EXHIBIT

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 29, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-20310 Palmer v. Guerrero
USDC No. 4:23-CV-4293

The court has denied the appellant's motion to quash order to apply for COA injunction in this case.

Please note, a motion for COA and brief in support are due for filing by 9/22/25. Failure to file will result in dismissal of the appeal, see 5th Cir. R. 42.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Mr. Edward L. Marshall
Mr. Scott Edward Palmer

EXHIBIT

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United States Court of Appeals for the Fifth Circuit

A True Copy
Certified order issued Oct 13, 2025

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 25-20310

SCOTT EDWARD PALMER,

Petitioner—Appellant,

versus

ERIC GUERRERO, *Director, Texas Department of Criminal Justice, Correctional Institutions Division*,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-4293

CLERK'S OFFICE:

Under 5TH CIR. R.42.3, the appeal is dismissed as of October 14, 2025, for want of prosecution. The appellant failed to timely comply with the certificate of appealability requirements.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Melissa Mattingly

By: _____

Melissa V. Mattingly, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

EXHIBIT

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 09, 2025

#00660844
Mr. Scott Edward Palmer
Alfred D. Hughes Unit
3201 FM 929
Gatesville, TX 76597

No. 25-20310 Palmer v. Guerrero
USDC No. 4:23-CV-4293

Dear Mr. Palmer,

We received your Amended Emergency Motion for Mandatory Injunction Release Pending Appeal. We are treating and filing it as a memo in support of the motion for bail pending appeal as your motion doesn't not state why this is in emergency and does not specific what you are attempting to enjoin.

Please note, any motions entitled 'Emergency' but comply with 5th Cir. R. 27.3 and 27.3.1, in which the requirements are strictly enforced.

Your motion also attempts to argue that you do not need a certificate of appealability, however, your motion to quash the COA requirement was denied on 8/29/25.

Currently a motion for COA and brief in support are due for filing with this court by 9/22/25. Your motion and memo for bail pending appeal will be submitted for ruling up the filing of your motion COA and brief in support. Failure to timely file a motion for COA and brief in support will result in dismissal of this appeal

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Cc: Mr. Edward L. Marshall

PROOF OF SERVICE

I hereby certify that a true and correct copy of the application for emergency injunctive release pending appeal has been served upon the following, via U.S. Mail, by placing the same in the institutional mailbox on February 22, 2026 first-class mail postage prepaid to:

Cara Hanna, Assistant Attorney General
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711
Tel: 512-936-1400
cara.hanna@oag.texas.gov

I, Scott Palmer certify that the above facts are true and correct under penalty of perjury. Executed on February 22, 2026.

Scott Palmer