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No. 25A595

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

KATY ELIZABETH KABHA,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

On Petition for a Writ of Certiorari
to the Texas Court of Criminal Appeals

Katy Elizabeth Kabha

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October Term, 2025

QUESTIONS PRESENTED

1. Void Judgment / Due Process

Whether the Due Process Clause of the Fourteenth Amendment permits a State to impose and enforce criminal punishment where guilt was never lawfully adjudicated, no guilty or nolo contendere plea was entered, and the disposition imposed was unauthorized by statute.

2. Improper Use of Nunc Pro Tunc

Whether the Due Process Clause permits a state court to use nunc pro tunc procedure to fabricate plea-based findings that never occurred, contradict the reporter's record, and retroactively legitimize a criminal judgment that was void when imposed.

3. Denial of Meaningful Review / Due Process

Whether a State may continue enforcing criminal punishment consistent with the Due Process Clause and the Sixth Amendment after its courts refuse to adjudicate federal claims of suppressed Brady material, ineffective assistance of counsel, an unlawful adjudicative process, and a judgment later altered to fabricate plea findings.

LIST OF PARTIES

Petitioner:

Katy Elizabeth Kabha.

Respondent:

State of Texas.

No other parties are known to have an interest in the
outcome of this petition.

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OPINIONS BELOW

The opinion of the Fifth District Court of Appeals of Texas affirming the judgment was issued on February 24, 2025, in Cause No. 05-24-00008-CR. The opinion is unpublished and is reproduced in the Appendix.

The Texas Court of Criminal Appeals refused Petitioner's pro se Petition for Discretionary Review in Cause No. PD-0309-25 on July 30, 2025.

The Texas Court of Criminal Appeals denied Petitioner's pro se motion for rehearing on September 3, 2025.

No state court has issued any opinion addressing the merits of Petitioner's post-judgment claim that the trial court lacked statutory authority and jurisdiction to impose the disposition reflected in the judgment.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the final judgment of a state court of last resort.

The Fifth District Court of Appeals of Texas affirmed Petitioner's conviction on February 24, 2025, in Cause No. 05-24-00008-CR.

The Texas Court of Criminal Appeals refused Petitioner's Petition for Discretionary Review on July 30, 2025, in Cause No. PD-0309-25, and denied rehearing on September 3, 2025.

The judgment became final upon denial of rehearing on September 3, 2025.

This petition is timely filed pursuant to Supreme Court Rule 13 and this Court's Order granting an extension of time to file through January 31, 2026; the original petition was returned by the Clerk for correction of formatting deficiencies, and this corrected petition is resubmitted on March 20, 2026, within the time permitted by Supreme Court Rule 14.5, and it presents

federal questions under the Fourteenth and Sixth Amendments to the United States Constitution.

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

U.S. Constitution, Amendment XIV (Due Process Clause)

“No State shall ... deprive any person of life, liberty, or property, without due process of law.”

This case directly implicates the Due Process Clause of the Fourteenth Amendment, which limits a State’s authority to impose and preserve criminal punishment.

Due process requires that punishment be imposed only after a lawful adjudication of guilt or a valid plea entered knowingly and voluntarily in compliance with statutory and constitutional safeguards. It further requires an honest adjudicative process and a meaningful opportunity for judicial review.

This Court has recognized that constitutional error occurs not only when evidence is suppressed, but whenever the integrity of the criminal process is compromised or

punishment is imposed without lawful authority. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). These protections apply where criminal punishment is imposed without a plea or verdict, adjudicative facts are fabricated after the fact through nunc pro tunc procedure, or a conviction is preserved through procedures that deny meaningful review of constitutional defects.

The Due Process Clause does not tolerate criminal punishment imposed by judicial invention, retroactive reconstruction of the record, or procedural mechanisms that insulate unconstitutional convictions from review.

U.S. Constitution, Article VI, Clause 2 (Supremacy Clause)

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land.”

The Supremacy Clause is implicated where state courts decline to remedy or address criminal judgments entered and preserved in violation of federal constitutional limits on judicial authority and procedural fairness.

28 U.S.C. § 1257(a)

This statute confers jurisdiction on this Court to review final state-court judgments where federal constitutional rights have been denied or left unadjudicated.

Texas Code of Criminal Procedure art. 42A.101

Deferred adjudication is authorized only where a defendant pleads guilty or nolo contendere and the court acts within the statutory framework prescribed by the Legislature. It is not authorized following a contested trial on the merits.

Texas Code of Criminal Procedure art. 26.13

This statute requires formal admonishments before acceptance of a guilty or nolo contendere plea and is a prerequisite to any lawful plea-based disposition.

STATEMENT OF THE CASE

Petitioner Katy Elizabeth Kabha was charged in Grayson County, Texas, with felony assault on a public servant arising from an encounter with law enforcement officers.

From the outset of the proceedings, Petitioner maintained her innocence, entered a plea of not guilty, and declined to admit guilt at any stage of the case.

Petitioner elected to proceed to a contested bench trial. On November 6, 2023, the trial court conducted a full trial on the merits. Both parties presented evidence, rested, and closed. The case was not resolved by plea agreement. No guilty or nolo contendere plea was entered. No plea colloquy occurred, and no statutory admonishments associated with plea proceedings were given.

At a subsequent hearing on December 7, 2023, the trial court stated that the evidence was "sufficient beyond a reasonable doubt." Instead of entering a judgment adjudicating guilt or acquittal, however, the court imposed six months of deferred adjudication supervision with probationary conditions.

Petitioner did not consent to deferred adjudication and did not waive her right to a lawful adjudication following trial.

The written judgment that followed did not accurately reflect what had occurred in open court. It contained

plea-based recitals inconsistent with the reporter's record. Acting pro se, Petitioner initially sought correction, believing the inconsistency to be clerical.

Rather than correcting the record, the trial court entered a nunc pro tunc judgment that altered the substance of the disposition by inserting plea-based findings that never occurred.

Texas law does not authorize deferred adjudication following a completed contested trial. Deferred adjudication is available only upon a guilty or nolo contendere plea entered in compliance with statutory requirements. See *McNew v. State*, 608 S.W.2d 166, 174 (Tex. Crim. App. 1980).

Petitioner timely appealed. The Fifth District Court of Appeals affirmed the judgment. The Texas Court of Criminal Appeals refused discretionary review and denied rehearing without written opinion.

After direct review concluded, Petitioner examined the record and determined that the trial court had imposed a criminal disposition without statutory authority and therefore without jurisdiction. She filed post-judgment

motions in the 59th Judicial District Court asserting that the judgment was void ab initio.

No court has issued a ruling on the merits of that claim.

Petitioner remains subject to the consequences of a criminal judgment entered without lawful adjudication of guilt and without any court ever determining that the judgment is constitutionally valid.

These jurisdictional defects arose against a broader pattern of constitutional violations raised throughout trial and appeal, including suppression of exculpatory evidence, missing body-camera and dash-camera recordings, interference with defense witnesses, and prosecutorial discovery violations affecting probable cause. Those issues are preserved in the record and Petitioner's appellate briefs.

STATEMENT OF FACTS

The charge in this case arose from an encounter between Petitioner and law-enforcement officers in Grayson County, Texas.

At all times relevant, Petitioner maintained her innocence, entered a plea of not guilty, and affirmatively requested a trial.

Petitioner was arrested based on asserted municipal warrants and allegations arising from the encounter, including allegations of trespass. Petitioner disputed those allegations, which were shown to be unsupported prior to trial and further undermined by the evidence presented at trial.

Throughout pretrial proceedings, Petitioner sought production of body-camera and dash-camera recordings relating to the encounter. Those recordings were not produced. The absence of the recordings was a basis for Petitioner's pretrial motion to dismiss.

On November 6, 2023, the trial court conducted a full bench trial on the merits. Both parties presented evidence and rested. The case was not resolved by plea agreement. No guilty or nolo contendere plea was entered, no plea colloquy occurred, and no statutory admonishments were given.

At a subsequent hearing on December 7, 2023, the trial court stated that the evidence was “sufficient beyond a reasonable doubt.” Instead of entering a judgment adjudicating guilt or acquittal, however, the court imposed six months of deferred-adjudication supervision.

Petitioner did not plead guilty or nolo contendere, did not consent to deferred adjudication, and did not waive her right to adjudication following trial.

After sentencing, the trial court entered a written judgment containing plea-based findings inconsistent with the reporter’s record. Acting pro se, Petitioner filed a motion seeking correction of what she believed to be clerical error.

The trial court thereafter entered a judgment nunc pro tunc inserting plea-based recitals that had not occurred.

The period of deferred-adjudication supervision concluded before appellate proceedings were resolved. As a result, Petitioner had no opportunity to seek federal habeas review.

Following completion of supervision, the municipal charges forming the asserted basis for probable cause were dismissed. No court considered those dismissals during direct review or in any post-judgment ruling.

Petitioner later filed post-judgment motions asserting that the disposition imposed after trial was unauthorized by statute and that the judgment was therefore invalid. No court has ruled on the merits of those claims.

The record further reflects that by 2022 the State had notice that evidence supporting probable cause did not exist. (R.R. vol. 9 at 46.)

REASONS FOR GRANTING THE PETITION

I. The Judgment Is Void Ab Initio, and Its Enforcement Violates the Due Process Clause

This case does not ask the Court to interpret Texas law or to correct an error of state procedure. It asks whether the Due Process Clause permits a State to continue enforcing criminal punishment after the State itself has acted beyond the authority its own law confers.

This case presents a fundamental constitutional question: whether a State may impose and enforce criminal punishment under a “judgment” that never lawfully came into existence.

The Due Process Clause permits criminal punishment only after either (1) a valid adjudication of guilt, or (2) a voluntary, knowing, and statutorily compliant guilty or nolo contendere plea. Neither occurred here.

Petitioner pleaded not guilty, maintained her innocence, and exercised her right to a contested bench trial. After both parties rested and closed, the trial court stated that the evidence was “sufficient beyond a reasonable doubt,” yet declined to enter a judgment of conviction and instead imposed deferred-adjudication supervision.

Texas law does not authorize that disposition. Deferred adjudication is available only when a defendant pleads guilty or nolo contendere and the court complies with the statutory plea framework. A court has no authority to impose deferred adjudication following a completed trial on the merits. The disposition imposed here was therefore unknown to law.

When a court acts without statutory authority, it acts without jurisdiction. A judgment entered in excess of jurisdiction "is void, and is subject to collateral attack at any time." *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).

This Court has likewise held that punishment imposed beyond lawful authority violates constitutional limits on judicial power. *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 176 (1874).

This is not a case of mere procedural irregularity. It is a case in which the trial court exercised a power the legislature never granted, imposing criminal punishment without a plea, without a verdict, and without lawful adjudication.

A judgment that never lawfully existed cannot constitutionally be enforced. Yet Texas continues to treat this void judgment as valid, subjecting Petitioner to criminal consequences without any constitutionally sufficient determination of guilt.

This Court's review is warranted to reaffirm a bedrock principle of ordered liberty: the State may not deprive a

person of liberty through a judgment the law does not recognize as a judgment at all.

II. The Trial Court Exceeded Its Authority by Using Nunc Pro Tunc to Manufacture a Plea That Never Occurred

This case also presents an important and recurring question concerning the constitutional limits of nunc pro tunc authority.

Nunc pro tunc exists solely to correct clerical errors so that the written judgment accurately reflects what actually occurred in open court. It may not be used to revise judicial decisions, add new findings, or fabricate procedural events after the fact. *Hill v. United States*, 368 U.S. 424, 430 (1962).

Here, the reporter's record establishes that:

- no guilty plea occurred,
- no nolo contendere plea occurred,
- no plea colloquy occurred, and
- no statutory admonishments were given.

Nevertheless, after sentencing, the written judgment was altered to include plea-based recitals that directly contradict the trial record.

When Petitioner, acting pro se, sought correction of what appeared to be a clerical inconsistency, the trial court did not correct the error. Instead, it entered a nunc pro tunc judgment that substantively rewrote history, adding plea findings that never happened and converting an unauthorized disposition into the appearance of a lawful plea case.

That action exceeded the court's jurisdiction. Nunc pro tunc cannot be used to create facts, supply missing jurisdiction, or transform an unlawful judgment into a lawful one.

The constitutional defect occurred at sentencing, when the court orally imposed deferred adjudication without statutory authority. A criminal judgment is rendered when pronounced in open court, not when later reduced to writing. Because the oral disposition itself was unauthorized, the judgment was void at the moment it was rendered.

No later modification can retroactively confer jurisdiction.

No clerical correction can legalize what the Constitution and statutes forbid.

Allowing courts to use nunc pro tunc to fabricate pleas after trial would eviscerate the Due Process Clause, permitting punishment to be justified not by what occurred, but by what a court later wishes had occurred.

This Court's review is necessary to make clear that due process forbids the post-hoc manufacture of jurisdiction through nunc pro tunc procedure.

III. Systemic Denial of Due Process Resulting in an Unreviewed Void Judgment

This case warrants review because no Texas court has ever adjudicated the merits of Petitioner's federal due process claims, despite those claims being properly presented, preserved, and dispositive. A conviction maintained in violation of due process is constitutionally void and may be challenged at any time. *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).

The constitutional injury here did not arise from a single error. It resulted from a cumulative breakdown of the adversarial process: Petitioner was denied an examining trial while incarcerated, denied the ability to present defense witnesses, deprived of effective assistance of counsel, subjected to the suppression of body-camera and dash-camera evidence, and confronted with materially altered testimony after a recording was withheld from the record. These violations were followed by criminal punishment imposed without lawful adjudication and a judgment later rewritten through nunc pro tunc procedure to insert plea findings that never occurred.

On direct appeal, Petitioner challenged the contradiction between the reporter's record and the written judgment, the use of nunc pro tunc procedure to add plea findings that never occurred, the denial of witnesses and compulsory process, the suppression of recorded evidence, and the ineffective assistance of appointed counsel. The Fifth District Court of Appeals affirmed without addressing these federal constitutional defects. The Texas Court of Criminal Appeals refused discretionary review and denied rehearing without opinion.

Petitioner further raised on appeal that the State failed to prove the specific act alleged in the indictment and that the trial court itself expressed uncertainty as to that element before imposing punishment. That claim likewise went unaddressed.

Only after direct review concluded, when Petitioner examined the record pro se, did the full constitutional magnitude of the sentencing defect become clear: the disposition imposed after a contested trial was unauthorized by statute and therefore lacked lawful foundation. Petitioner filed post-judgment motions explaining that the judgment had been entered without lawful adjudication and later altered to supply jurisdiction that never existed. The trial court did not rule. No court has.

The result is extraordinary. Texas continues to enforce criminal punishment even though no court has ever determined whether the conviction was lawfully imposed or constitutionally preserved. This Court has long held that punishment imposed without lawful authority violates the most basic limits of judicial power protected

by due process. *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 176 (1874).

This Court has likewise made clear that due process is violated when liberty is restrained through an unlawful sentencing or adjudicative framework, even where the State asserts that the outcome might have been the same. *Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

The denial of review was further compounded by the structure of the punishment itself. Because deferred-adjudication supervision expired before appellate proceedings concluded, Petitioner was deprived of any realistic opportunity to seek federal habeas relief. The unauthorized disposition thus functioned to insulate the conviction from both state and federal constitutional review.

Due process does not permit constitutional claims of this magnitude to disappear through procedural silence. While States may design their appellate systems, once review is provided it must be meaningful. *Evitts v. Lucey*, 469 U.S. 387, 393–96 (1985). A system that enforces criminal punishment while refusing to adjudicate properly

presented constitutional defects—after those defects were never competently identified or litigated by counsel—does not satisfy that standard.

The need for review is heightened by the subsequent collapse of the prosecution's factual foundation: the municipal charges forming the asserted basis for probable cause were dismissed following prosecutorial discovery violations, eliminating the predicate for the arrest and prosecution. Yet no court has considered that development. Suppression of material exculpatory evidence independently violates due process. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

When a State enforces a criminal judgment that:

- was imposed without lawful adjudication of guilt,
- was later rewritten to fabricate plea findings that never occurred,
- was obtained through suppressed evidence and impaired defense rights,
- was never properly challenged by counsel in its true constitutional posture, and
- is shielded from all meaningful judicial review,

the Due Process Clause is not merely implicated—it is violated. A conviction preserved through evidentiary suppression, ineffective representation, retroactive fabrication, and procedural silence rather than constitutional process cannot stand. This Court's intervention is necessary to restore the boundary between lawful adjudication and punishment imposed without due process of law.

CONCLUSION

This case presents a fundamental question of constitutional structure: whether a State may impose and continue to enforce criminal punishment where guilt was never lawfully adjudicated, no valid plea was entered, and the trial court lacked statutory authority to impose the disposition reflected in the judgment.

The constitutional injury did not arise from a single error. It arose from a systemic breakdown of the adversarial process—beginning with the denial of basic procedural safeguards and effective assistance of counsel, continuing through the suppression of material evidence and alteration of the adjudicative record, and culminating in

the use of nunc pro tunc procedure to insert plea-based findings that never occurred. When Petitioner sought review of these violations, no state court adjudicated the merits of her federal constitutional claims.

The result is extraordinary: a criminal judgment that was never lawfully imposed continues to carry legal consequences, not because it is constitutional, but because it has been insulated from review through procedural silence and ineffective representation.

The Due Process Clause does not permit liberty to be restrained by judicial invention, fabricated adjudicative findings, or a system that denies any meaningful forum to test the lawfulness of criminal punishment.

The record is complete, the questions presented are purely legal and dispositive, and this Court's review is necessary to restore the constitutional boundary between lawful adjudication and punishment imposed without due process of law.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Katy K 0 3/20/26

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Date: March 20th, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 33.1 of the Rules of the Supreme Court of the United States, I certify that this Petition for a Writ of Certiorari complies with the applicable word-count limitation. This petition contains **3,051 words**, excluding the portions exempted by Rule 33.1(d), including the cover page, Questions Presented, List of Parties, Table of Contents, Table of Authorities, Jurisdiction, Constitutional and Statutory Provisions Involved, the Appendix, and certificates.

I further certify that this petition complies with the typeface, type-style, and formatting requirements of Rule 33.1.

Respectfully submitted,

 03/20/24

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March 20th, 2026