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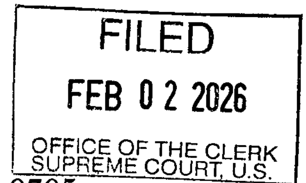

IN THE SUPREME COURT OF THE UNITED STATES

Appeal from the Texas Supreme Court, case nos. 25-0411 and 25-0705

ALISON MAYNARD,

Petitioner,

vs.

WILLIAM R. LUCERO, JACOB VOS, and MARK BANKSTON,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court for the State of Texas

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PETITION FOR WRIT OF CERTIORARI

Petitioner *pro se*:

Alison Maynard
7642 Hummingbird Hill Ln
San Antonio, TX 78255
Email: dinophile@gmail.com
Tel: 726-248-2141

I. QUESTIONS PRESENTED FOR REVIEW

Three substantial questions of federal law are presented, each requiring construction of the Wiretap Act, 18 U.S.C. Sec. 2520, *incorporating by reference* Secs. 2511 *and* 2515, in particular that this federal law preempts state judicial rules in conflict with it, as follows:

A. Whether Messrs. Lucero and Vos, nonresidents of Texas, can be dismissed by the Texas court for lack of personal jurisdiction, when nationwide jurisdiction is necessarily implied or the Wiretap Act's remedy is vitiated;

B. Whether the Fifth Amendment's minimum contacts test, as opposed to the Fourteenth Amendment's, applies to defendants sued in state court in a federal question case, specifically Lucero and Vos, in this case, for their violations of the Wiretap Act;

C. Whether Mr. Bankston's affirmative defense of statute of limitations can imply the same time limit to service of process, when no limitation on time of service is expressed in the Wiretap Act, nor even in any published state court rule; and whether the Texas Citizens' Participation Act, which is the basis for that and other defenses raised by Mr. Bankston but not decided on appeal, is preempted in its entirety.

II. PROCEEDINGS IN TEXAS STATE COURT SYSTEM

A. Parties to proceedings in the Texas Supreme Court: The original caption in this case contained the names of the parties to only one of two Texas Supreme Court cases as to which review is sought, the named parties being William Lucero and Jacob Vos, since an extension was requested only as to them. Thus, that caption did not indicate that review would also be sought as to a second Texas Supreme Court case, involving respondent Mark Bankston, so it has been modified to include the Bankston case[1]. The appellant/petitioner in both Texas Supreme Court cases was myself, Alison Maynard.

B. Parties in Bexar County District Court (in San Antonio):

Plaintiffs: Alison Maynard and Richard Carlisle.

Defendants: William R. Lucero, Jacob Vos, Jacob Zimmerman, Mark Bankston, Leonard Pozner, Elizabeth Williamson, and Doug Maguire. Pozner, Williamson, and Maguire had not been served at the time of the dismissals of Respondents.

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[1] Review was originally sought as to a third Texas Supreme Court case, as well, involving Jacob Zimmerman. However, the clerk of this Court determined the petition for certiorari was late as to Zimmerman. She has required this petition be resubmitted after removing all references to the Zimmerman case and complying with Rule 12.4, as I have now done.

C. List of all proceedings in the Texas state courts:

1. Bexar County District Court:

a. Case 2020-CI-21633: *Richard Carlisle and Alison Maynard, Plaintiffs v. William R. Lucero, Jacob Vos, Jacob Zimmerman, Mark Bankston, Leonard Pozner, Elizabeth Williamson, and Doug Maguire, Defendants*

b. Case 2023-CI-11772: *Richard Carlisle and Alison Maynard, Plaintiffs v. William Lucero and Jacob Vos, Defendants:* This was the case created by the district court severing the claims against Lucero and Vos, residents of Colorado, after their objection to jurisdiction was granted in case 2020-CI-21633 on March 31st, 2023.

c. Case 2024-CI-00306, *Richard Carlisle and Alison Maynard, Plaintiffs, v. Mark Bankston, Defendant:* This was the case created by the district court by severing the claims against Mark Bankston, after his "Motion to Dismiss Pursuant to the Texas Citizens Participation Act" in case 2020-CI-21633 was granted on July 13th, 2023.

2. Texas Fourth Court of Appeals:

Case 04-23-00665-CV: *Richard Carlisle and Alison Maynard, Appellants v. William R. Lucero, Jacob Vos, Jacob Zimmerman, and Mark Bankston, Appellees.* The timing of the dismissals of Lucero/Vos, Zimmerman, and Bankston was such that Mr. Carlisle and I were able to appeal all three in this one case. The Court of

Appeals then split the appeal into three, retaining this case number for only Lucero/Vos, as follows:

i. Case 04-23-00665-CV, *Richard Carlisle and Alison Maynard, Appellants v. William R. Lucero and Jacob Vos, Appellees.* Dismissal of Lucero and Vos based on lack of personal jurisdiction upheld via judgment and memorandum opinion dated April 2, 2025. Reconsideration *en banc* denied June 3rd, 2025.

ii. Case 04-24-00074-CV, *Richard Carlisle and Alison Maynard, Appellants v. Mark Bankston, Appellee.* Dismissal of Bankston based on Texas Citizens' Participation Act upheld (although vacating a $96,000 attorney fee award) via judgment and memorandum opinion dated May 21, 2025. Rehearing denied June 30th, 2025.

3. Texas Supreme Court:

i. Case 25-0411, *Alison Maynard, Petitioner v. William R. Lucero and Jacob Vos, Respondents.* Petition for review denied June 27th, 2025. Rehearing denied Sept. 5th, 2025.

ii. Case 25-0705, *Alison Maynard, Petitioner v. Mark Bankston, Respondent.* Petition for review denied Nov. 14th, 2025. Rehearing not requested.

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App-1(d) ......LuceroVos, Texas Supreme Court denial of reconsideration

App-3(a) ...... Bankston, Bexar County District Court order of dismissal

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IV. CITATIONS TO OFFICIAL AND UNOFFICIAL REPORTS

The opinions of Texas's Fourth Court of Appeals referenced in II.C.2, above, are not published and there is no citation other than the case number. These opinions, along with the orders of the Texas Supreme Court denying review and rehearing, are in the appendix.

V. BASIS FOR JURISDICTION IN THIS COURT

A. Timeliness and Rule 12.4: Per U.S. Supreme Court Rule 12.4, two judgments involving closely related questions are sought to be reviewed on writ of certiorari to the Texas Supreme Court, via this single petition. Although the petition in Lucero/Vos was originally due Dec. 4th, 2025, Justice Alito, on Nov. 25th,

2025, granted an extension on that petition to Feb. 2nd, 2026.[2] The petition relating to Bankston was due Feb. 13th, so this petition is early as to that case.

As stated above, the Texas Supreme Court denied my request for reconsideration in Lucero/Vos on Sept. 5th, 2025 and my petition for review in Bankston on Nov. 14th, 2025.

B. Statutory provision conferring jurisdiction:

Congress authorized this Court via 28 U.S.C. Sec. 1257 (a) to review, by writ of certiorari, final judgments from the highest court of a state when any "title, right, privilege, or immunity" is claimed under the Constitution or federal laws. I claim the right to the civil remedy provided by Congress in the Wiretap Act, 18 U.S.C. Sec. 2520, for the unlawful use and disclosure, including use in evidence in a state administrative proceeding, of my unlawfully acquired emails. Per U.S. Supreme Court Rule 12.4, I seek certiorari to this Court to review the denial by the Texas Supreme Court of my petitions in cases 25-0411 and 25-0705 asking it to review the opinions of the Texas Fourth Court of Appeals in each matter, or certiorari directly as to those opinions themselves, in 04-23-00665-CV and 04-24-00074-CV.

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional provisions: The Supremacy Clause of the United States Constitution, Art. VI, Cl. 2, states:

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[2] I believed Feb. 2nd was the date the Zimmerman petition was due, the reason I chose that date; in fact, the Zimmerman petition was due January 29th. See n. 1.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Fifth Amendment to the U.S. Constitution states in pertinent part that "no person shall be … deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment to the U.S. Constitution, at Sec. 1, states in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

Statutes: The Federal Wiretap Act of 1968 is part of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351, 82 Stat. 197, enacted June 19, 1968, codified at 34 U.S.C. § 10101 *et seq.*). It was enacted originally to address the interception of telephone calls, then updated via the Electronic Communications and Privacy Act of 1986 (ECPA, Title I), 18 U.S.C. Secs. 2510 - 2523, to address the interception of digital and electronic communications.

18 U.S.C. Sec. 2520 incorporates Sec. 2511, which makes it a crime to use or disclose electronic communications which the defendants knew or should have known were intercepted, and Sec. 2515, which prohibits the use of intercepted wire or oral communications in evidence.

The Texas Citizens' Participation Act is Tex. Civ. Prac. & Rem. Code Ann. Sec. 27.001 *et seq.* Because 28 U.S.C. 2403(b) may apply, per U.S. Supreme Court Rule 29 a copy of this petition will be served on the Texas Attorney General.

STATEMENT OF THE CASE

A. Material facts.

I am a former Colorado attorney (and attorney general candidate) who left that state in 2011 and became a Texas resident in 2016. Although I had not been registered as an attorney since 2009 and done nothing in a Colorado court, on April 9th, 2020 I was served at my home in San Antonio, Texas, with a disciplinary complaint signed by Jacob Vos, a prosecutor with the Colorado Supreme Court's Office of Attorney Regulation Counsel (OARC). The grievant was Minnesota attorney Jacob Zimmerman.

Mr. Zimmerman represented the plaintiff, Leonard Pozner, in the case *Pozner v. Fetzer* in Wisconsin, where Mr. Pozner, reportedly the father of a boy killed in the Sandy Hook school shooting in Connecticut, sued Prof. James Fetzer for defamation over a book Prof. Fetzer edited, *Nobody Died at Sandy Hook*. Mr. Zimmerman alleged to OARC that I had engaged in the unauthorized practice of law (UPL) by drafting documents for Prof. Fetzer to use in the case. I did, in fact, draft briefs and motions for Prof. Fetzer for about three months, from March to June 2019, before he found counsel, but I was not compensated and did nothing in a

representative capacity in any court, App-7, which means I did not engage in UPL as a matter of Wisconsin law[3]. '

A key piece of the "evidence" which Mr. Zimmerman provided to the Colorado OARC was private emails, referred to here as the "Halbig emails," which I had exchanged with acquaintances Richard Carlisle and Wolfgang Halbig in August 2018. The emails dealt with a case filed by Mr. Halbig pursuant to the False Claims Act (31 U.S.C. §§ 3729 – 3733), which was under seal mandated both by that Act and a federal court order. On their face the emails show only Carlisle, Halbig, and me as recipients, and each of us established, by sworn affidavit in the Colorado disciplinary proceeding, that we never provided them to anyone else by any other means, such as mail or hand delivery, App-8[4].

Although the Halbig emails had nothing to do with the charge of UPL on behalf of James Fetzer, they were attached to Jacob Zimmerman's request for

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[3] Wis. Stat. §757.30(2) states: "Every *person who appears* as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding *in or before any court of record*, circuit or supplemental court commissioner, or judicial tribunal of the United States, or of any state, *or who otherwise, in or out of court, for compensation or pecuniary reward* gives professional legal advice not incidental to his or her usual or ordinary business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section." (Emphasis added.)

I also did not commit UPL as a matter of Colorado law. Colorado had even scrapped its rules establishing the elements of UPL, but case law established that the offense required, as in Wisconsin, compensation or appearing in a representative capacity. The prosecution of me in Colorado had no legal basis whatsoever.

[4] My own affidavit is not included here, since it was part of a much larger pleading.

investigation. I learned that a Houston attorney named Mark Bankston, who was unknown to us, had sent them to Mr. Zimmerman. Mr. Bankston set forth how he acquired our emails in a declaration for Jacob Vos dated Feb. 12th, [2020][5], stating under penalty of perjury that they had been included in a document production made to *him* by *Infowars* in connection with a Sandy Hook-related court case in Austin, Texas, where Bankston represented a plaintiff named Scarlett Lewis. Mr. Bankston declared that he provided the Halbig emails to Jacob Zimmerman, in Wisconsin, to transmit to OARC for use in the disciplinary proceeding Mr. Zimmerman had initiated against me.

I discovered, on my own, that Mark Bankston also represented Leonard Pozner against Infowars in a different case in Austin which he did not mention in his declaration. Pozner is thus the link between Zimmerman and Bankston, as the client of both attorneys in two different states. Richard Carlisle and I alleged, in our complaint, that it was Pozner who intercepted the emails from my Gmail account, whereupon he "salted" them into the dropbox of documents Infowars produced to Bankston in the Lewis case, App-9, par. 29.[6]

I showed Mr. Vos, on Feb. 19th, 2020, that only Carlisle, Halbig, and I were named recipients on these emails, charged that they had been illegally intercepted, and warned him not to use them, citing the Wiretap Act. He proceeded to file

[5] There is a typo in the date. The declaration says "2010."

[6] Pozner is an IT fundi whose business is "modifying" people's web presence, in my case making it unspeakable, App-10.

formal disciplinary charges against me for UPL. Six months later he produced to me the notes of Matt Gill, an OARC investigator, who convened a telephone call with Bankston and Vos probably immediately after I had made the charge of interception. Gill's notes say "Not sure how email dump ended up in Mark's discovery" and "These were not sent to Infowars." App-11.

Thus, Mark Bankston's declaration of Feb. 12, 2020, to OARC was false, as he admitted. Jacob Vos pursued formal disciplinary charges against me with full knowledge the Halbig emails had been accessed in violation of federal law, and that he would be violating the law, himself, by using them.

I would not sit for the deposition Vos noticed to inquire into the Halbig emails, and moved for a protective order. The disciplinary judge, William Lucero, ignored the Congressional prohibition against using the intercepted emails in evidence in any state administrative or judicial proceeding, 18 U.S.C. Sec. 2515, along with my admonition that the matter discussed in them was under seal. He denied my motion and defaulted me. After my default, a panel consisting of Lucero, an attorney friend of his, and a layperson convened to determine the sanction. Jacob Vos proffered the Halbig emails as a factor in aggravation--to prove I had engaged in UPL on other occasions--to reach the sanction of disbarment. Although there had been no charge in the case of my engaging in UPL for Halbig, and no

adjudication of this issue, I was disbarred. Thus, Mr. Carlisle[7] and I sued Messrs Lucero and Vos, along with Mark Bankston and Jacob Zimmerman, pursuant to the Wiretap Act, 18 U.S.C. Sec. 2520, claiming actual and punitive damages, further alleging conspiracy and, by me alone, intentional infliction of emotional distress.

The facts surrounding my delayed service on Mark Bankston were that I was, first, defending against the Colorado disciplinary proceedings, including appealing the disbarment to the Colorado Supreme Court—which appeal, if I had been successful, would have obviated this suit[8]--and, second, dealing with COVID restrictions, which meant the Bexar County courthouse law library was closed, so I could not research case law. I filed the complaint itself well within the limitations period, 8-1/2 months after learning of the theft of my emails, and had looked online for any rule or statute setting a deadline for making service in a Texas state court case. There is none. From 20 years of litigation experience in Colorado I knew there was no rule limiting the time for making service there, either. I attested to these facts under oath. I learned, from Mr. Bankston's motion to dismiss, however, that Texas case law imposes a requirement that service be made within the statutory limitations period, unless diligence is shown, *see, e.g., Ashley v. Hawkins,*

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[7] Richard Carlisle has a privacy interest in the same emails, but does not participate in this proceeding. He also did not participate in the petitions for certiorari to the Texas Supreme Court.

[8] The Colorado Supreme Court issued a one-line order of affirmation, deciding none of my issues.

293 S.W. 3d 175 (Tex. 2009). The Bexar County district court did not accept my showing of diligence and granted his motion.

B. <u>Stage of proceedings when federal questions were raised</u>

My claims under the Wiretap Act, 18 U.S.C. Sec. 2520(b)(1), were made in the original complaint, filed Nov. 5, 2020, which sought injunctive relief, accompanied by my request for temporary restraining order, to stop the sanctions hearing in Colorado from going forward. That denied, Mr. Carlisle and I amended the complaint on March 6th, 2023, App-9, claiming actual and punitive damages.

I raised the issue of preemption in the Lucero/Vos and Bankston appeals, as set forth below.[9]

1. *Implied nationwide jurisdiction/preemption of the state court's basis for declining personal jurisdiction: assignment of error in Lucero/Vos*

Nationwide jurisdiction must be implied in the Wiretap Act, in the Lucero/Vos case, for the remedy to be viable. This is effectively the same question as preemption of the state courts' refusal to find these defendants had minimum contacts with the state. The state court is constitutionally required to give effect to the federal remedy.

When Lucero and Vos made their special appearances to contest personal jurisdiction in the trial court, I argued that the traditional minimum contacts

[9] Although I have not presented, as a question for review, the Texas courts' flawed 14th Amendment minimum contacts analysis, I detail its defects nevertheless because of the appellate court's mischaracterizations of the record (*e.g.*, saying I produced no evidence, when I did, and others). Additionally, it may be necessary to describe these errors because preemption is triggered by conflict with the courts' decisions.

requirements of the 14th Amendment as set forth in *Calder v. Jones*, 465 U.S. 783 (1984), were satisfied because the Wiretap Act claim was analogous to the tort of invasion of privacy, as the United States Court of Appeals for the Fourth Circuit held in *Brown v. American Broadcasting Co., Inc.*, 704 F.2d 1296 (4th Cir. 1983), and the state's long-arm statute provided for jurisdiction over nonresident tortfeasors. The district court judge signed the order dismissing these defendants which had been drafted by their counsel and included no findings of fact or legal analysis, App-1(a).

In the Texas Fourth Court of Appeals, I argued preemption for the first time in my reply brief, saying:

> A special circumstance militates for the court's exercise of personal jurisdiction over Lucero and Vos, that being the federal statute authorizing a civil suit for the use and disclosure of the plaintiffs' intercepted emails (the Wiretap Act, 18 U.S.C. Sec. 2520). Under the United States Constitution state courts have not only the power but the duty to enforce obligations arising under federal law, unless Congress gives the federal courts exclusive jurisdiction, which it did not do in the Wiretap Act. *Testa v. Katt*, 330 U.S. 386 (1947). "State courts are bound ... to give effect to federal law when it is applicable and to disregard state law when there is a conflict," *Cooper v. Aaron*, 358 U.S. 1 (1958). The mandate is found in the Supremacy Clause of the United States Constitution, Art. VI, Sec. 2, which says:
>
> > This Constitution, *and the laws of the United States which shall be made in pursuance thereof*, and all treaties made or which shall be made, under the authority of the United States, *shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*
>
> (Emphasis added). ...[T]he court cannot ... decline to proceed based on a determination that these defendants lacked a sufficient "Texas Nexus," since to do so would defeat the congressional remedy. Congress did not say that

state boundaries may be used to shield a Wiretap Act violator. Its intent was quite the opposite: to reach such wrongdoers nationwide. Because of the Supremacy Clause, the assumed right of the defendant to not be forced to defend in a state he has not even visited physically is trumped by Congress's expressed intent to deter and punish those who interfere with others' electronic communications, wherever they may be.

The Court of Appeals concluded the court did not have specific jurisdiction over Lucero and Vos, saying they did not "engage in any activities demonstrating they purposefully availed themselves of the benefits and protections of Texas law," relying on their declarations, which were not made under penalty of perjury[10], so were fictitious. The Court said nothing about preemption, made no analysis of the Wiretap Act (and mischaracterized my argument about the declarations).

In my request for *en banc* reconsideration filed April 21st, 2025, I cast my argument expressly as preemption, by the Wiretap Act, of the state court's decision to decline personal jurisdiction, specifically of its minimum contacts analysis. I discussed the necessity of implying nationwide jurisdiction in order to give effect to the federal remedy, saying:

> [T]he reach of this Act, which prohibits not only the interception of Plaintiffs' emails, but their use or disclosure, is not and cannot be limited to violators

[10] Lucero and Vos's declarations contained over 25 factual assertions, several false on their face (including that they had not sent anything to me in Texas and initiated no proceedings against me in Texas!), to establish they had no contacts with the state. However, instead of appearing at the foot of the document, as is customary, their jurat appeared in the first paragraph, stating that the "foregoing"—not the following—statements were made under penalty of perjury. Thus, *none* of their factual assertions, other than their name and address in the first paragraph, were made under penalty of perjury, so the jurats did not meet the requirements of Rule 120a,Tex.R.Civ.P. In the meantime, my response, made under oath, included a link to the 1,264-page pleadings file of the Colorado disciplinary proceedings, the first entry in which is the citation Jacob Vos served on me at my home in San Antonio.

> having "minimum contacts" defined by the state's physical boundaries, since that restriction is not expressed in the Wiretap Act and thwarts the intent of Congress.
>
> ...
>
> The use and disclosure of intercepted electronic communications which the Wiretap Act makes unlawful can occur wherever there is an internet connection, via wireless transmissions or wired servers physically located in other states, as well as in Texas, causing harm to a victim thousands of miles away. "Use and disclosure" of the intercepted electronic communications also occurs if they are printed out and transmitted by mail.
>
> ...
>
> Congress says the interception, use or disclosure of wire communications is *prohibited by any person* except as specifically provided in the statute ...and there is no specific exception for persons living or acting outside the territorial boundaries of the state in which suit is brought. It is a nationwide prohibition. ...

I also made the Fifth Amendment argument that minimum contacts are satisfied, for a federal question such as this one under the Wiretap Act, by suit brought anywhere within the United States. The Fourth Court of Appeals denied the request for *en banc* reconsideration in a one-line order.

My petition for review to the Texas Supreme Court dated May 19th, 2025, was primarily devoted to the substantial federal question of Wiretap Act preemption and again made the Fifth Amendment argument. I further argued that the judicial requirements for a special appearance under the state long-arm statute were not met, both because the defendants had targeted me in Texas, where they had no jurisdiction, as well as because their declarations attesting they did not were fraudulent. *See* n. 9. The Texas Supreme Court denied review, App-1(c).

2. Preemption/due process violation: assignment of error in Bankston

In the Texas 4th Court of Appeals, case 04-24-00074-CV, I argued in my opening brief that the Texas Citizens' Participation Act (TCPA), Tex. Civ. Prac. & Rem. Code Ann. § 27.001 *et seq.*, and the affirmative defense of statute of limitations as applied to service of process—which Bankston invoked under the "umbrella" of the TCPA--were both preempted by the Wiretap Act. I also assigned as error the time limitation on service imposed in the absence of any published rule, which constituted denial of *my* due process rights under the 14th Amendment to the U.S. Constitution. There is no time limit for making service under the Wiretap Act, and Fed.R.Civ.P. 4(m) does not apply in state court.

The first argument in my reply brief filed Oct. 18th, 2024, was that the Wiretap Act preempted the TCPA on its face; the second was that defenses not enumerated in the Wiretap Act (such as failure to make service within the statutory limitations period) are preempted; and the fourth was that the limitation imposed on service of process was doubly preempted under *Felder v. Casey*, 487 U.S. 131 (1988), since it led to a different result in state court than in federal court.

Despite this extensive briefing, the Court of Appeals did not mention preemption in its opinion.

In my petition for review to the Texas Supreme Court, I argued that the unpublished judicial rule requiring service to be made within the same limitations period as provided by the statute of limitations was preempted by the Wiretap Act,

as well as the rule of *Felder v. Casey*. I further argued that I was denied due process, since rules must be sufficiently clear and published to ensure that individuals can understand what is required. The Court denied my petition.

VII. ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF THE WRIT

A. <u>That the Wiretap Act preempts a state court's decision to decline personal jurisdiction based on no minimum contacts with the state presents a novel and substantial federal question</u>.

The Texas courts refused to entertain my claims under the Wiretap Act-- despite the Supremacy Clause mandate--by deciding that Lucero/Vos lacked minimum contacts with the state. The remedy Congress provided for the use of my stolen emails was thus rendered worthless.

The Act says, at 18 U.S.C. Sec. 2520(a):

> CAUSE OF ACTION. ...*[A]ny ...person* aggrieved *by any violation* of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind *may, in a civil action, recover from the person or entity*, other than the United States, *which engaged in that violation* such relief as may be appropriate.

(Emphasis added.) Congress provided a remedy to *any person* aggrieved by the conduct described, as against *the person [who] engaged in the violation.* That it declined to define any locus within which suit against a violator may be brought indicates that Congress did not intend its remedy to be thwarted by a state's geographical boundaries. No barrier to the interception and transmission of electronic communications is presented by such boundaries. Thus, although the

Wiretap Act does not expressly provide for nationwide personal jurisdiction, because its remedy is vitiated without it, nationwide jurisdiction must be implied[11].

Haywood v. Drown, 556 U.S. 729 (2009), rested on the same mandatory language found in the 1871 Civil Rights Act, 42 U.S.C. Sec. 1983. It, too, says *every person* who engages in the proscribed activity *shall be liable*. This Court said:

> [A]lthough states retain substantial authority to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies. ... The State's policy, whatever its merits, is contrary to Congress' judgment that *all* persons who violate federal rights while acting under color of state law shall be held liable for damages.

That the Texas court's decision declining personal jurisdiction is preempted by the Wiretap Act, since nationwide jurisdiction is implied, is an issue of first impression. It is the logical and necessary consequence of the huge advances in electronic communications which have been made since 1986, and represents no more of an "incursion" into state sovereignty than the internet itself. Effectively, this Court is asked to hold that the minimum contacts test for Wiretap Act purposes may be met virtually.

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[11]"Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants ..."

https://legalresource.ph/doctrine-of-necessary-implication-statutory-construction/ (accessed 1/26/26)

B. That the Fifth Amendment's minimum contacts standard—not the Fourteenth's—must apply to this federal question in state court presents a substantial federal question.

In *Fuld v. Palestine Liberation Organization,* 145 S.Ct. 2090 (June 20, 2025), this Court considered the constitutionality of a statute, the PSJVTA, 18 U.S.C. Secs. 2333, 2334, which provided that the Palestine Liberation Organization and Palestinian Authority--by name--by virtue of engaging in activities committed on U.S. soil which the law defined as terrorism, had consented to personal jurisdiction in "any appropriate district court of the United States." The case rejected the application of 14th Amendment due process standards, holding that the Fifth Amendment's standards applied, which meant that the defendants' minimum contacts were to be assessed in relation to the United States as a whole, rather than the state in which the court was located. Thus, the statute passed constitutional muster.

The Fifth Amendment is, then, a parallel route to the destination the Court must necessarily reach in this case. While the Wiretap Act does not explicitly provide for nationwide jurisdiction, as the statute did in *Fuld*, and this case is in state court, not federal, these variances are immaterial. What matters is that the Texas court's application of 14th Amendment minimum contacts standards has created immunity for the respondents, obstructing the intent of Congress. The state court did not even evaluate those standards in good faith, as noted, effectively rewriting the defendants' affidavits for them and mischaracterizing the record; but

the basis on which it failed to find sufficient contacts is immaterial, too, because it must be deemed to have no authority to require the defendants to have contacts with the *state* before the federal question may be entertained.

If the court had found personal jurisdiction under the 14th Amendment (which it should have), well and good: there would be no conflict with the federal law. But because it did not, there is, and its decision is preempted. And it is not a question of competing *constitutional* rights, that is, of Defendants' right to due process vs. the Supremacy Clause, since Defendants' due process rights derive from the Fifth Amendment, which prescribes that they may be sued anywhere within the United States. Minimum contacts for Wiretap Act purposes may be—indeed, usually must be—established virtually. This is a just result, given not only these defendants' foreknowledge that they could be haled into court in Texas, but that they haled *me* into their *Colorado* disciplinary proceeding, when I had no minimum contacts with that state, forcing me to defend and stigmatizing and impoverishing me for life.

In *Howlett v. Rose,* 496 U.S. 356, 375 (1990), this Court held that the state court, in applying a state law immunity defense to a Sec. 1983 claim, "directly violates federal law," since the "elements of, and the defenses to, a federal cause of action are defined by federal law." That is the situation presented here. The Wiretap Act enumerates permissible defenses, see 18 U.S.C. Sec. 2511(2)(a) through (j), and being a nonresident of the state in which suit is brought is not among them.

In addition, the Texas court's analysis of the 14th Amendment's minimum contacts requirement is not a matter of state law which could cause this Court to deny certiorari. It "decided the case the way it did because it believed that federal law required it to do so." *See Michigan v. Long*, 463 U.S. 1032 (1983). Thus, what is preempted, rightly, is the state court's misapprehension of the federal law.

The Court must give effect to the remedy Congress has provided.

C. Because the Wiretap Act sets no time limitation on service of process, and there is no published state court rule imposing such a limitation, a substantial federal question is presented whether the Wiretap Act preempts dismissal of my claim against Mark Bankston for nondiligent service, and even preempts the TCPA altogether.

In the Bankston matter, Texas *case law* imposes the same time limitation on service of process as is applicable to filing the complaint in court, although that period may be extended on a showing of diligence. That requirement is not published as a *rule*, however, and, as set forth above, I could not access case law during the COVID closure. I attested under oath that I had reviewed the Texas rules of civil procedure online[12] after filing the case and found no rule imposing a time limitation within which to make service. I knew of no rule limiting time for service in Colorado, either, where I was a litigator for 24 years[13].

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[12]at: https://www.txcourts.gov/media/1446498/trcp-all-updated-with-amendments-effective-may-1-2020.pdf

[13] Interestingly, there now is one, adopted in 2013, two years after I left the state, Colo.R.Civ.P. 4(m), which tracks Fed.R.Civ.P. 4(m).

In *Felder v. Casey*, 487 U.S. 131 (1988), a state statute required a notice of claim to be served before a tort case could be entertained in state court, while no notice of claim provision applied if the suit were brought in federal court. There was thus substantive impairment of the federal claim (under 42 U.S.C. Sec. 1983) when the case was brought in state court, and the requirement was preempted. The same must hold here. There is nothing merely procedural about a state court rule which results in dismissal of the federal remedy.

Moreover, in federal court there is a heightened standard of review of dismissals for failure to prosecute under Fed.R.Civ.P. 41, which applies even when the defendant has not been served. *See Millan v. USAA General Indemnity Co.*, 546 F.3d 321, 326 (5th Cir. 2008). Dismissal is warranted not upon mere negligence, but only on a showing of aggravating factors such as contumacious conduct, not present in *Millan* and not present here. And there is the additional constitutional problem of no notice to me of the requirement. Laws (and rules) must be sufficiently clear and published to ensure that individuals can understand what is required. *E.g.*, *Chicago v. Morales*, 527 U.S. 41 (1999). I got no notice from the court that dismissal was in the offing.

This Court must hold that Texas's judicial rule is preempted by the Wiretap Act, which places no time limitation on service; and while Fed.R.Civ.P. 4(m), which does, would apply if this case were in federal court, it has never been the law that a state court borrow a federal rule of civil procedure.

The affirmative defense of statute of limitations was brought under the "umbrella" of the Texas Citizens' Participation Act ("TCPA"), chapter 27 of the Texas Civil Practice and Remedies Code, an "anti-SLAPP" statute which has been described as "summary judgment on steroids." To the extent it provides defenses Mr. Bankston asserted but the Fourth Court of Appeals did not reach, due to its seizing on the service issue, the TCPA should be held preempted in its entirety.

Dated this 2nd day of February, 2026.

BY PETITIONER PRO SE

Alison Maynard
7642 Hummingbird Hill Ln
San Antonio, TX 78255
Email: dinophile@gmail.com
tel: 726-248-2141