

No. 04-21-00577-CR

IN THE FOURTH COURT OF APPEALS
AT SAN ANTONIO

In Re

Frediz De La Cruz-De La Cruz,

Relator

PETITION FOR WRIT OF MANDAMUS

Seeking to Compel the Kinney County Judge
to vacate his order firing three appointed judges
and denying their control over their own dockets

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PETITIONERS FOR RELATOR

IDENTITIES OF PARTIES AND COUNSEL

Pursuant to the provisions of Rule 52.2 and 38.1(a), Texas Rules of Appellate Procedure, a complete list of the names of all parties and counsel to this original appellate action seeking extraordinary relief and counsel are as follows:

**Relator
and Real Party in Interest:** Frediz De La Cruz-De La Cruz

State of Texas

Respondent: Tully Shahan
County Judge
501 S. Ann Street
Brackettville, Texas 78832-0389

**Attorneys
for Relator:** Keith S. Hampton
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**Attorneys
for Interested Parties:**

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LIST OF AUTHORITIES

<i>Ex parte Chi</i> , 256 S.W.3d 702 (Tex.Crim.App. 2008)	5
<i>In re State ex rel. Weeks</i> , 391 S.W.3d 117 (Tex.Crim.App. 2013)	5
<i>State ex rel. Curry v. Gray</i> , 726 S.W.2d 125 (Tex.Crim.App. 1987)(orig. proceeding)	5

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF APPELLATE PROCEDURE

Tex. Gov't Code ch.74	<i>passim</i>
Tex. Gov't Code §22.221	4
Tex. Penal Code §12.50	1
Tex. Penal Code §30.05	1
Tex.R.App.Pro. 9.4.	5
Tex.R.App.Pro. 52.1	1

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

Comes now Frediz De La Cruz-De La Cruz, Relator, and pursuant to Rule 52.1 of the Texas Rules of Appellate Procedure, files this *Petition for Writ of Mandamus* to compel Respondent, Kinney County Judge Tully Shahan, to vacate his order purporting to relieve duly appointed judges and his order precluding those judges' control over their own dockets, and would show this Court the following:

STATEMENT OF THE CASE

Relator was arrested without a warrant on October 27, 2021 for the class C misdemeanor offense of criminal trespass, enhanced (due to the disaster declaration) to a class B misdemeanor. Tex. Penal Code §§12.50 & 30.05. Relator is one of hundreds of persons who were arrested for criminal trespass as part of the Governor's "Operation Lone Star." This operation has resulted in a large number of arrests and criminal trespass cases that overwhelmed Kinney County's courts.

In light of the large number of cases, Honorable Judge Stephen Ables, the presiding judge of the Sixth administrative judicial region, appointed three additional judges to handle these cases, which they have been doing. However, on December 8, 2021, Kinney County Judge Tully Shahan abruptly ordered the termination of these appointed judges. Respondent informed them that "their services will no longer be

needed.” (Appendix, County Judge Shahan’s Order). He also ordered that his court coordinator “shall have sole authority in setting any and all court dates and docketed hearings for all cases under the jurisdiction of Kinney County.” (Appendix, County Judge Shahan’s Order). Relator has spent 56 days in jail as of December 22, 2021 with no bond hearing.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue a writ of mandamus in this cause under Article V §6 of the Texas Constitution, Article 4.03 of the Code of Criminal Procedure, and Section 22.221(b)(1) of the Government Code.

ISSUE PRESENTED

May a county judge *sua sponte* fire judges appointed by the presiding district judge of the administrative judicial region and preclude those judges from control over their own dockets?

ARGUMENT

Due to the same disaster that inspired Operation Lone Star, the presiding judge of the Sixth administrative region, former district judge Honorable Judge Stephen Ables, appointed three judges in accordance with the Court Administration Act, codified in chapter 74 of the Government Code. Judge Ables appointed judges Hon.

Vivian Torres, Hon. Genie J. Wright, and Hon. Kitty Schild. Upon appointment, these judges not only undertook to fulfill their constitutional obligations as members of the judicial branch of government, but also sought to “diligently discharge the administrative responsibilities of the office” and “rule on a case within 90 days after the case is taken under advisement[.]” Tex. Gov’t Code §74.059. These are precisely the duties these judges seek to perform.

Kinney County Judge Shahan has no authority at all regarding the judges’ performance of their duties or the terms of their appointments. He has no authority to remove them or control their dockets under the Court Administration Act. Tex. Gov’t Code ch. 74. His orders should be vacated promptly as a clear violation of the Act.

Relator remains incarcerated in the Texas Department of Criminal Justice Segovia Unit for an alleged criminal trespass. (Appendix, Probable Cause Affidavit). Relator is entitled to bond. There is no setting on his case. Respondent’s illegal removal of three duly appointed judges serves only to delay his release, prevent what is otherwise a routine bond approval process which ordinarily takes place within hours of arrest, and preclude any progress on his case. Respondent’s action is a clear abuse of discretion because Respondent lacks any authority to remove other appointed judges acting to do their jobs and fulfilling their own oaths.

Relator is entitled to a writ of mandamus if he has a clear right to relief and no adequate remedy at law. *Ex parte Chi*, 256 S.W.3d 702, 703-704 (Tex.Crim.App. 2008). “A clear right to relief is shown when the facts and circumstances dictate but one rational decision under unequivocal, well-settled (i.e., from extant statutory, constitutional, or case law sources), and clearly controlling legal principles.” *In re State ex rel. Weeks*, 391 S.W.3d 117, 122 (Tex.Crim.App. 2013)(citations omitted). Having usurped the role of presiding judge Stephen Ables, Respondent is dispensing orders well beyond his authority as Kinney County Judge. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex.Crim.App. 1987)(orig. proceeding). There is no remedy at all for Relator, who is forced to endure continued detention in prison unit due to Respondent’s innovative action. Respondent has none of the authority he asserts in his letter. Relator therefore has a clear right to relief, but no remedy except for a mandamus action in this Court. Accordingly, Relator seeks relief from this Court.

PRAYER

WHEREFORE, Relator prays this Court grant this petition and issue a writ of mandamus ordering Respondent to vacate his orders.

Respectfully submitted,



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PETITIONERS FOR RELATOR

CERTIFICATE OF SERVICE: By affixing my signature above, I certify that I served this document on the Kinney County District Attorney, Kinney County Attorney, and Kinney County Judge on December 22, 2021.

VERIFICATION: “My name is Keith S. Hampton and I am the Petitioner in the above-styled and numbered *Petition for Writ of Mandamus*. I have read the above and foregoing application, and I hereby swear that the facts contained therein are true and correct.”

Petitioner, Keith S. Hampton

Executed on December 22, 2021.

CERTIFICATE OF COMPLIANCE: By my signature above, I hereby certify that this petition contains 743 words and complies with Rule 9.4 of the Texas Rules of Appellate Procedure.

APPENDIX

Respondent's Letter Removing the Appointed Judges

Probable Cause Affidavit



Office: 830-563-2401

Tully Shahan
KINNEY COUNTY JUDGE
Post Office Box 348
Brackettville, Texas 78832-0348
county.judge@co.kinney.tx.us



Fax: 830-563-9163

December 08, 2021

To: All Members of the Judicial Administration under Operation Lone Star
Re: Termination of Judicial Assignments and notification of upcoming hearings under Operation Lone Star.

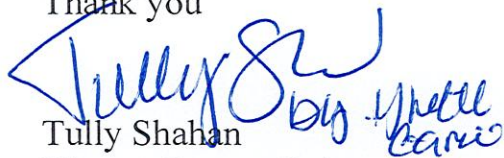
Dear Members of the Judicial Administration under Operation Lone Star:

Due to the large volume of misdemeanor cases filed under Operation Lone Star, it is in the best interest of Kinney County that other eligible County Judges be appointed to administer the efficient administration of justice. We appreciate the services, and the court recognizes the efforts of Judges Vivian Torres, Kitty Schild, and Genie Wright. However, at this time, their services will no longer be needed.

Therefore, let this be a written notice that the Court Coordinator of Kinney County Court shall have sole authority in setting any and all court dates and docketed hearings for all cases under the jurisdiction of Kinney County.

It is further noted that as of December 8, 2021, all parties involved with the misdemeanor cases filed under Operation Lone Star will be notified of the date and time of all upcoming docket hearings.

Thank you


Tully Shahan
Kinney County Judge

THE STATE OF TEXAS

X IN THE (MUNICIPAL)(JUSTICE)
X (COUNTY)(DISTRICT) COURT
X (PCT OR C.C. AT LAW ___)
X IN KINNEY COUNTY, TEXAS

COUNTY OF KINNEY

AFFIDAVIT and COMPLAINT FOR WARRANT OF ARREST AND DETENTION
IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS

The Undersigned Affiant, who after being duly sworn by me, on oath makes the following statement:

I, **Trooper II ORLANDO DE LUNA #15053**, have good reason to believe and do believe that **DE LA CRUZ DE LA CRUZ, FREDIZ H/M DOB 05/23/1975 TB, DL/ID#** on or about the **27 th day of October, 2021** in **KINNEY** County, Texas, did then and there commit the offense of:

CRIMINAL TRESPASS - DISASTER AREA (TXPC 30.05(a))
Misdemeanor - Class A

My belief of the foregoing statement is based upon **personal knowledge**, who personally observed such offense:

On October 27th, 2021, at approximately 11:16 PM, I, Trooper Orlando De Luna Jr was assigned to the Operation Lone Star Strike Team in Kinney County. I was notified by Texas Department of Public Safety Sergeant, Ryan Glenn to assist Texas DPS SRT (Special Response Team) and Texas DPS TMU (Tactical Marine Unit) in locating 8 trespassers that had triggered DPS Drawbridge Camera THP Conoly CRK 1 (29.24888, -100.44987) at approximately 9:18 PM on the Conoly Ranch, in Kinney County. The owner of the property is William Conoly and he has a signed criminal trespass affidavit on file authorizing the Texas Department of Public Safety to arrest any/all persons located on the property without the owner's consent. I responded to the Conoly Ranch with both Texas DPS SRT and Texas DPS TMU and located a total of 8 undocumented male migrants at approximately: 29.2468400, -100.4152200. This location was agricultural land and has barbed-wire fence surrounding the entire property. The nearest boundary (29.24129, -100.40678) to the property was more than a 100-feet from where the defendant was located and from where the defendant triggered the DPS drawbridge camera. Upon questioning the defendant about the property and the owner, the defendant stated he did not have permission to be on the Conoly Ranch. Furthermore, the defendant committed the offense of Criminal Trespass during a period in which the Texas Governor has declared a disaster for Kinney County, Texas.

This offense was committed against the peace and dignity of the state of Texas.

Affiant **Trooper II ORLANDO DE LUNA #15053**

SWORN AND SUBSCRIBED TO, before me by the said Affiant on this the **27th day of October, 2021**.

Notary Public Peace Officer, in and for The State of Texas **KINNEY** County

On this the _____ day of _____, 20____, I hereby acknowledge that I have examined the foregoing Affidavit and have determined that probable cause does exist for the issuance of an arrest warrant for the individual accused herein

Magistrate in and for, KINNEY County, Texas

10/28/2021