No. 04-21-00578-CV

## IN THE FOURTH COURT OF APPEALS AT SAN ANTONIO

## In Re

## Elio Enay Rudamas,

## Relator

#### PETITION FOR WRIT OF MANDAMUS

Seeking to Compel the Kinney County Judge to vacate his order appointing judges under the authority of Section 26.024 of the Government Code

Keith S. Hampton Attorney at Law State Bar No. 08873230 P.O. Box 66488 Austin, Texas 78766 512-476-8484 (office) 512-762-6170 (cell) keithshampton@gmail.com Angelica Cogliano State Bar No. 24101635 Addy Maldanado Miro State Bar No. 24055984 Attorneys at Law 505 West 12th Street, Suite 206 Austin, Texas 78703

Tel: 512-478-0758/Fax:877-497-8347

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: Elio Enay Rudamas

State of Texas

**Respondent:** Tully Shahan

County Judge 501 S. Ann Street

Brackettville, Texas 78832-0389

Attorneys

**for Relator:** Keith S. Hampton

Attorney at Law P.O. Box 66488

Austin, Texas 78766

Angelica Cogliano Attorney at Law 505 West 12th Street

Suite 206

Austin, Texas 78703

Addy Moldanado Miro

Attorney at Law

505 West 12th Street

Suite 206

Austin, Texas 78703

#### Attorneys

**for Interested Parties:** Brent Smith

Kinney County Attorney

501 S. Ann Street

Brackettville, Texas 78832-0389

Suzanne West

63rd Judicial District Attorney

209 East Losoya Street

Del Rio, Texas 78841-1405

## TABLE OF CONTENTS

Names of All Partiesii
List of Authorities iv-v
Statement of the Case
Statement of Jurisdiction
Issue Presented:
May a county judge intentionally create an excessive caseload in his court in order to invoke Section 26.024 of the Government Code and replace judges appointed by the administrative region's presiding district judge?
Statement of Facts
Argument
Prayer
Certification of Factual Statements
Certificate of Service and Compliance

## LIST OF AUTHORITIES

Ex parte Chi, 256 S.W.3d 702 (Tex.Crim.App. 2008)			
<i>In re State ex rel. Weeks</i> , 391 S.W.3d 117 (Tex.Crim.App. 2013) 4			
State ex rel. Curry v. Gray, 726 S.W.2d 125 (Tex.Crim.App. 1987)(orig. proceeding)			
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF APPELLATE PROCEDURE			
Tex. Const. art. V §6			
Tex. Code Crim. Pro. art. 4.03			
Tex. Gov't Code §74.059			
Tex. Gov't Code ch.74			
Tex. Gov't Code §22.221			
Tex. Gov't Code §26.024			
Tex. Penal Code §12.50			
Tex. Penal Code §30.05			
Tex.R.App.Pro. 9.4			
Tex.R.App.Pro. 52.1			

#### TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

Comes now Elio Enay Rudamas, 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 appointing judges pursuant to Section 26.024 of the Government, and would show this Court the following:

#### STATEMENT OF THE CASE

Relator was arrested without a warrant on October 28, 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 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.<sup>1</sup> Respondent informed them that "their services will no longer be needed." (Appendix, County Judge Shahan's Order). Having removed these judges, Respondent created a crisis of an overcrowded docket. He then invoked Section 26.024 of the Government Code and appointed county judges who are not lawyers to handle these cases.

#### 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 intentionally create an excessive caseload in his court in order to invoke Section 26.024 of the Government Code and replace judges appointed by the administrative region's presiding district judge?

#### 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,

<sup>&</sup>lt;sup>1</sup> This action is challenged in another mandamus action filed in this Court seeking the vacation of that order as well.

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. Each of these judges was fulfilling this mission before they were dismissed without reason.

After Respondent purported to fire these experienced, qualified judges, his docket became overcrowded, precisely the same conditions that Judge Ables' appointments had alleviated. Having illegally crowded his own docket, he then invoked his power of appointment. He chose county judges, none of whom are lawyers. His orders should be vacated as a clear abuse of Section 26.024 of the Government Code.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> Section 26.024 of the Government Code provides:

<sup>(</sup>a) The county judge may appoint a retired judge or a constitutional county judge from another county as a visiting judge to share the bench if the county judge finds that the dockets of the county court reflect a case load that the county judge considers to be in excess of that which can be disposed of properly in a manner consistent with the efficient administration of justice.

<sup>(</sup>b) The visiting judge may share the bench for periods authorized by the commissioners court.

<sup>(</sup>c) The visiting judge shall sit in those matters authorized by the county judge and (continued...)

Judge Torres is a retired county court at law judge of Medina County appointed until August 24, 2022. Judge Schild is the senior county court judge in El Paso appointed until September 24, 2022. Judge Wright is former Bexar County county court at law judge appointed until September 24, 2022.

Respondent replaced these experienced, diligent independent judges with at least two judges, Menard County Court Judge Brandon Corbin and Concho County Judge Allen Amos, neither of whom is a lawyer. His reasoning – "[d]ue to the large volume of misdemeanor cases filed under Operation Lone Star" – is self-evidently specious.

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). "[T]he ministerial-act requirement is satisfied if the relator can show a clear right to the relief sought. 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.

<sup>&</sup>lt;sup>2</sup>(...continued)

has the powers of the county judge in relation to those matters.

<sup>(</sup>d) The order appointing the visiting judge shall be noted on the docket of the court.

2013)(citations omitted). Respondent has circumvented the Court Administration Act in chapter 74 of the Government Code and abused Section 26.024 of the Government Code. *State ex rel. Curry v. Gray*, 726 S.W.2d 125, 128 (Tex.Crim.App. 1987)(orig. proceeding).

It is a clear abuse of discretion for a judge to deliberately crowd his court in order to replace the presiding judge of the administrative region with himself so that he may appoint judges of his choice, contrary to the Court Administration Act. 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,

Dea I Nong

Keith S. Hampton

Attorney at Law

State Bar No. 08873230

P.O. Box 66488

Austin, Texas 78766

512-476-8484 (office)

512-762-6170 (cell)

keithshampton@gmail.com

Addy Maldanado Miro

State Bar No. 24055984

Angelica Cogliano

State Bar No. 24101635

Attorneys at Law

505 West 12th Street

Suite 206

Austin, Texas 78703

Tel: 512-478-0758

Fax: 877-497-8347

#### 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."

/s/ Keith S. Hampton
Petitioner, Keith S. Hampton

Executed on December 22, 2021.

**CERTIFICATE OF COMPLIANCE:** By my signature above, I hereby certify that this petition contains 918 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



# 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 <u>sole</u> 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

Kinney County Judge

#### KICO-GRAL-C88QUT

Cause Number	er
Х	IN THE (MUNICIPAL VILLE)

THE STATE OF TEXAS

COUNTY OF KINNEY

X (COUNTY)(DISTRICT) COURT (PCT OR C.C. AT LAW X

IN KINNEY COUNTY, TEXAS

## 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, Probationary Trooper CODY J OLMEDA #15944, have good reason to believe and do believe that RUDAMAS, ELIO ENAY H/M DOB 11/17/1974, DL/ID# on or about the 28 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 information provided to me by LAMBERT, TOM, a credible person working at TEXAS DPS, who personally observed such offense:

On 10/28/2021, at approximately 8:20 AM, I, Trooper Olmeda and Trooper Larrasquitu were on patrol working Operation Lone Star in Kinney County, Texas. The affiant received information from a SOG Team member Sergeant Tom Lambert a credible source of information, that the defendants were observed attempting to board the train car at the Union Pacific Rail Yard in Spofford, Texas at coordinates (29.14780, 100.39989). Texas DPS Trooper Olmeda and Trooper Larrasquitu apprehended eight defendants. There were "no trespassing" signs posted on the rails to the north and south of the entry points to the railyard. The defendants did not have permission to enter or remain in the railyard or on any of the trains. C. Scott Post, the representative for the rail yard where the defendant was located, signed a criminal trespass affidavit allowing the Texas Department of Public Safety to arrest anyone found trespassing on the rail property that he managed. Furthermore, the defendants committed the criminal trespass during a time when the Governor of Texas had declared a state of disaster for Kinney County, Texas.

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

CMODN AND OUR COLLEGE	Affiant Probationary Trooper CODY J OLME		
SWORN AND SUBSCRIBED TO, before me by the said At	ffiant on this the 28th day of October 2021		
	the lul		
On this the	e Officer, in and for The State of Texas KINNEY County		
foregoing Affidavit and have determined that probable cause does exist for the issuance of an arrest warrant for the individual accused herein.			
	Ret W/Wlad J		
	Magistrate in and for, KINNEY County, Texas		
	10/28/2021		