

Appeal No. 04-21-_____ -CR

**In the Court of Appeals
for the Fourth Judicial District
San Antonio, Texas**

***EX PARTE* EDER GAEL VASQUEZ-BARRERA, *ET AL.*, APPELLANTS**

On Appeal from the 63rd Judicial District Court
Kinney County, Texas
Cause No. 5135
Order Denying Pretrial Habeas Relief to 153 Detainees

**EMERGENCY OPPOSED MOTION FOR IMMEDIATE RELEASE
OF ONE-HUNDRED- FORTY-FOUR PRETRIAL DETAINEES
ON PRETRIAL WRITS OF HABEAS CORPUS**

Jerome Wesevich
State Bar No. 21193250
jwesevich@trla.org
Tel. (915) 585-5120

Kristen Etter
State Bar No. 24038884
ketter@trla.org
Tel. (512) 374-2700

Rachel Garza
State Bar No. 24125240
rgarza@trla.org
Tel. (512) 374-2739

TEXAS RIO GRANDE LEGAL AID, INC.
902 East 11th Street
Del Rio, Texas 78840

Attorneys for Appellants

NAMES OF PARTIES AND COUNSEL

Appellants are these 144 individuals, who have been jailed as pretrial detainees pending disposition of misdemeanor charges for the following numbers of days as of December 21, 2021:

Name	Days Detained as of 12/21/21
1. Eder Gael Vazquez-Barrera	114
2. Jose Alexis Sanchez-Dubon	114
3. Santos Gerardo Andino-Martinez	114
4. Anibal Santos Velasquez-Arteaga	113
5. Gregorio Dionsio-Velasquez	112
6. Yerlin Osmar Olivas-Santeliz	111
7. Catarino Ramirez-Huex	111
8. Jorge Luis Gonzalez-Sanchez	111
9. Darlin Salvador-Jimenez	111
10. Grinley Salvador-Jimenez	111
11. Alejandrino Jimenez-Chable	111
12. Carlos Antonio Cordova-Juarez	111
13. Francisco Perez-Cordova	111
14. Jose Reyes-Sifuentes	110
15. Oscar Samuel Cabellero-Landaverde	110
16. Miguel Angel Carcamo-Mendoza	110
17. Angel Mery Salguero-Landaverde	110
18. Jhony Alexander Cerrato-Perez	110
19. Manuel De Jesus Ortiz-Botello	110
20. Gustavo Reza-Zamarripa	110
21. Victor Naun Escobar-Guerrero	110
22. Pedro Martinez-Ortiz	110
23. Jaime Martinez-Ortiz	110
24. Rafael Dominguez-Alaniz	110
25. Brayan Muruato-Padilla	110
26. Abel Aguilar-Toj	110
27. Abisayt Henry Espinoza	108
28. Jose Refugio Gonzalez-Rodriguez	108
29. Victor Alfonso Paredes-Vezquez	108
30. Reyes Zavala Alejandro	108
31. Walter Pechis Perez	108
32. Francisco Granado	108
33. Esdras Isaac Padilla-Castillo	108

34.	Eliseo Perez-Sosa	108
35.	Enrique Antonio Amador Blandon	107
36.	Bayron Alberto Ramirez-Gonzalez	107
37.	Cristian Emanuel Rodrigues-Rios	107
38.	Carlos Odilver Rodriguez-Ortega	107
39.	Jose Rolando Corrales-Flores	108
40.	Humberto Gonzales-Calderon	108
41.	Behirin Perdomo Rodriguez	108
42.	Danny Sanchez-Lopez	107
43.	Camilo Lopez-Lopez	107
44.	Alfredo Leyva Sanchez	107
45.	Gustavo Adolfo Mena Montejo	107
46.	Bartolo Cordova-Velazquez	107
47.	Moises Carrillo-Cordova	107
48.	Luis Miguel Arias-Aedo	107
49.	Miguel Angel Arevalo-Ramirez	107
50.	Hector Ivan Rodriguez-Izquierdo	107
51.	Pedro De Los Santos Carrillo	107
52.	Pablo Elston Martinez	107
53.	Roberto Gonzalez	89
54.	Jose Benedicto Estrada-Hernandez	89
55.	David Jose Garcia-Ortiz	89
56.	Rony Alexy Barahona-Alvarez	89
57.	Crescencio Hernandez-Garcia	88
58.	Ricardo Tapia-Lopez	88
59.	Carlos Antonio Sosa-Campos	88
60.	Bernabe Alarcon Zavaleta	88
61.	Alberto Ramirez-Zarate	88
62.	Hector Marin-Alarcon	88
63.	Alberto Salazar-Hernandez	88
64.	Alejandro Montero-Dominguez	88
65.	Eduardo Alonso Sanches Ruiz	88
66.	Ivan Christian Rodriguez-Ruiz	88
67.	Rodolfo Ruiz-De La Cruz	88
68.	Regulo Perez-Salazar	87
69.	Carlos De La Cruz-Ortiz	87
70.	Jorge Alberto Acosta-Cortes	86
71.	Francisco Abisai Vasquez-Jimenez	86
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73.	Eduardo Guadalupe Vazquez-Cruz	86

74.	Gustavo Aldofo Silva-Aguilar	86
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89.	Oscar Arlinton Nunez-Rodriguez	85
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110.	Victor Alfonso Martinez-Cruz	83
111.	Denis Reducindo Vasquez-Lopez	83
112.	Jean Christ-Lor Turenne	83
113.	Nathan Morales Tomas	83

114.	Jose Hanain Vasquez-Matheu	83
115.	Ever Rolando Gladamez-Milla	83
116.	Michael David Alvarado-Cerrato	83
117.	Obed Manrique Perez-Ortiz	82
118.	Marcelo Hernandez-Cordova	82
119.	Juan Jose Leon-Lopez	82
120.	Reynold Guadalupe Barajas-Durand	82
121.	Jose Eduardo Reyes-Montoya	82
122.	Jose Adan Perdomo-Valle	82
123.	Rufino Leiton-Trujillo	80
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125.	Victor Manuel Sanchez-Guajardo	80
126.	Jean Carlos Hernandez-Vazquez	80
127.	Adelaido Castillo-Perez	80
128.	Rodolfo Hernandez-Campos	80
129.	Edgar Gustavo Perez-Garcia	80
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142.	Ronaldo Rubalcaba-Herrera	78
143.	Carlos Roberto Perez-Rodriguez	85
144.	Alberto Jose Rodriguez Rodriguez	85

Counsel for all Appellants are:

Jerome Wesevich
State Bar No. 21193250
jwesevich@trla.org
Tel. (915) 585-5120

Rachel Garza
State Bar No. 24125240
rgarza@trla.org
Tel. (512) 374-2739

Kristen Etter
State Bar No. 24038884
ketter@trla.org
Tel. (512) 374-2700

TEXAS RIO GRANDE LEGAL AID, INC.
902 East 11th Street
Del Rio, Texas 78840

Counsel for Appellee State of Texas are:

George James Sales III
156th District Attorney's Office
111 St. Mary's, Suite 203
Beeville, TX 78102
(361)358-1007

Ms. Laurie English
112th District Attorney
400 S. Nelson Street
Fort Stockton, TX 79735
(432)336-6294
(432)336-3839 Fax
lkel12da@gmail.com

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STATEMENT OF THE CASE

- Nature of the Case:* Application for pretrial habeas relief in the form of release on bond as mandated by TEX. CODE CRIM. P. art 17.151 because the State did not claim or prove that it was timely ready for trial.
- Trial Court:* Hon. Roland Andrade, Judge of the 63rd District Court, Kinney County, Texas.
- Course of Proceedings:* All 144 Appellants were jailed for more than thirty days on Class B misdemeanor trespassing charges because they could not make the \$1,500 to \$10,000 bond set in each of their cases. The state made no indication that it was ready for trial in any of these cases, so on November 5, 2021, Appellants all filed a Verified Application for immediate habeas relief pursuant to TEX. CODE CRIM. P. art. 17.151. On December 3, 2021, the trial court docketed the Application as *Ex Parte Eric Uriel Sifuentes*, No. 5135. Attached Exhibit B.
- Trial Court Disposition:* On December 13, 2021 the trial court convened an evidentiary hearing on the Application. The State presented no evidence to meet its burden of proving that it was timely ready for trial, and did not claim that it had been timely ready for trial. The trial court nonetheless denied all habeas relief without explanation other than regret at the delay and Appellants' prolonged incarceration. RR 33:12 to 34:14, Attached Exhibit A.

ISSUE PRESENTED

Whether immediate, summary reversal of the trial court's order denying relief is justified because: (a) settled law establishes that immediate release on a writ of habeas corpus is required when the State fails to meet its burden of proving that it was timely ready for trial under TEX. CODE CRIM. P. art. 17.151; and (b) the reporter's record proves that the State failed to meet its burden of proving readiness for trial as to any Appellant.

OVERVIEW

Appellants are 144 pretrial detainees who have already been held for *months* longer than the maximum allowed by TEX. CODE CRIM. P. art. 17.151, and whose release is not only mandated by settled law of this Court, but mandated “immediately.” *Ex Parte Montes*, No. 04-20-00337-CR, 2021 WL 603368, at *3 (Tex. App.—San Antonio, Feb. 17, 2021).

The reporter’s record filed with this motion establishes that despite repeated invitations to supply the evidence necessary to carry its burden of proof, the State does not even claim that it was ready for trial in any of the 144 cases within the time required by article 17.151; nor has the State introduced any evidence to carry its burden of proving readiness for trial.

Immediate relief, without any need for further briefing and based only on the attached reporter’s record, is permitted by TEX. R. APP. P. 10.1 (“any deadline set by the court”), 10.3 (“emergency”), 31.1 (“may shorten” time and omit briefing), and 31.2 (“earliest practicable time”). Immediate relief is proper based only on *Ex Parte Montes*. Immediate relief is necessary to “do substantial justice to the parties,” Rule 31.2, because Appellants’ pretrial detention already far exceeds the maximum sentence that they would practically face even if they were found guilty, and because every additional day of illegal detention (1) causes irreparable harm to a large and growing group of pretrial detainees who have no adequate remedy at

law, and (2) perpetuates lawlessness in the administration of criminal justice in South Texas. *See Ex Parte Guerra*, 383 S.W.3d 229, 233-34 (Tex. App.—San Antonio 2012, no pet.) (“We are mindful that even in egregious cases, the bail must not be excessive and it must not be used as an instrument of oppression. *See* U.S. CONST. amend. VIII (prohibiting excessive bail); TEX. CONST. art. I, § 13.”).

STATEMENT OF FACTS

All material facts are established by the attached reporter’s record. RR, Exhibit A, Appendix 001. These facts are corroborated by the misdemeanor case file that is maintained by the Kinney County Clerk for each Appellant. *See* Tex. R. Ev. 201(b)(2); *In re Estate of Hemsley*, 460 S.W.3d 629, 638-39 (Tex. App.—El Paso 2014, pet. denied) (“We take judicial notice of the trial court’s publicly-available docket entries.”). Also, pursuant to TEX. R. APP. P. 10.2(c), the following facts are within the personal knowledge of undersigned counsel.

All material facts are identical for each of the 144 Appellants.

On or after August 24, 2021, each Appellant was arrested for Class B misdemeanor trespass, subject to punishment enhancement to Class A misdemeanor if convicted.

Each Appellant was presented to a magistrate pursuant to TEX. CODE CRIM. P. art. 15.17, at which time: (a) the magistrate found each Appellant indigent and caused undersigned counsel from Texas RioGrande Legal Aid to be appointed to

represent each Appellant; (b) bond was set for each Appellant at \$1,500 to \$10,000; and (c) each Appellant was committed to pretrial custody pending the posting of bond or trial.

Appellants have all been charged by information with criminal trespass, but none have been arraigned on the charge as of the filing of this emergency motion.

As of December 21, 2021, each Appellant has remained in custody solely on the pending misdemeanor trespass charge for at least 78, and at most 114 days.

On November 5, 2021, all 144 Appellants and nine others for a total of 153 pretrial detainees, filed a verified application for pretrial writs of habeas corpus pursuant to Tex. Code Crim. P. Ch. 11. RR 5:9 to 6:21; Verified Application, Exhibit B, Appendix 046; Amended List of Pretrial Detainees Seeking Release, Exhibit C, Appendix 060. The Verified Application is proof that each Appellant was detained longer than 30 days without the State being ready for trial in violation of Article 17.151, and specifically notified the State of its duty to meet its burden of proving that it was timely ready for trial. Application at 4 ¶ 15.¹

The 63rd District Court for Val Verde, Kinney, and Terrell Counties assigned Cause No. 5135 to Appellants' application and held a hearing to decide it

¹ Appellants and the State disagree as to whether the State must be ready for trial within 15 days as required by Article 17.151 § 1(3), or within 30 days as required by § 1(2). This disagreement is immaterial because all Appellants have been detained longer than thirty days without the State proving that it was timely ready.

it on December 13, 2021. RR 1. The State appeared via acting assistant Kinney County Attorney George Jim Sales, III. RR 2. The State was not only repeatedly advised of its burden to prove that it was ready for trial, but that to do so it must *begin* by at least asserting that it was ready for trial. Defense counsel Etter began:

Ms. Etter: [Y]ou know. Mr. Sales, I'm happy for you to go on record and state in good faith that the 30-day allotment, Kinney County Attorney's Office was ready on all of these 153 cases in September, in October, in November. And unless they can go on record and state that, Your Honor, they have failed to show that they were ready within the allotted time period that 17.151 requires them to be ready.

RR 56:11-22; *see also* RR 9:6-8 (same).

In response, the State did not assert that it was ever timely ready for trial.

RR at *passim*. Instead, the State only claimed that it *would* be ready in the future if and when the Court calls Appellants' cases for trial:

Mr. Sales: I'm not the boss. It's the judge of the courtroom is the boss. So my job is to file the case. Our case got filed. I'm relying on the Court to tell me what to do from there. So the Court tells me, you be here for arraignment, you be here for pretrial, you be here for jury trial. So two or three witnesses, we could announce ready. We have never been asked to announce ready. So there are 17 border prosecution units across South Texas standing ready, willing and able to assist Kinney County in the prosecution of these cases. So we are, in fact, ready to go.

RR 29:15-25. Defense counsel responded by urging the State to make its record:

Ms. Etter. It's really whether or not the State was ready for trial, not would they be ready for trial, but whether they were ready for trial within the allotted time period. So, again, was the state ready for trial in [any] of these cases in mid-September to try? And again, you know, the State can make under oath assertions about whether or not they were ready for trial, if Mr. Sales wants to say that.

...

And so the case law is very clear that not only is 17.151 in full effect ..., but also the Court has held that the prosecutor must state, not that he would be ready by the time a trial date is set, but whether he was ready or whether the State would have been ready in the relevant time period.

RR 30:24 to 31:2 and 31:15-22. Mr. Sales did not respond by saying that the State was ready, under oath or otherwise. Instead, the State remained silent, and then the Court denied habeas relief without considering further evidence. RR 33:12-22.

The Court then cautioned, “[a]lthough I’ve denied their relief, I’m hoping you-all can work something out. In the future, I can’t tell the county court what they need to do, but I’ll continue to hear these types of cases to make sure that justice, although it’s going slowly, I don’t want these individuals in there longer than they have to be.” RR 34:9-14. The State responded by explaining what it understands “work something out” to mean:

It’s my understanding that these defendants have all been offered a time served offer for pleas. And so that has been conveyed to the defense lawyers as well, and we want that on the record.

RR 34:25 to 35:3. In fact, the dockets of over one thousand-five hundred similar trespass cases brought in Val Verde and Kinney Counties under Governor Abbott’s Operation Lone Star have all been resolved not by a single trial, but either by dismissal or by guilty pleas for time served of one to four months.

The 144 Appellants timely appealed to this Court prior to arraignment in any of their cases to avoid having to plead guilty to crimes that they did not commit solely to avoid indefinite pretrial incarceration. Notice of Appeal, Filed December 22, 2021.

STANDARD OF REVIEW

The Court reviews a trial court's denial of pretrial habeas relief for violation of Article 17.151 for abuse of discretion, which is shown if the trial court acts without reference to guiding rules and principles. *State v. Hill*, 499 S.W.3d 853, 865 (Tex. Crim. App. 2016).

ARGUMENT

A. Settled law shows that Appellants are entitled to immediate relief.

The Legislature unambiguously decreed:

A defendant who is detained in jail pending trial of an accusation against him *must be released* either on personal bond or by reducing the amount of bail required, if the [S]tate is not ready for trial of the criminal action for which he is being detained within ... (2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days, or (3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less

TEX. CODE CRIM. P. art. 17.151 § 1 (emphasis added).

To prevent mandatory release under article 17.151, the State must make a prima facie showing that it was ready for trial within the applicable time. *Jones v. State*, 803 S.W.2d 712, 717 (Tex. Crim. App. 1991); *Ex parte Ragston*, 422

S.W.3d 904, 906–07 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Ex parte Brosky*, 863 S.W.2d 775, 778 (Tex. App.—Fort Worth 1993, no pet.). The State may make that showing by either announcing ready within the allotted time, or by announcing, retrospectively, that it had been ready within the allotted time. *Ex parte Ragston*, 422 S.W.3d at 907; *Ex parte Brosky*, 863 S.W.2d at 778. Once the State makes its prima facie showing, the burden shifts to the defendant to rebut it. *Ex parte Brosky*, 863 S.W.2d at 778.

This Court has already held that a trial court abuses its discretion by refusing habeas relief under Article 17.151 when the State has failed to prove that it was ready for trial, and that this Court’s mandate must issue “immediately” to protect Article 17.151 rights. *Ex Parte Montes*, No. 04-20-00337-CR, 2021 WL 603368, at *3 (Tex. App.—San Antonio, Feb. 17, 2021).

Here, the Reporters Record establishes that despite repeated invitations the State never claimed to have been timely ready for trial on any of Appellants’ 144 cases, and supplied no evidence of readiness. RR at *passim*; Facts, *supra*.

“Article 17.151 is mandatory.” *Ex parte Lanclos*, 624 S.W.3d 923, 927 (Tex. Crim. App. 2021). If the prosecution is not ready for trial within the requisite time, the defendant must be released either on personal bond or by reducing the bond requirement to an amount that the defendant can pay. *Ex Parte Gill*, 413 S.W.3d 425, 431 (Tex. Crim. App. 2013); *see also Ex parte Lanclos*, 624

S.W.3d at 927 (Executive Order GA-13 leaves in place the article 17.151 requirement that the bond amount must be reduced to an amount that the defendant can pay.).

B. Summary decision of this appeal is proper and necessary.

Article 17.151 imposes a mandate on trial judges that is enforceable via appeal from denial of pretrial writ of habeas corpus. *Jarman v. State*, No. 11-04-00145-CR, 2004 WL 2964810, at *3 (Tex. App.—Eastland, Dec. 16, 2004); *Ex parte Venegas*, 116 S.W.3d 160, 162 (Tex. App.—San Antonio 2003, no pet.). This principle was recently affirmed by the State’s highest criminal court. *Ex parte Lanclos*, 624 S.W.3d at 927.

Texas Rules of Appellate Procedure 31.1(b) and 31.2(b) explicitly provide that briefing, hearing, and submission of appeals from pretrial habeas orders may be abbreviated as necessary “to do substantial justice to the parties.” *See also Villarreal v. Flores*, No. 13-20-00252-CV, 2020 WL 3957834, at *2 (Tex. App. July 10, 2020), review dismissed (July 24, 2020) (summary decision three days after election appeal under “emergency” provision of TEX. R. APP. P. 10.3(a)(3)).

Without summary decision of this appeal on this Motion, article 17.151 will be rendered ineffective due to procedural delay in obtaining a decision even through accelerated briefing and argument. The rights at issue are not only settled by the Legislature’s plain text and the recent opinions of this Court and the Court

of Criminal Appeals, they appear in the plain text of the Texas Constitution: “The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.” TEX. CONST. Art. 1 § 12. Unless a procedure for summary decision of this appeal is available to Appellants within a very few days, not weeks, their habeas right will be neither speedy nor effectual, because: (1) exposure to virus for which they have no remedy; and (2) the State will simply arraign them and offer them time served in exchange for a guilty plea, which is an inherently coercive offer that none of them can practically refuse given that they have already spent far more time incarcerated than they would practically face if guilty, according to the State’s own admission. RR 34:22 to 35:3.

Importantly, a prompt and effective decision in this appeal will promote the effective and efficient administration of criminal justice in the thousand or more pending similar cases in South Texas under Operation Lone Star.

C. The State should promptly show cause as to why it claims summary decision is inappropriate.

In light of the rights at issue, the record, and the settled nature of the legal principles at issue, the State’s response should be carefully managed under Rules 31.1 and 31.2. Appellants recognize that the State should have some opportunity to respond to this Motion. But the State was served with Appellants specific habeas claims on November 5, 2021, which are the same claims presented in this

Motion. Yet in over six weeks the State has declined to meaningfully respond. Also, Appellants were able to produce this emergency motion within one day of receiving the reporter's record.

Appellants submit that in light of the rights at issue, the record, and the authorities, the following procedure would be fair: within 24 hours from the Court's order on proceedings for this motion, the State should be ordered to show cause why summary decision is inappropriate, which must include all evidence and authorities upon which the state relies, or specific descriptions of what evidence and authorities the State expects to present and explanations for why those are not immediately available. Upon receipt of the State's response, the Court should either issue its summary decision or order Appellants to reply as to whether the State has any colorable basis for resisting the relief sought in this Motion.

CONCLUSION AND PRAYER

The Court should at the soonest possible time issue its mandate requiring the District Court to immediately set bonds for each of the 144 Appellants in amounts that each can afford, even if that amount is nominal.

December 22, 2021

Respectfully submitted,

/s/ Jerome Wesevich
State Bar #: 21193250
Tel: 915-585-5120
Email: jwesevich@trla.org

Kristin Etter

State Bar #: 24038884
Tel: 512-374-2700
Email: ketter@trla.org

Rachel Garza
State Bar #: 24125240
Tel: 512-374-2739
Email: RachelGarza@trla.org

TEXAS RIOGRANDE LEGAL AID, INC
902 E 11th St,
Del Rio, Texas 78840

Attorneys for all Appellants

CERTIFICATE OF SERVICE

I certify that on the date next to my signature above I served counsel for all parties with the foregoing document, including all referenced exhibits and attachments, using the Court's electronic filing system, and via direct email to the following four prosecuting attorneys who have appeared for the State in any matter related to any Appellant:

George James Sales, III, dawn.tarver@co.bee.tx.us

Laurie English, lke112da@gmail.com

Brent Smith, bsmith@co.kinney.tx.us

Nicole Mata, n.mata@co.kinney.tx.us