

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

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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:** 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
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**Attorneys
for Interested Parties:**

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501 S. Ann Street
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TABLE OF CONTENTS

Names of All Parties	ii
List of Authorities	iv-v
Statement of the Case	1
Statement of Jurisdiction	1
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?	2
Statement of Facts	3
Argument	3
Prayer	6
Certification of Factual Statements	6
Certificate of Service and Compliance.	6

LIST OF AUTHORITIES

<i>Ex parte Chi</i> , 256 S.W.3d 702 (Tex.Crim.App. 2008)	4
<i>In re State ex rel. Weeks</i> , 391 S.W.3d 117 (Tex.Crim.App. 2013)	4
<i>State ex rel. Curry v. Gray</i> , 726 S.W.2d 125 (Tex.Crim.App. 1987)(orig. proceeding)	4

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES OF APPELLATE PROCEDURE

Tex. Const. art. V §6.	2
Tex. Code Crim. Pro. art. 4.03	2
Tex. Gov't Code §74.059	3
Tex. Gov't Code ch.74	2, 4
Tex. Gov't Code §22.221	2
Tex. Gov't Code §26.024	3
Tex. Penal Code §12.50	1
Tex. Penal Code §30.05	1
Tex.R.App.Pro. 9.4.	6
Tex.R.App.Pro. 52.1	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.¹ 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,

¹ 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.²

² Section 26.024 of the Government Code provides:

(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.

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

(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.

²(...continued)

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

(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,



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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.”

/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



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.

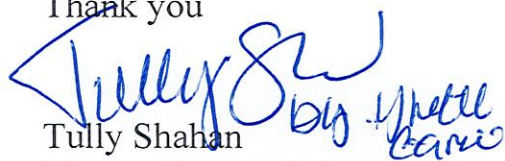
Dear Members of the Judicial Administration under Operation Lone Star:

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

Cause Number _____

THE STATE OF TEXAS

COUNTY OF KINNEY

- X IN THE (MUNICIPAL)(JUSTICE)
- X (COUNTY)(DISTRICT) COURT
- X (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:

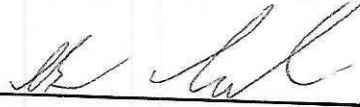
On 10/28/2021, at approximately 8:20 AM, I, Trooper Olmeda and Trooper Larrasquitu were on patrol working Operation Lone Star in Kinney County, Texas. The affiant received information from a SOG Team member Sergeant Tom Lambert a credible source of information, that the defendants were observed attempting 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.



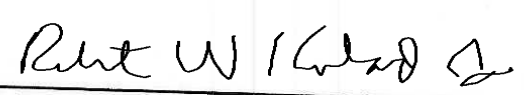
 Affiant **Probationary Trooper CODY J OLME**

SWORN AND SUBSCRIBED TO, before me by the said Affiant on this the **28th 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