

No. 24-

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**In the Supreme Court of Texas**

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**IN RE TEXAS HOUSE OF REPRESENTATIVES,**  
*Relator.*

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Original Mandamus Proceeding Directed to the  
Texas Department of Criminal Justice

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**RESPONDENT AND REAL PARTY IN INTEREST TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE'S RESPONSE TO  
PETITION FOR WRIT OF MANDAMUS**

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KEN PAXTON  
Attorney General of Texas

EDWARD L. MARSHALL  
Chief, Criminal Appeals Division

BRENT WEBSTER  
First Assistant Attorney General

CRAIG W. COSPER  
Assistant Attorney General  
*Counsel of Record*

JOSH RENO  
Deputy Attorney General  
For Criminal Justice

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
(512) 936-1400  
craig.cosper@oag.texas.gov

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**ATTORNEYS FOR THE  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

## RESPONSE

### I. Texas Law Precludes This Court from Granting Mandamus Against the CCA.

The Texas House of Representatives argues that the Court should grant mandamus against the Texas Department of Criminal Justice. However, the CCA has already exercised its exclusive jurisdiction and vacated the district court's temporary restraining order.<sup>1</sup> Effectively, Relator is asking this Court to overrule the CCA and reinstate the vacated injunction. But the Texas Constitution explicitly states:

The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be coextensive with the limits of the State and its determinations shall be *final except in criminal law matters*. Its appellate jurisdiction shall be final and shall extend to all cases *except in criminal law matters* and as otherwise provided in this Constitution or by law.

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<sup>1</sup> Although it appears the subpoena might not be valid for the following reasons: (1) the subpoena is not signed by the Speaker of the House (Dade Phelan) as required by House Rule 1, Section 13, but is instead signed by Chairman Moody; (2) assuming a committee chairman (for the Committee on Criminal Jurisprudence) could sign the subpoena, the return of service is signed by an agent of the wrong committee—the “committee on general investigating;” (3) the subpoena is directed to Robert Roberson, not TDCJ; and TDCJ cannot be punished for violating a subpoena directed to someone else; and (4) generally a warden can be commanded to act contrary to a final criminal judgment—i.e. by releasing a prisoner from custody—only pursuant to a writ of habeas corpus.

Tex. Const. art. V, § 3(a) (emphasis added). The Government Code likewise affirms that “[t]he supreme court has appellate jurisdiction, *except in criminal law matters.*” Tex. Gov’t Code § 22.002 (emphasis added). Moreover, the Code provides that:

The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, *the court of criminal appeals, or a judge of the court of criminal appeals.*

Tex. Gov’t Code § 22.002 (emphasis added). The relief sought in this case is simply not available.

## **II. The Texas Constitution, Statute, Rule, and Practice Further Allocate Exclusive Appellate Jurisdiction over Capital Cases to the CCA.**

The Texas House of Representatives argues that the Court should have concurrent jurisdiction over his appeal. However, the Texas Constitution, statute, rule, and practice all indicate the opposite. The Texas Constitution provides that “[t]he appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals.” Tex. Const. art. V, § 5(b). The Code of Criminal Procedure states that “[t]he Courts of Appeals [. . .] shall have appellate jurisdiction

coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed.” Tex. Code Crim. Proc. art. 4.03. “The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals.” Tex. Code Crim. Proc. art. 4.04 § 2. And Texas Rule of Appellate Procedure 71.1 mandates that all “cases in which the death penalty has been assessed” are appealed directly to the CCA. The CCA routinely hears death penalty direct appeals and applications for habeas corpus under Texas Code of Criminal Procedure Article 11.071.

“[T]he entry of an order which stays the execution of a death row inmate is a criminal law matter. Art. V, § 5 specifically confers exclusive appellate jurisdiction of all cases in which the death penalty has been assessed in the Court of Criminal Appeals.” *State ex rel. Holmes v. Honorable Court of Appeals for Third Dist.*, 885 S.W.2d 389, 394 (Tex. Crim. App. 1994). When an “injunction ‘arises over the enforcement of statutes governed by the Texas Code of Criminal Procedure,’ and ‘arise[s] as a result of or incident to a criminal prosecution,’ we hold this issue is a criminal law matter properly before this Court.” *Id.* (citing *Curry v. Wilson*, 853 S.W.2d 40, 43 (Tex. Crim. App. 1993) & Tex. Const. art. V, §

5); *see also Ex parte Alba*, 256 S.W.3d 682, 690 n.19 (Tex. Crim. App. 2008) (Cochran, J., concurring) (construing *Holmes* to mean “any order by another state court purporting to stay an execution unlawfully circumvents the exclusive jurisdiction of the Court of Criminal Appeals in a death-penalty conviction.”). The CCA has explained that the Texas Constitution imbues the CCA with jurisdiction over all legal issues arising out of a criminal prosecution. *State ex rel. Holmes*, 885 S.W.2d at 393. And “a matter does not cease to be a criminal law matter simply because it may be necessary to address elements of civil law in resolving the matter.” *Id.* at 394. This Court should thus decline to invade the rightful province of its sister court and decline the relief sought here.

### **III. Even If This Court Had Jurisdiction, the House’s Subpoena Is Likely Defective.**

Even if there was jurisdiction to consider this matter, it appears the subpoena might not be valid for the following reasons: (1) the subpoena is not signed by the Speaker of the House (Dade Phelan) as required by House Rule 1, Section 13, but is instead signed by Chairman Moody; (2) assuming a committee chairman (for the Committee on Criminal Jurisprudence) could sign the subpoena, the return of service is signed by an agent of the wrong committee—the “committee on general

investigating;” (3) the subpoena is directed to Robert Roberson, not TDCJ; and TDCJ cannot be punished for violating a subpoena directed to someone else; and (4) generally a warden can be commanded to act contrary to a final criminal judgment—i.e. by releasing a prisoner from custody—only pursuant to a writ of habeas corpus. Accordingly, the Court should decline to find the subpoena effectuates a stay even if the Court has jurisdiction to consider this inherently criminal matter.

### **PRAYER FOR RELIEF**

For the foregoing reasons, the Board respectfully requests that this Honorable Court deny Relator’s petition for writ of mandamus.

Respectfully submitted,

**KEN PAXTON**  
Attorney General of Texas

**BRENT WEBSTER**  
First Assistant Attorney General

**JOSH RENO**  
Deputy Attorney General  
for Criminal Justice

**EDWARD L. MARSHALL**  
Chief, Criminal Appeals Division

/s/ Craig W. Cospers  
**CRAIG W. COSPER**  
Assistant Attorney General

Texas Bar No. 24067554

Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
Tel.: (512) 936-1400  
Fax: (512) 936-1280  
*craig.cosper@oag.texas.gov*

ATTORNEYS FOR THE TEXAS  
DEPARTMENT OF CRIMINAL JUSTICE

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon opposing counsel for the Appellant, by notice of electronic filing with the Texas Court of Criminal Appeals CM/ECF system, on this, the 17th day of October 17, 2024.

Jeffrey Curtis Leach  
State Bar No.: 24067724  
jleach@grayreed.com  
1601 Elm Street, Suite 4600  
Dallas, Texas 75201

/s/ Craig W. Cospers  
CRAIG W. COSPER  
Assistant Attorney General



## CERTIFICATE OF COMPLIANCE

This brief complies with Tex. R. App. P. 9.4(i)(2)(D) in that it contains **720** words, as calculated pursuant to Tex. R. App. P. 9.4(i)(1), in Microsoft Word 2013, Century Schoolbook, 14 points.

/s/ Craig W. Cospers  
CRAIG W. COSPER  
Assistant Attorney General

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Name	BarNumber	Email	TimestampSubmitted	Status
craig cosper		craig.cosper@oag.texas.gov	10/17/2024 8:28:20 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Dale Wainwright		Dale.Wainwright@gtlaw.com	10/17/2024 8:28:20 PM	SENT
Pam Seger		pam.seger@traviscountytexas.gov	10/17/2024 8:28:20 PM	SENT
Jeffrey Leach		jleach@grayreed.com	10/17/2024 8:28:20 PM	SENT
Joe Moody		Joe.Moody@house.texas.gov	10/17/2024 8:28:20 PM	SENT