

No. WR-94,432-01

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IN THE  
**Court of Criminal Appeals**

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STATE EX REL KEN PAXTON,  
*Relator,*

v.

THE HONORABLE CATHERINE A. MAUZY, 419TH DISTRICT COURT OF TRAVIS  
COUNTY, TEXAS,

*Respondent*

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ORIGINAL PROCEEDING TO CAUSE No. D-1-GN-22-007149 PENDING IN  
THE 419TH DISTRICT COURT OF TRAVIS COUNTY  
THE HONORABLE CATHERINE MAUZY, PRESIDING

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**PETITION FOR WRIT OF MANDAMUS TO  
ENFORCE THIS COURT'S PREVIOUS ORDER  
GRANTING RELATOR'S PETITION FOR  
WRIT OF PROHIBITION**

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## **IDENTITY OF PARTIES AND COUNSEL**

To assist this Honorable Court in determining disqualification and recusal, the Texas Department of Criminal Justice certifies the following is a complete list of the parties and their attorneys in accordance with Texas Rule of Appellate Procedure 38.1(a).

**1. Respondent**

HON. CATHERINE A. MAUZY, PRESIDING JUDGE  
419th Judicial District Judge, Travis County, Texas  
Travis County Courthouse, P.O. Box 1748  
Austin, TX 78767

**2. Relator**

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UNKNOWN PHARMACY AND PHARMACISTS  
UNKNOWN EXECUTIONERS AND DRUG PROCURERS

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**4. Real Party in Interest**

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ROBERT ALAN FRATTA  
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## STATEMENT OF THE CASE

Relator Ken Paxton, Attorney General for the State of Texas, respectfully petitions this Court for a writ of mandamus to enforce the Court's earlier order granting Relator's petition for writ of prohibition. Real Parties in Interest, death row inmates Robert Fratta, Wesley Ruiz, John Balentine, and Arthur Brown, Jr. are scheduled for execution on January 10, February 1, February 8, and March 9, 2023, respectively. Ruiz and Balentine filed an Original Verified Petition and Application for Temporary Injunction, Declaratory Relief, and Permanent Injunction in Travis County District Court on December 16, 2022. Fratta later filed a motion to intervene. On December 21, 2022, Relator, Ken Paxton, Attorney General for the State of Texas, filed in this Court a motion for leave to file a petition for writ of prohibition pursuant to Rule 72.1 of the Texas Rules of Appellate Procedure, and an attached petition for writ of prohibition, seeking an order prohibiting Respondent, the Honorable Jan Soifer, presiding judge of the 345th District Court, Travis County, Texas, from enjoining, staying, or otherwise interfering with the scheduled executions in any way.

On December 23, 2022, Fratta filed in the 345th District Court a motion for Emergency Temporary Injunction and for Expedited Hearing, seeking a temporary injunction pending full adjudication of the merits of the original petition, and an emergency hearing on the matter set for either January 4 or

9, 2023. Relator then sought from this Court an emergency stay of proceedings in the 345th District Court, prohibiting the Respondent from enjoining, staying, or interfering in any of these three scheduled executions, or from holding a hearing on any related matter until this Court considered Relator's motion for leave and petition.

On December 30, 2022, this Court granted the Relator's emergency motion for a stay, ordering all proceedings in the 345th District Court stayed pending resolution of Relator's petition for writ of prohibition, and inviting the Respondent to respond to the Relator's motion before January 3, 2023. Following this stay, the Court learned that the case had been transferred to the 419th Judicial District Court, the Honorable Catherine A. Mauzy, presiding. Judge Mauzy submitted a response on January 3, 2023.

On January 4, 2023, this Court granted the Relator's motion for leave to file the application for writ of prohibition and ordered Judge Mauzy "to refrain from issuing any order purporting to stay the January and February executions of Harris County death row inmate [Fratta], Dallas County death row inmate [Ruiz], or Potter County death row inmate [Balentine]." Mem. Opinion at 2-3, *In re State of Texas ex rel. Ken Paxton*, No. WR-94,432-01 (Tex. Crim. App. Jan. 4, 2023) ("Mem. Op. Grant Prohibition").

Despite this Court's plain prohibition, on January 5, 2023, Fratta, Ruiz, and Balentine filed an Amended Emergency Motion for Temporary Injunction

and Declaratory Judgment and to Set Expedited Hearing on January 9, 2023. On January 8, 2023, Harris County death row inmate, Arthur Brown, whose execution is set for March 9, 2023, also filed a motion to intervene. The hearing was reset for January 10, 2023, where Respondent, Judge Mauzy, granted the motion for temporary injunction. This order, by requiring the Texas Department of Criminal Justice to adhere to best practices suitable only for pharmacies producing therapeutic medications for doctors and patients and to utilize pentobarbital only within a few hours of compounding, effectively stayed the executions of Fratta, Ruiz, Balentine, and Brown in direct contravention of this Court's January 4th order.

The Relator now files this petition for a writ of mandamus, asking the Court to issue a writ of mandamus directing Respondent to comply with the Court's writ of prohibition and to rescind her order granting a temporary injunction. Alternatively, because Fratta's execution is scheduled for this evening, Relator asks the Court to simply vacate Judge Mauzy's injunction order in the interest of time.

### **STATEMENT OF JURISDICTION**

The Texas Constitution invests the "Court of Criminal Appeals and the Judges . . . the power to issue . . . in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari." Tex. Const. art. V, § 5; *accord* Tex. Code Crim. Proc. Ann. art. 4.04, § 1.

This Court possesses exclusive appellate jurisdiction in death penalty cases, Tex. Const. art. V, § 5(b); Tex. Code Crim. Proc. art. 4.04 § 2, and it was this Court that issued mandate after affirming the convictions and sentences of Fratta, Ruiz, and Balentine on their respective direct appeals. “This being so, no other court of this state has authority to overrule or circumvent its decisions, or disobey its mandate[.]” *State ex rel. Wilson v. Briggs*, 351 S.W.2d 892, 894 (Tex. Crim. App. 1961).

By granting injunctive relief effectively staying the executions, the Respondent disregarded this Court’s order “to refrain from issuing any order purporting to stay the January and February executions of Harris County death row inmate [Fratta], Dallas County death row inmate [Ruiz], or Potter County death row inmate [Balentine].” *In re State of Texas ex rel. Ken Paxton*, No. WR-94,432-01, at 2-3.

The Respondent has thus interfered with both the express order of this Court, as well as the mandate of this Court affirming the sentences. No other court should be permitted to rule on the matter. *See State ex. rel. Holmes v. Honorable Court of Appeals for Third Dist.*, 885 S.W.2d 389, 395-96 (Tex. Crim. App. 1994) (“Any order by another state court which purports to stay a scheduled execution circumvents our decision and disobeys our mandate.”), *overruled in other part by Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 2002). “Because the respondent’s 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,’ . . . this issue is a criminal law matter properly before this Court.” *State ex rel Holmes*, 885 S.W.2d at 394 (citing *Curry v. Wilson*, 853 S.W.2d 40 (Tex. Crim. App. 1993) and Tex. Const. art. V, § 5).

### **ISSUE PRESENTED**

May a district court, in a civil lawsuit, purport to enjoin, stay, or otherwise interfere with an execution lawfully scheduled by another district court pursuant to this Court’s mandate, where the court issuing the injunction has no jurisdiction to do so and has been expressly ordered “to refrain from issuing any order purporting to stay” the scheduled executions?

### **STATEMENT OF RELEVANT FACTS**

Robert Alan Fratta was retried, convicted and sentenced to death in the 230th District Court of Harris County, for the murder-for-hire of his estranged wife Farah Fratta after his original conviction was overturned in federal habeas proceedings. This Court affirmed Fratta’s conviction on direct appeal, *Fratta v. State*, No. AP-76,188 (Tex. Crim. App. Oct. 5, 2011) (unpublished), and entered mandate on December 5, 2011. On October 11, 2022, the Honorable Chris Morton, presiding judge of the 230th District Court, signed an order setting Fratta’s execution date for January 10, 2023, thereby “commanding the director [of TDCJ] to proceed, at the time and place named

in the order of execution, to carry the same into execution[.]” Tex. Code Crim. Proc. art. 43.15(a) (Warrant of Execution).

Wesley Ruiz was tried, convicted, and sentenced to death in the 194th Judicial District Court in Dallas County, Texas, for the 2007 murder of Dallas Police Officer Corporal Mark Nix. This Court affirmed Ruiz’s conviction on direct appeal, *Ruiz v. State*, No. 75,968, 2011 WL 1168414 (Tex. Crim. App. March 2, 2011) (unpublished), and entered mandate on March 28, 2011. On June 24, 2022, the Honorable Ernest White, presiding judge of the 194th District Court, ordered the Director of TDCJ to execute Ruiz on February 1, 2023.

John Balentine was tried, convicted, and sentenced to death, in 320th District Court in Potter County, Texas, for the 1998 murders of 17-year-old Mark Caylor, Jr., 15-year-old Kai Geyer, and 15-year-old Steven Watson, during the same criminal transaction in Amarillo, Texas. This Court affirmed his conviction and sentence on direct appeal, *Balentine v. State*, No. 73,490, 71 S.W.3d 763 (Tex. Crim. App. 2002), and issued a mandate on April 29, 2002. On September 1, 2022, the Honorable Pamela Sirmon, presiding judge of the 320th District Court, ordered the Director of TDCJ to execute Balentine on February 8, 2023.

Arthur Brown, Jr. was convicted and sentenced to death by a jury in the 351st District Court of Harris County, Texas, for the June 20, 1992 capital

murders of Jessica Quinones, Jose Guadalupe Tovar, Audrey Brown, and Frank Farias during the same criminal transaction. This Court affirmed his conviction and sentence on direct appeal, *Brown v. State*, No. AP-71,817 (Tex. Crim. App. Dec. 18, 1996), and issued a mandate on March 14, 1997. On August 17, 2022, the Honorable Natalia Cornelio, presiding judge of the 351st District Court, Harris County, ordered the Director of TDCJ to execute Brown on March 9, 2023.

On December 14, 2022, less than two months before Ruiz's execution date, attorneys from the Federal Community Defender Office for the Eastern District of Pennsylvania and the Texas Defender Service filed in the 345th District Court in Travis County, Texas, an Original Verified Petition and Application for Temporary Injunction, Declaratory Relief, and Permanent Injunction, seeking to prohibit the Texas Department of Criminal Justice (TDCJ) from using allegedly expired drugs to carry out the executions of the petitioners, as ordered by the 194th District Court and 320th District Court. *See Ruiz and Balentine v. Texas Department of Criminal Justice, Bryan Collier, Bobby Lumpkin, Kelly Strong, Unknown Pharmacy and Pharmacists, Unknown Executioners, and Drug Procurers*, No. D-1-GN-22-007149. Shortly thereafter, Fratta, his execution less than a month away, filed a motion to intervene in the litigation. Brown followed suit.

## ARGUMENT

In 1978, the Texas Constitution was amended “to confer upon the Court powers to grant extraordinary writs in cases ‘regarding criminal law matters,’ in addition to the previously existent mandamus and prohibition authority to enforce its own jurisdiction.” *State ex rel. Wade v. Mays*, 689 S.W.2d 893, 897 (Tex. Crim. App. 1985) (citations omitted). The Texas Constitution and statute vest this Court with authority to issue both writs of prohibition and mandamus, Tex. Const. art. V, § 5(c); Tex. Code Crim. Proc. art. 4.04 § 1; and this Court possesses exclusive appellate jurisdiction in death penalty cases, Tex. Const. art. V, § 5(b); Tex. Code Crim. Proc. art. 4.04 § 2.

“To be entitled to mandamus relief [against a trial court], the relator must show two things: (1) that he has no adequate remedy at law, and (2) that what he seeks to compel is a ministerial act.” *In re State ex rel. Weeks*, 391 S.W.3d 117, 121-22 (Tex. Crim. App. 2013). An act is ministerial “when the law clearly spells out the duty to be performed ... with such certainty that nothing is left to the exercise of discretion or judgment.” *State ex rel. Healey v. McMeans*, 884 S.W.2d 772, 774 (Tex. Crim. App. 1994) (quoting *Texas Dept. of Corrections v. Dalehite*, 623 S.W.2d 420, 424 (Tex. Crim. App. 1981)). Just as the Relator met the requirements for a writ of prohibition—which this Court granted but the Respondent nevertheless disregarded—so too the Relator

meets the legal requirements to now obtain a writ of mandamus from this Court.

**I. The District Court had a “Ministerial” Duty to Comply with this Court’s Writ of Prohibition and to Refrain from Interfering with the Scheduled Executions.**

The Relator must show that he seeks to compel a ministerial act. “The ministerial-act requirement is satisfied if the relator can show a clear right to the relief sought.” *Weeks*, 391 S.W.3d at 122. To this end, a relator demonstrates a “clear right to relief . . . 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.’” *Id.* (quoting *Bowen v. Carnes*, 343 S.W.3d 805, 810 (Tex. Crim. App. 2011)).

More importantly, this Court has recognized a “ministerial” duty where a district court acts *without jurisdiction*. See *Bd. of Pardons & Paroles ex rel. Keene v. Court of Appeals for Eighth Dist.*, 910 S.W.2d 481, 483 (Tex. Crim. App. 1995) (“Provided a Relator has no adequate remedy at law, mandamus will issue to compel a trial court to set aside an order which it had no authority to enter.” (citing *State ex rel Holmes v. Salinas*, 784 S.W.2d 421 (Tex. Crim. App. 1991); *State ex rel Cobb v. Godfrey*, 739 S.W.2d 47 (Tex. Crim. App. 1987); *State ex rel Thomas v. Banner*, 724 S.W.2d 81 (Tex. Crim. App. 1987); *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986))). In other words, “[i]f a

trial judge lacks authority or jurisdiction to take particular action, the judge has a ‘ministerial’ duty to refrain from taking that action, to reject or overrule requests that he take such action, and to undo the action if he has already taken it.” *In re Medina*, 475 S.W.3d 291, 298 (Tex. Crim. App. 2015) (quoting 43B George E. Dix & John M. Schmolesky, *Texas Practice Series: Criminal Practice and Procedure* § 61.29 (3d ed. 2011)).

In this case, Relator sought and obtained an order preventing Respondent from entering any order interfering with either Fratta’s January 10, 2023 execution date, Ruiz’s February 1, 2023 execution date, or Balentine’s February 8, 2023 execution date.<sup>1</sup> It is axiomatic that Respondent has a ministerial duty to comply with this Court’s earlier writ of prohibition in which the Court commanded Respondent “to refrain from issuing any order *purporting* to stay the January and February executions of” the Real Parties in Interest. Mem. Order Grant Prohibition at 2 (emphasis added). As the Supreme Court of the United States describes this bedrock principal:

We have made clear that it is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected. . . . This they cannot be permitted to do without seriously undercutting the orderly process of the law.

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<sup>1</sup> Brown was not a part of the litigation at the time this order was entered and was thus not specifically mentioned in the Court’s ordered.

*Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) (cleaned up).

Moreover, Relator is entitled to a writ of mandamus here for the same reason he was entitled to seek and obtain the earlier writ of prohibition, i.e., because it is unquestionable the Respondent has no jurisdiction to enjoin or otherwise stay the scheduled executions. *See State ex rel. Millsap v. Lozano*, 692 S.W.2d 470, 482 (Tex. Crim. App. 1985) (“For a court to act, it must have jurisdiction to do so. This is fundamental.”) (quoting *State v. Klein*, 224 S.W.2d 250, 252 (Tex. Crim. App. 1949)).

As explained in the petition seeking the writ of prohibition, the filing of the indictment against Fratta in Harris County, Ruiz in Dallas County, Balentine in Potter County, and Brown in Harris County, conferred on those courts, “sole jurisdiction over the case to the exclusion of all other courts.” *State ex rel. Millsap v. Lozano*, 692 S.W.2d at 480 (citing *Flores v. State*, 487 S.W.2d 122 (Tex. Crim. App. 1972)). Further, the 230th District Court of Harris County set Fratta’s execution date pursuant to a mandate issued by this Court at the conclusion of direct appeal, as did the 194th Judicial District Court in setting Ruiz’s execution date, the 320th District Court in setting Balentine’s date, and the 351st District Court in setting Brown’s. *See* Tex. Code Crim. Proc. Art. 43.141(a). In signing these orders, the district courts specifically order the Director of TDCJ to carry out the executions on a specific date and at a specific time. *See* Tex. Code Crim. Proc. art. 43.15(a). In granting injunctive relief, the

419th District Court circumvented this Court's mandates, and the orders of these convicting district courts.

“The Court of Criminal Appeals is the court of last resort in this state in criminal matters. This being so, no other court of this state has authority to overrule or circumvent its decisions, or disobey its mandates.” *State ex rel. Wilson v. Briggs*, 351 S.W.2d 892, 894 (Tex. Crim. App. 1961). Indeed, even the convicting court may modify or withdraw an order setting a date for execution only in certain limited circumstances. *See* Tex. Code Crim. Proc. art. 43.141(d). The 419th District Court simply has no jurisdiction to enjoin the scheduled executions, or to issue an order purporting to do so. *State ex rel. Holmes v. Third Court of Appeals*, 885 S.W.2d 389, 395-97 (Tex. Crim. App. 1994), *overruled on other grounds by Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). Only the 230th District Court and the Court of Criminal Appeals may modify or withdraw Fratta's execution date; while only the 194th District Court or the Court of Criminal Appeals may modify or withdraw Ruiz's execution date; only the 320th District Court or the Court of Criminal Appeals may modify or withdraw Balentine's execution date; and only the 351st District Court or the Court of Criminal Appeals may modify or withdraw Brown's date. Even then, the courts may do so only in certain, well-defined circumstances, which do not exist here.

In *Holmes*, a Harris County death row inmate scheduled for execution filed a civil lawsuit in a Travis County District Court seeking an order enjoining his execution until the Board of Pardons and Paroles could hold a clemency hearing. 885 S.W.2d at 391. The Travis County judge entered the injunction and the Third Court of Appeals affirmed. *Id.* This Court held that an order purporting to stay or enjoin an execution is a criminal law matter, not a civil one. *Id.* at 393-94. Further, once jurisdiction was invoked in the convicting court in Harris County, it had “sole jurisdiction over the case to exclusion of all other courts,” apart from the “exclusive appellate jurisdiction” vested in this Court for death penalty cases. *Id.* at 394. Finally, the Court held that “[a]ny order by another state court which purports to stay a scheduled execution” is void and must be vacated. *Id.* at 395-96. Consequently, the Court held that the relator was entitled to a writ of mandamus to compel vacation of respondent’s injunction. *Id.* at 396.

This Court has exercised its authority to prohibit the Respondent from usurping the jurisdiction of the criminal convicting courts in Harris, Dallas, and Potter counties. Indeed, no Travis County—or any county—court apart from the convicting courts have any jurisdiction to interfere in these matters. *Cf., In Re Brent Smith, Relator*, No. 93,354-02, 2022 WL 17480102, at \*8 (Tex. Crim. App. Dec. 7, 2022) (granting application for writ of prohibition and

ordering district court in Travis County to “refrain from resolving the merits of habeas applications for misdemeanor cases arising in Kinney County”).

Of more significance, this Court expressly ordered the 419th District Court “to refrain from issuing any order purporting to stay the January and February executions of Harris County death row inmate [Fratta], Dallas County death row inmate [Ruiz], or Potter County death row inmate [Balentine].” The Respondent has done just that, in violation of her ministerial duty to refrain from interfering with scheduled executions. Therefore, the Respondent is entitled to mandamus relief.

Finally, this Court should not countenance Respondent’s decision to nullify the execution orders lawfully issued by co-ordinate district courts in these proceedings, as described in *Home Nat. Bank of Cleburne v. Wilson*, 265 S.W. 732 (Tex. Civ. App.—Dallas 1924, no pet.). In that case, the Hon. Irwin T. Ward, district judge for the 18th Judicial District of Johnson County, Texas, enjoined the Hon. Louis Wilson, district judge for the 44th Judicial District of Dallas County, Texas, from proceeding to trial and judgment in a lawsuit pending before Judge Wilson. *Id.* at 732. In forcefully reversing this effort, the Dallas appellate court began its analysis by observing that the injunction “was issued by a court of competent jurisdiction and by one whose jurisdiction was invoked by the filing of a proper pleading, and to that extent appears to be valid.” *Id.* at 733–34. However, even if the 18th Judicial District Court had

jurisdiction to issue the injunction, the injunction was, nevertheless, “void” because permitting a writ of injunction directed by “a judge of a district court against a judge of co–ordinate powers and of equal rank and dignity,” was monstrous:

To say that, under such conditions, a judge presiding in the court in which one of the suits is pending can by injunction destroy the judicial powers of the judge of the court in which the other suit is pending, *is to announce a doctrine so monstrous and far-reaching in its effect that no argument is required to demonstrate its fallacy.*

*Id.* at 734 (emphasis added). To permit Respondent to exercise adjudicative authority to issue an order that nullifies the force and effect of an earlier order issued by co-ordinate court having equal rank and dignity from performing its core adjudicative function cannot be permitted. *See id.*

## **II. Relator Has No Adequate Remedy at Law.**

Finally, notwithstanding the exclusive jurisdiction of the presiding criminal courts, as discussed above, given the last-minute nature of these proceedings, there is no other adequate remedy available at law. Indeed, Fratta’s execution is set for today, January 10, 2023, after 6:00 p.m., with Ruiz’s scheduled for less than three weeks from now. Insufficient time remains before the impending execution dates for any appeal of that decision to play out. Indeed, any remedy under these circumstances would be “so uncertain, tedious, burdensome, slow, inconvenient, inappropriate, or ineffective as to be deemed inadequate.” *Greenwell v. Court of Appeals for Thirteenth Judicial*

*Dist.*, 159 S.W.3d 645, 648–49 (Tex. Crim. App. 2005). Removing this Court’s exclusive appellate jurisdiction over death penalty cases is not an acceptable remedy. *See Holmes*, 885 S.W.2d at 394 (holding that an appeal that “would likely be through the civil courts” was not an adequate remedy where “this Court has the ultimate jurisdiction over criminal law matters”).

Furthermore, Fratta, Ruiz, Balentine, and Brown are at fault for waiting until the execution dates were impending—Fratta less than a month—to raise a challenge to the use of compounded, allegedly beyond-use-date pentobarbital as a method of execution. Indeed, this practice has been known to death row inmates since at least 2017, when a similar challenge was unsuccessfully litigated in federal courts. *See Whitaker v. Collier*, 862 F.3d 490, 496-500 (5th Cir. 2017) (finding allegations regarding use of compounded, beyond-use-date pentobarbital untimely and insufficient to state a 42 U.S.C. § 1983 method-of-execution claim under Eighth Amendment). In *Whitaker*, the Fifth Circuit determined that “[a] method-of-execution cause of action accrues ‘on the date direct review of a plaintiff’s conviction and sentence is complete’ or ‘in the event a state changes its execution protocol after a death-row inmate’s conviction has become final . . . on the date that protocol change becomes effective.’” 862 F.3d at 494 (citing *Walker v. Epps*, 550 F.3d 407, 414 (5th Cir. 2008)). There has been no relevant change in protocol upon which the parties could rely. *Id.* at 495 (holding that, “[t]o reset the accrual date, a change to an execution protocol

must be substantial, and any new accrual date is applicable only to the portion of the protocol that changed”) Notably, the Fifth Circuit specifically determined that challenges to the retesting of the pentobarbital and the beyond-use-date of the compounded pentobarbital were time-barred because the 2013 change in policy to the use of compounded pentobarbital was not a substantial change warranting resetting of the accrual date. *Id.* at 495-96. In short, the untimeliness of this challenge prevents the Relator from having an adequate remedy at law.

### **PRAYER FOR RELIEF**

Relator has no adequate remedy at law and Respondent lacks jurisdiction to issue injunctive relief or purported stay, meaning she had a “ministerial” duty to refrain from taking that action. Therefore, Relator asks this Court to grant this Petition for Writ of Mandamus, order the Respondent to withdraw the injunction, and to grant any other relief to which Relator is entitled. Alternatively, Relator asks this Court to vacate the Respondent’s injunction order in the in the interest of time.

Respectfully submitted,

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COUNSEL FOR RELATOR

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was served upon Peter Walker, Alex Kursman, Jennae Swiergula, Tivon Schardl, Paul Mansur, and Ben Wolf by notice of electronic filing with the Texas Court of Criminal Appeals CM/ECF system, on this, the 10<sup>th</sup> day of January, 2023.

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