

# Complaint Form

## Submitter Information

\* Name

Amanda Woog (Texas Fair Defense Project) and Claudia Muñoz (Grassroots Leadership)

\* Date of Birth

Amanda Woog: 02/22/1984 Claudia Muñoz: 08/07/1984

\* Address

314 E. Highland Mall, Suite 204

\* City

Austin

\* State

Texas



\* Zip

78752

\* Email

awoog@fairdefense.org and cmunoz@grassrootsleadership.org

\* Daytime Phone

(860) 874-7450

Cell Phone

## Judge Information

Court Type

County Court



**County**

Kinney County

**Court**

Select from the criteria above, to narrow down the list of judges below. If you cannot find the judge, or the judge is not listed, please enter the judge's name in the "Other" field below.

**Judge**

Judge Tully Shahan



## Case Information

**Cause Number**

See attached.

**Case Status**

- ☐ Pending
- ☐ Concluded
- ☐ On Appeal

## Attorney Information

**Your Attorney Details****Name****Address****City****State****Zip****Email**

**Daytime Phone****Cell Phone****Opposing Attorney Details****Name****Address****City****State****Zip****Email****Daytime Phone****Cell Phone****Witness Information****Witness 1 Details****Name****Address****City****State**

**Zip**

**Email**

**Daytime Phone**

**Cell Phone**

**What did this person witness?**

**Witness 2 Details**

**Name**

**Address**

**City**

**State**

**Zip**

**Email**

**Daytime Phone**

**Cell Phone**

### What did this person witness?

See attached.

## Details of the Complaint

Describe the factual details of your complaint in the space provided below. Include the date of the alleged misconduct. Your complaint should be as specific as possible. *Do not cite case law in your complaint.*

### \*Date of Alleged Misconduct of Judge

April 21, 2021 to present.

### \*Factual Details of your complaint against the Judge

See attached.

## How did you hear about the State Commission on Judicial Conduct?

- ☐ State Bar of Texas
- ☐ Another State Agency
- ☐ News Media
- ☐ Attorney
- ☐ Friend

☐ Other

## Confidentiality & Authorization

You may request that the Commission maintain your confidentiality. However, please be advised that it may not be possible for the Commission to investigate your complaint without revealing your identity to the judge. If you request confidentiality, and the Commission believes that it may reveal your identity to the Judge, we will advise you before proceeding. If you still wish to maintain confidentiality, check the box below.

☐ **I wish to maintain confidentiality.** I understand that it may affect the Commission's ability to investigate my complaint, and that the Commission may not be able to maintain my confidentiality.

**By entering my full name, below, I am authorizing the Commission to investigate my complaint against a Texas Judge.**

**\* Full Name**

Amanda Woog and Claudia Muñoz

**\* Date**

12/22/2021



*Submitted via SCJC Online Portal and FedEx*

Texas Commission on Judicial Conduct  
Office of the State Commission on Judicial Conduct  
P.O. Box 12265  
Austin, TX 78711  
(512) 463-5533

December 22, 2021

**RE: Formal Complaint Against Judge James T. “Tully” Shahan, County Court Judge of Kinney County, Texas**

Grassroots Leadership and Texas Fair Defense Project, through the undersigned individuals, formally submits this complaint pursuant to Section 33.021, *et seq.* of the Texas Government Code against Judge James T. “Tully” Shahan, County Court Judge of Kinney County in Texas.

### **INTRODUCTION**

Kinney County Judge Tully Shahan is using the criminal legal system to wage a political war against people he believes entered Kinney County via the Texas-Mexico border. Comparing this moment to the Battle of San Jacinto in 1873—the final battle in the Texas Revolution against Mexico—Judge Shahan has stated that “Texas is once again under siege, as thousands upon thousands of illegal aliens invade our State through our border with Mexico.” He has repeatedly referred to migration from Mexico as an “invasion,” claiming that it “violat[es] the sovereignty and territorial integrity of Texas.”<sup>1</sup>

His claims and rhetoric amount to dog-whistling and are grounded in white supremacist ideology. Although Judge Shahan claims that Kinney County residents have been “assaulted, injured, threatened, robbed, and intimidated,” he has also admitted no resident had been hurt by a migrant,<sup>2</sup> and crime data show there has been no rise in violent crime in Kinney County from 2020 to 2021.<sup>3</sup> His repeated characterization of migrants as “illegal aliens,” “invaders,” and criminals is rooted in nativist conspiracy theories about how Black and brown people are migrating to the

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<sup>1</sup> Tully Shahan, Joint Statement with County Attorney of Kinney County and Declaration of Local State of Disaster (April 21, 2021) (on file with Clerk of Kinney County), <https://cokinneytx.civicweb.net/document/16670/3.e%20Declaration%20of%20Local%20State%20of%20Disaster%20for%20Kin.pdf?handle=B7DFA16D4B5F44CE9DBFA7466939E756> (attached as Exhibit A).

<sup>2</sup> Vanessa Croix, *Kinney Co. Officials Issue Disaster Declaration, Calling on State Leaders for Help*, KENS5.COM (April 21, 2021, 6:43 PM CST), <https://www.kens5.com/article/news/special-reports/at-the-border/kinney-co-officials-issue-disaster-declaration-calling-on-state-leaders-for-help/273-1ac31fd5-c37d-4221-8675-d201ab40f6d3>.

<sup>3</sup> Brandon Mulder, *Fact-Check: Are Migrants Causing 'Carnage' at Border? Abbott's Claims Unfounded*, AUSTIN AMERICAN-STATESMAN (July 4, 2021, 9:00 AM CST), <https://www.statesman.com/story/news/politics/politifact/2021/07/04/texas-governor-greg-abbott-says-migrants-causing-carnage-border-fact-check-false/7842690002/>.

United States to seize power and undermine the existing culture. Judge Shahan has explicitly espoused this theory himself, claiming “Biden is diffusing all of these people in our country to change our culture.”<sup>4</sup>

This racist demagoguery would be disturbing coming from any elected official. Here, it is especially concerning because Judge Shahan is the judge who is presiding or will preside over hundreds or even thousands of misdemeanor criminal cases arising from the current targeting of migrants for criminal prosecution in Kinney and other counties. His statements and actions reveal bias that violates his ethical duties as a judge, undermines the rule of law, and betrays public trust in our legal system.

## **BACKGROUND**

Judge Shahan is at the center of and one of the chief driving forces behind what has become a multi-billion dollar state immigration enforcement system brought about through a series of county and state disaster declarations, unprecedented quasi-militaristic law enforcement occupations and operations,<sup>5</sup> and massive funding re-allocations and allocations. The first disaster declaration targeting migrants was issued by Judge Shahan in Kinney County on April 21, 2021, and gained swift momentum with 14 other Texas counties following his initial declaration, adopting his language verbatim.<sup>6</sup> Governor Abbott issued his own declaration on May 31, 2021 and announced his plans to construct a Texas border wall on June 16, 2021, employing similar “invasion” rhetoric and migrant crime narrative that mirrored Judge Shahan’s declaration.<sup>7</sup>

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<sup>4</sup> Aaron Nelsen, *Kinney County Has Embraced Greg Abbott’s Operation Lone Star Like Nowhere Else. It’s Fueling the Hysteria of Some Locals*, TEX. MONTHLY (Oct. 29, 2021), <https://www.texasmonthly.com/news-politics/operation-lone-star-kinney-county/>.

<sup>5</sup> Approximately 10,000 Texas National Guard (TNG) members and Texas Department of Public Safety (DPS) officers now occupy the Texas-Mexico border region on orders from the Texas Governor to arrest and jail migrants pursuant to OLS. Greg Abbott (@GregAbbott\_TX), TWITTER (Dec. 20, 2021, 10:24 AM), [https://twitter.com/GregAbbott\\_TX/status/1472966088182972422](https://twitter.com/GregAbbott_TX/status/1472966088182972422). In addition to this surge of state police officers and military soldiers in the region, the militarization of the border includes fleets of Humvees and Black Hawk helicopters and individuals dressed in military uniform and armed with assault rifles patrolling on private property. Melissa del Bosque, *Texas National Guard Filmed Trespassing During Border Operations*, THE INTERCEPT (Dec. 17, 2021, 1:00 PM), <https://theintercept.com/2021/12/17/texas-border-militarization-national-guard-operation-lone-star/> (Local residents in the region, concerned of the militarized operations under OLS, captured images and recordings of soldiers armed with assault rifles on their private property). In July 2021, Governor Abbott ordered the Texas National Guard (TNG) to collaborate with state police by seizing and arresting people for suspected violations of trespass and other state offenses. Press Release, Office of the Texas Governor, Governor Abbott Orders Texas National Guard to Make Arrests Related to Border Crisis (July 27, 2021), <https://gov.texas.gov/news/post/governor-abbott-orders-texas-national-guard-to-assist-texas-department-of-public-safety-in-making-arrests-related-to-border-crisis>. The Governor’s order is unprecedented because he is “the first Texas governor to send armed soldiers to arrest migrants as quasi-immigration officers.” del Bosque, *supra*, at ¶ 6; see also Christopher Sherman, *Perry sending National Guard troops to border*, ASSOCIATED PRESS (July 21, 2014), <https://apnews.com/article/51ddb1478ad340008e0bde4ff3cc8c20> (describing previous administrations’ deployment of national guard members have been limited to serving in a support role, such as intelligence gathering, or “detering and referring” migrants—not detaining people).

<sup>6</sup> Mulder, *supra* note 3.

<sup>7</sup> Compare Governor of the State of Tex., Proclamation No. 41-3822, 46 Tex. Reg. 3653, 3657-58 (June 18, 2021), [https://gov.texas.gov/uploads/files/press/DISASTER\\_border\\_security\\_IMAGE\\_05-31-2021.pdf](https://gov.texas.gov/uploads/files/press/DISASTER_border_security_IMAGE_05-31-2021.pdf) (claiming that “the ongoing surge of individuals unlawfully crossing the Texas-Mexico border poses . . . violent crime” and a “violation of sovereignty and territorial integrity.”), and KVUE-TV, *LIVE: Gov. Greg Abbott holds press conference on border*



What has emerged is “Operation Lone Star” (OLS), a state program that uses existing and newly-created facets of the criminal legal system to target migrants for arrest on state misdemeanor criminal trespass charges. The explicit purpose of the program is “to catch and jail...migrants.”<sup>8</sup> Pursuant to this program, state and local agencies have targeted and arrested individuals for alleged misdemeanor trespass based on their perceived race and national origin, including immigration status,<sup>9</sup> and have now arrested more than 2,200 individuals on trespass charges.<sup>10</sup> In Kinney County alone and since early August 2021,<sup>11</sup> more than 1,700 people have been arrested for trespass.<sup>12</sup> The vast majority—possibly all—of the arrested people are Latinx or Black.<sup>13</sup>

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wall, YOUTUBE (June 16, 2021), <https://youtu.be/nppzRbcVx2w> (claiming Texas residents were threatened, children have been harmed, and homes have been invaded by people who came across the border), with Shahan, *supra* note 1, at 1 (“This continual violation of our sovereignty and territorial integrity has resulted in residents of Kinney County being assaulted, threatened with violence, and robbed.”). *But see* Brandon Mulder, *Are Migrants Causing ‘Carnage’ at the Texas Border?*, POLITIFACT (July 2, 2021), <https://www.politifact.com/factchecks/2021/jul/02/greg-abbott/are-migrants-causing-carnage-texas-border-abbotts/> (disproving claims, that migrants have caused “carnage” and “invasion,” by Governor Abbott and Kinney County officials, including Judge Shahan).

<sup>8</sup> Greg Abbott (@GregAbbott\_TX), TWITTER (July 26, 2021, 2:41 PM), [https://twitter.com/GregAbbott\\_TX/status/1419744773200617478](https://twitter.com/GregAbbott_TX/status/1419744773200617478) (“Meeting with @TDEM, @TXMilitary, @TxDPS, & the Texas Commission on Jail Standards about our plan to catch and jail illegal migrants crossing the border. The Biden administration caused this crisis, Texas is stopping it.”).

<sup>9</sup> See, for example, Complaint, ACLU of Tex. v. Off. of the Tex. Governor, 21 (U.S. Dep’t of Just. Civ. Rts. Div., Dec. 15, 2021) [hereinafter *Title VI DOJ Complaint*], [https://www.aclutx.org/sites/default/files/field\\_documents/ols\\_trespass\\_arrest\\_title\\_vi\\_complaint.pdf](https://www.aclutx.org/sites/default/files/field_documents/ols_trespass_arrest_title_vi_complaint.pdf) for an analysis of available arrest records and affidavits by DPS officers as demonstrative evidence of stark racial disparities in arrests based on race and national origin:

This analysis is based on DPS trooper affidavits providing arresting officers’ accounts of 168 arrests—72 in Val Verde County and 96 in Kinney County . . . In 57% of cases in Val Verde County, the arrest narrative describes the individual’s perceived ethnicity, country of origin, and/or perceived immigration status: 17% include perceived ethnicity, 37.5% include country of origin, and 39% include perceived immigration status. For Kinney County, of the 96 arrest affidavits analyzed, 33% describe country of origin and/or perceived immigration status: 29% include perceived immigration status, and 8% include country of origin. (These totals for each category equal more than 100% because some narratives include [sic] for example, both perceived race and perceived immigration status.).

<sup>10</sup> Arelis R. Hernández, *Civil Rights Groups Ask DOJ to Investigate Texas Operation Arresting Migrants*, WASH. POST (Dec. 15, 2021, 5:25 PM EST), [https://www.washingtonpost.com/immigration/civil-rights-groups-ask-justice-department-to-investigate-discriminatory-texas-operation-that-arrests-migrants-at-border/2021/12/15/183305b0-5da9-11ec-bda6-25c1f558dd09\\_story.html](https://www.washingtonpost.com/immigration/civil-rights-groups-ask-justice-department-to-investigate-discriminatory-texas-operation-that-arrests-migrants-at-border/2021/12/15/183305b0-5da9-11ec-bda6-25c1f558dd09_story.html) (“The vast majority of the more than 2,200 trespassing arrests made under the program this year were in Kinney.”); @TxDPSSouth, TWITTER (Dec. 12, 2021, 12:49 PM), <https://twitter.com/TxDPSSouth/status/1470103407058894864> (“As part of Gov @GregAbbott\_TX #OperationLoneStar [Texas DPS and Military] have made over 2,300 arrests for criminal trespass.”).

<sup>11</sup> Vanessa Croix, *More Than 50 Migrants Arrested in Kinney County so Far in August*, KENS5.COM (Aug. 13, 2021, 7:57 PM CST), <https://www.kens5.com/article/news/special-reports/at-the-border/abbott-migrant-arrest-policy-impact/273-ca8ba0e8-edb6-46ef-a63a-6f8141aa6557> (reporting that Kinney County Sheriff’s Office began arresting people for trespass as part of OLS since August 4, 2021).

<sup>12</sup> The undersigned complainants have been unable to secure access to records for all arrests to date, despite that such records are public records. However, embargoed data obtained from state officials, estimates from defense and civil rights groups, reports from news sources, and available arrest records through successful records requests suggest that more than 1,700 people have been arrested by Kinney County for trespass under OLS. *See also* Nelsen, *supra* note 4, at ¶ 5 (“With more than 1,300 arrests, overwhelmingly on misdemeanor charges, the Kinney sheriff’s office has caught more migrants, by a wide margin, than all other counties combined.”).

<sup>13</sup> For example, based on 168 arrest affidavits by arresting officers in Val Verde County and Kinney County, “98% [of those arrested] were recorded as ‘H/M’ (Hispanic male) and 2% as ‘B/M’ (Black male).” *Title VI DOJ*

Once arrested, suspected migrants are processed through the Texas criminal legal system. With Judge Shahan at the helm, the Kinney County criminal system's handling of OLS cases has been rife with statutory and constitutional violations. For example, during mass magistration held in the parking lot of a courthouse,<sup>14</sup> people who did not speak English were told to sign a form in English with a pre-checked box ostensibly waiving their right to legal counsel;<sup>15</sup> hundreds of people were detained without counsel appointed or formal charges filed for weeks, some for more than a month; hundreds of people have been released or had their cases dismissed for constitutional and statutory violations of federal and state law;<sup>16</sup> and even when a court's lawful release order has been entered, many have continued to be illegally detained.<sup>17</sup> And now, Judge Shahan remains the county judge who will preside over these misdemeanor cases, in which he is ethically obligated to act impartially.<sup>18</sup> This, as we show, is untenable.

## **COMPLAINT**

### **I. Kinney County Judge Tully Shahan's Repeated Racist and Nativist Public Statements Violate Canons 2A and 4A(1) of the Texas Code of Judicial Conduct.**

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*Complaint, supra* note 9 (snapshot of data revealing that “all arrests are of people of color, and almost all are of Latino men.”). Data obtained from state officials, that are inaccessible to the public, and analyzed by the undersigned likewise show that, within 47 days between September 26 to December 6, 2021, 89.5% of 739 people arrested by Kinney County and “booked” as part of OLS are of Latin American origin. See John Burnett, *Texas Gov. Abbott Has A State Border Force Jailing Migrants, Which Some Say Is Illegal*, NPR, at 01:59-02:06 (Sept. 30, 2021, 4:23 PM EST), <https://www.npr.org/2021/09/30/1042008504/texas-gov-abbot-has-a-state-border-force-jailing-migrants-which-some-say-is-ille> (as of September 2021, “more than 900 of those apprehended and detained under OLS are from Mexico and Central America.”).

<sup>14</sup> Jolie McCullough, *Thanks to Local Politics and a Railroad, Rural Kinney County Accounts for Most of Texas' Migrant Arrests*, TEX. TRIBUNE (Sept. 2, 2021, 5:00 AM CST), <https://www.texastribune.org/2021/09/02/texas-immigration-arrests-jail-kinney-county/> (photograph of parking lot magistration, originally posted on August 6, 2021 by the Kinney County Sheriff's Office Facebook page, attached as Exhibit B).

<sup>15</sup> *Id.* at ¶ 22 (an Austin-based attorney stated that she “witnessed County Judge Tully Shahan process three men last month, . . . their court forms had already been marked to show the defendant had waived their right to counsel before the hearing began,” and the “only thing that wasn't filled in was the signature of the person charged,” and that the “judge told her the migrants could get attorneys later in Briscoe, but there were no local attorneys available.”).

<sup>16</sup> Jolie McCullough, *Texas Court Orders Release of More Than 200 Migrants Imprisoned in Gov. Greg Abbott's Border Security Clampdown*, TEX. TRIBUNE (Sept. 28, 2021, 12:00 PM CST), <https://www.texastribune.org/2021/09/28/texas-migrants-prison-release/> (In September 2021, State District Judge Roland Andrade ordered nearly 250 men, the majority arrested in Kinney County, to be immediately released from state custody because they were being illegally detained and held for more than a month without the state filing charges against them, citing widespread violations of state law and constitutional rights to due process); Elizabeth Findell & Alicia A. Caldwell, *Texas Jails Fill With Migrants as Border Arrests Overwhelm Courts*, WALL ST. J., (Nov. 8, 2021, 8:00 AM EST), <https://redirect.viglink.com/?u=https%3A%2F%2Fwww.wsj.com%2Farticles%2Ftexas-jails-fill-with-migrants-as-border-arrests-overwhelm-courts-11636376402&key=a7e37b5f6ff1de9cb410158b1013e54a&prodOvr=RAC&opt=false> (finding that, as of November 1, 2021, approximately 70% of 170 resolved cases were dropped, in some instances for lack of evidence, according to court records).

<sup>17</sup> Hernández, *supra* note 10, at ¶ 18 (“An attorney helping to represent two men arrested under a bridge, said clients . . . had their cases dismissed after being held for two months. But they were kept in jail weeks after a district court judge ordered their September release and that of more than 200 others in custody without charges.”).

<sup>18</sup> To our knowledge, Judge Shahan is the only elected official who both issued a disaster declaration and is ethically required to remain impartial at all times while presiding over the misdemeanor cases now being filed under Operation Lone Star.

Kinney County Judge Tully Shahan has demonstrated racial animus toward the hundreds of Mexican and Latinx people who have or will appear before him as part of Operation Lone Star, threatening his ability to act impartially as judge. Judge Shahan’s public statements directed at Mexican and Latinx individuals reveal that racism and nativism motivate his embrace and enforcement of Operation Lone Star.<sup>19</sup> Accordingly, he has shown an inability to execute his judicial duties with fairness, with impartiality, and without bias in over 1,700 trespass cases against, almost exclusively, Latinx men. For these reasons and as discussed below, Judge Shahan has violated Canons 2A and 4A(1) of the Texas Code of Judicial Conduct.

A. Judge Shahan’s xenophobic and discriminatory statements in his public declarations violate Canon 2A.

Canon 2 of the Texas Code of Judicial Conduct aims to “avoid impropriety and the appearance of impropriety in all of the judge’s activities.”<sup>20</sup> Canon 2A provides that a judge must “comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”<sup>21</sup> Canon 2A specifically addresses racial bias, particularly relevant here:

Judges who freely use racial or other epithets, on or off the bench, create, at the very least, a public perception that they will not fairly decide cases involving minorities. The administration of justice is prejudiced by the public perception of racial bias, whether or not it is translated into the court’s judgments and order.<sup>22</sup>

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<sup>19</sup> The vast majority of approximately 1,700 individuals arrested in Kinney County alone under OLS are Latinx and were accused solely of state trespass charges, an admittedly pretextual charge to target people entering the United States from Mexico. See Greg Abbott (@GregAbbott\_TX), TWITTER (Oct. 28, 2021, 9:08 PM), [https://twitter.com/GregAbbott\\_TX/status/1453906456768561154](https://twitter.com/GregAbbott_TX/status/1453906456768561154) (confirming in an interview that “if [migrants] do come across the border, the National Guard and the Texas Department of Public Safety, they are authorized to arrest these people who make it through our blockade efforts and put them in jail for violating a crime of criminal trespass in the state of Texas.”). These cases have rarely withstood legal scrutiny (although the barriers to obtaining such scrutiny have been immense with denials and delays in appointment of counsel and months to get a court date). Indeed, hundreds of cases have been dismissed and not a single case has been brought before a jury, let alone resulted in conviction by a jury. See Findell & Caldwell, *supra* note 16, at ¶¶ 2–4 (finding that only 3 percent of approximately 1,500 people arrested on OLS trespass charges between July and early November of 2021 have been convicted, all of which were by guilty pleas to misdemeanor trespass, and that of 170 OLS resolved cases by November 1, about 70% were dropped). Under similar circumstances as here, a federal court recently found that enactment of a facially neutral federal law that disparately criminalized Mexican and Latinx migrants could only be explained and was motivated by racial animus. *U.S. v. Carrillo-Lopez*, No. 3:20-cr-00026, 2021 WL 3667330, at \*7–16 (D. Nev. Aug. 18, 2021) (holding federal reentry law unconstitutional based on years of historical records, legislative background, disparate impact, and lawmakers’ use of racial slurs for Mexican migrants evidencing that law was enacted with racist and nativist intent against Mexican and Latinx migrants). Here, the application of a facially neutral criminal law disparately criminalizing Mexican and Latinx migrants similarly is motivated by racial animus.

<sup>20</sup> Code Jud. Cond. Canon 2 (Tex. Sup. Ct. 2019).

<sup>21</sup> Code Jud. Cond. Canon 2A (Tex. Sup. Ct. 2019).

<sup>22</sup> *In re Lowery*, 999 S.W.2d 639, 656–57 (Tex. Rev. Trib. 1998) (internal quotations omitted). See also Interview by Quassan Castro with bell hooks (July 24, 2013), <https://www.jetmag.com/made-of-shade/bell-hooks/> (“We can’t combat white supremacy unless we can teach people to love justice. You have to love justice more than your allegiance to your race, sexuality and gender. It is about justice.”).

Where a judge had created a public perception of bias based on race, ethnicity, or national origin, the judge not only failed to promote public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A but also cast public discredit upon the administration of justice in violation of Article V, Section 1-a(6)(A) of the Texas Constitution.<sup>23</sup>

Here, Judge Shahan created a public perception of bias based on race, ethnicity or national origin, specifically bias against Latinx people and migrants, when he repeatedly characterized migrants of Latin American origin as “illegal aliens,” “invaders,” and criminals; claimed that county residents have been “assaulted, injured, threatened, robbed, and intimidated” by migrants while admitting no resident had not been harmed by a migrant; and referred to migration from Mexico and South America as an “invasion” and “siege” of Texas.

Judge Shahan’s repeated characterization of people without United States citizenship as “illegal aliens,” “invaders,” and criminals has been directed almost exclusively toward Mexican and other Latinx people and is rooted in racism and nativism.<sup>24</sup> Multiple courts have recognized that, since the 1920s, nativist policymakers and eugenics proponents have used these terms in conjunction with discredited pseudoscientific and conspiracy theories to justify their racialization and criminalization of Mexican and other Latinx “alienage” to preserve the white race in the United States.<sup>25</sup> By using these terms about migrants repeatedly throughout his declarations, Judge Shahan similarly showed, or created the appearance of, an intent to target people based on their race and perceived immigration status, particularly Mexican and Latinx people believed to have crossed the Texas-Mexico border. Moreover, by combining the use of racialized labels with his call to criminalize migration from Mexico and South America, Judge Shahan reveals that the purpose of participation in OLS is to target people based on their race and immigration status. In this context, the use of these terms serves no legitimate judicial purpose other than to stoke racist and nativist ideologies rooted in anti-immigrant, nationalist, and white supremacist ideology against Mexican and Latinx people,<sup>26</sup> to conflate Black or Latinx people as criminals, “illegal aliens,” and “invaders” because of their perceived race and national origin, and to thereby justify the criminalization of a class of people because of racial animus.

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<sup>23</sup> See, e.g., *Lowery*, 999 S.W.2d at 657–59 (upholding Special Master’s findings that Dallas County judge willfully committed misconduct when he used racial slurs against a Black parking attendant in public); Public Reprimand of Charles F. Huegler, CJC No. 00-0162-JP (State Comm’n Jud. Conduct, Jan. 25, 2000) (concluding that judge violated Canon 2A by making racial slurs, and derogatory remarks about Black and Latinx people in general and about a Latino patrolman in particular while at store where employees and customers overheard); Public Admonition of Oscar Tullos, CJC No. 00-0647-JP (State Comm’n Jud. Conduct, May 31, 2001) (concluding judge violated Canons 2A and 3B(6) where judge abused his authority by illegally detaining a Mexican national and her 7 year-old-child in holding cell for purpose of shocking them into following law requiring children to attend school and by making derogatory remarks to the woman that demonstrated prejudice based on national origin).

<sup>24</sup> The labels “illegal aliens” and “invaders” are not facially-neutral terms of art. In this context these terms “index race, . . . foster racial stereotypes, and imbue legal categories with racial meaning” because these terms were used to falsely portray a group of migrants as inherently threatening and dishonest with the stated purpose to curtail migration of people from Latin America. See, e.g., *City of S. Miami v. DeSantis*, No. 19-CV-22927, 2021 WL 4272017, at \*41–42 (S.D. Fla. Sept. 21, 2021) (finding that “criminal illegals,” “illegal aliens,” and “invaders” are demeaning terms because those terms are often used to “maximize shock value” and perpetuate racial stereotypes about Latinx migrants as inherently dangerous and threatening).

<sup>25</sup> *Carrillo-Lopez*, 2021 WL 3667330, at \*14–16; *DeSantis*, 2021 WL 4272017, at \*6 and 27.

<sup>26</sup> See, e.g., *Carrillo-Lopez*, 2021 WL 3667330, at \*8 (finding that elected officials’ remarks, including “Mexicans were poisoning the American citizen because they were of a very undesirable class,” were racist and showed racial animus in enactment of anti-immigrant law).

Further, Judge Shahan’s claims about a purported migrant crime wave harming county residents are false and inflammatory, and create the appearance of racial bias against those arrested under Operation Lone Star. While Judge Shahan claimed that Kinney County residents have been “assaulted, injured, threatened, robbed, and intimidated” by migrants,<sup>27</sup> he also admitted no local resident had been hurt by a migrant.<sup>28</sup> Indeed, the state’s own crime data show the level of violence crime has remained the same in Kinney County from 2020 to 2021,<sup>29</sup> and as of October 2021, approximately 800 of the men arrested under OLS in Kinney County were charged *solely* with state misdemeanor trespass, with 160 more charged with cutting fences and damaging property.<sup>30</sup> Despite knowing that his migrant crime narrative is false, Judge Shahan nonetheless continued his targeting of migrants by perpetuating this narrative and associating undocumented people with lawlessness in public statements and disaster declarations.<sup>31</sup>

B. Judge Shahan’s discriminatory statements to the media violate Canon 4A(1).

Judge Shahan’s remarks to the media cast “reasonable doubt on [his] capacity to act impartially as a judge” in violation of Canon 4A(1), as two recent examples show.

First, in response to criticisms about his deficient handling of OLS cases as part of an interview with the *Washington Post*, Judge Shahan blamed undocumented people for his own failure to appoint lawyers to over 150 people who were caged in a state prison for over a month without formal charges filed or attorneys appointed. To justify this failure, Judge Shahan stated that “Kinney County cannot afford to stop prosecuting [migrants]” and “they are illegal aliens that are breaking the law.”<sup>32</sup> In other words, Judge Shahan suggested that if a person is perceived to be an “illegal alien,” a judge may deny that person their constitutional right to an attorney. Such a notion flies in the face of the “most basic obligation of protecting the fundamental rights of those [the judge] was elected to serve.”<sup>33</sup>

Second, Judge Shahan cast reasonable doubt on his ability to act impartially as a judge when he stated in a *Texas Monthly* interview that “Biden is diffusing all of these people in our country to change our culture,” perpetuating a white nationalist conspiracy theory that “foreigners will seize power in the U.S. through immigration and reproduction.”<sup>34</sup> To publicly push this discriminatory rhetoric while simultaneously presiding over the cases of people he fears will “change our culture” casts “reasonable doubt on [his] capacity to act impartially as a judge” in violation of violate Canon 4A(1).

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<sup>27</sup> Shahan, *supra* note 1, at 1 (“Thousands of illegal aliens invading our great State of Texas . . . has resulted in our residents being assaulted, injured, threatened, robbed, and intimidated by illegal aliens.”).

<sup>28</sup> Croix, *supra* note 2.

<sup>29</sup> Mulder, *supra* note 3.

<sup>30</sup> Nelsen, *supra* note 4.

<sup>31</sup> *Id.*

<sup>32</sup> Arelis R. Hernández, et. al., *Hundreds of Migrants Held for Weeks Without Charges as Texas’s Border Crackdown Overwhelms Justice System*, WASH. POST (Sept. 30, 2021, 4:38 PM EST), <https://www.washingtonpost.com/nation/2021/09/30/texas-migrant-arrests-release/>.

<sup>33</sup> *In re Chacon*, 138 S.W.3d 86, 96 (Tex. Rev. Trib. 2004), *aff’d* (Sept. 24, 2004).

<sup>34</sup> Nelsen, *supra* note 4.

## II. Judge Shahan's Practice of Routinely Depriving Litigants of Their Right to Appointment of Counsel Violates Canons 2A and 3B(2) of the Code of Judicial Conduct

In violation of Canons 2A and 3B(2) of the Code of Judicial Conduct, Judge Shahan routinely fails to comply with and lacks competence in articles 15.17(a) and 1.051 of the Texas Code of Criminal Procedure, as demonstrated when he systematically ignored his duty to advise OLS arrestees of the procedures to request appointed counsel, and indeed did not appoint lawyers for hundreds of people, at their bail-setting hearings, often referred as “article 15.17 hearings.” Canon 2A provides that a judge must comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 3B(2) provides, in pertinent part, that a judge should be faithful to the law and must maintain professional competence in it.

The mandates under articles 15.17(a) and 1.051 are straightforward: at magistration, the magistrate judge must inform the person arrested on how to request a lawyer,<sup>35</sup> and the judge must appoint counsel within three working days of a request for appointed counsel.<sup>36</sup> The purpose of this requirement is to ensure that the person arrested has an opportunity to invoke their right to appointed counsel and, if they refuse counsel, that they make a knowing, intelligent, and voluntary waiver of such rights. “The law would be chaos unless all judges . . . follow the law including its procedures. The procedures that exist are designed to safeguard the parties’ rights and let the public know what to expect. There is a reason for them and they are mandated by legislative enactments.”<sup>37</sup>

Judge Shahan’s practice violated both state law and the Sixth Amendment, and these practices have the appearance of an intent to deprive people arrested under OLS of the right to appointed counsel. Instead of fulfilling his legal duties, during *en masse* magistration of 155 men arrested under OLS in a parking lot outside the Kinney County courthouse, Judge Shahan instructed the men to sign a pre-filled form, written in only English, that included a bare recitation of rights after an arrest and a pre-checked box declining to request appointment of counsel, without offering or advising them on how to request appointed counsel.<sup>38</sup>

In addition to disregarding this responsibility as magistrate, Judge Shahan betrayed the public’s trust and was unfaithful in upholding the constitutional and statutory right to counsel when he preemptively refused to appoint attorneys for the accused men and forced their waiver of the right to appointed counsel. Addressing the men during their magistration, he stated that, regardless of whether the men requested an attorney, they will not receive appointed counsel and will be

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<sup>35</sup> Tex. Code Crim. Proc. art. 15.17(a) (2017) (“The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.”).

<sup>36</sup> Tex. Code Crim. Proc. art. 1.051(c)(1) (“If an indigent defendant . . . requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court . . . in the county in which the defendant is arrested shall appoint counsel . . . not later than the end of the third working day after the date on which the court . . . receives the defendant’s request for appointment of counsel.”).

<sup>37</sup> *In re Jones*, 55 S.W.3d 243, 249 (Tex. Spec. Ct. Rev. 2000).

<sup>38</sup> McCullough, *supra* note 14.



required to waive this right because there were no defense attorneys available to them.<sup>39</sup> This is false as a matter of law, and functions to usurp the men's opportunity to request a lawyer, thereby denying their constitutional and statutory right to legal counsel.<sup>40</sup>

Even if Judge Shahan intended to appoint counsel later, had actually provided sufficient interpretation services, and provided translated copies of the pre-filled forms for the men, "good intentions are not enough."<sup>41</sup> Canons 2A and 3B(2) demand more from judges, that judges must always remain cognizant of the destructive impacts of their judicial actions regardless of good faith or well-meaning intentions.<sup>42</sup> Here, Judge Shahan's routine deprivation of counsel resulted in over 150 men unjustly incarcerated for weeks or more without being appointed attorneys and for months thereafter without formal charges filed nor a calendar appearance,<sup>43</sup> effectively disappearing them into the state prison system based on mere allegations of misdemeanor trespass.

More recent actions also demonstrate Judge Shahan's ongoing inability to act impartially, thereby undermining public confidence in the integrity and impartiality of the judiciary. This month, Judge Shahan unilaterally removed three duly-appointed visiting judges,<sup>44</sup> cancelled all pending hearings previously scheduled before them,<sup>45</sup> and then handpicked five judges as their replacement,<sup>46</sup> acting in violation of Texas law and without good cause.<sup>47</sup> The three visiting judges had granted hundreds of motions for release due to constitutional and statutory violations in the last few months,<sup>48</sup> and they were scheduled to conduct hearings on an additional 153 pending

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<sup>39</sup> Judge Shahan confirmed to the media the same explanation he provided at magistration. Jolie McCullough, *Migrants Arrested by Texas in Border Crackdown are being Imprisoned for Weeks Without Legal Help or Formal Charges*, KRISTV.COM (Sept. 27, 2021, 12:10 PM), <https://www.kristv.com/news/texas-news/migrants-arrested-by-texas-in-border-crackdown-are-being-imprisoned-for-weeks-without-legal-help-or-formal-charges> ("Tully Shahan, the Kinney County judge, said Thursday that some men did not request counsel, and even if they had there were no local defense attorneys to take their cases.").

<sup>40</sup> The refusal or failure of the judge to appoint counsel for an indigent defendant is a denial of the constitutional right to counsel and due process of law. *See Moore v. State*, 168 Tex. Crim. 274, 277–78 (1959) (reversing conviction, despite court advising accused of his statutory rights and in absence of showing that court offered to appoint counsel, or accused was financially able to retain counsel or was able to represent himself, where judge insufficiently complied with statutory mandates and counsel was not appointed even if desired by accused).

<sup>41</sup> *See, e.g., Jones*, 55 S.W.3d at 249 ("Judge Jones, using his own methods, appears to mean well. The court has no doubt that his goal in this and similar cases is to do justice. But good intentions are not enough.").

<sup>42</sup> *See id.* at 249.

<sup>43</sup> McCullough, *supra* note 14, at ¶ 8 ("Of the more than 630 migrants detained in the Briscoe state prison this week, according to a prison official, more than 440 had been picked up in Kinney . . . That led to at least 155 migrants being jailed for weeks at the Briscoe state prison without lawyers, according to court officials and attorneys.").

<sup>44</sup> Cnty. J. Tully Shahan of Kinney Cnty., Letter and Order on Termination of Judicial Assignments and Upcoming Hearings Under Operation Lone Star (Dec. 8, 2021) (attached as Exhibit C).

<sup>45</sup> *Id.*

<sup>46</sup> Jolie McCullough, *Hundreds of Migrants Accused of Trespassing Languish in Texas Prisons. A County Judge's new Approach Might Prolong Their Detention*, TEX. TRIBUNE (Dec. 10, 2021, 5:00 AM CST), <https://www.texastribune.org/2021/12/10/texas-border-security-migrant-prisons/>.

<sup>47</sup> Texas law vests the power to reassign multiple judges to handle cases in counties with a backlog of cases in two people: the Chief Justice of the Supreme Court and the Presiding Judge of the administrative judicial region where the backlogged county is located. Tex. Gov't Code §§ 74.052, 74.054, 74.056, and 74.057. Judge Shahan, a county judge, is limited to appointment of one visiting judge when county dockets are overstretched. Tex. Gov't. Code § 26.024(a). If the county judge seeks to appoint a visiting judge to a pending case, they must show good cause and the parties must be given notice and a hearing. Tex. Gov't Code § 26.022(a)–(b).

<sup>48</sup> McCullough, *supra* note 46, at ¶ 3; Findell & Caldwell, *supra* note 16, at ¶¶ 3–4. *See also* McCullough, *supra* note 16 (In September, State District Judge Roland Andrade ordered nearly 250 men, the majority arrested in Kinney

pretrial writs of habeas corpus in December.<sup>49</sup> Judge Shahan made this decision despite admitting there is a larger volume of OLS cases than the court can handle alone,<sup>50</sup> and he issued the order only a day after County Attorney Brent Smith filed a writ of prohibition in state court, seeking to prevent the visiting judges from granting further relief, such as release in pending cases.<sup>51</sup> Judge Shahan's preferred replacement judges are believed to be his "friends" whom Judge Shahan believed "underst[ood] West Texas" better than the duly-appointed judges.<sup>52</sup> Judge Shahan's disregard for hundreds of people's right to be free from illegal confinement in favor of his own system of justice with personally-appointed judges severely undermines the judiciary's integrity and impartiality.

Lastly, these failures cannot be explained by inadvertence. Judge Shahan's practice of preemptively refusing the right to counsel by using pre-filled forms and misleading advisal raises serious concerns that he is abdicating his judicial role for "lawless judicial conduct, or a personal brand of justice in which the judge becomes a law unto himself, [which] is as threatening to the concept of government under law as is the loss of judicial independence."<sup>53</sup> His actions replacing the judges raise the same concerns. To be sure, mistakes happen. But these were not mistakes. This kind of systematic violation can only arise from either deliberately ignoring the law, or an inexplicable and deeply troubling inability to comprehend the requirements of a simple statutory mandate. Judge Shahan's violation of the appointment of counsel law was so flagrant and consistent that state officials eventually took magistration authority away from him for people arrested under Operation Lone Star because of concern with his judicial performance.<sup>54</sup>

For these reasons, we urge the Commission to investigate and meaningfully hold Judge Shahan accountable for his serious violations of the Canons of the Texas Code of Judicial Conduct. Without a "true sense of accountability," left unfettered, Judge Shahan's behavior will continue to lead to judicial lawlessness.<sup>55</sup>

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County, to be immediately released from state custody because they were being illegally detained and held for more than a month without the state filing charges against them, citing widespread violations of state law and constitutional rights to due process).

<sup>49</sup> Letter from Kristin Etter, Special Project Dir., Tex. RioGrande Leg. Aid, to Stephen B. Ables, Presiding J., Sixth Admin. Jud. Reg. (Dec. 9, 2021) (attached as Exhibit D).

<sup>50</sup> Shahan, *supra* note 44, at ¶ 1 (citing to "the large volume of misdemeanor cases filed under Operation Lone Star" as his rationale to replace all three of the visiting judges, without citing to any legal authority or lawful basis granted to him under Texas law).

<sup>51</sup> Application for Writ of Prohibition and Motion for Stay of Proceedings Below 1–2, and 5–6, In re State ex rel. Brent Smith, Ct. of Crim. App. Tex., WR-93, 354-01 (Dec. 7, 2021) (attached as Exhibit E).

<sup>52</sup> McCullough, *supra* note 46, at ¶ 6 (the Presiding Judge Ables believed that Judge Shahan replaced his appointed judges with Judge Shahan's "friends" whom Shahan believed best "understood West Texas.").

<sup>53</sup> Lowery, 999 S.W.2d at 659. See McCullough, *supra* note 14, at ¶ 21 ("Narce Villarreal, the justice of the peace [in Kinney County] who conducted most of these hearings, said Friday that most of the men she processed requested attorneys, so she filled out the necessary indigent defense paperwork. But she said the county judge told her he didn't fill out such forms, and she didn't know how or if attorneys were actually assigned.").

<sup>54</sup> E-mail between Brandon Wood, Exec. Dir., Tex. Comm'n Jail Stand., and Chris Earp, Sec. Chief, Tex. Dep't of Emerg. Mgt., (Aug. 14, 2021) (attached as Exhibit F):

Wood (TCJS): "Since Kinney is simply not up to the task, I recommend that if at all possible, any arrests made in Kinney by DPS as part of OLS be taken straight to VVTPF. I can not in good conc[ience] be ok with their approach."

Earp (TDEM): "That is the recommendation of OCA based on their meeting with Kinney County."

<sup>55</sup> *In re Barr*, 13 S.W.3d 525, 553 (Tex. Rev. Trib. 1998).



Respectfully submitted,

Claudia Muñoz  
*Co-Executive Director/Co-Directora Interina*  
**GRASSROOTS LEADERSHIP**  
Austin, Texas  
(512) 499-8111  
[cmunoz@grassrootsleadership.org](mailto:cmunoz@grassrootsleadership.org)

Amanda Woog  
*Executive Director*  
**TEXAS FAIR DEFENSE PROJECT**  
314 E. Highland Mall Blvd #204  
Austin, TX 78752  
(512) 637-5221  
[awoog@fairdefense.org](mailto:awoog@fairdefense.org)

# EXHIBIT A

Joint Statement with County Attorney of Kinney County and Declaration of Local  
State of Disaster, Dated April 21, 2021



Fellow Texans,

Today in Kinney County we are declaring a Local State of Disaster due to the thousands of illegal aliens invading our great State of Texas. This invasion has resulted in our residents being assaulted, injured, threatened, robbed, and intimidated by illegal aliens from around the world. As Texans, we will no longer allow the sovereignty and territorial integrity of our borders to be violated.

On April 21, 1836, Texas won her independence during the battle at San Jacinto, the final and decisive battle of the Texas Revolution. Today, 185 years later, Texas is once again under siege, as thousands upon thousands of illegal aliens invade our State through our border with Mexico.

The current status quo of our border is NOT sustainable, and endangers the health, life, and property of our residents. To effectively maintain the sovereignty and territorial integrity of our borders, the counties in Texas must stand together against this invasion and demand action from our governor and state leadership.

Numerous counties across Texas have already pledged to sign their own Declaration of Local State of Disaster. We look forward to coordinating with those counties and other state officials in establishing the necessary safeguards that will keep our residents safe.

A handwritten signature in blue ink, appearing to read "Tully Shahan", written over a horizontal line.

Tully Shahan, County Judge  
Kinney County, Texas

A handwritten signature in blue ink, appearing to read "Brent Smith", written over a horizontal line.

Brent Smith, County Attorney  
Kinney County, Texas



FILED FOR RECORD  
at 11:30 o'clock A.M.

APR 21 2021

COUNTY & DISTRICT CLERK, KINNEY CO.

### DECLARATION OF LOCAL STATE OF DISASTER

WHEREAS, the health, life, and property of the residents of Kinney County is under an imminent threat of disaster from the human trafficking occurring on our border with Mexico. The ongoing border crisis has resulted in thousands of illegal aliens invading Kinney County and overwhelming our local, state, and federal law enforcement. This continual violation of our sovereignty and territorial integrity has resulted in residents of Kinney County being assaulted, threatened with violence, and robbed, while also sustaining vast amounts of property damage; and

WHEREAS, the public health and safety of the residents of Kinney County is under an imminent threat of disaster from an elevated risk of exposure to unknown variants of COVID-19 resulting from the human trafficking occurring on our border with Mexico. The limited resources of Kinney County cannot adequately furnish the necessary procedures and facilities set forth by the Centers for Disease Control and Prevention for the testing and quarantining of thousands of illegal aliens who may be infected with unknown variants of COVID-19, or other infectious diseases that residents have not been vaccinated for; and

WHEREAS, the County Judge of Kinney County, Texas, has determined that extraordinary measures must be taken to ensure the protection of the health, safety, and welfare of county residents.

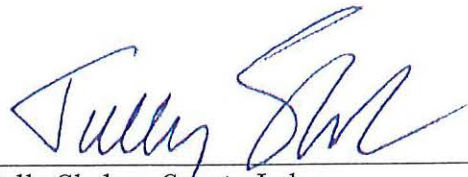
NOW, THEREFORE, BE IT PROCLAIMED BY THE COUNTY JUDGE OF Kinney County, Texas:

1. That a local state of disaster is hereby declared for Kinney County, Texas, pursuant to Section 418.108(a) of the Texas Government Code.
2. Pursuant to Section 418.108(b) of the Texas Government Code, the state of disaster shall continue for a period of not more than seven days from the date of this declaration unless renewed by the County Judge or continued by the Commissioners' Court of Kinney County, Texas.
3. Pursuant to Section 418.108(c) of the Texas Government Code, this declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the County Clerk of Kinney County, Texas.
4. Pursuant to Section 418.108(d) of the Texas Government Code, this declaration of a local state of disaster activates the Kinney County emergency management plan.
5. Pursuant to Section 362.002(a) of the Texas Local Government Code, this local state of disaster is intended to authorize, and does hereby declare, that a state of civil

emergency exists in Kinney County, Texas, and requests the assistance of additional law enforcement to uphold the sovereignty and territorial integrity of the county.

6. Pursuant to Section 433.005(a) of the Texas Government Code, this local state of disaster is intended to request, and does hereby request, that the Governor of Texas provide state military forces to aid in controlling conditions in the county by assisting the County Sheriff in the enforcement of law and the preservation of the sovereignty and territorial integrity of the county.
7. That this declaration hereby authorizes the use of all lawfully available resources and authority granted under both the Constitution of Texas and the Constitution of the United States.
8. That this declaration shall take effect immediately from and after its issuance and, upon approval by the Kinney County Commissioners' Court, shall continue in effect until terminated by the County Judge. Pursuant to this declaration, additional directives may be issued by the County Judge at any time deemed necessary.

DECLARED this 21<sup>st</sup> day of April 2021.

A handwritten signature in blue ink, appearing to read "Tully Shahan", is written over a horizontal line.

Tully Shahan, County Judge  
Kinney County, Texas



# EXHIBIT B

Photograph of Parking Lot Magistration Posted by Kinney County Sheriff's Office,  
Dated August 6, 2021



Migrants who have been arrested are read their rights outside the Kinney County Sheriff's Office before being sent to the Briscoe state prison. 📷 Kinney County Sheriff's Office Facebook page

Taken from Jolie McCullough, *Thanks to Local Politics and a Railroad, Rural Kinney County Accounts for Most of Texas' Migrant Arrests*, TEX. TRIBUNE (Sept. 2, 2021, 5:00 AM CST), <https://www.texastribune.org/2021/09/02/texas-immigration-arrests-jail-kinney-county/>.

# EXHIBIT C

Shahan Letter and Order Terminating Judicial Assignments and Hearings





Office: 830-563-2401

**Tully Shahan**  
**KINNEY COUNTY JUDGE**  
Post Office Box 348  
Brackettville, Texas 78832-0348  
[county.judge@co.kinney.tx.us](mailto: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.

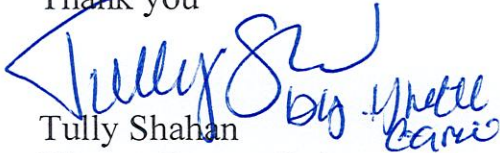
Dear Members of the Judicial Administration under Operation Lone Star:

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

# EXHIBIT D

Etter (TRLA) Letter to AJR Presiding Judge Ables, Dated December 9, 2021

LAW OFFICES OF  
**TEXAS RIOGRANDE LEGAL AID, INC.**

4920 NORTH IH-35  
AUSTIN, TEXAS 78715  
(512) 374-2700



ROBERT DOGGETT  
EXECUTIVE DIRECTOR  
RDOGGETT@TRLA.ORG  
(512) 680-3831

December 9, 2021

Via email to: [sables@co.kerr.tx.us](mailto:sables@co.kerr.tx.us)

Hon. Stephen B. Ables  
Presiding Judge of the Sixth Administrative Judicial Region  
Kerr County Courthouse  
700 Main Street, 2nd Floor  
Kerrville, TX 78028

Re: Authority to remove judges who are assigned by the Presiding Judge

Your Honor:

We write to ensure that you're aware of a delicate and unusual situation that affects hundreds of our clients, the Texas judiciary, and efficient law enforcement in South Texas.

Apparently yesterday afternoon Judge Shahan attempted to remove three judges who you assigned to hear Operation Lone Star cases, namely Judge Kitty Schild, Judge Vivian Torres, and Judge Genie Wright. See Judge Shahan's Dec. 8 Letter, attached. Judge Shahan does not appear to have authority to remove the judges who you appointed. See Tex. Govt Code Sec. 74.056. If the presiding judge assigns a judge within the region, only the presiding judge can remove that judge. Furthermore, any of these judges also has authority under Tex. Code Crim. Proc. Art. 11 to hear any pending habeas applications in addition to the matters on their arraignment dockets.

Those arraignment dockets are exceedingly full. Currently we represent 153 detained clients who have pending pretrial writs of habeas corpus. Many if not all had been agreed to be heard by Judge Schild and Judge Torres on their upcoming dockets over the next few days. All of our clients have been held in state prisons at taxpayer expense for months. Most were arrested solely for misdemeanor trespass more than 100 days ago, and have been in prison ever since. They are finally on dockets for December before one of the assigned judges whose authority has been called into question by Judge Shahan's attempt to remove them.

Judge Shahan would cancel existing dockets for the next three weeks, after Kinney County having previously canceled all four dockets last week due to a Covid outbreak. This would further aggravate a situation in courts that is already chaotic. We ask that you renounce Judge Shahan's attempt to exercise authority vested only in you as the presiding judge of

Administrative Region 6 by Tex. Govt. Code Sec. 74, and not permit any further disruption to the hearings currently scheduled, or the dockets that were established before his Dec. 8 letter.

There can be no question but that the services of Judges Schild, Torres, and Wright remain urgently needed. Consider this Operation Lone Star Data:

<b>Kinney County Arraignments if Arrested 12/4/21</b>	
Kinney arrests through 11/30/21	1658
Arraigned	125
Remaining to be arraigned	1533
Present Rate of arraignment per month (Nov & Dec)	120
Months until arraignment at present rate	12.78
Days until arraignment if arrested 12/1/21	389.64
Earliest Date of Arraignment at Present Rate	<b>1/2/2023</b>

If Kinney County has filed more cases than it can effectively administer, the solution is to bring in more judges, more prosecutors, more court staff, and more defense lawyers, not to remove the judges who have heard the vast majority of OLS cases in the county. Yet Judge Shahan's only attempt to supply a reason for removal of the judges is to cite "the large volume of misdemeanor cases filed under Operation Lone Star." This illogical explanation for removal of judges who have proven their capacity for service in the unusual circumstances created by Operation Lone Star instead could present an appearance of impropriety that all judges are sworn to avoid.

We ask that you immediately confirm for the three judges who you assigned to hear Operation Lone Star cases that their authority remains intact and unaffected by Judge Shahan's December 8 letter, especially as to cases that were already set for hearing prior to that letter. The prosecuting attorney is aware of these filings and settings and was served with copies of the pending writs of habeas corpus over a week ago. The upcoming dockets that Judge Shahan attempts to cancel been set since November 5. We have prepared our clients accordingly, and urge you to permit these proceedings to occur. We are at your service for any questions, and can be reached at (512) 374-2794.

Respectfully,

Robert Doggett  
Executive Director  
TEXAS RIOGRANDE LEGAL AID

Kristin Etter  
Special Project Director  
Operation Lone Star  
TEXAS RIOGRANDE LEGAL AID

copy via email: Hon. Tully Shahan  
Hon. Vivian Torres  
Hon. Genie J. Wright  
Hon. Kitty Schild  
Brent Smith, Kinney County Attorney

# EXHIBIT E

Smith Application for Writ of Prohibition and Motion for Stay of Proceedings,  
Dated December 7, 2021

No. \_\_\_\_\_

IN THE COURT OF CRIMINAL APPEALS OF TEXAS, AT AUSTIN

**In re State *ex rel.* Brent Smith**

Respondent

**Application for Writ of Prohibition  
and  
Motion for Stay of Proceedings Below**

Respectfully Submitted,

**Brent Smith**

County Attorney for Kinney County

SBN 24080722

Box 365

Brackettville, Texas 78832

Tel. (830) 563-2240

Fax: (830) 563-2644

## **Issue Presented**

May a judge grant any form of pre-trial relief to a defendant confined pursuant to an information without conducting a hearing at which the State has an opportunity to be heard?

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## **Identity of Parties and Counsel**

Pursuant to the Rules of Appellate Procedure (“Tex.R.App.Pro.”), the following is a complete list of the names and addresses of all parties involved in this case, so the members of the Court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case and so the Clerk of the Court may properly notify the parties or their counsel, if any, of the judgment and all orders of the Court of Criminal Appeals.

### **Relator**

#### **Brent Smith**

County Attorney for Kinney County, Texas  
Box 365  
Brackettville, Texas 78832

### **Respondents**

#### **Hon. Vivian Torres**

Post Office Box 56  
Rio Medina, Texas 78066

#### **Hon. Genie J. Wright**

Post Office Box 598  
Marfa, Texas 79843

#### **Hon. Kitty Schild**

500 E. San Antonio  
El Paso, Texas 79901

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<u><i>State ex rel. Smith v. Blackwell</i></u> , 500 S.W.2d 97 (Tex.Cr.App. 1973) . . . . .	5
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<u><i>State ex rel. Wade v. Mays</i></u> , 689 S.W.2d 893 (Tex.Cr.App. 1985) . . . . .	3, 4
<u><i>State ex rel. Young v. Sixth Judicial Dist. Court of Appeals</i></u> , 236 S.W.3d 207 (Tex.Cr.App. 2007) . . . . .	3
<u><i>Thomas v. Stevenson</i></u> , 561 S.W.2d 845 (Tex.Cr.App. 1978) . . . . .	4

### Texas Constitution:

Art. 5 § 5t . . . . .	4
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### Other References:

43b George E. Dix & John M. Schmolesky, Texas Practice Series: Criminal Practice and Procedure § 61.29 (3d ed.2011) . . . . .	4
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No. \_\_\_\_\_

IN THE COURT OF CRIMINAL APPEALS OF TEXAS, AT AUSTIN

**In re State *ex rel.* Brent Smith**

Respondent

**Application for Writ of Prohibition  
and  
Motion for Stay of Proceedings Below**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

COMES NOW, Brent Smith, County Attorney for Kinney County, Texas, (“Relator”), complaining of the actions of the Hon. Vivian Torres, Hon. Genie J. Wright, and Hon. Kitty Schild, each sitting by assignment in the County Court of Kinney County (“Respondents”), and requesting that this Honorable Court issue its writ of prohibition against said Respondents, and in support of such application would respectfully show the Court as follows:

**Statement of Facts**

In response to Gov. Abbott’s “Operation Lone Star” emergency initiative, Kinney County has experienced more that 1,500 arrests for offenses which are jurisdictionally based in the County Court of Kinney County. The average annual

number of new criminal cases in County Court for our county is generally less than one hundred (100).

In many of the pending cases, attorneys for the defendants have filed pleadings in the form of applications for pre-trial writs of *habeas corpus*; motions to quash the information; motions to set aside the information; motions to dismiss the information; motions to reduce bond, and motions for release on personal bond. On information and belief, the undersigned alleges that one or more of the Respondents have granted some form of relief in these pre-trial matters in *ex parte* communications without notice to the State and/or without conducting a hearing at which the State may be heard.<sup>1</sup> Additionally, the State is informed that these *ex parte* communications occurred without a docketed court hearing and did not include any type of formal notice to the State, but were instead facilitated by means of email correspondence between attorneys for the defendants and Respondents. Moreover, on information and belief, the undersigned asserts that there will be similar filings in hundreds of pending cases before the end of 2021.

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<sup>1</sup> The State is endeavoring to obtain copies of all of the aforementioned orders. The County Clerk's office, however, is by all accounts overwhelmed by the number of filings and is running behind on receiving, accepting, and filing documents. The State will continue its efforts to obtain the documents and will supplement the Court once they are obtained.

## **Argument & Authorities**

To be entitled to mandamus relief in a criminal case, the relator must show that (1) relator has no adequate remedy at law for obtaining the relief the relator seeks and (2) what relator seeks to compel involves a ministerial act rather than a discretionary act. [\*In re Powell v. Hocker\*](#), 516 S.W.3d 488, 494-495 (Tex.Cr.App. 2017). A writ of prohibition must meet the same standards as a writ of mandamus. See [\*In re Medina\*](#), 475 S.W.3d 291, 297-298 (Tex.Cr.App. 2015).

In [\*Medina\*](#), the Court set out the general principles relating to the requirements for prohibition:

A writ of prohibition must meet the same standards as a writ of mandamus, the former being used to "prevent the commission of a future act whereas the latter operates to undo or nullify an act already performed ...." [\*State ex rel. Wade v. Mays\*](#), 689 S.W.2d 893, 897 (Tex.Crim.App.1985). To merit relief through a writ of prohibition, an applicant must first show that the act he wishes the higher court to restrict "does not involve a discretionary or judicial decision." [\*Simon v. Levario\*](#), 306 S.W.3d 318, 320 (Tex.Crim.App.2009). Second, an applicant must show that he has no adequate remedy at law. [\*State ex rel. Young v. Sixth Judicial Dist. Court of Appeals\*](#), 236 S.W.3d 207, 210 (Tex.Crim.App.2007). "In some cases, a remedy at law may technically exist; however, it may nevertheless be so uncertain, tedious, burdensome, slow, inconvenient, inappropriate or ineffective as to be deemed inadequate." [\*Smith v. Flack\*](#), 728 S.W.2d 784, 792 (Tex.Crim.App.1987). Equitable principles are necessarily involved when we consider whether mandamus or prohibition should issue. *Id.* The ministerial-act requirement is satisfied if the relator can show a

clear right to the relief sought because the facts and circumstances dictate but one rational decision under unequivocal, well-settled, and clearly controlling legal principles. [\*In re Bonilla\*](#), 424 S.W.3d 528, 533 (Tex.Crim.App.2014). As Professors Dix and Schmolesky have pointed out, this Court has discussed the ministerial duty in terms of the respondent's authority or jurisdiction: "If 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." 43B GEORGE E. DIX & JOHN M. SCHMOLESKY, TEXAS PRACTICE SERIES: CRIMINAL PRACTICE AND PROCEDURE § 61.29 (3d ed.2011).

[\*Medina\*](#), 475 S.W.3d at 298.

## **Relator Has A Clear Right to the Relief Sought**

### **Availability of Prohibition**

Effective January 1, 1978, Art. 5, § 5, Tex. Const. was amended in order 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. See generally [\*State ex rel. Vance v. Routt\*](#), 571 S.W.2d 903 (Tex.Cr.App.1978); [\*Thomas v. Stevenson\*](#), 561 S.W.2d 845 (Tex.Cr.App.1978) (Onion, P.J., concurring).

[\*Wade v. Mays\*](#), 689 S.W.2d at 897. This application seeks the appropriate remedy for the intended actions of Respondent.

The writ of prohibition is an appropriate remedy to restrain the acts of a court which it has no legal authority to exercise. Such writ, though infrequently, has been issued by this Court and by the Supreme Court.

*State ex rel. Burks v. Stovall*, 324 S.W.2d 874, 876 (Tex.Cr.App. 1959).  
Similarly:

A writ of prohibition is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising jurisdiction with which they have not been vested.

*State ex rel. Smith v. Blackwell*, 500 S.W.2d 97, 99 (Tex.Cr.App. 1973).

The issuance of the writ of prohibition is restricted:

That writ [prohibition] issues only to prevent the threatened commission of a future act, and not to undo an act performed. Similarly, it will not issue to review an act which has already been performed, or to annul or correct proceedings already terminated.

*State ex rel. Rodriguez v. Onion*, 741 S.W.2d 433, 435 (Tex.Cr.App. 1987).

The facts of the case at bar show, without doubt, that prohibition is the appropriate remedy to terminate Respondent's unwarranted exercise of judicial power.

### **The Act(s) Sought to be Prohibited**

Relator seeks to prohibit each of the respondents from granting full or partial relief in any case in which the defendant seeks relief via an application for pre-trial writs of *habeas corpus*; a motion to quash the information; a motion to set aside the information; a motion to dismiss the information; a motion to reduce bond, and/or a motion for release on personal bond. In that regard, while Article 11.15 of the

Code of Criminal Procedure permits a trial court to summarily deny relief in a *habeas corpus* proceeding when the applicant's petition/application demonstrates that applicant "is entitled to no relief whatever," the State would show that nothing in the Code of Criminal Procedure or Penal Code permits a trial court to grant *ex parte* relief in any of the aforementioned situations. Consequently, any grant of relief in any case involving an application for pre-trial writs of *habeas corpus*; a motion to quash the information; a motion to set aside the information; a motion to dismiss the information; a motion to reduce bond, and/or a motion for release on personal bond, would be improper.

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

There is no appeal from the decision of the Respondent to intervene into the jurisdiction of this Court. No other court has the authority to enforce the jurisdiction of this Court but this Court.

Not only has Applicant no remedy at law, adequate or otherwise, but time is of the essence. Given that there are hundreds of motions seeking similar relief expected to be filed by the end of 2021, a failure to issue the writ prohibiting



Respondents from proceeding will result in the exercise of judicial power without authority or jurisdiction.<sup>2</sup>

### **Conclusion**

Relator has shown an entitlement to the issuance of a writ of prohibition directing Respondents not to grant relief in any case involving an application for pre-trial writs of *habeas corpus*; a motion to quash the information; a motion to set aside the information; a motion to dismiss the information; a motion to reduce bond, and/or a motion for release on personal bond. Relator has shown a clear entitlement to relief and the absence of any adequate remedy at law other than prohibition to restrain respondent from acting without jurisdiction or authority. Accordingly, Relator has shown himself to be entitled to relief.

### **Motion for Stay of Proceedings Below**

Given that there are hundreds of motions seeking the type of relief detailed in this application and hundreds more are expected to be filed by the end of 2021, the State of Texas and the people of Kinney County will suffer irreparable harm if

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<sup>2</sup> Relator is not seeking mandamus relief in any of the cases in which one of the Respondents has already granted bond reductions or other forms of relief resulting in release without a hearing as there have been no dispositive hearings in those cases and the State is hopeful that the defendant in those cases will appear as ordered.

Respondents are not temporarily prohibited from granting relief in any case involving an application for pre-trial writs of *habeas corpus*; a motion to quash the information; a motion to set aside the information; a motion to dismiss the information; a motion to reduce bond, and/or a motion for release on personal bond. Consequently, Relator prays the Court to issue its temporary Order prohibiting such action during the pendency of the proceedings in this case.

### **Prayer**

Relator respectfully prays this Court to enter its Order prohibiting each of the Respondents from granting relief in any case involving an application for pre-trial writs of *habeas corpus*; a motion to quash the information; a motion to set aside the information; a motion to dismiss the information; a motion to reduce bond, and/or a motion for release on personal bond, without a hearing, during the pendency of this case. Moreover, Respondent respectfully prays that, after due consideration of the case, the Court issue its Order prohibiting the said respondents, and/or any judges appointed to sit on misdemeanors with similar requests for relief, from granting such relief without conducting a hearing at which the State of Texas may be heard.

Respectfully submitted,

/s/ Brent Smith

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**Brent Smith**

County Attorney for Kinney County

SBN 24080722

Box 365

Brackettville, Texas 78832

Email: bsmith@co.kinney.tx.us

Tel. (830) 563-2240

Fax: (830) 563-2644

### **Certificate of Compliance**

This is to certify that: (1) this document, created using MSWord™ software, contains 1,769 words, excluding those items permitted by Rule 9.4 (i)(2)(B), Tex.R.App.Pro., and complies with Rules 9.4 (i)(2)(B) and 9.4 (i)(3), Tex.R.App.Pro.

/s/ Brent Smith

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**Brent Smith**

### Automated Certificate of eService

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Anne Boyde on behalf of Brent Smith  
Bar No. 24080722  
officemanager@texasappeallawyers.com  
Envelope ID: 59775667  
Status as of 12/8/2021 10:27 AM CST

Associated Case Party: Brent smith

Name	BarNumber	Email	TimestampSubmitted	Status
Brent Smith		bsmith@co.kinney.tx.us	12/7/2021 10:41:15 AM	SENT
Tonya SpethAhlschwede		tsa@452da.net	12/7/2021 10:41:15 AM	SENT
Laurie K.English		lke112da@gmail.com	12/7/2021 10:41:15 AM	SENT

Associated Case Party: Kitty Schild

Name	BarNumber	Email	TimestampSubmitted	Status
Kitty Schild		kschild@elp.rr.com	12/7/2021 10:41:15 AM	SENT

Associated Case Party: Vivian Torres

Name	BarNumber	Email	TimestampSubmitted	Status
Vivian Torres		judgetorres@schuchartlaw.com	12/7/2021 10:41:15 AM	SENT

Associated Case Party: GenieJ.Wright

Name	BarNumber	Email	TimestampSubmitted	Status
Genie J.Wright		geniejwright@gmail.com	12/7/2021 10:41:15 AM	SENT

# EXHIBIT F

E-Mail Between Brandon Wood from TCJS and Chris Earp from TDEM,  
Dated August 14, 2021

## Kaitlin Lopez Cano

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**From:** Chris Earp <Chris.Earp@tdem.texas.gov>  
**Sent:** Saturday, August 14, 2021 3:50 PM  
**To:** Brandon Wood  
**Cc:** Ronny Taylor  
**Subject:** Re: Upon Further Reflection

That is the recommendation of OCA based on their meeting with Kinney County.

**Chris Earp**

*Section Chief, Response – State Management Team  
Texas Division of Emergency Management*

O: [512-424-7061](tel:512-424-7061)

M: [512-917-8051](tel:512-917-8051)

On Aug 14, 2021, at 3:48 PM, Brandon Wood <brandon.wood@tcjs.state.tx.us> wrote:

Since Kinney is simply not up to the task, I recommend that if at all possible, any arrests made in Kinney by DPS as part of OLS be taken straight to VVTPF. I can not in good concise be ok with their approach. I am not sure what wrinkles have to be ironed out or gaps covered, and if I need to be ironing or covering, just let me know.

Brandon S. Wood  
Executive Director  
Texas Commission on Jail Standards

**CAUTION:** This email was received from an EXTERNAL source. Use caution when opening attachments or clicking links.  
If this could be a malicious email or phishing attempt, then please forward this email to [SPAM@tdem.texas.gov](mailto:SPAM@tdem.texas.gov) and then **DELETE** the email from your Inbox.