Supreme Court of Texas

No. 26-1300

In re John Rubio and Reinaldo Dennes,

Relators

On Petition for Writ of Mandamus

JUSTICE YOUNG, joined by Justice Lehrmann, Justice Busby, and Justice Hawkins, concurring in the denial of the petition for writ of mandamus and the motion to stay.

Relators are two inmates under sentence of death. They sued the Texas Department of Criminal Justice and other defendants seeking a temporary injunction and declaratory relief prohibiting defendants from using pentobarbital that is expired or beyond its use date, which (they allege) would violate the Texas and U.S. Constitutions and Texas statutes. The trial court dismissed their claims for want of jurisdiction, and relators appealed. The Fifteenth Court of Appeals determined that "[t]he timing, method, and procedures governing carrying out a sentence of death, as well as constitutional challenges to them, are clearly matters arising out of or related to a criminal case, not a civil case." No. 15-26-00200-CV, 2026 WL 3398189, at *1 (Tex. App. [15th Dist.] Nov. 9, 2026). The court therefore "dismiss[ed] this appeal for want of jurisdiction so that appellants may file

in a proper court." *Id.* at *2.

I have serious doubts about the Fifteenth Court's jurisdictional characterization of the claims. Perhaps this appeal is beyond its narrow statutory jurisdiction, but maybe not; and it is quite unlikely to fall outside *this* Court's jurisdiction.

At least some claims challenging aspects of how an execution will be carried out strike me as alleging violations of an asserted civil right—claims that would be collateral to and independent of the criminal-law conviction and sentence itself. Challenges to conditions of confinement or restrictions during confinement likewise are generally civil claims. Would anyone think that a court was adjudicating a *criminal* case when it resolved an inmate's challenge to a prison policy that forbade beards even when required by a sincerely held religious belief? *See Holt v. Hobbs*, 574 U.S. 352 (2015) (addressing litigation brought by such an inmate, involving the classic civil remedy of injunctive relief, under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc-1(a)). Yes, such a plaintiff is serving a prison sentence—but that hardly makes every claim by that plaintiff "criminal litigation."

The same seems true to me here. Whether relators are guilty and whether capital punishment is appropriate are, of course, matters wholly entrusted to the criminal-law system, which has spoken. They are determinations that a court exercising civil jurisdiction may not disturb. That does not mean, however, that claims like the one brought here do not arise under the civil law. The U.S. Supreme Court has long held, at least as a general matter, that 42 U.S.C. § 1983 (a civil vehicle), and not exclusively habeas corpus (a technically civil but functionally criminal

remedy to which a prisoner is limited for relief that would disturb a conviction or sentence), can be a proper way to raise method-of-execution claims. *See, e.g.*, *Nelson v. Campbell*, 541 U.S. 637, 643–46 (2004). Indeed, that Court recently held that this was true even if the challenged method was the *only* one authorized by state law, which is when a seemingly "civil" remedy could amount to a de facto bar to a criminal execution. *Nance v. Ward*, 597 U.S. 159, 168–70 (2022); *see id.* at 177 (Barrett, J., dissenting); *see also Ramirez v. Collier*, 595 U.S. 411 (2022) (considering a civil action brought under § 1983 that addressed the extent to which a death-row inmate had a federally protected right to the presence of a faith leader who could physically touch the inmate during the execution itself). True, it is for this Court alone to determine the boundary between civil and criminal matters in Texas, which itself presents an inherently and purely civil question. *See In re Tex. House of Representatives*, 702 S.W.3d 330, 338 (Tex. 2024). But precedent from the U.S. Supreme Court may aid us if we ever must decide whether we have jurisdiction to consider the merits of a petition that presents a claim like or analogous to this one.

But we need not resolve the question today, and I remain open to all views. For now, whether the question presented is civil *or not*, it would be imprudent for us to involve ourselves in this matter any more than in previous efforts to invoke civil jurisdiction to address similar late-filed contentions. This case has already made one trip to the Court of Criminal Appeals, which is fully capable of addressing civil questions that arise in the context of criminal proceedings. Relators are in no way deprived of the opportunity to make their claims merely because they do not have this additional forum, late in the day, to do so. Perhaps more to the point,

relators have not shown entitlement to the stay that would be necessary for us to have the time needed to consider the merits of their mandamus petition, which was filed only yesterday. Entitlement to mandamus relief "is largely controlled by equitable principles," *In re Walker*, 683 S.W.3d 400, 402 (Tex. 2024), including that it (or the foundation in litigation underlying it) be sought with maximum expedition rather than delay. And whether a stay in this context would support a civil claim or not, it should be resisted if not clearly supported by the traditional stay factors because of the high risk of interfering with the criminal-justice process. I agree with this Court's decision not to step in at the last minute, with one execution scheduled for tomorrow and one just a week after that.

With these observations, I concur in the Court's decision to deny the mandamus petition and the stay motion.

Evan A. Young
Justice

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