



**NUMBER 13-09-00415-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**IN RE JOHN ALLEN RUBIO**

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**On Petition for Writ of Mandamus.**

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**MEMORANDUM OPINION**

**Before Justices Rodriguez, Garza, and Vela  
Per Curiam Memorandum Opinion<sup>1</sup>**

Relator, John Allen Rubio, filed an application for writs of mandamus and/or prohibition and an “Emergency Motion to Stay District Court Proceedings Pending Mandamus Proceedings” in the above cause on July 15, 2009. That same day, the Court requested that the real party in interest file a response to the petition for writs of mandamus and/or prohibition, and ordered the “Emergency Motion to Stay” to be carried with the case. The Court has now received and reviewed the response to the petition for writs of mandamus and/or prohibition filed by the real party in interest, the State of Texas, acting

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<sup>1</sup> See TEX. R. APP. P. 52.8(d) (“When denying relief, the court may hand down an opinion but is not required to do so.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

by and through the Criminal District Attorney in and for Cameron County, Texas.

Mandamus relief may be granted if the relator shows that: (1) the act sought to be compelled is purely ministerial; and (2) there is no adequate remedy at law. See *Deleon v. Dist. Clerk*, 187 S.W.3d 473, 474 (Tex. Crim. App. 2006) (orig. proceeding). The relator must have a “clear right” to the relief sought and the merits of the relief sought must be “beyond dispute.” See *id.* “The requirement of a clear legal right necessitates that the law plainly describes the duty to be performed such that there is no room for the exercise of discretion.” *Id.*

The Court, having examined and fully considered the petition for writs of mandamus and/or prohibition and the response thereto, is of the opinion that relator has not shown himself entitled to the relief sought. Accordingly, the petition for writs of mandamus and/or prohibition and the emergency motion to stay are DENIED. See TEX. R. APP. P. 52.8(a).

PER CURIAM

Do not publish. See TEX. R. APP. P. 47.2(b).

Memorandum Opinion delivered and filed  
this 27th day of July, 2009.