



NUMBER 13-20-00563-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN RE NETTIE BIVENS, ET AL.

On Petition for Writ of Injunction.

MEMORANDUM OPINION

**Before Justices Benavides, Longoria, and Tijerina
Memorandum Opinion by Justice Benavides¹**

By petition for writ of mandamus, relators Nettie Bivens, et al.,² seek to compel the trial court to vacate its October 27, 2020 order reappointing a special master. See TEX.

¹ 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,” but “[w]hen granting relief, the court must hand down an opinion as in any other case”); *id.* R. 47.4 (distinguishing opinions and memorandum opinions).

² The relators are identified in the “Plaintiffs’ Sixth Amended Petition” as: Nettie Bivens, Maurice Bivens, Spencer Bivens, Mellody Bivens-Drake, Arthur Clark, Cora Goodwin, Roosevelt Jones, Faith Jones-Wright, Beverly Mack, Barbara Sanders, Paul Allen, Alberto Alvara, Angelica Alvara, Francisco Arriaga, Petra Arriaga, Gloria Ashley, Andrew Askew, Jose Avila, Barry Barbour, Summer Barnes, Porifrio Bentancur, Robert Bertrand, Eldias Bertrand, Christine Bivens, William Bivens, Lakyandrea Bivens, Brashea Bree, John Brinkley, Toni Brinkley, Max Brod, Deborah Broadway, Rick Brooks, Wayne Brooks, Charlotte Broussard, Kenneth Broussard, Lawayne Brown, Teresa Brown, Gwendolyn Brown, Walton Byford, Franklin Byrd, Johnnie Carpenter, Irma Carrasco, Rafael Carrasco, Irene Castioll, John Castleberry, Kelly Castleberry, Eva Castleberry, Robert Cossin, Tish Christian, James Cuellar, St. John Missionary

Baptist, Lydia Dailey, Kim Dale, April Danford, Angela Danford, Clifton Danford, Dustin Danford, Jene Danford, Lawrence Daniels, Jerold Davis, Elaine Dilley, George Dilley, Michael Doherty, Shane Dybala, Cleeland Dybala, Daniel Dutcher, Darryl Earley, Micole Earley, Eva Estrada, Sergio Estrada, Linda Ewald, Jessica Farmer, Estella Felder, Cherice Fields, Rosa Fletcher, Cheri Ford, Eric Fugate, Robert Freshour, Adamina Galindo, Noemi Garcia, Sandra Garcia, Serafina Garcia, Patricia Grice-Kirk, Damaris Gomez-Bustamante, Florencio Gomez, Jimmy Gordon, Agnes Gray, Gayelyn Greer, Lashonda Grice, Nathaniel Grice, Viola Grice, Dennis Griggs, Auden Guevara, Eric Guevara, Gabriela Guevara, Gustavo Guevara, Reynaldo Guevara, Cathryn Hall, Tammy Hall, Lisa Hannah, Wilson Hanks, Jr., Brenda Hasson, Charles Hauhe, Odis Hawkins, Sr., Larry Hodges, Brady Holloway, Kelly Hopkins, Richard Paul Horning, Imogene Hudson, Kerry Hutchinson, Kenneth James, William Johnson, Hurbert Johnson, Mary Johnson, Yul Johnson, Marvin Jones, Robert Jones, Debbie Knapp, Michael Knapp, Betty Knuckey, Timothy Lackey, Kenneth Lassiter, George Lee, Gary Lemster, Reginald Lewis, Kelly Lewis, Melissa Lingenfelter, Robert Lingenfelter, Arturo Luera Jr. Elizabeth Mack Godley, Thelma Mack, Gary Markgraf, Arnold Mangum, Sr. Fanni Marshall, Timothy Meador, Patricia Meador, Elsa Medina, Tony Magears, David Mccullough, Jordan Mears, Allen Miller, Theresa Mckinney-Trusty, Jeffrey Mochon, Brian Moore, Leroy Moore, Jose Moreno, Kristy Moss, Albert Munson Jr., Mordello Munson, Yohance Murphy, David Myers, Vanessa Mangum, Hector Nava, Michelle Nava, Richard Neisig, Dorothy O'Connell, Luis Ovideo, Greg Paladio, Dawn Pekar, Evelyn Penrice, Herman Perkins, Stella Perkins, Pamela Phillips, Jimmy Reedy, Stacy Regain, Jaime Rhodes, Joseph Robles, Mary Riggins, Tim Riley, Craig Roberson, Nabbie Roberts, Raymond Roberts, Patty Robinette, William Robinette, Callie Roy, Kyle Roy, Raymond Russell, Alma Sanchez, Brian Schrock, Maria Segura, Julian Sesmas, Winston Sinor, Deborah Sisson, Gay Sisson, Victor Slanina, Robert Smith, Marc Smyth, Guy Snyder, Raquel Solis, Ruby Spencer, Neal Stevens, Donnie Straton, Marion Strother, Billy Swallows, Nadine Swanson, Harvey Swanson, Dorene Tabares, William Thornton, Lynell Timmons, Vivian Tolbert, Ramiro Torres, Dawna Truitt, Tim Tucker Sr., Cody Turner, Vicky Turner, Maximo Turruabiar, Mark Vandaveer, John Varner, Enrique Vera, Rosalva Vera, Fredrick Villapando, Tonya Volkmer, Allen Volkmer, James Weakley, Tammy Whipple, Jimmy Whipple, Virginia Whitley, Misty Wicker, Ronald Wicker Jr., Ronald Wicker, Sr., Keith Wilkerson, Willie Williams, David Williams, Brittney Williams, Bonita Woodard, Aqurnette Wyche, Lucia Zamudio, Olga Zamudio, Ruben Zamudio, Otis Amey, Marvin Amason, Paula Bever, Dorothy Blackmon, Annie Bundick, Richard Bundick, Raymond Felder, Patricia Griggs, Lenton Heidrich, Bonnie Heidrich, Sherry Henson, James Hudson, Delois Jackson, Cora Jackson, Javlin Jackson, James Lockhart, Jeanette Lockhart, Elisia Lopez, Flora Lunford, Roosevelt Unford, Stella Mack, Randolph Mack, Lahanda Olson, Wilbur Olson, Jr., Wayne Patterson, Elvis Pena, Shanda Pennington, Earnest Pettit, Sr., Julio Rodriguez, Cynthia Rodriguez, Frank Scott, Horace Smith, Grayland Watkins, Willy Wiley, Glenise Wooten, David Wooten, Frederic Anderson, Patti Anderson, Ernesto Arrellano-Perez, Marytza Arrellano-Perez, Hunter Ashley, Timothy Bergen, Lee Anne Bible, Marcella Buchanan, Tramos Buchanan, Troy Weathers, Robert Cole, Kimberley Cole, Jesus Cossio, Stephany Delgado, Robert Farmacka, Anthony Garcia, John Garcia, Josephine Garcia, Tammy Garcia, Kandra Garcia, Karina Gutierrez, Pedro Gonzalez, Jose Gutierrez, Terry Harris, Dajiah Jones, Robert Hall, Latisha Hutchinson, Gene Kelly, Mary Kilsby, Rosy Lermy, John Peveto, Rachel Peveto, Hector Pina, Traci Kuhfuss, Glenn Richard, Kathey Richard, David Santacruz, Kathy Scott, Alexandria Shade, Sherwin Simple, Carlos Terrazas, Daniel Terrazas, Samuel Terrazas, Maria Terrazas, Joseph Via, Jose Albarado, Jovita Alvarado, Luis Cordon, Noel Coronado, Rudy Garcia, Carlos Gonzalez, Billy Graham, Delia Guevara, Joel Guevara, Joseph Gutierrez, Joanne Harwell, Edna Hernandez, Fernando Hernandez, David Hoelewyn, Pat Jacobs, Royal Jacobs, Rosa Lujan, Gerardo Mata, Lisa Mata, Maria Mata, Pablo Mata, Juan Pina, Rebena Popek, Richard Queen, Jason Rodriguez, Donald Ryan, Lori Ryan, Glenda Taylor, Keva Toler, Layne Toler, Chad Truitt, Shawna Truitt, Juan Velazquez, Michael Waley, Eduardo Zamudio, Arlos Zaragoza, Daniel Zaragoza, Hernan Zaragoza, Martin Zaragoza, Patricia Zaragoza, Rene Zaragoza, Fallyn Allen, Gregory Allen, Paul Allen, Reba Allen, Alberto Allen, David Barker, Elizabeth Beasley, Chris Beasley, Sequoia Beutnagel, Raymond Booker, Larry Brown, Patricia Brown, Charles Cartwright, Karen Cartwright, Roy Curtis, Janice Doiron, Pauletta Dunlap, Paulita Dunlap, Saylalon Dunlap, Victor Duran, Michael Ellis, Chase Farmacka, Colton Farmacka, Kathryn Figueroa, Rogelio Figueroa, Charles Lackey, Jose Mata, Kimberly Mata, Leovardo Mata, Lee Mickles, Juliette Minor, Edgar Mitchell, Mary Mitchell, Gilbert Ramirez, Sherril Ramirez, Albert Reyes Jr., Opal Roberts, Sara Rodriguez, Mary Sembera, Phillip Sembera, Arvin Smith, William Smith, Ashley Stark, Richard Stark, Caroline Steed, Ashley Thompson, Rachel Thompson, Betty Williams, Jimmy Williams, Jerry Wise, Simon Zamora, Lawrence Adaway, Brandon Anderson,

R. CIV. P. 171. Relators have filed a separate motion seeking temporary relief to stay the trial court's order pending resolution of this original proceeding. See *generally* TEX. R. APP. P. 52.10.

Mandamus is both an extraordinary remedy and a discretionary one. *In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding) (per curiam). For mandamus to issue, the relator must show that the trial court abused its discretion and that no adequate appellate remedy exists to cure the error. *In re N. Cypress Med. Ctr. Operating Co.*, 559 S.W.3d 128, 130 (Tex. 2018) (orig. proceeding); *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam); *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). As it pertains to this case, mandamus may lie to review an order appointing a master. See *Simpson v. Canales*, 806 S.W.2d 802, 811 (Tex. 1991) (orig. proceeding); *In re Behringer Harvard TIC Mgmt. Servs. LP*, 316 S.W.3d 831, 832 (Tex. App.—Dallas 2010, orig. proceeding).

The Court, having examined and fully considered the petition for writ of mandamus, the record, and the applicable law, is of the opinion that relators have not met their burden

Carolyn Ardoin, Brenda Armelin, Maria Betancourt, James Burns, George Cherry, Frances Downs, Ora Felder, Jason Feugate, Sandy Hale, Zella Fields, Susan Fritz, Arnulfo Galaindo, Juan Galindo, Mindy George, Dominique Gordon, Abraham Hernandez, Lacaquanta Hernandez, Karatta Jackson, Rayrick Jackson, Roilan Jackson, Clint Johnson, Sherry Johnson, Linda Kelly, Burtis Mcleod, Jaime Martinez, Michael Penny, Connie Perreault, Adrian Petteway, Russell Pointer, Russell Sanders, Guadalupe Segovia, Jimmie Scott, Venetia Sundance, Brent Taylor, Jaylon Tolbert, Jaime Villarreal, Leroy Watkins, Jimmie White, Jerry Johnson, Jean Johnson, Denise Gotcher, David Bruce Gotcher, Eugene Hanks, Ora Kennedy, Samantha Mclain, Howard O'neal, Claudette Ridgedell, Freddie Robinson, Glen Thomas, Jr., Amanda Helton, Calvin Helton, Carol Helton, Joshua Helton, Robert Martinez, Sara Juarez, Diana Roberts, Michael Roberts, Tony Brucia, Gigi Brucia, Maria Caffall Bickham, Nabor Delgado, Modesta Delgado, Michael Hendrick, Michelle Hendrick, Allan Mock, Annabelle Ozuna, Ralph Chaney, James Halbison, Eduardo Luera, Robert Maurer, Marcus Moss, Ruben Newell, Everett Strother, Mary Frazer, Charles Frazer, Teresa Landeros, Scot Isaacs, Tamara Isaacs, Ben Mansfield, Doralene Lewis, Chris Davidson, Marcia Davidson, Fredrick Gernard, Andrew Lopez, Grant Martin, and Robert Mendez.

to obtain relief. Accordingly, we deny the petition for writ of mandamus and the motion for temporary relief.

GINA M. BENAVIDES
Justice

Delivered and filed the
29th day of December, 2020.