

IN THE SUPREME COURT OF FLORIDA

HECTOR ROOS,

Petitioner,

v.

Case No.: SC22-1220

RON DESANTIS, in his
Official Capacity of Governor
of Florida,

Respondent.

_____ /

**AMENDED EMERGENCY PETITION FOR WRIT OF QUO WARRANTO
AND WRIT OF MANDAMUS**

September 21, 2022

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PETITION FOR WRIT OF QUO WARRANTO AND WRIT OF MANDAMUS

Does the Governor have the authority to operate an Immigrant Rendition program that transports immigrants from Texas to another state?¹ Because the legislature has not made an appropriation for any such program, last week's official actions by Respondent Governor Ron DeSantis—paying a private company to fly immigrants from Texas to Massachusetts—exceeded his lawful authority, meriting a writ of quo warranto and a writ of mandamus.

I. NATURE OF THE RELIEF SOUGHT

“Quo warranto is used to determine whether a state officer or agency has improperly exercised a power or right derived from the State.” *League of Women Voters v. Scott*, 232 So. 3d 264, 265 (Fla. 2017). The Governor of Florida is a state officer subject to quo warranto jurisdiction. See e.g. *League of Women Voters v. Scott*, 257 So. 3d 900 (Fla. 2018). And mandamus is used to compel a state officer to perform an indisputable legal duty. *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009).

The Petitioner respectfully requests this Court to issue a Writ of Quo Warranto determining that the Respondent does not have the authority to

¹ There is no formal name for the Florida program for immigrant flights.

operate his Immigrant Rendition program if, as is the case, that program transports immigrants not from Florida, but from another state. The Petitioner further asks that the Court issue a Writ of Mandamus to the Respondent ordering him to not operate such a program.

The Petitioner has asked for this relief on an emergency basis because the Respondent has announced that he will continue to operate this program, and there is no way to know when the next flight will occur. The Court's immediate consideration of this petition will prevent the Respondent from conducting further actions in excess of his authority.

II. PRELIMINARY STATEMENT

Fixing the Immigration Crisis is an Important Goal Fully Supported by the Petitioner in this Case

The Petitioner understands Governor DeSantis' intention of bringing public attention to our nation's broken immigration system. Rather than fix what is broken, this Petitioner suggests states' legislatures pass laws taking back immigration policy from the federal government and exercise their historic role in regulating immigration under the principle of federalism. Justice Antonin Scalia wrote that simply allowing the federal government to dominate the regulation of immigration as to leave virtually no room for

action by the states “deprives States of what most would consider the defining characteristic of sovereignty: the power to exclude from the sovereign's territory people who have no right to be there.”³ In the past, states decided who could enter their ports, and their laws dealt almost entirely with the exclusion of three types of individuals: criminals, paupers, and people suffering from contagious diseases.⁴ Only the states have the ability to resolve the problems causing the enormous backlogs and wait times of the federal immigration system.⁵

This solution requires the federal government to respect state sovereignty and the states to respect each other's. Governor DeSantis may have good intentions to send resources to Texas and operate a program from there. However, without proper authorization his Immigrant Rendition program usurps legislative power and Texas sovereignty having the unintended consequence of causing a constitutional crisis that threatens the domestic tranquility between the states and the federal government.

³ *Arizona v. United States*, 567 U.S. 387 (2012) (Scalia, J., concurring in part and dissenting in part).

⁴ Neuman, *The Lost Century of American Immigration (1776–1875)*, 93 Colum. L. Rev. 1833, 1835, 1841–1880 (1993).

⁵ Ewing, New Report Reveals Why USCIS Is Plagued by Enormous Backlogs and Wait Times. Jun 29, 2022. Immigration Impact, *available at*: <https://immigrationimpact.com/2022/06/29/why-uscis-has-backlogs-wait-times/>

III. STATEMENT OF CASE AND FACTS

On June 2, 2022, Governor Ron DeSantis signed into law the Fiscal Year 2022-23 Budget under HB 5001: General Appropriations Act (2022) which includes in its section 185:

From the interest earnings associated with the federal Coronavirus State Fiscal Recovery Fund (Public Law 117-2), the nonrecurring sum of \$12,000,000 from the General Revenue Fund is appropriated to the Department of Transportation for Fiscal Year 2021-2022, for implementing a program to facilitate the transport of unauthorized aliens from this state consistent with federal law. The department may, upon the receipt of at least two quotes, negotiate and enter into contracts with private parties, including common carriers, to implement the program. The department may enter into agreements with any applicable federal agency to implement the program. The term “unauthorized alien” means a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The term shall be interpreted consistently with any applicable federal statutes, rules, or regulations. The unexpended balance of funds appropriated to the department in this section remaining as of June 30, 2022, shall revert and is appropriated for Fiscal Year 2022-2023 to the department for the same purpose. This section shall take effect upon becoming a law.⁶

On the same day Governor DeSantis signed the budget into law, he published a list of budget highlights under the title Freedom First Budget

⁶HB 5001, 2022 Leg., Reg. Sess. 2022 (Fla. 2022), *available at* <https://www.flsenate.gov/Session/Bill/2022/5001/BillText/Filed/PDF>.

mentioning this new program to “facilitate the transport of unauthorized aliens out of Florida.”⁸

On September 14, 2022, two planes carrying an estimated 50 immigrants mostly from Venezuela arrived on Martha’s Vineyard, with Governor DeSantis quickly claiming responsibility.⁹ On September 15, 2022, Governor DeSantis held a press conference to discuss his Immigrant Rendition program explaining the authority to conduct the flights was approved through the state budget. Texas Governor Greg Abbott denied any involvement in chartering these flights.¹⁰

On September 16, 2022, Governor DeSantis held an additional press conference announcing his intention to spend “every penny” from the budget allocation to the Immigrant Rendition program. The Respondent dismissed concerns about the legality of the program, even though he

⁸Fiscal Year 2022-23 Freedom First Budget Highlights, *available at* <https://www.flgov.com/wp-content/uploads/2022/06/Freedom-First-Highlights.pdf>.

⁹Amy Simonson, D., Sept. 14, 2022. *DeSantis claims credit for sending 2 planes carrying migrants to Martha’s Vineyard in Massachusetts* | CNN Politics. Cnn.com, *available at:* <https://www.cnn.com/2022/09/14/politics/marthas-vineyard-massachusetts-migrants-planes/index.html>.

¹⁰Ceballos and Mower, Sept. 15, 2022. *DeSantis’ remarks prompt more questions on where migrant flights originated*. Miami Herald, *available at:* <https://www.miamiherald.com/news/politics-government/article265853866.html>.

admitted that none of the immigrants came from Florida, but rather from Texas; the flights made only a short refueling stop in Florida; and the budget language clearly states “from this state”.¹¹

He also stated that the program was voluntary.¹² Being voluntary means the program is not being run in coordination with a law enforcement or emergency authorization through an existing Compact among the other states and federal governments. The sole authorization for this program is the budget language. Given that the budget language is not ambiguous, it is clear that Governor DeSantis has altered the plain meaning of the budget language to authorize the Immigrant Rendition program.

The Immigration and Nationality Act (INA) is the primary federal law governing national immigration policy which contains several civil and criminal law components whose enforceability is only determined by the

¹¹Ceballos and Mower, Sept. 15, 2022. *Migrants to Martha’s Vineyard were not from Florida, DeSantis says*. Tampa Bay Times, available at: <https://www.tampabay.com/news/florida-politics/2022/09/16/migrants-marthas-vineyard-were-not-florida-desantis-says/?outputType=amp>; Murphy, P. et al. Sept. 16, 2022. *Florida budget language that created migrant relocation program would not permit DeSantis’ Massachusetts flights stunt*. CNN.com, available at: <https://amp.cnn.com/cnn/2022/09/16/us/marthas-vineyard-migrants-florida-budget-language/index.html>.

¹²Contorno, S., Sept. 16, 2022. *DeSantis vows Florida will transport more migrants from border to other states*. CNN.com, available at: <https://www.cnn.com/2022/09/16/politics/desantis-marthas-vineyard-migrants/index.html>.

policies established by the US Attorney General. See 8 U.S. Code § 1101 (14) (S). Only the federal government can enforce the INA. In practice, states receive requests from the federal government to assist in immigration law enforcement on the basis of a Compact such as the Emergency Management Assistance Compact (EMAC)¹³ or otherwise under state law as established in Fla. Stat. § 908.104.

The Florida Legislature has not authorized the Immigrant Rendition program operating out of Texas instead of Florida and there is no such request from Texas or the federal government. Instead, the Governor claims that the program relies solely on his interpretation of the law which differs from its plain language. Even if this authority did exist, this form of rule making authority is not granted in budget language to either Governor or the Department of Transportation. Governor DeSantis also did not invoke an emergency or exigent procedure in this situation unlike the emergency request made by Texas Governor Greg Abbot through the EMAC Compact to justify the deployment of 50 Florida law enforcement officers in the summer of 2021 to Texas.¹⁴ There also was no specific State

¹³Emergency Management Assistance Compact. 2022. *Emergency Management Assistance Compact*, available at: <http://www.emacweb.org/>

¹⁴Blanks, A., June 25, 2022. *Florida border deployments to start Monday, official says; state sheriffs still have questions*, Pensacola News Journal

of Emergency declared by Governor DeSantis to grant extra-constitutional authority to operate the Immigrant Rendition program.

IV. BASIS FOR INVOKING THIS COURT'S JURISDICTION

This Court has authority to issue a Writ of Quo Warranto under Article V, Section 3(b)(8), Florida Constitution and Rule 9.030(a)(3), Florida Rules of Appellate Procedure. The Court has jurisdiction to issue a Writ of Mandamus to a state officer under Article V, Section 3(b)(8), Florida Constitution, and Rule 9.030(a)(3), Florida Rules of Appellate Procedure.

V. STANDING

This Court has written:

[A] petition for writ of quo warranto is directed at the action of the state officer and whether such action exceeds that position's constitutional authority. See *Martinez v. Martinez*, 545 So. 2d 1338, 1339 (Fla. 1989) (in addressing the issue of standing, stating that "[i]n quo warranto proceedings seeking the enforcement of a *public right* the people are the real party to the action and the person bringing suit 'need not show that he has any real or personal interest in it.'" (emphasis added; citing *State ex rel. Pooser v. Wester*, 126 Fla. 49, 170 So. 736, 737 (1936)). Thus, when bringing a petition for writ of quo warranto, individual members of the public have standing as citizens and taxpayers. See *Chiles v. Phelps*, 714 So. 2d 453, 456 (Fla. 1998).

available at: <https://www.usatoday.com/story/news/2021/06/25/florida-desantis-border-aid-announcement-causes-confusion-among-local-sheriffs/5334639001/>

Whiley v. Scott, 79 So.3d 702, 706 (Fla. 2011).

Here, the Petitioner is a Florida citizen and taxpayer and has standing to request issuance of a writ of quo warranto in order to enforce the public right. *See also Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009).

The Petitioner notes that, in *Thompson v. DeSantis* (Fla. 2020), the Respondent essentially asked the Court to recede from *Whiley* and *Pleus*, and the Petitioner expects the Respondent to advance the same argument here. *See Thompson v. DeSantis*, 301 So. 3d 180, 184 (Fla. 2020). However, the Court rejected that request: “We will not lightly conclude that precedents of this Court are clearly erroneous. Based on our review of the arguments and analysis that have been presented to us, we cannot say that the Respondents have shown that the clearly erroneous standard is met here. We must therefore adhere to precedent and find that the Petitioner has standing.” *Id.* Just as the Court rejected the Respondent’s argument in *Thompson*, it should reject it here, if the Respondent decides to make the argument.

Although the Petitioner has standing as a citizen and taxpayer under Florida law, Petitioner Roos also has a real and personal interest in this action. Mr. Roos is the Libertarian Party of Florida candidate for governor

running to prevent the reelection of Governor DeSantis and pressure him into ensuring that he faithfully executes the laws of the State while he remains in office. See Article IV, Section 1 (a), Fla. Const. Governor DeSantis' controversial actions have generated significant publicity with Election Day only weeks away that could cause distinct harm to the campaign of Mr. Roos in violation of Article II, Section 8 (c), Fla. Const. which is a situation anticipated for quo warranto under Fla. Stat. §102.169. More importantly, while focused on such actions Governor DeSantis is not available to faithfully execute his duties which include working with the legislature and state agencies to reduce the regulatory and tax burdens on Floridians like Mr. Roos who are living in the midst of an economic recession and historic inflation crisis.

VI. ARGUMENT

BY SPENDING MONEY INCONSISTENT WITH THE TERMS OF SECTION 185 OF THE 2022 GENERAL APPROPRIATIONS ACT, THE RESPONDENT IS ACTING IN EXCESS OF HIS AUTHORITY, JUSTIFYING QUO WARRANTO RELIEF.

To determine whether the Respondent is acting in excess of the authority given to him by section 185 of the 2022 General Appropriations Act, it is necessary to consider the words of that appropriation. In particular,

these words: “a program to facilitate the transport of unauthorized aliens from this state consistent with federal law.”

The Court recently explained:

“[T]he goal of interpretation is to arrive at a ‘fair reading’ of the text by “determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” [Antonin] Scalia & [Bryan A.] Garner, *Reading Law* [: *The Interpretation of Legal Texts*] 33 [(2012)]. This requires a methodical and consistent approach involving “faithful reliance upon the natural or reasonable meanings of language” and “choosing always a meaning that the text will sensibly bear by the fair use of language.” Frederick J. de Sloovere, *Textual Interpretation of Statutes*, 11 N.Y.U. L.Q. Rev. 538, 541 (1934), *quoted in* Scalia & Garner, *Reading Law* at 34.

Ham v. Portfolio Recovery Associates, LLC, 308 So. 3d 942, 947 (Fla. 2020).

Under a fair reading of section 185—in fact, under any reading other than a frivolous one—Governor DeSantis has exceeded, and will continue to exceed, his authority when he spends money to transport unauthorized aliens not from Florida, but from another state.¹⁵ Obviously, “this state” is Florida. Having the planes quickly touch tarmac in Florida for a brief pit stop does not mean that the program is now facilitating the transport of

¹⁵There is a dispute over whether the persons transported on the flights were even “unauthorized aliens.” Fineout, G., Sept. 19, 2022. *Doubts rise over whether DeSantis had budget authority to fly migrants*. Politico, available at: <https://www.politico.com/news/2022/09/19/desantis-immigrants-marthas-vineyard-venezuela-00057673>.

immigrants from Florida and not that other state. If the immigrants are in Texas, for instance, and the flights originate in Texas that remains true throughout the flight, no matter where it briefly stops along the way. Thus, the Respondent is spending the section 185 appropriation on a program not authorized by the terms of that section.

Article II, Section 3 of the Florida Constitution provides that “[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” In construing our constitution, the Court has “traditionally applied a strict separation of powers doctrine.” *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004) (quoting *State v. Cotton*, 769 So. 2d 345, 353 (Fla. 2000)).

The First District Court of Appeal summarized Florida law on the legislature’s exclusive power to make appropriations:

Article III, sections 8, 12, and 19 of the Florida Constitution specifically give the power of appropriation to the legislative branch. ...

“The constitution specifically provides for the legislature alone to have the power to appropriate state funds.” [*Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 267 (Fla. 1991).] “The Florida Constitution vests the ‘power of the purse’ in the

Legislature....” *Graham v. Haridopolos*, 75 So. 3d 315, 318 (Fla. 1st DCA 2011). The “quintessential legislative power” to appropriate funds is “exclusive and plenary” and has resided in the Legislature alone for 179 years. *Id.* at 318, 320; *see also State v. Fla. Police Benev. Ass’n*, 613 So. 2d 415, 418 (Fla. 1992) (“Under the Florida Constitution, exclusive control over public funds rests solely with the legislature.”). “Under any working system of government, one of the branches must be able to exercise the power of the purse, and in our system it is the legislature, as representative of the people and maker of laws, including laws pertaining to appropriations, to whom that power is constitutionally assigned.” *Children*, 589 So. 2d at 267. “More importantly, only the legislature, as the voice of the people, may determine and weigh the multitude of needs and fiscal priorities of the State of Florida.” *Id.* It alone may decide “how, when, and for what purpose the public funds shall be applied.” *Graham v. Haridopolos*, 108 So. 3d 597, 603 (Fla. 2013) (quoting *Republican Party of Fla. v. Smith*, 638 So. 2d 26, 28 (Fla. 1994)).

Corcoran v. Geffin, 250 So. 3d 779, 784 (Fla. 1st DCA 2018)

Here, the Respondent is violating the strict separation-of-powers doctrine expressly codified in our state constitution. He is usurping the legislature’s exclusive power to make appropriations by spending the section 185 appropriation, which is limited to the transport of immigrants from Florida, on the transport of immigrants from Texas, or any other state that is not Florida. The Respondent has said that he has every intent of continuing this unlawful conduct. The Court must step in to restrain the Respondent from violating the law by issuing a Writ of Quo Warranto.

The Court should also issue a Writ of Mandamus to the Respondent ordering him to stop the operation of the program. Under Article IV, Section 1(a), of the Florida Constitution, the Respondent has a clear legal duty to “take care that the laws be faithfully executed.” As seen above, the Respondent also has a clear legal duty to refrain from “exercis[ing] any powers appertaining to either of the other branches unless expressly provided herein,” Art. II, § 3, Fla. Const., such as the legislative power of appropriation. Mandamus is appropriate here. See *Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009).

CONCLUSION

For the above reasons, this Court should issue a Writ of Quo Warranto to the Respondent specifically concluding that the Governor has exceeded and, if he continues to act in this way, will continue to exceed the authority granted to him by the legislature in section 185 of the 2022 General Appropriations Act. The Court also should issue a Writ of Mandamus to the Respondent ordering him to not operate such a program.

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished by e-service to Ryan Dean Newman, General Counsel, Executive Office of the Governor, ryan.newman@eog.myflorida.com; gov.legal@eog.myflorida.com, counsel for Respondent Ron DeSantis on this 21st day of September, 2022.

CERTIFICATE OF COMPLIANCE WITH RULE 9.045

I CERTIFY that this petition complies with the font (Arial 14-point) and word-count requirements. This filing contains 3,062 words (including sections permitted to be excluded), which is within the 13,000 word-limit prescribed in Fla. R. App. P. 9.100(g).

Dated: September 21, 2022

Respectfully submitted,

/s/ Hector Roos

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