

IN THE
DISTRICT COURT OF
TRAVIS COUNTY, TEXAS

Trial Court Cause No. _____

RAIS BHUIYAN,

Plaintiff,

v.

RICK PERRY, GOVERNOR,
State Of Texas,
BRAD LIVINGSTON, EXECUTIVE DIRECTOR
Texas Department Of Criminal Justice,
ANGIE McCOWN, DIRECTOR
TDCJ Victim Services Division
RISSIE L. OWENS, Member
Texas Board of Pardons and Paroles

Defendants.

TO THE HONORABLE DISTRICT COURT IN AND FOR TRAVIS COUNTY:

COMPLAINT

PLAINTIFF files the following complaint, seeking injunctive relief, and such other equitable relief as the Court deems fit and just.

PARTIES

1. The Plaintiff in this action is Rais Bhuiyan, who is a competent adult citizen of the United States and resident of Dallas County, Texas.

2. The Defendants in this action are:

- a. Rick Perry, Governor, the State of Texas, who is an adult citizen of the United States and, for purposes of this litigation, is legally present in Travis County, Texas;

- b. Brad Livingston, the executive director of the Texas Department of Criminal Justice (TDCJ), who is an adult citizen of the United States and, for purposes of this litigation, is legally present in Travis County, Texas.
- c. Angie McCown, Director of the Victim Services Division of the Texas Department of Criminal Justice (TDCJ), who is an adult citizen of the United States and, for purposes of this litigation, is legally present in Travis County, Texas.
- d. Rissie L. Owens is a member of the Texas Board of Pardons and Paroles, and is the person to whom submissions are made for clemency. She is assigned to Huntsville but, for purposes of this litigation, is legally present in Travis County, Texas.

3. All Defendants are sued in their official capacities.

JURISDICTION, VENUE, JURY TRIAL

4. Jurisdiction is appropriate pursuant to Tex. Civ. P. & R. Code Tit. 5, Sec. 8.

5. Venue is appropriate in Travis County, Texas, because the defendants are legally situated there. Tex. Civ. P. & R. Code Tit. 5, Sec. 15.002.

6. When it becomes procedurally necessary, Plaintiff notes that he intends to assert his right to trial by jury. Tex. Const. Art. 1, § 15 ; Tex. Civ. P. & R. Code Tit. 5, Sec. 10.

STATEMENT OF MATERIAL FACTS

7. The following are the materials facts relevant to Plaintiff's complaint:

1. PLAINTIFF'S DESIRE TO ENGAGE IN MEDIATION AND RECONCILIATION

8. Plaintiff is a United States citizen who is Muslim. His family come from Bangladesh.

9. While working in a Dallas convenience store in September 2001, Plaintiff was shot in the eye by Mark Ströman. Mr. Ströman shot three people in three different incidents in the wake of his sister's death in the World Trade Center attacks. He is currently scheduled to be executed on July 20, 2011 for capital murder. Plaintiff wishes to seek reconciliation with Mark Ströman, and to pursue full mediation with him.

10. Plaintiff feels this way because his parents raised him with the religious principle that he is best who can forgive easily. He believes, as a Muslim, that human life is precious and that no one has the right to take another's life.

11. Plaintiff also seeks solace for the widows and children of murder victims Vasudev Patel and Waqar Hasan, who are also victims in this tragedy, and who support Plaintiff in his efforts to seek reconciliation.

12. Plaintiff is strongly motivated by his religious beliefs. Forgiveness is a long standing mechanism within many faiths, Islam being one of them, towards the healing of the soul. As a Muslim, Plaintiff is of the belief that when he forgives or promotes mercy for his attacker, the government should no longer have a duty or a right to exact the ultimate punishment upon Mr. Stroman.

13. Plaintiff understands that while he does not properly understand why he did what he did, Mark Ströman recognizes that his actions were profoundly wrong and had a terrible impact upon Plaintiff, as well as the families of Mr. Patel and Mr. Hasan. Plaintiff understands that Mark Ströman is very remorseful for taking two lives, almost taking a third, and for the pain and suffering that he has caused.

2. PLAINTIFF'S DESIRE FOR MEDIATION AND RECONCILIATION

14. Plaintiff strongly desires mediation and reconciliation, and has for a long time.

15. Plaintiff has never been informed of his right to such mediation by the State of Texas.

16. Plaintiff has not otherwise been shown the respect that is mandated by the Texas Victims Bill of Rights.

17. Plaintiff was not given meaningful mental health assistance by the State of Texas to work through the terrible trauma that he suffered during the crime.

18. Plaintiff was not informed by the State of Texas of his right to testify to what he truly believed at trial, but was rather told he could only ask the questions that he was asked.

19. Plaintiff has not been accorded any of the rights that should, by law, be his in his role as a victim.

20. Plaintiff is a victim. As such, he did not want to rush into a public spotlight. Had he only known his rights, he would have been quietly pressing for his rights for a long time. There are various reasons why this was not possible.

21. First, neither the TDCJ nor any other Texas official told him about his right to mediation.

22. Second, he understood that it was not permissible for him to contact Mark Ströman and not permissible for Mark to contact him.

23. Only when he learned that an execution date had been set for Mark Ströman did it become clear that he had to act. He made clear in public his opposition to executing Mark Ströman – a step he took after considerable thought, as he knew it would cause him to relive a great deal of pain.

24. Only when he began to make his feelings known in public did he learn that his rights as a victim had been ignored or trodden on for the past nine and a half years.

25. Plaintiff understands that Mark Ströman had also previously been informed by officials of the TDCJ that he could not contact Plaintiff and the other victims.

26. Plaintiff understands, to a certain degree, why Mark Ströman acted as he did. However, to a greater extent Plaintiff lacks understanding, and is looking for these answers. He anticipates that a full mediation and reconciliation process with Mark will help him to reach this better understanding.

27. Plaintiff also understands to a certain extent where Mark Ströman obtained the racist beliefs that partially drove him in 2001 – now that he had seen evidence of Mark Ströman’s terrible childhood and background. Plaintiff understands that Mark Ströman has, to a certain extent, been able to rehabilitate himself even while on death row. Plaintiff is glad that this has been the case. However, Plaintiff understands that Mark Ströman has a long way to go before he will properly understand the reasons why he acted in the way he did, and fully comprehend the tragedy of the racial beliefs that he inherited from his stepfather.

28. Plaintiff’s own ability to reach a cathartic point in his own recovery depends very much on his being able to make full efforts to help Mark Ströman to reach his full potential, and to overcome the very negative lessons that he was taught as a child.

29. This will inevitably be a process that will take time.

3. PLAINTIFF’S DEMAND FOR THE BENEFIT OF THE TDCJ MEDIATION PROCEDURES

30. Plaintiff did not know of his rights because no Texas official had informed him.

31. Mark Ströman had been informed by Texas officials that it would be a violation of TDCJ rules for him to contact Plaintiff. Only the dire straits of Mark

Ströman's execution date led him to question whether the action of Defendants was legal.

32. Mark Ströman wrote to the TDCJ authorities asking for the opportunity to meet with Plaintiff and initiate mediation as soon as Plaintiff's comments in the media suggested to him that Plaintiff might be open to it. Mark Ströman's counsel wrote again, dated July 7, 2011, confirming the written request made to TDCJ on June 22, 2011, and asking what had come of it.

33. Plaintiff called the TDCJ to learn what he had to do in order to benefit from mediation with Mark Ströman. On July 7, 2011, he also wrote to confirm the details of the conversation.

34. Plaintiff also made a specific request, on June 29, 2011, to appear in person before the Pardon's Board, to plead

(a) that the Board set this matter for a full hearing at a time and a location convenient to the Board, pursuant to Rule 143.43(f)(3) of the Board's rules of procedure; and,

(b) that the Board allow Rais Bhuiyan to appear before it to state his position and the position of other victims with respect to commutation...

Clemency Petition on behalf of Mark Ströman, at 23 (June 29, 2011). Plaintiff has not heard anything back on this request, and has not been invited to speak to the Board.

35. Defendants have made no response to any of his requests as the time ticks by towards Mark Ströman's execution date.

36. The TDCJ states on its website as follows:

It is not uncommon for states to have victim offender dialogue programs for nonviolent offenses. The uniqueness of the TDCJ program is that it has been developed for victims of violent crime. The VOM/D process can only be initiated at the request of the victim, and offender participation is voluntary. If an offender chooses to participate, he/she must admit guilt and take responsibility for the offense. Either party may withdraw from the VOM/D process at any time. Participation in the VOM/D program is not expected to affect the offender's prison, parole, or community supervision (probation) status. Therefore, it is assured that offenders are not participating in order to

enhance their chances for parole approval. Through VOM/D, the victim may receive answers to questions, which may facilitate his/her healing and recovery. It provides offenders the opportunity to take responsibility for their actions and to be accountable for the pain and suffering those actions have caused.

See Texas Department of Criminal Justice, <http://www.tdcj.state.tx.us/victim/victim-vomd.htm>.

37. The “frequently asked questions” on the TDCJ website include the following queries and their answers:

When will the mediation take place?

Every case is unique and the preparation process varies in length for each case. However, the preparation usually lasts between 4 and 6 months from the time a mediator is assigned to the case, and the actual mediation day.

How long before a mediator is assigned to the case?

There is a waiting list of individuals requesting mediation and many variables affect the length of waiting time. Meeting with an offender is a very important step, and the VOMD staff will make every effort to begin each case as soon as possible.

Does the offender have to agree to mediation?

Offender participation in VOMD is voluntary, but many offenders agree to participate. An offender may decline further participation at any time prior to and including the day of the mediation. If the offender chooses *not* to participate, other options are available in the mediation program.

Is it permissible to write or visit the offender prior to the mediation?

Corresponding/visiting with the offender prior to mediation is highly discouraged during the mediation preparation process, as there is a chance of re-victimization. Any correspondence with the offender prior to or after the mediation is required to go through the VOMD office.

Can a support person come to the mediation session?

This is something that will be discussed with the mediator and the VOMD Program Supervisor. Victims are encouraged to have a support person in a waiting area of the prison during the mediation. Breaks will be taken as often as needed during the meeting.

See <http://www.tdcj.state.tx.us/faq/faq-victim-vomd.htm>. What this means, of course, is that it takes four to six months to initiate the process.

38. Mark Ströman could not put Plaintiff on his visitation list, because offenders are forbidden from adding their victims to their visitation lists.

39. The TDCJ has established a rule that violent prisoners can only engage in mediation with the victim after their legal challenges to their conviction and sentence are concluded. This means in effect that capital defendants and their victims (or the families of the deceased victims) – the instances where reconciliation would bear the greatest benefits – can effectively not benefit from the rights under the law.

40. While in theory a victim could go through their office's victim-offender mediation/dialogue program to meet with Mark Ströman, Plaintiff knows of no occasion when this has been done with death row inmates, however, because the TDCJ policy is not to allow victim-offender mediation/dialogue so long as the offender's case is on appeal, and death row offenders' cases are always on appeal.

41. In addition to the offender, both the offender's attorney and the AG would have to consent to the dialogue. Even if Plaintiff, Mark Ströman and Mr. Ströman's attorney all consented, the Attorney General can block the process without giving public reasons.

4. TDCJ DEFENDANTS' UTTERLY INEQUITABLE MANIPULATION OF THE PROCESS

42. If the process cannot begin until appeals the offender's case are concluded, that means it is not possible for the mediation to begin in Petitioner's case until (at the earliest) roughly four months after the denial of certiorari in Petitioner's

case – which took place on June 27, 2011. *Stroman v. Thaler*, 2011 WL 1324467 (June 27, 2011).¹

43. At the same time, it was the State of Texas that set Mr. Ströman's execution date for July 20, 2011. Thus, no matter what side one looks at this from, the State of Texas is trying to render nugatory the right to mediation.

REQUEST FOR INJUNCTIVE RELIEF

44. Plaintiff seeks injunctive relief pursuant to Tex. Civ. P. & R. Code Tit. 5, Sec. 106.002, Sec. 110.005 and other state statutes permitting such relief.

45. Defendant intends to execute Mark Ströman on July 20, 2011, at which time Defendant will have rendered it impossible to repair the damage caused by Defendant's actions.

46. The only way to allow for a meaningful resolution of this litigation is by preserving the *status quo*, and enjoining the Defendant from further violating Plaintiff's legal rights. Immediate injunctive relief is therefore appropriate.

CLAIMS FOR RELIEF

47. Plaintiff asserts the following claims for relief.

I. DEFENDANTS HAVE VIOLATED THE LAW AND THEIR OWN REGULATIONS IN REFUSING TO ALLOW MEANINGFUL MEDIATION BETWEEN PLAINTIFF (THE VICTIM) AND THE MAN WHO SHOT HIM

48. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

49. As a victim under Texas law, Plaintiff has a number of clear legal rights:

¹ Indeed, if Mr. Ströman (reasonably enough) files additional challenges to his conviction and sentence – as has apparently happened – the TDCJ rules do not even allow the process to begin then.

In Texas, victims of crime have the Crime Victim's Bill of Rights, created by the legislature in 1985. It has been amended and expanded during the past twenty years, and explicitly lists remedies and redress options that a "victim, guardian of a victim, or close relative of a deceased victim is entitled to ... within the criminal justice system." Of the thirteen numbered rights, the twelfth is "the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice." This portion of the statute was not enacted until the 77th legislative session in 2001.

Patrick Drake, *Victim-Offender Mediation in Texas: When "Eye for Eye" Becomes "Eye to Eye"*, 47 S. Tex. L. Rev. 647 (2006) (footnotes omitted).

50. The relevant statute reads as follows:

Art. 56.02. CRIME VICTIMS' RIGHTS. (a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed:

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and

(B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation,

eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;

(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;

(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;

(11) the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, if the offense is an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(12) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;

(13) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:

(A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B) by the Board of Pardons and Paroles before an inmate is released on parole;

(14) to the extent provided by Articles 56.06 and 56.065, for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the assault is reported to a law enforcement agency or a

forensic medical examination is otherwise conducted at a health care facility;
and

(15) for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by counsel for the defendant, the court shall state on the record the reason for granting or denying the continuance.

Tex. Code Crim. Proc. 56.02(a) (emphasis supplied).

51. Given that the delay in asserting these rights is all due to Defendants' and their agents' failure to inform Plaintiff, there can be no assertion that the failure to conduct meaningful mediation is the fault of anyone but Defendants. Certainly, as a victim, Plaintiff cannot be expected to know his rights, and be told he must forfeit them if he does not know of them. Rather, just as with the criminal defendant's famous *Miranda* rights, it is the duty of those responsible for victim coordination to ensure that victims are clearly informed of their rights, so that they may assert them.

52. Even were there not a statutory basis for the right to mediation, Defendants would still be required to proceed in a fair and non-discriminatory manner.

53. Rather, here, Defendants have made it impossible for essentially one class of victims to benefit from mediation – those whose firm religious beliefs prompt them to seek mediation and reconciliation in capital cases where the Defendants want to execute the prisoner.

54. In this regard, Defendants' actions are illegal. Tex. Civ. P. & R. Code Tit. 5, Sec. 106.001, provides:

Sec. 106.001. PROHIBITED ACTS. (a) An officer or employee of the state or of a political subdivision of the state who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

(1) refuse to issue to the person a license, permit, or certificate;

- (2) revoke or suspend the person's license, permit, or certificate;
- (3) refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state;
- (4) *refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state;*
- (5) *refuse to grant a benefit to the person;*
- (6) *impose an unreasonable burden on the person;* or
- (7) refuse to award a contract to the person.

(emphasis supplied)

55. Where there is a violation of this law, Tex. Civ. P. & R. Code Tit. 5, Sec. 106.002, provides for injunctive relief:

Sec. 106.002. REMEDIES. (a) If a person has violated or there are reasonable grounds to believe a person is about to violate Section 106.001, the person aggrieved by the violation or threatened violation *may sue for preventive relief, including a permanent or temporary injunction, a restraining order, or any other order.*

(b) In an action under this section, unless the state is the prevailing party, the court may award the prevailing party reasonable attorney's fees as a part of the costs. The state's liability for costs is the same as that of a private person.

Tex. Civ. P. & R. Code Tit. 5, Sec. 106.002 (emphasis supplied)

56. Indeed, the actions of the agents of the State of Texas and the Defendants in this case are not merely wrong, they are potentially criminal in nature:

Sec. 106.003. PENALTIES. (a) A person commits an offense if the person knowingly violates Section 106.001.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$1,000;
- (2) confinement in the county jail for not more than one year; or
- (3) both the fine and confinement.

Tex. Civ. P. & R. Code Tit. 5, Sec. 106.003.

57. Plaintiff therefore has the right to injunctive relief not only ordering the Defendants to permit the immediate initiation of mediation, but also enjoining the Defendants and the State of Texas from executing Mark Ströman until Plaintiff has had the opportunity to engage in this mediation and reconciliation.

II. DEFENDANTS HAVE VIOLATED PLAINTIFF'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS

58. The State of Texas and all of its official arms, including the Defendant in this case, are bound to respect Plaintiff's rights under the US Constitution. This Court is similarly required to enforce those rights. See US CONST. ART. VI, Clause 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

59. Defendant is under a legal duty not to violate Plaintiff's civil rights. See 42 U.S.C § 1983. Section 1983 provides:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof *to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress*, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983 (emphasis added).

60. The State of Texas and all of its official arms, including the Defendant in this case, are bound to respect Plaintiff's rights under the Constitution of the State of Texas. This Court is similarly required to enforce those rights.

1. PLAINTIFF IS SUFFERING DISCRIMINATION BASED ON HIS RELIGIOUS BELIEFS

61. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

62. As previously stressed, Plaintiff is strongly motivated by his religious beliefs. Forgiveness is a long standing mechanism within many faiths, Islam being one of them, towards the healing of the soul. As a Muslim, Plaintiff is of the belief that when he forgives, or promotes mercy for, his attacker the government should no longer have a duty or a right to exact the ultimate punishment upon Mr. Stroman.

63. At the time of the trial process, in 2001-02, it was the policy of the previous incumbent in the Office of the District Attorney in Dallas County to refuse a plea bargain to life if the victim refuses to agree to the proposal in a capital case. In another capital case returned for resentencing, the current Dallas County District Attorney's stated rationale, provided to defense counsel in writing, for seeking the death penalty was that the victim's mother had rejected the defendant's offer to accept a sentence of incarceration for the remainder of his natural life. While this was an inappropriate delegation of the District Attorney's constitutional duty to exercise discretion in narrowing the class of death-eligible prisoners, it is also a clear indication that the Dallas County DA treats victims with one set of beliefs very differently than victims with another set of beliefs. While the office abdicates its own authority in favor of the judgment of victims who seek vengeance, it ignores and disregards the judgment of victims whose faith leads them to seek avenues of reconciliation.

64. It is also the overriding policy of the Governor of the State of Texas to refuse clemency if the victims oppose it.

65. It is the policy of the TDCJ to refuse mediation to those whose religious beliefs compel them to see meaningful mediation with the perpetrators of capital crimes, even though the victims of other (apparently equal or lesser) crimes are allowed this right.

66. This violates the Texas Constitution. Tex. Const. Art. 1, § 6 (“FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.”).

67. It also violates Texas law. Tex. Civ. P. & R. Code Tit. 5, Sec. 110.001, provides:

(a) In this chapter:

(1) "Free exercise of religion" means an act or refusal to act that is substantially motivated by sincere religious belief. In determining whether an act or refusal to act is substantially motivated by sincere religious belief under this chapter, it is not necessary to determine that the act or refusal to act is motivated by a central part or central requirement of the person's sincere religious belief.

(2) "Government agency" means:

(A) this state or a municipality or other political subdivision of this state; and

(B) any agency of this state or a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, or public institution of higher education.

(b) In determining whether an interest is a compelling governmental interest under Section 110.003, a court shall give weight to the interpretation of compelling interest in federal case law relating to the free exercise of religion clause of the First Amendment of the United States Constitution.

Sec. 110.002. APPLICATION. (a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a government agency, in the exercise of governmental authority, granting or refusing to grant a government benefit to an individual.

(c) This chapter applies to each law of this state unless the law is expressly made exempt from the application of this chapter by reference to this chapter.

Tex. Civ. P. & R. Code Tit. 5, Sec. 110.002.

68. Texas law protects religious freedom:

Sec. 110.003. RELIGIOUS FREEDOM PROTECTED. (a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Tex. Civ. P. & R. Code Tit. 5, Sec. 110.003.

69. Texas law specifically provides for injunctive relief under these circumstances:

Sec. 110.005. REMEDIES. (a) Any person, other than a government agency, who successfully asserts a claim or defense under this chapter is entitled to recover:

- (1) declaratory relief under Chapter 37;
- (2) injunctive relief to prevent the threatened violation or continued violation;
- (3) compensatory damages for pecuniary and nonpecuniary losses; and
- (4) reasonable attorney's fees, court costs, and other reasonable expenses incurred in bringing the action.

(b) Compensatory damages awarded under Subsection (a)(3) may not exceed \$10,000 for each entire, distinct controversy, without regard to the number of members or other persons within a religious group who claim injury as a result of the government agency's exercise of governmental authority. A claimant is not entitled to recover exemplary damages under this chapter.

(c) An action under this section must be brought in district court.

(d) A person may not bring an action for damages or declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity as an officer of a government agency.

(e) This chapter does not affect the application of Section 498.0045 or 501.008, Government Code, or Chapter 14 of this code.

Tex. Civ. P. & R. Code Tit. 5, Sec. 110.005.

70. Texas law provides for accommodation, where possible:

Sec. 110.006. NOTICE; RIGHT TO ACCOMMODATE. (a) A person may not bring an action to assert a claim under this chapter unless, 60 days before bringing the action, the person gives written notice to the government agency by certified mail, return receipt requested:

- (1) that the person's free exercise of religion is substantially burdened by an exercise of the government agency's governmental authority;
- (2) of the particular act or refusal to act that is burdened; and
- (3) of the manner in which the exercise of governmental authority burdens the act or refusal to act.

(b) Notwithstanding Subsection (a), a claimant may, within the 60-day period established by Subsection (a), bring an action for declaratory or injunctive relief and associated attorney's fees, court costs, and other reasonable expenses, if:

- (1) the exercise of governmental authority that threatens to substantially burden the person's free exercise of religion is imminent; and

(2) the person was not informed and did not otherwise have knowledge of the exercise of the governmental authority in time to reasonably provide the notice.

(c) A government agency that receives a notice under Subsection (a) may remedy the substantial burden on the person's free exercise of religion.

(d) A remedy implemented by a government agency under this section:

(1) may be designed to reasonably remove the substantial burden on the person's free exercise of religion;

(2) need not be implemented in a manner that results in an exercise of governmental authority that is the least restrictive means of furthering the governmental interest, notwithstanding any other provision of this chapter; and

(3) must be narrowly tailored to remove the particular burden for which the remedy is implemented.

(e) A person with respect to whom a substantial burden on the person's free exercise of religion has been cured by a remedy implemented under this section may not bring an action under Section 110.005.

(f) A person who complies with an inmate grievance system as required under Section 501.008, Government Code, is not required to provide a separate written notice under Subsection (a). In conjunction with the inmate grievance system, the government agency may remedy a substantial burden on the person's free exercise of religion in the manner described by, and subject to, Subsections (c), (d), and (e).

(g) In dealing with a claim that a person's free exercise of religion has been substantially burdened in violation of this chapter, an inmate grievance system, including an inmate grievance system required under Section 501.008, Government Code, must provide to the person making the claim a statement of the government agency's rationale for imposing the burden, if any exists, in connection with any adverse determination made in connection with the claim.

Tex. Civ. P. & R. Code Tit. 5, Sec. 110.006.

71. Under these circumstances, the timing is such that an injunction must be issued in order to preserve the status quo.

72. Plaintiff enjoys the same rights to religious freedom under the federal constitution and laws. See U.S. CONST. Amend. I.

2. PLAINTIFF IS BEING DENIED THE EQUAL PROTECTION OF THE LAW

73. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

74. Plaintiff has the right to equal rights and equal protection of the laws under both the state and federal constitution. See Tex. Const. Art. 1, § 3 (“EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.”); Tex. Const. Art. 1, § 3a (“EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.”); U.S. CONST. Amend. V, XIV.

75. Defendants deny Plaintiff effective mediation where those who are the victims of lesser crimes, or crimes that are perhaps essentially identical in all respects but for Defendants’ plan to inflict capital punishment on the perpetrator, enjoy this right.

3. THE RIGHT TO FREEDOM OF ASSOCIATION

76. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

77. Plaintiff enjoys the right under the First Amendment to the United States Constitution to freedom of association. See US CONST. AMEND. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

78. This has been construed, and rightly so, to include the right to Freedom of Association. Such a right cannot be violated on a discriminatory basis.

79. In this case, while Defendant allows a large number of people to visit Mark Ströman and associate with him, including significant numbers of foreign nationals from countries such as Britain and Germany, Plaintiff is not allowed to meet with him. Indeed, Defendant purports to impose limits on Mark Ströman's right even to write to Plaintiff. Meanwhile, CBS News and large numbers of other media outlets are also allowed to meet with Mark Ströman.

80. These discriminatory rules are vague, arbitrary and wrong.

4. FREEDOM FROM A BILL OF ATTAINDER

81. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

82. Plaintiff has the right to freedom from being singled out for punishment. See US CONST. ART. I, Section 9 ("No Bill of Attainder or ex post facto Law shall be passed."); ART. I, Section 10, Clause 1 ("No State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."). See also Tex. Const. Art. 1, § 16 ("BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.")

83. Defendant's actions operate as a bill of attainder, singling out a particular class of people for arbitrary punishment without any due process.

5. PLAINTIFF HAS BEEN DENIED THE PRIVILEGES AND IMMUNITIES OF TEXAS CITIZENS

84. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

85. Plaintiff has the right to enjoy the Privileges and Immunities of other citizens. See US CONST. ART. II, Section 2, Clause 1 (“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”). While other citizens (and, indeed, even non-citizens) are allowed to meet with Mark Ströman, Plaintiff is not. While other victims are permitted meaningful mediation, Plaintiff is not.

6. PLAINTIFF HAS BEEN DENIED DUE PROCESS OF LAW

86. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

87. Plaintiff has a liberty interest in his relationship with Mark Ströman, and his right to associate with him, which cannot be taken from him arbitrarily, in an inequitable fashion, or without due process of law. See US CONST. AMEND. V (“No person shall ... be deprived of life, liberty, or property, without due process of law....”); US CONST. AMEND. XIV Section 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”); see also Tex. Const. Art. 1, § 19 (“DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”).

88. In this case, Plaintiff has been allowed no due process, and Defendant is discriminating against him in a way that is invidious, and based purely on the ground that he is a victim.

7. PLAINTIFF IS BEING PUNISHED IN AN UNCONSTITUTIONAL MANNER

89. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

90. Plaintiff will suffer a great deal if he is not permitted a fair opportunity to come to terms with the fact that he was shot in the face, and could have died, as a result of Mark Ströman's attack on him. In arbitrarily denying him the right to attempt to reach some degree of catharsis on this point, Defendant is inflicting cruel and unusual punishment on him, and without due process. US CONST. AMEND. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); Tex. Const. Art. 1, § 13 ("EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.")

8. PLAINTIFF'S RIGHT TO RESPECT AND DIGNITY

91. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

92. Nothing in the US or Texas Constitution purports to take away Petitioner's right, as a victim, to seek positive mediation with the perpetrator of the crime against him, Mark Ströman. As a result, this right inures to him at least as powerfully, and perhaps more powerfully, than the right to privacy. See US. CONST.

AMEND. IX (“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”); see also US CONST.

AMEND. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

III. DEFENDANTS HAVE FAILED TO RESPECT PLAINTIFF’S DIGNITY AND HIS RIGHTS UNDER THE TEXAS BILL OF RIGHTS

93. Plaintiff incorporates herein all the allegations in this complaint that both precede and follow.

94. Tex. Const. Art. 1, §30 sets out the rights of crime victims:

Sec. 30. RIGHTS OF CRIME VICTIMS. (a) A crime victim has the following rights:

(1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and

(2) the right to be reasonably protected from the accused throughout the criminal justice process.

(b) On the request of a crime victim, the crime victim has the following rights:

(1) the right to notification of court proceedings;

(2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;

(3) the right to confer with a representative of the prosecutor's office;

(4) the right to restitution; and

(5) the right to information about the conviction, sentence, imprisonment, and release of the accused.

(Added Nov. 7, 1989) (emphasis supplied)

95. Plaintiff has been and continues to be, denied his rights under the Texas Constitution.

CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE PLAINTIFF respectfully requests that this Court enter an order as follows:

- a. requiring that the defendant respond under an expedited schedule;
- b. enjoining the defendant from carrying out the execution of Mark Ströman and entering an order preserving the *status quo* until such time as the complaint may be resolved;
- c. ordering discovery under an expedited schedule;
- d. ordering a trial by jury of the merits of the cause;
- e. granting Plaintiff damages in the sum of \$[] in compensatory damages for the violation of his rights;
- f. granting Plaintiff damages in the sum of \$[] in punitive damages for the violation of his rights;
- g. granting an injunction requiring that the Defendants permit him a meaningful opportunity for mediation and reconciliation;
- h. granting such other equitable relief as the Court may deem just and right.

This 13 day of July, 2011.



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Counsel to Rais Bhuiyan*+

* Mr. Wahid is a member of the Bar of the State of Florida, and a *Motion to Appear Pro Hac Vice* accompanies this law suit. Mr. Wahid has submitted the required affidavit to the Texas Bar Examiners. However, the non-resident acknowledgment letter will not be issued until the application has been submitted with a cause number for this action, so it cannot be submitted simultaneously with the suit.

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Local co-counsel for Mr. Bhuyian+

-Counsel are acting *pro bono publico* on this case, given the importance of the issues.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing pleading to be served on the defendants, *via*
hand delivery and/or overnight delivery to:

Governor Rick Perry
Office of the Governor
State Insurance Building
1100 San Jacinto
Austin, Texas 78701

Brad Livingston
Texas Department of Criminal Justice Executive Director
209 West 14th Street, 5th Floor,
Price Daniel Building,
Austin, Texas 78701

Angie McCown,
TDCJ Victim Services Division,
8712 Shoal Creek Blvd, Ste 265,
Austin, Texas 78757

Rissie L. Owens
Texas Board of Pardons and Paroles
209 West 14th Street, Suite 500,
Austin, Texas 78701.

This 13th day of July 2011.



Danalynn Recer

