

IN THE 171ST DISTRICT COURT
OF EL PASO COUNTY, TEXAS

THE STATE OF TEXAS)	
)	
v.)	CAUSE NO. 20240D02366
)	
RICARDO CASTELLANO)	

MOTION TO QUASH INDICTMENT

Comes now the Defendant, Ricardo Castellano, by and through his undersigned attorney, and moves this Court to quash the indictment in this case, as it fails to state an offense, and as further grounds for this motion would show the Court the following:

The Indictment

Mr. Castellano is charged in Count One with retaliation against a school district employee due to the employee’s position as a public servant, in violation of Texas Penal Code § 36.06. Specifically, it is alleged that he “threatened to harm another” by “exerting undue influence resulting in the interference of the daily operations of Bill Sybert School in retaliation for or on account of the service or status of Bill Sybert School Principal, Gabriela Elliot as a public servant.”

Count Two of the indictment makes a similar accusation, apparently charging Mr. Castellano with obstruction, also under Texas Penal Code § 36.06. Specifically, it alleges that Mr. Castellano “threatened to harm another” by “exerting undue influence resulting in the interference of the daily operations of Bill Sybert School, to prevent or delay the service Bill Sybert School Principal, Gabriela Elliot as a public servant.”

The Statute

The basic terms of § 36.06 of the Texas Penal Code make it a criminal offense to harm or threaten to harm another person when that harm or threatened harm is for the purpose of retaliation against a public servant (§ 36.06(a)(1)) or obstructing the public servant (§ 36.06(a)(2)). The phrase “exerting undue influence” is not part of the statute. The term “harm” is not defined in the statute, however, it is defined in the general definitions section of the Penal Code as “anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.” Texas Penal Code § 1.07(a)(25).

Argument

The indictment fails to state an offense because instead of alleging a way in which Mr. Castellano might have harmed or threatened to harm a person, it merely alleges that he exerted undue influence on someone, which is not conduct punishable by any penal statute. The omission from the indictment is not a technicality or a typographical issue, but a fundamental, insurmountable issue: The indictment does not allege an offense.

The Texas constitution requires that an indictment allege that (1) a person (2) committed an offense, and without both of those elements, the charging instrument is not an indictment. *Teal v. State*, 230 S.W.3d 172, 179 (Tex.Crim.App.2007). The proper test to determine if a charging instrument alleges “an offense” is whether the allegations in it are clear enough that one can identify the alleged offense. *Id.* at 180. It is not required that the indictment include every element of the offense or every detail of the offense. However, it is required to put a defendant on notice of what conduct is alleged to be a criminal violation. In this case, the indictment specifies conduct that simply is not a criminal violation.

The definition of “harm” in § 1.07(a)(25) is consistent with a common understanding of the term “harm,” which is defined by Websters as “physical or mental damage: injury.” *Merriam-webster.com*. The exertion of undue influence is not included in any definition of “harm,” nor could it logically be considered a form of harm because it could not be presumed, nor would it even be likely, that being on the receiving end of undue influence would cause physical or mental damage.

Extensive discovery and investigation has been conducted and made available in this case. Defense counsel reviewed it all to determine whether the discovery would put the defense on notice as to what conduct was alleged to have been a violation of the statute. If so, the flaw in the indictment could potentially be corrected through amendment.

The discovery, however, revealed no conduct on the part of Mr. Castellano that would fall under the language of the violations alleged (or any other criminal violations, for that matter). Communications with the attorneys for the State did not enlighten the defense. This case cannot proceed when the defense cannot discern what conduct is alleged to have been criminal.

Because the indictment does not specify any conduct that would constitute “harm” or “threatening to harm” and instead specifies conduct that is not criminal, the indictment should be quashed. Because the extensive discovery demonstrates that the lack of criminal allegations in the indictment cannot be cured, this case should be dismissed with prejudice.

WHEREFORE, it is respectfully requested that the Court grant this motion, quash the indictment, and dismiss this case with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2026, this document was served via the electronic filing system to the District Attorney's Office at dacriminal@epcounty.com.

/s/ Mary Stillinger
MARY STILLINGER

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