

**No. 15-0732**

**IN THE SUPREME COURT  
OF TEXAS**

---

**UNIVERSITY OF THE INCARNATE WORD,  
*Petitioner,***

**v.**

**VALERIE REDUS, ET. AL,  
*Respondents.***

---

On Petition for Review from the  
Fourth Court of Appeals at San Antonio Texas  
No. 04-15-00120-CV

---

**PETITIONER'S REPLY BRIEF ON THE MERITS**

---

Laurence S. Kurth  
State Bar No. 11768450  
Laurence.kurth@akerman.com  
Matthew F. Wymer  
State Bar No. 24005234  
Matthew.wymer@akerman.com  
AKERMAN LLP  
112 East Pecan Street, Suite 2750  
San Antonio, Texas 78205  
Telephone: (210) 582-0220  
Facsimile: (210) 582-0231

Wallace B. Jefferson  
State Bar No. 00000019  
wjjefferson@adjtlaw.com  
Amy Warr  
State Bar No. 00795708  
awarr@adjtlaw.com  
ALEXANDER DUBOSE JEFFERSON &  
TOWNSEND LLP  
515 Congress Avenue, Suite 2350  
Austin, Texas 78701-3562  
Telephone: (512) 482-9300  
Facsimile: (512) 482-9303

**ATTORNEYS FOR PETITIONER**

## TABLE OF CONTENTS

Index of Authorities .....	ii
Summary of the Reply .....	1
Argument.....	3
I.    UIW is a “governmental unit” in its policing capacity. ....	3
A.    The parties’ main dispute is whether UIW satisfies the first prong of the statutory definition of “governmental unit.” .....	3
B.    UIW’s private status does not disqualify it from meeting the first prong. ....	4
C.    The court of appeals employed the wrong analysis. ....	7
D.    UIW satisfies both prongs of §101.001(3)(D). ....	8
1.    UIW satisfies the first prong because it is an “institution, agency, or organ of government.” .....	8
a.    UIW, in its policing function, <i>is</i> the government. ....	8
b. <i>LITS</i> supports UIW’s argument. ....	9
2.    UIW satisfies the second prong, as its policing function “derive[s] from . . . laws passed by the legislature.” .....	11
3.    The charitable immunity statute is irrelevant. ....	12
II.    As a governmental unit, UIW is entitled to dismissal because the real substance of the Reduses’ claims is an intentional tort. ....	13
III.   Because UIW is a governmental unit in this case, it is entitled to automatic dismissal of the suit against its employee, Cpl. Carter. ....	15
Prayer .....	16
Certificate of Service .....	18
Certificate of Compliance .....	19

## INDEX OF AUTHORITIES

### CASES

<i>Austin State Hosp. v. Graham</i> , 347 S.W.3d 298 (Tex. 2011).....	16
<i>Brown &amp; Gay Eng’g, Inc. v. Olivares</i> , 461 S.W.3d.....	8, 9
<i>City of Lancaster v. Chambers</i> , 883 S.W.2d 650 (Tex. 1994).....	6
<i>City of Watauga v. Gordon</i> , 434 S.W.3d 586 (Tex. 2014).....	14
<i>Harlow v. Fitzgerald</i> , 457 U.S. 800 (1982).....	6
<i>Harris Cty. v. Sykes</i> , 136 S.W.3d 635 (Tex. 2004).....	15, 16
<i>Heath v. Alabama</i> , 474 U.S. 82 (1985).....	5, 9
<i>Klein v Hernandez</i> , 315 S.W.3d 1, 8 (Tex. 2010).....	2
<i>LTTs Charter School, Inc. v C2 Constr., Inc.</i> , 342 S.W.3d 73, 78 (2011).....	2, 8
<i>Puerto Rico v. Sanchez Valle</i> , 136 S.Ct. 1863 (2016).....	5
<i>Scheuer v. Rhodes</i> , 416 U.S. 232 (1974).....	6
<i>Tex. Dept. of Pub. Safety v. Petta</i> , 44 S.W.3d 575 (Tex. 2001).....	14
<i>Tex. Parks &amp; Wildlife Dep’t v. Sawyer Trust</i> , 354 S.W.3d 384 (Tex. 2011).....	14

### STATUTES

TEX. CIV. PRAC. & REM. CODE §51.014.....	16
TEX. CIV. PRAC. & REM. CODE §51.014(a)(5) .....	16
TEX. CIV. PRAC. & REM. CODE §51.014(a)(8) .....	16
TEX. CIV. PRAC. & REM. CODE §84.004.....	12
TEX. CIV. PRAC. & REM. CODE §84.005.....	12
TEX. CIV. PRAC. & REM. CODE §84.006.....	12
TEX. CIV. PRAC. & REM. CODE §84.007(f).....	12
TEX. CIV. PRAC. & REM. CODE §101.001.....	13

TEX. CIV. PRAC. & REM. CODE §101.001(3)(D) .....	passim
TEX. CIV. PRAC. & REM. CODE §101.0215.....	9
TEX. CIV. PRAC. & REM. CODE §101.023.....	13
TEX. CIV. PRAC. & REM. CODE §101.106(e) .....	15, 16
TEX. EDUC CODE §12.105 .....	10
TEX. EDUC. CODE §51.212 .....	10
TEX. EDUC. CODE §51.212(a).....	9, 11
TEX. EDUC. CODE §51.212(b) .....	11
TEX. GOVT. CODE §22.001(a) .....	15
TEX. GOVT. CODE §22.225(c) .....	15

**RULES**

TEX. R. APP. P. 60.2(c).....	15
TEX. R. APP. P. 9.4(i)(1).....	19

**OTHER AUTHORITIES**

<i>First Principles of American Federalism and the Nature of Federal Criminal Jurisdiction,</i> 45 EMORY L.J. 1 (1996) .....	5
---	---

## SUMMARY OF THE REPLY

UIW—a private university—demonstrated that it is a “governmental unit” with respect to law enforcement. This is because it accepted the Legislature’s invitation to commission and deploy peace officers to enforce the State’s criminal laws, and agreed to be governed by the same State of Texas regulations and obligations that apply to every other Texas law-enforcement agency.

The court of appeals did not care that UIW operates a Texas law-enforcement agency. Rather, it confined its analysis to UIW as a whole. The Reduses share that myopic focus, insisting that because UIW dons a “private” cloak, it cannot function as a government unit for law enforcement, even though that is the most important of government functions.

This analysis is only skin deep. It neither comports with the legislative scheme, nor abides by this Court’s jurisprudence. The Legislature could have enacted a narrow definition of “governmental unit,” limited to public bodies. Instead, it chose a broad definition, naming every conceivable public body in Texas, and also including a catch-all provision whose purpose can only be to encompass entities, even private ones, that engage in an unquestionably public mission. UIW BOM at 10-11.

This Court’s decisions in *Klein* and *LTTs* confirm that view. In *Klein*, even though Baylor Medical School is “private,” the Court nevertheless determined that

the resident training program, specifically, satisfied “governmental unit” prerequisites. *Klein v. Hernandez*, 315 S.W.3d 1, 8 (Tex. 2010). And, in *LTTS*, the Court employed a multi-factor approach, not the binary approach (whether the entity is public or private) the Reduses advocate. *LTTS Charter School, Inc. v. C2 Constr., Inc.*, 342 S.W.3d 73, 78 (2011). In both cases, the Court held that a private defendant was a governmental unit or employee.

Using the correct analysis, UIW is a governmental unit with respect to its state-authorized and state-regulated policing function. This makes sense. The Legislature neither intentionally, nor implicitly, relegated discrete segments of Texas’s law-enforcement system to second-class status. It clearly intended to liberate police officers, and their departments, to perform public safety tasks for the public without fear of liability. This Court should grant review to restore all Texas law-enforcement agencies to an equivalent immunity footing.

## ARGUMENT

### I. UIW is a “governmental unit” in its policing capacity.

#### A. The parties’ main dispute is whether UIW satisfies the first prong of the statutory definition of “governmental unit.”

UIW and the Reduses agree on several points:

- UIW is not a government contractor, and does not assert immunity as such. UIW Pet. Reply at 5; Redus BOM at 19 (“Unlike the engineering firm in *Brown & Gay*, UIW does not argue that its “governmental unit” status derives from its government contractor status.”).
- Texas statutes govern whether UIW is a “governmental unit” in its policing capacity. UIW BOM at 9-12; Redus BOM at 16.
- UIW must satisfy the two-pronged definition of Civil Practice and Remedies Code §101.001(3)(D), demonstrating that it is: (1) an “institution, agency, or organ of government,” and (2) derives its “status and authority” from the Constitution or “laws passed by the legislature.” UIW BOM at 11; Redus BOM at 21.
- UIW meets the second requirement. UIW BOM at 16-18. The Reduses concede that “[t]he UIW Campus Police might meet the second requirement.” Redus BOM at 22.

Thus, the parties' dispute centers on whether UIW meets the first requirement: in its policing capacity, is UIW an "institution, agency, or organ of government?" TEX. CIV. PRAC. & REM. CODE §101.001(3)(D).

**B. UIW's private status does not disqualify it from meeting the first prong.**

The Reduses contend that because UIW is private, it cannot be an "institution, agency, or organ of government." Redus BOM at 15-16, 18. They insist that UIW's moniker—its "private" identity—defeats its obligation to enforce the criminal laws of Texas. *Id.* at 18 ("The statutes establish that the identity of the party being sued determines the availability of sovereign immunity, not the party's function."). But they cite no authority. *See id.*

*LTTs* and *Klein* override this argument, because this Court, in each case, held that private entities were governmental units. UIW Br. at 12. The Reduses' efforts to distinguish *LTTs* and *Klein* on other grounds bypass these critical holdings, which dismantle the categorical approach the Reduses advance—an approach that would render §101.001(3)(D) illusory. If the Legislature had intended to cover only public entities, it would have had no reason to enact a catch-all provision such as §101.001(3)(D). UIW BOM at 10-12. The Reduses make no attempt to show otherwise.

The Reduses state that, to qualify as a governmental unit, UIW must be part of the sovereign; they say it is not enough to merely enforce the law. Redus BOM at 15-16, 18. They are mistaken.

The ability to enforce criminal laws is one of several “common indicia of sovereignty.” *Puerto Rico v. Sanchez Valle*, 136 S.Ct. 1863, 1870 (2016). In fact, it is the most important. “Foremost among the prerogatives of sovereignty is the power to create and enforce a criminal code.” *Heath v. Alabama*, 474 U.S. 82, 93 (1985). “This is an appropriate ordering of sovereign responsibilities. It is beyond dispute that a sovereign’s foremost obligation is to protect the life and well-being of its citizenry. The sovereign carries out this obligation through the enforcement of its criminal laws.” Adam H. Kurland, *First Principles of American Federalism and the Nature of Federal Criminal Jurisdiction*, 45 EMORY L.J. 1, 8 (1996). Here, the Legislature expressly authorized the police department of a private entity to carry out the sovereign’s “foremost obligation.”

The Reduses cannot imagine any legislative justification to include a private university as a “governmental unit.” Redus BOM at 15. But the Legislature had ample reason. If a private university is not protected from a suit regarding a police activity, it would flinch in the discharge of its duty to guard the public. “[T]he danger that fear of being sued will dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their

duties” justifies the extension of qualified immunity to public officials. *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982); *see also City of Lancaster v. Chambers*, 883 S.W.2d 650, 656 (Tex. 1994) (discussing “the danger that the threat of . . . liability would deter [a police officer’s] willingness to execute his office with the decisiveness and the judgment required by the public good”) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 240 (1974)).

The same is true of private institutions charged with the paramount public duty of enforcing the state’s criminal laws. Fear of liability would carry with it an incentive to restrict a private university officer’s authority. For example, to avoid the kind of damages sought in this case, UIW would be well-advised to forbid its officer from assisting other departments, or from pursuing a dangerous suspect beyond the campus’s geographic footprint.—Yet it is essential, for the safety of Texas citizens, that a police officer—whether employed by UIW, Southern Methodist<sup>1</sup>, or Rice University<sup>2</sup>—not only be allowed, but instructed, to assist the Dallas or Houston police departments when needed. A St. Edwards University police officer<sup>3</sup> should be encouraged, if not instructed, to pursue a suspected felon not only on campus, but even if the suspect flees toward the Capitol. Otherwise,

---

<sup>1</sup> <http://www.smu.edu/BusinessFinance/Police> (last visited Aug. 6, 2016).

<sup>2</sup> <http://rupd.rice.edu/> (last visited Aug. 6, 2016).

<sup>3</sup> <https://www.stedwards.edu/campus-services/campus-safety> (last visited Aug. 6, 2016).

the “peace officer” will have failed to carry out the oath of office, and innocent citizens along South Congress Avenue may needlessly become victims.

The Legislature had strong policy reasons for including private universities as governmental units in their policing capacity.

**C. The court of appeals employed the wrong analysis.**

The court of appeals applied *LTTs* to *reject* UIW “governmental unit” status, but its analysis fails. It erroneously looked at the university as a whole and then asked whether UIW was part of Texas’s system of *public education*—not whether UIW’s police department was part of Texas’s *law-enforcement* system. UIW BOM at 13-14. This is at odds with *Klein*, which analyzed Baylor College of Medicine’s resident training program specifically, not the medical school as a whole. *Id.* at 14. The Reduses have not confronted this manifest disregard of *Klein’s* holding. They make no attempt to defend the court of appeals’ approach.

Instead of confronting the *Klein* holding, the Reduses say the source of Baylor Medical School’s governmental designation was the Health and Safety Code, not §101.001(3)(D). Redus BOM at 20 & n.3. This misses the point. The importance of *Klein* is the Legislature’s—and this Court’s—recognition that a private entity can be classified as a “governmental unit” for one or more of its functions. *Klein*, therefore, rebuts the court of appeals’ myopic focus on UIW as a

whole, and its refusal to consider whether UIW, in its policing capacity, was part of Texas’s law-enforcement system, and thus a “governmental unit.”

**D. UIW satisfies both prongs of §101.001(3)(D).**

**1. UIW satisfies the first prong because it is an “institution, agency, or organ of government.”**

Just as charter schools are “indisputably part of the Texas public education system,” *LTTS*, 342 S.W.3d at 76, private university police departments are indisputably part of Texas’s law-enforcement system. They have the same power to commission officers as their public counterparts. Their officers are fully-fledged peace officers with all the powers and duties of publicly employed police officers. UIW BOM at 15-16. They are regulated in the same manner by TCOLE, the state regulatory agency for law enforcement. Their officers have the same training regime and the same disciplinary edifice. *Id.* at 16. They take the same oath.

**a. UIW, in its policing function, is the government.**

The Reduses say that UIW is merely “voluntarily performing a government function,” which “has never been sufficient to turn a private party exercising independent discretion into a ‘governmental unit.’” Redus BOM at 22. UIW acknowledges that a private entity does not become a governmental unit merely by performing a governmental function. *See Brown & Gay Eng’g, Inc. v. Olivares*, 461 S.W.3d at 123 (rejecting claim of immunity by government road-design

contractor). But it is nevertheless highly salient that police protection is not just any governmental function, but “[f]oremost among the prerogatives of sovereignty.” *Heath*, 474 U.S. at 93; *see also* TEX. CIV. PRAC. & REM. CODE §101.0215.

UIW’s police department is the legal equivalent of any public police department in the state. It is not a government contractor, as the Reduses admit. *See* Redus BOM at 19. Its officers are not private security guards. Nor does UIW employ off-duty San Antonio police or Bexar County deputies. Under §51.212(a), it *commissions* its own peace officers. A private university police department does not contract *for* the government; it *is* the government. *Brown & Gay*, 461 S.W.3d at 129 (Hecht, C.J., concurring) (reasoning that immunity attaches when a private entity acts *as* the government, but not when it merely acts *for* the government). Therefore, immunity should attach.

**b. *LTTS* supports UIW’s argument.**

The Reduses rely on the dissenting opinion in *LTTS*, challenging the Court’s conclusion that §101.001(3)(D)’s definition of “governmental unit” is “broad.” Redus BOM at 21, 22 n.4. They also attempt to distinguish *LTTS*. Neither effort works.

Of the four indicia of “institution, agency, or organ of government” the Court found persuasive in *LTTS*, three are present here. UIW BOM at 18. The

absence of the fourth is not determinative. *Id.* If anything, a private university police department makes a better case than a private charter school for “governmental unit” because policing is a governmental function—and a paramount one—while education is not. In fact, private (or home) education is quite common (and, some may even say, superior).

It is true that the statute in *LTTS* designated open-enrollment charter schools as “part of the public school system of this state.” Redus BOM at 22-23 (citing TEX. EDUC CODE §12.105). The Reduses observe that no comparable statutes exist for private university police departments, and no explicit statute references a state law-enforcement system. *Id.* at 23.

If they mean to suggest that Texas lacks a law enforcement system, the Reduses are off the mark. The state’s education and law-enforcement systems are very similar. Both comprise local geography-based jurisdictions. These jurisdictions are governed by state agencies—TEA and TCOLE. And their employees are subject to statewide requirements and a statewide disciplinary structure. Texas’s law-enforcement system is as much of a “system” as its public-education system.

Moreover, the fact that §51.212 addresses only private universities while the statute in *LTTS* addressed both private and public charters is of no moment. The

Legislature is free to classify either public or private entities as “governmental units” as it chooses.

Finally, the Reduses’ argue that a private university peace officer possesses “a narrower range of ‘powers, privileges, and immunities’” than a publicly-employed peace officer. Redus BOM at 23, 24 n.7. But nothing in their brief bears that out. The only restriction on private university police officers is geographical: unless invited by another jurisdiction, they are restricted to their campus or any county where their institution owns land. TEX. EDUC. CODE §51.212(b). UIW pointed out the Redus statement’s inaccuracy in its reply brief at the petition stage. UIW Pet. Reply at 4. That it has recurred in their merits brief exposes a fundamental flaw in their approach to this case.

**2. UIW satisfies the second prong, as its policing function “derive[s] from . . . laws passed by the legislature.”**

The status and authority of private university police departments “derive from . . . laws passed by the legislature.” In fact, these departments are creatures of the Legislature. Legislative enactments justify their existence, circumscribe their authority, and govern their oversight. *See* TEX. EDUC. CODE §51.212(a). UIW BOM at 15-19.

The Reduses do not attempt to refute this. They note merely that “[t]he UIW Campus Police might meet the second requirement.” Redus BOM at 22. The truth is more emphatic. UIW satisfies the second prong of §101.001(3)(D).

### 3. The charitable immunity statute is irrelevant.

Contrary to the Reduses' contention, UIW is not confused about the different types of immunity that may apply to this case. The Reduses contend immunity would only apply to the extent that UIW qualifies as a charity. First, charitable "immunity" is a misnomer. Although it provides immunity to volunteers, *see* TEX. CIV. PRAC. & REM. CODE §84.004, for organizations and employees it provides only a limitation on damages. *See* TEX. CIV. PRAC. & REM. CODE §84.005, .006.<sup>4</sup>

Second, Chapter 84's damages caps may not apply here. Although Chapter 84 is generally applicable to UIW—a charitable organization—it is *not* applicable to a governmental unit. *See* TEX. CIV. PRAC. & REM. CODE §84.007(f) ("This chapter does not apply to a governmental unit or employee of a governmental unit as defined in the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code)"). Thus, in this case, charitable "immunity" and governmental immunity are mutually exclusive. Either may apply, but both cannot.

Stated another way, if UIW is a "governmental unit" for law-enforcement, UIW is generally immune from suit in suits like this one—arising out of UIW's

---

<sup>4</sup> The Charitable Immunity and Liability Act's damages caps for organizations range from \$100,000 to \$500,000. *See* TEX. CIV. PRAC. & REM. CODE §84.006.

law-enforcement activities. Of course, the Legislature may waive that immunity, as it has done in the Tort Claims Act. *See* TEX. CIV. PRAC. & REM. CODE §101.001, *et. seq.* If a plaintiff pleaded and proved a waiver of immunity, the Tort Claims Act’s damages caps would apply. *See id.* §101.023.<sup>5</sup>

However, if UIW is not a “governmental unit” as to law enforcement, it would not be immune, but Chapter 84’s damages cap would apply. The Reduses’ argument that UIW is attempting to get the benefit of both statutes simultaneously is thus unfounded.

**II. As a governmental unit, UIW is entitled to dismissal because the real substance of the Reduses’ claims is an intentional tort.**

UIW explained that the Tort Claims Act bars the Reduses’ claims because they allege the intentional tort of battery. UIW BOM at 19-21. The Reduses have not directly responded to this argument. But one statement, in an interior footnote, could possibly pertain to the intentional-tort bar: “The allegations of which UIW complains at page 19 of its brief are not in the Amended Petition.” Redus BOM at 25 n.8. The Reduses filed their Amended Petition in the trial court after the petition-stage briefing was already complete in this Court. *Compare* Redus BOM, App. 1, *with* <http://www.search.txcourts.gov/Case.aspx?cn=15-0732&coa=cossup> (last visited Aug. 6, 2016). The Reduses have now purged the volatile allegation of

---

<sup>5</sup> The Tort Claims Act’s damages caps range from \$100,000 to \$500,000. *See* TEX. CIV. PRAC. & REM. CODE §101.023.

an execution-style shooting, couching their claim instead in terms of negligent hiring, training, and supervision, Redus BOM, App. 1 at 14-15, and respondeat-superior liability for the officer's "excessive force." *Id.* at 15-16.

But the new pleading doesn't save the Reduses' claims. No matter how they describe the claim, its real substance governs. UIW BOM at 19-20 (citing *Tex. Parks & Wildlife Dep't v. Sawyer Trust*, 354 S.W.3d 384, 389 (Tex. 2011)). Excessive force is an iteration of battery, and is barred by the Tort Claims Act. UIW BOM at 20 (citing *City of Watauga v. Gordon*, 434 S.W.3d 586, 594 (Tex. 2014)). Alleging that *negligence* in hiring, training, or supervision led to the shooting does not circumvent the intentional-tort exception. *Id.* at 20-21. Also, these claims allege no waiver under the Tort Claims Act, as they do not involve a premises defect, operation of a motor vehicle, or use of tangible personal property. *Id.* at 20 (citing *Tex. Dept. of Pub. Safety v. Petta*, 44 S.W.3d 575, 581 (Tex. 2001)).

UIW made all of these arguments in its opening brief. The Reduses have ignored all of them. Instead, they contend that the Court has no jurisdiction over the merits of the immunity determination. Redus BOM at 9 ("The matter before this Court is limited to review of the appellate court's dismissal of an interlocutory appeal for want of jurisdiction.").

That is incorrect. This Court has jurisdiction over the appeal under §§22.001(a) and 22.225(c). UIW BOM at viii. And the Court has authority to “reverse the lower court’s judgment in whole or in part and render the judgment that the lower court should have rendered.” TEX. R. APP. P. 60.2(c). The Court, therefore, has full authority to decide both the jurisdiction and the merits of this immunity appeal.

The Reduses’ live pleading does not assert a cause of action within the Tort Claims’ Act’s waiver of immunity. That petition establishes that further attempts to replead would be futile.<sup>6</sup>

If a plaintiff has been provided a reasonable opportunity to amend after a governmental entity files its plea to the jurisdiction, and the plaintiff’s amended pleading still does not allege facts that would constitute a waiver of immunity, then the trial court should dismiss the plaintiff’s action. Such a dismissal is with prejudice . . . .”

*Harris Cty. v. Sykes*, 136 S.W.3d 635, 639 (Tex. 2004). The Reduses’ claims against UIW should be dismissed.

**III. Because UIW is a governmental unit in this case, it is entitled to automatic dismissal of the suit against its employee, Cpl. Carter.**

In its opening brief, UIW explained that Cpl. Carter must be dismissed under TEX. CIV. PRAC. & REM. CODE §101.106(e). UIW BOM at 21-22. Because the Reduses made the irrevocable election to sue both UIW and its employee in the

---

<sup>6</sup> The Reduses attempted to amend their Petition on March 16, 2015, only *after* UIW had perfected its appeal on March 3, 2015. CR 419.

same action, §101.106(e) requires that the employee be dismissed. *Id.* Once more, the Reduses have elected not to confront this argument. Instead, they assert that: “A trial court’s denial of a motion to dismiss is not a proper subject for an interlocutory appeal.” Redus BOM at 10. They cite only Texas Civil Practice and Remedies Code §51.014, suggesting that no jurisdiction exists because “motion to dismiss” is not included in the subsection (a)’s list of appealable trial-court orders. *See id.* But denials of motions to dismiss under §101.106(e) can be appealed under §51.014(a)(5) or (a)(8). *Austin State Hosp. v. Graham*, 347 S.W.3d 298, 300 (Tex. 2011) (per curiam); *Harris Cty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004).

This interlocutory appeal was proper, and the Court has jurisdiction to dismiss all claims against UIW and its employee, Cpl. Carter.

#### **PRAYER**

Petitioner respectfully requests that the Court reverse the court of appeals’ judgment and dismiss all claims against UIW and Cpl. Carter. Alternatively, the Court should remand to the court of appeals to decide the remaining issues. UIW requests all other relief to which it may be entitled.

Respectfully submitted,

/s/ Laurence S. Kurth

Laurence S. Kurth

State Bar No. 11768450

Laurence.kurth@akerman.com

Matthew F. Wymer

State Bar No. 24005234

Matthew.wymer@akerman.com

AKERMAN, LLP

112 East Pecan Street, Suite 2750

San Antonio, Texas 78205

Telephone: (210) 582-0220

Facsimile: (210) 582-0231

Wallace B. Jefferson

State Bar No. 00000019

wjefferson@adjtlaw.com

Amy Warr

State Bar No. 00795708

awarr@adjtlaw.com

ALEXANDER DUBOSE JEFFERSON &  
TOWNSEND LLP

515 Congress Avenue, Suite 2350

Austin, Texas 78701-3562

Telephone: (512) 482-9300

Facsimile: (512) 482-9303

**ATTORNEYS FOR PETITIONER**

## CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2016, a true and correct copy of Petitioner's Reply Brief on the Merits, including any and all attachments, is served via electronic service through eFile.TXCourts.gov on Respondents through counsel of record, listed below:

Brent C. Perry  
State Bar No. 15799650  
brentperry@brentperryllaw.com  
Robert R. Burford  
State Bar No. 03371700  
rburford@burfordperry.com  
BURFORD PERRY, LLP  
700 Louisiana, Suite 4545  
Houston, Texas 77002  
Telephone: (713) 401-9790  
Facsimile: (713) 993-7739

Jorge A. Herrera  
State Bar No. 24044242  
jherrera@herreralaw.com  
Frank Herrera, Jr.  
State Bar No. 09531000  
fherrera@herreralaw.com  
THE HERRERA LAW FIRM  
111 Soledad, Suite 1900  
San Antonio, Texas 78205  
Telephone: (210) 224-1054  
Facsimile: (210) 228-0887

Mason W. Herring  
State Bar No. 24071746  
mherring@herringlawfirm.com  
HERRING LAW FIRM  
2727 Allen Parkway, Suite 1150  
Houston, Texas 77019  
Telephone: (832) 500-3170  
Facsimile: (832) 500-3172

/s/ Laurence S. Kurth  
Laurence S. Kurth

## CERTIFICATE OF COMPLIANCE

Based on a word count run in Microsoft Word 2013, this brief contains 3,469 words, excluding the portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Laurence S. Kurth  
Laurence S. Kurth