

May 21, 2026

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
COURT OF APPEALS CASE NO. 15-26-00132
TRIAL COURT CAUSE NO. DC-2025-CV-1817

KEVIN N. BASS,) **IN THE DISTRICT COURT**
)
PLAINTIFF,)
)
vs.) **LUBBOCK COUNTY, TEXAS**
)
DARRIN D'AGOSTINO, D.O.,)
M.P.H., M.B.A., IN HIS)
OFFICIAL CAPACITY AS)
PROVOST AND EXECUTIVE VICE)
PRESIDENT OF ACADEMICS OF)
TEXAS TECH UNIVERSITY)
HEALTH SCIENCES CENTER,)
AND AMANDA McSWEEN, IN HER)
OFFICIAL CAPACITY AS)
MANAGING DIRECTOR OF)
ENROLLMENT SERVICES AND)
UNIVERSITY REGISTRAR OF)
TEXAS TECH UNIVERSITY)
HEALTH SCIENCES CENTER,)
)
DEFENDANTS.) **237TH JUDICIAL DISTRICT**

HEARING ON MOTION FOR NEW TRIAL

On the 21st day of May, 2026, the following
proceedings came on to be held in the above-titled and
numbered cause before the Honorable Les Hatch, Judge
Presiding, held in Lubbock, Lubbock County, Texas.

Proceedings reported by computerized stenotype
machine.

May 21, 2026

APPEARANCES**PRO SE PLAINTIFF (VIA ZOOM) :**Mr. Kevin N. Bass
[REDACTED]
[REDACTED]

Email: kbassphiladelphia@gmail.com

ATTORNEY FOR DEFENDANTS (VIA ZOOM) :Mr. Scott D. Smith
SBOT NO. 24011874
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
GENERAL LITIGATION DIVISION
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Email: scott.smith@oag.texas.gov

May 21, 2026

VOLUME 1

HEARING ON MOTION FOR NEW TRIAL

May 21, 2026

	PAGE	VOL.
Proceedings	4	1
Plaintiff's Oral Argument	6	1
Defendants' Oral Argument	9	1
Court's Closing Comments	12	1
Adjournment	13	1
Reporter's Certificate	14	1

May 21, 2026

P R O C E E D I N G S

THE COURT: The Court calls Cause No. DC-2025-CV-1817. This is Dr. Bass vs. Rice-Spearman, et al. And we are here on Plaintiff's 306a motion to extend the applicable periods of time from the signing of the judgment. We're also here on Plaintiff's Motion for New Trial pursuant to Rule 329b.

The Court -- before we have an evidentiary hearing on the 306a motion as to when the Plaintiff got notice of the -- the order granting the plea to the jurisdiction, the Court finds that 306a does not apply because the Plaintiff, pursuant to his pleadings, acknowledges notice of the order granting the plea to the jurisdiction within either seven or eight days, for sure by eight days, and that 306a(4) only applies if you did not receive notice within 20 days.

As a result of that finding by the Court, the Court finds that whether or not the Plaintiff received notice and why he didn't receive it of the order granting the plea to the jurisdiction is irrelevant because the Motion for New Trial was filed, I think, on day eight of the signing of the order granting the plea to the jurisdiction.

And the -- again, the Plaintiff acknowledges knowledge, actual knowledge of the order

May 21, 2026

1 granting the plea to the jurisdiction within eight days,
2 which is within 20 days; and, therefore the -- the 306a
3 motion to extend the appellate deadline is not
4 applicable in this case.

5 So, the court denies the Plaintiff --
6 without hearing evidence, the Court denies the
7 Plaintiff's 306a motion to extend the periods of time.
8 And by -- as a result of such denial, the Plaintiff is
9 required to comply with the deadlines as if he had
10 knowledge of the order when it was signed.

11 And I know, Dr. Bass, that you're ready
12 to put on all kinds of evidence about when you received
13 the notice, and -- and I know that the Defense is ready
14 to argue why you should have corrected the reason why
15 you didn't receive the notice earlier.

16 But for purposes of the 306a motion, the
17 Court finds none of that to be relevant, and that the
18 Plaintiff has timely perfected the ability to complain
19 about the order granting the plea to the jurisdiction.

20 And, so, the Court now moves to
21 Plaintiff's Rule 329 Motion for New Trial, would call on
22 Dr. Bass to argue that.

23 *MR. BASS:* Could I have a short break to
24 orient myself?

25 *THE COURT:* Sure.

May 21, 2026

1 *(Recess taken)*

2 *THE COURT:* All right. I'm back, if
3 y'all are ready.

4 *MR. BASS:* Your Honor, should I begin
5 or...

6 *THE COURT:* Yes.

7 **PLAINTIFF'S ORAL ARGUMENT**

8 *MR. BASS:* Sorry. First of all,
9 Your Honor, for the record, I respectfully except to the
10 denial of the Rule 306a motion to have an evidentiary
11 hearing.

12 And, Your Honor, this is my Motion for
13 New Trial under Rule 329b to set aside the March 26th
14 order dismissing my case. The motion is timely under
15 Rule 329b(a). The order was signed March 26th and
16 then filed on April 3rd, within the 30-day window, --

17 It rests on two grounds, both procedural.
18 First, Peralta vs. Heights Medical Center, a judgment
19 entered without notice and without opportunity to be
20 heard is void.

21 Between March 13th and 19th, I was shut
22 out of four procedural moments in the submission
23 proceeding -- proceeding on the plea, the notice of
24 submission, the pre-draft proposed order, reply making
25 three new arguments, and the March 19th submission

May 21, 2026

1 date that closed the paper record. I had notice of none
2 of them.

3 Second, Rule 21a, service to me was
4 defective. The certificates of error in this case
5 record serviced me as error or as sent to an address
6 that does not exist in one particular case.

7 Your Honor, these are contested factual
8 questions. I ask the Court to take evidence on them
9 today, to admit my exhibits and hear my testimony,
10 because Peralta requires findings of facts, and findings
11 cannot be made on papers alone. Today is where the
12 record, I hope, gets built.

13 *THE COURT:* Okay. So, I do have a
14 question. You received the plea to the jurisdiction
15 that was filed by the Defendants, because you filed a
16 response to that plea.

17 What you didn't get, because of the email
18 address issue, you didn't get the notice of the hearing
19 on the plea, which was by submission, not oral argument.
20 You didn't get the proposed order granting the plea.
21 You didn't get the Defendants' reply to your response to
22 the plea.

23 And what was the fourth thing that you
24 didn't get?

25 *MR. BASS:* The -- the March 19th

May 21, 2026

1 submission date that closed the paper record.

2 *THE COURT:* That's -- so, there was --
3 there were two orders setting hearing that you didn't
4 get. One of them I looked up last night, and it was
5 actually set for hearing before the order setting
6 hearing was signed. So, that couldn't have happened.

7 And, so, somebody realized that --
8 somebody on behalf of the Defendants realized that and
9 promptly submitted me an amended order setting hearing,
10 setting it for hearing again, by submission, at a date
11 after the order setting hearing.

12 And, so, those were two documents you
13 didn't get, and then the proposed order granting the
14 plea to the jurisdiction and then the reply by the
15 Defendants to your response.

16 What -- what would you have done
17 differently had you had notice of those four documents?

18 *MR. BASS:* One moment, Your Honor. So,
19 for the -- so, Your Honor, for the 3-13th, the notice of
20 submission, plus submitted notice of submission, I would
21 have objected, requested an oral argument. For 3-13,
22 the pre-drafted proposed order, I would have objected to
23 form and substance. 3-18, for the reply through the
24 arguments, ripeness futility, and academic deference, I
25 would have moved for a leave to file surreply.

1 And, then, for the -- for the 3-19 one, I
2 would have filed a surreply answering the -- the 3-18
3 before the submission closed.

4 And to add onto that, however, I would
5 also say, or at least it is my understanding that
6 Peralta forecloses the same result argument entirely,
7 independent of what I might have done.

8 As Peralta says, for 85 U.S. 80 at 86 to
9 87, it is no answer saying that in his particular case
10 due process of law would have led to the same result
11 because he had no adequate defense on the merits.

12 And, so, independent of what I might have
13 done, the lack of notice and opportunity was itself the
14 Peralta violation. No showing of a different outcome is
15 required.

16 | *THE COURT:* All right. Thank you.

17 Mr. Smith?

18 | **DEFENDANT'S ORAL ARGUMENT**

19 MR. SMITH: Yes, Your Honor.

20 So, the first point I want to make is
21 that Mr. Bass was not deprived of any due process
22 rights. He had his notice and opportunity to be heard,
23 which is evidenced by his comprehensive 78-page response
24 addressing Defendants' plea to the jurisdiction.

25 Mr. Bass's assertion that he didn't

May 21, 2026

1 receive Defendants' reply on the notice of submission,
2 that does not establish a Constitutional violation.
3 There is no right to file a surreply absent leave of
4 court. A movant can request submission without an oral
5 hearing, as Defendants did.

6 So, Plaintiff's disagreement with the
7 outcome doesn't make a -- you know, the procedural
8 events doesn't transform them into some kind of
9 deprivation of his -- of his rights.

10 Further, a Motion for New Trial requires
11 showing that the alleged error, in this case the
12 granting of Defendants' plea to the jurisdiction,
13 probably caused the rendition of an improper judgment.

14 And with respect to his -- Plaintiff's
15 assertion that Defendants raised three new arguments,
16 I -- I disagree with that. Defendants submitted their
17 plea to the jurisdiction. Plaintiff filed his response
18 addressing and rebutting a lot of Defendants' arguments.

19 With respect to the three issues that
20 Plaintiff says were newly raised, the first is academic
21 deference. This was already squarely in Defendants'
22 original plea, the plea regarding academic discipline
23 and transcript determinations are discretionary
24 institutional judgments and courts should defer to
25 academic decision-making, cited some cases. And

May 21, 2026

1 Plaintiff directly responded to those authorities and
2 arguments in his response.

3 And, so, all the reply did was reiterate
4 that academic record administration is discretionary.
5 Courts defer to universities. And the requested relief
6 would improperly supervise academic record
7 administration.

8 His second argument or issue that he says
9 is newly raised in the reply is -- is this FERPA analogy
10 ripeness. But the original plea that Defendants filed
11 argue that the case was not ripe, that institutional
12 review remained ongoing, no final refusal had occurred,
13 and there were administrative avenues that remained
14 open.

15 Plaintiff responded extensively in his
16 response, arguing that the 45 deadline -- day deadline
17 expired, arguing the process had lapsed, arguing that
18 the inspection structure was impossible, and argued the
19 dispute was not concrete and ripe.

20 So, all the reply did was argue that
21 neither FERPA nor OP 77.13 prescribed exact and special
22 logistics, and Plaintiff received multiple opportunities
23 that the dispute was over implementation details rather
24 than denial of access.

25 So -- and, then, the last point that he raises

May 21, 2026

1 is the futility argument under Miranda that Defendants'
2 original plea was fundamentally jurisdictional, and so a
3 dismissal for lack of subject matter jurisdiction. And,
4 so, the -- by simply arguing that any amendment is
5 futile. That -- that all the Defendants were arguing is
6 that Plaintiff had already amended, repeatedly, the
7 defect was legal rather than factual. So, further
8 amendment could not convert discretionary conduct into
9 administerial duties.

10 That's it. It's not a new jurisdictional
11 ground. There's no new arguments that are raised.
12 Simply, what Plaintiff is seeking is a second
13 opportunity to litigate issues that have already been
14 fully briefed. So, Defendants would respectfully submit
15 that his Motion for New Trial be denied. Thank you.

16 **COURT'S CLOSING COMMENTS**

17 *THE COURT:* Okay. All right. So, I
18 think the Court has discretion as to whether or not to
19 entertain evidence at a Motion for New Trial hearing.
20 The Court finds that the Plaintiff has sufficiently
21 briefed everything that's necessary to support his
22 argument here today on the Motion for New Trial, that
23 there's no factual evidence that would bolster or be
24 germane to the Motion for New Trial. It's a procedural
25 issue.

May 21, 2026

1 And the Court finds that evidence is --
2 is not necessary and will not entertain evidence.

3 So, the Court will consider the Motion
4 for New Trial based on the pleadings and the arguments
5 by the Plaintiff here today and the response by the
6 Defense. And the Court will let the parties know of its
7 ruling on the Motion for New Trial probably, oh, say,
8 Wednesday or so of next week.

9 All right. Thank you very much.

10 *MR. BASS:* Thank you, Your Honor.

11 *THE COURT:* All right. Bye-bye.

12 *(Proceedings adjourned)*

13

14

15

16

17

18

19

20

21

22

23

24

25

May 21, 2026

1 STATE OF TEXAS)

2 COUNTY OF LUBBOCK)

3 I, Joy Annette Goodman, Official Court Reporter in
4 and for the 237th District Court, City of Lubbock,
5 County of Lubbock, State of Texas, do hereby certify
6 that the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted, tendered in an offer of
16 proof or offered into evidence.

17 I further certify that the total cost for the
18 preparation of this Reporter's Record is \$100.00 and was
19 paid by Mr. Kevin Bass.
20
21
22
23
24
25

May 21, 2026

1 WITNESS MY OFFICIAL HAND this the 24th day of June,
2 2026.

3
4 /s/ Joy Annette Goodman

5 Joy Annette Goodman, Texas CSR 4741
6 Expiration Date: 10/31/2027
7 Official Court Reporter
8 237th District Court
9 904 Broadway (79401)
10 PO Box 10536
11 Lubbock, Texas 79408
12 Tel: 806.775.1028
13 Fax: 806.775.7996
14
15
16
17
18
19
20
21
22
23
24
25