

No. 15-26-00132-CV

In the Court of Appeals
for the Fifteenth Judicial District, Austin, Texas

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KEVIN N. BASS,
Plaintiff-Appellant,

v.

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-Appellees.

On Appeal from the 237th Judicial District Court
Lubbock County, Texas
Trial Court Case Number: DC-2025-CV-1817

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ORAL ARGUMENT NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 38.1(a) of the Texas Rules of Appellate Procedure, Appellees 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, provide this Court with the following list of parties and the names and addresses of all trial and appellate counsel:

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Defendants-Appellees:

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Other parties in the trial court:

Lori Rice-Spearman, Lauren Cobbs, Tamara Mancini, Simon Williams, Mia Myers, and John C. DeToledo were named as defendants but were nonsuited on January 22, 2026. They are not parties to this appeal.

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STATEMENT OF THE CASE

Nature of the Case:

Appellant Kevin N. Bass (“Bass”), proceeding pro se, brought this ultra vires action against Appellees 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 (“TTUHSC”), and Amanda McSween, in her official capacity as Managing Director of Enrollment Services and University Registrar of TTUHSC. In his live Fourth Amended Verified Original Petition, Bass alleged that Appellees failed to comply with duties he contends arise under Texas Government Code section 559.004 and TTUHSC HSC OP 77.13 concerning access to and correction of education records. CR 103–19.

Trial Court:

Cause No. DC-2025-CV-1817, in the 237th Judicial District Court of Lubbock County, Texas, the Honorable Les Hatch presiding.

Course of Proceedings:

Appellees filed a Plea to the Jurisdiction or, in the Alternative, Plea in Abatement, asserting that sovereign immunity barred Bass's claims because the challenged conduct did not fall within the ultra vires exception to immunity. CR 43–102. On March 3, 2026, Bass filed his Fourth Amended Verified Original Petition and a response to Appellees' Plea to the Jurisdiction. CR 103–97. Appellees thereafter filed a reply addressing the allegations in Bass's live pleading. CR 204–13. On March 26, 2026, the trial court granted Appellees' Plea to the Jurisdiction and dismissed Bass's claims without prejudice for lack of subject-matter jurisdiction. CR 214–15.

Bass subsequently filed a sworn motion under Texas Rule of Civil Procedure 306a(5) and a motion for new trial. CR 218–70. Following a hearing on May 21, 2026, the trial court denied the motion for new trial by written order signed May 27, 2026. CR 435–36. Bass timely perfected this appeal.

Trial Court's Disposition:

The trial court granted Appellees' Plea to the Jurisdiction, found that it lacked subject-matter jurisdiction over Bass's claims, and dismissed those claims without prejudice. CR 214–15. The trial court subsequently denied Bass's motion for new trial. CR 435–36.

STATEMENT REGARDING ORAL ARGUMENT

Appellees do not believe oral argument is necessary. The dispositive issues can be resolved by application of settled principles governing sovereign immunity, ultra vires claims, preservation, and harmful error to the pleadings and procedural record before the Court. Bass received Appellees' Plea to the Jurisdiction and filed a comprehensive response addressing the jurisdictional issues presented to the trial court. The record therefore permits resolution of Bass's appellate arguments without oral argument. If the Court nevertheless determines that oral argument would assist its consideration of the appeal, Appellees request the opportunity to participate and answer the Court's questions.

STATEMENT OF THE ISSUES PRESENTED

1. Did the trial court abuse its discretion in denying Bass's motion for new trial where Bass received Appellees' Plea to the Jurisdiction, filed a comprehensive response addressing the jurisdictional issues, and failed to demonstrate that the alleged service and notice deficiencies probably caused the rendition of an improper judgment or prevented him from properly presenting his case on appeal?

2. Was Bass afforded due process where he received notice of the dispositive Plea to the Jurisdiction and a meaningful opportunity to respond before the trial court ruled?

3. Did the trial court properly grant Appellees' Plea to the Jurisdiction because Bass failed to plead conduct falling within the ultra vires exception to sovereign immunity?

4. Is Bass entitled to another opportunity to amend where he repeatedly amended his pleadings, tendered an additional proposed amendment after dismissal, and nevertheless failed to plead a viable ultra vires claim?

STATEMENT OF FACTS

A. Bass's claims concerning TTUHSC's education-record procedures

Bass's claims arise from his efforts to inspect and seek amendment of education records maintained by Texas Tech University Health Sciences Center ("TTUHSC"). In his live Fourth Amended Verified Original Petition ("Fourth Amended Petition"), Bass asserted an ultra vires claim against Darrin D'Agostino and Amanda McSween in their official capacities. CR 103–19. He alleged that TTUHSC's handling of his requests failed to comply with Texas Government Code section 559.004 and TTUHSC HSC OP 77.13, TTUHSC's policy governing student education records. CR 103–19.

Section 559.004 requires a state governmental body to establish a "reasonable procedure" through which an individual may seek correction of information about that individual and provides that the procedure "may not unduly burden" an individual using it. Tex. Gov't Code § 559.004. TTUHSC has established HSC OP 77.13 as its procedure governing student education records. CR 149–57.

Bass alleged that TTUHSC provided him with four escorted review sessions to inspect approximately 1,600 education-record items spanning approximately 1,500 pages, as well as a 14-hour video, but he challenged the conditions under which that access was provided and alleged that certain records remained unavailable. CR 107–13. He also alleged that he submitted a request under Step 2 of

HSC OP 77.13 seeking amendment of his records and had not received a written disposition of that request. CR 109–13. The Step 2 request was directed to Dr. Erin Justyna, with D’Agostino and McSween copied on the request. CR 109.

Bass’s requested relief went beyond a written disposition of that request. Among other things, the Fourth Amended Petition asked the trial court to impose requirements concerning additional inspection sessions, deadlines, scheduling, organization and pagination of records, an inventory of records, preservation requirements, tolling, and a compliance notice. CR 115–16.

B. Appellees’ Plea to the Jurisdiction and Bass’s response

On February 9, 2026, Appellees filed a Plea to the Jurisdiction or, in the Alternative, Plea in Abatement. CR 43–102. Appellees asserted that Bass’s claims were barred by sovereign immunity because his allegations challenged discretionary administrative conduct rather than acts falling within the narrow ultra vires exception to immunity. CR 43–102.

On March 3, 2026, while the Plea remained pending, Bass filed his Fourth Amended Petition. CR 103–19. That same day, he filed a 78-page response to Appellees’ Plea. CR 120–97. Although the Plea had preceded the Fourth Amended Petition, Bass’s response presented his theory under section 559.004 and HSC OP 77.13 and addressed, among other subjects, whether the challenged conduct involved discretion, whether an internal policy could support an ultra vires claim,

academic deference, the extent of Bass's access to the records, ripeness, the identity of the proper officials, and Bass's request for an opportunity to amend. CR 120–97. Bass thus addressed the principal jurisdictional issues ultimately presented to the trial court.

Appellees filed their reply on March 18, 2026. CR 204–13. The reply applied Appellees' jurisdictional arguments to Bass's live Fourth Amended Petition and addressed the statutory theory Bass had advanced in his response. CR 204–13. It argued, among other things, that section 559.004 does not impose the purely ministerial duties Bass sought to enforce; that HSC OP 77.13 does not transform discretionary administrative decisions into ministerial acts; that Bass's claims challenged discretionary implementation of TTUHSC's education-record procedures; and that further amendment would be futile. CR 204–10.

C. The trial court grants Appellees' Plea to the Jurisdiction

The Plea was set for submission without oral argument. Bass did not receive the notices of submission, Appellees' reply, or Appellees' proposed order because the electronic-service system contained an incorrect email address for him.¹ RR 7–8; CR 200, 203, 213, 216.

¹ The incorrect email address was associated with Bass as an electronic service contact. Bass was alerted to the problem on March 3, when system-generated notices showed that service to the truncated address was undeliverable, but he did not correct the service contact or otherwise raise the issue before the trial court ruled. CR 275–76. Bass later asserted that his eFileTexas user profile contained his correct email

On March 26, 2026, after considering Appellees' Plea, Bass's response, Appellees' reply, the pleadings on file, and the applicable law, the trial court granted the Plea to the Jurisdiction. CR 214–15. The court determined that it lacked subject-matter jurisdiction over Bass's claims and dismissed them without prejudice. CR 214–15. Although the proposed order also contained language granting Appellees' alternative plea in abatement, the trial court struck that portion of the order. CR 214–15.

D. Bass's post-judgment motion and the May 21 hearing

On April 3, 2026, Bass filed a sworn motion under Texas Rule of Civil Procedure 306a(5) and a motion for new trial. CR 218–70. Bass asserted, among other things, that he had not received notice of the submission date, Appellees' reply, or the proposed order and argued that the lack of notice deprived him of an opportunity to respond before the trial court ruled. CR 218–70.

Bass also submitted proposed answers to the arguments contained in Appellees' reply and tendered a proposed Fifth Amended Petition. CR 299–304, 366–89. The proposed Fifth Amended Petition continued to request relief concerning inspection sessions and deadlines, organization and pagination of records, an

address and that the discrepancy instead appeared in the court's case-management system. CR 284–85.

inventory, tolling, preservation and logging requirements, and a compliance notice. CR 304, 366–89.

The trial court held a hearing on Bass’s post-judgment motion on May 21, 2026. RR 1–15. At the outset, the court denied Bass’s Rule 306a(5) request, concluding that the rule did not apply because Bass admittedly received actual notice of the March 26 order within eight days and had timely preserved his ability to challenge it. RR 4–5. At the hearing, the court acknowledged that Bass had not received the submission notice, Appellees’ reply, or the proposed order because of the email-address issue. RR 7–8. The court considered Bass’s contention that the lack of notice prevented him from responding before the Plea was decided. RR 4–13. Bass also requested that the court receive testimony and exhibits concerning the service issue and the opportunity he contended he had lost. RR 7, 12–13. The court declined to receive additional evidence. RR 12–13. No witness was sworn, no exhibit was marked and rejected, and Bass made no formal offer of proof identifying the proposed testimony.

On May 27, 2026, the trial court signed a written order denying Bass’s motion for new trial. CR 435–36. The court concluded, among other things, that Bass had been heard through his March 3 response to the Plea, that the court would not have considered a sur-reply before ruling on the Plea, and that Bass’s inability to object to the proposed order did not warrant a new trial. CR 435–36.

Bass thereafter perfected this appeal. CR 438–41.

SUMMARY OF THE ARGUMENT

The trial court’s judgment should be affirmed. Bass received Appellees’ Plea to the Jurisdiction and filed a comprehensive, 78-page response addressing the jurisdictional issues presented by the Plea. Although Bass did not receive notice of the submission date, Appellees’ reply, or the proposed order because of an incorrect email address in the electronic-service system, those service deficiencies did not deprive him of notice of the dispositive motion or a meaningful opportunity to oppose dismissal. Nor has Bass demonstrated that the alleged errors probably caused the rendition of an improper judgment or prevented him from properly presenting his case on appeal.

Bass’s own account of the proceedings confirms that Appellees’ reply did not inject a new jurisdictional theory into the case. Before the trial court ruled, Bass had already addressed the principal issues on which Appellees relied, including whether section 559.004 imposed ministerial duties, the significance of HSC OP 77.13, administrative discretion, academic deference, the extent of Bass’s access to his records, ripeness, the identity of the proper officials, and amendment. Bass had no absolute right to file a sur-reply or to present oral argument before the Plea was decided. And although he did not receive Appellees’ proposed order before it was submitted, he identifies no substantive provision of that proposed order that probably

affected the jurisdictional disposition. The trial court independently modified the proposed order by striking the provision granting Appellees' alternative plea in abatement before signing it. CR 214–15.

The subsequent proceedings further demonstrate why reversal is unwarranted. Bass presented his complaints concerning notice and service in a motion for new trial, and the trial court conducted a hearing at which those complaints were addressed. The court acknowledged the service problem but concluded that Bass had already been heard through his extensive response to the Plea and that the additional opportunities he claimed to have lost would not have altered the proceedings. CR 435–36. To the extent Bass now complains that the trial court prevented him from developing additional evidence at that hearing, the record contains no sworn testimony, excluded exhibit, or formal offer of proof identifying the evidence he contends the court should have considered. The procedural irregularities Bass identifies therefore do not establish reversible error.

The judgment should also be affirmed for the more fundamental reason that Bass failed to plead a claim within the ultra vires exception to sovereign immunity. Section 559.004 requires a governmental body to establish a “reasonable procedure” for correcting information and provides that the procedure may not “unduly burden” an individual. Tex. Gov’t Code § 559.004. TTUHSC established such a procedure through HSC OP 77.13. Bass’s disagreement concerns how TTUHSC administered

that procedure—including the format and conditions of inspection, copying and recording restrictions, scheduling, organization of records, and the handling of his amendment request. Those matters necessarily involve administrative judgment; section 559.004 does not prescribe the purely ministerial acts Bass seeks to compel. Appellees therefore did not act without legal authority or fail to perform a ministerial act merely because Bass disagrees with the manner in which TTUHSC administered its records procedures.

HSC OP 77.13 does not change that conclusion. The existence of an internal university policy does not itself establish that every procedural direction contained in the policy constitutes a ministerial duty enforceable through an ultra vires action. Indeed, Bass now acknowledges that an internal policy alone cannot enlarge the trial court's jurisdiction. His requested relief further demonstrates the discretionary nature of his claims: the Fourth Amended Petition asked the trial court to supervise such matters as inspection sessions, deadlines, scheduling, organization and pagination of records, an inventory, preservation requirements, tolling, and a compliance notice. Even Bass's proposed Fifth Amended Petition continued to seek much of that relief. Sovereign immunity therefore deprived the trial court of subject-matter jurisdiction.

Finally, Bass is not entitled to yet another opportunity to amend. He amended his petition four times before dismissal and submitted a proposed Fifth Amended

Petition in connection with his post-judgment motion. Yet the proposed Fifth Amended Petition still did not cure the jurisdictional defects. Bass now asks this Court to remand so that he may pursue an even narrower theory requiring a single official to issue a written disposition of his amendment request. But Bass acknowledges that this “exact one-step formulation” was not included even in the proposed Fifth Amended Petition he tendered to the trial court. A plaintiff is entitled to a reasonable opportunity to cure remediable jurisdictional defects; he is not entitled to serial opportunities to formulate new theories after repeated amendments fail to invoke the trial court’s jurisdiction. Bass had ample opportunity to plead a viable ultra vires claim and failed to do so; further amendment would therefore be futile.

The trial court correctly granted Appellees’ Plea to the Jurisdiction and acted within its discretion in denying Bass’s motion for new trial. The Court should affirm the judgment.

ARGUMENT AND AUTHORITIES

I. Standard of Review.

Whether a trial court has subject-matter jurisdiction is a question of law reviewed de novo. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). A plea to the jurisdiction challenges the trial court’s authority to decide the subject matter of the plaintiff’s claims. *Id.*; *Bland Indep. Sch. Dist. v. Blue*, 34

S.W.3d 547, 554 (Tex. 2000). The plaintiff bears the burden to plead facts affirmatively demonstrating the trial court's jurisdiction. *Tex. Dep't of Transp. v. Ramirez*, 74 S.W.3d 864, 867 (Tex. 2002) (per curiam).

When, as here, a plea challenges the pleadings, the court determines whether the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction. *Miranda*, 133 S.W.3d at 226. The court construes the pleadings liberally in the plaintiff's favor, looks to the pleader's intent, and accepts the pleaded jurisdictional facts as true. *Id.* If the pleadings affirmatively negate the existence of jurisdiction, however, the plea may be granted without allowing an opportunity to amend. *Id.* at 227.

Whether sovereign immunity has been waived or an asserted claim falls within the ultra vires exception to immunity presents a question of subject-matter jurisdiction and is likewise reviewed de novo. *See Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021); *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017). To invoke the ultra vires exception, a plaintiff must allege that a government officer acted without legal authority or failed to perform a purely ministerial act; an official does not act ultra vires merely by exercising discretion within the bounds of authority conferred by law. *Hall*, 508 S.W.3d at 238, 241–43; *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

A trial court’s denial of a motion for new trial is reviewed for abuse of discretion. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010). A trial court abuses its discretion only when it acts arbitrarily or unreasonably or without reference to guiding rules or principles. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). Under this standard, an appellate court does not substitute its judgment for that of the trial court merely because it might have reached a different conclusion. *Id.*

Finally, even when a trial court commits an error of law, reversal is warranted only if the error “probably caused the rendition of an improper judgment” or “probably prevented the appellant from properly presenting the case to the court of appeals.” Tex. R. App. P. 44.1(a). The harmful-error inquiry requires consideration of the entire record, and the complained-of error must have probably, rather than merely possibly, caused the requisite harm. *In re Commitment of Jones*, 602 S.W.3d 908, 913–14 (Tex. 2020).

II. The trial court did not abuse its discretion in denying Bass’s motion for new trial.

Bass’s first two issues focus principally on his failure to receive Appellees’ reply, the proposed order, and the notices setting the Plea to the Jurisdiction for submission. The record establishes that Bass did not receive those documents because they were electronically transmitted to an incorrect email address. RR 7–8; CR 200, 203, 213, 216. Appellees do not dispute that fact. But nonreceipt alone does

not establish that the trial court abused its discretion by denying a new trial. Bass must also demonstrate reversible error under the circumstances presented by this record.

He cannot do so. Bass received the dispositive Plea to the Jurisdiction, filed a 78-page response addressing the jurisdictional issues, and was therefore heard before the trial court dismissed his claims. CR 43–197. The unreceived reply did not introduce the jurisdictional subjects Bass identifies on appeal; his own response had already addressed them. Nor did Bass have an absolute right to oral argument or a sur-reply. And his inability to review Appellees’ proposed order before it was signed caused no demonstrated harm to the jurisdictional ruling. The trial court acted within its discretion in concluding that these circumstances did not warrant setting aside the judgment and beginning the jurisdictional proceedings anew.

A. Bass received the dispositive Plea and had a meaningful opportunity to respond to the jurisdictional grounds for dismissal.

The critical procedural fact is one Bass does not dispute: he received Appellees’ Plea to the Jurisdiction and responded to it at length. CR 43–197. This is therefore not a case in which a litigant first learned after judgment that a dispositive motion had been filed against him. Bass knew Appellees were seeking dismissal for lack of subject-matter jurisdiction and filed a 78-page response opposing that relief.

That response was not merely a generic opposition to an earlier pleading. On March 3, 2026, Bass simultaneously filed his Fourth Amended Petition and his

response to the Plea. CR 103–197. His response advanced the section 559.004 and HSC OP 77.13 theory on which his live pleading depended and addressed the principal jurisdictional obstacles to that theory. Among other things, Bass addressed whether the conduct at issue involved administrative discretion, whether HSC OP 77.13 could supply an enforceable duty, academic deference, the access TTUHSC had already provided, ripeness, the proper officials, and whether he should receive an opportunity to amend. CR 121–44. Bass himself acknowledges on appeal that his response anticipated these subjects.

Appellees’ March 18 reply applied those same jurisdictional principles to Bass’s live pleading. CR 204–13. It argued that the terms “reasonable” and “unduly burden” in section 559.004 preserve administrative discretion; that HSC OP 77.13 is an internal policy rather than an independent source of jurisdiction; that administration of academic records involves discretionary judgment; that the access already afforded Bass undermined his allegations concerning access and burden; and that further amendment would be futile. CR 205–10. Bass expressly acknowledges that the reply “did not originate those subjects.”

The trial court thus had before it Bass’s live petition, Appellees’ jurisdictional challenge, and Bass’s extensive response to the jurisdictional issues when it ruled. CR 103–215. The fact that Appellees subsequently sharpened their application of

those issues in reply does not transform Bass into a litigant who was denied notice that dismissal had been requested or an opportunity to oppose it.

Nor does the dismissal order's recital that the court considered Appellees' reply supply the harm Bass must show. The court stated that it considered the reply along with the Plea, Bass's response, the pleadings on file, and the applicable law. CR 214. That recital reflects only that the court reviewed the entire record before ruling; it does not establish that the reply supplied any jurisdictional ground the court would not otherwise have reached—particularly where, as Bass concedes, the reply merely applied principles his own response had already addressed. In the summary-judgment context, the Texas Supreme Court has held that a trial court's error in deciding a dispositive motion without proper notice was harmless where the court subsequently "fully considered" the nonmovant's response and the complaining party failed to show that the error prevented presentation of a full response. *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359–60 (Tex. 1998) (per curiam). Bass filed a 78-page response, and he identifies nothing the omitted reply prevented him from presenting.

B. Bass had no absolute right to oral argument or to file a sur-reply.

Bass also cannot establish reversible error based on what he says he would have done had he received the submission notices and reply. At the new-trial hearing, the trial court specifically asked Bass what he would have done differently. RR 8.

Bass answered that he would have objected to submission without oral argument, requested oral argument, objected to the proposed order, and sought leave to file a sur-reply responding to Appellees' reply. RR 8–9.

Bass does not contend on appeal that he possessed an absolute right either to oral argument on the Plea or to file a sur-reply; indeed, his brief expressly disclaims both propositions. The trial court's May 27 order likewise explained that the Plea was appropriately considered by submission and that no sur-reply was necessary or would have been considered. CR 435–36.

That matters to the harm inquiry. Bass's argument rests on opportunities he says he would have *requested* had he received the documents—not on a procedural entitlement that the trial court was required to grant. And the trial court subsequently considered precisely that contention while it retained plenary power and determined that the lost opportunity to request a sur-reply did not warrant a new trial. CR 435–36.

Nor does Bass identify a materially new factual or legal matter in the reply that he had no opportunity to address. His post-judgment papers identify the responses he says he would have made: that section 559.004 itself supplies an external statutory limitation on Appellees' authority; that his claim concerned implementation of a correction procedure rather than adjudication of academic merits; and that his live petition alleged unperformed procedural steps

notwithstanding the access TTUHSC had provided. CR 299–304. Those positions elaborate upon the jurisdictional theory Bass had already presented in his Fourth Amended Petition and extensive response. They do not demonstrate that the unreceived reply deprived him of the opportunity to address an entirely new basis for dismissal.

C. Nonreceipt of the proposed order does not establish reversible error.

Bass’s reliance on the proposed order fares no better. Rule 305 provides that a party submitting a proposed judgment for signature must serve it on all other parties who have appeared and remain in the case. Tex. R. Civ. P. 305. The proposed order was not successfully delivered to Bass. CR 216.

But the existence of a service violation does not dispense with the requirement of reversible harm. *See* Tex. R. App. P. 44.1(a). Bass told the trial court that, had he received the proposed order, he would have objected to its “form and substance.” RR 8. Yet he has not identified a particular provision of the proposed order to which he would have objected that probably caused the trial court to reach an improper jurisdictional disposition. Bass effectively acknowledges as much in his appellate brief, characterizing the proposed-judgment issue as cumulative and conceding that the record identifies no particular wording objection that, standing alone, probably changed the jurisdictional result.

The signed order further demonstrates that Appellees’ proposed order did not dictate the trial court’s disposition. Before signing it, the trial court struck the entire provision that would have granted Appellees’ alternative plea in abatement, leaving only the ruling granting the Plea to the Jurisdiction. CR 214–15. The court thus independently considered and modified the proposed disposition before signing it.

Accordingly, although Bass should have received the proposed order, Rule 305’s service requirement does not itself establish that the resulting judgment must be reversed. On this record, Bass has not shown that the failure to receive the proposed order probably caused the rendition of an improper judgment.

D. The failure to receive notice of the paper-submission date does not establish that the denial of a new trial was an abuse of discretion.

Bass likewise did not receive either notice setting the Plea for submission. RR 7–8. But his own brief recognizes uncertainty as to whether Rule 21(b) applies to the paper-only submission at issue here. Rule 21(b) addresses notice of a “court proceeding, as defined in Rule 21d(a),” while Rule 21d(a) defines a “court proceeding” as “an appearance before the court, such as a hearing or trial.” Tex. R. Civ. P. 21(b), 21d(a). The Plea was decided by submission without an oral hearing or appearance before the court. Bass therefore concedes that he has identified no holding squarely establishing that Rule 21(b)’s notice requirement applies to such a paper-only submission. In any event, an oral hearing was not required. In the summary-judgment context, the Texas Supreme Court has explained that “the term

‘hearing’ does not necessarily contemplate either a personal appearance before the court or an oral presentation to the court” and that the hearing date serves to determine the deadline for the nonmovant’s response. *Martin*, 989 S.W.2d at 359. Here, Bass had already filed his complete response before the Plea was submitted, so the omitted notice did not prevent him from filing his opposition to the dispositive motion.

More importantly, Bass already knew the substance of the matter the trial court would decide. He had received the Plea and filed his extensive opposition to it. CR 43–197. His asserted response to notice of the submission date was that he would have objected and requested oral argument. RR 8. But, again, Bass does not contend that he had an absolute right to oral argument. Thus, even assuming that Bass should have received notice of the submission date, the absence of that notice does not establish that the trial court probably would have reached a different jurisdictional disposition had notice been received.

E. The May 21 hearing gave the trial court an opportunity to consider Bass’s claimed prejudice while it retained plenary power.

The post-judgment proceedings further support the trial court’s exercise of discretion. Bass timely raised the service and notice problems in his motion for new trial, and the trial court held a hearing on May 21 while it retained plenary power to vacate its judgment. CR 218–70; RR 1–15.

The court did not ignore Bass's complaints. It expressly acknowledged that Bass had not received the two submission notices, Appellees' reply, or the proposed order because of the email-address problem. RR 7–8. It then asked Bass directly what he would have done differently had he received those materials. RR 8. Bass explained each action he contended he would have taken. RR 8–9. The court therefore had before it both the fact of nonreceipt and Bass's explanation of the opportunity he claimed to have lost when it decided whether a new trial was warranted.

Texas courts have recognized the significance of post-judgment proceedings conducted while the trial court retains control over its judgment. In *Texas Sting, Ltd. v. R.B. Foods, Inc.*, the court held that a post-dismissal hearing remedied a due-process violation arising from the plaintiff's lack of notice of a dismissal setting because the plaintiff received the opportunity to be heard while the trial court retained full control over its judgment. 82 S.W.3d 644, 648–49 (Tex. App.—San Antonio 2002, pet. denied). Although *Texas Sting* involved a dismissal for want of prosecution and a motion to reinstate, its reasoning supports the relevance of the May 21 hearing here. While the trial court retained plenary power, Bass was able to identify the procedural opportunities he claimed to have lost, and the court could determine whether those circumstances warranted vacating its judgment.

Bass emphasizes that the trial court declined to receive additional testimony and exhibits at the hearing. But the court explained that Bass had sufficiently briefed the matters necessary to support his argument and that additional factual evidence would not be germane because the new trial issue presented was procedural. RR 12–13. Nor was Bass entitled as a matter of law to present live evidence merely because he requested an evidentiary hearing. Whether to conduct an evidentiary hearing on a motion for new trial in a civil case is generally within the trial court’s discretion. *Hamilton v. Williams*, 298 S.W.3d 334, 338 (Tex. App.—Fort Worth 2009, pet. denied).

Bass’s reliance on *Hensley v. Salinas*, 583 S.W.2d 617 (Tex. 1979), does not establish otherwise. There, the movant challenged an agreed judgment on the factual ground that she had never consented to the settlement, and the trial court’s failure to receive evidence prevented her from establishing the factual basis for that challenge. *Id.* at 618–19. The Supreme Court held that when a motion for new trial presents a factual question on which evidence must be heard, the trial court must receive the evidence if the motion alleges facts that, if true, would entitle the movant to a new trial and a hearing is properly requested. *Id.* at 619.

Here, by contrast, the trial court acknowledged the predicate fact underlying Bass’s motion—that he did not receive the submission notices, Appellees’ reply, or the proposed order—and heard Bass explain what he contended he would have done

differently had he received them. RR 7–9. The court determined that additional factual evidence was not germane to the procedural issue it was deciding. RR 12–13.

Moreover, the appellate record contains no sworn testimony that was excluded, no exhibit that was marked and rejected, and no offer of proof or bill of exception setting out the substance of the evidence Bass contends the trial court should have received. Ordinarily, a party challenging the exclusion of evidence must make an offer of proof or bill of exception sufficient to disclose the substance of the excluded evidence and permit meaningful appellate review. Tex. R. App. P. 33.1(a); Tex. R. Evid. 103(a)(2); *In re Marriage of Rangel & Tovas-Rangel*, 580 S.W.3d 675, 680–81 (Tex. App.—Houston [14th Dist.] 2019, no pet.). The absence of such a record further undermines Bass’s ability to demonstrate that the trial court’s refusal to receive additional evidence probably caused the rendition of an improper judgment. *See* Tex. R. App. P. 44.1(a).

After considering Bass’s arguments, the trial court denied the motion for new trial by a written order explaining its reasons. CR 435–36. Among other things, the court concluded that Bass had been heard through his March 3 response, that the Plea could properly be decided by submission, that a sur-reply was neither necessary nor something the court would have considered, and that Bass’s inability to object to Appellees’ proposed order did not warrant a new trial. CR 435–36.

Those conclusions were within the trial court’s discretion. The post-judgment hearing did not erase the earlier service failures, but it gave the court an opportunity—while it still possessed plenary power—to determine whether those failures had deprived Bass of anything material to its jurisdictional decision. The court determined they had not.

F. Bass has not demonstrated reversible harm under Rule 44.1.

Ultimately, Bass’s first two issues cannot be separated from the harmless-error rule. A judgment may not be reversed for an error of procedure unless the appellate court concludes that the error probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting the case on appeal. Tex. R. App. P. 44.1(a).

Neither circumstance exists here. Bass received the dispositive Plea. He knew Appellees sought dismissal for lack of jurisdiction. He filed a 78-page response. That response addressed the statutory and policy theories in his live pleading and anticipated the principal jurisdictional arguments subsequently developed in Appellees’ reply. The trial court later heard Bass’s explanation of precisely what he would have done had he received the omitted materials and, while retaining plenary power, concluded that those circumstances did not justify a new trial.

Nor has Bass been prevented from presenting those matters on appeal. His appellate brief extensively addresses the contents of Appellees’ reply, the arguments

he says he would have made in response, the proposed order, the submission notices, the post-judgment proceedings, and the jurisdictional theory he now seeks to pursue. The record therefore permits full appellate review of his complaints.

The service failures should not have occurred. But Rule 44.1 asks whether an error was probably harmful, not merely whether an error occurred. On this record, Bass has not demonstrated that the failure to receive the reply, proposed order, or submission notices probably caused an improper jurisdictional judgment or prevented him from presenting his appellate case. The trial court therefore did not abuse its discretion in denying his motion for new trial.

III. Bass was not denied due process because he received notice of the dispositive Plea and a meaningful opportunity to respond.

Bass's third issue recasts the same procedural circumstances as a constitutional due-process violation. The argument fails because Bass received notice of the dispositive Plea to the Jurisdiction and a meaningful opportunity to oppose the relief Appellees sought before the trial court ruled. The no-notice authorities on which Bass relies involve materially different circumstances and do not establish that the service failures here require reversal.

A. Bass received notice that Appellees sought dismissal and was heard before the trial court ruled.

Due process requires notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

The notice required is that which is reasonably calculated, under the circumstances, to inform an interested party of the proceeding and afford an opportunity to present objections. *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84 (1988).

Bass received that fundamental process. He received Appellees' Plea to the Jurisdiction, knew that Appellees sought dismissal of his claims for lack of subject-matter jurisdiction, and filed a seventy-eight-page response opposing the Plea. CR 43–197. As discussed above, that response presented the section 559.004 and HSC OP 77.13 theory contained in his live Fourth Amended Petition and addressed the principal jurisdictional obstacles to that theory. CR 121–44.

Bass therefore was not deprived of an opportunity to defend his claims before they were dismissed. His complaint is narrower: after he had responded to the dispositive Plea, he did not receive notice of the date on which the court would consider the Plea by submission, Appellees' reply applying their jurisdictional arguments to his live pleading, or Appellees' proposed order. Those circumstances implicate the procedural and harmful-error questions addressed above. They do not place Bass in the same position as a litigant against whom a dispositive judgment is rendered without notice that the dispositive relief has been sought or without any meaningful opportunity to oppose it.

B. Bass’s no-notice authorities are materially distinguishable.

Bass principally relies on cases involving default judgments or dispositive motions of which the affected party had no notice. Those cases do not establish a due-process violation under the materially different circumstances here.

In *Peralta*, a default judgment was entered against a defendant who had not been properly served with process and therefore had no opportunity to appear and defend before judgment. 485 U.S. at 82–87. The Supreme Court held that the defendant could not be required to demonstrate a meritorious defense as a condition of obtaining relief from a judgment entered without constitutionally adequate notice. *Id.* at 86–87. Bass, by contrast, appeared, received Appellees’ dispositive Plea, and filed an extensive response before judgment.

The Texas default judgment authorities Bass cites involve the same fundamental absence of notice. In *LBL Oil Co. v. International Power Services, Inc.*, the Texas Supreme Court held that a defendant who had appeared was entitled to notice of the trial setting before a post-answer default judgment could be rendered. 777 S.W.2d 390, 390–91 (Tex. 1989) (per curiam). And *Mabon Ltd. v. Afri-Carib Enterprises, Inc.* likewise concerned a post-answer default judgment entered without constitutionally adequate notice of the dispositive proceeding. 369 S.W.3d 809, 812–13 (Tex. 2012).

Bass’s summary judgment authorities are similarly distinguishable. In *Limestone Construction, Inc. v. Summit Commercial Industrial Properties, Inc.*, the nonmovant received neither the no-evidence summary judgment motion nor notice of the hearing before a default summary judgment was rendered. 143 S.W.3d 538, 543–45 (Tex. App.—Austin 2004, no pet.). And *Etheredge v. Hidden Valley Airpark Ass’n* involved the absence of actual or constructive notice of a summary-judgment hearing. 169 S.W.3d 378, 381–84 (Tex. App.—Fort Worth 2005, pet. denied).

Bass expressly acknowledges the critical distinction: *Peralta*, *LBL Oil*, *Mabon*, *Limestone Construction*, and *Etheredge* involve defaults or parties who did not receive the dispositive motion, while Bass “did receive the original plea and filed a seventy-eight-page response.” He further acknowledges that those authorities therefore “do not mechanically command automatic reversal here.” That distinction is dispositive of Bass’s attempt to invoke the categorical no-notice rule applied in those cases.

Bass argues that the analogy nevertheless remains persuasive because his Fourth Amended Petition was filed after Appellees’ original Plea and Appellees’ unreceived reply was their first focused application of their arguments to his live pleading. But Bass filed his Fourth Amended Petition and his response to the Plea on the same day. CR 103–197. His response affirmatively presented the statutory and policy theories in the amended pleading and anticipated the very jurisdictional

subjects that Appellees later addressed in reply. CR 121–44. The absence of an opportunity to respond again to a reply concerning issues Bass had already addressed is materially different from the complete absence of notice and opportunity to defend presented in the authorities on which he relies.

Bass’s remaining authorities confirm that distinction rather than undermine it. *Mathis v. Lockwood* dispenses with any additional showing only where the complaining party “was not given notice of a trial setting” at all. 166 S.W.3d 743, 744 (Tex. 2005) (per curiam). Its statement that, absent intentional noncompliance, “due process requires some lesser sanction than trial without notice or an opportunity to be heard,” *id.* at 746, thus presupposes precisely what is absent here: a party subjected to a dispositive proceeding without notice and without any opportunity to be heard. Bass received the dispositive Plea and was heard through his seventy-eight-page response.

Union Carbide Corp. v. Moya is likewise distinguishable. There, the trial court led the defendants to expect a lengthy evidentiary hearing and then, on the day the hearing was scheduled to begin, abruptly prohibited live testimony and denied a continuance needed to assemble the written evidence the defendants had expected to present through witnesses. 798 S.W.2d 792, 793–94 (Tex. 1990). Here, Bass received the dispositive Plea and filed a complete written response addressing the jurisdictional issues before the court ruled; the trial court did not alter a previously

announced evidentiary procedure in a manner that prevented Bass from presenting his opposition to the Plea.

B. Gregg Price, P.C. v. Series 1—Virage Master LP is likewise distinguishable. There, a previously scheduled summary-judgment hearing was canceled, and the trial court thereafter placed the motion on its submission docket and ruled without providing notice of the operative submission setting. 661 S.W.3d 419, 423–25 (Tex. 2023). Here, although Bass did not receive notice of the submission date, he received the dispositive Plea and filed a seventy-eight-page response addressing the jurisdictional grounds on which Appellees sought dismissal.

C. The May 21 proceedings further distinguish this case from Bass’s no-notice authorities.

The post-judgment proceedings reinforce that distinction. Bass timely moved for a new trial and presented the trial court with his service and notice complaints while the court retained plenary power. CR 218–70. At the May 21 hearing, the court acknowledged the documents Bass had not received and asked him what he would have done differently had he received them. RR 7–9. Bass explained that he would have requested oral argument, objected to the proposed order, and sought leave to file a sur-reply. RR 8–9.

The court thereafter denied the motion for new trial in a written order addressing those contentions. CR 435–36. Thus, unlike a party suffering a default without notice and without an opportunity to defend, Bass had both a substantial

prejudgment opportunity to oppose dismissal and a post-judgment opportunity to explain to the trial court the significance of the materials he had not received.

Bass argues that the May 21 hearing did not “cure” the earlier service failures because the court declined to receive evidence and did not reopen the Plea for a sur-reply. But the constitutional question does not turn on whether the post-judgment proceeding recreated every additional procedural opportunity Bass says he would have pursued. Bass had already received notice of the dispositive relief sought and a meaningful opportunity to oppose it before judgment. The post-judgment proceedings are relevant because they afforded Bass an additional opportunity, while the trial court retained plenary power, to explain why the subsequent service failures materially prejudiced his ability to oppose dismissal.

Bass had already addressed the merits of the jurisdictional dispute in his 78-page response. His motion for new trial and subsequent filings then identified the additional arguments he says he would have presented had he received Appellees’ reply. CR 299–304. And the trial court considered Bass’s contention that the service failures deprived him of a meaningful opportunity to respond before determining that a new trial was unwarranted. CR 435–36.

Accordingly, the May 21 hearing need not be treated as a complete “cure” of the earlier service failures for Bass’s constitutional argument to fail. Bass received constitutionally meaningful notice and an opportunity to be heard before judgment,

and the post-judgment proceedings provided an additional opportunity to present his complaints while the trial court retained authority to grant relief.

D. Bass's procedural complaints do not transform this case into a no-notice due-process violation.

Bass's argument ultimately conflates a failure to receive particular filings and submission notices with a complete denial of constitutionally adequate notice and opportunity to be heard. The two are not equivalent on this record.

Bass knew what relief Appellees sought. He knew the jurisdictional basis on which they sought it. He filed an extensive response opposing that relief and addressing the statutory theory in his live pleading. He later presented the trial court with the additional arguments he says he would have made before judgment. And he has fully presented those matters to this Court.

The failure to serve Bass successfully with the reply, proposed order, and submission notices was a procedural irregularity properly evaluated under the applicable rules and the harmful error standard. It did not erase the process Bass actually received or convert the resulting judgment into the equivalent of a no-notice default. The Court should therefore reject Bass's constitutional challenge.

IV. The trial court properly granted the Plea to the Jurisdiction because Bass failed to plead an ultra vires claim.

Even apart from Bass's procedural complaints, the judgment should be affirmed because his Fourth Amended Petition did not plead conduct falling within

the ultra vires exception to sovereign immunity. Bass sought prospective relief against D’Agostino and McSween in their official capacities. But the duties he sought to compel were not purely ministerial, and his allegations did not establish that either official acted beyond the bounds of authority conferred by law. Instead, his claims challenged the manner in which TTUHSC administered its procedures for access to and correction of student records—matters requiring administrative judgment and discretion.

A. The ultra vires exception does not permit courts to control an official’s exercise of lawful discretion.

Suits against state officials in their official capacities generally implicate sovereign immunity because such suits are, in substance, suits against the State. *Heinrich*, 284 S.W.3d at 373. The ultra vires exception is narrow. To invoke it, a plaintiff must allege—and ultimately prove—that the government official “acted without legal authority or failed to perform a purely ministerial act.” *Id.* at 372.

An official acts without legal authority when the official exceeds the bounds of authority granted by law or acts in conflict with the constraints imposed by the law authorizing the official to act. *Hall*, 508 S.W.3d at 238, 241–43; *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158, 163 (Tex. 2016). Thus, the existence of some discretion does not categorically foreclose an ultra vires claim; an official exercising limited discretion may act ultra vires by acting beyond the constraints imposed by the governing law. *Houston Belt*, 487 S.W.3d at 163. But an

erroneous decision made within the bounds of authority conferred by law is not ultra vires merely because it is erroneous. *Hall*, 508 S.W.3d at 241–43. And a ministerial duty exists only when the law prescribes the duty with such precision and certainty that nothing is left to the official’s discretion or judgment. *Id.* at 243; *Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015).

That distinction is critical here. The question is not simply whether section 559.004 imposes obligations on TTUHSC. It plainly does. The jurisdictional question is whether the statute imposed the particular non-discretionary duties Bass asked the district court to compel and thereby deprived Appellees of discretion concerning how those duties would be performed.

B. Section 559.004 requires TTUHSC to establish a reasonable correction procedure, but it does not prescribe the ministerial acts Bass sought to compel.

Section 559.004 provides:

Each state governmental body shall establish a reasonable procedure under which an individual is entitled to have the state governmental body correct information about the individual that is possessed by the state governmental body and that is incorrect. The procedure may not unduly burden an individual using the procedure.

Tex. Gov’t Code § 559.004.

The statute therefore imposes an obligation to establish a reasonable procedure for correction of incorrect information and prohibits a procedure that unduly burdens the individual using it. But the Legislature did not prescribe the

mechanics by which a governmental body must implement that procedure. Section 559.004 does not specify how records must be presented for inspection, how inspection sessions must be scheduled or conducted, how records must be organized or paginated, what copying or recording procedures must be permitted, how many inspection sessions must be provided, what inventory must accompany the records, or the particular administrative timetable governing each step in the correction process. *See id.*

Indeed, the statutory language itself contemplates administrative judgment. What constitutes a “reasonable procedure” and what “unduly burden[s]” a person using that procedure necessarily depend upon circumstances and require the governmental body to make judgments concerning implementation. The Legislature could have prescribed particular procedures, deadlines, formats, or methods. It did not. Instead, it directed each governmental body to establish a procedure subject to standards of reasonableness and undue burden.

TTUHSC established a procedure governing student education records through HSC OP 77.13, as section 559.004 requires. Bass’s disagreement is therefore not that TTUHSC wholly failed to establish a correction procedure. Rather, his allegations challenge how TTUHSC administered that procedure in his particular circumstances.

That distinction places his claims outside the ultra vires exception. An official does not act without legal authority merely because a plaintiff alleges that the official exercised delegated judgment incorrectly. *Hall* is instructive. There, the Supreme Court explained that an official exercising discretion granted by the governing authority does not act ultra vires merely because the official may have reached an erroneous conclusion. 508 S.W.3d at 242–43. Where the governing law leaves the relevant determination to judgment rather than prescribing the required conduct with precision, the challenged act is discretionary rather than ministerial. *Id.*

Nor is this a case like *Houston Belt*, in which the governing law imposed an express constraint on how the official was required to exercise his delegated authority and the plaintiff alleged that the official acted outside that constraint. *See* 487 S.W.3d at 163. Section 559.004 does not prescribe the particular means by which TTUHSC must administer its correction procedure. Instead, it directs the governmental body to establish a “reasonable procedure” that does not “unduly burden” the individual using it. Tex. Gov’t Code § 559.004. Bass therefore identifies no comparable statutory constraint prescribing the particular inspection formats, scheduling methods, record organization, or other implementation measures he seeks to compel.

The same principle applies here. Section 559.004 supplies governing standards, but it does not prescribe with precision the particular administrative

conduct Bass seeks to compel. Indeed, Bass’s own pleading recognized the discretion inherent in implementing the procedure. He expressly alleged that Appellees could “select any reasonable format, modality, and scheduling method” for inspection and review. CR 113. That concession is incompatible with his characterization of those implementation decisions as purely ministerial acts. The statute supplies governing standards; it does not prescribe the particular means by which TTUHSC must satisfy them.

C. HSC OP 77.13 does not transform TTUHSC’s administration of student records into a series of judicially enforceable ministerial duties.

Bass’s reliance on HSC OP 77.13 does not cure the jurisdictional defect. The policy reflects TTUHSC’s implementation of its procedures concerning student education records, but its existence does not itself establish that every procedural direction contained in the policy constitutes a ministerial duty enforceable through the ultra vires exception. The relevant inquiry remains whether Appellees exceeded authority conferred by law or failed to perform an act that governing law made purely ministerial.

Bass effectively acknowledges this limitation. His appellate brief states that his strongest theory rests on section 559.004 itself as the external legal constraint and treats HSC OP 77.13 as evidence of TTUHSC’s procedures and allocation of responsibilities—not as an independent source capable of enlarging the trial court’s jurisdiction.

Nor does the use of mandatory language at particular points in HSC OP 77.13 establish that Bass pleaded a viable ultra vires claim. The question is not whether a policy uses words such as “will” or “shall” in describing a procedure. It is whether the governing law defines the duty Bass seeks to enforce with such precision and certainty that its performance leaves nothing to judgment or discretion. *See Hall*, 508 S.W.3d at 243.

Bass’s Fourth Amended Petition demonstrates why that standard is not satisfied here. His claims were not confined to compelling the mechanical issuance of a document after all discretionary decisions had already been made. Instead, he challenged the administration of the records process itself and sought judicial intervention in how that process should proceed.

Bass’s own allegations also illustrate the problem with his newly narrowed theory. His January 26 Step-2 amendment request was directed to Dr. Erin Justyna—not to either Appellee—with D’Agostino and McSween merely copied on the request. CR 109. And although HSC OP 77.13 provides that the Executive Vice President for Academic Affairs or designee will provide written notification to the student concerning an amendment request, CR 155, Bass’s live pleading did not confine his claim to compelling that discrete written notification from a specifically identified Appellee. Instead, as discussed below, he sought judicial intervention in numerous aspects of TTUHSC’s records process. CR 115–16.

D. The relief requested in Bass’s Fourth Amended Petition confirms that his claims sought judicial control over discretionary administrative matters.

The nature of Bass’s requested relief is particularly revealing. His Fourth Amended Petition did not merely ask the trial court to compel an official to perform one discrete act prescribed by statute. Bass asked the court to require, among other things, a written inspection schedule; sufficient inspection sessions; an organized and paginated presentation of records; continuity of access; a written response within a court-imposed period; an inventory of records; production of additional records identified on his “punch list”; a compliance notice filed with the court; tolling of internal deadlines; and preservation and logging requirements. CR 115–16. His proposed Fifth Amended Petition continued to seek substantial judicial direction over those matters.

Those requests would require the judiciary to do more than order an official to perform a predetermined ministerial task. They would require a court to determine what additional access was reasonable, how much inspection time was sufficient, how and when records should be presented, what organizational measures TTUHSC should employ, and what administrative steps were necessary to satisfy the statutory prohibition against undue burden.

That is precisely the type of judicial control over discretionary governmental decision-making that the ultra vires doctrine does not authorize. The doctrine permits a court to require officials to remain within the bounds of authority established by

law; it does not permit the court to substitute its judgment for that of officials on matters the governing law leaves to administrative discretion. *See Houston Belt*, 487 S.W.3d at 163; *Hall*, 508 S.W.3d at 242–43. This Court recently applied the same distinction in *Exxon Mobil Global Services v. State Office of Administrative Hearings*, holding that an administrative official had no ministerial duty to undertake a procedural determination that the governing statutes did not authorize the agency to make. 727 S.W.3d 590, 597–98 (Tex. App.—15th Dist. 2025). The decision reinforces that a ministerial duty must arise from the governing law itself; courts do not supply procedural obligations the Legislature did not impose. *See id.*; *Hall*, 508 S.W.3d at 242–43.

Bass’s allegations that TTUHSC’s procedures were unreasonable or burdensome do not alter that conclusion. Section 559.004’s standards constrain TTUHSC, but the existence of a statutory standard does not mean every disagreement over its application becomes a ministerial-duty claim. The relevant question for immunity purposes is whether Bass pleaded conduct outside Appellees’ lawful authority or the failure to perform a specifically prescribed ministerial act. His Fourth Amended Petition instead sought judicial supervision of the manner in which TTUHSC exercised its administrative authority.

E. Bass’s narrower appellate characterization cannot supply jurisdiction that his live pleading did not invoke.

Recognizing the breadth of the relief pleaded below, Bass now characterizes his proposed claim much more narrowly. He tells this Court that he seeks, at most, prospective performance of a single written-disposition step by the proper official under HSC OP 77.13, while leaving procedure, timing, record accuracy, and the substantive outcome to TTUHSC.

That is materially different from the claim presented in his live Fourth Amended Petition. And Bass acknowledges that even the proposed Fifth Amended Petition he tendered after judgment did not contain this “exact one-step formulation.”

The jurisdictional ruling must therefore be evaluated based on the claim actually pleaded when the trial court ruled, not the materially narrower theory Bass has formulated on appeal. At that time, Bass asked the judiciary to direct multiple aspects of TTUHSC’s administration of its records procedures. CR 103–19. Those allegations did not identify conduct beyond Appellees’ legal authority or the failure to perform a purely ministerial statutory duty.

Bass’s appellate reformulation is relevant, if at all, to his alternative request for yet another opportunity to amend. It does not establish that the trial court erred in granting the Plea to the Jurisdiction directed to the live pleading before it.

Accordingly, Bass failed to invoke the ultra vires exception to sovereign immunity, and the trial court properly granted Appellees' Plea to the Jurisdiction.

V. Bass is not entitled to another opportunity to amend his pleadings.

Bass alternatively asks this Court to remand so that he may plead a materially narrower ultra vires claim. The general rule requiring an opportunity to cure remediable jurisdictional pleading defects does not entitle a plaintiff to unlimited opportunities to reformulate his claims. Bass repeatedly amended his pleadings, amended after Appellees challenged the trial court's jurisdiction, and tendered yet another proposed amended petition in connection with his motion for new trial. Yet even that proposed Fifth Amended Petition did not plead the narrow "one-step" claim Bass now proposes on appeal. Under these circumstances, the trial court was not required to afford Bass another opportunity to amend.

A. A plaintiff is not entitled to repeated opportunities to amend after failing to cure identified jurisdictional defects.

When a plea to the jurisdiction challenges the pleadings and the pleading defects are potentially curable, the plaintiff ordinarily should be afforded an opportunity to amend. *Miranda*, 133 S.W.3d at 226–27. But if the pleadings affirmatively negate jurisdiction, dismissal without another opportunity to amend is proper. *Id.* at 227.

Moreover, the opportunity-to-amend rule does not require courts to permit serial amendments after a plaintiff has already had a reasonable opportunity to cure

the jurisdictional defect. In *Matzen*, the Supreme Court declined to remand for another opportunity to amend where the plaintiffs had already repleaded multiple times and still had not articulated a viable jurisdictional theory. 659 S.W.3d at 396 & n.18. The Court explained that although plaintiffs ordinarily should receive an opportunity to amend when pleading defects are curable, the plaintiffs there had “repleaded three times” and still failed to demonstrate how they could cure the jurisdictional problem. *Id.*

Similarly, in *Fraley v. Texas A&M University System*, the Supreme Court rejected a request for yet another opportunity to amend where the plaintiff had filed multiple petitions and had already amended in response to the defendant’s jurisdictional challenge. 664 S.W.3d 91, 101–02 (Tex. 2023). That rule traces to *Harris County v. Sykes*, which holds that once “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,” the trial court should dismiss the action. 136 S.W.3d 635, 639 (Tex. 2004). The opportunity to amend is intended to permit a plaintiff to cure a remediable pleading defect—not to guarantee successive opportunities to devise new jurisdictional theories after earlier attempts have failed.

The Fifteenth Court has applied the same distinction. In *Texas A&M University Department of Transportation, Parking Services Department v. Reeves*,

the Court remanded where the plaintiff had failed to plead facts establishing jurisdiction but the pleadings did not affirmatively negate the possibility that the jurisdictional prerequisites had been satisfied. 708 S.W.3d 312, 320–21 (Tex. App.—15th Dist. 2025, no pet.). By contrast, in *Sharma v. Texas Tech University Health Sciences Center El Paso*, the Court affirmed dismissal with prejudice where the plaintiff had notice of the pleading defect for several months and amended her pleading immediately before the dismissal hearing but still failed to cure the defect. No. 15-25-00007-CV, 2025 WL 1203502, at *2 (Tex. App.—15th Dist. Apr. 24, 2025, no pet.) (mem. op.). Bass’s case falls on the latter side of that line.

B. Bass had repeated opportunities to plead a viable ultra vires claim.

Bass was not dismissed on the basis of an unsuspected pleading defect that he never had an opportunity to address. Appellees filed their Plea to the Jurisdiction on February 9, 2026. CR 43–102. Bass thereafter filed his Fourth Amended Verified Original Petition on March 3—the same day he filed his 78-page response opposing the Plea. CR 103–197.

Thus, before judgment, Bass had both notice that Appellees challenged the trial court’s subject-matter jurisdiction and an opportunity to amend his pleadings in light of that challenge. And he exercised that opportunity. His Fourth Amended Petition nevertheless continued to seek relief requiring judicial supervision of TTUHSC’s administration of its records procedures, including inspection sessions,

deadlines, scheduling, organization and pagination of records, an inventory, preservation requirements, tolling, and a compliance notice. CR 115–16.

Nor was the Fourth Amended Petition merely another iteration of Bass’s earlier pleading. It expressly attempted to characterize his claims as limited to “ministerial, non-discretionary” procedural duties and prospective, procedure-only relief. CR 112–14. Thus, Bass had already attempted to cure the immunity problem identified by Appellees before the trial court ruled; the resulting pleading simply did not succeed in alleging a claim within the ultra vires exception.

The opportunity did not end with the March 26 judgment. Bass timely moved for a new trial while the trial court retained plenary power and tendered a proposed Fifth Amended Petition in support of his request for relief. CR 218–70, 366–89. That proposed pleading gave Bass another opportunity to demonstrate how amendment could cure the jurisdictional defect.

Yet the proposed Fifth Amended Petition continued to seek substantial judicial direction over TTUHSC’s administration of Bass’s records. It sought, among other things, additional inspection sessions and deadlines, organized and paginated presentation of records, an inventory, tolling, preservation and logging requirements, and a compliance notice. CR 366–89. Bass’s own appellate brief acknowledges the continuing breadth of the proposed Fifth Amended Petition.

This history distinguishes Bass’s case from one in which a plaintiff should receive an initial opportunity to cure a pleading defect identified for the first time by the trial court. Bass had notice of the jurisdictional challenge, amended his pleading, extensively briefed the jurisdictional issues, and subsequently tendered another proposed amendment. The trial court was not required to provide still another opportunity simply because Bass has now devised a narrower way to frame his requested relief.

C. Bass admittedly did not plead the narrow “one-step” theory he now proposes.

The most significant problem with Bass’s request for remand is that the particular claim he now asks to plead was not contained even in his proposed Fifth Amended Petition.

On appeal, Bass substantially narrows his requested claim. He says that, if permitted to amend again, he would identify the proper official and seek only prospective performance of the written-disposition step described in HSC OP 77.13, while leaving “procedure, timing, record accuracy, and the substantive result to TTUHSC.” In other words, Bass now seeks to isolate what he characterizes as one discrete ministerial act from the broader administrative relief requested below.

But Bass candidly acknowledges that this “exact one-step formulation was not in the tendered Fifth.” That concession is significant. The proposed Fifth Amended Petition was tendered after dismissal, when Bass already knew that the trial court

had concluded his allegations failed to invoke subject-matter jurisdiction. Yet even then, Bass did not propose the claim he now asks this Court to give him an opportunity to plead.

Bass responds that his new formulation is merely a reduction of the same statutory theory rather than a new claim. But whether characterized as a new claim or a narrower version of the old one, the relevant point is the same: **Bass had repeated opportunities to formulate a claim falling within the ultra vires exception and did not plead the theory he now advances.** Neither *Miranda* nor the opportunity-to-amend cases require an appellate court to remand indefinitely while a plaintiff continues narrowing and reformulating his theory of jurisdiction.

Matzen is particularly instructive. There, the Supreme Court declined to remand for further amendment after the plaintiffs had already repleaded multiple times and still failed to articulate a viable theory overcoming immunity. 659 S.W.3d at 396 & n.18. Bass has had at least as meaningful an opportunity here: four amended petitions before judgment, a detailed response to the jurisdictional challenge, post-judgment briefing, and a proposed Fifth Amended Petition. His request for yet another amendment should be rejected for the same reason.

D. The service issues do not entitle Bass to another amendment.

Bass attempts to connect his request for further amendment to his failure to receive Appellees' reply. He contends that the reply sharpened Appellees' application

of discretion, internal-policy status, academic deference, access, ripeness, and futility to the Fourth Amended Petition, and that he therefore lost an opportunity to tender a narrower amendment before judgment.

But, as explained above, Bass's March 3 response had already anticipated those jurisdictional subjects. CR 121–44. Bass acknowledges that Appellees' reply "did not originate" them. More importantly, Bass subsequently obtained the very information he says he lacked: he received the reply after judgment, learned the trial court's jurisdictional disposition, and then tendered a proposed Fifth Amended Petition while seeking a new trial. Yet the proposed Fifth still did not contain the narrow one-step theory he now asks to plead.

The service issue therefore does not explain Bass's continued failure to plead his present theory. By the time he proposed his Fifth Amended Petition, he knew both Appellees' arguments and the trial court's ruling. Nevertheless, the proposed pleading continued to request judicial supervision of numerous aspects of TTUHSC's records process.

Bass thus had a meaningful post-judgment opportunity to show the trial court how he could cure the jurisdictional defect and did not do so. The trial court was not required to grant a new trial so that Bass could continue refining his theory through additional pleadings.

E. The trial court properly dismissed without granting another opportunity to replead.

This case therefore does not present the ordinary *Miranda* situation in which a plaintiff has pleaded insufficient jurisdictional facts but has never been given an opportunity to cure the deficiency. Bass repeatedly amended his pleadings, amended after Appellees challenged jurisdiction, responded extensively to the jurisdictional arguments, and tendered another proposed amended petition after dismissal. Even that proposed Fifth Amended Petition continued to seek relief outside the narrow ultra vires exception.

Only on appeal has Bass isolated the “exact one-step formulation” on which his request for another amendment now depends. His concession that the theory was not contained in his proposed Fifth Amended Petition confirms that the trial court was never presented with the supposedly curative pleading Bass now envisions. The opportunity-to-amend rule does not require another remand under those circumstances. *See Matzen*, 659 S.W.3d at 396 & n.18; *Fraley*, 664 S.W.3d at 101–02.

Accordingly, even assuming without deciding that a materially narrower claim concerning a discrete written-disposition duty could be pleaded within the ultra vires exception, the possibility of such a claim does not require reversal of the judgment before this Court. Bass had repeated opportunities to plead a viable

jurisdictional claim and failed to do so. The trial court therefore did not err by dismissing the case without affording him yet another opportunity to amend.

PRAYER

For these reasons, Appellees 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, respectfully request that the Court affirm the trial court’s order granting Appellees’ Plea to the Jurisdiction and dismissing Bass’s claims without prejudice for lack of subject-matter jurisdiction. Appellees further request all other relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this Brief of Appellees complies with Texas Rule of Appellate Procedure 9.4(i). The text is set to 14-point and the number of words in the document as calculated by the word count feature of Microsoft Word is 10,844.

/s/ Scott D. Smith
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CERTIFICATE OF SERVICE

This is to certify that the above and foregoing instrument has been served on all counsel of record in accordance with the Texas Rules of Appellate Procedure on September 23, 2026 through the electronic filing system.

Kevin N. Bass

Via E-File

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