

Question

The respondent was removed from his home and deprived of property without a protective order being rendered, without findings, and without evidence being presented, during a time when the court was officially closed. The Fourteenth Amendment prohibits the deprivation of life, liberty, or property without due process of law. Due process generally requires notice and an opportunity to be heard before deprivation (*Mathews v. Eldridge*, 424 U.S. 319 (1976)). If the respondent was deprived of property (e.g., removal from his home) without a hearing, findings, or evidence, and without an emergency justifying summary action, this may constitute a due process violation actionable under § 1983.

Answer (Texas)

Short response

The removal of a respondent from their home and deprivation of property without a protective order, findings, evidence, or a hearing—especially absent an emergency—constitutes a likely violation of procedural due process under the Fourteenth Amendment and Texas law. Such actions are generally void and actionable under § 1983, as both statutory and case law require notice, an opportunity to be heard, and specific findings before depriving an individual of property.

Summary

Both the United States and Texas Constitutions prohibit the deprivation of life, liberty, or property without due process of law, which fundamentally requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Texas statutes governing exclusion from a residence and protective orders further reinforce these constitutional protections by mandating sworn affidavits, personal testimony, and judicial findings before a person can be excluded from their home, with only narrow exceptions for genuine emergencies.

In the scenario described, where a respondent was removed from their home without a protective order, findings, evidence, or a hearing—and during a period when the court was closed—there is no indication that statutory or constitutional due process requirements were met. The absence of an emergency or exigent circumstances further undermines any justification for summary action, making the deprivation of property highly likely to be unconstitutional and void, and providing grounds for a § 1983 claim.

Background and Relevant Law

Legislative Framework

The Texas Family Code provides detailed procedures and requirements for excluding a person from their residence or depriving them of property interests in the context of family law disputes:

- **Tex. Fam. Code § 83.006** stipulates that a person may only be excluded from their residence by a temporary ex parte order if the applicant files a sworn affidavit detailing the facts and circumstances necessitating exclusion and appears in person to testify at a temporary ex parte hearing. The court must make specific findings based on the affidavit and testimony, including recent family violence and a clear and present danger of future violence, before issuing such an order.
- **Tex. Fam. Code § 85.021** authorizes the court to grant exclusive possession of a residence in a protective order, but only after rendering such an order and following the statutory requirements, which implicitly include notice and an opportunity to be heard.
- **Tex. Fam. Code § 83.001** allows for a temporary ex parte order without notice or a hearing only if the court finds a clear and present danger of family violence based on the application.
- **Tex. Fam. Code § 262.102** governs emergency orders for possession of a child, requiring a finding of immediate danger to the child's physical health or safety, and a lack of time for a full adversary hearing, before a court may act without prior notice and hearing.
- **Tex. Fam. Code § 262.201** mandates a full adversary hearing within 14 days of a child's removal, with the court required to make findings based on sufficient evidence to justify continued deprivation.

These statutes collectively establish that, except in narrowly defined emergencies, exclusion from a residence or deprivation of property must be preceded by notice, a hearing, and judicial findings based on evidence.

Case Law

Texas courts, in line with federal constitutional principles, have consistently held that due process requires notice and an opportunity to be heard before the state may deprive an individual of property:

- The Texas and U.S. Constitutions both prohibit deprivation of life, liberty, or property without due process, and Texas courts interpret the state's "due course of law" provision as congruent with the federal "due process" clause ([Tojo Enters. v. Tex. Workforce Comm'n](#), 13-21-00210-CV (Tex. App. Mar 09, 2023); [Campbell v. Stucki](#), 220 S.W.3d 562 (Tex. App. 2007)).

- Due process is fundamentally about fairness and requires that affected parties receive notice and an opportunity to be heard at a meaningful time and in a meaningful manner ([In re Interest of J.R., 652 S.W.3d 508 \(Tex. App. 2022\)](#); [Covarrubias v. Texas Department of Criminal Justice, 52 S.W.3d 318 \(Tex. App. 2001\)](#); [Simmons v. Outreach Health Cnty. Care Servs., L.P., 511 S.W.3d 163 \(Tex. App. 2014\)](#)).
- Orders entered without due process are void, and deprivation of property without due process violates both the U.S. and Texas Constitutions ([In re Keeling, 227 S.W.3d 391 \(Tex. App. 2007\)](#)).
- The opportunity to be heard must be meaningful, not merely formal or perfunctory, and the right to notice cannot be overridden by legislative expediency ([In re L.D.C., NUMBER 13-17-00053-CV \(Tex. App. Dec 13, 2018\)](#); [In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)).
- Even in the context of temporary ex parte orders, Texas law requires a mechanism for the affected party to seek a prompt, live evidentiary hearing to vacate the order, and denial of such a hearing is a due process violation ([In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#)).
- The deprivation of property, such as exclusion from a home, is a significant interest, and absent exigent circumstances, due process requires prior notice and a hearing (Due Process [secondary]; Due Process [secondary]).

Secondary Materials

Secondary sources reinforce these principles, emphasizing that due process is not satisfied by mere formalities but requires real opportunities to contest deprivation, especially when fundamental rights such as property or home occupancy are at stake. They also highlight that the standard of proof and adequacy of notice are critical to the fairness of the process ([The Unconstitutionality of Protective Orders Under the Texas Family Code - Part I; The Unconstitutionality of Protective Orders Under the Texas Family Code - Part II](#)).

Analysis

Application of Law to the Scenario

The scenario describes a respondent who was removed from his home and deprived of property without a protective order, findings, evidence, or a hearing, and during a period when the court was closed. There is no indication of an emergency or exigent circumstances justifying summary action.

Statutory Requirements

Under [**Tex. Fam. Code § 83.006**](#), exclusion from a residence by temporary ex parte order requires a sworn affidavit, personal testimony, and specific

judicial findings regarding recent family violence and the likelihood of future violence. The court must conduct a hearing, even if ex parte, and make findings based on evidence. The absence of these steps—no affidavit, no testimony, no findings, and no order—means the statutory requirements were not met.

Tex. Fam. Code § 85.021 further requires that exclusive possession of a residence be granted only by court order, following the statutory process. If no protective order was rendered, the deprivation of property was unauthorized.

Tex. Fam. Code § 83.001 allows for ex parte orders without notice or a hearing only if there is a clear and present danger of family violence, which must be supported by the application. Even then, the respondent has the right to seek a prompt hearing to vacate the order ([In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#)).

In the context of child removal, **Tex. Fam. Code § 262.102** and **§ 262.201** require immediate danger and a lack of time for a full hearing to justify summary action, and mandate a full adversary hearing within 14 days. The absence of an emergency or subsequent hearing would violate these provisions.

Constitutional Due Process

The Fourteenth Amendment and the Texas Constitution both require that, before the state deprives an individual of property, the person must receive notice and an opportunity to be heard at a meaningful time and in a meaningful manner ([Tojo Enters. v. Tex. Workforce Comm'n](#), 13-21-00210-CV (Tex. App. Mar 09, 2023); [In re Interest of J.R.](#), 652 S.W.3d 508 (Tex. App. 2022); [Simmons v. Outreach Health Cmtys. Care Servs., L.P.](#), 511 S.W.3d 163 (Tex. App. 2014)). The opportunity to be heard must be real and not illusory, and the process must be fair and appropriate to the nature of the deprivation.

Where the deprivation is significant—such as exclusion from one's home—the courts have recognized that the risk of error is high if due process is not observed, and that real property cannot be removed or hidden, so there is rarely justification for bypassing due process (Due Process [secondary]).

Orders entered without due process are void and have no legal effect ([In re Keeling](#), 227 S.W.3d 391 (Tex. App. 2007)). The deprivation of property without due process is actionable under § 1983, as it constitutes a violation of constitutional rights.

No Emergency or Exigent Circumstances

The only recognized exception to the requirement for notice and a hearing is in cases of genuine emergency, such as immediate danger of family violence or harm to a child, and even then, the law requires prompt post-deprivation hearings and judicial findings based on evidence ([Tex. Fam. Code § 83.001](#);

[Tex. Fam. Code § 262.102](#)). In the absence of such circumstances, summary deprivation is not permitted.

The scenario specifies that there was no emergency justifying summary action, and the court was closed, further precluding any justification for bypassing due process.

Burden of Proof and Adequacy of Process

Secondary materials highlight that, when fundamental rights are at stake, the process must be robust, with adequate notice, time to prepare, and a meaningful opportunity to contest the deprivation ([The Unconstitutionality of Protective Orders Under the Texas Family Code - Part I](#); [The Unconstitutionality of Protective Orders Under the Texas Family Code - Part II](#)). The mere possibility of family violence or unsupported allegations are insufficient to justify deprivation without process.

Exceptions and Caveats

There are narrow exceptions to the requirement for notice and a hearing, primarily in cases of immediate danger or exigent circumstances. Texas law allows for temporary ex parte orders without notice or a hearing only if there is a clear and present danger of family violence, supported by sworn evidence, and even then, the respondent must have the opportunity to seek a prompt hearing to vacate the order ([Tex. Fam. Code § 83.001](#); [In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#)).

If, in a particular case, there was a genuine emergency and the statutory procedures for ex parte relief were followed, the deprivation might be justified temporarily, but only if followed by a prompt adversary hearing and judicial findings based on evidence. The absence of any such process, as in the scenario described, removes any possible justification.

Conclusion

The removal of a respondent from their home and deprivation of property without a protective order, findings, evidence, or a hearing—especially in the absence of an emergency and during a period when the court was closed—constitutes a clear violation of procedural due process under both the Fourteenth Amendment and Texas law. Statutory and case law require notice, an opportunity to be heard, and judicial findings based on evidence before such deprivation can occur. Orders entered without due process are void, and such actions are actionable under § 1983. The scenario described presents a textbook case of a due process violation, with no statutory or constitutional justification for the deprivation.

Legal Authorities

[County of Dallas v. Wiland, 216 S.W.3d 344, 2007 WL 489983 \(Tex. 2007\)](#)

Texas Supreme Court

Extract

the system's covered employees cannot be discharged without just cause, and thus they have a property interest in continued employment; the deputies were discharged without the hearing before the civil service commission promised by system rules to determine whether just cause existed, and thus they were denied procedural due process; ... Rather, said the court, the Manual gave covered employees a property interest of which they could not be deprived without procedural due process guaranteed by the Fourteenth Amendment. The process due, the court said, was that set out in the Manual, including a hearing on their grievances. Since the only hearing the deputies had been afforded was limited to whether they were entitled to present their grievances, they had been denied procedural due process and were entitled to the damages found by the jury.

Summary

Procedural due process rights of employees who have a property interest in their employment. It emphasizes that such employees cannot be deprived of their property interest without due process, which includes a hearing. This is directly relevant to the proposition, as it supports the idea that deprivation of property (such as removal from a home) without due process (notice and a hearing) may constitute a violation of the Fourteenth Amendment.

[Pena v. State, 226 S.W.3d 634 \(Tex. App. 2007\)](#)

Texas Court of Appeals

Extract

The concept of due process is, 'perhaps, the least frozen concept of our law —the least confined to history and the most absorptive of powerful social standards of a progressive society. But neither the unfolding content of `due process' nor the particularized safeguards of the Bill of Rights disregard procedural ways that reflect a national historic policy.' Against the historical status quo, I read the Court's opinion to allow some weight to be given countervailing considerations of fairness in operation, considerations much like those we evaluated in Mathews [v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)].

Summary

The passage highlights the evolving nature of due process, emphasizing that it is not rigidly confined to historical interpretations but is instead influenced by contemporary standards of fairness. It references Mathews v. Eldridge, a key case in due process jurisprudence, which supports the

proposition that due process requires notice and an opportunity to be heard before deprivation of property. This aligns with the proposition that the respondent's removal without due process could constitute a violation.

[In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)

Texas Supreme Court

Extract

Accordingly, the statute cannot place a temporal limit on a challenge to a void judgment filed by a defendant who did not receive the type of notice to which she was constitutionally entitled. Despite the Legislature's intent to expedite termination proceedings, it cannot do so at the expense of a parent's constitutional right to notice.

Summary

The passage emphasizes the importance of constitutional due process rights, specifically the right to notice, which cannot be overridden by statutory time limits or legislative intent to expedite proceedings. This supports the proposition that any deprivation of property or liberty without due process, including notice and an opportunity to be heard, is a violation of constitutional rights.

[Tojo Enters. v. Tex. Workforce Comm'n, 13-21-00210-CV \(Tex. App. Mar 09, 2023\)](#)

Texas Court of Appeals

Extract

The Texas Constitution's due-course-of-law guarantee provides that '[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.' Tex. Const. art. I, § 19. Similarly, the Fourteenth Amendment's due-process clause provides that '[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . .' U.S. Const. amend. XIV, § 1. 'While the Texas Constitution is textually different in that it refers to 'due course' rather than 'due process,' we regard these terms as without meaningful distinction' and thus 'have traditionally followed contemporary federal due process interpretations of procedural due process issues.'

Summary

The passage highlights that both the Texas Constitution and the U.S. Constitution protect individuals from being deprived of life, liberty, or property without due process of law. The Texas Constitution's "due course of law" is interpreted in line with the federal "due process" clause, meaning that procedural due process protections are similarly applied in Texas. This supports the proposition that the respondent's removal from his home without due process could be a violation of constitutional rights.

[In re Interest of J.R., 652 S.W.3d 508 \(Tex. App. 2022\)](#)

Texas Court of Appeals

Extract

The United States Constitution prohibits a state from 'depriv[ing] any person of life, liberty, or property, without due process of law' U.S. Const. amend. XIV, § 1. ... A violation of substantive due process occurs when the government deprives individuals of constitutionally protected rights by an arbitrary use of power. ... Procedural due process rules are meant to protect persons from the mistaken or unjustified deprivation of life, liberty, or property. ... Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

Summary

Constitutional requirement that no person shall be deprived of life, liberty, or property without due process of law, as guaranteed by the Fourteenth Amendment of the U.S. Constitution and mirrored by the Texas Constitution. It emphasizes that due process requires notice and an opportunity to be heard, which aligns with the proposition that the respondent's removal from his home without such procedural safeguards could constitute a due process violation.

[Thoyakulathu v. Brennan, 192 S.W.3d 849 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

The United States Constitution provides that '[n]o State ... shall deprive any person of life, liberty, or property, without due process of law.' U.S. CONST. amend. XIV, § 1. These words 'require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.' *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982) (quoting *Mullane v.*

Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

Summary

Foundational understanding of due process requirements, which are relevant to the proposition.

[Simmons v. Outreach Health Cmtys. Care Servs., L.P.](#) 511 S.W.3d 163 (Tex. App. 2014)

Texas Court of Appeals

Extract

The Due Process Clauses of the Texas Constitution and the Fourteenth Amendment to the United States Constitution also serve as restraints on legislative power in establishing procedural prerequisites to vindicating a claim. The Fourteenth Amendment provides that '[n]o State shall ... deprive any person of life, liberty, or property, without due process of law....' U.S. CONST. Amend. XIV, § 1. Likewise, the Texas Constitution's Due Process Clause provides that '[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land.' TEX. CONST. art. I, § 19. Notice and the opportunity to be heard are the cornerstones of due process. Before the State may deprive a person of property, the person must be afforded notice and the opportunity to be heard.

Summary

The passage highlights the fundamental due process requirements under both the U.S. Constitution and the Texas Constitution, emphasizing that notice and the opportunity to be heard are essential before the state can deprive a person of property. This directly supports the proposition that the respondent's removal from his home without these procedural safeguards could constitute a due process violation.

[Campbell v. Stucki](#), 220 S.W.3d 562 (Tex. App. 2007)

Texas Court of Appeals

Extract

The Fourteenth Amendment of the United States Constitution protects against deprivation of life, liberty, or property by the State 'without due process of law.' U.S. CONST. amend. XIV, § 1; Covarrubias v. Tex. Dep't Criminal Justice-Inst. Div., 52 S.W.3d 318, 324 (Tex.App.-Corpus Christi 2001, no pet.). The Texas Constitution states that no citizen of this state

shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the 'due course of the law of the land.' TEX. CONST. art. I, § 19. In the area of procedural due process, the protections afforded under the Texas Constitution are congruent with those in the federal constitution.

Summary

The passage highlights the congruence between the procedural due process protections under the U.S. Constitution and the Texas Constitution. It emphasizes that both constitutions protect against the deprivation of life, liberty, or property without due process of law. This is directly relevant to the proposition, as it underscores the requirement for due process before deprivation of property, which includes notice and an opportunity to be heard.

[In re L.D.C., NUMBER 13-17-00053-CV \(Tex. App. Dec 13, 2018\)](#)

Texas Court of Appeals

Extract

The Fourteenth Amendment of the United States Constitution protects against deprivation of life, liberty, or property by the state 'without due process of law.' U.S. CONST. amend XIV; Parratt v. Taylor, 451 U.S. 527, 537 (1981). 'The opportunity to be heard is the fundamental requirement of due process; it is an opportunity which must be granted at a meaningful time and in a meaningful manner.' Covarrubias v. Tex. Dep't. of Crim. Justice-Inst. Div., 52 S.W.3d 318, 324 (Tex. App.—Corpus Christi 2001, no pet.) (citing Parratt, 451 U.S. at 540). Evaluating procedural due process is a two-step process. Id. First, we must determine whether an existing liberty or property interest was interfered with, and secondly, we determine whether the procedures were constitutionally sufficient. Id.

Summary

Fundamental requirement of due process under the Fourteenth Amendment, emphasizing the necessity of an opportunity to be heard at a meaningful time and in a meaningful manner. It also describes the two-step process for evaluating procedural due process claims: determining interference with a liberty or property interest and assessing the sufficiency of the procedures. This directly relates to the proposition, as it underscores the requirement for due process before deprivation of property, which is central to the respondent's claim of being removed from his home without due process.

[In re Keeling, 227 S.W.3d 391 \(Tex. App. 2007\)](#)

Texas Court of Appeals

Extract

A deprivation of personal property without due process violates the United States and Texas Constitutions." ... "An order entered without due process is void." ... "The Fourteenth Amendment to the United States Constitution protects against deprivation of life, liberty, or property by the State 'without due process of law.'

Summary

Deprivation of personal property without due process violates both the United States and Texas Constitutions. It further clarifies that any order entered without due process is considered void. This aligns with the proposition that the respondent's removal from his home without due process could constitute a violation of the Fourteenth Amendment. The passage also emphasizes the requirement for notice and an opportunity for a hearing before deprivation, which supports the argument that the respondent's rights may have been violated if these procedures were not followed.

[In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#)

Texas Court of Appeals

Extract

Relator contends that the trial court abused its discretion and denied relator due process by refusing to hold an evidentiary hearing required by Family Code section 83.004. ... Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. ... Section 83.001 of the Texas Family Code, entitled 'Requirements for a Temporary ex parte Order,' provides: If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant. ... Section 83.004 provides that '[a]ny individual affected by a temporary ex parte order may file a motion at any time to vacate the order.' ... The trial court's refusal to conduct an evidentiary hearing violates the Legislature's statutory mandate that motions to vacate be decided in a live, evidentiary hearing, not by submission.

Summary

The Texas Family Code allows for temporary ex parte protective orders without a hearing if there is a clear and present danger of family violence. However, the code mandates that any motion to vacate such an order must be heard in a live, evidentiary hearing. The refusal to conduct such a

hearing violates due process requirements, as it denies the affected individual the opportunity to be heard in a meaningful manner. This aligns with the Fourteenth Amendment's due process clause, which requires notice and an opportunity to be heard before deprivation of property.

[Covarrubias v. Texas Department of Criminal Justice, 52 S.W.3d 318 \(Tex. App. 2001\)](#)

Texas Court of Appeals

Extract

The Fourteenth Amendment of the United States Constitution protects against deprivation of life, liberty, or property by the state 'without due process of law.' *Parratt v. Taylor*, 451 U.S. 527, 537 (1981). The opportunity to be heard is the fundamental requirement of due process; it is an opportunity which must be granted at a meaningful time and in a meaningful manner. *Id.* at 540; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The Due Process Clause promotes fairness by requiring the government to follow appropriate procedures when its agents decide to deprive a person of life, liberty, or property. *Daniels v. Williams*, 474 U.S. 327, 332 (1986).

Summary

The passage emphasizes the fundamental requirement of due process, which is the opportunity to be heard at a meaningful time and in a meaningful manner. It highlights that the Due Process Clause of the Fourteenth Amendment requires the government to follow appropriate procedures before depriving a person of life, liberty, or property. This directly supports the proposition that the respondent's removal from his home without a hearing, findings, or evidence, and without an emergency justifying such action, may constitute a due process violation.

[Tex. Fam. Code § 85.021 Tex. Fam. Code § 85.021 Requirements of Order Applying to Any Party](#)

Extract

In a protective order, the court may: ... grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence: (A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession; (B) is owned or leased by the party retaining possession; or (C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

Summary

The Texas Family Code § 85.021 outlines the conditions under which a court may issue a protective order that grants exclusive possession of a residence. This implies that such an order must be rendered by the court, suggesting that due process, including notice and an opportunity to be heard, should be followed. If the respondent was removed from his home without such an order being rendered, it could indicate a due process violation, as the statutory requirements for issuing a protective order were not met.

[Tex. Fam. Code § 83.006 Tex. Fam. Code § 83.006 Exclusion of Party From Residence](#)

Extract

Subject to the limitations of Section FAMILY CODE 85.021, a person may only be excluded from the occupancy of the person's residence by a temporary ex parte order under this chapter if the applicant: files a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence; and appears in person to testify at a temporary ex parte hearing to justify the issuance of the order without notice. Before the court may render a temporary ex parte order excluding a person from the person's residence, the court must find from the required affidavit and testimony that: the applicant requesting the excluding order either resides on the premises or has resided there within 30 days before the date the application was filed; the person to be excluded has within the 30 days before the date the application was filed committed family violence against a member of the household; and there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household.

Summary

Specific requirements that must be met for a court to issue a temporary ex parte order excluding a person from their residence. It requires a sworn affidavit, personal testimony, and specific findings by the court regarding recent family violence and the likelihood of future violence. This supports the proposition by highlighting the due process requirements that must be met before a person can be excluded from their home. If these requirements were not met, it could indicate a due process violation.

[Tex. Fam. Code § 83.001 Tex. Fam. Code § 83.001 Requirements For Temporary Ex Parte Order](#)

Extract

If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence,

the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.

Summary

Conditions under which a court in Texas may issue a temporary ex parte order without notice or a hearing. Specifically, it allows for such an order if there is a "clear and present danger of family violence." This suggests that, in the absence of such a finding, issuing an order without notice or a hearing could be problematic. The passage supports the proposition by highlighting the requirement of a "clear and present danger" finding, which, if absent, could indicate a due process violation.

[Tex. Fam. Code § 262.102 Tex. Fam. Code § 262.102 Emergency Order Authorizing Possession of Child](#)

Extract

Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section FAMILY CODE 105.001(a) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse; continuation in the home would be contrary to the child's welfare; there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section FAMILY CODE 262.1015 or FAMILY CODE 262.1016 or a protective order issued under Title 4; placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264: (A) was offered but refused; (B) was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or (C) would pose an immediate danger to the physical health or safety of the child; and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Summary

Specific conditions under which a court in Texas may issue a temporary order for the conservatorship of a child without prior notice and a hearing. It emphasizes the necessity of finding an immediate danger to the child's physical health or safety, or evidence of neglect or abuse, and the lack of

time for a full adversary hearing. This aligns with the due process requirements under the Fourteenth Amendment, which generally necessitate notice and an opportunity to be heard before deprivation of property or liberty. If these conditions are not met, the removal could be considered a due process violation.

[Tex. Fam. Code § 262.201 Tex. Fam. Code § 262.201 Full Adversary Hearing: Findings of the Court](#)

Extract

In a suit filed under Section FAMILY CODE 262.101 or FAMILY CODE 262.105, unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity... at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that: there was a danger to the physical health or safety of the child... the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Summary

Requirement for a full adversary hearing within 14 days of a child's removal by a governmental entity, unless the child is returned or the temporary order is dissolved. It emphasizes the necessity of findings and evidence to justify the removal and continued separation of the child from their home. This aligns with the due process requirement of notice and an opportunity to be heard before deprivation, supporting the proposition that removal without such procedures may constitute a due process violation.

[Due Process](#)

Gale Encyclopedia of Everyday Law - GALE - Jeffrey Wilson - 2006-01-01

Extract

Under both the Fifth and Fourteenth Amendments to the U.S. Constitution, neither the federal government nor state governments may deprive any

person 'of life, liberty, or property without due process of law.' ... The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. ... Procedural due process focuses primarily on a person's right to be heard, rather than a person's right to prevail in a dispute. ... Due process basically requires that a person who is deprived of a recognized right must be given some sort of notice and an opportunity for a hearing on the government's action.

Summary

Fundamental principles of due process under the Fifth and Fourteenth Amendments, emphasizing the requirement for notice and an opportunity to be heard before deprivation of life, liberty, or property. It highlights that due process is concerned with fair procedures and that any deprivation must not be arbitrary or capricious. This directly supports the proposition that removing someone from their home without a hearing or evidence could constitute a due process violation.

[Due Process](#)

Civil Procedure, 5th (Concepts and Insights Series) - Samuel Issacharoff

Extract

The two most prominent are notice and a hearing: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' According to the Supreme Court, these requirements—the opportunity to be heard and its 'instrumental corollary, a promise of prior notice'—'seem to be universally prescribed in all systems of law established by civilized countries.' ... Under this analysis, the seizure of a home produces a significant deprivation, unjustified by any governmental exigency. Unlike the yacht in *Calero-Toledo*, which could presumably be spirited away, 'real property cannot abscond,' meaning that 'the court's jurisdiction can be preserved without prior seizure.' The combination of the lack of exigency, the importance of one's homestead, and the necessarily escalated risk of error in *ex parte* proceedings rendered the seizure unconstitutional.

Summary

Due process requires notice and a hearing before deprivation of property. The passage emphasizes the importance of these procedural safeguards and highlights that the seizure of a home, without exigency, is a significant deprivation that requires due process. The passage also notes that real

property cannot abscond, suggesting that there is no justification for bypassing due process in such cases.

SUBSTANTIVE DUE PROCESS AND THE ORIGINAL MEANING OF THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE.

Faulkner Law Review - Thomas Goode Jones School of Law - Upham, David R. - 2019-09-22

Extract

The very prohibition itself suggests a prior rightful state a rule that every human person, by right, enjoys life, liberty, and property and should not be deprived of the same except for some good cause... within the Due Process Clause 'is necessarily implied and included the right to answer to and contest the charge, and the consequent right to be discharged from it, unless it is proved'... the clause does not merely prohibit offenses against the law. It does not simply permit all deprivations unless forbidden by the lawmaker. Rather, it more strictly prohibits all deprivations absent something called 'process,' which process must be of a certain kind: 'of law.'

Summary

The passage emphasizes the fundamental principle that individuals have a right to life, liberty, and property, and these rights cannot be deprived without due process of law. It highlights the necessity of a legal or judicial process before deprivation, which aligns with the proposition that the respondent's removal from his home without due process could constitute a violation. The passage supports the idea that due process requires an opportunity to contest charges and that deprivation without such process is prohibited.

The Unconstitutionality of Protective Orders Under the Texas Family Code - Part I

Extract

The United States Constitution requires that every defendant receive a meaningful trial. The 14th Amendment states that 'no state... shall deprive any person of life, liberty or property without due process of law.'... Defendants are given no meaningful time to prepare for hearing. A meaningful defense against an accusation of family violence requires an opportunity to obtain rebuttal evidence and the application of a standard of proof that accurately reflects the value of the rights that are at stake... Shockingly, however, the minimum amount of required notice afforded to a defendant in a protective order suit is only 48 hours' notice prior to final trial. Tex. Fam. Code § 84.004. These limitations do not allow for a meaningful trial... Finally, defendants in protective order cases are not given

a meaningful opportunity to be heard. Without time to adequately prepare for trial, a defendant absolutely cannot put forth a meaningful defense.

Summary

The Texas Family Code's provisions for protective orders may not provide sufficient time for defendants to prepare a defense, which can result in a lack of meaningful opportunity to be heard. This aligns with the proposition that the respondent was deprived of property without due process, as the lack of adequate notice and opportunity to prepare can lead to a due process violation.

[The Unconstitutionality of Protective Orders Under the Texas Family Code - Part II](#)

Extract

To enter a final civil protective order, the Court is required to find that the defendant's actions intended to result in physical harm, bodily injury, assault, or sexual assault or were a threat that reasonably placed the family member in fear of imminent physical harm, bodily injury, assault, or sexual assault. These are criminal actions as defined by the Texas Penal Code and conviction of which requires proof beyond a reasonable doubt. However, in a civil protective order trial, the Court must only find that the defendant has committed family violence and is likely to commit family violence in the future by a preponderance of the evidence. *Roper v. Jollife*, 493 S.W.3d 624, 638 (Tex. App.—Dallas 2015, pet. denied). This simply does not make sense. When a litigant is faced with loss of fundamental rights, due process requires that fact findings be made by more than a preponderance of the evidence. *Addington v. Texas*, 441 U.S. 418, 423.

Summary

The passage highlights the due process concerns related to protective orders under the Texas Family Code. It points out that while protective orders can result in significant deprivations of liberty and property, the standard of proof required is only a preponderance of the evidence, which is lower than the "beyond a reasonable doubt" standard required for criminal actions. This discrepancy raises due process concerns, especially when fundamental rights are at stake. The passage supports the proposition by emphasizing the need for proper findings and evidence before depriving someone of their property or liberty, aligning with the due process requirements under the Fourteenth Amendment.