

No. \_\_\_\_\_

18-8591

IN THE  
SUPREME COURT OF THE UNITED STATES

Jose J. Salazar Hernandez PETITIONER  
(Your Name)

vs.

The Tenth Court of Appeals — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Tenth Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

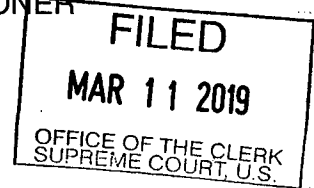
PETITION FOR WRIT OF CERTIORARI

Jose J. Salazar-Hernandez # 2140498  
(Your Name)

Barry Telford Unit, 3899 State Hwy. 98  
(Address)

New Boston, Texas 75570  
(City, State, Zip Code)

N/A  
(Phone Number)



### QUESTION(S) PRESENTED

1. Is it logical to conclude that a trier-of-fact has reasonably and rationally applied the "beyond a reasonable doubt" standard as contemplated under Jackson v. Virginia when:
  - (a) the alleged victim of a child sexual assault testifies that he or she is unsure the offense occurred;
  - (b) the child believes the offense in question to be the product of dreams; and
  - (c) the child testifies as such?
  
2. Is due process under the Fourteenth Amendment offended when the State or Government proffers an alleged out-of-court statement, to have been made by a child sexual assault victim, through a member of the prosecutorial team when:
  - (a) The statutory requirements, under code of criminal procedures, are not strictly adhered to;
  - (b) the State or Government fails to offer any proof as to the validity of the proffered statement; and
  - (c) does this effectively deny the defendant a full and fair opportunity to cross-examine the statement, of the prosecutorial team, when the fact finder is given no proof that the child made any statement at all?

## LIST OF PARTIES

[☒] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Jackson V. Virginia

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United States v. Brown

memorandum Appendix A 10f1

United States v. Nersesian

memorandum Appendix A 10f1

United States v. Dukagjini

memorandum Appendix A 10f1

### STATUTES AND RULES

Texas Penal Code 21.02

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix      to the petition and is

☐ reported at           N/A                                    ; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix      to the petition and is

☐ reported at           N/A                                    ; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix   C   to the petition and is

☐ reported at   ; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the   Tenth Court of Appeals   court appears at Appendix   D   to the petition and is

☐ reported at   ; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 11-7-2018.  
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 12-19-2018, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Fourteenth Amendment to the United States Constitution

Texas Code of Criminal Procedure Ann. art. 38.072

Texas Penal Code 21.02

Texas Code of Criminal Procedure Ann. art 2.01

Texas Rules of Evidence Rule(s) 801-804



### STATEMENT OF THE CASE

Jose J. Salazar-Hernandez, "Petitioner", after a plea of not guilty was convicted of 1 count of continuous sexual abuse of a child and 2 counts of indecency with a child by contact. Petitioner subsequently was sentenced to 30 years, without parole, for the continuous count, and 7 years for each of the other 2 counts and \$10,000 fines.

Petitioner asserts that the evidence before the trier of fact does not rationally or reasonably meet the requirements pursuant to Texas Penal Code 21.02. And, that the trier of fact did not rationally or reasonably draw their conclusion based on properly proffered evidence and contrary to the beyond a reasonable doubt standard demanded by Jackson v. Virginia.

Jane Doe, a pseudonym, testified about 5 instances of sexual assaults to have been committed by the Petitioner. However, Jane Doe, explicitly testified that all alleged assaults, which included all the touching of her vagina, buttox, or her touching Petitioner's penis, was as she believed the product of "dreams". The touching of her breast does not fall within Texas Penal Code 21.02. Thus, reasonable doubt exist within her own mind.

The Tenth Court of Appeals inappropriately relies upon testimony of 2 of the members of the prosecutorial team to secure the conviction. Both State witnesses testified to alleged out-of-court hearsay statements to have been made by Jane Doe. However, both witnesses failed to proffer any evidence as to the validity of their hearsay statements. Each testified to the necessary elements in order to establish the Texas Penal Code 21.02 offense. Their testimony was completely contrary to that of Jane Doe, the victim.

In essence, the Tenth Court of Appeals holds that it does not matter what the child victim in a sexual abuse case testifies to,

See Appendix A Memorandum

## REASONS FOR GRANTING THE PETITION

Pursuant to Rule 10 (c):

a state court or a United States court of appeals has decided an important question of federal law, that has not been, but should be, settled by this Court.

Specifically, a state court and court of appeals may rely solely on the testimony of members of the prosecutorial team to obtain and secure convictions, even when their testimony is unsupported by any evidence, and is contrary to the victim's testimony in a child sexual abuse case.

WHEREFORE, PREMISES CONSIDERED, Petitioner Prays that this Honorable Court Grant Certiorari to address this important issue amongst courts across this nation. There must be some reasonable and rational standards set by this Court because if left unaddressed every person in America is at high risk of incarceration based solely upon State or Government "expert" testimony. To such there is no viable defense in this particular type of case, or any case.

Thank You.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

José Soler

Date: \_\_\_\_\_