

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANCISCO SALAZAR
Petitioner

v.

THE STATE OF TEXAS
Respondent

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF
CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

BRITTANY CARROLL LACAYO
LACAYO LAW FIRM, PLLC
TBN: 24067105
212 Stratford St.
Houston, Texas 77006
Phone: (713) 504-0506
Fax: (832) 442-5033
Brittany@bcllawfirm.com

ATTORNEY FOR PETITIONER,
FRANCISCO SALAZAR

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To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to Supreme Court Rule 13.5, petitioner, Francisco Salazar, respectfully requests a thirty (30) day extension of time in which to file his petition for writ of certiorari in this Court, to and including January 25, 2019. The memorandum opinion of the Texas Court of Criminal Appeals was entered on May 23, 2018, and Petitioner's timely Petition for Discretionary Review was refused on September 26, 2018. *Salazar v. State*, 2018 Tex. App. LEXIS 3639 (Tex.

App. – Beaumont, May 23, 2018, pet ref'd). Copies of the memorandum opinion and order refusing the Petition for Discretionary Review are attached.

Petitioner's time to petition this Court for writ of certiorari currently expires on December 26, 2018. This application is being filed more than 10 days before that date. The Montgomery County District Attorney's Office has been consulted and does not oppose the requested extension. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. § 1257(a).

The Court of Appeals found that since there was no evidence that Salazar was subject to custodial interrogation at the time he declined to give a statement, “no Fifth Amendment protections would have applied.” *See Salazar*, 2018 Tex. App. LEXIS 3639, at *18. However, it remains an unanswered question whether Fifth Amendment protections apply to someone who has been informed of his right to remain silent (in this case by his attorney) and invokes that right in a noncustodial interrogation.

The Court of Appeals found that a defendant is unable to show prejudice in an ineffective assistance of counsel claim for being denied his constitutional right to testify and say he did not do what is alleged because the court found this would be the same as his not-guilty plea. 2018 Tex. App. LEXIS 3639, at *34.

The Court of Appeals' opinion presents a question of whether a defendant's due process rights are violated when an expert witness provides an opinion that the complainant or class of persons to which the complainant belongs is truthful, or a statistical opinion on false allegations. *See Salazar*, 2018 Tex. App. LEXIS 3639, at *14.

An extension of time is necessary because counsel's current professional obligations allow insufficient time to research, draft, and file a proper petition for writ of certiorari. Counsel prepared and filed a Reply Brief in the case styled *Happy Tran Pham v. The State of Texas*, Case No. 14-17-00400-CR, which was filed with the Fourteenth Court of Appeals for the State of Texas on November 28, 2018. Counsel was also appointed to represent a defendant in a Motion for Post-Conviction DNA Testing in the case styled *State of Texas v. Lydell Grant*, Case No. 1288802, which is pending in the 351st Judicial District Court of Harris County, Texas. Counsel has also been preparing a Petition for Writ of Habeas Corpus in the case styled *State of Texas v. Steven Wilson*, Case No. 7004, in Lee County, Texas. Counsel is also preparing a Petition for Rehearing En Banc in the case styled *United States of America v. Earlie Dickerson*, Case No. 12-20270, which is due to be filed in the Fifth Circuit Court of Appeals on December 26, 2018. Counsel is also preparing a brief in the case styled *United States of America v. Severiano Garza*, which is due to be filed with the Fifth Circuit Court of Appeals on January 4, 2019.

Wherefore, for the foregoing reasons, petitioner respectfully requests that an order be entered extending time for filing his petition for writ of certiorari to and including January 25, 2019.

Respectfully submitted,

/s/ Brittany Carroll Lacayo
BRITTANY CARROLL LACAYO
LACAYO LAW FIRM, PLLC
TBN: 24067105
212 Stratford St.
Houston, Texas 77006
Phone: (713) 504-0506
Fax: (832) 442-5033
Brittany@bcllawfirm.com

ATTORNEY FOR PETITIONER,
KEITH MICHAEL ST. AUBIN

December 13, 2018