

No. _____

19-7345

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERTO SANCHEZ

(Your Name)

PETITIONER

vs.

LORIE DAVIS, Dir, TDCJ-CID

ORIGINAL

RESPONDENT(S)

FILED

TO DEC 23 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SANCHEZ ROBERTO

(Your Name)

3899 State HWY 98 (Telford unit)

(Address)

New Boston, Texas 75570

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

DID THE FIFTH CIRUIT'S OPINION CONFLICT WITH IT'S OWN PRECEDENT IN ROJAS V. RICHARDSON REGARDING THE PREJUDICIAL NATURE OF A PARTY'S IMMIGRATION STATUS AND HOW TO EVALUATE THAT PREJUDICE.

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:

RELATED CASES

Sanchez v. Davis, No. 4:15-CV-948-A (N.D. Tex. May 17, 2017).

Sanchez v. Davis, 888 F.3d 746 (5th Cir. 2018).

Sanchez v. Davis, No. 17-10652, 2019 WL 4047516 (5th Cir. Aug. 28, 2019).

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STATUTES AND RULES

28 U.S.C. § 2254

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

[X] For cases from federal courts:

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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[] reported at _____; 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[] is unpublished.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 _____ 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[] is unpublished.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 _____ court appears at Appendix _____ to the petition and is

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[] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 28, 2019.

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: September 25, 2019, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (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 _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

STATEMENT OF THE CASE

Appellant robert sanchez ("sanchez") was tried ,for and convicted of, first degree felony murder in state court in Tarrant County, Texas. (see) *Sanchez*, 418 S.W.3d 302,305 (Tex.App.2013).

During the innocent and guilt phase of his trial, which took place on April 10, 2012, the prosecutor questioned Sanchez's cousin, Dilcia Chavarria, regarding Sanchez's immigration status, asking: " Is Roberto Sanchez herelegally or illegally? Sanchez's trial counsel did not object to thisquestioningChavarria responded: "well, illegallyhe doesn't have papers!" The jury ultimately found Sanchez guilty.

On April 12,2012, two days afterChavarriá's testimony, the jury deliberated Sanchez's sentence. During deliberations, the jury penned a note to the court asking: "if Sanchez is ever released on parole, will he remain in our country, or will he be deported back to Honduras?" The trial court replied to the note that it was "not able to supply additional information:" after two hours of deliberations, the jury sentenced sanchez to 70 years in prisonsand a fine of 10,000.

REASONS FOR GRANTING THE PETITION

DID THE FIFTH CIRCUIT'S OPINION CONFLICT WITH IT'S OWN PRECEDENT IN ROJAS V. RICHARDSON REGARDING THE PREJUDICIAL NATURE OF A PARTY'S IMMIGRATION STATUS AND HOW TO EVALUATE THAT PREJUDICE.

In *Rojas v. Richardson*, 703 F.2d 186, 191 (5th Cir.), on reh'g, 713 F.2d 116 (5th Cir. 1983), the Fifth Circuit held, the introduction of the plaintiff's immigration status namely, the use of the term "illegal alien" by the defendant's counsel during closing argument was highly prejudicial and constituted error. Although the court reversed its plain-error holding on rehearing, the principle of law and practical effect of both *Rojas* opinions are clear: when irrelevant to the litigation and to design to appeal to a jury's prejudice and bias, the introduction of a party's immigration status inherently prejudices that party.

In *Rojas*, Paulino Izaguirre Rojas, a ranch hand working for the defendant's sued for negligence after he was thrown from the horse and injured. 703 F.2d 187. during closing remarks at trial, defense counsel made a single reference to Rojas' immigration status, noting that he was an "illegal alien." Id. at 190-91. Rojas' counsel did not object, and the jury returned a verdict for the defendant. Id. at 188, 189-90.

On appeal, Rojas argued inter alia, the defense counsel's introduction of his immigration status was so prejudicial that it constituted plain error. Id. The court agreed. In finding that Rojas was prejudiced,

the court importantly held that "by introducing irreveant and unproven allegations that Rojas was an illegal alien the defense clearly was appealing to the prejudices and bias of the jury on the basis of national origin." Id. at 191. Although admittedly relevant to whether there was diversity jurisdiction, the court also held "his status as an illegal alien was completely irrelevant to the negligence claim the jury was to evaluate." Id. Despite using the term "alien" throughout the trial, the court concluded that the defense counsel's "single reference to the incendiary, derogatory expression 'illegal alien' is prejudicial." Id. the court supported the conclusion by citing analogous Texas case holding the same. (see) *Penate v. Berry*, 348 S.W.2d 167, 168-69 (Tex.App 1961); *Texas Emp. Ins Ass'n v. Jones*, 361 S.W.2d 725 727 (Tex.Civ.App 1962), writ refused NRE (feb. 6, 1963).

The court concluded that "the closing remarks of the defense counsel were highly prejudicial and a blatant appeal to jury bias." id at 192, and that the reference was so prejudicial that it could not be cured by curative instruction, id at 192 (citing *Pride Transport Co. v. Hughes* 591 S.W.2d 631 (Tex.Civ.App-eastland 1979, writ ref'd n.r.e.)) (some references are so perjudicial that it is difficult for a curative instructions to resuscitate fairness"). This conclusion that a party's immigration status is inherently prejudicial comport with numerous other cases both inside and outside the fifth Circuit. (see) *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 245 (Tex. 2010) (holding appeals "to racial and ethnic prejudices, whether' explicit and brazen' or 'veiled and subtle,' cannot be tolerated because they undermine the very basis of our judicial process"); *Republic*

Waste Servs. Ltd. v. Martinez, 335S.W.3d 401,409 (Tex.App. 2011) (noting that immigration is "highly charged area of political debate"); **Riascos v. State**, 792 S.W.2d 754,758 (Tex.App 1990) (Texas court have long held that national origin or race of the defendant is an inappropriate focal point for argument by the prosecution, particularly in light of the time."); **Moss v. sanger**, 75 Tex. 321, 322, 12 S.W. 619, 620 (1889)(noting that "no court of justice ought for a moment to tolerate" inflammatory appeals to prejudicial bias based on race, national origin, or ethnicity). And the Fifth Circuit has since reaffirmed the principale holding of **Rojas**- that the use of the term "illegal alien" can be highly prejudicial. (see) **Sifuentes v. Abreo**, 531 F.App'x 481 (5th Cir.2013).

Most significantly, the Court in **Rojas** did not engage in any sort of analysis regarding how the jury might have considered the **Rojas**' immigration status. Instead, given the prejudicial nature of the party's immigration status, the court assumed that the jury heard the defense counsel's reference, took note of it, and considered it in rendering thier verdict. See **Rojas**, 703 F2d at 192. Essentially, the Court concluded that the given the manner and circumstances surrounding the introduction of highly prejudicial and incendiary information, it was proper to presume prejudice.

Here, like **Rojas**, **Sanchez**'s immigration status was irrelevant to the underlying charge. and like in **Rojas**, it can be reasonably inferred from the State's line of questioning that the State intended to introduce **Sanchez**'s immigration status to appeal to the prejudice and bias of members of the jury on the basis of natioal origin. Moreover, here, we

know that the jury not only heard and understood the State's reference to Sanchez's immigration status, but that it made an impression on them enough for them to remember that fact two days later despite the State's single reference. We also know that it was important enough to their deliberations of Sanchez's sentence that they asked the Court how Sanchez's immigrant status would affect the sentence imposed. **Rojas** supports the proposition that under these circumstances, given the highly inflammatory nature of the party's immigration status, the Fifth circuit should presume a certain degree of prejudice absent evidence to the contrary. Given **Rojas'** holding, under these circumstances, a presumption that the jury's consideration of Sanchez's immigration status prejudiced Sanchez is warranted.

The Fifth Circuit did not recognize the inherently prejudicial nature of Sanchez's immigration status. Instead, the Fifth Circuit engaged in a hypothetical debate regarding how the jury could or might have considered Sanchez's immigration status. see *Sanchez*, 2019 WL 4047516, at *5. Engaging in this hypothetical exercise, the Fifth Circuit speculated that the jury might have been curious about Sanchez's immigration status or that it might have considered that information favorably, despite ultimately giving him a 70-year sentence. The Fifth circuit's guesswork as to the jury's intention to discussing Sanchez's immigration status is necessary and conflicts with the **Rojas'** guiding principle: prejudice is presumed when highly prejudicial and incendiary information such as a party's immigration status is introduced absent relevance and under circumstances indicating prejudicial appeal. As noted by Judge Costa in the COA, this is exactly the type of guesswork the jury's note eliminates. *Sanchez*, 888 F.3d at 752.

Rather, **Rojas** tells us it is safe to presume, given the Court's recognition of how prejudicial a party's immigration status can be that the jury's consideration of Sanchez's immigration status while deliberating his sentence did not work in his favor.

Given the presumption of prejudice applied to the introduction of a party's immigration status under these circumstances under **Rojas** the United States Supreme Court should hear this writ of certiorari to clarify the Fifth Circuit's precedent on this issue and whether its exercise in conjecture conflicts with the principle espoused in **Rojas**.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Roberto Sanchez

Date: Dec 23, 2019

FIFTH CIRCUIT'S OPINION

APPENDIX -A