

20-7053

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

ORIGINAL

Supreme Court, U.S.  
FILED

JAN 14 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
IN RE HECTOR MANUEL TORRES PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
THE COURT OF CRIMINAL APPEALS OF TEXAS

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

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
HECTOR MANUEL TORRES #1123769

(Your Name)

\_\_\_\_\_  
3872 FM 350 SOUTH POLUNSKY UNIT

(Address)

\_\_\_\_\_  
LIVINGSTON, TEXAS 77351

(City, State, Zip Code)

\_\_\_\_\_  
N/A

(Phone Number)

RECEIVED

JAN 29 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTION(S) PRESENTED

In Chaidez V United States, 568 U.S. 342 (2023) this court decided that Padilla V Kentucky, dis not apply retroactive and announced a new rule. This decision brings up a question of a constitutional magnitude as to determine whether the ruling by this court deprive certain people of the right to equal protection, by allowing a defense counsel to withhold a vital fact surrounding a plea bargain to a certain group of people, which is a direct denial of a constitutional right to effective assistance of counsel, when the Sixth Amendment as well as Strickland V Washington, existed at the time this court decided Padilla, which now brings to question before the court.

At the time of the plea proceeding did petitioner have protection of the Fourteenth Amendment's equal protection clause, or was he not entitled to it because of his nationality which deprives his of the same right as other defendants during his plea bargain proceeding ?

## **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**

## TABLE OF CONTENTS

|  |   |
|--|---|
| OPINIONS BELOW .....                                   | 1 |
| JURISDICTION.....                                      | 2 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 3 |
| STATEMENT OF THE CASE .....                            | 4 |
| REASONS FOR GRANTING THE WRIT .....                    | 5 |
| CONCLUSION.....  | 8 |

## INDEX TO APPENDICES

APPENDIX A COPY OF THE COURT OF CRIMINAL APPEALS DISMISSAL

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

| CASES   | PAGE NUMBER |
|---|-------------|
| CHAIDEZ V UNITED STATES 568 U.S. 342 (2013) .....               | 5, 6        |
| CITY OF CLEBURN V CLEBURN LIVING CENTER, 476 U.S. 432 (1985) .. | 5           |
| HILL V LOCKHART 474 U.S. 52 (1985) .....                        | 5, 6, 7     |
| MAYABB V JOHNSON 168 F.3d 863 (5th Cir. 3011) .....             | 7           |
| PADILLA V KENTUCKY 559 U.S. 256 (2010) .....                    | 5, 6, 7     |
| QUTBY V STRAYUSS 11 F.3d 488 (5th Cir. 1993) .....              | 7           |
| SONNIER V QUARTMAN, 467 F.3d 349 (5th CIR. 2007) .....          | 5, 6        |
| STRICKLAND V WASHINGTON 466 U.S. 668 (1984) .....               | 5, 6        |
| TEAGUE V LANE 489 U.S. 288 (1989) .....                         | 5, 7        |
| WILSON V BIRNBERG 660 F.3d 206 (5th CIR. 2011) .....            | 7           |

## STATUTES AND RULES

EQUAL PROTECTION OF THE LAW, FOURTEENTH AMENDMENT

## 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 \_\_\_\_\_; 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 \_\_\_\_\_; 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   A   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

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ 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: \_\_\_\_\_, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 12/2/2020.  
A copy of that decision appears at Appendix A.

☐ 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**

### **FOURTEENTH AMENDMENT:**

THE FOURTEENTH AMENDMENT PROVISION REQUIRING THE STATES TO  
GIVE SIMILARLY SITUATED PERSONS, OR CLASS SIMILAR TREATMENT  
UNDER THE LAW

### **SIXTH AMENDMENT:**

... HAVE THE RIGHT TO HAVE ASSISTENCE OF COUNSEL.



## STATEMENT OF THE CASE

This case involves a plea bargain, which petitioner was sentenced to Fifty-Years in prison for the offense of Sexual Assault C/H, and prior to agreeing to plead guilty to the offense, he was not informed of the fact that he would also be deported as a result. Petitioner would not have plead guilty had he known he would face deportation. The defense counsel failed to inform petitioner of that fact which he has challenged this in the state court who simply denied his habeas application without a written order. Now he is asking this court whether he had the same right's to know all that would result for his guilty plea, which would have allowed him to make an intelligent decision.

Petitioner first sought relief by filing an Application for Habeas Corpus relief under art. 11.07, the District Court, failed to make a finding on the federal question and forwarded the question to the Texas Court of Criminal Appeals, which dismissed the question without a written order under 11.07 sect 4. The question was properly presented to the court as petitioner became knowledgeable of the facts as presented.

## REASONS FOR GRANTING THE PETITION

Petitioner sought relief pursuant to this court decision in Padilla V Kentucky, 559 U.S.356,130 S.Ct.1473(2010)The court denied relief based of a decision in Chaidez V United States,568 U.S.342(2013). In Chaidez the court determined that Padilla did not apply retro-active, and was a new rule pursuant to Teague V Lane,489 U.S.288(1989). The decision was unfair because it was not in good faith. It denied a certian group of people of the right to "Equal Protection" by the court making it clear that at the time of it's decision in Padella the right to at that time given to certain people to have the right to effective assistance of counsel. Equal protection of the law is not an abstract right but is a command which the states must respect the equal protection clause requires that all persons similarly situated should be treated alike. City Of Cleburn Tex. V Cleburn Living Center,473 U.S.432,439,105 S.Ct.3249(1985). The petitioner in this case was singled out Chaidez, because at the time of his guilty plea, At the time petitioner plead guilty, the court was imbalanced and intentionally complicated for a non-citizen, Hill V Lockhard, 474 U.S.52(1985) stated that a defendant "MUST" be informed of all the circumstances surrounding his guilty plea in order for it to be intellegently made, and at the time of the petitioner's guilty plea such right existed, and Hill V Lockhard did not state that this only applied to citizens, and that non-citizens did not have this same right. In a criminal proceeding a non-citizen should had been able to enjoy the same right as a citizen, the purpode of equal protection is to secure every person within the states jurisdiction against intentional and arbitrary discrimination. Sonnier V Quarterman,476 F.3d

I. DID PETITIONER HAVE THE SAME RIGHT'S DURING HIS TRIAL ?

Did the Equal protection of the law stop during petitioner's guilty plea because he was a non-citizen. Padilla V Kentucky did not break new laws to counsel requirement's, and as stated in a dissenting opinion by Justice's Sotomayor, and Justice Ginsburg, Padilla did nothing more then apply the existing rule of Strickland, and that it was simply a garden-variety of Strickland V Washington, 466 U.S.668(1984). The rule imposed by Strickland and Hill, does not say that effective counsel during a plea proceeding apply "Unless you are Mexican," the law did not discriminate, and this court has made clear that it don't agree that every defendant does not have the right to a fair trial, or effective, also that unless you're an american, your guilty plea do not have to be intelligently made. In Hill V Lockhart, the court agreed that counsel have a duty to inform his client of all the circumstances surround a plea offer. The decision made in Chaidez deprives a defendant of his Sixth Amendment right to effective counsel, and discriminates against a group of defendant's based on race.

II. WAS PETITIONER DENIED EQUAL PROTECTION OF THE LAW ?

Equal Protection of the law is violated when governmental actions such as the issue in question classifies or distinguishes between two or more relevant persons or group, or when classification impermissible interferes with a fundamental right. see Mayabb V Johnson 168 F.3d 863(5th Cir.1999) It's clear the decision made by the court in Chaidez singled out a particular group of people violating 1. dis

people resulting in disparate treatment. Wilson V Birnberg, 660 F.3d 206(5th Cir.2011):Qutb V Strayuss, 11 F.3d 488(5th Cir.1993)

In Hill V Lokhart, this court applied the same two-part standard of Strickland, which requires a defendant effective counsel at all stages. This right was given to all defendants by the United States Constitution. Looking at the facts in this case it clear the lower court feel that because a person is a non-citizen, he does not have the same rights as the person next to him which is obnoxious. There was nothing in Torres (petitioner) plea agreement that informed him of the fact that he would be deported as a result of his guilty plea. Had the immigration consequences been discussed he would not have chosen to plead guilty.

This court has never made the distinction between collateral, and direct consequences of a guilty plea, so the question here is how can the court make a claim that deportation is collateral, and not direct. Such a claim can not be made until a determination is made as to whether there's a difference in the two. Teague does not apply here in this case, because the dissenting Judges were correct by determining that Padilla did not create a new rule, it was simply a garden variety of the Strickland, and did not impose any new rule. Petitioner is seeking a new trial, to return to the beginning of the proceeding, because if he had been informed by his counsel that he would face deportation he never would have plead guilty.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Hector M. Torres

Date: 1/14/2021