

20-7403  
No. \_\_\_\_\_

ORIGINAL

FILED

JAN 10 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD LUNA

— PETITIONER

(Your Name)

vs.

THE STATE OF TEXAS

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS

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

PETITION FOR WRIT OF CERTIORARI

RICHARD LUNA

(Your Name)

01164313

JDCJ-TERRELL

(Address) 1300 FM 655

ROSHARON, TX 77583

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Whether a defendant is denied his right to counsel on appeal when the defendant told his court appointed attorney to file notice of appeal but the attorney refused to do so because the attorney ~~ref~~ petitioner did not have the right to appeal in a plea-bargaining case?

Whether a defendant is denied his right to appeal when the trial court misleads him that the signing of any plea documents purporting to waive his right to appeal such that the court loses jurisdiction to accept notice of appeal?

The following information was obtained from the records of the [redacted] Department of the [redacted] Government:

[The rest of the document contains extremely faint, illegible text.]

## 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

STATE OF TEXAS V. RICHARD LUNA,  
NO. 2002 CR 7522, 175TH DISTRICT  
COURT, BEXAR COUNTY, TEXAS

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### CASES

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### STATUTES AND RULES

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RECEIVED - 10-10-67  
U.S. AIR FORCE



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☐ is unpublished.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 10/21/2020.  
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

### Amendment V to the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment VI to the United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### Amendment XIV to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No 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 the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## STATEMENT OF THE CASE

Petitioner has the right to appeal his criminal conviction and the right to the effective assistance to take that appeal.

Petitioner seeks an out-of-time appeal on the grounds he told his court appointed attorney to file notice of appeal but the attorney refused to do so telling Petitioner that it would do no good to do so because he did not have the right to appeal in a plea-bargained case.

The trial court incorrectly denied relief because "even if Applicant's counsel advised him not to file a notice of appeal, this court finds that such advice was within the range of competence demanded of attorneys in criminal cases.

The trial court then stated: "Applicant did indeed waive his right of appeal, and he signed his plea documents agreeing to waive his right to appeal. Had he filed a notice of appeal under such circumstances, such appeal would have been dismissed for lack of jurisdiction".

The trial court is wrong. A trial court does not lose jurisdiction to accept a notice of appeal regardless of any plea waivers made.



## **REASONS FOR GRANTING THE PETITION**

The Court of Criminal Appeals has decided an important federal question of law, namely, the right of a criminal defendant to file notice of appeal, that conflicts with the decision from this Court in *Garza v. Idaho*, No. 17-1025 (Feb. 27, 2019).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard Luna

Date: JANUARY 10, 2021