

**20-7576**  
No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Humberto Rodriguez, Jr. — PETITIONER  
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

MAR 02 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

Humberto Rodriguez, Jr. 1017893  
(Your Name)

Hughes Unit, Rt. 2 Box 4400  
(Address)

Gatesville, Tx 76597  
(City, State, Zip Code)

NONE  
(Phone Number)

**ORIGINAL**

### **QUESTION(S) PRESENTED**

Does the Supreme Court's Two-Step Test to determine [extra]territoriality it created in, *RJR Nabisco V. European Cmty*, 136 S.Ct. 2090, also apply to State criminal cases to determine Subject-Matter Jurisdiction, i.e. whether a Tribunal has the power to hear a case?

## 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

Ex Parte Humberto Rodriguez, Jr., T.C.C.A. No. WR-81853-02

Rodriguez V. State, 146 S.W.3d 674 (TCCA 2004)

Rodriguez V. State, 13-00-00771 (Tx. Ap. Ct. 13)

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:** *NA*

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 92nd District Court, Hidalgo Co., TX court appears at Appendix B 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**: NA.

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 12-23-2020.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date:  
None allowed on habeas corpus 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).

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**APPENDIX B:** State's Finding of facts and conclusion of law

**APPENDIX C:** State Court's ruling on finding of facts and conclusions of law

**APPENDIX D:** T.C.C.A. published ruling RODRIGUEZ V. STATE, 146 S.W.3d 674  
Reversing lower Court's acquittal.

**APPENDIX E:** Thirteenth Court of Appeals Opinion acquittal on murder charge,  
Number 13-00-771-CR, unpublished.

**APPENDIX F:** Applicant's State writ of habeas corpus

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
R.J.R. Nabisco, Inc. V. European Cmty., 136 S.Ct. 2090(2016)	pg.6-7
Morrison V. Nat'l.Ausl. Bank Ltd., 130 S.Ct. 2869,2877(2010)	pg.8
Villanueva V. U.S., 743 F.3d 103(5th Cir.2014)	pg.8
Ex Parte, Humberto Rodriguez, Jr. Tx.Cr.App. No.WR-81,853-02	pg.6-7
Rodriguez V. State, 13-00-00771 (Tx.App.Ct.13)	Appx. 4

## STATUTES AND RULES

Tx. Penal Code 1.04(a)(1) Jurisdiction
Tx. Penal Code 19.02 Murder
Tx. Penal Code 19.03 Capital Murder
Tx. Cd. Cr. App. Art.11.07(a)(2)

## OTHER

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **14TH AMENDMENT SUBSTANTIVE DUE PROCESS**

Applicant believes the State should apply a new TWO-STEP TEST the Supreme Court created to determine [extra]territoriality, to his capital murder case that will prove the State Courts had no power to hear the murder portion of his case because the murder portion of the capital murder and all its elements took place in Mexico by Mexican Nationals.

The test is not a new "rule" but clarifies existing Supreme Court rulings previously cited by Applicant but ruled meritless by the State.

The State now claims the test does not apply to State criminal cases, and was created using already existing Supreme Court cases. see Appx.pg.5-7,8.



## STATEMENT OF THE CASE

Petitioner Rodriguez is not asking the Supreme Court to rule on the merits of his case, which is a challenge to the State's highest Court of Criminal Appeals' use of a State Territorial statute to gain extraterritorial subject matter jurisdiction over his capital murder case which overturned the lower 13th Court of Appeals' acquittal of the murder conviction due to lack of jurisdiction over the murder that occurred in Mexico.

Rodriguez is seeking relief on the merits from the Texas Court of Criminal Appeals in a second habeas corpus by asking them to apply the Supreme Court's two-step test for extraterritoriality it created in the *R.J.R. Nabisco case*<sup>1</sup> in 2016 that did not exist when they reviewed the same issue in his first writ in 2014, calling the lack of subject matter jurisdiction issue meritless. The T.C.C.A. has never acknowledged the [extra]territorial issue of this case, and now claims the two-step test does not apply to state criminal cases.

Rodriguez argues that by applying the two-step test that the Supreme Court created to clarify extraterritoriality, it will be proven that the 13th Court of Appeals was correct in its ruling that the state capital murder statute's first requirement is to determine whether a murder occurred under the requirements of the state murder statute. It found the state could not even investigate the murder because no cause or result took place in the U.S., therefore the state could not have subject matter jurisdiction over the murder and they acquitted.

On State's P.D.R. the T.C.C.A. reversed the acquittal by ruling the State's Jurisdiction statute, Tx. Penal Code 1.04(a)(1) provides for territorial jurisdiction "if the conduct or result that is an element of the offense occurs inside this state." They then rule capital murder is the crime and kidnapping is a lesser included offense of capital murder and that element occurred in Texas, so the state has jurisdiction over the murder in Mexico. This ruling negates the capital murder statute's first requirement that a murder must first occur under the state's murder statute. That is impossible to determine when there can be no investigation because Texas law enforcement had no jurisdiction to operate in Mexico. As for the kidnapping, the State alleged the kidnappers picked up the vehicle they used to abduct the victim at a mobile home where this Applicant sometimes stayed, therefore he must have supplied it and is an accomplice to the kidnapping even if not one of the kidnappers, so he is also responsible for the murder that later occurred in Mexico. Nothing was proven.

The trial proved the murder was committed by four Mexican Nationals in Mexico, and the kidnapping was financed by and the vehicles supplied by an Oscar Rodriguez, not known by or related to Humberto Rodriguez or his family. This Applicant filed a separate State kidnapping writ that clearly proved all of that but the state refused to review it.

Petitioner Rodriguez believes by applying the Supreme Court's two-step test to the focus crime of murder as the second step requires, and as the state's capital murder statute requires, it will prove the murder was extraterritorial no matter the lower offense of kidnapping that occurred in Texas. The test will show the state territorial statute, Penal Code 1.04, does not confer extraterritoriality thus failing the first prong of the test, as does the indictment itself because it alleged the kidnapping and murder occurred in Hidalgo County, Texas.

Now the Supreme Court is petitioned to decide if their Two-Step test for extraterritoriality should be applied to this Petitioner's case by the Texas Court of Criminal Appeals to determine if the state has the power to try him for murder as the 13th Court of Appeals ruled it did not. To do that it must first determine whether their two-step test pertains to state criminal cases and a state court's power to hear a case. If it does, the Court should remand.

Appendix B and C are the State's response to Applicant's writ, in which they intentionally mislead and misstate the facts of the case and the one ground for relief argued by Applicant. Applicant's writ is Appx.F. The state argues why under Texas law the habeas corpus is successive, but fails to cite the law why it is not. TX.CD.CR.PROC. ART.11.07 4(a)(2) states;"by a preponderance of the evidence but for a violation of the U.S. Constitution, no rational juror could have found the Applicant guilty beyond a reasonable doubt."

Applicant argues the State violated the Substantive Due Process Clause of the 14th Amendment when it tried him for a murder Mexican Nationals committed in their own country, then ratified it by ruling a state territorial statute allows jurisdiction because the victim was kidnapped in the U.S., and now the State refuses to apply a new Supreme Court test to prove they were wrong. All why refusing to admit the issue is extraterritorial not territorial.

## REASONS FOR GRANTING THE PETITION

It is extremely important for the Supreme Court to clarify that both state and federal questions of extraterritoriality must undergo the two-step test, and where questions of a tribunal's power to try a case are at issue, a finding of extraterritoriality confers none.

Petitioner Rodriguez could not present this case a second time to the lower federal courts because they ruled him time-barred when he filed his first writ. And secondly because of the Fifth Circuit Court of Appeals' overbroad and mistaken ruling on extraterritoriality in, Villanueva V. U.S., 743 F.3d 103(5th Cir.2014) "The Supreme Court has clarified that whether a statute applies extraterritorially is a question on the merits rather than a tribunal's power to hear a case." citing Morrison V. Nat'l Austl. Bank Ltd., 130 S.Ct. 2869, 2877(2010). The Supreme Court did not say that. Morrison @2877: But to ask what "conduct" 10(b) reaches is to ask what conduct 10(b) prohibits, which is a merits question. Subject matter jurisdiction by contrast refers to a tribunal's power to hear a case. quoting U.S. V. Cotton, 122 S.Ct. 1781(2002).

The 5th Circuit lumped "conduct" questions with "jurisdiction" questions. which would forever bar the question of a tribunal's power to hear a case determined extraterritorial. Jurisdiction could never be questioned.

This Court's ruling in R.J.R Nabisco cites three types of statutes to consider. 136 S.Ct.2090; "There is a two-step framework for analyzing extraterritoriality issues. At first step the Court asks whether the presumption against extraterritoriality has been rebutted-that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially. The court must ask this question regardless of whether the statute in question regulates [conduct], affords [relief], or merely confers[jurisdiction]. The Fifth Circuit's version would never allow questions conferring jurisdiction.

It is clear that both the Fifth Circuit and the Texas Court of Criminal Appeals is confused as to a court's power to hear a case with foreign aspects, and how to determine whether they can or cannot. As it is, every case in which extraterritoriality is at issue within the Fifth Circuit either has been or will be decided wrong, as the Texas Court of Criminal Appeals has done.

This Petitioner believes that unlike the Supreme Court decisions on extraterritoriality prior to Nabisco that he cited, Nabisco clarified the issue of subject matter jurisdiction so that the T.C.C.A. could correct their pre-

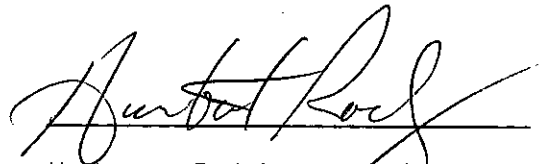
viously mistaken view of the difference between territorial and extraterritorial jurisdiction. It is important that the Supreme Court preserve the integrity of their decisions and the respect of foreign jurisdictions. It is important also to protect the Substantive Due Process of all past and future cases by assuring the incorrect rulings of the Fifth Circuit and The Texas Court of Criminal Appeals never to be cited as precedence for other cases.

INMATE DECLARATION

I Humberto Rodriguez, Jr., do hereby swear under penalty of perjury that the foregoing statements and documents are true and correct.

ON THIS DAY

2/23/21



Humberto Rodriguez, Jr 1017893  
The Hughes Unit  
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Gatesville, TX 76597

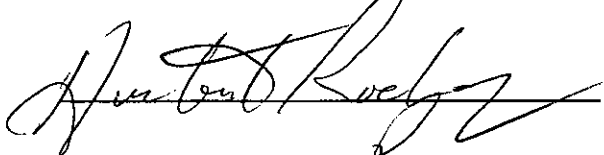
(2)

(9)

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Hunter R. Kief", written over a horizontal line.

Date: 2/23/04