

No. 20-7751

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IN THE SUPREME COURT OF THE UNITED STATES

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EFRAIN LOPEZ, PETITIONER

v.

BOBBY LUMKIN, TDC-J DIRECTOR, RESPONDENT

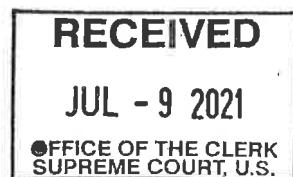
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**Petition For Rehearing**

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Submitted By:

Efrain Lopez, TDC# 1953021  
Wynne Unit, CID  
810 FM 2821  
Huntsville, TX 77349



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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

Comes Now Petitioner, Efrain Lopez, Pro Se, and prays that this Court grant's a Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fifth Circuit Court of Appeals. In support of Petition, Lopez states the following.

STATEMENT OF FACTS

On or about September 12, 2005, during a home invasion and robbery, crime victim Guadalupe Sepulveda, who sold drugs from his home, and deceased crime victim Daniel Zammora were both shot. Sepulveda survived his handgun wound, however, Zammora died from his gunshot wound. Sepulveda witnessed the crime. Drugs, weapons, a cell phone, scales, and less than \$2,000 were stolen from the scene of the crime. State records show the an "unkown person" was also assault during the home invasion and robbery. The State titled this offense as the, Loma Vista Case.

Detectives on the Case noticed that the stolen cell phone was being used. Quickly, detectives traced the stolen phone to their first suspect, Alejandro Garcia (a minor at the time). Alejandro Garcia was using the stolen cellphone, as if, it was his property, dialing his home and girlfriend and texting his girlfriend, etc. Alejandro Garcia was questioned by Detectives, and Alejandro accused his friend, Jose Loviano as the suspect for the Murder of Daniel Zammora.

Quickly, Jose Luviano was cleared from any wrong doing. Detectives, for the second time, questioned Alejandro Garcia; mind you, he is not incarcerated; and Alejandro then accused a, Goerge Lopez, who allegedly attended a different high school. As fast as possible, detectives could not locate a minor named Goerge Lopez and concluded the name is fictional.

For a third time, detectives question Alejandro Garcia about the Loma Vista murder. In this line of questioning Alejandro signed his 3rd affidavit accusing Petitioner Efrain Lopez as the suspect for Daniel Zammora death. F.Y.I., Lopez and Alejandro were friends.

On October 10, 2005, Lopez is arrest through a, Pocket Warrant, in front of his childhood home after school. He is taken into custody, read his Rights, and interrogated. Lopez denied all allegations and is released 24 hours later.

Detectives continue to communicate with Alejandro Garcia, and come up with a list of suspects: Juan Balderas, Israel Diaz, a so-called Debo, and others. All of the suspects, at the time, were Alejandro Garcia's friends.

On December 16, 2005, Lopez and about a dozen alleged suspects were taken into custody, read their rights, and interrogated. Lopez was personally arrest

for Agg. Assault of an Un-known Person during the Loma Vista home invasion. Detectvies also executed a Search Warrant, based on the testimony of Alejandro Garcia, in Lopez's childhood room looking for evidence. In Lopez's room, detectives found a 9mm pistol and money (in new condition).

Alejandro Garcia and his brother Pedro Garcia were also arrested and their room searched. Detectives found an armory of weapons, drugs, scales, some stolen items from Sepulveda, and shotgun shells.

In other peoples homes/rooms, various guns, drugs, even shotguns were found in their possesion.

While in custody, Lopez was accused as a suspect accomplice in a case the State titled, Bunker Hill Case. During interrogation, Lopez never confessed to murder.

After booking into the Harris County Jail, according to the Offense Report, the State prefered to prosecute the Bunker Hill case rather than the Loma Vista Case.

Lopez was indicted for the Bunker Hill Case on March 2, 2006. In 2008, Lopez relatives retained an Attorney, Gerald Fry. Mr. Fry shattered the State's case against Lopez. Mr. Fry filed the necessary motions to dismiss, asked for Bonds, and did what he could to help Lopez. However, the Court and State would not follow the modus operandi of releasing Lopez. The Court's and State ground for not releasing or following Due Process was that, according to the chimerial fallacy, Lopez was still the prim suspect in Daniel Zammora death.

The State refused to prosecute Lopez for the Bunker Hill Case and the trial Court refused to release Lopez. As the years went by prejudice and Bad Faith occurred. Lopez stayed in the county jail from December 2005 to September 2014. On an indictment that was rendered worthless by attorney Mr. Fry and as a suspect in the Loma Vista Case.

On May 11, 2011, Lopez was Indicted for the Loma Vista Case. Lopez relatives were financialy unable to retain an attorney to represent him in the new but ~~an~~ also old cause. The Court appointed attorney Joseph Salhab.

Once again, prejudice occurred and more Bad Faith from the State and Court. Lopez does not match the description offered by victim Guadalupe Sepulveda as the shooter of Daniel Zammora. Thus, the Loma Vista Indictment (along with the Bunker Hill Indictment) loitered in the Court's Docket.

The Court, backed up by the State, mandaciously denied Lopez's Constitutional Rights. The Right to post bail, the right to speedy trial, no cruel & unusual punishments, and right to due process were all denied to Lopez. Both the Court and State were in mens rea to prejudice Lopez's Constitutional Rihgts.

In 2013 or 2014, the Loma Vista Indictment was dismissed, reworded and Lopez was indicted once again.

On August 29, 2014, the Court heard Lopez pro se Motion to Dismiss for Denial of Speedy Trial. Attorney Salhab adopted the said Motion. Trial Court Denied the Motion.

In September 2014, the Loma Vista Indictment went to trial. Statewitness and victim of the crime Guadalupe Sepulveda testified that someone other than Lopez murdered Daniel Zammora. Statewitness Alejandro Garcia testified that Lopez murdered Zammora. Statewitness Yeni Rivas testified that Lopez confessed to her that he was present during the home invasion.

The defense offered as witnesses, Alejandro Garcia's cellmate/bunk mate; who testified that Alejandro Garcia spoke to him about the home invasion and never mentioned Lopez as the murderer. A detective for the State testified that Alejandro Garcia had lied to them and that no physical evidence existed that Lopez murdered Daniel Zammora.

The Trial Court Jury found Lopez guilty of Capital Murder and the Trial Judge Sentenced Lopez to life.

Since Lopez conviction, he has file Direct Appeal, PDR, Writ Cert, State Habeas Corpus, Federal Habeas Corpus, COA, and now another Writ Cert; entreating his Right to Speedy Trial, Due Processes, and arguendo innocence claim - that he did not murder Daniel Zammora.

#### REASONS MERITING REHEARING

##### U.S. Supreme Court Rules

Rule 15.1. A brief in opposition to a petition for a writ of certiorari maybe filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court. (Copied from Rules of the Court, blue book, page 14).

On May 30, 2021, Lopez Writ of Certiorari was filed with the Court.

On April 14, 2021, Lopez Writ of Certiorari was docketed with the Court.

On April 27, 2021, Lopez received Notice from the Clerk's Office that his Petition for Writ of Certiorari was placed on the Docket. A form was enclosed for notifying opposing counsel that the case was docketed.

On April 27, 2021, Lopez mailed out the Form of Notice that the case was docketed to the Attorney General's Office. On said Notice, it was written that the Respondent had 30 days to respond.

Lopez never received a copy of the State's Brief in Opposition nor a Waiver

stating that the Respondent wishes not to respond. This is a violation. Lopez is Pro Se and must rely in the observance of the Court's Rules to litigate.

Furthermore, the Form of Notice for the State, did read that the Respondent had 30 days to file their Opposition; plus according to Court Rules the State had/has to respond in Capital cases. Petitioner Lopez has a Capital Murder Case, thus, in gravamen, this grievance against the State should assuage a Rehearing with this Court.

#### **Innocence Claim**

The Fifth Circuit's decision to deny this ground is in conflict with what is written in, United States v. Hack, 162 F.3d 937, 942 n.1 (7th Cir. 1998), "where it was physically impossible for the witness to observe that which he claims occurred, or impossible under the laws of nature for the occurrence to have taken place at all." Alejandro Garcia Claims that, Lopez (who is 5'5 ft tall) shot and murdered Daniel Zammora with a black shotgun. However, victim Guadalupe Sepulveda attests that a 5'9 ft tall man of the age 23 shot and murdered Daniel Zammora with a camouflage shotgun.

Petitioner Lopez never confessed to murdering Daniel Zammora, he pleaded "Not Guilty" to the indictment at trial (that Lopez murdered Zammora), Lopez at the time of the offense was 5'4-5'5 feet tall, 17 years of age, and did not own a shotgun. In fortiori reasoning, Lopez's physical height does not match Sepulveda's description of who he attests murdered Daniel Zammora; Lopez age does not match the age Sepulveda judged the murderer to be, the State did not find a shotgun nor shotgun bullets in Lopez's room or posession; therefore, it is impossible for Alejandro Garcia to witness what he claims occurred, and impossible under the laws of nature for Lopez's indictment to have taken place at all.

A home invasion occurred, a robbery occurred, a 5'9 feet tall man of the age of 23 murdered Daniel Zammora, according to witness/victim Guadalupe Sepulveda. The Court must take these facts into consideration because they are the only evidence available for Jurist of reason. Lopez's height and age are germane to his innocence before this Court.

The Fifth Circuits decision also in conflict with, Quartaro v. Hansimaiier 28 F. Supp. 2d 749 (E.D.N.Y. 1998), where evidence is insufficient of physical evidence. How can a 5'5 ft adolescent of age 17, fit into Guadalupe Sepulveda testimony that a 5'9 ft man of the age 23 murdered Daniel Zammora?

Guadalupe Sepulveda testimony has to have the initial credibility with Jurist of Reason for he is a victim and not a defendant in the Case. And because Sepulveda should have the initial credibility in this case - the

only dispositive available with Sepulveda's testimony is that Lopez is NOT the murderer of Daniel Zammora.

Wherefore, the perfunctory is that Petition for Rehearing be granted and the Writ of Certiorari be granted aswell.

#### Denial of Live Evidentiary Hearing

The Fifth Circuit's decision to deny this ground is conflict with the 14 Amendment; Townsend v. Sain, 372 U.S. 293, 312-313 (1963); Matheney v. Anderson, 254 f.3d 1025, 1039 (7th Cir. 2001); and, Watkins v. Miller, 92 F. Supp. 2d 824 (S.D. Ind. 2000).

Lopez has in his posession 3 sets of evidence that have not been heard in a Live Evidentiary Hearing. Paperhearing does not compare or come close to testing evidence, in court, with witnesses on the stand.

All three sets of evidence contradict the testimony of state witness, Yeni Rivas, who testified in trial that Lopez confessed to her that he was present at the scene of the crime. With Alejandro Garcia's testimony and Yeni Rivas testimony to back up the State's theory, Lopez was found guilty by the trial jury hast generalization.~~GE CRW~~

The first piece of evidence is a Affidavit and transcript from, Private Investigator Mr. Richard Rodriguez. Rodriguez interviewed Yeni Rivas and asked her, did Lopez speak to you of the crime? She answered with a no. Yeni Rivas went on to further disclose that the State coerced her to testify or else have her child taken away, and other forms of misconduct.

The second piece of Affidavit is from Jessica Rivas, the sister to Yeni Rivas. After Lopez's trial, Jessia asked her sister Yeni, did Lopez confess to her about the crime? Yeni answered her sister with a no. Jessica Rivas contacted Lopez while in prison and provided him with a Affidavit.

The third piece of evidence is a Affidavit from Cecelia Calderon, who gives testimony to Yeni Rivas un-ethical behaviour of being a lier and un-trustworthy.

We can now see a creation of commen ground with, Guadalupe Sepulveda, Jessica Rivas, Cecilia Calderon, and inadvertantly Yeni Rivas with her self-confession to Jessica, a fortiori, that Lopez did not murder Daniel Zammora.

Lopez needed the Live Evidentiary Hearing to add weight to his sine que non, that he did not murder Daniel Zammora and the State Court and prosecution are in bad faith.

## Violation of Speedy Trial and Due Process

The Fifth Circuits decision to deny this ground is in conflict with: the 6th, 14th Amendments, and Speedy Trial Act and Law of Case Doctrine for Speedy Trial.

The modus operandi in the United States is that all defendants have the Right to Speedy Trial and Due Process. This modus operandi was not applied to Lopez. Lopez speedy trial consist of two violations thatlasted from 2005 to 2014! All while housed in Ad-Seg. This is prejudice according to, Barker v. Wingo, 407 U.S. 514 (1972); U.S. v. Seltzer, 595 F.3d 1170 (CA 10 2010); and, Maples v. Stegall, 427 F.3d 1020 (CA 6 2005). To add weight to this ground, Lopez also brings up, Zedner v. U.S., 547, 489, L.Ed 2d 749, 126 S.ct 1976 (2006). And how can one forget, U.S. v. Marion, 404 U.S. 307, 313 (1971).

The harm done in Lopez case is obviously extrapolation. The Law of Case Doctrine evince that a prejudice and prejudice error has occured. According to Wingo, it is conceivable that Lopez Right To Speedy Trial(s) were violated by the Trial Court and Prosecution. The grounds for relief according to, Seltzter, Maples, Zedner, and Marion is the adequate remedy of dismissal.

To ignore and continue to deny this ground, it will vitiate the 6th and 14th Amendment. The analogical reason, if this ground is denied, will result in depredation of all defendants right to speedy trial and due process; but if Certiorari is granted and Lopez's receives adequate remedy - the modus operandi will continue to be that all defendants have the Right to Speedy Trial and Due Process. It will be a fallacy to think that no slipper slop will occure with the denial of this ground. Jurist of reason, experts in jurisprudence, can see the reasoning of principle to this ground and it's casual reasoning.

Wherefore, the assuage to this violation is for Petition for Rehearing be granted and a Writ of Certiorari to be granted aswell.

## Ineffective Assistance of Counsel

The Fifth Circuit's decision to deny Lopez's four I.A.C.'s is clearly in conflict with the, 6th and 14th Amendments, and Strickland v. Washington, 466 U.S. 688 (1984). In Lopez's Writ of Certiorari, he showed the Court that the court appointed attorney Joseph Salhab performed outside the bounds of competent representation.

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\* A fallacy that assumes that taking a first step will lead to subsequent steps that cannot be prevented. The Art of Public Speaking by Stephen E. Lucas.

Lopez was arrested - twice - for the Loma Vista Case in 2005. Once in October and the second time in December. The state choice to delay the prosecution for Loma Vista in favor of prosecuting another Case. In 2008 the Bunker Hill Case became obfuscate. The Bunker Hill Case could not be tried. Rather than follow due process and release Lopez from custody, the trial Court and Prosecution ore tenus was - Lopez was still a suspect for the murder of Daniel Zammora, therefore, Lopez was not to be released for he will face prosecution in the Loma Vista Capital Murder Case. Lopez was finally Indicted for the Loma Vista Case on May 11, 2011. The Court Appointed, Mr. Joseph Salhab to represent Lopez.

The I.A.C., is that Salhab failed to protect Lopez Speedy Trial & Due Process Rights. Knowing that the indictment was untimely on state, federal , and constitutional ground, he should had challenged the indictment upon his appointment. In, Young v. Dretke, 356 F.3d 616 (5th Cir. 2004), the very same Federal Appellate Court that denied Lopez's COA, said that the trial attorney was in the wrong for not challenging the indictment " and moved to dismiss the untimely indictment on state law grounds." Young.

Rather, Lopez filed his own Speedy Trial Motions and Salhab adopted them in 2014.

The second I.A.C.'s was, trial attorney prevented Lopez with fallacies that he did not have to testify in his defense. Nonetheless, Lopez wanted to testify. The paradigm for Lopez trial should had been for Lopez to testify, and in front of the jury, deny murdering Daniel Zammora, deny all ad hominem, and Lopez testimony would have provided reasoning from principle that he did not murder Zammora. The trial jury would then not had made a hasty generalization from the State's red herring. The fact that Lopez was found guilty proves that the attorney's trial tactic did not work. U.S. v. Teague, 953 F.2d 1525 (CA 11 1992); U.S. v. Lore, 26 F. Supp. 2 729 (D.N.J. 1998); Jordan v. Hargett, 34 F.3d 310 (CA 5 1994); U.S. v. McKinnon, 995 F. Supp. 1404 (M.D. Fla. 1998).

The third I.A.C.'s: In 2008, while Lopez was under indictment for the Bunker Hill Case. Private Investigators where sent into the field to discover exculpatory evidence. These P.I.'s uncovered the State's mendacity, their bad faith to make up evidence. Which resulted all those involved in the state's investigation and prosecution for Bunker Hill, out of mens rea, abondoned the case (the prosecutor quit, and others moved around...).

Yeni Rivas, a statewitness, was interviewed by a P.I. named Mr. Richard Rodriguez. Rodriguez recorded the interview and typed a transcript. In the interview Rodriguez asked Yeni Rivas did Lopez confess to you about the murder? Yeni Rivas answered with various forms of "no's". Furthermore, she disclosed the

States coercion and threats. That her child would be taken away if she did not cooperate, etc., that she was coerced to sign statements of things she does not know of.

Rodriguez provided this exculpatory evidence to, Attorney Gerald Fry and Lopez relatives. In 2011, when Salhab was appointed to represent Lopez in the Bunker Hill Case, Mr. Fry gave Salhab copies of the exculpatory evidence. In September 2014, for Lopez trial, Salhab prejudice Lopez by FAILING to introduce the exculpatory interview as evidence when Yeni Rivas testified for the State, saying that Lopez confessed to her that he was at the scene of the crime. The purpose of having this exculpatory evidence at hand was for the purpose of contradicting and impeaching her testimony. The trial jury needed to hear this 2008 interview audio to reason from specific instances that Yeni Rivas is lying.

In 2015 or 2016, Private Invistagor Richar Rodriguez provided Lopez with a Affidavit of authencity and a copy <sup>of</sup> the audio transcript to use in the innocence claims.

Fourth I.A.C.'s is a prognosis. Never did Lopez or his attorneys ask for an extention. However, Salhab should had moved the Court to allow Lopez to be tried last in the long list of trials for Alejandro Garcia's high school friends. Alejandro Garcia was scheduled to testify for the state in the trials of defendants he ~~was~~ called friends. Why?, because it would be a fallacy to assume that Alejandro Garcia kept the same testimony in all of those trials. A lier can never keep his story straight. As seen with his first two, sworn Affidavits he committed perjury in.

Wherefore, prejudice exist that Lopez has I.A.C's claims according to Strickland v. Washington. Petition for Rehearing should be granted and a Writ of Certiorari should be granted as well.

#### STATE's SUPPRESION OF EXCULPATORY EVIDENCE

The Fifth Circuit decision to deny this ground conflicts with Brady doctrine, Philips v. Ornoske, 673 F.3d 1168 (CA 9 2012), and the 14th Amendment. During Lopez Loma Vista Trial, the State lied to jurors of Alejandro Garcia's plea deal. That Alejandro Garcia was not receiving special favors for his testimony.

The State told the jury, several times, that Alejandro Garcia was facing five to ninety-nine up to life in prison for his testimony. However, that was not the reality. Alejandro Garcia, in exchange for his testimony, received a reduction of charge, from Capital murder to Aggrevated robbery, a bail his mother could post, and guaranteed 5 years deferred judication probation; and somewhere

in the plea negotiations, Alejandro Garcia secured his brother Pedro Garcia's freedom (Pedro Garcia was a suspect in Loma Vista - his complaint, etc., disappeared).

The aftermath, when the State closed all their cases against Alejandro Garcia's friends, he did not go to prison. Those five up to whatever years the prosecutor told the jury in Lopez trial never happened. Alejandro Garcia received the expected five years of deferred and his brother never saw prosecution.

The talismanic mendacious words of the State to the jury in regards to Alejandro Garcia is a violation of the Brady Doctrine, a false cause, for if the jury would have known that Alejandro was promised five years deferred and that his brother, a suspect, would not face prosecution, the jury would not have given him credibility. The reasoning from specific instance would have been, in the eyes of the jury, that Alejandro Garcia is lie'ing.

In the Philips Case, the Court dismissed the case because a co-defendant testified falsely and the State lied to the jury about the co-defendant plea bargain. The Court ruled from a U.S. Supreme Court case, that the government may not knowingly suppress evidence that is exculpatory or capable of impeaching government witnesses. Banks v. Dretke, 540 U.S. 668, 691, 124 S.Ct 1256 L.Ed.2d 1166 (2004).

Jurist of Reason will see, through analogical reasoning, that the Philips case and this Lopez Case are alike. Therefore, the adequate remedy is to dismiss, according to the law of the Case doctrine.

Wherefore, the Court should grant Petition for Rehearing, and afterwards grant a Writ of Certiorari.

#### DENIAL OF DUE PROCESS; PERJURED TESTIMONY & FALSE TESTIMONY OFFERED BY THE STATE AT LOPEZ'S TRIAL

The Fifth Circuit's decision to deny this ground is in conflict with the 14th Amendment, Banks v. Dretke, 540 U.S. 668, 691, 124 S.Ct 1256 L.Ed2d 1166 (2004); Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct 1173, 3 L.Ed.2d 1217 (1959); Giglio v. United States, 405 U.S. 150, 153 (1972); and, Ventura v. Attorney General, FLA., 419 F.3d 1269 (CA 11 2005).

To jurist of reason, who holds the initial credibility in a Capital murder case? A Victim, a defendant, a co-defendant, or ad hominem witnesses?

A victim is a victim because he has been victimized, he or she felt the pain, the abuse, the violation of law implemented upon their body. A victim is not a suspect against itself, nor a defendant in court or trial. A victim, above all, is a eye-witness, an eye-witness because while he or she was being violated,

the victim heard, felt, and saw the crime transpire before them. No one knows more of the extrapolation of the Truth of how the crime occurred.

In this case, there are two victims, the deceased Daniel Zamora and Mr. Guadalupe Sepulveda. Sepulveda testified in Lopez trial, as a state witness, that he saw 5'9 ft man, around 23 years of age, with a camouflage shotgun; shoot and murder Daniel Zamora. His testimony hold logos, ethos, and pathos with reasoning. Logical, because he can describe a shooter; credibility, because he witnessed everything; and sympathy, because he is a victim and survived a gun shot wound. The res gestae then is that Sepulveda holds the initial, derived, and terminal credibility in Lopez case. Are jurist of reason in agreement?

Lopez is the Defendant in this case, the accused and suspect for Daniel Zamora. A trial jury found him guilty of murdering Daniel Zamora, not as an accomplice or facilitating, but as the principle shooter. Jurist of reason are entreated to remember that on September 12, 2005, Lopez was 5'4 to '5'5 feet tall, 17 years of age - a senior in high school with some Rice University summer school education - and no shotgun or shotgun bullets where ever found in his posession during the search & seizures. Lopez descriptions and testimony attest that he is not the Person Sepulveda witness murder Daniel Zamora. What more basis does a jurist of reason need to have to putative Lopez innocence claim?

During Lopez trial, the State did not offer has evidence, finger prints, a murder weapon, bullets, stolen property from Sepulveda, no basic evidence commen in a murder trial, because none existed. The state brought forth, two people, as statewitnesses, to support their burden. Rather than search for truth, the State depredated Sepulveda's testimony by allowing Alejandro Garcia and Yeni Rivas to obfuscate the truth and jury, and obdurated the case with red herring and ad hominem.

Alejandro Garcia is a co-defendant to the Loma Vista Case, who pleaded through a P.S.I. guilty plea of Aggrevated Robbery in facilitating the home invasion and robbery of Guadalupe Sepulveda and Daniel Zamora. The state found Alejandro Garcia through him using Sepulveda's cellphone to call his home and friends. When Alejandro Garcia and Pedro Garcia where arrested for Capital Murder in December 2005, the State found an armory of weapons in their posesion; plus drugs and scales; and some of Sepulveda's stolen property.

At one of Alejandro Garcia's friends home, the camouflage shotgun, that Sepulveda might had witness as the murder weapon, was found. (Said weapon is seen in a state picture).

Alejandro Garcia testified to seeing Lopez murder Daniel Zammora with a black shotgun.

The problem with Alejandro Garcia's testimony is that in 2005, he signed a sworn Affidavit accusing Jose Luviano as the murderer of Daniel Zammora. Not long after the state slapped him on the wrist for lie'ing, he signed a second sworn affidavit accusing a Goerge Lopez as the murderer of Daniel Zammora. Both affidavits turned out to be lies, thus, legally speaking "perjuries". Perjury is a criminal act punishable with prison time. But he was never charged with perjury. On his third interview with the State, he signed his third sworn Affidavit accusing Lopez as the murderer of Daniel Zammora.

To Jurist of reason it is germane to use analogicle reasoning, for the res gestae, Alejandro Garcia committed perjury twice - accusing two people of murdering Zammora - thus it is cognizable to reason that Alejandro Garcia is still lie'ing on his third Affidavit.

Lie'ing to coverup his mens rea: he stole Sepulveda's cellphone and used it as if it was his, in his room there was stolen property belonging to Sepulveda, he owned countless of weapons, possessed drugs and scales, his brother is guilty of the home invasion and robbery of Sepulveda (and under the law of parties, guilty of Daniel Zammora death), and facilitated in the home invasion and robbery of Sepulveda and in the death of Zammora.

Not only is Alejandro a true perjurer by all extents of the law and dictionary definitions, not only does the evidence found on him evince him to be guilty of capital murder, his testimony does not match Sepulveda's attested testimony.

It is dispositive then to conclude, that Alejandro lied in Lopez trial, in analogical reasoning, the dispositive in regards to the State, the State did obdurate mandacious testimony in Lopez trial, on purpose and knowingly.

The second witness to testify for the State was, Yeni Rivas. In December of 2005, she signed a sworn Affidavit, giving testimony that Lopez had confessed to her that he was at the scene of the crime. In 2008, Private Investigator Richard Rodriguez interviewed her in her home. In this recorded interview, Yeni Rivas said that Lopez never confessed to her that he was at the crime scene, that she does not know anything, and that the statement she signed - she was coerced/forced to sign by the State or have her baby taken away. She further disclosed the State misbehavior against her. And the last thing to bring up from that interview is, she stated that she was mad at Lopez.

In 2014, at Lopez's trial, Yeni Rivas testified that Lopez confessed to her that he was at the scene of the crime. For *Ad hominem* purposes, the State showed her a picture of a male with his face cover up, no other descriptions available for identification. She testified that the male in the picture was Lopez. Furthermore, Yeni Rivas then continued to add weight to the State's Red Herring question and further *Ad Hominem*.

The said picture that Yeni Rivas identified, was never found on Lopez nor in his childhood room. It was found in the home of a tall man, who lived several zip codes away from Lopez (seen in discovery/Offense Reports). Lopez was not on trial for a picture that had no connections to the Loma Vista Case, nor was he on trial for the red herring and *ad hominem*s mentioned. He was on trial for the murder of Daniel Zammora.

After Lopez trial and sentencing, while at the Telford Unit/prison. He received a letter from Jessica Rivas, the sister of Yeni Rivas. Jessica informs Lopez of her sister-to-sister talk with Yeni, and how Yeni confessed to her that Yeni lied in Lopez trial.

What can a Jurist of Reason evince from this? This is a Either-Or, did Yeni Rivas Lie, and to who? Lopez entreats this Court, for *res gestae*, to review Richard Rodriguez interview with Yeni Rivas and Jessica Rivas Sworn Affidavit, and dispositive fact-finder, that Yeni Rivas indeed did lie in Lopez trial; and through analogical reasoning, the State did obdurate mendacious testimony in Lopez trial, on purpose and knowingly.

Both Alejandro Garcia and Yeni Rivas' testimony are vitiated according to *sine qua non* reasoning that the State on purpose introduce false testimony/evidence in Lopez trial. The same bad faith shown in the Bunker Hill Case, a *fortiori*, is the same bad faith being shown in the Loma Vista Case.

Analogical reasoning to Jurist of Reason is the Lopez case is similar to the Napue Case, the Giglio Doctrine Case, Ventura Case, and Ortega v. Duncan, 333 F.3d 102 (CA 2 2003), therefore the adequate remedy is dismissal.

Wherefore, the Court should grant this Petition for Rehearing and afterwards grant Writ of Certiorari.

## SUGGESTION IN SUPPORT OF REHEARING

The Fifth Circuit decision that Lopez could not overcome the COA threshold was in conflict with the cases and bill of rights mentioned in the Petition for Writ Of Certiorari and in the COA. According to the law of case doctrine, Lopez has a *prima facie* grounds that need to be reviewed and remedied by the Court.

The victim of the crimes attests that Lopez is innocent with his personal exculpatory testimony, Lopez has exculpatory affidavits that putative his innocence claim, a plethora of I.A.C.'s claims, a mandacious Brady violation, a obdurate speedy trial violation of 9 years!, and false witnesses.

The final reasoning is that Lopez has ground for relief according to the law of Case Doctrine, ruling of this Court and the Constitution. The prejudice done to Lopez by the trial Court and State leaves no other adequate remedy but for the Petition for Rehearing be Granted. The Court has to winnow Lopez's Claims and assuage the harm. See *Farmer v. McBride*, 2004 U.S. Dist. LEXIS 29629 (S.D. W.Va 2004)\*

### CONCLUSION

For these reasons mentioned in this Petition, *for a fortiori* and analogical reasoning of law of the case doctrine, the Court must grant Rehearing of its judgment entered on June 14, 2021, to winnow and review Lopez's *prima facie* case, and issue a Writ of Certiorari to review the judgment and opinion of the Fifth Circuit of Appeals.

Signed on the 29 day of June, 2021.

Respectfully Submitted,



Efrain Lopez, Petitioner, Pro Se  
TDC# 1953021  
Wynne Unit  
810 FM 2821  
Huntsville, TX 77349

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\* Writ Granted because of numerous Due Process Errors.