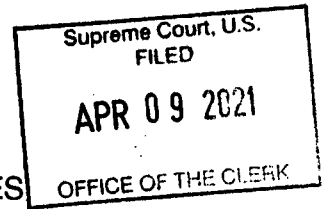


No. \_\_\_\_\_

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



Alexander Olivieri — PETITIONER  
(Your Name)

vs.

Bobby Lumpkin, Dir. TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

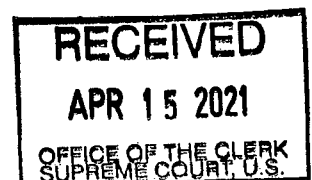
PETITION FOR WRIT OF CERTIORARI

Alexander Olivieri  
(Your Name)

899 FM 632 - Connally Unit  
(Address)

Kenedy, Texas, 78119  
(City, State, Zip Code)

none  
(Phone Number)



### Question(s) Presented

Is The Fifth Circuit effectivly overturning The Supreme Court, and it's own rulings in not granting Olivieri a Certificate of Appealability to consider if Olivieri might overcome a procedural bar on certian Ineffective Assistance of Counsel claims on account of Martinez v. Ryan and Trevino v. Thaler?

## LIST OF PARTIES

Bobby Lumpkin, Director, Texas Department of Criminal Justice -  
Institutional Division

## RELATED CASES

State v. Olivieri, 263rd district court of Texas, 1301922, 1st  
August 2012, unpublished

Olivieri v. State, First Court of Appeals of Texas, 01-12-00722-CR  
, 20th February 2014, unpublished

Olivieri v State, Texas Court of Criminal Appeals, PD-0398-14,  
5th June 2014, unpublished

Olivieri v. State, Texas Court of Criminal Appeals, WR 87492-01,  
22nd August, 2018, unpublished

Olivieri v. State, Texas Court of Criminal Appeals, WR 87492-03,  
?? May, 2019, unpublished

Olivieri, V. Davis, S. Dist. of Texas (Houston), 4:18-cv-04471,  
27th February, 2020, publishing unknown

Olivieri v. Lumpkin, US Court of Appeals (5th Cir), 20-20166,  
2 November, 2020, publishing unknown

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	5
REASONS FOR GRANTING THE WRIT .....	7
CONCLUSION.....	10

## INDEX TO APPENDICES

APPENDIX A	Order Denying COA from US CT of Appeals, 5th Circuit
APPENDIX B	Opinion denying relief from District Court
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

<u>Martinez v. Ryan 566 US 1 (2012)</u>	5, 7
<u>Trevino v. Thaler, 569 US 413 (2013)</u>	7
<u>Coleman v. Goodwin 833 F.3d 537 (5th Cir.2016)</u>	7
<u>Miller-El v. Cockrell, 537 US 322,338 (2003)</u>	9
<u>Fuller v. Johnson 114 F.3d 491,495 (5th Cir.1997)</u>	9

### STATUTES AND RULES

US Constitution, Amendment VI	3
US Constitution, Amendment XIV section.1	3
28 USC §2253	3
28 USC §2254	4

### 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 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 United States district 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.

☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2 November 2020.

☐ 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: 19 December 2020, and a copy of the order denying rehearing appears at Appendix N/A (1054)

☐ 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**

US Const., Amendment VI

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.

US Const., Amendment XIV sec. 1

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 due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC §2253(c)(2)

In order to obtain a COA to appeal the denial of a habeas petition, an Applicant must make a substantial showing of the denial of a constitutional right.



28 USC §2254 (b)(1)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court shall not be granted unless it appears that-

(A) the applicant has exhausted the remedies available in the courts of the state; or

(B)(i) there is an absence of available State corrective process;

or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

## STATEMENT OF THE CASE

In 2011 Alexander Olivieri was charged with first degree murder in relation to the death of Bridgett Frisbie. At the conclusion of a four day jury trial in 2012, Olivieri was found guilty and sentenced to sixty years imprisonment. After the conclusion of direct appeals Olivieri filed his initial state application for writ of habeas corpus in 2015. The following year Olivieri was able to discover documents from his trial counsel which Olivieri beleives demonstrate said counsel's ineffectivness. After some research, in 2017 Olivieri asks for and is appointed counsel on his state habeas petition to assist him in amending it. By late 2017 amendments were prepaired for the state habeas petiton. Olivieri's habeas counsel failed to file these amendments nor was he permitted to withdraw the petition, and in mid 2018 Olivieri's State Habeas petiton was denied. Olivieri then filed a subsequent state petition and a Federal Petition for Habeas Corpus, with a motion for stay and abayance on the latter, which was granted. The State Habeas petiton was dismissed in early 2019. At the Federal level, Olivieri raised multible issues, the bulk of which were some form of Ineffective Assistance of Trial Counsel. Möst of those either relied heavily on evidence found in 2016, or weren't in the first State habeas petition at all (though they were in the proposed amendments and second state habeas petition.). Olivieri argued then that they should be considered because of this Honorable Court's holdings in Martinez v. Ryan 132 S.Ct.1309 (2012). In early 2020 The District Federal

Court denied Olivieri's Federal Habeas Petition, ruling in relation to the IATC claims that they were either procedurally barred or that Olivieri did not overcome the deference that was given to prior state court findings. No mention was given as to whether or not the Martinez exemption might or might not apply. In mid 2020 Olivieri applied for a certificate of appealability to the United States Court of Appeals, 5th circuit arguing among other things that the proper standards weren't used in relation to Olivieri's IATC claims as to if any were procedurally barred, and the amount of deference to state findings were proper. In The Fifth Circuit's denial of Olivieri's application for COA, they merely state the standard and blankly state that Olivieri did not meet it. Olivieri filed a motion for reconsideration, focusing somewhat more on the nature of the underlying IATC claims that were ignored, but received a similar response, both in late 2020.

## REASONS FOR GRANTING THE PETITION

Allow me to cut to the chase and ask the root question at hand: Is this a judicial system that is fundamentally based on consistence and respect of precedent or is this a system of caprice where lower courts can and should feel comfortable making decisions irrespective of caselaw built up by either themselves or this Honorable Court?

In reference to Question One (should have been granted COAD for procedural bar due to district court overlooking Martinez) Allow me to reiterate in a different way the Fifth Circuit's decision: The Fifth Circuit is saying that The District Court is undebatably correct in saying that certain IATC claims are barred without even consideration of if they even might meet the standard to overcome a bar set forth in Martinez v. Ryan 566 US 1, and/or the district court was undebatably correct determining that said claims might not even potentially be a denial of a constitutional right.

Olivieri's research seems to indicate that perhaps the standard set forth in Martinez, verified as applicable to Texas by Trevino v. Thaler, 569 US 413 (2013) and seeminly usually followed by the Fifth Circuit itself in cases like Coleman v. Goodwin 833 F.3d.537 (5th cir.2016) should be applicable to this case because all the elements set forth by this Court exist because: Olivieri's barred IATC claims are potentially reversible errors. The terribly late and ineffective habeas counsel hindered and ultimatly prevented timly amendment of Olivieri's initial state Habeas petition, made without counsel, and as previously

established by This Honorable Court, the Martinez rule applies to Texas. Whether or not Olivieri's State Habeas counsel's non action in not filing a timely amendment or notifying Olivieri so that Olivieri could do so pro se is sufficient inaction to allow Olivieri to overcome a procedural bar under Martinez. Olivieri would think would be the main point of debate. Olivieri argues that this is highly debatable, in favor of Olivieri's position. In relation to the barred claims which The Fifth Circuit may be saying do not constitute a denial of a constitutional right. Olivieri notes that he is alleging Ineffective Assistance of Trial Counsel. This is probably the most heavily litigated type of error seen on habeas actions. Specifically Olivieri alleges his counsel was ineffective for failing to use documentary evidence to cross examine the State's expert, which Olivieri says would provide critical physical evidence support to the defense theory that Olivieri did not have access to the murder weapon, undermining the State's theory perhaps critically. Olivieri also alleges that counsel was ineffective in his cross examination of a critical witness, Zach Richards, who could be shown in the record to make contradictory statements, and object to his testimony on the grounds that not only did its content differ substantially from initial statements to police, but the Defense wasn't given discovery as to the content of this testimony beforehand. Olivieri argues that there is a long litany of cases that indicate that such things are reversible denials of ones constitutional rights to counsel and due process. Whether the specific allegations are reversible Olivieri argues is debatable.

However, Olivieri would also argue that This Honorable Court  
has ruled (in Miller-El v. Cockrell, 537 US 322,338 (2003)) that  
the determination of merit of particular claims is mostly beyond  
the scope of an application for certificate of appealability. It  
seems this Court has determined that issues that are debatable or  
are basically cases that should be given certificates of Appealability.  
The Fifth Circuit itself has precedent of this philosophy  
see: Fuller v. Johnson 114 F.3d 491,495 (5th Cir.1997). Olivieri  
argues that in the name of consistency, this practice should have  
been followed in his case and Olivieri should have been granted  
COA, therefore to correct this, and to show lower courts the  
value of consistency, a writ of certiorari should be granted to  
determine if Olivieri should even have the opportunity to have  
the Federal courts determine if his constitutional rights have been  
violated.

Dear reader, be you an Honorable Justice of The Court or an  
up and coming law clerk, I would have you know I am a realist. My  
experience with the courts has shown me that seemingly because I  
am a pro se, exparte, prisoner litigant, that means that I am  
regarded as basically wrong, and my arguments not worthy of being  
entertained. It saddens me that this nation, which I swore to  
defend as younger man, would so casually disregard it's constitution  
which I swore to uphold and defend. I cry to be heard, for  
even consideration of the possibility that I might be illegally  
confined. I expect I will be ignored. Please, prove me wrong.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Deslivi*

Date: 31<sup>st</sup> March, 2021

## APPENDIX

Appendix A: Order denying COA from COA from US Court of Appeals,  
Fifth Circuit page 1

Appendix B: Opinion Dening relief from District Court page 2