

No. 21-5691 ORIGINAL

Supreme Court, U.S.  
FILED

AUG 27 2021

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IN THE  
SUPREME COURT OF THE UNITED STATES

JUAN GUZMAN ZUNIGA — PETITIONER  
(Your Name)

vs.

BOBBY LUMPKIN DIR TX. TOL RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUAN GUZMAN ZUNIGA DCT. #21-1465196  
(Your Name)

LUTHER UNIT, 1800 LUTHER DRIVE A-2-11  
(Address)

NAVASOTA, TEXAS 77868.  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

- (1) WHETHER HIS PETITION HABEAS CORPUS IS "SECOND OF SUCCESSIVE"?
- (2) WHETHER THE PROCEDURAL DEFAULT RULING DECISION BY THE DISTRICT COURT ON PRIOR HABEAS CORPUS RELIEF HIM OF THE "SECOND OR SUCCESSIVE" ISSUE?
- (3) WHETHER HIS CLAIM ON HIS NEW WRIT OF INJUNCTIVE ASSISTANCE OF COUNSEL IS, AS A WHOLE, RESERVE A "DE NOVO" REVIEW UNDER THE DISTRICT COURT'S RULING TO "SECOND OR SUCCESSION"?
- (4) WHETHER HIS CLAIM OF NEW LAW, NEW RULE UNDER STATE AND FEDERAL LAW, RELIEF HIM OF THE COURTS OF APPEALS RULING TO "SECOND OR SUCCESSION"?
- (5) WHETHER A DENIAL OF A CONSTITUTIONAL RIGHT WAS CLEARLY ESTABLISHED, AND IF A CORRECTNESS STANDARD IS APPLICABLE WHERE DUE PROCESS IS AN ISSUE? PROCEDURAL RULING VS. MERIT ON GROUNDS ESTABLISHED.
- (6) WHETHER THE COURTS OF APPEAL ERRORED IN FAILING TO REVIEW A PROCEDURAL DEFAULT RULING.
- (7) WHETHER THE FAILURE TO REVIEW THE RULINGS OF THE STATES FINDINGS AND CONCLUSIONS OF LAW IN HIS HABEAS CORPUS DEPRIVE HIM OF CONSTITUTIONAL RIGHTS TO BE HEARD ON APPEAL?

## 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.

Supreme Court cases.

Autur v. Bennett. 531 U.S. 4, 121 S.Ct. 361

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BAREFOOT v. ESTELLE. 103 S.Ct. 3383

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CUTTEN v. WINDHOLSTER. 131 S.Ct. 3388

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HONN v. United States. 524 U.S. 231 (1998)

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MAQUINN v. PATTERSON. 130 S.Ct. 2788 (2010)

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MARTINEZ v. RYAN. 566 U.S. 1, (2012)

9.

McLeskey v. Zent 499 U.S. 467, 111 S.Ct. 1454

10.

Miller-El v. Cockrell (2004) 404 U.S. 123 S.Ct. 1029 (2003).

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Melendez-Villaz v. Massachusetts. 129 S.Ct. 2577 (2009)

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Picard v. Connor 404 U.S. 270, 275, 78 S.Ct. 509, (1971).

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Pointer v. Texas. 83 S.Ct. 1065 (1965)

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CONT:

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| Trevino v. Thaler. 133 S.Ct. 1911 (2013)                       | 9.                                               |
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| Burton v. Stewart. 549 U.S. 147, 152 (2007)                    | 6, 11, 12, 14, 22.                               |
| Tennard v. Dretke. 542 U.S. 274, 282 124 S.Ct. 2562, 69 (2004) | 23.                                              |
| William v. Taylor. 120 S.Ct. 1479, 1495.                       | 17, 20.                                          |

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| Carlson v. Pitcher. 137 F.3d 416, 420 (CA-6-1998)      | 18                         |
| Camarero v. Irvin. 98 F.3d 44, 45, 46 (CA-2, 1996)     | 18                         |
| Dickinson v. Maine. 101 F.3d 791 (CA-1-1996).          | 18                         |
| Harleman v. Quateman. 516 F.3d 272, 74 (5th Cir 2009)  | 20                         |
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| In re Grossy. 116 F.3d 1052, 1051 (5th Cir 1997)       | 11, 22                     |
| Lamberti v. Wainwright. 513 F.3d 277 (5th Cir 1976)    | 2                          |
| Lorry v. Dretke. 361 F.3d 890, 93 (5th Cir 2001)       | 20                         |
| Quezada. 754 F.2d 1194                                 | 10                         |
| Strickland v. Thaler. 701 F.3d 171 (2012)              | 10, 12, 13, 18, 21, 22, 23 |
| Turner Supra.                                          | 18                         |
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## PETITION FOR A WRIT OF CERTIORARI

PETITIONER. JUAN GUZMAN ZUNIGA OR A PRISONER PRO/SE,  
IN THE TERR PRISON Respectively Petitions; UNDER ID #1465146  
Now here. EN AS. PETITIONER - Appellant, Petitions for A  
WRIT OF CERTIORARI, A REVIEW ON THE JUDGMENT OF THE  
FIFTH CIRCUIT COURT OF APPEALS AND UNITED STATES DISTRICT  
COURT denial of Certificate of Appealability.

### OPINIONS Below

THE following opinions set forth within the proceeding  
of previous Habeas Corpus: are now being respectfully requested to be  
supplemented in to the Records. this opinions have been entered  
in previous proceeding in A MOTION 59(e). in its entirety in-  
cluded. opinion in denial of 60 B motion by the Federal Court on  
2014. August 27. USDC NO. 5:11-CV-241 and opinion in SA-  
11-CA-241 KR MSN. of 10/10/11.. this opinions are perti-  
nent here to support this case.

the following exceeding opinion pertain to the claims  
in this writ. And follow in the form attached.

Respectfully. Petitioner gives notice to the Court that he is not a license attorney, and does not hold knowledge of the law and craftiness to pleadings such as from a riped attorney. And respectfully ask not to be held to the stringent standard, applied to attorney of law. see United States vs Haines 404 U.S. at 520, 92-5CT 594. - .

### Statement of Jurisdiction

THE DISTRICT COURT AND THE COURTS OF APPEALS. AS WELL AS THE UNITED STATES SUPREME COURT HOLD JURISDICTION. TO REVIEW A REQUEST FOR CERTIFICATE OF APPEALABILITY. - see Hahn v U.S. 524 U.S. 231 (1998) Pursuant to 28 U.S.C. § 1254 (1). THE UNITED STATES SUPREME COURT HAS JURISDICTION. ON CERTIORARI, TO REVIEW A DENIAL OF A REQUEST FOR CERTIFICATE OF APPEALABILITY BY A CIRCUIT JUDGE OR PANEL OF A FEDERAL COURT OF APPEALS.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PETITIONER. MET THE REQUIREMENT, PROVISION SET FORTH TO SATISFY SUBSTANTIVE EQUALITY. HE HAS PRESENTED FAIRLY UNDER PICARD v CONNOR, 404 U.S. 270-275 78, 98-5CT 509 30. L-Ed. 2d. 438 (1971). ALSO SEE LOMBARDI v. WAINWRIGHT 513 F.2d 277 (5th. CIR. 1975). HIS RIGHT AS A STATE PRISONER TO SEEK FEDERAL HABEAS

Corpus Relief is guaranteed in 28 U.S.C. § 2254, The Standard for Relief under "AED-PA" is set forth in 28 U.S.C. § 2254.(d)(1),(2)(e)(i).

### STANDARD OF REVIEW

#### Denial of Certificate of Appealability

In Miller-El vs Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 60031 This Court clarified the standard for issuance of a Certificate of Appealability [Here-After "COA"] 28 U.S.C. § 2253(c)

... A Prisoner seeking COA need only demonstrate a "substantial showing of a constitutional right denial", Petitioner satisfies this standard by demonstrating that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further... We [this Court] do not require Petitioner to prove, before the issuance of a COA, that some jurists would grant the Petitioner's petition for Habeas Corpus. Indeed, a claim can be debatable even though, every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.

Id. 123 S.Ct 1038 [citing] Slack vs McDaniel 529 U.S. 473-484 (2000).

#### STATEMENT OF THE CASE

Petitioner was convicted by a Texas Court in a jury trial in the 186th Judicial District Court from San Antonio, Texas; of one, Sexual Assault by physical force and violence. As shown here after in a Bill of Indictment under, Texas Penal Code 22.011(A); 22.011(b)(1). A number of Enhancements were found... Petitioner was found guilty by jury; sentence to 30 years by Trial Judge.

#### STATEMENT OF FACT (Pertinent)

The incident occurred in Petitioner's residence in San Antonio, Texas on 4/23/2006. The police contacted petitioner at the residence...

on April 24 2006 - Police, Lab Forensic were allowed to enter and perform an investigation, where evidence was recovered.

A Sexual Assault Nurse Examiner performed further investigation and gathered and obtained evidence and learned the following...

### Reasons for Granting the Writ Argument Summary

The following factors were presented in this case:

(1) "ONE WINE BOTTLE" not received full analysis by Crime Lab Tech. for signs of DNA identification...

(2) SAME NURSE EXAMINER investigator seized evidence... containing DNA matter identified as unspecified substance of a genetic matter on internal and external area of petitioner's undergarment.

(3) Police seizing evidence obtained by SAME S.A.N.E. Nurse Expert investigator consisting and containing DNA material evidence on clothing of complainant's pants, crotch, undergarment - where at the very least - is a product of negligence by police lab technicians for ID. DNA Testing.

(4) Where this evidence was mitigating evidence pertinent for the defense

(4) Where in the absence deprived petitioner ability to corroborate - his testimony on the stand - to consent; and no sexual penial intercourse; pertinent to proof ORAL sexual relations was consented.

(5) Once this evidence was excluded, it was, and has been impossible, for petitioner to obtain and challenge own evidence introduced at trial by State Attorney.

(6) Because; of counselor [S] negligence, the strength of case became stronger at its weakest term. Where the Excluded Evidence the states theory to convict would of been impacted...

by major contradiction, againsts state testimonial evidence

(7) where the exclusion of the expert witness "Sexual Assault Nurse Examiner" was a chief neglect by Counselor [S].

That if not excluded would of purge the [Prosecutor's] prosecutions state witness [S], proving, inconsistency, in there testimony used to convict by lack of credible motive.

Petitioner claims that his writ no: 20-50034; 28 USC. NO. 5:19-CV-1417, NO. SA-19-CA-01417-4R. is a New writ, And not "second or successive" --- Slack vs. McDaniel 528 U.S. 473, 483-84 (2000) SEE APPENDICE A.

THE FIFTH CIRCUIT COURT AFFIRMED THE DISTRICT COURTS OF THE WESTERN DISTRICT DISMISSAL ORDER UNDER 28-USC: 2244(b)(3). APPENDICE B of 12/10/19 - [12/10/19]. further more the fifth circuit court went forth and issued order granting leave to submit motion for reconsideration - ordered denying the motion SEE APPENDICE E. petitioner went forth to ask the fifth circuit court of appeals for review of trial court state records and transcript. the court claimed they had no access to transcript / state court records. on appeal SEE APPENDICE G Ascertaining that his request need be addressed to the District Court. After the District Court Denying Habeas Corpus Relief under 28 USC 2244(b)(3). APPENDICE B. Petitioner pursued to bring life to his federal new writs To no avail: the District Court Denial Rule-59(e) under Federal Rule of Civil Procedure. And was Dismissed and Denial C.O.A. to the instant 39(e) claim. SEE APPENDICE C. In good faith seek to have the proceeding amended / Supplemental with briefing. The District Court Denial His pleading and again went forth and Denial him C.O.A. to his motion. SEE APPENDICE (d).

Petitioner found it necessary to request access to TRIAL STATE court records. / Transcripts. on Appeal. the District Court denied him relief. SEE Appendix E.

Petitioner asserts in pursuant to Miller v. Cockrell 537 U.S. 322 123 S.Ct 1029 (2003) He will show this court that a constitutional right has been denied. And claims this is a Slack v. McDaniel. CASE: 529 U.S. 473. (2003).

In his contention he shows claims that were designated to have controverted, unresolved facts that are material to the legality of petitioner's imprisonment. the need be resolved by the judicial court of the 186th District. Bexar County, TEX. THE TEXAS COURT OF CRIMINAL APPEALS. THE HIGHEST COURT IN TEXAS. denied without written order the Habeas Corpus. The writ court presented on 9/5/19. SEE Appendix H and denial on the findings of the TRIAL court without a hearing. SEE Appendix I

Petitioner argues that his writ civil no. SA-19-CA-01417-KR no. 20:50034 under (Amd. No: 2006-CR-5239. is not "second or successive" under Burton v. Stewart 549 U.S. 147, 152 (2007); IN RE Campbell, 750 F.3d, 523, 529, (5th Cir 2014). And claim this case's are not controlling law. pursuant to 28 U.S.C § 2244(b)(3). SEE Appendix B.

Hence forth. Ascertains the state court records and Appellate records. Zuniga v State. no: 04-07-729 CR., 2008 WL 416-3224. not designated for publication; SEE SA-11-CA 241 KR-454. the Highest court in Texas. Response by Gregg ABBOTT, ATT. GEN. And. SEE Zuniga v Thaler. NO: 5:11-CV-0241 KR.

where proof shows that his prior writ never reached jurisdiction neither in state Appellate level nor Federal District court. the prior writ was reviewed under the merits of Time Bar federal law 28-usc § 2244(b)(3). And out of...

Compliance Under State Statutory Rule 73.1. Texas Rules of Appellate Procedure. Aside from the findings of the State writ Court the 186th. Judicial District Court; San Antonio Texas...

Further more petitioner claims that because of a different judgement set forth. His first writ is claimed as if it does not exist.

Petitioner ask this Court to observe the writ Courts of the 186th. Judicial District Court orders of Designated Issues. there set forth lays and Error of Appeal. Where the Prosecution failed to respond. Because the Court; did not issue orders for the Prosecution to respond too.

The Court issued three (3) orders as shown by Appellate Records: No. 2006-CR 5239-W2. Orders for Defense Counsel of Trial; Order for Appellate Counsel Angela E. Moore; Orders for Michael D. Robbins. Appellate Counsel under ineffective... Assistance of Counsel; under this Designated order said by Judge Jefferson Moore. the first order shown is (A) for prosecutorial misconduct.

Instead the writ Judge responded for the state Prosecution in Ground ONE. The prosecution in joint with the Trial judge relied on the judge to act; A constitutional violation under Art 11.07... Art 11.07 (c), 11.07(d). To Reclaimed grounds under statutory New Rule Art 11.03 subsec Art 11.031 - which was set law to this New writ.. the states violation, is said to believe - to be corrected by state Judge - A clear violation of clear establish state and federal law, 28. U.S.C. § 2254. (b)(1)(A) (B)(i).

THE history of this case petitioner has created shows numerous procedures - from the start under previous Appellate procedures NO. 04-07-00729-CR; by Angela Moore; NO. 04-09-00114 CR. Pro/se denied; NO. 04-16-00484-CR dismissed as moot...

NO: 04-17-00116 CR. denied. PRO/SE.

THE following procedure number 04-17-00896 CR was set aside. CLERICAL ERROR: CAUSE NO: 04-17-00370-CR. Appeal was denied. this Appeal was a denial of effective assistance of counsel because the DNA procedure was never ruled on by the Court.

PDR. 0152-18 denied.

A judgement was issued. of 1/3/2018. Mandate ordered 7/26/18 Judge. Irene Rios. Order Denying Rehearing. Issued on 2/15/18 ORDER Deny. Reconsideration. Issued. 2/15/18 by Judge Irene Rios. Cause NO: 04-17-00635-CR Appeal. was Anders Briefed

THE Appeal was ordered Dismissed for Lack of Jurisdiction 11/31/18. the Appellate Court of the Fourth Court of Appeals made an ERROR of Appeal. where they failed to signify. A motion for DNA Testing. which was never ruled on by the Court. there were several orders issued. in this first Collateral Proceeding. for DNA Testing. But never was a ruling on first DNA procedure. this issue was mandamus by Petitioner under. NO. 04-16-00484-CR. mandamus was dismissed as moot.

the motion for DNA Testing. was never address on order denying the proceeding was never issued. As the Court claims. In its memorandum. Opinion. of 11/31/18. under. 04-17-00635-CR.

the previous memorandum opinion. under 04-17-00370 CR. And. that proceeding... judgement was set on a successive motion for DNA Testing. Also SEE NO. 04-16-00484-CR. for the authority of judgment.

PETITIONER CLEARS THIS A confusing issue. Cause NO. 04-17-00635-CR IS Appeal on motion for New Trial. Not on a motion for DNA Testing.

PETITIONER has diligently and promptly created this case....

A prior case which was ruled time barred by the federal courts and out of compliance by the Highest Court of Texas. Both judgments were pursuant procedure default under 28 U.S.C. 2244(b)(3) by the federal court, And out of compliance under Texas Rules of Appellate Proc Rule 73.1. - Both judgments are jurisdictional...

Petitioner claims that 28 U.S.C. 2253(c)(2) is not applicable in this situation. Because simply - A federal judge had rendered relief to proceed - with out pre-certification under 28 U.S.C. 2253(c). Petitioner did not need to ask permission to proceed under 28 U.S.C. 2254, when permission had been given. Priorly - Zungu has shown substantial show of the denial of a constitutional right" where, as here, the district court has denied for the second time a request for habeas relief on procedural grounds

SEE Strickland v. Holzer 701 F.3d 171 where a claim of ineffective assistance of counsel [5]. Does not warrant neglect. SEE Martinez v. Ryan 566 U.S. 1 (2012) also SEE Hinton v. Alabama 134 S.Ct 1081 (2010). To counsel's deficient performance was prejudicial and obstinate. To the cause at hand, where evidence pertinent to the defendants defense was deprived... , IN TRIAL; SEE Trevino v. Holzer 449 Fed. Appx. 415; Trevino v. Holzer 133 S.Ct 1911 (2013) where a new rule in Ryan, Resurrected.

Petitioner contends that a good cause of Exception Exist. In his New Writ. where the claim of ineffective assistance of counsel was raised. But was ruled default - where the claim hold not jurisdiction - for out of compliance.

The Right to confront your accuser. Is a Constitutional Right and Federal Law. Under Rules of Evidence - 808(6), 808(8).

where the ineffective performance of counsel infringed and deprived defendant of trial, a fair trial by [Confrontation] confrontation - the Confrontation clause provides protection for defendant at trial. - SEE U.S. vs. OATES 560 Fed. 451 71; -

Quezada, 754 Fed at 1194.

This inadequate, and ineffective assistance continued through out this case and its history. SEE Padilla vs. Thaler 687 Fed. 222 (2012). Petitioner should receive an opportunity to cross examine [U.S. CA. Court Amended]. - SEE McLendon v. J102 vs. Massachusetts 129 S-CT 2527 (2009) [CERTIORARI]

where the Sixth Amendment to the United States Constitution is made applicable to the states via the Fourteenth Amend. - SEE Johnson v. Tabor 85 S-CT 1065 (1965).

Petitioner contends he has shown proof to support his ineffective claim in his previous and present habeas corpus. While it is true, that a standard to the "cause; prejudice" has been dealt with - SEE McLendon vs. Zant 449 U.S. 467, 111 S-CT 1454 (1991), and a more important issue to consider. And the context in which that standard was developed is applicable.

This His New writ. shows proof to support that "A final disposition constituted in Art 1107.44(a) is applicable to over turn a judgment to "subsequent" or "successiveness".

Petitioner argues that His New writ NO: 2050034; U.SDC NO. 5-19-CV-1417; CIVIL NO. SA-19-CA-D1417-KR is not "Second or Successive" under Magwood v. Patterson 130 S-CT 2788 (2010) - SEE Strickland v. Thaler 701 F3d 171 (2012) His claims have been exhausted through state remedies, provisions under New Rules T.R.A.P. Art 64-01. Act 2015 84th leg. ch. 70 S-B. 487, Art 11073. Amended 2015 (H.B. 3724).

IN Lew. of the Federal District Court judgment under Burton v Stewart, 549 U.S. 147-152 (2007); IN Re Campbell 750 F.2d 523, 529 (5th Cir. 2014) for failure to obtain authorization under 28 USC 2253(c)...

Petitioner. Re-urges his previous contention, and respectfully ask the court to supplement or amend the judgment of all appellate courts - IN reference to case no 2006-CR-5239, 2006-CR 5239 W-13 (SA-1) civil action - NO-SA-11-CA-241. KR. N.S.N.; U.S.DC 5-11-CV 241. And this court judgment to the finality of that proceedings, which is pertinent to this claim of not "Second or Successive", where proof supports his contention, that his previous proceeding was judge and procedure default AFDPA (1996 Act) 28 USC 2244(d) and Texas Rules of Appellate Proc Rule 73.1. ON those merits; and not on the merits of the grounds claimed that Habeas Corpus (Writ).

Petitioner claims that the Highest Court of Criminal Appeals of Texas bounded it self to the Trial Courts finding IN this New Writ; under Texas Statutory Law Art. 11.073 To the Evidence now inserted as offered, SEE Ex parte Torres, 943 S.W.2d 469. To the subsequent writ of Judge Keller J. - where the judgement of the District Court civil action no 5:19-CV-1417. KR was ruled "Second or Successive" IN violation to 28 USC 2253(c) - 28 USC 2244

(b)(3) -

SEE: Slack vs McDaniel 529 U.S. 473, 487 (2000) - SEE IN Re Grasey, 116 F.3d 1051, 1052 (5th Cir. 1997). Held, A Petitioner who seeks to re-file habeas application after a prior dismissal with and or without prejudice for failure to exhaust state remedies, is not required to comply with 28 USC 2244(b) (3)(A), when he returns to federal courts after exhausting --

... those claims; Petitioner comfortably ascertains that when the District Court clearly stated in its judgment on A-60(B) proceeding No. 5:11-CV-0241-PR: granting Petitioner to proceed without a pre-certification under 28 USC § 2244(b)(3). Is sufficient to grant relief. In Petitioner claim, that this writ is not successive nor second, but is a new writ. SEE: Strickland vs Thaler 701 F3d. 171 [2012]. - Magwood v. Patterson 130 S. Ct 2788, 2895 - 177 L. Ed. 2d 592 (2010).

where "second or successive" in time, but rather not referred to all § 2254 application. -- where its a term of art that takes [2012 U.S. App. Lewis?] its full meaning from the federal courts code law. Including decisions, pre-dating the enactment of Statutory Law (AEDPA Act of 1996), see: Graham vs. Johnson 168 F3d 762, 778 (5th Cir 1999); Citing Rose Lundy 455 U.S. 509, 522 - 102 S. Ct. 1198 L. Ed. 2d 374 (1982) "because exhaustion is based on comity rather than jurisdiction. there existed no absolute bar to federal courts consideration of unexhausted habeas corpus application. ...

Petitioner objects to the Burton authority over this writ. Because this writ is a new writ under Magwood vs. Patterson 130 S. Ct 2788, 2895. 177 L. Ed. 2d 592 (2010). - Strickland vs Thaler 701 F3d. 171 (2012)...

In Burton the court claimed the petitioner did not raise the unexhausted claims in his application. Id. at 155. The court in Burton noted that the first application was adjudicated on its merits, and held that the second application was "second or successive" and remanded the Burton case back to the District Court for it to dismiss for want of jurisdiction. Id. at 155; 57.

Petitioner ascertains - it is not so in his case SA-11-CA-241-PR NSH. the entire Habeas Proceeding - State and federal. were dismissed in federal with prejudice - under 28 USC..

§ 2244(d) Time Bar - And state claims Zúñiga unexhausted claims merit dismissal of petition with out prejudice - under not in. Compliance Texas Rule Appellate Procedure Rule 73-1. see the states. Response of 10/10/2011. Civil Action No. SA-11-CA-241-XR-NSM

In petitioners New writ. he clearly establishes that his previous Habeas Application - was (Adjudication) Adjudicated on the Merit of unexhausted federal requirements under 28 U.S. 2244(d) And requirements under statutory law applicable to Code of Criminal Procedure Article 11-07. - Rule 73.1... Not on the ground merits. see Strickland vs. Tholer Tex. Feb 171 (2012); Magwood vs. Patterson 130 S.Ct. 2788; 2895.

(2012) Petitioner accepts that he has shown. presented an issue that is adequate to deserve encouragement to proceed -- Miller-El vs. Cockrell 537-U.S. 322, 327 (2003)... Applicant has Ascertained a relevant issue pertinent to his claim, that his writ is A New writ.

Further more, shows that 'rigorous' procedural obstacles have been placed before his claims which he has exhausted.

Burton offers limited provisions. Holding that those Applicants with Exhausted and unexhausted claims 'may proceed only with the Exhausted claims. - there fore placing an Applicant with rigorous greater burdens, - maybe of being sanctioned or ordered abusive... A "careful threshold passage" - - -

there fore. because Slack and Burton bidal the Courts inquiry. His procedural History in His case is sufficiently distinguishable, And Petitioner claims that not Burton. nor Campbell. are applicable case law.

But has found applicable case law in Magwood and Strickland.

Petitioner respectfully asserts; it would not be fair to him if this court would characterize his New writ as "Second or Successive."

Petitioner further contends.. that his New writ is not Successive nor Second.. His writ 2254. Application. applies to custody.. pursuant to state court judgment of conviction.. under state Statutory. New Rule Art 11-073. SEE Arthur vs Bennett 531 U.S. 4. 121. S-CT 361. 148 L-Ed. 2d 213...

furthermore. Art 11-07(4). to subsequent; successive.. Low: And. its [context]. text is similar to AEDPA (Act of 1996) 28-USE 2244(d). SEE Slack vs McDaniel 529 U.S. 473-486, 120 (S-CT 2788). S-CT 1598, 146 L. Ed. 2d. 542.... Citing Magwood vs. Patterson 130 S-CT 2788 (2010). where the phrase "second or successive" is not defined by AEDPA [Act of 1996]. pursuant to. § 2254.. where it describe as a "term of Art" Slack

there fore Respectively. the writ courts Response to his New writ WR-75-319-02. is pertinent in its contents to support his claim. Petitioner request that the litigation of of his 59(e) motion. Federal Rule of civil Procedure [ECF no. 6] and [ECF no. 9] and its briefing be supplemented.

The writ Court Recommendation. was that either the entire writ be denied on the merits or dismissed in part and denied in part. therefore his New writ is a misc. writ. on. 8/23/19. by Jefferson. Moore. Judge. of the 186th Judicial District Court. Beaver County. Tex. The writ Court forwarded these findings. To the Texas Court of Criminal Appeals. on 9/5/19.

on. 10/2/19. the Court of Criminal Appeals. SET these Judgment. denying New writ; with out written order on the findings. of the writ Court with out a Hearing.

SEE Appendix G.

THE Court of Criminal Appeals judgment does not challenge Art 11.07(4) to subsequent or successive, where hence for deserves Review. pursuant Milbr-EL v Lockrell. 537 U.S. 322, 327 (2003)

Because of Courts procedural Ruling. deserves.; ENCOURAGEMENT. the substantial showing. has been met, ... Fed Rule App. Prac Rule 22; SEE Rule 11. IN GENERAL RULES THAT GOVERN. 52254 proceedings; Slack v Mc Daniels. 529 U.S. 473, 483-84. (2000)

pursuant Maquod v Patterson. pp - 177. L. Ed. 2d. at 604, 605. Hence forth an intervening judgment does exist.

For instance, the United States Supreme Court in Culton vs Pinhoester. 131 S. CT 1388: Held. that federal courts must use the same Records. that were used by the state courts.

Relitigate at this time introduces a substantial claim - where His Right to obtain the same Records. that were used by the state were denied - SEE Appendix H. where the United States Court of Appeals denied him access to the state Records. the state used through out His entire collateral procedures SEE Appendix H; also SEE Appendix E where the District Court denied him access to state court Records; and where the entire mediate court of appeal - the Fourth. Court Appeals denied His Request to access to state Records. SEE Appendix I.

Relitigate contends; in weighting the aggravation of this mitigating facts and material evidence - the deprivation of His Right to Due Process of law. infringed fairness ...

A fair Notice of how this violation deprived him of a fair Trial pp 9. 599.7. Maquod - only in this state Records. Relief would deserve some encouragement

A. permission to proceed without pre certification; to 28 USC 2244.(b)(3) is sufficient to deserve ENCOURAGEMENT - SEE SA-11-CA-241 XR [ECF NO 40]

which now is the source of his claim that his writ is A New writ and no "Second or Successive" SEE Brewer vs. United States Attorney General 863 F3d 861 (2017) - where the U.S. Court of Appeals for the District of Columbia disputed the issue of a grant to proceed without pre certification under 28 U.S.C. § 2244.(b)(3).

Petitioner Ascertains, a fundamental error [5] is a very clear basis on underlying material error, that affects the foundation of a conviction's validity, it may well be a violation of fundamental fairness - A violation of Due Process law, a violation of the due course of clearly established Law - Article 1 § 19 Texas Constitution sits side by side with the United States Constitution.

Petitioner establishes law set by this Supreme Court in Slack vs McDaniel 529 U.S. 473. within the meaning of Rule 9.(b) ... where a valid stated claim of denial of a constitutional right SEE Miller-El v Cockrell 123 S.Ct 1029 (2003)

He has shown proof - that challenges the Decision of the Court of Appeals in Appendix A; and District Court Appendix B were unreasonable within the light of all Evidence introduced. SEE 28 U.S.C. § 2254.(e)(1) Standard. SEE Slack [p 549.]

Petitioner argues that 28 U.S.C. § 2244(d); 28 U.S.C. § 2244 (b)(3), and 28 U.S.C. § 2253(c)(2) are procedural Rulings in the case at hand; further more Congress expressed no intention to allow Trial Court procedural error to bar vindication of substantial constitutional right on Appeal.

THIS conclusion follows from AEDPA's present provisions, which incorporate earlier habeas corpus principles. ... see Barefoot v. Estelle, 103 S.Ct. 3383 also see; Williams v. Taylor, 120 S.Ct. 1479, under Barefoot, a substantial showing of the denial of a right includes showing that reasonable jurist could debate, whether [or, for that matter, agree that] the petition should have been resolved in a different manner or that the issues presented ... were "adequate to deserve encouragement to proceed further" 463 U.S. at 893 and 14, 77 L.Ed.2d 1090, 103 S.Ct. 3383, citing Slack (b) determining whether COA should issue where his petition was dismissed on procedural grounds. -- Here petitioner is making a showing substantially that a denial of Constitutional Right has occurred and that the District Court disposition of his 1<sup>st</sup> writ was erroneous under 28 U.S.C. § 2244(b)(3). -- not absent - pre certification requirement. ...

Petitioner holds to his contention that his writ was not "second or successive" see: Slack, (Pg. 550). In Rose v. Lundy, 2d. At 520 71 L.Ed. 374, 102 S.Ct. 1198 offer a standard where a prisoner can return to the federal court after he complies to the requisite exhaustion. Petitioner's new writ was not subsequent. see Rose 2d. At 520-521, 102 S.Ct. 1198.

It is instead petitioner claims that it more appropriate to treat the previous Estelle initial mixed petition, NO: 5A-11-CA 241, KR. 8006-CR-5239-W-1; as though it had not been filed. Subject to whatever conditions the court attaches to the dismissal. ...

Rose v. Lundy; dictated that whatever particular claims that petition contained, none could be considered by the federal court. THE previous petition was dismissed procedurally - on the merits of [AEDPA Act 1996] 28 U.S.C. § 2244(d). WRIT NO: 12-50746

.. SA-11-CA-241-XR was not in compliance: procedurally. Affirmed by the Fifth Circuit and finally by the United States Supreme Court on Certiorari. SEE: E.g. Carlson v. Pitcher 137 F3d 416, 420 [CA-6: 1998] where Affirmation is held; [that a habeas petition filed after a previous petition has been dismissed on Exhaustion grounds is not a "Second or Successive Petition"]... Turner; Supra - Christy v. Horn 115 F3d 201, 208 [CA-3 - 1997]; Dickinson v. Maine 101 F3d 791 [CA-1 1996]; Campano v. Irvin 98 F3d 44, 45 46 [CA 2. 1996]...

IN PURSUANT to Federal Rule Civil Proc 41.5(X6) Petitioner RE URGES HIS REQUEST asking this Court respectfully to Review the Behaviors Requirements - that have be met. This Court has created numerous CAW NO: as follows on collateral attack procedure under Art 64 of Art 11-073 - new Rule - He shows WRIT mandamus NO-04-14-00 484 CR; WRIT mandamus 04-17-00116 CR; Direct Appeal NO: 04-17-00370-CR; PDR-0152-18.. Direct Appeal 04-17-00635-CR; PDR-1294-18. and never gain Relief.

Petitioner contends he has demonstrated with preponderance Evidence, that reasonable jurists could conclude that the District Court disposition of WRIT NO: U.S. CA. NO: 80-50034 was ERRONEOUS...

Whether Petitioner is Entitled to the issuance of A COA is a question to be Resolved by this Court, and Relief should be granted. He believes He has made a "substantial showing of a denial of Constitutional Rights" SEE Slack, Supra, at 483, 146 L-Ed 2d 542 120-S-CT 1595...

IN Barefoot v. Estelle this Court has Announced... IN 463 U.S. 880, 77 L-Ed 1090, 103-SCT 3383 (1983) what determines, and constitutes the requisite standard. where Petitioner must show (that) that reasonable jurists could debate whether, [or, for that matter, agree that] this

... should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." 529 U.S. at 484, 146 L. Ed. 2d 542, 120 S. Ct. 1595. I quoting Borefoot, supra. at 893 n.4, 77 L. Ed. 2d 1090, 103 S. Ct 3383.

Petitioner claims that this is a slack case and accepts that his New writ is not "second or successive, and that [it is] his writ is not frivolous, and supports his claims not under Barton v Stewart 549 U.S. 147, 152 (2007); In Re Campbell 750 F.3d 523, 529 (5th Cir 2014). But has found that Maquod vs. Patterson 130 S. Ct 2778 (2010) controls and under Strickland v Thaler 701 F.3d 171 (2012) (5th Cir).

He contends that Strickland's claims fit into his claims Strickland's writ was dismissed without prejudice for lack of subject matter jurisdiction. - Hold his petition was a "Second or successive" petition. - - -

Similar procedural default issues as in the case at hand. ... where in Strickland even if the district court erred in reaching the merits of the prisoners exhausted claims, the error was not jurisdictional. - Holding that the District Court should not send the Petitioner on a wild goose chase by permitting him to split his exhausted and unexhausted claims, [guaranteeing] guaranteeing him federal habeas review, if he exhausted his state court remedies - only to then deny him habeas review once he exhausted his state remedies. Accordingly, the court in Strickland held his petition was not a "second or successive" petition, within the meaning of 28 USC 2244; - 28 USC 2244(b)(3)(A).

Petitioner now accepts - the pre-certification to proceed by the federal courts issue - Document 41 pg 1 of 11 in case no. 5-11-cv-00241-PR of 8/29/14. Pp 4. - is to support claim.

Petitioner contends; a review should issue on law "de novo" when a denial is on procedural ground - to grant to proceed without pre certification -- under 28 U.S.C. § 2254 (b)(3)(A). The District Court is barred from ascertaining jurisdiction over a claim of "Second or successive" Application. SEE U.S. v. Key 205 F3d 773, 774 (5th Cir 2000), also Hardeman v. Quarterman 516 F3d 272-274 (5th Cir 2008) -- Lorpy v. Drake 361 F3d 890, 893 (5th Cir 2004)

Petitioner's proof lays in clearly established law under 28 U.S.C. § 2254(d)(1). Where the entire prior writ(1), as the Court said - was Time barred; not in compliance - His prior writ(1) never gain jurisdiction...

In the New writ the facts are consistent to Applicable New Rule. The Rule of App. Pro. Art 11-073. It's evident that the Federal Court refused to collaterally review the state court's decision, where clearly established law in Texas Art 11-07-3; with respect to the Federal System; where 28 U.S.C. § 2254; [28 U.S.C. § 2254] applies.

The Supreme Courts habeas jurisprudence embodies this issue... where the factual determinations by the state courts are presumed correct absent clear and convincing evidence to the contrary.

Petitioner rebuttal assertion in His Rule 59e1 motion to the Federal Courts decision; on "Second or successive" establish a clear fact to support unreasonableness, in light of the evidence presented in His 59e1 rule proceeding, § 2254(c)(1)(2), the state Court response did not mention subsequent-successiveness, under Art 11-07(4) clearly establish statutory law.

Zuniga asserts that His COA on the District Courts decision to "Second or successive" is a separate procedure. One distinct from the underlying merits; see Stack 529 U.S. at 481, 146 L.Ed.2d 542, 120 S.Ct 1595. Also see Williams v. 529 U.S. at 399, 146 L.Ed.2d 389, 120 S.Ct 1495; Hohn 524 U.S. at 241

HIS PRIOR WRIT NO. 12-50746; SA-11-CA-241-XR.  
2006.CR.5239-W-1 WAS NOT IN COMPLIANCE UNDER STATUTORY.  
RULE AND LOW RULE 73.1. AND WAS RULE TIME BARRED BY THE  
FEDERAL COURT OF APPEAL UNDER 28 U.S.C. § 2244(d)(1)(A). 6/28/12  
AFFIRMED BY THE FIFTH CIRCUIT OF APPEALS 4/15/2013. ECF NO 36.  
ZUNIGA V. THOR. NO. 12-50746, THERE FOR MAKING THE WRIT  
COURTS JUDGMENT "VOID" FOR LACK OF JURISDICTION.

HIS APPEAL RESURRECTED FROM A JUDGMENT. THE UNITED STATES  
DISTRICT COURT, WESTERN DISTRICT OF SAN ANTONIO, TEXAS DIVISION.  
OF 8/25/2014 [ECF NO. 40] CIVIL NO. SA-11-CA-241-XR

WHERE THE GUARDIAN NOW PRIMA FACIE RAISES. WHETHER  
THE UNITED STATES DISTRICT JUDGE ERRORED IN RETAINING JURISDICTION  
ON HIS DENIAL OF A RULE 60(b)(4)(6) MOTION. IT NOW SEEMS  
THAT THIS INITIAL DECISION IS VOID FOR LACK OF JURISDICTION.

THE GRACE ZUNIGA JURISDICTION TO RETURN WITHOUT A PRE-  
CERTIFICATION. IN [28 U.S.C.] 28 U.S.C. § 2244(b)(3). FINALLY, IN  
THE INTEREST OF ~~STABILITY~~ FINALITY, THE CONCEPT OF VOID JUDGMENTS  
IS NARROWLY CONSTRUCTED, WHILE ABSENCE OF SUBJECT MATTER JURISDICTION  
MUST BE DISTINGUISHED FROM AN ERROR, IN THE EXERCISE OF JURIS-  
DICTION -- SEE UNITED STATES V. ZIMA, 766 F.2d 1153, 1159.

PETITIONER CLAIMS AN INTERVENING JUDGMENT ERROR. WHERE  
A JURISDICTION ISSUE ARISES -- ON A RULING OF "SECOND OR -  
SUCCESSIVE." SEE MAGUIRE V. PATTERSON, 130 S. CT 2788-2895  
(2010) ALSO SEE STERCKLAND V. THOR 701 F.3d 171 (2012) ..

PETITIONER HAS SHOWN SUBSTANTIAL SHOWING OF THE DENIAL  
OF A CONSTITUTIONAL RIGHT - SEE TENNARD V. DETKE, 542  
U.S. 274, 282 124 S-CT 2562, 2569, L-ED. 2d 384 (2004);

MILLER - BL V. JOHNSON 537 U.S. at 336, 123-S-CT at 1039;  
SLACK V. MCDONALD 529 U.S. 473, 483, 120 S-CT 1595, 1603  
L-ED. 2d 542 (2000); BORRERO V. ESTAB, 463 U.S. 880, 893, 103  
S-CT 3383, 3394, 77 L-ED. 2d 1090 (1983).

His reasonableness. has demonstrated that a jurist of reason-  
ableness. could debate [whether] Cor. for the matter, agree  
that His petition. should have be resolved in a different  
manner or that the issues presented are adequate to deserve  
encouragement to proceed further. - White 542 U.S. at 282 -  
124 S.Ct. at 2564; Johnson 537 U.S. at 336, 123 S.Ct. at  
1039; Slack, 529 U.S. 484, 120 S.Ct. at 1604. - Borah  
vs Estelle. 463 U.S. at 843. at [N-4], 103 S.Ct. at 3394. N4.

Petitioner Respectfully claims, that the cost of the govern-  
ment in particular, and to society in general would be reduced  
by its focusing on the collection and analysis of all D-N-A mat  
erial collected in all criminal case, Evidence pertinent to a  
jury trial and discovery phase of a criminal prosecution.

Rather than on Habeas Corpus, which must be resorted to  
when the justice system fails to [protect] protect innocent  
defendants. from a Constitutional violation of Due Process of  
Law. - 5th Amend, 14. Amend: by the State.

Pur-se Attorney General Loretta Lynch. Released in 2015.  
"where new guide lines aimed preventing error in police work, in-  
cluding - a Recommendation that law enforcement agencies devel-  
op guidelines for Exams, including RAPE Kits. be completed  
and analyzed in a timely manner" AT that, present time 70,000  
untested sexual assault kits in the "mist" of full completion.  
Existed.

### CONCLUSION

Based on all of the foregoing, This court should grant Petitioner  
Writ of Certiorari. - Evidentiary and grant full briefing.

Date 8-27-2021:

Respectfully submitted  
James L. [Signature]  
New SE 146546

