

22-5356

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

AUG 12 2022

OFFICE OF THE CLERK

JOSEPH M. BOURGEOIS <sup>PRE SE</sup> — PETITIONER  
(Your Name)

vs.

COURT CRIM. APPEALS TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSEPH MONTREL BOURGEOIS  
(Your Name)

JESTER III UNIT 3 JESTER ROAD  
(Address)

RICHMOND, TEXAS 77406  
(City, State, Zip Code)

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

QUESTION(S) PRESENTED

DOES BLOCKBURGER VS. UNITED STATES, 284 U.S. 299 [1932] APPLY TO MY CASE? DOUBLE JEOPARDY

DOES BIRCHFIELD (S) CONCURRENT RULINGS APPLY TO MY CASE? BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 216 BIRCHFIELD VS. NORTH DAKOTA, 579 U.S. 438, 476, 477 (2014)

DOES COLEMAN VS. THOMPSON, 501 U.S. 722, 729, 730 [1991] APPLY TO MY CASE? PROCEDURAL DEFAULT EXCEPTION

DOES HARRIS VS. OKLAHOMA, 433 U.S. 682 [1977] APPLY TO MY CASE? MORE SERIOUS FIRST, LESSER INCLUDED BARRED:

DOES MASSARO VS. UNITED STATES, 538 U.S. 500 [2003] APPLY TO MY CASE? EXCEPTION FOR INEFFECTIVE ASSISTANCE OF COUNSEL:

DOES MARTINEZ VS. RYAN, 566 U.S. 1 (2012) APPLY TO MY CASE?

CAN A STATE COURT REFUSE TO FOLLOW A UNITED STATES SUPREME COURT PRECEDENT?

DOES SLACK VS. MCDANIEL APPLY TO MY CASE?

SUCCESSIVE PETITION" SUBSEQUENT APPLICATION

DID DEFENSE COUNSEL VIOLATE STRICKLAND'S GUARANTEE? (i)

## 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

COURT OF CRIMINAL APPEALS OF TEXAS.  
TRIAL COURT NUMBER 14-CR-2877-83-3, WR-85,655-0  
JUDGMENT ENTERED JUNE 8, 2022: DISMISSED WITH-  
OUT WRITTEN ORDER SUBSEQUENT APPLICATION FOR  
WRIT OF HABEAS CORPUS.

COURT OF CRIMINAL APPEALS OF TEXAS  
TRIAL COURT NUMBER 15-CR-2476-83-2 WRIT-85,  
655-05. JUDGMENT ENTERED JUNE 8, 2022: DISMISSED  
WITHOUT WRITTEN ORDER, SUBSEQUENT WRIT/APPLICATION  
FOR A WRIT OF HABEAS CORPUS.

SUPREME COURT OF THE UNITED STATES:

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APPENDIX D

APPENDIX E

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### STATUTES AND RULES

4<sup>TH</sup> AMENDMENT SEARCH AND SEIZURE PROTECTION CLAUSE  
MUST OBTAIN SEARCH WARRANT.

5<sup>TH</sup> AMENDMENT DOUBLE JEOPARDY CLAUSE, DUE PROCESS

6<sup>TH</sup> AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL

14<sup>TH</sup> AMENDMENT DUE PROCESS OF LAWS

14<sup>TH</sup> AMENDMENT EQUAL PROTECTION CLAUSE

14<sup>TH</sup> AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL  
GUARANTEE.

### OTHER

SEE GENTRY VS. STATE, TR. CT. NO. 12-13 - 00168 - CR.  
APPEAL FROM THE 241<sup>ST</sup> JUDICIAL COURT OF SMITH COUNTY,  
TYLER, TEXAS: TR. CT. NO. 241-1540-12: CASE REVERSED  
AND REMANDED [WARRANTLESS BLOOD DRAW.  
DATE OF JUDGMENT AUGUST 27, 2014, CONFLICT WITH  
THE 56<sup>TH</sup> DISTRICT (iii) COURT OF SMITH COUNTY TEXAS.

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was JUNE 8, 2022  
A copy of that decision appears at Appendix B.

☐ 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

FOURTH AMENDMENT: TO THE UNITED STATES CONSTITUTION. GUARANTEES THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR.. PERSONS, HOUSES, PAPERS, EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES. "WARRANTLESS BLOOD DRAW ON MAY 02, 2014"

FIFTH AMENDMENT: PROVISIONS CONCERNING PROSECUTION AND DUE PROCESS OF LAW; "DOUBLE JEOPARDY RESTRICTION PRIVATE PROPERTY NOT TO BE TAKEN WITHOUT COMPENSATION";

PROVISIONS: NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW;

ON JANUARY 25, 2016 "PETITIONER" JOSEPH BOURGEOIS ENTERED A PLEA AGREEMENT,

PLEADING GUILTY TO THE OFFENSE OF INTOXICATION MANSLAUGHTER (COUNT-I IN CAUSES NUMBER 14-CR-287) AND INTOXICATION ASSAULT (COUNT-I IN CAUSE NUMBER-15-CR-1476), ON THE SAME DATE, IN EACH CASE, THE TRIAL COURT ENTERED A "WEAPON" A DEADLY WEAPON" FINDING, AND SENTENCED TO, ..TWO 15 YEAR TERMS.



CONSTITUTIONAL AND STATUTORY PROVISIONS  
IN CAUSE NUMBER-14-CR-2877) AND IN CAUSE  
NUMBER-15-CR-1476]

(1) INTOXICATION MANSLAUGHTER-14-CR-2877

(2) INTOXICATION ASSAULT-15-CR-1476

BOTH OF THESE CHARGES ARISE FROM THE SAME  
ACCIDENT ON MAY 02, 2014. DOUBLE JEOPARDY  
APPLIES?

SIXTH AMENDMENT: ASSISTANCE OF COUNSEL)

14TH AMENDMENT: DUE PROCESS OF LAWS AND  
EQUAL PROTECTION OF LAWS.

CONSTITUTIONAL EFFECTIVE ASSISTANCE  
OF COUNSEL.

ON JANUARY 25, 2016 ATTORNEY GREG RUSSELL  
HAD ME PLEA GUILTY TO (INTOXICATION MANSLAUGHTER  
(CAUSE NUMBER-14-CR-2877) AND IN CAUSE NUMBER-  
(15-CR-1476) INTOXICATION ASSAULT) THESE ARE THE  
SAME CHARGES?

### STATEMENT OF THE CASE

ON MAY 02, 2014 I WAS INVOLVED IN A CAR ACCIDENT IN GALVESTON COUNTY, TEXAS. I WAS TAKEN TO THE HOSPITAL WHERE MY BLOOD WAS TAKEN WITHOUT A SEARCH WARRANT OR COURT ORDER. "WARRANTLESS BLOOD DRAW. ON JULY 08, 2016 I FILED SEPARATE HABEAS

APPLICATIONS, ARTICLE 11.07'S. PRO SE APPLICATIONS" IN CAUSE NUMBERS - 14-CR-2877-83 AND 15-CR-1476-83 ON SEPTEMBER 21, 2016. THE CRIMINAL COURT OF APPEALS OF TEXAS, IN SEPARATE ORDERS DENIED EACH HABEAS APPLICATION, WITHOUT WRITTEN ORDER.

THE TWO CONCURRING BIRCHFIELD VS. NORTH DAKOTA, 136 U.S. 2160 AND BIRCHFIELD VS. NORTH DAKOTA, 579 U.S. 438, 476, 477, OPINION ISSUED JUNE 23, 2016.

RETROACTIVE TO CASES ON COLLATERAL REVIEW. THERE IS NO-WAY I COULD HAVE KNOWN ABOUT THESE RULINGS PRIOR TO FILING MY FIRST ARTICLE 11.07'S ON JULY 08, 2016 WITH THE COURT OF CRIMINAL APPEALS OF TEXAS. ON APRIL 13, 2021 I FILED A HABEAS CORPUS APPLICATION(S) IN CAUSE NUMBER-14-CR-2877-83 AND CAUSE NUMBER-15 CR-1476-83 ON JUNE 2, 2021 THE COURT OF CRIMINAL APPEALS DISMISSED THE APPLICATION" A SUBSEQUENT APPLICATION(S).

ON MARCH 25, 2022, I FILED THE INSTANT HABEAS APPLICATIONS. ON JUNE 08, 2022 COURT OF CRIMINAL APPEALS DISMISSED WITHOUT WRITTEN ORDER.

## STATEMENT OF THE CASE

ALL FEDERAL CONSTITUTIONAL CLAIMS ARE EXHAUSTED. IN THE 56<sup>TH</sup> JUDICIAL COURT OF GRAVESTON COUNTY TEXAS, THE CLAIMS ARE...  
"4<sup>TH</sup> AMENDMENT" UNREASONABLE SEARCH AND SEIZURE. WARRANTLESS BLOOD DRAW ON MAY 02, 2014.

"5<sup>TH</sup> AMENDMENT" DOUBLE JEOPARDY VIOLATION" CHARGES STEMMING FROM THE SAME ACCIDENT ON MAY 02, 2014. DUE PROCESS OF LAWS

"INTOXICATION MANSLAUGHTER: CAUSE NO. 14-CR-287,

"INTOXICATION ASSAULT: CAUSE NO. 15-CR-147B-83  
PLEADED GUILTY TO BOTH CHARGES ON THE SAME DAY JANUARY 25, 2016.

"6<sup>TH</sup> AMENDMENT" INEFFECTIVE ASSISTANCE OF COUNSEL". ATTORNEY GREG RUSSELL" NEGOTIATED TWO - PLEA BARGINS FOR THE SAME CRIME ON THE SAME DAY JANUARY 25, 2016.

"14<sup>TH</sup> AMENDMENT" DUE PROCESS OF LAWS AND EQUAL PROTECTION OF LAWS; UNREASONABLE SEARCH AND SEIZURE; EFFECTIVE ASSISTANCE OF COUNSEL.

## STATEMENT OF THE CASE

ON APRIL 13, 2021 APPLICANT FILED A HABEAS CORPUS WITH THE CONVICTING COURT. THE 56<sup>TH</sup> JUDICIAL COURT AN ARTICLE 11.07 ON THE BASIS OF THE RETROACTIVITY OF THE BIRCHFIELD VS. NORTH DAKOTA, 136 S. CT. 2160 [2016 "CONCURRING JUDGMENTS" BIRCHFIELD VS. NORTH DAKOTA, 579 U.S. 438, 476, 477, OPINION ISSUED JUNE 23, 2016, WARRANTLESS, BLOOD DRAWS OR URINE SAMPLES.

I TOLD THE STATE COURT OF THE 56<sup>TH</sup> JUDICIAL COURT OF GAVESTON COUNTY, TEXAS.. THAT THE BIRCHFIELD RULING(S) APPLIED TO MY CASE.

THAT THE INSTANT CLAIMS FILED ON THIS CLAIM DID NOT CONTAIN SPECIFIC FACTS SUFFICIENT TO ESTABLISH, BY A PREPONDERANCE OF THE EVIDENCE, THAT NO RATIONAL JUROR COULD HAVE FOUND THE APPLICANT GUILTY BEYOND A REASONABLE DOUBT.

THIS IS CONTRARY TO STRICKLAND VS. WASHINGTON 466 U.S. 668, 694 [1984]. A "REASONABLE" PROBABILITY IS A PROBABILITY SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUT-COME.

## REASONS FOR GRANTING THE PETITION

### RULE 10.(b)

THE 56<sup>TH</sup> JUDICIAL STATE COURT OF GAVESTON COUNTY TEXAS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN-A WAY THAT CONFLICTS WITH ANOTHER STATE COURT,

IN GENTRY VS. STATE, TRIAL COURT NO. 12-13-00168-CR, APPEAL FROM 241<sup>ST</sup> JUDICIAL COURT OF SMITH COUNTY, TEXAS, TYLER, TEXAS.

TRIAL COURT NO. 242-1540-12] CASE REVERSED WARRANTLESS BLOOD DRAW. REVERSED AND REMANDED. JUDGMENT AUGUST 27, 2014.

### RULE 10.(b)

ARKANSAS SUPREME COURT RULED THAT A STATUTE THAT ALLOWS A WARRANTLESS BLOOD DRAW BASED ON... "IMPLIED CONSENT." VIOLATED THE FOURTH AMENDMENT. WHEN APPLIED TO A DEFENDANT IN A "NEGLIGENT HOMICIDE CASE. THE APRIL 26, 2018 "OPINION"

REVERSED AND REMANDED FOR A NEW TRIAL WITHOUT THE IMPROPERLY OBTAINED BLOOD EVIDENCE. THE STATE DID NOT MEET THAT OR ANY BURDEN BECAUSE THE TRIAL COURT DID..NOT CONDUCT A SUPPRESSION HEARING" CONSIDER TESTIMONY OR REVIEW ANY EVIDENCE ON THE MATTER.

BETWEEN THE CONSTITUTIONAL PROBLEM AND THE LACK OF ACTUAL VOLUNTARY CONSENT. THE COURT FOUND THE PROPER REMEDY TO BE SUPPRESSION OF THE EVIDENCE.

SEE: DORTCH VS. STATE, 544 S.W. 3d 518 [ARKANSAS-2018]

## REASONS FOR GRANTING PETITION

### RULE 10.(C)

A STATE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT.

THE 56<sup>TH</sup> JUDICIAL DISTRICT COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

### CONTRARY TO CLAUSE STANDARD FOR GRANTING RELIEF

THE COURT "HELD" IN WILLIAMS VS. TAYLOR, 529 U.S. 362 [2000]

THE COURT (HELD) THAT (d)(1)'S CONTRARY TO CLAUSE "REQUIRED THE "REJECTION OF STATE COURT DECISIONS WHICH WERE SUBSTANTIALLY" DIFFERENT FROM RELEVANT PRECEDENTS OF THIS COURT.

THE COURT GAVE AN EXAMPLE OF A....  
MISINTERPRETATION OF STRICKLAND VS. WASHINGTON,  
466 U.S. 668, 694 [1984]

REASONS FOR GRANTING PETITION  
STANDARD FOR GRANTING RELIEF (d)(1)'S  
IF A STATE COURT WERE TO REJECT A PRISONER'S  
CLAIM OF "INEFFECTIVE ASSISTANCE OF COUNSEL-  
ON THE GROUNDS THAT.. THE PRISONER HAD.. NOT  
ESTABLISHED BY A PREPONDERANCE OF THE  
EVIDENCE.. THAT THE RESULT OF THE CRIMINAL  
PROCEEDING WOULD HAVE BEEN DIFFERENT.

### STANDARD FOR GRANTING RELIEF

WILLIAMS VS. TAYLOR, 529 U.S. 362, 409, 410 [2000]  
IN ADDITION TO.. THE SITUATION WHERE A STATE  
COURT "DECISION IS "CONTRARY TO OR AN..  
UNREASONABLE" "APPLICATION OF CLEARLY ESTABLISHED  
CONSTITUTIONAL LAW 28 U.S.C. (d)(2) PROVIDES THAT A  
STATE COURT "DECISION MUST BE REVERSED AND  
RELIEF MUST BE "GRANTED".

IF THE STATE COURT PROCEEDING RESULTED IN.. A  
DECISION THAT WAS BASED ON AN UNREASONABLE  
DETERMINATION OF THE FACTS IN LIGHT OF THE  
EVIDENCE PRESENTED IN THE STATE COURT...  
PROCEEDING.

THE 56<sup>TH</sup> JUDICIAL COURT OF GAVESON COUNTY, TEXAS  
CORRECTLY IDENTIFIED THE GOVERNING PRINCIPLE.  
BUT UNREASONABLY APPLIED THAT PRINCIPLE TO.. THE  
FACTS OF PRISONER'S CASE.

WILLIAMS VS. TAYLOR, 529 U.S. 362, 412 [2000]

## REASONS FOR GRANTING PETITION

IN COLEMAN VS. THOMPSON, 501 U.S. 722, 729, 730 (1991)  
WE CONSEQUENTLY READ COLEMAN AS CONTAINING AN  
"EXCEPTION"... ALLOWING A FEDERAL HABEAS COURT TO  
FIND CAUSE, THEREBY "EXCUSING" A DEFENDANT'S...  
"PROCEDURAL DEFAULT WHERE

(1) THE CLAIM OF "INEFFECTIVE ASSISTANCE OF TRIAL  
COUNSEL" WAS A "SUBSTANTIAL CLAIM."  
DOUBLE JEOPARDY CLAUSE VIOLATION.

(2) THE CAUSE CONSISTED OF THERE BEING NO  
COUNSEL DURING THE STATES' COLLATERAL REVIEW  
PROCEEDING.

IN MARTINEZ VS. RYAN, 566 U.S. 1 (2012)

SUPREME COURT OF THE UNITED STATES "HELD"  
THAT MARTINEZ'S HOLDING APPLIES IN TEXAS.  
THE COURT [HELD] A PROCEDURAL DEFAULT WILL  
NOT BAR A FEDERAL HABEAS COURT FROM HEARING  
A "SUBSTANTIAL CLAIM OF INEFFECTIVE ASSISTANCE  
AT TRIAL".

IF IN THE "INITIAL REVIEW COLLATERAL PRO-  
CEEDING" THERE WAS NO COUNSEL.



## REASONS FOR GRANTING PETITION

IN MASSARO VS. UNITED STATES, 538 U.S. 500 (2000)  
"EXCEPTION FOR "INEFFECTIVE ASSISTANCE"  
ALLEGATIONS

THE SUPREME COURT'S UNANIMOUS DECISION  
ACCORDINGLY  
AN "INEFFECTIVE ASSISTANCE" CLAIM BY A  
PRISONER... MAY BE BROUGHT "IN COLLATERAL  
PROCEEDING.

UNDER 2254 "STATE PRISONER..."

WHETHER OR NOT THE ISSUE COULD HAVE BEEN  
RAISED ON DIRECT APPEAL.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph M. Bougeois

Date: AUGUST 3, 2022