

NOV 28 2022

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22-6938

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Raul Gonzalez pro se — PETITIONER
(Your Name)

vs.

Bobby Lumpkin — 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

Raul Gonzalez # 2311359
(Your Name)

Wain Wright Unit
2665 P. R. 1
(Address)

Love Lady, TEXAS 75851
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Where legislatures violate the rule announced in Beazell v. Ohio, by retroactively altering the definition of TEXAS Sex offender Registration Act and increasing the punishment from the prior law - Does the Ex Post Facto Clause now apply?

Where petitioner provides "the Clearest Proof" T. S. O. R. A.'s requirements and Contract compell him to be a witness against himself - Does the Self-Incrimination Clause now apply?

Did the legislature intend to impose criminal penalties within T. S. O. R. A.?

Is 362.102 Tex Code Crim. Proc. void for vagueness?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

*Ms. Sarah M. Harp
Assistant Attorney General - crim. App. Dept.
P.O. Box 12548
Austin, Texas. 78711-2548
• Counsel for Respondent*

RELATED CASES

- Gonzalez v. Lumpkin, no: 4:21-cv-1138-0
United States district Court, Northern
District of TEXAS. Fort Worth Division.
Judgment entered on May 18th 2022*
- Gonzalez v. Lumpkin, No: 22-10569,
United States Court of Appeals
for the Fifth Circuit.
Judgment entered on September 30th 2022.*

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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☒ is unpublished.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 C 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 September 30th 2022.

☒ 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 September 20th 2020.
A copy of that decision appears at Appendix C.

☐ 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

United State Constitution, Amendment V.

"No person shall... be compelled to be a witness against himself in any criminal case, nor be deprived of life, liberty, or property, without due process of law.

United States Constitution, Amendment, XIV.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and 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; nor deny any person within its jurisdiction the equal protection of law.

United States Constitution, Art. 1 § 10 cl. 1.

The Ex Post Facto provision declares: "No State shall... pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.

STATEMENT OF THE CASE

Over 75 years ago, the rule was settled in this Court: That legislatures may not retroactively alter the definition of crimes, nor increase the punishment of criminal acts. Now to fall within the Ex Post Facto prohibition a law must be retrospective and "disadvantage the offender affected by it,"² by, inter alia, increasing the punishment of the crime.³ This Court speaking through the Honorable Justice Scalia, demonstrated that the presumption of retroactive legislation is deeply rooted in our jurisprudence and embodies a legal doctrine centuries older than our Republic.⁴

Years later, these words would echo through the chambers of this Court; "Whether a State law is properly characterized as falling under the Ex Post Facto Clause is a Federal question the Supreme Court determines for itself."⁵

1. *Beazell v. Ohio*, 269 U.S. 167 (1925).
2. *Weaver v. Graham*, 450 U.S. 24 (1981).
3. *Collins v. Youngblood*, 497 U.S. 37 (1990).
4. *Landgraf v. Usl Film Products*, 114 S. Ct. at 1497 (1994).
5. *Carmell v. TEXAS*, 529 U.S. 513 (2000) (citing *Lindsey v. Washington*, 301 U.S. 397 (1937)).

May it please the Court:

This case for the first time presents the question of whether the legislature intended to impose criminal penalties within the Texas Sex Offender Registration Act (T.S.O.R.A.) and whether Mr. Gonzalez can provide this Court with the clearest proof of punitive intent.⁶

In 1998, Raul Gonzalez was charged with sexual assault with a minor under 17. Due to the totality of circumstances surrounding his case he pled guilty and was sentenced to 10 years in prison. At the time of his plea he was not advised by his counsel nor admonished by the Trial Court about having to register as a sex offender. Texas Law now requires Trial Courts to admonish defendants about the registration requirement before accepting a plea.⁷ Upon release in 2008, Mr. Gonzalez was induced into a contract involuntarily by threat of confinement then conviction. The contract (CR-32-CR-35) form gave notice that Mr. Gonzalez was required to register for life and the failure to do so was punishable up to life in prison. Mr. Gonzalez contends that the 10 year sentence has now become a life sentence because he has to register for the rest of his life.

6. *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140. (2003).

7. Texas Code Criminal Procedures Art. 26.13(a) (1999).

On September 16, 2019, Mr. Gonzalez failed to comply with the registration requirement and can only direct this Court to the Statement below as to why:

"I submit that an individual who breaks a law that his conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for the law."

Martin Luther King Jr -

On February 28, 2020, Mr. Gonzalez plead guilty and was sentenced to 10 years imprisonment, for violating § 62.102 T.C.C.P.-Failure to comply with "any" requirement under Chapter 62. Through due diligence Mr. Gonzalez discovered that the statute under which he is confined operates unconstitutional under the guise of civil and remedial tables. T.S.O. R.A.'s life-time requirement imposed on him is due to the legislatures' retroactive alteration of the Act.

11.07 Habeas Corpus

Mr. Gonzalez filed an appeal with the Court of Criminal Appeals of TEXAS challenging the Act on ex post facto grounds and under the

Texas Constitution art. 3 § 56 (4) which provides in part; The legislature shall not... pass any local or Special law authorizing the change in venue from civil to criminal cases.

We see here in Article 1§16 of the Tex. Const. that no bill of attainder, ex post facto law, "retroactive law", or any law impairing the obligation of contracts shall be made. The Court went on to address Mr. Gonzalez's argument by denying his appeal without written order. *Id.* appx C.

Mr. Gonzalez then filed a § 2254 habeas Corpus in the United States district Court that was dismissed as untimely. Mr. Gonzalez argued that he was denied legal books to conduct the proper legal research during the Covid-19 pandemic. The issue was raised in the district Court, however, The Court of Appeals for the Fifth Circuit denied his C. V. A.

Mr. Gonzalez now calls upon this Court to settle the question as to whether T.S.O.R.A. promotes impermissible punishment or allows permissible regulation. In Shall v. Martin this Court determined that whether a restriction on liberty constitutes impermissible punishment or permissible regulation, we first look to legislative intent.

467 U.S. at 269.

Applying the intent-effects-test this court adopted in Smith v. Doe, the analysis began

with this question: Did the legislature intend a civil remedy or intend to impose criminal penalties. If the legislature intend to impose criminal penalties within S.O.R.A., that ends the inquiry. 538 U.S. 84.

1. Legislative Intent

In 1991, T.S.O.R.A. was codified in the Texas Revised Civil Statutes:

1991 Tex. Sess. Law Serv. Ch. 572 S.B. 259; Purpose:
An Act relating to the establishment of Sex offender registration program, creating offenses and penalties.

In 1997, the legislature repealed the Act and re-enacted the revised law into the Texas Code Criminal Procedures ch. 62.

1997 Tex. Sess. Law Serv. Ch. 668 S.B. 875; Purpose:
An Act relating to the applicability of the Sex offender registration program to certain defendants, to the procedures used to register and monitor sex offenders and to the "imposition of criminal penalties."

The legislatures' manifest intent will only be rejected were the party challenging the Act provides the clearest proof the Act subjects him to criminal penalties. Cautioning that Courts must consider the effects of the Statute in relation to the Statute on its face and that

"Only the Clearest Proof" will suffice to override legislative intent and Transform what has been denominated a civil remedy Turned criminal penalty. This court concluded that if the legislature manifest an expressly punitive intent, the inquiry is at an end and the Act is a violation of the Ex Post facto clause.

Legislative History

Texas Sex offender registration Act was first enacted in 1991. Also known as Ashley's law. Act of June 15, 1991, 72nd leg. R.S. Ch. 572 §1, TEX. GEN. LAW. 2029-32 art. 6252-13 cl. 1.

A registration violation under this law was a class A misdemeanor and only required a 10 year registration period.

Generally the repealing of statutes are not favored. In 1997 the legislature changed the venue from civil to criminal by repealing T.S.O.R.A. from the revised civil statutes and then moved the Act into the Tex. Code Crim. Proc. Ch. 62. Act of June 1, 1997. A registration violation under this law was increased to a felony. The punishment increases for every violation although no one is ever injured. The

8. Smith v. Doe, 538 U.S. 84 (2003).

life-time requirement was also incorporated under this law. Mr. Gonzalez also contends that the legislature retroactively altered the definition of T.S.O.R.A. by doing away with Scienter requirement and increased the punishment from the prior law. Henceforth making it more onerous by imposing numerous requirements and burdens that out pace its civil aims. The existence of Scienter is a customarily important element in distinguishing criminal from civil statutes. This Court observed that the "purpose and obvious" effect of doing away with guilty intent is to ease the prosecutions path to an easier conviction.^{9.} As it applies to me, the absence of scienter in every requirement that T.S.O.R.A. imposes on me allows the prosecution to shift strategies to facilitate an easier conviction. A state legislature certainly possess the authority to define the offense it wishes to punish... Texas' legislature here chose to 're-define' T.S.O.R.A. as to alter the requisite mental-state element in all its requirements. Section 62.102 "effectively and permissibly"... lessens the burden of the state to prove beyond reasonable doubt an essential element of the offense charged- the mental-state element.

^{9.} Morissette v. United States, 342 U.S. 263 (1952).

The police power, broad as it is, can not justify the passage of laws or ordinances which run counter to the limitations of the Federal Const. As it applies to me, § 62.102 T.C.P.P. is unconstitutional in failing to target the evil it intends to rectify. Due to the geographical restrictions imposed on me I am forced to go homeless. The lifetime requirement creates an undue burden on me and substantially limits major life activities such as; sleeping, eating, traveling, working, and interacting with others. The legislature has 'set a net' so large that additional restrictions have been placed on me under ordinances located within the Texas Local Govt Code and Govt Code §§ 341.906; 508.187; 508.225. Should I be found near or within any locations described in these statutes I could be found in violation of § 62.102 - Failure to comply with 'any' requirement. Moreover, should the State wish to pursue another route or "change the rules of the game towards the end," I can be found guilty under chapter 13 section 13.31 also titled failure to comply with the registration statute, Ch. 13.31 T.C.P.P.. "All these legislative changes, in a sense, are mirror images of one another. In each instance the State refuses, after the fact, to play by its own rules, altering them in a way that is advantageous to the State to facilitate an easier conviction."

Carmell v. TEXAS, 120 S. Ct. at 1632. (2000).

2. Impairing the Obligation of Contracts

As it applies to me, T.S.O.R.A. upsets settled expectations and operates unequally and unconstitutionally with those similar situated. Some individuals register only for 10 years and others for life without giving a defendant a risk assessment to determine their level of risk or dangerousness. T.S.O.R.A. furnishes a convenient tool for harsh and discriminatory enforcement by local prosecuting officials against certain groups deemed to merit their displeasure, and confers on police a virtually unrestrained power to arrest and charge persons with assumptions of possible violations.¹⁰ T.S.O.R.A. also forces Mr. Gonzalez to contract involuntarily, by requiring him to initial, sign and thumbprint CR-32 and CR-35 forms before being released from prison. The State then uses these devices as evidence compelling Mr. Gonzalez to be a witness against himself in a criminal proceeding. This court held that the privilege against self-incrimination not only privileges a person to testify against himself in a criminal trial in which he is a defendant, but also privileges him not to

10. *Papa Christou v. City of Jacksonville*, 405 U.S. 156 (1977).

answer questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future proceedings." As it applies to me, both contracts (CR-32-CR-35) forms are engineered and executed as a misleading device intended to defraud Mr. Gonzalez and operate to injure him, even though there be no vicious intent. T.S.O.R.A.'s requirements compell him to be a witness against himself in violation of the fifth Amendment.¹² T.S.O.R.A. imposes a legal duty by contract. Such contracts tainted by fraud are void ab initio, and offend the Federal Constitution.¹³ T.S.O.R.A.'s requirements also subvert the presumption of innocence and saddles me with the presumption of guilt and the only way to overcome that guilt is by incarceration.

3. Due Process Clause

Raul Gonzalez contends that § 62.102 T.C.C.P. offends the due process clause because there

11. *United States v. Ward*, 448 U.S. at 248, 100 S. Ct. at 2641 (1980);

Allen v. Illinois, 478 U.S. at 368 (citing *Minnesota v. Murphy*, 465 U.S. 420 (1984)).

12. *Austin v. United States*, 509 U.S. 602, 113 S. Ct. 2801 (1993).

13. U.S. Const. Art. I § 10 cl. 1 contract clause.

is no available defense to a potential violation under T.S.O.R.A.'s 'any' requirement provision.

In a concurring opinion filed by Justice Alcala in Robinson v. State, the Court observed that the harsh interpretation will result in the imposition of criminal penalties upon individuals who lack any criminal intent as to their conduct but are penalized as a result of their status as sex offenders.

The registration statute is now a strict-liability crime that gives a defendant absolutely "no defense" for any potential failure to give timely notification.¹⁴

4. § 62.102 T.C.C.P. void for vagueness

Courts agree that States have a legitimate compelling interest in protecting the public from individuals who may pose threats to the community. Section 62.102 is not narrowly tailored to serve an overriding State interest. "A court can not determine whether a regulation has gone too far unless it knows how far it goes."

Frates v. Yolo County, 477 U.S. at 348 (1986).

Applying the rational-basis-test would lead this court to the conclusion that forcing sex offenders homeless and roam the street is

14. U.S. Const. Amend. XIV.; 466 S.W. 3d at 180 (Tex. crim. App. 2015).

not only irrational but unreasonable. Then arresting the individual for being near or within a restricted location unaware is more disturbing. This form of government does not protect the public but rather "shocks the conscience." A statute prohibiting conduct that is not sufficiently defined is void for vagueness.¹⁵ Because § 62.102 does not define with certainty the term "Any", it allows law enforcement and prosecutors to subjectively legislate the meaning of the statute. Even if a requirement does not apply to Mr. Gonzalez he can be found guilty of any requirement. This court would agree that the term 'any' is a term of enlargement and not of limitation. Mr. Gonzalez contends that § 62.102 neither defines what conduct is prohibited in its requirement provision. Section 62.102 punishes innocent behavior and alters the legal rules of evidence in order to convict the offender.

It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave to the court to step inside and say who can be rightfully detained and who could set at large.¹⁶

15. *Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294 (1972).

16. *United States v. Reese*, 92 U.S. 214 (1875).

REASONS FOR GRANTING THE PETITION

A. The Sixth Circuit Court of Appeals has reached a different conclusion on similar facts relating to S.O.R.A.'s effects and the requirements imposed on restraints. A decision that conflicts with this Court's holding in Smith v. Doe.
See: Doe v. Snyder, 834 F.3d 696 (6th Cir. 2017).

In Smith, this Court adopted a set of factors known as the Kennedy factors to determine whether a the effects of a regulation points to a punitive measure.¹⁸ The categorization of a statute or a proceeding as civil or criminal is first of all a question of statutory construction.¹⁹ The Smith Court held that if the legislature meant to establish civil proceedings, we should defer to its intent unless there is "the clearest proof" that the "scheme" is so punitive in purpose or effect that it negates the states attempt to deem the statute civil.²⁰ The clearest proof is the change from venue, civil to criminal. 538 U.S. at 92.

18. Kennedy v. Mendoza-Martinez, 572 U.S. 144, 83 S. Ct. 554 (1963).

19. Kansas v. Hendrix, 521 U.S. at 361, 117 S. Ct. 2077

20. Smith v. Doe, 538 U.S. 84, (citing United States v. Ward, 448 U.S. 242, 100 S. Ct. 2636 (1980)).

The Kennedy Factors

(a). Does T.S.O.R.A. § 62.102 T.C.C.P. inflict what has been denominated in our history and traditions as punishment?

- Respondent relies on *Smith v. Doe* for the proposition that T.S.O.R.A. does not inflict punishment. 538 U.S. 84.
Respondent alleges that the Act is a civil remedy not meant to impose criminal penalties.
- Doe failed to provide this Court with the clearest proof that the legislature intended to impose criminal penalties within the Act. However, Doe challenged the Act under the Alaska Constitution and the ALASKA Supreme Court declared (A.S.O.R.A.) violated the Ex Post Facto Clause as-applied to Doe. see *Doe v. State*, 189 P.3d 999 (Ala. Sup. Ct. 2008).
- Mr. Gonzalez has provided this Court with the clearest proof that the legislature intended to impose criminal penalties within T.S.O.R.A..
- In addition, Mr. Gonzalez has provided the clearest proof that the revised law now compels him to be a witness against himself by the contracts and life-time requirement imposed on him. The change in venue from civil to criminal points in the direction of a punitive effect.

(b) Does T.S.O.R.A. § 62.102 impose an affirmative disability or restraint?

- Mr. Gonzalez was recently placed on the project innocence waiting list for his case to be reviewed. Until then he is subject to life-time registration. Much like the restrictions in (M.S.O.R.A and A.S.O.R.A), T.S.O.R.A. imposes more onerous duties and burdens, along with innumerable geographical restrictions on him.
- T.S.O.R.A.'s retroactive effect and retroactive punishment not only affects his substantial rights but his inalienable rights as well. Mr. Gonzalez is now homeless due T.S.O.R.A.. The effects have substantially affected every facet of his life, mentally, emotionally, and physically.
- T.S.O.R.A. has created a disability; something the legislatures did not intend. While T.S.O.R.A. does not outlaw Mr. Gonzalez from the city, it has made him an outcast.
- Mr. Gonzalez is now subject to 'ordinances' due to being placed on T.S.O.R.A.'s "hit list." Everyday he walks around in fear of being arrested not knowing whether his near or within a restricted location. All of which limit major life activities and deny him the right to engage in any of the common occupations of life, to marry, establish a home, bring up children, worship God according to the dictates of his conscience and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness of free men.

This factor points to the direction of punitive effect.

(c). Does T.S.O.R.A. § 62.102 promote the traditional aims of punishment?

• The change in venue from civil to criminal answers this question. The retroactive punishment and the legislatures' stated aims to impose criminal penalties within the Act also points in the direction of punitive effect.

(d). Does T.S.O.R.A. § 62.102 have a rational connection to a non-punitive purpose?

• This court would agree with the petitioner that there is no rational basis in passing a law that forces sex offenders to go homeless. Then arrest them for "roaming" near or within a restricted location unaware; unless there is a punitive purpose.

• In fact the Act has added to the homeless crises that plagues our State. It places an undue burden on the community and registrants. The Act actually promotes crime and recidivism, by putting individuals in desperate situations in order to survive weather conditions that sweep across our State every year. Moreover, Respondent can not provide this court any factual support that the restrictions under the Act have protected the public or reduced recidivism by registered offenders. Most importantly there is no evidence or

argument that T.S.O.R.A.'s requirements have kept him from re-offending or that requiring him to comply for life will do so.

- Respondent can not present any evidence that T.S.O.R.A.'s negative effects are counter balanced by any positive effects.

This factor points in favor of punitive effect.

(e). Is T.S.O.R.A. § 62.102 excessive with respect to the purpose?

- It is reasoned that our criminal law system holds persons accountable for past actions not anticipated future actions. The Act requires Mr. Gonzalez to register based solely on a prior conviction.

- T.S.O.R.A. allows Respondent to "split a cause of action" in a separate proceeding, by using the underlying offense for "evidentiary purposes". Relitigating a final Judgment that has been adjudicated in a prior action.

- Res judicata applies to both civil and criminal cases and I believe should bar this conviction.

- T.S.O.R.A.'s Chosen means are excessive in relation to the Statute's purpose because the Statute is also under inclusive. It excludes from its requirements persons who have committed the same acts and may pose threats to the community, but avoided conviction by pleading to a lesser charge. The Act neither meaningfully distinguishes the class of sex offenses

on the basis of risk, nor gives me the opportunity to demonstrate my lack of risk. The Act "chills" petitioner's due process.

- Because the Act imposes criminal penalties on Mr. Gonzalez, it should be regarded as penal in nature. The Act promotes the traditional aims of punishment - retribution and deterrence by incorporating § 62.102.

The Act "disadvantages" Mr. Gonzalez by creating strict-liability where no finding of scienter is required. The most critical aspect of T.S.O.R.A. is the unfettered discretion it places on the hands of law enforcement officials who may or may not want to register the offender.

- The factors are useful and should aid this court to the inescapable conclusion that T.S.O.R.A.'s ulterior purpose is deterrence and punishment.

20. United States v. Melendez-Carrion, 790 F.2d 1000-1001 (CA2 1986).

. For the foregoing reasons, Mr. Gonzalez respectfully request that this Court issue a writ of Certiorari to resolve the disagreement of The Sixth Circuit and review the judgment of The Fifth Circuit Court of appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 28th 2022