

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RAMIRO FELIX GONZALES,
Petitioner,
v.
STATE OF TEXAS,
Respondent.

**** CAPITAL CASE ****

On Petition for Writ of Certiorari
to the Texas Court of Criminal Appeals

**APPLICATION FOR 60-DAY EXTENSION
TO FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States, and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Ramiro Felix Gonzales, an indigent Texas death-row inmate, respectfully applies, under Supreme Court Rule 13.5, for a 60-day extension to file his petition for writ of certiorari to the Texas Court of Criminal Appeals (TCCA).

In support of his application, Mr. Gonzales states as follows:

1. Mr. Gonzales intends to file a petition for writ of certiorari challenging the TCCA's judgment denying him postconviction relief, entered on June 14, 2023. *Ex parte Gonzales*, No. WR-70,969-03, 2023 WL 4003783 (Tex. Crim. App. Jun. 14, 2023). *See* Appendix A.

2. Absent an extension, Mr. Gonzales's petition for writ of certiorari is due to be filed in this Court by September 12, 2023. In compliance with Rule 13.5, this application for additional time is being filed at least 10 days before that date.

3. Undersigned counsel's professional obligations in several other active capital cases have consumed most of their time over the past 60 days and have made it difficult for counsel to meet the current deadline for filing the petition for certiorari in this case. For most of the summer, beginning with jury selection in mid-May and ending with a penalty-phase verdict in mid-July, undersigned counsel were involved in capital trial proceedings in the case of *State of Texas v. Ronald Burgos Aviles*, in

which the State was seeking the death penalty. The trial proceedings were conducted in Webb County, Texas, approximately a four-hour drive each way from counsels' offices in Austin. Counsels' participation in the *Burgos Aviles* trial required weekly travel between the courthouse and counsel's residences. During counsels' weeklong stays in Webb County, the daily (and nightly) demands of trial prevented them from working on Mr. Gonzales's petition for certiorari from the date of the TCCA's decision until the *Burgos Aviles* trial concluded.

4. In addition, undersigned counsel are involved in several other pending capital cases that have active deadlines and will continue to demand counsel's time and attention in the weeks ahead. In one capital direct appeal, the appellant's opening brief must be filed in the TCCA by October 20. In a second pending capital appeal, undersigned counsel anticipate that they will be required to file a reply brief during roughly that same period and that oral argument will be scheduled shortly thereafter. Further, undersigned counsel are also consulting with a capital defense team that is scheduled to begin trial in early October.

5. Due to the convergence of all these deadlines in mid-October, Mr. Gonzales respectfully requests a 60-day extension to file his petition for writ of certiorari.

6. Finally, undersigned counsel are clinical professors associated with the University of Texas School of Law, where fall term classes began today. Three days

a week, undersigned counsel are responsible for teaching classroom courses; outside the classroom, they also supervise law students enrolled in the Capital Punishment Clinic, through which undersigned counsel represent capital defendants directly and assist other lawyers in doing so.

7. This capital case implicates several important questions related to the veracity of trial testimony offered by the prosecution, through its expert witness Dr. Edward Gripon, about Mr. Gonzales' propensity for "future dangerousness."¹ In his habeas application, Mr. Gonzales alleged that Dr. Gripon's testimony was materially false or misleading in several significant respects. That claim had four parts:

- (1) Dr. Gripon's trial testimony that a diagnosis of antisocial personality disorder was "certainly" and "clearly" present was untrue;
- (2) Dr. Gripon's trial testimony that sex offenders have "extremely high recidivism rates" was false and misleading;
- (3) Dr. Gripon's trial testimony that Mr. Gonzales's drug addiction did not have a "significant impact" on him has now been disavowed by Dr. Gripon himself;
- (4) Dr. Gripon now believes, contrary to his testimony at trial, that Mr. Gonzales does *not* present a future danger.

¹ Texas law bars imposing a death sentence unless the jury returns an affirmative finding that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Tex. Code Crim. Proc. art. 37.071 § 2(b)(1). This determination is referred to colloquially as the "future dangerousness" question.

All four parts of the claim were supported by a report by Dr. Gripon in which he corrected, revised, or disavowed his trial testimony in each of these respects.

8. On July 11, 2002, the TCCA issued an order concluding that Mr. Gonzales had “presented at least a *prima facie* showing that testimony of recidivism rates [Dr.] Gripon gave at trial were false and that the false testimony could have affected the jury’s answer to the future dangerousness question at punishment,” and remanded the application to the trial court for review of the merits of that claim. *Ex parte Gonzales*, No. WR-70,969-03, 2022 WL 2678866, at *1 (Tex. Crim. App. July 11, 2022) (not designated for publication). However, the TCCA declined to authorize further proceedings on the first, third, and fourth parts of the same claim, stating that a “determination of future dangerousness is made at the time of trial and is not properly evaluated on habeas,” and that to the extent Mr. Gonzales’ first claim rested on any such reevaluation, “the trial court shall not review it.” *Id.*

9. On remand of the claim authorized for “merits review”—i.e., Dr. Gripon’s testimony about sex offender recidivism rates—the state habeas judge entered an order on December 2, 2022, finding that no further evidentiary development of the claim was warranted and directing the parties to submit proposed findings of fact and conclusions of law. On February 2, 2023, the state habeas judge conducted a brief “status hearing” by videoconference. During that hearing, the habeas judge (who did not preside at trial) acknowledged that he had not yet read

the trial transcript, and in fact did not possess a copy. On March 17, 2023, at the presiding judge’s request, the State submitted a revised version of its proposed findings of fact and conclusions of law, adding citations to the trial record not included in the version of its proposed findings submitted in mid-January. Five days later, on March 22, 2023, the habeas judge signed the State’s findings of fact and conclusions of law recommending that the Court of Criminal Appeals summarily deny the claim on the merits.²

10. Thus, among the issues that may be presented in Mr. Gonzales’s petition for certiorari are whether the “unknowing” presentation of false testimony violates the Due Process Clause and, if so, what standard of harm applies; whether the TCCA correctly concluded that a false testimony claim premised on a “reevaluation” by the State’s mental health expert of the views he offered at trial does not present a cognizable claim of a federal constitutional violation that can be reviewed in postconviction proceedings; and whether the state court proceedings summarily denying Mr. Gonzales’s false testimony claim—notwithstanding the TCCA’s own prior determination that Mr. Gonzales’s allegations established “a

² The trial court’s findings of fact and conclusions of law also recommended that relief be denied on state procedural grounds, but the Court of Criminal Appeals specifically declined to adopt these findings and denied relief of the remanded claim on the merits. *Ex parte Ramiro Felix Gonzales*, No. WR-70,969-03, 2023 WL 4003783 at *2 (Tex. Crim. App. Jun. 14, 2023) (declining to adopt the trial court’s findings and conclusions “that laches and procedural bars prevent a merits review of Applicant’s remanded allegation”).

prima facie showing that testimony of recidivism rates [Dr.] Gripon gave at trial were false and that the false testimony could have affected the jury’s answer to the future dangerousness question at punishment”—were “fundamentally []adequate to vindicate the substantive rights provided.” *District Attorney’s Office v. Osborne*, 557 U.S. 52, 69 (2009).

11. Accordingly, for these reasons, Mr. Gonzales respectfully asks that the Court grant this application and extend for 60 days the time allowed to file his petition for writ of certiorari to the Texas Court of Criminal Appeals.

Respectfully submitted,



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