

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

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In The  
Supreme Court of the United States

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CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

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On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District

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**APPENDIX**

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**APPENDIX A**

Opinion of the Texas  
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Edinburg (Nov. 29, 2022)



**NUMBER 13-20-00320-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**EX PARTE CARLOS NOE GALLEGOS**

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**On appeal from the 275th District Court of  
Hidalgo County, Texas.**

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**MEMORANDUM OPINION**

**Before Chief Justice Contreras and Justices  
Hinojosa and Silva Memorandum Opinion by  
Justice Hinojosa**

This is an appeal from the denial of an application for writ of habeas corpus. By five issues which we re-organize as four, petitioner Carlos Noe

Gallegos argues that the habeas court abused its discretion in denying the application because: (1) it erroneously failed to consider and apply the *Padilla v. Kentucky*, 559 U.S. 356 (2010), standard for evaluating deficient representation; (2) it applied the wrong standard for evaluating prejudice in an ineffective assistance of counsel argument; (3) its fact findings and legal conclusions were unsupported by the record; and (4) it erroneously overruled Gallegos’s evidentiary objections. We affirm.

## **I. BACKGROUND FACTS**

Gallegos became a naturalized United States citizen in 2010. As part of his citizenship application, Gallegos avowed that he had not committed a crime or offense in the five years prior to the submission of his application.

### **A. The Underlying Offenses**

On November 1, 2016, six years after Gallegos became a citizen, he was indicted for two counts of aggravated sexual assault of a child, a first-degree felony. See TEX. PENAL CODE ANN. § 22.021(a)(2)(B). The charges arose from a delayed outcry from complainant L.G.<sup>1</sup>, Gallegos’s stepdaughter. L.G. alleged that on or about March 1, 2007, Gallegos (then a lawful permanent resident) inappropriately touched her when she was approximately seven years old. She also alleged that he exposed himself to her in 2009. These acts

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<sup>1</sup> We use initial for the minor complainants involved to protect their identities. See TEX. R. APP. P. 9.8 cmt.

occurred during the five-year period preceding Gallegos's naturalization.

According to investigation reports, Gallegos admitted that in 2007, while his wife was at work, he instructed L.G. to remove her pants and underwear and to sit on his lap while he was nude. While they sat at a table, Gallegos told L.G. to color while he placed his genitalia between her buttocks and vagina and moved her back and forth. He stated that he did not penetrate her. Gallegos also admitted that two years later, in 2009, he exposed himself to L.G. while she was watching cartoons. His wife was in their master bedroom, resting due to a high-risk pregnancy. Gallegos's wife and stepdaughter eventually reported these offenses to law enforcement officials. They sought assistance from the local Catholic Charities organization and Mujeres Unidas, a local women's shelter, to move away from Gallegos.

Gallegos was arrested and spent approximately two weeks in jail. After his release on bail, he met with attorney Richard Gonzales. Gallegos, a native Spanish speaker, took his sister with him to the legal appointment so she could translate for him. Gallegos informed his attorney that he was a naturalized citizen. According to Gallegos, Gonzales admitted to Gallegos that he "did [not] know much about immigration law, but . . . because [Gallegos] was a citizen, [his] status as a citizen should [not] be affected by the criminal proceedings."

Gallegos stated that, relying on Gonzales's assurance that his immigration status would not be affected, he accepted the State's plea offer of deferred adjudication with six years' community supervision and a \$1,000.00 fine on one of the charged offenses. In exchange for the plea, the State dismissed one count of aggravated sexual assault of a child and recommended that Gallegos receive credit for time served. According to Gallegos, Gonzales counseled him that "this was a great deal because [Gallegos] would not have to serve any prison time."

The plea documents signed by Gallegos set forth the following admonition, with a footnote citing *Padilla*:

If you are not a citizen of the United States of America, a plea of guilty or no contest may, and under current Federal immigration rules is almost certain to, result in your deportation, the exclusion from admission to this country, or the denial of naturalization under federal law, and I, the [d]efendant, have been so advised by my attorney.

In signing the plea documents, Gallegos acknowledged that he was "aware of the consequences of the plea, including immigration circumstances, if applicable." The plea documents, however, only addressed immigration consequences

for non-citizens, not naturalized citizens like Gallegos.

## **B. Application for Writ of Habeas Corpus**

Based on this guilty plea and the nature of the crime committed, the United States government sought to denaturalize Gallegos in 2018. See 8 U.S.C. § 1451(a) (providing for revocation of a naturalization order if it was “illegally procured” or “procured by concealment of a material fact or by willful misrepresentation”). Under federal law, if Gallegos’s citizenship became revoked, he would revert to the status of a lawful permanent resident and, in light of his guilty plea, he would be eligible for deportation. See *id.* § 1227(a)(2)(A)(i)(I) (providing that any non-citizen who is “convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under § 1255(j) of this title) after the date of admission” and “for which a sentence of one year or longer may be imposed” is deportable).<sup>2</sup>

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<sup>2</sup> Sexual assault of a child is a “crime of moral turpitude” under 8 U.S.C. § 1182(a)(2)(A)(i)(I) for the purposes of denaturalization proceedings. *Judulang v. Holder*, 565 U.S. 42, 50 (2011); *United States v. Rubalcava Gonzales*, 179 F. Supp. 3d 917, 924 (E.D. Mo. 2016) (“The Board of Immigration Appeals (‘BIA’) routinely holds that sexual assault or abuse of a minor is a crime involving moral turpitude.”); *United States v. Ekpin*, 214 F. Supp. 2d 707, 712–15 (S.D. Tex. 2002) (holding that defendant’s sexual abuse of a child was “unquestionably a crime of moral turpitude”). “[A]n applicant for naturalization lacks good moral character and is ineligible for naturalization if he is convicted of or admits the commission of one or more crimes involving moral turpitude

Gallegos subsequently filed an application for a writ of habeas corpus. See TEX. CODE CRIM. PROC. ANN. § 11.072. In his application, Gallegos argued that he received ineffective assistance of counsel in accordance with *Padilla* because his attorney failed to clearly advise him that his guilty plea would result in denaturalization and the loss of citizenship. Gallegos explained that Gonzales “knew or should have known that eligibility for naturalization requires a showing of good moral character, and that having committed such an offense just three years earlier probably would have made [Gallegos] ineligible for citizenship in 2010.” The application further noted that “[d]eferred adjudication constitutes a conviction for immigration purposes, and necessarily left [Gallegos] vulnerable to having his naturalization revoked.”

In an affidavit attached to the habeas application, Gallegos testified how Gonzales’s representation prejudiced him:

Had I not been mis-advised by [a]ttorney Gonzale[s] of the nearly automatic immigration consequences of my plea, I would not have accepted the plea and I would have gone to trial, instead. For several important reasons, I would not have voluntarily agreed to a plea which could result in my return to Mexico.

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during the statutory period, even if the person was never charged, arrested or convicted.” *Rubalcava Gonzales*, 179 F. Supp. 3d at 922.



First and foremost, I have lived in the United States since 2003 as a lawful permanent resident and as a naturalized citizen since 2010. My family all live here. I would have fought the 2016 charge had I known I would be separated from my family.

I would never have willingly accepted a plea that could result in my removal to my home country. I am married with one child, both of whom depend on me for assistance. I would not have voluntarily separated myself from my wife and child. Nor would I have subjected my family to living in Mexico, in order for my family to remain together.

Lastly, had I known the immigration consequences of my guilty plea, I would not have accepted it, because I would never willingly accept being sent to Mexico, which is on the verge of civil war between feuding cartels and where corrupt law enforcement are closely allied to the various cartels. There, I would face possible kidnap[p]ing, extortion, and execution by members of the M[exican] cartels and by those law enforcement officials tied to the Mexican cartels.

**C. The Hearing on the Application for Writ of Habeas Corpus**

The habeas court held a hearing on the application for writ of habeas corpus on December 11, 2019. Gallegos testified through an interpreter. Gallegos explained to the court that he became a lawful permanent resident in 2003 and obtained naturalized citizenship in 2010. He stated that he informed Gonzales about his naturalization status at their first meeting but that Gonzales did not “think it [was] going to affect [Gallegos] because of this criminal offense.” He further claimed that Gonzales “said that he did [not] know anything about immigration, but he did [not] recommend anyone that knew about it.” Gallegos interpreted this to mean Gonzales “was almost securing that it was not going to affect [his] documents.”

On cross-examination, the following colloquy occurred between the State and Gallegos:

STATE: Just to clarify, you’re not saying that you didn’t commit the charges that you pled guilty to today, correct?

HABEAS COUNSEL: I’m going to object to that, Your Honor. I believe the issue here is whether or not his attorney properly advised him of the plea of guilty and the [e]ffect on his immigration status.

STATE: Your Honor, this is all

interrelated, all of it; including what the evidence was. Because they brought up the fact that the State apparently did not agree to a lower charge and that has to do with the evidence in the case, Your Honor.

HABEAS COUNSEL: Again, we are here on this writ trying to see if we can set aside the conviction based on ineffective assistance of counsel based on the misinformation that was given to this gentleman concerning the consequences.

STATE: Exactly. I am just trying to clarify.

THE COURT: I'm going to overrule the objection. You may proceed.

STATE: Mr. Gallegos, you are not here today testifying that you did not commit the offense that you pled guilty to, correct?

GALLEGOS: Yes.

Later in the cross-examination, Gallegos acknowledged that although he knew of the good moral character requirement when applying for naturalization, he believed that the question asked

about criminal charges for which he had been convicted, not those which he committed:

STATE: Okay. At the time that you applied in 2010 you do realize you had committed a crime in 2007, correct?

GALLEGOS: Yes.

STATE: You knew you committed a crime back in 2007, correct?

GALLEGOS: Yes.

STATE: You just had not been charged for it, correct?

GALLEGOS: Yes.

STATE: Did you know that or were you aware that lying in the application could later affect, if it was proven that you lied, could affect your naturalization?

GALLEGOS: No.

STATE: So you thought that you could lie in your application without consequences?

GALLEGOS: No, I was not lying. I was not lying. I just didn't understand that question.

STATE: Okay.

GALLEGOS: Because I at no time lied. I would not have lied at any time if I had understood the question.

Gallegos explained that he did not have an attorney assist him when he completed the application for naturalization.

The State offered an affidavit from Gonzales into evidence during this hearing. In his affidavit, Gonzales testified to the following:

I advised [Gallegos] of his rights, the consequences of pleading guilty and all plea documents pertaining to his case. Included in those documents were his right to a jury trial, his right to confront State's witnesses[,] and the applicable range of punishment. I read and explained to [Gallegos] the section in the plea paperwork regarding U[.]S[.] citizenship which states, as a non-U[.]S[.] citizen, a plea of guilty would result in deportation, exclusion from the country[,] or denial of naturalization under [f]ederal law.

While representing [Gallegos], I spent considerable time discussing the case, the State's evidence, which included a statement of accused, and all possible defenses that could be raised. We reviewed discovery, including but not limited to, reports and affidavits. We discussed all the evidence that was presented against him. I informed [Gallegos] of both the likelihood of success and the risks of proceeding with trial. We discussed the strengths and weaknesses of the State's case. I advised [Gallegos] that putting this case in front of a jury was a very risky move based on the facts of the case. However, I told him that there was a possibility that he could be acquitted of all charges, but also a possibility he would be found guilty. I explained to him that if found guilty he ran the risk of being sent to prison. Additionally, we spent time discussing[] the District Attorney's plea offer, which ultimately was negotiated in [Gallegos's] favor.

[Gallegos] made it very clear that he did not want to go to prison and that he wanted me to try anything and everything to get him

probation. I spoke with the Assistant DA in the case and we had lengthy conversations about the plea deal. The original recommendation was a TDC prison sentence. After much negotiation and with input from the victim's family, a deferred probation sentence was offered. I attempted to try and find a way to get the case dismissed because of the immigration situation, but based on the facts and the willingness of the victim to proceed, those attempts were unsuccessful.

After considerable discussion of the evidence and the plea offer, [Gallegos] stated to me he did not want a jury trial and wanted to proceed forward with the deferred probation plea agreement. During his plea of guilty, the Court admonished [Gallegos] of the range of punishment, that any recommendation of the State is not binding on the Court, that the existence of a plea bargain limits the right of an appeal, and all immigration admonishments. Those included that a plea of guilty by a non-U[.]S[.] citizen may result in deportation, exclusion from this country or denial of naturalization under [f]ederal law. The Court

found [Gallegos] competent to stand trial and was not coerced, threatened[,] or persuaded in any way to plead guilty. [Gallegos] stated that he understood the admonishments of the Court and was aware of the consequences of his plea, and the Court received the plea freely and voluntarily. When asked by the Court if he had anything to say as to why the sentence should not be pronounced, [Gallegos] answered “no[,]” [and] the Court proceeded to pronounce sentence upon [Gallegos].

#### **D. Habeas Court’s Ruling**

On March 24, 2020, the habeas court issued the following conclusions of law:

##### **CONCLUSIONS OF LAW**

1. “In a post conviction collateral attack, the burden is on the applicant to allege and prove facts which, if true, entitle him to relief.” [*Ex parte Maldonado*], 688 S.W.2d 114, 116 (Tex. Crim. App. 1985).
2. To establish ineffective assistance of counsel, a defendant is required to show:
  - (1) his attorney’s



representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for his attorney's errors, the result of the proceeding would have been different. See [*Strickland v. Washington*], 466 U.S. 668, 687 (1984). There is a strong presumption that counsel has rendered adequate assistance and exercised reasonable professional judgment. See [*i*]d. at 690.

3. The reviewing court is to consider the totality of the representation rather than merely focus on isolated errors. See [*Ex parte Kunkle*], 852 S.W.2d 499, 505 (Tex. Crim. App. 1993). The right to "reasonably effective assistance of counsel" does not guarantee errorless counsel or counsel whose competency is judged by perfect hindsight. [*Saylor v. State*], 660 S.W.2d 822, 824 (Tex. Crim. App. 1983).
4. If a habeas applicant can show based on the totality of the circumstances that plea

counsel's error was one that affected his understanding of pleading guilty, and if he can show by substantial and uncontroverted evidence (1) that deportation was the determinative issue for him in plea discussions; (2) that he had strong connections to the United States and no other country; and (3) that the consequences of taking a chance at trial were not markedly harsher than pleading guilty, then it might not be irrational to reject a guilty plea. [*Lee v. United States*], 137 S. Ct. 1958, 1967 (2017).

5. The Court heard evidence that, prior to applying for U.S. citizenship in 2010, Applicant had committed the offense to which he had pled in this cause. The Court also heard evidence that Applicant omitted from said citizenship application that he committed the offense to which he had ple[a]d[ed] in this cause. The Court also heard evidence that naturalization requires a showing of good moral character.

6. [Gonzales's] credible affidavit testimony makes clear that: Applicant was informed of the strengths and weaknesses of the State's case; Applicant was advised of the success and the risks of proceeding to trial; Applicant was advised that having a jury trial was a very risky move given the facts of the case; Applicant was much more concerned of avoiding prison time, rather than going to trial; Applicant was given immigration warnings prior to his plea of guilt by [Gonzales] and the Court; and [Gonzales] attempted to find a way to have the case dismissed due to the immigration situation, but was ultimately unsuccessful.
7. The Court finds that Applicant has failed to show, by substantial and uncontroverted evidence, the factors enunciated in [*Lee*]. See [*Lee*], 137 S. Ct. [at] 1967 .  
..
8. The Court finds that Applicant's claims regarding ineffective assistance of counsel unmeritorious.

9. The Court finds that Applicant's claims regarding the lack of an interpreter at his proceedings to be unmeritorious.<sup>3</sup>
10. Applicant has failed to allege and prove facts which, if true, entitle him to relief. [*Ex parte Maldonado*], 688 S.W.2d [at] 116 . . . .

The court denied the application for writ of habeas corpus. Gallegos appeals.

## II. STANDARD OF REVIEW

Texas Code of Criminal Procedure article 11.072 is “the exclusive means by which the district courts may exercise their original habeas jurisdiction under Article V, Section 8, of the Texas Constitution” for individuals serving a term of community supervision. *Ex parte Torres*, 483 S.W.3d 35, 42 (Tex. Crim. App. 2016) (quoting *Ex parte Villanueva*, 252 S.W.3d 391, 397 (Tex. Crim. App. 2008)). Under article 11.072 writ proceedings, the trial judge is the sole finder of fact. *See State v. Guerrero*, 400 S.W.3d 576, 583 (Tex. Crim. App. 2013). Reviewing these appeals, we must afford almost total deference to a trial court's findings of fact when they are supported by the record, especially when those findings are based upon

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<sup>3</sup> This claim was not appealed.

credibility and demeanor. *See id.*; *see also Ex parte Garcia*, 353 S.W.3d 785, 788 (Tex. Crim. App. 2011).

In reviewing a trial court's decision on a habeas corpus application, we view the facts in the light most favorable to the trial court's ruling. *See Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex. Crim. App. 2006); *see also Ex parte Galvan-Herrera*, No. 13-11- 00380-CR, 2012 WL 1484097, at \*3 (Tex. App.—Corpus Christi—Edinburg Apr. 26, 2012, pet. ref'd) (mem. op., not designated for publication). We must uphold the ruling unless the trial court abuses its discretion. *Wheeler*, 203 S.W.3d at 324. Although we afford almost total deference to the trial court's determination of the historical facts, those facts must be supported by the record. *See Ex parte Garza*, 192 S.W.3d 658, 661 (Tex. App.— Corpus Christi—Edinburg 2006, no pet.). If the resolution of the ultimate question turns on an application of legal standards, we review the determination de novo. *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex. Crim. App. 2003), *overruled on other grounds by Ex parte Lewis*, 219 S.W.3d 335 (Tex. Crim. App. 2007).

### III. APPLICABLE LAW

To prevail on a claim that he entered an involuntary guilty plea due to ineffective assistance of counsel, Gallegos must satisfy a two-pronged standard showing that: (1) counsel rendered deficient performance and (2) Gallegos suffered prejudice as a result. *See Strickland*, 466 U.S. at 687–88; *Hill v. Lockhart*, 474 U.S. 52, 58–59 (1985); *Torres*, 483 S.W.3d at 43.

The first prong of *Strickland* requires Gallegos to show that his counsel's performance was deficient in that it failed to meet an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 687–88; *Ex parte Bowman*, 533 S.W.3d 337, 349–50 (Tex. Crim. App. 2017). In evaluating counsel's performance, we assess reasonableness under the circumstances of the underlying case viewed at the time counsel rendered assistance. *Bowman*, 533 S.W.3d at 350. We presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (quoting *Strickland*, 466 U.S. at 690). Counsel's deficient performance must be affirmatively demonstrated on the record and not require retrospective speculation. *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). We judge the totality of counsel's representation rather than focusing narrowly on isolated acts or omissions. *Ex parte Jimenez*, 364 S.W.3d 866, 883 (Tex. Crim. App. 2012).

The Sixth Amendment right to effective assistance of counsel requires counsel to correctly advise non-citizen clients about potential immigration law consequences, including deportation, exclusion from admission, and denial of naturalization. *Padilla*, 559 U.S. at 366–67. "[I]f immigration law regarding deportation is 'not succinct and straightforward,' defense attorneys must merely advise their clients that they could be deported, but when the law is 'truly clear' that the defendant would be deported if convicted, defense attorneys have a duty to 'give correct advice [that] is

equally clear.” *Ex parte Garcia*, 547 S.W.3d 228, 229 (Tex. Crim. App. 2018). It is not sufficient for counsel to advise the client that deportation might occur and recommend the client to seek advice from an immigration lawyer. *Torres*, 483 S.W.3d at 45. If deferred adjudication for the charged offense will clearly result in removal proceedings, counsel’s advice regarding those immigration consequences must be equally clear. *See Padilla*, 559 U.S. at 369; *see also Ex parte Doke*, No. 05-20-00826-CR, 2021 WL 4071153, at \*2 (Tex. App.—Dallas Sept. 7, 2021, no pet.) (mem. op., not designated for publication).

In a typical *Strickland* inquiry, a defendant can demonstrate prejudice by showing “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Roe v. Flores-Ortega*, 528 U.S. 470, 482 (2000). However, *Lee v. United States* provides a more nuanced prejudice analysis in the context of immigration cases:

When a defendant alleges his counsel’s deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of that trial “would have been different” than the result of the plea bargain. That is because, while we ordinarily “apply a strong presumption of reliability to judicial proceedings,” “we cannot accord” any such presumption “to

judicial proceedings that never took place.”

We instead consider whether the defendant was prejudiced by the “denial of the entire judicial proceeding . . . to which he had a right.” As we held in *Hill v. Lockhart*, when a defendant claims that his counsel’s deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.”

137 S. Ct. at 1965 (citing *Hill*, 474 U.S. at 52 (internal citations omitted)). In making this determination, courts should “not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Id.* at 1967.

#### **IV. INEFFECTIVE ASSISTANCE OF COUNSEL**

Because Gallegos’s first two issues—that the habeas court erroneously (1) failed to consider the *Padilla* standard for evaluating deficient representation and (2) applied the wrong standard for evaluating prejudice in an ineffective assistance



of counsel argument—are interrelated, we address them together.

### **A. Deficient Performance**

*Strickland*'s first prong requires us to analyze whether Gallegos's counsel provided deficient performance. *See Strickland*, 466 U.S. at 687–88. Both parties acknowledge that this is a matter of first impression: while *Padilla* clearly requires attorneys to warn non-citizens of immigration consequences after pleading guilty to certain crimes, it is unclear if *Padilla*'s protections extend to naturalized citizens, who may also have immigration consequences if it is shown that the naturalization was “procured by concealment of a material fact or by willful misrepresentation.” *See* 8 U.S.C. § 1451(a).

Gallegos urges us to apply *Padilla* to this case, as the immigration consequences for pleading guilty to this crime were clear: “when the deportation consequence is truly clear, as it was in this case, the duty to give correct advice is equally clear.” *Padilla*, 559 U.S. at 369. To date however, and as Gallegos admits, no Texas case has applied *Padilla* to naturalized citizens. Gallegos instead urges us to consider authority from other jurisdictions. *See Rodriguez v. United States*, 730 Fed. App'x 39, 42 (2d Cir. 2018) (holding counsel's advice deficient when Rodriguez was told “she did not have to worry about the immigration consequences of a plea [that] ignored the possibility of denaturalization”); *United States v. Kayode*, 777 F.3d 719, 723 (5th Cir. 2014) (holding counsel's

representation was deficient when the defendant, a naturalized citizen, was not made aware of immigration consequences until the plea hearing); see also Amber Qureshi, *The Denaturalization Consequences of Guilty Pleas*, 130 YALE L.J.F. 166, 178–84 (2020) (“The Court’s reasoning and holding in *Padilla* logically applies to denaturalization even though the Court did not explicitly acknowledge it in its opinion.”).

The State, on the other hand, encourages this court to strictly limit *Padilla*’s reach to non-citizen legal representation. Citing an unpublished concurring opinion from the Texas Court of Criminal Appeals, it argues that “[b]y its terms, the Supreme Court’s holding in *Padilla* is limited to the deportation consequences of a plea.” *Ex parte Velasquez-Hernandez*, No. WR-80,325-01, 2014 WL 5472468, at \*5 (Tex. Crim. App. 2014) (Keller, J., concurring) (not designated for publication); see *United States v. Farhane*, No. 05 CR. 673-4 (LAP), 2020 WL 1527768, at \*2 (S.D.N.Y. Mar. 31, 2020) (order) (holding that *Padilla* applied to non-citizens in “imminent risk of deportation,” not to naturalized citizens that made “misrepresentations about not having engaged in criminal conduct and . . . illegally procured naturalization”).

In an ineffective assistance claim, though, Gallegos must establish both deficient attorney performance and prove that it prejudiced him. See *Strickland*, 466 U.S. at 687. Because we conclude that the prejudice analysis is dispositive of this case, we assume without deciding that Gonzales’s representation was deficient. See TEX. R. APP. P.

47.1 (“The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.”) (emphasis added).

## **B. Prejudice**

Whether a defendant is prejudiced by inadequate legal representation requires a “case-by-case examination,” *Williams v. Taylor*, 529 U.S. 362, 391 (2000), of the “totality of the evidence,” *Strickland*, 466 U.S. at 695. The United States Supreme Court has instructed judges to look to “contemporaneous evidence to substantiate a defendant’s expressed preferences” when a defendant alleges that he would not have pleaded guilty but for an attorney’s deficient advice on immigration consequences. *Rodriguez*, 730 Fed. App’x at 43 (citing *Lee*, 137 S. Ct. at 1967).

As *Lee* instructs us, in a case with immigration consequences like this, we do not look at the strength of the State’s case when determining prejudice. *Lee*, 137 S. Ct. at 1965. The defendant does not have to show that he “would have been better off going to trial.” *Id.* Here, in fact, it appeared that the State had a strong case for conviction: an admission from Gallegos himself, statements from Gallegos’s wife and the complainant L.G., and L.G.’s apparent willingness to pursue the charges. Instead, because of the citizenship implications, we look to whether Gallegos can show prejudice by demonstrating “reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have

insisted on going to trial.” *Lee*, 137 S. Ct. at 1965 (citing *Hill*, 474 U.S. at 59). Rather than ask how a hypothetical trial would have played out absent counsel’s error, we must consider if there is an adequate showing that Gallegos would have opted to go to trial if he was properly admonished. *See id.*

In *Lee*, both the defendant and the defendant’s attorney gave testimony that deportation was the “determinative issue” in Lee’s decision to plead guilty to drug charges instead of pursuing trial. *Id.* at 1967. Lee even testified that his attorney became “pretty upset because every time something c[ame] up I always ask[ed] about immigration status and the lawyer always said ‘why are you worrying about something you don’t need to worry about.’” *Id.* at 1963 (cleaned up). Lee, who was born in South Korea, had lived in the United States for thirty years, had established two businesses, and was the only family member who could care for his elderly parents who lived in the United States. *Id.* at 1968. Lee communicated these concerns to his attorney. Thus, the Supreme Court held that Lee had “adequately demonstrated a reasonable probability that he would have rejected the plea had he known that it would lead to mandatory deportation.” *Id.* at 1967.

Gallegos has not established the same this record. Neither his testimony by affidavit or at the hearing, nor that of Gonzales, establish that deportation was a “determinative issue” for him in deciding whether to plead guilty. *See id.* at 1967. In response to this, Gallegos urges us to consider Rodriguez for the proposition that a defendant need

not ask continually about immigration consequences if he or she is relying on counsel's assurances that their immigration status will not be affected. *See* 730 Fed. App'x at 43.

In *Rodriguez*, the defendant legally entered the United States from the Dominican Republic in 1994 and became a naturalized citizen in 2007. *See id.* at 40. In 2010, Rodriguez pleaded guilty to federal conspiracy offenses which occurred prior to her naturalization. *Id.* Like Lee, Rodriguez had lived in the United States for a long period of time and was concerned about financially supporting her family. *See id.* at 41. At the plea hearing, Rodriguez's counsel emphasized that Rodriguez was the "sole basis of financial support for her two infant children . . . as well as both of her parents" and that her "family would suffer from severe collateral consequences due to [her] imprisonment." *Id.* The *Rodriguez* court recognized that, although there were "no statements at Rodriguez's plea hearing clearly demonstrating a 'single-minded focus' on avoiding negative immigration consequences," "this [was] not surprising given counsel's alleged early and continued assurances that there were no immigration consequences to worry about in her case." *Id.* at 43. Because the record established that Rodriguez's "sole concern with respect to a sentence was to ensure that she would be able to continue working in the United States to financially support her family," the court found that Rodriguez would have placed "paramount importance" on avoiding denaturalization and found prejudice. *Id.* at 44.

With the record before us, however, we cannot make this same determination. Gonzales's affidavit alluded that Gallegos's "determinative issue" in deciding to plead guilty was "that he did not want to go to prison and that he wanted [Gonzales] to try anything and everything to get him probation." Gonzales further averred that "Gallegos stated to me he did not want a jury trial and wanted to proceed forward with the deferred probation plea agreement." There was no testimony from Gonzales, Gallegos, or Gallegos's sister (who was at the legal consultation) regarding Gallegos's concern for his family should he be deported.

Although we acknowledge the statement from Gallegos's affidavit concerning the tenuous security situation in Mexico, the record does not show that Gallegos mentioned this concern prior to or during the plea. The habeas court may have considered this to be a "post hoc assertion[]" from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 137 U.S. at 1967. Moreover, unlike the *Lee* and *Rodriguez* cases, Gallegos did not establish a contemporaneous record of strong family connection or responsibility to substantiate his claim of prejudice, either. Although Gallegos's affidavit after his plea set forth that he was "married with one child, both of whom depend[ed] on [him] for assistance," the investigation reports noted that Gallegos's wife, stepdaughter L.G., and biological daughter were all seeking shelter and resources from a local church and/or women's shelter in order to move away from Gallegos. Reviewing the facts in the light most favorable to the habeas court's ruling, we cannot say the court

erred when it concluded that Gallegos did not prove that he was prejudiced by his trial counsel's failure to advise him that pleading guilty may result in his naturalization being revoked. *See Wheeler*, 203 S.W.3d at 324.

Examining the record of this case and the "totality of circumstances," we conclude that Gallegos did not establish prejudice under the definition set forth by *Lee*. *See Lee*, 137 S. Ct. at 1965; *Strickland*, 466 U.S. at 695; *Williams*, 529 U.S. at 391. Gallegos has not shown "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Lee*, 137 S. Ct. at 1965.

### **C. Conclusion**

Assuming without deciding that Gonzales's representation was deficient under *Padilla*, we conclude that, under this record, Gallegos has not established prejudice. *See Padilla*, 559 U.S. at 369; *Lee*, 137 S. Ct. at 1965. There is not "substantial and uncontroverted evidence" from the contemporaneous record that Gallegos would not have accepted a plea had he known it would lead to denaturalization. *See Lee*, 137 S. Ct. at 1969. We overrule issues one and two.

## **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

By his third issue, Gallegos contends the habeas court's "generic" findings of fact and conclusions of law were unsupported by the record.

Gallegos first asserts that the habeas court erroneously concluded Gallegos failed to prove his ineffective assistance of counsel claim.<sup>4</sup> Gallegos argues that *Padilla* required Gonzales to “specifically and accurately advise Gallegos that he would be denaturalized if he pleaded guilty.” Gallegos submits that the habeas court’s conclusion of law number six—which set forth that Gallegos “was given immigration warnings prior to his plea of guilt by [Gonzales] and the Court”<sup>5</sup>; and “[Gonzales] attempted to find a way to have the case dismissed due to the immigration situation, but was ultimately unsuccessful”—are actually findings of fact that are unsupported by the record.

The Texas Court of Criminal Appeals has held that, in the context of habeas cases, it “will afford no deference to findings and conclusions that are not supported by the record and will ordinarily defer to those that are.” *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008). The high court further clarified that where a given finding or conclusion is immaterial to the issue or irrelevant to the disposition of the case, it may decline to enter an alternative finding or conclusion. *See id.* at 728; *see also Ex parte Yusafi*, No. 09-08- 00301-CR, 2008 WL 6740798, at \*1 (Tex. App.—Beaumont Aug. 26, 2009, pet. ref’d) (mem. op., not designated for publication) (holding, in an ineffective assistance of

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<sup>4</sup> The habeas court’s conclusion of law number eight provided that, “[t]he Court finds that [Gallegos’s] claims regarding ineffective assistance of counsel [are] unmeritorious.”

<sup>5</sup> The State concedes that “the [habeas] court’s finding that [Gallegos] was provided immigration warnings prior to his plea of guilt by the trial court” is unsupported by the record.



counsel case, that “[s]hould a given finding or conclusion be immaterial to the issue or irrelevant to [the court’s] disposition, we may decline to consider said finding or conclusion and, instead, consider the findings and conclusions that are supported by the record and are germane to the resolution of the habeas appeal”). Assuming but not deciding that the habeas court’s conclusion that Gonzales provided adequate legal representation is not supported by the record, it is “immaterial” to the *Strickland* analysis because we previously held that Gallegos did not establish prejudice. *See Strickland*, 466 U.S. at 687; *Reed*, 271 S.W.3d at 727.

Gallegos, however, challenges this conclusion of law too, and asserts that the habeas court “misstated and then misapplied” the *Lee* standard to prove prejudice. The court’s conclusion of law number seven provided that, “[t]he Court finds that Applicant has failed to show, by substantial and uncontroverted evidence, the factors enunciated in *Lee*.” We disagree with Gallegos and hold that this is a conclusion based in the record for the reasons previously enunciated in our prejudice analysis, *supra*.

Under our standard of review, if the resolution of the ultimate question turns on an application of legal standards, we review the determination de novo. *See Peterson*, 117 S.W.3d at 819. Having reviewed the prejudice finding under the de novo lens of analysis, we overrule this issue.

## VI. EVIDENTIARY ISSUE

By his fourth issue, Gallegos contends that the habeas court erroneously overruled his evidentiary objections when the State inquired into Gallegos's guilt at the habeas hearing.

An appellate court applies an abuse of discretion standard of review when reviewing a trial court's ruling on the admission of evidence. *See Casey v. State*, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007). "A trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement." *Id.* (citing *Green v. State*, 934 S.W.2d 92, 101–02 (Tex. Crim. App. 1996)). If there is error, the appellate court must conduct a harm analysis. *See* TEX. R. APP. P. 44.2. Any error, defect, irregularity, or variance that does not affect substantial rights, however, must be disregarded. *Id.*

Here, the evidence Gallegos protests is his admission to committing the underlying crime during the habeas hearing. At the hearing, Gallegos's counsel's objection appeared to be one of relevance: "I'm going to object to that, Your Honor. I believe the issue here is whether or not his attorney properly advised him of the plea of guilty and the [e]ffect on his immigration status." *See* TEX. R. EVID. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."). Gallegos contends that he was harmed when the State erroneously used this "wrongfully elicited

testimony as an excuse for trial counsel's deficient performance."

However, as Gallegos admits, "[i]t is not clear whether the [habeas] court considered or gave any credit" to this information. Further, because Gallegos had already acknowledged that he committed these offenses in a statement to the San Juan Police Department, this information was cumulative. *See Brooks v. State*, 990 S.W.2d 278, 287 (Tex. Crim. App. 1999) (holding that "any error in admitting . . . evidence [is] harmless in light of other properly admitted evidence proving the same fact").

Because the complained-of evidence was cumulative, *see Brooks*, 990 S.W.2d at 287, any error in its admission would be harmless. *See TEX. R. APP. P. 44.2*. Accordingly, we overrule this issue. *See Casey*, 215 S.W.3d at 879.

## VII. CONCLUSION

We affirm the habeas court's judgment.

LETICIA HINOJOSA

Justice

Do not publish.

TEX. R. APP. P. 47.2 (b).

Delivered and filed on the 29th day of November,  
2022.

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

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In The  
Supreme Court of the United States

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CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District**

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**APPENDIX B**

Findings of Fact, Conclusions of Law,  
and Order Denying Habeas Relief by  
the 275<sup>th</sup> Judicial District Court of  
Hidalgo County, Texas (Mar. 24, 2020)

**Electronically Filed**  
**3/6/2020 3:45 PM**  
**Hidalgo County District Clerks**  
**Reviewed By: Alexandra Gomez**

	<b>Cause No. CR-4248-16-E(l)</b>
<b>Ex Parte</b>	<b>§ In The District Court</b>
	<b>§</b>
<b>Carlos Noe Gallegos.</b>	<b>§ 275th Judicial District</b>
	<b>§</b>
<b>Applicant</b>	<b>§ Hidalgo County, Texas</b>

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**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER DENYING HABEAS  
RELIEF**

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Having considered the application for Writ of Habeas Corpus, the arguments of Applicant Gallegos and the State, and the Court's files in the above-numbered cause, including records of the underlying criminal case, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On November 1, 2016, Applicant Carlos Noe Gallegos was indicted for two counts of

Aggravated Sexual Assault of a Child.

2. On April 19, 2017, Applicant pled guilty to one count of Aggravated Sexual Assault of a Child, pursuant to a plea bargain. Count Two was dismissed. Applicant was sentenced to a term of six years deferred adjudication-community supervision as to Count One.
3. Before entering his guilty plea, Applicant signed “Trial Court’s Certification and Notification of Defendant’s Right of Appeal,” “Waiver of Rights & Consent to Stipulation of Evidence And/Or Testimony & Plea of Guilty or No Contest” as to Count One, “Plea Admonishments” as to Count One, “Agreed Punishment Recommendation and Post Conviction Waivers” as to Count One, and “Discovery Compliance Statement Pursuant to Article 39.14(J) Texas Code of Criminal Procedure”.

4. On November 14, 2018, Applicant filed an application for a writ of habeas alleging that Applicant's trial attorney, Mr. Richard Gonzales, was ineffective because he failed to warn that he could be stripped of his naturalized citizenship by pleading guilty to this cause.
5. On April 29, 2019, the State filed its "State's Request for Habeas Court to Consider Attorney Affidavit." Attached to this motion was credible affidavit testimony by attorney Richard Gonzales, executed on March 5, 2019.
6. On December 4, 2019, this Court conducted hearing on the merits of Applicant's writ application.

#### **CONCLUSIONS OF LAW**

1. "In a post conviction collateral attack, the burden is on the applicant to allege and prove facts which, if true, entitle him to relief." Ex Parte

Maldonado, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985).

2. To establish ineffective assistance of counsel, a defendant is required to show: (1) his attorney's representation fell below an objective standard of reasonableness; and (2) there is a reasonable probability that, but for his attorney's errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). There is a strong presumption that counsel has rendered adequate assistance and exercised reasonable professional judgment. *See Id.* at 690.
3. The reviewing court is to consider the totality of the representation rather than merely focus on isolated errors. *See Ex parte Kunkle*, 852 S.W.2d 499, 505 (Tex. Crim. App. 1993). The right to "reasonably effective assistance of counsel" does



not guarantee errorless counsel or counsel whose competency is judged by perfect hindsight. Saylor v. State, 660 S.W.2d 822, 824 (Tex. Crim. App. 1983).

4. If a habeas applicant can show based on the totality of the circumstances that plea counsel's error was one that affected his understanding of pleading guilty, and if he can show by substantial and uncontroverted evidence (1) that deportation was the determinative issue for him in plea discussions; (2) that he had strong connections to the United States and no other country; and (3) that the consequences of taking a chance at trial were not markedly harsher than pleading guilty, then it might not be irrational to reject a guilty plea. Lee v. United States, 137 S. Ct. 1958, 1967 (2017).
5. The Court heard evidence that, prior to applying

for U.S. citizenship in 2010, Applicant had committed the offense to which he had pled in this cause. The Court also heard evidence that Applicant omitted from said citizenship application that he committed the offense to which he had pled in this cause. The Court also heard evidence that naturalization requires a showing of good moral character.

6. Mr. Gonzales's credible affidavit testimony makes clear that: Applicant was informed of the strengths and weaknesses of the State's case; Applicant was advised of the success and the risks of proceeding to trial; Applicant was advised that having a jury trial was a very risky move given the facts of the case; Applicant was much more concerned of avoiding prison time, rather than going to trial; Applicant was given immigration warnings prior to his plea of guilt

by Mr. Gonzales and the Court; and Mr. Gonzales attempted to find a way to have the case dismissed due to the immigration situation, but was ultimately unsuccessful.

7. The Court finds that Applicant has failed to show, by substantial and uncontroverted evidence, the factors enunciated in Lee. See Lee v. United States, 137S.Ct.1958, 1967(2017).
8. The Court finds that Applicant's claims regarding ineffective assistance of counsel unmeritorious.
9. The Court finds that Applicant's claims regarding the lack of an interpreter at his proceedings to be unmeritorious.
10. Applicant has failed to allege and prove facts which, if true, entitle him to relief. Ex Parte Maldonado, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985).

**ORDER**

IT IS THEREFORE ORDERED that the  
application for writ of habeas corpus be, in all  
things, DENIED.

The Clerk is further ORDERED to provide  
copies of this Order to Applicant's attorney,  
Petitioner Thelma Garcia, and to the State.

SIGNED FOR ENTRY this 24<sup>th</sup> day of March,  
2020.

/s/  
Judge Marla Cuellar  
275<sup>th</sup> District Court  
Hidalgo County, Texas

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

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In The  
Supreme Court of the United States

---

CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District**

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**APPENDIX C**

Order of the Court of Criminal Appeals  
of Texas at Austin denying petition for discretionary review (Aug. 23, 2023)

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**  
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

**8/23/2023**

**GALLEGOS, EX PARTE CARLOS NOE**

**PD-0238-23**

**COA No. 13-20-00320-CR**  
**Tr. Ct. No. CR-4248-16-E(1)**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

DISTRICT CLERK HIDALGO COUNTY  
100 N. CLOSNER, 1ST FLOOR  
EDINBURG, TX 78539  
\* DELIVERED VIA E-MAIL \*

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

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In The  
Supreme Court of the United States

---

CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District**

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**APPENDIX D**

Judgment of Deferred Adjudication &  
Community Supervision by the 275<sup>th</sup>  
Judicial District Court (Apr. 19, 2017)

Case No. CR-4248-16-E (COUNT ONE)  
TRN 9220501058 A001

THE STATE OF TEXAS           §       IN 275TH DISTRICT COURT  
VS.                               §       OF  
CARLOS NOE GALLEGOS       §       HIDALGO COUNTY, TEXAS  
SID: TX-16103959

ORDER OF DEFERRED ADJUDICATION  
& COMMUNITY SUPERVISION

DATE OF ORDER: April 19, 2017  
VISITING JUDGE PRESIDING: G. JAIME GARZA  
COURT REPORTER: GLORIA CASIANO  
ATTORNEY FOR THE STATE: LAUREN SEPULVEDA  
ATTORNEY FOR THE DEFENDANT: RICHARD D. GONZALES  
OFFENSE CODE: 11990004  
OFFENSE: AGG SEXUAL ASSAULT CHILD, AS  
CHARGED IN THE INDICTMENT  
DATE OF OFFENSE: March 07, 2007  
DEGREE OF OFFENSE: FELONY 1ST DEGREE  
STATUTE FOR OFFENSE: 22.021(A)(2)(B) PENAL CODE  
PUNISHMENT RANGE: LIFE OR 5-99 YEARS IN PRISON/MAX  
(Including enhancements if any): \$10,000 FINE  
CHARGING INSTRUMENT: INDICTMENT or INFORMATION  
PLEA TO OFFENSE: GUILTY  
TERMS OF PLEA AGREEMENT OR  
FINDINGS OF THE COURT TO WTL  
COMMUNITY SUPERVISION PERIOD: SIX (6) YEARS  
FINE: \$1,000.00  
RESTITUTION: NONE  
TIME SPENT IN JAIL: 15 DAYS  
DISMISS: CR-4248-16-E  
PLEA TO ENHANCEMENT: NONE  
PARAGRAPH(S):  
FINDING TO ENHANCEMENT: NONE  
FINDING ON DEADLY WEAPON: NONE  
COURT COSTS: \$ 629.00

On April 19, 2017, the above numbered and entitled cause was regularly reached and called for trial, and the State appeared by **LAUREN SEPULVEDA** and the Defendant and the Defendant's attorney, **RICHARD D. GONZALES**, were also present. Thereupon both sides announced ready for trial, and the Defendant, Defendant's attorney, and the State's attorney agreed in open court and in writing to waive a jury in the trial of this cause and to submit it to the Court. The Court consented to the waiver of a jury. The Defendant further



waived the reading of the indictment or information, and, upon being asked by the Court as to how the Defendant pleaded, entered a plea of **GUILTY** to the offense of **AGG SEXUAL ASSAULT CHILD, AS CHARGED IN THE INDICTMENT, FELONY 1ST DEGREE**. Furthermore, as to the enhancement paragraphs, if any, the Defendant entered a pica of **NONE**.

Thereupon, the Court admonished the Defendant of the range of punishment attached to the offense, that any recommendation of the State is not binding on the Court, that the existence of a plea bargain limits the right of an appeal to only pre-trial matters raised and preserved, and that if the Defendant is not a citizen of the United States of America, a plea of guilty or no contest may result in deportation under federal law; it appeared to the Court that the Defendant was competent to stand trial and was not influenced in making said plea(s) by any consideration of fear or by any persuasion prompting a confession of guilt; and that the Defendant understood the admonitions of the Court and was aware of the consequences of the plea(s); and the Court received the free and voluntary plea(s), which are now entered of record in the minutes of the Court.

The Court then proceeded to hear evidence from the State and the Defendant and, having heard argument of counsel, found there was sufficient evidence to support the Defendant's pica and found the offense was committed on **MARCH 07, 2007**, and made a finding of **NONE** on the enhancement paragraph(s), if any.

A pre-sentence investigation report **WAS NOT DONE** according to Article 42.12, Section 9, CCP.

However, the Court, after due consideration, is of the opinion and so finds that the best interests of society and the Defendant are served in this cause by deferring further proceedings without an adjudication of guilty.

It is, therefore, **ORDERED**, by the Court that further proceedings in this cause shall be and are hereby deferred. The Defendant is placed on community supervision for a period of **SIX (6) YEARS** with a fine of **\$1,000.00** subject to the conditions of supervision imposed by the Court in an Order that is hereby incorporated into this Order.

Order Imposing Conditions of Community Supervision

In accordance with the authority conferred by Article 42.12 of the Code of Criminal Procedure, the Court has placed the Defendant on community supervision in the above styled and numbered cause for the offense of **AGG SEXUAL ASSAULT CHILD, AS CHARGED IN THE INDICTMENT** for a period of **SIX (6) YEARS**. The Court hereby **ORDERS** the Defendant to comply with the following conditions of community supervision:

1. Commit no offense against the laws of this State, or of any other State, or the United States.
2. Avoid injurious or vicious habits.
3. Avoid persons or places of disreputable or harmful character.
4. Obey all rules and regulations of the Hidalgo County Community Supervision and Corrections Department.
5. Permit the Supervision Officer to visit Defendant at Defendant's home or elsewhere.
6. Work faithfully at suitable employment as far as possible.

7. Remain within the limits of Hidalgo County, Texas, unless given permission to leave there from.
8. Support any dependents.
9. Attain an educational skill level that is equal to or greater than the average skill level of students who have completed the sixth grade in public schools in this State by participating fully in the Hidalgo County Community Corrections & Supervision Education and Employment Program beginning immediately, comply with the developmental training, and obey all rules and regulations of the program.
10. Report monthly in person to the Supervision Officer beginning immediately and continue as directed by the Supervision Officer.
11. **ATTEND TREATMENT or COUNSELING SESSION, including but not limited to psychological counseling, for SEX OFFENDERS** with the Hidalgo County Community Supervision & Corrections Department **SEX OFFENDER PROGRAM**, comply with the treatment, obey all rules and regulations of the program, and report immediately to the Sex Offender Program Supervision Officer, at 3100 S. Highway 281, Edinburg, Texas.
12. **NOT GO IN, ON, or WITHIN 1000 FEET** of premises where **CHILDREN** commonly **GATHER**, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility.
13. **NOT PURCHASE, POSSESS, or ACCESS or VIEW**, sexually explicit visual or audio material on any medium; **INSTALL and ACTIVATE**, at Defendant's own cost, software approved by the Department and capable of blocking access to explicit material on any personal computer in Defendant's residence or any electronic device available; **PERMIT** the Supervision Officer or his Designee

access at any time to any personal computer or electronic device in Defendant's residence or any electronic device available in order to monitor compliance.

14. **NOT SUPERVISE** or **PARTICIPATE** in any **PROGRAM** that includes as **PARTICIPANTS** or **RECIPIENTS**, persons who are **17 YEARS OF AGE OR YOUNGER** and that regularly provides athletic, civic, or cultural activities.
15. **PAY**, in addition to court costs or any other fee imposed, to the Hidalgo County Community Supervision & Corrections Department Supervision Officer a **COMMUNITY SUPERVISION FEE** in the amount of **\$5.00**, due on or before 30 days from the date of this Order and every month thereafter during the period of community supervision, and payable at the Hidalgo County Community Supervision & Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
16. **PERMIT**, during the term of community supervision and on the basis of a "reasonable suspicion of criminal activity", any community supervision officer, government agency or their designee, to search Defendant's person, property, vehicle(s), residence or any place where Defendant may be living, with or without a search warrant.
17. **PRODUCE**, commencing immediately, for inspection and copying of any matters contained therein, to the Hidalgo County Community Supervision & Corrections Department or any government agency or their designees, any computer or electronic device which Defendant owns, possesses, or uses, including providing security codes, passwords, log on codes, or other access codes required to access the electronic device of computer's data, records, files, folders, databases, electronic mail, or any other computer or electronic information contained in said computers or electronic device.

18. **REGISTER** under **CHAPTER 62**, Code of Criminal Procedure.
19. **REIMBURSE** to the **TEXAS DEPARTMENT OF PUBLIC SAFETY** the amount of **\$144.00** for the **ANALYSIS** of blood for the purpose of creating a **DNA** record of the Defendant said payment due six (6) months from the date of this Order and payable at the Hidalgo County Community Supervision and Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
20. **SUBMIT** a **BLOOD SAMPLE OR OTHER SPECIMEN** to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a **DNA** record of the Defendant.
21. **PAY** part of the reasonable and necessary costs of sex offender treatment in monthly installments of **\$20.00**, beginning on or before 30 days from the date of this Order and continuing every month thereafter during the entire period of treatment in the Sex Offender Program, and payable to the Hidalgo County Community Supervision and Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
22. **SUBMIT**, upon the request of Dr. Gregorio Pina or Jerry Amaya, licensed sex offender therapist, to a **POLYGRAPH EXAMINATION** by a state licensed/certified examiner as directed by the Hidalgo County Community Supervision & Corrections Department, 3100 S. Highway 281, Edinburg, Texas, for treatment and counseling purposes only, cooperate fully with the examiner, and immediately pay all costs and fees incurred therein.
23. **PAY** the **FINE** in the amount of **\$1,000.00** in monthly installments of **\$20.00** beginning thirty (30) days from the date of this Order and continuing every month thereafter until paid in full, payable at the Hidalgo County Clerk Collections Department, 100 N. Closner, Edinburg, Texas.

24. **Avoid bars, taverns, “cantinas”, lounges, pool halls,** and all establishments whose primary business or source of income is selling or distributing alcoholic beverages.
25. **Avoid the use or abuse of any and all alcoholic beverages or mind-altering drugs** during the entire period of community supervision.
26. Make a payment in the amount of **\$8.00** for the cost of the analysis for alcohol or controlled substances, said payment due on the date of each analysis, and payable at the Hidalgo County Community Supervision & Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
27. Make **one payment** on or before **ninety (90) days** from the date of this Order to the local **Crime Stoppers Program**, as defined by Section 414.001 of the Government Code and certified by the Crime Stoppers Advisory counsel, in the amount of **\$50.00**, payable at the Hidalgo County Community Supervision and Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
28. **Pay a monthly fee** to the Court in the amount of **\$60.00** on or before **thirty (30) days** from the date of this Order, and continuing every month thereafter during the community supervision period, payable at the Hidalgo County Community Supervision & Corrections Department, 3100 S. Highway 281, Edinburg, Texas.
29. **Pay court costs** to the County of Hidalgo **within ninety (90) days** from the date of this Order payable at the Hidalgo County Clerk Collections Department, 100 N. Closner, Edinburg, Texas.
30. Submit to random testing for alcohol or controlled substances by authorized personnel of the Hidalgo County Community Supervision and Corrections Department.
31. **Work 240 hours** at a community service project(s) for an organization(s) approved by the Judge and

designated by the Hidalgo County Community Supervision & Corrections Department at the rate of not less than **eight (8) hours** per week **beginning immediately** and continuing every week thereafter until completed in full.

32. Submit as directed by the Supervision Officer to other programs within the community supervision continuum of programs and sanctions designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the Defendant, and comply with the rules and regulations of such programs.
33. Not communicate directly or indirectly with the victim, and not go within **1,000 FEET** of the Victim's residence, place of employment, or place of business.
34. Make one payment to Women Together/Mujeres Unidas Emergency Shelter in the amount of **\$100.00** due on or before 30 days from the date of this Order payable at the Hidalgo County Community Supervision & Corrections Department, 3100 S. Highway 281, Edinburg, Texas.

**Furthermore, the following special findings or orders apply:**

The Court finds that placing the Defendant on community supervision is in the best interest of the victim.

The Court finds that the Sex Offender Registration Requirements under Chapter 62, CCP, apply to the Defendant, and the age of the victim of the offense is **7 YEARS OF AGE**.

The Court finds that all court-ordered payments, if any, are suspended during the Defendant's custodial supervision, if any, and such payments shall be

reinstated thirty days from the date of discharge from such custodial supervision.

The Court finds that **THERE IS** plea bargain agreement between the State and the Defendant.

The Court, upon the State's motion, **DISMISSED** the following count(s), case(s), or complaint(s): **CR-4248-16-E, 275<sup>TH</sup> DISTRICT COURT, HIDALGO COUNTY, TEXAS.**

The Court finds that the Defendant has spent 15 DAYS in county jail.

The Defendant is hereby advised that, under the laws of the State of Texas, the Court shall determine the conditions of community supervision and may, at any time during the period of supervision, alter or modify the conditions of supervision. The Court also may extend the period of supervision and has the authority to revoke the community supervision at any time during the period of supervision for any violation of the conditions.  
Signed on the 19th day of April, 2017.

/s/  
Judge presiding

Receipt is hereby acknowledged on the date shown above of one copy of the above Order.

/s/  
Defendant

/s/  
Community Supervision Officer

JM  
Defendant's right thumbprint  
[image of thumbprint]



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

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In The  
Supreme Court of the United States

---

CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

---

**On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District**

---

**APPENDIX E**

Order Denying Reconsideration En Banc by  
the Texas Court of Appeals for the Thirteenth  
Judicial District at Corpus Christi-  
Edinburg (Mar. 29, 2023)

**FILE COPY**

**CHIEF JUSTICE**  
DORI CONTRERAS

**JUSTICES**  
GINA M. BENAVIDES  
NORA L. LONGORIA  
JAIME TIJERINA  
CLARISSA SILVA  
LIONEL ARON PEÑA JR.

**CLERK**  
KATHY S. MILLS



NUECES COUNTY COURTHOUSE  
801 LEOPARD, 10TH FLOOR  
CORPUS CHRISTI, TEXAS 78401  
361-888-0416 (TEL)  
361-888-0794 (FAX)

HIDALGO COUNTY  
COURTHOUSE ANNEX III  
100 E. CANO, 5TH FLOOR  
EDINBURG, TEXAS 78539  
956-318-2405 (TEL)  
956-318-2403 (FAX)

[www.txcourts.gov/13thcoa](http://www.txcourts.gov/13thcoa)

March 29, 2023

Hon. Brandy Wingate Voss  
Law Offices of Brandy Wingate Voss PLLC  
208 W. Cano St.  
Edinburg, TX 78539  
\* DELIVERED VIA E-MAIL \*

Re: Cause No. 13-20-00320-CR  
Tr.Ct.No. CR-4248-16-E(1)  
Style: Ex parte Carlos Noe Gallegos

Dear Counsel:

Appellant's motion for rehearing en banc reconsideration in the above cause was this day **DENIED** by this Court.

Very truly yours,  
/s/

Kathy S. Mills, Clerk

cc: Hon. Toribio "Terry" Palacios (DELIVERED VIA E-MAIL)  
Hon. Michael W. Morris (DELIVERED VIA E-MAIL)

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

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In The  
Supreme Court of the United States

---

CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

---

On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District

---

APPENDIX F

STATUTES

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Texas Code of Criminal Procedure article 26.13.....	F-20

## STATUTES

### 8 U.S.C.A. § 1227:

#### (a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

#### (1) Inadmissible at time of entry or of adjustment of status or violates status

##### (A) Inadmissible aliens

Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

##### (B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.

##### (C) Violated nonimmigrant status or condition of entry

##### (i) Nonimmigrant status violators

Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under

section 1258 of this title, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry

Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 1182(g) of this title is deportable.

(D) Termination of conditional permanent residence

(i) In general

Any alien with permanent resident status on a conditional basis under section 1186a of this title (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 1186b of this title (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such respective section is deportable.

(ii) Exception

Clause (i) shall not apply in the cases described in section 1186a(c)(4) of this title (relating to certain hardship waivers).

(E) Smuggling

(i) In general

Any alien who (prior to the date of entry, at the time of any entry, or within 5 years of the date of any entry) knowingly has encouraged, induced, assisted, abetted, or

aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Special rule in the case of family reunification

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Repealed. Pub.L. 104-208, Div. C, Title VI, § 671(d)(1)(C), Sept. 30, 1996, 110 Stat. 3009-723

(G) Marriage fraud

An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 1182(a)(6)(C)(i) of this title) and

to be in the United States in violation of this chapter (within the meaning of subparagraph (B)) if--

(i) the alien obtains any admission into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such admission of the alien and which, within 2 years subsequent to any admission of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant.

(H) Waiver authorized for certain misrepresentations

The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 1182(a)(6)(C)(i) of this title, whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who--

(i)(I) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(II) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such admission except for those grounds of inadmissibility specified under paragraphs

(5)(A) and (7)(A) of section 1182(a) of this title which were a direct result of that fraud or misrepresentation.

(ii) is a VAWA self-petitioner.

A waiver of removal for fraud or misrepresentation granted under this subparagraph shall also operate to waive removal based on the grounds of inadmissibility directly resulting from such fraud or misrepresentation.

(2) Criminal offenses

(A) General crimes

(i) Crimes of moral turpitude

Any alien who--

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 1255(j) of this title) after the date of admission, and

(II) is convicted of a crime for which a sentence of one year or longer may be imposed,

is deportable.

(ii) Multiple criminal convictions

Any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.



(iii) Aggravated felony

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

(iv) High speed flight

Any alien who is convicted of a violation of section 758 of Title 18 (relating to high speed flight from an immigration checkpoint) is deportable.

(v) Failure to register as a sex offender

Any alien who is convicted under section 2250 of Title 18 is deportable.

(vi) Waiver authorized

Clauses (i), (ii), (iii), and (iv) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) Controlled substances

(i) Conviction

Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) Drug abusers and addicts

Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.

(C) Certain firearm offenses

Any alien who at any time after admission is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of Title 18) in violation of any law is deportable.

(D) Miscellaneous crimes

Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy or attempt to violate--

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of Title 18 for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of Title 18;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 1185 or 1328 of this title,

is deportable.

(E) Crimes of domestic violence, stalking, or violation of protection order, crimes against children and1

(i) Domestic violence, stalking, and child abuse

Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term “crime of domestic violence” means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

(ii) Violators of protection orders

Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term “protection order” means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing

an independent action or as a pendente lite order in another proceeding.

(F) Trafficking

Any alien described in section 1182(a)(2)(H) of this title is deportable.

(3) Failure to register and falsification of documents

(A) Change of address

An alien who has failed to comply with the provisions of section 1305 of this title is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) Failure to register or falsification of documents

Any alien who at any time has been convicted--

(i) under section 1306(c) of this title or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or an attempt or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or an attempt or a conspiracy to violate, section 1546 of Title 18 (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(C) Document fraud

(i) In general

An alien who is the subject of a final order for violation of section 1324c of this title is deportable.

(ii) Waiver authorized

The Attorney General may waive clause (i) in the case of an alien lawfully admitted for permanent residence if no previous civil money penalty was imposed against the alien under section 1324c of this title and the offense was incurred solely to assist, aid, or support the alien's spouse or child (and no other individual). No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this clause.

(D) Falsely claiming citizenship

(i) In general

Any alien who falsely represents, or has falsely represented, himself to be a citizen of the United States for any purpose or benefit under this chapter (including section 1324a of this title) or any Federal or State law is deportable.

(ii) Exception

In the case of an alien making a representation described in clause (i), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such representation.

#### (4) Security and related grounds

##### (A) In general

Any alien who has engaged, is engaged, or at any time after admission engages in--

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

##### (B) Terrorist activities

Any alien who is described in subparagraph (B) or (F) of section 1182(a)(3) of this title is deportable.

##### (C) Foreign policy

###### (i) In general

An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

###### (ii) Exceptions

The exceptions described in clauses (ii) and (iii) of section 1182(a)(3)(C) of this title shall apply to deportability under clause (i) in the same manner as they apply to inadmissibility under section 1182(a)(3)(C)(i) of this title.

(D) Participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing

Any alien described in clause (i), (ii), or (iii) of section 1182(a)(3)(E) of this title is deportable.

(E) Participated in the commission of severe violations of religious freedom

Any alien described in section 1182(a)(2)(G) of this title is deportable.

(F) Recruitment or use of child soldiers

Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of Title 18 is deportable.

(5) Public charge

Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

(6) Unlawful voters

(A) In general

Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.

(B) Exception

In the case of an alien who voted in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such violation that he or she was a citizen, the alien shall not be considered to be deportable under any provision of this subsection based on such violation.

(7) Waiver for victims of domestic violence

(A) In general

The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship--

(i)2 upon a determination that--

(I) the alien was acting in self-defense;

(II) the alien was found to have violated a protection order intended to protect the alien; or

(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime--

(aa) that did not result in serious bodily injury; and



(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

(B) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(b) Deportation of certain nonimmigrants

An alien, admitted as a nonimmigrant under the provisions of either section 1101(a)(15)(A)(i) or 1101(a)(15)(G)(i) of this title, and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a).

(c) Waiver of grounds for deportation

Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 1182(a) of this title) shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the alien was provided such special immigrant status.

(d) Administrative stay

(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 1101(a)(15) of this title filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 1231(c)(2) of this title until

(A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or

(B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.

(2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws of the United States.

(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.

(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.

**Texas Code of Criminal Procedure article 11.072:**

Sec. 1. This article establishes the procedures for an application for a writ of habeas corpus in a felony or misdemeanor case in which the applicant seeks relief from an order or a judgment of conviction ordering community supervision.

Sec. 2. (a) An application for a writ of habeas corpus under this article must be filed with the clerk of the court in which community supervision was imposed.

(b) At the time the application is filed, the applicant must be, or have been, on community supervision, and the application must challenge the legal validity of:

(1) the conviction for which or order in which community supervision was imposed; or

(2) the conditions of community supervision.

Sec. 3. (a) An application may not be filed under this article if the applicant could obtain the requested relief by means of an appeal under Article 44.02 and Rule 25.2, Texas Rules of Appellate Procedure.

(b) An applicant seeking to challenge a particular condition of community supervision but not the legality of the conviction for which or the order in which community supervision was imposed must first attempt to gain relief by filing a motion to amend the conditions of community supervision.

(c) An applicant may challenge a condition of community supervision under this article only on constitutional grounds.

Sec. 4. (a) When an application is filed under this article, a writ of habeas corpus issues by operation of law.

(b) At the time the application is filed, the clerk of the court shall assign the case a file number ancillary to that of the judgment of conviction or order being challenged.

Sec. 5. (a) Immediately on filing an application, the applicant shall serve a copy of the application on the attorney representing the state by:

(1) certified mail, return receipt requested;

(2) personal service;

(3) electronic service through the electronic filing manager authorized by Rule 21, Texas Rules of Civil Procedure; or

(4) a secure electronic transmission to the attorney's e-mail address filed with the electronic filing system as required under Section 80.003, Government Code.

(b) The state may file an answer within the period established by Subsection (c), but is not required to file an answer.

(c) The state may not file an answer after the 30th day after the date of service, except that for good cause the convicting court may grant the state one 30-day extension.

(d) Any answer, motion, or other document filed by the state must be served on the applicant by certified mail, return receipt requested, or by personal service.

(e) Matters alleged in the application not admitted by the state are considered to have been denied.

Sec. 6. (a) Not later than the 60th day after the day on which the state's answer is filed, the trial court shall enter a written order granting or denying the relief sought in the application.

(b) In making its determination, the court may order affidavits, depositions, interrogatories, or a hearing, and may rely on the court's personal recollection.

(c) If a hearing is ordered, the hearing may not be held before the eighth day after the day on which the applicant and the state are provided notice of the hearing.

(d) The court may appoint an attorney or magistrate to hold a hearing ordered under this section and make findings of fact. An attorney appointed under this subsection is entitled to compensation as provided by Article 26.05.

Sec. 7. (a) If the court determines from the face of an application or documents attached to the application that the applicant is manifestly entitled to no relief, the court shall enter a written order denying the application as frivolous. In any other case, the court shall enter a written order including findings of fact and conclusions of law. The court may require the prevailing party to submit a proposed order.

(b) At the time an order is entered under this section, the clerk of the court shall immediately, by certified mail, return receipt requested, or by secure electronic mail, send a copy of the order to the applicant and to the state.

Sec. 8. If the application is denied in whole or part, the applicant may appeal under Article 44.02 and Rule 31, Texas Rules of Appellate Procedure. If the application is

granted in whole or part, the state may appeal under Article 44.01 and Rule 31, Texas Rules of Appellate Procedure.

Sec. 9. (a) If a subsequent application for a writ of habeas corpus is filed after final disposition of an initial application under this article, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that the current claims and issues have not been and could not have been presented previously in an original application or in a previously considered application filed under this article because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application.

(b) For purposes of Subsection (a), a legal basis of a claim is unavailable on or before a date described by that subsection if the legal basis was not recognized by and could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

(c) For purposes of Subsection (a), a factual basis of a claim is unavailable on or before a date described by that subsection if the factual basis was not ascertainable through the exercise of reasonable diligence on or before that date.

**Texas Code of Criminal Procedure article 26.13:**

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of a plea bargain agreement between the state and the defendant and, if an agreement exists, the court shall inform the defendant whether it will follow or reject the agreement in open court and before any finding on the plea. Should the court reject the agreement, the defendant shall be permitted to withdraw the defendant's plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and the defendant's attorney, the trial court must give its permission to the defendant before the defendant may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred

adjudication for an offense for which a person is subject to registration under that chapter; and

(6) the fact that if the defendant is placed on community supervision, after satisfactorily fulfilling the conditions of community supervision and on expiration of the period of community supervision, the court is authorized to release the defendant from the penalties and disabilities resulting from the offense as provided by Article 42A.701(f).

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) Except as provided by Subsection (d-1), the court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonitions and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(d-1) The court shall make the admonition required by Subsection (a)(4) both orally and in writing. Unless the court has received the statement as described by Subsection (d), the court must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonition required by



Subsection (a)(4) and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make a record of that fact.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall, as applicable in the case:

(1) inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned; and

(2) inquire as to whether the attorney representing the state has given notice of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56A.001.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) The court must substantially comply with Subsection (a)(5). The failure of the court to comply with Subsection (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(h-1) The court must substantially comply with Subsection (a)(6). The failure of the court to comply with Subsection (a)(6) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(i) Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

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

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In The  
Supreme Court of the United States

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CARLOS NOE GALLEGOS,  
*Petitioner,*  
v.

STATE OF TEXAS,  
*Respondent.*

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On Petition for a Writ of Certiorari  
to the Texas Court of Appeals for the Thirteenth Judicial District

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APPENDIX G

EXCERPTS OF CLERK'S AND REPORTER'S RECORD ON APPEAL

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Excerpts of Hearing on Applicant's Writ of Habeas Corpus .....	G-46


IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of Hidalgo, State of Texas, duly selected, impaneled, sworn, charged and organized as such at the July term A.D. 2016 of the 93<sup>rd</sup> Judicial District Court for said County, upon their oaths present in and to said court at said term that CARLOS NOE GALLEGOS, hereinafter styled Defendant, on or about the 7th day of March A.D., 2007, and before the presentment of this indictment, in Hidalgo County, Texas, did then and there intentionally or knowingly cause the sexual organ of Maria Salazar, a pseudonym, a child who was then and there younger than 14 years of age, to contact the sexual organ of the defendant;

COUNT TWO

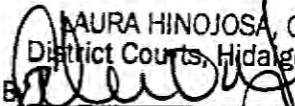
THE GRAND JURY, for the County of Hidalgo, State of Texas, duly selected, impaneled, sworn, charged and organized as such at the July term A.D. 2016 of the 93<sup>rd</sup> Judicial District Court for said County, upon their oaths present in and to said court at said term that CARLOS NOE GALLEGOS, hereinafter styled Defendant, on or about the 1st day of March A.D., 2007, and before the presentment of this indictment, in Hidalgo County, Texas, did then and there intentionally or knowingly cause the anus of Maria Salazar, a pseudonym, a child who was then and there younger than 14 years of age, to contact the sexual organ of the defendant;

AGAINST THE PEACE AND DIGNITY OF THE STATE.

  
FOREPERSON OF THE GRAND JURY

CR- 4248-16-E  
DA Control No. DA-16-05837  
Agency: SAN JUAN POLICE DEPARTMENT  
Arrest Date: 03/10/2016  
Bond: \$75,000.00 10  
State of Texas vs. CARLOS NOE GALLEGOS  
PID: 2121509  
Charge: AGG SEXUAL ASSAULT CHILD (counts 1,2)

**FILED**  
AT 3:00 O'CLOCK P M  
NOV 01 2016

  
LAURA HINOJOSA, CLERK  
District Courts, Hidalgo County  
Deputy#34

THE STATE OF TEXAS

§

IN THE 275TH DISTRICT COURT

V.

§

OF

CARLOS NOE GALLEGOS

§

HIDALGO COUNTY, TEXAS

SID: TX-16103959

**PLEA ADMONISHMENTS**

Pursuant to Article 26.13 of the Code of Criminal Procedure, you, CARLOS NOE GALLEGOS, Defendant in the above numbered and styled case, are hereby admonished as follows:

**OFFENSE CHARGED:** You are charged with the offense of AGG SEXUAL ASSAULT CHILD, FELONY 1ST DEGREE, committed on March 07, 2007.

**RANGE OF PUNISHMENT:**

**State Jail Felony**

If convicted, you may be confined in a State Jail Facility for a term of not more than 2 years or less than 180 days, and you may also pay a fine not to exceed \$10,000.00.

If I suspend the imposition of your sentence of confinement, I will place you on community supervision for a period of not less than 2 years or more than 5 years, and I may also suspend the fine in whole or in part.

If I should place you on community supervision after conviction or after deferred adjudication, you may be required to submit to a term of confinement in a county jail for not more than 180 days.

If I place you on community supervision after conviction of the State Jail Felony offense of Delivery of Controlled Substance in Penalty Group 1, or Delivery of Controlled Substance in Penalty Group 1-A, or Delivery of Controlled Substance in Penalty Group 2, or Delivery of Marihuana, you may be required to submit at the beginning of the period to confinement in a State Jail facility for not less than 90 days or more than 1 year, or for not less than 90 days or more than 180 days after conviction of any other State Jail Felony offense.

✓ **Other Felony**

If convicted, you may be imprisoned in the Institutional Division of the Texas Department of Criminal Justice for 5 to 99 years or life, and you may also pay a fine not to exceed \$10,000.00.

**Misdemeanor**

If convicted, you may be confined in the Hidalgo County Adult Detention Center (County Jail) for \_\_\_\_\_, and you may also pay a fine not to exceed \_\_\_\_\_, or both such confinement and fine.

**PLEA BARGAIN:**

☐ If a plea bargain does not exist, the recommendation of the prosecuting attorney is not binding on the Court.

☒ If a plea bargain does exist, the Court will inform you, in open court and before any finding on your plea, whether it will follow the agreement. Should the Court reject the agreement, you will be entitled to withdraw your plea.

### CITIZENSHIP

If you are not a citizen of the United States of America, a plea of guilty or no contest may, and under current Federal immigration rules is almost certain to, result in your deportation, the exclusion from admission to this country, or the denial of naturalization under federal law, and I, the Defendant, have been so advised by my attorney.

x Carlos Noe Gallegos  
Signature of Defendant

Advised by:

x [Signature]  
Signature of Attorney

### SEX OFFENDER REGISTRATION:

☒ If you are convicted, or receive deferred adjudication, for violation of a sex related offense as set out in Chapter 62 Sex Offender Registration Program of the Code of Criminal Procedure, you will be required to meet the registration requirement under said Chapter.

### DEFERRED ADJUDICATION:

☒ If I defer adjudicating your guilt and place you under community supervision, on violation of any condition, you may be arrested as provided by law. You will then be entitled to a hearing limited to a determination by the Court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, you will be subject to the full range of punishment for the offense with which you are charged, and all proceedings, including assessment of punishment, pronouncement of sentence, granting of community supervision, and your right to appeal, continue as if the adjudication of guilt had not been deferred. If you are charged with a State Jail Felony offense, and I proceed with an adjudication of guilty, I may suspend the imposition of the sentence and place you on community supervision, or I may order that the sentence be executed, regardless of whether you have been previously convicted of a felony.

Furthermore, if I defer an adjudication of guilt and place you on community supervision, you may have the right to petition the Court for an order of non-disclosure after successfully completing community supervision, unless you are ineligible due to the nature of this offense or your criminal history.

### PERMISSION TO APPEAL:

☒ If the punishment assessed does not exceed the agreement between you and the prosecutor, the Court must give permission before you can appeal on any matter in the case except for matters raised by written motion before trial.

Signed on the 19th day of April, 2017.

[Signature]  
Judge Presiding

### DEFENDANT'S STATEMENT TO ADMONITIONS

I, Defendant in the above numbered and styled case, have had the foregoing admonitions explained to me by my attorney, and I understand them and I am aware of the consequences of my plea.

Carlos Noe Gallegos  
CARLOS NOE GALLEGOS  
Defendant

[Signature]  
Attorney for Defendant

**CAUSE NO. CR-4248-16-E(1)**

<b>EX PARTE</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
	<b>§</b>	
	<b>§</b>	<b>HIDALGO COUNTY, TEXAS</b>
	<b>§</b>	
<b>CARLOS NOE GALLEGOS</b>	<b>§</b>	<b>275th JUDICIAL DISTRICT</b>

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**APPLICATION FOR ART. 11.072 WRIT OF HABEAS CORPUS**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW, PETITIONER, CARLOS NOE GALLEGOS**, by and through his attorney of record, and files this Application for Writ of Habeas Corpus Pursuant to Article 11.072, et. seq., of the Texas Code of Criminal Procedure, and Article 5, Section 8 of the Texas Constitution, seeking to have his guilty plea withdrawn, and in support shows the following:

**I.**

**JURISDICTION**

Jurisdiction is conferred on this Court by Art. 11.072, of the Texas Code of Criminal Procedure, which provides, in relevant part:

Sec. 1. This article establishes the procedures for an application for a writ of habeas corpus in a felony or misdemeanor case in which the applicant seeks relief from an order or a judgment of conviction ordering community supervision.

Sec. 2. (a) An application for a writ of habeas corpus under this article must be filed with the clerk of the court in which community supervision was imposed. (b) At the time the application is filed, the applicant must be, or have been, on community supervision, and the application must challenge the legal validity of:

- § The conviction for which or order in which community supervision was imposed; or
- § The conditions of community supervision.

**II.**

**SUMMARY OF FACTS**

1. A Deferred Adjudication Order was entered against Mr. Gallegos in the 275<sup>th</sup> Judicial District Court of Hidalgo County, Texas.
2. The trial cause number was CR-4248-16-E.

3. The trial judge was the Honorable Visiting Judge G. Jaime Garza.
4. The date of the Order was April 19, 2017.
5. Mr. Gallegos received a sentence of six (6) years of deferred adjudication community supervision and a \$1000.00 fine. Copies of the judgment of conviction and transcript are attached and incorporated by reference as **Exhibit A**.
6. Mr. Gallegos was charged with the state jail felony offense of aggravated sexual assault on a child.
7. Mr. Gallegos retained attorney Richard D. Gonzales ("Mr. Gonzales"). A copy of Gallegos's affidavit detailing his interactions with Mr. Gonzales is attached to and incorporated herein as **Exhibit B**.
8. Mr. Gonzales failed to advise Mr. Gallegos of the possible consequences of a guilty plea or conviction in this case. Mr. Gonzales admitted that he didn't know much about immigration law, but asserted that nonetheless he was competent to represent him in his criminal case. Mr. Gonzalez knew that the aggravated sexual assault child offense, of which Mr. Gallegos was charged, was allegedly committed on March 7, 2007. Mr. Gonzalez also knew that Mr. Gallegos became a naturalized US citizen in 2010, approximately three years after he had purportedly committed the offense. Mr. Gonzalez knew or should have known that eligibility for naturalization requires a showing of good moral character, and that having committed such an offense just three years earlier probably would have made Mr. Gallegos ineligible for citizenship in 2010.
9. Deferred adjudication constitutes a conviction for immigration purposes, and necessarily left Mr. Gallegos vulnerable to having his naturalization revoked. He became a permanent resident in 2003, less than five years before the offense was allegedly committed. So if his naturalization is revoked, he will revert to the status of a lawful permanent resident, and would be deportable, under 8 USC §1227(a)(2)(A)(i)(I). Mr. Gonzalez should not have told Mr. Gallegos that he was competent to handle his criminal case. Before recommending that Mr. Gallegos plead guilty in the criminal case Mr. Gonzalez should have either conducted nominal research on eligibility for naturalization, or recommended that Mr. Gallegos consult an immigration attorney.
10. Mr. Gallegos believes that Mr. Gonzales simply assumed that because Mr. Gallegos was a naturalized United States citizen, there could be no adverse immigration consequences to his plea. By representing that he was competent to handle the case, and recommending that he plead guilty, Mr. Gonzales misled Mr. Gallegos, leading him to believe that following his advice



would not create problems with his status as a naturalized U.S. citizen. Had he known that this was possible, Mr. Gallegos never would have pled guilty, but would have insisted on going to trial. As stated in his Affidavit, Exh B:

Attorney Richard Gonzalez never advised me that by pleading guilty, I could face removal by U.S. Immigration and Customs Enforcement.

Had I not been mis-advised by Attorney Gonzalez of the nearly automatic immigration consequences of my plea, I would not have accepted the plea and I would have gone to trial, instead. For several important reasons, I would not have voluntarily agreed to a plea which could result in my return to Mexico.

First and foremost, I have lived in the United States since 2003 as a lawful permanent resident and as a naturalized citizen since 2010. My family all live here. I would have fought the 2016 charge had I known I would be separated from my family.

I would never have willingly accepted a plea that could result in my removal to my home country. I am married with one child, both of whom depend on me for assistance. I would not have voluntarily separated myself from my wife and child. Nor would I have subjected my family to living in Mexico, in order for my family to remain together.

Lastly, had I known the immigration consequences of my guilty plea, I would not have accepted it, because I would never willingly accept being sent to Mexico, which is on the verge of civil war between feuding cartels and where corrupt law enforcement are closely allied to the various cartels. There, I would face possible kidnaping, extortion, and execution by members of the MX cartels and by those law enforcement officials tied to the Mexican cartels.

11. Mr. Gallegos is a citizen of Mexico who at the time of the offense and deferred adjudication order, was a naturalized United States citizen. Mr. Gallegos has been a naturalized United States citizen only since 2010.

12. On advice of counsel, Mr. Gallegos pled guilty to the charge. No jury trial was conducted.

13. No previous application for writ of habeas corpus has been filed in this matter, and no petition or appeal attacking the judgment of conviction is pending in any court, state or federal.

14. Mr. Gallegos is at risk of losing his U.S. citizenship, and thereafter, being removed.

(a) The conviction was obtained by a plea of guilty which was made involuntarily, because it was made with no understanding of the immigration consequences of the plea; and

(b) Mr. Gallegos was denied effective assistance of counsel.

### III.

#### **ARGUMENTS & AUTHORITIES**

##### **A. Community Supervision Sentences Are Subject to 11.072 Claims**

15. Mr. Gallegos files this application pursuant to Article 11.072, *et. Seq.*, of the Texas Code of Criminal Procedure, which provides that a defendant who has completed a term of community supervision may file an application for a writ of habeas corpus directly with the district court. Tex. Code Crim. Proc. Art. 11.072 §2(b). The application must attack the “legal validity” of “(1) the conviction for which or order in which community supervision was imposed;” or “(2) the conditions of community supervision.” Tex. Code Crim. Proc. Art. 11.072 §2(b)(1)-(2); *See Ex Parte Villanueva*, 252 S.W. 3d 391, 397 (Tex. Crim. App. 2008). *Orozco* attacks the legal validity of the conviction for which community supervision was imposed.

**B. Mr. Gallegos Is Suffering Continuing Consequences of Conviction**

16. The fact that an applicant may no longer actually be incarcerated or in physical restraint due to a specific conviction does not render the conviction unassailable for habeas corpus attack. The conviction may be attacked as long as it has serious collateral consequences to the applicant. *See Ex Parte Morse*, 591 S.W.2d 904 (Tex. Crim. App. 1980).

17. Mr. Gallegos is suffering continuing consequences of this conviction. He is facing denaturalization proceedings, *U.S. v. Gallegos*, No. 18-048 (S.D.Tx) (Hon. Ricardo Hinojosa presiding). This would render him removable, for having been convicted of a crime involving moral turpitude committed within five years of his becoming a lawful permanent resident. 8 U.S.C. §1227(a)(2)(A)(i)(I).

**C. The Trial Court Violated Mr. Gallegos’s Constitutional Rights by Not Providing an Interpreter**

**Due Process Requirement and Voluntary Pleas**

18. A guilty plea constitutes a waiver of three constitutional rights: the right to a jury trial, the right to confront one's accusers, and the right not to incriminate oneself. To be consistent with Due Process, a guilty plea must be entered knowingly, intelligently, and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969), *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex. Crim. App. 2006). If a guilty plea is not entered knowingly, intelligently, and voluntarily, it has been obtained in violation of due process and is void. *McCarthy v. United States*, 394 U.S. 459, 466 (1969), *Houston v. State*, 201 S.W.3d 212, 221 (Tex. App. - Houston (14th Dist.) 2006, no pet.), *State v. Collazo*, 264 S.W.3d 121, 127 (Tex. App. - Houston (1st Dist.) 2007, pet. ref’d).

**Language Issues and Due Process**

19. If a defendant does not speak English well enough to understand the trial proceedings or communicate with counsel, fundamental fairness and due process of law [along with the

Confrontation Clause] require that an interpreter be provided to translate between English and the defendant's own language. *Linton v. State*, 275 S.W.3d 493, 500 (Tex. Crim. App. 2009), *Orellana v. State*, 381 S.W.3d 645, 657 (Tex. App. - San Antonio 2012, pet. ref'd). The right to an interpreter is part of an accused's constitutional right to confrontation and a matter of due process. *Id.* at 657, *Kan v. State*, 4 S.W.3d 38, 41 (Tex. App. - San Antonio 1999, pet. ref'd). The right of a non-English speaking person to the assistance of an interpreter during trial proceedings is guaranteed by, *inter alia*, the Due Process Clause of the Fourteenth Amendment.

{ "pageset": "S69" } *Pineda v. State*, 176 S.W.3d 244, 247 (Tex. App. - Houston (1st Dist.) 2004, pet. ref'd). An inadequate understanding of English can lead to the entry of a constitutionally invalid guilty plea. *Aleman v. State*, 957 S.W.2d 592 (Tex. App. - El Paso 1997, no pet.), *Ex parte Zantos-Cuebas*, *supra*, at 88.

#### **Question of Preservation of Error or Waiver**

20. An accused waives his right to complain about the lack of an interpreter when he does not object or file a motion for an interpreter, unless the trial court is aware that the defendant needs a Spanish interpreter. *Vasquez*, *supra*, at 937. When it is made known to a trial court that an accused does not speak and understand English well, an interpreter must be furnished to translate the trial proceedings for the accused. *Baltierra*, *supra*, at 559. If the record demonstrates a defendant's lack of understanding of the proceedings, a defendant does not waive the right to complain of the language issue on appeal. *Leon v. State*, 25 S.W.3d 841, 843 (Tex. App. - Houston [1st Dist.] 2000, pet. ref'd), quoting *Hernandez v. State*, 986 S.W.2d 817 (Tex. App. - Austin 1999, pet. ref'd). When the ability of a defendant to speak and understand English is raised to some extent, the onus is on the trial court to inquire whether an accused's rights would be safeguarded in the absence of an interpreter. *Garnica v. State*, 53 S.W.3d 457, 459 (Tex. App. - Texarkana 2001, no pet.). When the trial judge is aware of the language problem, that judge has an independent duty to implement the right to an interpreter in the absence of a knowing and voluntary waiver. *Flores v. State*, 299 S.W.3d 843, 855 (Tex. App.-El Paso 2009, pet. ref'd.). Where the trial court is aware that a defendant needs a Spanish interpreter and fails to appoint one, a defendant does not waive his right to complain on the lack of an interpreter. *Villarreal v. State*, 853 S.W.2d 170, 171 (Tex. App. - Corpus Christi 1993, reh'g overruled, *Martins v. State*, 52 S.W.3d 459, 470 (Tex. App. - Corpus Christi 2001, no pet.). Although one can, lamentably, be held to have waived Confrontation Clause error, generally through inaction [of one's lawyer],

waiver of the right to an interpreter must be implemented by the system unless waived. *Garcia v. State*, 149 S.W.3d 135, 144 (Tex. Crim. App. 2003). There must be evidence in the record that affirmatively reflects that a valid waiver actually occurred. *Garcia v. State*, 429 S.W.3d 604 (Tex. Crim. App. 2014).

**D. Ineffective Assistance of Counsel Renders Mr. Gallegos's Conviction Invalid**

21. Mr. Gallegos received ineffective assistance of counsel from trial counsel, such that his constitutional rights were violated and his conviction is invalid. It should be vacated, and any statements or admissions made by him be withdrawn. Gallegos was entitled to effective assistance of counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, *Evitts v. Lucey*, 469 U.S. 387 (1985) and Art. 1, Sec. 10. Texas Constitution, *Ex Parte Dietzman*, 790 S.W.2d 305 (Tex. Crim. App. – 1990).

22. Because trial counsel neither consulted with an immigration attorney, or recommended that Mr. Gallegos do so, trial counsel misrepresented his competence to represent Mr. Gallegos in this case. Mr. Gallegos relied on his representation that he was competent to represent him, and as a result, accepted his recommendation that he plead guilty, in exchange for deferred adjudication. Trial counsel did not advise Mr. Gallegos that the plea of guilty would render him subject to de-naturalization and removal from the United States.

23. Had trial counsel properly advised Mr. Gallegos of the immigration consequences of his guilty plea, Mr. Gallegos would not have pled guilty, but would have proceeded to trial.

**Standard of Review for Ineffective Assistance of Counsel Claims**

24. In reviewing claims of ineffective assistance of counsel, the court applies a two-prong test. *See Salinas v. State*, 163 S.W.3d 734, 740 (Tex. Crim. App. 2005) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). To establish ineffective assistance of counsel, Mr. Gallegos must prove by a preponderance of the evidence that (1) his trial counsel's representation was deficient in that it fell below the standard of prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's deficiency, the result of the trial would have been different. *Id.* (citing *Strickland*, 466 U.S. at 687-88). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Mallett v. State*, 65 S.W.3d 59, 63 (Tex. Crim. App. 2001).

An accused is entitled to reasonably effective assistance of counsel. *King v. State*, 649 S.W.2d 42, 44 (Tex. Crim. App. 1983). When evaluating a claim of ineffective assistance, the court

looks to the totality of the representation and the particular circumstances of each case.

*Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).

**Failure to Advise Regarding Pleading Guilty and Proceeding to Trial Caused Plea to Be Involuntary**

25. When a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, he may attack the voluntary and intelligent character of the plea by showing that the advice of counsel was not within the range of competence demanded by attorneys in criminal cases, and that he would not have pled guilty to the offense of conviction, *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Ex parte Moody*, 991 S.W.2d 856, 858 (Tex. Crim. App. 1999).

26. A criminal-defense attorney “must have a firm command of the facts of the case” before he or she may render reasonably effective assistance of counsel. *Ex parte Welborn*, 785 S.W.2d 393 (Tex. Crim. App. 1990). Counsel has a duty to provide advice to his client about what plea to enter, and that advice should be informed by an adequate investigation of the facts of the case or be based on a reasonable decision that investigation was unnecessary. *See Ex parte Reedy*, 282 S.W.3d 492,500-01 (Tex. Crim. App. 2009); *Goodspeed v. State*, 187 S.W.3d 390, 392-93 (Tex. Crim. App. 2005). When counsel’s representation falls below this standard, it renders any resulting guilty plea involuntary. *Reedy*, 282 S.W.3d at 500. See also Standard 4-5.1 of the ABA Standards Relating to the Administration of Criminal Justice (defense counsel should inform himself fully on the facts and the law, then “advise the accused with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.”).

27. Trial counsel did not provide Mr. Gallegos with an understanding of the law in relation to the facts of his case. Without that information, Mr. Gallegos could not possibly make a voluntary and informed decision as to whether to accept a plea bargain or proceed with trial.

**Failure to Advise As to Immigration Consequences as Required by Padilla v. Kentucky**

28. Article 26.13 of the Texas Code of Criminal Procedure requires that prior to accepting a guilty plea, a trial court must admonish the defendant of the consequences of his plea. Tex. Code Crim. Proc. Ann. Art. 26.13(a).

29. While the Court asked Mr. Gallegos whether he was a U.S. citizen, the Court did not ask whether he was a U.S. citizen *on the date of the alleged offense*. Had this occurred, Mr. Gallegos would have responded that he was not, such that it would have been incumbent on the Court to

advise him that his plea might carry immigration consequences. But even if the Court had admonished Mr. Gallegos that his plea might have immigration consequences, it would not cure Mr. Gonzales' failure to advise him of the immigration consequences of the plea.

30. Citing the First Court of Appeals' holding in *Tanklevskaya*, the San Antonio and El Paso Courts of Appeals have held that the giving of the Article 26.13(4) admonishments do not supplant a lawyer's own duty to warn under *Padilla*, and, more importantly, that such a warning does not constitute sufficiently specific immigration advice under the Supreme Court's holding. See *Ex Parte Romero*, 351 S.W.3d 127, 131 (Tex. App.--San Antonio 2011)(citing *Ex Parte Tanklevskaya*, 361 S.W.3d 86 (Tex. App.--Hous. [1<sup>st</sup> Dist.] 2011) (rejecting state's reliance on the general immigration admonishment that was given by the trial court and trial counsel's affidavit in which he stated that he reviewed the admonitions with Romero, "including possible consequences relating to citizenship," and holding that the written admonition did not satisfy trial counsel's duty under these circumstances. Because the deportation consequence was truly clear, trial counsel had a duty to inform Romero of the specific consequences of his plea.; *Ex parte De Los Reyes*, 350 S.W.3d 723 (Tex. App.--El Paso 2011)(overruled on other grounds)(Given the near certainty that Appellant would be deported, the admonishment that the plea may result in deportation was not sufficient to alleviate the prejudice arising from counsel's failure to advise Appellant of the plea's immigration consequences). See *Salazar v. State*, 361 S.W.3d 99 (Tex. App.--Eastland 2011).

31. Here, the specific consequence of his plea was that it made Mr. Gallegos subject to denaturalization, and subsequent removal from the United States. He was denied effective assistance of counsel, as trial counsel did not explain the immigration consequences of the conviction prior to the entry of the guilty plea. If a discussion of the consequences of the guilty plea had been held and trial counsel had advised Mr. Gallegos that he would be subject to denaturalization and removal, Mr. Gallegos would not have entered a guilty plea but would have taken this matter to trial.

**Sixth Amendment Requirement of Effective Counsel Applies to Advice on Immigration Consequences of a Conviction**

32. In *Padilla v. Kentucky*, the Supreme Court of the United States held that, in light of the severity of deportation and the reality that immigration consequences of criminal convictions are inextricably linked to the criminal proceedings, the Sixth Amendment requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration

consequences of a guilty plea, and, absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel. *Padilla v. Kentucky*, U.S., 130 S. Ct. 1473, 1481 (2010).

33. Padilla was a lawful permanent resident of the United States who faced deportation after pleading guilty in a Kentucky court to the transportation of a large amount of marijuana in his tractor-trailer. In a post-conviction proceeding, Padilla claimed that trial counsel failed to advise him of this consequence prior to his entering the plea, and also told him that he “did not have to worry about immigration status since he had been in the country so long.” Padilla stated that he relied on his counsel’s erroneous advice when he pleaded guilty to the drug charges that made his deportation virtually mandatory.

34. The Kentucky Supreme Court denied post-conviction relief based on a holding that the Sixth Amendment’s guarantee of effective assistance of counsel does not protect a criminal defendant from erroneous advice about deportation, because deportation is merely a “collateral” consequence of his conviction.

35. The Court disagreed with the Kentucky Supreme Court and agreed with Padilla that “constitutionally competent counsel would have advised him that his conviction for drug distribution made him subject to automatic deportation.” Padilla at 1478. The Court observed that “[t]he landscape of federal immigration law has changed dramatically over the last 90 years.” *Id.* The Court stated:

While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The “drastic measure” of deportation or removal... is now virtually inevitable for a vast number of noncitizens convicted of crimes.

*Id.*

36. The Court explained that “accurate legal advice for noncitizens accused of crimes has never been more important,” and “deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.” *Id.* At 1475.

37. The Court found that the removal consequences for his conviction were clear in Padilla’s case, and that he had sufficiently alleged constitutional deficiency to satisfy the first prong of the Strickland test – that trial counsel’s representation had fallen below an “objective standard of reasonableness.” For Sixth Amendment purposes, defense counsel must inform a noncitizen client whether his or her plea carries a risk of deportation. The Court stated: “Our longstanding

Sixth Amendment precedents, the seriousness of deportation as a consequence of a criminal plea, and the concomitant impact of deportation on families living lawfully in this country demand no less.” *Id.* At 1486.

### **Padilla Applies to Post-Conviction Proceedings**

38. The language the Court uses in *Padilla* reflects the Court’s intent that the decision be applicable to cases on habeas review. For example, the Court stated that the decision would not “open the floodgates” of litigation as “professional norms have generally imposed an obligation on counsel to provide advice on the deportation consequences of a client’s plea.” *Id.* At 1485.

39. Further, several courts have applied *Padilla* to post-conviction review to date. For example, in an unpublished opinion out of the Austin Court of Appeals, *Ex Parte Saldana*, 03-09-00403-CR, 2010 WL 2789032 (Tex. App. – Austin 2010), the trial court granted relief on habeas corpus review where the defendant had entered a nolo contendere plea to assault and had not been advised of immigration consequences by his attorney prior to entering his plea. The court of appeals upheld the trial court’s order vacating the defendant’s plea, stating that while deportation was previously considered a “collateral consequence,” “the United States Supreme Court has recently held that, because of its ‘close connection to the criminal process’ and the difficulty classifying such consequences as either collateral or direct, ‘advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.’” *Id.* At 2 (quoting *Padilla*). The *Saldana* court continued:

In addition, misinformation-even regarding a matter about which a defendant is not entitled to be informed-may render a plea involuntary if the defendant shows that the plea was actually induced by the misinformation. *See Ex Parte Moody*, 991 S.W.2d 856, 857 (Tex. Crim. App. 1999); *Ex Parte Griffin*, 679 S.W.2d 15, 17 (Tex. Crim. App. 1984).  
*Id.* at 2.

### **Mr. Gallegos was Prejudiced by Trial Counsel’s Failure to Advise Him of the Immigration Consequences of His Plea**

40. A criminal conviction for aggravated sexual assault of a child is a crime of moral turpitude. Where, as here, the offense was allegedly committed within the five year period before the defendant became a naturalized citizen, a conviction renders him subject to denaturalization, removal from the United States, and ineligibility for reentry into the United States. 8 U.S.C. §1427(a) (requirement of five years good moral character in order to naturalize); 8 U.S.C. §1451(a) (denaturalization if ineligible when naturalization was procured); 8 U.S.C. §1227(a)(2)(A)(i) (alien deportable for crime of moral turpitude committed within five



years of becoming a permanent resident). In *Matter of Punu*, 22 I&N Dec. 224 (BIA 1998), the BIA found a deferred adjudication under article 42.12, §5 of the Texas Code of Criminal Procedure is a conviction for immigration purposes. Had Mr. Gallegos known the immigration consequences, he would not have pled guilty but would have taken his case to trial.

IV.

**CONCLUSION & PRAYER**


**WHEREFORE, PREMISES CONSIDERED,** Petitioner respectfully requests that this Court hold a hearing, make findings of fact and conclusions of law, and find that Petitioner was denied his constitutional right to effective assistance of counsel, such that his plea was not made voluntarily and knowingly. Petitioner further requests that this Court allow the plea and any relevant admissions to be withdrawn, vacate the conviction based on constitutional grounds set forth herein, and grant all other relief to which the Court finds he may be justly entitled.

Respectfully submitted,

LAW OFFICE OF THELMA O. GARCIA

301 East Madison  
Harlingen, TX 78550  
Phone: 956-425-3701  
Fax: 956-428-3731  
Email: [lawofctog@gmail.com](mailto:lawofctog@gmail.com)

By: \_\_\_\_\_

  
THELMA O. GARCIA  
STATE BAR NO.: 07646600

**COUNSELOR FOR PETITIONER**

**CERTIFICATE OF SERVICE**

I, THELMA O. GARCIA, do hereby certify that on the 12th day of November, 2018, a true and correct copy of the foregoing **Application for Art. 11.072 Writ of Habeas Corpus** was issued via certified mail to:

**Hidalgo County District Attorney's Office  
100 East Cano  
Edinburg, TX 78539**

**Mr. Richard D. Gonzales  
5429 North 23<sup>rd</sup> Street  
McAllen, TX 78504**

  
\_\_\_\_\_  
THELMA O. GARCIA

# **EXHIBITS**

REPORTER'S RECORD  
VOLUME 01 OF 01 VOLUMES  
TRIAL COURT CAUSE NO. **CR-4248-16-E**  
CR-0518-17-E  
CR-0560-17-G

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THE STATE OF TEXAS		IN THE DISTRICT COURT OF
VS		HIDALGO COUNTY, T E X A S
CARLOS NOE GALLEGOS		275TH JUDICIAL DISTRICT
DAVID SAUL PINEDA		275TH JUDICIAL DISTRICT
OMAR SUSTAITA		370TH JUDICIAL DISTRICT

\* \* \* \* \*

**Defendant's Plea of Guilty**

\* \* \* \* \*

On the 19th day of April, A.D., 2017, the foregoing  
Proceedings came on to be heard inside/outside the presence of a  
Jury, in the above-entitled and -enumerated cause; and the  
following proceedings were had before the Honorable Jaime Garza,  
Judge Presiding, held in Edinburg, Hidalgo County, Texas, USA:

Proceedings reported by COMPUTERIZED INTEGRATED  
COURTROOM REALTIME, STENOTYPE MACHINE; Reporter's Record  
produced BY COMPUTER-ASSISTED TRANSCRIPTION.

GLORIA CASIANO, Texas CSR #3257  
Official Court Reporter  
Hidalgo County Courthouse  
100 North Closner, First Floor  
Edinburg, Texas 78539 USA  
956.289.7420

COPY

A P P E A R A N C E S:

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3 HON. CASSANDRA HERNANDEZ  
SBOT: N/A  
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HIDALGO COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE  
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22 ATTORNEYS FOR THE DEFENDANT  
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Chronological Index  
Pretrial Proceedings  
Volume 1

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Volume 1

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1 APRIL 19, 2017

2 MORNING SESSION

3 P R O C E E D I N G S

4 THE COURT COORDINATOR: Judge, we have three  
5 pleas, two out of the 275th. Number two on the none jail,  
6 Carlos Gallegos.

7 MR. GONZALES: Good morning, judge. Richard  
8 Gonzales present for Mr. Gallegos.

9 THE COURT: Good morning.

10 THE COURT COORDINATOR: And we have one out of  
11 the 370th.

12 THE COURT: Carlos Gallegos, Saul Pineda and Omar  
13 Sustaita.

14 MR. BUSTOS: Your Honor, Hector Bustos on behalf  
15 of the defendant. He's present, judge, and we'll need the  
16 services of an interpreter, Your Honor.

17 MR. DE LA FUENTE: Your Honor, good morning.  
18 Artemio De La Fuente on behalf of Mr. Pina. We're present and  
19 ready for a plea.

20 THE COURT: Alright. Carlos Gallegos and Omar  
21 Sustaita. Who's your lawyer?

22 MR. BUSTOS: I am, Your Honor.

23 THE COURT: Alright. Stand behind your clients.  
24 Raise up your right hands.

25 (The defendants were sworn.)



1 THE COURT: You can lower your hand.

2 Are you Saul David Pineda?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: In CR-518-17-E, you were indicted for  
5 burglary of a building.

6 Are you Omar Sustaita?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In CR-560-17-G, you were indicted for  
9 evading arrest.

10 Mr. Pineda, yours is a state jail felony,  
11 carrying not less than 180 days, all the way up to two years in  
12 jail.

13 Mr. Sustaita, your evading arrest carries not  
14 less than two, all the way up to ten years in jail.

15 And are you Carlos Gallegos?

16 THE DEFENDANT: Yes.

17 THE COURT: In Count One of the indictment,  
18 CR-4248-16-E, is an aggravated sexual assault that carries not  
19 less than 5, all the way up to 99 years or life. And all of  
20 your charges carry fines of up to \$10,000.

21 Does each one of you three individuals understand  
22 the charge against you and the range of punishment?

23 THE DEFENDANT: Yes, Your Honor.

24 THE DEFENDANT: Yes.

25 THE DEFENDANT: Yes.

1 THE COURT: Have either one of you ever been  
2 declared to be incompetent or now claim to be mentally  
3 incompetent?

4 THE DEFENDANT: No, Your Honor.

5 THE DEFENDANT: No.

6 THE DEFENDANT: No.

7 THE COURT: Counsels, in consulting with your  
8 clients, have you determined they are competent to stand trial?

9 MR. DE LA FUENTE: Your Honor, Mr. Pineda is  
10 competent and able to understand.

11 MR. BUSTOS: Same announcement on behalf of Mr.  
12 Sustaita, Your Honor.

13 MR. GONZALES: Same announcement as to Mr.  
14 Gallegos.

15 THE COURT: The Court will make a finding to that  
16 affect for each defendant.

17 You each have a right to have a jury trial. You  
18 each have a right to have all witnesses present, but you can  
19 waive those rights. I show you State's 1 in your indictments.  
20 Are your signatures on these packages?

21 THE DEFENDANT: Yes, Your Honor.

22 THE DEFENDANT: Yes.

23 THE DEFENDANT: Yes.

24 THE COURT: Were these documents explained to you  
25 before you signed them?

1 THE DEFENDANT: Yes, Your Honor.  
2 THE DEFENDANT: Yes.  
3 THE DEFENDANT: Yes.  
4 THE COURT: In here you're telling me you do not  
5 want jury trials; is that correct?  
6 THE DEFENDANT: Yes, sir.  
7 THE DEFENDANT: Yes.  
8 THE DEFENDANT: Yes.  
9 THE COURT: The Court will accept and approve it.  
10 Mr. Pineda, are you a U.S. citizen?  
11 THE DEFENDANT: Yes, Your Honor.  
12 THE COURT: Mr. Sustaita, are you?  
13 THE DEFENDANT: Yes, sir.  
14 THE COURT: And, Mr. Gallegos, are you?  
15 THE DEFENDANT: Yes.  
16 THE COURT: And do all -- do you all three  
17 understand that I do not have to follow any recommendation made  
18 to me by your lawyers or the District Attorney's Office?  
19 THE DEFENDANT: Yes, Your Honor.  
20 THE DEFENDANT: Yes.  
21 THE DEFENDANT: Yes.  
22 THE COURT: Knowing all this, Saul Pineda, how do  
23 you plead in CR-518-17-E, guilty or not guilty?  
24 THE DEFENDANT: Guilty, Your Honor.  
25 THE COURT: Omar Sustaita, how do you plead in

**GLORIA CASIANO, Texas CSR #3257**  
**Criminal Auxiliary Court § Hidalgo County, T E X A S**

1 CR-560-17-G?

2 THE DEFENDANT: Guilty, sir.

3 THE COURT: And, Carlos Gallegos, how do you  
4 plead to Count 1 of the indictment styled CR-4248-16-E?

5 THE DEFENDANT: Guilty.

6 THE COURT: Are either one of you entering your  
7 pleas freely and voluntarily?

8 THE DEFENDANT: Yes.

9 THE DEFENDANT: Yes.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Is anybody forcing you to enter these  
12 pleas?

13 THE DEFENDANT: No.

14 THE DEFENDANT: No.

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Anybody promising you anything?

17 THE DEFENDANT: No, Your Honor.

18 THE DEFENDANT: No.

19 THE DEFENDANT: No..

20 THE COURT: The Court will accept each of your  
21 please and allow you be tried before the court.

22 Let me have the evidence.

23 MS. SEPULVEDA: Your Honor, at this time, in  
24 State of Texas versus Pineda and State of Texas versus Gallegos,  
25 the State would offer State Exhibit 1, Plea Admonishments,

1 Waiver of Rights, Stipulation of Evidence. State's Exhibit 2,  
2 the Felony Offense Report. State's Exhibit 3, the Agreed  
3 Punishment Recommendation and Post Conviction Waivers and  
4 State's Exhibit 4, the Michael Morton Disclosure Statement.  
5 We'd ask all these be considered, admitted without objection and  
6 that Mr. Pineda and Mr. Gallegos stipulate to venue and  
7 jurisdiction of this Court.

8 MR. DE LA FUENTE: Your Honor, we have no  
9 objections on behalf of Mr. Pineda and we so stipulate to venue  
10 and jurisdiction of this Honorable Court.

11 MR. BUSTOS: Same announcement on behalf of Mr.  
12 Sustaita, Your Honor.

13 MR. GONZALES: Same announcement for Mr.  
14 Gallegos.

15 MS. HERNANDEZ: Judge, in CR-0560-17-G, State  
16 offers Waivers of Rights, Admission of Guilt, Stipulation of  
17 Evidence, State's Exhibit 1. Offense Report of Witness  
18 Statements, State's Exhibit 2. Agreed Punishment  
19 Recommendations and Post Conviction Waivers, State's Exhibit 3.  
20 Waiver of 39.14, State's Exhibit 4, Compliance Discovery 39.14,  
21 State's Exhibit 5. We'd ask that defendant stipulate to venue,  
22 Hidalgo County, jurisdiction of this Honorable Court.

23 MR. BUSTOS: No objection, Your Honor, so agreed  
24 and stipulated to venue and jurisdiction of this Honor Court.

25 THE COURT: State's Exhibits will be admitted

1 into evidence in each of the three indictments without  
2 objection. The stipulation by each defendant as to the venue  
3 and jurisdiction of the Court is also approved by the Court.

4 (State's Exhibits No. 1, 2, 3, 4, 5 are admitted  
5 in defendants respective indictments.)

6 Let me have some facts and a recommendation on  
7 Mr. Pineda.

8 MS. SEPULVEDA: Your Honor, Mr. Pineda, in  
9 January of 2017, the victim in this case saw a boy riding a  
10 bicycle that had been stolen from the victim's home. When he  
11 approached the boy's father, the father said he had bought the  
12 bike from the defendant. The defendant also sold him a pull  
13 chain saw that was also stolen from the victim's shed. The  
14 defendant gave a Statement of Accused admitting to stealing due  
15 to his crack habit.

16 THE COURT: Is there a plea bargain?

17 MS. SEPULVEDA: Yes, Your Honor, we do have a  
18 plea bargain subject to your approval. That plea bargain is no  
19 fine, court cost and seven months in a state jail facility with  
20 credit for time served.

21 THE COURT: Is that the understanding?

22 MR. DE LA FUENTE: Yes, Your Honor, that's our  
23 understanding.

24 THE COURT: Be the finding of the Court that Saul  
25 Pineda is guilty as charged in CR-518-17-E and that your

1 punishment is seven months in a state jail facility and that you  
2 receive credit for any time spent in jail. Good luck to you,  
3 sir.

4 THE DEFENDANT: Thank you, Your Honor.

5 MR. DE LA FUENTE: May I be excused, Your Honor?

6 THE COURT: Thank you, sir.

7 MR. DE LA FUENTE: Thank you, Your Honor.

8 THE COURT: What are some facts and a  
9 recommendation on Mr. Sustaita?

10 MS. HERNANDEZ: On November 6th, 2016, La Joya  
11 Police Department stopped the defendant at approximately 6:30 in  
12 the morning. He stopped in the grass. He had an aerosol can  
13 held up to his nostrils inhaling the can's contents. When --  
14 while he was doing so, he hit the accelerator, moving the  
15 vehicle and almost ran over one of the officers. He has a DWI  
16 out of the same transaction that he is going to plead to. With  
17 his previous criminal history, we're offering six years  
18 probation, six years TDC probated for six years, \$750 fine and  
19 that he plead to the DWI.

20 THE COURT: Is that the understanding?

21 MR. BUSTOS: It is the understanding, Your Honor.

22 THE COURT: Be the finding of the Court that Omar  
23 Sustaita is guilty as charged in CR-560-17-G and that your  
24 punishment is six months in the Texas Department of Corrections.

25 However, the Court is going to suspend that and

1 place you on six years probation. As a condition to your  
2 probation, I'm assessing a \$750 fine. All standard conditions  
3 are to be applied to a case such as this. Good luck to you,  
4 sir.

5 MS. HERNANDEZ: Your Honor, it's six years TDC,  
6 probated for six years.

7 THE COURT: What did I say?

8 MS. HERNANDEZ: Six months.

9 THE COURT: I'm sorry. It's six years in the  
10 Texas Department of Corrections, suspended for six years  
11 probation.

12 MS. HERNANDEZ: Thank you.

13 THE COURT: Good luck to you. You may have a  
14 seat.

15 What are some facts and a recommendation on Mr.  
16 Gallegos?

17 MS. SEPULVEDA: Your Honor, on February 24th of  
18 2016, the defendant's wife, who is the victim's mother in this  
19 case, came to the front lobby of the P.D. to report an incident  
20 made, that happened eight years earlier. Her daughter had made  
21 an outcry that in the summer of 2007, the defendant had made her  
22 strip down and he stripped down as well and had the victim sit  
23 in his lap. And the defendant gave a Statement of Accused  
24 admitting to this incident.

25 THE COURT: Is there a plea bargain?



1 MS. SEPULVEDA: Your Honor, we do have a plea  
2 bargain subject to your approval.

3 The plea bargain is \$1,000 fine, court costs, six  
4 years deferred adjudication with standard conditions of  
5 probation and all sex offender conditions, including  
6 registration and a donation to Mujeres Unidas in the amount of  
7 \$100 and a community service, I believe for 240 hours of  
8 community service.

9 And, as part of this plea deal, Your Honor, we  
10 have agreed to dismiss Count Two and give this defendant credit  
11 for any time he served.

12 THE COURT: It will be the finding of the Court  
13 that the evidence justifies finding Carlos Gallegos is guilty as  
14 charged in Count 1 of the indictment styled CR-4248-16-E.

15 However, the Court is going to defer any  
16 adjudication of guilt, place you on six years deferred  
17 probation. All standard conditions are to be included,  
18 including sex registration and a \$100 donation to the Mujeres  
19 Unidas and community service are to be applied and successfully  
20 completed.

21 As part of the plea bargain, we're dismissing  
22 Count Two of the same indictment. Good luck to you, sir.

23 MR. GONZALES: Thank you, judge.

24 THE COURT: Thank you.

25 (End of Proceedings.)

1 THE STATE OF TEXAS §

2 COUNTY OF HIDALGO §

3 I, GLORIA CASIANO, Deputy Court Reporter in and  
4 for the 275th Judicial District Court, Hidalgo County, State of  
5 Texas, do hereby certify that the above and foregoing contains a  
6 true and correct transcription of all portions of evidence and  
7 other proceedings requested in writing by counsel for the  
8 parties to be included in this volume of the Reporter's Record,  
9 in the above-styled and numbered cause, all of which occurred in  
10 open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of  
12 the proceedings truly and correctly reflects the exhibits, if  
13 any, offered by the respective parties.

14 I further certify that the total cost for  
15 preparation of this Reporter's Record is \$\_\_\_\_\_ and is due  
16 and owing by Hidalgo County.

17 WITNESS MY OFFICIAL HAND this 28th day  
18 of August, A.D., 2018.

19  
20  
21 

22 /S/GLORIA CASIANO, C.S.R.  
23 Texas C.S.R. #3257  
24 Official Court Reporter  
25 Hidalgo County Courthouse  
Edinburg, Texas, U.S.A. 78539  
Telephone: 956.289.7420  
C.S.R. Certification No. 3257  
Expires: December 31, A.D., 2019

GLORIA CASIANO, Texas CSR #3257  
Criminal Auxiliary Court § Hidalgo County, T E X A S

CASE NO. CR-4248-16-E (COUNT ONE)

INCIDENT NO./TRN: 9220501058 A001

THE STATE OF TEXAS

V.

CARLOS NOE GALLEGOS

SID: TX-16103959

§

§

§

IN THE 275TH DISTRICT COURT

OF

HIDALGO COUNTY, TEXAS

**WAIVER OF RIGHTS & CONSENT TO STIPULATION OF EVIDENCE  
AND/OR TESTIMONY & PLEA OF GUILTY OR NO CONTEST**

I, CARLOS NOE GALLEGOS, voluntarily state as follows:

**RIGHTS OF ACCUSED:** I have the right of trial by jury; the right to demand the nature and cause of the accusation and have a copy thereof; the right to remain silent; the right to be represented by counsel; the right of being confronted with witnesses and to have compulsory process for obtaining witnesses; and the right to be accused by indictment. (Article 1.05 Code of Criminal Procedure)

**WAIVER OF RIGHTS:** I hereby waive my right of trial by jury; I waive my right to the appearance, confrontation, and cross-examination of witnesses at the guilt-innocence and punishment phase of this proceeding; I waive service of indictment and the two day waiting period for arraignment, or I waive my right to be accused by indictment; I waive my right to consult in private with counsel sufficiently in advance of trial to allow adequate preparation for trial; If I plead guilty, I waive my right to remain silent, and it is my desire to take the witness stand knowing that anything I say can be used against me. (Article 1.13, 1.14, 1.141 & 1.05(a) Code of Criminal Procedure)

**CONSENT TO STIPULATION OF EVIDENCE/TESTIMONY:** I consent to the oral and written stipulations of the evidence and/or testimony in this case.

**REPRESENTATION BY COUNSEL:** I have received and I am totally satisfied with the effective assistance and competent representation in this case.

**COMPETENCY:** I am mentally competent, fully aware of the nature of this proceeding, and I am able to assist my attorney in my defense.

**PLEA OF GUILTY:**

☒ I freely and voluntarily plead GUILTY, and I admit I committed each and every element of every offense alleged in the indictment or information, namely, AGG SEXUAL ASSAULT CHILD, FELONY 1ST DEGREE, committed on March 07, 2007.

☐ I freely and voluntarily plead GUILTY, and I admit I committed each and every element of the lesser included or related offense, namely, \_\_\_\_\_; committed on March 07, 2007.

**PLEA OF NO CONTEST**

☐ I freely and voluntarily plead NO CONTEST to the offense alleged in the indictment or information, namely, AGG SEXUAL ASSAULT CHILD, FELONY 1ST DEGREE, committed on MARCH 07, 2007.

☐ I freely and voluntarily plead NO CONTEST to the lesser included offense, namely,  
\_\_\_\_\_  
Degree: \_\_\_\_\_; committed on March 07, 2007.

**PLEA TO PRIOR CONVICTION(S):**

☐ I freely and voluntarily plead TRUE to the allegation(s) of prior conviction(s) in paragraph(s)  
\_\_\_\_\_ of the indictment or information.

**APPLICATION FOR COMMUNITY SUPERVISION:**

☒ I ask the Court to consider suspending the imposition of the sentence and place me on community supervision if the term of imprisonment in this case does not exceed ten (10) years or the term of confinement in this case does not exceed five (5) years.

**MOTION TO CONSIDER UNADJUDICATED OFFENSE(S):**

☐ I admit, with the consent of the Attorney for the State, my guilt of the following offense(s), and request the Court to take each into account in determining sentence for the offense of which I stand adjudged guilty: \_\_\_\_\_

**MOTION FOR DEFERRED ADJUDICATION:**

☒ I ask the Court to consider deferring further proceedings without entering an adjudication of guilty, and place me on community supervision for a period not to exceed ten (10) years, and that if my motion is granted, I will not be found guilty at this time.

**CREDIT FOR TIME SPENT IN JAIL BETWEEN ARREST & SENTENCING (not for deferred adjudication)**

☒ I freely and voluntarily agree with the trial judge that I shall receive 15 days credit on my sentence for the time I have spent in jail in this case, other than confinement served as a condition of community supervision, from the time of my arrest and confinement until my sentence.

Signed on this the 14th day of April, 2017.

Carlos Noe Gallegos  
CARLOS NOE GALLEGOS  
Defendant

Sworn to and subscribed before me, the Clerk of Hidalgo County, Texas, on this the 19 day of April, 2017.

Conor Kennedy  
Deputy District Clerk

**ACCEPTANCE AND APPROVAL BY THE DEFENSE ATTORNEY**

After consulting and advising Defendant of Defendant's constitutional and procedural rights, I believe that Defendant understands these rights; that Defendant is mentally competent; that Defendant is aware of the consequences of the plea, including immigration circumstances, if applicable<sup>1</sup>; that Defendant understands the admonitions of the Court; and that Defendant is not relying on any advice, information, or agreement not made known to the Court at this time. I approve the signing of the plea, waiver of rights, judicial confession, and agreement to stipulate evidence/testimony.

I waive, with the consent of the Defendant, the ten day preparation time that I am entitled to, if any, in order to prepare for trial.

  
\_\_\_\_\_  
Attorney for Defendant

**ACCEPTANCE AND APPROVAL BY THE ATTORNEY FOR THE STATE**

Before the entry of the Defendant's plea herein, I hereby consent to, and approve, the above waivers and stipulations.

I, the Attorney for the State, respectfully request permission from the Court to proceed on the lesser included or related offense, namely, \_\_\_\_\_.

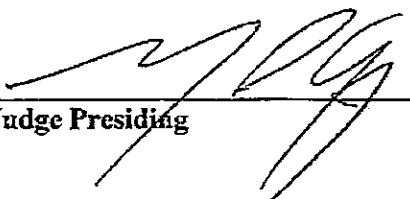
  
\_\_\_\_\_  
Assistant District Attorney

**ACCEPTANCE AND APPROVAL BY THE COURT**

It clearly appearing to the Court that the Defendant is mentally competent, and is represented by competent counsel; that Defendant understands the nature of the charge against Defendant; that Defendant has been admonished by the Court, including the minimum and maximum punishment provided by law; that Defendant fully understands the admonitions of the Court, and is fully aware of the consequences of the plea, including immigration consequences, if applicable; that the Attorney for Defendant and for the State consent and approve the waivers and stipulations made by the Defendant;

The Court, therefore, finds such plea, waivers, and consent to be voluntarily made, and the Court accepts the plea and approves the waivers and stipulations made by the Defendant.

Signed on the 19th day of April, 20 17.

  
\_\_\_\_\_  
Judge Presiding

<sup>1</sup> See Padilla v. Kentucky, 130 S.Ct. 1473 (2010).

**STATE OF TEXAS**

**COUNTY OF CAMERON**

**AFFIDAVIT**

I, **Carlos Noe Gallegos**, being of sound mind and body, do hereby attest to the truthfulness and correctness of the following under penalty of perjury:

I, **Carlos Noe Gallegos**, was born on [REDACTED] 1976 in Ciudad Mante, Tamaulipas, MX.

I currently reside at [REDACTED], Alamo, TX 78516. My phone number is: 956-475-5997.

This is my truthful recollection of discussions which transpired between my criminal defense counsel and me, following my arrest on criminal charges in San Juan, TX on March 10, 2016.

Within a few days following my arrest, my sister, Janeth Diaz, retained an attorney, Richard Gonzalez, to represent me in criminal proceedings. I did not speak to the attorney while I was in detention for fifteen days.

I met with Attorney Gonzalez within the first week after I was released on bond. My sister was with me. I had difficulty understanding Attorney Gonzalez because he never spoke with me in Spanish and my command of English is limited. He and my sister spoke in English.

During our twenty to thirty minute meeting, Attorney Gonzalez asked me whether I was a U.S. citizen or a lawful permanent resident. I told him that I was a naturalized citizen. He asked me when I had become a citizen and I told him in 2010.

He, then, admitted that he didn't know much about immigration law, but, that, because I was a citizen, that my status as a citizen shouldn't be affected by the criminal proceedings. He did not suggest that I speak with an immigration attorney, and told me he could handle my criminal case. My sister and I agreed to his remaining as counsel on my case because we believed him, that my status as a U.S. citizen would not be adversely affected.

At my third hearing, Attorney Gonzalez advised me of the offer by the District Attorney's Office of six years of probation and a fine of \$10,000. He counseled me that this was a great deal because I would not have to serve any prison time. He did **not** tell me that I risked losing my citizenship and being removed from the US. Nor did the judge in my criminal case.

At my sentencing hearing on April 19, 2017 at the 275<sup>th</sup> District Court in Hidalgo, County, TX, I agreed to accept the plea deal, based on my attorney's advice.

After the sentencing hearing, once again, Attorney Gonzalez told me, that while he did not know immigration law, I should not worry about the immigration consequences of my plea because I am a U.S. citizen.

Attorney Richard Gonzalez never advised me that by pleading guilty, I could face removal by U.S. Immigration and Customs Enforcement.

Had I not been mis-advised by Attorney Gonzalez of the nearly automatic immigration consequences of my plea, I would not have accepted the plea and I would have gone to trial, instead. For several important reasons, I would not have voluntarily agreed to a plea which could result in my return to Mexico.

First and foremost, I have lived in the United States since 2003 as a lawful permanent resident and as a naturalized citizen since 2010. My family all live here. I would have fought the 2016 charge had I known I would be separated from my family.

I would never have willingly accepted a plea that could result in my removal to my home country. I am married with one child, both of whom depend on me for assistance. I would not have voluntarily separated myself from my wife and child. Nor would I have subjected my family to living in Mexico, in order for my family to remain together.

Lastly, had I known the immigration consequences of my guilty plea, I would not have accepted it, because I would never willingly accept being sent to Mexico, which is on the verge of civil war between feuding cartels and where corrupt law enforcement are closely allied to the various cartels. There, I would face possible kidnaping, extortion, and execution by members of the MX cartels and by those law enforcement officials tied to the Mexican cartels.

**FURTHER AFFIANT SAYETH NOT.**

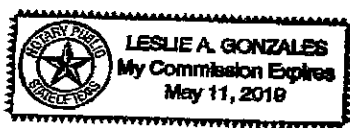
  
Carlos Noe Gallegos

10-15-2018  
Date

**SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority on this 15<sup>th</sup> day of October, 2018.**

My commission expires: 5-11-2019

  
NOTARY PUBLIC STATE OF TEXAS



Carlos Noe Gallegos Affidavit

Page 2

**Cause No. CR-4248-16-E(1)**

<b>EX PARTE</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>CARLOS GALLEGOS,</b>	<b>§</b>	<b>275TH JUDICIAL DISTRICT</b>
<b>APPLICANT</b>	<b>§</b>	<b>HIDALGO COUNTY, TEXAS</b>

**STATE’S REQUEST FOR HABEAS COURT TO CONSIDER ATTORNEY  
AFFIDAVIT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW, THE STATE OF TEXAS**, by and through the Criminal District Attorney of Hidalgo County and files this, its State’s Request for Habeas Court to Consider Attorney Affidavit, and would show:

1. On November 1, 2016, CARLOS GALLEGOS, DEFENDANT in the above-captioned cause of action, was indicted on two counts of Aggravated Sexual Assault of a Child.
2. On April 19, 2017, Defendant Gallegos pled guilty to one count of Aggravated Sexual Assault of a Child (Count One). This Court placed Defendant Gallegos on deferred adjudication with a 6 year term of community supervision.
3. Furthermore, on April 19, 2017, the State filed its motion to dismiss Count Two of the indictment. This court entered an order dismissing Count Two on the same day.



4. On November 14, 2018, Defendant Gallegos filed an application for a writ of habeas corpus pursuant to § 11.072 of the Texas Code of Criminal Procedure, alleging he had suffered from ineffective assistance of counsel, had not been warned of the immigration consequences of a guilty plea by his trial counsel, and would have insisted on going to trial had he known of these consequences, and that his plea was thus involuntary.
5. On March 5, 2019, Richard Gonzales, Defendant Gallegos's trial attorney, executed affidavit testimony responding to the allegations made in the writ application. Mr. Gonzales provided this affidavit to the State. The State has attached Mr. Gonzales's affidavit to this request as Exhibit 1.
6. This Court has not yet held a hearing in this matter, but has set this matter for hearing on May 2, 2019.
7. Article 11.072 provides the Court broad powers in making its determination, including the ordering of affidavits, depositions, interrogatories, a hearing, or the Court may rely on its own personal recollection. *See* Tex. Crim. Proc. art. 11.072, § 6(b).
8. The State has not filed an answer, however, under Article 11.072, matters alleged in the writ application not admitted by the State are considered to be denied. *See* Tex. Code Crim. Proc. art. 11.072, § 5(e).

9. The State requests this honorable Court to consider Mr. Gonzales's affidavit in making its determination on the merits of the writ application.

Respectfully submitted,

RICARDO RODRIGUEZ, JR.  
CRIMINAL DISTRICT ATTORNEY  
HIDALGO COUNTY TEXAS

/s/ Luis A. Gonzalez  
Luis A. Gonzalez, Assistant  
Criminal District Attorney  
State Bar No. 24083088

Office of Criminal District Attorney  
100 E. Cano  
Edinburg, Texas 78539  
Telephone: (956) 292-7600 ext. 8133  
Telefax: (956) 380-0407  
Luis.Gonzalez@da.co.hidalgo.tx.us

ATTORNEYS FOR THE STATE

#### **CERTIFICATE OF SERVICE**

This is to certify that, on April 28, 2019, a true and correct copy of the foregoing "State's Request for Habeas Court to Consider Attorney Affidavit", via electronic service to her email address,lawofoctog@gmail.com.

/s/ Luis A. Gonzalez  
Luis A. Gonzalez, Assistant

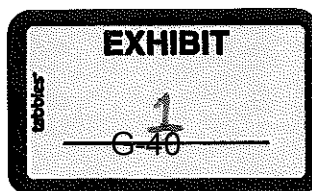
**CAUSE NO. CR-4248-16-E**

<b>STATE OF TEXAS</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>275<sup>TH</sup> JUDICIAL DISTRICT</b>
	<b>§</b>	
	<b>§</b>	
<b>CARLOS NOE GALLEGOS</b>	<b>§</b>	
	<b>§</b>	
	<b>§</b>	<b>HIDALGO COUNTY, TEXAS</b>

BEFORE ME, the undersigned authority, on this day personally appeared Richard Gonzales, who being by me duly sworn, stated as follows:

"I, Richard Gonzales, as attorney of record for the defendant did explain the immigration consequences of a guilty plea. I advised Mr. Gallegos of his rights, the consequences of pleading guilty and all plea documents pertaining to his case. Included in those documents were his right to a jury trial, his right to confront State's witnesses and the applicable range of punishment. I read and explained to Mr. Gallegos the section in the plea paperwork regarding US citizenship which states, as a non-US citizen, a plea of guilty would result in deportation, exclusion from the country or denial of naturalization under Federal law.

While representing Mr. Gallegos, I spent considerable time discussing the case, the State's evidence, which included a statement of accused, and all possible defenses that could be raised. We reviewed discovery, including but not limited to, reports and affidavits. We discussed all the evidence that was presented against him. I informed Mr. Gallegos of both the likelihood of success and the risks of proceeding with trial. We discussed the strengths and weaknesses of the State's case. I advised Mr. Gallegos that putting this case in front of a jury was a very risky move based on the facts of the case. However, I told him that there was a possibility that he could be acquitted of all charges, but also a possibility he would be found guilty. I explained to him that if found guilty he ran the risk of being sent to prison. Additionally, we



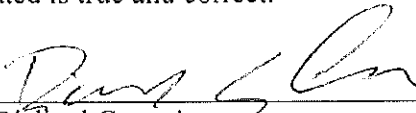
spent time discussing the District Attorney's plea offer, which ultimately was negotiated in Mr. Gallegos' favor.

Mr. Gallegos made it very clear that he did not want to go to prison and that he wanted me to try anything and everything to get him probation. I spoke with the Assistant DA in the case and we had lengthy conversations about the plea deal. The original recommendation was a TDC prison sentence. After much negotiation and with input from the victim's family, a deferred probation sentence was offered. I attempted to try and find a way to get the case dismissed because of the immigration situation, but based on the facts and the willingness of the victim to proceed, those attempts were unsuccessful.

After considerable discussion of the evidence and the plea offer, Mr. Gallegos stated to me he did not want a jury trial and wanted to proceed forward with the deferred probation plea agreement. During his plea of guilty, the Court admonished the Defendant of the range of punishment, that any recommendation of the State is not binding on the Court, that the existence of a plea bargain limits the right of an appeal, and all immigration admonishments. Those included that a plea of guilty by a non-US citizen may result in deportation, exclusion from this country or denial of naturalization under Federal law. The Court found the defendant competent to stand trial and was not coerced, threatened or persuaded in any way to plead guilty. Mr. Gallegos stated that he understood the admonishments of the Court and was aware of the consequences of his plea, and the Court received the plea freely and voluntarily.

When asked by the Court if he had anything to say as to why the sentence should not be pronounced, Mr. Gallegos answered "no", the Court proceeded to pronounce sentence upon Defendant."

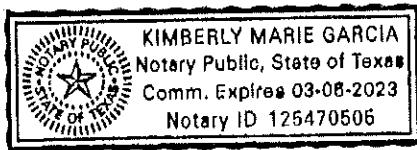
"I hereby state that the information stated is true and correct."

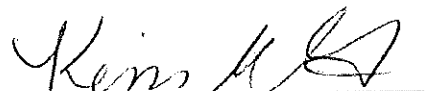
  
Richard Gonzales  
Attorney at Law

STATE OF TEXAS

COUNTY OF HIDALGO

SWORN to and SUBSCRIBED before me, the undersigned authority, on the 5<sup>th</sup> day of  
March, 2019 by Kimberly Garcia.



  
Notary Public, State of Texas

Commission expires: 03/05/19

**CAUSE NO. CR-4248-16-E(1)**

**EX PARTE**

§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**HIDALGO COUNTY, TEXAS**

**CARLOS NOE GALLEGOS**

**275th JUDICIAL DISTRICT**

---

**APPLICANT'S NOTICE OF APPEAL**

---

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Texas Rules of Appellate Procedure 25.1 and 26.1, Carlos Noe Gallegos in the above-styled and numbered cause, gives notice that he desires to appeal the Order Denying the Application for Writ of Habeas Corpus from Honorable Marla Cuellar, 275<sup>th</sup> District Court Judge in Hidalgo County, TX in Cause Number CR-4248-16-E(1), dated March 24, 2020. Applicant Carlos Noe Gallegos desires to appeal to the Thirteenth (13<sup>th</sup>) Court of Appeals, and hereby gives notice of appeal.

Respectfully submitted,  
Law Office of Thelma O Garcia  
301 E. Madison Ave.  
Harlingen, TX 78550  
Phone: 956.425.3701  
Fax: 956.428.3731  
[lawofctog@gmail.com](mailto:lawofctog@gmail.com)

By: 

THELMA O. GARCIA

STATE BAR NO.: 07646600

ATTORNEY FOR APPLICANT

**CERTIFICATE OF SERVICE**

This is to certify that on the 25th day of March, 2020, a true and correct copy of the above and foregoing document was served on the District Attorney's Office, Hidalgo County, 100 N. Closner, Edinburg, TX 78539, as provided by the Texas Rules of Procedure.

A handwritten signature in black ink, appearing to read 'Thelma O. Garcia', is written over a horizontal line.

Thelma O. Garcia  
Law Office of Thelma O. Garcia  
301 East Madison  
Harlingen, TX 78550

## Certification of Defendant's Right of Appeal

No. CR-4248-16-E(1)

The State of Texas

In the 275th Court

v.

of

Carlos Noe Gallegos

Hidalgo

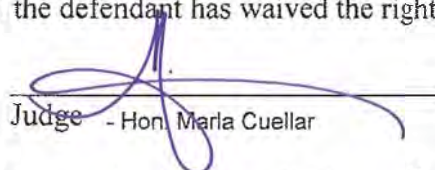
County, Texas

Defendant

### TRIAL COURT'S CERTIFICATION OF DEFENDANT'S RIGHT OF APPEAL\*

I certify that this criminal case:

- ☐ is not a plea-bargain case, and the defendant has the right of appeal;
- ☐ is a plea-bargain case, but matters were raised by written motion filed and ruled on before trial and not withdrawn or waived, and the defendant has the right of appeal;
- ☒ is a plea-bargain case, but the trial court has given permission to appeal, and the defendant has the right of appeal;
- ☐ is a plea-bargain case, and the defendant has NO right of appeal;
- ☐ the defendant has waived the right of appeal.

  
Judge - Hon. Marla Cuellar

1st of September, 2020

Date Signed

I have received a copy of this certification. I have also been informed of my rights concerning any appeal of this criminal case, including any right to file a *pro se* petition for discretionary review pursuant to Rule 68 of the Texas Rules of Appellate Procedure. I have been admonished that my attorney must mail a copy of the court of appeals' judgment and opinion to my last known address and that I have only 30 days in which to file a *pro se* petition for discretionary review in the Court of Criminal Appeals. TEX. R. APP. P. 68.2, 68.3. I acknowledge that, if I wish to appeal this case and if I am entitled to do so, it is my duty to inform my appellate attorney, by written communication, of any change in the address at which I am currently living or any change in my current prison unit. I understand that, because of appellate deadlines, if I fail to timely inform my appellate attorney of any change in my address, I may lose the opportunity to file a *pro se* petition for discretionary review.

/s/ Carlos Noe Gallegos

Defendant

Mailing address: c/o Law Office of Thelma O. Garcia  
301 E. Madison, Harlingen, Texas 78550

Telephone number: \_\_\_\_\_

Email Address (if any): \_\_\_\_\_

/s/ Thelma O. Garcia

Defendant's Counsel

State Bar of Texas ID number: 07646600

Mailing address: 301 E. Madison, Harlingen, Texas 78550

Telephone number: 956-425-3701

Email Address: lawofctog@gmail.com

\* See TEX. R. APP. P. 25.2(a)(2).



13-20-00320-CR

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REPORTER'S RECORD  
VOLUME 1 OF (1) VOLUMES  
APPEAL COURT CAUSE NO. 13-20-00320-CR  
TRIAL COURT CAUSE NO. CR-4248-CR  
13th COURT OF APPEALS  
CORPUS CHRISTI/EDINBURG, TEXAS

8/3/2020 9:12:17 AM  
EX PARTE § IN THE KATHY SIMMONS COURT  
§ Clerk  
§ HIDALGO COUNTY, TEXAS  
§  
CARLOS NOE GALLEGOS § 275TH JUDICIAL DISTRICT  
- - - - - §

\*\*\*\*\*

HEARING ON APPLICANT'S WRIT OF HABEAS CORPUS

\*\*\*\*\*

On the 11th of December, 2019, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the HONORABLE MARLA CUELLAR, Judge  
Presiding, held in HIDALGO County, Texas.

Proceedings reported by Oral Stenography  
utilizing voice-recognition technology; Reporters Record  
produced by computer-aided transcription.

TERESA R. NAVARRO, Texas CSR#3379  
Official Court Reporter - 275th District Court  
Hidalgo County Courthouse  
100 N. Closner Blvd., First Floor  
Edinburg, Texas 78539  
(956) 318-2270

TERESA R. NAVARRO, Texas CSR #3379  
275th District Court § Hidalgo County, T E X A S

## A P P E A R A N C E S

*ATTORNEY FOR THE STATE:*

Hon. Luis Gonzalez

HIDALGO COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE

100 East Cano St., Courthouse Annex III

Edinburg, Texas 78539

Phone: (956) 292-7600

E-mail: luis.gonzalez@da.co.hidalgo.tx.us

*ATTORNEY FOR THE APPLICANT:*

Hon. Thelma O. Garcia

--and--

Hon. Lisa Broadyaga

LAW OFFICE OF THELMA O. GARCIA

301 E. Madison Ave.

Harlingen, Texas 78550

Phone: (956) 425-3701

E-mail: lawofctog@gmail.com

Also present:

David Garza, Official Court Bailiff

Daisy Buentello, Official Assistant Coordinator & Interpreter

1 know immigration law.

2 And the attorney should have, once he said I  
3 became a U.S. citizen in 2010, if the attorney had known  
4 enough immigration law or even a little bit of immigration  
5 law, he would have realized that oh, dear, he became a citizen  
6 after the offense. There is a problem there.

7 And in that event he would not have pled guilty  
8 to this offense, but he would have tried to plead to the  
9 original offense, which was what he was originally charged  
10 with; which is indecency with a minor which has slightly  
11 different immigration consequences.

12 **THE COURT:** Okay. You can start with the  
13 testimony.

14 **CARLOS NOE GALLEGOS**

15 (after having been duly sworn, testified through  
16 the official court interpreter as follows:)

17 **DIRECT EXAMINATION**

18 **BY MS. GARCIA:**

19 **Q.** Would you please state your full name for the record?

20 **A.** Carlos Noe Gallegos.

21 **Q.** Okay. And how old are you, sir?

22 **A.** Forty-three-years-old.

23 **Q.** And where do you live?

24 **A.** I live in Alamo.

25 **Q.** And that's here in Texas?

1           Q.   And what is the name of your lawyer, sir, your  
2 criminal lawyer?

3           A.   Richard D. Gonzalez.

4           Q.   Okay. And when you were in jail did your lawyer  
5 visit with you?

6           A.   No.

7           Q.   How long were you in jail, sir, after you were  
8 arrested?

9           A.   Around two weeks.

10          Q.   When did you first see your lawyer, sir?

11          A.   The first time I saw him was when I came out, when I  
12 came out of jail, like the first week.

13          Q.   Okay. And when did you first speak to him about your  
14 immigration case?

15          A.   That same day that I went the first time he asked me  
16 if I was a citizen and I said yes. And he asked me how did I  
17 become a citizen and I said I applied for citizenship and I  
18 became naturalized.

19          Q.   Did he say, did he ask you if you were a naturalized  
20 citizen or did you tell him you were a naturalized citizen?

21          A.   Well, he asked me how I had become a citizen, if I  
22 had been born here or if I had become a citizen and I had  
23 become a citizen.

24          Q.   Okay.

25          A.   And then he asked me when and I said 2010. And

1 that's when, that's when he said I don't think it's going to  
2 affect you because of this criminal offense or whatever  
3 they're accusing you of or the documents.

4 But he never once said well, or back then he  
5 said that he didn't know anything about immigration, but he  
6 didn't recommend anyone that knew about it.

7 Q. So he himself told you he knew nothing about  
8 immigration law; is that correct?

9 A. Yes.

10 Q. When he said "I don't believe it's going to affect",  
11 "I don't believe this offense will affect your immigration  
12 status," sir, do you know what he meant by that?

13 A. Well, I thought I did because he was almost securing  
14 that it was not going to affect my documents.

15 Q. Which to you meant what?

16 A. That if it wasn't going to affect me for me to go  
17 through the process of my case.

18 Q. Okay. Were you --

19 A. Because if he would have told me since the beginning  
20 well, I can't because I don't know anything about immigration,  
21 maybe I would not have accepted that he would continue my case  
22 and I would go with somebody that knew about criminal and  
23 immigration.

24 THE COURT: Can you tell me what she, you didn't  
25 interpret what he said. He says "Maybe I wouldn't have done

1 it." He didn't say "I would not have done it."

2 It's better to let him finish small sections and  
3 then interpret because he didn't say "I wouldn't have done  
4 it." He said "I might not have done it."

5 So you need to tell him just say a little bit  
6 and you are going to interpret.

7 (Discussion in Spanish between official court  
8 interpreter and the witness.)

9 **THE COURT:** You may proceed.

10 **MS. GARCIA:** Thank you.

11 **Q.** (By Ms. Garcia) If you had known that your plea of  
12 guilty to the indictment that your Attorney Gonzalez counseled  
13 you about, if you had known that was going to affect your  
14 immigration status in the U.S., would you have pled guilty,  
15 sir?

16 **A.** Back then I would not.

17 **Q.** Okay. How many times did you counsel or did you meet  
18 up with your lawyer to talk about your case?

19 **A.** Maximum of two times.

20 **Q.** And the first time that you met with him you said it  
21 was after you got released. Where did you meet up with him  
22 the first time?

23 **A.** In his office.

24 **Q.** And how long did that interview last with him?

25 **A.** About 30, 40 minutes.

1 assault on a minor?

2 A. I don't understand.

3 Q. When you were initially arrested and charged you were  
4 charged with indecency with a minor. I don't know if you  
5 recall that or not?

6 A. Yes.

7 Q. And then you ended up pleaing to aggravated sexual  
8 assault on a child. Did he tell you why the charge changed?

9 A. No.

10 Q. Did he at any time tell you that he was trying to see  
11 if he could bring the charge to a lower charge?

12 A. Yes, he told me he was trying to change the charge  
13 from a high to a lower charge.

14 Q. Did he tell you what kind of a lower charge he was  
15 trying to bring it down to, sir?

16 A. No, he just told me that they were giving me a charge  
17 of first-degree and he was going to try to see if they could  
18 give me a charge for a second or third.

19 Q. And did he tell you what happened of why it was not  
20 brought down?

21 A. He only said that they were giving me aggravated and  
22 maybe that's why or no they were not going to change the  
23 charge.

24 Q. Did he tell you that because the charge of aggravated  
25 assault on the child that you could possibly be deported under

1 a plea, sir?

2 A. No.

3 Q. Or that you would lose your citizenship on your plea?

4 A. No.

5 Q. When you counseled with him that you went to his  
6 office and you were discussing your plea, at that point you  
7 had already been charged with aggravated sexual assault on a  
8 minor; is that correct?

9 A. I don't understand. Can you repeat that again.

10 Q. When you went to speak to your attorney you had  
11 already been charged with the aggravated assault on a minor?

12 A. Yes.

13 Q. And it was based on that charge that he told you that  
14 you would not have to worry about losing your immigration  
15 documentation or being removed?

16 A. Yes.

17 Q. Do you recall Mr. Gonzalez ever telling you that he  
18 was trying to see if he could get you the plea of indecency  
19 with a minor which was the original charge that you had?

20 A. If I understand? I understand he told me that.

21 Q. And did he tell you what happened regarding that  
22 charge?

23 A. No.

24 MS. GARCIA: I'm going to pass, Judge.

25 CROSS-EXAMINATION



1                   **MS. GARCIA:** -- it's part of the exhibit, Judge.  
2 If the Court needs one we have an extra one.

3                   Judge, I do have some redirect.

4                   **THE COURT:** Yes, go ahead.

5                   **MS. GARCIA:** Thank you.

6                   **REDIRECT EXAMINATION**

7 **BY MS. GARCIA:**

8           **Q.** Sir, when you spoke to Mr. Gonzalez did Mr. Gonzalez  
9 speak Spanish to you?

10          **A.** No.

11          **Q.** And who translated for you, sir?

12          **A.** During the first appointment it was my sister that  
13 was talking to him.

14          **Q.** And the second appointment that you had with him who  
15 translated then?

16          **A.** No, the rest of the times it was just me and him. He  
17 wouldn't talk much. He would just tell me that the Court got  
18 suspended or he said we are going to try to do this.

19          **Q.** Do you speak English, sir?

20          **A.** Very little. He knew that I didn't speak a lot.

21          **Q.** A while ago the district attorney here, assistant  
22 district attorney asked you whether your attorney had gone  
23 over that document that you signed concerning the  
24 admonishments of the immigration consequences, sir, or if he  
25 had talked to you about your immigration consequences and you

1 said that the attorney had.

2 Now, did the attorney tell you specifically that  
3 you were not eligible for citizenship at that point, sir,  
4 because you applied for citizenship before your five years of  
5 eligibility?

6 A. No.

7 Q. Sir, how long have you been on probation?

8 A. Two years, a little over seven months.

9 Q. And how long were you, what period of time were you  
10 given for probation?

11 A. How much?

12 Q. Yes?

13 A. Six years.

14 Q. And have you complied with all your conditions of  
15 probation since you were placed on probation?

16 A. Yes.

17 Q. Do you take any type of classes that were imposed to  
18 you by the Court?

19 A. Yes, but I completed it.

20 Q. And what about some type of community supervision,  
21 community hours?

22 A. Yes, I completed that too.

23 Q. And how many community hours were you given to do,  
24 sir?

25 A. 240.

1           **MR. GONZALEZ:** Your Honor, well, first of all,  
2 the State requests the Court to take judicial notice of all  
3 the contents of the Court's file including all of the  
4 pleadings filed by habeas counsel and the State.

5           **THE COURT:** The Court will take judicial notice  
6 of all documents in the Court's file.

7           **MR. GONZALEZ:** A few things, Your Honor.  
8 Essentially in this case the sentence about the lie that was  
9 basically perpetrated in the application process.

10           Mr. Gallegos on the stand admitted to knowing he  
11 had committed a crime from 2007 when he was applying in 2010.  
12 Apparently he did not understand the question in his  
13 application. I do not think that is something that  
14 Mr. Gonzalez should be at fault for not knowing.

15           Mr. Gonzalez did not represent until 2016. This  
16 was a delayed outcry case, Your Honor. So with the effect  
17 that had had since the date of offense was 2007 when  
18 Mr. Gallegos pled guilty, I guess that made the lie apparent  
19 from the application in 2010.

20           And that's something, I mean, Your Honor, that  
21 application requires that he have good moral character. Part  
22 of the consideration for good moral character is they have no  
23 criminal offenses. And I do not think they require  
24 convictions in that application process.

25           I mean, I'm not entirely sure to be honest with

1 COURT REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS \*

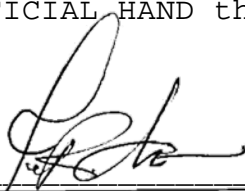
3 COUNTY OF HIDALGO \*

4 I, Teresa R. Navarro, Official Court Reporter in  
5 and for the 275th District Court of Hidalgo County, State of  
6 Texas, do hereby certify that the above and foregoing contains  
7 a true and correct transcription of all portions of evidence  
8 and other proceedings requested in writing by counsel for the  
9 parties to be included in this volume of the Reporter's  
10 Record, in the above styled and numbered cause, all of which  
11 occurred in open court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of  
13 the proceedings truly and correctly reflects the exhibits, if  
14 any, admitted by the respective parties.

15 I further certify that the total cost for the  
16 preparation of this Reporter's Record is \$574.00 and was paid  
17 by the attorney for the applicant.

18 WITNESS MY OFFICIAL HAND this the 25th day of  
19 July, 2020, A.D.

20   
21 \_\_\_\_\_  
22 TERESA R. NAVARRO, Texas CSR 3379  
23 Expiration Date: February 28, 2021  
24 Official Court Reporter  
25 275th District Court  
Hidalgo County Courthouse  
100 N. Closner Blvd., First Floor  
Edinburg, Texas 78539  
(956) 318-2270

TERESA R. NAVARRO, Texas CSR #3379  
275th District Court § Hidalgo County, T E X A S