

No. _____

ORIGINAL

23-7732

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAY 13 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOSE EDGAR HERNANDEZ — PETITIONER
(Your Name)

VS.

THE STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSE EDGAR HERNANDEZ * 1638975
(Your Name)

2101 FM 369 NORTH
(Address)

IOWA PARK, TEXAS 76367
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

IF STATUTORY LAW MANDATES AN INTERPRETER FOR THOSE WHOSE PRIMARY LANGUAGE IS NOT ENGLISH THEN
HOW IS A CONVICTION OBTAINED IN VIOLATION OF SAID MANDATE LAWFUL?

WHEN A STATE IGNORES ITS OWN STATUTORY LAWS, GOV'T CODES, AND CONSTITUTIONAL PROVISIONS WHICH
ARE SUPPORTED BY WELL ESTABLISHED FEDERAL LAW AND SUPREME COURT PRECEDENT TO MASS INCARCERATE
MIGRANTS UNLAWFULLY 'UNDER COLOR OF LAW' SHOULDN'T THE FEDERAL GOV'T DO SOMETHING ABOUT IT AS IT
IS LEGALLY BOUND TO ACCORDING TO THE PROTECTIONS AFFORDED THROUGH THE UNITED STATES CONSTITUTION?

AT A TIME WHEN MIGRANTS ARE AT THE FOREFRONT OF POLITICS AND PUBLIC INTEREST WOULDN'T IT BE
PRUDENT TO EXPOSE AND SHOW THAT THE COURT HAS AN INTEREST IN CORRECTING MASS VIOLATIONS OF
MIGRANTS RIGHTS BY THE STATE OF TEXAS AS TEXAS IS THE LARGEST VIOLATOR OF MIGRANTS RIGHTS?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

CASE NO. F-0946780-H CRIMINAL DISTRICT COURT NO. 1 OF DALLAS COUNTY, TEXAS - CONVICTED 4/7/2010

CASE NO. OS-10-00493-CR FIFTH COURT OF APPEALS @ DALLAS - AFFIRMED 10/27/2011

CASE NO. WIL-78,329-01 COURT OF CRIMINAL APPEALS OF TEXAS - DENIED W/O WRITTEN ORDER 1/9/2013

CASE NO. 3:13-CV-1534-O U.S. DC., N.D. OF TX - DALLAS DIVISION - DENIED 3/13/2014

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

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☐ is unpublished.

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

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

☒ For cases from **state courts**:

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

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

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

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

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 3/27/2024.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

PLEASE NOTE:

TEXAS RULES & APPELLATE PROCEDURE 79.2(d) PROHIBITS APPLICANTS FROM FILING A MOTION FOR

REHEARING ONCE A DENIAL OR DISMISSAL HAS BEEN ISSUED.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const Amend (s) VI : XIV

TX Const ART 1, §§ 10, 12

TCCP ART 2.01, 2.03 (b), 11.07, 26.13, 38.30, 38.31

T R CR EVID 604

TX Govt Code 57.001 : 57.002

STATEMENT OF THE CASE

PETITIONER WAS BORN AND RAISED IN GUATEMALA - HIS PRIMARY LANGUAGE BEING DIALECT AND THEN LEARNING SPANISH LATER IN LIFE AS A SECONDARY LANGUAGE OUT OF NECESSITY AFTER LEAVING HIS HOMETOWN.

PETITIONER WAS ARRESTED, ASSIGNED COUNSEL, TRIED, AND CONVICTED IN CASE NO. F-0946780-H IN THE CRIMINAL DISTRICT COURT NO. 1 OF DALLAS COUNTY, TEXAS ON 4/7/10 - TO WHICH HE WAS THEN APPOINTED APPELLATE COUNSEL WHO'S MINIMAL EFFORT IN REPRESENTATION GOT HIS CONVICTION AFFIRMED ON 10/27/10.

PETITIONER, WITH THE ASSISTANCE OF ANOTHER INMATE, ATTEMPTED TO FILE FOR POST-CONVICTION HABEAS CORPUS RELIEF FROM HIS CONVICTION TO WHICH DUE TO INADEQUATELY STAFFED AND OPERATED PRISON LAW LIBRARY AND A STILL EXISTANT LANGUAGE BARRIER PETITIONER'S EFFORTS WERE UNSUCCESSFUL AT BOTH STATE AND FEDERAL LEVELS.

ON APRIL 23, 2023 THE TEXAS DEPT. OF CRIMINAL JUSTICE'S INSTITUTIONAL DIVISION ISSUED ITS INMATES DIGITAL MEDIA TO WHICH INCLUDED BOTH APPLICATIONS TO THE LEXISNEXIS LEGAL RESEARCH SYSTEM AND A LANGUAGE TRANSLATING OPTION TO WHICH PETITIONER HAS UTILIZED TO GET A KNOWING AND INTELLIGENT UNDERSTANDING OF THE STATUTES AND CONSTITUTIONAL LAWS AS THEY APPLY.

PETITIONER DISCOVERED THAT HIS RIGHT TO AN INTERPRETER UNDER TEXAS LAW HAD BEEN VIOLATED, AND THAT THAT VIOLATION WAS A FUNDAMENTAL DEFECT IN THAT THE STATE OF TEXAS CONDUCTED CRIMINAL PROCEEDINGS AGAINST PETITIONER WHO THEY KNEW HE WASN'T COMPREHENDING - KNOWINGLY, INTELLIGENTLY, OR OTHERWISE - AS SUBSTANTIATED BY COUNSEL'S CLIENT INFORMATION SHEET THAT WAS PROCESSED AT INITIAL CONTACT.

AFTER FINDING CASE LAW THAT CONFERS THAT A DEFECT THAT RENDERES A SENTENCE VOID MAY BE RAISED AT ANY TIME AND THAT THE TEXAS CONSTITUTION STIPULATES THAT THE RIGHT TO HABEAS CORPUS MAY NEVER BE SUSPENDED - PETITIONER SUBMITTED A VALID SUCCESSIVE APPLICATION FOR HABEAS CORPUS RELIEF TO WHICH WAS DISMISSED WITHOUT WRITTEN ORDER ON 3/27/24.

PETITIONER NOW SEEKS EXTRAORDINARY RELIEF AS THE LAW COMMANDS IN SUCH AN INSTANCE AS THIS.

REASONS FOR GRANTING THE PETITION

ACCORDING TO THE TEXAS CRIMINAL PRACTICE GUIDE (COURTESY OF TEXONJEXIS):

JURISDICTIONAL DEFECTS OR DENIAL OF FUNDAMENTAL OR CONSTITUTIONAL RIGHT ARE ONLY BASIS FOR HABEAS CORPUS RELIEF. EX PARTE SHIELDS, 550 SW2D 670, 675 (TXCRAPP 1977). AND PURPOSE OF POST CONVICTION WRIT OF HABEAS CORPUS IS TO DETERMINE LAWFULNESS OF CONFINEMENT OR RESTRAINT AND IT MAY NOT BE USED AS SUBSTITUTE FOR DIRECT APPEAL. EX PARTE MCGOWEN, 645 SW2D 286, 288 (TXCRAPP 1993).

UNDER THE VARIOUS SUBSECTIONS LISTED IN ASSOCIATION WITH 1-38 "INTERPRETER" - CHRONOLOGICALLY STARTING WITH § 3:70.04 (3)(C)(i) - PLEA BARGAINING, INTERPRETER FOR DEFENDANT IT STATES IN PART: "A PLEA IS ENTERED KNOWINGLY ONLY IF THE DEFENDANT IS FULLY AWARE OF THE DIRECT CONSEQUENCES OF THE PLEA [BRADY V UNITED STATES, 397 US 742, 755 (1970); UNITED STATES V SMALLWOOD, 920 F.2D 1231, 1236 (5TH CIR [TEX] 1991); EX PARTE SHUFELIN, 528 SW2D 610, 615 (TXCRAPP 1975)]. TO MEET THIS REQUIREMENT, THE DEFENDANT MUST UNDERSTAND THE NATURE OF THE OFFENSES CHARGED AND THE PUNISHMENT RANGE FOR THOSE OFFENSES [SEE T.C.C.P. ART. 26.13 (2)(C):...]

HERE, PETITIONER WOULD POINT OUT THAT HIS PRIMARY LANGUAGE IS 'DIALECT', AND SPANISH HAS BECOME HIS SECONDARY LANGUAGE - NOT ENGLISH AS DOMINATES THE TEXAS JUDICIAL SYSTEM

THEN, UNDER § 3:71.02 (1)(b)(i) - FOREIGN LANGUAGE INTERPRETER IT STATES IN PART: "AN ASPECT OF THE DEFENDANT'S RIGHT TO BE PRESENT IS THAT THE DEFENDANT MUST UNDERSTAND, OR BE PROVIDED WITH A MEANS TO UNDERSTAND THE LANGUAGE OF THE FORUM IN WHICH THE PROCEEDING IS BEING HELD BECAUSE THE RIGHT TO UNDERSTAND THE TESTIMONY OF WITNESSES IS ONE OF THE MOST BASIC RIGHTS GUARANTEED BY THE CONFRONTATION CLAUSE. PROVIDING A QUALIFIED INTERPRETER TO AN ACCUSED WHO DOES NOT UNDERSTAND ENGLISH IS REQUIRED BY THE SIXTH AMENDMENT. [GARCIA V STATE, 149 SW3D 135, 140 (TXCRAPP 2004). INTERPRETER CONSTITUTIONALLY REQUIRED UNLESS EXPRESSLY AND KNOWINGLY WAIVED. BALTIERRA V STATE, 586 SW2D 553, AT 556-559 (TXCRAPP 1979), PROVIDING INTERPRETER TO ACCUSED WHO DOES NOT UNDERSTAND ENGLISH IS ALSO REQUIRED BY ARTICLE 1, SECTION 10 OF THE TEXAS CONSTITUTION]."

AND UNDER § 3.73 B.01 (1)(2) - RIGHT TO IT STATES THAT "IN A CRIMINAL CASE, THE RIGHT TO AN INTERPRETER

"WHEN NECESSARY FOR THE DEFENDANT TO UNDERSTAND THE PROCEEDINGS IS CONSTITUTIONALLY GUARANTEED."

TEXAS GOV'T CODE §7.001 DEFINES CERTIFIED COURT INTERPRETER AS DEFINED IN T.C.C.P. ART. 38.31(9)(2).

PETITIONER DID NOT EXPRESSLY AND KNOWINGLY WAIVE HIS RIGHT TO AN INTERPRETER - PETITIONER DID NOT EVEN KNOW AT THE TIME THAT HE HAD A RIGHT TO - LET ALONE THAT THE COURT HAD A MINISTERIAL DUTY TO PROVIDE AN INTERPRETER UNDER CONSTITUTIONAL AND STATUTORY LAW - JUST LIKE SO MANY OTHER MIGRANTS THAT HAVE HAD TO ENDURE THIS INTENTIONAL VIOLATION BY STATE ACTORS TO WHICH THIS COURT SUMMED UP TEXAS'S ACTIONS IN *CORMEIL V TEXAS*, 529 US 513, 533: "IN EACH INSTANCE, THE GOV'T REFUSES AFTER THE FACT, TO PLAY BY ITS OWN RULES, ALTERING THEM IN A WAY THAT IS ADVANTAGEOUS ONLY TO THE STATE, TO FACILITATE AN EASIER CONVICTION."

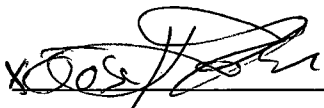
PETITIONER WOULD POINT OUT THAT ACCORDING TO *EX PARTE CARNES*, 579 SW2d 249, 250 (TXCRAPP 1979): "TRIAL COURT MUST ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW," - TO WHICH IT DID NOT ON THIS FUNDAMENTAL DEFECT/ CONSTITUTIONAL VIOLATION THAT IS NOT SUBJECT TO HARMLESS ERROR REVIEW, AND THAT *EX PARTE YOUNG*, 418 SW2d 824 (TXCRAPP 1967) DICTATES THAT: "UNLESS THE COURT OF CRIMINAL APPEALS GRANTS RELIEF AND ORDERS AN APPLICANT RELEASED FINAL DECISION ON HIS PETITION FOR A WRIT OF HABEAS CORPUS AFTER CONVICTION IN A FELONY CASE RESTS WITH THE SUPREME COURT OF THE UNITED STATES, EITHER BY APPEAL OR CERTIORARI FROM THE DENIAL OF RELIEF BY THE TEXAS COURT OF CRIMINAL APPEALS ..." AND "CERTIORARI WILL BE GRANTED BY THE SUPREME COURT AND THE DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS PRESENTED ORIGINALLY TO THE COURT OF CRIMINAL APPEALS ALLEGING FACTS WHICH, IF PROVED, WOULD RENDER THE APPLICANT'S CONFINEMENT UNDER A FELONY CONVICTION ILLEGAL AND ENTITLE HIM TO RELIEF W/O A HEARING SUCH AS DICTATED IN *TOWNSEND V SAIN*, 327 US 293..."

NOTWITHSTANDING, PETITIONER IS CONFIDENT THAT HIS CASE WOULD MEET THE STANDARDS SET FORTH IN *TOWNSEND*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 10, 2024