

24-5102 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA  
OCTOBER 2023 TERM

FILED  
JUL 09 2024  
OFFICE OF THE CLERK  
U. S. SUPREME COURT, U. S.

ALEXI HINOJOSA MATOS,  
Petitioner pro se,

vs.

THE STATE OF TEXAS,  
Respondent.

PETITION FOR A WRIT OF CERTIORARI  
TO THE HONORABLE TEXAS COURT OF CRIMINAL APPEALS

ALEXI HINOJOSA MATOS  
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QUESTION PRESENTED

Due to the gross nature of trial counsel's errors, and the miscarriage of justice due to prosecutor's misconduct, should the Court of Criminal Appeals have remanded the 11.07 application for a writ of habeas corpus for appointment of habeas counsel as opposed to the infamous white card denial?

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals available at WR-87-779-02, and is unreported. Matos's request for reconsideration denial (Appendix "A") is also unreported.

JURISDICTION

This Honorable Court has jurisdiction under 28 U.S.C. § 1254 (3)(d). The final judgment of the Court of Criminal Appeals was entered on April 17, 2024. This petition for a writ of certiorari is timely. Rule 13 (3).

FEDERAL AND STATE STATUTORY RULES AND  
CONSTITUTIONAL RULES AND PROVISIONS INVOLVED

The following Federal and Texas statutory rules and provisions  
of the State and Federal constitutions involved.

A. Federal Rules and Statutes

- a. 28 U.S.C. 1254(3)(d);
- b. 28 U.S.C. 1746
- c. Rule 13(3)

B. State Rules and Statutes

- a. Article 11.07 §4(a)(2)
- b. Article 1.051(3)

C. Constitutional Provisions Involved

Fifth Amendment of the U.S. Constitution

Sixth Amendment of the U.S. Constitution

Fourteenth Amendment of the U.S. Constitution

Articles I § 10 and 19 of the Texas Constitution

## INTRODUCTION AND STATEMENT OF THE CASE

The circumstances surrounding this case are extremely complex. The thrust of Matos's habeas corpus claims were due to his trial counsel's gross incompetence and the prosecutor's flagrant misconduct. See Appendix "F," "G," "H," "I," "J," and "K."

On March 14, 2022, Matos filed a subsequent 11.07 § 4(a)(2) state application for a writ of habeas corpus. WR-87,779-02. Matos also filed a Rule 2 Motion to Exempt the Page Limitation of his Memorandum of Law in Support of his 11.07. (Appendix "C"). The Court of Criminal Appeals denied the application without a written order based on the trial court's tenuous findings of fact. On February 5, 2023, Matos filed a Motion for Leave to File Motion for Judicial Notice of Adjudicative Facts on the Habeas Corpus Record, and requested the Court of Criminal Appeals to "Revive" and "Reinstate" his 11.07 writ application. (Appendix "B"). In haste to resolve the request, the State and trial judge ignored the Rule 2 motion and dismissed the the request as a third habeas application. (Appendix "A"). To date, the trial court, the State and Court of Criminal Appeals refuse to accept the Clerk of Court blunder in failing to file the Rule 2 Motion. But, the overarching issue before this Court surrounds the failure to have appointed a competent habeas corpus attorney to have assisted in futher developing Matos's meritorious constitutional claims of ineffective assistance of counsel, as well as to have aided Matos in receiving a fundamentally fair evidentiary hearing on his claims and to have further assisted in bringing the claims of prosecutor misconduct to light. Matos's claims raised in his initial and subsequent 11.07

REASONS THIS PETITION MUST BE GRANTED

The trial attorney, prosecutor, trial judge and ultimately the Court of Criminal Appeals ignored the blatant miscarriage of justice allowed again a Cuban Immigrant, Alexi Matos. As set forth below, this Honorable Court should grant certiorari and remand this case to the Court of Criminal Appeals, with specific orders to appoint a competent attorney to assist in showing trial counsel's incompetence and the bold tampering with evidence by the prosecutor of cause, and suppressing the fact that the alleged drugs were no more than "baking soda" supplied by a corrupt uniformed Houston police officer.

SUMMARY OF ARGUMENT

The judgment of conviction rests upon void principles and a fundamental miscarriage of justice. Matos remains actually , not merely legally, innocent of delivery of cocaine. Counsel was grossly incompetent and perjured his statements raised in his state habeas affidavit. The prosecutor has yet to be investigated nor held liable for his misconduct. Had Matos been appointed a competent habeas corpus attorney there is a reasonable likelihood he would have prevailed on his initial, as well as subsequent 11.07 application.

This Honorable Court has the authority to correct the injustice this case represents. After all, "Justice is The Highest of All Virtues." (Aristotle). "Truth is The Summit of Being: Justice is the Application of it to Affairs." (Ralph Waldo Emerson: Amer. Poet. Unitarian Minister, Philosopher").

STATEMENT OF RELEVANT FACTS DEMONSTRATING  
IT WAS IMPERATIVE THAT HABEAS COUNSEL BE APPOINTED  
AND WHY AND HOW AN EVIDENTIARY HEARING WOULD HAVE AIDED

A. Preface: Outline of the Internal Affairs Investigation by the  
Houston Internal Affairs Division (IAD) to Arrest Two Corrupt  
Uniformed Officers.

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1. Alexi Hinojosa Matos

Matos is a legal Cuban immigrant who was married, with children. He was the owner/operator of "Chica's Sports Bar" located in Houston, Texas. Matos allowed Houston Police officer Kendrick J. Ferguson to sit in the parking lot of the Club, and provided alcohol to the officer when requested. Sometime in early July of 2012, Officer Ferguson engaged in sexual intercourse with a local prostitute that hung out in the area of the Club. The sexual interlude took place in the back seat of the patrol car while Officer Ferguson was on duty. After having sex with the prostitute, Officer Ferguson refused to pay the fee agreed upon. The officer also took money from the prostitute and a small amount of cocaine she had in her purse. A verbal altercation ensued between the two. The officer told the prostitute he would jail her and would see to it she never worked his area again. Officer Ferguson instructed Matos to bar her from the Club and premises, which he did. Approximately one week later the prostitute filed a complaint with IAD against officer Ferguson and reported that Matos was allowing the officer to sell drugs on his premises and engage in free sex with other prostitutes. IAD opened an investigation into the allegations. This was how Matos came to be involved with the aftermath of the fall out between the prostitute and Officer Ferguson.

## 2. The Internal Affairs Proactive Investigation

On July 12, 2012, IAD officers, acting on the information received from the complaining prostitute, began a covert undercover investigation into information against Officer Ferguson and Matos. The two IAD officers entered the Club and remained for two hours, noting nothing of major significance occurring inside the Club. However, upon leaving the Club at 1:30 a.m., July 13, 2012, they observed a marked Houston Police Cruiser parked in the rear lot of the Club. The officer sitting inside the cruiser was identified as officer Ferguson. The IAD officer began developing an undercover plan after observing officer Ferguson associate with known prostitutes in what appeared to be drug transactions.

## 3. Undercover Officer E.Y. Esquibel, a Female Houston Officer

Approximately one week after IAD officers observed officer Ferguson's activities in the Club parking lot, Officer Esquibel visited the Club. Esquibel made contact with Matos and set her hooks in order to entrap him into the proactive IAD investigation. Several days later Esquibel visited the Club again and took Matos aside and questioned him about the marked Houston cruiser parked out back of the Club. Matos explained that the officer was "good" and could be trusted. Esquibel told Matos she had major "cartel" connections and sometimes moved large quantities of cocaine for the head members of the Cartel. Esquibel "wooed" Matos with many promises of sex, trips to Mexico and Las Vegas, if he would help her run a "RIP" (steal a shipment of drugs from the Cartel). Matos agreed to help her and Esquibel coached Matos into introducing Officer Ferguson to her and to garner his assistance in the "RIP."

#### 4. The Introduction of Esquibel and Officer Ferguson

Two days after informing Matos about the RIP, Esquibel made contact with Matos again at the Clup. But, as insurance, before bringing officer Ferguson into the plan, Esquibel told Matos that she wanted to purchase an ounce of cocaine from Ferguson in order to trust him. Matos agreed and told her to contact him the next day. Matos explained the entire plan to Ferguson that Esquible wanted to pull off. Ferguson was apprehensive at first but agreed after assurance from Matos. Esquible contacted Matos the next day and it was agreed they would meet later that evening at the "Cafe Pique Cuban Restaurant" located at 5757 Bellaire in Houston. This particular location was designated by Esquible. Little did Matos or Ferguson know that the location would be video taped by a number of IAD officers and drug agents. Esquible, it was later learned, word a wire to capture the exchange of purported drugs from Ferguson. Esquible insisted that Ferguson be the person to deliver the drugs in order to prove she could trust him.

#### 5. The Drug Exchange Between Ferguson and Esquible.

On July 19, 2012, the parties agreed to meet at 8:00 p.m. in a parking lot down the street from the original Cafe. Ferguson told Matos he "had a bad feeling: about Esquibel. Ferguson thought she might be working undercover. So, instead of bringing one ounce of actual cocaine, Ferguson weighed out an ounce of ["baking soda"] and placed it in a clear bag. Matos agreed to give the fake drug to Esquibel because he did not want Ferguson to be arrested just in case Ferguson's suspicions of Esquibel were correct. At 8:00p.m.

Ferguson and Matos met Esquibel in the parking lot. Both Matos and Ferguson approached the driver's side of Esquibel's car. She had a stack of bills in her hand when she walked up to the car. She immediately inquired about the drugs. Matos pulled the fake drugs out of his shirt and attempted to hand it to Esquibel. She refused to take the fake drugs and insisted that Ferguson give the bag to her so she could trust him. Angered by this action, Ferguson snatched the bag from Matos and handed it to her. Esquibel took her time counting out the money. Matos was perplexed as to why Esquibel was holding the money up above the steering wheel and counting it out slowly. It was later learned it was a pose in order that the other IAD officers could film the transaction. There was no immediate arrest. They all agreed to meet back at the Club at 10:00 p.m. and set forth the plan for the RIP.

#### 6. The 10:00 Meeting

Apparently Esquibel never tested the alleged drug because she told Ferguson and Matos it was good dope. During the RIP plan, Esquibel told Ferguson they needed one more officer to assist in the RIP. Ferguson told her he might know someone and would inquire. Esquibel said it would need to be fast because she was due to move 18 Kilos of cocaine two nights from the meeting. The plan was for Esquibel to have two satchels of purported cocaine in her car. She would drive through a designated part of town out of heavy traffic. Ferguson would execute a traffic stop and make an arrest on her. He would search her car and remove the alleged drugs, drive to a close by parking lot and drop Esquibel off. All that was lacking was to find another officer who IAD was also investigating.

## 7. A Stall In Plan

It is still unclear what caused Esquibel to change her plan as previously agreed, and extended the RIP until the eve of July 31, 2012. But, during this time Ferguson was able to bring in another Houston Uniformed Police Officer to assist in the RIP.

## 8. Houston Police Officer GERMAN RAMOS

According to a police report, Ramos was also under IAD's radar. As it turned out, the new date for the RIP had been moved up to July 31, 2012. And, for circumstances unexplained, Officer Ramos was assigned to ride with Ferguson on the night of the RIP.

## 9. July 31, 2012 : The Final Events Leading up to the Arrest

For the sake of brevity and for judicial economy, the best record of proof is the actual facts of events presented in the police report as it unfolded. (Appendix "L").

### ARGUMENT

I. BASIC PRINCIPLES OF STATUTORY INTERPRETATION PRINCIPLES, AND THIS COURT'S HOLDING IN THE MARTINEZ V. RYAN ANALYSIS, DEMONSTRATES THAT APPOINTMENT OF HABEAS COUNSEL SHOW BE BASED, IN EACH CASE, BASED ON A DEFENDANT'S CLAIMS OF INEFFECTIVE COUNSEL AT TRIAL, PROVIDED HIS CLAIMS ARE FACTUALLY COLORABLE.

A. This Court's holding in Martinez v. Ryan, 566 U.S. 1 (2012), supports this proposition as repeatedly emphasized by Justice Alcala, regarding appointment of habeas counsel for indigent, pro se defendants.

This case was never about Alexi Matos. This case originated in the lap of IAD due to a complaint by a prostitute regarding a corrupt uniformed officer who refused to pay her for her sexual

intercourse with officer Ferguson. Matos did not becomes involved until officer Esquibel literally forced herself on Matos for the promises of sex and expensive trips. It is worth noting that the was actually more than a promise between the two.

This Court has, more than once, discussed the Texas problem regarding appointment of habeas counsel. The Court stated, in Martinez:

"Without the help of an adequate attorney, a prisoner will have difficulties vindicating a substantial ineffective assistance of trial counsel claim on habeas review. Claims of ineffective assistance at trial often require much investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing the claim. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney."

Martinez, 132 S.Ct. at 1317.

The Court further reasoned that:

"prisoners are generally 'unlearned in the law' and 'may not comply with the State's procedural rules or may misapprehend the substantive details of federal constitutional law.' Id.

And the Court observed that,

"[w]hile confined to prison, the prisoner is in no position to develope the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record." Id.

Thus, the Court concluded that, "when a state's system for litigating ineefectiveness claims has the effect of moving the trial ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." Id., at 1318.

B. Texas's Discretionary Scheme Under Article 1.051(d)(3) Tex.Code.Crim.Pro., Is Grossly Inadequate To Protect A Habeas Applicant's Rights To Prove Ineffective Counsel At Trial.

The Supreme Court has previously addressed the inadequacies in Texas's system for litigating claims of ineffectiveness of trial counsel. See Trevino v. Thaler, 569 U.S. 413, 133 S.Ct. 1911 (2013). The Court further suggested that a Texas post-conviction writ application, if undertaken without the effective assistance of counsel, is an inadequate vehicle for litigating ineffective-assistance claims. Id., at 1919-20; see also Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309, 1317 (2012). In Trevino, the Court indicated that the lack of representation, or ineffective representation, in a Texas post-conviction proceeding could "deprive a defendant of any review of [an ineffective-assistance-of-trial-counsel claim]." Id., at 1918, 1920 (quoting Torres, 943 S.W.2d at 475).

C. Article 1.051(d)(3)'s "In The Interest of Justice" Language for Appointment of Habeas Counsel."

The plain language of Article 1.051(d)(3) mandates a habeas court to appoint counsel for an indigent habeas applicant when the interests of justice requires it. The article states:

(d) An eligible defendant is entitled to have the trial court appoint an attorney to represent him in the following appellate and post-conviction habeas corpus matters:...

(3) a habeas proceeding if the court concludes that the interests of justice require representation.

Ex parte Pointer, 492 S.W.3d 318 (Tex.Crim.App. 2016).

Without counsel it has been shown it is unlikely that most pro se applicants will be able to properly present their substantial ineffective assistance claims, thereby increasing the likelihood that such claims will be deprived of a meaningful consideration on post-conviction review and, as a result, that

violations of defendant's fundamental Sixth Amendment rights go unremedied. Ex parte Sariento, 2016 Tex.Crim.App. Lexis 1160.

D. The Term "In The Interests Of Justice."

The Texas Court of Criminal Appeals has never properly defined what the term "interests of justice" means. However, in numerous habeas corpus application on remand from the Court of Criminal Appeals, the Court has compelled the appointment of counsel for live evidentiary hearings involving indigent pro se habeas applicants "who [request] counsel and the justices of the Court appear to agree that the term "interests of justice" includes that situation. Ex parte Scott, 496 S.W.3d 793, 794 (Tex.Crim.App. 2019)(Alcala, J., concurring). In her concurring opinion Justice Alcala further stated:

"I however, would more broadly hold that the term also includes that mandatory appointment of counsel for indigent pro se applicants who [requests] counsel and have made a minimal threshold showing of a colorable ineffective-assistance."

See also In re Garcia, 486 S.W.3d 565 (Tex.Crim.App. 2016).

The 10th Circuit Court of Appeals expounded on the term "interests of justice" stating in more clarity:

"When we consider whether the importance of the issues raised might trigger the "interests of justice" exception, we have said that, "[i]n many respects, the interests of justice analysis we have developed, which expressly includes review of a litigant's unobjected-to substantive claims on the merits, is similar to reviewing for plain error." *Id.* To show plain error, Mr. Duffield would have to show "(1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

Duffield v. Jackson, 545 F.3d 1234, 1238 (10th Cir. 2008)(quoting United States v. Gonzales-Huerta, 403 F.3d 727, 732 (10th Cir.2005)).

Matos substantially meets all four of the components listed.

It is extremely difficult to keep track of the hundreds, if not thousands of Texas pro se defendants who have been tried and convicted by incompetent attorneys and sentenced to life sentences and other harsh forms of sentence. These prisoners have been and continue to be denied the right to reasonably challenge the unconstitutionally incompetent attorneys that allowed such wanton punishments and convictions. Ex parte Tilley, 502 S.W.3d 813, 814 (Tex.Crim.App. 2016)(Alcala, J., concurring and dissenting).

#### Conclusion

Matos's petition raises important constitutional questions that this Honorable Court should settle by judicial order. This is necessary due to the failing of the Texas Legislature and the Court of Criminal Appeals's distastes of appointment of counsel in habeas corpus cases. Bearing in mind, habeas applicants who sufficiently raise colorable claims of ineffective assistance at trial, and demonstrates a reasonable likelihood that his claims [if] proven true, would entitle him to habeas relief.

I, Alexi Hinojosa Matos, respectfully calls up on this Court to grant this Petition for Writ of Certiorari, and [appoint] a competent attorney to further assist in this Petition.

Respectfully submitted,

Alexi Hinojosa Matos  
Petitioner Pr Se  
TDCJ-CID # 2125461  
Barry Telford Unit  
3899 State Hwy 98 S.  
New Boston, TX 75570

CERTIFICATE OF COMPLIANCE

I, Alexi Hinojosa Matos, declares under 28 U.S.C. § 1746,  
have read the foregoing Petition for Writ of Certiorari and I  
further declare that my Petition complies with the page limits  
proscribed by Supreme Court Rule 33.1.



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Alexi Hinojosa Matos  
Petitioner Pro Se