

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ELOY HERACLIO ALCALA,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Now comes the petitioner, ELOY HERACLIO ALCALA, through undersigned appointed counsel, who respectfully moves for leave to proceed in forma pauperis and represents to wit:

1. Eloy Alcala is serving a life sentence in a Texas Penitentiary for Capital Murder.
2. The petitioner was appointed counsel to handle his appeal to the Texas Thirteenth Court of Appeals.
3. The petitioner has no income or assets.
4. Undersigned counsel was appointed to represent Alcala to prepare and file a Petition of Writ of Certiorari in the United States Supreme Court. A copy of the

order of appointment is appended.

Respectfully submitted,

/s/Rolando Garza

Rolando Garza

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Counsel for Petitioner

No. _____

IN THE
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ORDER REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON WRIT

The court has considered the petitioner's motion to proceed in forma pauperis on
Petition for a writ of Certiorari:

IT IS ORDERED that the motion be _____.

Washington DC, this _____ day of _____, 2024.

JUSTICE

AT 4:00 O'CLOCK PM

AUG 09 2024

Cause No. CR-4969-10-F

THE STATE OF TEXAS

§

In the District Court, District Courts, Hidalgo County

v.

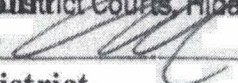
§

332nd Judicial District

ELOY HERACLIO ALCALA

§

Hidalgo County, Texas

LAURA HINOJOSA, CLERK
By  Deputy#38

ORDER

The Court considered appointed counsel's MOTION TO WITHDRAW AND SUBSTITUTE APPOINTED COUNSEL TO TIMELY FILE AT THE UNITED STATES SUPREME COURT A PETITION FOR ... WRIT OF CERTIORARI and the Response of the State of Texas, took judicial notice and made these findings and orders.

I. Judicial Notice

The Court takes judicial notice of the entire record in this cause, which is available at <https://pa.co.hidalgo.tx.us/CaseDetail.aspx?CaseID=1242341> and that:

- 1.) In this cause, the Defendant was convicted of Capital Murder and sentenced to life without parole.
- 2.) This court's judgment of conviction and sentence were affirmed by opinion and judgment of the Court of Appeals of Texas in its cause number 13-18-00614-CR on August 28, 2023, after that court filed some of the parties' briefs, which this court viewed at <https://search.txcourts.gov/Case.aspx?cn=13-18-00614-CR&coa=coa13>

3.) To exhaust Defendant's direct appeal at the state level, appointed counsel Victoria Guerra timely petitioned for Discretionary Review; but the Court of Criminal Appeals of Texas refused review in its cause number PD-0119-24 on June 5, 2024.

4.) The Court of Appeals issued its mandate regarding this cause on July 10, 2024.

5.) Hidalgo County has a public defender's office; and its lawyers handle misdemeanor cases, certain felony cases and neither capital murder defense nor capital murder conviction appeals.

6.) Hidalgo County has an assigned counsel program that lacks a provision for appointment of counsel to prepare and timely petition for writ of certiorari, if a death penalty sentence is not assessed after a capital murder conviction. See

<https://www.hidalgocounty.us/DocumentCenter/View/65834/Local->

[Rules Amended-Oct192023](#)

7.) Under the conditions in Article 1.051(d)(4), Texas Code of Criminal Procedure (C.C.P.) (2023-2024), a court can appoint counsel to represent an indigent defendant beyond the direct appeal's first stage.

8.) "In some cases, a remedy at law may technically exist; however, it may nevertheless be so uncertain, tedious, burdensome, slow, inconvenient, inappropriate or ineffective as to be deemed inadequate." *Smith v. Flack*, 728 S.W.2d 784, 792 (Tex. Crim. App. 1987).

- 9.) Finding indigence, the court appointed this Defendant counsel for the first and second jury trials and the resulting two direct appeals. *See Alcala v. State*, No. 13-12-00259-CR, 2014 Tex. App. LEXIS 7949, 2014 WL 3731733 (Tex. App.—Corpus Christi July 24, 2014, pet. ref'd) (memo op. not designated for publication) (court reversed the trial court's judgment and remanded for a new trial); *Alcala v. State*, No. 13-18-00614-CR, 2023 Tex. App. LEXIS 6647, 2023 WL 5541572 (Tex. App.—Corpus Christi Aug. 28, 2023, pet. ref'd) (memo op. not designated for publication) (court affirmed the trial court's judgment).
- 10.) This Defendant "... is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs." Article 26.04(p), C.C.P.
- 11.) The legislature committed to the trial court's sound judgment and discretion the responsibility to determine when the interests of justice require the appointment of qualified counsel to prepare and timely file a petition for certiorari at the United States Supreme Court. *Compare Ex parte Sandoval*, 508 S.W.3d 284, 284 (Tex. Crim. App. 2016) (orig. mandamus proceeding) (Keller, P.J., concurring opinion in which Keasler and Hervey, JJ., joined).
- 12.) "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is

timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” United States Supreme Court Rule 13.

II. Findings

The Court finds that:

- 1.) This Motion can be determined without a hearing.
- 2.) No party suggests a material change has occurred in the Defendant’s financial circumstances.
- 3.) This cause’s current presiding judge has learned much in his 30+ years serving as a state judge.
- 4.) Appointed counsel Guerra was notified that this Defendant desires to have counsel appointed to timely file a petition for writ of certiorari at the United States Supreme Court; but attorney Guerra is unable to expend the time necessary to complete and timely file a petition for certiorari regarding any issues raised or judicially addressed by the Court of Appeals.
- 5.) This Defendant’s petition for writ of certiorari is due to be filed on or before the 90th day after the Court of Criminal Appeals refused his petition for discretionary review on June 5, 2024.
- 6.) This court can appoint “in ... any other appellate proceeding if the court concludes that the interests of justice require representation,” Article 1.051(d)(4) C.C.P., including timely petitioning for writ of certiorari to a Court of Appeals of Texas,

which had overruled or denied a federal constitutional issue that is worthy of the Supreme Court's certiorari review.

- 7.) Thus, the legislature has thereby acknowledged judicial discretion to appoint counsel to timely petition for writ of certiorari, where a court of appeals has overruled or denied a "cert. worthy" issue.
- 8.) Such appointment of counsel would permit the United States Supreme Court to determine whether to grant review of this Defendant's "certiorari worthy" issue(s). See Articles 1.051 & 26.04(j)(2), C.C.P. Cf. Article 26.052(i)-(j), C.C.P., regarding death penalty cases.
- 9.) In its exercise of judgment and discretion, the court determines that interests of justice require appointment of counsel to represent this Defendant by timely petitioning for writ of certiorari at the United States Supreme Court. See Article 1.051(d)(4), C.C.P.
- 10.) This indigent Defendant was entitled as a matter of federal constitutional due process to appointed counsel at trial and during the first appeals as of right, *see Cooks v. State*, 240 S.W.3d 906, 910 (Tex. Crim. App. 2007); and given the totality of the circumstances existing in this cause, he is entitled in the interest of justice to counsel appointed to timely file at the United States Supreme Court a petition for writ of certiorari to the Court of Appeals regarding its last judgment and opinion, affirming this court's last judgment in its cause number CR-4969-10-F.

- 11.) The knowledge and skills that are necessary to adequately proceed at the United States Supreme Court as certiorari counsel petitioning for a writ of certiorari differ from the knowledge and skills required for criminal defense counsel to render on direct appeal at an appeals court in Texas the effective assistance guaranteed by Amendments VI and XIV, U.S. Constitution.
- 12.) Withdrawing appellate counsel has an ethical duty to promptly provide appointed certiorari counsel with all information and records relevant to the Defendant's latest direct appeal.
- 13.) The facts contained in Mr. Connors' affidavit filed in this cause in July 2024 are credible and true.

III. Orders

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED that the said pending Motion be and is hereby granted and Honorable Victoria Guerra is released from further representing this Defendant and Honorable Rolando Garza is appointed to represent this Defendant in preparing and timely filing at the United States Supreme Court a petition for writ of certiorari to the Thirteenth Court of Appeals of Texas related to this cause; and the court's clerk shall promptly send a copy of this signed order to:


William Hubbard hubbard43@gmail.com

Victoria Guerra vguerralaw@gmail.com

Rolando Garza crimapp@yahoo.com

Glenn W. Devino appeals@da.co.hidalgo.tx.us

Signed on the 9th August 2024.



Hon. Mario E. Ramirez, Jr.
Judge Presiding

Cc: William Hubbard at hubbard43@gmail.com
Victoria Guerra at vguerralaw@gmail.com
Rolando Garza at crimapp@yahoo.com
Glenn W. Devino at appeals@da.co.hidalgo.tx.us