No. 24-

In the Supreme Court of the United States

HECTOR FLORES, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

SHANE O'NEAL
101 E. Avenue B
Alpine, Texas 79830
shane@shaneoneallaw.com
(432) 538-7070

Counsel for Petitioner

QUESTION PRESENTED

Petitioner, Hector Flores, was convicted, after a trial, of child endangerment. That endangerment occurred during a trip to a national park in Texas but was prosecuted by the federal government under the Assimilated Crimes Act. As indicted, the relevant Texas law, required the government to prove, beyond a reasonable doubt, that Flores deprived his daughter of food, and that the deprivation put his daughter in imminent danger of a bodily injury. Flores had taken his daughter on a trip to Big Bend National Park. After their vehicle was disabled and they spent three days waiting for help, Flores and his daughter hiked through the remainder of the park and unwittingly crossed the Rio Grande into Mexico where they were quickly discovered and apprehended by Mexican authorities. During their journey, they had both foraged for food and asked for food from people they encountered along the way. There was testimony that Flores's daughter, at the conclusion of the journey, told a Park Ranger that they had gone four days without eating during the trip. There was no evidence that Flores's daughter received any sort of medical attention or sustained an injury.

Whether there was sufficient evidence of an imminent bodily injury because there was "no indication how or when Flores planned to end their 'survival camping.'" *Appendix* at 11.

RELATED PROCEEDINGS

United States Court of Appeals for the Fifth Circuit:

United States v. Flores, No. 22-50910 (Feb. 20, 2025)

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Petitioner Hector Flores, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Hector Flores, a single father, was federally prosecuted and convicted when he took his daughter on a camping trip. There was no evidence that Flores's daughter received an injury or medical treatment. Instead, the Fifth Circuit found that the trip constituted child endangerment because Flores had not brought sufficient

food—foraging from nature and the kindness of strangers along the way—and did not introduce any evidence of when he "planned to end their 'survival camping.'" *Appendix* at 11.

In affirming Flores's conviction under Texas Penal Code § 22.041(c), which requires proof that a deprivation to a child's welfare result in an "imminent" bodily injury—the Fifth Circuit clearly broke with prevailing Texas law that it is insufficient when the evidence shows "the accused placed the child in a situation that is potentially dangerous." *Millslagle v. State*, 81 S.W.3d 895, 898 (Tex. App. – Austin 2002, pet. ref'd). The Fifth Circuit's holding here creates a clear split with Texas's highest criminal court, which has consistently rejected as insufficient attempts to prosecute parents based on potential, unrealized dangers. *See Garcia v. State*, 367 S.W.3d 683 (Tex. Crim. App. 2012) (holding no rational jury could have determined that a child—found with her mother shivering, with blue lips, and wearing only a diaper in 58-degree weather—was in imminent danger of a bodily injury).

The Court should take this case to resolve the disagreement between the Fifth Circuit Court of Appeals and the Texas Court of Criminal Appeals.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit, *United States v. Flores*, No. 22-50910 (5th Cir. Feb. 20, 2025), is attached to this petition as an appendix.

JURISDICTION

The Fifth Circuit entered its judgment on February 20, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, in pertinent part, that "no person shall be . . . deprived of life, liberty, or property without due process of law."

"A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child . . . in imminent danger of death, bodily injury, or physical or mental impairment." Tex. Penal Code § 22.041(c).

STATEMENT

A. Factual and procedural background.

In January 2022, Hector Flores, Jr., and his daughter L.F. traveled to Big Bend National Park. After sustaining a flat tire, they ran out of food and L.F. went several days without eating.

Flores was charged with child endangerment under Texas Penal Code § 22.041, assimilated through 18 U.S.C. § 13. A jury returned a guilty verdict, affirmed by the Fifth Circuit Court of Appeals.

At the time of the offense, Flores was a single parent to his daughter L.F. He had spoken and checked out books about living off the grid and surviving in the wilderness. In January, he withdrew L.F. from school. Twenty-four days later, they entered Big Bend National Park.

While driving on a rough road, they drove into a wash and sustained a flat tire. They made a makeshift campsite and stayed near the vehicle for several days. They had three backpacks of supplies, including food and water. Eventually, they started to walk in the direction of Boquillas, a town in Mexico indicated on the park map.

During their journey, they ran out of food. They foraged for food, eating berries harvested by Flores as well as minnows and a frog. They eventually encountered people and asked for more food. They received granola bars from hikers and a wrap and orange from kayakers on what they later would discover was the Rio Grande River. "Aside from being hungry, L.F. was not injured." *Appendix*, at 3.

When park rangers discovered their abandoned campsite, they started a search and rescue mission. Days later, two rangers observed Flores and L.F. camping in Mexico. L.F. did not appear emaciated and was gathering firewood. The campsite was twenty miles from Flores's abandoned truck. One day later, Flores and L.F. were transferred from the custody of Mexican authorities to park rangers. The Mexican authorities told Ranger Mahoney that L.F. was uninjured when they found her. When Ranger Herndon saw L.F., he believed that she had lost weight when compared to an undated photograph.

The park rangers did not take L.F. to a physician but instead transferred her to the custody of Texas Child Protective Services. There was no evidence to indicate that L.F. received any sort of medical treatment or intervention for hunger or any other condition she experienced during the "survival camping."

The government alleged by indictment that Flores "did then and there intentionally, knowingly, recklessly, or with criminal negligence, engage in conduct, by omission, that placed L.F., a child younger than 15 years of age, in imminent danger of death bodily injury, or physical or mental impairment, by not providing adequate food, and the defendant did not voluntarily deliver the child to a designated emergency infant care facility provider . . . ."

Flores pleaded not guilty and asserted to his right to a jury trial. After the government rested its case, Flores moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. The district court denied the motion. Following testimony from his own witness, Flores renewed his Rule 29 motion. At the conclusion of the government's closing argument, the defense again renewed its Rule 29 motion, and that motion was denied.

The jury returned a guilty verdict. The district court imposed a sentence of five years' probation and a special assessment of $100. Flores timely appealed.

Among various grounds, Flores challenged the sufficiency of the evidence supporting that L.F. was in an imminent danger of bodily injury. The Fifth Circuit affirmed the judgment finding the evidence of the limited availability of food combined with the absence of any indication how or when Flores planned to end their "survival camping" and Flores's failure to ask for assistance beyond additional food meant a jury could find beyond a reasonable doubt that Flores placed his daughter in imminent danger of a bodily injury by failing to provide her with adequate food.

REASONS FOR GRANTING THE PETITION

I. The Court should grant certiorari to correct the Fifth Circuit's interpretation of "imminent bodily injury" as including bodily injuries that are possible or likely if conditions remain unchanged.

This case provides the Court the ideal opportunity to resolve the conflict between Texas law and the Fifth Circuit over the meaning of an "imminent" bodily injury. That conflict occurs, in this case, over the courts' interpretation of the same statute, Texas Penal Code § 22.041(c).

Texas courts have defined "imminent" as "ready to take place, near at hand, impending, hanging threateningly over one's head, menacingly near." *Elder v. State*, 993 S.W.2d 229, 230 (Tex. App. – San Antonio 1999, no pet.) (quoting *Devine v. State*, 786 S.W.2d 268, 270 (Tex. Crim. App. 1989)). Further, "to be 'imminent' for purposes of imposing responsibility pursuant to Penal Code § 22.041(c), the situation must be immediate and actual, not potential or future, at the moment of the act or omission by the defendant." *Newsom v. B.B.*, 306 S.W.2d 910, 918 (Tex. App. – Beaumont 2010, pet. denied). To be convicted under this statute, "[i]t is not sufficient that the accused place the child in a situation that is potentially dangerous. The accused's conduct must threaten the child with immediate, impending death, bodily injury, or impairment." *Millslagle v. State*, 81 S.W.2d at 898.

Texas courts have held that imminence requires more than an abstract threat. For example, in *Moody v. State*, the defendant's young children lived in an unsanitary house, were permitted to play unsupervised in an unfenced yard near a busy road, and were often seen wearing only diapers in cold weather. No. 01-03-00685-CR, 2004 WL 1472216 (Tex. App. – Houston [1st Dist.] July 1, 2004, no pet.) (mem. op., not designated for publication). The court held the evidence was insufficient for conviction because the children only faced "*potentially* dangerous situations" rather than imminent danger. *Id*.

In a similar case, a mother was convicted when her child was shivering, had blue lips, and wore only a wet diaper in 58-degree weather. *Garcia*, 367 S.W.3d at 688. The Texas Court of Criminal Appeals held that no rational jury could have determined that the child was in imminent danger of bodily injury. *Id*. at 689. In reaching that conclusion, the court stated that harm to the child was merely a "possibility" because there was no evidence that the child was in the cold for an extended duration. *Id*.

Texas courts have also held that a witness's reaction is probative of a danger's imminence. "Imminent danger of death or bodily injury to a child demands urgent intervention to remove the child from danger." *Sparkman v. State*, No. 09-14-00375, 2015 WL

4760179 (Tex. App. – Beaumont Aug. 12, 2015); *see also Clark v. State*, No. 12-12-00287-CR, 2013 WL 5966464 (Tex. App. – Tyler Nov. 6, 2013) ("A measure of the imminence of a danger is the nature of the response the danger should provoke. Once observed by those in a position to act, an imminent danger of death or bodily injury to a child justifies, in fact demands, urgent intervention to remove the child from the danger."). In *Sparkman*, the Texas appellate court concluded that the State had not shown an imminent danger because at the time the child was seen on the road, "there were no vehicles on the road" and the witness did not feel "the need to run after the child to prevent it from being harmed." 2015 WL 4760179, at *2-3.

The evidence presented to the jury was insufficient to show that Flores placed L.F. in an imminent danger of receiving a bodily injury. Before they were apprehended, L.F. and Flores were camping and L.F. was observed by troopers engaging in normal camping activities. She was not emaciated nor impaired in anyway. When she was apprehended, she was not given medical treatment of any kind.

The Fifth Circuit's reasoning illustrates the absence of the evidence. Indeed, the Fifth Circuit did not point to any evidence that the jury considered. Rather, it's finding hinged on the lack of an

"indication how or when Flores planned to end their 'survival camping.'" *Appendix*, at 11. The Fifth Circuit pointed to the fact that Flores "did not ask hikers or kayakers they encountered on their trek to contact rangers or other authorities for assistance." *Appendix*, at 11. That ignores the record evidence that Flores did ask for and receive food. It also omits that after observing Flores and his daughter neither the hikers nor the kayakers observed a danger so imminent as to require intervention.

An accurate application of Texas law clearly showed that L.F. was not in an imminent danger of receiving bodily injury. The Fifth Circuit's reliance on the probability of future developments clearly conflicts with Texas law on imminence. This Court should grant the writ to resolve that conflict.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

/S/ SHANE O'NEAL
O'NEAL LAW
101 E. Avenue B
Alpine, Texas 79830
shane@shaneoneallaw.com
(432) 538-7070

Counsel of Record for Petitioner

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