

24-7424  
No. \_\_\_\_\_

ORIGINAL

Supreme Court, U.S.  
FILED

MAY 19 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WILBERTO ARELLANO

— PETITIONER

(Your Name)

VS.

ERIC GUERRERO

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

WILBERTO ARELLANO

(Your Name)

2661 F.M. 2054- COFFIELD UNIT

(Address)

TENNESSEE COLONY, TEXAS 75884

(City, State, Zip Code)

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(Phone Number)

**QUESTION(S) PRESENTED**

WHETHER PETITIONER IS ENTITLED TO EQUITABLE TOLLING BASED ON HIS CLAIM OF ACTUAL INNOCENCE.

## 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:

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## STATUTES AND RULES

## OTHER

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 <sup>A</sup> to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[<sup>x</sup>] is unpublished.

The opinion of the United States district court appears at Appendix <sup>B</sup> to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[<sup>x</sup>] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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[ ] is unpublished.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 \_\_\_\_\_ 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[ ] is unpublished.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 April 25, 2025.

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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.  
\_\_\_\_\_

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).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

XIV Amendment to the United States Constitution, which provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

Petitioner was convicted of murder after a jury trial and was sentenced to life in Cause #1353257. (Dkt-11-7,pp. 134-135). His conviction was affirmed on June 7, 2018, and his petition for discretionary review was refused on November 14, 2018. Arellano, v, State, 555 S.W. 3d 647 (Tex.App.-Houston [1st Dist.] 2018, pet. ref'd). (Dkt. 1,p.3).

On February 8, 2022, petitioner filed an application for a writ of habeas corpus at state level, represented by counsel, raising three grounds of ineffective assistance of counsel. On May 24, 2022, the trial court held a live evidentiary hearing, and on June 3, 2022, the trial court recommended that petitioner be granted a new trial. (Dkt. 11-30,pp. 6-25). On February 15, 2023, the Texas Court of Criminal Appeals disagreed with the trial court and denied relief. Ex Parte Arellano, Writ No. 93, 869-01, 2023 WL 2000069 (Tex.Crim.App. Feb. 15, 2023).

On June 5, 2024, petitioner filed his federal petition for habeas relief in the district court, raising ineffective counsel and actual innocence. (Dkt. 1,p. 9).

The respondent filed an answer, seeking dismissal based upon the statute of limitations and asserted petitioner did not satisfy the actual innocence exception to the limitations period. (Dkt. 12). Petitioner filed a reply contending that he should be entitled to relief under the actual innocence

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1. Dkt. refers to the instrument in the District Court

exception because "he was not at the place where the crime took place and could not have been the culprit." (Dkt. 13, pp. 3-4).

The district court noted that petitioner did not identify any new evidence that would support his claim of actual innocence. However, after liberally construing the pleadings, the district court found that petitioner's appointed counsel filed a motion for new trial based on newly discovered evidence in the form of an affidavit from Maria Maldonado Mondragon. (Dkt. 11-7, pp. 151-58). (Dkt. 14, p. 10). That affidavit names the affiant's husband as the shooter. (Id. at 157). The petitioner argued that this evidence proved his innocence and his claim that he was misidentified.

The district court found that this evidence satisfied the Schlup requirement for "new evidence", but posited that it was not enough to show that no reasonable jury would not have convicted him. (Dkt. 14, p. 11). Schlup v. Delo, 513 U.S. 298, 324 (1995).

The district court entered final judgement on November 26, 2024. (Dkt. 15). Petitioner filed timely notice of appeal on December 10, 2024. the district court denied certificate of appealability sua sponte. (Dkt. 14, p. 140). Petitioner now seeks certiorari from this Court.

## REASONS FOR GRANTING THE PETITION

Petitioner request the Court grant Certiorari under Supreme Court Rule 10(b) and (c) because the District Court and the Court of Appeals has decided an important question of Federal Law in a way that conflicts with relevant decisions of this Court regarding actual innocence claims and its relevance to equitable tolling.

This Court has recognized that a credible showing of actual innocence may allow a petitioner to pursue his constitutional claims on the merits notwithstanding the existence of a procedural bar to relief. This rule, or fundamental miscarriage of justice exception, is grounded in the equitable discretion of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons. McQuiggin, v. Perkins, 569 U.S. 383, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013).

Petitioner asserts his case meets that standard.

### PETITIONER IS ENTITLED TO EQUITABLE TOLLING

Eduviel Ramirez-Zarco, Rafeal Pineda-Soto, Juan Estrada-Gonzales and Apolinio Estrada-Gonzales were eating dinner and drinking alcohol at a restaurant at about 1:00a.m. on February 27, 2012. (5 RR. 42-43,45,51).<sup>2</sup> Several men and women were seated at the next table. (5 RR 55-56). Ramirez-Zarco got on the stage and sang karaoke. (6 RR 41). As he stepped of the stage, a man approached from behind and shot him in the head for no apparent

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<sup>2</sup>RR refers to trial court reporter's record.

reason. (6 RR. 88). He died as a resul. (5 RR 114,123).

Detective Jesus Sosa received information regarding two possible suspects in April of 2012 and compiled a photospread. (6 RR. 5,13-14). Apolinio, and Rafeal identified petitioner as the possible shooter. (5 RR. 67-69, 6 RR 51,71).

Apolonio stated he was very intoxicated that night and was only 50 percent confident in his identification. (5 RR 102,128). Rafeal testified that the shooter wore a red shirt and black pants, and that the shooter said, "You fucking asshole, I just killed you." (6 RR 107-09). Sergeant Matthew Brady testified that Rafeal made these statements. (7 RR 4-7). Rafeal testified that he was going to identify someone because the officer told him that the shooter was in the photospread. (6 RR 103-06). Juan viewed the photospread in July and identified petitioner. (6 RR. 82,85,101). Juan denied that he saw petitioner on the news before he viewed the photospread. (6 RR 73). Sergeant Guillermo Gonzales testified that Juan said he saw petitioner in a photo in the media a week before he viewed the photospread. (6 RR 143-44).

A crime scene officer collected all of the items that were on the table where the shooter was dining and drinking, including all utensils and glasses for DNA and fingerprint testing. (5 RR. 135, 154-55). Petitioner was excluded as a possible contributor of the DNA and fingerprints. (6 RR 28-29).

Saida Escalon, who waited on the table where the shooter sat, testified the petitioner was not at that table, nor in the

restaurant that night. (6 RR 152-56). However, she acknowledged on cross-examination that she identified petitioner in a photospread as being in the restaurant that night.(6 RR 162,171). Sergeant Gonzales testified that Escalon said petitioner looked like one of the men at the table. (7 RR 14-17).

Defense argued that the witnesses were told the shooter would be in the photospread, that Rafeal made statements to the police that were inconsistent with his identification, Aplonio stated he was so intoxicated that he was only 50 percent sure of his identification, and that Juan admitted he saw petitioner in the media a week before his identification, which made the photospread unduly suggestive.(7 RR 29-32).

Petitioner was found guilty and sentenced to life on September 17, 2015). Petitioner's family hired Dexter Eaves, who filed a motion for new trial on October 19, 2015. (CR 134-35,151).<sup>3</sup> The motion alleged that Marie Mondragon had come forward after petitioner was convicted and provided an affidavit that she was in the restaurant on the night of the shooting and that her husband committed the murder, that petitioner was not there, and that she did not come forward before trial because she feared reprisal. (CR 151-57). Eaves failed to present the motion to the court within ten days and request a hearing. As a result, the motion was denied by operation of law 75 days after the imposition of the sentence.

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<sup>3</sup> CR refers to the state court clerk's record.

On appeal, petitioner challenged the trial court's failure to hold a hearing on the motion for new trial, but the appellate court held counsel failed to comply with Tex.R.App.Proc. 21.6.

After petitioner's family hired Attorney Randy Schaeffer, a state application for a writ of habeas corpus was filed February 8, 2022, raising three grounds of ineffective assistance of counsel.

On May 24, 2022, a live hearing was held and on June 3, 2022, the trial court made findings of fact and conclusions of law, holding trial counsel ineffective for failing to file a motion in limine and if necessary, object to inadmissible hearsay and opinion testimony that witnesses identifications of petitioner in the photospread was reliable, counsel called a witness whom he knew would be impeached with a prior inconsistent statement to police, counsel opened the door to testimony the petitioner was under investigation for another murder and that counsel failed to timely present the motion for new trial and request a hearing. The trial judge recommended the petitioner be granted a new trial. On February 15, 2023, the Texas Court of Criminal Appeals disagreed with the trial court and denied relief with no written explanation.

On June 5, 2024, petitioner filed for relief in the District Court. Dkt. 1). The Respondent asserted the time bar defense and petitioner moved for equitable tolling based in part on his claim of actual innocence.

The District Court posited the petitioner did not identify

any new evidence to support his claim of actual innocence. However, giving petitioner's claim liberal reading and knowing that petitioner labored with no understanding of the english language, proceeding pro se, with the assistance of a prison writ writer, independently reviewed the record and found the petitioner did in fact file a motion for new trial based on newly discovered evidence in the form of an affidavit from a witness who was in the restaurant on the night of the murder, naming someone else as the killer. (Dkt. 11-7,pp. 151-58)(Dkt. 14, p. 10). The District Court went on to find that this evidence was not available before trial and therefore meets the Schlup requirement for "new evidence", but posited it was insufficient to undermine confidence in the petitioner's trial (Dkt. 14,p.10). The District Court dismissed the petition and denied a certificate of appealability sua sponte. (Dkt. 14,p. 11).

Petitioner moved the Fifth Circuit Court Of Appeals for a COA which it denied on April 25, 2025. Petitioner now seeks a writ of Certiorari from this Court. See ARELLANO V. GUERRERO, NO. 24-2056) (5th Cir. 2025).

In Perkins, 569 U.S. at 386, this Court held that "actual innocence, if proved serves as a gateway through which a petitioner may pass [ even if] the impediment is a procedural bar...or...expiration of the statute of limitations." As threshold matter, a credible gateway "claim [ of actual innocence] requires [the] petitioner to support his allegations of constitutional error with new reliable evidence...that was not

presented at trial." Schlup, 513 U.S. at 324.

In the case sub judice, petitioner did in fact support his claim of actual innocence with an affidavit from a witness who named her husband as the shooter after petitioner was convicted. No Court has passed upon the issue of whether this affidavit or the authore thereof is reliable or credible which is why it is so important to grant review in this case. Interestingly, DNA evidence left at the killer's table did not match that of the petitioner which supports his claim of actual innocence and misidentification due to suggestive procedures. But for counsel's ineffectiveness, no rational jury would have found petitioner guilty beyond a reasonable doubt in this case.

According to the innocence project, eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in nearly seventy-five percent of convictions overturned through DNA testing. Understand the Causes: Eyewitness Misidentification, The Innocence Project, (Jan. 31, 2014) Furthermore, that source suggests that more than 300 innocent people have been released from prison nationwide largely due to faulty identifications. 300 DNA Exonerations-And Counting!, The Innocence Project, (Jan. 13, 2014, 9:46 a.m.).

The only evidence connecting petitioner to this case is faulty identifications by drunkards that was bolstered by inadmissible hearsay and opinion testimony that the witnesses identifications were reliable. But for this inadmissible evidence, no rational jury could have found petitioner guilty beyond a reasonable

doubt of committing this crime and petitioner is indeed actually innocent of the crime for which he was convicted.

Because petitioner presented clear and convincing evidence that he was not the shooter, that a witness has come forward and named her husband as the killer, and because none of the DNA evidence that was tested could be linked to petitioner, the Court Of Appeals erred in denying petitioner a COA based upon his claim of actual innocence.

### **CONCLUSION**

Petitioner respectfully request this Court grant Certiorari and remand to the Court of Appeals for further proceedings. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wilberto Arellano  
Wilberto Arellano  
Pro Se

Date: May 19, 2025