

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE ANTONIO GUERRERO YANEZ — PETITIONER
(Your Name)

vs.

MS. LORIE DAVIS, DIRECTOR; — RESPONDENT(S)
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS; AUSTIN, TEXAS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSE ANTONIO GUERRERO YANEZ
(Your Name)

8L39T; W.P. CLEMENTS UNIT; 9601 SPUR 591
(Address)

AMARILLO, TEXAS 79107-9606
(City, State, Zip Code)

N/A.
(Phone Number)

QUESTION(S) PRESENTED

QUESTION ONE. Did the Texas Court of Criminal Appeals err by ignoring the fact that exculpatory evidence was withheld by the prosecution, until after the trial was over, and resulted in an unfair trial, that violated Petitioner's constitutional rights, under the 5th and 14th Amendments of the U. S. Constitution, which guarantee due process, and equal protection of the law, for all defendants?

QUESTION TWO. Did the Texas Court of Criminal Appeals (TCCA) err by ignoring the fact that the prosecutors used racist remarks, and inflammatory accusations, against Petitioner, in order to create hatred in the minds of the jury, beginning with the prosecutor's opening statement and ending with the prosecutor's closing statement?

QUESTION THREE. Did the TCCA err by ignoring the fact that the alleged victim committed aggravated perjury by changing her accusations in the police report, and then several times on the witness stand?

QUESTION FOUR. Did the TCCA err by ignoring the fact that Petitioner's jury consisted of almost all white, Anglo-Saxon, Protestant, women, and in no way was it a collection of Petitioner's "peer group," as is guaranteed by the 6th Amendment of the U. S. Constitution? In fact, during the selection of Petitioner's jury, the prosecution eliminated Hispanics, especially men, from serving on the jury, resulting in a highly prejudicial group of WASPs! Petitioner was judged guilty by this group of WASPs, before the trial began!

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:

TABLE OF CONTENTS

OPINIONS BELOW	1.
JURISDICTION.....	2.
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3.
STATEMENT OF THE CASE	4-6.
REASONS FOR GRANTING THE WRIT	7-9.
CONCLUSION.....	9.

INDEX TO APPENDICES

APPENDIX A WHITE CARD DENIAL, BY THE TEXAS COURT OF CRIMINAL APPEALS, ON OCTOBER 04, 2017.

APPENDIX B AFFIDAVIT OF JOSE ANTONIO GUERRERO YANEZ STATING HIS ACTUAL INNOCENCE OF ALL COUNTS AND ALLEGATIONS AGAINST HIM.

APPENDIX C AFFIDAVIT IN SUPPORT OF PETITIONER'S MOTION TO PROCEED IN FORMA PAUPERIS

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

1. <i>Ida R. v. Portuondo</i> , 553 F.3d 230, 241 (And Co. 2009)	6, 7
2. <i>Morley v. Morley</i> , 294 U.S. 103, 112 (1935)	56, 7, 8
3. <i>Morley v. Morley</i> , 447 F.3d 735, 744 (9th Cir. 2006)	6, 7
4. <i>Napue v. Allerton</i> , 360 U.S. 264, 269 (1959)	56, 8
5. <i>Payne v. Hall</i> , 261 F.3d 10, 217-18 (And Co. 2001)	6
6. <i>Reed v. State of Iowa</i> , 37 F.3d 389 (8th Cir. 1994)	5, 8
7. <i>Richland v. Richland</i> , 460 U.S. 668, 687-88 (1954)	6
8. <i>U.S. v. Dunn</i> , 427 U.S. 97, 103 (1976)	5, 8
9. <i>Vega v. Johnson</i> , 149 F.3d 352 (5th Cir. 1998)	6
10. <i>Yarbrough v. Henry</i> , 540 U.S. 14 (2003)	6

STATUTES AND RULES

1. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.06	4
2. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.07	4
3. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.13	4
4. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.14	4
5. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.15	4
6. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.16	4
7. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.21	4
8. TEXAS CODE OF CRIMINAL PROCEDURE, ARTICLE 35.261	4, 7
9. RULE 10 OF THE SUPREME COURT'S RULES	7, 8

OTHER

1. U.S. CONSTITUTIONAL AMENDMENT FIVE - DUE PROCESS	11, 3, 8
2. U.S. CONSTITUTIONAL AMENDMENT SIX - FAIR TRIAL, FAIR JURY	11, 3, 8
3. U.S. CONSTITUTIONAL AMENDMENT FOURTEEN - DUE PROCESS, EQUAL PRO-	11, 3, 8
SECTION OF THE LAWS	

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 N/A; 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 N/A to the petition and is

- ☐ reported at N/A; 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 A 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 N/A court appears at Appendix N/A to the petition and is

- ☐ reported at N/A; 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/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 10/04/2017.
A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT FIVE. No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment, or indictment of a Grand jury, except in cases arising in land or naval forces, or in the militia, in actual service in time of war, or public danger; nor shall any person be subject for the same offense, to be twice put in jeopardy of life or limb; nor shall he compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT SIX. In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of Counsel for his defense.

AMENDMENT FOURTEEN. 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

After being charged, and indicted, on the offenses of aggravated sexual assault and indecency with a child by contact (3 counts), Mr. Yanez pled not guilty. At voir dire, Mr. Yanez faced a jury pool consisting of a heavily populated group of white, Anglo-Saxon, protestant residents of McLennan County, that did not fairly represent the demographic distribution of Hispanics in McLennan County. Mr. Yanez's attorney failed to invoke TCCP Article 35.06, which allows the defense to challenge the jury array prior to any trial proceedings. Mr. Yanez's attorney should have invoked TCCP Article 35.07, that challenges the jury panel array, alleging that the court officer summoned a jury panel with a view to securing a conviction favorable to the State. TCCP Article 35.13 allows the State and defense to challenge prospective jurors, either for cause, or peremptorily (no reason required) as per TCCP Article 35.14. TCCP Article 35.15, allows the State and defense 10 challenges, and TCCP Article 35.16 allows for the elimination of prospective jurors for several reasons including a person who has a bias, or prejudice against the defendant. The trial judge has the final authority to rule on the qualifications of each prospective juror, as per TCCP Article 35.21 and he approved the selection of the highly biased, anti-Hispanic jury. The judge also ignored TCCP Article 35.261, that prohibits challenges based on race. The Court should have dismissed the jury array and called for a new jury array. On 08/31/2012, Mr. Yanez was convicted by the anti-Hispanic jury on one count of aggravated sexual assault, and 2 counts of indecency with a child by contact. On 09/28/2012, Mr. Yanez's new counsel filed a motion for a new trial, based on the fact that the prosecution withheld material evidence favorable to Mr. Yanez. The motion was granted on 11/09/2012. Mr. Yanez was reindicted on new falsified charges of 7 counts of aggravated sexual assault, and 4 counts of indecency with a child by

contact. In fact, 4 counts of aggravated sexual assault were abandoned, during trial, as they were shown to be based on such outlandish allegations by the alleged victims, that not even the prosecution could defend them! After egregious prosecutorial misconduct, where once again, the prosecution used its peremptory challenges to eliminate Hispanics, especially men, from serving on the jury, and then resorted to inflammatory, racist, insults against Mr. Yanez's character, and his Hispanic background, the anti-Hispanic jury convicted Mr. Yanez on 3 counts of aggravated sexual assault and 4 counts of indecency with a child by contact. Many Circuit Courts, and the Supreme Court of the U.S. (the SCOTUS), have issued rulings that granted habeas relief to defendants who were subjected to such prosecutorial misconduct. See: Ben v. State of Iowa, 37 F.3d 389 (8th Cir. 1994); Mooney v. Holohan, 244 U.S. 103, 112 (1935); Napue v. Illinois, 360 U.S. 264, 269 (1959); and U.S. v. Agurs, 427 U.S. 97, 103 (1976).

Throughout Mr. Yanez's trials (two), the prosecution resorted to outlandish instances of aggravated perjury by the 2 alleged victims, the Child Protection Service employee, and the investigating officer, all who fabricated evidence and allegations against Mr. Yanez. There was not a scintilla of forensic, medical, anatomical, or scientific evidence that supported the ridiculous allegations made against Mr. Yanez. Many Circuit Courts, and the SCOTUS, have issued rulings that state that if a single act of perjury resulted in a conviction of the defendant, that conviction MUST BE SET ASIDE. In Mr. Yanez's case, there is ample reason to set aside ALL of his convictions, due to the

many egregious acts of aggravated perjury promulgated against Mr. Yanez by the prosecution. Mooney v. Holahan (supra); Wapne v. Illinois (supra); Morris v. Ylst, 447 F.3d 735, 744 (9th Cir. 2006); and Blake v. Portuondo, 553 F.3d 230, 241 (2nd Cir. 2009).

Mr. Yanez was wrongly convicted for the reasons given above but also because his trial attorneys: (1.) failed to impeach the overt perjurious testimonies of the State's witnesses and the alleged victims; (2.) failed to use medical experts to counter the lies of the State's paid for experts; (3.) failed to fully investigate the case; and, (4.) failed to object to the illegal seating of a majority of anti-Hispanic jurors. Many Circuit Courts, and the SCOTUS, have ruled that such failures fall well below an objective standard of reasonableness, and prejudice the defendant, resulting in an unreliable and fundamentally unfair outcome in the trial, constituting ineffective assistance of counsel. Strickland v. Washington, 460 U.S. 668, 687-88 (1954); Garbomugh v. Banty, 540 U.S. 1, 4 (2003); Vega v. Johnson, 149 F.3d 352 (5th Cir. 1998); and Pavel v. Hollis, 261 F.3d 212, 217-18 (2nd Cir. 2001). Mr. Yanez appealed his conviction on 03/26/2014 and the 7th Court of Appeals affirmed on 04/28/2016. On 06/29/2016, Mr. Yanez filed a timely PDR that was refused by the Court of Criminal Appeals (CCA). On 05/24/2017, Mr. Yanez filed 7 Applications for writs of habeas corpus in the CCA. On 10/04/2017, the CCA denied all 7 Applications. Now, on 12/26/2017, Mr. Yanez is filing a timely Petition For Writ of Certiorari in the SCOTUS, seeking relief from a manifest miscarriage of justice.

REASONS FOR GRANTING THE PETITION

REASON ONE. In denying Mr. Yanez's 7 Applications for writs of habeas corpus, the Texas Court of Criminal Appeals (TCCA), ignored the fact that Mr. Yanez was denied a fair and impartial trial due to the selective exclusion of Hispanics, especially Hispanic men, from serving on the jury, in violation of TCCP Article 35.261, which forbids the prosecution from using its peremptory challenges to eliminate prospective jurors based on race, and in violation of Mr. Yanez's constitutional rights under the 5th, 6th, and 14th Amendments of the U.S. Constitution. The TCCA's denial of Mr. Yanez's Applications conflicts with the rulings of many Circuit Courts, and the Supreme Court of the U.S. (the SCOTUS), and invokes Rule 10(C), of the Rules of the Supreme Court, as to call for an exercise of the supervisory power of the SCOTUS.

REASON TWO. In denying Mr. Yanez's 7 Applications for writs of habeas corpus, the TCCA ignored the fact that Mr. Yanez was denied a fair and impartial trial due to the use of witnesses, by the prosecution, who committed aggravated perjury in making unfounded, ridiculous, allegations against Mr. Yanez, that resulted in all of his wrongful convictions. Again, the TCCA's denial of Mr. Yanez's 7 Applications, conflicts with the rulings of many Circuit Courts of Appeal, and the SCOTUS, and invokes Rule 10(C), of the Rules of the SCOTUS, as to call for an exercise of the supervisory power of the SCOTUS. Mooney v. Holohan (supra); Napue v. Illinois (supra); Morris v. Galt (supra); and Drake v. Portwood (supra).

REASON THREE. In denying Mr. Yanez's 7 Applications for writs of habeas corpus, the TCCA ignored the fact that Mr. Yanez was denied a fair and impartial trial, due to the egregious prosecutorial misconduct, of both assistant D.A.s, who, throughout Mr. Yanez's trial, used racist, anti-His-

poor remarks, and inflammatory, degrading comments, against Mr. Yanez's character and Hispanic background. Many Circuit Courts of Appeal and the SCOTUS, have issued habeas relief to defendants' behalf who was subjected to such prosecutorial misconduct. Beckham v. State of Iowa (supra); Mooney v. Holohan (supra); Napue v. Illinois (supra); and U.S. v. Gears (supra).

REASON FOUR. In denying all 7 Applications for writs of habeas corpus of Mr. Yanez, the T.C.A. ignored the fact that Mr. Yanez was denied a fair and impartial trial due to the fact that the prosecution, knowingly, and willingly, withheld exculpatory evidence, from the defense, until the first trial was over. When a new trial was ordered, the prosecution reluctantly provided some of that evidence, but withheld evidence that could have exonerated Mr. Yanez, i.e. the statements made by the alleged victims, who named their biological father as the abuser, and denied Mr. Yanez was guilty of abusing them. The prosecution's unethical, illegal actions violated Mr. Yanez's constitutional rights under the 5th, 6th and 14th Amendments of the U.S. Constitution, and should have resulted in a mistrial. The denial by the T.C.A. conflicts with rulings of many Circuit Courts of Appeal, and the SCOTUS who granted habeas relief to defendants who were subjected to such unethical, illegal actions by the prosecution. Beckham v. State of Iowa (supra); Mooney v. Holohan (supra); Napue v. Illinois (supra); and U.S. v. Gears. T.C.A.'s denial of Mr. Yanez's 7 Applications for writs of habeas corpus invokes RULE 10 of the Rules of the

Supreme Court of the United States.

REASON FIVE. The JCCA ignored the fact that there was NO physical, forensic, scientific, or anatomical evidence to support the outrageous allegations made by the 2 alleged victims.

REASON SIX. Mr. Yanez has NEVER been charged, or implicated, in ANY crime, and has always been a hardworking, successful, tax-paying citizen, with a splendid reputation. His wrongful convictions are an egregious, manifest miscarriage of justice, and the SCOTUS MUST SET ASIDE ALL of Mr. Yanez's convictions, based on the long-standing precedents established by the Supreme Court of the United States.

CONCLUSION

The petition for a writ of certiorari should be granted, and the judgment of the JCCA vacated with a ruling that ALL convictions MUST BE SET ASIDE.

Respectfully submitted,

X Jesse A. Guerrero Yanez

Date: 12 / 26 / 2017