

No. _____

25-7164 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAR 17 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DANNY WAYNE ALCOSER — PETITIONER
(Your Name)

vs.

ERIC GUERRERO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

WESTERN DISTRICT OF TEXAS, WACO DIVISION
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Danny Wayne Alcoser
(Your Name)

12071 F.M. 3522
(Address)

Abilene, Texas 79601
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Question # 1

DOES THE FEDERAL COURT POSSESS THE AUTHORITY TO CIRCUMVENT A 14th AMENDMENT RIGHT OF DUE PROCESS BY IGNORING THE STATE'S DEPRIVITY AND SUSPENSION OF A TEXAS CONSTITUTIONAL RIGHT WHEN THE STATE SUSPENDED OR ABRIDGED PETITIONER'S WRIT OF RIGHT TO STATE HABEAS CORPUS IN ORDER FOR THE STATE TO CONTINUE PETITIONER'S UNLAWFUL CONVICTION AND INCARCERATION?

Question # 2

DOES THE FIFTH CIRCUIT COURT OF APPEAL HAVE THE AUTHORITY TO IGNORE ITS OWN CASE PRECEDENT WITHOUT ISSUING A NEW ONE TO DEPRIVE PETITIONER EQUAL PROTECTION UNDER HIS CIRCUMSTANCES INDISTIGUISHABLE FROM THOSE IT OPINIONED AND DETERMINED IN *Perrillo v. Johnson*, 79 F.3d 441 (5th Cir. 1996)?

Question # 3

DOES THE INVITED ERROR DOCTRINE ALLOW AN ALLEGED FAMILIAL RELATIONSHIP -- COMMON LAW MARRIAGE OR RELATIONSHIP BETWEEN A CHILD AND MAN -- TO BECOME LEGAL OR VALID DESPITE TEXAS STATUTES AND CASELAW THAT PROHIBIT SUCH AN EXISTANCE AS A MATTER OF LAW?

LIST OF PARTIES

- [X] 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:

Petitioner: Danny Wayne Alcoser, 12071 F.M. 3522, Abilene,
(Pro Se) Texas 79601.

Respondent: Eric Guerrero, TDC Director, P.O. Box 99,
Huntsville, Texas 77342.

Respondent's Counsel: Marta McLaughlin, Office of the Attorney
General, Criminal Appeal Division,
P.O. Box 12548, Capitol Station,
Austin, Texas 78711-2548

RELATED CASES

- Cause No. 2016-1261-C1 -- Convicting Court
- Cause No. 2016-1261-C1B -- Habeas Court
- Case No. 6:24-CV-00621-ADA -- Federal District Court
- Case No. 25-50523 -- Fifth Circuit Court of Appeals

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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 B 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 United States district court 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.

☐ 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 January 7, 2026.

☐ 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: February 12, 2026, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Fourteenth Amendment to the United States Constitution:

Sec.1 [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States 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 a 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.

Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fine imposed, nor cruel and unusual punishment inflicted.

Texas Constitution Article I, Sec. 12:

The writ of Habeas Corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Texas Penal Code § 22.01:

- (a) A person commits an offense if the person:
 - (1) intentionally, knowingly, or recklessly causes bodily injury to another , including the person's spouse;
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:
 - (2) a person whose relationship to or association with the defendant is described by section 71.0021(b), 71.003, or 71.005, Family Code, if:
 - (A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense that was committed:
 - (i) against a person whose relationship to or

association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(ii) under:

(a) this Chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11.

Texas Family Code § 6.202:

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or termination by the death of the other spouse.

Texas Family Code § 71.003:

Family includes individuals related by consanguinity or affinity, as determined under Section 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regards to marriage, and a foster child and foster parent, without regards to whether those individuals reside together.

Texas Family Code § 71.005:

"Household" means a unit composed of persons living together in the same dwelling, without regards to whether they are related to each other.

Texas Family Code § 160.201:

(b) The father-child relationship is established between a man and a child by:

- (1) an un rebutted presumption of the man's paternity of the child under Section 160.204 (married to child's mother);
- (2) an effective acknowledgment of paternity by the man under Subchapter D, unless the Acknowledgment has been rescinded or successfully challenged;
- (3) an adjudication of the man's paternity;

- (4) the adoption of the child by the man; or
- (5) the man;s consenting to assisted reproduction by his wife under Subchapter H, which resulted in the birth of the child.

Texas Code of Criminal Procedure Artilce 11.07:

Sec. 3.

(a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) An application for writ of habeas corpus filed after final conviction in a felony case, other than a case in which the death penalty is imposed, must be filed with the clerk of the court in which the conviction being challanged was obtained, and the clerk shall assign the application to that court. When the application is received by that court, a wirt of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk of that court shall make appropriate notation thereof, assign the case a file number (ancillary to that of the conviction being challanged), and forward a copy of the application by certified mail, return receipt requested, by electronic mail, or by presonal service to the attorney representing the state in that court, who shall answer the application not later than the 30th day after the date of the copy of the application is recieved. Matters alleged in the application not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. Confinement means confinement for any offense or any

collateral consequence resulting from the conviction that is the basis of the instant habeas corpus. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the application, any answer filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

Federal Habeas Corpus Procedure 28 USCS § 2254:

(a) The Supreme Court, Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the court of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the court of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the questions presented.

(d) An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of the State court shall not be granted with respect to any claim that was adjudicated on the merits in the State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an applicant for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of their record, then the State shall produce part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official record of the State, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

STATEMENT OF THE CASE

On January 4, 2018, Petitioner, an innocent man, Alcoser hereinafter, was charged, adjudicated of, and sentenced for assaulting a "family" or "household" member, as to Count I. Texas Penal Code (TPC) § 22.01 (a)(1), (b)(2)(A). All other counts were later reversed and subsequently dismissed by the trial court.

Following his conviction Alcoser appealed. During direct appeal he directed appellate counsel to attack trial counsel's performance for failing to challenge the State's conviction on its charged elements of "family" and "household" relationships because he is neither under 71.003 (family) or 71.005 (household) of the Texas Family Code (TFC) according to TFC §§ 6.202 (a) and 160.201 (b). As agreed appellate counsel filed an amended motion for new trial (AMNT) raising those matters. However, that motion had somehow been lost and omitted from the trial court clerk's record and the appellate court clerk's record on direct appeal.

Due to counsel's reluctance to remedy the depravity of that procedural error Alcoser motioned the appellate court to abate the appeal so counsel could be withdrawn and replaced. Alcoser claimed counsel to have been ineffective during the 30 day critical stage following the imposition or suspension of his sentence, what is known in Texas as a Cooks violation, See Cooks v. State, 240 S.W.3d 906, 911 (Tex.Crim.App.2007). Counsel was relieved of his duties.

Upon reinstatement of his appeal, within its opinion, the Seventh Court of Appeals declared that Alcoser's claims of ineffective assistance counsel (IAC) claims should be raised by 11.07 state habeas application. It asserted that the record

should be developed by way of 11.07 because the record, as it stood, did not support the alleged IAC claims. See Alcoser v. State, 2022 Tex. App. LEXIS 5722, *10 (Tex.App.-Amarillo 2022).

After exhausting all direct appeal procedures Alcoser filed his 11.07 state habeas application, trial cause no. 2016-1261-C1B; Texas Court of Criminal Appeals (TCCA) case no. WR-90,777-06. In that application Alcoser declared his innocence, claiming the State relied on false testimony to secure his conviction while further declaring trial and appellate counsels to have been ineffective for failing to gain a firm command of the facts, evidence, and governing laws relevant to his case, and for not bringing those facts and exculpatory evidence to the courts attention. He asserted had counsel done such he would not be in prison for assaulting a "family" or "household" member. Thus, justice would demand his immediate release.

When the District Clerk of McLennan County received the 11.07 application it forwarded it to the District Attorney (D.A.) and the 19th Judicial District Court in which Alcoser was convicted. Both officials -- the D.A. and Trial Judge -- were successors to their positions by the time Alcoser had filed his application.

When the D.A. received the application he chose not to answer, causing Alcoser's claims to be deemed denied by default and controverted.

After the trial court's receipt of the application it chose not to act as well. Its choice not to execute an Order Designating Issues (ODI), or make any Findings of Fact and Conclusions of Law (FFCL) caused Alcoser's controverted issue to remain unresolved. Additionally, it denied Alcoser's request for an evidentiary

hearing.

Upon the expiration of the D.A.'s and Court's time to respond the district clerk forwarded Alcoser's application to the Texas Highest Court for Criminal Appeals. That court, without rhyme or reason, denied Alcoser's application without written order.

Due to the deprivation of adequate state habeas process Alcoser file his 2254 federal habeas application, case no. 6:24-CV-00621. In that application, although he shorthanded the title of his grounds, Alcoser raised in his arguments the same substance alleged in his state application. In short, that the state could not support its alleged elements of "family" or "household" used to elevate his misdemeanor offense to that of a felony. He also alleged had counsels been effective in alerting the courts of the facts, his exculpatory evidence, and the laws governing his offense justice would demand his immediate release from prison.

In an order executed by the Federal District Court (FDC) the judge of said court took recognition of Alcoser's claims that he was not a "family" or "household" member. And, it declared Alcoser provided evidence to refute those elements. See exhibit A, p. 15. The FDC, however, declared the TCCA's ruling -- denial without written order -- had been a ruling on the merits and therefore caused Alcoser's claims thereof to be procedurally barred. See Appendixed exhibit A (FDC's Order). The FDC also denied Alcoser's request for discovery and inclusion of the TCCA's Writ Staff Attorney Memorandum Analysis (WSAMA) to be included into the federal habeas record after Alcoser asserted that document to be the only thing in existence containing any written dicta from

said counsels who assemble those documents for the judges viewing after initially viewing and addressing every claims raised by Alcoser in his 11.07 state habeas application. Alcoser asserted his entitlement to that record and pronounced its existence in Ex parte Dawson, 509 S.W.3d 294, 295 (Tex.Crim.App. 2016). Additionally, the FDC also denied Alcoser's request for an evidentiary hearing even though he proved his entitlement to that hearing under the Fifth Circuit's precedent in Perillo v. Johnson, 79 F.3d 441 (5th Cir. 1996).

To remedy the FDC's erroneous and egregious rulings Alcoser motion the Fifth Circuit Court of Appeals for a certificate of appealability. In his pleading he reiterated the facts regarding his claim of innocence of the State's charged offense and raised issues of the FDC's abuse of discretion for failing to follow case precedent of the higher court, the Fifth Circuit Court of Appeal, in Perillo v. Johnson, 79 F.3d 441 (5th Cir. 1996). The Fifth Circuit declared that Alcoser failed to meet the burden of proof to satisfy the standard requisites for federal habeas relief. Therefore, it further decided because of that failure it would not address Alcoser's claims of the FDC's abuse of discretion for not permitting discovery and an evidentiary hearing that he claimed necessary to meet his burden. See appendix exhibit B (Fifth Circuit Court of Appeals Opinion/Order entered December 17, 2025), reh'g denied in Alcoser v. Guerrero, 2026 U.S. App. LEXIS 4354 (5th Cir.- Feb. 12, 2026). See appendix C (5th Cir. Ct. Order)

Alcoser now respectfully seeks certiorari relief from this Honorable Court.

REASONS FOR GRANTING THE PETITION

This Court believes that the "guilt shall not escape or innocence suffer." Berger v. United States, 295 U.S. 78, 88 (1935). Our Fourteenth Amendment to the United State Constitution guarantees its citizens the right to due process, as does Texas Constitution, Article 1, Section 12, which provides Texans a full, fair, and adequate habeas corpus process as a "writ of right" that "shall never be suspended." This right is to be "speedy and effectual." Id.

As stated above and recognized by the FDC, Alcoser complained about the State's unlawful application of the "family" and "household" elements, and the evidence presented by Alcoser refuting such elements. See Appendix A, page 15. However, when Alcoser filed his state habeas application he received no due process. Instead, the district attorney and conviction court's choice not to act on Alcoser's application leaving his claims made therein controverted and unresolved, which by comparison to the TCCA's judgement in Ex Carnes, 579 S.W.2d 249 (Tex.Crim.App.1979) those actions not only deprived the applicant of due process but is considered an abuse by the court. Unfortunately, the TCCA failed to recognize this when it denied Alcoser's state habeas application without written order. See below ex parte Carnes and the new presiding judge of the TCCA opinions in Cobb and Wood.

Ex parte Carnes, 579 S.W.2d 249 (Tex.Crim.App.1979)

Because the State made no reply, admitted none of the matters which were alleged, they are deemed denied. CCP 11.07 § 2 (b) [now 11.07 § 3 (b)]. Thus, they are controverted. The trial court took no action for more than 20 days, which constitutes a finding that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement.

CCP 11.07 § 2 (c) [now 11.07 § 3 (c)]. This finding is obviously an abuse of discretion because all the controverted allegations of facts mentioned ... are material and there is nothing in the record (neither a statement of facts from an evidentiary hearing nor any findings of fact) to show that they have been resolved." Id.

Ex parte Cobb, 710 S.W.3d 747, 749 (Tex.Crim.App. 2025)

I recognize we have not made a habit of applying our own Constitution to examine questions of entitlement of habeas relief in our courts. Id.

Ex parte Wood, 2025 Tex. Crim. App. LEXIS 490, *7-8 (Tex.Crim.-App. 2025)

The Texas Constitution spells out ... "effectual" habeas as a "writ of right" free from "suspension." Tex. Const. Art. 1 § 12. [It also] prohibits cruel and unusual punishment and guarantees its citizens access to its courts for a remedy for "injury done to [his person]" and freedom from deprivation of life, [liberty, or property] without due course of law. Tex. Const. Art. 1 § 13. Meanwhile, the federal Constitution, unlike our own, refers to habeas corpus as a mere "privilege" subject to potential suspension. U.S. Const. Art. I § 9. Id.

At the federal level Alcoser filed his 2254 habeas application in the federal district of the county of which he was convicted. Beacuse the local D.A. and the trial court took no action on his state habeas applcation claims -- that the state relied on fasle testimony to secure his conviction without any evidence and that defense and appellate counsels were ineffective -- Alcoser repeated those claims in his federal application. And, due to the State's denial of his request for an evidentiary hearing he motioned for discovery -- inclusion of the TCCA's WSAMA into the federal habeas record. He also motioned for an evidentiary hearing to develop a record he was prevented from creating at the state level. There, Alcoser relied on the Fifth Circuit Court of Appeals holdings in Perillo v. Johnson, 79 F.3d 441, 444 (5th Cir. 1996).

When there is a factual dispute, that, if resolved in petitioner's favor, would entitle [him] to relief and the state has not afforded the petitioner a full and fair evidentiary hearing, a federal habeas corpus petitioner is entitled to discovery and an evidentiary hearing. Id.

Not only did the State court deny Alcoser his request for an evidentiary hearing, the FDC took notice of Alcoser's evidence refuting the State's charged elements of "family" and "household," see appendix A, p.15, however, despite that evidence the FDC asserted the claim raised by Alcoser was barred. Based on what? Nobody truly knows! The FDC refused to give Alcoser an evidentiary hearing that he was warranted. And, it prohibited discovery and an evidentiary against its own holding in Perillo, that is:

Because [Alcoser's] judge in the State habeas corpus proceeding was not the trial judge, he could not [depend on] his own first hand knowledge of the trial. []. Therefore,... the State habeas corpus proceeding are not entitled to the 2254(d) presumption of correctness. Perillo, 79 F.3d @ 447.

Unfortunate as Alcoser has been, he was forced into seeking a certificate of appealability in the 5th Circuit Court of Appeals. Disappointingly, that court supported the decision of those of the same cloth. See appendix B.

Below are the facts, evidence, and caselaw to show Alcoser is unlawfully charged and illegally confined in a Texas Prison:

Fact:

1. The State indicted Alcoser, in Count I, for assault against a "family" or "household" member. See Appendix D (indictment).
2. The state declared Complainant (Ursula) and Alcoser to be

common-law married. See appendix E (partial transcripts).¹

3. Ursula declared Alcoser as her child's father. See appendix F (partial transcripts).

4. Ursula and Officer Tucker established under oath Alcoser was not living in the home when the incident occurred. See appendix G (partial transcript).

Evidence:

5. Alcoser provided the state and federal courts with a copy of his marriage and divorce certificates showing him legally married to a woman other than Ursula from 2004-2021, including 2016-2018 when he associated with Ursula. See appendix H (certificates).

6. Alcoser provided a copy of the Child's birth record to show he and Ursula were given an opportunity to complete an acknowledgment of paternity but chose not to complete one. See appendix I (Survey on Acknowledgment of Paternity).

Caselaw:

7. Sanchez v. State, 460 S.W.3d 675, 684 (Tex.App.-Eastland 2015)

Even though it could have applied other available elemental relationship, such as a dating relationship under 71.021(b), Texas Family Code, "the State did not alleged [that] relationship in the indictment." Id. "Under Jackson v. Virginia, 443 U.S. 307 (1979), the State must prove the statutory element that it has chose to allege, not some other alternative statutory element that it did not allege." Sanchez, @ 684.

8. Villegas v. Griffin Indus., 975 S.W.2d 745, 750 (Tex.App.-Corpus Christi 1998)

"A marriage contracted while one party is married to another person is void ab initio as a matter of law." See 6.202 on p. 4 above.

1. Complete record in 5th Cir. Ct. of appeal, case no. 25-50523.

9. In the Interest of Baby Boy R., 191 S.W.3d 916, 923-24 (Tex.-App.-Dallas 2006)

"Although [the man] admitted he is the child's biological father, he did not file an acknowledgment of paternity ... to establish a man's paternity. Additionally, he has not been adjudicated the child's father, has not adopted the child, and nothing in the record indicates the child was born as a result of [man] consenting to assisted reproduction. Accordingly, no parent-child relationship as defined by the family code exist between [the man] and the child." Id. See 160.201 at p.4 above.

10. Haynes v. State, 254 S.W.3d 466, 470 (Tex.App.-Houston [1st Dist.] 2007), aff'd 273 S.W.3d 183 (Tex.Crim.App. 2008)

The State must prove as an element of the offense of felony assault on a household member that the defendant and complainant were living together in the same dwelling when the offense was committed." Id. See 71.005 at p. 4 above.

Alcoser raised the exact same facts in his State habeas corpus application, see 5th Circuit Court's Record on Appeal (ROA) at pages 4210 through 4271 (ROA: 4210-4271); and compare with Federal habeas corpus application file in the FDC, at ROA: 9-97. It was nothing new, and had been argued from the outset, however, the State nor Federal courts in Texas, including the 5th Circuit court of appeals in Louisiana, cares one bit if Alcoser is unlawfully incarcerated or illegally confined.

Does the Supreme Court of the United States care if its citizens are denied due process guaranteed by the constitution? Does it condone the actions of Texas? Does it believe Texas can ignore its own constitution and its citizen his writ of right just so Alcoser can remain incarcerated? Will someone take the time to care about the unjust casted upon Alcoser? Alcoser may not be the perfect man, and has had some trial and tribulations on life's journey. Nonetheless, he is innocent of the State's charge for

assault against a "family" or "household" member as described under Texas Family Codes 71.003 & 71.005, which the State selected for alternatives within the Texas Penal Code 22.01. Minus those elements Alcoser's charge is nothing greater than a Class A misdemeanor under Texas Penal Code § 22.01(a). See statute 22.01 (b) on p. 3 above. Thus, Alcoser is entitled to immediate release from his unlawful conviction and illegal confinement.

WHEREFORE, Alcoser prays that someone will consider the facts above and agree he is being illegally confined by an unlawful conviction secured by the State despite otherwise the illegality thereof.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny Wayne Alcoser

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