No. 26-5079

FILED
DEC 16 2025
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ERNESTO GUTIERREZ — PETITIONER
(Your Name)

vs.

ERIC GUERRERO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ERNESTO GUTIERREZ TDCJ ID # 328377
(Your Name)

William P.Clements 9601 Spur 591
(Address)

Amarillo,Texas 79107
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

QUESTIONS OF FIRST IMPRESSION

1) When the legislature makes one exclusion to a statute, are Courts authorized to add a second exclusion?

2) Are life-sentenced inmates, in Texas, eligible for Mandatory Supervision release?

LIST OF PARTIES

[x] All parties appear in the caption of this 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 judgement is the subject of this petition is as follows:

Eric Guerrero

TDCJ Executive Director

P.O.Box 99

Huntsville,Texas 77342

RELATED CASES

STATE CASES

Ex Parte Chamberlain,586 S.W.2d 547 (Tex.Crim.App.1979)
Ex Parte Franks,71 S.W.3d 327 (Tex.Crim.App.2001)
Mitchell V.State,762 S.W.2d 916 (Tex.App.-San Antonio 1988)
Smallwood V.State,827 S.W.2d 34 (Tex.App.-Houston [1st Dist] 1992)
Rau V.State,2017 Tex.App.LEXIS 3040 (Crt.Crim.App.2nd Dist.Ft.Worth)

U.S.DISTRICT COURT CASES

Fee V.Johnson,CA # G-01-084 (Galv.2001)
Govan V.Johnson,1998 U.S.Dist.Lexis 24272 (N.Dist.Abilene)
Malchi V.Thaler,211 F3d 953 (5th Cir.2000)
Rummel V.Estelle,587 F2d 651 (5th Cir.1979) Footnote 8

FIFTH CIR.APP.COURT CASES

Arnold V.Cockrell,306 F3d 277 (5th Cir.2002)

U.S.SUPREME COURT CASES

Bd of Educ.V.Rowley,458 U.S.176 (1982) Footnote 11
Flemming V.Florida Citrus Exch.358 U.S.153 (1958)
Jam V.United States,340 U.S.593 (1951)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATE CASES:

Ex Parte Chamberlain,586 S.W.2d 547 (Tex.Crim.App.1979).....8
Ex Parte Franks,71 S.W.3d 327 (Tex.Crim.App.2001).....4,5,6,7,9,10
Mitchell V.State,762 S.W.2d 916(Tex.App.-San Antonio,1988).....,8,9
Smallwood V.State,827 S.W.2d 34(Tex.App.-Houston[1st Dist]1992).....9,10
Rau V.State,2017 Tex App LEXIS 3040(Ct.Crim.App.2nd Dist.Ft Worth).....9

U.S.DISTRICT COURT CASES

Fee V.Johnson,CA# G-01-084 (Galv.2001).....7,8
Govan V.Johnson,1998 U.S.Dist.LEXIS 24272 (N.Dist.Abilene).....8
Malchi V.Thaler,211 F3d 953 (5th Cir.2000).....4,5,6,7,11
Rummel V.Estelle,587 F2d 651 (5th Cir.1979)Footnote 8.....9

FIFTH CIR.APP.COURT CASES

Arnold V.Cockrell,306 F3d 277 (5th Cir.2002).....10

U.S.SUPREME COURT CASES

Bd of Educ.V.Rowley,458 U.S.176 (1982) Footnote 11.....4
Flemming V.Florida Citrus Exch.358 U.S.153 (1958).....4
Jam V.United States,340 U.S.593 (1951).....4,7

STATUTES AND RULES

STATE STATUTES

Texas Senate Bill 152.....4,5

FEDERAL STATUTES

Title 28 U.S.C.A. Section 2254 (d)(1)(2).....7

TABLE OF CONTENTS

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 5

CONCLUSION 12

INDEX TO APPENDICES

APPENDIX A Application for Certificate of Appealability

APPENDIX B U.S.Dist.Court Opinion and Order

APPENDIX C On Petition for Rehearing En Banc

APPENDIX D

APPENDIX E

APPENDIX F

TIME FOR FILING:

Pursuant to this Courts rules Petitioner has 90 days to file a Writ of Certiorari. The 90 day time begins from "the date of the entry of the final judgement in the United States court of appeals or highest state court or 90 days from the denial of a timely filed petition for rehearing."

In the instant case the denial of a timely filed petition for rehearing was October 20, 2025. (Appendix C) Petitioner's time for filing started on October 20, 2025 and ends 90 days later or on January 17, 2026. Petitioner is filing this Writ on December 15, 2025 well within the 90 day period.

Respectfully,

Ernesto Gutierrez

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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 A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[V] is unpublished.

The opinion of the United States district court 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.

[ ] 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 August 07, 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: October 20, 2025, 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

TEXAS SENATE BILL 152, Section 15(b) & (c);

28 USCA 2254, (d)(1)(2).

STATEMENT OF THE CASE

The gist of Petitioner's claim is that a State Court,Ex Parte Franks,71 S.W.3d 327 (Tex.Crim.App.2001) erred by adding a second exclusion to Senate Bill 152 (Mandatory Supervision Laws) despite the fact that the legislature only made one exclusion.The legislature only excluded "persons under sentence of death" from the statute. (Exhibit "A") The Franks Court added Life sentences as a second exclusion.This Court prohibits adding exclusions to a statute. Jam V.United States,340 U.S. 593,596 (1951)

The Franks Court ruled that "that life-sentenced inmates were ineligible" for mandatory supervision release.Id at 327.The Court arrived at this conclusion on its false belief that life sentences have no numerical value which makes it mathematically impossible to determine a release date on a life sentence.Franks at 328 Petitioner will provide numerous "Jurists of reason" who affirm that life sentences have a numerical value of 60 years which makes it mathematically possible to determine a release date on a life sentence.

A release date can be determined on Petitioner's life sentence by combining Petitioner's calendar time served with his accrued good conduct time credits pursuant to the formula created by the legislature in S.B.152 section 15 (c). (Exhibit "A") When this combination equates to 60 years Petitioner is entitled to mandatory release.Petitioner's prison time sheet indicates he has accumulated 96 years,02 months and 15 days of time credits. (Exhibit "H") This accumulated time exceeds the 60 years required for Petitioner to be released to mandatory supervision.

Pursuant to Malchi V.Thaler,211 F3d 953,957 (5th Cir.2000) the mandatory supervision law created a protected liberty interest right to mandatory supervision.Since the legislature did not exclude life sentences from the statute,Petitioner,who is serving a life sentence,is not excluded from

mandatory supervision release and has a Constitutionally protected liberty interest right to be released to mandatory supervision.

By excluding life sentences from the statute, the Franks Court made two errors; it violated this Courts precedent which prohibits adding exclusions to a statute and it deprived applicant of his liberty interest right to be released to mandatory supervision.

REASONS FOR GRANTING THE PETITION

Petitioner is being deprived of his liberty interest right to be released to Mandatory Supervision on his life sentence.

On September 1,1997 the Texas legislature enacted the Mandatory Supervision Laws .(S.B.152) Pursuant to Malchi V.Thaler,211 F3d 953,957 (5th Cir.2000) the law created a protected liberty interest right.

The Court ruled that:

> We now conclude that pursuant to the Supreme Court's decision in Wolff, there is a Constitutional expectancy of early release created by Texas Mandatory Supervision scheme in place prior to September 1,1996 for earned good time credits.(Emphasis added)

The legislature made only one exclusion to the statute,it only excluded "persons under sentence of death." (Exhibit "A")Since the legislature only excluded death sentences from the statute,the statute's protected liberty interest right applies to all inmates not under sentence of death and said inmates are eligible for Mandatory Supervision release.Thus,Petitioner,who is serving a life sentence and is not under sentence of death is eligible for Mandatory Supervision release.And,the statute's protected liberty interest rights apply to Petitioner's life sentence.

In 2001 the issue of whether life sentenced inmates were eligible for Mandatory Supervision release was addressed in the case of Ex parte Franks,71 S.W.3d 327 (Tex.Crim.App.2001).The Court ruled that life-sentenced inmates were ineligible for such release.Franks at 327

The Court's opinion was based on its belief that life sentences had no numerical value and thus,it was mathematically impossible to determine a release date on a life sentence.Petitioner will show three reasons why the Franks decision is unconstitutional.

First: The legislature created only one exclusion to the Mandatory Supervision statute; "persons under sentence of death."(Exhibit "A") Even though the legislature only excluded death sentences from the statute, the Franks Court still added a second exclusion to the statute; it added life sentences as a second exclusion. The addition of a second exclusion to a statute is a blatant violation of this Court's precedent which prohibits Courts from adding exclusions to a statute and from subtracting exclusions from a statute.

In Jam V. United States, 340 U.S.593,596 (1951) This Court addressed an issue of statutory construction. This Court ruled that:

> ...our problem is to construe what Congress has written. After all, Congress expresses its purpose by words. It is for us to ascertain neither to add nor subtract, neither to delete nor to distort.(Emphasis added)

In Flemming V.Florida Citrus Exch. 358 U.S.153,166 (1958)and in Bd.of Educ. V.Rowley, 459 U.S.176 Footnote 11 (1982) This Court rendered similar rulings and cited the Jam case.

Pursuant to this Court's rulings, it is prohibited for Courts to add exclusions to a statute or to subtract exclusions from a statute. Yet, dispite this Court's rulings the Franks Court still added life sentences as a second exclusion to the Mandatory supervision laws. The addition of life sentences as a second exclusion to the statute violated this Court's precedent.

The Mandatory Supervision Law was created as an avenue to release inmates to Mandatory Supervision. The law created a protected liberty interest right to Mandatory Supervision release. Malchi, supra at 957 Since the legislature only excluded "persons under sentence of death" from being released to Mandatory Supervision, all inmates not under sentence of death are eligible to be released to Mandatory Supervision and have a protected liberty interest right to such release. Consequently, Petitioner, who is serving a life sentence but is not under sentence of death, is eligible for Mandatory Supervision release and has

a protected liberty interest in such release.

When the Franks Court added life sentences as a second exclusion to the statute it did not only violate this Court's precedent,it also deprived Petitioner of his liberty interest right to be released to Mandatory Supervision.Petitioner should not have been denied such release on the grounds that he is serving a life sentence.

Pursuant to Title 28 U.S.C.S. section 2254 a Petitioner can obtain release in a habeas corpus in Federal Court if the Petitioner overcomes subsection (d)(1)or(2).Petitioner can overcome subsection (d)(1).This section requires proof that the State Court's decision:

> 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. (d)(1)

In the instant case the Franks decision to add life sentences as a second exclusion to the statute was contrary to this Court's established law prohibiting Courts from adding exclusions to a statute. Jam supra at 596. Consequently,Petitioner has met the above prong which entitles him to relief. Second: The Franks Court determined that a life sentence has no numerical value which makes it impossible to determine a release date on life sentences. Franks at 328 On this bases it ruled that life sentences were ineligible for Mandatory Supervision release. However,this ruling is refuted by numerous "Jurist of Reason" who affirm that life sentences are eligible for Mandatory Supervision release and that life sentences have a numerical value of sixty years.This ruling is especially refuted by Magistrate Judge Froechner,and by Justices Kent and Cummings.

In Fee V.Johnson,CA.# G-01-084 (Galv.2001) Magistrate Froechner recommendation ruled that:

> This Court agrees with Petitioner that his life sentence

> is for purposes of calculating release eligiblity,a sentence of sixty years.The Court also agreed that Petitioner was eligible for Mandatory Supervision release when he was sentenced in 1980,and under Article 42.12,§ 15(c) of The Texas Code of Criminal Procedure (vernon 1977),he is entitled to be released to Mandatory Supervision when his calendar time plus accrued good time equals the maximum term to which he was sentenced;which as already stated,is sixty years (Exhibit "B" pg.2,para.2)(Emphasis added)

Chief Justice Kent agreed with Magistrate Judge Froechner stating:

> This Court has reviewed the Exhibits and is troubled, as was the Magistrate,by what seems to be the incorrect conclusions ofTDCJ officials that certain prisoners are not eligible for release on mandatory supervision when it appears that the statute in effect at the time of their offenses permitted such release (Exhibit "C", pg.1)

In Govan V. Johnson,1998 U.S.Dist Lexis 24272 (N.Dist.Abilene Division) Justice Cummins ruled that "Govan's petition seeking a finding that he is eligible for Mandatory Supervision on both the life sentence and the 99-year sentence is granted. (Exhibit "D",pg.4)

These Justices leave no place for debate,they affirm that life sentences have a numerical value of sixty years and affirm that life-sentenced inmates are eligible for Mandatory Supervision Release.These Justices refute the Franks ruling that life sentences have no numerical value and that life-sentenced inmates are eligible for Mandatory Supervision release.But beside these Justices,there are other "jurists of reason" who concur with the opinion of these Justices.

STATE CASELAW

(1) Ex parte Chamberlain,586 S.W. 2d 547,548 (Tex.Crim.App.1979) Imprisonment for sixty years rather than life is a distinction without a difference insofar as parole eligibility is concerned.

(2) Mitchell V. State,762 S.W. 2d 916,925 (Tex.App.- San Antonio 1988) Justice Cantu implied that life sentences had a numerical value of sixty years.

In Mitchell the Court sentenced Mitchell to sixty years for Aggravated Sexual Assault.said offense carried a "Maximum Term" of life.Tex.Penal Code Ann. Sec.22.01 (a)(5)(Vernon's Supp.1986)(Emphasis added)

Even though Mitchell was sentenced to sixty years,Justice Cantu held,"such a term [60 years] for all practical purposes is equivalent to the 'maximum term' [Life] assessible under the statute." Justice Cantu clearly equated life to sixty years,Justice Chapa concurred.

(3) Smallwood V. State,827 S.W. 2d 34,39 (Tex.App.- Houston[1st Dist.]1992) Judge O'Connor stated "In Texas,60 years is the life sentence,the maximum the State can incarcerate a person."

(4) In the Framks dissent,Justice Johnson held "I believe that the sixty year maximum created by the Texas Code of Criminal Procedure Art.42.12 sec 15(b) [parole statute] was intended to apply to Mandatory Supervision as well." Franks supra at 331

(5) Rau V. State,2017 Tex.App.LEXIS 3040 at 62 (Crt.Crim.App.2nd Dist. Fort Worth) The prosecutor argued that there was no difference between a sixty year sentence and life.

FEDERAL CASELAW

(6) Rummel V. Estelle,587 F2d 651,656 (5th Cir.1979) at footnote 8 Justice Thornberry held "In Texas,a life sentence is essentially the same as one for sixty years."

EXTRA TEXTUAL FACTORS

(7) Affidavit from Helen Copitka,former Commissioner and voting Board Member of the Texas Parole Board,where she stated that,while she was a Board Member,she understood that inmates serving life sentences were eligible for Mandatory Supervision and that life sentences equated to sixty years.(Exhibit "E")

(8) In "Texas sentencing" legal analysts Ken Anderson and John Bradley

noted that life equated to sixty years.

> In calculating the percentage of a sentence that an inmate has served, the Parole Board considers a sentence of 61-99 or life to be a sentence of 60 years.(Exhibit "F")

(9) In "Time Credits and Related Problems" written by Mr.John G.Jasuta, former Chief of Staff Attorney for the Texas Court of Criminal Appeals in Austin,Mr.Jasuta included a chart indicating that life sentences and 60 years are the same.(Exhibit "G")

Appellant has provided this Court with a number of "jurists of reason" who affirm that a life sentence has a numerical value of sixty years.How did so many "jurists of reason",from different geographical locations,and from different time periods arrive at the same conclusion that a life sentence has a numerical value of sixty years? They arrived at this conclusion because it is well-settled that "In Texas,60 years is the life,the maximum the State can incarcerate a person..." Smallwood,supra at 827 S.W. 2d 39.

The above "jurists of reason" leave no room for dispute,they prove that a life sentence has a numerical value of sixty years which disputes the Franks decision that life sentences have no numerical value.Life sentences do have a numerical value of sixty years. Thus the reason the Franks Court relied upon to conclude that life sentences have no numerical value is invalid.

In Arnold V. Cockrell,306 F3d 277 (5th Cir.2002) the Court agreed with the Franks Court that life sentences have no numerical value.However,The Arnold ruling was not base on the evidence. The Arnold Court rendered its decision by deferring to the Franks interpretation of its own laws.Arnold at 279 The Arnold Court blindly adhered to the Franks decision instead of rendering a decision based on the facts.

Since the above evidence proves that the Franks decision is invalid, the Arnold decision is also invalid since it relied on an invalid decision.

Third: The District Court and the Fifth Circuit Court denied Petitioner relief on the grounds that Petitioner had not shown that he had been deprived of a Constitutional right, and that Petitioner had not shown that "jurists of reason" could debate the merits ruling. However, Petitioner has made both showing.

As already stated the Mandatory Supervision Laws created a protected liberty interest right. Malchi supra at 957 This right applies to all inmates who are not under sentence of death because the legislature only excluded death sentences from the statute. Thus, since Petitioner is serving a life sentence but is not under sentence of death, Petitioner inhereted this protected liberty interest right to Mandatory Supervision release. Denying Petitioner release to Mandatory Supervision deprives Petitioner of a Constitutionally protected liberty interest right.

Now, Concerning the issue of "jurists of reason." Petitioner has presented this Court with twelve "jurists of reason" who agree with Petitioner that a life sentence has a numerical value of sixty years. These "jurists of reason" include State and Federal Judges, a Prosecutor, a voting member of the Texas Parole Board and other persons of the legal profession.

Petitioner has also presented this Court with "jurists of reason" who claim that a life sentence has no numerical value; Justices from the Texas Court of Criminal Appeals, Justice of the Federal District Court, and Chief Justice Elrod of the Fifth Circuit Appellate Court. If these Justices were faced with the "jurists of reason" who agree with Petitioner that life sentences have a numerical value of sixty years, they would debate the merits of the ruling, Consequently, Petitioner has met the second prong which entitles him to relief.

CONCLUSION

Petitioner presented this Court two questions:

1. Are Courts authorized to add exclusions to legislature stautes? and

2. Are Texas life-sentenced inmates eligible for mandatory supervision release?

This Court prohibits Courts from adding exclusions to legislative statutes Jam, Flemming, and Bd.of Educ. all supra The Franks Court violated this Court's precedent when it added life sentences as a second exclusion to S.B.152 despite the fact that the legislature only excluded death sentences from the statute.

It is well settled that the Mandatory Supervision laws create a liberty interest right. Malchi supra at 957 Since the legislature did not exclude life sentences from the statute, Petitioner who is serving a life sentence has a protected interest right to be released to mandatory supervision. Excluding life sentences from mandatory supervision release deprived Petitioner of his liberty interest right to be released to mandatory supervision.

The petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Anthony Garcia

December 15, 2025