USAP5 25-50524

Supreme Court of The United States

Carbajal Petitioner

V.

26-5145 Guerrero Dir. TDCJ ID

Respondant.

Petition Writ of Certiorari Writ

Eric Guerrero	Dir. Texas Department of Criminal Justice
Ken Paxton	Texas Attorney General
Annabell Perez	41st District Court, El Paso County Judge
Yvonne Rosales	El Paso County, District Attorney
Greg Anderson	Defense Attorney

On Petition For Writ of Certiorari

Petitioner
Jorge Carbajal
2312080
Bill Clement Unit
9601 Spur 591
Amarillo, TX 79107

Question

Did Texas constitutionally enact Penal Code 21.02 where the conviction rest on a generalize unanimity verdict and not on a specific criminal act rendering a Jury's duty as unanimous fact finders to a specific criminal acts beyond reasonable doubt void?

List of All Parties to the Proceedings

For Guerrero

Ken Paxton	Attorney General of Texas
Brent Webster	1st Ass. Attorney General
Josh Reno	Deputy Attorney General for Criminal Justice
Edward L. Marshall	Chief Criminal Appeal Division
Jennifer Wren	Ass. Attorney General
Eddie Guerrero	Director TDCJ-ID
Kathleen Cardone	United State District Judge

For Carbajal

Jorge L. Carbajal	Applicant Pro Se litigant

Table of Contest

Table of Authorities used in argument

Citations of the official and unofficial reports of opinions. and order entered in cases.

1. Carbajal V. State 659 SW3d 164, 2022 Tex. App Lexis 5623, 2022 Lx 98814 (Tex. App. El Paso, Aug 5 2022)

A. Opinion (Court of Appeal Eight District) opinion Exhibit(C)

2. In re Carbajal 2022 Tex. Crim. App. Lexis 802 (Tex. Crim. App. Nov. 9, 2022)

A. No known orders enter

3. Carbajal V. Guerrero 2025 Dist. Lexis 115036, 2025 Lx 173874, 2025 WL 169938 (Western Dist. Tex. June 17, 2025)

A. ORDER for respondant to answer Appendix Exhibit (D)

B. Memorandum opinion and order Appendix Exhibit (B)

C. ORder Appendix Exhibit(E)

4. Carbajal V. Guerrero 2025 US. App. Lexis 31478, 2025 Lx 579490 (5th Cir. Tex. Dec 3, 2025)

Appendix Exhibit (A)

Note to this Court

Petitioner want to let this court known that the opinions of the lower courts brief; that the only

Pages sent where the one's only with an opinion about the challange to the Penal code. under this case.

Jurisdiction

This Court has Jurisdiction under 28 U.S.C § 1257 (a). The Judgment of the court below was entered Dec 03. 2025.

This Petition is filed within the time allowed by the Supreme Court Rule 13.

Constitutional and Statutory Provisions

U.S. Const. Amend VI
U.S. Const. Amend XIV
Texas Const. Art 1 §13
Texas Penal Code 21.02

Statement of the Case ~~Argument~~

Texas Penal Code §21.02 ("continuous Sexual abuse of a child" (here in as TPC 21.02)) authorizes conviction based on a generalizes unanimous agreement that two or more acts of sexual abused occurred with in a thirty or more day in duration, without requiring the Jury to unanimously agree on which specific criminal act were committed. The question presented is whether Texas may constitutionally enact and enforce such a statute without violating the Sixth Amendment's guarantee of unanimous Jury verdict and the Fourteenth Amendment's guarantee of Due Process.

Petitioner argues that TPC 21.02 is unconstitutional because it permits conviction for a "continuous course of conduct" without requiring the State to prove beyond a reasonable doubt that all Jurors agreed on the same underlying criminal acts. Under due process principle, the Jury must unanimously agree on the

specific offense proven beyond reasonable doubt, not merely on a general pattern of conduct.

TPC 21.02(d) expressly states that jurors "are not required to agree unanimously on which specific act of sexual abuse were committed" so long as they unanimously agree that the defendant committed "two or more acts of sexual abuse" during a period of thirty or more day of duration. Petitioner contends that this statutory structure impermissibly treat the individual acts of sexual abuse as interchangeable "means" even through under federal constitutional law they function as elements that must be unanimously found.

Texas courts have upheld § 21.02 reasoning that the statute defines a single offense that may be committed by various means. see. Render V. State 316 SW 3d 846 (Tex. Crim. App. 2010) (There are over fifty challanges to this Penal Code under the unanimity question of law) By contracts the Supreme Court of Hawaii

struck down a nearly identical statute HRS §707,735.5 as unconstitutional as violates the defendant's right to due process and Jury unanimity. see State V. Rabago 103 Haw. 236, 81 P.3d 1151 (2003) In Rabago, the Hawaii Supreme Court cited Arceo "That the Prosecution must either elect the specific acts it relied upon a conviction or the trial court must give a specific unanimity instructions requiring all Juror to agree on the same underlying Criminal act". This unanimity violation is only one of the symptoms of why this statute is unconstitutional and should have not being created as such.

A federal Court in Texas has acknowledged that the Supreme Court has never directly addressed the constitutionally of statute §21.02, and there-fore found no clear established federal law forbidding them. Carbajal V. Guerrero 2025 U.S. Dist. Lexis 115036 (W.D. Texas). Petitioner argues that this absense of Supreme Court precedent is precisely why review is warranted.

The core constitutional question is whether Texas Legislature may treat the specific acts of sexual abuse as mere "manner and means" of committing a continuous abuse offense, thereby relieving the State of the obligation to prove unanimously agreement on each act.

Under Apprendi V. New Jersey 530 US 466 (2000) element of the offense must unanimosly be found by the jury beyond a reasonable doubt.

Petitioner contends that Texas's approach collapses elements into means, diluting the Sixth Amendment requirement and Fourteenth Amendment's due process guarantee.

Petitioner respectfully seek review by filling a Petition for Writ of Certiorari pursuant to Supreme Court Rule 10. This case presents an important federal question that warrant this Court's intervention. and the decision below conflicts with established Supreme Court precedent and departs from the accepted and usual course of judicial proceedings.

Whether the decision below conflicts with this Court's precedent and warrants review under Supreme Court Rule 10. where the lower courts departed from the accepted usual course of judicial proceedings and decide an important federal question in a manner that conflicts with decisions of other courts.

<u>Primary challange:</u> Legislature exceeded constitutional limits by enacting a statute that violate Due Process.

<u>Secondary challange</u>: Unanimity violation defect prove the Due Process violation.

Challange to Texas Penal Code 21.02

The list below are some of the defendants that have challanged Texas Penal Code 21.02 unanimity.

William V. State 305 SW 3d 886 (Court of Appeal 2010)
(Court of Appeal here-in COA)
Render V. State 316 SW 3d 846 (COA 2010)
Kennedy V. State 385 SW 3d 729 (COA 2012)
McMillan V. State 388 SW 3d 866 (COA 2012)
Fulmer V. State 401 SW 3d 305 (COA 2013)
Glover V. State 406 SW 3d 343 (COA 2013)
Price V. State 413 SW 3d 158 (COA 2013)
Holton V. State 487 SW 3d 600 (COA 2015)
Carmichael V. State 505 SW 3d 95 (COA 2015)
McCain V. State 582 SW 3d 332 (COA 2018)
Guzman V. State 591 SW 3d 713 (COA 2019)
Villareal V. State 590 SW 3d 75 (COA 2019)
Carbasal V. State 659 SW 3d 164 (COA 2022)
Trice V. State 721 SW 3d 614 (COA 2025)
Render V. State 2010 Tex App Lexis 1950 (COA 2010)
(Tex. App. Lexis here-in TAL)
State V. Espinoza 2010 TAL 4952 (COA 2010)
Pierce V. State 2010 TAL 5323 (COA 2010)
Hawkin V. State 2011 TAL 1019 (COA 2011)
Hensha V. State 2011 TAL 2882 (COA 2011)

Ramirez V. State 2011 TAL 3086 (COA 2011)
Sandoval V. State 2011 TAL 4339 (COA 2011)
Garcia V. State 2011 TAL 5826 (COA 2011)
Hernandez V. State 2011 TAL 8552 (COA 2011)
Ibenvenwa V. State 2011 TAL 9908 (COA 2011)
Shafer V. State 2012 TAL 1902 (COA 2012)
Cortez V. State 2012 TAL 6394 (COA 2012)
Henry V. State 2013 TAL 402 (COA 2013)
Kaizer V. State 2013 TAL 7271 (COA 2013)
Cox V. State 2013 TAL 8890 (COA 2013)
Teinert V. State 2014 TAL 1478 (COA 2014)
Macintosh V. State 2014 TAL 3105 (COA 2014)
Smallwood V. State 2014 TAL 9719 (COA 2014)
Shumski V. State 2015 TAL 2116 (COA 2015)
Serrano V. State 2015 TAL 2344 (COA 2015)
Moore V. State 2015 TAL 2638 (COA 2015)
Gonzales V. State 2015 TAL 8943 (COA 2015)
Eannario V. State 2015 TAL 11568 (COA 2015)
Pruitt V. State 2016 TAL 1518 (COA 2016)
Barroquin-Tabares V. State 2016 TAL 5756 (COA 2016)
Mechado V. State 2016 TAL 7836 (COA 2016)
Hernandezgaleno V. STAte 2016 TAL 9381 (COA 2016)

Aguayo V. State 2016 TAL 12297 (COA 2016)
Garcia V. State 2016 TAL 13916 (COA 2016)
Heslio V. State 2017 TAL 4568 (COA 2017)
Love V. State 2018 TAL 515 (COA 2018)
Harris V. State 2018 TAL 4855 (COA 2018)
Smith V. State 2018 TAL 5361 (COA 2018)
Lamper V. State 2018 TAL 6788 (COA 2018)
Garison V. State 2019 TAL 680 (COA 2019)
Bell V. State 2019 TAL 2964 (COA 2019)
Nunez Quijada V. State 2019 TAL 9092 (2019)
Holland V. State 2019 TAL 10834 (COA 2019)
Guajardo V. State 2020 TAL 1348 (COA 2020)
Carl V. State 2020 TAL 8808 (COA 2020)
Clay V. State 2020 TAL 2179 (COA 2021)
Heide V. State 2021 TAL 4811 (COA 2021)
Gutierrez V. State 2021 TAL 5538 (COA 2021)
Vandevoort V. State 2021 TAL 6075 (COA 2021)
McCormick V. State 2021 TAL 7906 (COA 2021)
Harrison V. State 2021 TAL 9806 (COA 2021)
Cola V. State 2022 TAL ~~6290~~ (COA 2022) 2813
Alvarez V. State 2022 TAL 6290 (COA 2022)
Garcia V. State 2022 TAL 8624 (COA 2022)
Ruiz V. State 2023 TAL 4217 (COA 2023)

Toliver V. State 2023 TAL 7774 (COA 2023)
Cardona V. State 2023 TAL 8577 (COA 2023)
Schimidt V. State 2024 TAL 1367 (COA 2024)
Ortiz V. State 2024 TAL 2367 (2024 COA)
Jimenez V. State 2024 TAL 6306330 (COA 2021)
Favor V. State 2025 TAL 3450 (COA 2025)
Ex Parte Sandoval 2021 TAL 5978 (COA 2021)

No Case found in Court of Criminal Appeal

Henry V. Stephen 2014 U.S. Dist. Lexis 134238 (N Dist 2014)
(U.S. Dist. Lexis Here-in UDL)
Cox V. Davis 2016 UDL 167653 (N. Dist. 2016)
Coronado V. Davis 2017 UDL 215591 (S. Dist. 2017)
Ibenyenwa V. Davis 2017 UDL 234021 (N. Dist. 2017)
McElvain V. Davis 2017 UDL 209677 (N. Dist. 2017)
Macintosh V. Davis 2018 UDL 15128 (N. Dist. 2018)
Shockley V. Dir. Tex. Dept. Criminal Justice 2020 UDL
55533 (E. Dist. 2020)
Robert V. Davis #2020 UDL 137495 (E. Dist. 2020)
Bullman V. Dir 2021 UDL 159271 (E. Dist. 2021)
Carbajal V. Guerrero UDL 115036 (W. Dist. 2025)

Texas Penal Code 21.02 (d) challanged

§21.02 Continuous sexual abuse of a child.

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

Statement

The statute is unconstitutional as enacted, not just as applied. The unanimity defect is proof of the deeper Due Process violation. The Legislature (Texas) exceeded constitutional limits by redefinding elements as means.

History of Case

Petitioner was indicted by El Paso County Texas grand jury for alleadly committed multiple sexual offenses against Jane, while she was a child an a young women. see Carbajal V. State 659 SW3d 164 (Tex. App. El Paso. Apr. 30. 2021) In a fourteen count indictment count I: committed act of continous sexual abuse against Jane while she was under 14 years of age (TPC 21.02); Counts II through XI alleged Petitioner sexual assaulted Jane while she was younger than 17 years of age (TPC 22.021); The alleged dates are between April 27, 2015 through April 27, ~~2017~~ 2017. This counts were indicted with an age limitation to each count, but also with the "on or about" language of indictment; Count XII alleged indecency with a child (TPC 21.11) when Jane was 10 years old; Counts XIII and XIV alleged sexual assault (TPC 21.011) without Jane's consent at the age of 17 years. Each Count included an enhancement paragraph charging Petitioner was finally convicted of agg. assault (TPC 22.021) with a deadly weapon on 2002.

State abondane Count ~~VI~~ VI during trial. Jury found Petitioner guilty on thirdteen counts and followed with a punishment of life in prison without parole and a 10,000 dlls fine to each count.

On Appeal Petitioner raised six issues.

1. Failure to order election of the acts upon which the State sought conviction.
2. Challange to TPC 21.02 constitutionality.
3. The State's refusal to elect resulted in double jeopardy.
4. .....
5. The Court committed reversible error in allowing .....
6. Insufficiency of the evidence count XIII and XIV

During the direct appeal the court concluded that there was a double jeopardy violation and reversed and acquitted count XI. "The four judgments of conviction..... are affirmed and modified by this decision".

Petitioner motion for Petition for Discreatory Review was refused. see In re Carbajal 2022 Tex. Crim. App. Lexis 802.

Petitioner filed a States Habeas raising 32 issues under constitutional violations including all previously except #4. Texas Court of Criminal Appeal denied claims without a written order (Appeal # WR-95,294-01)
Petitioner filed a Federal Habeas raising the same 32 issues. Federal Judge Wren order the State to answer all 32 claims as she found the State Habeas dismissal inappropriate. (order to respondent # EP-24-CV-49-KC) State respond misrepresented Texas law, shuffled Counts, and circumvented the claims in question. Federal Judge concluded that Petitioner had not shown that the State's responds was unreasonable and she denied relief. see Carbajal v. Guerrero 2025 U.S. Dist. Lexis 115836 (Texas Western District Court).

Petitioner Petition the Fifth Cir. Court of Appeal for a Certificate of Appealability but only brought forth five claims in which would interweave with most of the 32 issues brought in States and Federal Habeas. This motion for appealability was denied on Dec. 3, 2025.

Petitioner has file a motion of rehearing on every denial.

Note

Petitioner want this Court to note that the other claims not brought forth to this Court are not abondand by default.

Petitioner want to note this Court the claim at hand has been exhausted and this Court has jurisdiction over the issue brought forth.

Argument

Does TPC 21.02 (d) which permits conviction without jury unanimity on the specific acts of sexual abuse violate the Sixth Amendment requirement that jurors must unanimously agree on the precise criminal offense proven beyond reasonable doubt?

Petitioner argues that this statute is unconstitutional not merely because it violates unanimity, but because Texas Legislature lacked constitutional authority to enact a statute that eliminates core Due Process Protection. The unanimity defect is evidence of the deeper constitutional violation.

Several Texas Courts of Appeal have considered this secondary question (unanimity violation) in relation to this statute and have held that it passes constitutional musterd. see Render v. State 316 SW3d 846 (~~2010~~ 2010). The state responds section 21.02 is constitutional because it defines the offenses in such a way that the jury need not to be unanimous as to any particular act or omission because

they are but the means by which the offense may be committed".

Hawaii similar statute HRS 707-735.5 (continuous sexual assault of a minor under age of fourteen) was struck down as unconstitutional and in violation of defendant's rights to a due process of law. see State V. Rabago. with the same questions of law at hand.

The Supreme Court of Hawaii noted in Rabago quoting Arceo, 84 Hawaii at 32-33 928 P.2d at 824-875 "At or before case-in-chief, the prosecution [must] elect the specific act upon which is relying to establish the "conduct" element of the charge offense; or.... the trial court [must] give the jury specific unanimity instructions that advises the jury all twelve of it's members must agree that the same underlying criminal acts have been proven beyond reasonable doubt."

In this instance case the Federal District court of Texas have acknowledge that the

Supreme Court has never directly addressed the constitutionallity of the statute § 21.02 "no holdings for the Court of Criminal Appeal to contravene or unreasonably apply" and therefore found no clear established federal law forbidding them. see Carbajal V. Guerrero

The Sixth Amendment require unanimity on the specific act. The Supreme Court held in Ramos V. Louisiana 590 US 83 (2020) that the Sixth Amendment that requires unanimous jury verdict in the states criminal cases. Unanimity means agreement on the same specific act not a general agreement that some crime occurred. Texas Penal Code 21.02 (d) explicity states that the jurors "are not required to agree unanimously on which specific act of sexual abuse" were committed. This directly conflicts with Ramos and Apprendi which requires on the elements of the offense to be proven beyond reasonable doubt.

This question arises from this argument.

Is it permissible by the United States Constitution letting Texas Legislature treat specific act of sexual abuse as manner and means of committing the "series" of sexual abuse "course conduct" as if they already had found them guilty, without due Process of law?

The statute treats elements as means, in violation of Apprendi V. New Jersey. Apprendi requires that elements be proven beyond reasonable doubt. Shad V. Arizona 501 US 624 (1991) warn that legislature cannot evade unanimity be redefining elements as means.

That this Court has repeatedly held that legislature may not define crimes in a way that destroy Due Process Protections.

TPC 21.02 collapses any of the eight Predicate offenses (this predicate offenses are different levels of degree and Punishments) into a generic finding, violating this Principle, also treat two or more acts as interchangeable means but under

Apprendi this elements must be proven unanimously. That distiction (elements V. means) is critical.

By treating the eight predicate offenses as interchangeable means, the statute circumvents the Constitution requirement that elements are not merely catagories of conduct and must be unanimously found. This conflicts with Apprendi V. New Jersey and Schad V. Arizona which distinguish between element requring unanimity and mere factual means. This statutory scheme circumvents the Sixth Amendment and treat Predicate offenses as interchangeable means rather than elements, diluting the Constitutional Protection. The Fourteenth Amendment guarantees due Process. see In re Winship 397 US 358 (1970)

Prohibitation of creating such statute

The legislature has considerable discration in defining crime and the manner in which those crime can be committed. see Ladrian

V. State 268 SW3d 532, 535 (Tex. Crim. App 2008) This discration is limited by the Due Process Clause of the U.S. Constitution and the Due Course of law of Texas Constitution. see Schad V. Arizona 501 US 624 111 S.CT 2491, 1152. L.Ed 2d 555 (1991)

The Supreme Court decision in Schad is important because it describes the Due Process limitation to the legislature's ability to define crimes. That limitation the Court suggest would not permit a jury to convict a person of offense of crime: an offense define as a conbination of several disparate offenses. The Court states that such statute is impermissible as there is "nothing in our history to suggest that the Due Process would be permissible. Id at 2497.

An aggregation of statutes can go to far. see. Richardson V. United States 526 US 813, 820-21; 1195 at 1707; 1711-12; 143 L.Ed 985 (1999). The Supreme Court in constructing a statute

did not give a reading that allow many of the nation drug laws to be a part of a crime" engaging in a continuous criminal enterprise" without jury unanimaty because such readings would "come close to test the Constitutional limits impose by Due Process"

Finally, the Supreme Court has indicated that the Constitution itself limits a State's Power to define crimes in a way that would permit juries to convict while disagreeing about the means, at least where the definition risk a serious unfairness and lack support in history tradition. Id 820

Justice Breyer opinion in Richardson "The closest analogie it cite of a statute making a criminal such a crime as sexual abuse of a minor. State's course interpretating such a statute have sometimes permitted juries disagreement about 'specific' underlying criminal 'incident' insisting only upon proof of a

'continuance course of conduct' in violation of the law. Eg People V. Gear Cal 4th 86, 8494 23 Cal R. PTR 2d 261. 263-267 (1997) Similar statute have been passed before, to later be struck down under the similar question of unanimity. see State V. Rabago.

TPC 21.02 is a first degree enhanced felony punishable min. 25 to max 99 without the possibility of parole. (Tex. Gov. Code 508.145) Conbined with Tex. Code of Crim. Proc. 38.07 (which permits conviction base soley of the testimony of the victim) statute creates a serious risk of a wrongful conviction and gives great disadvantage to defend any allegations of sexual abuse where in most cases no physical evidence exist.

Texas Constitution requires that jury verdict to be unanimous (Texas Constitution Article 1 §13) Unanimity means that every juror must agree that the defendant committed a single

specific criminal act and not that a crime had occurred.

The Sixth Amendment right to a jury trial as incorporated against the State by the way of the Fourteenth Amendment that requires unanimous verdict to convict a defendant of a serious crime. (Ramos V. Louisiana) Due Process requires a reliable verdict. (see In re Win Ship)

This statute allows conviction by creating an illusion of guilt in all predicate offenses and undermines the jury's role as fact-finders. see Clark V. Thaler ~~to~~ 673 F. 3d 410 emphasizes that vague or generalized findings violate due process.

Conclusion

Texas Legislature exceeded constitutional limits by enacting a statute that eliminates Due Process Protections, and treats elements

as means and authorizes conviction without unanimous agreement on the specific criminal act proven beyond reasonable doubt.

For this reasons above Petitioner conviction should be reversed to the appropiate relief and strike down Texas Penal Code 21.02 as unconstitutional.

Executed on Jan 27, 2026 ///
Executed on March 10, 2026 ///

x ///
Jose Carbajal
#2312080