NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OSMIN PERAZA
Petitioner
V.
STATE OF TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

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QUESTION PRESENTED FOR REVIEW

Question One: Whether the Texas Court of Criminal Appeals has expanded the definition of "court costs" to such an extent that the money paid by defendants that support non-court programs and goes to the general revenue fund of the State has become a punishment that violates double jeopardy?

Question Two: Whether the Texas Court of Criminal Appeals has expanded the definition of "court costs" to such an extent that the money paid by defendants that support non-court programs and goes to the general revenue fund of the State violates equal protection by subjecting criminal defendants to paying, in essence, a tax for their conviction?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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CONSTITUTION AND STATUTES

MISCELLANEOUS

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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015)

The opinion of the Houston Court of Appeals for the First District appears at Appendix B to the petition and is reported at *Peraza v. State*, 457 S.W.3d 134 (Tex. App. – Houston [1st Dist.] 2014).

JURISDICTION

The date on which the highest state court decided my case was July 1, 2015.
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: September 16, 2015, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

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 the land or naval forces, or in the militia, when 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 be 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.

U.S. CONST. AMEND. XIV

Section 1. 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.

TEX. GOV'T CODE ANN. § 102.021 (West)

A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

> (13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure). $250

TEX. CRIM. PROC. CODE ANN. § ART. 102.020 (West)

(a) A person shall pay as a cost of court:

> (1) $250 on conviction of an offense listed in Section 411.1471(a)(1), Government Code;

> (h) Except as provided by Subsection (h-1), the comptroller shall deposit 35 percent of the funds received under this article in the state treasury to the credit of the state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the general revenue fund.

STATEMENT OF THE CASE

Mr. Peraza pleaded guilty to two different felony offenses of aggravated sexual assault of a child. After the presentation of punishment witnesses, the court sentenced Mr. Peraza to 25 years imprisonment on each case to run consecutively. Court costs were imposed upon Mr. Peraza, including a $250 "DNA record fee." The money collected for the DNA record fee does not pay for DNA costs - 35 percent of the funds received under this article in the state treasury to the credit of the "state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the general revenue fund." TEX. CRIM. PROC. ART. 102.020.

Motions for new trial and motions in arrest of judgment were filed in both cases and denied the same day filed. The motions challenged the constitutionality of the DNA record fee. The Texas First Court of Appeals determined the statute was unconstitutional and modified the judgments to delete the $250 DNA record fee from the judgments.

The Texas Court of Criminal Appeals reversed the lower Court of Appeals and determined that any court cost which was expended for " legitimate criminal justice purposes" and not solely for recoupment of costs necessary or incidental to the trial of a criminal was constitutional. *Peraza v. State*, 467 S.W.3d 508, 517 (Tex. Crim. App. 2015)

REASONS FOR GRANTING THE PETITION

> Question One: Whether the Texas Court of Criminal Appeals has expanded the definition of "court costs" to such an extent that the money paid by defendants that support non-court programs and goes to the general revenue fund of the State has become a punishment that violates double jeopardy?
>
> Question Two: Whether the Texas Court of Criminal Appeals has expanded the definition of "court costs" to such an extent that the money paid by defendants that support non-court programs and goes to the general revenue fund of the State violates equal protection by subjecting criminal defendants to paying, in essence, a tax for their conviction?

STATEMENT OF FACTS

The First Court of Appeals which was reversed by the Texas Court of Criminal Appeals had it right when it detailed the numerous ways the "DNA record fee" money can be spent by the State having nothing to do with the Courts or DNA:

> Here, the "DNA Record Fee" revenue dedicated to the state highway fund does not constitute money that is required, by either the Texas Constitution or federal law, to be used for public roadways.

Peraza v. State, 457 S.W.3d 134, 142 (Tex. App.—Houston [1st Dist.] 2014), *rev'd*, 467 S.W.3d 508 (Tex. Crim. App. 2015). As to the Criminal Justice Planning, the First Court of Appeals explained:

> Numerous entities are eligible to apply for grants from the criminal justice planning fund, including "[s]tate agencies, units of local government, independent school districts, nonprofit corporations, Native American tribes, COGs, universities, colleges, hospital districts, juvenile boards,

> regional education service centers, community supervision and corrections departments, crime control and prevention districts, and faith-based organizations."
>
> * * *
>
> (grant recipients from criminal justice planning fund "include local units of government, independent school districts, non-profit corporations, hospitals, universities, colleges, community supervision and corrections departments, law enforcement agencies and councils of governments"). Moreover, the CJD has awarded money from the fund to a variety of recipients, such as the Alamo Area Council of Governments for Regional Police Training Academy, the Bastrop County Women's Shelter for SAINT: Sexual Assault Integrated Nursing Team, Fort Bend County for the "Saved by the Bell" Delinquency Reduction Program, the Katy Christian Ministries for Counseling Services for Victims of Domestic Violence, and The Family Place for S.T.A.R.T.

Id.

One week ago, Justice Jennings of the First Court of Appeals again re-urged the problem with the DNA fee and stated in a concurring opinion:

> Until the court of criminal appeals corrects its holding in *Peraza*, or the United States Supreme Court overrules it, this Court, as an intermediate court of appeals, however, is bound to follow *Peraza*, no matter how erroneous the reasoning expressed therein.

Alcaraz v. State, 01-14-00675-CR, 2015 WL 7783512, at *11 (Tex. App.—Houston [1st Dist.] Dec. 3, 2015, no. pet. h.)(Jennings, J., concurring).

ARGUMENT AND AUTHORITIES

The decision of the Court crafting a broad new rule to define court costs has created a new constitutional equal protection problem and double jeopardy issue.

In *Peraza,* the Court of Criminal Appeals fundamentally altered the definition of court costs from the last five decades of precedent. *Peraza v. State*, 467 S.W.3d 508, 517

(Tex. Crim. App. 2015). There arises serious constitutional issues from this new pronouncement.

If the sum paid upon conviction is to support "reasonable criminal justice purposes," it is no longer a court cost but a punishment.

Felons convicted of numerous "sex" crimes pay a $250 fee for reasonable criminal justice purposes. TEX. CODE CRIM. PROC. ART. 102.020(a)(1). Misdemeanants convicted of numerous "sex" crimes pay $50. TEX. CODE CRIM. PROC. ART. 102.020(a)(2). And if the defendant is placed on probation, the fee is $34. TEX. CODE CRIM. PROC. ART. 102.020(a)(3). These stacked fees increase according to the seriousness of the offense and remarkably resemble the punishment scale for those convicted of various crimes. Felons do more time than a person convicted of a misdemeanor or someone placed on probation.

The Fifth Amendment to the United States Constitution provides: "nor shall any person be subject for the same offense to be twice placed in jeopardy of life or limb...." U.S. CONST. AMEND. V. Encompassed within the double jeopardy prohibitions is the guarantee of protection against multiple punishments for the same offense. *North Carolina v. Pearce*, 395 U.S. 711, 717, (1969).

By requiring Mr. Peraza to pay for funds expended on "legitimate criminal justice purposes," rather than reimburse the court for its costs - he is now being punished twice for the same offense.

The new rule defining court costs as "reasonably related to criminal justice purposes" raises issues under the Equal Protection Clause. (EPC)

Felons may be a suspect class under Equal Protection Jurisprudence subject to the protections of strict scrutiny. The EPC of the 14th Amendment prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV. At a minimum, statutory classifications implicating the EPC are subjected to rational basis review - meaning the classification must be rationally related to a legitimate government purpose. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). At the other end of the spectrum, classifications based on race or national origin, and those affecting fundamental rights are subject to strict scrutiny - meaning that the classification must be narrowly tailored to achieve a compelling government purpose. *Id* (internal citations omitted). A court looks to the "traditional indicia of suspectness" to determine if the classification merits strict scrutiny. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973). Strict scrutiny is appropriate if the class is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id.*

Convicted felons, especially those convicted of sexual offenses, are subject to the indicia of suspectness. Upon conviction, a felon loses the right to vote, is sent to prison or is subjected to probation, subjected to the opprobrium of society, has limited job

opportunities, and faces restrictions as to where he can live. In light of these handicaps, a felon is "relegated to a position of political powerlessness" meriting higher scrutiny. *But see: City of Cleburne v. Cleburne Living Ctr.* 473 U.S. 432, 440 (1985) (Court refuses to recognize the mentally retarded as a suspect class. Reasons that classifications are suspect if there is "no sensible ground for differential treatment"). Because the statute regulates the rights of felons, an arguable suspect classification, it should be subjected to strict scrutiny.

> The statutes establishing the DNA Records Fee are constitutionally invalid under the Equal Protection Clause because they are not narrowly tailored to achieve the compelling government interest of obtaining recoupment for criminal justice purposes.

Operating in concert with TEX. GOV'T CODE § 411.1471, TEXAS CODE CRIM PROC. ART. 102.020(h) imposes a $250 court cost for DNA Testing for those defendants convicted of certain felonies and a $50 charge for those convicted of certain misdemeanors. The court's holding that these fees which fund "legitimate criminal justice purposes" is arguably a compelling government interest for the purpose of strict scrutiny review. However, the statutes creating the mechanism for reimbursement are not narrowly tailored for that purpose. Instead of refunding DPS directly, the statutes present a roundabout reimbursement structure.

The difference between the DNA Record Fee for Felons and those convicted of misdemeanors is further proof that the purpose of the $250 fee is not narrowly tailored to recoupment.

There is no evidence that a DNA test costs more for someone convicted of a felony than a misdemeanor. The price DPS pays for testing for both classes is the same, yet a felon pays $250 for his test and the person convicted of a misdemeanor pays $50. There is no discernible reason for the difference in price other than an impermissible punitive purpose or a desire to obtain more revenue for the state. If this isn't enough of an indication of an ulterior motive for the convoluted reimbursement structure, a person placed on community supervision need only pay $34 for DNA Testing; and this fee is credited directly to DPS. The fee structure is not narrowly tailored to reimburse DPS for the cost of testing and fails an Equal Protection strict scrutiny analysis.

Even if felons are not a suspect class, the DNA Record Fee statutes may still be unconstitutional under the EPC because if they are not rationally related to the legitimate government interest of obtaining recoupment for court costs.

For the same reasons the DNA Record Fee statutes fail to survive strict scrutiny, they might not survive rational basis review. Rational basis review is a more permissive standard than strict scrutiny; it is used when a court concludes that a statute implicates neither a suspect classification nor a fundamental right. *Heller v. Doe*, 509 U.S. 312, 319 (1993). Laws under rational basis review enjoy a "strong presumption of validity" and will not "run afoul of the Equal Protection clause if there is a rational relationship between the disparity of treatment and some government purpose." *Id.* at 319-20.

Classifications can fail rational basis review for two main reasons. First, a classification fails rational basis review if the classification "rests on grounds wholly irrelevant to the state's interest" *Heller*, at 324(citations omitted), or is so attenuated to the asserted goal as to "render the distinction arbitrary or irrational." *Cleburne*, 473 U.S. at 446. Second, a classification fails if its objective is illegitimate or impermissible. *Id.* For example, "a bare desire to harm a politically unpopular group" is not a legitimate state interest. *Id.* at 447. In other words, a statute with an evidently invidious purpose will not stand even if strict scrutiny is not invoked. *Id.*

A statute with an invidious purpose, or created with a bare desire to harm will be struck down under rational basis review. In *Cleburne*, the Court invalidated a city zoning ordinance requiring a special use permit for the establishment of a group home for the mentally retarded, after the city had denied a permit. *Cleburne*. 473 U.S. at 435. The Court held that the mentally retarded were not a suspect class under the 14th Amendment even though the class was often the subject of discrimination and "deep-seated prejudice." *Id.* at 438. Nonetheless, the Court found that the zoning ordinance was invalidated by the Equal Protection Clause because it appeared to be based upon an irrational prejudice about the mentally retarded. *Id.* at 450. In support of this contention, the Court noted that the Cleburne City Council's decision in denying the ordinance was centered upon the negative attitudes of nearby property owners about the home, and fears the elderly harbored for the mentally retarded. *Id.*, at 448. The

Court further held that the seemingly legitimate reasons for denial including avoiding concentration of population and congestion of the streets were invalid because the council does not explain why apartment houses, hospitals, and the like could locate in the area without a permit. *Id.* at 450.

Undoubtedly, reasonable court costs levied against a defendant are rationally related to the legitimate state purpose of recouping its losses. However, the DNA Record Fee statute may not survive rational basis review for two reasons.

First, the distinctions created by the statute are not rationally related to the state interest of recoupment. It is impermissible that a felon be forced to pay for criminal justice programs, unrelated to his trial, benefitting the general public. The three tiered pay structure is highly suspect.

This is a national problem.[1]

On March 4, 2015, the U.S. Justice Department of Justice Civil Rights Division released a report: An Investigation into the Ferguson Police Department. The report detailed numerous problems with the policing in Ferguson. http://apps.washingtonpost.com/g/documents/national/department-of-justice-report-on-the-ferguson-mo-police-department/1435/. A focus of the investigation dealt with court costs and the burden these costs had on the community. The report

[1] Much of the research and work cited below is from an article written by the undersigned attorney: Jani Maselli Wood, *Court Fees*, ABA Criminal Justice Fall 2015.

explained that "Ferguson's municipal court practices combine to cause significant harm to many individuals who have cases pending before the court. Our investigation has found overwhelming evidence of minor municipal code violations resulting in multiple arrests, jail time, and payments that exceed the cost of the original ticket many times over." Report at 42. The Justice Department was particularly concerned with the fact that the influence of revenue on the courts could be unlawful because the town's finances were substantially dependent on "'fines, forfeitures, costs, and fees,' collected by the courts." Report at 42, n. 20, *citing Ward v. Vill. Of Monroeville*, 409 U.S. 57, 58-62 (1972). Although not detailed, the report referenced "certain fees" that were "designated for particular purposes, but were "nonetheless paid directly to the City." Report at 10, n. 8.

Many other states have used court costs to support general government. There is significant available information on this trend. In a series called Prisoners of Debt, Oklahoma Public Radio Station KGOU and Oklahoma Watch detailed numerous examples. Kate Carlton Greer, *Over the Years, Court Fines, Fees Have Replaced General Revenue Funds*, Feb. 9, 2015. http://kgou.org. In 1992, Oklahomans passed a referendum making it "nearly impossible for lawmakers to raise taxes." *Id.* Through the ensuring years, the legislature added more than "30 different fines and fees for the state and local government to the court's collection duties." The fine for speeding over the speed limit between one and 10 miles is $10 is Oklahoma. But the minimum ticket amount with

costs is $188.50. *Id.* One legislator described it as "a legislative leadership and a governor willing to use criminals as an ATM to fund other parts of government." *Id.*

In Nebraska, the Legislative Research Office prepared a report in 2013 regarding court costs. Kate Gaul, *Selected Nebraska Court Fees*, Legislative Research Office September 2013. The introduction is especially telling: "Most people assume court fees finances operations of the courts. They do not." *Id.*, at 2. The report explained how criminal court costs are used to pay for judicial retirement pensions, a law enforcement improvement fee, and a crime victims fee. *Id.*, at 4-10.

In a 2008 report out of Ohio studying court costs, the first recommendation was "[c]ourt costs should be reasonable, nominal and directly related to the operation and maintenance of the court." Supreme Court of Ohio, *Report and Recommendations of The Joint Committee to Study Court Costs and Filing Fees*, July 2008 at p. 4.

http://www.supremecourt.ohio.gov/publications/jtcommcourtcostsreport.pdf at p.4.

The report further recommended that "court costs and fees cannot and should not be considered 'income' to a court." *Id.* The final recommendation was that court "costs and fees should not be used to fund any special interest, but should be used to fund justice system programs leading to an efficient and effective judicial system." *Id.* Deep in the report is the determination that collected court costs should be appropriated back to the court, but "when the economy is in a downturn, the legislative authority may believe it

is necessary to fund other programs with the court cost revenue." *Id*, at p. 8. Whether the report was followed is unknown.

Municipal courts in Ohio are allowed to assess a "fee" for "special projects" in addition to the statutorily mandated court costs. *Middleburg Hts v. Quinones*, 900 N.E.2d 1005, 1009 (Ohio 2008). These special projects include "but [are] not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services." *Quinones*, 120 Ohio St. 3d at 537-38, 900 N.E.2d at 1009. A proposed bill in the Ohio Legislature in 2010 lamented these special fees and as background reported, "[t]here are multiple instances of funding authorities who have seized special project funds that are collected by Ohio courts. The use of these funds for general purposes (i.e., uses that are unrelated to the operation and maintenance of Ohio courts) is illegal." Donna E. Childers, *Judicial Impact Statement, Segregation of Funds Collected by Courts*, October 22, 2010.

In Pennsylvania, a DNA cost of $250 is required for persons convicted of any felony offense. "[T]he General Assembly made its intentions known that the Act encompasses all convicted felons, no matter what the crime, *Pennsylvania. v. Derk*, 895 A.2d 622, 626 (2006). When a defendant convicted of theft challenged the cost as punitive, the Pennsylvania Supreme Court found it not punitive and explained:

> ..the policy considerations behind the Act were to aid in criminal investigations, and to deter and detect recidivist acts. Additionally, § 2318 states any tests performed on a DNA sample are to be used for assistance in identifying or recovering human remains from disasters or for other humanitarian identification purposes, in addition to law enforcement. By establishing a DNA bank, perpetrators of future criminal acts can be more quickly apprehended, and those otherwise considered suspects can be excluded. Society will benefit by the systematic utilization of science to detect and deter crime, and the remedial goal of public safety will be that much more attainable. Thus, we conclude that the legislative intent behind enacting the DNA Act was not to punish, but to promote public safety and more effective law enforcement."

Derk, 895 A.2d at 627. The DNA fee is statutorily used for non-court purposes and collected for the executive branch function of promoting public safety and law enforcement.

Pennsylvania also charges convicted persons $5.00 for the County Probation Officers' Firearm Education and Training Fund. 16 PA. CONS. STAT. ANN. § 6308. But in fairness to Pennsylvania, when a court charged a defendant $84,723 "for the salaries of the assistant district attorneys and county detectives assigned to the District Attorney's Office," the Supreme Court held that was a "prosecutorial cost" that the defendant was not required to pay. *Pennsylvania. v. Garzone*, 993 A.2d 306, 322-23 (PA 2010), *aff'd*, 34 A.3d 67 (PA 2012).

Kansas requires each defendant upon conviction to pay a DNA court cost of $200. KAN. STAT. ANN. § 75-724 (a) (West) This fee is required "regardless of whether the person's DNA sample was already on file with the Kansas Bureau of

Investigation at the time such person was arrested, charged or placed in custody, unless the person can prove to the court that the person: (1) has paid such fees in connection with a prior conviction or adjudication; and (2) did not submit specimens of blood or an oral or other biological sample authorized by the Kansas bureau of investigation to the Kansas bureau of investigation for the current offense of conviction or adjudication. KAN. STAT. ANN. § 75-724 (b) (West). The burden is on the defendant to provide the proof, and absent that proof, "the court would still be required to order her to pay the fee unless she could prove she paid the fee for the prison test." *Kansas v. Simmons*, 329 P.3d 523, 535 (Kan. Ct. App. 2014).

The money from this fee is used not just for laboratory services, but also for the purchase and maintenance of equipment for use by the laboratory in performing DNA analysis and education, training and scientific development of Kansas bureau of investigation personnel regarding DNA analysis. KAN. STAT. ANN. § 75-724 (E)(2)(3)(West).

Retirement and insurance benefits for law enforcement is a mandatory $6.25 court cost in North Carolina. N.C. GEN. STAT. ANN. § 7A-304 (A)(3) (West). If a criminal defendant has any laboratory tests done on evidence, there is a fee of $600. N.C. GEN. STAT. ANN. § 7A-304 (a)(8) (West). And if an expert from the state lab testifies in the defendant's criminal case, another $600 in court costs are assessed. N.C. GEN. STAT.

ANN. § 7A-304 (a)(11) (West). The use of court costs to fund the prosecution of a defendant is far removed from a judicial function.

And in March 2015, the New York Times reported on the above-referenced Justice Department report. Matt Apuzzo, *Justice Department to Fault Bias by Ferguson*, NY Times, p. A1 March 1, 2015. While the focus of the article is the resultant racial animosity in Ferguson from these practices, there is a critical portion regarding court costs being used to fund the city: "…the report criticizes the city for disproportionately ticketing and arresting African-Americans and relying on the fines to balance the city's budget." *Id.* And the city workers congratulated themselves when revenue exceeded expectations as they insisted police officers hit ticket quotas. Matt Apuzzo and John Eligon, *Ferguson Police Tainted by Bias*, *Justice Dept. Says*, NY Times, p. A1, March 5, 2015. In describing one instance where a municipal judge was up for reappointment there was a question as to his ability to judge because "he "does not listen to the testimony, does not review the reports or the criminal history of defendants, and doesn't let all the pertinent witnesses testify before rendering a verdict." Campbell Robertson, *A City Where Policing, Discrimination and Raising Revenue Went Hand in Hand*, NY Times, p. A14 March 5, 2015. The city manager "acknowledged the judge's shortcomings" but he was reappointed because the Ferguson could not "afford to lose any efficiency in [their] Courts, nor experience any decrease in … [their] Fines and Forfeitures." *Id.*

The Conference of State Court Administrators released a report detailing the inherent problems in using courts as revenue centers for the state and that this was not the purpose of the system. "Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution." Carl Reynolds and Jeff Hall, 2011-2012 *Policy Paper Courts are not Revenue Centers*, p. 4 http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx. Reynolds and Hall described the "court costs":

> The proliferation of these fees and costs as chargeable fees and costs included in the judgment and sentence issued as part of the legal financial obligation of the defendant has recast the role of the court as a collection agency for executive branch services

Id., at p. 9.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OSMIN PERAZA, Petitioner
V.
THE STATE OF TEXAS, Respondent

PROOF OF SERVICE

I, JANI J. MASELLI WOOD DO SWEAR OR DECLARE THAT ON THIS DATE, December 11, 2015, as required by Supreme Court Rule 29, I have served the enclosed MOTION TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid. The names and addresses of those served are as follows:

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Mr. Ken Paxton
Texas State Attorney General
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 11, 2015.

_____

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Appendix A
Opinion of the Texas Court of Criminal Appeals

Appendix B
Opinion of the First Court of Appeals - Houston, Texas

Appendix C
Orders denying motion for rehearing