No. 12-117

In The
Supreme Court of the United States

ROSA ESTELA OLVERA JIMÉNEZ,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

BRIEF OF ENRIQUE PEÑA NIETO, GOVERNOR ERUVIEL ÁVILA VILLEGAS, YURIRIA MARVÁN, AND THE FREE AND SOVEREIGN STATE OF MEXICO AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*

Enrique Peña Nieto is the president-elect of the United Mexican States.[1] He participates as *amicus curiae* in his individual capacity as a concerned citizen. From 2005 to 2011, Mr. Peña Nieto was the governor of *amicus curiae* the State of Mexico, the most populous state in the nation of Mexico and the home of the petitioner Rosa Estela Olvera Jiménez. Eruviel Ávila Villegas is the current governor of the State of Mexico; he participates as *amicus curiae* in his official and personal capacities. Yuriria Marván is a Mexican attorney who has been integrally engaged in coordinating the State of Mexico's involvement in Rosa's case.

Disturbed about Rosa's plight and the effect of the Texas courts' holdings on other Mexican citizens, the State of Mexico has provided funding to hire qualified experts supporting Rosa's state habeas application. The State of Mexico's Commission on Human Rights continues to monitor Rosa's case closely.

[1] This brief has been submitted with the parties' written consent, which is on file with the Clerk of Court. The parties were notified ten days prior to the due date of this brief of the intention to file. Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

The citizens of Mexico and their government leaders have been shocked by Rosa Jiménez's treatment in the Texas criminal-justice system. After her conviction, private individuals and the government of the State of Mexico hired new lawyers to prepare her state habeas application and paid for assistance from qualified experts—which the trial court and her trial attorney's errors had denied her.

Amici were pleased when Texas's state habeas court recommended a new trial after analyzing all expert testimony. This reflected the American legal system at its best: a judge carefully and honestly attempting to ensure that the criminal prosecution conformed to constitutional principles. In contrast, the decision of the Texas Court of Criminal Appeals (CCA) deviates from constitutional commitments. In cases turning on expert testimony, indigent defendants in Texas now have no real remedy when their trial counsel fails to make a formal request for a competent expert essential to their defense. Nor can habeas applicants like Rosa seek a new trial unless they have "medically indisputable" evidence of their innocence, an impossible standard that the CCA applies arbitrarily.

The CCA's standards have cut off meaningful judicial review for a woman with strong ineffective-assistance and actual-innocence claims. The CCA's standards will also fall especially hard on Mexican nationals in Texas. The widespread perception that

Mexican nationals cannot get fair trials in Texas courts is bad for the citizens of both our countries. *Amici* believe it is critical to change that perception. This case is an outstanding vehicle for delineating proper legal standards and, in doing so, abating several negative real-world consequences of the CCA's decision that trouble *amici* and the Mexican public.

ARGUMENT

I. *Amici* and the Mexican People Are Deeply Concerned About—and Have Provided Assistance to Correct—Fundamental Injustices in Rosa's Case.

"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."[2] This is a case about equal justice for an undocumented, young Mexican mother accused of a terrible crime in Texas. The case turned entirely on expert testimony, yet the accused was denied funds to retain a single qualified expert. Further, her court-appointed counsel failed to preserve this obvious error. *Amici* are concerned that one of our citizens was denied a fair trial and due process in this case—and that Texas courts will continue to apply rules that systematically deprive indigent defendants, including many Mexican nationals, of basic rights in criminal proceedings.

[2] *Griffin* v. *Illinois*, 351 U.S. 12, 19 (1956).

A. Rosa Was Deprived Basic Tools of an Adequate Defense, Prompting a Sustained Outcry and Efforts to Give Her Access to Qualified Experts for the First Time.

The undisputed facts are troubling, both because they involve the death of a young child and because they support Rosa's innocence and impugn the legitimacy of the legal process applied to her.[3]

Never violent or abusive, and with no criminal history, Rosa was by all accounts a kind and gentle person. 7.RR.236-237, 303-304; 8.RR.17-20.[4] Children she had cared for testified she was loving and never lost her temper. 7.RR.236-237. She loved B.G., who was just 21 months old, and B.G. loved her. 5.RR.34-35. He was not fussy, and he enjoyed playing with Rosa and her daughter in the Jiménez apartment. 6.RR.100-101. Rosa had no motive to kill B.G. Nor did the child have a single bruise or scratch on his body, refuting the State's theory that Rosa pinned him down and forced paper towels down his throat as he struggled for life. 3.RR.119. With B.G. still alive in

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[3] *Amici* adopt the facts in the petition, but wish to highlight certain facts relevant to *amici*'s arguments as well as facts that prompted the State of Mexico to hire qualified experts for Rosa's state habeas application and to direct its Commission on Human Rights to track the case.

[4] Citations in the forms "App.___" and "___.RR.___" are to the petition appendix and the trial reporter's record, respectively.

her arms, Rosa frantically rushed him to a neighbor's apartment to call 911 after unsuccessful attempts to remove an obstruction from his throat. App.7-8. Texas arrested Rosa based solely on the hospital doctors' belief that it would have been impossible for the young child to swallow paper towels by himself—even though none had ever seen *any* case, accidental or intentional, of paper-towel asphyxiation. 5.RR.119; 3.RR.269-270.

With no eyewitnesses other than Rosa, no motive for Rosa to kill B.G., and none of Rosa's DNA on the paper towels,[5] the State's case rested solely on expert opinions. Rosa's lawyer understood the case would hinge on experts, so he asked the trial judge in chambers for funds to hire at least one *qualified* expert—a specialist in pediatrics with clinical expertise in choking—to refute the State's *four* medical experts and show that Rosa did not kill B.G. App.72-73. The judge refused money for a single qualified expert, and Rosa's counsel failed to make a formal request on the record, denying her competent expert assistance at trial and the opportunity to appeal the trial court's denial of funding. App.32. Her lawyer instead used the court's paltry grant to hire the "worst witness" the habeas judge had seen in 30 years' experience—a "purported expert" whose participation was "worse than having no witness" at all and who, as the State argued to the jury, lacked the necessary expertise in

[5] 6.RR.158.

choking, child abuse, or pediatrics to offer a meaningful opinion. *See, e.g.*, 8.RR.50.[6] The lead prosecutor also made several comments that encouraged the jurors to view Rosa as being "other," alien, and not one of them. *See, e.g.*, 5.RR.40 ("Despite being from Mexico, she's very intelligent, wouldn't you agree?"). Presented with testimony from the State's four medical experts and not a single qualified expert supporting the defense, the jury convicted Rosa.

Her conviction sparked strong and sustained public outcry in Mexico. Major newspapers, magazines, and television networks have covered her story in depth—and continue to do so.[7] A prominent Mexican

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[6] Rosa's defense lawyer approached several specialists in choking and pediatrics, but none was willing to dedicate time to the case without the promise of being paid. App.125. One refused to help because Travis County—the same office prosecuting Rosa—had stiffed her after she testified in another case. App.127.

[7] *See, e.g.*, *Mexicana clama justicia y libertad en Estados Unidos,* UNIVISIÓN NOTICIAS, May 16, 2012, *available at* http://tinyurl.com/9xc8p7c (reporting that Rosa's case possibly involved manipulated expert testimony and racial discrimination, with the prosecutor suggesting most Mexicans were ignorant); *Buscarán reabrir el caso de Rosa Estela Olvera en EU*, INFÓRMATE, Nov. 5, 2010, *available at* http://tinyurl.com/8d5c46p (covering a press conference where local authorities asked the United States government to correct the abuse of authority that happened in Rosa's case); Emilio Fernández Román, *Caso de mexicana presa en EU daría vuelco,* EL UNIVERSAL, Nov. 4, 2010, *available at* http://tinyurl.com/2dy5mkm; Javier Salinas Cesáeo, *Gobierno mexiquense contrata defensa para connacional sentenciada en EU*, LA JORNADA, July 13, 2010, at 43, *available at* http://tinyurl.com/8bpretn (noting that Rosa's prosecution was plagued by unfairness, legal

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filmmaker detailed Rosa's case in the internationally acclaimed documentary *Mi vida dentro* ("My Life Inside").[8] This coverage raised concerns about Rosa's innocence and her lack of help from qualified experts at trial. Mexico's federal government and consulate provided funds and valuable support following the trial. Private citizens and the government of the State of Mexico funded hiring the kind of qualified experts—a pediatric otolaryngologist and two other pediatric specialists—that the trial court had refused. App.51-65, 73.

At state habeas, testimony from those experts—among America's top pediatric-airway and child-abuse specialists—showed why accidental ingestion was not only possible but also the best explanation of what happened to B.G. App.51-65. The habeas court

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errors, and tints of racism); Emmanuel Suberza, *Apoya Ecatepec defensa de mexiquense condenada a 99 años de cárcel en EU*, EL UNIVERSAL, July 12, 2010, *available at* http://tinyurl.com/9f9w9vx (covering comments from the director of the State of Mexico's Commisison on Human Rights, who claimed American authorities violated many of Rosa's rights); Carlos Bonfil, *Mi vida dentro,* LA JORNADA, Jan. 18, 2009, *available at* http://tinyurl.com/8ejrkqn (describing Rosa's story as a dramatic example of the harm a discriminatory legal system can inflict on an undocumented person and referring to racist comments made by the prosecutor during the case).

[8] MI VIDA DENTRO (Ambulante 2007); *see also Mi vida dentro* Home Page, www.mividadentro.com; Tania Molina Ramírez, *Mi vida dentro*, *documental que puede salvar a condenada en EU*, LA JORNADA, Aug. 15, 2010, at 7, *available at* http://tinyurl.com/2ffs6vp.

carefully analyzed the expert testimony from both sides, finding that Rosa's new experts established that B.G. "likely choked accidentally" and that the State's experts did not "credibly rebut" this conclusion. App.52-56, 68. The habeas judge also found that Rosa's lawyer had unsuccessfully requested funds for qualified experts off the record. App.73. Even so, constrained by the CCA's standard for actual-innocence claims, the habeas court ruled Rosa could not prevail on such a claim without "medically indisputable" evidence of her innocence. App.77-80. But the habeas court recognized Rosa's due-process claim under *Ake* v. *Oklahoma*, 470 U.S. 68 (1985), and her ineffective-assistance claim based on her counsel's failure to preserve her *Ake* claim for direct appeal. App.81-85. With "no confidence in the outcome of the trial," the habeas court recommended a new trial. App.84, 89.

B. Rejecting the Habeas Court's Recommendation of a New Trial, the Texas Court of Criminal Appeals Has Applied Two Unconstitutional Standards.

The CCA—a court composed of nine elected judges, seven of them former prosecutors—rejected the habeas court's recommendation and applied two standards inconsistent with U.S. law and fundamental fairness. *Amici* are concerned about how the CCA applied those standards to Rosa—and about their future impact on indigent defendants, including many Mexican nationals.

First, the CCA held that defense counsel's failure to preserve Rosa's *Ake* claim probably would not have changed the outcome of the trial, reasoning it was enough that Rosa's sole testifying "expert" (Kanfer) presented the defense's general theory of the case.[9] The CCA's conclusion defies common sense and cannot be squared with the habeas court's extensive findings about Kanfer's gross inadequacy[10]—or with the CCA's own observation that Kanfer's trial conduct was "probably quite damaging to [his] credibility as a neutral scientific expert."[11]

Effective assistance of counsel requires more than summoning a "purported expert"[12] who agrees

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[9] App.47.

[10] *See, e.g.*, App.74, 82 (finding Kanfer was worse than "having no witness" at all; that he "lacked the pediatric specialization and the clinical experience to render a reliable and persuasive opinion"; that because he lacked these qualifications, his opinion "carried little weight at trial, and was clearly outweighed by the trial testimony" of the State's experts; and that "[t]o the extent Dr. Kanfer's testimony had any persuasive value (which is highly doubtful), . . . it was completely and 100% undermined by Dr. Kanfer's unprofessional conduct at trial"). The CCA ignored the habeas court's findings, violating its own stated rule of deferring to such findings. *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008); *accord Weisgram* v. *Marley Co.*, 528 U.S. 440, 443 (2000) ("[C]ourts of appeals should be constantly alert to the trial judge's first-hand knowledge of witnesses, testimony, and issues; in other words, appellate courts should give due consideration to the first-instance decisionmaker's 'feel' for the overall case.") (internal quotation marks omitted).

[11] App.39.

[12] App.82.

with the defense's ultimate story—that "the defendant did not commit the crime" or that "the victim's death was accidental." When an indigent's case turns on expert testimony, the State does not satisfy due process by supplying an expert with the wrong qualifications and the wrong experience. Rather, the Constitution compels the State to provide a "competent" expert when needed for "an effective defense." *Ake*, 470 U.S. at 77, 83 (holding "the State must, at minimum, assure the defendant access to a *competent* psychiatrist who will conduct an *appropriate* examination") (emphasis added).[13] Here, the prosecution emphasized that Kanfer lacked the proper qualifications and experience. 8.RR.50. Rosa's trial counsel agreed, but failed to request a qualified expert on the record, committing a serious professional error.[14] In such cases, there is more than "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland* v. *Washington*, 466 U.S. 668, 694 (1984).[15]

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[13] *See also Starr* v. *Lockhart*, 23 F.3d 1280, 1289 (8th Cir. 1994) (holding "due process requires access to an expert who will conduct, not just any, but an appropriate examination").

[14] *See* TEX. R. APP. P. 33.1(a) (to preserve error, counsel must object on the record and obtain adverse ruling on the record); STATE BAR OF TEXAS, PERFORMANCE GUIDELINES FOR NON-CAPITAL CRIMINAL DEFENSE REPRESENTATION 5.3(E) (2011) ("Counsel should obtain a clear ruling on any pretrial motion on the record or in writing.").

[15] The issue is not whether Rosa had "an equal number of experts" or a "team of experts," as the CCA would have it. App.45. It is whether her counsel made sure she had the "basic

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Second, according to the CCA, when a habeas applicant relies on medical evidence that *could have been* available at trial, she must use "medically indisputable evidence" to "'unquestionably' establish" her actual innocence.[16] No other American court has ever applied such a standard, for good reason: "medically indisputable" is both oxymoronic[17] and more exacting than "proof beyond a reasonable doubt," the highest evidentiary standard known to law. It comes as no surprise, then, that the CCA renders Kafkaesque decisions in habeas cases involving medical evidence.[18]

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tools"—here, one or more experts competent in the areas of pediatric choking and child abuse—to build "an effective defense." *Ake*, 470 U.S. at 77.

[16] App.14; *Ex parte Briggs*, 187 S.W.3d 458, 465 (Tex. Crim. App. 2005).

[17] *See* WILLIAM OSLER, SIR WILLIAM OSLER: APHORISMS FROM HIS BEDSIDE TEACHINGS AND WRITINGS 125 (William Bennett Bean ed., 1950) ("Medicine is a science of uncertainty and an art of probability.").

[18] *See, e.g.*, *Ex parte Criner*, No. 36,856-01, slip op. at 3 (Tex. Crim. App. July 8, 1998) (denying habeas relief on ground that, even though applicant proved the semen in the rape victim did not contain his DNA, he did not prove his innocence because he could have used a condom (a possibility never mentioned at trial) and because the victim was so "promiscuous" that the presence of another man's semen did not suggest the applicant was not the rapist); *Ex parte Robbins*, 360 S.W.3d 446, 459 (Tex. Crim. App. 2011) (holding an applicant convicted of homicide based on a medical examiner's testimony was not entitled to habeas relief even though the examiner recanted her conclusions, with the CCA reasoning that "it remains at least possible" that the victim's death "could have occurred as [the expert] originally testified").

The CCA also applies its standards arbitrarily. It almost always denies relief to habeas applicants if their medical evidence could have been discovered at trial—even when ineffective assistance of counsel is the reason that evidence was not discovered. This is what happened to Rosa. App.14-15. But in another case involving a young mother who was not Hispanic, the CCA granted a new trial based on claims and facts similar to those here—even though the applicant pleaded guilty and her medical evidence *was* available at the time of trial. *Ex parte Briggs*, 187 S.W.3d. 458, 468 (Tex. Crim. App. 2005) (granting a new trial to applicant who pleaded guilty to felony injury to her child, with relief based on her attorney's failure to "request investigatory and expert witness fees" under *Ake*). In another case, the CCA granted habeas relief because "new scientific developments" suggested innocence was "perhaps possible." *See Ex parte Henderson*, 246 S.W.3d 690, 691-692 (Tex. Crim. App. 2007).[19] It is hard to understand why the CCA should grant habeas relief to someone who received a fair trial and was convicted on the basis of then-valid scientific theories—while denying relief to those like

[19] In *Ex parte Henderson*, the CCA granted a non-Hispanic white woman a reprieve based on new medical studies showing it was "perhaps possible" the toddler she was babysitting could have suffered his injuries from a fall rather than from intentional blows to his head. 246 S.W.3d at 691. That "possibility" was enough to grant relief even though—unlike Rosa's dash for help with B.G. alive in her arms—Henderson buried the three-month-old in a wine-cooler box and fled to another state. *Id.* at 697 (Keasler, J., dissenting).

Rosa, who were denied the opportunity to present "existing" medical evidence of their innocence because of their lawyers' mistakes. Comparing Rosa's case to *Ex parte Briggs* shows the CCA lacks guiding principles in applying its habeas standards. *Ex parte Henderson* reveals twisted logic. And cases like *Ex parte Lopez*[20]—where the CCA grants relief for a claim like Rosa's but with no explanation or analysis—give habeas applicants no hope of ever understanding what really motivates the CCA's decisions to grant or deny relief.

II. The Case Affects Not Only One Woman But Also the Treatment of Mexican Nationals in American Courts and our Countries' Bilateral Relationship.

A. Rosa's Petition Presents a Compelling Case of Actual Innocence.

Amici appreciate the Court cannot correct every error in every case. Still, we trust the Court values each innocent life. The facts here pose a strong case of innocence. Granting Rosa's petition could rescue an innocent woman from languishing in prison for the rest of her life, cut off from her daughter and the son born to her in jail as she awaited trial. *Amici* and our country care deeply about Rosa as an individual. We

[20] No. AP-76,716 (Tex. Crim. App. Jan. 25, 2012) (unpublished), *available at* http://tinyurl.com/9lmjlnm.

care about her family. We also see that her case will influence—for good or ill—thousands of other lives.

B. The CCA's Standards Will Fall Especially Hard on Mexican Nationals and Indigent Defendants of All Backgrounds.

More than two million Mexican nationals live in Texas.[21] Many are undocumented and lack financial resources.[22] They often cannot afford good lawyers, much less qualified experts in forensics cases. Texas provides appointed counsel rather than public defenders, unlike most states, and severely limits funds for expert witnesses.[23] In contrast, "the state usually has access to numerous experts, including many, like medical examiners, who are institutional players."[24]

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[21] U.S. Dept. of Commerce, U.S. Census Bureau, 2010 American Community Survey, *available at* http://tinyurl.com/3or625f.

[22] Pew Research Center, Demographic Profile of Hispanics in Texas, 2010, *available at* http://tinyurl.com/8n2nx3e.

[23] James D. Bethke, *Rich or Poor: The Right to a Fair Trial Requires a Good Lawyer*, TEX. BAR J., Mar. 2006, at 240; *Indigent Defense News in Texas* (Tex. Indigent Defense Comm'n, Austin, Tex.), Dec. 2011, at 4, *available at* http://tinyurl.com/94bvvwj. It is well documented that indigent defendants who get appointed counsel suffer worse outcomes than those who get public defenders. *See* Thomas H. Cohen, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* 5 (2011), *available at* http://ssrn.
com/abstract=1876474.

[24] Jordan Smith, *A Parliament of Experts: Did 'expert testimony' convict an innocent woman of murder?*, AUSTIN CHRON., Feb. 4, 2011, *available at* http://tinyurl.com/8d4ldsz.

Indigent defendants—with limited or no funds to hire experts—have no way to counter the State's power, and "the adversarial process fails."[25] Indigents of all backgrounds face those stark facts. And the problem is especially severe for Mexican nationals, many of whom do not speak English fluently and do not understand their legal rights.

Thus, the problems in Rosa's case—constitutionally incompetent counsel, no access to qualified experts, and CCA standards that prevent meaningful judicial review—are likely to recur in future cases involving Mexican nationals.

It is especially important for the Court to correct the CCA's flawed legal standards here, as there are few other safeguards in Texas's legal system to ensure justice for indigents, especially Mexicans. Texas prosecutes racial minorities disproportionately.[26] And

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[25] *Ibid.*; *see also* Amber J. McGraw, *Life But Not Liberty? An Assessment of Noncapital Indigent Defendants' Right to Expert Assistance Under the* Ake v. Oklahoma *Doctrine*, 79 WASH. U. L.Q. 951, 952 (2001) (identifying the lack of expert-witness funds for indigents as a "prime source" of erroneous convictions).

[26] *See* MICHAEL J. COYLE, LATINOS AND THE TEXAS CRIMINAL JUSTICE SYSTEM 2-3 (2003), *available at* http://tinyurl.com/bmn5zj7 (showing minorities comprise 70% of Texas's prison population but only 40% of Texas's total population, with Latinos roughly twice as likely as whites to be incarcerated); Martin Guevara Urbina & Ferris Roger Byxbe, *Capital Punishment in America: Ethnicity, Crime, and Social Justice*, 2 INT'L J. OF HUMANITIES & SOC. SCI. 13-29 (2012) (showing that between May 15, 1985 and April 1, 2012, Texas executed 77 Latinos of Mexican descent, 11 times as many as the rest of America combined).

because "Texas is one of the few remaining states in which judges at all court levels are selected in partisan elections," Texas judges have to be "tough on crime" to stay in office.[27] This reality shapes the Texas judiciary,[28] and the CCA sets the tone for the system. It is "the most notorious state high court in the country," and one of its own judges has conceded the CCA is a "national laughingstock."[29] The decisions and rhetoric of its judges show why. Presiding Judge Sharon Keller has touted herself as a "prosecution-oriented person" who sees "legal issues from the perspective of the state instead of the perspective of the defense."[30] CCA Judge Tom Price advertises he is "very tough on crimes where there are victims who have been physically harmed," holding "no feelings for the criminal" because "[a]ll [his] feelings lie with the victim."[31] Such rhetoric arguably exhibits an

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[27] Stephen B. Bright, *Elected Judges and the Death Penalty in Texas*, 78 TEX. L. REV. 1805, 1826, 1836 (2000).

[28] *See* Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. REV. 759, 760-66 (1995) (naming Texas judges who were voted off the bench for appearing "soft on crime").

[29] Michael Hall, *And Justice for Some*, TEXAS MONTHLY, Nov. 2004, at 156, 157.

[30] Jennifer Lenhart, *Texas Court of Criminal Appeals*, HOUSTON CHRON., Oct. 30, 1994, at 16; Bruce Nichols, Editorial, *Allegations Stir Up Appeals Court Races*, DALLAS MORNING NEWS, Oct. 9, 1994, at 45A.

[31] Clay Robison, *Judge's Politics an Exception to Rulings*, HOUSTON CHRON., Feb. 4, 2001, at 2.

unconstitutional bias against defendants. *Republican Party of Minn.* v. *White*, 536 U.S. 765, 776, 777 n.7 (2002).[32] Vigilant protection of an indigent defendant's constitutional rights is crucial in such a system.

C. The CCA's Ruling Is Corrosive to Our Countries' Invaluable Bilateral Relationship, Which Depends on Our Officials' Treating Both Countries' Citizens Fairly.

The Texas courts' handling of Rosa in this highly publicized case—and the prospect of similar treatment of Mexican nationals in future cases—corrodes trust between our citizens and undermines common interests. This is not good for Mexicans or Americans.

A strong and healthy relationship between Mexico and the United States is crucial to the welfare of our citizens. Our national governments cooperate on critical issues: contranarcotics, terrorism, human smuggling, illegal firearms, human-rights abuses, migration, and national security. We are important trading partners, with goods and services trade totaling $500 billion per year. Our citizens travel to the other's land more than to any other foreign country.

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[32] *See also* John Paul Stevens, Opening Assembly Address, A.B.A. Annual Meeting, Orlando, Fla. (Aug. 3, 1996), *in* 12 ST. JOHN'S J. LEGAL COMMENT. 21, 30-31 (1996) ("A campaign promise to 'be tough on crime' . . . is evidence of bias that should disqualify a candidate from sitting in criminal cases.").

More than 750,000 U.S. citizens live in Mexico, and millions of Mexican nationals live in the United States. It is not surprising, then, that more Mexican nationals are arrested in the U.S. than in any other foreign country, and vice versa.

As such, each country depends on the other's officials to accord basic legal rights to its citizens. These include the right to a fair trial and, in cases turning on expert opinion, access to competent experts. Rosa's case has colored Mexicans' perception about how Mexican citizens are treated in Texas courts and American courts generally. Americans would surely be alarmed—and rightly so—if a U.S. citizen received a 99-year sentence in Mexico based on the facts in Rosa's trial and habeas proceedings.

When courts abandon constitutional values in passing judgment on the other country's citizens, resentment is sure to build among that country's private citizens and governmental officials alike. The results are good for no one. Our officials, high and petty, must apply the law with an even hand, subjecting the powerful to the rule of law and the powerless to its protection. *Amici* ask the Court to correct the CCA's unconstitutional legal standards and to vindicate Rosa's due-process rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 2012