

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-8656

FEDERICO MARTINEZ-MACIAS,
Texas Department of Corrections,
Death Row Inmate, No. 771,

Petitioner-Appellee,

versus

JAMES A. COLLINS, Director,
Texas Department of Criminal
Justice, Institutional Division,

Respondent-Appellant.

Appeal from the United States District Court
for the Western District of Texas

(December 11, 1992)

Before POLITZ, Chief Judge, HIGGINBOTHAM, and SMITH, Circuit
Judges.

HIGGINBOTHAM, Circuit Judge:

We review today the judgment of the United States District
Court granting a writ of habeas corpus on the petition of Federico
Martinez-Macias convicted of capital murder in Texas and now on
death row in that state. We affirm the judgment below for
essentially the reasons stated by the magistrate-judge in her
report and recommendation, and the order of the district court
adopting it. We have read the record, read the briefs, and heard
oral argument. We are left with the firm conviction that Macias
was denied his constitutional right to adequate counsel in a

capital case in which actual innocence was a close question. The state paid defense counsel \$11.84 per hour. Unfortunately, the justice system got only what it paid for.

The judgment granting the petition for habeas corpus is affirmed. The judgment of conviction is vacated and Federico Martinez-Macias shall be released from custody if the State of Texas has not commenced a new trial within 120 days of our mandate.