

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 00-40194

JOHNNY AVALOS ALBA,

Petitioner-Appellant,

versus

GARY L. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, INSTITUTIONAL DIVISION,

Respondent-Appellee.

Appeal from the United States District Court
For the Eastern District of Texas
(4:98-CV-221)

August 21, 2000

Before EMILIO M. GARZA, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Johnny Avalos Alba petitions for a certificate of appealability (“COA”). In light of the respondent’s confession of error, we GRANT a COA on the issue of whether the trial court impermissibly allowed Alba’s race to be used as a factor in the punishment phase of his trial,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

VACATE the judgment of the district court, and REMAND with instructions to grant habeas relief limited to sentencing. *See Saldano v. Texas*, –U.S.–, 120 S. Ct. 2214, __ L. Ed. 2d __ (2000).

In all other respects, COA is DENIED.