

No. 23-5823

IN THE
Supreme Court of the United States

RAMIRO FELIX GONZALES,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

**MOTION TO DEFER CONSIDERATION OF
PETITION FOR CERTIORARI
PENDING THE DISPOSITION OF
GLOSSIP V. OKLAHOMA, NO. 22-7466**

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CAPITAL CASE

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On January 22, 2024, this Court granted certiorari in *Glossip v. Oklahoma*, No. 22-7466, and directed the parties to brief and argue, in addition to the questions presented, the issue of “[w]hether the Oklahoma Court of Criminal Appeals’ holding that the Oklahoma Post-Conviction Procedure Act precluded post-conviction relief is an adequate and independent state-law ground for the judgment.”

Mr. Gonzales petitioned for a writ of certiorari on October 12, 2023. In opposing this Petition, Respondent argued that the Texas Court of Criminal Appeals' ("CCA") decision below rested on an adequate and independent state ground. Resp. Br. Opp'n at 10-19. In his reply, filed on January 26, 2023, Mr. Gonzales pointed out that the CCA's purported application of Tex. Code Crim. Proc. Art. 11.071 § 5(a) was *not* the ultimate ground for the decision below and, to the extent that it was one of the grounds underlying the state court decision, there was no "clear or express indication" that the state law provision was the dispositive ground for the lower court's decision. Pet'r Reply Br. at 3-7.

In *Glossip v. Oklahoma*, No. 72-7466, the petitioner argues that the application of the state law rule at issue in his case necessarily turned on determinations of federal law. *See, e.g.*, Pet'r Reply Br. at 11-12, No. 22-7466. Here, Mr. Gonzales argues both that the application of the state law rule at issue in his case was inextricably intertwined with federal constitutional questions, and that the state court's decision does not in fact rest on the adequate and independent state ground as Respondent claims. Pet'r Reply Br. at 3-12.

Mr. Gonzales submits that in his case, it is clear that the CCA's statement that the central thrust of the claim at issue was not cognizable does not preclude this Court's review, and that Respondent's incorrect argument to the contrary presents no impediment to a grant of certiorari. But to the extent this Court finds it advisable to consider this issue in tandem with the issue presented in *Glossip v. Oklahoma*, Mr. Gonzales alternatively suggests that the Court hold this case pending the disposition of *Glossip v. Oklahoma*.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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