No. 23-5823

IN THE

Supreme Court of the United States

RAMIRO FELIX GONZALES,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI

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RESPONSE IN OPPOSITION

Petitioner, Texas death row inmate Ramiro Gonzales, asks the Court to defer, i.e., stay, its consideration of his pending petition for writ of certiorari until the Court decides *Glossip v. Oklahoma*, No. 22-7466 (U.S.). Mot. Defer 1. This is because, Gonzales argues, one of the issues in *Glossip* might impact his case (though he argues in the same breath that the issue is largely irrelevant to his case). *Id.* at 2–3. The Court should reject Gonzales's meritless delay tactic.

On January 11, 2024, the parties were notified by the state trial court that it had set a hearing for February 12, 2024. Just a few days before that hearing, Gonzales moved to stop it, arguing that his pending certiorari petition and motion to defer in this Court made setting an execution date premature. The trial court rejected Gonzales's arguments and set his execution for June 26, 2024.

Gonzales's conviction is nearly twenty years old. In that time, he's sought out state direct review, state habeas review thrice (the initial was heard on the merits and reconsidered years later, the second dismissed, and the third heard partially on the merits, partially dismissed), federal habeas review (and its attendant appeals), and effectively, a second

round of federal habeas review by moving to reopen the initial proceeding (and its attendant appeals too). *See* Resp't Br. Opp'n 4–9. He's also challenged Texas's method of execution and its execution chamber policies. Beginning in 2016, Gonzales has been set or reset for execution five times. His present setting is his sixth execution date. Now, on his fourth trip before the Court, he seeks to delay his execution once more. It's understandable, unfortunately commonplace, *see Rhines v. Weber*, 544 U.S. 269, 277 (2005) ("In particular capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death."), but unwarranted.

For one, Gonzales himself disputes whether the *Glossip* certiorari grant is relevant to his proceeding. Mot. Defer 3 ("Respondent's incorrect argument to the contrary presents no impediment to a grant of certiorari."). Maybe this is why Gonzales does nothing to bring his case within the ambit of that certiorari grant, nor can he. The bar at play here is Texas's abuse-of-the-writ bar (though Gonzales disagrees). *See* Tex. Code Crim. Proc. art. 11.071 § 5(a). Whether it is adequate is a decision unique to its application by the Texas Court of Criminal Appeals (CCA). In other words, is the bar "firmly established" and does the CCA

"regularly follow[]" it? *Lee v. Kemna*, 534 U.S .362, 376 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). What another state high court does with its state law is of no matter to the Texas law applied by the CCA. And whether the abuse-of-the-writ bar is independent of federal law comes from what the CCA wrote in its opinion, *see Coleman v. Thompson*, 501 U.S. 722, 732 (1991) (training review on "[s]tate court opinions" to determine independence), not what another court wrote in theirs. In short, no matter what the Court holds in *Glossip*, about how the Oklahoma Court of Criminal Appeals applied Oklahoma state law, it will have no effect on how the CCA applied Texas law. There is no reason to delay resolution of Gonzales's certiorari petition on such a flimsy reed.

For another, certiorari can be denied here simply because there's no need for the "guidance" Gonzales seeks as he fails to provide any sort of conflict or confusion amongst the lower courts in interpreting *Johnson v. Mississippi*, 486 U.S. 578 (1988). *See* Resp't Br. Opp'n 22–23. And there's real question about whether Gonzales adequately raised the *Johnson* issue in state court. *Id.* at 20–21. But even if these concerns are set aside, Gonzales failed to prove falsity for the issue reviewed on the merits by the CCA, and fails to prove falsity for those that were barred,

id. at 28–40, all of which are fact dependent matters not well suited for the Court's review. Assuming falsity were proven—somehow without a factfinding court—materiality certainly is not given the State's overwhelming punishment case. *Id*. In other words, the adequacy and independence issue in this case is but one of the many reasons to deny Gonzales a writ of certiorari.

And because there are many reasons to deny certiorari in this case, most unconnected to the adequacy and independence issue implicated by the *Glossip* certiorari grant, and because that "connection" will have no effect on the issues raised here, Gonzales's motion to defer his petition for writ of certiorari, the continuation of nearly twenty years of avoiding sentence, should be denied.

Respectfully submitted,

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