

● 23-6529 ●

No. #

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SUPREME COURT U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

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**ORIGINAL**

In re:

Raymond Ramirez,

PETITIONER.

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ON PETITION FOR A WRIT OF MANDAMUS TO  
THE  
UNITED STATES COURT OF APPEALS  
FOR THE  
FIFTH CIRCUIT COURTS

-----  
PETITION FOR WRIT OF MANDAMUS

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Raymond Ramirez  
No. B#00903886  
John M. Wynne State Farm  
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Huntsville, Texas. 77349-0009  
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Petitioner, In propria persona

## ISSUES PRESENTED

### ISSUE No. 1

Whether the court of appeals clearly abused its discretion and deprived the Petitioner of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution when it fail to consider and address the Petitioner's issue of whether he was required to seek authorization fo file a second or successive federal habeas petition when the constitutional claims presented were based on a newly enacted State post-conviction statute relating to certain scientific evidence that was not available at the time the Petitioner filed his initial federal habeas corpus petition?

### ISSUE No. 2

Whether the court of appeals clearly abused its discretion by holding that the Petitioner did not make the necessary showing for authorization to file a second or successive federal habeas corpus petition under Title 28 U.S.C., Section 2244(b)(2)(A) or (B)(i) and (ii) when the newly discovered evidence conclusively showed that the factual predicate for the claim as discovered by the Petitioner on August 11, 2022 could not have been discovered previously through the exercise of due diligence at the time the initial federal habeas petition was filed; and the facts underlying the claim if proven and viewed in the light of the evidence as a whole would be sufficient to establish by clear and convincing evidence that for the constitutional error of the prosecution's use of perjury or false testimony no reasonable fact finder would have found the Petitioner guilty of Capital Murder when the new evidence no longer supported the of an intentional Murder or Homicide in the case that presented more than a borderline case to proceed further?

### ISSUE No. 3

Whether the court of appeals clearly aubsed its discretion and deprived the Petitioner of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution when it fail to consider and address the prominent and propriety of the Petitioner's newly discovered evidence and claim of actual innocence that was not predicated on a freestanding claim of actual innocence and was recognized by this Court in Kuhlman v. Wilson, 106 S.Ct. 2616 (1986) for the prupose of having considered a second or successive federal habeas corpus petition?

## LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding or who have an interest in the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner;

Raymond Ramirez  
No. #00903886  
John M. Wynne State Farm  
810 FM 2821, West Hwy. 75, N.  
Huntsville, Texas. 77349-0005

Respondent;

United States Court of Appeals  
for The Fifth Circuit Courts:  
Jerry E. Smith, Circuit Judge  
Lesilie H. Southwick, Circuit Judge  
Cory T. Wilson, Circuit Judge

Party of Interest:

State of Texas:  
Ken Paxton, Attorney General  
P.O. Box 12548  
Austin, Texas. 78711-2548

## RELATED CASES

1. Case No. #G-09-252, Styled: Raymond Ramirez v. Rick Thaler, Director, TDCJ-CID, Before the United States District Court for the Southern District of Texas, Galveston Division.
2. Case No. #10-40314, Styled: Raymond Ramirez v. Rick Thaler, Director, TDCJ-CID, Before the United States Court of Appeals for the Fifth Circuit.
3. Case No. #21-40875, Styled: Raymond Ramirez v. Gary Quaterman, Director, TDCJ-CID, Before the United States Court of Appeals for the Fifth Circuit.
4. Case No. #WR-72,546-05, Styled: Ex Parte Raymond Ramirez, before the Texas Court of Criminal Appeals.

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IN  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a Writ of Mandamus issue to review the decision and/or determination of the Panel for the United States Court of Appeals for The Fifth Circuit Courts denying an Application or Motion for Authorization To File A Second or Successive Petition for A Writ of Habeas Corpus pursuant to Title 28 U.S.C., Section 2254 et seq.

OPINIONS BELOW

The unpublished written Order of the Panel for the United States Court of Appeals for The Fifth Circuit Courts appears at Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28 U.S.C., Section 1651(a), and Rule 20.1 and 20. 3. (a) of the Supreme Court Rules.

The date on which the Panel for the United States Court of Appeals for The Fifth Circuit Courts delivered its Order in this case was on July 26, 2023.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution 14TH Amendment, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C., Section 2244 (b)(2)(B)(i) & (ii); A claim presented in a second or successive habeas corpus application under Section 2254 [28 U.S.C., Section 2254] that was not presented in a prior application shall be dismissed unless - (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Title 28 U.S.C., Section 2244 (3)(E): The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

Supreme Court Rules, Rule 20. 1.: Issuance by the Court of an extraordinary writ authorized by 28 U.S.C., Section 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Supreme Court Rules, Rule 20. 3. (a): A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

Texas Code of Criminal Procedure, Article 11.073 (enacted September 1, 2013; amended September 1, 2015): This article applies to relevant scientific evidence that contradicts scientific evidence relied on by the State at trial. A court may grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files an application, in the manner provided by Article 11.07, 11.071, or 11.072, containing specific facts that: relevant scientific evidence is currently available and was not available at the time of the convicted person's trial because the evidence was not ascertainable through the exercise of reasonable diligence by the convicted person before the date of or during trial.

## STATEMENT OF THE CASE

Petitioner was convicted before the 344TH Judicial District Court of Chambers County, Texas, in Case No. #10350, for the alleged offense of Capital Murder, Styled: The State of Texas v. Raymond Ramirez. Punishment was imposed on January 20, 2000, at Life in the Texas Department of Criminal Justice-Correctional Institutions Division.

On April 05, 2001, the First Court of Appeals for The State of Texas, in an Unpublished Opinion affirmed the Judgment & Sentence of the trial court in Case No. #01-00-001-8-CR, Styled: Raymond Ramirez v. The State of Texas. (Appendix B). On September 12, 2001, the Texas Court of Criminal Appeals refused the Petitioner's Petition for Discretionary Review in Case No. #PD-1193-01, Styled: In re Raymond Ramirez.

Petitioner's first federal habeas petition filed under the provisions of Title 28 U.S.C., Section 2254 et seq. was dismissed by the United States District Court for the Southern District of Texas, Galveston Division on February 11, 2010, as time-barred pursuant to Title 28 U.S.C., Section 2244(d) et seq., in Case No. #G-09-252, Styled: Raymond Ramirez v. Rick Thaler, Director, TDCJ-CID. Petitioner's appeal was dismissed by the United States Court of Appeals for the Fifth Circuit on June 09, 2010, for want of jurisdiction in Case No. #10-40314, Styled: Raymond Ramirez v. Rick Thaler, Director, TDCJ-CID.

On July 05, 2023, Petitioner filed a Motion for An Order Authorizing A United States District Court To Consider A Second or Successive Federal Habeas Corpus Petition Pursuant To Title 28 U.S.C, Section 2254 et seq. (Appendix C).

On July 26, 2023, in an Unpublished Order, the United States Court of Appeals for the Fifth Circuit denied the Petitioner's Motion in Case No. #23-40399. Styled: In re Raymond Ramirez. (Appendix A).

Before the court of appeals, Petitioner sought authorization to have considered the following Grounds for federal habeas relief, to-wit:

(1) He was actually innocent of the offense charged because new relevant scientific evidence demonstrated and conclusively established that the death of the alleged victim was not a Homocide due to Homicidal Violence because new Pathological Findings denounced the Cause of Death as Multiple Blunt Force Injuries and the Manner of Death to be Undetermined;

(2) He was deprived of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution because his conviction was based and premised upon perjury and/or false testimony of the State's Expert Witness regarding the Cause of Death and Manner of Death of the alleged victim where such evidence has since been recanted; and

(3) He was entitled to a new trial under the provisions of Article 11.073 of the Texas Code of Criminal Procedure because there is new relevant Scientific evidence that contradicts the scientific evidence relied on by the State wherein the Autopsy Report has been changed to reflect and depict that the Cause of Death was due to Multiple Blunt Force Injuries and the Manner of Death to be Undetermined.

In considering and addressing the Petitioner's motion, the court of appeals held that the Petitioner sought to argue that he was innocent because the victim died from multiple blunt-force injuries rather than homicidal violence and that he received ineffective assistance of counsel. However, the Petitioner's motion did not present a claim regarding ineffective assistance of counsel, and did not present a claim regarding he was actual innocent because the victim died from multiple blunt-force injuries rather than homicidal violence.

Further, the court of appeals held that it could not authorize

the filing of a successive Section 2254 application only if the Petitioner made a prima facie showing that either (1) his claim relied on a new rule of constitutional law that was made retroactive by the United States Supreme Court and was previously unavailable or (2) the factual predicate for the claim could not have been discovered previously through due diligence, and the underlying facts, if proven, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the Petitioner guilty of the underlying offense. Citing, Section 2244(b)(2), (3)(C). Without elaborating in applying the law to the facts of the case, the court of appeals paid lip-service to the matter and conclusionary held that the Petitioner failed to make the requisite showing. (Appendix A). In light of the Petitioner's claim of actual innocence, the court of appeal without elaborating in applying the law to the facts of the case and the propriety of the Petitioner's "new evidence," the court of appeal simply held that it did not recognize freestanding claims of actual innocence. Citing, *In re Swearingen*, 556 F.3d 344 (5th Cir. 2009), and furthered that it did not recognize actual innocence as a gateway for authorization to file a second or successive application. Citing, *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013), and *Jackson v. Lumpkin*, 25 F.4th 339 (5th Cir. 2022). (Appendix A).

## REASONS FOR GRANTING THE PETITION

This case presents a novel jurisdictional question and a very important question of federal law that has not been determined by this Court and should be settled by this Court regarding whether it has jurisdiction to review a decision of a federal court of appeals denying a Motion for Authorization under Title 28 U.S.C., Section 2244(b)(3)(E), upon an original petition seeking mandamus relief.

The Petitioner argues that this Court has jurisdiction, as part of its original jurisdiction, to review a decision of a federal court of appeals denying a federal habeas petitioner's motion for authorization by way of a writ of mandamus.

Title 28 U.S.C., Section 2244(b)(3)(E) provides, that: "The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be subject of a petition for rehearing or for a writ of certiorari." However, the statutory provisions does not prohibit the review of the grant or denial of an authorization by a court of appeals to file a second or successive application by this Court by way of mandamus.

On the matter of Extraordinary Writs under Rule 20 of the Supreme Court Rules and this Court's original jurisdiction, in *In re Davis*, 130 S.Ct. 1 (2009) this Court in view of its habeas corpus jurisdiction decided whether it had jurisdiction to entertain an original petition for writ of habeas corpus.

This Court held that for the most part the provisions of the Antiterrorism Effective Death Penalty Act of 1996 (AEDPA) does not preclude this Court's power to grant habeas corpus

relief under its original jurisdiction. However, this Court decided that it does affect the standard of review used by this court in the granting of such relief.

Thus, to what extent does this Court have to review a decision of a federal appellate court's denial of a motion for authorization by way of a writ of mandamus invoking this Court's original jurisdiction under Title 28 U.S.C., Section 1651(a), Rule 20.1, and Rule 3(a) of the Supreme Court Rules? To the extent thereof, Petitioner argues that this Court has jurisdiction to review a decision of a federal appellate court's denial of a motion for authorization by way of a writ of mandamus before this Court.

Rules blocking the enforcement of the "All Great Writ," some of which were created by the AEDPA should not be employed to deprive people of their constitutional protected rights.

Under Rule 20. 1 of the Supreme Court Rules, issuance by the Court of an extraordinary writ authorized by Section 1651(a) is not a matter of right, but of discretion sparingly exercised.

To justify the granting of such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

As provided by Rule 20. 3. (a), a petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity

why the relief sought is not available in any other court.

Addressing the contours of a petition for mandamus relief before this Court, this Court has established that a writ of mandamus is the appropriate remedy for exceptional circumstances amounting to a judicial usurpation of judicial power or a clear abuse of discretion. *Cheney v. U.S. Dist. Ct.*, 120 S.Ct. 2576 (2004). However, this Court also held that in reviewing petitions for mandamus relief, courts must be careful least they suffer themselves to be misled by labels such as abuse of discretion and want of power into interlocutory review of non-appealable orders on the mere ground that they may be erroneous. *Will v. United States*, 88 S.Ct. 269 (1967). Cf., *Banker Life & Cas. Co. v. Holland*, 74 S.Ct. 145 (1953); rejecting reasoning that implied that every interlocutory order which is wrong might be reviewable under the "All Writs Act." This admonition warns that the courts are not to issue a writ to correct a mere abuse of discretion, even that such might be reversible on a normal appeal. The inverse of this admonition, of course, is that a writ is appropriate to correct a "Clear Abuse of Discretion."

Admittedly, the distinction between abuse of discretion and a clear abuse of discretion cannot be sharply defined for all cases. As a general matter, this Court's exercise of its discretion is not unbounded; that is, this Court must exercise its discretion within the bounds set by the relevant statutes and relevant binding precedents. A lower court, as in this case, the United States Court of Appeals for The Fifth Circuit, clearly abused its discretion when it (1) relied on clearly

erroneous factual finding, (2) relied on a clearly erroneous conclusion of law; and (3) clearly misapplied the law to the facts of the case in the mist of denying the Petitioner's motion for authorization. This Court's review of these type of errors, shouldsbein the mist of granting mandamus relief, when as in this case, the errors produced a patently erroneous result.

Thus, mandamus is the appropriate means to test a federal court of appeals discretion in ruling on the Petitioner's motion for authorization, because mandamus is entitely appropriate to review for a clear abuse of discretion that clearly exceeds the bounds of judicial discretion.

This Court reiterated the importance of "actual innocent claims" and confirmed that such claims require careful scrutiny even when they are brought in a successive collateral attack. See., Davis.

It would appear that this Court's standard of review for a clear abuse of discretion is whether the court of appeals committed a clear abuse of discretion in denying the Petitioner authorization to file a second or successive federal habeas petition pursuant to Title 28 U.S.C., Section 2254 et seq., when the motion satisfied upon a frima facie showing the requirements of Title 28 U.S.C., Section 2244(b)(3)(C)?

The relevant portions of Section 2244(b)(3)(C) requires that a claim be dismissed unless: (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (2) the facts underlying the claim, if proven and viewed in light of the evidence as

a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

Thus, Section 2244 establishes two (2) independent gates through which the motion to file a successive petition must pass before the merits will be addressed. However, given the Petitioner's pro se status, the presentment of new evidence, and justifying circumstances, the court of appeals fail to review the Petitioner's motion with a lenient eye allowing the case to proceed, as the case is more than borderline. Williams v. Kulman, 722 F.2d 1048, 1050 (2nd Cir. 1993). The court of appeals did not lift an eye-brow as to the Petitioner's presentment of "New Evidence" and gave it no consideration whatsoever regarding the Petitioner's claim of actual innocence as a gateway to have his constitutional claim of perjury heard on the merits. The court of appeals failure to fully examine the relevant issues of constitutional violations and claim of actual innocence based on newly discovered evidence in itself deprived the Petitioner of his constitutional rights to Due Process under the 14TH Amendment to the United States Constitution. Surely, this was a clear abuse of discretion committed by the court of appeals.

In view of the court of appeals conclusionary order denying the Petitioner's motion for authorization, the court of appeals did not find that the claims presented for authorization were presented in a prior federal habeas petition. Further, it is clear from the court of appeals decision, that it did not make

the threshold inquiry and determination of whether the claims had been presented in a prior federal habeas petition. *In re Mills*, 101 F.3d 369 (11th Cir. 1996). Therefore, it must be taken that the claims were not presented in a prior federal habeas petition and thus survives the hurdle of Title 28 U.S.C., Section 2241(b)(1). Thus, the claims presented are not successive.

As demonstrated above, it must be taken that the claims are being presented for the first time in a federal habeas petition and fall under the statutory provisions of Title 28 U.S.C., Section 2244(b)(2)(B)(i) & (ii), requiring the Petitioner to show: (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty.

In the context of determining whether to grant a motion for permission to file a second or successive petition for writ of habeas corpus, Section 2244(b)(3)(C) provides that the court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a *prima facie* showing that the application satisfies the requirements subsection (B)(i) & (ii). The definition of "*prima facie* showing" is simply a sufficient showing of possible merits to warrant a fuller exploration by the district court. If, in light of the documents submitted with the motion, it appears

reasonably likely that the motion satisfies the stringent requirement for the filing of a second or successive federal habeas petition, the court of appeals shall grant the motion. In re Johnson, 322 F.3d 881 (5th Cir. 2003). How true and liberally this is applied by the Court of Appeals for the Fifth Circuit is at best suspect. As in this case, the court of appeals gave no consideration to the newly discovered evidence in this case that presented a *prima facie* showing of actual innocence.

A petition or motion based on a claim that did not become ripe any earlier than until after the adjudication of the first petition or motion is not a second or successive petition or motion within the meaning of Section 2244. *United States v. Obeid*, 707 F.3d 898 (7th Cir. 2013), and *Slack v. McDaniel*, 120 S.Ct. 1595 (2000).

In this case, Petitioner's first federal habeas petition was dismissed on February 11, 2020, by the United States District Court for the Southern District of Texas, Galveston Division, pursuant to Title 28 U.S.C., Section 2244(d), in Case No. #G-09-252, Styled: *Ramirez v. Thaler, Director, TDCJ-CID*.

Petitioner's new evidence consisting of the Amended Autopsy Report was generated and/or compiled on May 18, 2022, that the Petitioner became aware of on August 11, 2022. Therefore, the factual predicate for the Petitioner's claims and the claims themselves did not become ripe any earlier than until after the adjudication of the first federal habeas petition. There is no evidence presented upon which the court of appeals could have reasonably conceived that this factual predicate could

have been discovered previously through the exercise of due diligence. (Appendix D).

Therefore, it can be reasonably concluded that the court of appeals clearly abused its discretion by way of an erroneous factual finding, and conclusion of law.

Clearly, the new evidence that charges the factual predicate was not available at the time the Petitioner filed his first federal habeas petition, and the Petitioner specifically pled the date he acquired and/or became aware of the new evidence through the exercise of due diligence.

Therefore, the Petitioner did show and has shown that the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and the court of appeals abused its discretion in its decision that the Petitioner did not meet this requirement.

In this case, the Court of Appeals for the First District of Texas affirmed the Judgment & Sentence of the trial court on April 05, 2001, (Appendix B). The Texas Court of Criminal Appeals denied the Petitioner's Petition for Discretionary Review on September 12, 2001.

The Petitioner was indicted for the alleged offense of Capital Murder that stemmed a Post-Mortem Examination (Autopsy Report) conducted by Paul W. Shrode, a Forensic Pathologist with the Harris County Medical Examiner's Office on December 07, 1997. (Appendix E) Pathological Findings

Shrode made Pathological Findings, that the alleged victim suffered from: (1) Frothy exudate of the lungs; (2) Multiple

points of blunt trauma to head and face; and (3) Fractured of the right horn of the hyoid bone. From these Pathological Findings, Shrode's medical basis for the Cause of Death to be Homocidal Violence and the Manner of Death to be a Homicide. (Appendix E).

During the Petitioner's trial Shrode was called as the prosecution's expert witness, who testified that things such as the "fractured hyoid bone" in the neck of the alleged victim suggested a direct point of trauma in a unique place in the body, and the seemingly scratch marks on the front neck of the alleged victim suggested that it was not a motor vehicle accident. Shrode went on to say, that since there were multiple points of trauma on the top of the head suggested that it was not a motor vehicle accident. (RR.Vol.IV; p. 39).

In view of Shrode's testimony, the prosecution during Closing Arguments of the Petitioner's trial, emphasized on Shrode's testimony regarding the Petitioner's specific intent to kill the alleged victim, because the alleged victim had a fractured hyoid bone in the neck that is normally caused by choking. (RR.Vol.IV; p. 122).

During the Petitioner's direct appeal, the court of appeals surmise of the evidence in upholding the Petitioner's conviction was solely based on the testimony of Shrode. The court of appeals stated that the evidence considered in the light most favorable to the verdict, showed that the victim had suffered a severe beating, her blood was found on the Petitioner's cloths and in his car, and he was the last person seen with the victim.

(Appendix B). The court of appeals referred to Shrode's testimony, that blunt trauma to the head caused the victim's brain to herniate into the opention to to the spinal column, thus, shutting down her respiratory system. Therefore, there was legally sufficient evidence to conclude that the Petitioner had beat the victim about the head, and that the head woundsultimately led to her death. (Appendix B).

The court of appeals in considering all the evidence referred to Shrode's testimony and fact that he could not determine, with certainty, whether the cause of death was from the blunt trauma that caused the brain swelling or whether the victim drowned, that was premised on evidence of bubbles in the neasal cavity that suggested drowning, and that he believed that the victim was still alive when she was placed in the water. The court of appeals furthered, that even though shrode testified that the water may have been a "contributing factor," he also testified that the injuries to her brain would have still caused her death, therefore concluding, that a rational jury could have determined that the beating caused the victim's brain to swell, thus, causing her respiratory system to shut down, and that the fact the victim was in the water at the time this happen contributed to, but did not cause, her death. (Appendix B).

On May 18, 2022, an Amended Post-Mortem Examination (Autopsy Report) based on examination of the alleged victim conducted on December 07, 1997, that was authored by Shrode, and now Pramod Gumpeni, Assistant Deputy Chief Medical Examiner of the Harris County Medical Examiner's Office, and Dwayne Wolf,

Deputy Chief Medical Examiner of the Harris County Examiner's Medical Office, was made.

The Amended Report made new Pathological Findings, that the alleged victim suffered from only (1) Multiple Blunt Force Injuries, and added that: Upon review of the photographs from the autopsy and from review of the crime scene description, the injuries that the decedent sustained could be attributed to a pedestrian being struck by a motor vehicle. The patterned injuries on the head and extremities could be from parts(s) of a vehicle, or from going under a vehicle. It was furthered, that given the unclear circumstances as to how the decedent sustained these injuries, it is more appropriate to classify the Cause of Death as Multiple Blunt Force Injuries and Manner of Death to be Undetermined. (Appendix D).

The Amended Report clearly wiped out the previous Pathological Findings made by Shrode himself and trial testimony, that constitutes a recantation of his trial testimony and depiction of those Pathological Findings, and calls into question the veracity of the Petitioner's conviction, that a "court" cannot have confidence in the outcome of the Petitioner's conviction. Further, there is not basis for the State appellate court's affirmation of the Petitioner's conviction upon Shrode's previous trial testimony.

The court of appeals stated that the Petitioner sought to argue that he is innocent because the victim died from Multiple Blunt Force Injuries rather than Homicidal Violence. However, the graveman of the Petitioner's argument that the Cause of

Death was no longer a "Homocide," that led to and the initiation of an indictment charging him with the offense of "Capital Murder," and upon which the prosecution was premised.

The Amended Report, calls into question Shrode's testimony and Pathological Findings of (1) Frothy exudate of the lungs, and (3) Fractured of the right horn of the hyoid bone; and that it was not a motor vehicle accident.

The question now, is whether the facts surrounding the Amended Autopsy Report with respect to the Petitioner's claim that the prosecution intentionally and knowingly presented and used false testimony to gain a conviction, is sufficient to establish by clear and convincing evidence, that, but for this constitutional violation, no reasonable factfinder would have found the Petitioner guilty?

Further, can the Amended Autopsy Report support a freestanding claim of actual innocence?

In light of the Petitioner's perjury testimony argument, Shrode deliberately or knowingly created a misleading Autopsy Report, that was materially inaccurate inculpatory Report that violated the Petitioner's constitutional rights under the 14TH Amendment to the United States Constitution.

It is well established federal law, that it is a constitutional violation of a criminal defendant's rights under the 14TH Amendment to the United States Constitution for the prosecution to allow false testimony to go uncorrected; or to knowingly and intentionally use perjury testimony to secure a conviction. Napue v. Illinois, 79 S.Ct. 1173 (1959), and Giglio v. U.S., 92 S.Ct. 763 (1972).

Cf., *Brown v. Miller*, 519 F.3d 231 (5th Cir. 2008); a former convicted defendant sued the State's Crime Labatory Technician, accussing the technician of creating a misleading and materially inaccurate inculpatory Serology Report. It was argued that the deliberate or knowingly creation of the misleading and scientifically inaccurate Serology Report violated his due process rights. The court held and explained that the deliberate or knowingly creation of misleading and scientifically inaccurate Serology Report amounted to the violation of the defendant's due process rights. The court explained that the rights of a criminal defendant to be free from false or fabricated evidence has been weel settled by 1959.

The prosecution's interactions with Shrode, whom was empolyed as a State agent with the Harris County Medical Examiner's Office, knew or should have known, given text book information, that the Pathological Findings that Shrode relied on and based his exprt opinion upon were false, given the Amended Autopsy Report and Pathological Findings.

Atfour (4) Justice plurality of this Court has concluded that the "ends of Justice test" mandates the consideration of a second or successivepetition or motion, only when the habeas petitioner supplements his constitutional claim with a colorable showing of factual innocence. *Kuhlman v. Wilson*, 106 S.Ct. 2616 (1986).

Given the Amended Autopsy Report, the Petitioner has made a colorable showing of factual innocence because this is new relevant scientific evidence that represents a substantial

intervening cahnage in the facts of the case that can no longer provide the basis for the Petitioner's conviction for Capital Murder. As presented in the Amended Autopsy Report, there is no "Homicide" presentable.

Therefore, the Petitioner has shown that the facts underlying the claim, if proven and viewed in light of the evidence as whole, would be sufficient to establishe by clear and convincing evidence, that, but for constitutional error, no reasonable factfinder would have found the Petitioner's guilty. Thus, the court of appeals abused it's distrction when it determined that the Petitioner did not meet the requirements of Section 2244((b)(2)(B)(ii).

In view of "Habeas Corpus" context, the Petitioner is aware of this Court's decision in Felker v. Turpin, 116 S.Ct. 2333 (1996), wherein this Court denied Felker habeas corpus relief by finding that he failed to demonstrate "exceptiaonl Cercumstances" justifying issuance of the writ.

Unlike the Petitioner's claims, Felker alleged that qualified experts, reviewing the forensice evidence after his conviction had established that the victim must have died during a period when he was under police surveillance for the victim's disappearance and that he had a valid alibi. He further claimed that the testimony of the State's forensic expert at trial was suspect because he was not a licensed physician, and that new wspert testimony so discredited the prosecution's testimony at trial that he had a colorable claim of factual innocence. This Court in reviewing Felker's claim held, that they did not materially

differ from numerous other claims made by successive habeas petitioners which it have had occassion to review on stay applications to this Court. This Court stated that neither of the them satisfied the requirements of the relevant portions of the Act, let alone the requirements that there be "exceptional circumstances" justifying the issuance of the writ.

Unlike Felker, a special injustice is presented by this case that presents an "exceptional circumstance," whether in the context of a mandamus or habeas corpus exist to justify the issuance of the writ, where after more than twenty (20) years, and pro se litigations, the prosecution's expert witness has recanted his trial testimony in the form of an Amended Autopsy Report that was based on the same Post-Mortem Examination of the alleged victim with new Pathological Findings substantially different from the Pathological Findings testified to by the prosecution's expert witness at trial. Given matter, that the prosecution's expert witness testified that the injuries suffered by the alleged victim could not have resulted from an vehicle accident, wherein the new pathological findings, it is avered that the injuries suffered by the alleged victim resulted from being run over by a vehicle. This does not exclude that the Amended Autopsy Report no longer supports a finding of a Homocide in this case that provided the means for an indictment charging the Petitioner with Capital Murder.

The court of appeal stated that it does not recognize freestanding claims of actual innocence. However, the Petitioner did not

present the court of appeals with a freestanding claim of actual innocence, and presented the court of appeals with a claim of actual innocence based on newly discovered evidence that was not presented at trial, that was based on a constitutional violation.

Notwithstanding, the court of appeals holds that it does not recognize freestanding claims of actual innocence, this Court in *In re Davis*, 130 S.Ct. 1 (2009) did employ the review of a freestanding actual innocence claim upon the transfer of the case to the United States District court for an evidentiary hearing for determination of whether Davis had made a showing that clearly established his innocence of the crime for which he was convicted by demonstrating that several of the State's witnesses against him had recanted their testimony and implicated the State's principal witness, and no court, State or Federal has ever conducted a hearing to assess the reliability of the score of post-conviction affidavits that, if reliable, would satisfy the threshold showing for a truly persuasive demonstration of actual innocence.

In this case, the Petitioner has made a showing that clearly establishes his innocence of the crime for which he was convicted, i.e., (Capital Murder), because (1) the Amendment Autopsy Report no longer supports the finding of an indictment and prosecution for a "Homocide," Capital Murder, (2) the trial testimony of the prosecution's expert witness and evidence has been recanted by the Amended Autopsy Report, (3) the prosecution's expert witness testified falsely, and presented a materially inaccurate

Autopsy Report before it was amended, and (4) the prosecution's expert witness testimony is no longer supported by the Amended Autopsy Report, with respect to the purported fracture of the right horn of the hoid bone, and that it was not a motor vehicle accident.

Thus, in light of the Petitioner's request for mandamus relief, this Court should consider in alternative the context of habeas corpus relief.

Under Rule 20.4.(a) of the Supreme Court Rules, a petition seeking a writ of habeas corpus shall comply with the requirements of Title 28 U.S.C., Section 2241 and 2242, and in particular with the provisions in the last paragraph of Section 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held. If the relief sought is from the judgment of a State court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the State courts or otherwise comes within the provisions of Title 28 U.S.C., Section 2254(b).

First, for the purpose of Section 2254(b), the Petitioner's presented the claims presented, as set out in this Petition, to the Texas Court of Criminal Appeals under the State's newly enacted Post-Conviction procedure codified as Article 11.073 of the Texas Code of Criminal Procedure. Question arises as to whether the Petitioner was required to seek authorization to file a second or subsequent petition in view of the State's new post-conviction statute, an issue that the court of appeals

did not consider and address. The statute took effect on September 01, 2013, and was amended effective September 01, 2015.

In the State of Texas, the Texas Court of Criminal Appeals is the State's highest criminal court, and is the only court with the jurisdiction and authority to grant habeas corpus relief after final felony conviction. Petitioner's application for a writ of habeas corpus, raising the instant claims, pursuant to Article 11.073 was dismissed by the Texas Court of Criminal Appeals under Article 11.07 on May 24, 2023, in Case No. #WR-72,546-05, Styled: Ex Parte Ramirez, Raymond.

Section 2241 Statement: Petitioner is presently unlawfully confined and illegally restrained of his liberty in violation of his constitutional rights under the 14TH Amendment to the United States Constitution, by Bobby Lumpkin, acting in his official capacity, a Director of the Texas Department of Criminal Justice-Correctional Institutions Division, pursuant to a Judgement & Sentence entered by the 344TH Judicial District Court of Chambers County, Texas, in Case No. #10350, Styled: The State of Texas v. Raymond Ramirez, on January 20, 2000, for the alleged offense of Capital Murder. Punishment as assessed a Life in the Texas Department of Criminal Justice-Correctional Institutions Division.

Section 2242 Statement: Petitioner has previously filed an application for writ of habeas corpus with the United States District Court for the Southern District of Texas, Galveston Division, in Case No. #G-09-252, Styled: Ramirez v. Thaler, that was dismissed by the district court on February 11, 2010.

Absent authorization by the United States Court of Appeals for the Fifth Circuit, Petitioner could not file a second or successive petition with the district court. The United States Court of Appeals for the Fifth Circuit denied authorization to file a second or successive federal habeas petition on July 26, 2023, in Case No. #23-40399, Styled: Ramirez v. Lumpkin.

Verification Statement: I, Raymond Ramirez, pursuant to Title 28 U.S.C., Section 1746, declare under penalty of perjury, that the allegations contained in the instant petition germane of federal habeas corpus relief, and as stated are all true and correct, upon personal knowledge of the same. Executed on this the 30th day of October 2023,

/s/ *Raymond Ramirez*  
Raymond Ramirez  
Declarant.

In light of the Petitioner's request for mandamus relief, this Court should transfer the matter to the United States District Court for consideration and/or evidentiary hearing.

#### CONCLUSION

WHEREFORE, PREMISES CONSIDERED and in the interest of justice, Petitioner respectfully moves and prays that for the reasons stated and as demonstrated above, that the requested relief in all be granted.

/s/ *Raymond Ramirez*  
Raymond Ramirez  
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Petitioner, In propria persona.