

ORIGINAL

23-7249
No. 23-0518

In the Supreme Court of the United States

ROBERT GANDY, PETITIONER

v.

The Honorable Glenn Hegar
Texas Comptroller of Public Accounts

FILED

MAR 28 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS SUPREME
COURT*

PETITION FOR A WRIT OF CERTIORARI

ROBERT GANDY
9550 SPRING GREEN BLVD
STE 408
KATY, TX. 77494
(832) 654-3107
Email: Robertgandy12@yahoo.com

PRO SE PETITIONER

i. 52

QUESTIONS PRESENTED

In *Thompson v. Clark*, 596 U.S. ____ (2022), *Cert No. 20-659*, this Court held that a petitioner need not prove actual innocence after his conviction has been vacated and criminal charges dismissed to entitle him to seek compensation for his wrongful arrest and false imprisonment. The Court stated, “*Questions concerning whether a criminal defendant was wrongly charged, or whether an individual may seek redress for wrongful prosecution, cannot reasonably depend on whether the prosecutor or court happened to explain why charges were dismissed. Therefore, requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary.*” *Id.*

I. The question presented is whether the U.S. Supreme Court decision in *Thompson v. Clark*, *Cert No. 20-659* renders Texas Civil Practice and Remedies Code §103.001(a)(1)(2)(C)(ii) unconstitutional.

In *Reed v Gertz*, *Cert. No. 21-442*, this Court held that the statute of limitations begins to run at the end of the state-court litigation.

II. The Question presented is whether Gandy’s Tim Cole Act application for wrongful conviction compensation under the applicable 3-year statute of limitation begins to run from the moment his writ of habeas corpus is granted and remanded or from the final date the trial court dismissed the case on remand.

PARTIES TO THE PROCEEDING

Petitioner, Robert Gandy was the relator in the Texas Supreme Court Writ of Mandamus Proceeding and the applicant before the Texas Comptroller of Public Accounts. Respondent Hon. Glenn Hegar is the Texas Comptroller of Public Accounts, in his official capacity. Ken Paxton, Texas Attorney General, in his official capacity.

RELATED PROCEEDINGS

This case arises from the following proceedings:

In Re Robert Gandy, No. 23-0518 (Tex. S. Ct. Feb. 16, 2024) (denying petition for writ of mandamus).

Ex Parte Gandy, WR-22-074-10 (Tex. Crim. App. 2019) (granting writ of habeas corpus).

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES.....	v
TABLE OF APPENDICES.....	vi
INTRODUCTION.....	1
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY	
PROVISIONS INVOLVED.....	7
STATEMENT.....	8
A. Legal background.....	8
B. Factual and procedural background.....	11
REASONS FOR GRANTING THE PETITION.....	14
1. The state court of last resort has decided important federal constitutional issues that are recurring and exceptionally important.....	14,15
A. The Texas Supreme Court refused to answer constitution question presented whether the U.S. Supreme Court decision in Thompson v. Clark, Et Al Cert No. 20-659 renders Texas Civil Practice and Remedies Code §103.001(a)(1)(2)(C)(ii) unconstitutional.	

- B. Texas is applying an unconstitutional law, which violates the due process and equal protection constitutional rights of wrongful convicted individuals in conflict with the U.S. Supreme Court decision in Thompson v. Clark, Et Al Cert No. 20-659.
- C. The Texas Supreme Court refused to answer a procedural due process question presented, whether Gandy's Tim Cole Act application for wrongful conviction compensation under the applicable 3-year statute of limitation begins to run from the moment Petitioner's writ of habeas corpus is granted and remanded or from the final date the trial court dismissed the case on remand which conflicts with the U.S. Supreme Court decision in Reed v Gertz, Cert. No. 21-442.

CONCLUSION.....15

TABLE OF APPENDICES

	Page
APPENDICES	17,18
APPENDIX A	
Texas Comptroller Original Denial of Relator's Tim Cole Act Wrongful Imprisonment Application for Compensation, August 30, 2019.	29
APPENDIX B	
Texas Comptroller Denial of Relator's Tim Cole Act Wrongful Imprisonment Application for Compensation, June 22, 2020.	31
APPENDIX C	
Relator, Robert Gandy's Second Request for Wrongful Imprisonment Compensation, April 17, 2020.....	33
APPENDIX D	
Relator, Robert Gandy's Original Request for Wrongful Imprisonment, August 7, 2019.....	38
APPENDIX E	
Texas Comptroller Denial of Relator's Tim Cole Act Wrongful Imprisonment Application for Compensation, May 25, 2023.	40
APPENDIX F	
Relator, Robert Gandy's Third Request for Wrongful Imprisonment Compensation, April 14, 2023.....	42
APPENDIX G	
Relator, Robert Gandy's Driver's License.....	53
APPENDIX H	
District Attorney's Motion to Dismiss, Cause No. 053243701010	54
APPENDIX I	
Trial Court Findings of Fact and Order, November 30, 2018	55

APPENDIX J

Court of Criminal Appeals, Opinion and Mandate, Ex Parte Robert Gandy,
WL-22,074-10..... 61

APPENDIX K

TDCJ Certification Letter, Relator's Prison Time and Parole, August 29,
2019.....66

APPENDIX L

Supreme Court of Texas Decision Letter, In Re Gandy, Writ No 23-0518
.....69

TABLE OF AUTHORITIES

Cases

<i>Brown v. Harris County</i> , No. 22-0256 (Tex. S. Ct. 2022).....	4,5
<i>Ex Parte Gandy</i> , WR-22-074-10 (Tex.Crim. App. 2019).....	1,2,6,7,11
<i>In re Billy Frederick Allen</i> , 366 S.W.3d 696, 708 (Tex. S. Ct. 2012).....	3,4,5,6,7
<i>In re Brown</i> , 614 S.W. 3d 712, 716 (Tex. S. Ct. 2020).....	3
<i>In re Colston Lester</i> , 18-1041 (Tex. S. Ct. 2020).....	4,6
<i>In re Smith</i> , 333 S.W. 3d 582,585 (Tex. S. Ct. 2011).....	3
<i>Reed v Gertz</i> , Cert. No. 21-442 (S. Ct. 2022).....	8,15
<i>Schlup v. Delo</i> , 513 U.S. 298, 301 (S. Ct. 1995).....	1,5,7
<i>Thompson v. Clark, ET AL</i> Cert No. 20-659 (S. Ct. 2022).....	8,9,10,12,14,15

UNITED STATES CONSTITUTION

4 th , 5 th and 14 th Amendment U.S.C.A.....	10,12,13
---	----------

TEXAS STATUTES

Texas Civil Practice and Remedies Code

§103.001(a)(2)(B).....	2,3,4,6,9,11,12,14
------------------------	--------------------

Texas Civil Practice and Remedies Code

§103.001(a)(1)(2)(C)(ii).....8,9,12

Texas Civil Practice and Remedies Code §103.003(3).....14

INTRODUCTION

1. The Texas Supreme Court denied writ of mandamus without opinion on these constitutional questions presented. The Texas Supreme Court which is the court of last resort has decided an important federal question in a way that conflicts with the decisions of the United States Supreme Court.
2. The Constitutional questions presented herein are critically important because there are thousands of wrongfully convicted individuals in Texas similarly situated who are being denied fundamental constitutional rights by Respondent and this conduct will continue.
3. Petitioner Robert Gandy was incarcerated for 15 years in the Texas Department of Criminal Justice. Petitioner remained on parole for 15 years. (Appx. K).
4. On May 8, 2019, the Texas Court of Criminal Appeals in *Ex Parte Gandy*, WR-22-074-10 (Tex. Crim. App. 2019) decided Petitioner's claims of constitutional violations for the State's use of false and perjured testimony to obtain his conviction; *Schlup* – type claims of constitutional violations in the context of a writ of habeas corpus. The Texas Court of Criminal Appeals granted the Petitioner's Writ of Habeas Corpus based on *Schlup* – type claims of violation of Petitioner's rights to a fair trial under the U.S. Constitution. The Texas Supreme Court, in its previously published mandamus rulings on eligibility for compensation under the Tim Cole Act, has made it abundantly clear that a writ granted on *Schlup*-type claims includes a finding of actual innocence. In its denial of Petitioner's application for compensation Respondent concedes that Petitioner became eligible for compensation under §103.001 on May 8, 2019, and that Petitioner's criminal charge for which Petitioner was sentenced

was dismissed on April 16, 2020. (Appx. I and J). The final resolution of Petitioner's criminal charge on remand was the beginning of the statute of limitations, not the date the Writ of Habeas Corpus was granted, because the case was remanded to the trial court for petitioner to answer the charges. The district attorney did not move to dismiss the case until April 16, 2020. Respondent has determined that the statute of limitations begins the moment the writ of habeas corpus was granted which is erroneous because the case was still pending in the trial court for final disposition.

5. Moreover, the information necessary for Respondent to approve Petitioner's claim was provided to Respondent including the Order issued by the Texas Court of Criminal Appeals which states that the court "filed and set this case to resolve the issues involved in applicant's constitutional claim that his conviction was based upon perjury and false testimony of state's witness." *Ex Parte Gandy*, WR-22-074-10 (Tex. Crim. App. 2019). The Texas Court of Criminal Appeals opined the trial court finds by a preponderance of evidence that but for the false testimony of the F.B.I. examiner, Petitioner would not have been convicted of this offense. A finding which clearly indicates on its face that Petitioner is actually innocent of the charge for which he was sentenced. It is indisputable that Petitioner has always been eligible for compensation under Section 103.001(a)(2)(B) of the Tim Cole Act.
6. Texas has adopted an administrative scheme for wrongful conviction compensation known as the Tim Cole Act. Respondent, Glenn Hegar, Texas Comptroller of Public Accounts, is the sole decision maker of whether an application for compensation should be granted or denied. The Respondent's duty is purely ministerial. If any application for compensation is denied the sole remedy under Texas law is to file a Writ of Mandamus to the Texas Supreme Court.

A. The Tim Cole Act and the eligibility criteria for compensation

Under the Tim Cole Act, “a wrongfully imprisoned person may seek compensation from the state for the period of wrongful imprisonment.” *In re Allen*, 366 S.W.3d 696, 699 (Tex. 2012) (orig. proceeding) (citing Tex. Civ. Prac. & Rem. Code 3§ 103.001(a)). A claimant must file an application for compensation with the Comptroller’s judiciary section on a form provided by the Comptroller. Tex. Civ. Prac. & Rem Code §§ 103.003, .051(a)(1). The application must include verified copies of certain legal documents establishing a claimant’s eligibility for compensation. *Id.* § 103.051(a)(2). The Comptroller uses these documents to determine the eligibility of the claimant and the amount of compensation owed. *Id.* § 103.051(b), (b–1). The Comptroller “consider[s] only” the “verified copy of the . . . court order, motion to dismiss, and affidavit, as applicable, justifying the application for compensation.” *Id.* § 103.051(a)(2), (b–1). “If the filed documents do not clearly indicate on their face that the person is entitled to compensation under Section 103.001(a)(2), the comptroller shall deny the claim.” *Id.* § 103.051(b–1). The Comptroller’s duty to determine a claimant’s eligibility is “purely ministerial,” *id.*, which means that the Comptroller “has no discretion or authority to misinterpret the law” in deciding a claim, *In re Smith*, 333 S.W.3d 582, 585 (Tex. 2011) (orig. proceeding).

7. The Act has three eligibility provisions, each providing an alternative ground for compensation. *See* Tex. Civ. Prac. & Rem. Code § 103.001(a)(2); *In re Brown*, 614S.W.3d 712, 716 (Tex. 2020) (orig. proceeding) (*Brown I*). This case concerns two of them—section 103.001(a)(2)(B) and section (a)(2)(C). They require that: (1) the person has served in whole or in part a sentence in prison under the laws of this state; and (2) the person: . . .
(B) has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the person is actually innocent

of the crime for which the person was sentenced; or (C) has been granted relief in accordance with a writ of habeas corpus and: (i) the state district court in which the charge against the person was pending has entered an order dismissing the charge; and (ii) the district court's dismissal order is based on a motion to dismiss in which the state's attorney states that no credible evidence exists that inculcates the defendant and, either in the motion or in an affidavit, the state's attorney states that the state's attorney believes that the defendant is actually innocent of the crime for which the person was sentenced. Tex. Civ. Prac. & Rem. Code § 103.001(a). The Petitioner meets the criteria outlined in §103.001. (Appx. I and J).

8. Respondent has refused to approve Petitioner's application for compensation despite satisfying the clear and unambiguous statutory language, as well as the Texas Supreme Court's construction of the statutory language and holdings in *In re Allen* and *In re Lester*. As such, the Respondent violated Petitioner's right to procedural due process and equal protection under the United States Constitution in denying Petitioner's *Tim Cole Act* claim.
9. In another case involving compensation under the Tim Cole Act, *Brown v. Harris County*, ET AL No. 22-0256, decided September 2022, in its opinion on page 4, the Texas Supreme Court opined that by finding, "*no reasonable juror could find Brown guilty of murder.*", "*In short, the special prosecutor found Brown actually innocent.*"
10. Analogous to Petitioner's case, the finding in *Brown* that "no reasonable juror could find Brown guilty of murder", is synonymous with the findings of the trial court that "*but for the false testimony of these two witnesses (accomplice-witness Richards and FBI special agent Riley), no rational trier of fact could*

have rendered a conviction in his case.”¹, and the finding of the Court of Criminal Appeals that, “*The trial court by a preponderance of evidence found that, but for the false testimony of the F.B.I. examiner Applicant would not have been convicted of this offence.*”² Therefore, under the finding in *Brown*, the Court of Criminal Appeals grant of Petitioner, Mr. Gandy’s writ was “in short” a finding of actual innocence. *Id* and *In re Allen*, 366 S.W.3d 696 (Tex. 2012).

11. In *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851. A court finding that a *Schlup* claim was established means the Claimant demonstrated that the constitutional error at trial probably resulted in the conviction of one who was actually innocent.
12. The Court of Criminal Appeals' opinion on its face determined that *Allen* was actually innocent. The grant of habeas relief meant that the Court of Criminal Appeals held that Allen showed actual innocence by a preponderance of the evidence. Actual innocence remains an essential part of the *Schlup* claim, for without the court finding actual innocence, the writ would be denied.³

Even if a court does not explicitly state that its holding is based on actual innocence, implicitly the court must find that the Claimant is actually innocent to grant relief on a *Schlup* claim.⁴ Ultimately, the *Allen* Court made clear that because the Court of Criminal Appeals granted habeas relief on a *Schlup* claim, Allen's writ clearly indicates on its face that relief was based on actual innocence. Petitioner, Mr. Gandy’s relief is clearly *Schlup* type and is precisely the relief authorized and instructed by the Texas Supreme Court for compensation under the Act.

¹ Trial court findings of fact Appx. I, page 3, 6 and 7.

² Court of Criminal Appeals Opinion Appx. J, page 2.

³ *In re Allen*, 366 S.W.3d 696, 709 (Tex. 2012)

⁴ *In re Allen*, 366 S.W.3d 696, 710 (Tex. 2012)

13. *In re Allen* makes clear, the Texas Court of Criminal Appeals' granting habeas relief on Petitioner's constitutional claims is a court finding, or determination, that Petitioner is actually innocent of the crime for which he was sentenced, thereby making him eligible for compensation under Section 103.001(a)(2)(B) of the Tim Cole Act.
14. Petitioner has cited cases that hinge on equal protection under the law in which compensation was granted where there was no declaration by the State's attorney of the claimant's actual innocence, and no express finding by the court of the same. These cases show that the Act's legislative intent of compensating wrongfully imprisoned persons can be fulfilled without an express declaration of actual innocence from the district attorney who was responsible for the wrongful conviction. *In Re Billy Frederick Allen* 366 S.W. 3d 696 (Tex. 2012), *In Re Lester*, 602 S.W.3d 469 (Tex. 2020). In *In Re Allen* and *In Re Lester* the Texas Supreme Court established circumstances upon which compensation is recoverable without an express finding or declaration of actual innocence by the States attorney or the court. In the cited cases the Texas Supreme Court held that implicit in the granting of a writ vacating a conviction based on violation of constitutional rights was a finding of actual innocence, which entitled the claimants in those cases to compensation under the Act.
15. There is a clear mandate that to fulfill his ministerial function under section 103.001(a)(2) of the *Tim Cole Act*, the Respondent must fully and faithfully apply the holdings of *In re Allen* and *In re Lester* to the Petitioner's claim and make no effort to review the propriety of the Texas Court of Criminal Appeals holding in *Ex Parte Gandy*, but only the validity and authority of the writ of habeas corpus and the Order granting habeas corpus.

16. The writ granted in *Ex Parte Gandy*, is facially valid as a grant of relief on grounds of “actual innocence,” because the Court found that no rational trier of facts could have convicted Petitioner of aggravated robbery absent the State’s use of perjured and false testimony to obtain his conviction. Simply, the fact that the writ was granted on a *Schlup* – type claim brings Petitioner within the “narrow class of cases that satisfy the actual innocence standard.” *Allen*, 366 S.W.3d at 710. Plainly, this Court stated that *Schlup* claims are actual innocence claims under the *Tim Cole Act*.

JURISDICTION

17. The Texas Supreme Court entered its order denying the writ of mandamus on February 16, 2024, without written opinion. The time to file a petition for a writ of certiorari is 90 days from the date of the Texas Supreme Court denial. This Court has jurisdiction under United States Supreme Court Rule 10(b) and 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18. The Due Process Clause of the Fifth and Fourteenth Amendment to the U.S. Constitution provides:

[N]or 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.

STATEMENT

A. Legal background

19. This Court's decisions establish two basic principles essential to this case. First, in *Thompson v. Clark*, 596 U.S. ____ (2022), *Cert No. 20-659*, this Court held that a petitioner need not prove actual innocence after his conviction has been vacated and criminal charges dismissed to entitle him to seek compensation for his wrongful arrest and false imprisonment. The Court stated, "*Questions concerning whether a criminal defendant was wrongly charged, or whether an individual may seek redress for wrongful prosecution, cannot reasonably depend on whether the prosecutor or court happened to explain why charges were dismissed. Therefore, requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary.*" *Id.*

I. The question presented is whether the U.S. Supreme Court decision in *Thompson v. Clark*, *Cert No. 20-659* renders Texas Civil Practice and Remedies Code §103.001(a)(1)(2)(C)(ii) unconstitutional.

Second, in *Reed v Gertz*, *Cert. No. 21-442*, this Court held that the statute of limitations begins to run at the end of the state-court litigation.

II. The Question presented is whether Gandy's Tim Cole Act application for wrongful conviction compensation under the applicable 3-year statute of limitation begins to run from the moment his writ of habeas corpus is granted and remanded, or from the final date the trial court dismissed the case on remand.

20. Petitioner, proceeding pro se, filed his original application for compensation for wrongful imprisonment with the Respondent on August 07, 2019, once his writ of habeas corpus was granted vacating his wrongful conviction. On August 30, 2019, Respondent notified Petitioner his claim was denied. Petitioner filed a subsequent application after retaining counsel on May 04, 2020, seeking to cure the defects of which he had been notified by Respondent. Then, on June 22, 2020, Respondent, again, denied Petitioner's claim for wrongful imprisonment compensation asserting Section 103.001(a)(2)(B) provides that, for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced, and that the habeas corpus order included with Petitioner's application did not meet the actual innocence requirement of Section 103.001(a)(2)(B). On April 14, 2023, Petitioner represented by counsel filed his application for compensation under the Tim Cole Act based upon the U.S. Supreme Court precedent of *Thompson v. Clark*. Petitioner submitted he was eligible for compensation under Section 103.001(a)(2)(B) which provides for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced, or alternatively Petitioner is eligible under Section 103.001(a)(2)(C)(i), which provides, for a person to be eligible for compensation they must have been granted relief in accordance with a writ of habeas corpus, and the state district court in which the charge against the person was pending has entered an order dismissing the charge.
21. Petitioner therein challenged the constitutionality of the additional requirement of Section 103.001(a)(1)(2)(C)(ii) that the state district court's dismissal order be based on a statement by the State's attorney, in either the

motion to dismiss or by affidavit, that the person was actually innocent of the crime for which they were sentenced. Petitioner argued that this requirement is a violation of the 4th 5th and 14th Amendment to the United States Constitution's protection against unlawful seizure of property, and grant of equal protection and due process under law. In addition, the standard set forth in Section 103.001(a)(2)(C)(ii) conflicts with the recent U.S. Supreme Court decision in *Thompson v. Clark*. Thus, Respondent is applying an unconstitutional standard to deny Petitioner's claim for compensation under the Tim Cole Act, in the instant case.

22. Respondent again denied Petitioner's application for compensation stating that Petitioner has not met the requirement of providing a motion to dismiss with a statement or affidavit from the prosecuting attorney that he is actually innocent of the charges for which he was sentenced, and that Petitioner's application for compensation based upon his writ of habeas corpus is time barred under the Tim Cole Act's statute of limitations provisions. Petitioner asserts that Respondent has misapplied the statute of limitations provisions of the Tim Cole Act, and incorrectly applied the statute of limitations to deny Petitioner's application for compensation. Petitioner was within the 3-year statute of limitations to file his last application for compensation with the Respondent since his criminal charges were not dismissed until April 16, 2020. (See Appx. H).
23. Petitioner submits the Tim Cole Act, Section 103.003(3) which establishes the date of dismissal of the criminal charges as the final favorable determination beginning the running of the statute of limitations applies to his application for compensation. The relation back doctrine supports this argument as well.

24. Petitioner, upon final denial by Respondent filed a Writ of mandamus to the Texas Supreme Court Writ No. 23-0518 as the final remedy at law, to wit briefing was ordered by all parties, then the writ was denied without written order on February 16, 2024. (Appx. L).

B. Factual and procedural background

25. Petitioner Robert Gandy was wrongfully incarcerated for 15 years in the Texas Department of Criminal Justice. Petitioner remained on parole for 15 years before filing a writ of habeas corpus pro se and obtaining a reversal of his criminal conviction. (Appx. K).

An egregious miscarriage of justice spanning 30 years of petitioner's life. *Ex Parte Gandy*, WR-22-074-10 (Tex. Crim. App. 2019). The Texas Court of Criminal Appeals opined the trial court finds by a preponderance of evidence that but for the false testimony of the F.B.I. examiner, Petitioner would not have been convicted of this offense. A finding which clearly indicates on its face that Petitioner is actually innocent of the charge for which he was sentenced.

26. Petitioner, proceeding pro se, filed his original application for compensation for wrongful imprisonment with the Respondent on August 07, 2019, once his writ of habeas corpus was granted vacating his wrongful conviction. On August 30, 2019, Respondent notified Petitioner his claim was denied. Petitioner filed a subsequent application after retaining counsel on May 04, 2020, seeking to cure the defects of which he had been notified by Respondent. Then, on June 22, 2020, Respondent, again, denied Petitioner's claim for wrongful imprisonment compensation asserting Section 103.001(a)(2)(B) provides that, for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced,

and that the habeas corpus order included with Petitioner's application did not meet the actual innocence requirement of Section 103.001(a)(2)(B). On April 14, 2023, Petitioner represented by counsel filed his application for compensation under the Tim Cole Act based upon the U.S. Supreme Court precedent of *Thompson v. Clark*. Petitioner submitted he was eligible for compensation under Section 103.001(a)(2)(B) which provides for a person to be eligible for compensation, they must have been granted habeas corpus relief that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced, or alternatively Petitioner is eligible under Section 103.001(a)(2)(C)(i), which provides, for a person to be eligible for compensation they must have been granted relief in accordance with a writ of habeas corpus, and the state district court in which the charge against the person was pending has entered an order dismissing the charge.

27. Petitioner therein challenged the constitutionality of the additional requirement of Section 103.001(a)(1)(2)(C)(ii) that the state district court's dismissal order be based on a statement by the State's attorney, in either the motion to dismiss or by affidavit, that the person was actually innocent of the crime for which they were sentenced. Petitioner argued that this requirement is a violation of the 4th 5th and 14th Amendment to the United States Constitution's protection against unlawful seizure of property, and grant of equal protection and due process under law. In addition, the standard set forth in Section 103.001(a)(2)(C)(ii) conflicts with the recent U.S. Supreme Court decision in *Thompson v. Clark*. Thus, Respondent is applying an unconstitutional standard to deny Petitioner's claim for compensation under the Tim Cole Act, in the instant case.

28. Petitioner ask the court to take judicial notice that the district attorney's office was the county actor in Petitioner's Section 1983 suit, Gandy v. Harris County ET AL, Civil Action No 4:19-cv-03487 in the Southern District of Federal Court Houston, Texas for its unconstitutional use of perjured and false testimony to secure Petitioner's unlawful conviction and imprisonment. Petitioner lost that case a trial. Therefore, it is reasonable to conclude that the self-serving reasons given in the district attorney's dismissal order regarding actual innocence while the civil action against the district attorney's office was ongoing created a conflict of interest, the result of which was the denial of Petitioner's only redress to which he was entitled under state law for his wrongful imprisonment -- compensation under the Tim Cole Act. The inherent conflict of interest created by litigation against the district attorney exposes the due process and equal protection risk created by reliance upon the district attorney, whose actions led to the wrongful imprisonment, to make a fair determination of actual innocence in an affidavit or dismissal motion. Tim Cole Act, Section 103.001(a)(2)(C)(ii) deprives Petitioner, and others similarly situated, of constitutional due process and equal protection under the 5th and 14th Amendment to the U.S. Constitution.
29. Respondent again denied Petitioner's application for compensation stating that Petitioner has not met the requirement of providing a motion to dismiss with a statement or affidavit from the prosecuting attorney that he is actually innocent of the charges for which he was sentenced, and that Petitioner's application for compensation based upon his writ of habeas corpus is time barred under the Tim Cole Act's statute of limitations provisions. It appears Respondent, in his denial of Petitioner's application for compensation, concedes the merits of Petitioner's reliance on the Texas Supreme Court previous rulings, that the granting of his writ of habeas

corpus included a finding of actual innocence. Petitioner is eligible for compensation under Section 103.001(a)(2)(B) of the Tim Cole Act, provided that grant of eligibility is not time barred, as stated by Respondent in his denial of Petitioner's application for compensation.

30. Petitioner asserts that Respondent has misapplied the statute of limitations provisions of the Tim Cole Act, and incorrectly applied the statute of limitations to deny Petitioner's application for compensation. Petitioner was within the 3-year statute of limitations to file his last application for compensation with the Respondent since his criminal charges were not dismissed until April 16, 2020. (See Appx. H).
31. Petitioner submits the Tim Cole Act, Section 103.003(3) which establishes the date of dismissal of the criminal charges as the final favorable determination beginning the running of the statute of limitations applies to his application for compensation. The relation back doctrine supports this argument as well.

REASON FOR GRANTING THE PETITION

32. The state court of last resort has decided important federal constitutional issues that are recurring and exceptionally important in conflict with U. S. Supreme Court decisions.

This case is an excellent vehicle for resolving the questions presented.

- A. The Texas Supreme Court refused to answer constitution question presented whether the U.S. Supreme Court decision in *Thompson v. Clark, Et Al* Cert No. 20-659 renders Texas Civil Practice and Remedies Code §103.001(a)(1)(2)(C)(ii) unconstitutional.

- B. Texas is applying an unconstitutional law, which violates the due process and equal protection constitutional rights of wrongful convicted individuals in conflict with the U.S. Supreme Court decision in *Thompson v. Clark*, Et Al Cert No. 20-659.
- C. The Texas Supreme Court refused to answer a procedural due process question presented, whether Gandy's Tim Cole Act application for wrongful conviction compensation under the applicable 3-year statute of limitation begins to run from the moment Petitioner's writ of habeas corpus is granted and remanded, or from the final date the trial court dismissed the case on remand which conflicts with the U.S. Supreme Court decision in *Reed v Gertz*, Cert. No. 21-442.

CONCLUSION

The petition for a writ of certiorari should be granted in the interest of justice.

Respectfully submitted,

/S/Robert Gandy

ROBERT GANDY
9550 SPRING GREEN BLVD
STE 408
KATY, TX. 77494
(832) 654-3107
Email: Robertgandy12@yahoo.com

PRO SE PETITIONER

APPENDIX