No. _____

IN THE

Supreme Court of the United States

In re
RAMIRO FELIX GONZALES,
Petitioner

On Appeal from the Texas Court of Criminal Appeals

PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

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CAPITAL CASE

QUESTIONS PRESENTED

The Court should grant the concurrently filed petition for certiorari, vacate the decision of the Court of Criminal Appeals ("TCCA"), and remand for further proceedings on the Eighth and Fourteenth Amendment claims raised therein. *See Andrus v. Texas*, 590 U.S. 806 (1998). If that petition is denied, however, Mr. Gonzales respectfully requests that the exercise its extraordinary writ jurisdiction and review the merits of this case.

The questions presented are:

(1) Does it violate the Eighth and Fourteenth Amendments to the United States Constitution to execute an individual who does not meet the eligibility criteria for a sentence of death under state law?

(2) When a state conditions a capital defendant's eligibility to be sentenced to death on a jury's determination of "future dangerousness," can the state refuse to recognize challenges to the accuracy of the jury's determination as cognizable grounds for post-conviction review?

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No. 24-____

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PETITION FOR HABEAS CORPUS

OPINION BELOW

The Order Dismissing Petitioner's Subsequent Application for Writ of Habeas Corpus, issued by the Texas Court of Criminal Appeals ("TCCA"), is not yet published at the time of this filing. Pet. App. 5a–8a. (Petitioner's Appendix is filed with the concurrently submitted Petition for Certiorari.)

JURISDICTION

The Texas Court of Criminal Appeals entered an order dismissing Petitioner's Subsequent Application for Writ of Habeas Corpus on June 24, 2024, and Petitioner filed a notice of appeal to this Court on June 24, 2024. As explained in Petitioner's petition for certiorari, also filed today, the Court should grant certiorari, vacate and remand the decision of the TCCA (Pet. App. 1a), which held that the constitutional claims raised in the subsequent application did not meet the requirements of Tex. Code Crim. Pro. art. 11.071 § 5. However, if that petition is denied, this Court has

the jurisdiction and authority to review the district court's final order under 28 U.S.C. §§ 1651 and 2241 and Article III of the U.S. Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution states: "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."

Section 1651 of Title 28, United States Code, states:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Section 2241 of Title 28, United States Code, addresses the power of the Supreme Court to grant or transfer a writ of habeas corpus:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.

Section 2244 of Title 28, United States Code, governs finality of determinations in habeas corpus and reads in pertinent part:

(b)(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B) (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.

STATEMENT OF THE CASE

Texas is the only state that requires a jury finding beyond a reasonable doubt that "there is a probability that [a capital] defendant would commit criminal acts of violence that would constitute a continuing threat to society" before a defendant is eligible for the death penalty. *Satterwhite v. Texas*, 486 U.S. 249, 250 (1988) (a probability of future dangerousness "must be found before a death sentence may be imposed under Texas law."); *Mosley v. State*, 983 S.W.2d 249, 263 n.18 (Tex. Crim. App. 1998) (the constitutional "eligibility requirement is satisfied in Texas by aggravating factors contained within the elements of the offense, the future dangerousness special issue, and sometimes, other 'non-*Penry*' special issues.").

Petitioner Ramiro Felix Gonzales was sentenced to death in 2006 after a jury predicted that, even if incarcerated, he would "commit criminal acts of violence" that "would constitute a continuing threat to society." But that prediction has not come to pass.

In the 18 years that Mr. Gonzales has been on death row, he has committed no criminal acts of violence and, indeed, no criminal acts whatsoever. He has earnestly devoted himself to self-improvement, contemplation, and prayer, and has grown into a mature, peaceful, kind, loving, and deeply religious adult. He acknowledges his responsibility for his crimes and has sought to atone for them and to seek redemption through his actions. Petitioner does not "pose a continuing threat" to prison society; to the contrary, he has been selected for a leadership role in Texas's groundbreaking faith-based programming on death row. Corrections officers, prison chaplains, and

fellow inmates alike attest to his maturity, integrity, and thoughtfulness, as do psychologists, lay people, faith leaders—and even the State's forensic psychiatrist who testified at trial that Petitioner has antisocial personality disorder and would pose a risk of violence "wherever he goes." That expert, Dr. Edward Gripon, has now recanted that testimony and changed his opinion—something he has never done before in a death penalty case.

Because there is no longer any risk, let alone a "probability," that Petitioner would commit any "criminal act of violence that would constitute a continuing threat to society"—a requisite finding for death-eligibility under Texas law—he is ineligible for execution under state law and the Eighth and Fourteenth Amendments. But Texas refuses to provide any avenue for review of Petitioner's claims.

The state court's refusal to recognize or address Petitioner's constitutional claim of eligibility for the death penalty violates procedural due process and requires this Court's intervention. Exercise of this Court's discretionary extraordinary writ jurisdiction is appropriate in this case because it will aid this Court's appellate jurisdiction, exceptional circumstances warrant the exercise of the Court's discretionary powers, and adequate relief cannot be obtained in any other form or from any other court.

REASONS TO GRANT THE WRIT

This Court has the authority to issue a writ of habeas corpus under 28 U.S.C. sections 1651 or 2241 to review the district court's decision. The Court's power to grant an extraordinary writ like original habeas corpus is extensive but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). An extraordinary writ may issue upon a showing

> 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.

Sup. Ct. R. 20(1). Petitioner can meet each of these criteria.

Texas is the only state that conditions death *eligibility* upon a jury prediction of future behavior,[1] and the only state that insulates a predictive condition precedent from review for accuracy at any time—despite acknowledging that such predictions cannot be determined "right or wrong at the time of trial" but "may be shown as accurate or inaccurate only by subsequent events." *McGinn v. State*, 961 S.W.2d 161, 168 (1998). Petitioner has presented evidence of subsequent events disproving the jury's determination that he would pose a threat of future violence, including the changed opinion of the State's future dangerousness expert at trial, but Texas refuses to provide a venue by which his Eighth Amendment claim may be heard.

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[1] *Satterwhite*, 486 U.S. at 250; *Mosley*, 983 S.W.2d at 263 n.18.

This is a crucial and recurring constitutional problem, but no state or federal remedy exists unless this court exercises its extraordinary jurisdiction under the All Writs Act, 28 U.S.C. § 1651.

I. EXERCISE OF THIS COURT'S EXTRAORDINARY JURISDICTION IS NECESSARY AND APPROPRIATE IN AID OF THIS COURT'S APPELLATE JURISDICTION.

As an initial matter, habeas corpus jurisdiction is itself appellate. *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 100-01 (1807) (the Court's habeas jurisdiction is "clearly *appellate*"). And this Court retains original habeas jurisdiction over constitutional claims by state court prisoners. *Felker v. Turpin*, 518 U.S. 651, 658–61 (1996); *Byrnes v. Walker*, 371 U.S. 937 (1962); *Chappel v. Cochran*, 369 U.S. 869 (1962). Thus, Petitioner respectfully submits that issuance of the writ he seeks meets this threshold jurisdictional requirement.

II. PETITIONER HAS ESTABLISHED HIS INELIGIBILITY FOR THE DEATH PENALTY UNDER STATE LAW TO THE REQUISITE DEGREE THAT HIS EXECUTION WOULD BE UNCONSTITUTIONAL.

Petitioner brings a substantial constitutional claim—that the death eligibility criteria exposing him to the ultimate selection decision is no longer accurate and therefore his death sentence is unconstitutional—but Texas courts refuse to provide any process by which he might raise this claim. The extraordinary circumstances of not only his postconviction rehabilitation but also the changed opinion of the *State's* "future dangerousness" expert warrant this Court's intervention in this case.

A. Texas's Refusal to Provide a Forum by which Death Eligibility Determinations are Subsequently Reviewed for Accuracy Violates the Eighth Amendment.

Claims of "actual innocence of the death penalty" are those that "focus on those elements that render a defendant eligible for the death penalty" under state law. *Sawyer v. Whitley*, 505 U.S. 333, 347 (1992). A determination by the jury, beyond a reasonable doubt, that there is a probability that a capital defendant will commit future criminal acts of violence that constitute a threat to society is a condition precedent for a lawful death sentence in Texas. *Satterwhite*, 486 U.S. at 250. Such a requirement represents a determination by the Texas Legislature that the goal of incapacitation is central to the Texas system of capital punishment. *See Jurek v. Texas*, 428 U.S. 262, 275 n. 10 (1976). Only those defendants convicted of capital murder under Texas Penal Code § 19.03, and who the jury unanimously finds will probably commit future acts of violence, are then eligible for the ultimate sanction. Tex. Code Crim. Pro. art. 37.071 § 2(b)(1); *Estrada v. State*, 313 S.W.3d 274, 281 (Tex. Crim. App. 2010) (Texas "has construed the future-dangerousness special issue to ask whether a defendant would constitute a continuing threat 'whether in or out of prison'").

The Eighth Amendment Cruel and Unusual Punishment Clause "was designed to protect those convicted of crimes." *Ingraham v. Wright*, 430 U.S. 651, 664 (1977). It applies to issues that become ripe only years after sentencing. For example, the Eighth Amendment prohibits executing a prisoner who has "lost his sanity" *after* sentencing. *Ford v. Wainwright*, 477 U.S. 399, 406, 410 (1986). In such an instance, the execution of sentence is no longer constitutional because it fails to accomplish any

permissible purposes of punishment, specifically the stated purpose of retribution. *Id.* at 407–8.

However, claims of incompetency may only be raised when execution is imminent, and "remain unripe at early stages of [habeas corpus] proceedings." *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007). For this reason, such claims are not viewed as abusive in habeas corpus proceedings, and not subject to the second-or-successive writ bar. *Id.* at 946–47. Similarly, constitutional claims like the one Petitioner raised below—that the jury's prediction that a capital defendant will probably commit criminal acts of violence in the future was inaccurate and therefore a rehabilitated inmate does not pose a threat to society and is not eligible for execution under state law—are not ripe for review until the execution is imminent and the accuracy of the prediction can be conclusively determined.

Petitioner contends that it is fundamentally arbitrary for a State to condition a death sentence on a "prediction" of future conduct that is never subsequently assessed for accuracy. *Ex parte Gonzales*, No. WR-77,969-03 (Tex. Crim. App. Jul. 11, 2022) ("the determination of future dangerousness is made at the time of trial and is not properly reevaluated on habeas;" accordingly, "[t]o the extent Applicant's first claim is such a reevaluation, the trial court shall not review it."); *cf. Clemons v. Mississippi*, 494 U.S. 738, 749 (1990) (reminding that "this Court has repeatedly emphasized that meaningful appellate review of death sentences promotes reliability and consistency"). And "if a State wishes to authorize capital punishment it has a constitutional responsibility to tailor and apply its law in a manner that avoids

the arbitrary and capricious infliction of the death penalty." *Godfrey v. Georgia*, 446 U.S. 420, 428 (1980). Texas, by conditioning death-eligibility on a prediction of future conduct[2] that is never reviewed for accuracy even in the face of evidence conclusively proving the inaccuracy of that prediction, has shirked its constitutional responsibility.

This lack of review is constitutionally intolerable particularly where, as here, the question of whether the prediction was accurate becomes ripe for evaluation only years, or decades, after the conclusion of direct review, when the execution itself is imminent. Texas courts view the "'future dangerousness' special issue [as] ensur[ing] that no defendant, regardless of how heinous his capital crime, will be sentenced to death unless the jury finds that he poses a real threat of future violence." *Coble v. State*, 330 S.W.3d 253, 268 (Tex. Crim. App. 2010). But when that real threat of future violence does not come to pass, the need for incapacitation by execution has been disproven, as has the condition precedent for death eligibility, and therefore a lawful death sentence, under state law.

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[2] In the *civil* commitment context, the Texas Supreme Court long ago "declined to adopt the criminal law standard of 'beyond a reasonable doubt' [for the requisite finding that a potential ward would be a future danger] *primarily because it questioned whether the State could prove by that exacting standard that a particular person would or would not be dangerous in the future.*" *Addington v. Texas*, 441 U.S. 418, 420 (1979) (emphasis supplied).

B. Petitioner Is Ineligible for Execution Because He Has Shown That the Condition Precedent Was Inaccurate—He Does Not Pose a Risk of Future Acts of Violence or Threat to Society and The State's Own Trial Expert Agrees.

The present-day evidence conclusively establishes that Petitioner does not pose a risk of future acts of violence or threat to society by any reasonable standard; overwhelming evidence renders him ineligible for execution.

At Petitioner's 2006 trial, the State introduced evidence from jailers who spoke to his disruptive behavior in jail and testimony of Florence Teich, the named victim in a separate sexual assault case to which Petitioner pled guilty four years before his 2006 trial. *See generally*, Reporter's Record (hereinafter, "RR") Vol. 39 at 14–198; Vol. 40 at 1–169. As is common in Texas prosecutions, the State's case that Petitioner would pose a risk of future acts of criminal violence rested heavily on the testimony of State psychiatrist Dr. Edward Gripon, who told the jury that Petitioner had antisocial personality disorder and would continue to present a danger to others, even if incarcerated. RR Vol. 41 at 67–75. Asked about Petitioner's "potential for rehabilitation" in light of suggestions he had initially disclaimed full responsibility for the offense, Dr. Gripon placed the possibility of rehabilitation "around one or two percent." *Id.* at 94–95. Dr. Gripon ultimately opined that Petitioner "would pose a risk to continue to commit threats or acts of violence" "wherever he goes." *Id.* at 66, 94.

But Dr. Gripon no longer stands by his trial testimony. After spending three and a half hours with Petitioner at the Polunsky Unit in September 2021, Dr. Gripon concluded, "to a reasonable psychiatric probability" that Petitioner "**does not** pose a

threat of future danger to society." Pet. App. at 24a (emphasis in original). Dr. Gripon described Petitioner's maturation and complete rehabilitation over the past two decades. Noting that Petitioner was "barely 18 years old" at the time of Bridget Townsend's murder, Dr. Gripon observed that "[w]ith the passage of time and significant maturity," Petitioner "is now a significantly different person both mentally and emotionally," having made "a very positive change for the better." *Id.*

Clinical psychologist Dr. Katherine Porterfield, who evaluated Petitioner to assess the effects of childhood sexual abuse and trauma on Petitioner, has reached the same conclusions as Dr. Gripon. Dr. Porterfield noted that despite his extensive childhood trauma history and years of abuse, Petitioner "received no therapeutic services or other intervention beyond criminal prosecution," and that "[t]he crimes that he committed are tragically and inextricably linked to the trauma he suffered and the lack of care provided to him." Pet. App. at 45a (Report of Dr. Katherine Porterfield, Ph. D.). Yet Dr. Porterfield's assessment also revealed that "[s]ince his incarceration, Ramiro has demonstrated remarkable improvements in his functioning across multiple domains." Pet. App. at 49a. Dr. Porterfield concluded her report by noting that

> In the years since his incarceration, there has also been evidence of Ramiro's maturation and psychological resilience, in particular his deep and genuine religious faith, sincere remorse, and meaningful attachments to positive, prosocial individuals. Ramiro's current functioning indicates improvement in many of his psychological and behavioral difficulties and potential for further rehabilitation and growth.

Id.

Numerous correctional officers, including many women,[3]—have attested that, from their experience, Petitioner presents no danger to anyone in a prison setting and describe him as "consistent," "thoughtful," and "sensitive." Zykiare Best, a former correctional officer who supervised and interacted with Petitioner on a regular basis, described him as cooperative and considerate, recalling that he "always [went] out of his way to make sure that [correctional officers] check everything" during contraband searches "so we don't get into trouble. He's that kind of person."[4] Karen Woodley, a correctional officer who currently works on death row and has worked closely with Petitioner for years, attests that she feels safe around him. As Ms. Woodley has explained, she has personally witnessed Petitioner's growth for herself:

> The person that I see, or I have known for the past five years, if asked if I feel safe around him, I do. Do I feel that he has grown as an individual? I feel that he has…. Do you genuinely think that a 17-year-old is in the same place as a 35-year-old, mentally? I don't believe so.[5]

And finally, the Texas Department of Criminal Justice has recognized Petitioner's character transformation and demonstrated lack of threat to prison society by selecting him as one of the first leaders in TDCJ's vanguard death row

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[3] This is particularly relevant given the prosecution's line of cross-examination during the testimony of the defense prison classification expert, making sure the jury heard that "inmates have access to females in prison" and that both guards and other prison staff who are women "have been sexually assaulted by inmates." RR Vol. 42 at 151.

[4] Zykiare Best, "Ramiro's Story – Full Length," *Texas Defender Service*, available at https://youtu.be/dwRLSb53u10?si=lMqdeGVr6BmSAE-Z.

[5] Karen Woodley, "Ramiro's Story – Full Length," *Texas Defender Service*, available at https://youtu.be/dwRLSb53u10?si=lMqdeGVr6BmSAE-Z.

faith-based programming.[6] Petitioner's ministry was well-known on death row to both guards and inmates before the institutionalization of faith-based programming on death row and, as soon as practicable administrators, appointed Petitioner as a "peer coordinator" of a newly opened faith-based pod. His influence on others—not only fellow death row prisoners, but also correctional officers, Texas Department of Criminal Justice's official field ministers,[7] and citizens and faith leaders in the free world[8]—cannot be understated.

But based on the aggravating evidence before the jury at the time, and "the jury's duty to assess [a defendant's] present character for future dangerousness," the trial evidence may have been legally sufficient to support the jury's affirmative finding on that special issue. *Coble*, 330 S.W.3d at 269–70. Petitioner does not contest that fact here. Instead, he maintains that his demonstrated character over the two decades he has spent in prison—not only his nonviolent institutional record, but his universal reputation for good character, rehabilitated nature, exemplary leadership, and the changed opinion regarding his character by the State's expert, Dr. Gripon, himself—establish that Petitioner *no longer* meets the eligibility criteria under Texas law because the jury's determination has been "shown to be inaccurate by subsequent events. *McGinn*, 961 S.W.2d at 168.

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[6] Michelle Pitcher, "Finding God, Asking State to Find Mercy on Death Row," *Texas Observer* (Jun. 21, 2024) available at https://www.texasobserver.org/ramiro-gonzales-clemency-2024/.

[7] "Ramiro Gonzales 2024 Clemency Video," *Texas Defender Service*, available at https://www.youtube.com/watch?v=2GN9pDv7GDo&t=26s.

[8] Pet. App. at 52a (letter from evangelical faith leaders in support of clemency).

C. Texas Insulates Behavioral Predictions of Future Criminal Acts of Violence from Review Only Where Death Eligibility is Conditioned Upon Them—Where Constitutional Protections Should Apply with The Greatest Force.

Death, "in its finality," is a qualitatively different punishment than any other; there is therefore a "corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976).

In approving Texas's statutory scheme almost fifty years ago, this Court noted that, while "[i]t is, of course, not easy to predict future behavior," that does not mean that such predictions cannot be made. *Jurek*, 428 U.S. at 274–75. But of course, as the Texas courts have recognized, predictions can also be "shown to be accurate or inaccurate only by subsequent events." *McGinn*, 961 S.W.2d at 168.

This Court in *Jurek* observed that "prediction of future criminal conduct is an essential element in many of the decisions rendered throughout our criminal justice system." *Jurek*, 428 U.S. at 275. Decisions regarding "bail, for instance, must often turn on a judge's prediction of the defendant's future conduct." *Id.* Similar predictions "must be made by parole authorities." *Id.* at 276. But a salient difference distinguishes these permissible predictions from the jury's prediction on which a death sentence is conditioned in Texas: the availability of meaningful review.

In the bail context, Texas provides statutory avenues for judicial review and potential relief, including reduction of bail amount and revisiting the determination that custody in lieu of bail is warranted. *See, e.g.*, Tex. Code Crim. Pro. art. 11.24 (providing a person is entitled to habeas corpus relief if committed to custody for

failing to enter bond "if it be stated in the application that there was no sufficient cause for requiring bail or that the bail required is excessive"); Tex. R. App. Pro. 31 *et seq*. (provisions governing "Appeals in Habeas Corpus, *Bail*, and Extradition Proceedings in Criminal Cases"). And in the parole context, state law *requires* that prisoners denied release *must* be reconsidered. Tex. Gov. Code § 508.141(g), "Authority to Consider and Order Release on Parole" (mandating that the Board "shall adopt" policies that "must require the Board to reconsider [prisoners for] release").

But in the context of the death penalty, where a finding of future dangerousness is required to render a capital defendant death-eligible under state law, Texas provides only for legal sufficiency review on direct appeal *based on the trial record*, but no meaningful review of the prediction itself or the veracity of the evidence underlying it. While this may have been a rational approach at the time this Court reviewed the constitutionality of the statute itself in *Jurek*, the celerity of capital punishment was then much different than it is today. Reports of the Bureau of Justice Statistics indicate that for prisoners executed between 1977 and 1984, the average time between sentence and execution was six years.[9] By 2021, the most recent year for which statistics are available, the average time between sentence and execution had reached 19.4 years.[10] Behavior over a six-year period may be easier to

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[9] Lawrence A. Greenfield and David G. Hinners, *Capital Punishment 1984*, U.S. Department of Justice, Bureau of Justice Statistics, May 1986.

[10] Tracy Snell, *Capital Punishment, 2021 – Statistical Tables*, U.S. Department of Justice, Bureau of Justice Statistics, November 2023.

predict than behavior over two decades. A jury determination that a defendant would probably pose a threat of future criminal acts of violence is logically more probative for that six-year period, then, and the potential for the prediction to be shown inaccurate far less.

Today, however, where defendants like Mr. Gonzales spend decades between sentence and potential execution, these years in prison present an opportunity to conclusively determine the accuracy—or inaccuracy—of the jury's prediction. And like the Eighth Amendment problem that would result from executing someone who does not understand the reasons for their punishment, here the purported justification for the execution—incapacitation—has been undermined by subsequent events. *See Johnson v. Mississippi*, 486 U.S. 578 (1988) (death sentence based on information later revealed to be inaccurate is unconstitutional). When the State's own psychiatric expert on the issue of "future dangerousness" disclaims his trial opinion and testimony after reevaluating a defendant following years of rehabilitation and exemplary behavior, and subsequent events demonstrate the utter inaccuracy of the condition precedent for death eligibility, meaningful review of the constitutionality of such an execution is required.

D. Extraordinary Circumstances Warrant This Court's Intervention.

As described *supra*, there is substantial compelling evidence that Petitioner is a nonviolent, inspirational, and fully rehabilitated person who, even in the words of the State's own expert on future dangerousness at trial, "does not pose a threat of future danger to society." And as Dr. Gripon himself told a reporter, he has *never*

before issued a report changing his opinion in a death penalty case; Petitioner "is the exception, not the rule."[11]

Not all individuals incarcerated for many years will be able to disprove the eligibility determination with such persuasive force; even fewer still will be able to offer the opinion of the State's own trial expert that they do *not* pose a threat of future violence. Because Petitioner can do both, his case is truly extraordinary.

III. BECAUSE CLAIMS OF INELIGIBILITY FOR EXECUTION ON THE GROUNDS THAT TEXAS'S CONDITION PRECEDENT WAS INACCURATE ARE NOT RIPE IN INITIAL HABEAS CORPUS PROCEEDINGS, THE STATE COURTS' ABSOLUTE REFUSAL TO ADDRESS THEM MEANS THAT ADEQUATE RELIEF CANNOT BE OBTAINED ELSEWHERE.

The constitutional eligibility issue raised here would otherwise evade judicial review of any kind, and therefore exercise of this Court's original jurisdiction under § 1651 and § 2241 is proper.

A. No Remedy Exists in State Court Because Texas Refuses to Recognize Claims of Ineligibility for Execution on This Ground or Provide Review of The Accuracy of The Eligibility Determination at Any Point.

Texas provides no state law forum for review of death ineligibility claims like this one. As the Texas Court of Criminal Appeals has made clear, the trial-level eligibility finding of future dangerousness is, "in essence, one of prediction," and "predictions are not right or wrong at the time of trial—they may be shown as

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[11] Maurice Chammah, "This Doctor Helped Send Ramiro Gonzales to Death Row. Now He's Changed His Mind," *The Marshall Project* (Jul. 12, 2022), available at https://www.themarshallproject.org/2022/07/11/this-doctor-helped-send-ramiro-gonzales-to-death-row-now-he-s-changed-his-mind.

accurate or inaccurate only by subsequent events." *McGinn*, 961 S.W.2d at 168; *Russeau v. State*, 171 S.W.3d 871, 878 n. 1 (Tex. Crim. App. 2005).

The evidence of subsequent events disproving the predictive eligibility determination is not only necessarily unavailable at the time of trial, but it cannot be introduced on direct review of the trial record under well-settled principles of appellate law. And rather than reviewing the jury's determination for *accuracy*, the legal sufficiency review on direct asks only "if, after reviewing all of the record evidence … a rational jury would necessarily have entertained a reasonable doubt about the defendant's future dangerousness." *Coble*, 330 S.W.3d at 265.

The Texas Court of Criminal Appeals has held explicitly in this case that "the determination of future dangerousness is made at the time of trial and is not properly reevaluated on habeas." *Ex parte Gonzales*, No. WR-70,969-03, 2022 WL 2678866 at *1 (Tex. Crim. App. July 11, 2022). And when Petitioner again raised this claim explicitly as an Eighth Amendment issue in the related proceeding in which cert is also sought before this Court, the Court of Criminal Appeals dismissed the issue under Art. 11.071 § 5's bar on subsequent habeas applications. *Ex parte Gonzales*, No. WR-70,969-04, (Tex. Crim. App. Jun. 24, 2024); *see Kunkle v. Texas*, 125 S.Ct. 2898 (2004) (mem.) (Stevens, J., concurring in denial of certiorari) (Art. 11.071 § 5 is an independent state law ground depriving this Court of certiorari jurisdiction).[12] State

[12] In his concurrently filed petition for writ of certiorari, Petitioner argues that dismissal of this claim under Article 11.071 §5 is *not* independent of the constitutional question and therefore does not preclude this Court's review of the claim raised below.

post-conviction review is thus unavailable, whether in initial or subsequent proceedings, as is certiorari jurisdiction in this Court.

B. No Remedy Exists in Federal Court Because These Claims of Death-Ineligibility Would Be Defaulted and Barred.

Federal habeas courts similarly offer no avenue for review of ineligibility claims like this one. Because state courts refuse to recognize these claims, they will be unexhausted and unreachable in federal habeas proceedings. 28 U.S.C. § 2244(b)(2). Furthermore, because these claims attack the lack of procedure afforded under state law, federal habeas courts will be barred from reviewing them anew under the rule of *Teague v. Lane,* 489 U.S. 288, 305–11 (1989) (new constitutional rules of criminal procedure are generally not applicable to cases which have become final before rule is announced).

Exercise of this Court's extraordinary writ power in these circumstances is therefore warranted because adequate relief cannot be obtained in any other forum.

CONCLUSION

For the foregoing reasons, this Could should exercise its original jurisdiction, vacate the judgment of the TCCA below and remand for further proceedings on Petitioner's death eligibility claim consistent with the Eighth and Fourteenth Amendments. Alternatively, the petition for writ of certiorari should be granted.

Respectfully submitted,

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