Nos. 24-6727, 24A860

IN THE

Supreme Court of the United States

DAVID WOOD,
Petitioner,

v.

RACHEL PATTON, District Attorney Pro Tem,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals for the Fifth Circuit and Application for a Stay of Execution

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Should this Court grant review and a stay of execution where Petitioner challenges straightforward applications of properly stated rules of law; the lower courts properly dismissed his claims for failing to demonstrate standing, a plausible claim for relief, or both; and where he has exhaustively, repeatedly, and unsuccessfully litigated challenges to his decades-old capital murder conviction and death sentence?

LIST OF PROCEEDINGS

State v. Wood, No. 58486-171 (171st Dist. Ct., El Paso Cnty., Tex. Nov. 30, 1992) (convicted and sentenced to death)

Wood v. State, No. AP-71,594 (Tex. Crim. App. Dec. 13, 1995) (affirming conviction and sentence)

Ex parte Wood, No. WR-45,746-01 (Tex. Crim. App. Sept. 19, 2001) (denying initial state habeas application)

Wood v. Dretke, No. 3:01-CV-2103-L, 2006 WL 1519969 (N.D. Tex. June 2, 2006) (denying federal habeas petition)

Wood v. Quarterman, 503 F.3d 408 (5th Cir. 2007) (denying a certificate of appealability)

Wood v. Quarterman, 552 U.S. 1314 (2008) (denying petition for a writ of certiorari)

Ex parte Wood, No. WR-45,746-02, 2009 WL 10690712 (Tex. Crim. App. Aug. 19, 2009) (granting a stay of execution on a subsequent application for a writ of habeas corpus)

Wood v. Texas, No. 58486-171-2 (171st Dist. Ct., El Paso Cnty., Tex. Nov. 1, 2010) (granting motion for postconviction DNA testing)

Wood v. Texas, No. 58486-171-2 (171st Dist. Ct., El Paso Cnty., Tex. Aug. 17, 2011) (conclusion on Article 64 postconviction DNA testing)

Ex parte Wood, No. WR-45,746-02, 2014 WL 6765490 (Tex. Crim. App. Nov. 26, 2014) (denying subsequent habeas application)

Wood v. Texas, No. 58486-171 (171st Dist. Ct., El Paso Cnty., Tex. June 12, 2017) (denying motion to disqualify)

In re Wood, No. WR-45,746-03 (Tex. Crim. App. July 26, 2017) (denying leave to file a petition for a writ of mandamus)

Ex parte Wood, 568 S.W.3d 678 (Tex. Crim. App. 2018) (granting reconsideration of and denying subsequent habeas application)

Wood v. Texas, 140 S. Ct. 213 (2019) (denying petition for a writ of certiorari)

Wood v. Texas, No. 58486-171 (171st Dist. Ct., El Paso Cnty., Tex. Mar. 3, 2022) (denying motion for postconviction DNA testing)

Wood v. State, 693 S.W.3d 308 (Tex. Crim. App. 2024) (affirming denial of motions for postconviction DNA testing)

Wood v. State, No. 58,486-171 (171st Jud. Dist. Ct. El Paso County, Tex. Jan. 24, 2025) (denying motion for leave to disclose grand jury testimony)

Wood v. Patton, No. A-24-CV-1058, 2025 WL 629282 (W.D. Tex. Feb. 19, 2025) (dismissing complaint)

Wood v. Texas, --- S. Ct. ---, 2025 WL 581671 (Feb. 24, 2025) (denying petition for a writ of certiorari)

Wood v. Patton, No. 25-70004, 2025 WL 723836 (5th Cir. Mar. 7, 2025) (affirming order dismissing complaint)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

BRIEF IN OPPOSITION

Almost forty years ago, Petitioner David Wood killed three women and three teenaged girls and buried their bodies in a desert outside El Paso, Texas. He was convicted of capital murder and sentenced to death for these heinous crimes in 1992. Over the next three decades, he has engaged in a dilatory course of piecemeal litigation to unreasonably delay the execution of his sentence. *See Wood v. State*, 693 S.W.3d 308, 339–40 (Tex. Crim. App. 2024). Relevant here, that piecemeal litigation included several motions filed under Chapter 64 of the Texas Code of Criminal Procedure (Chapter 64) for postconviction DNA testing. *Id.*

Although Chapter 64 was enacted in 2001, *id.* at 330, Wood did not file a motion seeking postconviction DNA testing until 2010. *Id.* The prosecutor did not oppose this motion, and the trial court then ordered testing of the three items Wood requested. ROA.79.[1] But over the next seven years, Wood "doled out" additional Chapter 64 motions, seeking testing of 69 items in 2011, 39 items in 2015, and then 142 items in 2017. *Id.* at 337–38. The trial court denied those requests, and in 2024 the Texas Court of Criminal Appeals (CCA) affirmed, recognizing the plain import of Wood's decade-long piecemeal

[1] "ROA" refers to the Record on Appeal produced by the Fifth Circuit.

litigation under Chapter 64—that it was made for the purpose of unreasonable delay. *Id*. at 339–40; *see* Tex. Code Crim. Proc. art. 64.03(a)(3)(B).

Wood then filed a complaint under 42 U.S.C. § 1983 in federal district court alleging that Chapter 64 violated his procedural due process rights in two ways. Pet'r's App. C. First, Wood argued that, because the CCA had not granted a convict's motion for postconviction DNA testing in the last fifteen years, the CCA's rejection of *his* claim showed that Chapter 64 is "an illusory right that cannot be reasonably obtained." Pet'r's App. C at 3. Second, Wood contended that the CCA interpreted Chapter 64's unreasonable-delay element "in a new and novel way" in his case. *Id*.

The district court dismissed Wood's complaint for failure to state a claim, Pet'r's App. B at 12–14, 17, and the Fifth Circuit affirmed, Pet'r's App. A at 6–10. As to Wood's first claim, the court of appeals applied this Court's decision in *Reed v. Goertz*, 598 U.S. 230 (2023), and the Fifth Circuit's decision in *Gutierrez v. Saenz*, 93 F.4th 264 (5th Cir.), *cert. granted* 145 S. Ct. 118 (2024), and held that he lacked standing. Pet'r's App. A at 5–8. The court reasoned that Wood's "request for a vague declaratory judgment announcing that the CCA has 'construed' Chapter 64 unconstitutionally would not apprise a state prosecutor (or the CCA) of which denials were unconstitutional and why." Pet'r's App. A at 7. Nor would "a generalized declaratory judgment . . . give the state prosecutor any justification to think that" the undue-delay element of

Chapter 64—the only element the CCA relied on to deny him DNA testing—was unconstitutional. Pet'r's App. A at 7. So Wood could not establish redressability because "the declaratory judgment would not get him the DNA testing he seeks." Pet'r's App. A at 5. As for Wood's second claim, the court held that he had standing to challenge the constitutionality of the "undue delay" element of Chapter 64 under *Reed* and *Gutierrez*, but that his challenge simply failed on the merits. Pet'r's App. A at 8–10.

Challenging only the Fifth Circuit's resolution of his first claim, Pet. Cert. 17 n.2, Wood now seeks a stay of execution and a writ of certiorari. The Court should deny both. Wood's primary argument is that this case is indistinguishable from *Gutierrez* and the same grounds that led this Court to grant review in *Gutierrez* should lead to the same result here. They should not. *Gutierrez* involves a redressability question concerning a declaratory judgment that eliminates only one of several, independent state-law grounds that a prosecutor has relied upon to deny access to DNA testing. But this case does not involve the interplay between redressability and multiple independent state law grounds. Instead, this case concerns whether a "vague," "generalized" declaratory judgment not keyed to any particular statutory requirement under Chapter 64 will establish redressability. Because *Gutierrez* presents a different redressability question, it will not "control Wood's case," Pet. Cert. 14, and the Court should not permit Wood to piggyback off the certiorari grant in that case.

Beyond *Gutierrez*, Wood's petition and application for a stay of execution are little more than a bid for error correction based on nothing more than his disagreement with the Fifth Circuit's straightforward application of this Court's precedent in *Reed*. But that is not enough to warrant certiorari. And *a fortiori* such arguments fall short of meriting a stay of execution, despite Wood's protestations about the Fifth Circuit's holding with respect to standing, where his claims have already been addressed and found to have failed to state a plausible claim for relief. Pet'r's App. A at 9–10; Pet'r's App. B at 12–14. No stay of execution should issue to postpone the dismissal of Wood's claims. This Court should thus deny the petition for a writ of certiorari and the application for a stay of execution.

STATEMENT OF THE CASE

I. Facts of the Crime

> Six women disappeared from the El Paso area between May 13, 1987 and August 27, 1987. Between September 4, 1987 and March 14, 1988, the bodies of these women were found buried in shallow graves in the same desert area northeast of El Paso....The first body discovered was that of Rosa Casio, age 23, who worked in a topless club. On the evening of her disappearance she was seen holding hands with a man who could have been [Wood]. The second body found was that of Karen Baker, age 21, who lived at a hotel on Dyer. The day of her disappearance, she was seen by Charles Lloyd riding a red Harley Davidson with [Wood]. She told Lloyd that [Wood] would be back to pick her up for a date at midnight. At midnight, Lloyd saw a man pull up in a white or beige pickup. The man got out and walked toward Karen, who was standing nearby. This was the last time Karen was seen. The third body recovered was that of Dawn Smith, age 14. This victim was well-

acquainted with [Wood] and there was testimony that she would have accepted a ride with him. The fourth body was that of Desiree Wheatley, age 15. Desiree was last seen near a Circle K store, getting into the passenger side of a small beige truck driven by [Wood]. The fifth body was that of Angelica Frausto, age 17, who was a dancer at a topless bar. She was last seen going for a ride with a man on a red Harley-Davidson. The sixth body recovered was that of Ivy Williams, age 23, a prostitute and exotic dancer. She was seen with [Wood] shortly before her disappearance.

Five of the bodies were located in the same one by one-half mile area; the sixth was three-quarters of a mile away. All of the bodies were approximately 30 to 40 yards from one of the dirt roadways in the desert. Four of the bodies were in various states of undress, indicating that the killer had sexually abused them. [Wood]'s former girlfriend and others testified that he owned a beige pickup. He also drove a red Harley-Davidson. [Wood]'s girlfriend testified that he had several tattoos on his body and that he owned both a burnt orange blanket and some shovels, all of which he kept in the back of his pickup. A forensic chemist testified that orange fibers found on the clothing of one of the victims matched orange fibers taken from a vacuum cleaner bag which [Wood] and his girlfriend had left in their old apartment.

Randy Wells testified that he shared a cell with [Wood] for two and a half months in 1989. [Wood] told him about the murders, describing his victims as topless dancers or prostitutes. [Wood] told him that he would lure each girl into his pickup with an offer of drugs. Then he would drive out to the desert, tie her to his truck and dig a grave. Next he would tie the victim to a tree and rape her. Wells also testified that he covered over some of [Wood]'s tattoos with new ones. He said [Wood] told him he wanted the tattoos covered up because one girl who had seen the tattoos had gotten away from him.

Both Karen Baker and Desiree Wheatley were with [Wood] when they were last seen alive. Ivy Williams was seen with [Wood] shortly before her disappearance. In the case of the victim Desiree Wheatley, a witness who knew [Wood] before the incident identified him as the man driving the pickup that Wheatley

climbed into. All of the murders took place between May 30, 1987 and August 28, 1987.

Wood v. State, No. 71,594, slip op. at 3–5 (Tex. Crim. App. Dec. 13, 1995).

The CCA detailed in its opinion testimony given at the guilt phase of the trial by the victim of an extraneous offense committed by Wood in July 1987:

> [Judith] Kelly was walking outside of a Circle K located on Kemp and Dyer in the northeast part of El Paso. A tattooed man driving a tan pickup stopped and asked her if she needed a ride. Kelly identified [Wood] in court as the driver of the pickup. She accepted his offer, climbed into his vehicle, and told [Wood] where she was going. When [Wood] passed up the turn she had directed him to take, he explained that he would take her back after first stopping by the house of a friend. He stopped at an apartment complex and went inside. When he returned about three minutes later, a piece of narrow rope was hanging from one of his pockets.
>
> [Wood] drove northeast of town toward the desert, in the direction opposite Kelly's friend's apartment. He explained that he was going there to recover some cocaine he had buried in the desert. He stopped first at a gate in the desert area east of Dyer. Finding the gate locked, he crossed back west into the desert area located between Dyer and McCombs. After driving around the area for a good while, [Wood] finally stopped his truck, got out, and ordered Kelly out as well. She saw him get a "brownish red" blanket and a shovel from the back of his truck and take them behind some bushes. After tying her to the front of his truck with the rope, [Wood] proceeded to dig a hole behind the bushes. Ten or fifteen minutes later, he returned with the blanket and began ripping her clothes and forcing her to the ground. Suddenly hearing voices, [Wood] ordered Kelly to get back in the truck.
>
> [Wood] drove across to the desert on the west side of McCombs, where he stopped his vehicle again. He ordered her out, spread the blanket on the ground and forced her to remover her clothes. He gagged her and tied her to a bush. While he had her on the ground attempting to rape her, he ordered her to say that she was 13; she refused to do so, saying she was 27 or 28 years old.

> Ultimately, [Wood] did rape Kelly. Immediately afterwards, [Wood] stated that he heard voices. He hastily threw the blanket and Kelly's clothing into the back of his truck and drove away, leaving her naked in the desert. His final words to her were, "[A]lways remember, I'm free."

Id. at 2–3.

II. Trial, Direct Appeal, and Postconviction Proceedings

David Wood was convicted and sentenced to death for the murder of six women. The CCA affirmed his conviction and sentence on direct appeal. *Wood v. State*, No. AP-71,594 (Tex. Crim. App. Dec. 13, 1995). Wood filed a state application for a writ of habeas corpus, and the CCA denied relief. *Ex Parte Wood*, No. 45,746-01 (Tex. Crim. App. Sept. 19, 2001). Wood filed an amended federal habeas petition on October 2, 2002, and the district court denied each claim on the merits and subsequently denied a certificate of appealability (COA). *Wood v. Dretke*, No. 3:01-CV-2103-L, 2006 WL 1519969, at *19 (N.D. Tex. June 2, 2006). Wood applied for a COA, which was denied. *Wood v. Quarterman*, 503 F.3d 408 (5th Cir. 2007), *cert. denied*, 552 U.S. 1314 (2008).

The state trial court scheduled Wood's execution for August 20, 2009. Two days before the scheduled execution, Wood filed a subsequent state habeas application and was granted a stay of execution so he could raise a claim under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Ex parte Wood*, No. WR-45,746-02, 2009 WL 10690712, at *1 (Tex. Crim. App. Aug. 19, 2009).

Eighteen years after his conviction, in 2010 Wood filed his first motion for DNA testing pursuant to Chapter 64. ROA.79. Wood's *Atkins* claim was being litigated in the state district court, and Wood asked the State to agree to DNA testing of evidence that was previously tested for purposes of Wood's trial. ROA.79. The State agreed, and the Court granted Wood's motion for DNA testing. ROA.79. Wood unsuccessfully attempted to stay the *Atkins* litigation until the DNA testing could be completed. ROA.172. Wood asked the court to reconsider the stay while additional attorneys who had been appointed to represent him also asked for a ninety-day extension of all deadlines. *See* ROA.193. The court refused to grant an indefinite stay but agreed to a ninety-day extension. *See* ROA.193. However, the judge stated that Wood was engaging in dilatory tactics and that Wood was seeking DNA testing for that purpose. *See* ROA.195, 508.

The *Atkins* hearing was rescheduled for June 20, 2011, and Wood had until February 15, 2011, to turn over his expert reports. *See* ROA.195. Before Wood's February 15 deadline, the trial court informed Wood's counsel that it would be willing to extend the deadline for turning over expert reports to some point shortly after an upcoming scheduling hearing. *See* ROA.349. On February 24, 2011, Wood filed a supplemental motion for DNA testing of evidence that had not been previously tested: fingernails from the victim Angie Frausto. ROA.180–81. The State opposed this motion. ROA.187.

Wood continued to attempt to delay the *Atkins* case and repeatedly ignored deadlines to turn over his expert reports. *See* ROA.350, 508. During the week of August 8, 2011, the parties met in El Paso for a hearing to address the results of the DNA testing and to set a hearing date for the *Atkins* claim. *See* ROA.350. The parties agreed to begin the *Atkins* hearing on October 11, 2011. *See* ROA.350. Following the August hearing, the trial court entered findings that the results of the DNA testing did not show the jury would not have convicted him if it had been aware of the results. ROA.232.

On October 11, 2011, four days before the *Atkins* hearing and over a month after amendments to Chapter 64 went into effect, Wood filed another motion for DNA testing under Chapter 64 seeking to test more than sixty-nine items of evidence. ROA.233. The trial court agreed to appoint an expert, William Watson, to assist Wood in determining what evidence may be available for testing. ROA.507–11. Years passed without any word from Wood until the trial court announced that if no DNA issues were going to be pursued an execution date would be set. *See* ROA.531–32.

Despite the court's admonition, Wood responded with a two-page motion for DNA testing on April 3, 2015. ROA.544–45. The State filed an opposition to this motion on April 7, 2015. ROA.529. On April 30, 2015, Dr. Watson submitted a letter to the court stating that he had traveled to El Paso and reviewed the evidence. ROA.580. He then addressed which items of evidence

he believed might contain biological material. ROA.581. The trial court did not enter an order scheduling Wood's execution and on September 1, 2015, additional amendments to Chapter 64 went into effect. On November 2, 2015, Wood filed a motion for the court to create a profile of an alternative suspect and a motion asking the court to unseal evidence pertaining to a body that was discovered in the desert east of El Paso during Wood's trial. ROA.619, 710.

On December 11, 2015, the State filed its response to Wood's motion to create a DNA profile for an alternate suspect. ROA.761. The State filed an advisory on August 10, 2016, informing the court that the discovered body was that of a Hispanic male and was unrelated to the desert murders. ROA.840.

Between August 2016 and January 2017, Wood filed several ancillary motions. ROA.863, 907, 963, 1029. A hearing to address the DNA issues was scheduled for March 8, 2017. *See* ROA.1331. On March 3, 2017, Wood submitted a motion for postconviction DNA testing under Chapter 64 asking the court to allow testing of items that had never been considered and were not included in any of his other motions for postconviction DNA testing. ROA.1187–1246. Then, after the hearing was held on March 8, 2017, on April 18, 2017, Wood filed a motion seeking to disqualify the trial judge. ROA.1276. The motion was denied on June 12, 2017. ROA.1430. The CCA denied Wood's petition for leave to file a writ of mandamus on the issue on July 26, 2017. Notice, *In re Wood*, No. WR-45,746-03 (Tex. Crim. App. July 26, 2017).

Back in the trial court, on December 4, 2017, Wood filed a motion to disqualify the Attorney General's office as the District Attorney Pro Tem. ROA.1431. On March 3, 2022, the trial court denied Wood's motions for DNA testing and his ancillary motions. ROA.1518–21, 1523. The CCA affirmed the trial court's denial on appeal. *Wood v. State*, 693 S.W.3d 308, 322–40 (Tex. Crim. App. 2024), *cert. denied*, 2025 WL 581671 (Feb. 24, 2025).

On August 15, 2024, the 171st District Court of El Paso County, Texas entered an order setting Wood's execution date for March 13, 2025. On December 11, 2024, Wood filed in the trial court a motion for disclosure of grand jury testimony in his capital murder case and a motion requesting that counsel be appointed to represent Wood in the state trial court. On January 24, 2025, the trial court granted the motion to appoint counsel but denied the motion for disclosure of grand jury testimony. Order, *Wood v. State*, No. 58,486-171 (171st Dist. Ct. El Paso Cnty, Tex. Jan. 24, 2025).

Wood filed in the CCA a subsequent application for a writ of habeas corpus and a motion for a stay of execution. *Ex parte Wood*, No. WR-45,746-04 (Tex. Crim. App. Feb. 21, 2025). The application and motion remain pending.

On March 1, 2025, Wood filed in the state trial court an application for a writ of habeas corpus challenging his previous conviction for sexual assault and a motion for a stay of execution. The court denied the application and a

stay of execution. Order, *Ex parte Wood*, No. 870d06913 (346th Dist. Ct. El Paso Cnty., Tex. Mar. 10, 2025).

On March 5, 2025, Wood filed in the Fifth Circuit a motion for authorization to file a successive federal habeas petition and a motion for a stay of execution. *In re Wood*, No. 25-10359 (5th Cir.). On March 11, 2025, the Fifth Circuit granted Wood's motion for authorization in part but denied a stay of execution. Order 14, *In re Wood*, No. 25-10359 (5th Cir.).

Wood filed in the federal district court a civil rights complaint and a motion for a preliminary injunction requesting a stay of execution. Pet'r's App. C; ROA.2183–2213. The court dismissed the complaint for failing to state a claim on which relief could be granted, and it denied Wood's request for a stay of execution. Pet'r's App. B at 12–17. The Fifth Circuit affirmed the dismissal of Wood's complaint, holding Wood lacked standing to bring his first claim, and his second claim failed to state a plausible claim for relief. Pet'r's App. A at 5–10. The Fifth Circuit also denied Wood's request for a stay of execution. *Id.* at 10. Wood then filed a petition for a writ of certiorari and an application for a stay of execution. The instant brief in opposition follows.

REASONS FOR DENYING CERTIORARI AND A STAY

Wood has exhibited a clear pattern of purposeful delay over the preceding decades to unreasonably delay Texas's enforcement of its capital murder conviction and death sentence. *See Wood*, 693 S.W.3d at 329–40. The

state court came to that inescapable conclusion and affirmed the denial of Wood's Chapter 64 motions. *Id.* at 340. After delaying the state court's resolution of his requests for postconviction DNA testing for more than a decade, Wood filed a complaint in federal district court raising two claims alleging Chapter 64 violates due process. The first claim failed even to point to a provision of Chapter 64 or authoritative construction of it by the CCA that was violative of procedural due process. Pet'r's App. A at 7. And in any event, as the district court held, the claim failed to show Chapter 64 is an "illusory" right as Wood alleged. Pet'r's App. B at 12. The Fifth Circuit found Wood had standing to bring his second claim, but it failed to state a plausible claim for relief because it was premised on Wood's distortion of the CCA's precedent regarding Chapter 64's unreasonable-delay element. Pet'r's App. A at 9–10.

In reaching those conclusions, the lower courts straightforwardly applied this Court's precedent applicable to a procedural due process challenge to a state's postconviction DNA testing scheme. Wood seeks certiorari review and what would effectively be an automatic stay simply by virtue of the fact that the Fifth Circuit dismissed one of his two claims for lack of standing. Because this Court is reviewing the Fifth Circuit's opinion in *Gutierrez*, in which the court held the plaintiff lacked standing in light of the availability of independent bases for the custodians of the evidence to refuse access to the evidence, Wood argues this Court must stay his long overdue execution to

await this Court's opinion. But the Fifth Circuit's invocation of *Gutierrez* to reject one claim for lack of standing does not ineluctably mean that Wood's petition should be granted or that his excessively dilatory tactics should be rewarded by way of a stay of execution.

In this case, the Fifth Circuit applied *Reed v. Goertz*, 598 U.S. 230, 234 (2023), to a context that is distinct from *Gutierrez*. Here, Wood's first claim failed even to allege a basis for concluding any of Chapter 64's procedures or any of the CCA's authoritative construction of them violate procedural due process. Pet'r's App. A at 6–8. That is plainly different from *Gutierrez* where the Fifth Circuit found a lack of standing due to the availability to the state actors of independent and alternative grounds on which to refuse access to evidence for DNA testing. *Gutierrez*, 93 F.4th at 275. Indeed, Wood's failure to demonstrate standing as to his first claim is tantamount to a failure to state a plausible claim for relief due to his inability to articulate a basis for a declaratory judgment that any procedure in Chapter 64 is unconstitutional. Consequently, even if this Court were inclined to question the Fifth Circuit's application of *Reed* and *Gutierrez*, Wood fails to justify this Court's attention—and fails by orders of magnitude more to justify a stay of execution—where the result would be the same: dismissal of his complaint. Wood's petition for a writ of certiorari and application for a stay of execution should be denied.

ARGUMENT

I. Wood Provides No Compelling Reason for Further Review.

The Court requires those seeking a writ of certiorari to provide "[a] direct and concise argument amplifying the reasons relied on for allowance of the writ." Sup. Ct. R. 14.1(h). Wood argues the Court should grant review to await its opinion in *Gutierrez*, but (1) he fails to show that opinion will control in this case, *see Garcia v. Texas*, 564 U.S. 940, 941 (2011) ("Our task is to rule on what the law is, not what it might eventually be."), or (2) that it would ultimately lead to a different outcome in this case even if it did. He repeatedly asserts that his case is materially indistinguishable from *Gutierrez*. Pet. Cert. 11–13. But he is wrong.

In *Reed*, this Court held that the plaintiff had standing because a declaratory judgment that Chapter 64's procedures violate due process would eliminate the state prosecutor's justification for refusing access to evidence for DNA testing, and it was substantially likely the prosecutor would abide by such a judgment. 598 U.S. at 234. The Fifth Circuit distinguished *Reed* in *Gutierrez* where the plaintiff had successfully obtained a declaratory judgment as to Chapter 64's exclusion of punishment-related DNA testing and its purported inconsistency with Texas's abuse-of-the-writ statute. 93 F.4th at 270–71. The CCA in the plaintiff's Chapter 64 proceedings, however, had already opined that even if Chapter 64 provided for such testing, the plaintiff

would not be entitled to it. *Id*. at 275. The Fifth Circuit held that *Reed* was distinguishable because the CCA had "effectively anticipated an unfavorable federal court ruling," so there was not a substantial likelihood that "a favorable ruling by a federal court on [the plaintiff's] claims would cause the prosecutor to order DNA testing[.]" *Id*.

At issue in *Gutierrez* is whether the availability of state law grounds to refuse access to evidence that are "independent" of the ground(s) implicated by a declaratory judgment precludes a showing of redressability and whether the Fifth Circuit inappropriately examined the state court's opinions to predict whether the plaintiff would ultimately succeed on the merits after being allowed DNA testing. Br. for Petitioner 31, 37, *Gutierrez v. Saenz*, No. 23-7809 (Dec. 3, 2024); Reply Br. 1, 5, 12, *id*. (Feb. 14, 2025). Neither issue is relevant here.

In reaching its holding with respect to standing in Wood's case, the Fifth Circuit did not rest its decision on whether the CCA had already spoken on the alleged defect in Chapter 64 or whether independent state law grounds precluded redressability. Pet'r's App. A at 5–8. Instead, the Fifth Circuit recognized a pleading defect: Wood's first claim failed even to identify any particular provision of Chapter 64 or authoritative construction of it that violated procedural due process. Pet'r's App. A at 5 n. 6 ("Unlike Wood, Reed identified a specific way in which Chapter 64 allegedly violated the

[C]onstitution[.]"), 7. Consequently, a "vague" declaratory judgment that did not undermine any of Chapter 64's procedures would not even apprise Respondent of which procedure was unconstitutional and why. *Id*. Indeed, such a declaratory judgment could have *no* preclusive effect and amount to nothing more than an advisory opinion. *See Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) ("After all, the point of a declaratory judgment 'is to establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata.'" (citation omitted)).

Wood's attempt to show this Court's opinion in *Gutierrez* will inevitably be controlling and dispositive in his favor fails to recognize the critical distinctions between the cases. Wood failed to demonstrate standing with respect to one of his two claims by failing to even allege a particular provision or construction of Chapter 64 that rendered it illusory. Pet'r's App. A at 7. That is not the case in *Gutierrez*. Consequently, he cannot show this Court's opinion in *Gutierrez* will call the Fifth Circuit's judgment into question, particularly when Wood's first claim would almost certainly be dismissed—as it has already been, Pet'r's App. B at 12—under Rule 12(b)(6) for the same reason.

Notably, the plaintiff in *Gutierrez* succeeded in obtaining a declaratory judgment as to a particular provision of Chapter 64. 93 F.4th at 271. Wood did not. He asserts the Fifth Circuit's holding that he lacked standing with respect to his first claim closed "the courthouse doors" to a potentially meritorious

complaint. Pet. Cert. 12. Not so in this case. Indeed, the district court dismissed both his claims for failing to state a plausible claim for relief. Pet'r's App. B at 12–14. Wood fails to present a compelling reason to grant review of the lower court's judgment where his claims are unlikely to proceed beyond the pleading stage because they do not state a claim on which relief can be granted. The Court should deny Wood's petition for a writ of certiorari.

II. The Lower Courts' Application of this Court's Precedent Does Not Warrant Review.

Wood challenges the Fifth Circuit's holding that he lacked standing to bring suit, arguing the court misapplied this Court's holding in *Reed*. Pet. Cert. 11. But *Reed* does not mandate a finding that a plaintiff who fails even to specifically allege a constitutional infirmity in a statute has standing to seek a vague declaratory judgment. This Court should deny Wood's petition.

To demonstrate standing, a plaintiff must adequately allege (1) an injury, (2) that is fairly traceable to the defendant's conduct, and (3) would likely be redressed by the requested relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The plaintiff bears the burden of establishing these elements, which are "indispensable" parts of a lawsuit and must be proven rather than merely pled. *Id*. at 561. In *Reed*, this Court held the plaintiff had standing to sue a district attorney to seek a declaratory judgment as to the constitutionality of Chapter 64 because the plaintiff was denied access to

evidence for DNA testing, and the district attorney denied him that access. 598 U.S. at 234. An order declaring the challenged statutory procedures violated due process would "eliminate" the district attorney's justification for denying DNA testing, i.e., it was substantially likely the district attorney "would abide by such a court order." *Id*.

The plaintiff in *Reed* sought and was denied in state court access to evidence for DNA testing, in part because he failed to satisfy Chapter 64's chain-of-custody requirement. 598 U.S. at 233. He later filed a civil rights action against the local prosecutor, alleging among other things that Chapter 64's chain-of-custody requirement was unconstitutional. *Id*. The lawsuit was dismissed on limitations grounds. *Id*. at 233–34. This Court reversed, first holding the plaintiff had standing to bring suit. *Id*. at 234. The Court held the plaintiff sufficiently alleged an injury in fact: denial of access to evidence for DNA testing. *Id*. The Court also found a causal connection between the defendant's conduct and the injury: the defendant denied the plaintiff access to the evidence. *Id*. And the Court found the injury was redressable through the civil rights action because a federal court judgment that Chapter 64's procedures were unconstitutional "would eliminate the state prosecutor's justification for denying DNA testing," would result in a change in legal status, and would significantly increase the likelihood the defendant would grant access to the evidence for testing. *Id*. In doing so, the Court articulated a test

for determining whether a plaintiff in such an action has standing—it did not hold that every unsuccessful state court litigant will have standing to seek a judgment declaring his state's postconviction DNA testing procedures unconstitutional. *See id.*

Here, Wood's first claim raised a vague complaint that Chapter 64 is "illusory." Pet'r's App. C at 2–3, 16–17. The claim did not articulate *how* or *why* it was illusory with respect to any particular provision of the statute or any authoritative construction of it by the CCA. Pet'r's App. A at 7 ("Thus, Wood's request for a vague declaratory judgment announcing the CCA has 'construed' Chapter 64 unconstitutionally would not apprise a state prosecutor (or the CCA) of which denials were unconstitutional and why."). Instead, the claim flatly alleged the CCA has not granted a request for postconviction DNA testing in the last fifteen years. Pet'r's App. C at 17. But without challenging any particular procedure in Chapter 64, the vague declaratory judgment he sought could not undermine any reason Respondent might have for refusing him access to evidence for DNA testing.

Wood argued below that a declaratory judgment that Chapter 64 is an illusory right "would undercut the only reason" the CCA gave for denying testing. Appellant's Br. 29. But the CCA did not address at all whether Chapter 64 is an illusory right, so it is entirely unclear how a vague declaratory judgment stating it is illusory would "undercut" the CCA's judgment. Indeed,

such a declaratory judgment could not have any preclusive effect in later litigation if it does not identify any inadequacy in Chapter 64. *See Brackeen*, 599 U.S. at 293. And as the Fifth Circuit explained, the CCA has rejected Chapter 64 requests "for a *multitude* of reasons," Pet'r's App. A at 7, *none* of which Wood facially challenged, Appellant's Br. 37 (describing his complaint regarding Chapter 64's unreasonable-delay element as an "as-applied challenge"). Wood fails to show that the Fifth Circuit's refusal to extend *Reed* to countenance such a vague and unspecific complaint is contrary to this Court's precedent.

Wood centers his attention on the Fifth Circuit's invocation of *Gutierrez*, but as discussed above he elides that the court simply applied *Reed* to a different circumstance. Pet'r's App. A at 6–7. The Fifth Circuit's statement that *Gutierrez* "controls" means nothing more than that *Reed* controls. *Compare* Pet'r's App. A at 6 ("Under *Gutierrez*, Wood cannot establish standing because it is not 'substantially likely' that a favorable ruling from our court would cause the state prosecutor to change course and agree to DNA testing."), *with Reed*, 598 U.S. at 234 (holding plaintiff had standing because it was "substantially likely" the state prosecutor would abide by a judgment that Chapter 64's procedures violated due process). The Fifth Circuit's application of *Reed* does not warrant review.

For the same reasons, Wood's argument that the Court should grant review to resolve a circuit split, Pet. Cert. 15–17, is unconvincing. As discussed above, the Fifth Circuit in *Gutierrez* distinguished *Reed* on a different basis—the availability to a prosecutor of independent state law grounds to rely upon to refuse access to evidence—than the court did here. This case is not *Gutierrez*, and to the degree any circuit split was relevant in *Gutierrez*, it is irrelevant here. Nothing in *Reed* or the circuit precedent Wood relies on supports his position that standing can be maintained to seek a vague declaratory judgment that fails to identify any particular constitutional defect in a statute. *See Reed*, 598 U.S. at 234. Wood's petition for a writ of certiorari should be denied.

III. Wood Does Not Deserve Another Stay of Execution.

A. The stay standard

A stay of execution "is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 583–84 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). Wood must satisfy all the requirements for a stay, including a showing of a significant possibility of success on the merits. *Id.* (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983)). When a stay of execution is requested, a court must consider:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). "The first two factors of the traditional standard are the most critical. It is not enough that the chance of success on the merits be 'better than negligible.'" *Id.* (citation omitted) The first factor is met in this context by showing "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari" and "a fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

A federal court must also consider "the State's strong interest in proceeding with its judgment" and "attempt[s] at manipulation," as well as "the extent to which the inmate has delayed unnecessarily in bringing the claim." *Nelson*, 541 U.S. at 649–50. Indeed, "there is a strong presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay." *Id.* at 650. "Both the State and the victims of crimes have an important interest in the timely enforcement of a sentence," and courts "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584.

B. Wood fails to show likely success on the merits.

As explained above, Wood cannot show he is likely to succeed in obtaining review and reversal of the lower court's judgment. This is especially true where Wood's claim has already been found to fail to state a claim on which relief can be granted. Pet'r's App. B at 12–14. Wood is not entitled to a stay of execution where, even if this Court were inclined to review the Fifth Circuit's judgment with respect to standing, the claim is likely to be dismissed under Rule 12(b)(6) anyway, and for much the same reason the Fifth Circuit gave for dismissing it for lack of standing. *Rubin v. United States*, 524 U.S. 1301, 1302 (1998) (Rehnquist, Circuit Justice) (on application for stay) (assuming four members of the Court would vote to grant certiorari review but denying a stay because stay applicant failed to show the Court would reverse the court of appeals's judgment and the district court was of the same view as the court of appeals); *Miroyan v. United States*, 439 U.S. 1338, 1343–44 (1978) (Rehnquist, Circuit Justice) (on application for stay) ("[E]ven under their most favorable hypothesis, the most applicants could expect is a remand to the Ninth Circuit for consideration by that court or by the District Court of whether there was probable cause. And if that question was resolved adversely to the applicants, there is no reason to think that their judgments of conviction would not again be affirmed by the Ninth Circuit.").

Wood's claim alleged the CCA's construction of Chapter 64 violated due process because it rendered the right to postconviction DNA testing an illusion. Pet'r's App. C at 16–17. The claim failed on its face because it was not based on any alleged defect in the statute or on any particular authoritative construction of it by the CCA. Nor did Wood even meaningfully attempt to satisfy his burden under *Osborne* to show that its procedures were inconsistent with any recognized principle of fundamental fairness, 557 U.S. at 70, by, for example, alleging that Chapter 64's chain of custody requirement, Tex. Code Crim. Proc. art. 64.03(a)(1)(A), was too stringent, or the materiality standard, Tex. Code Crim. Proc. art. 64.03(a)(2)(A), too burdensome. Pet'r's App. A at 5 n.6. Instead, Wood complained generally that the CCA rarely grants DNA testing under Chapter 64 and has not done so in the last fifteen years. Pet'r's App. C at 16–17. But without any showing that a particular provision of the statute was fundamentally inadequate or violated a fundamental principle of justice, Wood failed even to state a plausible claim for relief. *See Osborne*, 557 U.S. at 69, 72–74.

Rather than the controlling Supreme Court precedent in *Osborne*, Wood relied on the now-vacated district court opinion in *Gutierrez v. Saenz*, 565 F. Supp. 3d 892, 908 (S.D. Tex. 2021). Pet'r's App. C at 15–16. But that opinion has no bearing on this case at all. First, it has no legal force because it was vacated by the Fifth Circuit, *Gutierrez*, 93 F.4th at 275, and the complaint has

since been dismissed by the district court, Order of Dismissal, *Gutierrez v. Saenz, et al.*, No. 1:19-CV-185 (S.D. Tex. June 18, 2024), ECF No. 216. Second, *Gutierrez* was based on an entirely different factual ground. The district court's judgment in *Gutierrez* was based on the fact that Chapter 64 does not provide for postconviction DNA testing to address punishment-phase issues, which purportedly rendered Texas's *subsequent habeas relief provision*—not Chapter 64—an illusory right, a matter that is irrelevant here. *Gutierrez*, 565 F. Supp. 3d at 910.

Moreover, Wood's claim was based entirely on the alleged frequency in which the CCA affirms or overturns lower courts' rulings in Chapter 64 proceedings. Pet'r's App. C at 16–17. Wood's argument ignored the obvious fact that the CCA is not the only Texas court that applies Chapter 64—trial courts and intermediate courts do, too. Moreover, as an appellate court, the CCA does not adjudicate an inmate's Chapter 64 motion in the first instance. Tex. Code Crim. Proc. art. 64.05. Rather, the CCA (or an intermediate appellate court, *id.*) affirms or rejects a trial court's ruling, which decision is informed in part by deference the reviewing court owes to a trial court's adjudication of subsidiary issues. *See Rivera v. State*, 89 S.W.3d 55, 59 (Tex. Crim. App. 2002) ("[W]e afford almost total deference to a trial court's determination of issues of historical fact and application-of-law-to-fact issues that turn on credibility and demeanor, while we review de novo other application-of-law-to-fact issues.").

The decision of whether to grant a Chapter 64 motion for postconviction DNA testing in the first instance is for the trial court, not the CCA. Tex. Code Crim. Proc. art. 64.01(a-1) (requiring the filing of a Chapter 64 motion in "the convicting court"); Tex. Code Crim. Proc. art. 64.03(a)–(e) (providing prerequisites the "convicting court" must find to order postconviction DNA testing and the procedures the "convicting court" must follow). Therefore, even if it were proper to determine the constitutionality of Chapter 64 based solely on how often motions are granted, that evidence is not found in an examination of appellate statistics. Pet'r's App. B at 12 (the district court's finding that Wood's claim was unpersuasive because it inappropriately restricted its scope to "one aspect"—an appeal to the CCA—of Texas's postconviction DNA testing procedures); *see Morrison v. Peterson*, 809 F.3d 1059, 1066–67 (9th Cir. 2015) (rejecting claim that California's postconviction DNA testing statute was "illusory" where the plaintiff's statistics regarding successful motions lacked context and where inmates had obtained DNA testing through agreement by the prosecution).

It suffices to say that Wood's claim failed to state a plausible claim because inmates have not only obtained postconviction DNA testing in Texas in the last fifteen years but have obtained favorable results via Chapter 64—facts Wood did not dispute below. *See, e.g., Cooper v. State*, 673 S.W.3d 724, 730 (Tex. Crim. App. 2023) ("In December 2016, the trial court granted

Appellant's [Chapter 64] motion[.]"); *Pruett v. State*, No. AP-77,065, 2017 WL 1245431, at *5 (Tex. Crim. App. Apr. 5, 2017) (the trial court granted inmate's motion in 2015); *State v. Long*, Nos. 10-14-330-CR, 10-14-331-CR, 10-14-332-CR, 10-14-333-CR, 2015 WL 2353017, at *1–4 (Tex. App.—Waco, May 14, 2015) (the trial court granted Chapter 64 motions in 2012, and the appellate court affirmed the finding that a movant "would not have been convicted had the results of the DNA testing been available at trial"); *see also Wilson v. State*, No. 74,390, 2003 WL 1821465, at *2 (Tex. Crim. App. Mar. 26, 2003) ("In fact, numerous trial courts have granted DNA testing for convicted persons who satisfy the requirements of Articles 64.01 and 64.03."). Indeed, if Chapter 64 is not unconstitutional in all its applications, and it is not because it is neither illusory nor a barricade to postconviction DNA testing, Wood's claim *necessarily* failed. *United States v. Salerno*, 481 U.S. 739, 745 (1987) ("A facial challenge to a legislative Act is, or course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.").

Wood accepted this heavy burden and framed his claim as requiring a showing that the CCA's construction of Chapter 64 operated as an automatic barricade or "an empty possibility." Pet. Cert. 20. But Wood *admits* inmates have obtained postconviction DNA testing in Texas via Chapter 64. Pet. Cert. 21 ("Wood recognized below that there are a few examples of individuals

receiving DNA testing—but only when the State agreed to permit it or when the State decided not to file an appeal of a lower court granting it."). So Chapter 64 is not an illusory right, and there is no "automatic barricade" as Wood alleged. And because inmates have indisputably availed themselves of the right to postconviction DNA testing, Wood's claim failed to state a plausible claim for relief. This was particularly true where Wood did not allege the right to postconviction DNA testing under Chapter 64 was illusory because a particular provision of the statute was constitutionally deficient or the CCA authoritatively construed the statute in a particular way. Pet'r's App. C at 16–17. As the district court held, Pet'r's App. B at 12, this utterly failed to show Chapter 64 on its face or as authoritatively construed by the CCA violated procedural due process.

Wood tries to deflect from the fact that inmates have obtained postconviction DNA testing under Chapter 64 by asserting it has only happened where the State agreed to it or did not appeal a lower court's decision granting it. Pet. Cert. 21–22. This does nothing to counter Respondent's showing that Chapter 64 is not an illusory right. Indeed, if the CCA had authoritatively construed Chapter 64 in such a way that created an automatic barricade to testing or an "empty possibility," Pet. Cert. 20, the lower state

courts—bound, as they are, by the CCA's holdings[2]—could not grant testing either. But that is obviously not the case, as Wood has admitted. Moreover, it goes without saying that a prosecuting office's decision of whether to agree to testing or to appeal a lower court's ruling is informed by a wide range of discretionary considerations, including the likelihood of succeeding on appeal. Wood fails to show that the exercise of such discretion is either inappropriate or relevant to whether Chapter 64 is an illusory right. To the degree it might be relevant, it only serves to underscore the relatively few cases—little more than one per year over the last fifteen years, by Wood's count, Pet'r's App. C at 16—that reach the CCA after being subjected to winnowing by adversarial testing in the lower courts. *See Morrison*, 809 F.3d at 1067 (rejecting "illusory" claim and observing that the relatively low rate of exonerations in California could be explained by "more careful than average work" by prosecutors "in the first instance").

Wood also erroneously focused only on cases where the defendant has been sentenced to death. *See* Tex. Code Crim. Proc. art. 64.05 (providing for the manner of appeal for both capital and non-capital cases). Therefore, a large

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[2] *See Kiffe v. State*, 361 S.W.3d 104, 109 (Tex. App. Houston [1st Dist.] 2011) ("As an appellate court, we are duty bound to follow precedent issued by the Texas Court of Criminal Appeals in this matter."); *Griggs v. State*, 99 S.W.3d 718, 722 (Tex. App.—Houston [1st Dist.] 2003) (Evans, J., concurring) (stating in a Chapter 64 appeal that "[t]his court, of course, is bound to follow the statutory construction enunciated by the [CCA] in" a previous case).

number of Chapter 64 appeals are resolved by intermediate courts. *See e.g., In re Robertson, Sr.,* No. 03-19-282-CR, 2021 WL 1312589, at *1 (Tex. App.—Austin Apr. 8, 2021); *Evans v. State*, 628 S.W.3d 358 (Tex. App—Ft. Worth 2021); *Ambriati v. State,* No. 09-15-65-CR, 2015 WL 6998616, at *1 (Tex. App—Beaumont Nov. 12, 2015). Wood's myopic focus on one piece of Chapter 64's procedures failed to demonstrate that the right to postconviction DNA testing under Chapter 64 was illusory. Pet'r's App. B at 12. Moreover, Wood created a false impression by using the past fifteen years as the basis for examining the frequency in which Chapter 64 motions succeed. Since 2013, Texas Code of Criminal Procedure Article 38.43 has required all biological evidence in death penalty cases to be DNA tested prior to trial. That would necessarily limit the postconviction testing requests during most of the fifteen-year period Wood addressed and skew any resulting statistics. *See Morrison*, 809 F.3d at 1067 (rejecting "illusory" claim where prosecuting offices' proactive offering of DNA testing "may have further reduced the need to litigate [postconviction DNA testing] motions").

Even assuming Wood's allegations were true, they created nothing more than a suspicion of a legally cognizable right of action. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007). Under *Osborne*, Wood was required to adequately allege that Texas's procedures "are fundamentally inadequate to vindicate the substantive rights provided" by Chapter 64. *Osborne,* 557 U.S. at

69–71. Wood's argument that the CCA's construction of Chapter 64 rendered its benefits illusory entirely failed to do so. This Court should not grant a stay and postpone the dismissal of a serial killer's utterly meritless claim, particularly where he has effectively admitted that postconviction DNA testing is not an illusory right in Texas. Pet. Cert. 21. The Court should deny his application for a stay of execution.

C. Wood fails to prove irreparable injury.

Wood has litigated and re-litigated his challenges to his conviction and sentence for more than three decades. He has failed to identify any error. His procedural due process claim failed to show he was denied any process, and he has repeatedly failed to show he is entitled to postconviction DNA testing. Thus, his punishment is just, and his execution will be constitutional. He fails to demonstrate any injury, let alone an irreparable one.

D. The equities heavily favor Respondent.

"[T]he State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Wood killed his victims almost forty years ago. He exhaustively appealed his sentence through both state and federal court, obtaining a stay of execution in 2009, *Wood*, 693 S.W.3d at 330. He has engaged in a course of litigation that plainly demonstrated an intent to piecemeal his filings to unreasonably delay the execution of his sentence. *Id*. at 336–39. As the CCA concluded, this conduct

was a "classic sign of purposeful delay," not a diligent effort to obtain relief. *Id.* at 337. Such dilatory tactics underscore why the court should deny this motion for stay. *See, e.g.*, *Bucklew v. Precythe*, 587 U.S. 119, 149–51 (2019). It was not a "rush" to set an execution date for Wood that precipitated the filing of his request for a stay of execution but rather the proliferation of filings that has continued until mere days before his scheduled execution. Moreover, as the state trial court found, ROA.232, Wood's reliance on the presence of an unknown male DNA profile is unavailing. Wood presents no legitimate reason to delay his execution date any longer. The families of Wood's numerous victims deserve justice for his decades-old crimes.

As thoroughly discussed above, Wood relies entirely on the assertion that this Court should stay his execution to await the Supreme Court's decision in *Gutierrez*. But again, the standing issue in *Gutierrez* is distinct from the Fifth Circuit's standing analysis in this case and entirely irrelevant to the merits of Wood's claims, which as discussed above are entirely lacking. Wood baselessly asserts the Court should grant a stay so the Fifth Circuit on remand can address the merit of Wood's claim in the first instance "guided" by this Court's eventual opinion in *Gutierrez*. Pet. Cert. 12, 18. The Court's opinion in *Gutierrez* will almost certainly not bear on the merits of Gutierrez's claim. A stay in these circumstances would be entirely inappropriate.

For the reasons argued above, this Court should deny the requested relief and a stay. Wood cannot overcome the strong presumption against granting a stay or demonstrate that the balance of equities entitles him to a stay of execution. For the same reason, Wood fails to show that he would suffer irreparable harm if denied a stay of execution. Wood cannot show he would be irreparably harmed if denied additional process to which he has no entitlement. His request for a stay of execution should be denied.

CONCLUSION

Wood's petition for a writ of certiorari and his application for a stay of execution should be denied.

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