No. 17–7603

In the Supreme Court of the United States

ERIC LYLE WILLIAMS,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner Eric Lyle Williams waged a war on the criminal justice system. He carefully planned and carried out the executions of Kaufman County District Attorney Michael McLelland and his wife Cynthia (who was murdered only because she witnessed her husband's murder). He gunned down Kaufman County First Assistant District Attorney Mark Hasse in broad daylight—in front of no less than three eye witnesses. When Williams was finally brought to justice—after an exhaustive investigation that involved local, state, and federal law enforcement—he was prosecuted by two of the most well-respected attorneys in Texas. He was represented by three more of the most well-respected attorneys in Texas. He was tried by an impartial jury of his peers. His trial was broadcast on television. In other words, it fully comported with the Sixth Amendment.

Having been found guilty capital murder pursuant to Texas Penal Code Section 19.03, he was sentenced to death pursuant to Texas Code of Criminal Procedure, Article 37.071. These governing provisions of Texas's death-penalty scheme have long been found by this Court to comply with the Eighth Amendment's prohibition against cruel and unusual punishment. Williams made no challenge to their constitutionality when he took his automatic appeal to the Texas Court of Criminal Appeals. But now, riding on the coattails of the petition for certiorari review filed in *Hidalgo v. Arizona*, Williams challenges not only Texas's death-penalty scheme, he challenges the death penalty itself.

The questions presented for certiorari review are:

(1) Whether Texas's death-penalty scheme, which defines nine specific ways in which capital murder can be committed and then requires the jury to determine whether the defendant constitutes a future danger to society, violates the Eighth Amendment?

(2) Whether the death penalty itself violates the Eighth Amendment in light of contemporary standards of decency?

(3) Whether the death penalty as applied in Texas is so arbitrary that it has real and real troubling consequences?

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BRIEF IN OPPOSITION

To serve legitimate penological aims, the death penalty must "'be limited to those offenders'" who commit the most serious crimes and whose "'extreme culpability makes them 'the most deserving of execution.'" *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008) (citation omitted). Petitioner Eric Williams is one of those offenders. His murders were an attack on the entire criminal justice system. He murdered First Assistant District Attorney Mark Hasse and District Attorney Michael McClelland because they did their jobs: they prosecuted Williams for theft. McClelland's wife Cynthia was murdered because she was a witness to her husband's murder. Now, Williams challenges not only Texas's death-penalty scheme, he challenges the death penalty itself; challenges he did not make to the lower court. He complains about disparities in race and wealth without acknowledging that he is educated, white, and formerly a licensed attorney and elected county official, who was represented at trial by three of three of the best attorneys in the state. He blindly talks about "luck of the draw" without acknowledging that the coldblooded murder of an elected district attorney and his wife would be deathworthy anywhere in the country. Neither *his* conviction nor *his* sentence were the result of anything other than *his own actions*. Williams is most deserving the death penalty, and this case is not the proper vehicle for making any sweeping changes to it.

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction to review the final judgment of a state's highest court. However, certiorari review is precluded when "the question was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992); *see also* Sup. Ct. R. 14(g)(i) (jurisdictional mandate requires that the federal questions presented were done so "timely and properly"). As discussed more fully below, and despite Williams's statements to the contrary, Petition at 32, the questions presented were not. Therefore, this Court is without jurisdiction to consider them. *Kansas v. Marsh*, 548 U.S. 163, 168 (2006) (jurisdiction lies "where the federal claim has been finally decided").

STATEMENT OF THE CASE

I. Statement of Facts

A. Facts of the crime

In the pre-dawn hours of Saturday, March 30, 2013, Williams broke into the home of Mike and Cynthia McLelland. 45 Reporter's Record (RR) 21–23; State's Exhibit (SX) 273 (ADT records). He then methodically, and without remorse, emptied at least 20 .223 caliber rounds from his AR-15,[1] first into

[1] *See* 45 RR 78 (live .223 round found in storage unit Williams rented); 87–88 (AR-15 recovered from storage unit Williams rented); 96–97 (most common platform for .223 rounds is the AR-15); 45 RR 125–26, 128, 130, 137, 137–38, 139 (ballistics

Cynthia and then into Mike. 44 RR 183–84 (Cynthia was shot a minimum of five times and a maximum of eight times), 194 (Mike suffered 16 separate gunshot wounds), 126–27 (20 shell casings recovered). Because nothing about the crime scene suggested that anything had been taken, Texas Ranger Rudy Flores told the jury the intent of the assailant was clear: to kill the McLellands. 44 RR 120; 115–118. And although Mike kept guns around the house that were "easily accessible," none of them had been fired that morning. 44 RR 136.

Having done exactly what he came to do, Williams calmly left the house, got into a white Crown Victoria his wife, Kim Williams, was waiting in, and the two of them left the scene to hide the car. 44 RR 73, 215–16, 25, 272; 46 RR 127, 128, 130–31, 136–37; SX 273, 319–21. From the time Williams entered the McLelland home to the time he left, only two minutes elapsed. 44 RR 21–23. But as the jury would learn, Williams had spent the last year planning every step, from the type of weapon he would ultimately use to the vehicle he would drive to the place he would hide that vehicle.

Williams began 2011 as a respected attorney and a Justice of the Peace in Kaufman County. By March of 2012, Williams was a convicted felon, that conviction having been obtained by Kaufman County District Attorney Mike

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expert testimony that all the .223 rounds and casings recovered during the autopsies and from the McLelland home, Williams's storage unit, and a secondary crime scene came from the same unknown weapon); SX 285–91 (ballistics reports).

McLelland.[2] 44 RR 75. His life as he knew it was gone: he was suspended from the bench, and his law license was suspended.[3] 44 RR 73, 74–75, 76. At this point, Williams "dropped out of sight," 44 RR 76, and his plan to kill Mike began to take shape.

In November 2012, Williams took his first step, which was to convince Rodger Williams, an acquaintance from his days in the Texas State Guard, to rent a storage unit for him. 44 RR 237. Rodger explained that Williams told him it was for his in-laws and that he "didn't want to put his name on it" because his conviction would subject them to unwarranted scrutiny. 44 RR 237–38, 241, 253, 264. Just before Christmas that same year, Williams rented Unit 18 at Gibson's Self Storage, paying for a year's rent in cash provided by Rodger. 44 RR 242; SX 274, 275, 276. Williams was given access rights to the unit and knew the access code, "2072." 44 RR 253, 254 (access code was the last four digits of Williams's driver's license number). After the McLellands were murdered, Rodger heard media reports that law enforcement was conducting a search of the home of Williams's in-laws. He came forward and told law enforcement about the storage unit so that they could search it and ultimately clear Williams. 44 RR 244–45.

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[2] A warrant for Williams's arrest was signed in June of 2011; the trial occurred in March of 2012. 44 RR 74.

[3] Williams was also placed on leave from the Texas State Guard. 44 RR 236.

On April 13, 2013, a search of the storage unit unveiled a virtual arsenal of "at least 30 weapons:" firearms (including a Rock River lower with an AR-15 5.7 caliber upper, the lower component of an AR-15 5.56 caliber, and another lower component of an AR-15),[4] a crossbow, and knives. 45 RR 75–76, 78–79, 88; SX 110, 111, 112, 114. The two AR-15 lower components were "consistent in caliber" with the ammunition that killed the McLellands. 45 RR 105–106. In addition to these more traditional weapons, there was an "improvised incendiary device" or "a homemade explosive of some sort." 45 RR 82, 115; SX 155. Law enforcement also discovered a single round of .223 caliber ammunition, 45 RR 78, which the ballistics expert determined from its markings had been "cycled in the same firearm that fired all of the cartridge cases recovered from the crime scene," 45 RR 130. Finally, the search turned up a "maybe a sniper's mat," a bulletproof vest, tactical equipment, a sheriff's patch, which "would [be worn] on their ballistic vest for identification purposes," and a box of boot covers of the kind law enforcement wears.[5] 45 RR 74, 75–77, 79–80, 83; SX 149, 150; *see also* 44 RR 143–44. Importantly, the

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[4] AR-15 rifles have upper and lower components and can be broken down into two separate parts. 45 RR 98–99, 103–05.

[5] The box of "booties" had a mailing a label with Williams's name and address on it. 45 RR 84. A receipt for the purchase of these "booties" was found during a search of Williams's computer. 46 RR 110–11.

search turned up nothing belonging to anyone else, including Rodger. 45 RR 72.

In January of 2013, Williams met with Scott Hunt, another friend from his days in the Texas State Guard, and told him he wanted to make an AR-15 upper disappear. 45 RR 37–38. This was important because it is the upper component of an AR-15 that "impart[s] markings to bullets, spent shell casings, things like that[.]" 45 RR 100. Hunt explained to the jury that he believed Williams wanted to do this because he needed money. 45 RR 37. Williams also asked Hunt about the "penetrating capabilities" of a 5.7 round. Hunt explained that the "round is known for armor penetration." 45 RR 35. After hearing about the McLelland murders and learning that a search had been conducted of Williams's home, Hunt came forward and told law enforcement about their conversation. 45 RR 42.

In February 2013, Williams took his next step—he bought a car. Williams found a white Ford Crown Victoria for sale on Craigslist. Posing as Richard Greene, a man buying a reliable car for his daughter, Williams bought the car (with cash) from Edward Cole. Cole identified Williams as the man he had known as Richard Greene. 44 RR 214–17, 222. The white Crown Victoria was found in Unit 18.[6] 44 RR 72, 74. Williams's fingerprints were found in the

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[6] Cole's name was on a receipt for window tinting found in the car. 45 RR 85; SX 142.

car, 46 RR 43, 44, and the title to the car was found during a search of Williams's home. 45 RR 67–68; 46 RR 27–28; SX 100, 109a.

Williams spent some time target shooting, trying to decide which gun was best to use to carry out his murderous plan. He did this underneath a Highway 75 overpass, a secluded area. 44 RR 149, 150. During a search of the area, shell casings (.223, 5.7, and 9mm caliber) were recovered. 44 RR 153. The 5.7 caliber casings were later tied to one of the weapons seized from the storage unit. 45 RR 138. Officers also noted that the damage to the pillars looked like bullet strikes; later testing confirmed their suspicions. 44 RR 154–56.[7]

After the McLellands were discovered murdered, Deputy Robert Ramsey was ordered to find and talk to Williams. 45 RR 155. Ramsey called Williams, who explained that he and his wife were up in the Quinlan area.[8] Williams arranged to meet Deputy Ramsey when they got back in to town. 45 RR 158. At that meeting, when asked if he had shot a gun recently, Williams said no, "[h]e had not fired one since his last arrest," 45 RR 160, and consented to a gunshot residue test; the results established that Williams had lied about

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[7] Williams had also spent some time on the internet researching Mike McLelland, 46 RR 76; SX 311.

[8] Law enforcement knew Quinlan to be near Lake Tawakoni. 45 RR 157–58. Beginning in August of 2013 and ending in March of 2014 (for a total of 16 dive days), Lake Tawakoni was searched. A cell phone later connected to Williams was recovered. 46 RR 64, 66. As State Trooper Steven Tippett explained to the jury, "Somebody broke it over backwards." 46 RR 67.

firing a gun. 45 RR 158–59; 46 RR 22. Williams also said he had been at his in-laws' home all day. 45 RR 159.

The next night, Sunday, March 31st, Williams brazenly taunted law enforcement with an anonymous tip to Crime Stoppers:[9]

> Do we have your full attention now? Only a response from Judge Bruce Woods will be answered. You have 48 hours.
>
> [Law enforcement response]: You have our attention. How can the county judge contact you?
>
> The message through this secure format only. Your act of faith will result in no other attacks this week. Judge Wood must offer a resignation of one of the four main judges in Kaufman, district or county court, list stress or family concerns or whatever else sounds deniable. The media will understand. My superiors will see this is a first step, ending our action. Do not report any details of this arrangement. You have until Friday at 4:00 p.m. We are not unreasonable, but we will not be stopped.
>
> [Law enforcement response]: We have received a number of tips, and yours is the most credible. We are working on your demands. A lot has been put out to the media. In order for us to verify that you are a part of this group, individuals in this incident, can you give us additional details that are specific to this case and not known by the press.

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[9] Deputy Brian Beavers, the liaison between Crime Stoppers and the investigative team, explained to the jury that each tip is assigned a unique number, and the unique number for this tip was found jotted on a piece of paper during a search of Williams's home. 45 RR 180; SX 98. Beavers was able to connect the number to a tip received in the late evening hours of the day following the McLellands' murders. 45 RR 182–83. He also explained to the jury how law enforcement was able to open a dialogue with the tipster. 45 RR 178.

45 RR 184–88; SX 293. Although Williams did not respond again, law enforcement interpreted the statement "Your act of faith will result in no other attacks this week" as a confession to the McLelland murders. 45 RR 186, 189.

Finally, on April 11th, Williams was interviewed by Texas Ranger Dewayne Dockery. Williams told Ranger Dockery that he had sold all of his guns except for one, a Desert Eagle .44,[10] and again said that he was with in-laws on the day the McLellands were murdered. 45 RR 195–96.

B. Facts relating to punishment

1. The State's case for future dangerousness

During the punishment phase, the jury learned that Williams—who was obsessed with the manifesto of Christopher Dorner,[11] a police officer in California who killed people he worked with out of revenge, 54 RR 73—did not begin his war against Kaufman County law enforcement with the execution of the McLellands. Rather, it began 58 days earlier, with the execution of Assistant District Attorney Mark Hasse.

On the morning of January 31, 2013, Williams executed Assistant District Attorney Mark Hasse, 48 RR 23–24, for the sole reason that he, along with Mike McLelland, had prosecuted Williams for theft by a public servant

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[10] This gun was recovered during the search of Williams's home. 45 RR 64–65.

[11] Law enforcement recovered a copy of the manifesto—the content of which was described as "graphic and disturbing"—during the search of Williams's home. 49 RR 40–41; SX 99.

and burglary of a building.[12] 54 RR 23 ("He was angry because . . . he thought that they were trying to set him up."), 24, 25, 82. He did this with three shots fired at point blank range.[13] In Williams's own words, he did this with ".38 caliber +P ammunition, 147 grain Hydra-Shok ammunition, fired from a 3 inch .357 5 shot revolver."[14] 48 RR 214; SX 293.[15]

As he had done in preparation for the McLelland murders, Williams bought a car, a 2001 Mercury Sable, just three days earlier, again telling the seller that the car was for his daughter. 48 RR 164–65. Although the seller could not positively identify Williams as the buyer, 48 RR 168–69, Williams's DNA matched samples taken from earplugs found in the car, 49 RR 26, 27, 121. Williams's DNA also matched samples taken from a glove and pair of goggles found in the car. 49 RR 124–25.

Just as he had done with Mike, Williams researched Mark prior to carrying out his murderous plan. A search of his home computer revealed that Williams had searched for him on LexisNexis in early 2012, both before and after his burglary trial, and in to early 2013. 49 RR 178–79. He searched for

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12 Cynthia McLelland was, in Williams's words, "collateral damage." 54 RR 67.

13 Three eyewitnesses confirmed this. *See* 48 RR 35–51 (testimony of Patricia Luna), 54–72 (testimony of Lenda Bush), 82–93 (testimony of Martin Ceda).

14 This was part of the tip Williams sent to Crime Stoppers not previously read to the jury. It all proved to be true.

15 Even without his confession, law enforcement immediately suspected Williams was the assailant. 48 RR 184–85.

Mark's home addresses, and a license plate search came back to one of Mark's neighbors. 49 RR 180–81.

The jury also learned about other items found during the search of Lake Takawoni. Recovered were: a black bag (which turned out to be "a hoodie grim reaper type of Halloween mask") containing two revolvers—a Ruger .357 and a Smith & Wesson .38—and several speed strips of ammunition, an "easier way to carry your ammunition . . . you can reach into your pocket and pull out five rounds of ammunition that much faster." 48 RR 201–11. The Ruger was positively identified as the gun used to kill Mark. 49 RR 11–15.

The murders of Mark Hasse and Mike and Cynthia McLelland were "the culmination, were the peak of an arc of past violence and antisocial behavior on the part of" Williams. 48 RR 9–10. In the early 1990s, Janice Gray met Williams at a conference for court coordinators, and the two had a short-lived relationship. There was no agreement that their relationship would be exclusive, 50 RR 11, 12, and it eventually ended because Gray met someone in Coryell (where she lived) and wanted to pursue a relationship with that gentleman, but she said Williams "seemed fine" with this, 50 RR 12, 13.

Gray saw Williams a short while later, at another conference. He asked her out to dinner, but Gray told him she had other plans. She also told Williams she "didn't think it would be a good idea." 50 RR 13–14. At this point, Williams told Gray he had a gift for her teenaged son—whom Williams had never met–

–"and he took out a gun." 50 RR 14. Later that night, when Gray was at dinner, Williams "walked up behind [her] and kind of tapped [her] on the shoulder," telling her he wanted to talk to her. 50 RR 16. The two talked about the fact that she wanted to have another relationship, but when Gray attempted to return to her friends, Williams said, "I have a gun; and if you walk away, I'll use it. I have nothing to lose."[16] 50 RR 17. Gray reported the incident to the head of the conference, and the Huntsville police were called; a police officer was stationed outside Gray's hotel room. 50 RR 18.

The next morning, the officer, believing Williams to be gone, nevertheless walked Gray to her class. When she arrived, Williams was inside the classroom. That afternoon, Gray made a formal report about the incident to the police. 50 RR 19. Gray was told that the officer talked to Judge Ashworth, whom Williams worked for at the time. Judge Ashworth told the officer that "he would make sure that [Williams] would never bother [her]." 50 RR 20. Indeed, Gray did not hear from Williams again. 50 RR 21.

Finally, Gray was asked about the interview she saw Williams give during which he said "he didn't blame 'em for looking at him, but he had

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[16] Gray told the jury she believed he meant what he said—that he would use the gun—because he "was just different. . . he seemed a little agitated, and he seemed nervous." 50 RR 25.

nothing to do with it."[17] Gray told the jury she knew he had done it "by the look on his face, I said I just know he did that;" the look in his eye "just kind of freaked me out a little bit." 50 RR 25, 28.

Janice Gray was not the only person to be threatened by Williams. Judge Dennis Jones told the jury about threats he overheard Williams make against another attorney: "I'm just gonna kill him, kill his wife, his kids, I'm gonna burn his house down, stab him." 50 RR 32. The object of the threats, attorney Jon Burt, testified next. He explained that he had been involved in a case in which Williams had been appointed to serve as mediator. 50 RR 38. On the day of the scheduled mediation, Burt received a call from Williams's wife, during which she explained that Williams had been in the hospital, and the mediation had to be rescheduled. 50 RR 39. Burt later learned from Judge Jones that Williams was "mad or upset," which Burt did not understand. Judge Jones then relayed the threats he had overheard. 50 RR 42. Burt told the jury that he was concerned then, and he was still concerned at the time of trial. 50 RR 43.

Beyond this, the jurors also learned just how extensive Williams's arsenal really was. 49 RR 38–58, 72–76; SX 532. FBI Special Agent Diana

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[17] Of the interview, Williams's wife Kim told the jurors that Williams was "arrogant" and "thrilled" and "acted like nothing had happened." He just enjoyed showing off his Segway. 54 RR 75.

Strain explained, the search of the storage unit uncovered "[n]umerous sharp edged weapons, knives, and machetes," and "thousands upon thousands of rounds of ammunition." 49 RR 51; 50 RR 84–98. Law enforcement also found "lots of tactical, police, military type gear," police apparel and "uniform type equipment." 49 RR 51, 54–56. Williams had also made his own napalm. 49 RR 102; 54 RR 31. And when Williams's car was searched after he was arrested for theft by a public servant and burglary of a building, an AR-15 style rifle (.223 caliber) and a 12-gauge shotgun were found mounted on the inside roof. 49 RR 193. Additionally, three Glock handguns with magazines and two other handguns were found in the car. 49 RR 194.

The most damning testimony came during the State's rebuttal when Williams's wife, Kim, testified. After being arrested for theft by a public servant and burglary of a building (and then bonding out) in 2011, the first thing Williams did was call her and tell her to take a computer monitor that had been sitting in their kitchen over to her parents' home. Kim did as she was told.[18] She believed him when he told her that although he had brought the monitor home from the office, he did not have a receipt for it, and he did not want law enforcement to think this was one of the ones that had been taken

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[18] Just a short while later, law enforcement arrived at their home. 54 RR 22.

from the IT department. Williams also told her he was going to give it to someone in the State Guard. 54 RR 21–22.

Once Williams was convicted he became angry,[19] 54 RR 23, spending his days on the computer; Kim thought he was playing games. Instead, he was planning the executions of Mike and Mark. 54 RR 28. Williams bore the most animosity for his situation against Mark, calling him a "[f]uck stick," even in front of the lawyers who represented him during the trial. His nickname for Mike was "Sluggo." 54 RR 24–25. Williams was also angry with Judge Ashworth because he told Mike and Mark about Janice Gray; "[o]therwise they wouldn't have known about [her]." 54 RR 27, 28.

When Williams first said that he wanted to kill Mike, Mark, and Judge Ashworth,[20] Kim did not believe him. 54 RR 29, 31. It was not until Thanksgiving of 2012 when Williams told her what he had planned for Judge Ashworth that she began to take him seriously:

> [H]e had made napalm, put it in pickle jars. He had bought some bolt cutters, and he bought a crossbow with razor tips. . . He was gonna wait until after the Super Bowl, and he was gonna wait for him and shoot him with the crossbow, and then bore his stomach out, and put the napalm in it. . . He had [also] thought about

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[19] Kim told the jurors that Williams drank a lot and took prescription pills, which affected his diabetes, his memory, "the way he thought about things," and his mood became worse. 54 RR 29–30.

[20] Judge Erleigh Wiley was also on Williams's "hit list" because "she screwed him over for money," but no plans were ever made. 54 RR 82; *see* 54 RR 127–28, 131–33 (after reviewing records associated with Williams's work as a guardian ad litem, Judge Wiley believed he was "padding his bill"). Williams also wanted to kill Jon Burt over the mix-up with the mediation. 54 RR 83.

> kidnapping him and bringing him back to the house and putting him in the freezer. . . He was going to die, and he was going to be buried in the backyard - - in the flower bed next to the backyard.

54 RR 31–32,[21] 78 (describing the napalm as "an extra kind of FU"). Williams had gone so far as to dig out the flower bed to see if a body would fit in it. 54 RR 32. Judge Ashworth was supposed to be killed first, but Williams wanted to kill Mike and Mark because they had convicted him and ruined his life. 54 RR 82.

Williams's first plan for Mark involved waiting at a fast food restaurant just down the street from the courthouse and "shoot[ing] from there." The second plan was to wait for Mark at his home and "shoot him in his truck." Williams had gone so far as to drive out to Mark's home and watch it, all the while taking notes. 54 RR 32–33. The third and final plan, nicknamed "Tombstone,"[22] was to kill him as he arrived for work: Kim would drive, park where Williams told her to, and he would get out and shoot Mark in broad daylight in front of people. 54 RR 34. Kim told the jurors that she and Williams went to the location "a couple of times" before January 31st. 54 RR 35. Williams

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[21] A key that opened both front gates and a storage facility (where it was determined that a key to the main house was kept) on Judge Ashworth's property was found in Williams's car. Thus, the one key would give someone "full access to everywhere on Judge Ashworth's farm." 54 RR 111, 119–20; SX 96.

[22] Williams named it this after the movie of the same name during which "they shot a lot of people in the street. They, they chase them from the sidewalks and shoot them in the street like the Gundown at the Okay Corral." 54 RR 35. Williams liked the "shock factor" of brazenly gunning Mark down "during the day, early in the morning when people are going to work." 54 RR 35.

also carefully planned what he would wear: a black Halloween mask, a black nylon jacket over a bulletproof vest, and dark khaki pants. 54 RR 40.

On the morning of January 31st, Kim said there was "excitement in the air" because they wanted to kill Mark. She followed her routine of getting dressed and taking care of the dogs before Williams woke up and got dressed. 54 RR 42. The two then left the house to retrieve the Mercury Sable, 54 RR 43–44, and head toward the courthouse. Once there, Kim said the mood was quiet as they waited for Mark to arrive. 54 RR 45. They watched as Mark parked in what Williams knew to be his "usual spot," then Williams got out, caught up to Mark, and shot him.[23] 54 RR 45–46. Afterwards, they returned the car to the storage unit, where Williams cleaned the car; Kim told the jurors the two were "[h]appy, quiet, satisfied." 54 RR 47–49. With pride, Williams told Kim about the last few seconds of Mark's life: "I asked him what - - if Mark said anything, and he told me that Mark said so no, no, please, please, no." 54 RR 50.

Once they were back home, Williams put a sling on his arm to fool the police when they came looking for him. 54 RR 50, 51. Indeed, the police arrived just minutes later. 48 RR 174, 177–79, 187, 189 (Williams described as

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[23] Kim testified that she heard "at least" five shots, but she admitted that she could not watch Williams kill Mark "[b]ecause it hurt." 54 RR 46.

"shocked" on learning Mark had been killed; told police he had gone to the pharmacy to pick up medicine for his wife, who "was bedridden and in a coma").

Next on Williams's "hit list" was Mike McLelland, whom Kim said Williams was "ready to kill" because he had already killed Mark. 54 RR 56. Originally, Williams planned to kill Mike as he had Mark, but then decided because "it would be on a holiday weekend, there would be no, no law enforcement protecting him," he would do it in the sanctuary of the McLellands' home. 54 RR 53–54. Kim told the jury that Williams could not decide which gun to use, so he found "a place underneath an overpass between Seagoville and Kaufman, and he would shoot at the, the concrete pillars." 54 RR 55. Williams also took pictures of the McLelland home. 54 RR 58. Ultimately, the plan became clear: Williams thought it "more than likely" that Cynthia McLelland would answer the door, so he would dress up as a member of law enforcement, tell her he was policeman and that there was a gunman in the area, at which point Williams said she would let him into the home. 54 RR 59, 66.

The night before the McLelland murders, Williams was "happy. He was in a good mood, a very good mood. . . He was trying on clothes." Kim told the jurors Williams "looked like he was in the Army or SWAT."[24] 54 RR 60, 60–61.

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[24] Kim told the jurors Williams was wearing "blue little booties" on the morning of the murders. 54 RR 80.

Then, in the early morning hours of March 31st, just as they had before Mark's murder, Williams and Kim drove to the storage unit, retrieved the white Crown Victoria and headed toward the McLelland home. 54 RR 62–63. Once there, Williams went to the front door and rang the doorbell, at which point Kim saw a light come on inside the house, the porch light come on, and someone come to the door. 54 RR 63–64. She saw Williams go inside, and then shots—"a lot," "more than five"—rang out. 54 RR 64.

On the drive back to the storage unit, Kim described their mood as "happy satisfaction." 54 RR 67. While Williams did not discuss executing Mike, he did tell her that as he was leaving the house, he fired one last shot into Cynthia "because she was still moaning."[25] Cynthia died because she was a witness, so in Williams's words, she was "collateral damage." 54 RR 60, 67. Once again, Williams cleaned the car, and the two spent the remainder of the day with Kim's parents. Williams grilled steaks to celebrate. 54 RR 68–69.

The McLellands, Mark, Judge Ashworth, Judge Wiley, and Jon Burt were not the only ones Williams targeted. Kim told the jurors that Williams had once threatened her father over some extra cell phone charges. 54 RR 84–85. He had pulled a pistol on total strangers. 54 RR 85–86. Kim also believed

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[25] During the trial on guilt/innocence, the jury had learned that this shot was fired into to the top of Cynthia's head while she lay dying on the floor of her home. 44 RR 170–72.

Williams—whom she described as an "excellent marksman"—tried to kill her when he was holding a gun that went off, almost hitting her.[26] 54 RR 88.

2. The defense's case in mitigation

The defense's case had three main objectives: (1) to shift the blame for Williams's actions to others (primarily Mike and Mark),[27] (2) to establish that Williams would not be a future danger due to TDCJ's security measures and his good behavior while in jail awaiting trial, and (3) to show that the executions of the McLellands and Mark were an aberration in an otherwise normal life.

With their first witness, the defense attacked Williams's trial and conviction for theft by a public servant and burglary of a building, attempting to shift the blame for the murders from Williams to the victims. Jenny Parks, an attorney in Kaufman County, first met Williams, whom she described as "quiet and reserved, a little antisocial . . . pretty shy," 50 RR 77, when he was Judge Ashworth's court coordinator. She "never had any issues with him," and often sought his advice when she had a client with a family law matter. 50 RR 69–71. When asked specifically about the prosecution that resulted in the

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[26] Neither were animals safe around Williams. Kim told the jury Williams had shot a cat in the eye, "dragged it from the field," and thrown it into the middle of the street. 54 RR 89.

[27] The blame shifting also reached to Williams's wife. *See* 53 RR 13–21 (testimony of Heather Jones), 23–29 (testimony of Andrea Jones).

executions of the McLellands and Mark, Parks told the jurors that it was "ridiculous. . . [I]f he had a monitor in his car . . . he was trying to get an arraignment system working in the jail so that the judges wouldn't have to physically go down to the jail. They could do it via teleconferencing."[28] 50 RR 74. When asked about Mark's character, she recalled that he "bragg[ed] about destroying the lives of people in court that he had prosecuted."[29] 50 RR 83.

Other witnesses also discussed Williams's attempts to change the way things were done, again suggesting that his prosecution for theft by a public servant and burglary of a building should never have happened. Regina Fogarty explained, "He tried to get [Wi-Fi] into the courtroom for the attorneys. [H]e was trying to help with the video magistration at the jail, to get that started." 53 RR 63. And Mark Calabria, a local attorney, told the jurors: "He came in as a coordinator, he had the responsibility of organizing the law library, brought some computer equipment in. Even as his job in overseeing . . . the law library, he was always trying to improve the access that we had, and trying to develop some better opportunities for managing the court's docket[.]" 53 RR 71; 53 RR 176.

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[28] The indictment alleged that Williams had stolen computer monitors from the county. 52 RR 120.

[29] In this same vein, Cathy Adams described seeing a "pretty good size mugshot" of Williams hanging in the District Attorney's offices. The caption above it said "captured." 53 RR 176.

There was testimony about Williams's behavior while he was in jail awaiting trial;[30] the jury also heard about TDCJ's security measures.[31] First, Rockwall County Sheriff's Deputy Kevin Brown and Lori Compton, a jail administrator for the Kaufman County Sheriff's Department, both testified that there had been no incident reports filed against Williams—he was "responsive to verbal direction;" he had "not used verbal threats or intimidation against" any of the jail staff; he had not "used physical force or threat of force" against any jail staff, and he had "not escaped or attempted to escape." 50 RR 116–17 (Brown), 199–100 (Compton); 50 RR 181 (testimony that while Williams was in the infirmary, a door was left unlocked overnight but he did not try to escape). While he was in the Kaufman County jail, the worst that Williams was known to have done was possess contraband—"two bars of extra soap, two [bottles] of shampoo, and some string off of a sheet." 50 RR 176.

In an attempt to establish that the executions of the McLellands and Mark were but an aberration in an otherwise normal life, the defense presented the testimony of numerous family members and friends, as well as

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[30] Additionally, the jury heard about the security measures in place generally at the Kaufman County and Rockwall jails. 50 RR 111–16, 160–61, 164–67. The jury also heard about specific security measures put in place for Williams. 50 RR 170, 172, 173, 198–99.

[31] *See* 51 RR 24–40 (testimony of James Aiken, president of a "correctional consulting concern"), 62–92 (testimony of Frank Aubuchon, former administrator of the classification operations and unit classification processes at TDCJ).

colleagues and clients, who talked about Williams's childhood, his work as a guardian ad litem, and his work as an attorney. Williams's uncle said Williams was different from his cousins because "he was smarter, better behaved. He didn't have problems with liquor like some of [them] did. He was just a good kid." 51 RR 135. Williams was also the one who, as an adult, "took care of the paperwork and that type of thing" for the family.[32] 51 RR 137.

Williams, who was remembered by his Scout Master as "very smart," polite, and "eager to learn," 51 RR 141, had been in the Boy Scouts, even becoming an Eagle Scout, 51 RR 142; 53 RR 112; DX 68 at 33, 45. He was also inducted into the Order of the Arrow, a service organization akin to a fraternity within the Boy Scouts; in order to be admitted, one had to receive the vote of his peers. 51 RR 142–43; 53 RR 110–11.

Friends from high school described a perfectly normal childhood. "[They] did things together. [They] saw movies, [they] went over to friends' houses, hung out, things like that, studied, took on tests, failed, didn't do too well sometimes." 51 RR 175; 51 RR 205; 51 RR 219; 52 RR 17–18; 52 RR 42–43; 53 RR 117. They "[p]layed Dungeons and Dragons, other role playing games,"

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[32] The jury learned that Williams was also the primary care giver for his wife and her parents. 53 RR 92, 160; 54 RR 96–97; DX 68 at 62–64. As one friend said, "I would say he was an excellent husband. I think he was dedicated and even though some people might have left, he stayed with her even when she was really ill." 53 RR 160.

strategic games, and computer games. 51 RR 210; 51 RR 220; 52 RR 17–18. They went swimming in Lake Worth. 51 RR 220.

Williams participated in the Physics Olympics, 51 RR 175, and was a member of the math and science teams as well as the Junior Engineering Technical Society. 51 RR 185; 52 RR 18; 52 RR 42–43; 53 RR 114; 53 RR 137; DX 68 at 38–39. He also played the trumpet in the school band. 51 RR 205; 52 RR 18; 53 RR 114.

While he was not known as the "class clown," Williams was an "upbeat person, he wasn't afraid to laugh or, make others laugh when it was appropriate." 51 RR 188, 189. One friend said Williams was a "rules follower" with a "wicked sense of humor." 51 RR 211. Another said he was "[f]riendly, helpful, caring, protective, gregarious." 52 RR 51. Two men described Williams as the brother they never had. 52 RR 44–45; 53 RR 118. A cousin said "he was a caring, gentle child and never really meant to cause anyone any harm." 53 RR 99. Finally, one childhood friend stated unequivocally that she would "trust him with [her] kids. [She] would trust him to stay with [her] current family now, today." 52 RR 56.

Lastly, there was testimony about Williams's work as guardian ad litem and an attorney. Regarding his work as a guardian ad litem, Cassie Acevedo told the jurors she was not sure how hard deciding which parent to live with would have been without Williams's guidance. 52 RR 71, 73. Generally, as

Judge William Martin, III, described, Williams "was very much engaged in the, in the cases, had an empathy for the children and . . . [h]ad good judgment and preparation." 53 RR 86. Other witnesses testified similarly. 52 RR 105–06; 52 RR 111, 134.

Regarding his work as an attorney, Ronnie Fudge described Williams as "always prepared" in the handling of Fudge's divorce, and when Fudge could no longer afford to pay Williams's fees, Williams "just quit charging" him. 52 RR 78. Fudge and Williams even became friends. 52 RR 77. He was described as "professional and courteous," 53 RR 72. Another friend told the jurors Williams was "always prepared,"—"He always knew the law before he came into the courtroom"—and was "respectful of the court." 53 RR 157–58. Williams was also helpful to other lawyers, especially if they had a question about family law. 53 RR 158. Finally, he was equally helpful to members of the Clerk's Office, 52 RR 127 ("[W]e could go to him and ask him a question, any kind of question, he would - - if he didn't know the answer, he would find it for us.").

II. Disposition of the Court Below

Having been found guilty of the capital murder of Michael and Cynthia McLelland, Williams was sentenced to death on December 14, 2014. His motion for new trial, which included none of the claims before the Court now, was denied after a hearing. 11 Clerk's Record (CR) 4367–402, 4451–472; 57–59 RR;

11 CR 4476; 1 Supp. CR 22–23. Williams raised forty claims on direct appeal, none of which were the claims raised in the instant petition. His conviction and sentence were affirmed by the Court of Criminal Appeals. *Williams v. State*, No. AP-77,053, 2017 WL 4946865 (Tex. Crim. App. Nov. 1, 2017) (Petition at Appendix A). This appeal follows.

REASONS FOR DENYING CERTIORARI REVIEW

The questions Williams present for review is unworthy of the Court's attention. Supreme Court Rule 10 provides that review on writ of certiorari is not matter of right, but of jurisdictional discretion, and will be granted only for "compelling reasons." The two claims Williams has presented for review were not presented to the Court of Criminal Appeals, so not only are they waived, this Court is without jurisdiction to consider them. It is well-established that Texas's death-penalty scheme provides all the constitutional protections required. It is well-established that the death penalty is constitutional. As Williams identifies no circuit or state supreme court cases to the contrary, this is not the case to revisit those holdings. Certiorari review should be denied.

I. Texas's Death-Penalty Scheme Fully Comports with this Court's Eighth Amendment Jurisprudence.

Williams first claims that the "Texas Court of Criminal Appeals['] decision breaks with the clear precedent of this Court and endorses a system in which the death penalty may be 'wantonly' and 'freakishly' imposed."

Petition at 9; *see also id.* at 10–16. Initially, this claim is waived because it was not presented to the Court of Criminal Appeals; there is no *decision in this case* regarding the constitutionality of Texas's death-penalty scheme. As such, this Court should decline to consider it. *See* Sup. Ct. R. 14(g)(i); *see also, e.g., United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994) (petitioner must demonstrate "exceptional circumstances that would warrant reviewing a claim that was waived below"); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 672–73 (1940) ("Apart from the reluctance with which every court should proceed to set aside legislation as unconstitutional on grounds not properly presented, due regard for the appropriate relationship of this Court to state courts requires us to decline to consider and deicide questions affecting the validity of state statutes not urged or considered there."). In any event, as discussed below, Williams's arguments ignore repeated determinations that Texas law fully comports with this Court's Eighth Amendment jurisprudence.

A. Texas law effectively narrows the class of crimes that make a defendant death-eligible.

There are "two different aspects of the capital decision making process: the eligibility decision and the selection decision."[33] *Tuilaepa v. California*, 512 U.S. 967, 971 (1994). To find a defendant "death eligible," the trier of fact must convict [him] of murder and find one aggravating circumstance (or its

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[33] The "selection decision" is not at issue here. *See generally*, Petition.

equivalent) at either the guilt phase or penalty phase." *Id.* at 972; *see also Zant v. Stephens*, 462 U.S. 862, 877 (1983) (capital sentencing scheme must "genuinely narrow that class of persons eligible for the death penalty and must justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder"). "The aggravating circumstance may be contained in the definition of the crime or in a separate sentencing factor (or in both)." But whatever the aggravating circumstance or circumstances, they may not apply to every capital murderer. *Id.* It (or they) also may not be unconstitutionally vague. *Id.*

Texas narrows the class of death-eligible defendants at both the guilt/innocence trial and the punishment trial. *See Hidalgo v. Arizona*, No. 17–251, 2017 WL 3536644 (March 19, 2018) (Breyer, J., joined by Ginsberg, Sotomayor, and Kagan, J.J., respecting the denial of certiorari). First, state law limits those offenses classified as capital murder. Tex. Penal Code § 19.03;[34] *see Lowenfield v. Phelps*, 484 U.S. 231, 243–46 (1988) (discussing the narrowing function of Texas's capital-murder statute); *Jurek v. Texas*, 428 U.S.

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[34] Texas's current statute provides nine different ways in which capital murder can be committed. Tex. Penal Code § 19.03(a). Reviewing claims made under the prior statute, both the Fifth Circuit and the Court of Criminal Appeals have explained that the statute requires two specific intents (one for the murder and one for the underlying felony), *Hogue v. Johnson*, 131 F.3d 466, 506–07 (5th Cir. 1997), and that the statute requires that the murder and the underlying felony must be related (but the murder does not have to be committed to facilitate the underlying felony), *Griffin v. State*, 491 S.W.3rd 771, 776 (Tex. Crim. App. 2016).

272, 270 (1976) (plurality op.) (same); *see also Hidalgo*, 2017 WL 3536644, at *2 (distinguishing Texas's statute from Arizona's statute, which "makes all first-degree murders eligible for death and defines first-degree murder broadly to include all premeditated homicides along with felony murder based on 22 possible predicate felony offenses") (citation omitted). And in contrast to other statutes found to be unconstitutionally vague, Texas's classification is quite clear. *See, e.g., Maynard v. Cartwright*, 486 U.S. 356, 362–65 (1988) (holding "especially heinous, atrocious, or cruel" to be vague) (citing *Godfrey v. Georgia*, 446 U.S. 420 (1980)). Under Texas's scheme, then, the jury's determination of guilt ensures that a capital defendant comes within the narrowed class of "death eligible" offenders. *Jurek*, 428 U.S. at 270; *see also Woods v. Cockrell*, 307 F.3d 353, 359 (5th Cir. 2002) ("In the guilt-innocence phase, a defendant's eligibility for consideration of the death penalty is determined.") (internal quotation marks and citation omitted).

Here, Williams was charged with committing capital murder in two ways: (1) during the course of committing or attempting to commit burglary or (2) murdering two people during the same criminal transaction. 1 CR 32; *see* Tex. Penal Code § 19.03(a)(2) & (7)(A). Although the jury returned a general verdict, 47 RR 58; 11 CR 4273–81, the Court of Criminal Appeals determined the evidence was more than sufficient to support a finding of guilt under either theory, Appendix A at 12–15.

Second, state law also provides that capital juries must answer the future dangerousness special issue; thus, the class of death-eligible defendants is narrowed again at punishment. *See* Tex. Code Crim. Proc. art. 37.071, § 2(b)(1) (jury must determine "whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society").[35] The terms used herein have been repeatedly found to have a "common-sense core meaning . . . that criminal juries should be capable of understanding." *Tuilaepa*, 512 U.S. at 975; *see, e.g.*, *James v. Collins*, 987 F.2d 1116, 1120 (5th Cir. 1993) (terms "deliberately," "probability," "criminal acts of violence," and "continuing threat to society" have common sense meaning). Indeed, the *Kennedy* Court specifically points back to *Jurek* as upholding the future dangerousness special issue as constitutional. *Kennedy v. Louisiana*, 554 U.S. 407, 440 (2008); *see also Pulley v. Harris*, 465 U.S. 37, 50 n.10 (1985) (stating that Texas's punishment issues are not impermissibly vague because they have a "common sense core of meaning") (citation omitted).

As with the conviction, Williams challenged the State's case for future dangerousness. But again, the Court of Criminal Appeals found the evidence more than sufficient to support the jury's answer to that special issue. Appendix A at 15–16.

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[35] The State must prove future dangerousness beyond a reasonable doubt. Tex. Code Crim. Proc. art. 37.071, § 2(c).

The *Godfrey* Court explained that a "capital sentencing scheme must . . . provide a 'meaningful basis for basis distinguishing the few cases in which [the penalty] is imposed from the many cases in which it is not.'" 466 U.S. at 427–28 (internal quotation marks and citation omitted). There is no question that Texas's scheme does exactly this. *See Hidalgo*, 2017 WL 3536644; *Lowenfield*, 484 U.S. at 245; *Jurek*, 428 U.S. at 276 (opinion of Stewart, Powell, and Stevens, J.J.) (finding the eligibility decision constitutional).

B. The Texas death-penalty scheme is not arbitrarily applied.

Within his argument that the Texas death-penalty scheme unconstitutionally fails to narrow the class of defendants that can be eligible for the death penalty, Williams also argues that the "arbitrariness of the death penalty in Texas has real and troubling consequences." Petition at 12; *see also id.* at 12–16. Without briefing or elaboration, Williams lists seven ways in which this is so: (1) it enables "troubling racial disparities;" (2) it "turns on accidents of geography and county resources;" (3) it does not provide for proportionality review; (4) jurors are not told the result of a failure to agree; (5) "the Governor . . . does not have independent authority to grant [c]lemency and can only do so upon recommendation of the Texas Board of Pardons and Parole[s];" (6) the board does not meet in person when considering clemency petitions; and (7) counsel are denied compensation for work performed in connection with clemency. Petition at 13–15.

The first two taken together amount to an equal protection challenge. And as discussed more fully below, *see* Section II(B), it is entirely baseless. Regarding proportionality review, the Constitution does not require this. Nor does it require that jurors be told the result of any failure to agree. *Jones v. United States*, 527 U.S. 373, 381–82 (1999). Finally, it does not require that clemency be made a part of the appellate process for death-sentenced inmates. *Godfrey*, 446 U.S. at 428. In any event, "[a] death row inmate's petition is [] a 'unilateral hope.' The defendant in effect accepts the *finality* of the death sentence for purposes of *adjudication*, and appeals for clemency as a matter of *grace*." *Ohio Adult Parole Authority v. Woodward*, 523 U.S. 272, 282 (1998) (plurality op.) (citations omitted, emphasis in original). That being said, *Woodward* does hold that "some *minimal* procedural safeguards apply to clemency proceedings" to prevent a decision based on a coin toss or the arbitrary denial of *any* access to the clemency process. *Id.* at 289 (O'Connor, J., joined by Souter, Ginsberg, and Breyer, J.J.) (concurring in part and concurring in the judgment). And this Court held in *Harbison v. Bell* that 18 U.S.C. § 3599 allows federally-appointed attorneys to be compensated for state clemency proceedings. 556 U.S. 180, 194 (2009). But Williams will not even be eligible for clemency until an execution date has been set, so these arguments are premature. *See* Tex. Admin. Code § 143.57.

This Court has long recognized that Texas's death-penalty statute fully comports with the Eighth Amendment. Williams's specious arguments to the contrary provide no basis for overturning decades of precedent. For these reasons, certiorari must be denied.

II. The Court Should Not Overrule Decades of Precedent to Find that Capital Punishment Per Se Violates the Eighth Amendment.

Williams also argues that capital punishment is per se cruel and unusual, and therefore, violates the Eight Amendment. Petition at 16–32. As with his other claim, this argument is waived. Williams failed to present this claim to the Court of Criminal Appeals so this Court should decline to consider it. *See, e.g.*, *Alvarez-Sanchez*, 511 U.S. at 360 n.5. The unavailing nature of Williams's arguments notwithstanding, this is not the case to make such a sweeping change to the law.

A. Capital punishment is not per se cruel and unusual.

Williams concludes his petition as many other capital litigants do: by claiming that capital punishment is unconstitutional. Petition at 16–32. This argument has failed for decades, and this case is no different.

The Eighth Amendment prohibits "all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive." *Kennedy*, 554 U.S. at 419 (quoting *Atkins v. Virginia*, 536 U.S. 304, 311 n.7 (2002)). This "protection against cruel and unusual punishment flows from the basic precept

of justice that punishment for a crime should be graduated and proportioned for the offense." *Id.* (internal quotation marks and citation omitted). However, it is settled that that capital punishment is constitutional. *Glossip v. Gross*, 135 S. Ct. 2726, 2732 (2015); *Baze v. Rees*, 553 U.S. 35, 47 (2008). Indeed, this Court has held that the Eighth Amendment prohibits capital punishment only for defendants who either (1) had a diminished culpability for the crime (e.g., juveniles or those with intellectual disabilities) or (2) committed a crime that is disproportionate to a capital sentence (e.g., non-homicide offenses against individuals). *Id.* at 420–21.

Williams's culpability and the egregiousness of his crimes are not disputed. His attack on the criminal justice system was purposeful, senseless, and deserving of capital punishment. *See Kennedy*, 554 U.S. at 420; *see also Tison v. Arizona*, 481 U.S. 137, 156 (1987) ("Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense and, therefore, the more severely it ought to be punished."). Even Williams does not argue that the facts of his crimes warrant leniency.

Ignoring his culpability and the egregious way he committed his crimes, Williams argues instead that this Court should find capital punishment is per se cruel and unusual, first because a "wide-spread consensus" now rejects capital punishment, asserting that 31 states have "abandoned" capital

punishment, and the remaining jurisdictions carry out capital punishment infrequently. Petition at 16–32; *see also id.* at 17–19. These assertions are inaccurate. A majority of states have democratically adopted and approved of capital punishment, some them affirming that judgment as recently as November 2016.[36] And as recently as 2015, this Court stated the inexorable conclusion: "it is settled that capital punishment is constitutional." *Glossip*, 135 S. Ct. at 2732; *see also Kennedy*, 554 U.S. 437–38.

Williams's narrative also ignores a trio of 2016 enactments on California, Nebraska, and Oklahoma. California voters rejected, *for a second time*, a proposition that would have repealed its capital sentencing laws, and instead, approved a measure that requires state officials to expeditiously carry out capital sentences.[37] Nebraska voters overwhelmingly reinstated capital punishment after lawmakers had repealed it.[38] And, in response to the recent difficulties in obtaining the necessary lethal-injection drugs from

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[36] *See* National Conference of State Legislatures, States, and Capital Punishment (last visited April 2, 2018), http://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx.

[37] *See* Jazmine Ulloa & Julie Westfall, *California voters approve an effort to speed up the death penalty with Prop. 66*, L.A. Times, Nov. 22, 2016, 7:00PM, http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-proposition-66-death-penalty-passes-1479869920-htmlstory.html.

[38] *See* Josh Sandburn, *Nebraska Restores the Death Penalty One Year After Eliminating It*, Time, Nov. 8, 2016, http://time.com/4563703/nebraska-restores-death-penalty-election.

pharmaceutical companies, Oklahoma voters provided the state legislature with the authority to adopt any execution method that is constitutional.[39]

Like every other capital petitioner to raise this claim, Williams has failed to prove a consensus against capital punishment. There is no reason for this Court to take this case and affirm once again what is consistently announced. *See generally Gregg v. Georgia*, 428 U.S. 153, 175–76 (1976) (joint op. of Stewart, Powell, and Stevens, JJ.) ("In a democratic society, legislatures not courts, are constituted to respond to the will and consequently the moral values of the people.") (quoting *Furman v. Georgia*, 408 U.S. 238, 383 (1972)).

B. Capital punishment is administered constitutionally.

Williams finally makes various claims that capital punishment can never be imposed in constitutional manner, and therefore, should be declared per se unconstitutional. Petition at 12; *see also id.* at 20–32. While these claims are not unique, they have been presented, addressed and refuted by various courts.

First, Williams again asserts an equal protection claim, arguing that a defendant's race and the location of the crime have improperly infected the administration of capital punishment. *Id.* at 12–13, 20–22. Putting aside the

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[39] *See Oklahoma voters approve ballot measure affirming death penalty*, Chi. Trib., Nov. 8, 2016, 9:19PM, http://www.chicagotribune.com/news/nationworld/ct-election-results-death-penalty-20161108-story.html.

fact that Williams is white, he committed these murders in rural Texas, and he was represented by three of the best defense attorneys in the state, Williams's cursory citation to various studies are insufficient to support an equal protection claim under this Court's jurisprudence. *McClesky v. Kemp*, 481 U.S. 279, 291–93 (1987). More importantly, Williams does not—and cannot—*provide* any evidence specific to his case which could possibly suggest that his death sentence was the product of purposeful discrimination. Petition at 20–22; *see Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) ("So long as the prosecutor has probable cause to believe that the accused committed an offense defined by the statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."). That is because "a legitimate and unchallenged explanation for the decision is apparent from the record: [Williams] committed an act for which the United States Constitution and [Texas] laws permit the imposition of the death penalty." *McCleskey*, 481 U.S. at 297 (footnote omitted). After nearly a year of planning, Williams took revenge on the people he blamed for the downturn his life took after he committed a felony: he broke in to the home of Mike and Cynthia McLelland and gunned them down because Mike had obtained that felony conviction.

Second, Williams claims that capital punishment cannot be administered constitutionally because juries have the discretion to refuse to

impose a capital sentence. Petition at 20–23, 26–25. "By granting juries untrammeled discretion to grant mercy to whomever they wish, the law reintroduces . . . the very sort of arbitrariness that the first 'narrowing' requirement, is intended to remove." *Id.* at 22–23. This assertion ignores this Court's pronouncement that "[n]othing in any of our cases suggests that the decision to afford an individual defendant mercy violates the Constitution." *Gregg*, 428 U.S. at 199; *see Marsh*, 548 U.S. at 171 ("So long as the sentencer is not precluded from considering relevant mitigating evidence, a capital sentencing statute cannot be said to impermissibly, much less automatically, impose death.") (citation omitted).

Third, Williams asserts that numerous defendants who have received death sentences "have been formally exonerated of their crimes of conviction." Petition at 25; *see also id.* at 25–27. He then proclaims, without identifying a single case where an individual was executed for a crime that he or she did not commit, that "States have put [innocent] individuals to death." *Id.* As Justice Scalia explained,

> Capital cases are given especially close scrutiny at every level, which is why in most cases many years elapse before the sentence is executed. And of course capital cases receive special attention in the application of executive clemency. . . As a consequence of the sensitivity of the criminal justice system to the due-process rights of defendants sentenced to death, almost two-thirds of all death sentences are overturned. . . "Virtually none" of these reversals, however, are attributable to a defendant's "actual innocence." . . .

> Most are based on legal errors that have little or nothing to do with guilt.

Marsh, 548 U.S. at 198 (Scalia, J., concurring.) (citations omitted); *see also id.* at 185–99 (explaining in detail how this argument does not withstand scrutiny).

Fourth, Williams argues in passing that a long delay between sentencing and execution constitutes cruel and unusual punishment. Petition at 28–29. But "[t]here is simply no authority in the American constitutional tradition or in this Court's precedent for the proposition that a defendant can avail himself of the panoply of appellate and collateral procedures and then complain when his execution is delayed." *Johnson v. Bredesen*, 130 S. Ct. 541, 545 (2009) (Thomas, J., concurring in the denial of certiorari) (internal quotation marks and citation omitted); *see also Marsh*, 548 U.S. at 198 (Scalia, J., concurring).

Finally, Williams points to laws and practices from other countries. Petition at 29. But the laws and practices of other countries are immaterial. "[T]he task of interpreting the Eighth Amendment remains [this Court's] responsibility." *Roper v. Simmons*, 543 U.S. 551, 575–76 (2005).

As recently as 2015, the constitutionality of the death penalty was reaffirmed. *Glossip*, 135 S. Ct. at 2732. Williams's arguments have done nothing to suggest there has been so dramatic a change in the last three years that it should be otherwise. The procedural posture of this claim and the facts

of Williams's crime are all the more reason not to use this case as that vehicle. For these reasons, certiorari should be denied.

CONCLUSION

The murders of Mike and Cynthia McLelland and Mark Hasse were an attack on the very criminal justice system that Williams now seeks the protection of, and that he will be seeking the protection of, for the next several years. Ignoring the fact that none of the constitutional claims raised herein were decided by the state court and ignoring the three execution-style murders he carried out in the name of revenge, Williams argues not only that Texas's death-penalty scheme is unconstitutional, but also that the death penalty itself is unconstitutional. Texas's death-penalty scheme has been repeatedly identified or upheld as constitutional. The Texas legislature has authorized it as a proper punishment to certain enumerated murders. As Justice Scalia explained, "This Court . . . does not sit as a moral authority. Our precedents do not prohibit the States from authorizing the death penalty, even in our imperfect system." *Marsh*, 558 U.S. at 181 (Scalia, J., concurring).

For these reasons, certiorari review should be denied.

Respectfully submitted,

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