No. 22-7546

In the Supreme Court of the United States

ROBERT LESLIE ROBERSON III,
Petitioner,

v.

TEXAS
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

BRIEF OF THE INNOCENCE PROJECT OF TEXAS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Innocence Project of Texas was founded in 2006 by two criminal defense attorneys, current Executive Director Mike Ware and Jeff Blackburn, who dedicated their careers to freeing the innocent. Since that time, the Innocence Project of Texas has grown to be one of the leading innocence organizations in the country, having exonerated or freed 29 people.

The Innocence Project of Texas is dedicated to correcting past injustices, preventing future wrongful convictions, and giving hope to people who feel that they are out of options. As a nonprofit organization, the Innocence Project of Texas relies on community support to free the innocent, reform criminal justice practices, and educate the public about wrongful convictions.

The Innocence Project of Texas has a direct and substantial interest in this Court's review of the Texas Court of Criminal Appeals' ("CCA") decision in this case. In the opinion below, the CCA denied habeas relief to the Petitioner, Robert Roberson III. As a leading organization in litigating wrongful convictions and advocating for the exoneration of innocent individuals in Texas, the Innocence Project of Texas is especially qualified to comment on capital cases involving the CCA and Article 11.073 of the Texas Code of Criminal Procedure, known as the "junk science writ." The Innocence Project of Texas supported the enactment,

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[1] All parties were given timely notice of the filing of this brief. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

and was involved in the development, of that statute to provide an important state postconviction mechanism to provide relief from wrongful convictions in cases just like Mr. Roberson's.

The Petition presents critically important legal questions regarding the serious due process concerns raised when advances in scientific and medical knowledge undermine criminal convictions, and when a reviewing court fails to grapple meaningfully with the record developed in a postconviction process that exists precisely to correct such errors. The Innocence Project of Texas is concerned that Petitioner's case is emblematic of more systemic due process concerns that have been raised in proceedings under Texas's junk science writ. Certiorari is urgently warranted to provide guidance to the CCA and other lower courts nationwide on the minimum due process requirements that apply in postconviction proceedings of this nature, and to correct the lower court's error on that point in this capital case—an error that could lead to the mistaken deprivation of a human life.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below, if allowed to stand, forecloses one of Mr. Roberson's last remaining remedies before his execution. Nearly a decade ago, the Texas Legislature codified the junk science writ to provide a state postconviction procedure to allow additional review of criminal convictions based on outdated or subsequently debunked scientific theories.

But despite the original promise of the "junk science writ" in protecting the due process and other constitutional rights of criminal defendants, in practice the writ has been applied in a manner that raises serious constitutional concerns. In this capital case, the CCA summarily denied relief, despite overwhelming record evidence that Petitioner's underlying conviction and death sentence rest on tabloid science. As courts in other jurisdictions have held, upholding a conviction in these circumstances violates fundamental due process principles. But the decision below raises a second and independent constitutional concern: the courts failed to engage meaningfully with the postconviction record, and instead uncritically adopted nearly word-for-word the prosecution's proposed findings below.

Unfortunately, this case is not an outlier; similar examples from the CCA and other courts underscore the need for this Court's intervention and guidance. Despite its critical role in reviewing postconviction proceedings under Texas's "junk science" writ, the CCA has repeatedly upheld criminal convictions that rest on debunked scientific theories, in some instances leading this Court to intervene repeatedly in a single

case to protect basic constitutional rights. As it has done in past cases, this Court should grant plenary review or summarily reverse to correct the error here and provide additional guidance to the CCA and other courts. The CCA's error in this capital case has the gravest of possible consequences; the proceedings below represented one of Petitioner's last remaining outlets for review of his conviction and capital sentence.

As the Petition demonstrates, the questions presented here are of substantial importance. Amicus files this brief to offer additional context on the importance of the issues and the urgent need for this Court's review.

ARGUMENT

I. Texas Enacted The Junk Science Writ To Provide A Critical Safety Valve For Convictions Based on Debunked Science, Even After The Exhaustion Of Other Postconviction Remedies

The origin of the junk science writ begins much earlier than its effective date of September 2013. In 1985, in Lubbock, Texas, a picture of Army veteran and Texas Tech University sophomore Timothy Cole was shown to a young woman who had recently been raped in a campus parking lot.[2] The woman twice identified Cole as the perpetrator, once via the photograph, and later again in an in-person line up. Cole's conviction and 25-year sentence was based primarily on her testimony.

Cole maintained his innocence throughout the judicial process. But there were no other witnesses, and his case predated the now-routine use of DNA. Forensic testing would not become a well-established practice until 2001, when the Texas Legislature amended the state's Code of Criminal Procedure to allow for postconviction DNA testing.[3] By then, Cole had already died behind bars, at the age of 39. Cole unfortunately did not live to learn that another man had confessed to the rape; that confession was corroborated by

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[2] *State* v. *Cole*, 99th District Court, Lubbock County (Tex. 1986); see also *Cole* v. *State*, 735 S.W.2d 686, 688 (Tex. App.—Amarillo 1987), rev'd, 839 S.W.2d 798 (Tex. Crim. App. 1990); *Timothy Cole*, INNOCENCE PROJECT, https://innocenceproject.org/cases/timothy-cole/ (last visited June 12, 2023).

[3] *See* TEX. CODE CRIM. PROC. art. 64.01.

DNA evidence linking that man, rather than Cole, to the assault.

Timothy Cole's place in history as the first person in Texas to be posthumously exonerated through DNA testing ultimately led to the 2009 establishment of the Timothy Cole Advisory Panel on Wrongful Convictions. The Advisory Panel brought together attorneys, judges, and other community stakeholders in Texas to address the growing concern over wrongful convictions. In its 2010 Report to the Texas Indigent Defense Commission, the Advisory Panel recommended that Texas amend Chapter 11 of the Texas Code of Criminal Procedure to reflect developments in forensic science. Specifically, the Advisory Panel urged Texas to recognize the need for "meaningful access to the courts to those with claims of actual innocence following a conviction based on science that has since been falsified."[4]

Two years later, the Texas Legislature enacted the junk science writ, creating a special procedural pathway in state postconviction review for those whose convictions were based on subsequently discredited science.[5] The writ, codified as Article 11.073 of the Texas Code of Criminal Procedure, creates a pro-

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[4] Timothy Cole Advisory Panel on Wrongful Convictions, *Report to the Texas Task Force on Indigent Defense* 29 (2010), https://projects.nfstc.org/fse/pdfs/FINALTCAPresearch.pdf.

[5] See, *e.g.*, S. Crim. Just. Comm., Bill Analysis, Tex. S.B. 344, 83rd Leg., R.S (2013), https://capitol.texas.gov/tlodocs/83R/analysis/html/SB00344F.htm ("The bill specifies that evidence to contradict scientific evidence presented at trial is among the types of claims or issues that can affect court consideration of an application for a writ of habeas corpus.").

cess to allow consideration of "relevant scientific evidence" that was either "not available to be offered by a convicted person" at trial or evidence that "contradicts scientific evidence relied on by the state."[6] The statute empowers a habeas court to consider *changes* in the scientific value of evidence—an overdue expansion from prior law, which only allowed for evaluation of *new* evidence. And importantly, the statute "provide[s] a path for relief where false and discredited forensics may have caused the false conviction of an innocent person."[7]

Texas did not stand alone in enacting its "junk science writ." Indeed, the forensics community had long called for nationwide reform. For example, in 2009, the National Academy of Sciences released a 400-page report warning that the "forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country."[8] The Academy recognized that "undue weight" has been placed on "imperfect testing."[9] Even more concerning, the report explained that "imprecise or exaggerated

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[6] TEX. CODE CRIM. PROC. art. 11.073.

[7] House Comm. on Crim. Juris., Bill Analysis, Tex. S.B. 344, 83rd Leg., R.S. at 3 (2013), https://hro.house.texas.gov/pdf/ba83R/SB0344.pdf.

[8] Comm. on Identifying the Needs of the Forensic Sci. Cmty., Nat'l Rsch. Council, *Strengthening Forensic Science in the United States: A Path Forward*, at xx (2009), https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf.

[9] *Id.* at 4.

expert testimony" has led to "the admission of erroneous or misleading evidence."[10]

After Texas enacted its junk science writ, numerous other states nationwide, including California, West Virginia, Mississippi, Connecticut, Wyoming, Michigan, and Nevada, passed similar legislation. Despite the initial promise of such reforms, the reality of how these procedures have functioned in practice has been less successful. The CCA's decision here, upholding Petitioner's conviction and capital sentence despite overwhelming postconviction evidence discrediting the scientific theory upon which his conviction rests, is unfortunately no outlier. Intervention from this Court is urgently needed to correct the error and avoid a wrongful execution in Mr. Roberson's case, while also giving important guidance to lower courts nationwide about due process safeguards on postconviction proceedings of this sort.

II. This Court's Intervention Is Needed To Protect Due Process Rights In The Context Of The "Junk Science" Writ

By enacting the junk science writ, Texas and other states provided an important and salutary safeguard against the serious due process and other concerns raised when criminal convictions rest on, or are tainted by, subsequently debunked science.

The Petition compellingly demonstrates the due process concerns raised in Mr. Roberson's case, in-

[10] *Ibid.*

cluding by the conduct and outcome of the postconviction proceedings below.[11] Unfortunately, however, the due process concerns in this case are no outlier.

For instance, in *Ex parte Flores*,[12] the CCA denied relief from a capital murder conviction obtained through hypnotically enhanced testimony. It did so despite a compelling record, developed on postconviction review, that subsequent advances in scientific knowledge had discredited the use of such techniques.[13] And the "junk science" proceedings fell short of normal guarantees of due process, with the CCA denying relief despite conceding that the trial court had simply "adopted the State's proposed findings of fact and conclusions of law."[14] The defendant, Charles Don Flores, remains on death row today, based on a conviction and sentence predicated upon evidence gathered through a technique voluntarily abandoned by the Department of Public Safety and Texas Rangers because of its untrustworthy results.[15]

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[11] Pet. 14–24, 26–39.

[12] *Ex parte Flores*, No. WR-64,654-02, 2020 WL 2188757 (Tex. Crim. App. May 6, 2020) (per curiam) (not designated for publication); see also Lauren McGaughy, *Texas Rangers Stop Using Hypnosis After Dallas Morning News Investigation Reveals Dubious Science*, DALL. MORNING NEWS (Mar. 11, 2021), https://bit.ly/3BvQdKd (McGaughy, *Texas Rangers Stop Using Hypnosis*); *Ex parte Chanthakoummane*, 662 S.W.3d 450, 450–451 (Tex. Crim. App. 2020) (Newell, J., dissenting) ("[h]ypnosis has been discredited * * * as a forensic discipline to uncover forgotten memories of crimes").

[13] *Flores*, 2020 WL 2188757, at *1 (citing TEX. CODE CRIM. PROC. art 11.071, § 5).

[14] *Id*.

[15] McGaughy, *Texas Rangers Stop Using Hypnosis*.

More recently, in *Escobar* v. *Texas*, the CCA denied a death-row prisoner's request for a new trial based on the state's use of forensic evidence subsequently demonstrated to be misleading. The CCA did so despite the State's express confession of error in briefing to that court regarding the use of untrustworthy evidence, and the petitioner's entitlement to a new trial. This Court ultimately vacated and remanded, after Texas again confessed error in its response to the certiorari petition, and urged this Court to vacate and remand for a new trial.[16]

The similarities between those cases and this one are striking. Petitioner's case involves a capital sentence that rests on scientific evidence (here, "Shaken Baby Syndrome") that has subsequently been soundly discredited in the scientific community. But the CCA once again denied relief in a judgment that cannot be reconciled with the record developed on postconviction review, and did so in a summary manner that raises fundamental due process concerns.

III. This Court Plays A Critical Role In Correcting Errors In Capital Cases

This Court has historically played an important role in vindicating constitutional rights in capital cases, including in reviewing decisions of the CCA.

For example, in *Moore* v. *Texas*,[17] this Court vacated a decision of the CCA denying relief on an *Atkins*

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[16] *Escobar* v. *Texas*, 143 S. Ct. 557, 557 (2023) (vacating and remanding "in light of the confession of error by Texas in its brief [to this Court]"); see also Br. of Resp. State of Texas in Support of Pet'r at 22–32.

[17] 581 U.S. 1 (2017).

claim of intellectual disability. This Court rejected the CCA's application of the so-called "*Briseno* factors" (considerations *created by the CCA* in 2004[18] to determine whether a capital defendant has an intellectual disability).[19] After the CCA again denied relief on remand, this Court summarily reversed, finding the CCA's decision "inconsistent with [this Court's prior] opinion in *Moore*."[20] Indeed, even the prosecution had agreed, in its brief to this Court, that Mr. Moore had a viable *Atkins* claim "and cannot be executed."[21] Yet despite this Court's prior holding that "[b]y design and in operation, the *Briseno* factors 'creat[e] an unacceptable risk that persons with intellectual disability will be executed,'"[22] this Court found that the CCA had on remand simply "repeat[ed] the analysis [this Court] previously found wanting."[23]

To similar effect, in *Smith* v. *Texas*,[24] this Court reversed the CCA's denial of habeas relief, finding that the CCA had disregarded a "broad and intractable problem" previously identified by this Court in *Penry* v. *Johnson*.[25] The error in that case was that an instruction restricting the jury's consideration of mitigation evidence was "constitutionally inadequate" if it

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[18] *Ex parte Briseno*, 135 S.W.3d 1, 8–9 (Tex. Crim. App. 2004).

[19] *Moore*, 581 U.S. at 17–18.

[20] *Moore* v. *Texas*, 139 S. Ct. 666, 670 (2019) (per curiam).

[21] 581 U.S. at 17.

[22] 139 S. Ct. at 670.

[23] *Ibid.*; see also *id.* at 672 (Roberts, C.J., concurring) ("On remand, the [CCA] repeated the same errors that this Court previously condemned—if not quite *in haec verba*, certainly in substance.").

[24] 543 U.S. 37 (2004) (per curiam).

[25] *Id.* at 46 (citing *Penry* v. *Johnson*, 532 U.S. 782 (2001)).

prevented the jury from giving "'*full* consideration and *full* effect to mitigating circumstances' in choosing [an] appropriate sentence."[26]

In denying relief, the CCA had also refused to allow a special instruction regarding the defendant's intellectual disability. Instead, it concluded "that petitioner's low IQ and placement in special-education classes were irrelevant" to the constitutional propriety of the death penalty "because they did not demonstrate that he suffered from a 'severe disability.'"[27] This Court disagreed, stating that there was "*no question* that a jury might well have considered petitioner's IQ scores and history of participation in special-education classes as a reason to impose a sentence more lenient than death."[28]

In *Powell* v. *Texas*, this Court again intervened to review and summarily reverse the CCA's misapplication of this Court's precedent in a capital case. This Court originally vacated the judgment of the CCA and remanded for further consideration in light of this Court's intervening decision in *Satterwhite* v. *Texas*, which involved use of psychiatric evidence during the penalty phase of a capital trial, when that evidence was obtained in violation of a defendant's Sixth Amendment right.[29] After the CCA affirmed the denial of relief on remand, this Court summarily reversed, holding that the CCA had "conflated the Fifth

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[26] *Id.* at 38 (quoting *Penry*, 532 U.S. at 797).

[27] *Id.* at 44.

[28] *Ibid.* (emphasis added).

[29] See *Powell* v. *Texas,* 492 U.S. 680, 682–683 (1989) (citing *Satterwhite v. Texas*, 486 U.S. 249 (1988)).

and Sixth Amendment analyses, and provided no support for its conclusion that petitioner waived his Sixth Amendment right."[30]

This Court's intervention is no less urgently warranted here than it was in *Moore, Smith*, and *Powell*. Because actual innocence is at issue in Mr. Roberson's case, the stakes are that much higher.

IV. The Postconviction Proceedings Here Violated Petitioner's Due Process Rights

While the "administration of criminal justice is predominantly committed to the care of the States," federal courts hold a critical role in enforcing the Due Process Clause and ensure "an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, [and] on the detached consideration of conflicting claims."[31] But a conviction based on quasi-scientific explanations and subsequently discredited science is fundamentally unfair, and inadequate postconviction review deprives criminal defendants of important due process safeguards against inaccurate results.

A. Sustaining A Conviction Based On Subsequently Discredited Science Violates Due Process

State and federal courts across the country have grappled with, and reached inconsistent results regarding, the due process concerns raised when a criminal conviction rests on medical or scientific expert testimony that is subsequently discredited. This Court

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[30] *Id.* at 683.

[31] *Rochin* v. *California*, 342 U.S. 165, 168, 172 (1952).

should grant certiorari to provide much-needed guidance to the CCA and other lower courts by "hold[ing] that a conviction later found to be based upon unreliable scientific evidence deprives the defendant of a fundamentally fair trial and violates the Due Process Clause."[32]

As the Petition explains at length, various courts around the country have concluded that when a criminal conviction was obtained in reliance on subsequently discredited expert or scientific theories, a conviction may need to be set aside, including on due process grounds.[33] Courts have recognized and acknowledged that the fundamental fairness of a trial is undermined, in violation of due process, when a conviction is procured through subsequently invalidated expert testimony.[34]

The same principles apply in the context of convictions based on "Shaken Baby Syndrome." For example, in *Hanson* v. *Baker*, a habeas petitioner argued

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[32] See *Ex parte Robbins*, 360 S.W.3d 446, 471 (Tex. Crim. App. 2011) (Cochran, J., dissenting) (predicting that this Court will one day so hold, "because it raises an intolerable risk of an inaccurate verdict and undermines the integrity of our criminal justice system").

[33] Pet. 29–31 (citing cases from the Third and Ninth Circuits, and from courts in Wisconsin, Massachusetts, New York, Maryland, and Illinois).

[34] See *Han Tak Lee* v. *Tennis*, No. 08-cv-1972, 2014 WL 3894306, at *15 (M.D. Pa. June 13, 2014) (noting the "emerging consensus that, upon a proper showing by a habeas petitioner, this paradigm shift in our understanding of * * * science may entitle petitioners to post-conviction relief"), aff'd, 798 F.3d 159 (3d Cir. 2015).

that the prosecution's reliance on flawed medical expert testimony in support of a "Shaken Baby Syndrome" diagnosis had undermined the fairness of his trial.[35] The court agreed, stating that "the 'triad-only' diagnosis of shaken baby syndrome has been repudiated" and that "the scientific consensus now is that short falls by children can in fact cause the triad of subdural hemorrhage, cerebral edema and retinal hemorrhage, and death."[36] Based on these scientific findings, the court concluded that "the prosecution's arguments based on that evidence[] rendered his trial fundamentally unfair and violated fundamental conceptions of justice," rising to the level of a due process violation.[37] That decision cannot be reconciled with the ruling of the CCA in Mr. Roberson's case, which denied relief on a very similar theory.[38]

The due process violation here is particularly stark in light of this Court's decision in *Ake* v. *Oklahoma*.[39] There, this Court addressed the due process implications that arose through the use of psychiatrists as expert witnesses. In doing so, it noted that psychiatry is not an exact science and that psychiatrists widely and frequently disagree on the appropriate diagnosis to be attached to particular symptoms.[40] Due to this debate within the medical community, this Court explained

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[35] *Hanson* v. *Baker*, No. 04-cv-00130, 2018 WL 10400454, at *23 (D. Nev. Mar. 13, 2018), aff'd, 766 Fed. Appx. 501 (9th Cir. 2019).

[36] *Id.* at *25–26.

[37] *Id.* at *26.

[38] Pet. App. 003–004; see also Pet. 16–22.

[39] 470 U.S. 68, 81–85 (1985).

[40] *Id.* at 81.

that due process required a factfinder to resolve differences within the medical community "on the basis of the *evidence offered by each party*." This Court emphasized the important role of opposing expert testimony to address shortcomings and raise doubt in the mind of the factfinder regarding other expert testimony.[41]

Here, the causation theory that was the crux of the prosecution's case (Shaken Baby Syndrome) has been largely discredited by scientific and medical advances that post-date Mr. Roberson's conviction. Despite Article 11.073, the postconviction courts ignored the vast evidence of the shortcomings and fallacies of that quasi-scientific hypothesis (as well as new evidence that no homicide even occurred) and instead sustained a capital murder conviction that rests on that now-discredited hypothesis. Due process requires at a bare minimum that the CCA engage meaningfully with the record developed here showing that advances in scientific understanding have completely undermined the reliability of the conviction.[42]

B. The Uncritical Acceptance Of A Lower Court's Unsupported Findings Violates Due Process

The due process concerns raised by the CCA's denial of relief are compounded by the procedure the CCA used in resolving the postconviction proceedings.

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[41] *Ibid*. (emphasis added); see also *McDaniel* v. *Brown*, 558 U.S. 120, 136 (2010) (per curiam) ("Given the persuasiveness of such evidence in the eyes of the jury, it is important that it be presented in a fair and reliable manner.").

[42] See *Ake*, 470 U.S. at 82.

Here, the CCA uncritically accepted the lower court's findings of fact and conclusions of law, without meaningfully engaging with the overwhelming record evidence tending to support Petitioner's right to relief.[43] "In capital proceedings generally, this Court has *demanded* that factfinding procedures aspire to a heightened standard of reliability."[44] Yet the proceeding here lacked even basic indicia of heightened reliability, by failing to engage meaningfully with evidence that the medical and scientific theories underlying Mr. Roberson's conviction were wholly unreliable.[45]

As this Court has made clear, due process demands more. In *Holmes* v. *South Carolina*, 547 U.S. 319, 331 (2006), this Court explained that where a factfinder "evaluat[es] the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt." That principle applies equally here. The CCA cannot simply rubber stamp a trial court's near verbatim adoption of the prosecution's

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[43] Pet. App. at 002–004.

[44] *Ford* v. *Wainwright*, 477 U.S. 399, 411 (1986) (emphasis added).

[45] Cf. *Commonwealth* v. *Epps*, 53 N.E.3d 1247, 763–767 (Mass. 2016) (vacating a conviction based on Shaken Baby Syndrome due to modern medical understanding); *Del Prete* v. *Thompson*, 10 F. Supp. 3d 907, 957–958 (N.D. Ill. 2014) (finding that on a preponderance of the evidence—the same standard of review under the Texas junk science writ—concerning the modern understanding of Shaken Baby Syndrome, no reasonable jury would have convicted the defendant); *State* v. *Edmunds*, 746 N.W.2d 590, 598–599 (Wis. Ct. App. 2008) (finding that based on the newly developed record regarding Shaken Baby Syndrome, a jury would have reasonable doubt as to guilt).

flawed and misleading factual recitations,[46] without engaging with the record developed in the postconviction proceedings. That conclusion is particularly true when a capital conviction "rests almost entirely upon scientific pillars which have now eroded."[47]

Due process "protects against procedures which confound the structural prerequisites of the criminal justice system."[48] In enacting the junk science writ, the Texas Legislature provided a postconviction procedure for a criminal defendant to ask a reviewing court to "consider whether the field of scientific knowledge, a testifying expert's scientific knowledge, or a scientific method" has changed since the trial.[49] But by uncritically rubber-stamping the findings of the habeas court—a court that copied-and-pasted the State's skeletal arguments as its own without meaningful engagement with the overwhelming body of evidence undermining those findings, including unrebutted evidence

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[46] Compare Pet. App. 006–017 (trial court's findings of fact and conclusions of law), with Pet App. 328–345 (Texas's proposed findings of fact and conclusions of law); see also Pet. 24 ("The habeas court's [Findings of Fact and Conclusions of Law] largely tracked the State's proposal, including its typographical and grammatical errors.").

[47] *Han Tak Lee* v. *Tennis*, 2014 WL 3894306, at *16; *Goldberg* v. *Kelly*, 397 U.S. 254, 271 (1970); *Riggins* v. *Nevada*, 504 U.S. 127, 131, 136–137 (1992) (finding a due process violation resulting from a "one-page order that gave no indication of the court's rationale"); see also Harold Leventhal, *Appellate Procedures: Design, Patchwork, and Managed Flexibility*, 23 UCLA L. REV. 432, 438 (1976) ("[T]here is accountability in the giving of reasons.").

[48] *Gutierrez* v. *Saenz*, 565 F. Supp. 3d 892, 910 (S.D. Tex. 2021), appeal docketed, No. 21-70009 (5th Cir. Dec. 13, 2021).

[49] TEX. CODE CRIM. PROC. art. 11.073(d).

the child's death was the result of natural and accidental causes and not homicide—the CCA fell short of basic principles of due process while also frustrating the original intent of the junk science writ.[50]

In enacting the junk science writ, Texas made a laudable and pioneering commitment to ensuring that its criminal convictions—and in some cases, capital sentences—are not dependent on faulty or disproven scientific explanations. But in honoring that commitment, the State and its institutions must act consistent with all "applicable due process norms," including the guarantees of due process.[51] "The minimum assurance that [decisions about] * * * life-and-death" are adequately informed "requires respect for the basic ingredient of due process, namely, an opportunity to be allowed to substantiate a claim before it is rejected."[52] Here, due process demands that the judgment below be reversed, because Petitioner's conviction and death sentence rest on a thoroughly discredited Shaken Baby Syndrome hypothesis rejected by modern science.

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[50] *Douglas* v. *California*, 372 U.S. 353, 358 (1963).
[51] *Evitts* v. *Lucey*, 469 U.S. 387, 400–401 (1985).
[52] *Ford*, 477 U.S. at 414 (internal quotation marks omitted).

CONCLUSION

For the foregoing reasons and those in the Petition, the Petition for a Writ of Certiorari should be granted. In the alternative, this Court should summarily reverse.

Respectfully submitted.

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