No. 23-7809

# In the Supreme Court of the United States

RUBEN GUTIERREZ, PETITIONER

*v.*

LUIS SAENZ, ET AL.,

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIFTH CIRCUIT*

## BRIEF FOR RESPONDENTS


KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
William.Cole@oag.texas.gov
(512) 936-1700

AARON L. NIELSON
Solicitor General

WILLIAM F. COLE
Deputy Solicitor General
*Counsel of Record*

CAMERON FRASER
Assistant Solicitor General

ERIC ABELS
JEFFERSON D. CLENDENIN
Assistant Attorneys General

## QUESTION PRESENTED

In *Reed v. Goertz*, 598 U.S. 230 (2023), this Court held that when a state prisoner is denied access to post-conviction DNA testing under a state statute, a federal judgment declaring the statute unconstitutional can redress the prisoner's injury if (1) it would "eliminate the state prosecutor's justification for denying DNA testing" and thereby (2) "significant[ly] increase ... the likelihood that the state prosecutor would grant access to the requested evidence." *Id.* at 234 (cleaned up).

In this case, Petitioner Ruben Gutierrez sought and received a judgment from the district court declaring Texas's DNA-testing statute, Texas Code of Criminal Procedure, Chapter 64, unconstitutional insofar as it allows a prisoner sentenced to death to conduct post-conviction DNA testing to challenge his conviction but not his sentence. Yet the Texas Court of Criminal Appeals ("CCA") has held, in three separate opinions over the course of thirteen years, that Gutierrez would not be eligible for DNA testing under state law even if he could use the results to challenge his sentence.

Following issuance of the district court's declaratory judgment, Cameron County District Attorney Luis Saenz has continued to stand on that independent state-law ground—among others—as a basis for continuing to deny Gutierrez DNA testing. And just last summer, the CCA held that the district court's declaratory judgment did not change the fact that Gutierrez is ineligible for DNA testing under state law.

The question presented is whether, under *Reed*, Gutierrez's injury is redressable by the declaratory judgment he sought and obtained from the district court.

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## INTRODUCTION

In 1998, Ruben Gutierrez and two other individuals concocted a plot to rob 85-year-old Escolastica Harrison of the nearly $600,000 in cash Gutierrez knew she stored in her mobile home. During the robbery, Mrs. Harrison was beaten to death and repeatedly stabbed with screwdrivers in the face and neck. Multiple witnesses placed Gutierrez at the scene of the crime, and Gutierrez confessed to planning the robbery and then carrying it out in the very room where Mrs. Harrison was being murdered. After a jury trial, Gutierrez was convicted and sentenced to death. His conviction was affirmed on direct appeal, and his efforts to win habeas relief from state and federal courts have been repeatedly rejected.

For the last fourteen years, Gutierrez has also unsuccessfully sought access to DNA testing of certain evidence that he aims to use to challenge his death sentence in a future (second) subsequent state habeas application. The Texas Court of Criminal Appeals ("CCA") has rejected those efforts three separate times, finding that Gutierrez was not entitled to DNA testing because he could not meet the required elements under Texas Code of Criminal Procedure, Chapter 64. Following his second failed attempt to win DNA testing, Gutierrez filed this federal civil rights lawsuit seeking to hold various aspects of Chapter 64 unconstitutional under the Due Process Clause. The district court accepted one of those theories, declaring Chapter 64 unconstitutional insofar as it allows a prisoner sentenced to death to conduct post-conviction DNA testing to challenge his conviction but not his capital sentence. Yet following this Court's decision in *Reed v. Goertz*, 598 U.S. 230 (2023), the Fifth Circuit reversed on Article III standing grounds, holding that Gutierrez failed to prove redressability. The court

observed that the CCA had already held twice that even if Gutierrez could use that evidence to challenge his sentence, he would *still* not be entitled to DNA testing under Texas law. And Saenz was "quite likely to follow" the CCA's holdings rather than a declaratory judgment that has no effect on Gutierrez's ultimate eligibility for DNA testing under Texas law. Pet.App.12.

This Court should affirm. The district court's declaratory judgment does not "eliminate the state prosecutor's justification for denying DNA testing," *Reed*, 598 U.S. at 234, because that judgment affects only one of multiple, independent state-law grounds that support District Attorney Saenz's decision to deny access to the evidence. Likewise, the declaratory judgment does nothing to "significant[ly] increase . . . the likelihood that the state prosecutor would grant access to the requested evidence." *Id.* (cleaned up). That was affirmatively proven when Saenz continued to stand on his objections in response to Gutierrez's attempt to use the declaratory judgment in support of a third motion for DNA testing in state court. And just last summer, the CCA affirmed the denial of Gutierrez's motion, reiterating for a third time that Gutierrez was not entitled to DNA testing under state law even if he could use the evidence to challenge his sentence. Thus, the declaratory judgment Gutierrez won does not redress the injury he suffers from denial of access to DNA testing, and he lacks Article III standing to pursue it. For similar reasons, these events now render Gutierrez's case moot, robbing him of any personal stake in the outcome of the case and making the district court's declaratory judgment purely advisory.

The Court should therefore affirm the Fifth Circuit's decision dismissing the case for lack of jurisdiction.

## STATEMENT

### I. Gutierrez's Capital-Murder Conviction

#### A. Escolastica Harrison's murder

In September 1998, Avel Cuellar discovered the lifeless body of his aunt, 85-year-old Escolastica Harrison, laying in a pool of her own blood in the bedroom of the mobile home they shared in Brownsville, Texas. 17.RR.37, 117-18.[1] Mrs. Harrison had extensive bruising to her face and neck as well as at least thirteen stab wounds, one of which punctured her skull, inflicted by what appeared to be flathead and Phillips-head screwdrivers. 19.RR.226-27, 234-39. The nearly $600,000 in cash that she kept in her trailer from her management of the mobile-home site was nowhere to be found, and her home office had been ransacked. 18.RR.106-110; *see* 17.RR.81-82. Mrs. Harrison's ultimate cause of death was "[h]omicidal blows to the left eyebrow area of the face and the right side of the head," which "severely and fatally damaged her brain." 19.RR.224-25.

#### B. The police's investigation and Gutierrez's confession

The police's investigation of this crime led detectives to Ruben Gutierrez. Gutierrez was a friend of Mrs. Harrison's nephew, Cuellar, and had drawn close to Mrs. Harrison while befriending Cuellar. 17.RR.88-95. That friendship led to Gutierrez being one of the few people who knew that Mrs. Harrison kept large quantities of cash in her home because she did not trust banks. 17.RR.96-97. Acting on multiple reports that Gutierrez

[1] "RR," preceded by volume number and followed by page numbers, refers to the court reporter's record of Gutierrez's capital-murder trial.

was spotted in the mobile-home park around Mrs. Harrison's home during the evening of her murder, detectives sought to bring Gutierrez in for questioning. 18.RR.133-34. Gutierrez voluntarily appeared at the police station and told detectives that he had encountered Cuellar and another friend while he was visiting the mobile-home park on the Friday before the murder, but that he was driving around with another friend on the Saturday of the murder. 18.RR.120-21, 131-32. Yet the detectives had already spoken with multiple witnesses who placed Gutierrez outside of Mrs. Harrison's home on *Saturday*—the day she was murdered—so the detectives pressed him on this point, asking whether he was sure about those dates. 18.RR.133. At that point, Gutierrez abruptly ended the interview and left the police station. 18.RR.134-35.

Upon the detectives' further investigation, the individual Gutierrez claimed he was with the night of Mrs. Harrison's murder contradicted his alibi. 18.RR.137-38. A tip also led detectives to Gutierrez's two accomplices, Rene Garcia and Pedro Gracia, who were in possession of large quantities of cash and newly purchased vehicles and electronics. 18.RR.142-44. The police then obtained, and later executed, a capital-murder warrant for Gutierrez's arrest. 18.RR.148-49. After learning that his two accomplices were in custody and had given statements to the police,[2] Gutierrez volunteered another

[2] Although they were "referred to but not admitted at trial," JA.578a, the police secured a statement from Rene Garcia "that places [Gutierrez] in Mrs. Harrison's home and stabbing her," along with a statement from Pedro Gracia "that places [Gutierrez] inside Mrs. Harrison's home at the time of the murder," JA.587a. The CCA held that it could properly, and constitutionally, consider those

statement to the police. 18.RR.162; *see* 30.RR.Ex.45. In this statement, Gutierrez claimed that Gracia approached him and asked for his help in robbing Mrs. Harrison. 18.RR.168. Gutierrez agreed, recruited Garcia, and then came up with a plan for the robbery: while Gracia distracted Mrs. Harrison by pretending to be interested in renting a lot in her mobile-home park, Garcia would slip into her house to steal the money from her bedroom closet, where Gutierrez knew it would be. 18.RR.169.

Though Gutierrez confessed that "[t]here was no doubt about the fact that I planned the whole ripoff," he claimed that he "never wanted for either one of them to kill Ms. Harrison." 18.RR.172. Gutierrez insisted that, while Gracia and Garcia took off to Mrs. Harrison's home with two screwdrivers in hand, he waited at a nearby park for Gracia and Garcia to complete the robbery. 18.RR.169-71. And according to Gutierrez, when the two returned with a blue suitcase containing Mrs. Harrison's files and a toolbox full of her cash, Garcia was holding a bloody screwdriver and confessed to killing Mrs. Harrison. 18.RR.170. At that point, Gutierrez "decided that [he] did not want any money that they had just ripped off" and insisted he would walk home. 18.RR.170-71, 172. Following this confession, Gutierrez led detectives right to the location of the blue suitcase (he claimed Gracia told him where it was). 18.RR.178-79, 183-89.

The next day, Gutierrez agreed to give a third statement to the police. 19.RR.52-53; *see* 30.RR.Ex.66. In this statement, Gutierrez admitted that he had previously "lied" about not "being in [Mrs. Harrison's] house"

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statements when assessing Gutierrez's eligibility for DNA testing under Chapter 64. *See* JA.582a-585a.

during her murder. 19.RR.67. Instead, Gutierrez now confessed that *Gracia* was the driver and Gutierrez "was in the house looking for the money while [Garcia] was stabbing that lady." 19.RR.68. He stated that Garcia was supposed to lure Mrs. Harrison outside of her home on the pretense of renting a mobile-home lot while Gutierrez would enter the house to take the money. 19.RR.68. But when Gutierrez entered the home, Garcia and Mrs. Harrison were still inside talking, so Garcia punched her in the face, knocking her out, and then dragged her by her hair into her bedroom, where Gutierrez searched for her money. 19.RR.68-69. While he was rooting around in Mrs. Harrison's closet, Gutierrez claimed, Garcia began repeatedly stabbing Mrs. Harrison with a screwdriver that "had a clear handle with red," which was one of the two screwdrivers he said "we" brought to the house (the other being "a star type" screwdriver). 19.RR.68-69. Even after Gutierrez located the money and "tossed it to" Garcia, Gutierrez contended that Garcia "put it on the bed," "told [him] that [Mrs. Harrison] didn't want to die," and then went back to "stabbing the old lady," only stopping after Gutierrez "told him to blow it off" as he "was walking out" the door "with the blue suitcase" to catch a getaway ride from Gracia. 19.RR.69.

### C. Gutierrez's trial, conviction, and sentence

Gutierrez was eventually indicted and tried for capital murder. "The prosecution's theory at trial was that [Gutierrez], either as a principal or as a party, intentionally murdered Mrs. Harrison during a robbery." JA.571a. In addition to Gutierrez's confession placing himself inside Mrs. Harrison's home and, at minimum, burglarizing her home while she was being murdered, the prosecution's case-in-chief also emphasized "the

medical examiner's testimony that two different instruments caused the stab wounds"—flathead and Phillips-head screwdrivers—and the fact that "four different people," including one who did not know him at all, placed Gutierrez at the mobile-home park the day of Mrs. Harrison's murder. JA.571a. The jury was instructed that it could convict Gutierrez of capital murder "if it found that Gutierrez[,] 'acting alone or as a party' with the accomplice[,] intentionally caused the victim's death." JA.571a; 20.RR.52; *see* Tex. Penal Code § 7.01(a). The jury returned a general verdict of guilt. JA.571a; 21.RR.3-5.

At the punishment stage of Gutierrez's trial, the jury was instructed that Gutierrez could be sentenced to death if it found that he: (1) posed a "continuing threat to society," (2) "intended to kill the deceased or another or anticipated that a human life would be taken," and (3) there was a lack of "a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed." Tex. Code Crim. Proc. art. 37.071(b)(1)-(2), (e)(1); *see* 24.RR.126-33. At the punishment stage, the jury heard evidence of Gutierrez's lengthy involvement with the criminal-justice system, including: his commission of several burglaries, assault of a police officer, threats to kill a teacher, instigation of "an 'almost riot' because county jail employees would not give him any Kool-Aid," threat to "shank" a prison guard if the guard interfered with his attempt to escape, and threat to kill an assistant district attorney following his conviction. *See Gutierrez v. State*, No. 73,462, slip op. at 6 (Tex. Crim. App. Jan. 16, 2002). The jury answered the first two special issues in the affirmative and, as to the third, found a lack of sufficient mitigating evidence.

25.RR.3-5. Based on those findings, the trial judge sentenced Gutierrez to death. 25.RR.7-8.

The CCA affirmed Gutierrez's conviction on direct appeal, overruling each of his ten asserted points of error, including challenges to the legal sufficiency of the evidence at the guilt-innocence stage, the legal sufficiency of the evidence as to the first two special issues at the punishment stage, and the voluntariness of his confession. *See Gutierrez*, No. 73,462, *supra,* slip op. at 5-21.

## II. Gutierrez's Collateral Postconviction Litigation

More than two decades of collateral litigation have followed Gutierrez's conviction and its affirmance on direct appeal. That litigation includes three state habeas applications, one federal habeas petition, three motions for DNA testing, and the instant lawsuit under 42 U.S.C § 1983 challenging the constitutionality of Texas's DNA-testing statute, Chapter 64.

### A. Gutierrez's first motion for DNA testing, two state habeas applications, and federal habeas petition

Following affirmance of his conviction on direct appeal, Gutierrez first filed a state habeas application raising "twenty allegations in which he challenge[d] the validity of his conviction and resulting sentence." *Ex parte Gutierrez*, No. WR-59,552-01, 2004 WL 7330936, at *1 (Tex. Crim. App. Sept. 15, 2004). The CCA rejected most of those claims but remanded the case to the trial court for fact development on two ineffective assistance of trial counsel claims related to the voluntariness of his confession. *Id.* The CCA later rejected those two remaining claims upon the case's return to that court. *Ex parte Gutierrez*, No. WR-59,552-01, 2008 WL 2059277, at *1 (Tex. Crim. App. May 14, 2008); *see Gutierrez v.*

*Stephens*, No. 1:09-cv-22, 2013 WL 12092544, at *18-*21, *23 (S.D. Tex. Oct. 13, 2013).

Gutierrez then turned to federal court, filing a federal habeas petition in January 2009. But "[b]ecause his petition included two claims that he had not raised in his initial state habeas [application], the district court stayed and administratively closed the case to allow him to fully exhaust his state court remedies." *Gutierrez v. Stephens*, 590 F. App'x 371, 374 (5th Cir. 2014).

Once back in state court, Gutierrez initiated a lawsuit making a request for DNA testing under Chapter 64. Gutierrez sought DNA testing of five items: (1) a blood sample taken from Mrs. Harrison; (2) a shirt belonging to Cuellar containing apparent blood stains; (3) nail scrapings taken from Mrs. Harrison; (4) blood samples from Cuellar's bathroom, a raincoat found in or just outside of that bathroom, and Mrs. Harrison's sofa; and (5) a single loose hair found on Mrs. Harrison. JA.572a. Gutierrez's theory was that "exculpatory results" from this testing "would tend to support his assertion that 'he was not present during, did not participate in, and did not know or anticipate the victim's murder.'" JA.577a-578a.

The trial court issued findings of fact and conclusions of law denying the request for DNA testing, and the CCA affirmed. JA.574a, 588a-604a. The CCA identified four independent grounds for rejecting Gutierrez's request for DNA testing. First, the court held that Gutierrez was "at fault" for not previously testing the evidence because his counsel made a strategic decision not to test the evidence so that he could argue that the police's own failure to test the evidence demonstrated a "lack of investigation" and that they "fell down on the job." JA.588a-593a (citing Tex. Code Crim. Proc. art. 64.01(b)(1)(B)

(amended by Act of May 20, 2011, 82nd Leg., R.S., ch. 366, § 1, 2011 Tex. Gen. Laws 1016, 1016) (S.B. 122, eff. Sept. 1, 2011)). Second, the court held that "the trial judge acted within his discretion in finding that identity was and is not an issue in this case," given that the case was tried under Texas's law of parties, *see supra* at 7, and, among other things, Gutierrez's own confession and multiple witnesses placing him at the scene of the murder. JA.597a-598a; *see also* JA.582a-587a; Tex. Code Crim. Proc. art. 64.03(a)(1)(C) (requiring a convict seeking to obtain DNA testing to show that "identity was or is an issue in the case"). Third, the court held that "[t]he statute does not authorize testing when exculpatory testing results might affect only the punishment or sentence that he received." JA.602a; *see* Tex. Code Crim. Proc. art. 64.03(a)(2)(A) (requiring a convict seeking to obtain DNA testing to "establish[] by a preponderance of the evidence that" he "would not have been *convicted* if exculpatory results had been obtained through DNA testing" (emphasis added)). Finally, the court held that "even if Chapter 64 did apply to evidence that might affect the punishment stage as well as conviction," Gutierrez "still would not be entitled to testing" because "the record facts satisfy the *Enmund/Tison*[3] culpability requirements that he played a major role in the underlying robbery and that his acts showed a reckless indifference to human life." JA.603a.

In response to the CCA's rejection of his request for DNA testing—and in an effort to exhaust his claims for purposes of his federal habeas petition, *Gutierrez*, 590 F. App'x at 374—Gutierrez filed a second state habeas

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[3] *Tison v. Arizona*, 481 U.S. 137 (1987); *Enmund v. Florida*, 458 U.S. 782 (1982).

application, this time arguing, among other things, that the State violated its *Brady* obligations by failing to submit certain biological evidence for DNA testing. JA.551a. The CCA dismissed that application as an abuse of the writ under state law. JA.551a (citing *Ex parte Gutierrez*, No. WR-59,552-02 (Tex. Crim. App. Aug. 24, 2011)); *see* Tex. Code Crim. Proc. art. 11.071, § 5(a).

Having run out of options in state court, Gutierrez returned to federal court and filed an amended habeas petition. The district court eventually denied that petition, and the Fifth Circuit declined to issue a certificate of appealability. *Gutierrez*, 590 F. App'x at 384. This Court thereafter denied his certiorari petition. *Gutierrez v. Stephens*, 577 U.S. 829 (2015).

**B. Gutierrez's second motion for DNA testing**

Following the conclusion of federal habeas proceedings, Gutierrez's court-appointed counsel withdrew from the case, and the district court appointed new counsel. Order, *Gutierrez v. Davis*, No. 1:09-CV-22 (S.D. Tex. Aug. 22, 2018), ECF No. 79. To allow new counsel time to gain familiarity with the case, the district court stayed Gutierrez's then-pending execution. *Id.* After that stay expired and a new execution date was set, new counsel also succeeded in obtaining a stay of that second execution due to state-law issues concerning the warrant of execution. *In re Gutierrez*, No. WR-59,552-03, 2019 WL 5418389, at *1 (Tex. Crim. App. Oct. 22, 2019) (per curiam).

About a month after the second execution date was set, Gutierrez filed a second motion for postconviction DNA testing in state court, seeking testing of the same items he sought in his first motion, in addition to Mrs. Harrison's "nightgown, robe, and slip." JA.554a. The trial court denied his motion in a written order. Tracking

two of Chapter 64's statutory requirements, the court held that Gutierrez was not entitled to DNA testing because: (1) he "ha[d] not shown by a preponderance of the evidence that a reasonable probability exists that" he "would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing," and (2) his "request for the proposed DNA testing is made for the purpose of unreasonably delaying the execution of [his] sentence or [the] administration of justice." JA.555a.

The CCA affirmed on three independent state-law grounds. First, the court independently analyzed each of the five items of which Gutierrez sought testing and concluded that, for each one, he had "not met the requirements of Article 64.03(a)(2)," because he had "not established by a preponderance of the evidence that he would not have been convicted if exculpatory results were obtained through DNA testing." JA.561a-564a. Second, the court reaffirmed its prior conclusion that Chapter 64 "does not authorize testing when exculpatory testing results might affect only the punishment or sentence that he received." JA.564a. Third, the court separately reaffirmed its alternative finding that "even if Chapter 64 did apply to evidence that might affect the punishment stage," Gutierrez "still would not be entitled to testing" because "the record facts satisfy the *Enmund/Tison* culpability requirements that he played a major role in the underlying robbery and that his acts showed a reckless indifference to human life." JA.564a-565a. The court did not reach, and therefore left undisturbed, the trial court's finding that Gutierrez was not entitled to DNA testing for another independent state-law reason: his request for DNA testing was "made to unreasonably delay

the execution of [his] sentence or the administration of justice." JA.565a-566a.

### C. Gutierrez's federal civil rights lawsuit

While Gutierrez was litigating his second DNA-testing motion in state court, he filed the instant lawsuit in federal district court under 42 U.S.C. § 1983 against the Cameron County, Texas District Attorney, Luis Saenz, and the Chief of the Brownsville, Texas Police, Felix Sauceda, Jr. JA.32a. Because the CCA had not yet ruled on his second request for DNA testing, the district court stayed the case pending resolution of that motion. JA.32a.

Following the CCA's denial of his second DNA-testing motion, *supra* at 12, the district court lifted the stay and Gutierrez filed an amended complaint. JA.427a-466a. In that operative complaint, Gutierrez sought, as relevant here, a declaratory judgment holding that Chapter 64 violated his procedural due process rights under the Fourteenth Amendment.[4] Gutierrez advanced two procedural-due-process theories. The first challenged Chapter

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[4] Gutierrez also brought claims under the Eighth Amendment and the First Amendment (the latter under an access-to-courts theory) related to the denial of DNA testing. JA.458a-459a. He also brought claims under the First Amendment and the Religious Land Use and Institutionalized Persons Act challenging the Texas Department of Criminal Justice's then-existing policy excluding outside spiritual advisors from the execution chamber. JA.459a-463a. None of these claims is at issue here. The First and Eighth Amendment claims related to DNA testing were dismissed at the pleading stage, JA.239a-240a, and Gutierrez did not appeal that dismissal. The spiritual-advisor claims were ultimately dismissed as moot after the policy was changed following this Court's decision in *Ramirez v. Collier*, 595 U.S. 411 (2022). Order of Dismissal, *Gutierrez v. Saenz, et al.*, No. 1:19-CV-185 (S.D. Tex. Mar. 10, 2023), ECF No. 213.

64's requirement that a convict demonstrate by a "preponderance of evidence" that he "would not have been convicted if exculpatory results had been obtained through DNA testing," which Gutierrez argued was too "high" of a standard. JA.448a-449a. In particular, Gutierrez contended that the CCA's application of that standard in affirming the rejection of his two motions for DNA testing showed that, "as construed by the CCA, the statute effectively precludes DNA testing." JA.448a-455a. Gutierrez's second theory was that the statute's limitation of DNA testing to challenges to a prisoner's conviction but not his sentence deprived him of a liberty interest in obtaining a reduced sentence. JA.456a-458a.

Saenz and Sauceda initially moved to dismiss Gutierrez's complaint on several grounds, including standing, sovereign immunity, statute of limitations, and failure to state a claim. JA.370a-372a, 379a-389a, 392a-412a. The district court denied the motion in relevant part. JA.286a-327a. After ancillary litigation over Gutierrez's claim demanding the presence of an outside spiritual advisor in the execution chamber that eventually reached this Court, *see Gutierrez v. Saenz*, 141 S.Ct. 1260 (2021), the district court ordered briefing on "what, if any, DNA claims remain in this case and the merits of those claims." JA.26a.

After receiving briefing on the DNA claim, the court entered a declaratory judgment holding Chapter 64 partly unconstitutional. JA.61a. The court first rejected Gutierrez's challenge to Chapter 64's "preponderance of the evidence . . . standard," holding that Gutierrez failed to show that it is impossible to receive DNA testing under Chapter 64 or that the standard "offends historical practice or a fundamental principle of justice." JA.53a-56a. But the court nevertheless accepted Gutierrez's

theory that limiting DNA testing to challenges to a prisoner's conviction but not his sentence was unconstitutional. JA.56a-61a. In the court's view, because Texas law permits prisoners to file a "subsequent habeas application" challenging their death sentence under Texas Code of Criminal Procedure article 11.071, § 5(a)(3), precluding them from obtaining DNA testing to attack that sentence renders Texas's abuse-of-the-writ statute "illusory" in violation of the Due Process Clause because it "barricades the primary avenue for" a prisoner to "make use of that right." JA.59a-60a. The district court thereafter entered a final judgment disposing of Gutierrez's DNA testing claims. JA.63a-71a. Although Saenz and Sauceda appealed the district court's declaratory judgment to the Fifth Circuit, Gutierrez did *not* cross-appeal the district court's rejection of his procedural due process challenge to Chapter 64's preponderance-of-the-evidence standard.

On appeal, the Fifth Circuit held that Gutierrez lacked standing to seek a declaratory judgment because he failed to establish redressability. Pet.App.7-15. Applying this Court's recent decision in *Reed*, the court held "there is not a substantial likelihood that a favorable ruling by a federal court on Gutierrez's claims would cause the prosecutor to order DNA testing," because the CCA "has already found that Gutierrez would have no right to DNA testing even if the statutory bar to testing for evidence about sentencing were held to be unconstitutional." Pet.App.14, 15. Moreover, the court concluded that "a state prosecutor is quite likely to follow what his state's highest criminal court has already held should be the effect of such a decision," and "a state court, if presented with Gutierrez's request for DNA testing, would be bound by the Texas Court of Criminal Appeals'

holding that such testing would be meaningless." Pet.App.12, 15.

This Court granted Gutierrez's petition for a writ of certiorari.

**D. Gutierrez's third motion for DNA testing**

Shortly after securing a declaratory judgment from the district court holding Chapter 64 partly unconstitutional—but before the Fifth Circuit reversed that decision on standing grounds—Gutierrez filed a third motion for DNA testing in state court, "seek[ing] testing of the same items for which he sought testing in his first two motions." JA.467a-468a. After initial litigation over jurisdictional questions was resolved by the CCA, *see* JA.481a-490a, the trial court rejected Gutierrez's request for DNA testing on the merits. The court held that Gutierrez's request was "collaterally estopped, barred by the doctrine of res judicata, and barred by the doctrine of law of the case," given the CCA's two prior opinions rejecting Gutierrez's requests for testing. JA.476a.

After the Fifth Circuit issued its opinion and while Gutierrez's certiorari petition was pending in this Court, the CCA affirmed the trial court's denial of Gutierrez's motion. JA.480a. Gutierrez argued that his motion was not barred by res judicata or the law-of-the-case doctrine because *this time* he had the benefit of the district court's declaratory judgment. But the CCA rejected Gutierrez's argument that the district court's declaratory judgment (which by then had been reversed by the Fifth Circuit) changed the analysis. JA.477a-479a. As the CCA explained, its two prior opinions rested on a state-law ground that was independent of the one the district court held unconstitutional, and that ground "continues to apply here." JA.479a. For a third time, the CCA held that "[*e*]*ven if*, Chapter 64 applied to evidence affecting

the punishment stage, given the evidence in this case, [Gutierrez] cannot show that the jury would have answered the punishment issues differently should he obtain exculpatory DNA results." JA.479a. Consequently, "[g]iven the evidence presented the statute did not operate unconstitutionally as to" Gutierrez. JA.479a.

## SUMMARY OF ARGUMENT

**I.** The Court should affirm because the Fifth Circuit correctly held that Gutierrez lacks Article III standing. In *Reed*, this Court held that a Texas prisoner who had been denied access to DNA testing under Chapter 64 had standing to seek a federal-court judgment declaring Chapter 64 unconstitutional. 598 U.S. at 234. And under *Reed*, Gutierrez's injury—denial of access to DNA testing—is redressable if the declaratory judgment (1) would "eliminate the state prosecutor's justification for denying DNA testing" and thereby (2) "significant[ly] increase . . . the likelihood that the state prosecutor would grant access to the requested evidence." *Id.*

Under this standard, Gutierrez failed to prove redressability. The district court declared Chapter 64 unconsitutional insofar as it allows a prisoner sentenced to death to conduct post-conviction DNA testing to challenge his conviction but not his capital sentence. JA.56a-61a. Yet the CCA has held *three times* over thirteen years that Gutierrez would be ineligible for DNA testing even if he could use it to challenge his sentence, because exculpatory DNA evidence would not change that sentence. *See* JA.603a; JA.565a; JA.479a. And over the course of its three detailed opinions denying Gutierrez's motions for DNA testing, the CCA has identified other statutory grounds that Saenz relied on to deny Gutierrez DNA testing under state law.

JA.597a-598a; JA.555a. Because multiple, independent state-law grounds that were unaffected by the district court's declaratory judgment continue to support Saenz's decision to deny Gutierrez access to evidence for DNA testing, the district court's declaratory judgment does not "eliminate the state prosecutor's justification for denying DNA testing," and therefore it will not redress his injury attributable to the denial of access to that evidence. *Reed*, 598 U.S. at 234

For similar reasons, Gutierrez cannot show that the district court's declaratory judgment would "significant[ly] increase . . . the likelihood" that Saenz "would grant access to the requested evidence." *Id.* To the contrary, as the Fifth Circuit correctly explained, a Texas prosecutor is "quite likely to follow" the CCA's holdings rather than a declaratory judgment that has no effect on Gutierrez's ultimate eligibility for DNA testing under Texas law. Pet.App.12. But the Court need not speculate about what Saenz would do. After Gutierrez obtained the declaratory judgment from the district court, he took it to state court and filed a third motion for DNA testing, seeking to compel Saenz to turn over the evidence. Saenz refused, and the CCA upheld that refusal, holding that the declaratory judgment did not alter the preclusive effect of its two prior decisions denying DNA testing on other state-law grounds. *See* JA.477a-479a. Accordingly, Gutierrez's theory that the district court's declaratory judgment would "significant[ly] increase . . . the likelihood" that Saenz "would grant access to the requested evidence," *Reed*, 598 U.S. at 234, has already been disproven.

Gutierrez resists these straightforward conclusions in several ways, but none has merit. *First*, he argues (at 5, 25, 27, 37-38, 40) that his injury is redressable because

Saenz might one day "unilaterally" decide to hand over the requested evidence. This argument, founded entirely on speculation, is an admission that it is not the district court's declaratory judgment that would redress his injury but the voluntary actions of Saenz. This Court's precedents are clear, however, that though redress is sought "*from* the defendant," it must come "*through* the court." *Hewitt v. Helms*, 482 U.S. 755, 761 (1987).

*Second*, Gutierrez contends (at 14, 33, 37, 38-39, 40) that his injury is redressable because Saenz might choose to disregard the CCA's repeated holding that he is not eligible for DNA testing even if he could use it to challenge his death sentence, because the CCA based that conclusion on only the "record facts" at trial and not on the supposedly new theories and evidence he wishes to present. But this argument disregards the fact that the CCA was *required* under state law to consider only those record facts when adjudicating Gutierrez's right to DNA testing under Chapter 64. *See Holberg v. State*, 425 S.W.3d 282, 285 (Tex. Crim. App. 2014). Moreover, this argument is just as speculative as the first, disproven by Saenz's actual conduct when confronted with this allegedly new evidence and theories, and yet another admission that it is not the district court's declaratory judgment providing the redress.

*Third*, Gutierrez attempts to reconceptualize his injury (at 31-35) as a "procedural injury" that sounds in due process: a denial of his right to file a subsequent state habeas application. But that right is not at issue in this case; only Gutierrez's right to access evidence for DNA testing is. And Gutierrez's argument that the district court's declaratory judgment might have a "possible, indirect benefit in a future lawsuit," *United States v. Juv. Male*, 564 U.S. 932, 937 (2011) (per curiam), here a

hypothetical *third* state habeas application, "does not preserve standing" in *this* lawsuit, *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023). Nor does this refashioning of his injury help him cure his redressability problem. Multiple, independent state-law grounds that are unaffected by the district court's declaratory judgment continue to support Saenz's decision to deny Gutierrez access to the evidence for DNA testing—and thus block his path to filing a state habeas application accompanied by the DNA testing results.

Because Gutierrez has no constitutional right to DNA testing, *Dist. Att'ys Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68 (2009), or to state habeas review, *Murray v. Giarratano*, 492 U.S. 1, 7-8 (1989), his analogy to cases involving deprivations of constitutionally protected property interests without notice and a hearing are inapt. And because the procedural right he now attempts to assert here—the right to file a subsequent state habeas application with a particular mix of evidence—is different in kind from the ones at issue in the Administrative Procedure Act ("APA") and environmental-law cases he cites (at 6-7, 35), those cases are inapposite.

*Finally*, Gutierrez accuses (at 5, 22, 27) the Fifth Circuit of fashioning a "novel" test for redressability that was not envisioned by this Court's decision in *Reed*. But the Fifth Circuit's decision represents a straightforward application of *Reed* to the facts of this case. Gutierrez's caricature of the Fifth Circuit's decision is inaccurate and ultimately fails to identify any error.

**II**. Alternatively, the Court should hold that this case is now moot, because an "intervening circumstance deprives" Gutierrez of a "personal stake in the outcome of the lawsuit." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013). That circumstance is Saenz's

refusal to provide Gutierrez with access to the requested evidence even after the district court issued its declaratory judgment, and the CCA's holding that the declaratory judgment did not change Gutierrez's ineligibility for DNA testing under state law. JA.477a-479a.

Because the CCA's decision is the final, binding determination of Gutierrez's eligibility for DNA testing under Texas law in the light of the declaratory judgment, the district court lacks any power "to grant any effectual relief" to Gutierrez, *Chafin v. Chafin*, 568 U.S. 165, 172 (2013), in the form of a declaratory judgment making it more likely that Saenz "would grant access to the requested evidence," *Reed*, 598 U.S. at 234. And because the district court's declaratory judgment is now entirely advisory, this case is now moot.

## ARGUMENT

### I. Gutierrez Lacks Standing.

This case is not justiciable because Gutierrez lacks Article III standing. The narrow declaratory judgment that Gutierrez sought and received from the district court would not redress his injury—the denial of access to evidence for DNA testing under Chapter 64—because District Attorney Saenz's[5] decision to deny Gutierrez

[5] In *Reed*, this Court identified "[t]he state prosecutor" as the relevant state actor for purposes of traceability because the prosecutor "denied access to the evidence and thereby caused Reed's injury." 598 U.S. at 234. Though Gutierrez alleged that Sauceda, the Brownsville Police Chief, "has custody of certain evidence," JA.432a, he provided no evidence, *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992), showing that Sauceda, in addition to Saenz, "denied him access to evidence," *Reed*, 598 U.S. at 234. Thus, Gutierrez has not established traceability as to Sauceda. But if the Court disagrees, the redressability problems discussed in this brief apply equally to Sauceda.

DNA testing is supported by multiple, independent state-law grounds, only one of which was affected by the district court's declaratory judgment. Indeed, the CCA has held *three times* that Gutierrez would be ineligible for DNA testing even if he could use the results to challenge his sentence. Gutierrez's efforts to avoid this straightforward conclusion fail.

### A. Gutierrez's injury is not redressable under *Reed*.

The Court should affirm the Fifth Circuit's decision dismissing Gutierrez's case for lack of jurisdiction because he did not establish the redressability element of the test for Article III standing.

**1.** Article III limits the federal judiciary to deciding "'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (quoting U.S. Const. art. III). And an "essential and unchanging part of the case-or-controversy requirement of Article III" is the doctrine of standing. *Lujan*, 504 U.S. at 560. Standing "tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (citation omitted). To establish standing, a plaintiff "must plead and—ultimately—prove" three familiar elements. *Dep't of Educ. v. Brown*, 600 U.S. 551, 561 (2023). Those elements are "(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion*, 594 U.S. at 423.

At issue in this case is the third element: redressability. "To determine whether an injury is redressable, a court will consider the relationship between 'the judicial relief requested' and the 'injury' suffered." *California v. Texas*, 593 U.S. 659, 672 (2021) (citing *Allen v. Wright*, 468 U.S. 737, 753 n.19 (1984)). "[R]edressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Brackeen*, 599 U.S. at 294 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 825 (1992) (Scalia, J., concurring in part and concurring in the judgment)). After all, "[i]t is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability." *Id.* "[T]his means that the dispute must 'be "real and substantial" and "admit of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."'" *California*, 593 U.S. at 672 (quoting *Medimmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126-27 (2007)). This requirement applies equally to declaratory-judgment actions and "suits for every other type of remedy," including coercive relief such as injunctions or damages. *Id.*

Just two Terms ago, this Court articulated the circumstances under which a prisoner like Gutierrez, who has been denied post-conviction DNA testing under a state statute, has standing to seek a federal-court judgment declaring that statute unconstitutional. *See Reed*, 598 U.S. at 234. The Court first identified the nature of the "injury in fact: denial of access to the requested evidence." *Id.* It then held that such an injury would be traceable to "[t]he state prosecutor, who is the named

defendant," because that prosecutor "denied access to the evidence and thereby caused [the] injury."[6] *Id.* Finally, the Court held that a federal court's declaratory judgment concluding that "Texas's post-conviction DNA testing procedures violate due process" would redress the injury if "that court order would eliminate the state prosecutor's justification for denying DNA testing" and thereby "'significant[ly] increase . . . the likelihood' that the state prosecutor would grant access to the requested evidence." *Id.* (quoting *Utah v. Evans*, 536 U.S 452, 464 (2002)). That is because "[i]t is 'substantially likely' that the state prosecutor would abide by such a court order," even though it does not formally coerce that prosecutor to do so. *Id.* (quoting *Evans*, 536 U.S at 464); *see Brackeen*, 599 U.S. at 293 (holding that it is the "preclusive effect" of declaratory judgments that save them from being "little more than an advisory opinion").

**2.** Under *Reed*, Gutierrez failed to establish redressability. The district court declared Chapter 64 unconstitutional because it allows a convict access to evidence for DNA testing to challenge his conviction but not his sentence. JA.61a. Yet that singular ground for declaring part of the statute unconstitutional was only one of several independent state-law grounds supporting District Attorney Saenz's decision to deny access to the requested evidence. Indeed, over the course of its three

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[6] In so holding, the Court rejected Goertz's argument that the denial of DNA testing under Chapter 64 was neither traceable to the state prosecutor nor redressable by a declaratory judgment against him, because "[n]o state actor enforces Chapter 64" and instead "Texas courts independently" apply the statute's requirements. Brief for Respondent 38, *Reed v. Goertz*, No. 21-422 (U.S. Aug. 23, 2022) ("*Reed* Respondent's Br."); *cf. Reed*, 598 U.S. at 248-249 (Thomas, J., dissenting).

opinions denying Gutierrez's motions for DNA testing, the CCA identified three independent reasons, grounded in Chapter 64, that Saenz has advanced for denying access to the evidence. Each of those reasons has been upheld by either the CCA itself or the state trial court, and each stands unaffected by the district court's narrow declaratory judgment in this case. The district court's declaratory judgment therefore in no way "eliminate[s]" Saenz's "justification for denying DNA testing." *Reed*, 598 U.S. at 234.

Start with the CCA's repeated holding, made three times over thirteen years, that "even if Chapter 64 did apply to evidence that might affect the punishment stage as well as conviction, [Gutierrez] still would not be entitled to testing." JA.603a; *see also* JA.564a-565a; JA.478a. As the CCA has explained, "given the evidence in this case, [Gutierrez] cannot show that the jury would have answered the punishment issues differently should he obtain exculpatory DNA results." JA.479a. And there is no constitutional problem with his sentence because "the record facts satisfy the" Eighth Amendment's "culpability requirements that he played a major role in the underlying robbery and that his acts showed a reckless indifference to human life." JA.603a; JA.565a; JA.478a.

Nothing about the district court's declaratory judgment purports to address—let alone "eliminate," *Reed*, 598 U.S. at 234—this freestanding basis for denying DNA testing. In fact, the CCA's holding tracks Chapter 64's statutory "preponderance of the evidence" requirement as applied to sentencing challenges. Tex. Code Crim Proc. art. 64.03(a)(2)(A). Gutierrez challenged the constitutionality of that preponderance of the evidence standard in the district court, but the court expressly rejected that argument. JA.53a-56a. That is a final

judgment that Gutierrez chose not to appeal to the Fifth Circuit and which he therefore cannot contest in this Court. *See, e.g.*, *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency, Inc.*, 535 U.S. 302, 334 (2002).

Two other independent statutory criteria under Chapter 64 further support Saenz's decision to deny Gutierrez DNA testing and likewise remain unaffected by the district court's declaratory judgment. First, in its 2011 decision denying Gutierrez's first DNA testing motion, the CCA held that Gutierrez was not entitled to DNA testing because he failed to meet Chapter 64's statutory requirement to prove that "identity was or is an issue in the case," Tex. Code Crim. Proc. art. 64.03(a)(1)(C). JA.597a-598a. Saenz continued to maintain that Gutierrez failed to satisfy this statutory requirement throughout proceedings on Gutierrez's second DNA-testing motion, though the CCA did not end up reaching this issue. JA.556a-557a. Second, in rejecting Gutierrez's second DNA-testing motion, the state trial court expressly found that Gutierrez's motion was "made for the purpose of unreasonably delaying the execution of [his] sentence or administration of justice," JA.555a, which is a freestanding statutory hurdle Gutierrez was required to clear to win DNA testing under Chapter 64, *see* Tex. Code Crim. Proc. art. 64.03(a)(2)(B). Because the CCA did not reach that issue in affirming the trial court's order, JA.565a-566a—thereby leaving the trial court's finding undisturbed—Saenz remains free to deny DNA testing on that independent statutory ground, too. Again, the district court's narrow declaratory judgment in this case does not purport to address either of these two independent statutory grounds for rejecting Gutierrez's request for DNA testing, so that judgment

does not "eliminate the state prosecutor's justification for denying DNA testing." *Reed*, 598 U.S. at 234.

For similar reasons, there is no "likelihood," much less a "significant[ly] increase[d]" one, that the district court's declaratory judgment would induce "the state prosecutor [to] grant access to the requested evidence." *Id.* As the Fifth Circuit correctly observed, "a state prosecutor is quite likely to follow what his state's highest court has already held should be the effect of such a decision." Pet.App.12. And because the CCA has held three times that Gutierrez would still not be entitled to DNA testing even if he could use the results to challenge his sentence—and one time that identity was not an issue in the case—Saenz is likely to follow those independent state-law grounds to deny Gutierrez access to DNA testing.

But this Court need not speculate about what Saenz might do—we already know. After securing a declaratory judgment from the district court, Gutierrez raced to state court to file his third motion for DNA testing, arguing that the district court's declaratory judgment changed the legal landscape, allowed him to avoid the preclusive effect of the CCA's two prior denials of testing, and required granting him access to the evidence. *See* JA.475a-479a. Yet Saenz refused—even though Gutierrez had the district court's freshly inked declaratory judgment in hand—and the CCA upheld that decision by denying Gutierrez's motion for DNA testing for a third time. JA.477a-479a. The district court's declaratory judgment therefore did *not* allow Gutierrez to "obtain relief that directly redresses the injury suffered," because it did *not* ultimately win him "access to the requested evidence." *Reed*, 598 U.S. at 234. Thus, on the unique facts of this case, the redressability question

posed by *Reed*—whether a declaratory judgment would "'significant[ly] increase . . . the likelihood' that the state prosecutor would grant access to the requested evidence," *id.* (quoting *Evans*, 536 U.S. at 464)—has already been answered concretely in the negative.

**B. Gutierrez's arguments are meritless.**

Gutierrez offers a jumble of arguments in an effort to establish redressability and cast doubt on the Fifth Circuit's application of *Reed*. None has merit.

**1. The theoretical possibility that Saenz could unilaterally agree to DNA testing does not establish redressability.**

Gutierrez's primary theory of redressability (at 5, 25, 27, 37-38 40) is that his injury is redressable because Saenz could "unilaterally agree to testing" and possesses the theoretical "capabil[ity] of" voluntarily agreeing to hand over the evidence "in accordance with the declaration." Indeed, he surprisingly contends (at 36) that "[t]he question" in this case "is not whether Gutierrez will be ultimately successful in obtaining DNA testing," but instead "whether there remains at least the possibility" that a declaratory judgment would cause Saenz to "revisit" his decision to deny access.

This argument cannot be squared with this Court's holding in *Reed* that the declaratory judgment must "significant[ly] increase . . . the likelihood," not just raise the possibility, that "the state prosecutor would *grant access* to the requested evidence." 598 U.S. at 234 (emphasis added). And it runs headlong into the well-established principle that "'speculat[ion]' that the injury will be 'redressed by a favorable decision'" is not enough to demonstrate Article III standing. *Lujan*, 504 U.S. at 561. Speculation is the most Gutierrez could possibly offer here,

since the district attorney has resisted Gutierrez's efforts to obtain DNA testing since 2011.[7] Worse yet, Gutierrez's speculation about what Saenz might do in response to a declaratory judgment has now been affirmatively *disproven*, given that Saenz declined to hand over the evidence even after the district court issued its declaratory judgment.

Gutierrez's argument is also a tacit concession that his injury cannot "be redressed by *judicial relief*." *TransUnion*, 594 U.S. at 423 (emphasis added). After all, if Gutierrez were to obtain DNA testing through the "unilateral" efforts of Saenz, Pet. Br. 27, then definitionally the district court's declaratory judgment would play no role in that decision. But this Court has been clear: though redress is sought "*from* the defendant," it must come "*through* the court." *Hewitt*, 482 U.S. at 761. And "redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Brackeen*, 599 U.S. at 294 (citing *Franklin*, 505 U.S. at 825 (Scalia, J., concurring in part and concurring in the judgment)). So, to the extent that Gutierrez means to argue that the "persuasive" force of the district court's reasoning might someday induce Saenz to voluntarily wave the white flag, that is simply not enough to establish redressability for purposes of Article III standing.

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[7] The fact that a *different* district attorney voluntarily agreed to allow a *different* defendant access to evidence for DNA testing does not suggest anything about the likelihood that *Saenz* would agree to that testing *here*. *See* Pet. Br. 37 (citing *Skinner v. State*, No. AP-76,675, 2012 WL 2343616, at *1 (Tex. Crim. App. June 20, 2012) (per curiam) (not designated for publication)).

### 2. Gutierrez cannot establish redressability by speculating that Saenz might disregard the CCA's previous decisions.

Gutierrez does not directly address the Fifth Circuit's holding that "a state prosecutor is quite likely to follow what his state's highest court has already held should be the effect of" a declaratory judgment holding a state DNA-testing statute unconstitutional. Pet.App.12. Nor does he seriously contend with the fact that multiple independent state-law grounds support Saenz's decision to deny access to the requested evidence. *See supra* at 25-26. Instead, he tries to circumvent the CCA's long-final determinations by suggesting that "the CCA's findings do not preclude" Saenz "from granting access to the evidence" voluntarily, Pet. Br. 37, because its determinations "do not embrace" a new version of "the sentencing claim that [Gutierrez] seeks to develop and present" based on supposedly new evidence and theories, Pet. Br. 33; *see id.* at 38-43.[8]

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[8] The "new evidence" that Gutierrez spills much ink describing (at 38-43) constitutes variations on themes and arguments he has pressed for years. For example, Gutierrez claims (at 39) that he has new evidence that Avel Cuellar spoke with his nephew about stealing from his aunt and then told that nephew after she was murdered that he had money buried in the mobile-home park. But one of Gutierrez's primary trial themes was that Cuellar was the true killer. *See* 20.RR.92-102. Similarly, Gutierrez argues (at 39) that he would like to attack the credibility of one of the detectives by arguing that his trial testimony was untruthful. But Gutierrez's trial strategy was built on the notion that the police did a poor job investigating and lied about the voluntariness of Gutierrez's confession. JA.592a-593a. Regardless, Gutierrez's overarching theory is that such evidence would "severely undercut the trial prosecution's theory that Gutierrez was present during the murder and masterminded the plot." Pet. Br. 41. Yet these new theories and evidence are marked by a significant flaw: they contradict Gutierrez's own

As an initial matter, this theory of redressability is also speculative, foreclosed by Saenz's decision to deny testing even after the declaratory judgment was issued, and an admission that it is not the declaratory judgment that would redress his injury, but a voluntary act by Saenz. *See supra* at 28-29. Yet it suffers from an additional flaw. Gutierrez criticizes the CCA (at 14, 40) for relying only on "the facts in the trial record" when denying his requests for DNA testing under Chapter 64. But it was required to do so: For purposes of Chapter 64 eligibility, Texas courts consider only "the mix of evidence that was available at the time of trial." *Holberg*, 425 S.W.3d at 285. Indeed, Reed made the same argument, in the same context, before the CCA, and the CCA rejected it. As the CCA explained, "Reed's brief on this point claims post-trial factual developments undermine the State's theory at trial, but our review in this context does not consider post-trial factual developments." *Reed v. State*, 541 S.W.3d 759, 774 (Tex. Crim. App. 2017). "Instead, we limit our review to whether exculpatory results 'would alter the landscape if added to the mix of evidence that was available at the time of trial.'" *Id.* (citing *Holberg*, 425 S.W.3d at 285).

Because the CCA has held that new evidence compiled post-trial cannot be considered when determining a convict's eligibility for DNA testing under Chapter 64, Gutierrez has no basis to assert that his new evidence and theories would cause Saenz to disregard the CCA's previous holdings. To the contrary, Gutierrez admits, Pet. Br. 39, that he *already* presented this evidence to

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confession admitting to planning the robbery and putting himself at the scene of the murder, eyewitness testimony placing him at the scene, and the incriminating statements of Garcia and Gracia. *See supra* at 4 & n.2, 5-6; *accord* JA.585a-587a.

the state courts in conjunction with his second motion for DNA testing, yet Saenz nevertheless "stated his opposition" to that motion, Pet. Br. 38.[9] Gutierrez offers no reason to think Saenz will suddenly have a change of heart.

### 3. Gutierrez cannot establish redressability by adopting a new theory of injury.

Unable to show how the narrow declaratory judgment he obtained would redress the injury he suffers—namely the "denial of access to the requested [DNA] evidence," Pet. Br. 28—Gutierrez attempts to reconceptualize (at 32-34, 35) his Article III injury as a "procedural injury" sounding in due process: the deprivation of "his right to be heard, that is, his right to develop and assert his death-eligibility claim" via another subsequent state habeas application. The Court should reject this sleight of hand.

**a.** At the outset, the notion that the district court's declaratory judgment could have a "possible, indirect benefit in a future lawsuit," here a hypothetical third

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[9] In addition to presenting his allegedly new evidence and theories to a trial court "in support of his [second] Chapter 64 motion" for DNA testing, Pet. Br. 39, Gutierrez also presented them to the CCA when he filed a *third* state habeas application (his second subsequent one). *Compare* Pet. Br. 39, *with* Subsequent Appl. For Post-Conviction Writ of Habeas Corpus 12, 13, 75 n.8, *Ex parte Gutierrez*, No. 98-CR-1391 (107th Dist. Ct., Cameron County, Tex. June 8, 2020) (per curiam). The CCA dismissed that application as an abuse of the writ because the "specific facts," Tex. Code Crim. Proc. art. 11.071, § 5(a), Gutierrez marshalled did not meet the standards for overcoming Texas's bar on subsequent habeas applications, *Ex parte Gutierrez*, No. WR-59,552-05, 2020 WL 3118514, at *1 (Tex. Crim. App. June 12, 2020). So while Gutierrez is correct that no court has considered these supposedly new facts on plenary merits review, he is wrong to say (at 39) that "no court has ever considered" them.

subsequent state habeas application, does not allow Gutierrez to bootstrap redressability for the injury he asserts in this lawsuit: access to DNA testing. *Juv. Male*, 564 U.S. at 937; *see Brackeen*, 599 U.S. at 294. Under *Reed*, the only question is whether a declaratory judgment would significantly increase the likelihood that "the state prosecutor would grant access to the requested evidence." 598 U.S. at 234. Whether the district court's declaratory judgment might prove useful in facilitating a future state habeas application "does not preserve standing" here. *Brackeen*, 599 U.S. at 294.

Moreover, Gutierrez's newfound reformulation of his injury is inconsistent with the way he has described that injury throughout this litigation. In his operative complaint, he alleged that his injury was Saenz's "refus[al] to release the biological evidence for testing," which "thereby prevent[s] Plaintiff from gaining access to exculpatory evidence." JA.457a. In his merits brief to the Fifth Circuit, he defined his injury as an "inability to access DNA testing." Brief of Plaintiff-Appellee 19, *Gutierrez v. Saenz*, No. 21-7009 (5th Cir. Aug. 1, 2022). And in this Court, Gutierrez relied on *Reed* to identify his injury as denial of access to evidence for DNA testing, both at the certiorari stage, Pet. 3, 14, and at the merits stage, Pet. Br. 28. But regardless of how Gutierrez chooses to characterize his Article III *injury*, that still does not solve his *redressability* problem. After all, even assuming that access to DNA testing is necessary to facilitate his ability to challenge his death sentence via a subsequent state habeas application,[10] he *still*

[10] As described more fully in Respondents' brief to the Fifth Circuit, it is not. The district court wrongly held that Article 11.071, § 5(a) would be rendered illusory if convicts cannot obtain DNA testing to challenge their sentence under Chapter 64. But even

cannot not show how the district court's declaratory judgment will redress that injury. Multiple, independent state-law grounds that are unaffected by the district court's declaratory judgment continue to support Saenz's decision to deny Gutierrez access to the evidence—and thus block his path to acquiring and presenting such evidence in a state habeas application, too. *See supra* at 25-26.

Gutierrez argues (at 34) that finding a lack of redressability here because other state-law grounds continue to make Gutierrez ineligible for the death penalty would be akin to a court approving the government's seizure of property without a pre-deprivation hearing because the owner is behind on installment payments, *Fuentes v. Shevin*, 407 U.S. 67, 83-84 (1972), or entering a default judgment against a party without notice because the defendant did not have any meritorious defense, *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988).

These analogies are inapt. A convict has no "free-standing" constitutional "right to DNA evidence"—or for that matter a constitutional right to state habeas

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without the availability of such DNA testing, the CCA regularly considers applications under that provision and, in fact, has granted merits review of claims alleging ineligibility for the death penalty under it. *See, e.g.*, *Ex parte Milam*, No. WR-79,322-04, 2021 WL 197088, at *1 (Tex. Crim. App. Jan. 15, 2021) (per curiam); *Ex parte Weathers*, No. WR-64,302-02, 2012 WL 1378105, at *1 (Tex. Crim. App. Apr. 18, 2012) (per curiam). *See* Brief for Defendants-Appellants 32, *Gutierrez v. Saenz*, No. 21-70009 (5th Cir. Feb. 14, 2022). More fundamentally, the district court's holding discounts the possibility that other evidence apart from DNA material may provide viable support in an Article 11.071 proceeding. *Id.* For example, the defendant might discover new phone records, a witness might recant crucial testimony, or the defendant might find newly discovered video or audio evidence. *Id.*

review, *Murray*, 492 U.S. at 7-8—but a State may afford him a liberty interest via a "state-created right" to such evidence, *Osborne*, 557 U.S. at 68. In creating such a right, a State "has more flexibility in deciding what procedures are needed in the context of postconviction relief," given the diminished liberty interests of a convict as compared to a "free man." *Id.* at 68-69. And "[f]ederal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided." *Id.* at 69. But it is hardly a constitutional problem that Texas's DNA testing statute imposes "conditions and limits on access to DNA evidence," "just as the federal statute and all state statutes" do. *Id.* at 70. Nor has Gutierrez shown that Chapter 64's prerequisites "are fundamentally inadequate to vindicate the substantive rights provided." *Id.* at 69. So Gutierrez's analogy to outright denials of the right to be heard are simply wrong.

In all events, *Fuentes* and *Peralta* establish the proposition that "[t]he right to be heard does not depend upon an advance showing that one will surely prevail at the hearing." *Fuentes*, 407 U.S. at 87. But Gutierrez's inability to meet Chapter 64's requirements is not analogous to the denial of notice or the opportunity to be heard. Indeed, such a claim would be difficult to make here, where Gutierrez has filed three separate motions for DNA testing (each of which was carefully considered by the CCA), three state habeas applications, and one federal habeas petition. *See supra* at 8-13, 16-17, 32 n.9.

**b.** Even further afield is Gutierrez's invocation (at 35) of the concept of a "procedural injury" by reference to the principle that a "person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards

for redressability and immediacy." *Lujan*, 504 U.S. at 572 n.7. Gutierrez cannot use this rule to duck his obligation to prove redressability.

Gutierrez claims (at 35) that Texas's statute governing subsequent state habeas applications in death-penalty cases, Tex. Code Crim. Proc. art. 11.071, § 5(a)(3), provides him a "procedural right to protect [his] concrete interest in seeking relief from [his] death sentence[]." Yet Gutierrez errs out of the gate because, even if Article 11.071 confers a procedural right on Gutierrez, he is not "asserting that right," *Lujan*, 504 U.S. at 572 n.7, to file a subsequent habeas application in *this* federal civil rights lawsuit. Instead, this suit challenges the constitutionality of a separate statute that governs access to DNA testing. Tex. Code Crim. Proc. ch. 64. Thus, Gutierrez is not entitled to take advantage of any rule that allows for a relaxed showing of redressability in "procedural rights" cases because he is not asserting in *this* case the procedural right he claims he was denied. And again, a "possible, indirect benefit in a future lawsuit" is not enough to ground redressability. *Juv. Male*, 564 U.S. at 937.

Furthermore, the procedural right Gutierrez asserts here—filing a subsequent state habeas application—is different in kind from the procedural rights in the APA and environmental-law cases he cites. *See* Pet. Br. 6-7, 35. Those cases involve *freestanding* procedural rights, such as the preparation of an environmental impact statement, *Lujan*, 504 U.S. at 572 n.7, an opportunity for notice-and-comment and negotiated rulemaking, *Brown*, 600 U.S. at 557-58, and a "statutory consultation obligation" under the Endangered Species Act, *Ctr. for Biological Diversity v. Env't Prot. Agency*, 861 F.3d 174, 182 (D.C. Cir. 2017). Nothing in the rights-creating language

of those statutes requires a plaintiff to show the unlawfulness of the federal agency's underlying substantive action—licensing a dam, *Lujan*, 504 U.S. at 572 n.7, forgiving loans, *Brown*, 600 U.S. at 559, or authorizing the use of a pesticide, *Ctr. for Biological Diversity*, 861 F.3d at 177—*before* those rights can be vindicated. *See, e.g.*, 5 U.S.C. § 553(b), (c) (APA notice and comment); 16 U.S.C. § 1536(a)(2) (consultation); 20 U.S.C. § 1098a(a)-(b) (negotiated rulemaking); 42 U.S.C. § 4332(2)(C) (environmental impact statement).

But here, the right to file a subsequent habeas application *is* dependent upon an applicant making a preliminary showing that the government's underlying substantive conduct—imposition of a death sentence—was unlawful. *See* Tex. Code Crim. Proc. art. 11.071, § 5(a)(1), (3). Specifically, that applicant must make a showing of "specific facts" that the claim was previously unavailable as well as a "prima facie showing of merit," *Canales v. Stephens*, 765 F.3d 551, 565 (5th Cir. 2014) (citing Tex. Code Crim. Proc. art. 11.071 § 5(a)(1)),[11] or specific facts showing by clear and convincing evidence that no rational factfinder would have found in the State's favor on one of the special issues but for a constitutional violation, Tex. Code Crim. Proc. art. 11.071 § 5(a)(3), *Rocha v. Thaler*, 626 F.3d 815, 832 (5th Cir. 2010). Because this procedural right incorporates a substantive standard that must be met, Gutierrez, in this instance, must indeed make a preliminary showing that "he will be successful in vacating his death sentence" in order to show that his "procedural right" has been violated. Pet. Br. 36. Gutierrez is therefore wrong to argue (at 31-32, 35) that

[11] As *Canales* explained, the CCA applies § 5(a) sequentially, and if a claim is dismissed because it was previously available, the dismissal is a procedural one. *Canales*, 765 F.3d at 565.

the APA and environmental-law cases are "illuminat[ing]" here or would be "call[ed] into question." Instead, they are simply inapposite.

**4. The Fifth Circuit did not fashion a novel redressability test but faithfully applied this Court's decision in *Reed.***

Lastly, Gutierrez contends (at 5, 22, 27) that the Fifth Circuit fashioned a "novel" test for redressability by requiring courts to "speculate" or "predict" what a defendant "might do following a declaratory judgment" and to "scour" the state-court record to make that determination. He then argues (at 22, 31) that the Fifth Circuit's rule will encourage prosecutors to ignore court orders. All three arguments are meritless.

**a.** Gutierrez first criticizes the Fifth Circuit (at 5, 25, 27, 31) for deploying a redressability test that depends upon making a "predictive judgment" or "speculative compliance-prediction" about what the state prosecutor would do following entry of a declaratory judgment. But Gutierrez is fighting this Court's own precedent. It is *Reed* itself that requires courts to make "a prediction about what the state Respondents would do in the event that a declaration were entered against them," Pet. Br. 25, by considering whether entry of a declaratory judgment "'would amount to a significant increase in the *likelihood*' that the state prosecutor would grant access to the requested evidence," *Reed*, 598 U.S. at 234 (emphasis added) (quoting *Evans*, 536 U.S. at 464); *see also id.* (observing that it is "'substantially *likely*' that the state prosecutor would abide by" the district court's declaratory judgment (emphasis added)).

Nor did *Reed* conjure this rule out of thin air: it expressly derived this principle from *Evans*, a case in which this Court held that a declaratory judgment or

injunction requiring the Secretary of Commerce to "recalculate" population data in certain states for the 2000 decennial census due to the use of "legally improper counting methods" and then "recertify the official result," would redress Utah's injury of receiving one less member in the House of Representatives. 536 U.S. at 460-61. The Court explained that the Secretary's submission of a new census report containing corrected population calculations "would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered" because the Court deemed it "substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision." *Id.* at 464 (quoting *Franklin*, 505 U.S. at 803).

It is thus this Court's redressability precedent, not some newfound test manufactured by the Fifth Circuit or Saenz, that requires a "predictive judgment," Pet. Br. 27, about whether issuance of the declaratory judgment "would amount to a significant increase in the likelihood" that Gutierrez would obtain DNA testing, *Reed*, 598 U.S. at 234. Gutierrez does not ask this Court to overrule or modify *Reed* or *Evans*, so he must litigate within their confines. *See, e.g.*, *Bank of Am., N.A. v. Caulkett*, 575 U.S. 790, 795 & n.† (2015); *see also United States v. Sineneng-Smith*, 590 U.S. 371, 375-76 (2020).

**b.** Gutierrez is also wrong to argue (at 5, 22, 27) that the Fifth Circuit grafted onto *Reed*'s redressability test a new requirement that courts "scour[] the state court record" to assess redressability in a Section 1983 DNA-testing case.

The Fifth Circuit held that "*Reed* does not apply when a Section 1983 plaintiff is seeking a declaratory

judgment that some state statute or rule violates federal law, but the highest state court already considered that possible violation and found it would not justify the relief being sought." Pet.App.12. That is not a "novel test," Pet. Br. 5, but a particular application of *Reed*'s rule that a declaratory judgment must "significant[ly] increase" the "likelihood that the state prosecutor would grant access to the requested evidence" for it to redress the injury associated with the denial of access to such evidence, *Reed*, 598 U.S. at 234. And applying the Fifth Circuit's decision does not require a court to plumb the depths of the state-court record, but simply to consult judicial opinions from the State's highest court to assess what it has already said about the state statute or rule at issue in the federal case. True, the Fifth Circuit did briefly examine the federal- and state-court briefing in *Reed* to determine whether "the proposed distinction . . . actually distinguishes *Reed*." Pet.App.12-13 & n.4. But that examination was part of the Fifth Circuit's determination whether to *"adopt"* the rule, Pet.App.12—not a component of how courts will *apply* it going forward.

**c.** Finally, there is no merit to the argument that the Fifth Circuit's test would allow a defendant to defeat standing by simply refusing to comply with a declaratory judgment. Pet. Br. 22, 31; CAC Amicus 20-23.

Saenz has never indicated that he would not comply with the district court's declaratory judgment by, for example, continuing to withhold the requested evidence on the ground that Gutierrez can only obtain DNA testing to challenge his conviction but not his sentence. *See* Pet. Br. 38 (acknowledging that Saenz previously argued that the declaratory judgment was "law of the case" and "binding"). But the fact that Saenz can continue to deny access to DNA-testing evidence by relying on *other*,

independent state-law grounds, *supra* at 25-26, hardly amounts to "noncompliance" with that declaratory judgment. Pet. Br. 31. It is the "preclusive effect" of a declaratory judgment that binds parties to that judgment and "saves proper declaratory judgments from a redressability problem." *Brackeen*, 599 U.S. at 293. But a declaratory judgment cannot have preclusive effect on issues or claims it did not decide: "A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact *distinctly put in issue and directly determined* by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . .'" *Montana v. United States*, 440 U.S. 147, 153 (1979) (emphasis added) (quoting *S. Pac. Ry. Co. v. United States*, 168 U.S. 1, 48-49 (1897)).

Here, the district court did not declare unconstitutional Chapter 64's requirement that a trial court find that "identity was or is an issue in the case," Tex. Code Crim. Proc. art. 64.03(a)(1)(C), and that a convict show that "the request for the proposed DNA testing is not made to unreasonably delay the execution of [the] sentence or administration of justice," *id.* art. 64.03(a)(2)(B). So Saenz remains free to rely on those two grounds—the former endorsed by the CCA and the latter by a state trial court—to deny access to DNA testing without running afoul of the district court's declaratory judgment. *See supra* at 26-27. Similarly, the district court's declaratory judgment did not disturb the CCA's repeat holding that Gutierrez would not be entitled to DNA testing even if Chapter 64 applied to challenges to a convict's sentence because he "cannot show that the jury would have answered the punishment issues differently should he obtain exculpatory DNA results," JA.479a; *see* JA.565a-

566a; JA.603a. Saenz does not in any sense defy the district court's declaratory judgment by continuing to rely on this state-law finding to deny access to the evidence Gutierrez seeks.[12]

## II. Alternatively, This Case Is Now Moot.

Alternatively, this case should be dismissed for lack of jurisdiction because it is now moot. Through this Section 1983 action, Gutierrez seeks a declaration that his procedural due process rights are violated by Chapter 64's restriction of access to DNA testing to only those who are challenging their convictions but not those who are challenging their sentences. JA.456a-458a. To show that this declaratory judgment will redress his injury—"denial of access to the requested [DNA] evidence," Pet. Br. 28—Gutierrez must demonstrate that the declaratory judgment would "significant[ly] increase ... the likelihood that the state prosecutor would grant access to the requested evidence." *Reed*, 598 U.S. at 234. But Gutierrez already attempted to use the district court's declaratory judgment to compel Saenz to hand over the

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[12]In his certiorari petition, Gutierrez supplied (at 18-19) an additional argument: the Fifth Circuit erred in distinguishing *Reed* because in that case the CCA also offered additional state-law grounds for denying Reed access to DNA testing besides the chain-of-causation requirement he challenged in federal court; yet this Court did not look to those grounds in assessing standing. But in *Reed*, Goertz did not argue that independent state-law grounds not at issue in the case demonstrated a lack of redressability. *See Reed* Respondent's Br., *supra*, at 37-39. So the Fifth Circuit correctly invoked, Pet.App.13, this Court's longstanding principle that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (quoting *Webster v Fall*, 266 U.S. 507, 511 (1925)).

evidence for testing, and Saenz refused—a decision that was upheld by the CCA under state law. Any declaratory judgment issued by the district court, then, cannot affect Gutierrez's rights or provide him any effectual relief—*i.e.*, access to evidence for DNA testing. The proceedings surrounding Gutierrez's third motion for DNA testing have therefore rendered this case moot.

Article III permits federal courts to adjudicate only "actual, ongoing controversies." *Honig v. Doe*, 484 U.S. 305, 317 (1988); *see* U.S. Const. art. III; *see also* 28 U.S.C. § 2201(a) (explaining that a federal court may only issue a declaratory judgment in "a case of actual controversy"). Thus, "[t]o qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.'" *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). But "[i]f an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Genesis Healthcare Corp.*, 569 U.S. at 72 (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477-78 (1990)).

"Mootness has been described as 'the doctrine of standing set in a time frame.'" *Arizonans for Off. Eng.*, 520 U.S. at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)). It reflects the principle that "[f]ederal courts may not 'decide questions that cannot affect the rights of litigants in the case before them' or give 'opinion[s] advising what the law would be upon a hypothetical set of facts.'" *Chafin*, 568 U.S. at 172 (quoting *Lewis*, 494 U.S. at 477). True, "a case 'becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" *Id.*

(quoting *Knox v. Serv. Emps. Int'l Union, Loc. 1000*, 567 U.S. 298, 307 (2012)). Nevertheless, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome" a court should dismiss the case as moot. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)).

In this case, an "intervening circumstance deprives" Gutierrez of a "personal stake in the outcome of this lawsuit," *Genesis Healthcare Corp.*, 569 U.S. at 72: his unsuccessful effort to use the district court's declaratory judgment as a hook for compelling Saenz to turn over the requested evidence for DNA testing. Gutierrez's theory of redressability is built on the notion that issuance of the district court's declaratory judgment would redress his injury by "significant[ly] increas[ing] . . . the likelihood that" Saenz "would grant access to the requested evidence." Pet. Br. 28 (quoting *Reed*, 598 U.S. at 234). But this theory has now been affirmatively disproven by Gutierrez's failed attempt to use the declaratory judgment as the basis for filing a third Chapter 64 motion to compel Saenz to turn over the evidence. Indeed, the CCA agreed with Saenz that the district court's declaratory judgment did nothing to alter Gutierrez's ultimate ineligibility for DNA testing under Chapter 64. Consequently, the district court's declaratory judgment is purely advisory and "cannot affect the rights of" Gutierrez to obtain DNA testing. *Chafin*, 568 U.S. at 172.

This is, therefore, the unique case where it is "impossible" for the district court "to grant any *effectual* relief" to Gutierrez. *Id.* (emphasis added). The CCA's decision is the final, binding determination of the effect of the district court's declaratory judgment on Gutierrez's right to DNA testing under Texas law. Saenz has already

indicated that he does not view the declaratory judgment as changing Gutierrez's ineligibility for DNA testing under Chapter 64 (a view the CCA agreed with), and Gutierrez can offer nothing but speculation that Saenz might someday change his mind on his own volition (not because of the district court's declaratory judgment).

Gutierrez cannot use this appeal to belatedly challenge the CCA's decision holding that he is ineligible for DNA testing notwithstanding the declaratory judgment, because he did not seek certiorari review of that decision. Only this Court may review the decisions of a state's highest court, and only through a petition for a writ of certiorari. 28 U.S.C. § 1257(a); *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005) (explaining that section 1257(a) "vests authority to review a state court's judgment solely in this Court"). Thus, Gutierrez cannot now attack the CCA's 2024 holding. Nor, under the *Rooker-Feldman* doctrine, can he later file a complaint in federal court "inviting district court review and rejection" of the CCA's 2024 holding. *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). That is because federal district courts have "strictly original" jurisdiction and have no authority to exercise what would effectively be appellate jurisdiction over state appellate courts. *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923). Nor, finally, can Gutierrez repackage an impermissible appeal of the CCA's decision as an original Section 1983 action that "in substance would be appellate review of the state judgment." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994); *see also Reed*, 598 U.S. at 244 (Thomas, J., dissenting) (explaining that "a case or controversy is appellate in nature when the relief-seeking party's injury is traceable to the allegedly erroneous action *of another court*").

Because intervening proceedings have demonstrated that Gutierrez's request for declaratory relief is now moot, the Court can also dismiss this appeal on this independent jurisdictional ground.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
William.Cole@oag.texas.gov
(512) 936-1700

AARON L. NIELSON
Solicitor General

WILLIAM F. COLE
Deputy Solicitor General
*Counsel of Record*

CAMERON FRASER
Assistant Solicitor General

ERIC ABELS
JEFFERSON D. CLENDENIN
Assistant Attorneys General

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