

IN THE
Supreme Court of the United States

BARTHOLOMEW GRANGER,
Petitioner,

v.

ERIC GUERRERO, Director, Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF
CERTIORARI**

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CAPITAL CASE

QUESTION PRESENTED

Should this Court review the independence and adequacy of Texas's subsequent-writ bar when a federal habeas petitioner has never challenged the imposition of a procedural bar on those grounds in the federal courts?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner Bartholomew Granger is a Texas inmate sentenced to death for causing the death of Minnie Sebolt while retaliating against and intending to kill the mother of his children for her service as a witness against him. After unsuccessfully challenging his conviction and sentence in the state courts, Granger sought federal habeas relief. The district court denied relief, and the Fifth Circuit denied Granger a certificate of appealability (COA). As relevant here, the Fifth Circuit found beyond debate the district court's determination that Granger's ineffective-assistance-of-trial-counsel (IATC) claim related to the ballistics evidence was barred by Texas's abuse-of-the-writ bar.

Granger now requests certiorari review of the Fifth Circuit's decision. Glomming onto the Court's then-pending decision in *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025), Granger claims Texas's abuse-of-the-writ bar is not independent or adequate. However, Granger provides no compelling reason that this Court should exercise its discretion to review the lower courts' decision to uphold Texas's routine and unextraordinary dismissal of abusive ineffectiveness claims. This is especially true given

the vehicle problems Granger's case presents: he never once challenged in the lower federal courts the independence and adequacy of Texas's subsequent-writ bar. The Court cannot, and should not, grant certiorari to review Granger's waived arguments. And the Fifth Circuit was nevertheless correct that the Texas Court of Criminal Appeals's (CCA) abuse-of-the-writ bar precluded relief in Granger's case. Certiorari review should thus be denied.

STATEMENT OF THE CASE

I. Facts of Granger's Capital Murder

The Fifth Circuit summarized the facts related to Granger's capital murder as follows:

Bartholomew Granger was convicted of capital murder and sentenced to death for the March 14, 2012 killing of Minnie Ray Sebolt. At the time of the murder, Granger was on trial in Jefferson County, Texas for sexual assault of a child—his then-20-year-old daughter, Samantha Jackson. Samantha and her mother, Claudia Jackson, testified against Granger on Tuesday, March 13, and Samantha's cross-examination was set to begin the next day, March 14. Rebecca Richard, Granger's estranged wife, was also set to testify on March 14. Granger arrived at the courthouse early that day, and when Samantha, Claudia, and Rebecca approached the courthouse, Granger began shooting at them with a semi-automatic rifle. Both Samantha and Claudia were shot, but luckily survived. However, two bystanders, Sebolt and Leslie King, were also shot, and Sebolt died at the scene. Law enforcement officers responded quickly, and they shot and wounded Granger as he returned to his truck. Granger fled the scene, later

abandoning his truck and taking hostages in a nearby business. Eventually, the hostages overpowered him, and Granger was taken into custody.

At trial, Granger testified during both the guilt and punishment phases. He admitted to shooting Samantha, but denied causing Sebolt's death or any other person's wounds. He claimed he had not shot in the direction of the courthouse at all. The main issue at the guilt phase of trial was thus the ballistics evidence—namely, whose bullets hit and ultimately killed Sebolt: Granger's or the officers'? The jury found Granger guilty of capital murder.

Granger v. Lumpkin, No. 24-70001, 2024 WL 3582651, at *1 (5th Cir. July 30, 2024).

II. Conviction and Postconviction Proceedings

Granger was convicted and sentenced to death for capital murder. ROA.2813–15. The CCA affirmed Granger's conviction and sentence on direct review. *Granger v. State*, No. AP-77,017, 2015 WL 1875907, at *1 (Tex. Crim. App. Apr. 22, 2015). While direct appeal was pending, Granger filed his initial state application for writ of habeas corpus. ROA.12566–689. Based upon the trial court's findings and recommendations and its own review of the record, the CCA denied relief. *Ex parte Granger*, No. WR-83,135-01, 2017 WL 3379285, at *5 (Tex. Crim. App. May 17, 2017). This Court declined certiorari review. *Granger v. Texas*, 138 S. Ct. 470 (2017).

Granger turned to the federal courts, filing an initial federal habeas petition and then an amended federal habeas petition raising twenty claims for relief. ROA.51–217, 953–1121. At Granger’s request, the district court stayed the proceedings so Granger could exhaust twelve claims in state court, including the IATC ballistics-evidence claim at issue here. ROA.1347–54. The CCA dismissed Granger’s subsequent application as an abuse of the writ without considering the merits of the claims. *Ex parte Granger*, No. WR-83,135-02, 2020 WL 915434, at *1 (Tex. Crim. App. Feb. 26, 2020) (unpublished). Upon return from state court, Granger filed a second amended petition. ROA.1384–1563. In an exhaustive 221-page opinion, the district court denied Granger relief, holding most of Granger’s claims were procedurally barred from federal review. ROA.2504–2724. The district court denied Granger’s request to alter or amend the judgment. *See* ROA.2774–86.

Granger sought a COA on three IATC claims, including the instant ballistics-evidence claim. *See Granger*, 2024 WL 3582651, at *2. The Fifth Circuit declined to issue one, holding reasonable jurists would not debate that Granger’s IATC ballistics-evidence claim was procedurally barred. *Id.* at *3. Addressing the sole argument Granger raised to overcome the

procedural bar, the Fifth Circuit found Granger could not excuse the default via his state habeas counsel's alleged ineffectiveness. *Id.* The Fifth Circuit alternatively held that reasonable jurists would not debate that Granger's IATC claim was also without merit. *Id.* Granger now seeks certiorari review. Pet. Writ Certiorari (filed Feb. 6, 2025) (Petition). This proceeding follows.

REASONS FOR DENYING THE WRIT

I. Granger Provides No Compelling Reason to Expend Limited Judicial Resources on This Case.

At the outset, the question Granger presents for review is unworthy of the Court's attention. The Court requires those seeking a writ of certiorari to provide "[a] direct and concise argument amplifying the reasons relied on for allowance of the writ." Sup. Ct. R. 14.1(h). The Court, however, would be hard pressed to discover any such reason in Granger's petition, let alone amplification thereof. Granger makes no allegations of circuit or state-court-of-last-resort conflict, no allegation of direct conflict between the lower court and this one, and no important question. *See* Sup. Ct. R. 10(a)–(c). Granger barely even references the Fifth Circuit's opinion in his question presented or his argument in support. *See* Petition ii, 9–15. Indeed, a person reading Granger's petition

could be forgiven for forgetting that Granger is seeking review of a *federal* court's denial of a claim during federal habeas review; rather, Granger's petition reads like he is asking this Court for direct review of a state court opinion. Granger's blatant attempt to piggyback off a then-pending grant of certiorari is insufficient justification for this Court to exercise its discretion to review the Fifth Circuit's run-of-the-mill application of federal procedural default doctrine.

The best that Granger musters is a conclusory statement that, because Texas's abuse-of-the-writ bar is frequently applied by the Texas state courts, and upheld by the federal courts, his case "raises procedural questions at least as important as those in *Glossip*." Petition 9. But the Fifth Circuit appropriately applied federal procedural doctrine to a long-standing state law ground, and Granger's protestations to the contrary are no more than mere disagreement with the outcome, which is, at best, simply a request for error correction. *See* Sup. Ct. R. 10 ("A petition . . . is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."); *see also Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting) ("Error correction is 'outside the mainstream of the Court's functions.'" quoting Eugene

Gressman et al., *Supreme Court Practice* 351 (9th ed. 2007))). Granger's petition should be denied for this reason alone.

II. This Case Is a Poor Vehicle Because Granger has Doubly Forfeited the Argument.

The entirety of Granger's fifteen-page petition asks this Court to address an argument that he has never pressed in the courts below. As the Court is one of "final review and not first view," *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012) (citation omitted), it should deny certiorari review.

In the district court, Granger's only reference to the alleged inadequacy of Texas's procedural bars was a mere reservation of rights. See ROA.1399. Indeed, in an introductory "statement about exhaustion and procedural default," Granger argued that his claims (all twenty of them) were either "exhausted or f[e]ll within an exception to the exhaustion requirement." *Id.* He then baldly alleged that "[n]o claims are procedurally barred" because "either: (1) [the CCA] was mistaken; (2) [the bar] was not an adequate and independent state ground; and/or (3) there is cause and prejudice and/or a miscarriage of justice." *Id.* However, rather than affirmatively argue which of his claims should not be barred

under which doctrine, Granger simply “reserve[d] his right to reply to any” affirmative defense the Respondent would raise. *Id.*

Granger nonetheless preemptively addressed the procedural default of his IATC ballistics-evidence claim in his petition, but only to argue that the default should be excused because of state habeas counsel’s alleged ineffectiveness in failing to raise it. ROA.1531. Granger claimed state habeas counsel’s failure to investigate and raise the claim was not strategic. *Id.* Granger did not argue Texas’s abuse-of-the-writ bar was not independent or adequate.

And despite reserving his right to raise such argument in his reply brief, Granger did not do so then either. *See* ROA.2119–20. Instead, Granger repeated his argument that the IATC ballistics-evidence claim was not procedurally barred because state habeas counsel’s alleged ineffectiveness excused the default. ROA.2119 (citing *Trevino v. Thaler*, 569 U.S. 413, 429 (2013); *Martinez v. Ryan*, 566 U.S. 1, 14 (2012)). Granger argued that the Director’s contention that state habeas counsel strategically chose not to raise a meritless claim was mere speculation that should be resolved at an evidentiary hearing, and that it was nevertheless incorrect. *Id.* Granger’s argument was simple: “[t]he default

is excused,” not that the bar wasn’t independent or adequate in the first place. *See* ROA.2120.

It should come as no surprise, then, that the district court found Granger’s IATC ballistics-evidence claim defaulted because he could not excuse it. *See* ROA.2679–81. True, earlier in its opinion, the district court provided a recitation of the general law governing procedural default, including the independence and adequacy of Texas’s abuse-of-the-writ doctrine. *See* ROA.2458–59.¹ But when addressing the *instant* claim, the district court found “Granger fail[ed] to demonstrate that state habeas counsel were ineffective, as required to overcome the procedural default of the underlying IATC claim through *Martinez*.” ROA.2681. The district court thoroughly reviewed—and rejected—Granger’s specific arguments about state habeas counsel’s alleged failure to investigate or lack of

¹ Granger cites to this page of the district court’s opinion to suggest that the district court’s finding that the abuse of the writ bar was independent and adequate was “[c]entral to [its] holding” that Granger’s IATC ballistics-evidence claim was unexhausted and procedurally barred. *See* Petition 7–8 (citing ROA.2548). But the page Granger cites was the district court’s discussion and resolution of his *first* claim for relief, which the district court characterized as “essentially a cumulative error claim.” *See* ROA.2546. While the instant IATC ballistics-evidence claim Granger now presses was *part* of that cumulative error claim, it can hardly be said that the district court’s generic statements about the independence and adequacy of the bar, *see* ROA.2548–49, were “central” to its holding that Granger’s ballistics-evidence claim was barred.

strategic decision-making. *See* ROA.2680–81. The district court did not pass upon any argument that Texas’s procedural dismissal wasn’t independent or adequate to begin with. *See generally id.*

Granger’s briefing in the Fifth Circuit also omitted this argument. Across both his COA application and his reply brief, his argument for why the district court erred comprised three total paragraphs, focused yet again on state habeas counsel’s alleged ineffectiveness. Appl. COA 56–57, *Granger*, 2024 WL 3582651 (filed Apr. 3, 2024); Reply 23, *Granger*, 2024 WL 3582651 (filed July 3, 2024). Worse, Granger never cited *Glossip*, even though this Court had already granted certiorari review in that case by the time Granger filed his COA application. *Compare* Appl. COA (filed Apr. 3, 2024), *with Glossip v. Oklahoma*, 144 S. Ct. 691 (2024) (petition for certiorari granted January 22, 2024).

Granger’s inadequate presentation of these arguments in the lower court both precludes consideration of the claim on certiorari review and makes his case a poor vehicle for addressing them. *Meyer v. Holley*, 537 U.S. 280, 292 (2003) (“But in the absence of consideration of that matter by the Court of Appeals, we shall not consider it.”); *Pennsylvania Dept. of Corr. v. Yeskey*, 524 U.S. 206, 212–13 (1998) (“Where issues are neither

raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.”). The Court is not in the business of passing on arguments forfeited below. *See, e.g., Jones v. Hildebrant*, 432 U.S. 183, 188–89 (1977). Certiorari should be denied.

III. The Fifth Circuit’s Straightforward and Correct Application of Procedural Default Does Not Warrant This Court’s Review.

Though Granger says little about the Fifth Circuit’s opinion, his argument boiled down is that the Fifth Circuit incorrectly held that his IATC ballistics-evidence claim is procedurally barred by an independent and adequate state law ground. *See* Petition 9. Granger is wrong.

“A federal habeas court will not review a claim rejected by a state court ‘if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.’” *Beard v. Kindler*, 558 U.S. 53, 55 (2009) (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). To be adequate, a state law ground must be “firmly established and regularly followed.” *Lee v. Kemna*, 534 U.S. 362, 376 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). To be independent, the state law ground must “not depend upon a federal constitutional ruling on the merits.” *Stewart v. Smith*, 536 U.S.

856, 860 (2002). There is no presumption of federal law consideration. *Coleman*, 501 U.S. at 735. Rather, the state court’s decision must “fairly appear to rest primarily on federal law, or to be interwoven with the federal law.” *Id.* Where there is no “clear indication that a state court rested its decision on federal law, a federal court’s task will not be difficult.” *Id.* at 739–40.

Here, there is no question that Granger’s IATC claim was presented to the state court for the first time in Granger’s subsequent application. *See Granger*, 2024 WL 3582651, at *3. The CCA, finding Granger “failed to satisfy the requirements of [Texas Code of Criminal Procedure] Article 11.071 § 5(a),” dismissed Granger’s application “as an abuse of the writ without considering the merits of the claims.” *Ex parte Granger*, 2020 WL 915434, at *1. As the Fifth Circuit found, this means Granger’s claim is procedurally barred from federal habeas review. *See Granger*, 2024 WL 3582651, at *3.

Before this Court, Granger does not challenge the adequacy of Section 5, and with good reason—the Fifth Circuit “has held that, since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an . . . adequate state ground for the

purpose of imposing a procedural bar.” *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008); *cf. Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 45 (2017) (noting that this Court generally defers to a court of appeals’s interpretation of their respective states’ laws). The only question, then, is whether Section 5 is independent of federal law.

Granger argues that Texas’s abuse-of-the-writ bar, like the bar at issue in *Glossip*, is interwoven with federal law. *See* Petition 9–14. Specifically, Granger argues that Article 11.071 § 5 requires the applicant to satisfy two prongs: 1) he must make a prima facie showing of a federal constitutional claim, and 2) he must show the factual or legal unavailability of his claim. *See id.* at 10–11 (citing *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007); *Ex parte Staley*, 160 S.W.3d 56, 66 (Tex. Crim. App. 2005) (per curiam)). Granger argues that both prongs of the CCA’s analysis are interwoven with federal law because the former is necessarily a merits determination on a question of federal constitutional law and the latter’s legal-unavailability requirement involves questions of federal law. *Id.* at 11–13. Granger emphasizes that the CCA did not specify upon which prong it was dismissing his

subsequent application; thus, it is impossible to tell whether the CCA relied on state or federal law. *Id.* at 14. Granger is wrong on all fronts.

The CCA explicitly stated in Granger’s case that it was not considering the merits of Granger’s claims, and Granger’s speculation about sub silentio federal law consideration cannot overcome this express statement. *See Coleman*, 501 U.S. at 735. Indeed, Granger’s characterization of the CCA’s decision as unexplained, *see* Petition 9, and “opaque,” *id.* at 14, dooms his argument because if there is no *clear* indication that a state court rested its decision on federal law, this Court will *not* presume that such a state court decision was interwoven with federal law. *Coleman*, 501 U.S. at 735, 739–40; *see also Rocha v. Thaler*, 626 F.3d 815, 835 (5th Cir. 2010) (rejecting contention “that [Article 11.071] § 5(a)(1) is dependent on federal law in all cases”).

And as the Fifth Circuit has explained, “[i]f the CCA’s decision rests on [factual or legal] availability, the procedural bar is intact.” *Rocha*, 626 F.3d at 835. Conversely, if the CCA determines the claim was *unavailable* but that the applicant failed to make a prima facie showing of merit, “a federal court can review that determination” because it is

interwoven with federal law. *Id.* But importantly, the CCA conducts its Section 5 analysis in that order:

Campbell establishes that the two requirements of § 5(a)(1) should be applied sequentially. The CCA *first* examines whether the factual or legal basis of the claim was unavailable at the time of the original application. Only *if* the applicant can surmount the unavailability hurdle does the CCA proceed to ask whether the application makes out a claim that is prima facie meritorious.

Rocha, 626 F.3d at 834 (emphasis added); *accord Ex parte Campbell*, 226 S.W.3d at 421–22 (dismissing claim as abuse of the writ where claim was unavailable but without prima facie merit). There is no indication that the CCA proceeded to a prima facie merits analysis in Granger’s case, particularly given that Granger’s sole argument for overcoming Section 5 was (like in the federal courts) that his state habeas counsel’s ineffectiveness should excuse his failure to raise the claim sooner. *See* ROA.13741–50, 13836.

The fact that Granger did not argue either factual or legal unavailability of his IATC ballistics-evidence claim in the state courts also makes his argument that the legal unavailability analysis of Section 5(d) is interwoven with federal law, *see* Petition 13, a non sequitur. Whether legal unavailability *can* be interwoven with federal law (and it’s

not) is irrelevant when it wasn't pressed, much less considered, here. The Fifth Circuit was correct to uphold the CCA's independent and adequate procedural dismissal. *Granger*, 2024 WL 3582651, at *3.

This Court's recent decision in *Glossip* does not change this analysis. In *Glossip*, this Court found Oklahoma's imposition of a procedural bar posed no jurisdictional barrier to this Court's review because Oklahoma "made application of [the state] procedural bar depend on an antecedent ruling on federal law, that is, on the determination of whether federal constitutional error ha[d] been committed." 145 S. Ct. at 626 (quoting *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985)). "After all, [Oklahoma] made application of [its procedural bar] contingent on its determination that the attorney general's confession of federal constitutional error had no basis in law or fact." *Id.* In other words, Oklahoma had engaged in a two-step process, determining *first* that the attorney general's confession of constitutional error was meritless and "[o]nly then" applying a state-law procedural ground. *Id.* at 625. Because Oklahoma's rejection of the attorney general's confession of error "rested exclusively on federal law, so too did its subsequent decision to apply" the state law ground. *Id.*

Simply put, *Glossip* is entirely inapposite because the two-step process Oklahoma employed is directly inverse to the two-step process the CCA employs in run-of-the-mill cases like Granger's. Where Oklahoma first addressed a federal constitutional question, Texas never even reaches that question if, like here, the applicant doesn't get past the unavailability prong. Ultimately, Texas's abuse-of-the-writ bar has been long upheld as an independent and adequate state law ground, and Granger provides no justification to question that. The Fifth Circuit's denial of COA was correct, and Granger's petition should be denied.

IV. The Question Presented Is Not Important Because a Favorable Ruling Would Not Benefit Granger.

Not only was the Fifth Circuit correct to deny Granger a COA on procedural grounds, but a ruling otherwise from this Court would not change Granger's position in the Court below. Indeed, a petitioner seeking a COA on a procedural ruling must show both that reasonable jurists would debate "whether the petition states a valid claim of the denial of a constitutional right" *and* "whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Here, the Fifth Circuit denied a COA because Granger failed to prove both grounds: it held the district court's procedural dismissal was

not debatable, *and* reasonable jurists would not debate that Granger failed to show his trial counsel was deficient in their handling of the ballistics evidence. *See Granger*, 2024 WL 3582651, at *3.

Granger does not mention the latter holding even once. *See, e.g., id.* at 8 (describing the Fifth Circuit’s procedural rulings related to default and the consideration of new evidence but not the alternative merits ruling). Because Granger does not even ask this Court to review the Fifth Circuit’s alternative basis for denying a COA,² an opinion that the Fifth Circuit’s procedural ruling was incorrect would have no effect on the outcome of Granger’s case in the court below, rendering such an opinion essentially advisory. *Cf. Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (noting the Court lacks jurisdiction to review independently supported state law direct appeal opinions because, if the state law determination is sufficient to sustain the judgment, “any opinion of this Court on the federal question would be purely advisory”).

² Any attempt by Granger to challenge in his reply brief the Fifth Circuit’s alternative merits decision should be considered waived. *See Irvine v. California*, 347 U.S. 128, 129 (1954) (petitioners cannot “smuggl[e] additional questions into” a case); *see also* Sup. Ct. R. 14.1(a) (“Only the questions set out in the petition, or fairly included therein, will be considered by the Court.”).

In any event, the Fifth Circuit was correct to deny a COA because Granger’s IATC ballistics-evidence claim alternatively lacked merit. Granger argued that the central issue during the guilt phase of his trial was whose bullets—his or the police officers’—killed Sebolt. Appl. COA 48–57. He faulted trial counsel for failing in several respects to bring up rebuttal evidence, object to expert testimony, or adequately prepare their expert to testify. *Id.* at 49–52. Granger argued that, but for counsel’s ineffectiveness, there would have been a reasonable doubt as to the origin of the fatal bullets. *Id.* at 52.

The Fifth Circuit found that “while Granger focuses on the direction of the bullet that killed Sebolt,” the State’s “entire argument on this issue at trial focused on testimony that none of the officers began shooting until Granger was already back by his truck and Sebolt was already down.” *Granger*, 2024 WL 3582651, at *3; *see also* ROA.11242. Indeed, as both the Fifth Circuit and district court agreed, “no amount of evidence regarding the bullet’s *trajectory* could overcome the *temporal* evidence” showing that the only bullets that fatally pierced Sebolt’s femoral vein were Granger’s. *See Granger*, 2024 WL 3582651, at *3; *see also* ROA.2685–86 (district court summarizing the trial testimony in

support). Given the overwhelming evidence that only Granger had shot his gun by the time Sebolt was killed, Granger could not conceivably show he was prejudiced from trial counsel's failure to rebut, nitpick, highlight, minimize, or object to evidence about the *direction* the fatal bullets entered her body. ROA.2685–86.

But the Fifth Circuit also correctly determined Granger couldn't show deficiency either: "Granger's trial counsel still produced the evidence Granger argues was necessary in this appeal[.]" *Granger*, 2024 WL 3582651, at *3. Namely, counsel presented an expert to establish a reasonable doubt as to the State's ballistics evidence based on the trajectory of the entrance and exit wounds and relied on inconsistencies in the expert testimony to suggest that "Miss Sebolt had to be shot from inside the courthouse." *Id.*; *see also* ROA.11139–40, 11211–12. In light of that, the Fifth Circuit was right to conclude Granger could not show deficiency. *Granger*, 2024 WL 3582651, at *3. In sum, because the Fifth Circuit correctly determined Granger's claim alternatively lacked merit—a conclusion which Granger does not even challenge here—this Court should not grant certiorari when the question on which he seeks review is not even an important one in his case.

CONCLUSION

Granger fails to present a compelling reason to grant certiorari review. For all the reasons discussed above, the petition for a writ of certiorari should be denied.

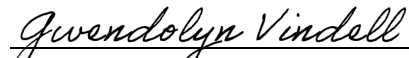
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