

No. 25-1003

IN THE
Supreme Court of the United States

ERIC GUERRERO, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
Petitioner,

v.

DEXTER JOHNSON,
Respondent.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit**

**BRIEF OF PROTASIO APARECE
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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RECORD CITATION GLOSSARY

The state-court record from Dexter Johnson’s capital murder prosecution was filed on the docket of his federal habeas proceeding. *Johnson v. Stephens*, No. 4:11-cv-02466, Dkt. 56 (S.D. Tex. Jan. 12, 2018). *Amicus* cites the testimony from its component volumes by the short forms indicated below.

Guilt-phase testimony:

- Jonnathan Truong,
Dkt. 56-23 (“Truong Tr.”)
- Detective Everett Hargrave,
Dkt. 56-23 (“Hargrave Tr.”)
- Detective Allen Brown,
Dkt. 56-24 (“Brown Tr.”)
- Tazamisia Butler,
Dkt. 56-27 (“Butler Tr.”)
- Tim Hughes,
Dkt. 56-27 (“Hughes Tr.”)
- Louis Ervin,
Dkt. 56-28 (“Ervin Tr.”)
- Protasio Aparece,
Dkt. 56-29 (“Protasio Tr.”)
- Hoang Ngo,
Dkt. 56-29 (“Ngo Tr.”)

Punishment-phase testimony:

- Julie Fletcher,
Dkt. 56-31 (“Fletcher Tr.”)
- Charles Ebert,
Dkt. 56-31 (“Ebert Tr.”)
- Carl Timothy Sanders,
Dkt. 56-32 (“Sanders Tr.”)
- Edgar Cortinas,
Dkt. 56-32–33 (“Cortinas Tr.”)
- Timothy Randle,
Dkt. 56-33–34 (“Randle Tr.”)
- Christina Aparece,
Dkt. 56-37 (“Christina Tr.”)
- State’s closing argument,
Dkt. 56-38 (“State Closing”)

INTEREST OF *AMICUS CURIAE**

Protasio Aparece is the father of Maria Chrisalee “Sally” Lopez Aparece. Sally was 23 years old when Dexter Johnson raped and murdered her. Protasio has an interest in seeing justice carried out for his daughter, and in doing everything he can to ensure that no other family endures the decades of excessive delays in obtaining justice that he and his family have suffered.



* Pursuant to Supreme Court Rule 37.6, *amicus* represents that this brief wasn't authored in whole or in part by any party or counsel for any party. No person or party other than *amicus* or his counsel made a monetary contribution to the preparation or submission of this brief.

STATEMENT

Twenty years ago, in the early-morning hours of Father's Day 2006, Dexter Johnson abducted 23-year-old Maria Chrisalee Lopez Aparece—"Sally" to her family and friends—and her boyfriend, Huy Ngo, at gunpoint. After terrorizing them, Johnson raped Sally in the back seat of her car while his accomplice taunted Ngo. Johnson then marched Sally and Ngo into the woods, shot each of them in the head, and left them for dead. Johnson and his accomplices then took Sally's car joyriding and used her credit cards to fund a shopping spree.

Earlier that evening, Sally had been at home making a card for her father, Protasio Aparece, while he worked a sixteen-hour shift as a registered nurse. After her murder, Sally's family found the unfinished card. They placed it in their living room, in front of the fireplace, alongside Sally's ashes—where it remains today.

Johnson's vicious crimes inflicted unbearable pain on his victims and their families. But that was just the beginning of their suffering. Johnson's serial litigation has robbed the families of even a modicum of peace or closure. It has been two decades since Johnson brutally murdered Sally, and nineteen years since a Harris County jury sentenced him to death—but justice still has not been served.

This Court should vindicate crime victims' "important interest in the timely enforcement of a sentence," *Bucklew v. Precythe*, 587 U.S. 119, 149 (2019), and "powerful and legitimate interest" in "real finality," *Calderon v. Thompson*, 523 U.S. 538, 556 (1998), by reversing the judgment below and ending an ordeal

that has compounded the suffering of Sally's family for over two decades.

1. Protasio and Christina Aparece raised five children—Mark, Ian, Christine, Sally, and Eldon. Protasio Tr. 175:8–15. Sally's given name, Chrisalee, combined Christina's nickname ("Christy") with Protasio's nickname ("Alee"). *Id.* 176:4–8.

Sally's favorite color was pink. Protasio Tr. 177:13–14. At Johnson's trial, Sally's mother remembered she was very "loving" and "caring," "always smiling." Christina Tr. 145:18–21. Sally was attending Wharton Junior College and wanted to be a nurse like her father, who worked as a registered nurse in the surgical unit at Houston's Ben Taub Hospital. Christina Tr. 146:1; Protasio Tr. 178:17, 181:4–8. Sally was—in her mother's words—a "daddy's girl." Christina Tr. 145:22–23.

2. On the evening of Saturday, June 17, 2006—the night before Father's Day—Protasio and Christina decided to see a movie. Protasio Tr. 177:15–24. They invited Sally—who lived with them—but she declined, teasing that movies were "only for the oldies." *Ibid.* So they went without her, and Sally stayed home. *Ibid.*

When Protasio and Christina got home around midnight, Sally was still there—in bed talking on her cell phone. Protasio Tr. 179:18–180:1. She waved at Protasio. *Id.* 180:8. That was the last time he saw Sally alive. *Id.* 181:2.

3. The friend on the other end of Sally's call was Jonnathan Truong, whom she'd known since the eighth grade. Truong Tr. 33:14–19, 35:5–7. Sally told Truong she planned to drive across town that night to

return a set of keys that her boyfriend, Huy Ngo, had left at her house. *Id.* 36:21–23. Ngo’s family—born in Vietnam—had moved first to France and then to the United States in pursuit of the “American dream.” Ngo Tr. 10:3–15.

Sally had waited for her father to come home because they shared a car—a blue Toyota Matrix. Truong Tr. 37:9–16. Sally made the drive from her home in Sugar Land to Houston’s Acres Homes neighborhood, talking on the phone with Truong the whole way. *Id.* 38:23–39:1. Sally arrived outside Ngo’s house, and Ngo got into the car with her. *Id.* 39:2–6; Ervin Tr. 62:23–63:6. Sally told Truong she would call him back in about 15 minutes. Truong Tr. 39:2–6. She never called again.

4. Unbeknownst to Sally and Ngo, Dexter Johnson and four others—Keithron Fields; Fields’s girlfriend, Ashley Ervin; Ashley’s 14-year-old brother Louis; and the Ervins’ cousin, Timothy Randle—were watching them from a black Nissan Sentra down the street. Hughes Tr. 47:12, 48:14–20; Ervin Tr. 30:1–2, 40:14–17.

By that point, Johnson was already deep into a three-month “spree of violence”—committing four murders during a string of “brutal crimes.”¹ In Johnson’s “quest for easy money and cars,” he “showed no mercy.”²

¹ Keri Blakinger, *‘I Can’t Forgive Till You’re Dead’: Execution Set for Brain-Damaged Texas Man Behind 4 Killings*, Houston Chronicle (Dec. 6, 2018), <https://perma.cc/CL88-VVYX>.

² Mike Glenn et al., *5 Held in Houston Spree That Left 4 Dead*, Houston Chronicle (June 27, 2006), <https://perma.cc/F5NF-49A5>.

5. Johnson's crime spree began on March 12, 2006, when he robbed Julie Fletcher, a seventh-grade teacher, at gunpoint outside her apartment complex, taking her cash and credit cards. Fletcher Tr. 21:8–31:19.

On May 26, Johnson shot and killed Brady Davis, Jr.—a 60-year-old retired schoolteacher—at a carwash around 6:00 a.m. Davis had been washing his barbecue pit ahead of Memorial Day weekend. Ebert Tr. 156:1–160:12.

On June 16, Johnson and Alvie Butler approached Jose Olivares and his nephew Edgar Cortinas at a pay phone, demanding money. Cortinas Tr. 147:11–151:10. After shooting and wounding Cortinas, Johnson trained his gun on Olivares and killed him. *Id.* 149:2–6; Sanders Tr. 95:15–25. Police found the quarters Olivares and Cortinas had been using to make their calls scattered on the ground. Sanders Tr. 99:9–23.

6. The next day, Johnson and his crew spent the evening smoking marijuana at a party. Ervin Tr. 38:1–8. He and Fields said “they needed some money” and “wanted to go hit a lick”—slang for “robbing people.” *Id.* 39:4–13; Butler Tr. 57:3–6.

Johnson and his four accomplices left the party. Ervin Tr. 41:1–23. Randle drove. *Ibid.* At Johnson's direction, they stopped at an apartment complex, where Johnson picked up a shotgun. *Id.* 48:5–14.

Johnson then directed Randle to Alpert Street, where he spotted Sally's blue Matrix and told Randle to “stop” and turn around. Ervin Tr. 53:21–54:5. Johnson announced that “he was going to jack the people that was in the car.” *Id.* 105:9–10. He tied a black

bandana over his face and Fields pulled a black hoodie over his head. *Id.* 55:18–19, 57:1–10.

7. Johnson, Fields, and Louis Ervin then approached the Matrix—Johnson armed with his shotgun and Fields with a pistol. Ervin Tr. 57:19–58:6, 63:15–18. Johnson “beat on the window * * * of the driver’s side,” where Sally was sitting, and demanded: “Get out of your car.” *Id.* 63:20–65:10. Sally started “crying,” “shaking her head” and repeatedly telling Johnson no. *Id.* 65:20–22.

Johnson kept beating on the window and pointing his gun at it. Ervin Tr. 66:4–67:3. Sally opened the door. *Ibid.* Johnson “grabbed her by the hair” and threw her in the back seat. *Id.* 67:6–8. Fields pushed Ngo into the back seat. *Id.* 67:14–18.

8. Johnson drove off in the Matrix, with Ervin in the front seat and Fields in the back with Sally and Ngo. Ervin Tr. 76:1–19. Fields dug through Sally’s purse for credit cards. *Id.* 77:10–16. Sally insisted that her father was the only one who knew the PIN needed to activate her credit card—but Johnson insisted “she was lying.” *Id.* 77:19–78:15. While driving, Johnson “turned the shotgun backwards towards her” and “told her, if she d[id]n’t activate the credit card, he was going to shoot her.” *Id.* 80:5–11.

Johnson asked Ervin and Fields if they knew “where some woods was”—but neither did. Ervin Tr. 81:18–82:3. Johnson decided “to ride around until he saw some.” *Id.* 82:3–4. For the next half-hour, Johnson drove while Sally cried and pleaded with her captors to “please let her go”—saying they “could have the car and anything” else but begging them not to hurt

her. *Id.* 82:22–24. Ngo tried to comfort Sally, telling her “that it was going to be all right.” *Id.* 83:2–3.

9. Johnson stopped at a wooded area. Ervin Tr. 83:7–11. Fields forced Ngo out of the car. *Id.* 86:24–87:2. Johnson then “got in the back” with Sally and commanded “her to take her shorts off.” *Id.* 92:5–10. Sally—sobbing—told Johnson “[n]o” and desperately held onto her shorts so Johnson “couldn’t pull them off.” *Id.* 92:16–24. Johnson—shotgun “in one hand”—threatened “that he was going to shoot her if she didn’t let him take them off.” *Id.* 93:8–17.

Johnson stripped Sally naked and raped her in the back seat of her car. Ervin Tr. 87:23–88:1, 92:14–93:12. Fields held Ngo at gunpoint on his knees, taunting him. *Id.* 86:15–88:1.

After Johnson raped Sally, he and Fields decided they were going to “off” Sally and Ngo. Ervin Tr. 97:7–8. Johnson and Fields then marched a naked Sally and shirtless Ngo into the woods and executed them. *Id.* 98:11–100:6; Brown Tr. 90:11–17, 100:24–25 (describing “two fired bullets” recovered from autopsy).

10. Johnson and Fields returned to Sally’s Matrix and drove off—“swerving” around, “laughing,” with “the music up loud,” as they raced to catch up to Randle and the Ervins who had fled the scene. Ervin Tr. 101:12–25. Johnson boastfully remarked that he “had to go ahead and off them people.” *Id.* 102:13–14. When Ervin asked him why, Johnson said that someone “had said my name,” that Sally and Ngo “didn’t want to give him” any money, and that “killing people is what” he does. *Id.* 112:6–113:14.

The five of them proceeded to treat themselves to a spending spree using Sally’s credit cards. They

made purchases at McDonald's, Exxon, Shell, Raceway, and two different Wal-Marts—running up numerous overdraft charges along the way. Protasio Tr. 189:8–12; Ervin Tr. 106:19–107:2.

11. Meanwhile, the Apareces couldn't find their daughter. When Protasio rose before dawn on Father's Day to head to the hospital, the Matrix wasn't there. Protasio Tr. 181:21–182:23. He assumed Sally had spent the night at her friend Shireen's house—as she often did—so he went to work. *Ibid.* When he returned home at almost 11 p.m., Sally still wasn't there. *Id.* 183:3–14. Protasio “wonder[ed] where she was because it was Father's Day,” but told himself she must still be with Shireen. *Ibid.*

He worked another sixteen-hour overnight shift, into Tuesday morning. Protasio Tr. 183:17–18, 185:21–22. But when he awoke after returning home, Sally still wasn't back. *Ibid.* By then Protasio “was worried and mad at the same time.” *Id.* 184:19–185:2. Sally was “a very loving girl and she never missed an occasion” like Father's Day. *Ibid.* He and Christina repeatedly called Sally's mobile phone, but the calls went unanswered. *Id.* 185:3–9.

That afternoon, Protasio and Christina reported Sally missing. Protasio Tr. 189:20–21. The family spent Thursday and Friday handing out flyers with Sally's picture and searching for her. *Id.* 192:3–16.

12. Their search ended on Friday, when police officers found Sally's and Ngo's bodies in the woods five days after Johnson had executed them. Brown Tr. 86:14–18, 89:6–11.

The Apareces were out looking for Sally when Protasio received a call from one of the detectives, who

told Protasio to “take [his] family back home” and that officers would meet them there. Protasio Tr. 193:7–15. The detective didn’t say why—but Protasio knew instantly that something was “wrong.” *Ibid.* The whole family—Protasio, Christina, Sally’s siblings, and Protasio’s siblings—was gathered at the house when the detective told them that Sally had been murdered. *Id.* 193:22–194:6. The officers who spoke with the family had only one word to describe Protasio’s reaction—“[d]evastated.” Hargrave Tr. 218:17–22.

13. The State charged Johnson with capital murder. *Johnson v. State*, 2010 WL 359018, at *1 (Tex. Crim. App. Jan. 27, 2010). Johnson argued that someone else had taken Sally and Ngo into the woods and shot them. *Id.* at *5. The jury rejected Johnson’s defense and found him guilty on June 13, 2007. *Id.* at *1.

During the punishment phase, Johnson’s own expert put his IQ between 74 and 88 and testified that he wasn’t intellectually disabled under the diagnostic criteria then in use. *Johnson v. Lumpkin*, No. 4:19-cv-03047, Dkt. 78 at 4 & n.2 (S.D. Tex. Oct. 28, 2022). After the jury found beyond a reasonable doubt that Johnson would be a continuing threat to society and that there wasn’t sufficient mitigating evidence to spare his life, the court sentenced him to death. *Johnson*, 2010 WL 359018, at *1.

14. Johnson spent the next twelve years challenging his conviction through direct appeal, state post-conviction review, and federal habeas review. On direct appeal, the Texas Court of Criminal Appeals affirmed, and this Court denied further review. *Johnson*, 2010 WL 359018, at *1, *7; *Johnson v. Texas*, 561 U.S. 1031 (2010).

15. While his direct appeal was pending, Johnson sought state habeas review, raising eleven grounds—among them claims of brain damage, mental illness, racial discrimination, and ineffective assistance of counsel. *Johnson v. Stephens*, No. 4:11-cv-02466, Dkt. 56-71 (S.D. Tex. Jan. 12, 2018). The Texas Court of Criminal Appeals denied relief. *Ex parte Johnson*, 2010 WL 2617804, at *1 (Tex. Crim. App. June 30, 2010) (per curiam).

16. Johnson’s initial federal habeas petitions fared no better. Rather than invoke *Atkins v. Virginia*, 536 U.S. 304 (2002), directly, Johnson argued instead that he was merely “borderline” and that *Atkins* should be extended to defendants, like him, with severe mental illness. *Johnson v. Stephens*, 617 F. App’x 293, 303 (5th Cir. 2015) (per curiam). The district court denied relief, the Fifth Circuit affirmed, and this Court denied review. *Id.* at 304–05; *Johnson v. Stephens*, 577 U.S. 1121 (2016). Johnson’s subsequent requests for reconsideration and for a new trial also failed. *Johnson v. Davis*, 746 F. App’x 375, 381 (5th Cir. 2018) (per curiam), cert. denied, 586 U.S. 1249 (2019).

17. After nearly twelve years of unsuccessful challenges to his conviction and sentence—up and down both the state and federal judiciary—the State obtained a death warrant to carry out his execution on May 2, 2019. *Johnson v. Davis*, 2019 WL 13440694, at *3 (S.D. Tex. Aug. 12, 2019). Shortly after, Johnson filed a successive state application asserting he was intellectually disabled under *Atkins*. *Id.* at *4. The Texas Court of Criminal Appeals dismissed the application as an abuse of the writ. *Ex parte Johnson*, 2019

WL 1915204, at *1 (Tex. Crim. App. Apr. 29, 2019) (per curiam).

18. After this and other litigation by Johnson, the State reset the execution for August 15, 2019. *Johnson*, 2019 WL 13440694, at *1. Johnson then moved under Federal Rule of Civil Procedure 60(b) to reopen the federal habeas judgment. *In re Johnson*, 935 F.3d 284, 288 (5th Cir. 2019). As the execution approached, he filed another successive state application and asked the Fifth Circuit to authorize a successive federal *Atkins* petition. *Ibid.* The district court denied Rule 60(b) relief, and the Texas Court of Criminal Appeals dismissed the new state application as an abuse of the writ. *Ibid.* But the Fifth Circuit authorized the federal petition and stayed the execution, holding that changes in diagnostic standards had rendered the claim “previously unavailable.” *Id.* at 290–95. This was the second time Johnson’s execution had been set—but stayed—in fewer than four months.

19. The State moved to dismiss the petition as successive and untimely. *Johnson v. Lumpkin*, No. 4:19-cv-03047, Dkt. 64 (S.D. Tex. May 11, 2022). The district court denied the motion, and the Fifth Circuit affirmed, allowing Johnson to proceed to the merits more than eighteen years after his conviction. *Johnson v. Lumpkin*, No. 4:19-cv-03047, Dkt. 78, at 1–2, (S.D. Tex. Oct. 28, 2022); *Johnson v. Guerrero*, 2025 WL 2060781, at *1–3 (5th Cir. July 23, 2025) (per curiam).

20. The Fifth Circuit denied rehearing en banc on a vote of 9-7. *Johnson v. Guerrero*, 164 F.4th 398 (5th Cir. 2026). Judge Ho, joined by Judges Jones, Smith,

and Engelhardt, issued a dissent from the denial of rehearing en banc. *Ibid.*³

In the twenty years since Johnson murdered Sally, the dissenters pointed out, he has received “an extraordinary amount of process.” *Johnson*, 164 F.4th at 399 (Ho, J., dissenting from denial of rehearing en banc). “Extraordinary delays like this are,” the dissenters explained, “extraordinarily commonplace in our criminal justice system.” *Ibid.* And they “force the family and friends of victims” like Sally and Ngo “to wait for justice—for over two decades, in this case.” *Ibid.* The dissenters would have granted rehearing en banc “to correct our precedent—and perhaps bring the friends and family” of Sally and Ngo “one step closer to justice.” *Ibid.*

Sally’s family has been waiting “over two decades” “for justice.” *Johnson*, 164 F.4th at 399 (Ho, J., dissenting from denial of rehearing en banc). They’ve waited far too long.

ARGUMENT

I. EXCESSIVE DELAYS BREAK AEDPA’S PROMISE OF FINALITY AND HARM VICTIMS’ FAMILIES.

For over two decades, the pain and grief suffered by Sally’s family have been compounded by excessive delays in carrying out Johnson’s sentence. Sally’s family is not alone. Across the Nation, victims suffer immeasurable harm from excessive delays in carrying out criminal sentences—delays that undermine

³ Judge Oldham didn’t participate in the consideration of rehearing en banc.

finality and rob victims' families of even a modicum of peace.

As this Court has reaffirmed, both “the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Bucklew*, 587 U.S. at 149 (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). “Those interests have been frustrated in this case.” *Ibid.*; see also *id.* at 168 (Breyer, J., dissenting) (recognizing that “the long delays that now typically occur between the time an offender is sentenced to death and his execution” are “excessive”). Indeed, AEDPA imposes significant restrictions on what additional claims a prisoner can bring on a successive federal habeas petition precisely to prevent “very lengthy delays” in justice. *Banister v. Davis*, 590 U.S. 504, 523 (2020) (Alito, J., dissenting).

Crime victims and their families also have a powerful interest in finality, which is “essential to the operation of our criminal justice system.” *Edwards v. Vannoy*, 593 U.S. 255, 263 (2021) (quoting *Teague v. Lane*, 489 U.S. 288, 309 (1989)). The Fifth Circuit’s decision breaks AEDPA’s promise of finality. A victim’s family has no repose if a prisoner is free at any time to present new theories based on old law that was fully effective when he was tried and convicted.

“Only with real finality can the victims of crime move forward knowing th[at] moral judgment will be carried out.” *Calderon*, 523 U.S. at 556. Unsettling this expectation of finality “inflict[s] a profound injury to the ‘powerful and legitimate interest in punishing the guilty,’ an interest shared by the State and the victims of crime alike.” *Ibid.* (quoting *Herrera v.*

Collins, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)).

When—after twelve years of litigation—Johnson's execution was first set to be carried out in 2019, one prosecutor who had “handled over a dozen death penalty appeals and writs” acknowledged that, until this case, he “never really had a sense of what the families of the victims are going through and how they may never obtain closure for a loss that can only be described as unspeakable.”⁴

Few understand this profound injury better than the Apareces. In the two decades since Sally's brutal murder, “Johnson has received an extraordinary amount of process—trial and conviction, followed by direct appeal to multiple appellate courts, followed by a state habeas petition and subsequent appeal, followed by a federal habeas application and subsequent appeal, as well as a number of subsequent petitions further challenging his conviction.” *Johnson*, 164 F.4th at 399 (Ho, J., dissenting from denial of rehearing en banc).

That excessive delay stalks the Apareces for as long as it continues. Sally's mother, Christina Aparece, keeps her daughter's photographs close at hand. Pausing over one, she said simply: “Look at her smile. I miss her so bad.” Christina Tr. 150:3–4. Two decades on, the wound hasn't closed. It's an “ugly pain,” Christina explained, she “cannot even sleep” and she suffers “[n]ightmares.” *Id.* 151:1–2. The brutality of Sally's murder compounds the pain of her

⁴ Blakinger, *I Can't Forgive Till You're Dead: Execution Set for Brain-Damaged Texas Man Behind 4 Killings*, *supra* note 1.

family and friends: “It’s really affected * * * all of us, especially her friends, her aunts and uncles.” *Id.* 151:6–8.

Christina “still cannot accept this thing that happened to [her] baby girl.”⁵ She thinks about it “[e]very day. Every day.” Christina Tr. 151:11.

Sally’s father, Protasio, carries the same unrelenting burden. When Johnson “hurled his chair in anger” in the courtroom after his sentence was announced, Protasio said “[c]an you imagine how violent he was the night he killed my daughter.”⁶ Protasio can never forget what he was forced to endure at trial. “The most difficult part of the case” for Protasio “was sitting through trial, learning exactly how his daughter had been brutalized.” *Ibid.*

As the State put it during closing argument, Sally’s family must live with the “horrible” knowledge that

the child they loved and brought into this world and raised in a loving home and tried to teach and do right, the one they had hopes for that she would have a happy, productive life, not only was she taken from them at an early age, not only was she ripped out of their family suddenly and without warning, but now they have to know the brutal way she died, the way she suffered, the fear she felt.

⁵ Glenn et al., *5 Held in Houston Spree That Left 4 Dead*, supra note 2.

⁶ Paige Hewitt, *Killer Erupts in Court at Death Sentence*, Houston Chronicle (June 28, 2007), <https://perma.cc/97L7-QG6A>.

State Closing 75:13–22.

After more than two decades, Sally’s family is still waiting for justice. This Court should bring them one step closer—not two steps back.

II. RESEARCH CONFIRMS WHAT EXPERIENCE MAKES PLAIN—EXCESSIVE DELAYS IN OBTAINING JUSTICE HARM VICTIMS’ FAMILIES.

Not surprisingly, the academic literature confirms what the experience of families like the Apareces makes painfully clear—long after the immediate loss and physical trauma are over, crime victims and their families continue to suffer from invisible but no less painful wounds that refuse to heal. Delayed proceedings compound that harm and exacerbate the initial injuries victims suffer.

It is well known, of course, that violent crime inflicts immediate psychological trauma on victims and those close to them. Most obviously, Post-Traumatic Stress Disorder is commonly documented among the victims of violent crime. See Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 J. Traumatic Stress 182, 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 J. Traumatic Stress 119, 119 (2003).

PTSD can afflict not only the direct victims of violent crime, but also those who experience its profound repercussions more indirectly, such as family members and friends. Kilpatrick & Acierno, 16 J. Traumatic Stress at 125–27; see also Shirley A. Murphy et al., *PTSD Among Bereaved Parents Following the Violent Deaths of Their 12- to 28-Year-Old Children: A Longitudinal Prospective Analysis*, 12 J. Traumatic

Stress 273, 273–74 (1999) (following 261 bereaved parents for two years and finding that “[t]wice as many mothers and fathers whose children were murdered” met full PTSD criteria as parents whose children died by accident or suicide).

PTSD is far from the only wound that violent crime inflicts on victims and their families. Depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and suicide also number among them. Parsons & Bergin, 23 J. Traumatic Stress at 182. All these injuries are compounded when the administration of justice is marred by dilatory maneuvering and gamesmanship.

Of course, from the victim’s perspective, proceedings rarely move quickly enough—“trial is typically delayed through scheduling conflicts, continuances, and other unexpected delays throughout the course of the trial.” Mary Beth Ricke, *Victims’ Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection*, 41 Wash. U. J. L. & Pol’y 181, 183 (2013). “Victims of the crimes are already heightened emotionally with anxiety and anticipation of the impending trial, and these delays lead to further and unnecessary trauma.” *Ibid.*

So it’s not surprising that “multiple studies” demonstrate “the negative effect on a victim’s healing process when there is a prolonged trial of the alleged attacker because the actual judicial process is a burden on the victim.” *Id.* at 193; see also Ulrich Orth & Andreas Maercker, *Do Trials of Perpetrators Retraumatize Crime Victims?*, 19 J. Interpersonal Violence 212, 215 (2004). “The years of delay exact an enormous physical, emotional, and financial toll” on

victims and their families. Dan S. Levey, *Balancing the Scales of Justice*, 89 *Judicature* 289, 291 (2006); see also Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 *Cornell L. Rev.* 486, 492 (2003) (“Ending this painful process can become a major goal for the victim’s family—sometimes the only realizable goal of the execution.”).

Prolonged appeals and relitigation drag victims’ families back into the most damaging events of their lives. For victims’ families, following an offender’s appeals preserves the “involuntary bond[]” between victim and offender years after conviction—a bond that “create[s] and prolong[s] the” initial trauma. Jody Lyneé Madeira, *When It’s So Hard to Relate: Can Legal Systems Mitigate the Trauma of Victim-Offender Relationships?*, 46 *Hous. L. Rev.* 401, 460 (2009).

Abundant academic literature confirms what common sense and experience make plain. A victim’s experience with the criminal justice system—particularly when the process is long delayed and seemingly never-ending—compounds the initial effects of violent crime. See Ricke, 41 *Wash. U. J. L. & Pol’y* at 182–83; see also Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 *J. Traumatic Stress* 159, 159 (2003).

The harm caused by drawn-out criminal justice proceedings is especially acute in cases involving capital punishment, which often involve decades of delay and false stops and starts before the case is finally over. “The automatic appeals, and often repeated appeals,” in death-penalty cases “are continually brutal on victim family members.” Levey, 89 *Judicature* at

290. “Year after year, survivors summon the strength to go to court, schedule time off work, and relive the murder of their loved one over and over again[.] * * * The years of delay exact an enormous physical, emotional, and financial toll,” *id.* at 290–91, as each new round of litigation becomes yet “another source of psychological stress,” sustaining “persisting rumination about injustice.” Orth & Maercker, 19 J. Interpersonal Violence at 213, 215.

The “system can and often does intensify the trauma that led to the courthouse in the first place.” Dorislee Gilbert & Emily Bonistall Postel, *Truth Without Trauma: Reducing Re-Traumatization Throughout the Justice System*, 60 U. Louisville L. Rev. 523, 523 (2022). The delays keep family members from experiencing any sense of “closure”—any “hope they will be able to put the murder behind them.” Gross & Matheson, 88 Cornell L. Rev. at 489, 490–94.

* * *

AEDPA’s restrictions on successive habeas petitions exist for good reason: excessive delays inflict extraordinary harm on victims’ families and break the promise of finality. This case—a successive habeas petition based on a decades-old decision rendered *before* Johnson murdered Sally—proves the point.

This Court should vindicate crime victims’ “important interest in the timely enforcement of a sentence,” *Bucklew*, 587 U.S. at 149, and “powerful and legitimate interest” in “real finality,” *Calderon*, 523 U.S. at 556, by reversing the judgment below and ending an ordeal that has denied peace and closure to the

family of Sally Aparece—and Johnson’s other victims—for over two decades.

CONCLUSION

For these reasons, the judgment of the Fifth Circuit should be reversed.

Respectfully submitted.

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