IN THE SUPREME COURT OF THE UNITED STATES

LUCIO ROY ATKINSON, Petitioner v. TEXAS, Respondent	§	Trial Court Cause #46805 Petition for Writ of Certiorari to the Texas Court of Criminal Appeals, Writ Cert. No. 25-5131

PETITIONER ATKINSON'S PETITION FOR REHEARING TO RECONSIDER PETITION FOR WRIT OF CERTIORARI NO. 25-5131 UNDER SUPREME COURT RULE 44

TO THE HONORABLE JUSTICE SAMUEL ALITO:

COMES NOW, Lucio Roy Atkinson, pro se, un-skilled and indigent in the above styled and numbered case number to respectfully petition this Court for rehearing to reconsider his petition for writ of certiorari #25-5131. This petition is presented in good faith and not for delay. Mr. Atkinson will show the following:

Relevant Procedural History

Mr. Atkinson's Petition for Writ of Certiorari was denied on October 6, 2025, which was also the deadline and/or same date for him to respond to Texas's (Respondent's) Answer and Reply to his 28 U.S.C. § 2254 petition. In result of said date, Mr. Atkinson mailed this Court, and the U.S. District Court (Western Dist. of Tex.- Austin Div.), his Reply to Respondent Guerro's Answer with Brief in Support, on September 15, 2025——almost three weeks early (see WYNNE Prison Unit mailroom log, Attachment "A").

Although this Court never received the said mail, along with the said U.S. District Court receiving an empty PRIORITY MAIL envelope. In result, Mr. Atkinson mailed said District Court a Motion for Extension of Time to re-file, which was granted on

October 29, 2025 to November 26, 2025. Subsequently, Mr. Atkinson then revised said litigation by adding claims of "Mail Tampering Impendiments", then re-mailed both to this Court and to said District Court the said litigation via Certified Mail, with Return Signature request, on October 27, 2025. Although the "Green Card" Return Signature was taken off by someone in the WYNNE Prison Unit mailroom before it was mailed to said U.S. District Court. In addition, the "Green Card" for this Court's Certified Mail was returned with no signature, even though Mr. Atkinson payed for these services; also, the certified mail does not have the Huntsville seal USPS 77349 on it, but has a stamp illustrating RECEIVED with "BU" initials represented (i.e.- This is from **Bu**rnet County, Texas).

Then, Mr. Atkinson received back the said revised litigation with motion for rehearing for failure to comply with SUPREME COURT RULE 44 on November 18, 2025, via WYNNE Unit mailroom, postmarked November 13, 2025. This corrected petition follows:

New Reason To Grant Petition for Writ of Certiorari

Based on information and belief, Mr. Atkinson's position as a pro se litigant has been shifted and prejudiced in violation of Access to Courts, and the First Amendment U.S. Constitutional right. Insofar, a full consideration of the case on the merits now includes U.S.P.S. mail tampering. Meaning, Mr. Atkinson can humbly provide a basis for believing this Court would reverse course and grant his petition for writ of certiorari. Because from the onset, he has documented, filed and asserted in the lower courts that the use of the U.S.P.S. mail has been compromised in

some way throughout these proceedings. Now, ... in result, this Court has been obstructed and/or denied a full and fair opportunity to consider the said litigation before denying Mr. Atkinson's petition for writ of certiorari on October 6, 2025:

Which was properly developed by Mr. Atkinson to show the conspiratorial impediments to cover up the true cause of action that encompass the principle Grounds set out in his petition for writ of certiorari (see ATTACHMENT "B", revised Response to Respondent's Answer with Brief in Support to Mr. Atkinson's § 2254 petition). In closing, Mr. Atkinson's position as an un-aided, un-skilled, indigent, minority pro se litigant has been preyed upon by the State of Texas. In other words, if mail tampering has distorted the proceedings in this alleged "dry labbing" case, then what else could, or would, be uncovered in this cause? In result, the Ground of "Mail Tampering" is limited to other substantial grounds not previously presented. Thus, Ground Four, "Can the State use the "use of" the U.S.P.S. mail in the furtherance of a conspiracy to conceal and/or impede the true cause of action (i.e. dry labbing), and if not, is this a violation of un-aided, un-skilled, indigent, minority pro se litigants' 1st and 14th Amendment U.S. Constitutional rights? see 28 U.S.C. 2101(e); 18 U.S.C. § 3006 A; UNITED STATES v. OHIO POWER CO., 353 U.S. 98 (1957)(The interests of justice prevail); GONDECK v. PAN AMERICAN WORLD AIRWAYS, INC., 382 U.S. 25 (1965)(Interest of justice).

PRAYER

Mr. Atkinson humbly prays that this Court grants a rehearing to reconsider his petition for writ of certiorari, No. 25-5131 in

the interest of justice and/or any other relief this Court finds just.

Respectfully submitted,

Lucio Roy Atkinson

Lucio Roy Atkinson
Pro Se

Date: November 21, 2025

CERTIFICATE OF COMPLIANCE/VERIFICATION

I, Lucio Roy Atkinson, certify this petition is presented in good faith, and not for delay, and I certify and declare under penalty of perjury that all the facts herein are true and correct.

Signed this 21st day of November 2025.

Lucio Roy Atkinson

Lucio Roy Atkinson

CERTIFICATE OF SERVICE

I, Lucio Roy Atkinson, certify that a true and correct copy of "Petition for Rehearing to Reconsider Petition for Writ of Certiorari, No. 25-5131" was placed in the WYNNE Prison Unit's mailbox, on November 21st, 2025, postage pre-paid, and addressed to:

1. Ken Paxton,
TX Attorney General
P.O. BOX 12548
Capitol Station
Austin, TX 78711

2. Judge Pitman
U.S. District Court
501 W. 5th St.,
Suite 1100
Austin, TX 78701

3. Justice Samuel Alito
U.S. Supreme Court
Office of the Clerk
Washington, DC 20543-0001

Respectfully submitted,

Lucio Roy Atkinson

Lucio Roy Atkinson
TDCJ #2250307
WYNNE Prison Unit
810 F.M. 2821
Huntsville, TX 77349

ATTACHMENT "A"

"PETITIONERS RESPONCE TO
RESPONDANTS ANSWER"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LUCIO ROY ATKINSON, TDCJ #02250307, Petitioner v. ERIC GUERRO, TDCJ-CID DIRECTOR, Respondent.	§	CIVIL ACTION NO. A-25-cv-00791-RP

PETITIONER ATKINSON'S REPLY
TO RESPONDENT GUERRO'S ANSWER
WITH BRIEF IN SUPPORT

TO THE HONORABLE U.S. DISTRICT JUDGE ROBERT PITMAN, AND TO THE HONORABLE U.S. MAGISTRATE JUDGE SUSAN HIGHTOWER:

Petitioner Lucio Atkinson respectfully files his Reply to Respondent Guerro's Answer. Atkinson demonstrates the following:

ACCURATE, BRIEF and CLEAR

As Justice Scalia pointed out, there are only two possible judgments denying relief "adjudication on the merits" and "resolution of a claim on procedural grounds." WILLIAMS, 568 U.S. 289, 308. So to clear the very high bar of showing "that a federal claim was inadvertently overlooked in the state court," id. at 303, "the petitioner needs to sail the exceedingly narrow strait between SCILLA and CHRYBDIS ; He must show his claim was somehow not adjudicated on the merits, yet also was properly presented to the state court such that it was not procedurally defaulted. That run is probably impossible in practice, which is maybe why no habeas petitioner has rebutted the RICHTER, 562 U.S. 86 presumption in the Supreme Court since WILLIAMS.

Although before that strait can be sailed, Atkinson respectfully

opposes Respondent's Answer that Atkinson's petition should be dismissed with prejudice as untimely, or alternatively as unexhausted and procedurally defaulted. Also, Atkinson objects to the Respondent's assertions of fact, except those supported by the record, specifically admitted herein, in that Atkinson rebuts Respondent's mis-characterization of the record. Lastly, Atkinson requests that this Court stay the proceedings in light of the questions presented in the U.S. Supreme Court, which states:

1) Can the State of Texas "dry lab" test results in order to obtain a conviction under TEX. HEALTH & SAFETY CODE §§ 481.104(a)(2) and 481.114(a)(c)? Meaning, can the Department of Public Safety crime lab forensic analyst draw her conclusions by masquerading the use of the internet——www.drugs.com——as conclusive forensic evidence in identifying alleged controlled substance without identifying the source of the library spectra used to compare her instrument data to a reference in order to identify the compound as CLONAZEPAM? In other words, can the State's expert "guess" what the alleged substance is? And if not, is this action and/or inaction a violation of Atkinson's 14th AMENDMENT U.S. Constitutional right?

2) Does the Texas 11.07 statute deprive pro se litigants of a full and fair opportunity to litigate, where a litigant has a colorable claim of extrinsic fraud and the statute fails to mandate the appointment of counsel? And if so, is this a violation of the 14th AMENDMENT to the U.S. Constitution?

3) Can this case's emergence be the reason that this Court constitutionalizes, and proclaims, that the 6th AMENDMENT to the U.S. Constitution requires the appointment of post-conviction habeas counsel, where unskilled, indigent pro se litigants are deprived equal protections under the 14th AMENDMENT to the U.S. Constitution?

JURISDICTION

Atkinson invoked SUPREME Court of the United States jurisdiction under 28 U.S.C. § 1257(a) see Writ of certiorari filed May 17, 2025, assigned docket number 25-5131. see also https://www.supremecourt.gov/search.aspx?filename=/docketfiles/html/public/25-5131

htm (last visited Aug. 7 2025). This Court has concurrent jurisdiction under 28 U.S.C. §§§ 124(d)(1), 2241(a), and 2254.

I. PROCEDURAL HISTORY WITH IMPEDIMENTS

Atkinson's conviction was affirmed March 12, 2021 by the 3rd Court of Appeals in Austin, Texas. ATKINSON, 2021 WL 936702. Atkinson's PDR was refused August 25, 2021. Rehearing denied October 6, 2021. Atkinson had 90 days to file a petition for writ of certiorari with the U.S. Supreme Court, but could not for the following reasons wholly beyond his control[*1] :

A. Fraudulent Impendiment: One

Atkinson asserts the State tampered with the record in order to conceal the true cause of action. As a result, Atkinson diligently challenged the record immediately after October 6, 2021. see ATTACHMENT 1, APPENDIX D, motion for appointment of counsel with motion for correction of record filed Dec. 20, 2021, denied Jan. 10, 2022. see 28 U.S.C. § 2244(d)(1)(B). In result, the State created an impediment by depriving Atkinson of Due Process when they did not hold a hearing on Atkinson's motion for correction of the record, in violation of his 6th and 14th AMENDMENT rights to the U.S. Constitution. see SLAVIN v. CURRY, 574 F.2d 1256 (5th Cir. 1978).

Insofar, see p. 1 of 9 which says: Atkinson complains the record is defective or inaccurate per se a breach in the chain of

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*1 Equitable tolling applies only when a litigant's failure to meet a legally mandated deadline unavoidably arose from circumstances beyond the litigant's control. GRAHAM-HUMPHREY'S v. MEMPHES BROOKS MUSEUM OF ART 209 F 3d 552, 560-61 (6th Cir. 2000)

POSSESSION. Atkinson does not allege inaccuracies by the court reporter, Jennifer M. Fest. Although, it is her responsibility to ensure that no one gains access to the original recording without the court's written order under TEX. R. APP. PROC. 13.2(e) ... A breach in the chain of possession violates Atkinson's right to obtain a perfected appeal. Atkinson claims this civil penalty will hinder his right to Due Process under the 6th and 14th AMEND. of the U.S. Const.

Even further, see p. 5 of 9, which says: The record does not accurately reflect what actually occurred at trial; specifically, the dramatic scene of the abandonment of COUNT II of the indictment. During the middle of defense counsel's cross-examination of the State's expert witness on DPS lab testing results, the State prosecutor [Mr. McAfee] interrupted Defense counsel's [Mr. Marsh's] cross-examining question ["How do we know the pills are real?"] by standing up and verbally saying, "We would like to abandon COUNT II of the indictment." in an unlively demeanor, resulting in McAfee and Marsh arguing inaudibly. Consequently, during the same episode, Mr. Marsh's statement, "Well I know I have an appeal," while standing in the middle of the courtroom, directed at the prosecution, has been deleted from the record, as well.

Finally, see p. 8 of 9, which says: Appellant will graciously submit a writ of certirari within the next 30 days. Without a true record from the court reporter, appellant will have to address the Supreme Court Justices blindly. Appellant filed a certified motion with the district clerk, addressed to Honorable Judge Stubbs requesting the trial record by application of indigent September

2021. In the interest of justice Appellant prays that parties consult, have a hearing, give notice to Appellant, and settle the dispute in favor of Appellant. Simply put, the State allowed an overt act of a conspiracy to go unchecked when they did not hold a hearing to correct the record with trial counsel's [Mr. Marsh's] own testimony. Furthermore, to maintain a conspiracy action under 42 U.S.C. § 1983, it is necessary that there is an actual denial of Due Process, or of equal protections, by someone acting under color of state law. HANNA v. HOME INSURANCE COMPANY, 281 F.2d 298, 303 (5th Cir. 1960), cert. denied 365 U.S. 838.

Therefore, Atkinson asserts an overt act of a conspiracy is an extraordinary circumstance and/or vehicle upon which an affirmative defense can be relied upon to warrant Atkinson be entitled statutory tolling/equitable tolling and/or an exception to the statute of limitations. see 28 U.S.C. § 2244(d)(1)(B). The date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed. see In re SKINNER, 2025 U.S. App. LEXIS 14986; see also In re WILL, 970 F.3d 536 (5th Cir. 2020)("A prima facie showing is simply a sufficient showing of possible merit to warrant a fuller exploration by the district court.").

Additionally, the language of 42 U.S.C. § 1985 encompasses conspiracy to interfere with civil rights like: "... (3) Depriving persons of rights or privileges." The relevant portion of § 1985(2) establishes a cause of action against two or more persons who conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or

territory with intent to deny to any citizen the equal protection of the laws. Not to mention that "aiding and abetting" focuses on whether the defendant(s) knowingly gave substantial assistance to someone who performed wrongful conduct.

In which, in this cause, was when trial counsel's attempt to impeach the State's analyst's credibility on cross-exmmination by rightfully inquiring into collateral matters pertaining to said analyst's truthfulness, or lack thereof, by providing extrinsic evidence in stating "How do we know the pills are real" in reference to the two (2) subpoenaed DPS lab records [i.e. #14 Source of Library spectra and, #17 Copy of Electronic version, or copy of hard copy version]..... was deleted from the record. see FORD v. STATE, 122 NEV. 796, 806, 138 P.3d 500 (2006)(Extrinsic evidence may however if relevant to truthfulness be inquired on cross-examination of the witness).

In fact, under § 2254(e)(1), according to LAMBERT v. BLACKWELL, 387 F.3d 210 (3rd Cir 2004) and TAYLOR v. MADDOX, 366 F.3d 992 (9th Cir 2004), § 2254(e)(1) contemplates a challenge to a State court's individual fact determination based wholly, or in part, on evidence outside the record. LAMBERT, at 235; TAYLOR, at 1000 (State's court factual findings surviving intrinsic review under § 2254(d)(2) are presumed correct under § 2254(e)(1), which may be challenged with extrinsic evidence). see also VALDEZ v. COCKRELL, where the Fifth Circuit suggested that individual factual challenges should be evaluated under (e)(1) first, and then after they are resolved, the habeas court should consider the entirety of the record under (d)(2).

Atkinson contends that he has satisfied diligence as required under § 2254(e)(1), (2)(A)(ii) and (B), IN THAT WHEN THIS impediment is removed factual findings will exonerate him. see SUMNER v. MATA, 455 U.S. 591 (1982).

B. Fraudulent Impediment: Two

As a result of the above showing, appellant counsel was allowed to brief a "rabbit hole" (i.e. conspiracy) on direct appeal, rather than brief the nuances of Atkinson's constitutional claims and defenses on direct appeal see ATTACHMENT 2, APPENDIX "K" (explaining logical inferences of scheme); see also state habeas writ application #46805A [challenging procedure], specifically resubmitted version filed Feb. 22, 2024, which encompasses a substantial showing of appellate counsel violating TEX. CODE CRIM. PROC. Art. 26.04(j)(3)(A), in an effort to abandon Atkinson.

In fact, Atkinson asserts that appellate counsel sabotaged his direct appeal in the furtherance of a separate, yet single, continuous conspiracy. To put this into perspective, a § 1983 complaint will show several separate conspiracies. However, Atkinson asserts a single, continuous conspiracy that began with the intention of denying Atkinson the equal protections of the law, and continued by obstructing justice and denying Due Process in an attempt to successfully conceal the complicity of the true cause of action——as in this cause here.

For example, consider the evidence appellate counsel briefed on direct appeal: Would it seem logical to conclude that appellate counsel only knows calculus (i.e. conspiracy law), but does not

know simple math (i.e. the lesser included offense instruction law). see State habeas writ application #46805-C, GROUND THREE as a guage. In that, had appellate counsel adequately briefed the lesser included offense jury instruction, then the subpoena evidence still would have had to be presented in a new trial. Therefore, attorney abandonment can qualify as an extraordinary circumstance for equitable tolling purposes. see MANNING v. EPPS, 688 F.3d 177, 184 n. 2 (5th Cir. 2012)(citing MAPLES v. THOMAS, 565 U.S. 266, 281-82(2012)).

Which brings the attention back to said habeas writ application #46805-A [challenging procedure]; the initial writ application was so that Atkinson could have a fair opportunity to fully develop the record in a motion for new trial (MNT) hearing, and of course, for his appellate time table to be re-set. Therefore, Atkinson did exactly what State law requires in that the equitable tolling rule announced in MARTINEZ v. RYAN, 566 U.S. 1 (2012), and in TREVINO v. THALER, 569 U.S. 413 (2013), permits a federal court to dispense with § 2254(e)(2)'s narrow limits because a prisoner's State post-conviction counsel negligently failed to develop the State-court record. In short, while § 2254(i) precludes Atkinson from relying on the ineffectiveness of his post-conviction attorney as a "GROUND for relief," it does not stop Atkinson from using it to establish "cause". see HOLLAND v. FLORIDA, 560 U.S. 631.

In addressing the "cause" prong for overcoming procedural default, COLEMAN v. THOMPSON, 501 U.S. 722 (1991) held that the ineffectiveness of state habeas counsel could not constitute such "cause". id., at 752-53. However, in MARTINEZ, the Supreme Court

recognized an exception to COLEMAN's holding that:

> "... Where, under State law, claims of IAC must be raised in an initial review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of IAC at trial if, in the initial review collateral proceeding there was no counsel, **or counsel in that proceeding was ineffective.**" MARTINEZ, 132 S.Ct. at 1320.

The MARTINEZ Court continued with:

> "... To succeed in establishing cause, a petitioner must show (1) that his claim of IAC at trial is substantial (i.e., has some merit), and (2) that habeas counsel was ineffective in failing to present those claims in his first state habeas proceeding". id., at 1318.

In TREVINO, the Supreme Court extended MARTINEZ to Texas prisoners, holding that, although Texas does not preclude prisoners from raising ineffective assistance of trial counsel claims on direct appeal, the rule of MARTINEZ nevertheless applies because "the Texas procedural system-as a matter of its structure, design, and operation——does not offer most defendants a meaningful opportunity to present a claim of IAC of trial counsel on direct appeal." TREVINO, 133 S.Ct., at 1921.

Therefore, this Court should forgive any , and all, procedural defaults, because Atkinson's state post-conviction counsel was herself ineffective for failing to raise any meritorious IAC claims, along with developing the facts to support it ... with motive. Meaning, if this Court was to take a closer look at state habeas writ application #46805-A, specifically, Facially Plausible Ground #1 [IAC for failure to subpoena Mr. Rick Ruplinger], this Court will clearly see that an extraordinary "cause" is shown in this case warranting statutory/equitable tolling, and/or an exception to the statute of limitations of § 2244(d)(1)(B).

In that, appellate counsel did exactly what any competent attorney would do in the furtherance of a conspiracy.... she ignored it. Because, if she had entertained the meritorious Ground by subpoenaing Mr. Ruplinger in a MNT hearing (which is a critical trial stage), then the State's conspiracy would have been definitely sabotaged during this period. Meaning, Mr. Ruplinger's testimony would have significantly presented the true cause of action that would have supported the nuances (i.e. testing of the evidence) of Atkinson's constitutional claims and defenses that should have been presented on direct appeal.

Also, "... a petitioner must show that some objective factor external to the defense impeded counsel's efforts ..." MURRAY v. CARRIER, 477 U.S. 478. Atkinson attempted to satisfy this MURRAY showing when he attempted to make a substantial showing where he was denied IAC within the requirements of MARTINEZ and TREVINO. Yet he was prevented, hindered and/or impeded in doing so by the State [trial] court officials and by Atkinson's appellate counsel:

Firstly, by appellate counsel simply ignoring Facially Plausible Ground #1 within her affidavit;

Secondly, when the State (trial) court ignored and/or failed to address trial counsel's response to Facially Plausible Ground #1 (i.e. the subpoenaed lab record errors) within his affidavit; and,

Lastly, when the State court trial Judge (Mr. Evan Stubbs) "successfully" sent to the Texas Court of Criminal Appeals appellate counsel's affidavit **without** also sending trial counsel's affidavit——and compounding this wrong by waiting until the Court of Criminal Appeals dismissed Writ application [#46805-A] without written or-

der (on May 01, 2024).

In essence, Atkinson asserts that the State (trial court) and appellate counsel held dirty hands within these proceedings. Meaning, the actual impediment is appellate counsel. Therefore, the State can not rely on the State court record in the light of the shadow of these conspiratorial acts.

The AEDPA's one-year deadline is not jurisdictional bar, and can, in appropriate exceptional circumstances——**like here**——be equitably tolled. see HOLLAND v. FLORIDA, 560 U.S. 631 (2010). The Doctrine of equitable tolling preserves a [party's] claim when strict application of the statute of limitations would be inequitable. DAVIS v. JOHNSON, 158 F.3d 806 (5th Cir. 2000). It applies where [one party] is actually misled by the [other party] about the cause of action, or is prevented in some extraordinary way——**like here**——from asserting his rights. COLEMAN v. JOHNSON, 184 F.3d (5th Cir. 1999).

C. Fraudulent Impediment: Three

As a result of the above showing, and the substance of Atkinson's § 2254 memorandum of law, Atkinson's [State habeas] writ application #46805-C was **not** adjudicated on the merits because it would have shown:

The State's and DPS's failure to turn over the subpoenaed evidence violated BRADY v. MARYLAND, 373 U.S. 83 (1963), which then would have shown the State's failure to correct Mrs. Arellano's false material statements, testimony and certification of the DPS lab report analysis submitted to the Grand Jury in violation

of NAPUE v. ILLINOIS, 360 U.S. 264 (1959). In addition, this case is similar to MANUAL v. CITY OF JOLIET, 580 U.S. 357 (2017), and comparable to VIRINE v. U.S., 846 F.Supp.2d 550 (2011). see [Writ of Certiorari, docket No. 25-5131] § 2244(d)(1)(C).

As a result of the above impediments, Atkinson has shown how and why he was prevented from discovering and litigating the factual predicates of these claims in a timely fashion. By showing direct evidence from a long chain of events demonstrating a civil conspiracy in order to conceal the true nature of this cause of action. In that, allegations that identify the period of the conspiracy, the object of the conspiracy, and certain other actions of the alleged conspirators taken to achieve that purpose and allegations that identify which defendants conspired how they conspired, and how the conspiracy led to a deprivation of constitutional rights which have indeed held to be sufficiently particular to properly allege a conspiracy. see ATTACHMENT 3, substance of HAZEL-ATLAS Motion for clarity.

Therefore, Atkinson's remaining State habeas writ application #46805-C[*2] could warrant statutory tolling/equitable tolling, and/or an exception to the statute of limitations due to a conspiracy that was amplified by specific instances of outrageous misconduct that prevented Atkinson (i.e. a diligent petitioner) from timely pursuing his habeas corpus.

[*2] Notably, should discovery reveal additional support for equitable tolling, Atkinson should be free to re-raise, and/or raise new issues after the close of discovery.

In addition, fraudulent concealment, and/or the doctrine of equitable estoppel , is available in rare and exceptional cases—— like here——when extraordinary circumstances prevented a party from timely performing a required act, and the party acted with reasonable diligence throughout the period tolled; especially when the petitioner is induced by fraud, misrepresentation and/or deception. see HAZEL-ATLAS GLASS CO.,v. HARTFORD-EMPIRE CO. , 322 U.S. 238 (1944). see also U S. v LOCKE, 471 U.S. 84, 94 n. 10 (1985)(referring separately to estoppel and equitable tolling).

CONCLUSION

In order to cover up the apparent conspiracy, the Respondents are attempting to obstruct and/or subvert justice by being untruthFull and/or misleading this Court into actually believing that:

> "Trial counsel received the records, used them at trial, and was able to effectively cross-examine the lab analyst regarding her work,"
>
> which translates into:
>
> "Trial counsel received, then used the two (2) subpoenaed DPS records/documents (i.e. Item #14——Source of Library Spectra, and Item #17——Copy of Electronic version, or copy of hard copy version], because he included the two (2) DPS documents within his very own submitted business record affidavit prior to trial, which was two (2) disks of records from the Texas DPS crime lab (see CR 75-77).

Firstly, it would defy logic, the law, and the competence of this Court. Because Respondent's fail to realize and grapple with

the fact that their own assertions contradicts the record. Being that, trial counsel filed his business record affidavit on January 31, 2019; then on February 19, 2019, at 9:33 a.m., on the first day of trial, trial counsel is requesting that the trial court take Judicial Notice of the same exact "allegedly received" two (2) DPS [subpoenaed] documents (11 RR 111-112). In other words, why would trial counsel assert a DPS subpoena has not been complied with? The answer is, "because counsel never ever,,ever received the Two (2) DPS documents, which again was #14 [Source of Library Spectra] and #17 [Copy of Electronic version or copy of hard copy version].

In truth, these assertions, if temporarily believed, would eventually merit a Fed.R.Civ.Proc. RULE 60(d)(3) review amongst other reviews and/or a Federal Bureau of Investigation review (amongst other agencies) with concurrent jurisdiction. see PUGIN v. GARLAND, 599 U.S. 600 (2023)(Obstruction of justice covers "the crime or act of wilfully interfering with the process of justice and law, including by influencing, threatening, harming or impeding a witness, juror or judicial or legal officer, or furnishing false information in or otherwise impeding an investigation or **legal process**.)——especially when it involves the public interest.*3 (see § 1001 Fraud and False statements).

In fact, a working example of this **now** involves a pattern of mail tampering [in violation of 18 U.S.C. § 1708] where Atkinson's

*3 The reference book was found to be not stored per policy. Mrs. Arellano, the DPS analyst, did not go back to verify if this case was affected by the QAP for improperly stored or documented references (11 RR 152-160).

incoming and outgoing **legal** mail has been compromised, interfered and impeded with in some sort of fashion. For example, on September 15, 2025, at 6:30 a.m. to 7:15 a.m., Atkinson's hand-delivered legal package*4, hand-delivered to the WYNNE Prison UNIT's mailroom, weighed about 1.9 lbs, and contained about 100 pages of litigation. Mrs. Thomas [the WYNNE Prison Unit mailroom supervisor], who took possession of the aforementioned legal package can corroborate said event. She documented, logged and/or filed said transaction in her records, to be mailed out via **Priority Mail** to the Western District Court of Texas [Federal], Austin Division. To say the least, the Priority Mail was received September 19, 2025 by the deputy clerk (of said Court) either empty or without the said legal package that Mrs. Thomas had inserted. Meaning, the said package was replaced with a small plastic U.S. Postal bag "Returned to Sender" REFUSED on September 24, 2025. In which Atkinson received the empty Priority Mail on, or about, September 30, 2025, in the presence of Mrs. Thomas.

The significance is, the tampering of his outgoing legal mail interefered with his Constitutional right to access to Courts, and his U.S. Const. FIRST AMENDMENT right. In fact, his position as a pro se litigant was actually prejudiced in that Atkinson

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*4 The said legal package contained Petitioner's Reply to Respondent's Answer, with Brief in Support, which was 14-pages. The said Reply came with three (3) ATTACHMENTS: ATTACHMENT 1 was "Appendix D, Motion for Appointment of Counsel, with Motion for Correction of Record; ATTACHMENT 2 was "Appendix "K" (explaining logical inferences of scheme); and, ATTACHMENT 3 was the substance of HAZEL-ATLAS Motion for clarity. The three (3) said ATTACHMENTS were about 75 pages, plus the 14-page Reply, amounted to about 100-pages total.

mailed the exact aforementioned litigation to the U.S. Supreme Court for consideration in relation to his [Petition for Writ of Certiorari, No. 25-5131] on September 15, 2025. Although, just like the above said litigation Priority Mailed to the said [Federal] Western District Court, the U.S. Supreme Court, too, did not receive the aforementioned litigation despite the WYNNE Prison UNIT mailroom records confirming the event, and/or the transaction. see WYNNE Prison Unit Mailroom records.

As a result, the actual injury plausibly involves the denial of Atkinson's said Petition [for [Writ of Certiorari], which was denied October 6, 2025. see ATTACHMENT. In fact, Atkinson sent the aforementioned litigation to both Courts [i.e. the Federal Court in Austin, and the U.S. Supreme Court] and to the Respondent three (3) weeks early on September 15, 2025, despite the Federal Court [in Austin] deadline set for October 6, 2025.

In other words, it is plausible the U.S. Supreme Court Justices (Justice Alito particulary) might have been reasonably waiting on the Honorable U.S. District Judge Pitman's determination in said [Federal] Court in Austin related to "Petitioner's Reply to Respondent's Answer" before making a careful decision to grant or deny Atkinson's Petition for Writ of Certiorari. Therefore, as a result of the above showing of mail tampering, Atkinson now humbly requests that the Honorable Supreme Court Justices reconsider Atkinson's Petition for Writ of Certiorari [No. 25-5131] by taking into consideration this revised Reply to Respondent's Answer in relation to Atkinson's § 2254 petition. In which Mr. Atkinson resubmitted said litigation on October 27th 2025 by certified mail.

PRAYER

For the foregoing reasons, Atkinson respectfully prays this Court to grant his petition for writ of habeas corpus.

Respectfully submitted,

Lucio Roy Atkinson

VERIFICATION

I, Lucio Roy Atkinson, declare under penalty of perjury that all the facts herein are true and correct.

Signed on this 27 day of October, 2025.

Lucio Roy Atkinson, Petitioner Pro Se

CERTIFICATE OF SERVICE

I, Lucio Roy Atkinson, certify that a true and correct copy of "Reply to Respondent's Answer, with Brief in Support" was placed in the WYNNE Prison Unit's mailbox on October 27, 2025, postage pre-paid, and addressed to:

1. Ken Paxton,
Texas Attorney General
P.O. BOX 12548
Capitol Station
Austin TX 78711

2. Judge Pitman
U.S. District Court
501 W. 5th St.,
Ste. 100
Austin TX 78701

3. Justice Samuel Alito
U.S. Supreme Court
Office of the Clerk
Washington, DC 20543-0001

Respectfully submitted,

Lucio Roy Atkinson
TDCJ #2250307
WYNNE Prison Unit
810 F.M. 2821
Huntsville, TX 77349

Additional material from this filing is available in the Clerk's Office.