No. 25-5397

IN THE

Supreme Court of the United States

WILLIE ROY JENKINS,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

1. Whether the Court has jurisdiction over claims that were disposed of on adequate and independent state law grounds?

2. Whether a writ of certiorari is warranted for fact-dependent, Texas-law-focused false testimony and new-science claims predicated on legal bases never before recognized by the Court?

3. Whether the Court should expend its limited resources to consider highly fact-bound federal false testimony claims, that were alternatively denied on the merits by the Texas Court of Criminal Appeals, when Jenkins seeks nothing more than mere error correction?

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BRIEF IN OPPOSITION

A serial rapist, convicted in both Texas and California, Petitioner Willie Roy Jenkins was sentenced to death in Texas for the 1975 rape and murder of Sheryl Norris. Norris was found dead in her apartment bathroom, with her nude-from-the-waist-down body face up over the edge of her bathtub, partially submerged in the water, and with feces and blood in her genital and buttocks area. Jenkins denied knowing Norris, but his sperm was inside Norris's body and his DNA was, at the time, on the blouse she was wearing when she died. Jenkins was found guilty of Norris's rape and murder, and after hearing about Jenkins's sexually violent history during punishment, the jury answered the special issues in such a way that a death sentence was imposed.

Jenkins challenges his conviction primarily on the theory that, despite his pattern of raping women at random, his sperm, in this one instance, consensually found its way inside a victim he denied knowing. To that end, Jenkins sought initial state collateral review, alleging, *inter alia*, that the State knowingly presented false evidence during the guilt phase of trial. The Texas Court of Criminal Appeals (CCA), largely adopting the habeas trial court's 200-page findings of fact and conclusions of law (FFCL) and conducting its own review, found Jenkins's false testimony claims procedurally barred because they could've been raised sooner and, alternatively, meritless. *See Ex parte Jenkins*, Nos. WR-86,569-01, -02, 2025 WL 1122336, at *3 (Tex. Crim. App. Apr. 16, 2025) (unpublished).

While Jenkins's initial writ proceedings were pending, the Texas Department of Public Safety (DPS) conducted a State-initiated reinterpretation of the DNA evidence due to changes in mixture interpretation statistics. The upshot of the newer, more sensitive DNA testing was: 1) Jenkins's link to the sperm in Norris's body was even stronger than it was at trial; but 2) the mixture on the blouse Norris wore when she died is no longer interpretable. *See* Pet. App'x D, at 4. Jenkins filed a subsequent state writ raising three claims arising under state law—1) a new-science claim via Texas Code of Criminal Procedure Article 11.073, 2) an unknowing false testimony claim, and 3) an actual innocence claim. The CCA dismissed Jenkins's subsequent application as an abuse of the writ without considering the merits. *See Jenkins*, 2025 WL 1122336, at *3.

Jenkins now seeks certiorari review of the CCA's procedural and merits rejections of the claims raised in both writs. But the request is jurisdictionally foreclosed because the state court's disposition of both writs relied upon adequate and independent state procedural grounds. Review should nevertheless be denied, as Jenkins fails to make a compelling case for this Court to expend its limited resources, especially given that his case is a poor vehicle to address those questions where he raises arguments that were not raised to the CCA and at least some of his claims—including those he tries to cumulate with other cognizable claims—are predicated on legal bases that have never been recognized by this Court as arising under the Constitution. Instead, Jenkins has a pending federal habeas proceeding that would serve as a better vehicle for his arguments. Certiorari review should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

On November 24, 1975, just days before the Thanksgiving holiday, twenty-year-old Sheryl Norris asked her boss if she could have the afternoon off so she could pack for her trip home. 37 Reporter's Record (RR) 110–15. Norris left work around noon that day. 37 RR 111–15. Her live-in boyfriend Charles Wayne Andrus called the apartment several times around 12:50 p.m., but Norris did not pick up. 37 RR 137–38. Andrus had left their apartment that morning to drop off laundry and take his car to the mechanic before heading to the Texas State University campus to study for exams. 37 RR 136–37. After finishing one of those exams, Andrus picked his car up around 5:00 p.m. and drove home. 37 RR 136, 138–39.

When Andrus arrived, the front door was ajar, and music was blaring "almost at a deafening level." 37 RR 140–41. Andrus found Norris in the bathroom lying face up, bent backwards over the bathtub, with her pants down. 37 RR 144. Thinking she had slipped or had an accident, Andrus reached down and grabbed Norris's arm, but it was stiff, and Andrus immediately knew she was dead. 37 RR 144–45. Worried the assailant might still be in the apartment, Andrus ran to the neighbor's apartment and called the police. 37 RR 145.

A San Marcos Police Department (SMPD) officer was dispatched to the scene. 37 RR 172, 174. The officer encountered a visibly upset Andrus who said he had found his girlfriend dead in their apartment. 37 RR 175–76. The officer went into the apartment, found Norris's dead body in the bathroom, and called for assistance. 37 RR 176–77. Several SMPD officers and Texas Rangers arrived. 37 RR 177–79. DPS

sent a crime scene unit, including Criminologist Joe Ronald Urbanovsky, to assist in the collection and preservation of evidence. 37 RR 179–80, 204, 207, 210–11, 213, 216–17, 259–60.

Norris's body was taken to the Pennington Funeral Home in San Marcos, where Dr. Charles Bell conducted her autopsy. 37 RR 213, 217, 219. Dr. Bell collected evidence and specimens, including a swabbing of Norris's vagina that was preserved on a slide. 37 RR 219–20, 222–25, 274–76. Microscopic examination of the slide revealed the presence of spermatozoa. 37 RR 222–23, 275–76. Urbanovsky was present for Norris's autopsy, 37 RR 219–20, and he also saw spermatozoa on the slide, 37 RR 223.

Based on the crime scene evidence, investigators believed Norris struggled with her attacker before her murder. 37 RR 270. A folded dollar bill and several coins were scattered on the floor, unusual in the otherwise tidy apartment. 37 RR 181, 184, 251–52, 253–54, 255–56. A pair of underwear was found in the middle of the floor in the bedroom. 37 RR 216–17, 258. In the living room, there was a hole in the sheetrock wall up near a light switch. 37 RR 224. A white powdery substance was recovered from the toe of Norris's boot, the upper area of her left boot, and the bottom of her pants. 37 RR 225–27, 261, 264–65. Through testing, DPS concluded the substance was consistent with material recovered from the hole in the sheetrock of the apartment. 37 RR 226–27, 242, 261, 264–65, 269. Given the proximity of the hole to the light switch, Norris had likely kicked the wall during the apparent struggle. 37 RR 269–70.

Investigators also believed Norris had been raped shortly before her murder. 37 RR 214, 218, 222, 223–34, 265. Norris's body was lying face up, bent backwards over the water-filled bathtub, with arms extended and shoulders and head submerged under water. 37 RR 177, 186, 262–64. Norris wore only a white blouse, a bra, and a pair of knee-high boots. 37 RR 214, 258, 262–64. She wore no pants or underwear, and sperm was present on the vaginal smear slide taken during her autopsy. 37 RR 216–17, 222–23, 258, 275–76. There was also fecal matter in the middle of the bed, on the edge of a sheet, on the bathroom floor by Norris's foot, and under her body. 37 RR 256–57, 260–61. Blood and fecal matter were on Norris's buttocks and genital area. 37 RR 218, 264–65. Two scarves were knotted tightly around her neck, and abrasions indicated strangulation. 37 RR 214, 220–21, 264. Norris's submerged wristwatch was stopped at 12:31 p.m., suggesting she was killed within thirty minutes of leaving work for lunch. 37 RR 263. The evidence pointed to a combined rape/murder that occurred in a very short period. 37 RR 117, 214, 218, 222, 223–24, 265. At trial, Dr. Jeffrey Barnard, Chief Medical Examiner (ME) for Dallas County and Director of the Southwestern Institute of Forensic Science (SWIFS),[1] testified that Norris's death was a homicide caused by strangulation and drowning. 38 RR 91, 99–100.

The case remained cold, 37 RR 221–22, 224–25, until forensic testing eventually advanced enough to lead to Jenkins in 2010. In 1976, hair analysis and blood-typing were largely unremarkable—some hairs were similar to Andrus's, and

[1] Dr. Bell was not called to testify, as the State believed he died. *See* 37 RR 59.

blood from the door in the bathroom was the same blood type as Norris. 37 RR 230–31; 49 RR at State's Exhibit (SX) 22.

But in 1997, prompted by a phone call from Norris's older sister inquiring about the status of the investigation into Norris's murder, 37 RR 96–98; 38 RR 132–33, SMPD Detective Penny Dunn began re-investigating the case, including submitting evidence for analysis using polymerase chain reaction (PCR) DNA testing, 37 RR 237; 38 RR 134–35, 138–41. After again finding sperm on the vaginal smear slide obtained during the 1975 autopsy, a DPS DNA analyst collected a sample from the slide using two sterile swabs, one used for testing and the other frozen and stored. 39 RR 71–73, 81. Using differential extraction,[2] DPS obtained a sperm cell fraction and epithelial cell fraction. 39 RR 98–104. DQ-Alpha and D1S80 amplification kits, 49 RR at SX 73, excluded Norris's boyfriend Andrus as a contributor to the sperm cell fraction of the vaginal smear slide, 39 RR 102–05, 109.

In 1999, the vaginal smear was analyzed using Short Tandem Repeat (STR) testing. 39 RR 148, 151–53. A partial profile for an unknown male contributor was identified. 39 RR 154, 167–68, 170, 195. The partial profile did not contain enough

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[2] Differential extraction was described to the jury as "normally done on semen stains" because they usually "contain sperm and epithelial cells." 39 RR 98. The sperm cells, often called the "male component," have thicker cell walls and can therefore sustain "more rigorous extraction procedures." *Id*. The epithelial cells, often called the female component because it contains essentially the skin cells of the victim, 39 RR 100, are "more sensitive and break[] apart more easily." 39 RR 98. To separate the two components, the sample is subjected to "conditions where it will selectively break apart the epithelial cells." *Id*. They then separate the epithelial cell fraction and "what's left is the undigested or still intact sperm cell heads." *Id*. Those sperm cell heads are then broken apart in "a harsher type of environment or chemicals," leaving "the DNA from the male contributor." 39 RR 98–99.

markers to be uploaded into the Combined DNA Index System (CODIS). 39 RR 170–72. Nevertheless, the DNA profile could be used for making one-to-one comparisons to known DNA profiles. 39 RR 172. Andrus was again excluded as the contributor. 39 RR 195. Dunn continued to submit known DNA samples of other potential suspects for comparison. 38 RR 144–47; 39 RR 172–74. No suspects were identified. 39 RR 177.

In 2008, DNA technology advanced to be better able to analyze degraded samples. 38 RR 150; 39 RR 60–63, 222. On July 22, 2010, DPS reported that it had analyzed the extract of the sperm cell fraction of the vaginal smear and obtained a partial DNA profile consistent with a mixture. 38 RR 150; 39 RR 222. The DNA profile of the major contributor to the mixture was entered into CODIS. 39 RR 228. Shortly after, DPS advised Dunn that there was a "hit" in the CODIS database, meaning the DNA profile of an offender in the national database matched the DNA profile from the sperm cell fraction of the vaginal smear. 38 RR 151; 39 RR 160. That offender was verified by the CODIS database as being Willie Roy Jenkins. 38 RR 152.

Though the jury didn't hear this evidence during guilt, *see infra* Statement of the Case II, Jenkins was at that time incarcerated in California as a Sexually Violent Predator (SVP). 38 RR 152. Dunn went to California to obtain DNA samples from Jenkins, and she interviewed Jenkins about Norris's rape/murder. 38 RR 158–59. Jenkins denied knowing Norris and denied any knowledge about the crime. 38 RR 159. Regardless, Jenkins could not be excluded as a contributor, and the probability of selecting an unrelated person at random who could be a contributor to the same DNA profile is approximately 1 in 365.6 quadrillion Caucasians, 1 in 5.705

quadrillion African Americans, and 1 in 20.37 quintillion Hispanics. 39 RR 237–38, 244–45.

With this direct link between Jenkins and the victim he denied knowing, investigators delved further into the circumstances of the murder. Military records showed that in 1975, Jenkins was stationed at the United States Marine Corps base in Twentynine Palms, California. 38 RR 187. Jenkins was granted emergency leave from the base for thirteen days beginning November 23, 1975, the day before Norris was murdered. 38 RR 192–93. Jenkins could have left the base as early as 4:30 p.m. on November 22nd if he was off duty and had his leave papers. 38 RR 193–94. While on emergency leave, Jenkins drove to Texas to visit his wife, Merle Jenkins, who was then hospitalized in San Antonio. 39 RR 30–32, 36–38. He stayed at the home of his wife's father in Marion, Texas, 39 RR 38, about thirty miles from San Marcos, where Norris was murdered. Jenkins was familiar with the area: he grew up in Marion and attended one semester at Texas State University on a football scholarship before quitting to join the Marines. 38 RR 153; 39 RR 24–25.

Jenkins was then indicted on November 19, 2010, for two counts of intentional murder (one by strangling and one by drowning) while in the course of committing or attempting to commit aggravated rape. 1 Clerk's Record (CR) 4. But while preparing for trial, investigators discovered a second link between Jenkins and the victim: Jenkins's DNA was identified in a handprint on the white blouse Norris was wearing when she died. 38 RR 162–65; 39 RR 248–50, 255–58. DNA testing of the blouse revealed a partial DNA profile consistent with a mixture, and Jenkins could not be excluded as a contributor to the profile at 15 locations. 39 RR 255–58. The probability

of selecting an unrelated person at random who could be a contributor to the DNA profile at those loci was reported to be 1 in 457.9 trillion for Caucasians; 1 in 44.68 trillion for African Americans; and 1 in 8.977 quadrillion for Hispanics. 39 RR 259.

II. State's Punishment Evidence

The CCA summarized Jenkins's pattern of sexual violence as follows:

> The State called witnesses to testify to five different rapes committed by [Jenkins]. One rape victim testified that [Jenkins] raped her in California on August 8, 1975—a mere three months before raping and killing Norris. The victim described riding her bicycle near Joshua Tree National Park when [Jenkins] pulled her from her bicycle and dragged her into his car. [Jenkins] drove off with the victim on the floorboard of his car. The victim testified that she saw a pencil in the floorboard and considered stabbing [Jenkins], but decided against it because she feared [Jenkins] would kill her. After driving a distance from where he abducted her, [Jenkins] stopped the car and raped the victim. Then [Jenkins] drove back to the scene of the abduction, where police had already gathered because a friend of the victim recognized her abandoned bicycle and suspected foul play, and [Jenkins] "stopped about 50 or 60 feet in front of all these police officers and just pushed [her] out of the car and then he rode right through them." [Jenkins] pled guilty to rape in San Bernardino County, California[3] and was originally given a probated sentence of three years. [Jenkins]'s probation was later revoked.
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> Another victim was raped twice by [Jenkins] in San Antonio, Texas, in early 1977. The victim testified that the experiences were so traumatizing that she had difficulty remembering the details of the rapes. The victim told of one of the rapes occurring at a used furniture store where she worked after graduating from high school. After raping the victim, [Jenkins] left the store and drove off, but not before the victim was able to run out of the store and see the license plate number on [Jenkins]'s car. Despite having [Jenkins]'s license plate number, the victim did not report the rape to police at that time. The victim then told of a second rape that occurred at the same store. Her memory was not clear, but she did then report both sexual assaults to the police. The victim was asked by police to identify her rapist from a live line-up, and she identified [Jenkins]. The victim did not testify in court against

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3 Notably, Jenkins pleaded guilty on November 20, 1975, 41 RR 94; 49 RR at SX 90, just four days before he raped and murdered Norris.

[Jenkins] at that time and testified that she has tried to block the rapes from her mind.

[Jenkins]'s next victim was sexually assaulted in May 1977, when she was in her early twenties. The victim died before this trial. Barbara Niemann and Eddie Pinchback, both with the San Antonio Police Department, testified to their investigation of the rape. Niemann interviewed the victim and said that the victim identified her assailant from a line-up. Pinchback testified that [Jenkins] was eventually arrested for the rape. Pinchback also testified that he interviewed a witness by the name of Willie Wood in connection with the rape. Willie Wood testified that he was the person the victim initially encountered after she was raped and that he and some of his coworkers were the ones who called the police. Wood testified that the victim came running into the grocery store warehouse in San Antonio, where he worked the 11 p.m. to 7 a.m. shift, and that the victim was naked from the waist down and crying hysterically. Wood testified that the victim had cuts and bruises all over her head. [Jenkins] pled guilty to aggravated rape in this case. On November 14, 1977, he was convicted in Bexar County and sentenced to seven years' imprisonment.

Another victim, C.P.V., testified that [Jenkins] raped her on August 20, 1983, in California when she was trying to get a ride back home to another town. C.P.V. testified that she initially felt safe about taking a ride from [Jenkins] because there was an older man in the backseat of the car and she had not had problems when she had previously accepted rides. However, after dropping the older man off at a bus station, [Jenkins] drove to a secluded spot and raped C.P.V. in the car. [Jenkins] pled guilty to "rape by force" in Kern County, California on October 14, 1983. He was sentenced to eight years' of imprisonment.

The last rape victim to testify against [Jenkins] testified that [Jenkins] raped her on June 16, 1991, when she was twenty-one years old. The victim had gone to a laundromat in the early morning hours of June 16, but upon discovering that she needed coins for the laundromat, the victim began walking to a gas station. [Jenkins] drove by and offered the victim a ride. Once the victim was in the car, [Jenkins] drove to a dark road and raped her in his car. After the rape, [Jenkins] allowed the victim to leave the car. The victim walked back to the laundromat to get her clothes and went home without reporting the rape because she was so embarrassed. However, she eventually reported the rape to police and picked [Jenkins] out of a line-up. [Jenkins] pled guilty to "rape by force" in Kern County, California. He was convicted and sentenced to eight years' imprisonment, enhanced to ten years for two prior rape convictions.

Jenkins v. State, 493 S.W.3d 583, 594–96 (Tex. Crim. App. 2016). Evidence was also presented showing that Jenkins had molested his two stepdaughters while they were children. *Id*. at 595–96. And Jenkins was classified as an SVP under California law and civilly committed to Atascadero State Hospital for treatment. *Id*. at 596 & n.12. But "being institutionalized did not slow down [Jenkins]'s propensity for violence," *Jenkins*, 493 S.W.3d at 619, so the State also showed that Jenkins "brutalized" others from his psychiatric institution and pre-trial detention while he was in custody, *id*. at 593.

III. Conviction and Initial Postconviction Proceedings

Jenkins was convicted and sentenced to death, 2 CR 342–45, and his conviction and sentence were affirmed, *Jenkins*, 493 S.W.3d at 589. While direct appeal was pending, he filed an application for state habeas relief raising nine grounds for relief. *See generally* Appl. Relevant here, he argued the State knowingly presented false evidence that: 1) Dr. Bell was dead and had concluded Norris was raped; 2) Andrus downplayed his drug-dealing and criminal history; 3) Andrus's alibi had been "confirmed quite strongly"; and 4) several original investigating officers had died. Appl. 20–66. Jenkins "recognize[d] that much of the State's false testimony could have been exposed based on evidence provided to trial counsel during the discovery process." *Id.* at 65. So he also raised ineffectiveness claims faulting trial counsel for failing to correct or rebut the same allegedly false testimony. *See id*. at 88–102.

A seven-day evidentiary hearing on Jenkin's ineffective-assistance claims was held in 2021. Evidence at the hearing established that trial counsel had copies in

their files and were otherwise fully aware of all the evidence Jenkins relied on during postconviction proceedings to demonstrate supposed falsity. *See, e.g.*, 7 Evid. Hr'g Reporter's Record (EHRR) 88, 93–94, 118, 156, 191–92, 195–96, 200, 202–03; 8 EHRR 163–64, 166; 10 EHRR 232–33, 245. Most notably, trial counsel testified that they knew (even if the State didn't) that Dr. Bell was *not* dead at the time of trial because the defense spoke with him. *See* 7 EHRR 88, 156. Trial counsel testified that they strategically chose not to call Dr. Bell because of his age, memory issues, and the possibility that contesting the sexual assault would have opened the door at guilt to Jenkins's sexually violent past. 7 EHRR 160; 8 EHRR 168, 170; 10 EHRR 230.

Following the hearing, the parties submitted proposed FFCL, and closing arguments were held. On May 12, 2022, the trial court largely adopted the State's proposed FFCL and recommended the denial of relief. In particular, the trial court recommended that Jenkins's false testimony claims be procedurally barred because they were available at trial and therefore could've been raised on direct appeal. *See* Pet. App'x B, at 25, 28, 32–33, 35, 40–41, 44–46, 49–50. The trial court alternatively recommended that the claims be denied on the merits. *See id.* at 18–51. Jenkins raised no objections to the trial court's FFCLs to the CCA after the record was forwarded to it.

On April 15, 2025, the CCA adopted all but two paragraphs[4] of the trial court's FFCL. *Jenkins*, 2025 WL 1122336, at *3. Based on the FFCL and its own independent

[4] The two unadopted paragraphs were related to Jenkins's claim that his lead trial counsel—a former judge who presided over capital murder trials—was not statutorily qualified to serve as first-chair counsel in a capital case. *See Jenkins*, 2025 WL 1122336, at *3 (not adopting paragraph numbers 226 and 227); Pet. App'x B.

review, the CCA denied Jenkins's initial writ, agreeing that the false testimony claims were procedurally barred because they could have been raised sooner and that the claims were alternatively meritless. *Id*. (citing *Ex parte Nelson*, 137 S.W.3d 666, 667 (Tex. Crim. App. 2004)).

IV. Subsequent Postconviction Proceedings

While the initial writ proceedings were pending, the Texas Forensic Science Commission issued a communication regarding the use of Combined Probability of Inclusion/Exclusion (CPI). *See Skinner v. State*, 484 S.W.3d 434, 493 n.7 (Tex. Crim. App. 2016). The State accordingly requested on May 30, 2017, that DPS re-evaluate Jenkins's case for the use of CPI and conduct reinterpretation if eligible. *See* Pet. App'x D, at 3. Several months later, DPS reported that Jenkins's "case may benefit from reinterpretation." *Id*.

In July 2022, DPS informed the parties that, due to more sensitive DNA testing, it had detected low levels of contamination in the reagent blank associated with the epithelial cell fraction of the vaginal swab obtained from Norris's autopsy. *See id*. Needing a known sample for the victim to finish the reinterpretation of the blouse, DPS inquired whether any other evidence could be used to derive a DNA profile for Norris or whether it should proceed with the available evidence. *Id*. The State requested that DPS proceed. *See id*.

Shortly after, Jenkins moved the CCA to stay the then-pending initial writ proceedings until completion of the reinterpretation. *See Jenkins*, 2025 WL 1122336, at *2. The CCA granted Jenkins's motion and remanded the case to the trial court to consider the new developments and determine whether they affected the claims

Jenkins raised in his initial writ. *Ex parte Jenkins*, No. WR-86,569-01, 2023 WL 2290883, at *1 (Tex. Crim. App. Mar. 1, 2023).

DPS reported the results of the reinterpretation in June 2023. Pet. App'x D, at 3–4. "Most significantly, [DPS] reported that [Jenkins] is linked even more strongly as the contributor to the DNA in Norris's vagina (by odds in the septillions versus the previous quadrillions)." *Jenkins*, 2025 WL 1122336, at *2. However, the DNA mixture on Norris's white blouse is now uninterpretable because the known profile available for Norris is now itself a mixture, unrelated to the contamination identified in 2022. *See* Pet. App'x D, at 4.

On February 26, 2024, the trial court entered supplemental FFCL recommending that the post-trial DNA developments were unrelated to and had no effect on the claims Jenkins raised in his initial writ. *Id.* at 6–7. As such, the trial court concluded any new claims predicated on those developments would be untimely amendments to the initial writ over which the trial court had no jurisdiction. *Id.* at 7–8. Those findings, and the associated clerk's record, were then forwarded to the CCA.

Jenkins then filed his subsequent state writ in the CCA. *Jenkins*, 2025 WL 1122336, at *2. He raised three claims related to the new DNA developments: 1) the new results justify Article 11.073 relief because they contradict trial evidence tying Jenkins to the blouse and "may" undermine Jenkins's link to the sperm; 2) the new results render false trial evidence regarding the blouse and the quality of the DNA analysis; and 3) he is actually innocent. *See id.*; *see also* Subsequent Appl. for Writ of Habeas Corpus 25–36, 56–58, 63, *Ex parte Jenkins*, 2025 WL 1122336, at *3 (Sub.

Appl.). Jenkins also raised Article 11.073, false testimony, and actual innocence claims that scientific developments since trial undermine Dr. Barnard's and Urbanovsky's opinions that Norris had been raped. *See* Sub. Appl. 37–44, 58–59, 63. Jenkins argued he could overcome Article 11.071 § 5 of Texas Code of Criminal Procedure because the science was new and not ascertainable by him when he filed his initial writ. *See id.* at 50–54, 61–62, 76.

On April 16, 2025, in the same order disposing of Jenkins's initial writ, the CCA adopted the trial court's supplemental FFCL. *Jenkins*, 2025 WL 1122336, at *3. The CCA held Jenkins "failed to satisfy the requirements of Article 11.071 § 5(a)" and dismissed the writ as an abuse of the writ "without considering the merits of the claims." *Id.*

REASONS FOR DENYING THE WRIT

I. Jenkins's Claims Were Denied on Adequate and Independent State Law Grounds Depriving the Court of Jurisdiction.

Jenkins seeks certiorari review of: 1) federal false testimony claims that were barred for failure to be raised sooner, and 2) state-law false testimony, new-science, and actual innocence[5] claims that were barred as abusive. Each of these state-law determinations strips this Court of jurisdiction.

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[5] The petition is unclear on *which* state-law claims he seeks this Court's review. At times, he refers only to the false testimony claims. *See* Pet. 24 (arguing the CCA "refused to specify the basis for not authorizing Mr. Jenkins's false evidence claims raised in his subsequent application"). At others, he appears to fault the CCA's dismissal of his new-science and actual innocence claims, *see id.* at 16 (stating that the CCA dismissed his "new false evidence and actual innocence claims"), 25 (same), 27 (claiming new science developments were "part of the procedural gateway for his actual innocence claim"). At yet others, he relegates reference to his new-science and actual innocence claims to footnotes. *See* Pet. 13 n.2. Jenkins's lack of clarity makes

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision.'" *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)). To be adequate, the state law ground must be "'firmly established and regularly followed.'" *Lee v. Kemna*, 534 U.S. 362, 885 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). A "discretionary rule can be 'firmly established' and 'regularly followed' even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Ultimately, situations where a state law ground is found inadequate are but a "small category of cases." *Kemna*, 534 U.S. at 381. 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 v. Thompson*, 501 U.S. 722, 735 (1991). 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.

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his case a poor vehicle to address the questions he presents. *See* Sup. Ct. R. 14.4 ("The failure of a petitioner to present with accuracy, brevity, and *clarity*, whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." (emphasis added)).

A. The CCA's error-preservation bar is adequate.

Jenkins's initial writ raised several knowing-use-of-false-testimony claims under *Napue v. Illinois*, 360 U.S. 264 (1959). However, Jenkins fully admitted that much of the alleged falsity could have been exposed by trial counsel with evidence provided to them during pre-trial discovery. *See supra* Statement of the Case III. And evidence at the evidentiary hearing repeatedly proved this true. Counsel was aware of those documents but strategically chose not to object to or rebut what amounted to, at most, mere inconsistencies either because: they preferred not to draw the jury's attention to certain facts; they did not think it would matter; they worried contesting some of it would open the door to Jenkins's highly probative sexual assault history; or some combination of the above. *See id.*; *see also* Pet. App'x B, at 96–112.

Because of this conclusive evidence demonstrating that counsel was aware of—sometimes even more than the State—any alleged falsity and intentionally chose to do nothing about it, the CCA adopted the trial court's FFCL that Jenkins's false testimony claims were barred because they could have been raised sooner. *Jenkins*, 2025 WL 1122336, at *3; *see also Ex parte Jimenez*, 364 S.W.3d 866, 880 (Tex. Crim. App. 2012) ("[W]e recently noted our trend . . . to draw stricter boundaries regarding what claims may be advanced on habeas petitions because the Great Writ should not be used to litigate matters which should have been raised on appeal or at trial." (cleaned up) (quoting *Ex parte Richardson*, 201 S.W.3d 712, 713 (Tex. Crim. App. 2006)).

Jenkins argues that the CCA's imposition of this procedural bar was not based on an adequate state law ground for two reasons. *First*, he argues it was a novel,

"unforeseeable," and "unsupported" application of a bar that has never been used by the CCA because such claims are "always" considered on the merits and prior availability has only affected the harm standard to be applied. *See* Pet. 17–22 (citing, e.g., *Ex parte Ghahremani*, 332 S.W.3d 470 (Tex. Crim. App. 2011); *Cruz v. Arizona*, 598 U.S. 17, 25 (2023)). *Second*, Jenkins argues the CCA's rule contravenes *Glossip v. Oklahoma*, 604 U.S. 226, 252 (2025), which held defense counsel's knowledge is irrelevant to the due process inquiry. *See* Pet. 22–24. Jenkins is wrong on both fronts.

Initially, Jenkins presented neither of these arguments to the CCA, even though the trial court's FFCL recommended his claims be barred because he didn't raise them sooner. Texas law permits parties to object to trial court FFCL, *see* Tex. R. App. 73.4(b)(2), and if he felt that the trial court's recommendation that a bar be imposed was novel, unforeseeable, or unfair, he could have raised that objection to the CCA, but he did not. He did not argue that the imposition of a bar would overrule the CCA's prior precedent, and he did not even cite or ask the CCA to consider (or reconsider) *Glossip*'s effect on its error-preservation bar, despite *Glossip*'s availability before the CCA issued its decision. *Compare Glossip*, 604 U.S. at 226 (decided Feb. 25, 2025), *with Jenkins*, 2025 WL 1122336, at *1 (decided Apr. 16, 2025). Because these arguments were "'not pressed or passed upon' in state court," *Illinois v. Gates*, 462 U.S. 213, 219 (1983), such questions are not part of the "[f]inal judgment[] or decree[] rendered by the highest court of" Texas necessary for this Court's jurisdiction, 28 U.S.C. § 1257(a). Regardless, "the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below," *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *see also City & County of*

San Francisco v. Sheehan, 575 U.S. 600, 609 (2015) (dismissing a question "not passed on below" as improvidently granted).

Nevertheless, Texas's should've-been-raised-earlier rules have long been recognized as adequate state grounds capable of barring federal review. *See Harper v. Lumpkin*, 64 F.4th 684, 693–294 (5th Cir. 2023) (citing *Aguilar v. Dretke*, 428 F.3d 526, 535 (2005)); *cf. Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 45 (2017) (noting this Court generally defers to a court of appeals's interpretation of their respective states' laws). And Jenkins is incorrect that the CCA has never applied that rule to a false testimony claim—the CCA has adopted trial court FFCL similar to Jenkins's barring false testimony claims raised in initial writs because they were not raised sooner. *See*, *e.g., Ex parte Rhoades*, No. WR-78,124-01, 2014 WL 5422197, at *1 (Tex. Crim. App. Oct. 1, 2014) (unpublished) (adopting finding that the applicant's false-testimony complaints were barred on habeas review because the testimony was not objected to at trial); *Ex parte Devoe*, No. WR-80,402-01, 2014 WL 148689, at *1 (Tex. Crim. App. Jan. 15, 2014) (unpublished) (same).[6]

More than that, as Jenkins concedes, Pet. 19, the CCA expressly considered, in the context of a false testimony claim, the general rule that "a convicted person may not raise a claim for the first time in a habeas-corpus proceeding if he had a reasonable opportunity to raise the issue at trial or on direct appeal and failed to do so." *Ex parte De La Cruz*, 466 S.W.3d 855, 864 (Tex. Crim. App. 2015). Applying that principle to De La Cruz's facts, the CCA found *his* false testimony claim was not

[6] The trial court FFCL in these two cases are included in an appendix because they are not available on the electronic database.

barred because his claims were "premised on new factual and legal bases that were not reasonably available to him during his trial or direct appeal," and he therefore had no "adequate opportunity" to raise earlier. *Id*. at 864–65. In other words, unlike Jenkins, De La Cruz "raised his claim . . . at the earliest possible opportunity." *Id*. at 865. The CCA thus concluded that the circumstances of De La Cruz's case, "in conjunction, weigh in favor of consideration of his claim on the merits." *Id*.

Jenkins downplays *De La Cruz*'s import by suggesting the CCA just "noted the general principle" but "ultimately declined" to "revisit[] its false evidence jurisprudence[.]" Pet. 19. But the CCA did not just "note" the principle; it applied it to the specific facts of De La Cruz's case and found a bar was not appropriate. Jenkins's nitpicking of the word "note" does not mean he can claim unfair surprise that the bar may be applied in the right case—his. Texas is allowed to "extend its prior [procedural bar] jurisprudence, including by applying the Rule to new situations as they arise." *Cruz*, 598 U.S. at 30; *see also Valdez v. State*, No. AP-77,042, 2018 WL 3046403, at *7–8 (Tex. Crim. App. June 20, 2018) (appellant's false evidence claims were barred on direct appeal due to lack of a contemporaneous objection at trial).

Moreover, Jenkins's argument that *De La Cruz* does not overrule the CCA's precedent applying a more stringent harm standard relies on a false dichotomy—the CCA doesn't have to overturn its harm-standard jurisprudence to find that, in some circumstances, a petitioner's failure to raise a false testimony claim earlier bars its review. *See Walker v. Martin*, 562 U.S. 307, 320 (2011) ("A discretionary rule ought not be disregarded automatically upon a showing of seeming inconsistencies."). Indeed, Jenkins acknowledges (at 23) that fact questions usually surround whether

a claim was reasonably available sooner. *See Ghahremani*, 332 S.W.3d at 482 ("[T]he determinative factor in whether a defendant can raise the issue on direct appeal is, frequently, how well the State hid its information."). A state court is permitted discretion to sidestep that question and simply hear the merits of the claim. *See Beard*, 558 U.S. at 60–61. This is especially true where, as in the cases Jenkins cites, Pet. 17–18, the parties do not raise a potential procedural bar.[7]

But even had the CCA considered issues not raised in those cases, it is not clear imposition of the bar would have been warranted. True, *Ex parte Fierro* established the higher harm standard for false testimony claims that could've been raised sooner. 934 S.W.2d 370, 374 & n.10 (Tex. Crim. App. 1996). But *Fierro* was decided both before the CCA recognized in 2004 its "trend . . . to draw stricter boundaries" around when claims are properly raised for the first time in habeas, *see Jimenez*, 364 S.W.3d at 880, and before the Court expressly considered the bar's application in false testimony claims in *De La Cruz* in 2015.

And since *Fierro*, the CCA either: 1) found claims were *not* available to be raised earlier, *see, e.g.*, *Ghahremani*, 332 S.W.3d at 482; *Ex parte Weinstein*, 421 S.W.3d 656, 663 (Tex. Crim. App. 2014) (trial judge found neither State nor defense were aware of the falsity); *Ex parte Colone*, 663 S.W.3d 611, 612 (Tex. Crim. App.

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[7] The fact that Jenkins cites a litany of cases in which no procedural bar was imposed makes his simultaneous argument (at 23–24) that the CCA's rule would entirely preclude consideration of false testimony claims ring hollow. His citation to *Young v. Ragen* also does not help him, as *Young* dealt with a state categorically barring postconviction review of federal due process claims. 337 U.S. 235, 238 (1949). Texas has a "clearly defined method by which [Jenkins] may raise claims of denial of federal rights," *id*. at 239; he just can't benefit from it because he didn't adequately preserve his claims.

2022) (meritorious State suppression-of-evidence and concomitant false testimony claims); *Ex parte Carter*, --S.W.3d--, 2025 WL 2161258, at *2 (Tex. Crim. App. July 30, 2025) (subsequent false testimony claims were authorized under Article 11.071 § 5(a), meaning they were not previously available); or 2) punted on whether the higher harm standard would apply because no materiality had been found, *see, e.g.*, *Ex parte Chavez*, 371 S.W.3d 200, 210 (Tex. Crim. App. 2012). Only in *Ex parte Lalonde* did the CCA appear to find that the higher standard should apply because the applicant attempted, but was not permitted, to raise the claim on direct appeal. *See* 570 S.W.3d 716, 723. But the CCA ultimately did not apply the harmless error standard because it found no materiality.[8] *Id.* at 724. Thus, few cases since *Fierro* have had facts like Jenkins's—clear evidence that defense counsel, at trial, was fully aware of, and chose not to pursue, evidence that could prove alleged falsity. And in those that did—like *Rhoades* and *Devoe*—the CCA barred them. Thus, the CCA's application of a bar in Jenkins's case is not inconsistent with, nor did it overrule, its prior jurisprudence.

Jenkins's argument that *Glossip* invalidates the CCA's procedural bar is similarly unavailing. *Glossip* addressed Oklahoma's "mistaken interpretation of *Napue*" on the *merits* of a federal constitutional claim. 604 U.S. at 252. This Court did not purport to address a state court's own interpretation of its state preservation rules. And Jenkins makes no assertion that the preservation bar is interwoven with

[8] Notably, the CCA found under a related claim that the State had suppressed the perjury evidence at trial. *See Lalonde*, 570 S.W.3d at 725. Given that finding as well as the applicant's unsuccessful attempt to raise the claim sooner, it certainly seems at least within the CCA's equitable discretion to choose not to procedurally bar the perjury claim, even if a bar had been raised.

federal law, so this Court's holdings about the proper application of that federal law is inapposite to the adequacy of the bar. Indeed, to the extent it touched on any error-preservation issues, the Court, in rejecting the dissent's argument that Glossip "ignored the lithium issue on direct appeal," noted that "Glossip had no reason to know at the time of his direct appeal that [the prosecutor] knowingly failed to correct Sneed's false testimony . . . so he would have had *no occasion* to raise his *Napue*" claim then. *Id.* at 240 n.4. (emphasis added). Jenkins did have occasion to do so, and he still didn't.

Surely the Court did not intend to upend state court procedure by suggesting that even where evidence definitively proves trial counsel had in their possession *every* piece of evidence a defendant now claims proves falsity,[9] the state court cannot require defense counsel to object at trial, raise it on appeal, or forfeit it forever more. *Cf. United States v. Olano*, 507 U.S. 725, 731 (1993) ("No procedural principle is more familiar to this Court than that a constitutional right . . . may be forfeited in criminal . . . cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it." (cleaned up)). While the defense's inaction may be

[9] Even in *Glossip*, the evidence defense counsel had was not on all fours with the falsities: the false testimony "concerned the reasons for his lithium prescription, not the mere fact that he had taken it," and "Glossip's counsel was aware of the latter, not the former." 604 U.S. at 252; *see also id.* at 253 n.10 ("[T]he defense did not know during trial that Sneed had been diagnosed with bipolar disorder; to the contrary, Glossip later sought (and the State successfully opposed) discovery on that issue."). And fundamentally, the state in *Glossip* withheld eight boxes of documents, including those underlying his false testimony, and other, prosecutorial misconduct claims. *See id.* at 231, 237–38. There are no similar allegations of suppression in Jenkins's case.

irrelevant to Due Process, *see Glossip*, 604 U.S. at 253 n.10,[10] the potential for sandbagging is most certainly within the purview of a state's procedural rules to prevent.

The crux of Jenkins's complaint is he thinks the CCA's procedural bar is incorrect. But whether an applicant could have raised a claim sooner is purely a question of Texas state law, *cf. Moore v. Texas*, 122 S. Ct. 2350, 2353 (2002) (mem.) (Scalia, J., dissenting), and "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions," *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991); *see also Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945) ("Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.").

B. The CCA's abuse-of-the-writ bar is independent.

Texas, like Congress, has imposed significant restrictions on second-in-time habeas applications. *Compare* Tex. Code Crim. Proc. art. 11.071 § 5, *with* 28 U.S.C. § 2244(b). A Texas court may not reach the merits of a claim in a subsequent application "*except* in exceptional circumstances." *Ex parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002). The applicant bears the burden of providing "sufficient

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[10] Again, *Glossip* dealt with facts, withheld by the state, that objectively disproved a key witness's testimony about why he was prescribed a medication by a doctor he denied seeing. 604 U.S. at 618, 253 n.10. The alleged falsities in Jenkins's case are nowhere near the same ilk—they amount to mere inconsistencies in witness testimony that is cross-examination fodder for the defense to elicit if they so choose. *See infra* Argument V. Certainly, the State is not required to preemptively present to the jury *every* piece of conceivably impeaching evidence it (indisputably) disclosed to defense counsel regarding a particular witness—that would render entirely pointless *Brady*'s obligation to turn over that evidence in the first place and would fundamentally alter the adversarial nature of criminal proceedings.

specific facts establishing," Article 11.071 § 5(a), one of these "exceptional circumstances," *Ex parte Kerr*, 64 S.W.3d at 418.

First, an applicant can prove either factual or legal unavailability of a claim. Article 11.071 § 5(a)(1). A claim is legally unavailable when its legal basis "was not recognized or could not have been reasonably formulated from a final decision of the [this Court], a court of appeals of the United States, or a court of appellate jurisdiction of this state," *id*. § 5(d), and factually unavailable when its factual basis "was not ascertainable through the exercise of reasonable diligence," *id*. § 5(e). Second, an applicant can prove that, but for a constitutional violation, "no rational juror could have found the applicant guilty beyond a reasonable doubt." *Id*. § 5(a)(2). This requires an applicant to "make a threshold, prima facie showing of innocence by a preponderance of the evidence." *Ex parte Reed*, 271 S.W.3d 698, 733 (Tex. Crim. App. 2008). Third, an applicant can prove "by clear and convincing evidence," but for a constitutional violation "no rational juror would have answered in the [S]tate's favor one or more of the special issues." Article 11.071 § 5(a)(3).

Below, Jenkins accepted the burden of proving an exception to the abuse-of-the-writ bar. Sub. Appl. 50–54, 61–62, 76. He argued factual unavailability,[11] *id*., but the CCA disagreed, finding Jenkins failed to "satisfy the requirements of Article 11.071 § 5" and dismissing the claims "as an abuse of the writ without considering the merits of the claims," *Jenkins*, 2025 WL 1122336, at *3. Before this Court, Jenkins does not challenge the adequacy of § 5 and for good reason—the Fifth Circuit "has

[11] He also sought authorization for his unknowing false testimony claims under § 5(a)(2), *see* Sub. Appl. 61–62, but he does not seek review of that determination here.

held that, since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an independent and 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*, 581 U.S. at 45. The only question, then, is whether Section 5 is independent of federal law.

Jenkins argues that it's not. Pet. 24–28. He argues § 5 requires the applicant to satisfy two prongs: 1) making a prima facie showing of a constitutional claim, and 2) showing the factual or legal unavailability of the claim. *See id.* at 25 (citing *Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007)). While conceding the second prong is "a state law ground," *id.* at 27, Jenkins argues the first prong is interwoven with federal law because it is "a federal law inquiry into the factual sufficiency of the claim." *Id.* at 25–26. Jenkins 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.* Jenkins is wrong on all fronts.

The CCA explicitly stated it was not considering the merits of Jenkins's subsequent writ, and Jenkins's speculation about sub silentio federal law consideration cannot overcome this express statement. *See Coleman*, 501 U.S. at 735. Indeed, Jenkins describing the CCA's decision as "unelaborated," *see* Pet. 25, 27, and "unclear," *id.* at 25, 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 it. *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 the Fifth Circuit has recognized that the CCA conducts its § 5 analysis in the order laid out by *Campbell*:

> *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 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 Jenkins's case.[12]

Importantly, it is difficult to see how the CCA's dismissal even *could* be intertwined with federal law when Jenkins's claims were themselves state-law creations. *See Ex parte Kussmaul*, 548 S.W.3d 606, 633 (Tex. Crim. App. 2018) (Article 11.073 is a "statutory, non-constitutional" creation); *Pierre v. Vannoy*, 891 F.3d 224, 230 (5th Cir. 2018) (Ho, J., concurring), *as revised* (June 7, 2018) ("There is a long line of unbroken precedent from both this Court and the U.S. Supreme Court holding that false trial testimony does not implicate a defendant's due process rights

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[12] Jenkins inaccurately suggests the trial court concluded that the facts were previously unavailable. Pet. 27. The trial court found the new test results *unrelated* to the claims in Jenkins's initial writ because those claims were all trial related, and the new results didn't exist at the time of trial. *See* Pet. App'x D, at 6. This is a subtle, but important, difference, as § 5 requires the applicant to show that the subsequent claims "could not have been presented previously in a timely initial *application*." Article 11.071 § 5(a)(1) (emphasis added). The trial court expressly left that question to the only court with jurisdiction to decide it—the CCA. *See* Pet. App'x D, at 8.

if the State was unaware of the falsity at the time the testimony was given."); *Herrera v. Collins*, 506 U.S. 390, 400 (1993) (actual innocence is not a cognizable federal claim). Thus, even if the abuse-of-the-writ bar can sometimes be interwoven with federal law or even if the CCA proceeded to the second step, it did not decide a federal issue because there was no federal question to decide.

Ultimately, § 5—a state-law ground clearly and unambiguously applied by the CCA—prohibits this Court from exercising jurisdiction over Jenkins's subsequent claims. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (mem.) (Stevens, J., concurring) ("I am now satisfied that the Texas court's determination was independently based on a determination of state law, *see* Tex. Code Crim. Proc. art. 11.071 § 5 [], and therefore that we cannot grant petitioner his requested relief."). Jenkins's petition should be denied.

II. Jenkins Provides No Compelling Reason for Further Review.

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) (emphasis added). The Court, however, would be hard pressed to discover any such reason in Jenkins's petition, let alone amplification thereof. Jenkins makes no allegations of circuit or state-court-of-last-resort conflict, and he makes no effort to explain why they are important to the judiciary or citizenry at large. *See* Sup. Ct. R. 10(a)–(c). The best he musters is an argument that the CCA's procedural bar of his initial writ claims conflicts with this Court's precedent, *see* Pet. 22, but as explained above, this Court did not address state preservation rules in *Glossip*, so there is no conflict upon which to grant the writ. And since the CCA made no federal law

determinations in barring Jenkins's claims, and addressed state-law-only claims in his subsequent application, the state court has *not* decided an important question of federal law. *See* Sup. Ct. R. 10(c) (certiorari is warranted when "a state court . . . has *decided* an important question of federal law that has not been, but should be, settled by this Court" (emphasis added)).

Left with no true ground for review in his briefing, the only reasonable conclusion is that Jenkins seeks mere error correction. But that is hardly a good reason to expend the Court's limited resources. *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."). And such a request is especially problematic here because the court below did not reach the merits of the claims Jenkins raised in his subsequent writ, and this Court is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

The state court proceedings in Jenkins's case were more than adequate; he is merely displeased with the final result. Certiorari review is not merited on this basis. Jenkins's petition should be denied.

III. His Case Is a Poor Vehicle for Consideration of the Questions Presented.

Jenkins's petition suffers significant vehicle problems. As argued above, his first question presented raises arguments not pressed to the CCA—he did not ask the CCA to consider whether its procedural bar was inconsistent with its prior precedent, and he did not ask the CCA to consider *Glossip* at all, much less its effect on its

procedural rules. These vehicle problems should defeat his request for certiorari review. *See Yee*, 503 U.S. at 533.

Similar flaws afflict his second and third questions presented. He purports to have raised claims under *Napue*, Pet. 36, which held that "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." 360 U.S. at 269. While the claims Jenkins raised in his initial writ *were* properly raised under *Napue*, in his subsequent writ, Jenkins cited *Napue* but did not—as required, *id*.—allege that Texas *knowingly* used false evidence, *see* Sub. Appl. 55–56. Instead, he relied on Texas's more defendant-friendly unknowing-use rule. *Id*. (citing *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009)). Indeed, his subsequent false evidence claim relied on the same "new science" supporting his Article 11.073 claim, which he argued was not available to him at trial. And his Article 11.073 and actual innocence claims are themselves not federal questions. *See Kussmaul*, 548 S.W.3d at 633; *Herrera*, 506 U.S. at 400.

This raises several problems for Jenkins. First, this Court has no jurisdiction to address state law questions, so even if Jenkins could overcome Texas's abuse-of-the-writ bar on those claims, the Court would still have no jurisdiction to address their merits. Second, this Court is "unlikely" to extend *Napue* so broadly. *Cash v. Maxwell*, 132 S. Ct. 611, 615 (2012) (Scalia, J., dissenting from denial of certiorari). And even if the Court someday were to expand *Napue*, this would not be the case in which to do so because Jenkins does not allege a circuit split as to what *Napue* requires. Expanding *Napue* in the way Jenkins needs would be a monumental decision. The Court should not take such an extraordinary step where the issue has

received almost no analysis in the lower court decision or the certiorari petition. Third, he attempts to cumulate his state law claims with his federal due process ones, *see* Pet. 28–38—an argument which he also did not press to the CCA, presenting vehicle problems for his third question presented.

And even putting all of that aside, Jenkins's third question presented is highly fact bound, and this Court does "not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *cf. Foster*, 578 U.S. at 500 ("[I]n the absence of exceptional circumstances, we defer to state court factual findings unless we conclude that they are clearly erroneous."). That task fell to the CCA.

At bottom, this case presents an exceptionally poor vehicle for reaching the merits of Jenkins's claims. But Jenkins is not without a potential remedy to raise many of these arguments—he still has federal habeas available. *See Lawrence v. Florida*, 549 U.S. 327, 335 (2007) (review is rarely granted "'at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims,' choosing instead to wait for 'federal habeas proceedings.'" (quoting *Kyles v. Whitley*, 498 U.S. 931, 932 (1990) (Stevens, J., concurring))). Because a better vehicle remains for Jenkins's arguments, certiorari should be denied

IV. Jenkins's State Law Claims Are Barred by Nonretroactivity Principles And Without Merit.

Jenkins's three state-law claims do not warrant further review. *First*, to make them cognizable, the Court would need to establish new constitutional rules of

criminal procedure, which nonretroactivity principles prohibit, since Jenkins's conviction has long been final. *See Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality opinion); *Edwards v. Vannoy*, 593 U.S. 255, 272 (2021). *Second*, the claims lack merit. Even if Jenkins were raising a *Napue* claim, it would fail, as the State did not know of any falsity (which Jenkins admits, *see* Sub. Appl. 61–62), and it was not false, at the time of trial. *See Napue*, 360 U.S. at 269; *Carter*, 2025 WL 2161258, at *12 ("Opinion testimony that is scientifically accurate at the time of trial does not 'create a misleading impression of the facts' at trial because it leads the jury to a correct interpretation of the evidence according to the well-accepted understandings of the scientific community at that time." (citation omitted)).

Regardless, all three state law claims fail for the same reason: none of the post-trial developments would change the overwhelming evidence that Jenkins raped and murdered Norris. Jenkins's sperm was found in Norris's dead body, a fact even more strongly confirmed now. Yet Jenkins denied knowing Norris, and he could only have been in Texas for a maximum of 40 hours before the murder occurred, not including the time it took for him to drive to Texas from California. Norris was home from her lunch break for a maximum of 30 minutes before she was raped and murdered. And the jury could infer from the physical evidence that she *was* raped—blood and fecal matter were found from her bedroom to her bathroom to around her genital and anal area, she was naked from the waist down and strangled with scarves, and sperm from someone other than her live-in boyfriend was found inside her.

Jenkins suggests (at 31) none of that proves rape: Norris just happened to be in a room where "it is not uncommon for an individual's pants to be around their

ankles or for blood and feces to be present in the vaginal/anal areas" when a hereto-undiscovered stranger murdered (but not raped) her the day after she apparently had consensual sex with another stranger—Jenkins. Under this counterfactual, the jury would have to believe that Norris went home for lunch, filled her bathtub "inten[ding] to take a bath," *id.*, either before or after she apparently removed her pants and underwear in her bedroom, defecated there, then was moved (either freely or forcibly) to the bathroom with her pants still around her ankles, where she continued to defecate and get blood on her somehow,[13] before ultimately being strangled or drowned to death, all while Jenkins's semen was just coincidentally inside her. Nothing about the post-trial scientific developments would affect the jury's decision that not only was Norris raped, but it was Jenkins who raped and murdered her.

Worse, had Jenkin's absurd consent theory been presented at guilt, it would have opened the door to his serial rapes of women he also didn't know. *See supra* Statement of the Case II. Under the doctrine of chances, "highly unusual events"—like Jenkins's repeated, violent sexual assaults of random women—"are unlikely to repeat themselves inadvertently or by happenstance." *De La Paz v. State*, 279 S.W.3d 336, 347 (Tex. Crim. App. 2009); *see also Casey v. State*, 215 S.W.3d 870, 880 (Tex. Crim. App. 2007). That is, if Jenkins wants to argue consent, he'd have to also explain the five other women he raped. *See Ex parte Reed*, 670 S.W.3d 689, 759–60 (Tex. Crim. App. 2023) (citing *Bousley v. United States*, 523 U.S. 614, 623–25 (1998)). Jenkins's

[13] There is no evidence that Norris was menstruating when she was murdered. It's unclear how Jenkins explains blood in her vaginal/anal areas if she was not raped.

trial counsel successfully avoided opening this door for a reason; Jenkins now runs headlong into that reason. Certiorari review should be denied.

V. The CCA's Straightforward Application of Napue Does Not Warrant Review.

Even if the Court could reach the merits of Jenkins's *Napue* claims, there is no basis to second guess the CCA's decision, based on the trial court's FFCL, that they had no merit. *First*, Jenkins failed to prove falsity in all but one claim. To be sure, the testimony that Dr. Bell was dead was false. *See* Pet. App'x B, at 26. But Jenkins's remaining complaints related to Dr. Bell, Pet. 28–29, were either not evidence at all, *see* Pet. App'x B, at 26, 29, or distorted the record, *see id*. Similarly, Jenkin's other claims related to Andrus's drug dealing, criminal history, and alibi, as well as any link between those and Norris's death,[14] Pet. 33–35, either distorted the record or nitpicked at mere inconsistencies in the testimony. *See* Pet. App'x B, at 33–34–35, 40–41, 51; *see also De La Cruz*, 466 S.W.3d at 870–71 (the existence of inconsistencies in the evidence does not, "without more," support a finding of falsity). The jury was not under any false impressions about Andrus's criminal activities making him a suspect in Norris's murder or his alibi not being confirmed by another person. Pet. App'x B, at 33–34, 40; *see also id*. at 98–99 (trial counsel didn't probe Andrus more

[14] The trial court rejected Jenkins's argument, Pet. 35, that Dunn testified falsely that Lieutenant James O'Connell was dead, as O'Connell was not mentioned during Dunn's testimony at all. *See* Pet. App'x B, at 50. The trial court also found Janet Brightman's forty-year-later memories related to Andrus's alibi, Pet. 35 n.7, and O'Connell's disproven memories and rank speculation, *id*. at 35, not credible. *See* Pet. App'x B, at 39, 44, 48–49. Jenkins says nothing about these credibility findings.

because Andrus's answers "paint[ed] [him] as a dope dealer that was not telling the truth all the time" and "evasive in dodging the questions").

Second, Jenkins failed to prove State knowledge. *Glossip*, 604 U.S. at 626. Of course, if there was no falsity, the State could not have knowingly solicited or failed to correct such. *See, e.g.*, Pet. App'x B, at 34–35. Notably, the testimony regarding Andrus's alibi was both elicited and clarified by defense counsel; thus, there was nothing for the State to correct. *See id.* at 40; *Napue*, 360 U.S. at 269. And as to Dr. Bell, the trial court found the State neither knew nor should have known that he was not dead, given their reasonable investigation of him in 1996. *See* Pet. App'x B, at 26–27.

Third, even if Jenkins could prove falsity and knowledge, he wholly failed to prove the alleged falsities were reasonably likely to have affected the judgment of the jury. *See Napue*, 360 U.S. at 271. Like his state law claims, no amount of nitpicking testimony to try to blame Andrus would've had any effect on Jenkins's lack of innocent explanation for his sperm being inside Norris's vagina and his DNA being on Norris's blouse when she died. *See* Pet. App'x B, at 27–28, 30–31, 35–36, 41–42, 50–51. Whether *Dr. Bell* concluded Norris was raped, Urbanovsky (who personally observed the crime scene) and Dr. Barnard (a certified forensic pathologist that would have been called even if Dr. Bell, a private pathologist, was alive) each concluded the same.[15] *See id.* at 24–25, 27–28. With Jenkins only in Texas for a short window and

[15] True, Jenkins attacks these conclusions, and the conclusion that his DNA was on Norris's blouse, in light of post-trial developments, and he asks this Court to cumulate those post-trial developments with his *Napue* claims. Pet. 36–38. He cites *Glossip* as support, but *Glossip*'s cumulative error analysis was dicta, as the Court

Norris's rape and murder happening within an even shorter window, none of the alleged falsities had any effect on the jury's determination that all signs pointed to Jenkins being the one who raped and murdered her. Certiorari should be denied.

CONCLUSION

Jenkins fails to show that this Court has jurisdiction over the matters for which he seeks review, or that there are otherwise compelling grounds to issue a writ of certiorari. Consequently, the petition should be denied.

Respectfully submitted,

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had already found a *Napue* violation. *See* 604 U.S. at 250–51. Moreover, the state conceded the errors cumulated, *id.*, which the State does not do here. And even without the blouse or expert opinion that Norris was raped, Jenkins would not prove materiality. *See supra* Reasons for Denying the Writ IV.