No. _____

In the
Supreme Court of the United States

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IN RE BLAINE MILAM,

Petitioner.

ON PETITION FOR A WRIT OF HABEAS CORPUS

APPLICATION FOR STAY OF EXECUTION

Blaine Milam is scheduled to be executed on September 25, 2025.

To the Honorable Samuel Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Blaine Milam respectfully requests that this Court stay his execution pending the disposition of his petition for a writ of habeas corpus. Blaine Milam is actually innocent of the capital murder for which he is scheduled to be executed on September 25, 2025.

I. Requirements for a stay of execution.

A stay of execution is justified pending the disposition of a petition for a writ of habeas corpus. *See Barefoot v. Estelle*, 463 U.S. 880, 889 (1983) ("Approving the execution of a defendant before his appeal is decided on the merits would clearly be improper."). The standards governing when a stay should issue are well-settled. A stay of execution "is an equitable remedy" and "is not available as a matter of right." *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Courts consider:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Whether the applicant unnecessarily delayed in bringing his claims is also considered. *Hill*, 547 U.S. at 584.

II. Milam's petition is likely to succeed on the merits.

Milam has shown a likelihood of success on the merits of his actual innocence claim for the reasons set out in his petition for a writ of habeas corpus. In short, no forensic evidence ties Milam to any injury on A.C., the thirteenth-month-old daughter of his then-fiancée Jesseca Carson. At trial, the State relied on (1) bitemark opinion testimony that Milam's dentition matched certain injuries on A.C., (2) testimony by a State-retained lab that Milam's DNA was present on those injuries, and (3) testimony by a supposed blood-pattern analysis (BPA) expert. But all of this evidence is now known to be unreliable, false, and prejudicial. First, there is now a consensus that all bitemark opinion testimony is junk science and such testimony is inadmissible in Texas courts. Second, in August 2025, the State-retained lab retracted its DNA testimony from trial, resulting in significant changes to the prior DNA testimony. Moreover, the lab now rejects any inference-drawing from DNA evidence about how or when an individual's DNA is transferred to a surface. Third, the testimony about blood stains on a pair of jeans found at the scene days after the offense came from an expert who did not belong to an accredited lab and who did not adhere to methodology to allow him to offer any reliable opinion about how the stains were left on the jeans.

The State relied on demonstrably unreliable and prejudicial forensic evidence because it could find no motive for Milam to have killed A.C. By contrast, there is abundant evidence that

Carson was suffering from a rare brain disorder, prosopometamorphopsia ("PMO"), which causes sufferers to see people's faces as distorted and warped. Sufferers often describe the distorted faces as malevolent and threatening—and which Milam's jury never learned about. In her statements to law enforcement, Carson consistently reported seeing such distortions in her daughter's face, leading her to believe that A.C. was possessed by a demon—a belief Milam never endorsed. She described seeing the demon in A.C.'s face and being frightened of her daughter. Carson told law enforcement that she would rather see A.C. "go to heaven now than to . . . have Satan have her soul and her go to hell when she gets older[.]"

Finally, the State introduced testimony from a county jail nurse that Milam had told her he had done "it." It is undisputed, however, that at the time Milam made this vague statement, he had full-scale IQ scores of 71 and 68 on testing administered by the defense and State respectively. And in January 2021, the State's trial expert revised his prior opinion and concluded that Milam does meet the current diagnostic criteria for intellectual disability. As this Court knows, individuals with low intellectual functioning are especially vulnerable to making false confessions. *Atkins v. Virginia*, 536 U.S. 304, 320 (2002); *Hall v. Florida*, 572 U.S. 701, 709 (2014).

III. Milam will be irreparably injured absent a stay.

Milam's impending execution is plainly an irreparable injury. In a capital case, this factor "weighs heavily in the movant's favor" based on the "irreversible nature of the death penalty." *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982). This is particularly true when the underlying claim is that Milam is actually innocent of the offense for which he is scheduled to be executed.

IV. Harm to other parties or the public is minimized.

Milam recognizes that "the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. However, any injury to other parties by

staying Milam's execution is minimized by a number of factors. First, the public interest lies in Milam's favor. The public does not have an interest in carrying out the execution of an innocent man. Instead, the public interest lies in ensuring the avoidance of a gross miscarriage of justice. Second, the State received notice in March 2016 that the lab that performed the DNA testing recommended that the DNA evidence in Milam's case be reinterpreted because the mixture interpretation methodology used before trial was outdated and unreliable. Milam only learned of this notice last month, despite attempts to obtain the lab's records in 2018, 2024, and 2025. Finally, any harm to other parties is mitigated by the temporary nature of the requested relief, which does not invalidate Milam's conviction or sentence, but instead is only a temporary measure to permit him an opportunity to litigate his claim of actual innocence.

V. Milam timely and diligently pursued this litigation.

Milam diligently litigated this claim. Within weeks of initial federal habeas proceedings ending, the convicting court set an execution date of January 15, 2019. At that time, Milam filed a subsequent state habeas application challenging his conviction on the ground that the bitemark opinion testimony which the State described at trial as a "smoking gun" was junk science. Milam also raised an *Atkins* claim. The Texas Court of Criminal Appeals ("TCCA") remanded both claims to the convicting court for a determination on the merits. *Ex parte Milam*, 2019 WL 190209, *1 (Tex. Crim. App. Jan. 14, 2019). The convicting court, however, denied Milam any process and denied both claims in a letter addressed to the parties. It then signed the State's proposed Findings of Fact and Conclusions of Law verbatim, which the TCCA adopted with limited exceptions to deny relief on July 1, 2020. *Ex parte Milam*, No. WR-79,322-02, 2020 WL 3635921 (Tex. Crim. App. July 1, 2020).

The trial court set an execution date for Milam of January 21, 2021. Shortly prior to that date, Milam learned that the State's *Atkins* expert from trial changed his opinion and thought that Milam did meet current diagnostic criteria for intellectual disability. Milam filed a subsequent state habeas application raising an *Atkins* claim on the ground that every expert to have opined on whether he was intellectually disabled now agreed that he met current diagnostic criteria. The TCCA stayed the execution and remanded the *Atkins* claim to the convicting court. *Ex parte Milam*, No. WR-79,322-04, 2021 WL 197088, *1 (Tex. Crim. App. Jan. 15, 2021). The convicting court again signed the State's proposed Findings of Fact and Conclusions of Law verbatim, which the TCCA likewise adopted and denied relief on July 31, 2024. *Ex parte Milam*, No. WR-79,322-04, 2024 WL 3595749 (Tex. Crim. App. July 31, 2024).

The trial court set an execution date for Milam of September 25, 2025. On September 2, 2025, Milam filed a subsequent state habeas application renewing his challenge to the bitemark opinion testimony in light of the emergence in 2023 of a consensus that such testimony however framed is junk science, directly contradicting the TCCA's prior opinion. Milam also challenged the reliability of the DNA evidence in light of the State's 2020 conclusions—adopted by the convicting court and TCCA—that the DNA evidence established a further forensic link between Milam and the offense. The TCCA dismissed Milam's claims. Milam also filed a Motion for Authorization to proceed on his actual innocence claim and related claims in the United States Court of Appeals for the Fifth Circuit, which denied authorization.

CONCLUSION

This Court should stay Milam's execution pending the disposition of his petition for a writ of habeas corpus.

Respectfully submitted,

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