No. _____

In the
Supreme Court of the United States

_____

IN RE
BLAINE MILAM,

Petitioner.

_____

PETITION FOR A WRIT OF HABEAS CORPUS

_____

CAPITAL CASE

_____

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

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CAPITAL CASE
QUESTIONS PRESENTED

1. In a capital case, does "a truly persuasive demonstration of 'actual innocence' made after trial . . . render the execution of a defendant unconstitutional," *Herrera v. Collins*, 506 U.S. 390, 417 (1993), under the Eighth and Fourteenth Amendments to the United States Constitution?
2. Does the admission of material forensic opinion testimony that is later wholly discredited render a criminal trial fundamentally unfair in violation of the Due Process Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDINGS BELOW

All parties appear on the cover page in the caption of the case.

LIST OF RELATED CASES

- *State v. Milam*, 4th District Court of Texas, No. CR009-066 (June 8, 2010)
- *Milam v. State*, Court of Criminal Appeals of Texas, No. AP-76,379 (May 23, 2012)
- *Ex parte Milam*, Court of Criminal Appeals of Texas, No. WR-79,322-01 (Sept. 11, 2013)
- *Milam v. Director*, United States District Court for the Eastern District of Texas, No. 13-cv-00545 (Aug. 16, 2017)
- *Milam v. Davis*, United States Court of Appeals for the Fifth Circuit, No. 17-70020 (May 10, 2018)
- *Ex parte Milam*, Court of Criminal Appeals of Texas, No. WR-79,322-02 (July 1, 2020)
- *In re Milam*, United States Court of Appeals for the Fifth Circuit, No. 20-40663 (Oct. 27, 2020)
- *In re Milam*, United States Court of Appeals for the Fifth Circuit, No. 20-40849 (Jan. 8, 2021)
- *Ex parte Milam*, Court of Criminal Appeals of Texas, No. WR-79,322-04 (July 31, 2024)
- *Milam v. Jimerson*, United States District Court for the Eastern District of Texas, No. 25-cv-00267 (Aug. 29, 2025)
- *Milam v. Jimerson*, United States Court of Appeals for the Fifth Circuit, No. 25-70015 (Sept. 19, 2025)
- *Ex parte Milam*, Court of Criminal Appeals of Texas, No. WR-79,322-05 (Sept. 22, 2025)

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PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner Blaine Milam respectfully asks that the Court grant his petition for writ of habeas corpus. In the alternative, he asks that the Court transfer the petition to the United States District Court for the Eastern District of Texas for a hearing and determination on the merits of his claim. The Court should order the District Court to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes petitioner's innocence." *In re Davis*, 557 U.S. 952, 952 (2009).

OPINIONS BELOW

The September 19, 2025, opinion of the United States Court of Appeals for the Fifth Circuit denying authorization to file a second or successive habeas corpus application is attached as Appendix A. The September 22, 2025, order of the Court of Criminal Appeals of Texas dismissing a subsequent application for a writ of habeas corpus is attached as Appendix B.

STATEMENT OF JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. §§ 1651(a), 2241(a), 2254(a), and Article III of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides in relevant part: "nor cruel and unusual punishments inflicted." The Fourteenth Amendment to the United States Constitution provides in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law."

RULE 20 STATEMENT

The writ sought is in aid of the Court's appellate jurisdiction, as it sounds in habeas corpus and Milam's custody is pursuant to the judgment of a state court. Further, the claim presented in

the petition has been presented to both the Court of Criminal Appeals of Texas ("TCCA") and the Fifth Circuit. *Milam v. Jimerson*, ___ F.4th ___, 2025 WL 2680581 (5th Cir. Sept. 19, 2025); *Ex parte Milam*, No. WR-79,322-05 (Tex. Crim. App. Sept. 22, 2025). Milam is barred from filing a petition for writ of certiorari from either of those decisions, because the TCCA decision in this case rests on adequate and independent state law grounds and he is statutorily prohibited from filing a petition for writ of certiorari from the Fifth Circuit decision, 28 U.S.C. § 2244(b)(3)(E). That leaves Milam with no adequate remedy at law because adequate relief cannot be obtained in any other form or in any other court. Milam has demonstrated this by exhausting the remedies available to him by law in both state court and the lower federal courts for this claim, leaving this petition as his only available option.

The petition establishes that exceptional circumstances warrant the exercise of the Court's discretionary powers. Specifically, as explained below Texas will execute an innocent person absent the Court's intervention.

Milam did not make application to the district court of the district in which he is held because the Fifth Circuit denied him authorization to file a second or successive habeas application there. *See* 28 U.S.C. § 2244(b)(3).

STATEMENT OF THE CASE

Blaine Milam is innocent. He was wrongfully convicted of capital murder and sentenced to death in Rusk County in 2010 for the tragic death of A.C., the thirteen-month-old daughter of his then-fiancée, Jesseca Carson. In fact, it was Carson who caused her daughter's death. There is no credible evidence that Milam played any role in it. To obtain a conviction, the State relied on bitemark comparison testimony as its "smoking gun." 48 RR 38. However, bitemark testimony is

not only extraordinarily prejudicial, it has also been "wholly discredited." *McCrory v. Alabama*, 144 S. Ct. 2483, 2483 (2024) (Sotomayor, J., respecting denial of certiorari).

In seeking Milam's conviction, the State entirely failed to consider that Carson was the lone perpetrator despite Carson's telling the authorities a bizarre story that A.C. was possessed by a demon—a story Carson alone told; her increasingly disturbed beliefs and behaviors in the months leading up to A.C.'s death; and her demonstrable lies that inculpated Milam and exculpated herself. Instead, for the sole stated reason that Milam was the only man in the house, authorities immediately leapt to the conclusion that he—and not Carson—caused A.C.'s death. They persisted on this path even though nothing in their investigation provided any reason why Milam would commit such a horrific crime. Instead, witnesses including Carson, consistently reported that Milam adored A.C., treated her as his own daughter, and had stepped up to take care of her as Carson's mental health deteriorated.

Carson told authorities a story untethered from reality about demon possession and exorcism. Despite this, the State adopted Carson's narrative that Milam had convinced Carson her daughter was possessed and that she merely acquiesced to his brutal assault of A.C. as its theory of the case. But new evidence about a rare, albeit well-documented, neurological visual-perception disorder called prosopometamorphopsia ("PMO") places Carson's statements (and the State's theory of the case) in an entirely different light. Carson's descriptions of both A.C.'s and Milam's faces during what she believed were demonic possessions are consistent with this disorder. PMO causes people afflicted with it to see people's faces as distorted or "warped." Sufferers often describe the distorted faces as malevolent and "demon"-like.

The experience of PMO is terrifying. It would be especially terrifying for a person who was already experiencing documented religious delusions (as Carson was), who believed in demon

possession (as Carson did), and who had no other available explanation for what she was experiencing. PMO provides a reason why Carson—and not Milam—would have beaten and strangled her own daughter to death. Carson herself told authorities 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 . . . when she dies even if she hasn't done anything." Ex. 24 at 29.[1]

However, because the State was singularly focused on Milam, it failed to critically interrogate Carson's story and instead tried to force a square peg into a round hole. The State's prejudgment of Milam's guilt was compounded by Milam's intellectual and social impairments, which inhibited his ability to counter Carson's narrative. On IQ testing administered by the defense and the State shortly after Milam's arrest, he obtained IQ scores of 71 and 68 respectively. A psychiatrist retained by the State who examined him pre-trial observed that Milam "clearly has intellectual limitations" and "has very simplistic ideas, is very naïve, extremely gullible, easily led . . . ." Ex. 29 at 13-14.

These characteristics contributed to Milam's inability to tell his side of the story while Carson deftly told her side—an invented story of Milam attempting to perform an exorcism—adopted by the State as its own. Milam's vulnerabilities turned this case from what should have been a he-said-she-said case into a she-said case. While Milam spent his time during interviews with authorities naively protecting Carson, Carson spent her time with authorities weaving a tale that placed the blame on Milam and negated her culpability. Even though authorities established that Carson lied about important details in her story, it nevertheless remained the State's story because it was the only story it had that implicated Milam.

[1] The referenced exhibit numbers correspond to the exhibits filed below in the Fifth Circuit in support of the Motion for Authorization.

Consequently, law enforcement conducted a forensic investigation designed to produce evidence that supported Carson's narrative that Milam caused A.C.'s death. But new evidence eliminates or conclusively undermines the reliability of the forensic evidence the State used to try to establish that Milam injured A.C. At trial, the State emphasized bitemark opinion testimony that is now considered discredited in its entirety. The State also relied on DNA evidence to try to corroborate its bitemark opinion testimony. That evidence has since been retracted by the Southwestern Institute of Forensic Sciences ("SWIFS"), the lab that conducted the testing. SWIFS also rejects the argument that the presence of DNA provides any information about how or when an individual's DNA is deposited on a surface. This discredits the State's theory that any DNA of Milam's on A.C. must be related to his alleged assault on her and not the result of normal daily living activities as one of her care-takers. Likewise, the blood pattern analysis ("BPA") testimony, which the State relied on for its theory of how the offense occurred, was methodologically unsound and demonstrably unreliable.

The only evidence the State currently possesses that Milam played any role—whether as a principal or a party—in causing A.C.'s death is a vague oral admission he made to a jail nurse of having done "it." But that admission lacks reliability. Milam has been diagnosed as intellectually disabled by multiple experts, including the State's trial expert who changed his diagnosis in 2021. At trial, there was a dispute over whether he met the criteria for intellectual disability or whether he fell in the borderline range of functioning. But there was no dispute that he was cognitively impaired and naïve. These characteristics placed Milam at a heightened risk of falsely confessing. *See* Ex. 5 at 3-4. In light of this and his dependence on Carson—whose vastly superior intellect and social skills were never denied—Milam's admission is most reasonably understood as a naïve attempt to protect Carson. Indeed, Milam expressly contemplated taking the blame for Carson

during his custodial statement, inquiring: "what if I tell you it was me and I take the blame for somebody else, will I be in trouble?" 59 RR SX E-2.[2]

In sum, the evidence now establishes that: 1) Carson was suffering a terrifying visual-perception disorder that caused her to see malevolent-seeming distortions in her daughter's face, explaining why Carson would attack her; 2) the State's primary evidence attempting to connect Milam to the assault—bitemark opinion testimony—has been thoroughly debunked and would not be admissible today to identify an injury as a human bitemark, let alone link that injury to a particular individual; 3) the DNA evidence the State presented to corroborate the bitemark opinion testimony would now be deemed inconclusive and provides no evidence of how or when any DNA was deposited; 4) the blood pattern analysis opinion testimony that State relied on for its theory of how the offense occurred was methodologically unsound; and 5) Milam's purported confession that he did "it" is most reasonably understood as an attempt to cover for Carson, which he expressly contemplated doing. The State's case today establishes nothing more than Milam's presence in his own home on the night of A.C.'s death. And the remaining evidence of who was responsible for A.C.'s death—Carson's and Milam's custodial statements—points strongly to Carson as the lone perpetrator.

I. Statement of Facts

A. Carson and Milam's Relationship

1. Carson was undisputedly higher functioning and more sophisticated than Milam.

To convince Milam's jury that Milam had fatally injured A.C. while Carson did nothing to intervene, the State cast him as the dominant person in his relationship with Carson at his trial. But the State's theory of their relationship at Milam's trial did not square with its theory at Carson's

[2] RR refers to the Reporter's Record at Milam's trial, with the exception of some references to Carson's trial, which are labeled as *State v. Carson*.

trial. Nor did it square with reality. At Carson's trial, the State portrayed Carson as the savvier one, whose intelligence far exceeded Milam's. Carson's mother testified that Carson was "a strong willed girl" who was "significantly more intelligent" than Milam. *State v. Carson*, No. CR2009-067, 14 RR 171-72, 174-76. Likewise, Texas Ranger Kenny Ray—who interviewed both Milam and Carson—testified that Carson was "by far" the more intelligent of the two. *Id.* at 17 RR 117. The State itself characterized Milam as "dumb" and "ignorant[.]" *Id.* at 18 RR 37.

In light of Carson's higher degree of sophistication, the State told Carson's jury that it was implausible that Milam instigated the offense and tricked Carson into not intervening:

> From the objective evidence that you heard, the objective evidence, not just what she said, which is the more likely scenario? That Blaine Milam brainwashed Jesseca Carson into all of this and manipulated her and duped her or that she is the one where all of this originated? Ask yourself that question. Look at the objective evidence . . . . . She's the one. She's the one.

Id. at 18 RR 36-37.

The State's presentation about the nature of Milam's relationship with Carson at her trial was consistent with the evidence. When Milam met Carson, he was a socially isolated eighteen-year-old described by the few who knew him as naïve, awkward, and "slow." 51 RR 14, 32. Even as a young child, his grade-school teachers described him as shy and socially inept. *Id.* He had few friends in school. 53 RR 220. His social isolation was worsened when his parents removed him from school around the fourth grade. 51 RR 39. Milam spent most of his childhood isolated in his family's rural Rusk County trailer watching television with his seriously ill father while his mother worked at the Dollar Store to support the family. *Id.* at 259.

Carson earned good grades and graduated high school. *See, e.g.*, *State v. Carson*, No. CR2009-067, 16 RR 122, 125. Milam, on the other hand, has little schooling and has IQ scores in the ID range. A psychiatrist retained by the State who examined him pre-trial observed that Milam

"clearly has intellectual limitations" and "has very simplistic ideas, is very naïve, extremely gullible, easily led . . . ." Ex. 29 at 13-14.

2. All evidence demonstrated that Milam loved A.C. and had no motive to harm her.

In early 2008, Milam met Carson—his first and only serious girlfriend—through the website MySpace. 51 RR 283. Soon their online relationship developed in the real world. Within a few months, he proposed marriage. After Carson graduated high school, the couple moved into their own apartment, a short drive from Milam's mother's trailer home. 50 RR 33; 51 RR 298.

By all accounts, Milam was "ecstatic about having [A.C.] around" and embraced the role of father. 51 RR 292. No evidence suggested he ever mistreated A.C. Instead, all the evidence reflected that Milam had a loving relationship with her. Carson's mother, Heather Wilkes, testified at Carson's trial that she (Wilkes) had no concerns about Milam's treatment of A.C. and that he helped care for her. *Id.* at 14 RR 169-70. Milam's former boss, who became Carson's friend and assisted with her defense at her trial, likewise observed that Milam "had a good relationship with [A.C.]" *Id.* at 15 RR 44. The most zealous advocate of Milam's loving relationship with A.C. was Carson herself. Throughout her statements to authorities, Carson insisted that Milam loved A.C. and would not have hurt her.[3] *See*, *e.g.*, Ex. 24 at 36, 38, 42; Ex. 25 at 13-14, 38; *see also State v. Carson*, No. CR2009-067, 16 RR 135, 173, 201.

The State had nothing explaining why Milam would abruptly flip from being a loving father figure to A.C. to horrifically assaulting her, causing prosecutors to disclaim "throughout [the trial they are not] required to prove motive." 48 RR 144.

[3] Indeed, even though Carson shrewdly shifted the blame to Milam by casting him in a story as both the diviner of the demon as well as its exorcist (who may have tried to "knock [the demon] down"), she stopped short of claiming that Milam ever physically hurt A.C.

B. Changes in Carson Precipitating the Offense

1. Carson's mental health deteriorates and she withdraws from A.C.

What does have explanatory power, however, are Carson's bizarre beliefs and behavior, which ultimately—and tragically—became focused on A.C. Around September 2008, a few months before A.C.'s murder, Carson's friends and family noticed increasingly strange and erratic behavior from her. 46 RR 41; 51 RR 304. Whereas she had once been outgoing and friendly, she became withdrawn and disheveled. 46 RR 41. Although her friends and family did not recognize this, witness accounts of Carson's demeanor and behavior during this time reflect symptoms consistent with psychosis and depression. 46 RR 261-62. Shortly after Milam's father died that year, Carson came to believe that she and Milam could communicate with their deceased fathers through a Ouija board. Ex. 25 at 80-81. Carson's father had committed suicide when she was a child, but she claimed the Ouija board revealed to her that her father had been murdered by her mother and that the murder weapon was buried in Alabama. Ex. 25 at 27, 90-92. This delusion is documented in police reports and witness statements in the months leading up to A.C.'s death.

In October, Carson began making harassing phone calls to her mother Heather Wilkes, accusing Wilkes of killing her father. According to a police report filed by Wilkes, Carson threatened her, "[Y]ou'll pay for what you did to my Dad." These calls continued several times a day at all hours of the day and night. Ex. 28 at 1-2. In an email, sent October 4, Carson again accused Wilkes of killing Carson's father and trying to poison her and A.C. Ex. 26.

Later that October, Carson took Milam and A.C. to Alabama on an investigative mission. 46 RR 204. They stayed one night with the family of her best friend, Tiffany Taylor. Lori Taylor, Tiffany's mother, recounted to law enforcement that Carson told her she was using a Ouija board and had proof that her mom had killed her dad and made it look like a suicide. Ex. 27 at 4. Carson said she came to Alabama to look for the gun her mom had used to kill her father, which Carson

believed was buried at a relative's house. *Id.* at 5. Taylor further stated that Carson "gave her the names of who helped" and told Taylor that her mom was threatening her and Milam. *Id.* Carson said her mom had put rat poison in Carson's and Milam's food and in A.C.'s bottle. *Id.* at 4-5. Soon after, Carson returned to Texas with Milam and her daughter in tow.

In November 2008, Carson's mother filed another police report complaining that her daughter was harassing and threatening her. *See* Ex. 28 at 6-7. Carson continued to call and text her mother and grandmother several times a night.

That same month, Carson took Milam and A.C. back to Alabama. Friends who saw Carson during this time became concerned that she appeared disinterested and disconnected from her daughter. 46 RR 210-11. Lori Taylor recounted that Milam was the one who fed and changed A.C. 46 RR 209. Carson did not act "like you would expect a new mother to be taking care of her baby." *Id.* at 210-11. Taylor also reported that Carson seemed "weird, hollow," and "empty." *Id.* at 209. She described looking into Carson's eyes was "like looking into a dark space." *Id.*

2. Carson experienced terrifying visual distortions that led her to kill A.C.

At about 10:30 a.m. on December 2, 2008, emergency services received a call from Milam reporting that A.C. was not breathing. 42 RR 105. Milam described to the 911 operator that he and Carson had held A.C. after finding her and that he had attempted "mouth-to-mouth and CPR." *Id.* The 911 operator instructed them to bring A.C. to the phone so the operator could talk them through giving CPR again. *Id.* Based on the operator's instructions, Milam looked into A.C.'s mouth to check that her airway was not obstructed and then pinched her nose and blew breaths into her mouth and to give hard and fast chest compressions. *Id.* Milam and Carson repeated these steps several times. *Id.* A.C. was deceased when law enforcement arrived on the scene.

Soon after arriving at the scene, Texas Ranger Kenny Ray interviewed Milam and Carson separately. *See* Ex. 25; SX F-1, 59 RR 148. Both Carson and Milam initially told Ranger Ray that

they had left A.C. alone in the trailer and had walked down to look at some property they intended to purchase. Ex. 25 at 73-74; SX F-1, 59 RR 52. When they returned home an hour or two later, they found A.C. in a hole in the floor of the master bathroom. Ex. 25 at 75; SX F-1, 59 RR 152.[4]

When questioning Carson, Ranger Ray told her that he did not believe her initial version of events. Carson expressed anxiety that her real story would not be believed.

> CARSON: I could tell you, but you wouldn't believe me.
> RANGER RAY: I will. I will believe you.
> CARSON: No, you won't.
> RANGER RAY: I will believe you. I promise.
> CARSON: If you do, none of the other cops won't --
> RANGER RAY: I will --
> CARSON: Because it's something that they would not believe.
> RANGER RAY: I will believe you. I promise you, I will believe you.

Ex. 25 at 78-79. It was at this point, Ranger Ray would later testify, that Carson's demeanor changed from that of a grieving mother to being coldly matter-of-fact. 40 RR 31. Carson told Ranger Ray that she believed Milam was being possessed, "kind of like 'The Exorcist,'" but that Milam did not "understand" it was happening until she told him. *Id.* at 82. Carson then came to believe A.C. was also possessed. Ex. 25 at 90, 93.

What Carson went on to describe is consistent with prosopometamorphopsia ("PMO"). PMO is caused by dysfunction in the clusters of neurons that are typically housed in the occipital and temporal lobes of the brain and that are specialized for processing faces. Ex. 7 at ¶2. When this network of neurons does not function properly, conscious face perceptions and behavioral judgments about faces are disrupted. *Id.* at ¶3. PMO causes faces to "distort in shape, texture,

[4] Carson later admitted that she fabricated this story and instructed Milam to tell it to law enforcement. Ex. 25 at 109-10.

feature position, and/or color, and faces often transform while being viewed." *Id.* These distortions can affect only one half of the face (hemi-PMO) or both sides of the face (bilateral-PMO). *Id.* People with PMO are more likely to see distortions in familiar faces and for some people, the distortions only appear intermittently. *Id.* at ¶5. The distortions can be inconsistent in appearance. *Id.* They can also appear when looking at faces on screens. *Id.* People with PMO have also described hearing voice distortions. *Id.* at ¶9. While the visual distortions can vary and are described by those who experience PMO in numerous different ways, some of the most common distortions reported are "drooping or melting features." *Id.* at ¶4. Some people see features of the face shifted from their usual position. *Id*. at Table 1. Some distortions are static while others change as the individual continues to gaze at a particular face. *Id*.

A substantial proportion of people who have reported their PMO symptoms have described that the distorted faces they see appear malevolent and resemble, especially, "demons." *Id.* Consequently, PMO is colloquially known as "demon-face syndrome."[5] PMO can occur in those who are mentally healthy and those who have psychosis. *Id.* at ¶6. Perhaps unsurprisingly, PMO typically has a major impact on the mental health of those who experience it. *Id.* at ¶3. Yet, many people with PMO do not report their experience for fear others will perceive them as being mentally ill. *Id.* at ¶6. PMO can last for years but it can also resolve on its own as quickly as a month or two after it starts. *Id.* at ¶7. While rarely occurring, it is well documented in medical literature and, at least more recently, has been reported about in several mainstream media sources.[6]

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[5] *See, e.g.*, Demon Face Syndrome, WebMD, https://www.webmd.com/brain/prosopometamorphopsia (last visited Aug. 13, 2025).

[6] *See, e.g.*, NPR, *How Are You Not Seeing This?*, Sept. 13, 2024, https://www.thisamericanlife.org/840/how-are-you-not-seeing-this; https://www.cnn.com/2024/03/22/health/demon-faces-prosopometamorphopsia-wellness; https://www.nbcnews.com/health/health-news/disorder-man-sees-demonic-faces-rcna144533 (last visited September 15, 2025).

In Carson, PMO caused her to see distorted features on certain familiar faces, including her daughter's face. *See id.* at ¶5 (some people with PMO are more likely to perceive distortions in familiar faces than unfamiliar ones). Carson's descriptions of seeing a demon in Milam's face—and later in A.C.'s—are consistent with PMO. *Id.* at ¶¶10-22. In her statement to Ranger Ray, Carson said the "demon" would come in and out of Milam. Ex. 24 at 38. Over time though, the "demon" began to appear more frequently in Milam and, she told Ray, she could not make it stop happening. Carson described to Ranger Ray her perception that Milam's face changed. She told him about an incident when she was driving her car and "Blaine looks over and starts looking at me, and it was a look that wasn't Blaine's." *Id.* at 12-13.

Thus, while incredible on its face, Carson's account of Milam's "demon possession" becomes coherent through the lens of PMO evidence: she was intermittently experiencing grotesque distortions in Milam's face that she was interpreting as a demon possessing him. She also explained to authorities how Milam would cope with Carson's distress when she experienced PMO in his face: he would remove himself from her view by hiding in the bathroom, sometimes for so many hours that his mother would ask what he was doing in there. *Id.* at 87.

As is common with PMO, the distortions Carson saw in Milam's face made him appear menacing and frightened her: "[I]t came close to looking like he was going to kill me."[7] *Id.* at 84. Similarly, in her trial testimony, Carson told her jury about an incident while Blaine was driving:

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[7] Carson's statements are similar to those a subject with PMO has used to describe looking at a partner's face:

> So I remember we were sitting at a table at a restaurant. It was outside the movies. We were going to go see a movie that night. And I remember looking at him, and I thought he was snarling at me. . . . I remember looking at his face and thinking, I don't want to be anywhere near this person. He feels like a stranger and like he wants to harm me, to hurt me.

NPR, *How Are You Not Seeing This?*, Sept. 13, 2024, available at https://www.thisamericanlife.org/840/how-are-you-not-seeing-this (last visited September 15, 2025).

> I turned over to look at him, and he's just got this expression on his face like he's about to kill me, like he's just about to jump over, you know, in the middle of the car and attack me. And, you know, I'm sitting there, and I'm driving while I'm doing this, but I'm asking him, "What's wrong?" And I'm crying and everything. And his voice is not even the same octave as Blaine's voice was. It was completely different. And his eyes just -- they just looked so evil.

State v. Carson, No. CR2009-067, 16 RR 158.

Carson told Ranger Ray that, after some period of time, the "demon" had not returned in Milam "for a while." Ex. 24 at 12. That changed on December 1, when the "demon" returned, this time appearing in her child A.C. At the time, she and Milam were alone with A.C., as Milam's mother had gone out of town. Carson described the changes she observed to A.C.'s appearance: one side of A.C.'s face was "warped down, and her eye was like stretched and stuff, and it was really freaky." Ex. 25 at 90. Carson later described that "one whole side [of A.C.'s] eyelids were, like, this long on this side and her whole face on this side was stretched out. And her lip, her top lip looked like she had a cleft palate." Ex. 24 at 19.

In a photo Milam took of A.C., Carson described seeing one side of A.C.'s face "warped down, and her eye was like stretched and stuff," *id.* at 90: a classic description of a "drooping" face seen in hemi-PMO.[8] Carson told authorities it was "frightening" to her "to see [A.C.] look like that." *Id.* at 93. She also described the distortions as dynamic: "even when it would come to be [A.C.] for a couple of minutes, her face was still warped, and then, you know, it would go back to the demon possessing her or whatever." *Id.* Carson would try to look at A.C. from time to time: "it would be her for a little while, and then it would start getting mean again. And then I was like,

[8] *See* John C. M. Brust and Myles M. Behrens, *"Release Hallucinations" as the Major Symptom of Posterior Cerebral Artery Occlusion: a Report of 2 Cases*, 2 Annals of Neurology 432 (1977) (describing subject who "experienced transient visual illusions: the right half of people's faces (i.e., to the patient's left) seemed to melt, 'like clocks in a Dali painting'"); Jan Blom, et al., *A Century of Prosopometaphopsia Studies*, 139 Cortex 298, 301–02 (2021) (systematic literature review determined 23% of hemi-PMO sufferers identified in the literature described the face as "drooping downward").

'Is it coming back?'" *Id.* at 108. Carson's account of experiencing dynamic distortions in a face as she continued to look at it is a common feature in PMO. Ex. 7 at ¶4.

Lacking any readily available explanation for what she was experiencing, Carson, who believed in demon possession, Ex. 25 at 82, interpreted her experience of PMO literally and became convinced her daughter was being possessed by a menacing demon. She described A.C. during this period as being "mean" and "not my baby," which caused her to "br[eak] down." *Id.* at 93, 102. She likely also experienced vocal distortions, causing her to perceive A.C.'s cries to be her "growling" at her. Ex. 24 at 15; *see also* Ex. 7 at ¶¶9, 17. PMO evidence explains that Carson was not simply entertaining a delusion about a demon attempting to possess her child, *she was viscerally experiencing it*. That she was actually experiencing this visceral reality is consistent with her fear during her interrogation by Ranger Ray that she would not be believed and be psychiatrically committed instead. *See, e.g.*, Ex. 25 at 79 ("I could tell you but you wouldn't believe me."); *id.* at 110 ("I didn't want to be sent to an in- -- a mental institution[.]").

Because of its rarity and obscurity, neither the State nor the defense knew about PMO at the time of Milam's trial. The State therefore theorized that the distortions Carson saw were A.C.'s injuries. But this theory does not account for Carson's description of warping that was dynamic, not static. She described how A.C.'s face would return to being herself again. Ex. 24 at 18-19, 24. Nor does it account for Carson seeing Milam's face transform into a demon. As with Milam's face, she interpreted this as an evil spirit or demon trying to get inside A.C.

3. Carson fabricated a story and shifted blame away from herself.

Carson recognized that her perception that A.C. was possessed by a demon would not be believed by authorities and that she could face criminal charges for A.C.'s death. Ex. 25 at 79. She

admitted that she concocted a fake alibi story and instructed Milam to tell it to the police.[9] She did so because she thought that, if she did not make up a story that would create an alibi, the authorities "wouldn't believe us, and they would either take us to a mental institution or they'd arrest us for murder, when neither one of us would ever do that to that baby." *Id.* at 110. But when her attempt to create an alibi was quickly rebuffed by authorities, Carson deftly began to shift blame to Milam. In her interviews with Ranger Ray, Carson made herself a passive witness to what she described as Milam's attempt to exorcise the demon from A.C.—a story the State called a "second cover story" in Carson's trial. *State v. Carson*, No. CR2009-067, 18 RR 87.

Moreover, and in addition to the initial alibi story Carson admitted to fabricating, law enforcement established that Carson's "second cover story" included other demonstrable lies that exculpated herself and shifted blame to Milam as the person responsible for the "exorcisms." First, according to Carson, Milam locked himself and A.C. together in the master bedroom so Milam could perform an "exorcism" on A.C. Ex. 24 at 26. She suggested A.C.'s death may have been caused by Milam "knocking" the "demon" out. *Id.* at 28. In fact, authorities learned that no bedroom in the trailer could be locked from the inside. *State v. Carson*, No. CR2009-067, 12 RR 219. Carson's story of being locked out of an attempted exorcism by Milam was wholly invented. Second, Carson said that Milam had told her that he needed to obtain a metallic cross to successfully perform an exorcism. Ex. 25 at 90. She told Ranger Ray the couple made a trip to a gas station the night of December 1 where she stood outside while Milam entered and purchased such an object. 40 RR 53. But video surveillance of the gas station obtained by authorities showed

[9] Ranger Ray assumed Milam had told Carson to give the fake account that they had left A.C. alone in the trailer that morning while they walked down to look at property they were planning to purchase. Carson corrected Ray: "[Milam] didn't tell me to. I actually told him to[.]" Ex. 25 at 109-10.

that, while the couple did go to the gas station, Carson—not Milam—entered the store. Milam did not buy a metallic cross. Carson bought snacks and a drink. *Id.*

C. The Investigation Was Unreliable and Designed to Obtain a Conviction Against Milam

1. Despite Carson's bizarre story, the investigation immediately focused on Milam.

Notwithstanding that the story Carson told about Milam exorcising her demon-possessed child evidenced Carson's alarming state of mind, Ranger Ray never conducted an interview aimed at determining whether she had caused A.C.'s death. Instead, he invented a narrative whole cloth that Milam resented A.C. and wanted Carson in his life "without a baby." Ex. 24 at 37. In his very first interview with Milam, before any evidence was collected and before he spoke to Carson, Ranger Ray told Milam, "[A] whole lot of people think you did this." SX F1, 59 RR 166. When Milam asked why, Ranger Ray answered, "you're the only male in this house." *Id.*

Ranger Ray also assumed Milam must be responsible for the injuries Ranger Ray believed to be bitemarks:

> The baby's got bite marks all over her, okay? And those are very, very easy to measure, photograph, and then we're going to get a search warrant, and it -- it will order you to go with -- with us to a dentist, and the dentist is going to make a cast of your teeth, and then we'll match those up.

SX F1, 59 RR 75. Before any evidence was collected, Ranger Ray made clear that he assumed Milam lashed out at A.C. in anger, asking what A.C. had done to make Milaim hit her. SX F1, 59 RR 78. Milam consistently denied hitting A.C. or causing her any harm in his statements and no evidence ever demonstrated that he had any history of responding to her with anger or violence.

Despite the fact that Ranger Ray arrived on the scene just prior to speaking with Milam, and his accusations were made in an investigative vacuum, 39 RR 228, the tone and target of the investigation was set. From this point forward, Carson was used strictly to develop evidence against Milam as the primary actor, and she was never seriously considered as the perpetrator. The

State would also choose to seek the death penalty against Milam only. This was notwithstanding that (1) Carson admitted seeing and believing that A.C. was possessed by a demon; (2) she had become withdrawn and detached from her daughter; (3) she told a story that authorities later ascertained contained lies; and (4) she told authorities she preferred that A.C. "go to heaven now than to . . . have Satan have her soul and her go to hell when she gets older," Ex. 25 at 98. The investigation's narrow focus biased the subsequent forensic investigation, producing unreliable opinion evidence against Milam dressed up as science.

2. Scene contamination and bias in the forensic workup.

Because the State could obtain no evidence that Milam had any motive to harm A.C., it was forced to hinge its case on shaky inferences from physical evidence it recovered at the scene. But law enforcement's investigation of that scene was so mishandled that the lead detective, Amber Rogers, was subsequently demoted to a public relations role. *See* 41 RR 28. When asked at trial whether mistakes had been made in the processing of the scene, Rogers responded that she could not answer that question. 44 RR 53. Law enforcement failed to document the scene on the day of the offense—December 2, 2008—forcing them to return nine days later to collect much of the physical evidence eventually relied on by the State to tie Milam forensically to A.C.'s death. In the interim, law enforcement had released the scene to Milam's mother and brother who lived there. By the time authorities returned, the scene was so compromised that, as one investigator testified, there was no point in wearing protective shoe coverings as he "would have had to change them every five minutes." 42 RR 191.

The investigation at the scene on the day-of was led by then-detective Rogers. 44 RR 46. She described her training in crime scene investigation as "basic." She had no training at all in DNA evidence. *Id.* at 58, 122. Rogers agreed at trial the entire home should have been photographed and videoed on the day of the offense, *id.* at 102, but nobody did so. In fact, despite

the presence of several officers, no one completed a documented walk-through of the two-bedroom mobile home on that day. Rogers testified that she entered the home, looked at A.C., and then quickly exited again. *Id.* at 93. She did not walk through the home. Consequently, she could not verify whether evidence later relied on by the State was or was not present in certain locations.

Rogers did not verify whether any evidence was present—let alone collect any evidence—in the south bedroom. 46 RR 102. Nor did anyone else.[10] That was true even though Carson identified the south bedroom repeatedly in her interviews with authorities. *See, e.g.*, 7 RR 122; Ex. 25 at 86, 104. She described how Milam allegedly kept A.C. in the south bedroom during parts of the alleged exorcisms. *See* 7 RR 148-49. Instead of conducting a thorough search of the trailer home, the scene was released to Shirley and Danny Milam, Milam's mother and brother, that same afternoon to occupy.

Eventually, nine days after the offense, law enforcement searched the south bedroom. Rogers was joined by Noel Martin, a crime scene investigator who was called for his knowledge of blood evidence. *See* Ex. 21. Martin observed that "[i]t was obvious, [due] to the fecal matter on the floors and whatnot," that dogs and cats had been inside the home for the past nine days. *Id.* at 155-56. He and another officer tried to remove the animals from the scene, but "short of calling animal control out there . . . or shooting the animals, [he] d[idn't] know any other way to keep them out." *Id.* at 160. Due to the home being released to Milam's family and the presence of animals, the scene had been significantly altered. *See* Ex. 6 at ¶¶58-60.

Despite obvious scene contamination and alteration, investigators collected various items for testing. This included a pair of jeans found in the south bedroom that bore "stains . . . consistent

[10] One investigator did walk to the south end of the home but he "c[ouldn't] remember exactly what [he] did back there," except that he did not observe anything of evidentiary value. 41 RR 65-66.

. . . with contact transfer bloodstains[.]" 42 RR 203. As he later testified, however, without photographs from December 2, Martin could not know the condition of the south bedroom on the day of the offense. 46 RR 161. He agreed "100%" that the pair of jeans—which the State later claimed was a critical piece of evidence—were moved from another location in the home to the south bedroom after December 2. *Id.* at 188.

Rogers and others returned again on December 13, 2008, following information that a cell phone with evidentiary value for the defense may be located under the home. 40 RR 190-91; 44 RR 49-50. The underside of the trailer home had never been documented or searched. After crawling under the trailer, Rogers recovered a wrench wrapped in a plastic bag, SX 40-B, a steel bar, SX 39, a pair of work boots, and a Q-tip, 41 RR 29.

In addition to the physical evidence having been collected without regard to contamination, law enforcement's myopic focus on Milam impacted the forensic testing conducted on that evidence. Over the past decade, the scientific community has increasingly recognized, through empirical research, that many forensic disciplines are vulnerable to cognitive biases that can negatively affect the reliability of forensic conclusions. Every forensic discipline the State relied on at Milam's trial—bitemark, DNA mixture interpretation, pathology, and BPA—is inherently susceptible to cognitive bias because of its subjective nature. *See, e.g.*, Cooper & Meterko, *Cognitive bias research in forensic science,* 297 Forensic Sci. Int'l (2019). Reference materials—such as identifying a known suspect or having a "theory, chart, or pattern in mind"—can unconsciously steer an analyst's comparison process, so that that the suspect profile or preconceived theory, rather than the raw data, drives the decision. Itiel E. Dror, *Cognitive and Human Factors in Expert Decision Making: Six Fallacies and the Eight Sources of Bias*, 92

Analytical Chemistry 7998, 8000-01 (2020). Forensic analysts who provided key testimony for the State at Milam's trial were repeatedly exposed to known sources of cognitive bias.

At the scene on December 2, 2008, authorities decided, prior to any testing, that the injuries present on A.C.'s body were bitemarks. *See, e.g.*, Ex. 17 at 1. The State told the medical examiner ("ME") that "you will find that the body shows bite marks." Ex. 15 at 1. The State contacted the ME again on the day of the autopsy, to inform him that Milam was "the primary suspect" and that the ME should also "please note . . . that the primary suspect, Blaine Keith Milam, was not the biological father of the child." Ex. 16 at 1.

After receiving this information, the ME immediately agreed with the State's assertion about A.C.'s injuries being bitemarks. 41 RR 170. Consequently, he requested that Dr. Robert Williams, SWIFS' chief forensic odontologist, participate in the autopsy. *Id.* at 167. Together, they tallied 24 injuries which they categorized as human bitemarks. *Id.* The ME swabbed the injuries for DNA analysis, which was also conducted by SWIFS.

At a pre-trial hearing held to determine the admissibility of Dr. Williams's opinions about who caused certain injuries to A.C., Dr. Williams testified that "[m]ost" of the contusions and abrasions on A.C.'s body "were not of evidentiary value" for bitemark comparison purposes. 6 RR 23, 60. He testified to his pattern "matching" methodology on four of the injuries: one on the lower left arm, one on the left knee, one on the right arm or right knee—he could not tell which—and one just above the left buttock. *Id.* at 31, 35, 40, 42. When testifying about the injury on either the right knee or arm, he acknowledged that, after conducting some of the comparisons, he had an expectation that he would conclude that the pattern of other injuries would match Milam. *Id.* at 41. With regard to the injury on the left knee, he had "a question about, as far as the maxillary arch

not fitting [Milam's teeth] uniquely and perfectly[.]" *Id.* at 66. As for the "other two,"[11] he testified "they seem to -- they fit to my subjective opinion." *Id.*

At that same hearing, the State informed Dr. Williams that the DNA analysis of swabs taken from some of the injuries was consistent with Milam's DNA profile. *Id.* at 50. The State emphasized the weight of this finding to Dr. Williams: "If there were swabs taken of some of these bite marks, okay, and if any of those swabs came out consistent DNA-wise with Blaine Milam and inconsistent with Jesseca Carson, would that further corroborate and confirm the results that you came up with?" *Id.* at 51. Dr. Williams responded that this was "a given." *Id.*

By the time of trial, and after being told that Milam's DNA was on certain injuries, Dr. Williams testified he could "match" *eight* of the injuries to Milam "to a reasonable degree of dental certainty," including the injury on A.C.'s left knee which he previously testified he had "questions" about. 43 RR 238. For several other injuries, he now testified that he could not exclude Milam. *See, e.g.*, 44 RR 266, 270, 273, 275; 45 RR 8. Critically, Dr. Williams testified that he could not exclude Milam—and even that he could match his dentition to a reasonable degree of dental certainty—to injuries he had previously assessed as being "not of evidentiary value." *See, e.g.*, 6 RR 60; *compare, e.g.*, 44 RR 234 *with* 45 RR 31.

Forensic analysis of the DNA evidence already compromised by law enforcement's poor processing of the scene was likewise infected with suspect-driven bias. SWIFS's analysts were told by the State that this case concerned the death of an infant, that Milam was the primary suspect, and that he was not A.C.'s biological father. Exs. 15 at 1; 16 at 1; 33 at 1; 36 at 1; 37 at 1. The impact of this biasing information is demonstrated by the inconsistency in SWIFS analyst Angela

[11] This appears to be a reference to the injury on the left lower arm and the injury on the left buttocks, as those were the other two injuries discussed during this exchange. 6 RR 66.

Fitzwater's methodology across various samples, for which there is "no scientifically supportable rationale[.]" Ex. 4 at ¶39.

Notably, her interpretation of DNA results from item 20I, a swab from an injury on A.C.'s left elbow, emphasizes how evidence was interpreted to fit the State's theory that Milam was "the primary actor." The electropherograms corresponding to item 20I established the presence of genetic markers corresponding to A.C., Milam, Carson, and Danny Milam. *See* Ex. 4, Attachment D. Many of these peaks corresponded to alleles shared by Milam and Carson, Carson and A.C. as mother and daughter, and Milam and Danny Milam as brothers. *See* Ex. 1 at ¶31. Yet, contrary to SWIFS's Standard Operating Procedures (SOPs) and accepted standards of practice, Fitzwater selected which alleles to include in her calculations about the probability that Milam was a contributor based on whether those genetic markers were present in Milam's reference profile and without accounting for the degree of overlap between all possible contributors. Exs. 1 at ¶¶32, 34; 4 at ¶54. This approach is "categorically wrong" and amounts to "paint[ing] a target around the arrow." Ex. 1 at ¶¶32, 34.

By adapting her process in this way, Fitzwater was able to testify—and the State to argue—that, although Carson could not be excluded in the DNA mixture present on a "bitemark," "the majority of the markers seen were consistent with Blaine Milam." 43 RR 75; 48 RR 39-40 ("[T]hat's the one that you heard from the lab that the DNA from the swab of that bite mark matches the defendant, that the alleles that are present are all his alleles, with a couple of small stray ones."). And, as set out *infra*, this myopic focus on Milam continues to impact SWIFS's interpretation of the DNA evidence to this day.

The State's tunnel vision on Milam further dictated what testing was conducted. For example, based on Martin's observations of a large blood stain on the front of the jeans collected

on December 11, 2008, the State speculated the jeans were worn by the perpetrator. 42 RR 203. Those jeans, however, were not in Milam's size. 48 RR 28-29. The jeans were in the size of Danny Milam, Milam's brother who also sometimes stayed in the home, undercutting the State's theory that they belonged to Milam. The State nevertheless developed an unsupported theory that the jeans belonged to Milam, *id.*, putting the identity of the wearer of the blood-soaked jeans at issue. Yet, SWIFS did not swab the inside of the jeans to check for epithelial cells from the wearer or to obtain potential DNA. A SWIFS's forensic biologist testified that SWIFS "typically also take[s] a cutting from the inside of the waistband, since that's an area that would rub a bunch against whoever was wearing it, and send that off for DNA analysis." 43 RR 72. She agreed that she could have done so here but did not. *Id.* SWIFS thus omitted routine analysis to identify who may have worn the jeans.

D. The State's Case at Trial

By the time of trial, witnesses and surveillance video established only that Milam and Carson were seen together at around 9:00 p.m. on December 1, 2008, at the National Truck Stop (where Carson falsely told law enforcement Milam went to purchase a metallic cross). 46 RR 99. A witness saw A.C. with them at that time. *Id.* at 96. The next time Milam and Carson were seen was around 9:00 a.m. on December 2, when they pawned items at Insta Cash Pawn. 42 RR 59-61. Sometime between 9:00 and 9:15, they stopped at On the Run gas station in Henderson, where Carson purchased cigarettes. 42 RR 96. Around 10:30 a.m., Milam called 911 from his mother's home to report that they had found A.C. injured and not breathing. 42 RR 105.

To fill in the gaps and cast Milam as "the primary actor," the State relied on (1) bitemark opinion testimony, (2) DNA evidence, and (3) serology and blood pattern evidence. The State also called a jail nurse who testified that Milam told her he had done "it." It is now known, however, that all this evidence is unreliable and therefore prejudicial.

REASONS FOR GRANTING THE WRIT

The Court has previously rejected actual innocence as a basis for federal habeas relief. *Herrera v. Collins*, 506 U.S. 390, 393 (1993). The Court also assumed—without deciding—that "in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim." *Id.* at 417; *see also House v. Bell*, 547 U.S. 518, 554–55 (2006) (*Herrera* "left open" the possibility of a freestanding actual innocence claim); *Sawyer v. Whitley*, 505 U.S. 333, 345–46 (1992) ("A federal district judge confronted with a claim of actual innocence may with relative ease determine whether a submission . . . consists of credible, noncumulative, and admissible evidence negating [an] element of [the offense]."). The Court should grant Milam's petition to make clear what it has assumed since *Herrera*: the Constitution forbids the execution of an innocent person—such as Milam.

This Court has previously recognized that the admission of prejudicial, unreliable evidence violates the right to due process under the Fourteenth Amendment. *Payne v. Tennessee*, 501 U.S. 808, 825 (1991); *Kansas v. Carr*, 577 U.S. 108, 123 (2016); *Andrew v. White*, 145 S. Ct. 75, 80 (2025). Moreover, false or unreliable forensic evidence has long been recognized as unduly prejudicial. *See, e.g.*, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993) (observing that "[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it"). Lower courts have recognized that the admission forensic evidence, later discovered to be unreliable, at a criminal trial violates due process. *See Lee v. Glunt*, 667 F.3d 397, 407 (3d Cir. 2012) (remanding due process claim based "on what new scientific evidence has proven to be fundamentally unreliable expert testimony" for evidentiary development); *In re Hill*, No. 20-3863, 2025 WL 903150, **8, 14-15 (6th Cir. Mar. 25, 2025) (granting MFA and

authorizing second or successive petition raising due process claim based on changes to interpretation of bitemark evidence). The Court has yet to answer the question of whether a conviction based on now-discredited scientific evidence violates due process. *See McCrory*, 144 S. Ct. at 2483 (Sotomayor, J., respecting denial of certiorari). The Court should also grant Milam's petition to answer that question.

I. Milam is innocent.

A. There is no reliable forensic evidence tying Milam to the offense.

At trial, the State's case was grounded in what appeared to be hard science. But new science establishes that this evidence is no more than unreliable and prejudicial opinion testimony. At a trial held today, the State would have no reliable forensic evidence to present to the jury to tie Milam to the offense.

1. There is now a scientific consensus that all bitemark opinion testimony is junk science.

With a dearth of evidence that Milam played any role in causing A.C.'s death, the State placed tremendous weight on the opinions of its bitemark expert, Dr. Williams.[12] He repeatedly testified that Milam's "unique" dentition matched the patterned impressions he identified. *See, e.g.*, 45 RR 19, 27-28, 52. Dr. Williams opined that Milam's dentition matched eight of these impressions—including at least one which he previously testified had little evidentiary value—with "the highest degree of confidence that [he] [has] in a match of [a] particular dentition to a bite mark"—a "reasonable degree of dental certainty." *Id.* at 25, 27-28.

The State described this testimony as "the most significant aspect of the evidence here" and "the smoking gun in this case." 48 RR 38. It was Dr. Williams's testimony that "more than anything" told the jury Milam was not an "innocent bystander here at all, that he is truly guilty of

[12] Dr. Williams is now deceased.

capital murder." *Id.* at 41. In the State's words, Dr. Williams's testimony established "proof beyond a reasonable doubt." *Id.* at 42. But Dr. Williams's opinions are junk science.

While bitemark testimony has been recognized as unreliable for years, in 2023, the scientific community reached a consensus that *no* opinion derived from bitemark comparison analysis—regardless of how it is framed—is scientifically reliable. This consensus finally and authoritatively rejects the bitemark opinion testimony relied on by the Texas courts to uphold Milam's conviction in 2020. *Ex parte Milam*, No. WR-79,322-02, 2020 WL 3635921, *1 (Tex. Crim. App. Jul. 1, 2020) (adopting trial court conclusion of law that odontological testimony that Milam "was 'excluded' or 'not excluded' from having made certain bitemarks" was still admissible in Texas). This consensus is rooted in the National Institute of Standards and Technology's ("NIST") 2023 report entitled "Bitemark Analysis: A NIST Scientific Foundation Review."[13] Ex. 8 at ¶17. That report results from a five-year study of bitemark evidence led by "odontologists, statisticians, legal professionals, forensic scientists, experts in standards and communications," who "reviewed, synthesized and interpreted over 400 sources of information and considered input from a workshop" made up of "the forensic bitemark analysis community" itself. *Id.* at ¶¶13-14. Based on this work, there is now a consensus that *any and all* opinions about the source of injuries on human skin based on comparing those injuries to human dentitions are not scientifically supportable. *Id.* at ¶17. Specifically, "determinations made by experts in this area—including whether to exclude or not exclude an individual as the source of a bitemark as then-current ABFO guidelines permitted—are not scientifically reliable or valid." *Id.* at ¶15.

Consequently, the NIST report "marks a shift from scientific skepticism towards bite mark comparison analysis to the establishment of a scientific consensus that no opinions purporting to

[13] Available at https://nvlpubs.nist.gov/nistpubs/ir/2023/NIST.IR.8352.pdf.

individualize any given injury to a potential biter—whether to include or exclude—is scientifically supportable." Ex. 2 at ¶27. As such, under "contemporary scientific understanding of bite mark evidence, none of the forensic odontology testimony . . . from Mr. Milam's trial purporting to include or exclude any person's dentition as having left injuries is scientifically reliable." *Id.* at 8. Thus, the State's "smoking gun" is prejudicial junk science that has been "wholly discredited[.]" *McCrory*, 144 S. Ct. at 2483 (Sotomayor, J., respecting denial of certiorari). It cannot be relied upon to support Milam's conviction.

2. SWIFS has retracted DNA testimony relied on by the State.

To corroborate Dr. Willliams's opinion that Milam repeatedly bit A.C., the State presented extensive DNA testimony by an analyst from the Southwest Institute of Forensic Science ("SWIFS") that Milam's DNA was on injuries to A.C.'s skin. 43 RR 133-35 (swabs 20A, 20Q, 20R). But, following a complaint to the Texas Forensic Science Commission that SWIFS's interpretations did not comport with current scientific understanding of DNA mixtures, SWIFS now concludes that the genetic markers detected on those swabs correspond to A.C. only.[14] Ex. 12 at 9. Likewise, the State relied on SWIFS's testimony that only A.C.'s DNA was detected on a swab from Milam's shirt to argue that A.C.'s blood was on his shirt on the day of the offense. 48 RR 28. SWIFS now reports the presence of DNA from at least two contributors, with genetic markers corresponding to Milam, A.C., Carson, and Danny Milam. Ex. 12 at 7.

[14] The State did not request reinterpretation of the DNA evidence until August 2025 and SWIFS accordingly did not recant its prior testimony until August 12, 2025. *See* Ex. 12. Notably, SWIFS notified the State in March 2016 of the likely need for reinterpretation of the DNA evidence in Milam's case based on changes in the interpretation of DNA mixtures. Ex. 19 at 2-5. In that notice provided only to the State, SWIFS both recommended reinterpretation and requested that the State make the same known to Milam. *Id.* The State, however, neither requested reinterpretation nor informed Milam of this notice. Instead, the State continued to rely on what it knew was unreliable DNA evidence to uphold Milam's conviction in subsequent litigation in 2019-2020. *See, e.g.,* WR-79,322-02, State's Proposed FFCL ¶161.g.1 ("[T]he Court concludes this DNA evidence taken from injuries on her body more strongly points to Applicant as the contributor."). Milam only learned of this notice when the State turned over 4,000+ pages of DNA records on August 13, 2025. Milam had requested—and the State successfully blocked—access to these records before then.

	Trial	2025 reinterpretation
10AT1 (Milam's shirt)	Single-source profile corresponding to A.C.	Major-minor mixture. A.C., Carson, Danny Milam, and Milam are included.
20A (anterior neck)	Milam "possible contributor"	Single-source profile. A.C. is included.
20Q (right upper forearm)	Milam "possible contributor"	Single-source profile. A.C. is included.
20R (distal anterior right forearm)	Milam "possible contributor"	Single-source profile. A.C. is included.

See Ex. 12. In short, by SWIFS's own admission, its trial testimony and the State's argument that DNA forensically linked Milam to the offense is false.

The State also emphasized SWIFS's testimony that Milam's DNA was present on a swab (20I) taken from an injury on A.C.'s left elbow. 48 RR 39. Notwithstanding that SWIFS did not conduct any testing to establish the presence of saliva, 43 RR 68-69, the State leaned into 20I as corroborative of Dr. Williams's bitemark opinion. 48 RR 39-40. At the time of trial, SWIFS reported that 20I was a mixture of "at least two contributors" and included Milam, A.C., and Carson as possible contributors. 43 RR 136. SWIFS now reports that 20I is a mixture of only two contributors: A.C. and Milam. Ex. 12 at 7.

But this reinterpretation finds no support in current understanding of DNA mixture interpretation and is demonstrably suspect-driven. *See* Ex. 3A at ¶3.[15] Indeed, in its request for

[15] Cynthia Cale, a DNA expert, has filed a complaint with the Texas Forensic Science Commission requesting investigation of SWIFS's reinterpretation based on serious scientific and methodological flaws that undermine certain of SWIFS's conclusions. *See* Ex. 3-B. That complaint is pending before the Commission.

reinterpretation on August 1, 2025, the State made its expectations clear to SWIFS. In an email to the DNA analyst conducting the reinterpretation, the District Attorney wrote: "I know you appreciate everything about this case is weighty; not only because the defendant faces the ultimate punishment, but because I submit it is the most horrific torture ever perpetrated on an innocent baby in our history." Ex. 10. Under current understanding of DNA mixture interpretation, sample 20I should not be interpreted. Ex. 1A at 33; Ex. 3A at 2.

SWIFS also now makes explicit that DNA interpretations "do not provide information" regarding "how" or "when" DNA evidence was transferred. Ex. 12 at 8. SWIFS further cautions that:

> It is important to note that an individual who had direct contact with an item may not necessarily leave behind detectable DNA. Alternatively, DNA from an individual who never had direct contact with an Item may still be detected. Therefore, the DNA results presented in this report should be considered within the context of the case facts.

Id.; *see* Ex. 1A ¶31 ("No DNA tests are currently able to distinguish between secondary transfer (such as the transfer of DNA through contamination events) or DNA present due to direct contact with an object."). SWIFS's corrected report thus establishes that whatever the presence of Milam on A.C. and vice versa, the DNA evidence does not corroborate the bitemark opinion testimony.[16] In short, SWIFS's corrected report establishes that, as well as its own DNA testimony now being known to be false, the State's argument to the jury that DNA evidence tied Milam to A.C.'s

[16] That the DNA analysis does not corroborate the "bitemark" opinion testimony is further established by SWIFS' reinterpretation of swab 20C taken from an injury on A.C.'s chin. SWIFS now reports that A.C. and Milam are included and that Carson and Danny Milam are excluded. Ex. 12 at 7. But Dr. Williams testified that Milam was excluded from the corresponding injury, but that Carson was not. 44 RR 285. Hence, while Dr. Williams' testimony purporting to include or exclude individuals from the injuries on A.C. is not scientifically valid, the DNA results from 20C further demonstrates that the State's arguments that the DNA provides evidence about who is responsible for the injuries on A.C.'s body are entirely unsupportable. Moreover, that Milam provided CPR to A.C., 42 RR 105, provides an obvious reason why his D.N.A. would be on her chin.

injuries—evidence it has now resorted to calling of "marginal value" to its case—is unreliable and prejudicial.

3. Forensic testing never confirmed the presence of blood on any clothing known to be worn by Milam.

The State also relied on the testimony of Martin, presented as a blood pattern analysis ("BPA") expert, and a SWIFS serologist to argue to the jury that presumed blood on Milam's shirt collected on the day of the offense and blood on a pair of jeans collected on December 11 implicated Milam as the primary actor. 48 RR 28-29, 30. Martin testified to these opinions and the State so argued notwithstanding the facts that there was no evidence that Milam ever wore those jeans; that SWIFS could not confirm the presence of blood on Milam's shirt; and that only Carson's jacket had enough blood on it for SWIFS to confirm the presence of blood. 42 RR 34, 42.

Moreover, due to improper scene processing and contamination (including by releasing the scene), BPA cannot establish that the blood supports any activity-level propositions—that is, it cannot determine how the blood was deposited or whether it resulted from any particular offense-related activity. *See* Ex. 6 at ¶74 ("[T]he mere presence of blood does not indicate the activity which led to it being deposited."). Yet the State repeatedly conflated the presence of presumed blood with particular supposed actions of Milam's. *See, e.g.*, 48 RR 28-29 (State arguing that the presence of presumed blood on Milam's shirt and on the jeans recovered from the south bedroom linked Milam to the bloodletting activity).

Martin testified that the bloodstain on the jeans was a "contact transfer stain," 42 RR 203, and the State argued that this opinion established that Milam was holding A.C. on his lap while she was bleeding, 48 RR 29-30. But Martin's flawed methodology cannot be used to support this rank speculation as his opinion was not grounded in methodologically sound analysis of the evidence. To permit such a conclusion, Martin's opinion would have required a "careful and

systematic examination" to determine whether the jeans were being worn "at the time the blood was deposited" or were merely "present as an object in the location during bloodshed," and whether the stain's characteristics were consistent with "blunt forces applied to a blood source or active bleeding," as opposed to "coming into contact with the blood source or resuscitation efforts." Ex. 6 at ¶¶61, 62. Neither Martin's reports, nor SWIFS's documentation, contains such analysis. *Id.* Moreover, denim presents particular interpretive challenges in stain assessment that Martin ignored. Porous textiles, like denim, create "inher[en]t limitations" on reliable BPA conclusions. *Id.*at ¶63. Additionally, any reliable BPA conclusions regarding the jeans is prohibited by the fact that they were collected on December 13, nine days after the offense, and were demonstrably not present on December 4 in the location from which they were recovered. *See id.* at ¶60.

Notably, Martin opined on the significance of blood patterns in determining where "blood events occurred" without taking into account any subsequent serology or DNA testing. 46 RR 7-22. In formulating his conclusions, Martin never reviewed "any scientific lab reports." 46 RR 186. For example, he testified he had observed "free-falling" "blood drops," *id.* at 16-17, without confirming that what he observed was indeed blood or accounting for negative DNA testing results of those samples. Ex. 6 at ¶52. In other words, Martin offered a BPA opinion without ever confirming that the stains he observed were in fact blood.[17]

Martin's investigation demonstrates a lack of competency in BPA procedures, including improper evidence collection methods, inconsistent and selective methodology, and failure to incorporate laboratory testing results. These concerns are compounded by the fact that the Smith

[17] Presumptive testing for blood was originally developed to detect blood in fecal matter, Ex. 6 ¶53. As Martin described, by the time he went to the scene, "[i]t was obvious, to the fecal matter on the floors and whatnot," that dogs and cats had been inside the home for the past nine days. *Id.* at 155-56.

County Sheriff's Office was—and remains—an unaccredited laboratory. Id. at ¶48. Martin's opinions dressed up as forensic science are unreliable and prejudicial.

Notably, in denying Milam's Motion for Authorization on the ground that there remained evidence of guilt, the Fifth Circuit relied on "the presence of the victim's blood on [Milam's] clothing." App. A at 11. This argument by the State at trial was based on presumptive testing, as well as SWIFS's testimony that the DNA on the shirt was a single-source profile corresponding to A.C. 43 RR 117. But due to the trace nature of the observed stain, the State's serologist could not confirm the presence of blood. 43 RR 62-63. More importantly, however, SWIFS now concludes that DNA from the shirt is from at least two contributors, including possibly Milam, A.C., Carson, and Danny Milam. Ex. 12. The evidence therefore does not support the conclusion that A.C.'s blood was on Milam's shirt.[18]

4. In the absence of reliable forensic evidence tying Milam to A.C's death, the State now takes the position it can execute him because he was present on the night of her murder.

Milam's conviction rests on what is now known to be unreliable and false bitemark opinion testimony, DNA, and BPA evidence. In light of this, the State now takes the unprecedented position that it can execute Milam even if he is not legally liable for murder: "Either Applicant or Carson, or both, bit [A.C.] twenty-four times. The *failure to prove which one does not negate the fact that Applicant was present*, *fully aware* that a torturous murder was happening, *either* participated or *did not stop it*, and then took steps to cover up their involvement and tamper with evidence afterwards. And then he confessed." Motion to Dismiss, *Ex parte Milam*, No. WR-79,322-05, at 38 (Tex Crim. App. Sept. 17, 2025) (emphasis supplied) (hereinafter "Mot. to Dismiss"). Even setting

[18] The Fifth Circuit also relied on the purported fact that Milam "instruct[ed] his sister to hide evidence." App. A at 5. This never happened. During a jail visit, Milam instructed his sister to locate a blue cell phone that was under the house and that would be helpful to his defense. 40 RR 190-91. The cell phone was never located.

aside the fact that the State does not have evidence that Milam did not try to prevent A.C.'s death, mere presence does not establish culpability as a party to capital murder under Texas law. *See Alexander v. State*, 607 S.W.2d 551, 553 (Tex. Crim. App. 1980) (mere presence at the scene of an offense is relevant evidence but not alone sufficient to support a conviction under Texas Penal Code § 7.02(a)). Nor do any of the other actions or inactions the State speculates about. Likewise, the State argues that Milam's execution for the death of A.C. should go forward because "[t]he evidence continues to confirm the State's theory that both *could be* responsible, *neither could be excluded*, but dispels [Milam's] argument that it was only Carson." Mot. to Dismiss at 96 (emphasis supplied). The Fifth Circuit seemingly took the same position, finding that the fact that only Milam and Carson were in the house that night was evidence of his guilt. App. A at 5. But the State is not—and should not be—empowered to execute a person simply because it cannot "exclude" him as having committed a murder.

B. Carson killed her daughter.

The State's evidence now establishes nothing more than Milam's presence in his home on the night of A.C.'s death. There is no reliable forensic evidence tying Milam to any of A.C.'s injuries, nor any evidence of a motive. By contrast, PMO evidence explains that Carson, experiencing immense fear from a visual perception disorder that caused her to believe her daughter was possessed, Ex. 24 at 28-29, lashed out and beat her child—or what she believed was the demon—to death. That Carson was experiencing PMO-induced distortions in her daughter's face is corroborated by the ME's testimony, who described A.C.'s face injuries as one of "the first thing[s]" that "really jumped out" at him upon observing A.C.'s body. 41 RR 166-67.

Carson's genuine belief that A.C. was possessed by a demon—and the terror she experienced as a result—explain why she would harm A.C.[19] There is no comparable evidence about why Milam would commit such an offense. Instead, the evidence supports that Milam tried to respond to the circumstances created by his highly distressed fiancée. Importantly, when Carson's blame-shifting statements—including her demonstrable lies that Milam purchased a metallic cross to use for an exorcism and that he locked himself and A.C. in a bedroom without a lock—are properly assessed through the lens of PMO evidence, only one reasonable interpretation of the evidence remains: Milam never attempted to perform an exorcism on A.C. Instead, he unsuccessfully tried to care for and protect A.C. while PMO caused her mother to believe that A.C. was possessed.[20] With this as her reality, Carson preferred that A.C. "go to heaven now [rather] than spend a life with Satan having her soul and her going to hell afterwards for something she hasn't even done." 40 RR 48.

Milam's vague statement to a jail nurse at the county jail that he had done "it" also does not detract from the conclusion that Carson killed A.C. In closing, the State characterized this statement as "the gold standard of admissions." 48 RR 150. But, because of his low intellectual functioning, Milam was at heightened risk of doing exactly what he indicated to law enforcement he would do: take the blame for Carson. Indeed, he had openly contemplated doing so during his

[19] Moreover, Carson's account of the events of that night—that Milam performed an exorcism that killed her daughter—is further undermined by her description of her behavior that night, which wholly lacks credibility. She insisted that, while Milam purportedly exorcised a demon from her infant daughter in the next room of their tiny trailer, she slept, watched television, and took a bath. Ex. 24 at 26; *State v. Carson*, No. CR2009-067, 16 RR 196. At Carson's trial, the State made clear her alleged behavior was inexplicable. *Id.* at 18 RR 39.

[20] Instead of letting Carson see A.C. in person, Milam took a picture of A.C. to show it to her "[j]ust in case, you know, it scares you, you won't, you know, actually see her, you'll just see a picture." Ex. 24 at 89-90. But Carson still saw her daughter's features warped down, and her eye was like stretched and stuff, and it was really freaky." *Id.* PMO can appear in faces on screens. Ex. 7 at ¶2.

custodial statement. 59 RR SX E-2 ("And if I tell you, what if I tell you it was me *and I take the blame for somebody else*, will I be in trouble?") (emphasis added).

Based on his IQ scores of 68 and 71, it was undisputed at Milam's trial that he had impaired intellectual functioning. And, in 2021, the State's trial expert changed his opinion and agreed that Milam was intellectually disabled at the time of trial. Research shows that individuals with deficits in intellectual functioning are at heightened risk for falsely admitting culpability. Notably, such persons have a propensity to be compliant and agreeable, which puts them at increased risk of "overstat[ing . . .] responsibility or involvement" or "eagerly assuming blame to please or curry favor." Ex. 5 at 4. This population also tends to be gullible, naïve, and overly trusting. *Id.* They have a "reduced appreciation of the consequences of making false incriminating statements." *Id.* at 4. These characteristics contribute to an increased risk of false confessions, including protective false confessions, which are designed to protect someone else, such as a partner. *Id*; *see Hall v. Florida*, 572 U.S. 701, 709 (2014) (intellectually impaired persons are "more likely to give false confessions").

Milam possessed many of the core characteristics that make people in this population vulnerable to falsely admitting responsibility for something they did not do. A psychiatrist retained by the State at trial described Milam as "very naïve" and "extremely gullible." Ex. 29 at 12. Similarly, at Carson's trial, the State elicited testimony from Milam's former counsel that he was "one of the most naïve 17 or 18-year-old young men that [he] had ever met." *State v. Carson*, No. CR2009-067, 17 RR 141. And his custodial statement makes clear that he did not appreciate the consequences of "taking the blame" because he asked if he would "be in trouble" for doing so. SX E-2, 59 RR 58. Notably, in his vague statement, Milam did not provide any details of the facts of the offense by which a court can judge its reliability and veracity. *See* Ex. 5 at 5 (because of the

risk of false confessions by those with intellectual limitations, it is important for there to be "corroborating and credible evidence to accompany [a] confession").

There is no credible inculpatory evidence against Milam. Instead, the new evidence about Carson's perception of reality being altered by PMO, in conjunction with her ongoing religious delusions, and the fear she experienced as a result provides an explanation for why Carson would attack her own daughter. There is no comparable evidence about why Milam would commit such an offense.

CONCLUSION

For the foregoing reasons stated, this Court should grant Milam's petition for writ of habeas corpus because he is actually innocent and the State's use of false, unreliable forensic science violated due process. In the alternative, the Court should transfer the petition to the United States District Court for the Eastern District of Texas for an evidentiary hearing and a determination on the merits of his claim.

Respectfully Submitted,

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