Nos. 25-6670, 25A847

IN THE

Supreme Court of the United States

CHARLES VICTOR THOMPSON,
Petitioner,

v.

STATE OF TEXAS
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI AND APPLICATION FOR A STAY OF EXECUTION

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This is a capital case.

QUESTIONS PRESENTED

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

2. Whether the Court should expend its limited resources to consider fact-bound questions, raised at the latest possible moment in last-minute litigation, where the claims are meritless and barred by non-retroactivity.

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BRIEF IN OPPOSITION

Charles Thompson is **scheduled to be executed after 6:00 p.m. today, January 28, 2026.** He was convicted and sentenced to death in 1999 for the murders of Dennise Hayslip and Darren Cain. *See Thompson v. State*, 93 S.W.3d 16, 18 (Tex. Crim. App. 2001). Following a retrial as to punishment, Thompson was again sentenced to death. *See Thompson v. State*, No. AP-73,431, 2007 WL 3208755, at *1 (Tex. Crim. App. Oct. 31, 2007). While Thompson was in jail following his second punishment trial and before he was transferred to prison, he escaped from jail and fled to Louisiana.[1] Since then, Thompson has unsuccessfully challenged his conviction and sentence in state and federal court, *see Thompson v. Davis*, 916 F.3d 444, 451–53 (5th Cir. 2019) (summarizing Thompson's appeals), with federal habeas litigation concluding in 2021, *Thompson v. Lumpkin*, 141 S. Ct. 977 (2021).

Almost five years later, and after the time expired for Thompson to file pleadings seeking relief from his sentence, *see* Texas Court of Criminal Appeals

[1] Death Row Escapee Caught, THE ASSOCIATED PRESS (Nov. 6, 2005) https://www.cbsnews.com/news/death-row-escapee-caught/. Thompson reportedly admitted he considered robbing a bank while he was evading capture, but he was arrested before he did so. Death Row Inmate Says He's Not Done Living, HOUSTON PRESS (Oct. 27, 2025), https://www.houstonpress.com/news/death-row-inmate-says-hes-not-done-living/.

Miscellaneous Rule 11-003,[2] he filed a subsequent habeas application in state court, as well as a suggestion that the court reconsider its dismissal ten years ago of his first subsequent habeas application, and a motion for a stay of execution.[3] In his subsequent application, Thompson re-raised a previously rejected claim relating to a jailhouse witness, and he raised claims alleging violations under the Confrontation Clause, a claim under Texas's "new science" statute,[4] and a claim alleging his counsel were ineffective at his second punishment trial twenty years ago. *See generally* Subs. Appl. The Texas Court of Criminal Appeals (TCCA) denied Thompson's suggestion for reconsideration and associated motion for a stay of execution without a written order, and it dismissed the subsequent application and denied the related motion for a stay of execution, stating Thompson "failed to show that he satisfies the requirements of Article 11.071 § 5 or Article 11.073. Accordingly, we dismiss the application as an abuse of the writ without reviewing the merits of the

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[2] Misc. Docket No. 11-003, Procedures in Death Penalty Cases Involving Requests for Stay of Execution and Related Filings in Texas State Trial Courts and the Court of Criminal Appeals (Tex. Crim. App. Sept. 1, 2011) https://www.txcourts.gov/media/208124/miscruleexecution.pdf.

[3] *See generally* Second Subsequent Appl. for Post-Conviction Writ of Habeas Corpus, *Ex parte Thompson*, No. WR-78,135-04 (Tex. Crim. App. Jan. 21, 2026) (Subs. Appl.); Suggestion that the Court Reconsider First Subsequent Application for Post-Conviction Writ of Habeas Corpus, *Ex Parte Thompson*, No. WR-78,135-03 (Tex. Crim. App. Jan. 20, 2026); Mot. to Stay Execution, *Ex parte Thompson*, No. WR-78,135-04 (Tex. Crim. App. Jan. 21, 2026).

[4] *See generally* Tex. Code Crim. Proc. art. 11.073.

claims raised." Order 3, *Ex parte Thompson*, No. WR-78,135-04 (Tex. Crim. App. Jan. 27, 2026) (Ord.).

Thompson now seeks certiorari review of the TCCA's dismissal of his latest subsequent application. However, this Court is without jurisdiction to hear his claims because they were dismissed on an adequate and independent state law ground below. Moreover, Thompson is unable to present any special or important reason for certiorari review, and he fails to demonstrate a violation of any federal constitutional right. Further, the excessively dilatory nature and absence of any arguable merit of Thompson's petition foreclose his request for a stay of execution. Certiorari review as well as Thompson's request for a stay of execution should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

The federal district court summarized the facts of Thompson's murder of Dennise Hayslip and Darren Cain:

> Thompson started dating Dennise Hayslip, who was twelve years his senior, around June of 1997. Thompson soon moved in with her. Thompson rarely worked, but relied on Hayslip and another roommate for support. Thompson became increasingly jealous, possessive, angry, and abusive. Thompson eventually moved out.
>
> Hayslip began dating Darren Cain, but still occasionally saw Thompson. On April 30, 1998, Thompson was at Hayslip's apartment when Cain called at around 2:30 a.m. Thompson told Cain "to come over there and he would beat his ass." When Cain

arrived, Thompson answered the door with a stick. A fight ensued. Thompson lost the fight.

Cain and Hayslip exited the apartment. Thompson walked out also, yelling, cussing, and calling Hayslip a "whore." As Cain told Thom[p]son to "chill," Thompson responded: "do you want to die, mother fucker?"

By that time, the police had been called. The responding officer encountered Thompson, Hayslip, and Cain standing outside. Thompson's eye was blackened from the fight he had started. Because no one wanted to press criminal charges, a police officer allowed Thompson to leave after threatening him with criminal trespass should he return. After the responding officer escorted him from the premises, Thompson went to get a gun.

Thompson later described to a friend, Diane Zernia, how he returned to Hayslip's apartment and shot both Hayslip and Cain. Thompson kicked down the door to Hayslip's apartment and encountered Cain inside. As Cain grabbed the end of the gun, Thompson began firing. Thompson shot Cain four times, and two bullets missed. After Cain fell to the ground, Thompson reloaded the gun, put it up to Hayslip's cheek, and said, "I can shoot you too, bitch." The gun fired. The bullet traveled through Hayslip's cheek, into her tongue, and out the other side. Thompson later claimed that he also tried to shoot himself, causing a wound on his arm.

Neighbors heard the gunshots. Shortly thereafter, Hayslip began knocking on neighbors' doors. A neighbor found her sitting on the ground, gasping for breath as she leaned forward to prevent drowning in her own blood. When emergency responders arrived, they found Cain dead. Hayslip was bleeding profusely. Responders took her by life flight to a hospital where she later died.

Leaving the apartment, Thompson threw his gun in a nearby creek. Thompson then went to Zernia's house and fell asleep on a couch. When he woke up, he described the murders to Zernia. Thompson then called his father, who picked him up and took him to the police station.

> The State of Texas charged Thompson with capital murder for intentionally or knowingly causing the death of more than one person in the same criminal transaction. *See* Tex. Penal Code Ann. § 19.03(a)(7). Specifically, the indictment required the prosecution to prove that Thompson "unlawfully, during the same criminal transaction, intentionally and knowingly caused the death of" Cain by "shooting [him] with a deadly weapon" and also "intentionally and knowingly caused the death" of Hayslip by "shooting [her] with a deadly weapon . . . ." Thompson stood trial in 1999. The prosecution presented testimony and evidence showing that Thompson shot both Cain and Hayslip. The prosecution particularly emphasized Thompson's confession to Zernia that he shot both victims. The main defensive argument at the guilt/innocence phase was that medical malpractice, not the gunshot through Hayslip's mouth, was the primary cause of her death. The jury convicted Thompson of capital murder. He was sentenced to death.

Thompson v. Davis, No. 4:13-CV-1900, 2017 WL 1092309, at *1–2 (S.D. Tex. Mar. 23, 2017) (footnotes and record citations omitted).

II. Evidence Pertaining to Punishment

The TCCA summarized the prosecution's punishment evidence presented during Thompson's 2005 retrial:

> A few hours after committing the murders, [Thompson] went to the home of Diane Zernia and confessed to her. After calling his father, [Thompson] surrendered to authorities. [Thompson] later phoned Zernia from jail and tried to persuade her to lie about what he had told her, but she refused. [Thompson] also attempted, from [jail], to solicit someone to kill Zernia and was later indicted for solicitation to commit capital murder. The State also presented evidence that [Thompson] was associated with the Aryan Brotherhood gang in [jail]. A fellow jail inmate testified that [Thompson] gave him a list of people who [Thompson] believed were potential witnesses and told the inmate that he would pay him to "eliminate" the witnesses or otherwise make sure that they

> would not appear in court. The inmate turned the list over to the police.
>
> The State also presented evidence that [Thompson] began committing crimes as a juvenile. In 1984, while living with his parents in an upper-middle-class neighborhood in Colorado, [Thompson] committed a string of crimes that resulted in over $60,000 of damage to homes and property. While on probation from the youth center, [Thompson] stole his father's motorcycle, ran away, and committed a variety of crimes. He was arrested again in 1987 and sentenced to a juvenile facility. [Thompson] had problems with drugs and alcohol from an early age. He married, but later abandoned his wife and two children. In 1996, [Thompson] was arrested for transporting illegal immigrants from Mexico.

Thompson v. State, 2007 WL 3208755, at *1–2.

The defense presented several witnesses in its mitigation case. Thompson's father testified about the crimes Thompson committed as a youth, as well as Thompson's alcohol and drug use from a young age. 18 Retrial Reporter's Record (RR-R) 283–85, 293; 19 RR-R 11. He also explained that Thompson did not speak until age three and had trouble in school. 18 RR-R 274–78. Thompson's brother testified that he had set a bad example for his siblings and admitted he introduced Thompson to drugs when Thompson was thirteen or fourteen years old. 18 RR-R 121–22, 128. Thompson's brother and the childhood friend with whom Thompson burglarized houses testified that Thompson's father had been a strict disciplinarian. 18 RR-R 126–27, 241–42.

Thompson's ex-wife, and the mother of his two children, testified that he drank a lot, used drugs, and came home only when he felt like it. 18 RR-R 258–61. Thompson did not send money to help raise the children. 18 RR-R 262–63.

Several former employers testified about Thompson's drinking and drug use and his inability to maintain employment. 18 RR-R 104, 108, 212. One testified that Thompson used cocaine intravenously. 18 RR-R 104, 108. The other owned the moving company where Thompson worked with Zernia's son and counseled Thompson about his drinking after he missed work. 18 RR-R 208–12.

Several witnesses testified that, shortly after the murders, Thompson had confessed to shooting Ms. Hayslip and Mr. Cain. 18 RR-R 109–10; 18 RR-R 244–46.

Thompson also elicited testimony from several expert witnesses. A physician specializing in addiction testified about Thompson's alcohol and cocaine dependence. 18 RR-R 165. A neuropsychologist testified that Thompson was intelligent, with an 85th-percentile IQ, but some of his thought processes were affected by mild, diffuse brain damage. 19 RR-R 45, 50–52, 56.

III. Procedural History

Thompson was convicted on April 14, 1999, of capital murder. Clerk's Record (CR) 212–13. Pursuant to the jury's answers to the special issues on future dangerousness and mitigation, the trial court sentenced Thompson to

death. *Id*. The TCCA affirmed Thompson's conviction on direct appeal. *Thompson v. State*, 93 S.W.3d at 29. However, the court vacated Thompson's sentence and remanded the case for a new trial on punishment.[5] *Id.*

At retrial on punishment, the jury answered the special issues on future dangerousness and mitigation as before, and Thompson was again sentenced to death. Clerk's Record-Retrial (CR-R) 240. The TCCA affirmed Thompson's sentence on direct appeal. *Thompson v. State*, 2007 WL 3208755, at *6.

Thompson filed a state application for a writ of habeas corpus following his first conviction and sentence. State Habeas Clerk's Record (SHCR)-01 at 2–92. He filed a second application following the retrial on punishment. SHCR-02 at 2–117. As to all the allegations, the trial court entered findings of fact and conclusions of law recommending that relief be denied. SHCR-01 at 224–67; SHCR-02 at 218–61. Based on the trial court's findings and conclusions, and on its own review, the TCCA issued a combined order denying habeas relief. *Ex parte Thompson*, Nos. WR-78,135-01 & WR-78,135-02, 2013 WL 1655676, at *1 (Tex. Crim. App. Apr. 17, 2013).

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[5] The TCCA granted Thompson's first ground for rehearing in which he maintained that the TCCA failed to fully consider his fourth point of error on original submission; however, on further consideration, the TCCA concluded that its decision was improvident and withdrew the order granting rehearing. *Thompson v. State*, 108 S.W.3d 269, 269 (Tex. Crim. App. Jan. 29, 2003).

On April 15, 2014, Thompson filed a federal habeas petition. Pet., *Thompson v. Stephens*, No. 4:13-CV-1900 (S.D. Tex. Apr. 15, 2014), ECF No. 21. The district court granted Thompson's unopposed motion to stay the proceedings to allow him to seek state court relief. Ord., *Thompson v. Stephens*, No. 4:13-CV-1900 (S.D. Tex. May 6, 2015), ECF No. 52.

Thompson filed a subsequent habeas application on September 24, 2015. SHCR-03 at 1–486. After reviewing the application and finding that it failed to satisfy the requirements of Texas's abuse-of-the-writ statute, the TCCA dismissed it "as an abuse of the writ without considering the merits of the claims." *Ex parte Thompson*, No. WR-78,135-03, 2016 WL 922131, at *1 (Tex. Crim. App. Mar. 9, 2016) (citing Tex. Code Crim. Proc. art. 11.071, § 5(c)).

Upon return to federal court, Thompson filed an amended petition, which the district court denied. *Thompson v. Davis*, 2017 WL 1092309, at *33. Thompson obtained a certificate of appealability as to whether he established a violation under *Brady v. Maryland*, 373 U.S. 83 (1963), sufficient to overcome procedural default and, if so, whether he was entitled to relief on his *Brady* claim or his claim under *Massiah v. United States*, 377 U.S. 201 (1964), with respect to a jailhouse witness's testimony. *Thompson v. Davis*, 916 F.3d at 463. The Fifth Circuit later affirmed the district court's denial of habeas relief. *Thompson v. Davis*, 941 F.3d 813, 817 (5th Cir. 2019), *cert. denied sub nom., Thompson v. Lumpkin*, 141 S. Ct. 977.

The state trial court then scheduled Thompson's execution for January 28, 2026. Execution Ord., *Texas v. Thompson*, No. 0782657 (262nd Dist. Ct., Harris Cnty., Tex. Sept. 11, 2025). Thompson moved in federal court for funding to support a clemency application, which the district court granted. Ord., *Thompson v. Guerrero*, No. 4:13-CV-1900 (S.D. Tex. Dec. 12, 2025), ECF No. 118.

Thompson later filed in state court a suggestion that the TCCA reconsider its 2015 dismissal of his first subsequent habeas application, a motion for a stay of execution, and his second subsequent state habeas application. *See* Ord. 2–3. On January 27, 2026, the TCCA declined to reconsider its dismissal of Thompson's first subsequent application, dismissed the second subsequent application as an abuse of the writ, and denied a stay of execution. *Id.* Thompson then filed in this Court a petition for a writ of certiorari and an application for a stay of execution. The instant opposition follows.

REASONS FOR DENYING THE WRIT

The claims for which Thompson seeks review were dismissed by the court below on an adequate and independent state law ground, Texas Code of Criminal Procedure Article 11.071, § 5(a), which deprives this Court of jurisdiction to hear them. *See* Ord. 3. Even assuming jurisdiction, Thompson

has not furnished a reason the lower court erred in rejecting his claims, let alone a compelling reason for this Court to grant a writ of certiorari.

Moreover, Thompson's petition is a poor vehicle for his claims—fact-bound questions without development or merits analysis in the court below. This is particularly true because the reason for the lack of development of the claims is Thompson's failure to properly raise them. Indeed, he filed his latest subsequent application after the time expired for him to file pleadings in state court challenging his conviction and sentence. *See* Ord. 2 (noting that Thompson's subsequent application was filed on January 21, 2026). His Confrontation Clause claims are also plainly meritless and barred by non-retroactivity principles.

Perhaps most importantly, Thompson shot and killed Dennise Hayslip and Darren Cain in the same criminal transaction, and his claims challenging the finding that the gunshot wound he inflicted on Ms. Hayslip caused her death have no merit. *See Thompson v. Davis*, 2017 WL 1092309, at *6–7; *Thompson v. State*, 93 S.W.3d at 20–21. His own expert admitted at trial that it was "reasonably medically likely that" Ms. Hayslip would have died without medical intervention after Thompson shot her in the face, lacerating her tongue and causing profuse bleeding that could have caused her to drown on her own blood. 12 Reporter's Record (RR) 245–46 (Thompson's expert, Dr. Paul Radelat, agreeing that Ms. Hayslip could have drowned on her blood), 251 (Dr.

Radelat testifying that "without any medical intervention it was reasonably medically likely she would die"), 255–56 (Dr. Radelat's testimony that the "intermediate long term conditions without any medical intervention . . . would probably be fatal"). Nothing Thompson presents now casts doubt on the jury's verdict. His last-minute effort to relitigate an issue he has repeatedly lost in state and federal court, now under the guise of excessively dilatory Confrontation Clause claims, should be rejected. His indisputable failure to raise these claims diligently also precludes him from receiving equitable relief from this Court.

Thompson's petition is simply unworthy of the Court's attention, and his application for a stay of execution should be denied.

ARGUMENT

I. The Court Below Dismissed Thompson's Claims on an Adequate and Independent State Law Ground, Which Deprives this Court of Jurisdiction.

Thompson seeks review of the lower court's dismissal of his Confrontation Clause claims. *See generally* Pet. Cert. Despite the TCCA's explicit statement that it was not "reviewing the merits of the claims raised," Ord. 3, Thompson argues that it did so sub silentio, meaning this Court can reach them too. Pet. Cert. 12–19. But he is wrong, and the TCCA's dismissal on a state law ground strips the Court of jurisdiction.

"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)). The state law ground barring federal review may be "substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

To be adequate, a 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)). Discretion does not deprive a state law ground of its adequacy because "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.

A state law ground is "independent of federal law [when it] do[es] 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*, 501 U.S. at 735–36. To so find, 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.

Texas, like Congress, has imposed significant restrictions on subsequent habeas applications. *Compare* Tex. Code Crim. Proc. art. 11.071, § 5, *with* 28 U.S.C. § 2244(b); *see Kindler*, 558 U.S. at 62 (noting that federal courts should not "disregard state procedural rules that are substantially similar to those to which we give full force in our own courts"). 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 specific facts establishing," Tex. Code Crim. Proc. art. 11.071, § 5(a), one of these "exceptional circumstances," *Ex parte Kerr*, 64 S.W.3d at 418.

Relevant here, an applicant can prove either factual or legal unavailability of a claim. Tex. Code Crim. Proc. art. 11.071, § 5(a)(1). This requires proof of unavailability in *all* prior state habeas applications. *See Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007). A claim is legally unavailable when its legal basis "was not recognized or could not have been reasonably formulated from a final decision of [this Court], a court of appeals of the United States, or a court of appellate jurisdiction of [Texas]," Tex. Code Crim. Proc. art. 11.071, § 5(d), and factually unavailable when its factual basis

"was not ascertainable through the exercise of reasonable diligence," Tex. Code Crim. Proc. art. 11.071, § 5(e).

In the court below, Thompson accepted the burden of proving an exception to the abuse-of-the-writ bar. For his first Confrontation Clause claim, which related to his guilt trial, he argued the claim was based on a newly available legal ground and also showed no juror would have convicted him of capital murder but for the error. Subs. Appl. 41–50. For his second Confrontation Clause claim, which related to his punishment retrial, he argued only that it was based on a newly available legal ground. *Id*. at 52–56. As mentioned before, the TCCA did not agree, finding that Thompson did not satisfy "the requirements of Article 11.071 § 5 or Article 11.073," and it dismissed "the application as an abuse of the writ without reviewing the merits of the claims raised." Ord. 3.

Thompson challenges the adequacy of § 5(a)(1). Pet. Cert. 17–19. However, the Fifth Circuit "has held that, since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an . . . adequate state ground for the purpose of imposing a [federal] procedural bar." *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008).[6]

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[6] *See also Moore v. Texas*, 122 S. Ct. 2350, 2352–53 (2002) (Scalia, J., dissenting); *Balentine v. Thaler,* 626 F.3d 842, 857 (5th Cir. 2010) (recognizing that § 5 is an adequate state law ground for rejecting a claim); *Matchett v. Dretke*, 380 F.3d 844, 848 (5th Cir. 2004) ("Texas' abuse-of-the-writ rule is ordinarily an 'adequate and

Thompson argues the bar is inadequate here because, if the TCCA found his confrontation claims were available to him when he filed a subsequent application in 2015, it would constitute a departure from the definition of legal availability because his claims are based on this Court's opinion in *Smith v. Arizona*, 602 U.S. 779, 802 (2024), which postdated his first subsequent application. Pet. Cert. 18. But, as discussed further below, such a finding would be plainly consistent both with the statutory definition of availability, Tex. Code Crim. Proc. art. 11.071, § 5(d) (a claim is legally unavailable if the legal basis "could not have been reasonably formulated from a final decision of the United States Supreme Court, . . . or a court of appellate jurisdiction of this state on or before that date"), and this Court's explanation in *Smith* that its opinion in that case "follow[ed] from all this Court has held about the Confrontation Clause's application to forensic evidence." 602 U.S. at 802.

This is simply not a situation where the state court's imposition of a bar was exorbitant. *See*, *e.g.*, *Kemna*, 534 U.S. at 376, 381–84. Thompson's

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independent' procedural ground on which to base a procedural default ruling."); *Busby v. Dretke*, 359 F.3d 708, 724 (5th Cir. 2004) ("the Texas abuse of the writ doctrine is an adequate ground for considering a claim procedurally defaulted."); *Barrientes v. Johnson*, 221 F.3d 741, 758–59 (5th Cir. 2000); *Fuller v. Johnson*, 158 F.3d 903, 906 (5th Cir. 1998); *Emery v. Johnson*, 139 F.3d 191, 195–96 (5th Cir. 1997) *cf. Expressions Hair Design v. Schneiderman*, 581 U.S. 37, 45 (2017) (noting that this Court generally defers to a court of appeals's interpretation of their respective states' laws); *De Buono v. NYSA-ILA Medical & Clinical Servs. Fund*, 520 U.S. 806, 810 n.5 (1997) (noting "settled practice of according respect to the courts of appeals' greater familiarity with issues of state law").

meritless confrontation claims could have been raised before, and it is utterly unremarkable that the TCCA refused to authorize further proceedings. This is simply not an "exceptional case[]" or "the rarest of situations, [where] 'an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question.'" *Cruz v. Arizona*, 598 U.S. 17, 26 (2023) (citing *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964)).

The only question then is whether § 5 is independent of federal law. It is, and the state court's dismissal of Thompson's claims deprives this Court of jurisdiction. Indeed, this Court has held on numerous occasions that it "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment," *Coleman*, 501 U.S. at 729, because "[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal: Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory." *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (citing *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945), and *Sochor v. Florida*, 504 U.S. 527, 533–34 & n.112 (1992)); *see Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Despite this long-standing precedent, Thompson now argues that § 5 is not independent of federal law. Pet. Cert. 12–17. But even considering this Court's federal habeas jurisprudence—which does not apply to a jurisdictional bar—Thompson's arguments are wrong. In *Long*, the Court made clear that, in determining whether a state-court judgment is independent and adequate on direct review, it would first decide whether a state court decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." 463 U.S. at 1040. If this predicate was met, the Court would presume that the state court's decision turned on federal law unless the "adequacy and independence of any possible state law ground" was "clear from the face of the opinion." *Id*. at 1040–41. This framework was imported into the federal habeas context in *Harris v. Reed*, 489 U.S. 255, 260–63 (1989), and it has since been called the "*Harris* presumption" when it is applied in such matters. *See*, *e.g.*, *Ylst v. Nunnemaker*, 501 U.S. 797, 802 (1991).

The Court later made clear in *Coleman* that a two-part, conjunctive test is required:

> In habeas, if the decision of the last state court to which the petitioner presented his federal claims fairly appeared to rest primarily on resolution of those claims, or to be interwoven with those claims, and did not clearly and expressly rely on an independent and adequate state ground, a federal court may address the petition.

501 U.S. at 735. *Coleman* rejected the notion that *Harris* imposed a "clearly and expressly" requirement on all procedural default holdings. *Id*. at 736. Rather, the Court explained that the *Harris* presumption, and hence the "clearly and expressly" requirement, "appl[ies] only in those cases in which it fairly appears that the state court rested its decision primarily on federal law." *Id*. (internal quotation marks omitted); *see also id*. at 735 (describing this "predicate to the application of the *Harris* presumption"). Thus, contrary to Thompson's suggestion, Pet. Cert. 14, there is *no* presumption of federal-law consideration unless it is first determined that the state court decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Coleman*, 501 U.S. at 735. 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.

In *Rocha v. Thaler*, 626 F.3d 815 (5th Cir. 2010), the Fifth Circuit considered the independent nature of Texas's § 5 bar in the federal habeas context. There, the court rejected Rocha's contention "that § 5(a)(1) is dependent on federal law in all cases." *Id*. at 835. Instead, whether a § 5(a)(1) dismissal is independent of federal law turns on case-specific factors. *Id*. As the court held,

> If the [T]CCA's decision rests on availability, the procedural bar is intact. If the [T]CCA determines that the claim was unavailable but that the application does not make a prima facie

> showing of merit, a federal court can review that determination under the deferential standards of AEDPA.

Id.

In this case, there is no need to assume. The TCCA dismissed Thompson's application as "an abuse of the writ without reviewing the merits of the claims raised." Ord. 3. And contrary to Thompson's argument, Pet. Cert. 14, the TCCA conducts the availability and prima facie inquiries "sequentially," *Rocha*, 626 F.3d at 833–34 (discussing *Ex parte Campbell*, 226 S.W.3d at 422), and there is absolutely no indication the TCCA proceeded to a prima facie merit analysis instead of resting its decision on availability. *See Buntion v. Lumpkin*, 31 F.4th 952, 962–63 (5th Cir. 2022) (holding that argument similar to Thompson's "undebatably fail[ed]" because it was based on a misreading of *Ex parte Campbell*). Thompson also argues the TCCA does not mean it when it says it dismisses a claim without reviewing the merits because sometimes the TCCA finds no prima facie merit and still says that it is not reaching the merits, Pet. Cert. 14–16, but the TCCA's instant order does not resemble Thompson's cited orders, which specifically reference the "prima facie" requirement. *E.g., Ex parte Rubio*, Nos. WR-65,784-02, WR-65,784-04, 2018 WL 2329302, at *5 (Tex. Crim. App. May 23, 2018).

The adequacy and independence of the TCCA's dismissal is borne out by the fact that Thompson's latest subsequent state habeas application was

indeed subject to dismissal on an adequate and independent state law ground—availability. Tex. Code Crim. Proc. art. 11.071, § 5(a)(1); *see Ex parte Campbell*, 226 S.W.3d at 421; *Ex parte Sales*, No. WR-78,131-02, 2023 WL 382321, at *1 (Tex. Crim. App. Jan. 25, 2023) ("[T]he factual basis must have been unavailable as to *all previous applications*." (emphasis added)). Even assuming Thompson could not have formulated a Confrontation Clause claim in his initial applications based on the admission of the non-testifying pathologist's autopsy report and the testimony of the pathologists who testified about the report, he could have formulated such a claim in his 2015 subsequent application. *See Ex parte Campbell*, 226 S.W.3d at 421.

At that time, this Court's opinions in *Bullcoming v. New Mexico*, 564 U.S. 647 (2011), and *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), were indisputably available to Thompson. *See Smith*, 602 U.S. at 802 (this Court's explanation that its holding "follow[ed] from all this Court has held about the Confrontation Clause's application to forensic evidence").[7] Thompson also could have formulated his claims in 2015 based on the TCCA's opinion in *Burch v. State*, in which it held the defendant's right to confrontation was violated by

[7] Notably, Thompson chose to wait a year and a half after this Court decided *Smith* to attempt to raise his confrontation claims, and then only did so after the time expired for him to raise the claims in state court. That delay means summary dismissal is appropriate, as it suggests the claims are nothing more than a dilatory tactic. *See Bucklew v. Precythe*, 587 U.S. 119, 149–50 (2019).

the introduction of a surrogate analyst's testimony and the non-testifying analyst's report. 401 S.W.3d 634, 637–40 (Tex. Crim. App. 2013) (finding confrontation error where the prosecution "attempted to submit testimonial evidence that the appellant possessed cocaine without giving the appellant the opportunity to cross-examine the analyst who testified the cocaine and made the affirmation of its contents"); *see also* Tex. Code Crim. Proc. art. 11.071, § 5(d) (a claim is legally unavailable if the legal basis "could not have been reasonably formulated from a final decision of the United States Supreme Court, . . . or a court of appellate jurisdiction of this state on or before that date"). Therefore, the TCCA's boilerplate dismissal of Thompson's subsequent application represents a decision independent from federal law. *See Rocha*, 626 F.3d at 836 ("A [T]CCA decision fairly appears to rest on state law if it dismisses a subsequent habeas application under § 5(a)(1) because the application does not raise a claim that was factually or legally unavailable.").

Ultimately, the abuse-of-the-writ bar—a state-law ground clearly and unambiguously applied by the TCCA—prohibits this Court from exercising jurisdiction over the claims for which Thompson now seeks review. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (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."). Thompson's

claims are foreclosed by an adequate and independent state procedural bar and certiorari review should be denied.

II. Thompson Provides No Compelling Reason for Further Review, and His Confrontation Claims Lack Merit in Any Event.

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 would be hard pressed to discover any such reason in Thompson's petition, let alone amplification thereof. Indeed, Thompson makes no allegation of circuit or state-court-of-last-resort conflict. *See* Sup. Ct. R. 10(a)–(b). Left with no true ground for review, the only conclusion is that Thompson seeks correction of what he believes was error by the lower court. But that is a plainly inadequate basis for this Court to expend its limited resources. Sup. Ct. R. 10. And such a request is particularly inappropriate here because, as discussed above, the court below did not reach the merits of Thompson's claims, and this Court is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Indeed, Thompson's petition is founded on the notion that the TCCA resolved his confrontation claims by deciding an important federal question contrary to this Court's holding in *Smith*, but the TCCA did no such thing. *Supra* Argument, Part I. Consequently, Thompson's petition is an exceptionally poor vehicle for

reaching the merits of his claims, and his petition should be denied for that reason alone. Nonetheless, Thompson's claims are not compelling.

Thompson raised two Confrontation Clause claims in the court below alleging the testimony of pathologists who testified at his guilt trial and his retrial on punishment violated his constitutional rights. Subs. Appl. 27–56. As discussed below, his claims are barred by principles of non-retroactivity, *see Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality op.), and are meritless.

A. Nonretroactivity principles bar relief.

Habeas is generally not an appropriate avenue for the recognition of new constitutional rules. *Teague*, 489 U.S. at 310. Thus, for the most part, new constitutional rules do not apply to convictions final before the new rule was announced.[8] *Id*. This facilitates federal- and state-court comity by "validat[ing] reasonable, good-faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions." *Butler v. McKeller*, 494 U.S. 407, 414 (1990).

Thompson seeks retroactive application of this Court's opinion in *Smith*. But *Smith* was issued years after Thompson's conviction and sentence became final. *See Teague*, 489 U.S. at 301 ("[A] case announces a new rule if the result

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[8] For purposes of *Teague*, Thompson's conviction became final on October 6, 2003, and his sentence became final on October 8, 2006, when this Court denied his petitions for a writ of certiorari on direct appeal. *See Caspari v. Bohlen*, 510 U.S. 383, 390 (1994).

was not *dictated* by precedent existing at the time the defendant's conviction became final."). The inquiry then turns on whether the rule Thompson proposes is substantive or a watershed rule of criminal procedure. It is neither.

The rule in *Smith* is not substantive—it does not "prohibit the imposition of capital punishment on a particular class of persons." *Saffle v. Parks*, 494 U.S. 484, 495 (1990). Rather, it is clearly procedural. *Cf. Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) ("[R]ules that regulate only the *manner of determining* the defendant's culpability are procedural."). And because the "watershed" exception is "moribund," *Edwards v. Vannoy*, 593 U.S. 255, 272 (2021), *Smith* does not qualify for retroactive application. As such, *Teague*'s non-retroactivity bar applies, and Thompson's petition should be denied.

B. The claims are meritless.

In Thompson's guilt trial, Dr. Patricia Moore testified regarding the autopsies of Mr. Cain and Ms. Hayslip. 12 RR 78–131. Dr. Moore conducted the autopsy on Mr. Cain. 12 RR 80. Dr. Paul Shrode conducted the autopsy on Ms. Hayslip. 12 RR 102–03. Dr. Moore testified regarding the injuries Ms. Hayslip suffered as indicated in Dr. Shrode's autopsy report as well as photographs of Ms. Hayslip and her medical records and said Dr. Shrode's conclusion was that the cause of Ms. Hayslip's death was the gunshot wound to the face. 12 RR 104, 106–08, 113–14. Dr. Moore testified that her opinion based on the report and the autopsy photographs was the same. 12 RR 106.

Thompson objected "[a]ccording to the Rules of Evidence" to Dr. Moore's testimony about Dr. Shrode's opinion as to the cause of Ms. Hayslip's death, 12 RR 105, and objected on "the same basis" to the introduction of Dr. Shrode's report, 12 RR 109. Dr. Moore testified that Ms. Hayslip would not have survived if she had received no medical help. 12 RR 110.

At Thompson's punishment retrial, Dr. Dwayne Wolf testified regarding Ms. Hayslip's autopsy. 16 RR 221–41. Thompson did not object to the introduction of Dr. Shrode's autopsy report. 16 RR-R 227 (Thompson's counsel stating "I have no objection to the autopsy portion of the report"). Dr. Wolf reviewed the photographs from Ms. Hayslip's autopsy as well as photographs from the hospital where she was treated. 16 RR-R 229–31. Dr. Wolf testified regarding the efforts made at the hospital to save Ms. Hayslip, 16 RR-R 235–39, and said the cause of death was the gunshot wound to the face. 16 RR-R 238–39 ("[Ms. Hayslip] was in dire need of medical intervention because she had this wound. Unfortunately, the efforts at the hospital were unsuccessful."). Thompson did not object to Dr. Wolf's testimony regarding Ms. Hayslip's cause of death.

In *Smith*, the Court held that "[w]hen an expert conveys an absent [forensic] analyst's statements in support of his opinion, and the statements provide that support only if true, then the statements come into evidence for their truth." 602 U.S. at 783. In doing so, the Court rejected the contrary view

some state courts had taken in the wake of *Williams v. Illinois*, 567 U.S. 50 (2012). *Smith*, 602 U.S. at 783, 789. Further, the Court reiterated that if the absent analyst's statements are testimonial, they are barred by the Confrontation Clause as recognized in *Crawford v. Washington*, 541 U.S. 36 (2004). *Smith*, 602 U.S. at 783, 789. The Court did not decide whether the analyst's statements were testimonial but instead remanded the case back to the state court with guidance. *Id.* at 801–03.

Thompson fails to show the non-testifying pathologist's autopsy report was testimonial.[9] He has not shown the report was prepared for the primary purpose of accusing him or that it possessed the requisite solemnity and formality envisioned by Justice Thomas in *Williams*. In *Williams*, Justice Thomas wrote a concurring opinion explaining that while he did not agree with the plurality's primary purpose test, he thought the report was not testimonial because it lacked the necessary solemnity and formality as it was neither sworn nor a certified declaration of fact. 567 U.S. at 103–04, 110–13.

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[9] As discussed above, Thompson did not specifically object to the admission of the autopsy report or Dr. Moore's testimony regarding Ms. Hayslip's cause of death on Confrontation Clause grounds—only evidentiary rules—at his guilt trial, 12 RR 105, 109, and Thompson did not object to the report's admission or Dr. Wolf's testimony at his punishment retrial, 16 RR-R 227. Consequently, he did not preserve any objection to the report's admission or the testimony on Confrontation Clause grounds, and any such claim is barred. *See* Tex. R. App. P. 33.1; *see also Thompson v. Davis*, 2017 WL 1092309, at *32 (the federal habeas court's opinion addressing Thompson's claim alleging his trial counsel were ineffective "for not raising a Confrontation Clause objection because Dr. Moore, rather than Dr. Shrode who performed the autopsy, testified about the cause of Hayslip's death").

Additionally, the testifying pathologists' testimony about the autopsy photographs was not testimonial. *Lee v. State*, 418 S.W.3d 892, 898 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd); *United States v. Williams*, 740 F. Supp. 2d 4, 10 (D.D.C. 2010) (suggesting autopsy photos could form the basis for an independent expert opinion); *cf. United States v. Lopez-Moreno*, 420 F.3d 420, 436 (5th Cir. 2005) (holding that admission of a photocopy of a voter identification card did not violate the Confrontation Clause because it did not involve a witness bearing testimony).

Nonetheless, even if there was confrontation error, it was harmless because there was no relevant, compelling factual dispute about the cause of Ms. Hayslip's death. *See Coy v. Iowa*, 487 U.S. 1012, 1021 (1988) (confrontation error subject to harmless error analysis); *Langham v. State*, 305 S.W.3d 568, 582 (Tex. Crim. App. 2010) (same). Thompson has repeatedly attempted to avoid the consequences of his shooting Ms. Hayslip in the face by blaming her death on the medical treatment she received after the shooting. *E.g., Thompson v. Davis*, 2017 WL 1092309, at *6. His claims have consistently failed because controlling Texas law provides that a person is criminally responsible "if the result would not have occurred but for his conduct . . . unless the concurrent cause was clearly sufficient to produce the result *and the conduct of the actor clearly insufficient*." Tex. Penal Code § 6.04(a) (emphasis added); *see Thompson v. State*, 93 S.W.3d at 20. As the TCCA held in

Thompson's case, "even assuming, arguendo, that the conduct of the doctors was clearly sufficient to cause Hayslip's death, the conduct of [Thompson] was not 'clearly insufficient' so as to absolve him of criminal responsibility under § 6.04." *Thompson v. State*, 93 S.W.3d at 21. That interpretation of state law cannot be questioned by this Court. *Bradshaw v. Richey*, 546 U.S. 74, 76 (2005) ("We have repeatedly held that a state court's interpretation of state law, including one announced on direct appeal of the challenged conviction, binds a federal court sitting in habeas corpus.").

Indeed, *Thompson's own expert*, Dr. Paul Radelat, admitted at trial that Ms. Hayslip likely would have died without medical intervention after Thompson shot her in the face. *See Thompson v. State*, 93 S.W.3d at 20–21. Moreover, Dr. Radelat testified at length about the treatment Ms. Hayslip received at the hospital and about the alleged errors committed by the treating personnel. 12 RR 214–33.

None of the "new" evidence Thompson has marshalled since—whether it is the 2014 letter from Dr. Lloyd White, or the last-minute reassessment by Dr. Patricia Moore[10]—contradicts the evidence from trial that Ms. Hayslip

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[10] Dr. White's 2014 letter was submitted with Thompson's first subsequent habeas application stated, "[t]he fact that Ms. Hayslip almost certainly would have survived but not [sic] for this medical treatment error raises a substantial question of intervening cause of death, albeit the gunshot wound was the reason she came to the hospital in the first place." SHCR-03 at 483. Dr. Moore's 2026 affidavit similarly states only that the gunshot wound did not "independently" cause Ms. Hayslip's

would not have survived without medical intervention. Indeed, the only evidence Thompson has presented that has addressed the relevant question under Texas law—whether Thompson's conduct was clearly insufficient to cause Ms. Hayslip's death, Tex. Penal Code § 6.04(a)—is Dr. Radelat's testimony, and his testimony supported the jury's verdict.[11] 12 RR 243–56. Any notation in the autopsy report as to whether Ms. Hayslip's cause of death was the gunshot wound to her face or a "medical misadventure" is a red herring. It does not answer the relevant question under Texas law, i.e., whether Thompson is criminally responsible for her death. He is. *See* Tex. Penal Code § 6.04(a); *Cyr v. State*, 665 S.W.3d 551, 557 (Tex. Crim. App. 2022) ("[A]n actor need not be the sole cause of the harm. Causation is established where the conduct of the defendant is the 'but for' cause 'operating alone or concurrently with another cause.'"); *Robbins v. State*, 717 S.W.2d 348, 351 (Tex. Crim. App. 1986) (en banc) ("If concurrent causes are present, two possible combinations exist to satisfy the 'but for' requirement: (1) the defendant's conduct may be sufficient by itself to have caused the harm, regardless of the existence of a

death, and she admits the manner of death was homicide "because Ms. Hayslip would not have been in the hospital but for the gunshot wound."

[11] Dr. Radelat testified on direct examination that Ms. Hayslip's wound was "survivable," but he acknowledged it was "life threatening" if "not properly handled." 12 RR 232–33.

concurrent cause; or (2) the defendant's conduct and the other cause *together* may be sufficient to have caused the harm.").

Notably, Thompson has grossly downplayed the severity of Ms. Hayslip's injury that he inflicted, suggesting it was not serious because she was ambulatory and communicative. Pet. Cert. 2. To the contrary, the gunshot wound Thompson inflicted nearly severed her tongue, causing profuse bleeding that could have caused her to drown and could have caused her tongue to swell to the point of causing her to suffocate. *See Thompson v. State*, 93 S.W.3d at 20. Indeed, Ms. Hayslip was bleeding so profusely that she was unable to even lean back, and she was unable to speak—she communicated by moving her head, signing with her hands, or writing notes. *See, e.g.*, 11 RR 59–63, 82–87, 243–45; 12 RR 11, 22; 16 RR-R 95–97, 122–28. It would be flatly incredible to suggest Ms. Hayslip would have survived such an injury without medical intervention. That is perhaps why none of Thompson's experts have ever suggested she would have. 12 RR 232–33, 243–56 (Dr. Radelat's testimony); SHCR-03 at 482 (Dr. White's letter stating "there is reasonable medical probability she would have survived *had treatment been carried out as originally planned*" (emphasis added)); Subs. Appl. at 58 (quoting affidavit of Dr. Moore stating "Ms. Hayslip most likely would have survived the wound *but for the medical misadventure*" (emphasis added)).

Thompson argues the only evidence that Ms. Hayslip's cause of death was the gunshot wound to her face came from Dr. Shrode. Pet. Cert. 12. But this is again a sleight of hand. In addition to Dr. Radelat, the surgeon who was in charge of Ms. Hayslip's care, Dr. Robert Marvin, testified that she would have been unable to breathe if she had laid back, and her tongue would have progressively swollen and cut off her airway. 12 RR 7, 11, 16. Further, she would have bled into her lungs, which could have caused her to die. 12 RR 16–17. Consistent with the testimony of Thompson's expert, Dr. Marvin testified that Ms. Hayslip "would not have survived" the gunshot wound without medical intervention. 12 RR 29. Nothing Thompson identifies now casts any doubt on that conclusion.

Thompson also argues his case is "on all fours" with *Seavey v. Texas*, 145 S. Ct. 368 (2024), in which this Court vacated an intermediate court's opinion and remanded for further consideration in light of *Smith*. Pet. 30. But unlike *Seavey*, Thompson's claims arose in habeas—decades after his trial—and are subject to both the jurisdictional bar of Article 11.071, § 5(a), as well as *Teague*'s prohibition against retroactive application of new rules. *See supra* Argument, Parts I, II(A). So *Seavey* doesn't avail Thompson any more than *Smith* does. And in any event, as discussed above, the cause-of-death testimony Thompson challenges here is a red herring because, as the TCCA has explained, the relevant question is whether Thompson's shooting Ms. Hayslip

in the face was "clearly insufficient" to cause her death.[12] *Thompson v. State*, 93 S.W.3d at 21. It was not.

Thompson's Confrontation Clause claims are wholly meritless. His petition should be denied.

III. Thompson's Application for a Stay of Execution Should Be Denied.

This Court should also deny Thompson's request for a stay of execution. A stay of execution "is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough,* 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). Rather, the inmate must satisfy all the requirements for a stay, including a showing of a significant possibility of success on the merits. *Id*. (citing *Barefoot v. Estelle*, 463 U.S. 880, 895–96 (1983)). When the requested relief is a stay of execution, a court must 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

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[12] Thompson seems to suggest the prosecution was required as an independent matter to "exclude any reasonable possibility that the medical misadventure was clearly sufficient to cause" Ms. Hayslip's death, Pet. Cert. 24, but that is not the law. *Cyr*, 665 S.W.3d at 557 ("[A]n actor need not be the sole cause of the harm. Causation is established where the conduct of the defendant is the 'but for' cause 'operating alone or concurrently with another cause.'"); *Robbins*, 717 S.W.2d at 351 ("If concurrent causes are present, two possible combinations exist to satisfy the 'but for' requirement: (1) the defendant's conduct may be sufficient by itself to have caused the harm, regardless of the existence of a concurrent cause; or (2) the defendant's conduct and the other cause *together* may be sufficient to have caused the harm.").

> 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)). A court must consider "the State's strong interest in proceeding with its judgment" and "attempt[s] at manipulation." *Nelson*, 541 U.S. at 649–50 (citing *Gomez v. U.S. Dist. Court for Northern Dist of California,* 503 U.S. 653, 654 (1992)).

Thompson's latest challenge to his conviction and sentence was filed at the latest possible moment, *see* Texas Court of Criminal Appeals Miscellaneous Rule 11-003, and his attempt to raise several fact-bound claims at the last minute forecloses his appeal to equity. *See Bucklew*, 587 U.S. at 149–51. That delay, alone, requires a "strong equitable presumption" against a stay of execution. *Hill*, 547 U.S. at 584. Further, as demonstrated above, Thompson's petition is unworthy of this Court's attention, and he fails to demonstrate a likelihood of success on the underlying claims that are jurisdictionally barred, barred by principles of non-retroactivity, and meritless.

Moreover, "[b]oth the State and the victims of crimes have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. Thompson's victims have waited almost thirty years for Thompson's sentence to be carried out. His last-minute attempt to raise meritless claims is plainly a dilatory effort to delay his sentence. Such tactics underscore why the Court

should deny his application for a stay. *See, e.g.*, *Bucklew*, 587 U.S. 149–51. Thompson presents no reason to delay his execution date any longer. His victims deserve justice for his decades-old crimes.

Lastly, Thompson cannot overcome the strong presumption against granting a stay or demonstrate that the balance of equities entitles him to a stay of execution. For the same reason, Thompson fails to show that he would suffer irreparable harm if denied a stay of execution. *Walker v. Epps*, 287 F. App'x 371, 375 (5th Cir. 2008) (explaining that "the merits of [the movant's] case are essential to [the court's] determination of whether he will suffer irreparable harm if a stay does not issue"). This Court should deny Thompson's application for a stay of execution.

CONCLUSION

For the reasons set forth above, Thompson's petition for a writ of certiorari and his application for a stay of execution should be denied.

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