

No. 25-6774

In the Supreme Court of the United States

CHARLES DON FLORES,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS OF TEXAS

**BRIEF OF THE TEXAS DEFENDER SERVICE AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

Table of Authorities..... iii

Interests of Amicus Curiae1

Introduction and Summary of the Arguments.....1

The Arguments.....2

 I. Article 11.073 was Intended To Expand Access to Justice in Post-Conviction Proceedings for People Wrongfully Convicted On the Basis of False or Unreliable Forensic Evidence.....2

 A. The History and Context of 11.0733

 II. Texas Courts’ Implementation of 11.073 Contravenes the Statute’s Purpose and Fails to Protect the Innocent.....7

 A. The TCCA Frequently Applies Procedural Bars to Prevent Development of Claims—Often Without Addressing the Merits—in Contravention of 11.073’s Purpose.....8

 B. The TCCA Prevents Potentially Innocent People from Obtaining Relief by Applying a More Stringent Standard than 11.073 Prescribes 10

 C. The TCCA’s Application of 11.073 Systematically Forecloses Relief in Capital Cases, Heightening the Risk of Wrongful Execution. 11

 D. The TCCA has Effectively Confined 11.073 Relief to DNA-Based Claims, Contrary to the Realities of Forensic Error. 13

III. Updated Data Continues To Show that Relief Under 11.073—and Opportunities to Develop Evidence to Support Claims for Relief—are Rare.....	16
Conclusion	18

TABLE OF AUTHORITIES

Cases

<i>Ex parte Elizondo</i> , 947 S.W.2d 202 (Tex. Crim. App. 1996).....	10
<i>Ex parte Fournier</i> , 473 S.W.3d 789 (Tex. Crim. App. 2015).....	10
<i>Ex parte Robbins (Robbins I)</i> , 360 S.W.3d 446 (Tex. Crim. App. 2011).....	5, 6
<i>Ex parte Robbins (Robbins II)</i> , 478 S.W.3d 678 (Tex. Crim. App. 2014).....	6
<i>In re Roark</i> , 707 S.W.3d 157 (Tex. Crim. App. 2024)	18

Statutes

Tex. Code Crim. Proc. Ann. art. 64.01 (West 2025)	16
Tex. Code. Crim. Proc. Ann. art. 11.07 (West 2025)	8
Tex. Code. Crim. Proc. Ann. art. 11.071 (West 2025)	8
Tex. Code. Crim. Proc. Ann. art. 11.073 (West 2025)	3, 9, 10

Other Authorities

<i>DNA Testing Suspended as More Problems Emerge at Houston Crime Lab</i> , Innocence Project (Feb. 1, 2008), https://innocenceproject.org/news/dna-testing-suspended-as-more-problems-emerge-at-houston-crime-lab/	5
---	---

<i>Exonerations by Year</i> , National Registry of Exonerations, https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx (last visited Mar. 6, 2026).....	14
House Research Organization, Bill Analysis, Texas House of Representatives, 83rd Legislature, Regular Session, at 2 (May 15, 2023), https://hro.house.texas.gov/pdf/ba83R/SB0344.PDF	13, 15
<i>Innocence Database</i> , Death Penalty Info. Ctr., https://deathpenaltyinfo.org/policy-issues/policy/innocence (last visited Mar. 6, 2026)	12
John Morgan, Forensic Testimony Archaeology: Analysis of Exoneration Cases and Its Implications for Forensic Science Testimony and Communications, National Institute of Justice, Document No. 306259, at 31, 35 (March 2023), https://www.ojp.gov/pdffiles1/nij/grants/306259.pdf	15
<i>Roberson Facing Execution on Oct. 16 for a Crime that Never Occurred</i> , Innocence Project (July 17, 2025), https://innocenceproject.org/news/what-to-know-about-robert-roberson-on-texas-death-row-for-a-crime-that-never-occurred/	17
Samuel R. Gross, Barbara O'Brien, Chen Hu & Edward H. Kennedy, <i>Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death</i> , 111 Proc. Nat'l Acad. Sci. 7230 (2014), https://www.pnas.org/doi/epdf/10.1073/pnas.1306417111	13

Senate Research Center, Bill Analysis, S.B. 344,
83rd Leg., R.S., at 1 (Feb. 28, 2013),
[https://capitol.texas.gov/tlodocs/83R/analysis/pdf/S
B00344I.pdf#navpanes=0](https://capitol.texas.gov/tlodocs/83R/analysis/pdf/SB00344I.pdf#navpanes=0).....16

Trevor Rosson, *A New Remedy for Junk Science:
Article 11.073 and Texas's Response to the
Changing Landscape in the Forensic Sciences.*, 48
St. Mary's L.J. 465 (2017)4

INTERESTS OF AMICUS CURIAE¹

Texas Defender Service (TDS) is dedicated to ending mass incarceration and excessive punishment in Texas through direct representation, policy reform, and public education. In July 2024, TDS released *An Unfulfilled Promise: Assessing the Efficacy of Article 11.073*.² This report examined the effectiveness of Texas Code of Criminal Procedure Article 11.073, a law intended to grant relief to those wrongfully convicted based on flawed forensic evidence.

INTRODUCTION AND SUMMARY OF THE ARGUMENTS

An Unfulfilled Promise: Assessing the Efficacy of Article 11.073 (“TDS report”) is based on a systematic review of over 70 attempts to use Article 11.073 to obtain post-conviction relief from 2013, when the law was passed, through the end of 2023. The report outlines how the law has failed to provide a pathway to justice for the wrongfully convicted. TDS’s review of these cases revealed that the Texas Court of Criminal Appeals (“TCCA”) has systematically frustrated Article 11.073’s purpose by invoking procedural barriers with minimal explanation, imposing extra-statutory

¹ No counsel for any party authored this brief in whole or in part, and no party, counsel, or person other than amici, their members, and their counsel contributed money to fund the preparation or submission of this brief. Counsel of record for all parties received timely notice of amici’s intent to file this brief.

² Texas Defender Service, *An Unfulfilled Promise: Assessing the Efficacy of Article 11.073* (2024), <https://www.texasdefender.org/wp-content/uploads/2024/07/TDS-11.073-Report.pdf> (on file with TDS).

burdens that deny relief to potentially innocent individuals, foreclosing meaningful review in capital cases where there is the risk of wrongful execution, and effectively restricting the statute's reach to DNA-based claims despite the well-documented prevalence of non-DNA forensic error.³ Since the report was released, the same patterns have persisted through February 2026.

Petitioner Charles Flores has invoked Texas's Article 11.073 several times to argue that evolving scientific understanding—first about hypnosis and later about eyewitness memory reliability—showed the key identification evidence at trial was unreliable and that he would not have been convicted, but the TCCA has either denied relief or dismissed the claims without reaching the merits.⁴ Mr. Flores's post-conviction litigation exemplifies how Article 11.073 has failed to operate as a meaningful avenue for state habeas applicants to demonstrate that they would not have been convicted but for the presentation of now-discredited or unreliable scientific evidence at trial.

THE ARGUMENTS

I. Article 11.073 was Intended To Expand Access to Justice in Post-Conviction Proceedings for People Wrongfully Convicted On the Basis of False or Unreliable Forensic Evidence.

Scientific evidence has a powerful and persuasive influence in the courtroom, and criminal defendants are often convicted based on testimony and evidence

³ Texas Defender Service, *supra* note 2, at 1–2.

⁴ Pet. at 13–19.

provided by experts in forensic science. But science is continually evolving, expert opinions change, theories are disproved, and forensic conclusions that once seemed to incriminate a person may later prove false.

In the early 2000s, a series of scandals, exposés, and exonerations revealed that innocent people in Texas had been convicted based on flawed forensic science, from false DNA and fingerprint evidence to problematic arson assessments.⁵ The overwhelming majority of people for whom since-invalidated science played a major role in their convictions, however, had no way to bring those issues to court.

Texans began to recognize that the State needed a mechanism through which innocent people convicted by virtue of problematic forensic evidence could obtain relief for their wrongful convictions. To that end, in 2013, the Texas Legislature passed Senate Bill 344, later codified as Texas Code of Criminal Procedure Article 11.073.⁶ Article 11.073 created a statutory pathway for post-conviction relief for people who could present scientific evidence that was not available to be offered at their trial or contradicted scientific evidence relied on by the state at trial. Innocent people now had an ostensible way to have science that would not be valid if presented at a trial today re-evaluated, which, in the death penalty context, could be a powerful tool in preventing wrongful executions.

A. The History and Context of 11.073

Article 11.073 was the first law of its kind in the nation and served as a response to “the changing

⁵ Texas Defender Service, *supra* n. 2 at 5.

⁶ TEX. CODE. CRIM. PROC. ANN. art. 11.073 (West 2025).

landscape in the forensic sciences.”⁷ Its enactment was a significant development in Texas’s approach to post-conviction relief and the evolving role of scientific evidence in the legal system. This development was preceded by several key events that give context to the motivations behind 11.073 and its intended impact on the legal system.

One of these events was the execution of Cameron Todd Willingham in February 2004 for allegedly setting a fire that killed his three young daughters. Willingham had always maintained his innocence. After his execution, questions about the arson investigation and the purportedly scientific evidence used in his conviction emerged, suggesting that the fire was not the result of arson.⁸

Questions were also raised by the revelation of serious concerns about the integrity of forensic work done by state-supported crime laboratories. In November 2002, the Houston Police Department Crime Lab faced scrutiny after a state audit revealed troubling findings, including under-trained staff, mistake-

⁷Trevor Rosson, *A New Remedy for Junk Science: Article 11.073 and Texas's Response to the Changing Landscape in the Forensic Sciences*, 48 St. Mary's L.J. 465, 467 (2017), <https://commons.stmarytx.edu/thestmaryslawjournal/vol48/iss3/2> (on file with TDS).

⁸ See, e.g., Douglas J. Carpenter et al., Innocence Project Arson Review Committee, *Report on the Peer Review of the Expert Testimony in the Cases of State of Texas v. Cameron Todd Willingham and State of Texas v. Ernest Ray Willis* 3 (2016), <https://www.innocenceproject.org/wp-content/uploads/2016/04/file.pdf> (on file with TDS).

ridden work, and contaminated evidence, leading to the closure of the lab's DNA and Serology Section.⁹

In 2005, the Texas Legislature established the Texas Forensic Science Commission to investigate allegations of error and misconduct by forensic scientists that affect the integrity of forensic analysis results. In that same year, in recognition of the serious concerns posed by mishandled or faulty forensic science, the United States Congress authorized the National Academy of Sciences, which advises the federal government on scientific and technical matters, to conduct an independent study on forensic science.

In 2009, Texas State Senator John Whitmire filed Senate Bill 1976, which would have enacted Article 11.073, aiming to allow wrongfully convicted individuals to present new scientific evidence. The bill passed the Senate but did not yet prevail in the Texas House of Representatives.

In 2011, the TCCA denied relief to Neal Hampton Robbins. Robbins had filed a post-conviction application after the Harris County Medical Examiner's Office reconsidered its prior autopsy findings for the victim and amended the autopsy report to change the initial cause of death to "undetermined."¹⁰ The TCCA held that, despite the change, since the new opinion only indicated that the cause of death was "undetermined," Robbins could not definitively prove that the State's medical examiner's testimony at his original

⁹ *DNA Testing Suspended as More Problems Emerge at Houston Crime Lab*, Innocence Project (Feb. 1, 2008), <https://innocenceproject.org/news/dna-testing-suspended-as-more-problems-emerge-at-houston-crime-lab/> (on file with TDS).

¹⁰ *Ex parte Robbins (Robbins I)*, 360 S.W.3d 446, 453 (Tex. Crim. App. 2011).

trial—that the cause of death was asphyxiation—was false, which was the threshold Robbins was required to meet for relief.

Three judges dissented, noting that the change in the cause of death determination “raises an extremely serious concern about the accuracy of the original jury verdict.”¹¹ The dissent stated that Robbins should be granted a new trial and that the legal system needed a mechanism to address claims involving changed science.¹² Public concerns about wrongful convictions were further strengthened in 2011 after DNA evidence exonerated Michael Morton, who was wrongfully convicted in Texas in 1987.¹³

In 2013, Senator Whitmire’s Senate Bill 344 successfully passed through the Legislature, finally enacting Article 11.073. The law went into effect on September 1, 2013.

Days after 11.073’s enactment, Neal Hampton Robbins filed a new post-conviction application, raising no new facts but relying on 11.073 as a new legal basis for bringing a subsequent application.¹⁴ The TCCA granted Robbins a new trial, acknowledging 11.073 as a new legal basis for bringing a subsequent post-conviction application.¹⁵ The Texas Legislature reaffirmed the breadth it intended for the law when, in

¹¹ *Robbins I*, 360 S.W.3d at 459 (Cochran, J., dissenting).

¹² *Id.* at 470.

¹³ Michael Morton was exonerated by DNA evidence in 2011 after it was discovered that prosecutors had withheld exculpatory evidence.

¹⁴ *Ex parte Robbins (Robbins II)*, 478 S.W.3d 678, 680 (Tex. Crim. App. 2014).

¹⁵ *Id.*

response to uncertainty from the TCCA, it amended 11.073(d) in 2015 to say that changes in scientific knowledge also include a change in the opinion of an expert who previously testified for the State.

11.073 thus created a statutory pathway for individuals who could not meet the actual innocence threshold—or, who could not yet meet the actual innocence threshold absent permission to develop additional facts in light of new scientific developments—to show that they, nevertheless, were innocent and could not have been convicted at a trial held today.

II. Texas Courts' Implementation of 11.073 Contravenes the Statute's Purpose and Fails to Protect the Innocent

Article 11.073 intended to expand access to justice in post-conviction proceedings for people wrongfully convicted on the basis of false or unreliable forensic evidence. In practice, the Texas courts' implementation of the statute has been marked by inconsistent application, disregard for discredited scientific methods, the imposition of a higher bar to relief than the statute dictates, and a striking absence of relief in capital cases.

The Texas courts' actions risk the execution of innocent people. Individually and cumulatively, these factors have detrimental effects on justice and mean that the statute is not fulfilling its intended purpose: providing relief to innocent people based on flawed forensic evidence.

**A. The TCCA Frequently Applies
Procedural Bars to Prevent
Development of Claims—Often
Without Addressing the Merits—in
Contravention of 11.073’s Purpose**

Article 11.073 claims are adjudicated under Texas’s existing post-conviction frameworks – Article 11.07¹⁶ for noncapital cases and Article 11.071¹⁷ for capital cases. First-time post-conviction claims go to the habeas court for findings of fact and conclusions of law. After factfinding, the TCCA has the chance to determine whether to grant relief. In the case of a subsequent application, the habeas court acts only upon authorization by the TCCA, and a claim usually cannot be authorized unless “the factual or legal basis for the claim was unavailable” at the time of the prior petition.¹⁸ Before Article 11.073, the rules governing subsequent post-conviction applications were ill-suited to claims arising from evolving scientific knowledge, because the underlying evidence was available at the time of trial even though the scientific understanding of that evidence later changed. Despite the pathway created by 11.073 for courts to reconsider convictions based on changed science, the TCCA has applied procedural bars to prevent large numbers of 11.073 claims from being considered on the merits.

The TDS Report assessed the efficacy of Article 11.073 in achieving its animating goals and examined the 74 applications with 11.073 claims filed in Texas

¹⁶ TEX. CODE. CRIM. PROC. ANN. art. 11.07 (West 2025).

¹⁷ *Id.* art. 11.071.

¹⁸ *Id.* art. 11.07 § 4(a)(1); *id.* art. 11.071 § 5(a)(1).

that received TCCA decisions from September 2013 through December 2023. During that period, at least 28 of the 74 applications had been barred on procedural grounds without consideration of the merits. Of the 28 procedurally barred applications, 13 were dismissed or denied without any written order, and the remaining 15 were dismissed by orders that never provided more than a page of discussion and frequently merely used form language, seen below:

We have reviewed the subsequent application and find that Applicant has failed to satisfy the requirements of Article 11.071, sec. 5(a). Accordingly, we dismiss the subsequent application as an abuse of the writ without considering the claims' merits.¹⁹

This pattern of summary denials further prejudices individuals seeking 11.073 relief, since limited guidance is given for how to present these claims to the TCCA or what claims may be considered viable.

This also disproportionately affects people sentenced to death, who are more likely to have already filed a previous application for post-conviction relief. These applicants—some who have already been

¹⁹ Article 11.071 § 5(a) of the Texas Code of Criminal Procedure prescribes the requirements that must be met for review of the merits of a subsequent state habeas application. TEX. CODE. CRIM. PROC. ANN. art. 11.071 § 5(a) (West 2025). An 11.073 claim brought in a subsequent application may be reviewed on the merits if it is “based on relevant scientific evidence that was not ascertainable through the exercise of reasonable diligence by the convicted person on or before the date on which the original application . . . was filed.” *Id.* art. 11.073(c) (West 2025).

executed, and others awaiting execution on death row—never had, or may never have, potentially outdated or false science underlying their convictions addressed. The execution of a person convicted due to faulty forensics, simply because they were not able to overcome a procedural bar, raises serious concerns about the legitimacy and accuracy of the criminal justice system.

B. The TCCA Prevents Potentially Innocent People from Obtaining Relief by Applying a More Stringent Standard than 11.073 Prescribes

Under 11.073, a court may grant relief when it finds that “had the scientific evidence been presented at trial, on the preponderance of the evidence, the person would not have been convicted.”²⁰ On its face, the TCCA claims to apply 11.073’s statutory language, but in application, the court appears to require that applicants present evidence that is affirmatively exculpatory, which is more in line with the standard for actual innocence, rather than show that they could not have been convicted.²¹ Many innocent people cannot obtain such affirmative evidence, particularly

²⁰ *Id.* art. 11.073.

²¹ See *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996) (alterations in original) (citations omitted) (stating that, where “claims of actual innocence [] are not accompanied by a claim of constitutional error at trial,” the habeas court “must be convinced that the ‘new facts unquestionably establish [the applicant’s] innocence’”); *Ex parte Fournier*, 473 S.W.3d 789, 793 (Tex. Crim. App. 2015) (“An actual innocence claim must be accompanied by new ‘affirmative evidence of the applicant’s innocence.’”).

where decades have gone by and original evidence has gone stale, been destroyed, or been lost.

Of the fifteen people granted relief under 11.073 from September 2013 to December 2023, 10 were either simultaneously granted relief on an actual innocence claim or presented evidence indicative of actual innocence.²²

In practice, people seeking relief under 11.073 may need to go beyond proving the State's reliance on flawed science—they might need to provide evidence affirmatively showing innocence. For most innocent people who were convicted based on problematic forensic evidence, this standard is impossible to meet. As a result of the TCCA's interpretation, 11.073 does not consistently protect all people who have been convicted on false and discredited scientific evidence.

Texas already permits actual innocence as an independent pathway for post-conviction relief. To hold people seeking 11.073 relief to the same standard renders 11.073 moot and denies relief to many innocent people who will never be able to meet the actual innocence legal standard but can nonetheless show that their convictions were based on flawed forensic science.

C. The TCCA's Application of 11.073 Systematically Forecloses Relief in Capital Cases, Heightening the Risk of Wrongful Execution.

During the period covered by the TDS Report, the TCCA decided 25 Article 11.073 applications filed by people facing the death penalty, which constituted 34%

²²Texas Defender Service, *supra* note 2, at 11.

of all applications filed. In that time, the TCCA had not granted relief to a single death-sentenced person under the statute. In contrast, people who were not sentenced to death have received relief in 15 of 49 cases, or a rate of approximately 31%.²³

Of the 25 applications, 18 were dismissed or denied without review of the underlying claim after the TCCA determined they were procedurally barred. Sixty-four percent of applications filed by people sentenced to death had their applications dismissed or denied by an order no longer than a page and with no substantive discussion.²⁴

The deadly consequences of this pattern are clear: People may be executed following convictions that rest on faulty science because they are unable to obtain relief under 11.073. This is especially concerning because the rate of wrongful convictions of death-sentenced people is quite high. Since 1973, 202 people have been exonerated from U.S. death rows; 18 of these people were from Texas.²⁵ For every eight people executed, one person on death row has been exonerated.²⁶ A 2014 study estimated that the rate of wrongful conviction is 4% in capital cases; the actual number may be far higher than that.²⁷

²³ *Id.* at 15.

²⁴ *Id.*

²⁵ *Innocence Database*, Death Penalty Info. Ctr., <https://death-penaltyinfo.org/policy-issues/policy/innocence> (on file with TDS) (last visited Mar. 6, 2026).

²⁶ *Id.*

²⁷ Samuel R. Gross, Barbara O'Brien, Chen Hu & Edward H. Kennedy, *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 *Proc. Nat'l Acad. Sci.* 7230, 7230-35

When the TCCA does not review capital cases on the merits—or rejects claims for relief under 11.073 in spite of trial court recommendations that relief be granted after factual development²⁸—it risks the execution of innocent people and does so despite the creation of a statutory mechanism designed to avoid that outcome.

D. The TCCA has Effectively Confined 11.073 Relief to DNA-Based Claims, Contrary to the Realities of Forensic Error.

The text of Article 11.073 allows for relief based on any false scientific evidence. The statute recognizes that many scientific disciplines that were at one time regularly used to secure convictions have been found to be riddled with errors.²⁹ Those disciplines include

(2014), <https://www.pnas.org/doi/epdf/10.1073/pnas.1306417111> (on file with TDS).

²⁸ For example, in the case of Areli Escobar, the TCCA authorized development in the trial court of claims under 11.073 challenging the validity of DNA and fingerprint evidence purportedly linking him to the crime scene. After an evidentiary hearing, the trial court issued over 80 pages of findings, concluding that it would be “shocking to the conscience” to uphold the conviction given the “fundamentally unfair” trial. The Travis County District Attorney’s office also admitted error and agreed to the recommendation for relief. Nevertheless, despite the TCCA’s typical practice of adopting trial court findings, the TCCA denied relief to Mr. Escobar on the basis that he had not shown that the faulty DNA evidence was likely to have affected the jury’s verdict. Texas Defender Service, *supra* note 2, at 15–16.

²⁹ See House Research Organization, Bill Analysis, Texas House of Representatives, 83rd Legislature, Regular Session, at 2 (May 15, 2023), <https://hro.house.texas.gov/pdf/ba83R/SB0344.PDF> (on file with TDS).

fields as varied as blood spatter evidence, forensic pathology, fire debris investigation, shoeprints, bitemark evidence, firearms identification, gunshot residue, and DNA, to name a few. But new DNA evidence is the only consistently reliable type of evidence upon which the TCCA grants relief.

DNA claims are significantly overrepresented in successful applications. Thirty-two of the 74 applications decided before December 2023 contained DNA claims, but of the fifteen successful applications in that time period, eleven raised DNA-based claims. Despite constituting only 39% of all claims, DNA claims constituted 73% of successful claims.³⁰

Eleven of 15 successful applications raised DNA-based claims, and 32 of the 74 applications decided before December 2023 contained DNA claims. Despite accounting for 43% of 11.073 claims raised, DNA claims are significantly overrepresented in successful applications, constituting 73% of successful claims.³¹

This imbalance is problematic because DNA evidence is only a tiny subset of potentially false forensic evidence, and in fact, most wrongful convictions are not based on DNA.³² Of the 3,784 exonerations in the U.S. since 1989,³³ only 641 involved DNA evidence. In a study of 458 wrongful convictions involving false or misleading forensic evidence, a researcher found that while many cases involved issues with DNA,

³⁰ Texas Defender Service, *supra* note 2, at 13.

³¹ *Id.*

³² As of March 6, 2026.

³³ *Exonerations by Year*, National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx> (on file with TDS) (last visited Mar. 6, 2026).

exonerations based on DNA have become less likely; now, it is more likely that other forensic flaws contributed to the conviction.³⁴

While DNA evidence represents only a small subset of potentially flawed forensic evidence, it is the most commonly presented claim. This contradiction makes sense because DNA evidence uniquely has the power to definitively establish innocence or guilt, making it possible to overturn wrongful convictions based solely on its re-evaluation. Few other types of scientific evidence possess this same conclusive power, even though they can still significantly influence trial outcomes. This underscores the harm of prioritizing the concept of innocence over evaluating the reliability of the verdict in light of the evidence.

In creating 11.073, legislators acknowledged that a mechanism for relief pursuant to DNA issues had been recognized through the establishment of Chapter 64 of the Code of Criminal Procedure.³⁵ Instead of creating a provision for every type of discredited science, 11.073 “would establish a single standard” to address developments in “various fields.”³⁶

Although the Texas Legislature intended for 11.073 to encompass the full scope of scientific evidence that

³⁴ John Morgan, *Forensic Testimony Archaeology: Analysis of Exoneration Cases and Its Implications for Forensic Science Testimony and Communications*, National Institute of Justice, Document No. 306259, at 31, 35 (March 2023), <https://www.ojp.gov/pdffiles1/nij/grants/306259.pdf> (on file with TDS).

³⁵ House Research Organization, *supra* note 31, at 2.

³⁶ *Id.*

can affect a trial,³⁷ the TCCA’s interpretation narrows in on only a small subset of false forensic evidence. This excludes many defendants whose convictions are based on false forensic techniques but whose cases did not involve DNA evidence.³⁸

III. Updated Data Continues To Show that Relief Under 11.073—and Opportunities to Develop Evidence to Support Claims for Relief—are Rare.

Though the period covered in the TDS Report ended in December 2023, developments since then through February 2026 show that the same patterns have persisted, despite legislative pushback against the implementation of 11.073 and public outcry over the near-execution of Robert Roberson.³⁹ Only two 11.073

³⁷ Senate Research Center, *Bill Analysis, S.B. 344, 83rd Leg.*, R.S. 1 (Feb. 28, 2013), <https://capitol.texas.gov/tlodocs/83R/analysis/pdf/SB00344I.pdf#navpanes=0> (on file with TDS). (“The bill specifies that evidence to discredit scientific evidence presented at trial is among the types of claims or issues that can affect court consideration of an application for writ of habeas corpus.”).

³⁸ See Texas Code of Criminal Procedure chapter 64 for the procedure to file a Motion for Forensic DNA Testing. This is a motion that convicted people can submit to their convicting court requesting the court order the forensic DNA testing of evidence reasonably likely to contain biological material. While the procedures are different from Article 11.073, with some assumptions, it is arguable that all successful 11.073 claims based on DNA could have been granted relief through the gateway provided by Chapter 64. TEX. CODE CRIM. PROC. ANN. art. 64.01(a–1) (West 2025).

³⁹ See, e.g., *Roberson Facing Execution on Oct. 16 for a Crime that Never Occurred*, Innocence Project (July 17, 2025), <https://innocenceproject.org/news/what-to-know-about-robert-roberson-on->

claims have been granted in the intervening years—that of Andrew Wayne Roark, who was serving a 35-year sentence for Injury to Child, and Damon Earl Lewis, who was serving a 99-year sentence for Aggravated Sexual Assault on a Child—and the vast majority of applicants continue to be denied.

The TCCA resolved 17 applications made under 11.073 from January 2024 to February 2026.⁴⁰ Fifteen of these applications were dismissed or denied, and ten of these applications were dismissed with no more than a paragraph of discussion of why the claim failed, using a version of the form language quoted above in Section II.A, *infra*. Nine of the denied claims were deemed procedurally barred and resolved without consideration of the merits, two of those nine were dismissed or denied without written order, and eight received less than a page of discussion.

When combined with the data from September 2013 to December 2023, the numbers show that at least 37 of the 91 applications for relief under 11.073 have been barred on procedural grounds without reaching the merits. Fifteen of these procedurally-barred applications were dismissed or denied without a written order, and 21 of the remaining 22 barred applications

texas-death-row-for-a-crime-that-never-occurred/ (on file with TDS).

⁴⁰ Though only sixteen decisions on 11.073 claims were issued, the opinion in Eugene Alvin Broxton's case resolved two separate 11.073 applications brought at different times. Additionally, another case—the non-capital conviction of Carmen Mejia—raised an 11.073 claim, but was granted on actual innocence grounds without resolution of the 11.073 claim, and thus has not been counted in this dataset.

were dismissed by orders that provided limited discussion and frequently used only form language.

The TCCA continues to deny relief to death-sentenced people under 11.073, and no death-sentenced applicant has ever received relief under 11.073. This remains true despite the fact that ten out of 17 claims decided since December 2023 were filed by people sentenced to death. The two applications granted in that time period were both for non-capital offenses with sentences below life imprisonment.⁴¹

The disparity in relief between individuals sentenced to death and those not sentenced to death has grown since December 2023. As of December 2023, individuals who were not sentenced to death received relief at a rate of 31%, while 0% of death-sentenced individuals received relief, despite comprising 34% of 11.073 applications. From January 2024 to February 2026, 59% of applications were filed by individuals facing the death penalty, yet their rate of relief remained 0%. In contrast, individuals not sentenced to death received relief at a rate of 29% in that period, roughly tracking the previous grant rate despite comprising a much smaller percentage of applications filed.

CONCLUSION

Mr. Flores's petition exemplifies a recurring problem. This Court should grant certiorari to address the failure to meaningfully consider claims that evolving scientific knowledge has called into question the reliability of a conviction, despite the creation of a state-

⁴¹ *In re Roark*, 707 S.W.3d 157 (Tex. Crim. App. 2024).

created liberty interest meant to provide review of such claims.

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