

No. 25-6774

In the Supreme Court of the United States

CHARLES DON FLORES,

Petitioner,

v.

TEXAS,

Respondent.

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

**BRIEF OF JENNIFER THOMPSON AS AMICUS
CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae Jennifer Thompson is an advocate for criminal justice reform who focuses on wrongful convictions and the fallibility of eyewitness identification. Her work stems from her own experience as a crime survivor; after DNA exonerated the man convicted in her case, Ronald Cotton, she befriended him and became a pioneer of restorative justice in wrongful convictions. Her experiences led her to understand how the processes used in eyewitness identification are antiquated and likely to fail.

Jennifer has written a book about her story, testified before numerous legislatures, presented before hundreds of audiences, and appeared in both local and national media. She also founded Healing Justice, a non-profit organization that works with wrongfully convicted people and victims of crime.

Amicus has a profound interest in this case because it implicates the same systemic failures she experienced. Charles Flores remains on death row based on post-hypnotic eyewitness identification, a type of evidence Texas has expressly rejected. He has sought relief three times under a statute Texas created to remedy exactly this kind of injustice. Texas courts have denied him each time without explanation. Jennifer knows what it means when the system fails. For

¹ No counsel for any party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No entity or person aside from *amicus curiae* or her counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties were given timely notice of the intent to file this brief.

Ronald Cotton, that failure cost eleven years. For Charles Flores, it may cost his life.

SUMMARY OF ARGUMENT

Jennifer Thompson survived a brutal rape in 1984. She identified her attacker with absolute certainty at trial. She was wrong. Ronald Cotton spent eleven years in prison for a crime he did not commit while the real rapist remained free. DNA evidence eventually proved the mistake, and Ronald was exonerated. Jennifer and Ronald became friends and advocates. Their story illustrates a painful truth: wrongful convictions harm everyone—the wrongfully convicted, the original victims, and the community left vulnerable when the real perpetrator escapes justice.

Charles Flores now faces execution based on an eyewitness identification tainted by forensic hypnosis, a technique Texas has since deemed unreliable junk science. Texas enacted Article 11.073 to provide relief in exactly this situation: when a conviction rests on science that has been discredited. Yet Flores has sought relief under Article 11.073 three times, and the Texas Court of Criminal Appeals (TCCA) has denied him each time without explanation. This case presents the question of whether a state can create a right and then deny it arbitrarily to those facing execution. If it can, the right is meaningless for the people who need it most.

1. Jennifer’s story demonstrates how suggestive eyewitness identification procedures can produce wrongful convictions. She studied her attacker’s face during the assault. She cooperated fully with police. She testified with complete confidence. And she was

wrong. Scientific consensus now confirms that the procedures used in her case—suggestive lineups, repeated exposure to the same suspect, and post-identification validation by detectives—contaminated her memory and manufactured the confidence she expressed at trial. The system failed her, not the other way around. Ultimately, scientifically grounded DNA evidence gave Ronald Cotton the pathway to prove his innocence.

2. Charles Flores asks only for the same opportunity Ronald Cotton received: a meaningful chance to prove his innocence. The witness who identified Flores did not initially describe someone who looked like him. She was hypnotized by police, shown a suggestive lineup, and exposed to Flores's photo in news coverage before trial. By the time she identified him in the courtroom, her memory was thoroughly contaminated. Texas has since banned reliance on evidence procured using forensic hypnosis in criminal trials and enacted Article 11.073 to remedy convictions based on debunked science. Flores is exactly the petitioner the statute was designed to protect. Yet the TCCA has denied his petitions three times without engaging with the merits of his claims, violating Flores's right to due process.

3. The stakes are life and death. Wrongful convictions destroy lives—not only the wrongfully convicted, but also the original victims and the future victims of perpetrators who remain free. Jennifer lived for years believing she had obtained justice, only to learn that the real rapist had committed twenty-four additional crimes, including six more rapes, while an innocent man sat in prison. The criminal justice system's integrity depends on its willingness to correct its

errors. Texas created a pathway for that correction. Its courts have refused to let Charles Flores use it. If he is executed based on debunked science, that error can never be undone. This Court should grant certiorari.

ARGUMENT

I. The System Failed Jennifer Thompson and Ronald Cotton, and Science Explains Why.

A. Jennifer Wrongly Identified Her Attacker with Certainty at Trial.

By sharing her story, Jennifer hopes to highlight the potential faultiness of eyewitness identification and the devastating impact of wrongful conviction on victims of crime.²

On July 29, 1984, Jennifer survived a brutal rape in her Burlington, North Carolina apartment. She was asleep in her bed when a noise awoke her. When she asked who was there, a man jumped on her, pinned her arms to the side of her head, and put a knife to her throat. He threatened to kill her if she did not shut up, then proceeded to perform oral sex on her and rape her.

As she was being attacked, Jennifer decided that if she survived, she would make sure her rapist went to prison. Although her attacker avoided direct light, she studied his face, looked at his hairline, and searched for scars, tattoos, or anything else that would help her identify him. She wanted the man who hurt her to pay

² Jennifer provides an abbreviated version of her story in support of this brief. For the complete account, see Jennifer Thompson-Cannino, Ronald Cotton & Erin Torneo, *Picking Cotton: Our Memoir of Injustice and Redemption* (2009).

for his crime, and if the death penalty was available, she wanted him to get it.

After escaping to her neighbor's house, Jennifer was taken to a hospital, where a partial rape kit was collected. It was around 4 a.m. She could hear another woman crying nearby. Detective Mike Gauldin met her at the hospital. He told Jennifer that the other woman had been raped by the same attacker that night and was also having a rape kit collected. Two women, one hour apart, had their lives forever altered by the same man.

Jennifer went to the police station with Detective Gauldin, wearing someone else's clothes, unshowered, and traumatized. There, she worked with the detectives to create a composite sketch. She looked through choices of eyes, noses, and ears. During this process, the detectives realized that the first hospital had not fully completed the rape kit, so Jennifer was taken to another hospital, which performed another rape kit, further traumatizing her as samples from her body, the crime scene, were placed in plastic bags and sealed for evidence. She was torn between wanting the ordeal to be over and wanting to provide as much information as she could, because she knew that a serial rapist was on the loose and had to be stopped. She was a 22-year-old college student, alone and frightened, trying to remember every detail of the monster who had almost killed her. She forced herself to keep her composure and preserve her memory, even as part of her wanted to unravel.

When the police took Jennifer back to her apartment to look for anything that seemed out of place, she knew that she would never be able to live there again.

Over the next three months, she lived in various places—attempting, but failing, to find solace and safety.

On July 31, 1984, the police asked Jennifer to return to Burlington to look at some photos. At the station, she was shown a photo array that included a man named Ronald Cotton. She assumed the police must have a suspect since they had asked her to drive all that way. She feared that if she failed to identify a suspect, her attacker would again evade capture.

Based on their faces, she could only narrow down the choices to two subjects. However, when she looked at Ronald Cotton's photo, the memory of the man assaulting her came back so sharply and clearly, she felt sick. She thought he must be the one. After she signed and dated the photo, the detectives told her that she had “done a great job” and “that’s who we thought it was.”

On August 8, 1984, the police brought Jennifer face-to-face with seven men in a physical lineup. To her horror, she was not separated from them by a one-way mirror; instead, she was in the same room, separated only by a table. During the lineup, each man was instructed to repeat what the attacker had said during the rape: “shut up or I’ll cut you.” The detectives assured Jennifer they would protect her, but she was sick with fear. These men knew her name and what she looked like in broad daylight; if her rapist was there, she had to get it right. After all, she wondered, if she did not identify him, would he come after her and finish the job?

Once again, Jennifer could initially only narrow the subjects down to two choices. Among the two, one

man looked particularly familiar. After ten minutes, she identified Ronald Cotton as her attacker. She wrote down his number on a piece of paper. The detectives told her that she had identified the same man in both lineups—she had done her part to ensure that the man who raped her would pay for what he had done.

In January 1985, Jennifer testified at Ronald Cotton's trial. She was certain that he had raped her, so her testimony was sincere and confident. The jury could tell. Ronald Cotton was convicted of first degree rape, first degree sexual assault and first degree breaking and entering. He received life in prison plus 45 years. As Jennifer's once-perfect life crumbled under the lasting effects and trauma of the rape, she took comfort in having sent the man who raped her to prison for life.

Jennifer tried to “rebuild” her life, to “move forward” and to “put this behind her,” but the horrors of what happened to her that night were just up the stairs or around the corner. It was impossible to “move on” because the trauma of what was done to her now was a living and breathing part of her body—it was in her bones.

Meanwhile, Ronald Cotton continued to insist on his innocence. He began to suspect that the real perpetrator had been another man he met in prison named Bobby Poole, a serial rapist from the same community.

In 1987, Ronald Cotton was granted a new trial because a critical piece of evidence had not been admitted in the first trial: the fact that the other woman who had been raped on the same night, the one Jennifer heard crying in the hospital, could not pick Ronald

Cotton out of a lineup. Jennifer testified again, as did the other woman who had been raped on the same night as her. The other woman had previously been unable to make an identification, but at this trial, she said she had known it was Ronald Cotton but had simply been too afraid during the lineup to identify him. Even after Bobby Poole was brought into the court room and denied that he had committed these crimes, Jennifer was certain as ever. Once again, she identified Ronald Cotton as the man who had raped her that night. He received two life sentences and 35 years. Ronald Cotton would die in prison, and Jennifer was relieved.

In 1995, Detective Gauldin approached Jennifer about providing blood for a DNA test that Ronald Cotton had requested. Apparently, the samples from the rape kits had degraded, and a sample of her DNA was needed to separate out the perpetrator's DNA. Jennifer gave the blood right away, believing the test would only confirm what she already knew.

When Detective Gauldin asked to visit in person, Jennifer knew something was wrong. The test had been run. The DNA matched Bobby Poole. Jennifer was devastated, paralyzed by the thoughts that not only had an innocent person gone to prison for a crime he did not commit, but also that the system had left a serial rapist out on the streets to create so much additional harm. The system had failed them all.

After serving eleven years for a crime he did not commit, Ronald Cotton was freed. As the TV played the joyful scenes of his release, Jennifer lived a very different reality. She felt physically ill and overwhelmed with guilt by the knowledge that they had

made a terrible mistake and that the identification process had contributed to taking eleven years of an innocent man's life. She fell apart, crying and berating herself for a long time. She could not understand how she could have been so confident in an identification that turned out to be wrong. Even after knowing her attacker was Bobby Poole, she still saw Ronald Cotton in her nightmares.

In an effort to heal, Jennifer met Ronald Cotton. Together, they became advocates for other people in their situation. Through this work, Jennifer came to understand that the investigative processes used in her case are antiquated and likely to fail—with life-shattering consequences.

B. Scientific Consensus Confirms Why the Legal System Failed Jennifer and Ronald.

Jennifer's experience was not an anomaly. Indeed, eyewitness misidentifications have been present in almost three-quarters of the over 300 wrongful convictions later overturned by DNA evidence. Nat'l Rsch. Council of the Nat'l Acads., *Identifying the Culprit: Assessing Eyewitness Identification* 11 (2014).

After Ronald Cotton's exoneration, Jennifer received death threats and hate mail blaming her for his lost years. At first, she blamed herself. But as leading scientists have written, "in a very real way, it was the legal system—not Jennifer Thompson—that made the key mistake by ignoring her initial (low) confidence." John T. Wixted & Gary L. Wells, *The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis*, 18 *Psych. Sci. in the Pub. Int.* 10, 13 (2017).

The scientific consensus is now clear: only the first eyewitness identification test can provide reliable information, and only if conducted under proper conditions. *E.g.*, John T. Wixted et al., *Test a Witness's Memory of a Suspect Only Once*, 22 *Psych. Sci. in the Pub. Int.* 1S, 2S (2021).

Proper conditions require specific procedural safeguards. Administrators should not know the suspect's identity. *Relationship*, 18 *Psych. Sci. in the Pub. Int.* at 17. Witnesses should be cautioned that the offender may not be present. *Id.* at 16–17. The suspect should not stand out. *Id.* at 15. And critically, a witness should never be shown the same suspect twice—repeated exposure contaminates memory and makes a face seem familiar for the wrong reasons. *Test a Witness's Memory*, 22 *Psych. Sci. in the Pub. Int.* at 2S. Post-identification feedback—such as telling a witness she chose correctly—must also be avoided. See *Relationship*, 18 *Psych. Sci. in the Pub. Int.* at 18.

The procedures in Jennifer's case did not meet these standards. The administrators knew the suspect's identity. Ronald Cotton appeared in both lineups—no other suspect did. And after Jennifer made her initial identification, the detectives told her she had chosen correctly. Put another way, the procedures were suggestive rather than neutral.

When proper procedures are followed, a high-confidence identification can be reliable. Conversely, “[a]n expression of low confidence on that first test is a glaring red flag because it is almost always an indication that the risk of error is high.” *Relationship*, 18 *Psych. Sci. in the Pub. Int.* at 13.

Jennifer's initial identification of Ronald Cotton exhibited exactly this warning sign. Her "initial identification of Cotton from a photo lineup was characterized by a prolonged period of hesitation and indecision that lasted for nearly 5 minutes and ended with a low-confidence verbal identification consisting of the words 'I think this is the guy.'" *Relationship*, 18 Psych. Sci. in the Pub. Int. at 13. This should have been treated as a red flag. Instead, the detectives validated her choice, she was shown a second lineup with the same suspect, and by trial she was completely confident. That confidence was the product of the process itself—not reliable memory.

Jennifer did everything the system asked of her. She studied her attacker's face during the assault. She went to the police. She participated in the lineups. She testified truthfully about what she believed. The science makes clear that the system failed her, not the other way around. It ignored her initial hesitation, contaminated her memory through repeated testing, and then relied on the confidence it had manufactured.

Jennifer's story demonstrates that flawed procedures can produce wrongful convictions even when those procedures are lawful. Her lineups were suggestive but not prohibited. When a state has officially banned reliance upon the technique that produced a conviction, the case for reexamination is even stronger.

II. Charles Flores Seeks Only What Ronald Cotton Eventually Received—A Meaningful Chance to Prove His Innocence.

Ronald Cotton was eventually exonerated because the system gave him a meaningful opportunity to prove his innocence. Charles Flores has sought that opportunity three times, and Texas courts have denied his petitions without explanation each time. See Pet. App.781–783, Pet. App.784–786, Pet. App.1–2. They have done so even though Texas has since banned reliance upon the technique that sent Flores to death row and enacted a law to remedy convictions like his—yet it refuses to let him benefit from either change. See Tex. Code Crim. Proc. art. 38.24.

In 2013, Texas created Article 11.073 to allow prisoners to seek relief when their convictions rest on disproven science. Tex. Code Crim. Proc. art. 11.073. This Court has recognized that the denial of such a state-created right implicates federal due process. See *Skinner v. Switzer*, 562 U.S. 521, 529 (2011) (allowing petitioner to raise a due process claim under 42 U.S.C. § 1983 challenging a Texas postconviction DNA statute). Yet no death-sentenced litigant has ever received relief under Article 11.073, and Flores’s repeated petitions have been denied without explanation. See *Ex Parte Flores*, No. WR-64,654-04, 2025 WL 2860250, at *1 (Tex. Crim. App. Oct. 9, 2025) (per curiam); see also Tex. Def. Serv., *An Unfulfilled Promise: Assessing the Efficacy of Article 11.073*, at 15 (2024).

Part II.A establishes that Flores has a claim under Article 11.073 because his conviction rests on forensic hypnosis, a technique Texas has since deemed junk science. Part II.B documents the TCCA’s response—three cursory denials, and a pattern that has left every death-row petitioner without relief. Part II.C demonstrates that this pattern violates due process by rendering Flores’s statutory right illusory.

A. Article 11.073 Was Designed for Cases Like This One, Yet Flores Remains on Death Row.

Jennifer’s story illustrates how eyewitness identification can fail even when a witness is confident at trial and procedures are merely suggestive. Charles Flores’s case is worse: his conviction rests on forensic hypnosis—a technique Texas has since deemed junk science. See Tex. Code Crim. Proc. art. 38.24. Article 11.073 was enacted to remedy exactly this kind of injustice. But Texas has refused to apply it.

The reliability of certain forensic science methods has been questioned for years by both Texas’s legislature and judiciary. House Rsch. Org., Bill Analysis, Tex. S.B. 1976, 81st Leg., R.S. 3 (May 20, 2009) (“Defendants who were wrongly convicted using * * * any debunked science deserve a way to raise their claim before a court.”); *Ex Parte Robbins*, 360 S.W.3d 446, 471 (Tex. Crim. App. 2011) (Cochran, J., dissenting) (“Given the * * * concerns about the scientific reliability of forensic science * * * the criminal justice system needs some jurisprudential mechanism to deal with cases in which a prior conviction was based upon scientific evidence that has subsequently been found to

be unreliable * * * .”). In the wake of this growing concern, the Texas legislature created a first-of-its-kind “junk science” law with the enactment of Article 11.073 of the Code of Criminal Procedure. Valena E. Beety, *Changed Science Writs and State Habeas Relief*, 57 Hous. L. Rev. 483, 524 (2020). Article 11.073 expanded on the existing state procedure for writs of habeas corpus by permitting post-conviction relief when the science relied upon at trial has changed. *Ex Parte Chaney*, 563 S.W.3d 239, 255 (Tex. Crim. App. 2018). Under this law, a defendant may receive habeas relief if they “can show by the preponderance of the evidence that [they] would not have been convicted if the newly available scientific evidence had been presented at trial.” *Ex Parte Robbins*, 478 S.W.3d 678, 690 (Tex. Crim. App. 2014). Charles Flores has met his burden because the science used to convict him has been formally debunked.

In 2023, the Texas legislature enacted Senate Bill 338, codified under Article 38.24 of the Texas Code of Criminal Procedure, which bans the use of evidence obtained through “investigative hypnosis” in criminal trials. Noah Degarmo, *Texas Bans ‘Investigative Hypnosis’ Evidence*, Dall. Express (July 2, 2023), <https://perma.cc/2885-BMAC>. This form of hypnosis was a method that was previously alleged to help elicit witness’s memories so investigators could obtain detailed and accurate information. Gary L. Griffiths, *Investigative and Forensic Hypnosis*, 7 Detective 14, 16 (1979). Over time, however, skepticism of the technique’s legitimacy grew, and SB 338 was created “to protect the public by requiring that forensic evidence is supported by science, research, and data so as not to wrongfully convict an innocent person.” S. Rsch. Ctr.,

Bill Analysis, Tex. S.B. 338, 88th Leg., R.S. 1 (Apr. 12, 2023).

Charles Flores was convicted on exactly this kind of evidence. Jill Barganier, the State’s key witness, did not initially describe someone who looked like Flores. She was placed under hypnosis by a patrol officer in order to provide “a good composite” of the individual she saw. The individual she saw in this hypnotic state looked nothing like Flores. Pet. App.168–169. However, Flores had already become the preferred suspect by that time. Pet. App.16. Right after the hypnosis, she was shown a lineup featuring all Hispanic males with short, shaved hair, even though she had described someone with dark blonde, wavy hair. Pet. App.21–22. Flores stood out in the lineup because he was the only one wearing bright clothing against a distinct background and without a white bar blocking part of the photo. Pet. App.22. Jill Barganier did not select Flores from that lineup. *Ibid.*

In the months that followed, Charles Flores appeared in photos on the news. Pet. App.22–23. When Jill Barganier arrived at trial, she saw Flores—the only Hispanic person in the courtroom—and said she could at that time identify him. Pet. App.25–26. She insisted that she was certain. Pet. App.26. By this time, her memory as to Flores was contaminated; she had, by trial, seen his photo repeatedly in the news as well as in the photo lineup. The reliability of her trial testimony is fatally undermined by the multiple flaws in the eyewitness identification procedures, including a technique Texas has since deemed unreliable—exactly the kind of tainted identification Article 11.073 was designed to address.

Jennifer’s experience shows how witness identifications can be wrong despite a witness’s certainty at trial. See *supra* Part I.A. What begins as a sincerely held belief can later be proven mistaken. But Jennifer’s misidentification resulted from suggestive lineup procedures—problematic, but not formally prohibited. Charles Flores’s conviction rests on a technique Texas has expressly rejected as unreliable junk science. If the system failed Ronald Cotton under merely flawed procedures, it has certainly failed Flores under procedures the State itself has repudiated.

B. The TCCA’s Treatment of Flores’s Petitions Reflects a Systemic Failure to Apply Article 11.073 as Intended.

Charles Flores has invoked Article 11.073 three times. His first petition documented the scientific concerns about forensic hypnosis. His second added evidence that Jill Barganier’s identification was unreliable. His third came after Texas banned reliance on evidence obtained through forensic hypnosis in criminal trials entirely—formal legislative confirmation that the technique underlying his conviction is junk science. The TCCA denied all three. See Pet. App.781–783 (denial of first petition), Pet. App.784–786 (denial of second petition), Pet. App.1–2 (denial of third petition).

The court’s most recent denial offered no reasoning. It stated only that Flores failed to satisfy the procedural requirements under Article 11.071, Section 5, with no analysis of how it reached that conclusion. *Flores*, 2025 WL 2860250, at *1; Pet. App.1–2. A concurring judge in Flores’s 2016 appeal acknowledged “that

whatever we do, we owe a clear explanation for our decision to the citizens of Texas.” *Ex Parte Flores*, No. WR-64,654-02, 2016 WL 3141662, at *1 (Tex. Crim. App. May 27, 2016) (per curiam) (Newell, J., concurring). The citizens of Texas—and Flores himself—still await that explanation.

Unfortunately, this pattern extends beyond Flores. No death-sentenced prisoner has ever been granted relief under Article 11.073. *An Unfulfilled Promise* at 15. Although the statute requires only a preponderance of the evidence, the TCCA’s track record tells a different story: 73% of successful petitions relied on DNA evidence affirmatively establishing the petitioner’s innocence. *Id.* at 13. For those on death row, this unwritten standard has proven insurmountable.

Members of the Texas legislature have taken notice. In October 2024, the Texas House of Representatives sent an open letter to the TCCA asking the court to stay the execution of Robert Roberson, who was convicted on the basis of “shaken baby syndrome”—a diagnosis the scientific community has since discredited. Letter Br. of Members of the Texas House of Representatives in Supp. of Stay, *Ex Parte Roberson*, No. WR-63,081-03 (Tex. Crim. App. Oct. 15, 2024). The legislators wrote that “the writ has been applied in a manner that raises serious constitutional and equitable concerns.” *Id.* at 2; see also Michelle Pitcher, *Bipartisan Legislators Join Calls for Clemency for Robert Roberson*, Tex. Observer (Sept. 17, 2024), <https://perma.cc/U2KW-BMC6>.

The facts of Robert Roberson’s case differ from Charles Flores’s, but the pattern is the same. See Let-

ter Br. at 1. Forensic hypnosis and shaken baby syndrome have both been rejected by the relevant scientific communities. Both men remain on death row. Neither has received meaningful review under a statute designed to provide it.

Texas created a right for prisoners convicted on debunked science. For Charles Flores and others facing execution, that right has proven illusory.

C. The TCCA's Arbitrary Denials Violate Flores's Right to Due Process.

The pattern documented above is more than merely troubling; it constitutes a clear violation of Charles Flores's constitutional rights.

When a state provides an individual with a liberty interest, that interest is protected under the Due Process Clause of the Fourteenth Amendment. See *Dist. Att'y's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68 (2009) (acknowledging an Alaskan criminal statute provided respondent with a liberty interest subject to due process protection). The Fourteenth Amendment ensures that those granted a liberty interest have adequate procedural means of securing it. See *Newton v. City of New York*, 779 F.3d 140, 148 (2d Cir. 2015) (assessing what process was due under a state-created liberty interest). The foundational requirement of due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted). This Court has also recognized that a "state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." *Osborne*, 557 U.S. at 68 (citation omitted).

Article 11.073 created such a liberty interest: the right to seek habeas relief when a conviction rests on debunked science. Under the statute, a defendant need only show by the preponderance of the evidence that he would not have been convicted had the new scientific evidence been available. Tex. Code Crim. Proc. art. 11.073(b)(2). To be sure, this Court has acknowledged that a convicted defendant “does not have the same liberty interests as a free man” and that the State “accordingly has more flexibility in deciding what procedures are needed in the context of postconviction relief.” *Osborne*, 557 U.S. at 68–69. Texas exercised that flexibility by enacting Article 11.073—a narrow right for those convicted on the basis of since-debunked science.

But flexibility in designing procedures does not permit a state to nullify them entirely. Charles Flores has filed three petitions presenting evidence that his conviction rests on a technique Texas has rejected as junk science. He has received three denials and no explanation. He has never been heard “at a meaningful time and in a meaningful manner.” By refusing to grant relief to Flores (and any other death-row petitioner) and declining to explain its reasoning, the TCCA has rendered Article 11.073 illusory for those who need it most.

The Fourteenth Amendment provides that “[n]o State shall * * * deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. Texas is poised to execute Charles Flores based on evidence it has formally repudiated, under a statute it refuses to apply as written. The TCCA’s conduct deprives him of both liberty and life without the process he is due.

III. The Question Presented Is Important, and the Stakes Are Life and Death.

The stakes of this case extend far beyond Charles Flores. Wrongful convictions are not bullets that harm a single victim—they are bombs that destroy the wrongfully convicted, the original victims of crime, and everyone caught in the blast radius when the real perpetrator remains free. Jennifer’s story reflects this reality.

The stakes are high for the wrongfully convicted. Ronald Cotton lost eleven years to a cell. Charles Flores has been on death row for over two decades. If Texas executes him based on debunked science, no court will ever be able to correct the error.

The stakes are high for the original victims of crime. Jennifer’s prison bars were emotional and invisible. She moved through the world with a composed exterior while living with profound pain, nightmares, and fear that shaped how she raised her children. And because the wrong man sat in prison, her rapist walked free until he was arrested while committing another attack. She received justice only because Ronald Cotton eventually had the opportunity to prove his innocence. Charles Flores has never been given that opportunity.

The stakes are high for future victims. Within weeks of Jennifer’s rape, Ronald Cotton was arrested. The case was closed. Meanwhile, Bobby Poole committed twenty-four additional crimes, including six more rapes, before he was stopped. Every one of those victims paid for the misidentification.

And the stakes are high for the integrity of the criminal justice system. A system that cannot correct its errors loses its claim to legitimacy. Jennifer trusted the system to deliver justice. It delivered an innocent man to prison and left a serial rapist free. That error was eventually corrected because the system allowed Ronald Cotton to prove his innocence. Charles Flores asks for nothing more than the same opportunity. The system's integrity depends on its willingness to correct what it got wrong.

Texas created a pathway for prisoners to challenge convictions built on junk science. It then expressly rejected the technique that sent Charles Flores to death row. Yet Texas courts have refused, without explanation, to let him use that pathway. If a state can create a right and then deny it arbitrarily to those facing execution, the right is meaningless for the people who need it most.

Jennifer eventually learned the truth about her misidentification because Ronald Cotton was given the chance to prove his innocence. Charles Flores has asked for nothing more. Jennifer knows the costs of being certain and wrong, and those costs are irreversible when the state executes a man based on debunked science.

CONCLUSION

For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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