

No. WR-50,961-12

**In the Court of Criminal Appeals
of the State of Texas
and the
21st Judicial District Court
Bastrop County, Texas**

EX PARTE RODNEY REED,
Applicant.

On Application for Post-Conviction Writ of Habeas Corpus in Cause No. 8701
in the 21st Judicial District Court of Bastrop County

**BRIEF FOR AMICI CURIAE FAIR AND JUST PROSECUTION, LAW
ENFORCEMENT ACTION PARTNERSHIP, AND 29 FORMER
PROSECUTORS, JUDGES, LAW ENFORCEMENT OFFICERS, AND
LEADING GOVERNMENT ATTORNEYS IN SUPPORT OF RODNEY
REED'S TWELFTH APPLICATION FOR A WRIT OF HABEAS CORPUS**

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IDENTITY OF AMICI CURIAE AND STATEMENT OF INTEREST

Amici curiae are Fair and Just Prosecution, a Project of the Tides Center; Law Enforcement Action Partnership; and a group of 29 former prosecutors, judges, law enforcement officers, and leading government attorneys. A full list of amici is attached as an Appendix.

Amici are committed to protecting the integrity of the justice system. With decades of experience as criminal justice leaders around the country, amici understand the government's aim "in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). This profound responsibility—recognized by the Supreme Court, the Texas Courts, and professional organizations like the American Bar Association—mandates that prosecutors ground their cases in good-faith investigations, disclose evidence favorable to criminal defendants, and strive to overturn erroneous or improperly obtained convictions.

Amici have a deep understanding of the harms that ensue when prosecutors fall short of their obligation to pursue justice. Prosecutors who permit bias to drive investigations, fail to correct false testimony, and pursue convictions over truth deny criminal defendants fundamental constitutional rights. When that happens, the public rightfully loses faith in the justice system, eroding the trust required for effective law enforcement everywhere. Having dedicated their careers to pursuing

justice, amici respectfully submit this brief to highlight the stakes and urgency of correcting wrongful convictions in cases like this one.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States entrusts prosecutors with immense discretion to pursue justice. “The prosecutor has more control over life, liberty, and reputation than any other person in America.” Robert H. Jackson, *The Federal Prosecutor*, 31 Am. Inst. Crim. L. & Criminology 3, 3 (1940). “He can have citizens investigated,” “order arrests,” “cause the citizen to be indicted and held for trial,” “go on with a public trial,” and “make recommendations as to sentence,” “probation,” and “parole.” *Id.* The just exercise of that extraordinary power relies on prosecutors seeking truth and acknowledging errors. Accordingly, both the Constitution and professional standards require prosecutors to conduct good-faith investigations, disclose material evidence favorable to criminal defendants, and correct false testimony. Those obligations extend to every stage of the criminal justice process, from jury selection to habeas proceedings.

The prosecution of Rodney Reed has failed justice at every turn. Mr. Reed’s conviction rests on undisclosed material exculpatory evidence (violating *Brady*), false-testimony misconduct, and refusal to properly investigate the likely perpetrator. In the nearly three decades since Mr. Reed’s conviction, the prosecution has not sought to correct these errors, nor to test the murder weapon in this case for DNA. That conduct cannot be squared with prosecutors’ constitutional and professional obligations. Because the prosecutors in this case have abdicated their

responsibilities, this court must intervene to prevent unjustified deprivations of life and liberty.

The need to correct wrongful convictions is especially critical in cases, like this one, that raise the specter of racial bias. Studies show that innocent Black Americans are seven times more likely than white Americans to be falsely convicted of serious crimes, and that prosecutorial misconduct is significantly more common in cases with Black defendants than with white ones. And once convicted, Black Americans are disproportionately likely to receive the death penalty, particularly where the victim is white and female.

The racial dynamics in this case are impossible to ignore. At trial, prosecutors told the (all-white) jury that it was “ludicrous” and “offensive” to believe that the victim, a white woman, could have had a romantic relationship with Mr. Reed, a Black man—a relationship that a dozen undisputed witnesses have since confirmed. 56 TRR 61:24-62:8. At the same time, prosecutors refused to acknowledge the possibility that the real perpetrator could have been the victim’s fiancé, a white man, who knew about the affair and later repeatedly *confessed*—while imprisoned for kidnapping and raping another woman—that he “had to kill [his] n****r-loving fiancé[e].” App.226; see 3 HRR 114:20-115:22. No conviction, much less an execution, can stand on such racially charged and demonstrably erroneous foundations.

Correcting the errors and misconduct in this case is essential not only to justice for Mr. Reed, but also to effective law enforcement across Texas. Wrongful convictions erode public trust in the justice system, which in turn makes people less likely to report crime, serve as witnesses, and accept the authority of police and judges. That erosion is particularly acute in cases—like Mr. Reed’s—where law enforcement refuses to properly investigate a crime, prosecutors fail to disclose exculpatory evidence and exploit racial biases to secure a conviction, or the State attempts to block avenues for exoneration. Naturally, wrongful convictions also leave the true perpetrator at large and able to deal further harm, leaving everyone less safe. All Texans therefore have a stake in getting this case right.

This court should grant Mr. Reed’s application for a writ of habeas corpus.

ARGUMENT

I. MR. REED’S PROSECUTORS HAVE FALLEN SHORT OF THEIR DUTY TO PURSUE JUSTICE

The primary duty of a prosecutor is to pursue justice—before and after convictions. Regrettably, the prosecution in Mr. Reed’s case has repeatedly fallen short of its legal and ethical obligations. Mr. Reed has sought to remedy these errors over nearly three decades, offering compelling evidence of his innocence. But the prosecution has refused to reconsider its position. This court’s intervention is needed to correct the prosecutorial failures in this case, to vindicate Mr. Reed’s constitutional rights, to maintain the integrity of the justice system, and ultimately

to reverse the wrongful conviction and planned execution of a demonstrably innocent man.

A. Each Prosecutor’s Primary Obligation Is To Pursue Justice, Which Includes Disclosing Exculpatory Evidence

Bedrock precedent and professional standards establish that a prosecutor’s highest duty is to pursue justice. Relevant here, that pursuit includes good-faith investigation of the case, disclosure of evidence favorable to criminal defendants, and correction of false testimony.

1. Prosecutors have a special duty to seek justice, not merely to serve as advocates for conviction. *See Berger v. United States*, 295 U.S. 78, 88 (1935) (“The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.”); *United States v. Agurs*, 427 U.S. 97, 111-12 (1976) (“For though the attorney for the sovereign must prosecute the accused with earnestness and vigor, he must always be faithful to his client’s overriding interest that ‘justice shall be done.’” (citation omitted)). This role is unique in our judicial system. While most lawyers’ primary obligation is to zealously represent the interests of their clients, prosecutors must first and foremost seek the just resolution of a case on behalf of the public. As the Supreme Court recognized in *Berger*, this means that the prosecutor “is in a peculiar and very definite sense the servant of the law.” 295 U.S. at 88. A prosecutor’s duty “is as much . . . to refrain from improper

methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” *Id.*; see also *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (“We have several times underscored the ‘special role played by the American prosecutor in the search for truth in criminal trials.’” (citation omitted)). As Supreme Court Justice and Nuremberg prosecutor Robert Jackson once said, “[a]lthough the government technically loses its case, it has really won if justice has been done.” Robert H. Jackson, *The Federal Prosecutor*, 31 Am. Inst. Crim. L. & Criminology 3, 4 (1940).

In a criminal trial, the purpose of the adversarial system is to ensure that the defendant’s rights are protected from government overreach regardless of the guilt or innocence of the defendant; it is designed to give the defense the opportunity to challenge all aspects of the government’s case before the government can strip a person of life or liberty. See *Kimmelman v. Morrison*, 477 U.S. 365, 380 (1986) (“The constitutional rights of criminal defendants are granted to the innocent and the guilty alike.”). “Indeed, under our adversarial system, it is beyond dispute that a criminal defendant is entitled to a fair trial even though he may be guilty, that the purpose of such a trial is to determine whether the prosecution can meet its burden of proof, and that the role of counsel is to put the prosecution to its proof, even if the defendant is guilty.” *Morales v. Greiner*, 273 F. Supp. 2d 236, 249-50 (E.D.N.Y. 2003).

Prosecutors are therefore obliged to seek justice not by securing convictions at all costs, but by safeguarding constitutional rights, pursuing the truth, and protecting the innocent. As Chief Justice White wrote, “[l]aw enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. . . . To this extent, our so-called adversary system is not adversary at all; nor should it be.” *United States v. Wade*, 388 U.S. 218, 256-58 (1967) (White, J., concurring in part); *see also State v. Boyd*, 233 S.E.2d 710, 713 (W. Va. 1977) (“The prosecuting attorney occupies a quasi-judicial position in the trial of a criminal case. In keeping with this position, he is required to avoid the role of a partisan, eager to convict, and must . . . set a tone of fairness and impartiality . . .”). As the representative of their community in the criminal justice system, prosecutors must depart from a “pure adversary model” because their roles “transcend[] that of an adversary.” *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985). Courts have long emphasized the importance of “faithful and ethical exercise of power by those who bear the mantle of public trust,” *Dickson v. Quarterman*, 462 F.3d 470, 480 (5th Cir. 2006), particularly because courts, litigants, defendants, and the general public “presume that public officials have properly discharged their official duties.” *Banks*, 540 U.S. at 696 (citation omitted). Thus, while prosecutors “may strike hard blows, [they are] not at liberty to strike foul ones.” *Berger*, 295 U.S. at 88.

The ABA Standards on prosecutorial conduct and rules governing professional conduct reinforce that a prosecutor's responsibility is to pursue justice rather than convictions. Both make clear that a prosecutor is not simply an advocate or ordinary adversary, but a "minister of justice." *Model Rules of Pro. Conduct* r. 3.8 cmt. (A.B.A. 2010), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor/comment_on_rule_3_8/. The ABA explains that a prosecutor's "primary duty" is to "seek justice within the bounds of the law, not merely to convict." *Crim. Just. Standards for the Prosecution Function* std. 3-1.2(b) (A.B.A. 2017), https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecution-function/. The ABA Criminal Justice Standards provide that "[t]he prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system." *Id.* at std. 3-1.2(f). Likewise, the Model Rules state that "[t]he responsibility of the public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict." *Model Code of Pro. Resp.* EC 7-13 (A.B.A. 1980), <https://www.defendyouthrights.org/wp-content/uploads/2014/05/ABA-Model-Code-of-Professional-Responsibility.pdf>.

The State of Texas also recognizes that prosecutors' foremost duty is to the integrity of the adversarial system. The Texas Disciplinary Rules of Professional

Conduct state that a “prosecutor has the responsibility to see that justice is done, and not simply to be an advocate.” *Tex. Disciplinary R. Pro. Conduct* § 3.09 cmt. 1 (Tex. Ctr. Legal Ethics 2024), <https://www.legalethictexas.com/resources/rules/texas-disciplinary-rules-of-professional-conduct/special-responsibilities-of-a-prosecutor/>. The Rules require prosecutors to ensure that defendants’ rights are protected by refraining from: prosecuting or threatening to prosecute a charge that is not supported by probable cause; “conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel”; or initiating or encouraging the waiver of important pre-trial, trial, or post-trial rights by unrepresented defendants. *Id.* § 3.09(a)-(f). And Texas is far from alone. Courts across the country have emphasized that a prosecutor is charged to be a “minister of justice.”¹

¹ See, e.g., *Caudill v. Commonwealth*, 374 S.W.3d 301, 309 (Ky. 2012) (“Unlike other attorneys, ‘[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate.’” (alteration in original) (citation omitted)); *State v. Torres*, 279 P.3d 740, 746 (N.M. 2012) (noting local rules codifying “the duty of a prosecutor as a ‘minister of justice’” (citation omitted)); *Domingo-Gomez v. People*, 125 P.3d 1043, 1055 (Colo. 2005) (“Prosecutors, who are enforcers of the law, have higher ethical duties than other lawyers because they are ministers of justice, not just advocates.” (Bender, J., dissenting) (citation omitted)); *People v. Jones*, 662 N.W.2d 376, 381 (Mich. 2003) (“A prosecutor has the responsibility of a minister of justice, not simply that of an advocate.”); *Att’y Grievance Comm’n of Md. v. Gansler*, 835 A.2d 548, 572 (Md. 2003) (“Prosecutors are held to even higher

2. From the outset, prosecutors have a duty to ensure their cases rest on good-faith investigations. The Model Rules of Professional Responsibility only permit prosecutors to bring cases they know are supported by probable cause. *Model Rules of Pro. Conduct* r. 3.8(a). Once a case is underway, prosecutors should also “ensure that criminal investigations are not based upon premature beliefs or conclusions as to guilt or innocence but are guided by the facts.” *Standards for Crim. Just.: Prosecutorial Investigations* std. 1.2(d)(i) (A.B.A. 2014), https://www.americanbar.org/groups/criminal_justice/resources/standards/prosecutorial-investigations/. That includes an affirmative responsibility to examine all evidence available to law enforcement. “[T]he individual prosecutor has a duty to learn of any [exculpatory] evidence known to others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Thus, “an inaccurate conviction based on government failure to turn over an easily turned rock is essentially as offensive as one based on government non-disclosure.” *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992).

standards of conduct than other attorneys due to their unique role as both advocate and minister of justice.” (citation omitted)); *State v. Salitros*, 499 N.W.2d 815, 817 (Minn. 1993) (“[T]he prosecutor is a ‘minister of justice’ whose obligation is ‘to guard the rights of the accused as well as to enforce the rights of the public.’”); *Aldridge v. State*, 470 S.W.2d 42, 46 (Tenn. Crim. App. 1971) (“[A] public prosecutor is not a plaintiff’s attorney, but a sworn minister of justice, as much bound to protect the innocent as to pursue the guilty . . .”).

3. Disclosing material evidence that might help a defendant is also integral to a prosecutor's pursuit of justice. "The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence." *United States v. Nobles*, 422 U.S. 225, 231 (1975) (quoting *United States v. Nixon*, 418 U.S. 683, 709 (1974)). The Supreme Court has therefore long recognized that prosecutors have an affirmative constitutional duty to disclose favorable evidence to the accused if it is material to either guilt or punishment. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Kyles*, 514 U.S. at 432. "[R]egardless of request [by the defense], favorable evidence is material, and constitutional error results from its suppression by the government, 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles*, 514 U.S. at 433 (quoting *Bagley*, 473 U.S. at 682). The importance of a fair trial also means that suppression of material evidence violates a defendant's rights regardless of the good or bad faith of the prosecution. *See Brady*, 373 U.S. at 87.

The *Brady* safeguards—a "constitutional mandate" that "exacts the minimum that [a] prosecutor . . . must do"—are not only necessary to protect a defendant's constitutional rights, but also serve to maintain the integrity of the criminal justice

system. *United States v. Beasley*, 576 F.2d 626, 630 (5th Cir. 1978). The “administration of justice suffers when any accused is treated unfairly,” including when the prosecution “withholds evidence” that, if made available, would “tend to exculpate him or reduce the penalty.” *Brady*, 373 U.S. at 87-88. Indeed, *Brady* is “not a discovery rule, but a rule of fairness and minimum prosecutorial obligation.” *Beasley*, 576 F.2d at 630 (citing *Agurs*, 427 U.S. at 107).

The Texas Disciplinary Rules of Professional Conduct reinforce these obligations by requiring prosecutors to “make timely disclosure” of all exculpatory or mitigating evidence and disclose new and credible evidence that a defendant did not commit an offense for which he was convicted. *Tex. Disciplinary R. Pro. Conduct* § 3.09(d), (f). Notably, these are merely the “minimum standards of conduct” that should guide prosecutors. *Id.* at Preamble ¶ 7.

4. Finally, correcting erroneous inculpatory evidence is just as important as disclosing exculpatory evidence. In *Napue v. Illinois*, the United States Supreme Court made clear that “a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.” 360 U.S. 264, 269 (1959) (citations omitted). The Due Process clause “imposes “the responsibility and duty to correct”” false testimony on ‘representatives of the State,’ not on defense

counsel.” *Glossip v. Oklahoma*, 604 U.S. 226, 252 (2025) (citations omitted). This obligation extends to false testimony that only bolsters or attacks the credibility of a witness. “The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend.” *Napue*, 360 U.S. at 269. A prosecutor’s use of or failure to correct false testimony to obtain a conviction constitutes “a corruption of the truth-seeking function of the trial process.” *Agurs*, 427 U.S. at 104 (citation omitted).

B. A Prosecutor’s Obligation To Pursue Justice Continues After Conviction

A prosecutor’s duty to pursue justice does not end after trial. “[P]rosecutors . . . should strive to see that justice is done before *and after* conviction.” *See Comm’n for Lawyer Discipline v. Hanna*, 513 S.W.3d 175, 184 (Tex. Crim. App. 2017) (emphasis added). The United States Supreme Court has long acknowledged that a prosecutor has a duty to admit error when mistakes at trial tainted a conviction. *See Cook v. United States*, 138 U.S. 157, 185 (1891) (“The representatives of the government, in this court, frankly concede, as it was their duty to do, that this action of the court below was so erroneous as to entitle the defendants to a reversal.”); *Young v. United States*, 315 U.S. 257, 258-59 (1942) (“The public trust reposed in the law enforcement officers of the Government requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their

remaining silent.”). More recently, in another capital case out of Texas, the Supreme Court has credited prosecutors for confessing error in cases in which race was impermissibly used to secure death sentences in capital cases. *Buck v. Davis*, 580 U.S. 100, 124-25 (2017).

1. The prevailing standards guiding prosecutorial conduct also make clear that prosecutors must pursue justice after conviction, including admitting error and seeking to reverse a conviction where appropriate. The National Prosecution Standards, promulgated by the National District Attorneys Association, state that a prosecutor “shall not assert or contest an issue on collateral review unless there is a basis in law and fact for doing so.” *Nat’l Prosecution Standards* std. 9-1.6 (Nat’l Dist. Att’ys Ass’n June 2024), <https://www.ndaa.org/news/national-prosecution-standards---fourth-edition-june-2024>. Standard 9-1.3 also states that “[t]he prosecutor should defend a legally obtained conviction and a properly assessed punishment unless new evidence is received that credibly calls the conviction or sentence into question.” *Id.* at std. 9-1.3. The commentary further explains that when prosecutor finds that the conviction is not supported or was obtained through unjust means, they should “support the reversal of any conviction for the crime of which the person was erroneously convicted.” *Id.* at commentary.

The ABA’s Model Rules of Professional Conduct and Criminal Justice Standards for the Prosecution Function are in accord. The Model Rules require a

prosecutor to “seek to remedy the conviction” if there is evidence establishing that a defendant in the prosecutor’s jurisdiction was wrongfully convicted. *Model Rules of Pro. Conduct* r. 3.8(h). The ABA’s Criminal Justice Standards similarly state that a prosecutor’s duty to defend convictions extends only to those obtained following a “fair process.” *Crim. Just. Standards for the Prosecution Function* std. 3-8.1. Thus, “the prosecutor should temper the duty to defend with independent professional judgment and discretion. The prosecutor should not defend a conviction if the prosecutor believes the defendant is innocent or was wrongfully convicted, or that a miscarriage of justice associated with the conviction has occurred.” *Id.* The standards also state that after conviction, a prosecutor is not required to “invoke every possible defense to a collateral attack, and should consider potential negotiated dispositions or other remedies, if the prosecutor . . . reasonably conclude[s] that the interests of justice are thereby served.” *Id.* at std. 3-8.5.

2. Prosecutors’ post-conviction responsibilities include an ongoing obligation to adhere to the letter and spirit of *Brady*. State and federal courts across the country have held that the State has a continuing, post-conviction duty to disclose *Brady* material that was available to the government at the time of trial. *See, e.g., In re Jenkins*, 525 P.3d 1057, 1067 (Cal. 2023) (collecting cases); *Carter v. Bigelow*, 787 F.3d 1269, 1278 (10th Cir. 2015) (“[T]he prosecution’s duty to disclose such

evidence ‘is ongoing and extends to all stages of the judicial process’” (quoting *Smith v. Roberts*, 115 F.3d 818, 820 (10th Cir. 1997)).

Procedural rules and ethical standards also require disclosure of newly obtained evidence in the post-conviction context. In 2014, Texas expanded its discovery rules to mandate post-conviction disclosure of exculpatory, impeachment, or mitigating information, thus recognizing a prosecutor’s continuing obligation to pursue justice. *See* Tex. Code Crim. Proc. Ann. art. 39.14(h), (k). The United States Supreme Court has also instructed that “after a conviction the prosecutor also is bound by the ethics of his office to inform the appropriate authority of after-acquired or other information that casts doubt upon the correctness of the conviction.” *Imbler v. Pachtman*, 424 U.S. 409, 427 n.25 (1976). National prosecution standards also urge the disclosure of newly obtained evidence after conviction where the new evidence undermines the validity of the conviction.²

² The American Bar Association’s Model Rules of Professional Conduct state that if a prosecutor “knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted” the prosecutor, among other things, should promptly disclose the evidence and “undertake further investigation” to determine whether the defendant was wrongfully convicted. *Model Rules of Pro. Conduct* r. 3.8(g). Similarly, the National Prosecution Standards set forth by the National District Attorney’s Association advise the disclosure of evidence where a prosecutor “reasonably believes that the convicted person’s claim of actual innocence is supported by specific factual allegations which, if true, would entitle the convicted person to relief under the legal standard applicable in the jurisdiction, and the evidence relates to that claim.” *Nat’l Prosecution Standards* std. 9-1.7. More generally, the National Prosecution Standards urge prosecutors who learn of material

C. In Mr. Reed's Case, The Prosecution's Conduct Is Inconsistent With The Duties Of Ministers of Justice

The State's prosecution and post-conviction treatment of this case cannot be reconciled with the duties owed by ministers of justice.

1. The original prosecution reflects *Brady* violations, false-testimony misconduct, and failure to properly investigate the likely perpetrator. The prosecution knowingly violated *Brady* by failing to disclose material evidence that supported Mr. Reed's defense that he was in a consensual relationship with the victim, Ms. Stites, which explained the presence of his sperm in her body. App.245. Before trial, prosecutors had "witness interview summaries" confirming two witnesses knew Mr. Reed and Ms. Stites were familiar. *Id.* And investigators had expressly heard from several witnesses before trial that "Stacy and Rodney may have been dating." App.59. Not only did the prosecution fail to disclose this critical information to Mr. Reed as *Brady* demands, but the lead investigator falsely testified at trial that the investigators did not "find anyone who linked" Mr. Reed and Ms. Stites. 46 TRR 113:4-11.

The prosecution also solicited and presented false scientific testimony. *See* App.164-72. First, the State presented and relied on false testimony that sperm cannot survive for more than 26 hours inside the vagina to argue that Mr. Reed's

or credible evidence suggesting actual innocence following a conviction to "exercise due diligence in taking appropriate action." *Id.* at std. 9-1.8.

sperm must have been deposited in Ms. Stites when she died. 56 TRR 34:1-12. However, even the State's own experts have since agreed that the testimony was "a misrepresentation" and that sperm can survive intact for days, which corroborates Mr. Reed's assertions that he was in a relationship with Ms. Stites. 8 HRR 279:8-280:21. The State also presented testimony that Ms. Stites must have died between 3 and 5 a.m. on April 23, but its own expert witness has since admitted his testimony was not "a scientifically reliable opinion of when Ms. Stites died." App.166. At Mr. Reed's 2021 hearing, two experts explained why forensic evidence actually shows Ms. Stites likely died before midnight, when Mr. Fennell claimed to have been with her. Those opinions were corroborated by three other forensic experts in Mr. Reed's seventh habeas application. App.179-88; App.192-202.

The State also failed to properly investigate Jimmy Fennell, Ms. Stites' fiancé, who was later convicted of kidnapping and sexual assault and confessed to the murder of Ms. Stites. *See Reed v. United States*, 589 U.S. 1239, 1241 (2020) (Sotomayor, J., statement respecting the denial of cert.). The State failed to disclose witnesses, including those in law enforcement, who had information that might implicate Mr. Fennell in Ms. Stites' murder. App.220-23; 2 HRR 275:6-277:15. Wayne Fletcher, a friend of Mr. Fennell and an employee of the Bastrop County Sheriff's Office, told investigators that Mr. Fennell knew Ms. Stites was "fucking a n****r." App.221-22; 2 HRR 275:6-277:15. And at Mr. Reed's 2021 hearing, a

witness testified that Mr. Reed and Ms. Stites' neighbor had reported to the police and the Lee County District attorney after Ms. Stites' death that the couple had loud, aggressive arguments that made him concerned about Ms. Stites' safety. 4 HRR 197:9-24. The officials ignored the neighbor, telling him they "already had their suspect." 4 HRR 198:6-8.

Any one of these violations would independently undermine the validity of this proceeding and warrant reconsideration of a conviction. Collectively, the prosecution's repeated, knowing failures culminated in a death sentence "mired in doubt." *Reed*, 589 U.S. at 1244.

2. Today, the prosecutors in Mr. Reed's case have an obligation to correct the State's misconduct at trial, adhere to post-conviction prosecutorial standards, and work to reverse his conviction, or at the very least test physical evidence that could conclusively determine the true perpetrator of the offense. Following Mr. Reed's conviction and death sentence, ample evidence has been uncovered that casts significant doubt on his conviction and further implicates someone else in the murder. Indeed, two people have come forward with declarations stating that Jimmy Fennell *confessed* to Ms. Stites' murder. App.226; 3 HRR 114:20-115:22. Even before the evidence presented in the instant petition, Justice Sotomayor noted that "there is no escaping the pall of uncertainty over Reed's conviction." *Reed*, 589 U.S. at 1244 (Sotomayor, J., statement respecting the denial of cert.).

Post-conviction tools like DNA testing can help determine whether the actual perpetrator has been identified or whether prosecutorial errors have been made and need to be corrected, something prosecutors are legally and ethically bound to do.³ Prosecutors should therefore be eager to agree to DNA testing—and most of them are. In an examination of 194 DNA exonerations, prosecutors did not oppose motions to vacate convictions in 88% of cases where the DNA did not match the individual convicted.⁴ Anecdotal evidence suggests that more often than not, prosecutors do not oppose motions for post-conviction DNA testing.⁵

Here, however, the State has refused to subject the alleged murder weapon in this case—a webbed belt—to DNA testing, despite Mr. Reed’s multiple requests and substantial litigation requesting the tests. *See Reed v. Goertz*, 146 S. Ct. 936 (2026) (Sotomayor, J., joined by Kagan, J., and Jackson, J., dissenting from the denial of cert.). If the State stands by its prosecution of Mr. Reed, it should welcome DNA

³ Clayton B. Drummond & Mai Naito Mills, *Addressing Official Misconduct: Increasing Accountability in Reducing Wrongful Convictions*, 5 *Wrongful Conviction L. Rev.* 270, 275 (2024), <https://wclawr.org/index.php/wclr/article/download/34/54/404>.

⁴ *Convicting the Innocent, DNA Exonerations Database*, Wilson Ctr. for Sci. & Just. (2023), <https://convictingtheinnocent.com/using-the-database/additional-research/>.

⁵ *When Prosecutors Oppose DNA Testing*, Innocence Project (June 13, 2012), <https://innocenceproject.org/news/when-prosecutors-oppose-dna-testing/> (quoting Peter Neufeld, co-founder of the Innocence Project) (stating that most prosecutors no longer oppose such motions).

testing that could confirm its position once and for all. Failing to allow DNA testing of the belt, which could “exculpate Reed and identify the real killer,” is “inexplicable,” *id.* at 939—not to mention a violation of the prosecutors’ public trust and a disservice to the interests of justice.

A prosecutor’s obligation to pursue justice is at its zenith in a capital case like that of Mr. Reed. The finality of the death penalty makes it “qualitatively different from a sentence of imprisonment, however long. . . . Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). In pursuing this irreversible and most severe punishment, prosecutors must ensure that the proceeding has integrity, comports with constitutional requirements, and has fulfilled the truth-seeking function of a criminal trial. In Mr. Reed’s case, the prosecution’s conduct has fallen short of that standard.

D. The Court Should Correct The Prosecutorial Failures Here

When prosecutors fail in their constitutional and ethical duties, courts become the final safeguard against wrongful deprivations of life and liberty, the erosion of systemic integrity, and the loss of public trust in the justice system. “Federal courts have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who

observe them.” *Wheat v. United States*, 486 U.S. 153, 160 (1988). The United States Supreme Court has long recognized that prosecutorial misconduct calls “for stern rebuke and repressive measures and, perhaps, if these [are] not successful, for the granting of a mistrial.” *Berger*, 295 U.S. at 85. And the Supreme Court of Texas has declared that “[i]t is not only the province but the duty of the trial judge, acting on his own volition if necessary, to prevent . . . deterioration of judicial dignity” that results from trial lawyers’ misconduct. *Tex. Emps.’ Ins. Ass’n v. Haywood*, 153 Tex. 242, 247 (1954). In short, courts must ensure that only just convictions stand.

Judicial intervention is imperative in Mr. Reed’s case. In the nearly three decades since Mr. Reed’s conviction, the prosecution’s misconduct has left Mr. Reed on death row, a potential perpetrator free, and the public without assurance that justice has been done. Three Supreme Court Justices found it “inexplicable” that the courts that reviewed Mr. Reed’s prior habeas petitions “did not proceed with more caution and carefully consider each of Reed’s arguments, especially given that his claim implicates the ‘constitutionally intolerable’ possibility of the ‘execution of a[n] . . . innocent person.’” *Reed*, 146 S. Ct. at 938 (alterations in original) (citation omitted). That lack of caution and care must not be repeated. In a case where *Brady* violations and improper investigation led to a conviction that “a simple DNA test” could materially undermine, FJP respectfully submits that this Court must intervene

to prevent prosecutorial misconduct from resulting in wrongful loss of life and liberty. *Id.*

II. RACIAL BIAS CAN DRIVE WRONGFUL CONVICTIONS LIKE MR. REED’S

The criminal justice system makes mistakes. The exact number of wrongful convictions is impossible to ascertain, but research suggests that the wrongful conviction rate in capital cases is at least 4%, and the wrongful conviction rate in a general state prison population is 6%.⁶ Although prosecutors are obligated to pursue justice and seek to correct wrongful convictions, there is, unfortunately, significant evidence that many of them do not. Moreover, the frequency with which race appears to impact prosecutions—including and especially in capital cases—is alarming. The persistence of racial disparities and mistakes in capital cases mars the prosecution of those cases and the integrity of the justice system as a whole. Mr. Reed’s case provides a vivid example of the human cost when prosecutors allow racial disparities to undermine the justice system.

⁶ See Samuel R. Gross et al., *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 11 PNAS 7230, 7233 (May 20, 2014), <https://www.pnas.org/doi/pdf/10.1073/pnas.1306417111>; Charles E. Loeffler, Jordan Hyatt & Greg Ridgeway, *Measuring Self-Reported Wrongful Convictions Among Prisoners*, 35 J. of Quantitative Criminology 259, 259 (2019); Eric Martin & Angela Moore, *Advancing the Scholarship on Wrongful Convictions*, in *Special Report, Wrongful Convictions: The Literature, The Issues, and the Unheard Voices* 3, 12 (Nat’l Inst. of Just. 2023), <https://www.ojp.gov/pdffiles1/nij/251446.pdf>.

A. Racial Bias Is A Pervasive Factor In Capital Cases

Racial disparities in the death penalty have persisted for decades and are well-documented. Research illustrates that unwarranted (conscious and unconscious) associations between Blackness, criminality, and violence can impact decision-making in policing, prosecution, and sentencing. *See Buck*, 580 U.S. at 121 (describing the “‘powerful racial stereotype’—that Black men are ‘violence prone’” (citation omitted)).⁷ Recent scholarship has revealed how states, including Texas, structure death penalty eligibility in a way that permits unconscious bias to invade both charging and sentencing decisions.⁸ As a result, Black individuals are substantially more likely to receive the death penalty than their white counterparts. In Texas, for example, Black individuals make up 46% of the death row population,

⁷ *See also, e.g.*, Joshua Gupta-Kagan, *The Intersection Between Young Adult Sentencing and Mass Incarceration*, 2018 Wis. L. Rev. 669, 723 (2018); Katherine B. Spencer, Amanda K. Charbonneau & Jack Glaser, *Implicit Bias and Policing*, 10 Soc. & Personality Psych. Compass 50, 55 (2016); Sophie Trawalter et al., *Attending to Threat: Race-based Patterns of Selective Attention*, 44 J. Experimental Soc. Psych. 1322, 1322 (2008); Jennifer Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. Personality & Soc. Psych. 876, 878, 889-91 (2004); Lincoln Quillian & Devan Pager, *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, 107 Am. J. Soc. 717, 718 (2001); Darrell Steffensmeier, Jeffrey Ulmer & John Kramer, *The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male*, 36 Criminology 763, 769 (1998).

⁸ Justin D. Levinson & Rachel G. Schaefer, *Flawed Framework, Fatal Discretion: Unraveling Implicit Bias in Capital Punishment Decisions*, 75 Case W. Rsrv. L. Rev. 821, 846-47, 858-59, 888-93, 897 (2025).

despite being only 13.4% of the state population.⁹ And around the time of Mr. Reed’s conviction, federal prosecutors sought the death penalty against Black defendants at a much higher rate than for white defendants: from 1995-2000, 72% of federal cases seeking death were against Black defendants.¹⁰ Most recently, in 2025, 75% of defendants against whom state prosecutors in death-eligible states sought capital sentences were people of color.¹¹

The race of the defendant is a significant factor in capital jury sentencing decisions. According to a 2015 study, juries “were four and one half times more likely to impose a sentence of death when the defendant was black than they were in cases involving similarly situated white defendants.”¹² An earlier version of the

⁹ Tex. Dep’t of Crim. Just., *Gender and Racial Statistics of Death Row Inmates*, https://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html (June 12, 2026); U.S. Census Bureau, *QuickFacts: Texas*, <https://www.census.gov/quickfacts/fact/table/TX/PST045224> (last visited July 28, 2026). Recent state and federal data indicates that nationwide, Black people make up approximately 40% of death row both state and federal, despite being only 13.5% of the population. See Legal Def. Fund, *Death Row U.S.A.: Spring 2026*, at 1 (Apr. 1, 2026), <https://www.naacpldf.org/wp-content/uploads/DRUSASpring2026.pdf>; U.S. Census Bureau, *QuickFacts: United States*, <https://www.census.gov/quickfacts/fact/table/US> (last visited July 28, 2026).

¹⁰ U.S. Dep’t of Justice, *The Federal Death Penalty System: A Statistical Survey (1988-2000)* 8 (Sept. 12, 2000), https://www.justice.gov/archive/dag/pubdoc/_dp_survey_final.pdf.

¹¹ Taylor Bonner, *New Analysis of Racial Bias and Death Eligibility in 2025*, Death Penalty Info. Ctr. (Jan. 14, 2026), <https://deathpenaltyinfo.org/new-analysis-of-racial-bias-and-death-eligibility-in-2025>.

¹² Katherine Beckett & Heather Evans, *The Role of Race in Washington State Capital Sentencing, 1981-2014*, at 33 (2014), <https://storage.ghost.io/>

same study found that juries were three times more likely to recommend a death sentence for a Black defendant than for a white defendant in a similar case.¹³ Over the last five years in Texas, “more than 50 percent of death sentences have been imposed on people of color.”¹⁴ Controlling for other factors, studies have indicated that racial bias plays a significant role in the way the public views crimes committed by Black people, and is thus one explanation for these types of sentencing disparities.¹⁵

The race of the victim matters, too. Defendants are more likely to be sentenced to death when the victim is white.¹⁶ Prosecutorial discretion in seeking the death penalty follows a similar pattern: for example, a statewide study of California capital cases found that prosecutors brought special circumstance

c/d5/17/d517bf5e-0944-433c-a10e-1dfe572602c5/content/files/legacy/documents/washracestudy2014.pdf (emphasis omitted). The study examined 297 cases in which defendants were convicted of aggravated murder. *Id.* at 13. The cases were analyzed for factors that might influence sentencing, including the number of victims, the prior criminal record of the defendant, and the number of aggravating factors alleged by the prosecutor. *Id.* at 37.

¹³ Katherine Beckett & Heather Evans, *The Role of Race in Washington State Capital Sentencing, 1981-2012*, at 2 (2014), <https://perma.cc/XPS2-7YTR>.

¹⁴ Tex. Coal. to Abolish the Death Penalty, *Texas Death Penalty Developments in 2023: The Year in Review 2* (2023), <https://tcadp.org/wp-content/uploads/2023/12/TCADP-Report-Texas-Death-Penalty-Developments-in-2023.pdf>.

¹⁵ Levinson & Schaefer, *supra* note 8, at 831-32.

¹⁶ Michael L. Radelet & Glenn L. Pierce, *Race and Death Sentencing in North Carolina, 1980-2007*, 89 N.C. L. Rev. 2119, 2119-20 (2011).

charges—the charging decision that triggers death eligibility—at a significantly higher rate in cases with at least one white victim even after controlling for differences in the cases, such that white victim cases represented 34% of death-eligible cases overall but 46% of cases actually presented to a jury for death sentencing.¹⁷ A study in Durham, North Carolina, showed that prosecutors were 43% more likely to seek the death penalty for a Black defendant with a white victim, as opposed to a Black victim.¹⁸ And in Texas, a comprehensive study of 15,394 capital murder convictions from 1973 to 2018 found that death sentences were imposed in 8.5% of murder cases with white victims but only 2.7% of cases with Black victims—meaning cases with white victims were three times more likely to result in a death sentence than cases with Black victims.¹⁹

More recently, in 2024, researchers found that after controlling for a number of non-racial factors, the odds of a jury imposing a death sentence were about *sixteen*

¹⁷ Catherine M. Grosso, Jeffrey Fagan, & Michael Laurence, *The Influence of the race of defendant and the race of victim on capital charging and sentencing in California*, 21 J. Empirical Legal Studies 482, 501 (2024), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jels.12390>.

¹⁸ Isaac Unah, *Choosing Those Who Will Die: The Effect of Race, Gender, and Law in Prosecutorial Decision to Seek the Death Penalty in Durham County, North Carolina*, 15 Mich. J. Race & L. 135, 135 (2009).

¹⁹ Jelani Jefferson Exum & David Niven, *Where Black Lives Matter Less: Understanding the Impact of Black Victims on Sentencing Outcomes in Texas Capital Murder Cases from 1973 to 2018*, 66 St. Louis U. L.J. 677, 681-82 (2022).

times greater if the victim was a white female compared to a Black male.²⁰ This study expanded on the famous charging and sentencing study of Georgia homicides in the 1970s that formed the basis of the challenge in *McCleskey v. Kemp*, 481 U.S. 279 (1987).²¹ Troublingly, in 50 years, the data points have hardly moved.²² The 2024 study further found that in cases with a white female victim compared to a Black female victim, the odds of a death sentence were six times greater, and for cases with a white female victim compared to a white male victim, a defendant was three times more likely to receive the death penalty.²³ There were 3,026 death-eligible defendants between 1976 and 2019 in Georgia, and only 8% involved the murder of a white victim.²⁴ However, that 8% translated to 52% of defendants executed in Georgia during that time frame.²⁵ Numerous studies in other states found similar results over the past several decades.²⁶

²⁰ Scott Phillips et al., *Sacred Victims: Fifty Years of Data on Victim Race and Sex as Predictors of Execution*, 114 J. Crim. L. & Criminology 249, 249 (2024).

²¹ David C. Baldus, Charles Pulaski & George Woodworth, *Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience*, 74 J. Crim. L. & Criminology 661 (1983).

²² Phillips, *supra* note 20, at 249.

²³ *Id.* at 271.

²⁴ *Id.* at 282.

²⁵ *Id.*

²⁶ See David C. Baldus, Julie Brain, Neil A. Weiner & George Woodworth, *Evidence of Racial Discrimination in the Use of the Death Penalty: A Story from Southwest Arkansas (1990-2005) with Special Reference to the Case of Death Row Inmate Frank Williams, Jr.*, 76 Tenn. L. Rev. 555 (2009); David C. Baldus,

The extensive research conducted on the relationship between race and the death penalty has all led to the same conclusion: that race remains a decisive factor in capital sentencing, regardless of the jurisdiction. This is true both as to the race of the defendant and the race of the victim. Unfortunately, as the research above demonstrates, the belief that the justice system and death penalty exist in a “post-racial” America is a dangerous fallacy.

B. Black Americans Are Much More Likely To Be Wrongfully Convicted

Racial disparities in wrongful convictions are similarly striking. A 2022 study found that although Black people make up approximately 13% of the population of the United States, they comprise over half (53%) of exonerations.²⁷ Innocent Black Americans are seven times more likely than white Americans to be falsely convicted of serious crimes.²⁸ And the race of Black Americans’ alleged victims can

Catherine M. Grosso, George G. Woodworth & Richard Newell, *Racial Discrimination in the Administration of the Death Penalty: The Experience of the United States Armed Forces (1984-2005)*, 101 J. Crim. L. & Criminology 1227 (2011); Glenn L. Pierce & Michael L. Radelet, *Death Sentencing in East Baton Rouge Parish, 1990-2008*, 71 La. L. Rev. 647 (2011); Glenn L. Pierce & Michael L. Radelet, *Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999, The Empirical Analysis*, 46 Santa Clara L. Rev. 1 (2005); Scott Phillips, *Continued Racial Disparities in the Capital of Capital Punishment: The Rosenthal Era*, 50 Hous. L. Rev. 131 (2012).

²⁷ Samuel R. Gross et al., *Race and Wrongful Convictions in the United States 2022*, Nat’l Registry of Exonerations, at 1 (Sept. 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4245863.

²⁸ *Id.*

exacerbate that injustice. While only 13% of murders by Black people involve white victims, 26% of innocent Black murder exonerees were convicted of killing white people.²⁹ In cases involving sexual assault, Black people are eight times more likely to be wrongfully convicted, and that risk increases dramatically if the victim is white: most innocent Black defendants exonerated for sexual assault had been convicted of raping white women (128 out of 207).³⁰

Wrongful convictions resulting from state misconduct are also tainted by racial disparities. The same 2022 study found that state misconduct was considerably higher among murder exonerations with Black defendants (78%) than white defendants (64%). Notably, 85% of Black death-row exonerees were victims of state misconduct, compared to 70% of white death-row exonerees.³¹ The misconduct included concealing exculpatory evidence in violation of *Brady* (63% of cases), witness tampering (35% of cases), and perjury by a state official (20% of cases).³² A 2024 study of 1,404 exonerations found that police and prosecutors committed more acts of misconduct than the number of exonerees included in the study.³³ It also found racial disparities: in 209 acts of prosecutorial misconduct

²⁹ *Id.* at 4-5.

³⁰ *Id.* at 2, 18-19.

³¹ *Id.* at 6.

³² *Id.*

³³ Drummond & Mills, *supra* note 3, at 270.

examined in those wrongful conviction cases, over half of those who fell victim to prosecutorial misconduct were Black (55%) and were specifically harmed by the withholding of *Brady* evidence (58%).³⁴

C. Racial Stereotypes Contributed To Mr. Reed’s Wrongful Conviction

Mr. Reed’s prosecutors failed to mitigate—and even appeared to embrace—the influence of racial stereotypes in his case. As explained above, because Mr. Reed was a Black man accused of killing a white woman, he was statistically significantly more likely to have the prosecutor seek the death penalty against him and have the jury sentence him to death. In addition, whether consciously or not, prosecutors in his case wrongfully relied on racial bias, and improperly stressed it to the jury.

1. Prosecutors should guard against racial bias in criminal trials. There is a constitutional “imperative to purge racial prejudice from the administration of justice.” *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221 (2017). Prosecutorial decision-making may not be “deliberately based upon an unjustifiable standard such as race.” *Wayte v. United States*, 470 U.S. 598, 607 (1985) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978)). In addition, it would be “patently unconstitutional” for a prosecutor to argue that a defendant deserves a death sentence

³⁴ *Id.* at 282-83.

because of his race. *See Buck*, 580 U.S. at 119; *see also Zant v. Stephens*, 462 U.S. 862, 885 (1983) (noting that race and other factors are “constitutionally impermissible” in capital sentencing).

“[R]elying on race to impose a criminal sanction poisons public confidence in the judicial process” and injures “not just the defendant, but ‘the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the process of our courts.’” *Buck*, 580 U.S. at 124 (alterations in original) (citation omitted). For this reason, the ABA’s Criminal Justice Standards for the Prosecution Function advise that “[t]he prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race A prosecutor’s office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work.” *Crim. Just. Standards for the Prosecution Function* std. 3-1.6.

2. Mr. Reed’s prosecutors spurned their constitutional and ethical duties to prevent racial bias from infecting the case. Mr. Reed consistently argued in his defense that he had a consensual affair with Ms. Stites, thus explaining his DNA found within her body. But at the time of trial, many Americans strongly disapproved of interracial relationships. A 1990 study showed that 63% of non-Black adults surveyed said they would be very or somewhat opposed to a close

relative marrying a Black person.³⁵ Gallup polls showed that in 1991 only 27% of US adults over age 50 approved of interracial relationships, and non-white adults did not reach a majority level of approval (over 50%) until 1997.³⁶

Rather than mitigating those attitudes, Mr. Reed's case prosecutors exploited them by implying that a relationship between Mr. Reed and Ms. Stites was impossible. To start, they inaccurately claimed to have interviewed everyone about this affair and could find no evidence of it, while in reality investigators had interviewed hardly anyone to confirm or deny this claim.³⁷ During closing, the prosecutor made the following remarks to the jury:

- “They talked to all these people, and not one of them during the course of the investigation that they talked to ever said she was associated with that

³⁵ Gretchen Livingston & Anna Brown, *Intermarriage in the U.S. 50 Years After Loving v. Virginia*, Pew Rsch. Ctr. (May 18, 2017), <https://www.pewresearch.org/social-trends/2017/05/18/intermarriage-in-the-u-s-50-years-after-loving-v-virginia/>.

³⁶ Justin McCarthy, *U.S. Approval of Interracial Marriage at New High of 94%*, Gallup (Aug. 5, 2021), <https://news.gallup.com/poll/354638/approval-interracial-marriage-new-high.aspx>.

³⁷ App.9 (quoting a witness statement that if the police “had spoken to everyone who worked at HEB, they certainly would have learned that many [employees] knew Stacey and Rodney were seeing each other”); *see also* App.76. Had they done so, they may have discovered that there were “[w]itnesses unrelated to Reed but known to Stites [who could corroborate] Reed’s claim that he and Stites were in a clandestine relationship before her death.” *Reed*, 589 U.S. at 1240 (Sotomayor, J., statement respecting denial of cert.).

defendant. Ever. They weren't dating according to anyone, they weren't friends, they weren't associates." 43 TRR 53:11-17.

- "[L]et's talk about the secret affair. . . . So [investigators] go and they talk to everybody, every boyfriend, every co-worker, every friend, every family member, everybody. Nobody, nobody connects them. Nobody." 56 TRR 56:24-57:11.

The State also claimed that Stacey would never have an affair with Reed, and especially would never risk getting pregnant by "*him*."

- "And we've got to look at the circumstances of Stacey's life to tell us whether [the secret affair]'s really true. . . . Jimmy told you that Stacey was on the [placebo] pill at the time of her death so they weren't engaging in any kind of sexual relations, but they expect you to believe that she would go out and do that with him?" 56 TRR 60:5-61:3.
- "Now, do you really expect that [Stites] . . . is going to stop off on her way to work for a quickie with [Reed]? With him? Please. It's ludicrous. And frankly, in light of everything, it's offensive" 56 TRR 61:24-62:6.

By implying to the jury that Ms. Stites would reject an affair with Mr. Reed for no reason other than his race, the State relied on stereotypes and attitudes about interracial relationships in order to secure a conviction and death sentence.

Mr. Reed’s prosecution thus illustrates the racial disparities and wrongful convictions in capital cases. His execution is incompatible with a legal system that promises equal justice. “Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.” *Buck*, 580 U.S. at 124 (quoting *Rose v. Mitchell*, 443 U.S. 545, 555 (1979)).

III. PUBLIC SAFETY DEPENDS ON IMPARTIAL PROSECUTIONS

Prosecutors and other law enforcement officers depend upon public trust to realize their mission of upholding justice and promoting public safety for all members of the community. Put simply, “justice must satisfy the appearance of justice.” *Offut v. United States*, 348 U.S. 11, 14 (1954). Our legal system “depends in large measure on the public’s willingness to respect and follow its decisions.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 445-46 (2015). When individuals have confidence in legal authorities and view prosecutors, the police, the courts, and the law as legitimate, they are more likely to report crimes, cooperate as witnesses, and accept police and judicial system authority.³⁸ But when the public does not trust law

³⁸ See Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. Crim. L. 231, 263 (2008), <https://kb.osu.edu/server/api/core/bitstreams/9f207de7-8f1e-550b-bae1-be261bd741f7/content> (“[Findings] demonstrate that people are more willing to cooperate with the police when they view the police as legitimate social authorities. If people view the police as more legitimate, they are more likely to report crimes in their neighborhood. In addition, minority group members are more likely to work with neighborhood groups.”); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance*,

enforcement and prosecutors, community members may be less willing to report crimes, serve as witnesses, testify in cases, and generally accept police and judicial system authority.³⁹ This reluctance hampers the ability of the police and prosecutors to fulfill their public safety obligations.⁴⁰

Wrongful convictions are extraordinarily harmful to the people who have been falsely accused, victims, their families, and to society at large—all of which undermines public trust in the justice system. The wrongfully convicted person faces years behind bars or even the threat of execution for a crime they did not commit. Collectively, people who were wrongfully incarcerated and have been

Cooperation and Engagement, 20 Psych., Pub. Pol’y & L. 78, 78-79 (2014), <https://law.yale.edu/sites/default/files/area/center/justice/document/ssrnpopularlegitimacy.pdf> (“The most important finding of this study is that legitimacy plays a significant role in motivating law related behavior. The prior role of legitimacy in shaping compliance is replicated, as is the role of legitimacy in encouraging cooperation, including ceding power to the state and helping to address problems of crime and social order. In addition, legitimacy is shown to have a role in motivating empowerment, e.g. in building social capital and facilitating social, political and economic development.”).

³⁹ See Tyler & Fagan, *supra* note 38, at 265 (“Hence, procedural injustice leads to lowered legitimacy and diminished cooperation with the police.”); German Lopez, *Police Have to Repair Community Trust to Effectively do Their Job*, Vox (Nov. 14, 2018), <https://www.vox.com/identities/2016/8/13/17938262/police-shootings-brutality-black-on-blackcrime>.

⁴⁰ See *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence*, Giffords Law Ctr. to Prevent Gun Violence (Sept. 9, 2021), <https://giffords.org/lawcenter/report/in-pursuit-of-peace-building-police-community-trust-to-break-the-cycle-of-violence/> (violent crime rates increase in areas with a lack of public trust in law enforcement).

exonerated since 1989 have spent more than 25,000 years in prison.⁴¹ And the human cost of wrongful convictions is especially high in communities of color, where on average Black exonerees will spend 3 years longer in prison awaiting relief than their white counterparts.⁴² Cases involving a wrongful conviction also inflict a double harm on the victims in the case; in a study examining the effect of wrongful convictions on victims, many “victims described the impact of the wrongful conviction as being comparable to, or worse than, their original victimization.”⁴³

In addition, when the wrong person is blamed for a crime, the true perpetrator avoids accountability, and in many cases, continues to harm other people. An estimated 41,000 additional crimes are committed each year by “true perpetrators,” and these crimes are often violent, felony-level offenses, including sexual assault and homicide.⁴⁴ A 2020 study discovered that in cases of exoneration, the presence of prosecutorial misconduct at trial was associated with lower odds that a true

⁴¹ Nat’l Registry of Exonerations, *25,000 Years Lost to Wrongful Convictions*, at 1 (June 14, 2021), <https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/25000%20Years.pdf>.

⁴² Gross et al., *supra* note 27, at iii.

⁴³ Seri Irazola et al., *Study of Victim Experiences of Wrongful Conviction*, at iv Nat’l Inst. of Just. (Sept. 2012), <https://nij.ojp.gov/library/publications/study-victim-experiences-wrongful-conviction> (see “Downloads”; then click on “PDF”).

⁴⁴ Jennifer N. Weintraub & Kimberly M. Bernstein, *Identifying and Charging True Perpetrators in Cases of Wrongful Convictions*, 1 *Wrongful Conviction L. Rev.* 181, 184 (2020).

perpetrator would be identified after conviction than cases in which no misconduct was discovered.⁴⁵ In this way, prosecutorial misconduct and the ensuing wrongful convictions pose a direct and real threat to public safety.

If courts allow prosecutors to act with the sole purpose of securing and defending convictions, they send a troubling message that the legal system's singular objective is to keep people in jail and prison, regardless of the evidence, fundamental fairness, or constitutional rights. Public trust begins with a belief in the legitimacy of law enforcement: "institutionalized trust arises from the public's belief in the benevolent, good-faith conduct of individual officers, as well as the perception of the police force as an honest and competent entity acting in the best interest of all citizens."⁴⁶ Even in the event that law enforcement fails, the public places their faith in their elected local prosecutors, in cooperation with the courts, to rectify any harm caused at the investigative level. People should be able to rightfully presume that the legal system will prioritize undoing past wrongs and, critically, that the prosecutor will be eager, not reluctant, to correct past mistakes, including the hiding of material evidence, the exploitation of the race of a defendant or victim, or the

⁴⁵ Jennifer N. Weintraub, *Obstructing Justice: The Association Between Prosecutorial Misconduct and the Identification of True Perpetrators*, 66 *Crime & Delinq.* 1195 (2020).

⁴⁶ Andrew Eichen, *Broken Trust: The Pervasive Role of Deceit in American Policing*, CATO Pol'y Analysis, Sept. 12, 2024, at 19; *see also* Julia Simon-Kerr, *Public Trust and Police Deception*, 11 *Ne. U. L. Rev.* 625, 666-70 (2019).

presentation of testimony later discovered to be false. Permitting prosecutors to ignore their legal and ethical obligations suggests that the legal system is willing to allow unjust convictions to stand uncorrected. And “[l]ittle else matters if a state cannot persuade its citizens that it wields legitimate authority.” *Willey v. Harris Cnty. Dist. Att’y*, 27 F.4th 1125, 1133 (5th Cir. 2022).

Public trust is particularly affected in cases where there are significant concerns of law enforcement protecting their own from scrutiny, whether that be by hiding exculpatory evidence in order to protect a prior custodian who failed to disclose it, or, as in this case, refusing to investigate the most likely murder suspect due to their employment with the police department. “Any demonstration of dishonesty or unreliability by an officer tarnishes [public] trust, undermining the legitimacy of law enforcement.”⁴⁷ And public trust has already been tarnished in recent years: according to a 2020 Pew Research Center survey, more than sixty percent of Americans characterize the efficacy of law enforcement in holding officers accountable for misconduct as merely fair or poor, a sentiment that is notably more pronounced among Black Americans.⁴⁸

⁴⁷ Eichen, *supra* note 46, at 19.

⁴⁸ *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct*, Pew Rsch. Ctr. (July 9, 2020), <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>.

In this case, evidence known to investigators during Mr. Reed’s trial and subsequently uncovered through the appellate process has revealed a credible and likely alternative suspect: Jimmy Fennell, Ms. Stites’ live-in fiancé, who was a local police officer and the last person to have seen her alive.⁴⁹ In 2019 it was reported that Mr. Fennell, who ultimately was convicted and sentenced to 10 years in prison for kidnapping and raping a woman in his custody while on police duty, confessed to killing his “n***r-loving fiancée” to another prisoner.⁵⁰ The failure to investigate Mr. Fennell reflects the unfortunate reality that crimes committed by law enforcement, especially domestic violence, are woefully under-reported or under-investigated in large part because of the fear of retaliation and protection of the perpetrator over the victim. “Law enforcement officers are trained to control situations, have increased stress associated with violence perpetration, and have

⁴⁹ *Reed*, 589 U.S. at 1240-41 (Sotomayor, J., statement respecting denial of cert.).

⁵⁰ *Id.*; *see id.* at 1241 (“One officer averred that, a month before the murder, Fennell told him that Stites was ‘f***ing a n***r.’ Another officer attested that at Stites’ funeral, he witnessed Fennell say to Stites’ body something along the lines of, ‘You got what you deserved.’ The third officer stated that Stites’ colleagues told him that they would warn Stites when Fennell came to her workplace so that Stites could avoid Fennell. And still other individuals with no relation to Reed provided accounts that Stites and Fennell had a tumultuous, and seemingly violent, relationship just before Stites’ death.” (citation omitted)).

guaranteed access to lethal weapons – a dangerous combination for their partners.”⁵¹

A meta-analysis of officer-perpetrated domestic violence found self-reported rates with a pooled average of 21.2%.⁵² However, only about 12% of victims report officer-involved domestic abuse to outside authorities.⁵³ When the community believes that criminal justice actors will protect their “own” over the public, despite the knowledge of the racist, illegal, dishonest, or illegitimate actions of law enforcement actors, communities have no reason to trust in the system.⁵⁴

In sum, when the community does not think the system is fair or responsive to their needs and priorities, they may choose not to participate in it. This is especially true in cases where law enforcement refuses to properly investigate

⁵¹ Annelise M. Mennicke & Katie Ropes, *Estimating the Rate of Domestic Violence Perpetrated by Law Enforcement Officers: A Review of Methods and Estimates*, 31 *Aggression & Violent Behav.* 157 (2016).

⁵² *Id.*

⁵³ Jim Hagerty, *Police Domestic Violence: Underreporting and Victim Barriers in Law Enforcement Cases*, MyStateline (Mar. 20, 2026), <https://www.mystateline.com/news/police-domestic-violence-underreporting-and-victim-barriers-in-law-enforcement-cases/> (reporting that only approximately 12% of victims report OIDV to outside authorities, based on a review of aggregated peer-reviewed studies and official records).

⁵⁴ Research has documented the “Blue Wall of Silence” and its effects: 46% of surveyed officers witnessed misconduct but remained silent, and that the code of silence significantly diminishes police accountability and public trust in the criminal justice system. See Carl B. Klockars, Sanja Kutnjak Ivković & M.R. Haberfeld, *The Contours of Police Integrity* (Sage Publ’ns 2004); Sanja Kutnjak Ivković, Maki Haberfeld & Robert Peacock, *Decoding the Code of Silence*, 29 *Crim. Just. Pol’y Rev.* 172 (2018).

police-involved crimes, where prosecutors fail to disclose exculpatory evidence and instead exploit racial biases to secure a conviction, and then attempt to block all avenues of relief in correcting a wrongful conviction. Cases like Mr. Reed's decimate public trust in the criminal justice system, significantly hampering the ability of police and prosecutors to do their jobs—and making everyone less safe.

CONCLUSION

The integrity of the legal system relies on prosecutors fulfilling their constitutional duty to pursue justice rather than conviction. Mr. Reed's capital conviction rests on *Brady* violations, false testimony, and an incomplete investigation—not to mention unmistakable signs of racial bias. Despite compelling evidence of his innocence, a confession from the likely perpetrator, and a murder weapon readily available for DNA testing, the State has continued to press for Mr. Reed's execution. That course will end the life of a demonstrably innocent man and stain our criminal justice system forever. Amici urge this Court to grant Mr. Reed habeas relief.

Dated: July 30, 2026

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APPENDIX

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that the foregoing brief complies with the type-volume limitation in Texas Rule of Appellate Procedure 9.4(i)(2)(A). According to the word count feature of Microsoft Word, the brief contains 10,366 words, excluding the exempted parts under Texas Rule of Appellate Procedure 9.4(i)(1). The brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point size.

Dated: July 30, 2026

/s/ Christopher S. Heasley
Christopher S. Heasley

CERTIFICATE OF SERVICE

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