CAPITAL CASE
EXECUTION SCHEDULED May 21, 2026, AT 10:00 A.M.

No. 25-

IN THE
Supreme Court of the United States

TONY VON CARRUTHERS,

Applicant,

—— V.——

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Melanie C. Verdecia, Esq.
QUARLES & BRADY LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602

Lucas Cameron-Vaughn
ACLU OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212

Eric M. Freedman
Siggi B. Wilzig
HOFSTRA UNIVERSITY SCHOOL OF LAW
250 West 94th Street
New York, NY 10025

Maria DeLiberato
Counsel of Record
Brian W. Stull
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104

Counsel for Petitioner

QUESTION PRESENTED

For years, Tennessee death-row prisoner Tony Carruthers—who was forced to represent himself at trial—has maintained his innocence and unsuccessfully sought DNA testing. He is now scheduled to be executed tomorrow, May 21, without full testing of available evidence.

Tennessee's DNA Act of 2001, Tenn. Code Ann. §§ 40-30-304 and -305—enacted years after Mr. Carruthers's conviction—provides for mandatory or discretionary DNA testing on the application of a person convicted of a crime. After prior unsuccessful attempts to obtain testing, six weeks before his execution date, Mr. Carruthers petitioned again for DNA testing of key crime-scene evidence, including victims' fingernail scrapings and cloth bindings used on victims. The testing would have taken two weeks to complete.

Seeking to comply with a 2025 Tennessee Supreme Court rule, which requires that "any state court collateral litigation that would potentially affect the . . . timing of" a scheduled execution "must commence with the filing of a motion in" the state supreme court, Mr. Carruthers initially filed his petition for DNA testing in the Tennessee Supreme Court on April 9. Tenn. Sup. Ct. Rule 12.4(E). The Tennessee Supreme Court waited three weeks before issuing an order dismissing Mr. Carruthers's petition for lack of jurisdiction. Mr. Carruthers promptly re-filed his petition in the trial court, which took more than one week to deny his requests. He then appealed to the state's Court of Criminal Appeals. The Tennessee Supreme Court assumed jurisdiction of that appeal, and so Mr. Carruthers returned where he had started five weeks earlier. The Tennessee Supreme Court then denied his

request, and in doing so, 1) invoked timing considerations not pertinent under the plain text of the DNA Act; 2) relied on disavowed and discredited forensic testimony, and 3) failed to consider how favorable testing could have changed the outcome, as the DNA Act requires.

The question presented is:

> Whether the Tennessee Supreme Court's imposition of arbitrary procedural barriers, contrary to its own rules and state statutes, violated Petitioner's right under Tennessee law to DNA testing that would demonstrate his innocence or warrant a sentence reduction and thus deprived Petitioner of the liberty and property interests this Court has recognized in *Skinner v. Switzer*, 562 U.S. 521 (2011) and *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-31 (1981).

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner, petitioner-appellant below, is Tony Von Carruthers.

Respondent, respondent-appellee below, is the State of Tennessee.

LIST OF PROCEEDINGS

1. *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000) (direct appeal).

2. *Carruthers v. State*, No. W2006-00376-CCA-R3PD, 2007 WL 4355481 (Tenn. Crim. App. Dec. 12, 2007), *perm. app. denied* (Tenn. May 27, 2008) (state post-conviction).

3. *Carruthers v. Carpenter*, No. 2:08-cv-02425 (W.D. Tenn. Mar. 31, 2014) (federal habeas).

4. *Carruthers v. Mays*, 889 F.3d 273 (6th Cir. 2018) (federal habeas).

5. *Carruthers v. Mays*, 586 U.S. 1146 (2019) (federal habeas).

6. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD, 2026 WL 1257769 (Tenn. May 7, 2026) (competency to be executed).

7. *Carruthers v. State*, No. W2026-00226-CCA-R3-PD, 2026 WL 1031140 (Tenn. Crim. App. April 16, 2026) (denial of post-conviction fingerprint testing)

8. *State v. Carruthers*, No. W1997-00097-SC-DDT-DD (Tenn. April 30, 2026) (dismissal of Rule 12(4)(E) Motion on DNA testing)

9. *Carruthers v. State,* No. W2026-00706-SC-RDM-PD, 2026 WL 1396729 (Tenn. May 19, 2026) (denial of post-conviction DNA testing)

10. *Carruthers v. Skrmetti, et. al,* 3 :26-cv-00540, 2026 WL 1365275 (M.D. Tenn. May 15, 2026) (denial of motion for preliminary injunction and stay of execution)

11. *Carruthers v. Skmetti, et. al*, 26-5433 (6th Cir. May 20, 2026)

TABLE OF CONTENTS

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Cases

Other Authorities

Statutes, Rules, and Regulations

INTRODUCTION

Without this Court's intervention, in less than 24 hours, Tennessee will execute Tony Carruthers, after having arbitrarily denied him statutory DNA testing of crime-scene evidence critical to the question of his innocence and his role in the crime. The Tennessee Supreme Court denied Mr. Carruthers's petition for DNA testing, pursuant to a state statute specifically providing for such post-conviction requests, by imposing newly invented procedural hurdles that are contrary to the DNA Act and the court's own rules. By delaying their decisions on Mr. Carruthers's petition for DNA testing and ruling against him on technical, procedural grounds, the state courts ran out the clock on a petition that was originally filed in plenty of time for the requested DNA testing to be completed before the scheduled execution date.

Permitting the state court's decision denying potentially exculpatory DNA testing to stand, and Mr. Carruthers's execution to go forward, would compound previous injustices in this case and contravene the Tennessee DNA Act's dual purposes of ensuring that the innocent are not wrongfully convicted and that the criminal legal process reveals the truth of what happened. Those previous injustices began when Mr. Carruthers, who was mentally ill, was forced to represent himself at trial. They continued when the State presented false and inflammatory forensic evidence and suppressed, for decades, evidence that a key prosecution witness was a paid informant.

If executed, Mr. Carruthers will be the first pro se defendant to suffer that fate in over 100 years.[1] And as fully described below, his death will culminate a process that is irreconcilable with the constraints on judicial arbitrariness that this Court has consistently enforced for over six decades.

The Court should grant review because the Tennessee Supreme Court imposed arbitrary procedural barriers that deprived Mr. Carruthers of his liberty and property interests in DNA testing, contravening this Court's precedents. The Court should summarily reverse the decision below, and grant the accompanying application for a stay of execution. In the alternative, the Court should stay the execution, grant certiorari, and set this case for full briefing and oral argument.

OPINIONS AND ORDERS BELOW

State v. Carruthers, No. W1997-00097-SC-DDT-DD (Tenn. April 30, 2026) (dismissal of Rule 12(4)(E) Motion on DNA testing)

Carruthers v. State, No. W2026-00706-SC-RDM-PD, 2026 WL 1396729 (Tenn. May 19, 2026) (denial of post-conviction DNA testing and Motion to Compel)

Carruthers v. State, Nos. 94-02797, 94-02798, 94-02799, 95-111128, 95-11129, P-25948 (Tenn. Crim. Ct. 30th Jud. Dist. at Memphis May 11, 2026) (criminal court's denial of post-conviction DNA testing and Motion to Compel)

STATEMENT OF JURISDICTION

The Tennessee Supreme Court's decision denying relief to Mr. Carruthers was issued on May 19, 2026. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

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[1] *See* Steven Hale, *Tennessee Man Could Be the First Person In Nearly A Century To Be Executed After Being Forced to Represent Himself At Trial*, Appeal (Feb. 18, 2020), https://theappeal.org/tennessee-death-penalty/

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution states in pertinent part: "nor shall any State deprive any person of life, liberty, or property without due process of law[.]"

RELEVANT STATE LAW PROVISIONS

Tennessee Code section 40-30-304 provides as follows:

> After notice to the prosecution and an opportunity to respond, the court shall order DNA analysis if it finds that:
>
> (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
>
> (2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;
>
> (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
>
> (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tennessee Code section 40-30-305 provides as follows:

> After notice to the prosecution and an opportunity to respond, the court may order DNA analysis if it finds that:
>
> (1) A reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

Tennessee Supreme Court Rule 12.4(E) provides in pertinent part:

After a date of execution is set, any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court. Any response to the motion must be filed within five (5) days of the motion, unless a different response time is ordered by the Court.

STATEMENT OF THE CASE

I. LEGAL BACKGROUND

Tennessee's post-conviction DNA Act prescribes mandatory testing when "a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis," Tenn. Code Ann. § 40-30-304, and discretionary testing when "a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable," Tenn. Code Ann. § 40-30-305. Both provisions of the DNA Act include three other factors: that the evidence still exists and can be tested; that the evidence was not previously analyzed; and that the petition is made to demonstrate innocence and not for unreasonable delay. *Id.*

The DNA Act contains no time limit for filing. *Griffin v. State*, 182 S.W.3d 795, 799 (Tenn. 2006).

Under Tennessee Supreme Court Rule 12.4(E), "[a]fter a date of execution is set, any state court collateral litigation *that would potentially affect the* method or *timing of execution* must commence with the filing of a motion in this Court." Tenn. Sup. Ct. R. 12.4(E) (emphasis added). This is a new rule, promulgated in 2025. *In re Amendment of Tenn. Sup. Ct. R. 12.4(E)*, No. ADM2025-01930 (Tenn. Dec. 5, 2025) (Order). The state has carried out no prior execution under this version of the rule.

II. PROCEEDINGS IN THE STATE COURTS

A. Forced to Represent Himself at Trial, Mr. Carruthers Was Convicted and Sentenced to Die.

In 1996, Mr. Carruthers and his co-defendant, James Montgomery, were convicted after trial of three counts of first-degree murder and condemned to die.[2] Mr. Carruthers was forced to represent himself after the judge found that he had impliedly waived his right to appointed counsel.

At trial, the State presented no eyewitnesses, forensic evidence, or fingerprint evidence that inculpated Mr. Carruthers. *State v. Carruthers*, 35 S.W.3d 516, 524-30 (Tenn. 2000). To the contrary, the fingerprint evidence *excluded* Mr. Carruthers from the kidnapping crime scene, a fact which the jury never learned due to the State's selective evidentiary presentation and his inability to represent himself effectively. Pet. App. 471-494a.

Despite being without counsel, Mr. Carruthers "filed numerous pro se motions" even before his 1996 trial, which took place in an early era of DNA science, "including one requesting DNA evidence." *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *32 (Tenn. Crim. App. 2007). The trial court did not grant this motion.

Before trial, the General Sessions Court originally dismissed the case for lack of evidence. Pet. App. 89-90a. The State revived its prosecution by enlisting a paid

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[2] For further discussion of the facts of the underlying crimes, see *State v. Carruthers*, 35 S.W.3d 516, 524-30 (Tenn. 2000). For further discussion of his self-representation and the underlying constitutional issues, see *Carruthers v. Mays*, 889 F.3d 273, 280 (6th Cir. 2018).

informant, Alfredo Shaw, who claimed Mr. Carruthers had confessed to him—though the State never disclosed the fact that Shaw was a paid informant, and the jury never knew of it. (*See* Pet. App. 91-98a.) But before Mr. Carruthers' trial, Shaw recanted during a television interview, admitting the police pressured and paid him to testify falsely. (*See* Pet. App. 134a) At trial, the State nonetheless continued to rely on Shaw's testimony, as well as that of convicted felons and other paid informants. Defending himself pro se, Mr. Carruthers called Shaw as a defense witness.[3] But contrary to his statements on television, Shaw and other informants testified that they heard or overheard Mr. Carruthers making incriminating statements about his plans to commit the crime.[4] (*See Carruthers*, 35 S.W.3d at 524-29.)

Mr. Carruthers and his co-defendant James Montgomery were convicted and both were sentenced to death. At sentencing, the State relied on medical testimony "that the victims were . . . shot and buried alive," a fact the Tennessee Supreme Court eventually explicitly cited in finding the death sentence not disproportionate on appeal. *Carruthers*, 35 S.W.3d at 570. Notably, the State's expert witness later disavowed his testimony that the victims were buried alive. Pet. App. 730-738a.

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[3] Due to his recantation, the State did not initially call Mr. Shaw. *Carruthers*, 35 S.W.3d at 528. When Mr. Carruthers announced that he would do so, the State placed on the record that it would charge Mr. Shaw with aggravated perjury if he recanted on the record. *Id.* Mr. Shaw's attorney then announced that Mr. Shaw intended to testifying consistently with his grand jury testimony. *Id.* at 528-29. Notwithstanding this warning, Mr. Carruthers called him as a witness. *Id.* at 529.

[4] As described below, the fact the Shaw had been paid by the government was unknown to the jury at trial and was only revealed decades later after a Justice Review Unit was created by the Shelby County District Attorney's Office. Pet. App. 582-96a.

Mr. Carruthers's self-representation at trial, under a theory of implied waiver, was so catastrophic and prejudicial that the Tennessee Supreme Court ultimately reversed his *co-defendant's* convictions and death sentence. The court found "that [co-defendant James] Montgomery was severely prejudiced by Carruthers' self-representation, specifically, his offensive mannerisms before the jury, his questioning of witnesses that elicited incriminating evidence, and most importantly, his calling Alfredo Shaw to testify as a witness." *Carruthers*, 35 S.W.3d at 553-54.

B. After His Conviction and Sentencing, Mr. Carruthers Continues Unsuccessfully to Seek DNA Testing and Relief.

In 2007, the Tennessee Court of Criminal Appeals rejected Mr. Carruthers' claim that he had been denied the effective assistance of trial counsel in light of the failure of his original counsel (who represented him before he was forced to proceed pro se at trial) to request DNA testing. *Carruthers v. State*, No. W2006-00376-CCA-R3-PD, 2007 WL 4355481, at *40 (Tenn. Crim. App. 2007). In that 2007 proceeding, Mr. Carruthers sought DNA testing of a key piece of evidence that is still at issue today, *see infra*—a white blanket found with the victims' bodies. An expert witness co-defendant James Montgomery had determined that there was DNA on that blanket that did not belong to Montgomery, Carruthers, a second co-defendant who had died, or any of the victims. 2007 WL 4355481, at *33.

In 2006, based on that DNA testing, the State offered Montgomery an *Alford* [5] plea to reduced charges, and a sentence of 27 years in prison, to be served

[5] *Alford v. North Carolina*, 400 U.S. 25 (1970).

concurrently on each count, with all credit for time served. He was released in 2015 and remains free. Pet. App. 500-535a.

In 2011, Mr. Carruthers again sought DNA testing, including of the same white blanket that remains at issue today. *Carruthers v. State*, No. W2012-01473-CCA-R3-PD, 2013 WL 3968787, at *1 (Tenn. Crim. App. Aug 1, 2013), *perm. app. denied* (Tenn. Dec. 10, 2013). The Tennessee courts denied this request. *Id.* at 5.

In 2010 and 2011, Montgomery told investigators for Mr. Carruthers that he was not involved in the crimes and that Montgomery had enlisted another man, Ronnie "Eyeball" Irving, to assist in the kidnapping and murders. Pet. App. 23a, 500-536a. Mr. Irving was murdered in 2002, and his fingerprints and a DNA sample are on file at the medical examiner's office. Pet. App. 730-738a.

C. Key Exculpatory Information Comes to Light After Trial.

As noted above, *supra* at 9, key evidence at trial included the testimony of Alfredo Shaw at the liability phase and the State's medical examiner at the sentencing phase. After trial, that evidence was undermined by new disclosures.

First, the medical examiner disavowed his trial testimony, which the Tennessee Supreme Court had relied on in denying relief, that the victims were buried alive. *Carruthers*, 35 S.W.3d at 527. No medical evidence or science supported his trial testimony. Pet. App. 155a, 682a, 687a, 715-16a. Yet the prosecution had relied on the medical examiner's scientifically baseless testimony as its primary argument for the death penalty during the sentencing phase of the trial (*Carruthers*, 35 S.W.3d at 527). One of Mr. Carruthers' original jurors has now said that had he

"known the victims were not buried alive," he "would not have voted for a death sentence." Pet. App. 727a. And yet, astoundingly, the State continues to rely on the medical examiner's testimony [6].

Second, in 2024, thirty years after trial, the State finally confirmed what Mr. Carruthers always suspected: Shaw was a paid government informant. Pet. App. 582-583a. The jury never heard this information, because the prosecution successfully objected when Mr. Carruthers attempted to question Shaw about whether he was a paid informant. Pet. App. 536-538a.

D. Mr. Carruthers's Third Petition for DNA Testing Under Tennessee State Law.

Six weeks ago, Mr. Carruthers made his third and most recent DNA testing request in the Tennessee courts (in addition to the ineffective assistance of counsel claim he raised for trial counsel's failure to seek DNA testing pretrial). Now represented by counsel, he requested initial testing of several items of available forensic evidence, including (a) fingernail scrapings from all three victims; and (b) cloth bindings from the victims' bodies. Pet. App. 1-51a. In addition, Mr. Carruthers sought comparison of the unknown DNA from the white blanket found with the victims' bodies with the DNA of Ronnie Irving, whom Mr. Carruthers's co-defendant

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[6] The State argued in its opposition to Mr. Carruthers' petition in the Tennessee Supreme Court that "the trial testimony that the victims were buried alive would have weighed heavily in favor of the death sentences" and that "[t]he suggestion that the expert later qualified his testimony does not change what was presented to the jury . . . ." State's Br. at 29-30. It has done the same in its public statements. *See*, e.g., Evan Mealins, *Tennessee Supreme Court sets 2026 execution dates for Christa Pika, three others,* The Tennessean (Oct. 1, 2025), https://perma.cc/VG3H-KZ72.

James Montgomery identified as the person who actually committed the crime. (*See supra*; Pet. App. 730-37a)

Mr. Carruthers supported that request with the findings of a forensic expert, Alan Keel, who concluded that modern DNA technology—which has advanced dramatically since the limited testing in 2003—can now likely obtain profiles from each of the untested items that could exclude Mr. Carruthers and/or identify the actual perpetrator. (Pet. App. 473-497a). This testing would take two weeks. *Id.* The Tennessee trial court credited this showing, finding it likely that each item "bear[s] transfer biology from whomever bound the victims." Pet. App. 479a. The Court therefore found that Mr. Carruthers had fulfilled the statute's second criterion—that the evidence remains in existence in such a condition that DNA testing is feasible. *Id.*

One of Mr. Carruthers's original jurors has now stated that "[a] DNA match with a different person would make me doubt Mr. Carruthers' guilt." Pet. App. 725a.

Mr. Carruthers filed his DNA testing petition in compliance with Tennessee Supreme Court Rule 12.4 (E). Because testing could "*potentially* affect the timing of his execution," *id.*, six weeks before his execution date he filed a petition in the Tennessee Supreme Court seeking testing of the specified items. He did not file an application for stay of execution because his execution date was still six weeks away. But as days and then weeks passed, the court did not rule. Finally, three weeks after Mr. Carruthers filed his petition, the Tennessee Supreme Court concluded that it had no jurisdiction to hear his motion. Pet. App. 52-23a.

Mr. Carruthers promptly re-filed in the lower state court, still with enough time to complete the two-week process for the requested testing prior to his execution date. The lower court took eight additional days, only to deny the motion as both insufficient and untimely. Pet. App. 738-753a. On appeal, the Tennessee Supreme Court affirmed the order denying DNA testing on May 19, 2026, finding that Mr. Carruthers sought DNA testing to delay his execution and that the DNA testing would not meet the requirement that the results might affect the outcome, Tenn. Code § 40-30-305(1); § 40-30-304(1), by crediting both the "buried-alive" evidence the State's medical examiner has long-since disavowed and the testimony of Alfredo Shaw, as though the State hadn't confessed, years after trial, that it failed to disclose at trial that he was a paid informant. Pet. App.764-767a.

In sum, for the last six weeks, Mr. Carruthers has asked multiple Tennessee state courts for DNA testing of concededly available forensic evidence, which could have been completed within two weeks. The state courts ultimately agreed that the items he requested to test were both in a condition suitable for testing and had never been subjected to the type of testing that Mr. Carruthers requested. Pet. App. 749a. But the courts have persisted in denying the testing up to this eve of his execution, while Mr. Carruthers was bounced from court to court despite following state law and the Tennessee Supreme Court's rules.

REASONS FOR GRANTING THE WRIT

Since at least 1996, often acting as his own counsel, Tony Carruthers has repeatedly and consistently sought DNA testing of key evidence. Now supported by a

state statute enacted years after his trial and conviction, and a trio of this Court's recent decisions, he seeks to vindicate his constitutionally protected liberty interest in accessing Tennessee's statutory post-conviction DNA testing procedures. *See generally Skinner v. Switzer*, 562 U.S. 521 (2011); *Reed v. Goertz*, 598 U.S. 230 (2023); *Gutierrez v. Saenz*, 606 U.S. 305 (2025). While the state-asserted federal-court barriers presented and rejected in those cases do not exist here, the underlying liberty interest is the same: Like Henry Skinner and Ruben Gutierrez before him in Texas, he seeks to use state DNA testing procedures "'to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence.'" *Gutierrez*, 606 U.S. at 314-15 (quoting *Skinner*, 562 U.S. at 530). Like the litigants who have come before him, he has identified with specificity the forensic evidence he seeks to test; that evidence has not previously been tested, and it remains available for testing. *See* Tenn. Code § 40-30-304 (2) & (3) (requiring the evidence to remain in existence in suitable condition for DNA testing and that it has never been previously DNA tested or that analysis now requested could resolve an issue not resolved by prior analysis); Tenn. Code § 40-30-305 (same).

The Court should grant the writ because the Tennessee courts have denied Mr. Carruthers access to such procedures in violation of the Due Process Clause, based on arbitrary and irrational constructions of the applicable statutes and rules. *See generally Bouie v. City of Columbia*, 378 U.S. 347 (1964); *Marks v. United States*, 430 U.S. 188 (1977). Rather than apply those statutes and rules, which would have resulted in a grant of his request and the prompt testing of the evidence well in

advance of his scheduled execution date, the Tennessee Supreme Court first rejected his original, timely petition on technical grounds, taking three weeks of the six-week window before his execution date; then after he re-filed his petition in a lower court and it circled its way back to the Tennessee Supreme Court, it denied the petition as untimely—all based on unforeseeable constructions of Tennessee procedure. The state courts also rejected Mr. Carruthers's request for DNA testing on the ground that it would not have made a difference in the outcome, but to reach that conclusion they relied on discarded and refuted evidence, and set standards that would render it virtually impossible for any litigant to obtain testing.

I. THE TENNESSEE SUPREME COURT'S DECISION IS ARBITRARY AND DENIES DUE PROCESS, CONFLICTING WITH THIS COURT'S DECISIONS.

The Tennessee Supreme Court's ruling denying Mr. Carruthers' petition for DNA evidence that could prove his innocence or require reduction of his sentence, and its arbitrary procedural rulings, deprive him of due process and conflict with this Court's precedents in *Skinner*, *Reed* and *Gutierrez*, and the basic requirements of due process set out repeatedly by this Court. *See*, *e.g.*, *Baldwin v. Hale*, 1 Wall. 223, 233 (1864) ("Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense"); *In re Oliver*, 333 U.S. 257, 273 (1948); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (emphasizing that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

The state court's ruling runs contrary to Tennessee law in a completely unforeseeable manner that deprived Mr. Carruthers of the notice needed to avail himself of statutory testing. DNA testing is mandatory under Tennessee law whenever when "a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis," Tenn. Code Ann. § 40-30-304, and is discretionary when "a reasonable probability exists that analysis of the evidence will produce DNA results that would have rendered the petitioner's verdict or sentence more favorable," Tenn. Code Ann. § 40-30-305.

Tennessee law imposes no statutory time limitation for filing a petition for DNA analysis under the DNA Act. *Griffin*, 182 S.W.3d at 799 (confirming that the DNA Act "gives petitioners the opportunity to request analysis at 'any time'"). And a petitioner cannot waive the right to DNA analysis under the Act by implication. *See id.*; *see also* Tenn. Code. Ann. § 40-30-305 (2024) (statute expressly permits retesting when the evidence was not subjected "to the analysis that is now requested"). The only statutory requirement is that a request for DNA testing be made "for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or the administration of justice." Tenn. Code Ann. §§ 40-30-304(4); 40-30-305(4).

Tennessee Supreme Court Rule 12.4(E) provides a facially clear directive: "After a date of execution is set, any state court collateral litigation that would potentially affect the method or timing of execution must commence with the filing of a motion in this Court." The explanatory comment to the amendment similarly

states: "Section 4(E) was amended to set forth the procedures for state court collateral litigation potentially affecting the method or timing of execution that is filed after a date of execution is set." Tenn. Sup. Ct. R. 12.4(E).

Seeking a DNA testing process that would take two weeks, and with six weeks to go before his scheduled execution date, Mr. Carruthers filed precisely where the Rule directed, in the Tennessee Supreme Court. Waiting until half of that window (three weeks) had passed, the Tennessee Supreme Court denied relief, inexplicably holding that it had no jurisdiction to consider his filing. Pet. App. 52-53a. When Mr. Carruthers returned on appeal to the court with his request for testing, after re-filing in the trial court, the Tennessee Supreme Court, now with the execution date only two days away, agreed with the lower court that he filed "for the purpose of delaying his execution and, in turn, failed to establish the fourth criterion of both the mandatory and discretionary provisions of the DNA Act." Pet. App. 749-50a, 752a.

By affirming Mr. Carruthers' entrapment in a procedural morass without having provided notice of how to access testing in the first instance, these decisions by the Tennessee Supreme Court contravene basic due process precedents of this Court. *Baldwin*, 1 Wall. at 233; *In re Oliver*, 333 U.S. at 273; *Mullane,* 339 U.S. at 314 (emphasizing that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"). Nowhere is the need for such notice more fundamental than in the capital context. *See Lankford v. Idaho*, 500 U.S. 110, 125–26 (1991).

The Court has repeatedly applied these when criminal charges have been based on unforeseeable judicial interpretations of criminal statutes. Thus, in *Bouie v. City of Columbia*, 378 U.S. 347 (1964), this Court established that an unforeseeable judicial interpretation of a statute that contradicts the statute's plain text violates the Due Process Clause—operating as the judicial equivalent of an ex post facto law. The Court held that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, § 10, of the Constitution forbids." *Id.* at 353. *See also Marks*, 430 U.S. at 191-92 (applying *Bouie*'s fair-warning principle to the retroactive broadening of judicial standards); *Shuttlesworth v. Birmingham*, 382 U.S. 87, 90-92 (1965) (holding that a person cannot be penalized for failing to comply with an unconstitutional or nonexistent legal requirement); *Cole v. Arkansas*, 333 U.S. 196, 201 (1948) (holding that due process requires judgment and appeal on the legal theory actually given notice of and tried).

As this Court has pointed out in finding that a change in state evidentiary standards violated the Ex Post Facto Clause, "[t]here is plainly a fundamental fairness interest, even apart from any claim of reliance or notice, in having the government abide by the rules of law it establishes to govern the circumstances under which it can deprive a person of his or her liberty or life." *Carmell v. Texas*, 529 U.S. 513, 533 (2000). The Tennessee Supreme Court contravened this basic due process requirement; its orders are grotesquely unfair.

While these cases arise in the criminal-charging context, their animating principle—that due process forbids the retroactive application of unforeseeable

judicial constructions—extends to any deprivation of a constitutionally protected interest. The Tennessee Supreme Court contravened this basic principle in two ways: (1) in ruling first that Mr. Carruthers filed in the "wrong court," when Rule 12.4(E) expressly directed him to file in the Tennessee Supreme Court; and (2) in ultimately concluding when considering the same request, on appeal after he re-filed the same petition in the lower court as directed, that his subsequent filing was "untimely," notwithstanding that the DNA Act contains no filing deadline whatsoever and that the Tennessee Supreme Court's initial "wrong court" holding prolonged the delay. Such bait and switch "notice" is incompatible with over century of this Court's due process jurisprudence. *Cf. NAACP v. Alabama ex rel. Patterson,* 357 U. S. 449, 457 (1958) ("Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified re-liance upon prior decisions, seek vindication in state courts of their federal constitutional rights."); *Cruz v. Arizona*, 598 U.S. 17, 26-27 (2023) (applying *NAACP v. Alabama ex rel. Patterson* in context of unforeseeable appellate court decision that broke with prior state precedent).

Mr. Carruthers followed the letter of both the Tennessee DNA Act and the Tennessee Supreme Court rule requiring that he file his petition in that court. The Tennessee Supreme Court denied his petition by imposing procedural rules that were contrary to the court rule and the statute. As a result, Mr. Carruthers was deprived of his right to DNA testing under the state statute, with life-or-death consequences—a right protected by the Due Process Clause. *See Gutierrez*; *Dist. Atty.'s Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52 (2009).

II. THE PROCEDURAL MORASS CREATED BY THE COURT BELOW VIOLATED DUE PROCESS.

Even if one were to assume that the TSC accurately and validly read its court rule, its decision still could not stand.

Long before DNA testing existed, the Court recognized that rights created by state law were a form of "property" protected from arbitrary deprivation. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-31 (1981) (citing cases).

The particular statutory entitlement at issue in *Logan* was access to a state adjudicatory procedure for determining whether petitioner had been subjected to impermissible employment discrimination. Although he timely filed his claim, the tribunal to adjudicate it – through no fault of his – failed to convene within the time period provided by state law. As a result, the Illinois Supreme Court held, Logan lost his right to pursue his claim. The Court reversed.

In light of the competing interests involved – including "the importance of the private interest and the length or finality of the deprivation; the likelihood of governmental error; and the magnitude of the governmental interests involved, *id.* at 434 (citing, e.g. *Mathews v. Eldridge*, 424 U.S. 319 (1976) (citation modified)) – this Court concluded that to deprive Logan of his statutory rights in such "a random manner" presented "an unjustifiably high risk that meritorious claims will be terminated." *Logan*, 455 U.S.at 434-35.

What is true of Mr. Logan is a fortiori true of Mr. Carruthers. He has a private interest of the highest order in pursuing his statutory rights; the risk of government error is high; the costs to the government of granting him his statutory rights are low;

and he has through no fault of his own been deprived of those rights in a random manner.

In their papers below, the respondents have denigrated all this by accusing Mr. Carruthers of last-second gamesmanship for the purpose of delaying his well-deserved execution. The courts below have adopted this theory, stating that Mr. Carruthers could have sought DNA testing years ago. But this ignores the court's own acknowledgment, and most of the facts reviewed above, that Mr. Carruthers has for decades been seeking DNA testing. Pet. App. 760a.

And the record is undisputed that the renewed DNA testing Mr. Carruthers requested from the TSC in the first instance on April 9, 2026, could have been completed in approximately two weeks, well before his scheduled execution. Pet. App. 481a ¶ 17. Had the State agreed to the testing at the outset, it would have been complete before May had even begun. *See id.* Indeed, in his April 9, 2026, request for DNA testing, Mr. Carruthers did not request a stay of execution because the testing could be completed in time without delaying his scheduled execution date.

Even after the TSC waited until April 30 to deny his original motion and send him to the Criminal Court, Mr. Carruthers *still* did not ask for a stay. When he filed the DNA Motion in the Criminal Court on May 4, there remained time to complete the testing before the execution date. *See id.*

It was only after the Criminal Court denied the DNA Motion a week later and he filed his Notice of Appeal to the Court of Criminal Appeals ("CCA") on May 13 (eight days before his scheduled execution) that Mr. Carruthers filed a motion to stay

his execution. *See* Mot. Stay Execution, *Carruthers v. State*, No. W1997-00097-SC-DDT-DD (Tenn. May 13, 2026).

Mr. Carruthers, through counsel, has thus been diligently seeking DNA testing for nearly six weeks now, being bounced around between the Tennessee courts in search of his statutory rights and answers. *Cf. Logan*, 455 U.S. at 429-30 ("[T]he Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be 'the equivalent of denying them an opportunity to be heard upon their claimed right[s].'" (quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971)).

The Tennessee legislature explicitly granted prisoners the right to DNA testing for the purpose of enabling them to pursue potentially meritorious claims of innocence. The Tennessee courts have been running out the clock, and respondents now seek to blame Mr. Carruthers for those delays.

This Court should reject that invitation. Mr. Carruthers has a due process right to obtain the DNA testing that may result in his walking out of prison as a free man, or at least reducing his sentence of death, *Gutierrez*, 606 U.S. at 314-15 (quoting *Skinner*, 562 U.S. at 530) that is of considerably greater weight than the respondents' asserted interest in executing him first. See *Reed v. Goertz*, 146 S. Ct. 936 (2026) (Sotomayor, J., dissenting from the denial of certiorari).

III. THE TENNESSEE COURTS VIOLATED MR. CARRUTHERS'S DUE PROCESS RIGHTS BY RELYING ON TRIAL TESTIMONY THAT HAS BEEN DISAVOWED AND DISCREDITED TO DENY THE REQUEST FOR DNA TESTING.

In addition to denying Mr. Carruthers's petition based on a Kafkaesque ruling that it was untimely, the Tennessee Supreme Court also held that Mr. Carruthers was not entitled to DNA testing because there was not a reasonable probability that he would not have been prosecuted or convicted in exculpatory results were obtained (under § 40-30-304) or that the results would render the verdict or sentence more favorable (under § 40-30-305). The state court reached this conclusion based on its assertion that other evidence—namely, the testimony of Alfredo Shaw that Mr. Carruthers had confessed the crime, and the medical examiner's testimony that the victims were buried alive, would have secured the conviction and death sentence regardless of the DNA test results. But those two witnesses' testimony have been entirely undermined by subsequent revelations. The State finally admitted nearly 30 years after the trial that it had failed to disclose that Shaw was a paid informant; and this fact would have undermined Shaw's credibility. Pet. App. 584-625a. And the State's medical examiner disavowed his trial testimony and acknowledged that there was no medical evidence that the victims were buried alive. Pet. App. 155a, 682a, 687a, 715-16a.

By relying on the trial testimony that has since been discredited, and refusing an evidentiary hearing on the request for DNA testing, the Tennessee Supreme Court violated the basic guarantee of a right to be heard. *Logan*, 455 U.S. at 429-30; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Mr. Carruthers's request for DNA testing easily met the statutory requirement of an impact on the outcome. Testing could show that DNA on items found on or with

the victims belonged to Irving, the man co-defendant Montgomery identified as the perpetrator. Thus, DNA testing would potentially be exculpatory or, at minimum, render the verdict or sentence more favorable.

But the Tennessee Supreme Court ignored this. Instead, it found that "the [medical examiner's] opinion that the victims were buried alive would" continue to "weigh heavily in favor of death sentences." Pet. App. 759a, 766a. But the State has not disputed the medical examiner's disavowal of his trial testimony that the victims were buried alive, and his acknowledgment that there was no scientific basis for that opinion. Pet. App. 155a, 682a, 687a, 715-16a. Mr. Carruthers has repeatedly brought this fact to the attention of the Tennessee courts. Pet. App. 22a, 64a, 126a, 152a. Mr. Carruthers' right to be heard was not honored when the Tennessee courts explicitly relied on a disavowed, inflammatory factual assertion in favor of a death sentence as a basis to deny testing. *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (noting "principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction" is "implicit in any concept of ordered liberty").

In context, without the buried alive testimony, with the possibility of another assailant such as Irving, and without DNA evidence of Mr. Carruthers on either ligatures or fingernail scraping of the victims,[7] a death sentence is certainly less probable, as one of the Carruthers jurors has already stated. Pet. App. 724-727a.[8] *See*

[7] As the court below correctly acknowledged, Tennessee law requires that the court presume the DNA testing would be favorable. Pet. App. 763a (citing *Powers v. State*, 343 S.W.3d 36, 55 n.28 (Tenn. 2011)).

[8] The juror's declaration is merely illustrative of what a fact finder may well decide, and was not offered as evidence.

also Lockett v. Ohio, 438 U.S. 586, 608 (1978) (discussing "comparatively minor role" as example of mitigation evidence).

The Tennessee Supreme Court's dogged reliance on the testimony of Alfredo Shaw, without giving Mr. Carruthers an opportunity to be heard on the post-trial disclosures that undermined that testimony, similarly violated Mr. Carruthers's due process rights. Pet. App. at 759a, 764a. Here, again, the courts were on explicit notice that the State, after years of suppressing this evidence, had admitted that Shaw was a paid informant. Pet. App. 601-625a. Yet in finding no reasonable probability exculpatory DNA testing would have changed the outcome, the courts explicitly cited "Mr. Carruthers' confession to Alfredo Shaw[,]" while ignoring this significant credibility problem. See, e.g., *On Lee v. U.S.*, 343 U.S. 747, 757 (1952) ("The use of informers, accessories, accomplices, false friends, or any of the other betrayals which are 'dirty business' may raise serious questions of credibility."); *Banks v. Dretke*, 540 U.S. 668, 701 (2004) (citing *On Lee*).

In sum, DNA showing Irving's involvement, which co-defendant James Montgomery had previously alleged, would have changed the picture dramatically. The Tennessee courts' refusal to acknowledge that reality, and its reliance on disavowed and tainted testimony in doing so, amounted to a violation of the Due Process Clause.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Melanie C. Verdecia, Esq.
QUARLES & BRADY LLP
101 East Kennedy Blvd., Suite 3400
Tampa, FL 33602

Lucas Cameron-Vaughn
ACLU OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212

Eric M. Freedman
Siggi B. Wilzig
HOFSTRA UNIVERSITY SCHOOL OF LAW
250 West 94th Street
New York, NY 10025

Maria DeLiberato
Counsel of Record
Brian W. Stull
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104

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Counsel for Petitioner