No. 18-8561

IN THE
Supreme Court of the United States

JEFFERY LEE WOOD,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

BRIEF IN OPPOSITION

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

ADRIENNE McFARLAND
Deputy Attorney General
For Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

MATTHEW OTTOWAY
Assistant Attorney General
Counsel of Record

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 936-1400
matthew.ottoway@oag.texas.gov

Counsel for Respondent

CAPITAL CASE

QUESTIONS PRESENTED

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

2. Whether the Court should expend its limited resources to consider highly fact-bound questions, raised for the first time in last-minute litigation, where there has been no adversarial briefing, no fact finding, and no merits analysis in the court below, and which would greatly expand death penalty ineligibility or postconviction process.

3. Whether the Court should create a new rule of death penalty exemption in a case where the petitioner has not adequately briefed it, his evidence does not support it, and he would not, as a matter of fact, fall within its ambit.

4. Whether the Court should create a new, constitutionally-enshrined postconviction process despite rules against retroactivity and a lack of footing in due process.

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BRIEF IN OPPOSITION

The State of Texas respectfully submits this brief in opposition to the petition for a writ of certiorari filed by Jeffery Lee Wood.

STATEMENT OF THE CASE

I. Facts Concerning Wood's Guilt of Capital Murder and the Trial on the Merits

> Shortly after 6:00 a.m. on January 2, 1996, while [Wood] remained outside in a vehicle that [he] had borrowed from his brother, Danny Reneau entered a Texaco station located near IH-10 in Kerrvil[l]e, Texas and fatally shot store clerk Kriss Keeran with a .22 caliber pistol. Reneau and [Wood] then removed the store's safe, cash box, and the videotape recorder connected to the store's security camera. They proceeded directly to the home of [Wood's] parents in Devine, Texas, disposing of the murder weapon along the way. Upon their arrival at the Wood residence, Reneau and [Wood] unsuccessfully attempted to open the safe before they settled for withdrawing a portion of the money inside the safe through a slot in the bottom. When their efforts to sledge-hammer open the safe woke [Wood's] younger brother, Jonathan, they played the videotape showing Reneau's fatal shooting of Keeran for Jonathan before directing him to destroy the tape with a blow torch.
>
> [Wood] and Reneau were both arrested late on the evening of January 2, 1996. [Wood] gave police two statements concerning his involvement in Keeran's murder. In his first statement, which [he] gave during the early morning hours of January 3, 1996, [Wood] attempted to downplay his advance knowledge of Reneau's plan to rob the store and insisted that Keeran was his good friend. Approximately twelve hours later, however, [Wood] gave a second statement to law enforcement officers, in which he

admitted that (1) he knew Reneau was going to rob the store, (2) he and Reneau returned to their residence at one point in the hours before the robbery to trade one gun for another that Reneau felt would not be as loud when it fired, and (3) he anticipated that Reneau would shoot Keeran if Keeran refused to cooperate with the robbery.

. . . .

The guilt-innocence phase of [Wood's] capital murder trial began on February 23, 1998. In addition to the evidence and testimony outlined above, the jury watched a videotape of the crime scene taken minutes after the discovery of Keeran's body. The jury also heard testimony from another employee of the gas station that, in the weeks prior to Keeran's fatal shooting, [Wood] and Reneau had often discussed with him the possibility of robbing the store with his cooperation but that he had always considered such discussions to be a joke.

After the State rested, [Wood's] trial counsel called [Wood's] girlfriend, who testified that (1) Reneau and her sister were living with her and [Wood] at the time of the murder, (2) she was aware that [Wood] and Reneau planned to rob the gas station, (3) Reneau insisted that he carry a gun during the robbery, (4) the plan was for Reneau and [Wood] to rob the store before the banks opened on January 2 because they had learned from store employees that a large sum of cash would be in the safe at that time, (5) Reneau and [Wood] went to the store the afternoon before the robbery to talk with Keeran and learned that Keeran would not cooperate with their planned robbery, and (6) when Reneau and [Wood] left their home at approximately 5:30 a.m. on January 2, 1996, she believed they were headed to Devine.

On the morning of February 25, 1998, after deliberating less than ninety minutes, the jury returned its verdict, finding [Wood] guilty of capital murder.

Wood v. Dretke, 386 F. Supp. 2d 820, 826–28 (W.D. Tex. 2005) (footnotes omitted)

II. Facts Relevant to Punishment and the Sentencing Phase of Trial

[T]he prosecution presented evidence, including [Wood's] hand-written confession, implicating [he] and Reneau in the armed robbery of a grocery store in Kerrville on November 30, 1995, slightly more than a month before Keeran's murder.

The prosecution called the Kerr County Sheriff, the administrator of the Kerr County Jail, and a jailer at that facility to testify regarding (1) an incident on December 29, 1996 in which [Wood] and Reneau were observed standing on the sinks in their respective cells talking to each other through an air vent about a possible car-jacking should they successfully escape from the jail, (2) an incident on February 29, 1996 in which [Wood] (a) reacted violently to a denial (pursuant to jail policy) of his request that jail officials transfer funds from his inmate account into Reneau's account, (b) insisted on pressing the emergency buzzer in his cell and refused to cease doing so when directed to stop by jail personnel, (c) even more violently resisted the efforts of jail employees to move him to a detoxification cell, (d) assaulted one of the guards who moved [Wood] on that date, and (e) threatened to kill several of the jail employees who finally did manage to move him, and (3) a letter [Wood] wrote to Reneau while they were both inmates at the Kerr County Jail in which [Wood] bragged about filing charges against the guards who had moved him and indicated that he planned to "go places" once he was released on bond.

Finally, the prosecution called Dr. James P. Grigson, who testified that, in his opinion (1) [Wood] would most certainly commit future acts of violence and did represent a threat to society, (2) [Wood's] attention deficit disorder did not cause [his] criminal behavior, and (3) [Wood] had experienced difficulty controlling his anger throughout his years in school.

[Wood's] trial counsel did not cross-examine any of the prosecution's punishment-phase witnesses and offered no evidence on [his] behalf. During yet another in-chambers

> conference held immediately after both parties closed at the punishment phase of trial, [Wood] (1) stated that his trial counsel had done precisely as he had directed them at the punishment phase of trial and (2) directed his trial counsel not to present any argument on [his] behalf.
>
> After the prosecution made its closing argument, the jury deliberated slightly more than an hour before it returned its verdict at the punishment phase of trial, finding (1) beyond a reasonable doubt there was a probability [Wood] would commit criminal acts of violence that would constitute a continuing threat to society, (2) [Wood] either actually caused Kriss Keeran's death or intended to kill Keeran or another or anticipated that a human life would be taken, and (3) beyond a reasonable doubt there were insufficient mitigating circumstances to warrant a life sentence. Based on the jury's findings, that same date, the trial court imposed a sentence of death.

Id. at 833–34 (footnotes omitted).

III. Course of State and Federal Proceedings

Wood appealed his conviction to the Texas Court of Criminal Appeals (CCA), which unanimously affirmed it. *Wood v. State*, 18 S.W.3d 642 (Tex. Crim. App. 2000). He did not petition this Court for further review of his direct appeal.

While his direct appeal was pending, Wood filed his first state habeas application. 1.SHCR-01, at 8–184.[1] After considering the record,

[1] "SHCR-01" refers to the documents and pleadings filed in Wood's initial state habeas proceeding, or state habeas clerk's record, preceded by volume and followed by page numbers.

the state habeas trial court recommended denial of relief. 2.SHCR-01, at 4–15. The CCA reviewed the record, adopted the state habeas trial court's proposal, and denied relief. *Ex parte Wood*, No. WR-45,500-01 (Tex. Crim. App. May 9, 2001). Wood did not seek review of the denial of state habeas relief from this Court.

Following the denial of state relief, Wood filed a petition for a writ of habeas corpus in federal court, which the district court denied, though it granted three certificates of appealability (COA). *Wood v. Dretke*, 386 F. Supp. 2d 820 (W.D. Tex. 2005). The United States Court of Appeals for the Fifth Circuit denied a request for an additional COA, *Wood v. Quarterman*, 214 F. App'x 473 (5th Cir. 2007), and affirmed the denial of federal habeas relief, *Wood v. Quarterman*, 491 F.3d 196 (5th Cir. 2007). This Court then denied Wood a writ of certiorari. *Wood v. Quarterman*, 131 S. Ct. 2445 (2008).

Wood's execution was thereafter scheduled for August 21, 2008, by the state trial court. Order Setting Execution, *State v. Wood*, No. A96-17 (216th Dist. Ct., Kerr County, Tex. May 6, 2008). This execution date was stayed by the federal district court pending a hearing on Wood's competence for purposes of execution. *Wood v. Quarterman*, 572 F. Supp.

2d 814 (W.D. Tex. 2008). Following a hearing, the district court found Wood competent to be executed and denied him a COA. *Wood v. Thaler*, 787 F. Supp. 2d 458 (W.D. Tex. 2011). The Fifth Circuit, however, granted a COA, *Wood v. Stephens*, 540 F. App'x 422 (5th Cir. 2013), but ultimately affirmed the competency finding, *Wood v. Stephens*, 619 F. App'x 304 (5th Cir. 2015). The Court then denied Wood's petition for writ of certiorari. *Wood v. Stephens*, 136 S. Ct. 1180 (2016).

The state trial court set another date for Wood's execution, this time August 24, 2016. Execution Order, *State v. Wood*, No. A96-17 (216th Dist. Ct., Kerr County, Tex. May 20, 2016). About three weeks later, Wood filed a subsequent state habeas application raising eight claims. 1.SHCR-02, at 14–113.[2] The CCA stayed Wood's execution and remanded two of these claims—based on allegations of false evidence—to the trial court for merits review. Order, *Ex parte Wood*, No. WR-45,500-02, 2016 WL 4445748, at *1 (Tex. Crim. App. Aug. 19, 2016). After additional briefing, the trial court recommended granting relief, 5.SHCR-02, at 28–33, but the CCA disagreed with the recommendation. The CCA found that, even

[2] "SHCR-02" refers to the documents and pleadings filed in Wood's second-in-time state habeas proceeding, or state habeas clerk's record, preceded by volume and followed by page numbers.

assuming falsity of the challenged evidence, it was not material, denying relief on the merits of the two false-evidence claims. *Ex parte Wood*, No. WR-45,500-02, 2018 WL 6076407, at *1–2 (Tex. Crim. App. Nov. 21, 2018). As to the remaining "claims regarding [Wood's] competency to stand trial" and the "challenges to his death sentence and the Texas death penalty scheme," the CCA found that he "failed to satisfy the requirements of Article 11.071, § 5(a) [of the Texas Code of Criminal Procedure]," so it "dismiss[ed] th[o]se claims as an abuse of the writ without reviewing the merits." *Id*. at *2.

REASONS FOR DENYING THE PETITION

The claims for which Wood seeks review were dismissed on an adequate and independent state law ground thus depriving the Court of jurisdiction to hear them. Jurisdiction notwithstanding, Wood fails to provide a single compelling reason to grant a writ of certiorari. So thorough is this failure, he dedicates but a scant few sentences discussing factors normally utilized by the Court in granting certiorari review. This absence of justification lays bare his true request—mere error correction. When Wood's motivation is properly framed, it exposes what a poor vehicle for review this case presents—fact-bound questions without

adversarial briefing, evidentiary development, or merits analysis in the court below. If such a procedural posture were to ever present an adequate means for review, it certainly does not in a case seeking to create a new rule of death penalty exemption or postconviction process. In any event, Wood's claims have no merit, either because non-retroactivity bars them or because they lack legal or factual support. The Court should deny his petition.

I. The Court Below Dismissed Wood's Claims on an Adequate and Independent State Law Ground Depriving the Court of Jurisdiction.

Wood seeks further review of three claims: (1) that he possessed insufficient culpability to warrant a death sentence, (2) that evolving standards of decency render his death sentence incompatible with the Eighth Amendment, and (3) that due process requires a current evaluation of his dangerousness because his capital sentence is predicated on a finding of future danger. Pet. Cert. 23–40. Despite the CCA's explicit statement that it was not "reviewing the merits" of these claims, Wood argues that it did so sub silentio, meaning the Court can reach them too. *Id.* at 23–24. But he is wrong, and the CCA's dismissal on a state law ground strips the Court of jurisdiction.

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment 'if that judgment rests on a state law ground that is both 'independent' of the merits of the federal claim and an 'adequate' basis for the court's decision.'" *Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)). The state law ground barring federal review may be "substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

To be adequate, a state law ground must be "'firmly established and regularly followed.'" *Lee v. Kemna*, 534 U.S. 362, 885 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). Discretion does not deprive a state law ground of its adequacy for a "discretionary rule can be 'firmly established' and 'regularly followed' even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Ultimately, situations where a state law ground is found inadequate are but a "small category of cases." *Kemna*, 534 U.S. at 381.

A state law ground is "independent of federal law [when it] do[es] not depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002). There is no presumption of federal

law consideration. *Coleman*, 501 U.S. at 735. To so find, the state court's decision must "fairly appear to rest primarily on federal law, or to be interwoven with the federal law." *Id.* Where there is no "clear indication that a state court rested its decision on federal law, a federal court's task will not be difficult." *Id.* at 739–40.

Texas, like Congress, has imposed significant restrictions[3] on second-in-time habeas applications. *Compare* Tex. Code Crim. Proc. art. 11.071 § 5, *with* 28 U.S.C. § 2244(b). A Texas court may not reach the merits of a claim in a subsequent application "*except* in exceptional circumstances." *Ex parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002). The applicant bears the burden of providing "sufficient specific facts establishing," Tex. Code Crim. Proc. art. 11.071 § 5(a), one of these "exceptional circumstances," *Ex parte Kerr*, 64 S.W.3d at 418.

First, an applicant can prove either factual or legal unavailability of a claim. Tex. Code Crim. Proc. art. 11.071 § 5(a)(1). This requires proof of unavailability in *all* prior state habeas applications. *See Ex parte Campbell*, 226 S.W.3d 418, 421 (Tex. Crim. App. 2007) ("[T]he factual or

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[3] Texas's codification of these restrictions is sometimes referred to as the abuse-of-the-writ bar or section 5 bar in capital cases. *See, e.g.*, *Rocha v. Thaler*, 626 F.3d 815, 831 (5th Cir. 2010).

legal basis for an applicant's current claims must have been unavailable as to all of his previous applications."). A claim is legally unavailable when its legal basis "was not recognized or could not have been reasonably formulated from a final decision of the [this Court], a court of appeals of the United States, or a court of appellate jurisdiction of this state," Tex. Code Crim. Proc. art. 11.071 § 5(d), and factually unavailable when its factual basis "was not ascertainable through the exercise of reasonable diligence," Tex. Code Crim. Proc. art. 11.071 § 5(e).

Second, an applicant can prove that "but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." Tex. Code Crim. Proc. art. 11.071 § 5(a)(2). This requires an applicant to "make a threshold, prima facie showing of innocence by a preponderance of the evidence." *Ex parte Reed*, 271 S.W.3d 698, 733 (Tex. Crim. App. 2008) (citation omitted). A "claim" of this sort is also known as a "*Schlup*-type claim," *Ex parte Franklin*, 72 S.W.3d 671, 675 (Tex. Crim. App. 2002), because section 5(a)(2) "was enacted in response to" *Schlup v. Delo*, 513 U.S. 298 (1995), *Ex parte Reed*, 271 S.W.3d at 733.

Third, an applicant can prove that, "by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the [S]tate's favor one or more of the special issues." Tex. Code Crim. Proc. art. 11.071 § 5(a)(3). Section 5(a)(3), "more or less, [codifies] the doctrine found in *Sawyer v. Whitley*, 505 U.S. 333 (1992)." *Ex parte Blue*, 230 S.W.3d 151, 151 (Tex. Crim. App. 2007).

In state court, Wood accepted the burden of proving an exception to the abuse-of-the-writ bar. 1.SHCR-02, at 104–110. For his insufficient-culpability claim, Pet. Writ Cert. at 23–31, Wood argued that he met the *Sawyer* analogue exception, 1.SHCR-02, at 105. For his evolving-standards-of-decency claim, Pet. Writ Cert. at 31–35, he argued both factual and legal unavailability, and the *Sawyer* analogue exception, 1.SHCR-02, at 105–06. And for his future-danger-resentencing claim, Pet. Writ Cert. at 35–40, he argued factual and legal unavailability and, alternatively, that the abuse-of-the-writ bar did not apply, 1.SHCR-02, at 107–10. As mentioned before, the CCA did not agree, finding that Wood "failed to satisfy the requirements of Article 11.071, § 5(a)," and it dismissed "these claims as an abuse of the writ without reviewing the merits." *Ex parte Wood*, 2018 WL 6076407, at *2.

Before this Court, Wood does not challenge the adequacy of section 5, and that is with good reason—the Fifth Circuit "has held that, since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an . . . adequate state ground for the purpose of imposing a [federal] procedural bar." *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008); *cf. Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1149–50 (2017) (noting that this Court generally defers to a court of appeals's interpretation of their respective states' laws). The only question then is whether section 5 is independent of federal law.

For his first two claims, Wood argues federal law dependence because the Fifth Circuit "deems dismissals of Eighth Amendment categorical ineligibility claims by the [CCA as] adjudications on the merit of the federal claim." Pet. Cert. Pet. 23, *see id.* at 31–32. Wood's argument is unsound.

It is true that the Fifth Circuit views a section 5 dismissal of an intellectual disability claim under *Atkins v. Virginia*, 536 U.S. 304 (2002) as a decision on the merits. *See Rivera v. Quarterman*, 505 F.3d 349, 359 (5th Cir. 2007). But that is unique to *Atkins* claims. *See Busby v. Davis*,

No. 15-70008, 2019 WL 2169678, at *4 (5th Cir. May 20, 2019) (holding that a section 5 dismissal "would appear to be sufficient to rebut the presumption that [the petitioner's] federal claims were adjudicated on the merits, with at least one exception—his *Atkins* claim"). And that uniqueness is predicated on the way the CCA treats *Atkins* claims, and only *Atkins* claims, under section 5. *See id*. at *5 ("The []CCA's seminal decision in *Ex parte Blue* makes clear that when a defendant who was convicted post-*Atkins* raises an *Atkins* claim for the first time in a [subsequent] habeas application, the Texas court must determine whether the defendant has asserted facts, which if true, would sufficiently state an *Atkins* claim[.]"). Indeed, Wood implicitly accepts the CCA's unique treatment of *Atkins* claims under section 5 by citing only cases dealing with such claims. Pet. Writ Cert. at 23–24.

Boiled down, Wood's argument that federal law was considered in his case is predicated on nothing but an assumption that the CCA treats all claims of death penalty ineligibility like *Atkins* claims for section 5 purposes. But he fails to support that argument with CCA caselaw and it is that caselaw, describing the unique treatment of *Atkins* claims under section 5, that has made all the difference in the Fifth Circuit's

independence analysis for *Atkins* claims. *See, e.g.*, *Rocha v. Thaler*, 626 F.3d 815, 830–31 (5th Cir. 2010) ("Confronted with the specter of state district courts being forced to consider large numbers of [subsequent] habeas applications raising meritless *Atkins* claims, the [CCA] made a choice. It opted to create a new requirement for habeas applicants who sought to bring a subsequent *Atkins* [claim]."). But here, the CCA explicitly stated it was not considering the merits of Wood's first two claims, and speculation about sub silentio federal law consideration cannot overcome this express statement. *See Coleman*, 501 U.S. at 735. Indeed, even if the Court were faced with an unexplained CCA decision, its review for federal law independence would "not be difficult," *id*. at 740, so it is even less so given the CCA's clarity here.

In any event, the Fifth Circuit has recognized that an applicant trying to overcome section 5 via the *Sawyer* analogue exception does not mean the CCA reached the merits of his or her claim. *See Rocha*, 626 F.3d at 839 ("A claim that a prisoner is actually innocent of the death penalty is legally distinct from a claim that a prisoner's trial counsel was constitutionally ineffective at sentencing. When the CCA rejects the former, it does not simultaneously decide the merits of the latter."); *see*

also Moore v. Texas, 122 S. Ct. 2350, 2353 (2002) (Scalia, dissenting) ("The [CCA] was not required to pass on any federal question in deciding whether 'clear and convincing evidence' showed that 'but for a violation of the United States Constitution no rational juror would have answered in the state's favor one or more of the special issues that were submitted to the jury.'" (quoting Tex. Code Crim. Proc. art. 11.071 § 5(a)(3))). As such, Wood's first two claims were dismissed on an adequate and independent state law ground that jurisdictionally precludes this Court's review of such claims.

For his third claim, Wood argues that because of its "temporal nature," it "necessarily precluded the CCA from finding that the factual allegations could have been presented in an earlier application." Pet. Writ Cert. at 36. Thus, he reasons, "[t]he only ground on which the CCA could have disposed of this claim under state law is its view of the underlying federal question, . . . [t]he Court therefore has jurisdiction to, and should, reach it." *Id.* In this, Wood misconstrues the nature of the abuse-of-the-writ bar.

The abuse-of-the-writ bar is not its exceptions. Rather, it prohibits a Texas court from "consider[ing] the merits of or grant[ing] relief" on a

claim raised in an application "filed after . . . an initial application[.]" Tex. Code Crim. Proc. art. 11.071 § 5(a). As a matter of indisputable fact, Wood's future-danger-resentencing claim was presented in a second-in-time application. Under state law, it is thus procedurally barred *absent* exception. *Id*. Wood's argument is therefore not truly about federal law independence but is rather a quibble with state law—that the CCA *should* have found an exception to the abuse-of-the-writ bar. In other words, Wood does not dispute that the abuse-of-the-writ bar applied to him—it obviously does given its broad reach, something he implicitly conceded given his attempts to skirt it in state court—he just believes the "temporal nature" of his third claim should have exempted him from it. But the CCA disagreed and "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."[4]

[4] To the extent that the "correctness" of a state court's application of state procedural law is a proper subject of review from a state habeas case, it was correct. As discussed further, Wood's future-danger-resentencing claim has no line of demarcation for when resentencing must take place. Stated another way, it is not clear whether a day, year, or decade must pass before due process requires resentencing to reevaluate dangerousness. Given this lack of clarity, the CCA was free to conclude that the legal foundation for Wood's claim was no different if he spent a day, year, or decade in prison, so the factual basis was available prior to the filing of his initial application, an event which took place after Wood had already spent two years on death row. *Compare Death Row Information*, Texas Department of Criminal Justice, https://www.tdcj.texas.gov/death_row/dr_offenders_on_dr.html (last updated Apr. 25, 2019) (Wood arrived on March 3, 1998), *with* 1.SHCR-01, at 8 (Wood's application was filed on March 27, 2000).

Estelle v. McGuire, 502 U.S. 62, 67–68 (1991). Because the CCA relied only on state law to bar this claim, the Court does not have jurisdiction to consider the claim's merits.

On top of the CCA's express statement that it was not reaching the merits of the three claims Wood raises here, the procedural posture of this case makes it obvious that was the case. When the CCA first reviewed Wood's subsequent habeas application for section 5 purposes, it remanded his two false-evidence "claims to the trial court for resolution." *Ex parte Wood*, 2016 WL 4445748, at *1. When the trial court forwarded its proposed findings on those claims, the CCA, "based on [its] own review, den[ied] relief." *Ex parte Wood*, 2018 WL 6076407, at *2. And then the CCA turned its attention to the remaining claims in Wood's subsequent application and "dismissed the[m] as an abuse of the writ without reviewing the merits." *Id.* at *2. Thus, the Court is effectively presented with *evidence* that the CCA did not consider federal law—the

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The alternative is that Wood has cracked the code on timeliness—he has discovered a claim with no accrual date because every *second* he behaves well on death row is additional evidence of peaceful behavior that must be considered by a new jury. The converse is that, for every additional *second* Wood spends on death row, he suffers a new constitutional violation. There is simply no law (or logic) that supports such a claim, and the CCA did not have to succumb to such absurd reasoning in applying the abuse-of-the-writ bar.

CCA made it obvious when it reached the merits of some of Wood's claims and equally obvious when it did not. The absence of federal law consideration could not be any clearer.

Ultimately, the abuse-of-the-writ bar—a state-law ground clearly and unambiguously applied by the CCA—prohibits this Court from exercising jurisdiction over any of the claims for which Wood now seeks review. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (Stevens, J., concurring) ("I am now satisfied that the Texas court's determination was independently based on a determination of state law, *see* Tex. Code Crim. Proc. art. 11.071 § 5 [], and therefore that we cannot grant petitioner his requested relief."). Accordingly, Wood's petition should be denied.

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

The Court requires those seeking a writ of certiorari to provide "[a] direct and concise argument *amplifying* the reasons relied on for allowance of the writ." Sup. Ct. R. 14.1(h) (emphasis added). The Court would be hard pressed to discover any such reason in Wood's petition, let alone amplification thereof. Indeed, Wood makes no allegations of circuit or state-court-of-last-resort conflict. *See* Sup. Ct. R. 10(a)–(b). The best that Wood musters is a conclusory statement that the CCA's adjudication

of his first claim conflicts with this Court's precedent, Pet. Writ Cert. at 24, and that his third claim "is an important one that the Court has never decided," *id.* at 38. The problem with the former is that, as explained above, the CCA did not reach Wood's first claim on the merits, it applied a state law procedural bar. *See supra* Argument I. Accordingly, there is no conflict upon which to grant a writ of certiorari.

The problem with the latter is that, while it mimics a reason for certiorari review, *see* Sup. Ct. R. 10(c), Wood omits a key part of the Court's memorialization of that justification—that "a state court . . . *has decided* an important question of federal law that has not been, but should be, settled by this Court," *id.* (emphasis added). Again, there was no adjudication on the merits in state court. *See supra* Argument I. And thus, the important question justification for certiorari review is lacking.

Moreover, while the third claim may be important to Wood, he does not explain why it is important to the judiciary or citizenry at large. Indeed, his argument undermines his assertion of importance as the new rule he advocates would, at most, affect "only two [death penalty] states" because all others "have backwards-looking capital sentencing statutes that condition death sentences on the past behavior of the defendant."

Pet. Writ Cert. at 36–37. Again, Wood fails to prove the importance of the question he presents.

Left with no true ground for review in his briefing, the only reasonable conclusion is that Wood seeks mere error correction. But that is hardly a good reason to expend the Court's limited resources. *See* Sup. Ct. R. 10 ("A petition . . . is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). And such a request is especially problematic here because the court below did not reach the merits of Wood's claims and the Court is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Even worse yet, Wood's claims are heavily fact dependent, and because there was no evidentiary development in the lower court, this court would have "to review evidence and discuss specific facts" for Wood to garner relief, something the Court "do[es] not" do. *United States v. Johnston*, 268 U.S. 220, 227 (1925). Ultimately, this case presents an exceptionally poor vehicle for reaching the merits of Wood's claims and his petition should be denied on this basis alone.

A. Wood's insufficient-culpability claim lacks merit.

Wood argues that the CCA's decision conflicts with this Court's opinions in *Enmund v. Florida*, 458 U.S. 782 (1982) and *Tison v. Arizona*, 481 U.S. 137 (1987), as it concerns Wood's personal culpability vis-à-vis his death sentence. Pet. Writ Cert. at 24. He claims that this sentence is "plainly excessive" given that he instructed his codefendant, Reneau, not to bring a gun to the convenience store robbery, that he simply sat in the getaway vehicle while the robbery and murder occurred, that there was no plan hatched before the offense, and that "his well-documented impairments" prevented him from acting with reckless indifference. *Id.* at 27, 29. In sum, "[d]ue to [Wood's] minor participation in the homicide and his lack of the requisite mental state under *Enmund* or *Tison*," he claims entitlement to relief. *Id.* at 31. It is not warranted.

The Eighth Amendment prohibits imposition of a death sentence for one who "aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." *Enmund*, 458 U.S. at 797. The Court later clarified that "major participation in the felony committed, combined with reckless

indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement." *Tison*, 481 U.S. at 158.

Wood's recitation of the "facts" is myopic. Indeed, he even ignores his own confession. At trial, one of Keeran's co-workers testified that Wood had discussed with him plans to rob the convenience store maybe "seven or eight" times in the days leading up to the robbery and murder. 24.RR.73–74. Reneau attended some of these sessions, but "[h]e would just kind of sit in the background" and "just nod and, you know, just agree with whatever was said." 24.RR.74. And then, after these sessions ended, it was Wood who repeatedly called the coworker and asked him if he "wanted to go along and do it." 24.RR.78, 80. From this alone, the jury could have believed there had been "major participation in the felony committed"—Wood was the impetus and planner of the entire thing.

But there is more. Wood was not merely an unwitting getaway driver. He borrowed his younger brother's truck by deception to commit the robbery. 24.RR.111. He was in the convenience store, talking with Keeran, who Wood described as "a real good friend," 25.RR.19, just before the shooting, 25.RR.15. After the murder, Wood admitted to grabbing the VCR recording from the store's surveillance system, money bags, and the

murder weapon before fleeing. 25.RR.16–17. Wood's youngest brother testified that Wood directed him to destroy the VCR recording. 24.RR.227. Wood further admitted to participating in the disposal of the murder weapon and going on a spending spree with the robbery proceeds. 25.RR.17, 37–38. There can be no doubt that Wood was a major participant in the robbery even setting aside that he planned the entire thing.

There can also be no doubt that Wood had the requisite reckless indifference to human life. In fact, because Wood planned to murder Keeran, *Tison* has no real work to do, and Wood's claim fails even under the most generous reading of *Enmund*. This is because Wood admitted that he knew Reneau "was going to take [Keeran's] life if he failed to cooperate[.]" 25.RR.30. Although Wood claimed he was "hoping that [Keeran] w[ould] cooperate," he knew that if Keeran failed to do so, he was "going to die." 25.RR.31. And he knew this because Wood and Reneau came up with this "ultimate, final plan" before carrying out the robbery and murder. 25.RR.34; *see also id.* ("Yeah, this was the final plan, but I didn't think he was going to do anything, so . . . but when he did, I did go in there and get the VCR and the gun from the desk."). While Wood

professed that he did not anticipate Keeran's death, that is highly doubtful—he and Reneau learned the afternoon before the early morning robbery that "[Keeran] was not going to go through the plan," 25.RR.86, Wood told Reneau that "there was going to be a gun" to make it "look like a robbery[,]" 25.RR.92, and they switched out guns just beforehand because the first one "would be too loud[,]" 25.RR.23. In other words, when possible cooperation evaporated, Wood and Reneau equipped themselves with a weapon to avoid detection because they knew Keeran was "going to die." Given these facts, Wood falls outside of *Enmund* because he "intend[ed] that a killing take place or that lethal force w[ould] be employed." *Enmund*, 458 U.S. at 797. But even if Wood found himself within *Enmund* and *Tison*'s ambit, they are satisfied—Wood had a reckless indifference to human life because he knew Reneau was going to kill Keeran for refusing to cooperate with the robbery.[5] This fact-bound question is not worthy of review by the Court in the first instance.

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[5] Wood asserts that the Court can reach this claim because it "is a record-based one[.]" Pet. Writ Cert. at 24. But it really is not, especially the way Wood has briefed it. Indeed, most of Wood's citations to the record are from his co-defendant's trial. *Id.* at 6–12 nn.13–29, 37–40, 43–57, 61–64. Many others are from his most recent state habeas application, but those "facts" are founded by documents not presented at Wood's capital murder trial. *Id.* at 3–5 nn.2–12. Still others are from pretrial competency hearings, also not before the jury that decided Wood's guilt or answered the sentencing special issues. *Id.* at 13–14 nn.65–68, 71–72. As to the co-defendant's

B. Wood's Eighth Amendment claim has no merit.

Wood claims that "standards of decency have evolved to prohibit the death penalty for a person who did not either kill or intend to kill." Pet. Writ Cert. at 31. To so prove, Wood dedicates about three full pages to this endeavor. *Id.* at 31–34. Then to take advantage of this supposed change, Wood argues that he did "not have any active participation in the robbery[,]"he was not armed, he did not accompany Reneau into the store, he did not physically harm anyone, and he has impairments that made him vulnerable to influence of Reneau. *Id.* at 34–35.

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trial, Wood did not move the state courts to judicially notice that transcript. As to the second, there has been no state court ruling on admissibility. And, as to the third, there has been no explanation how a pretrial hearing has any bearing on what is ultimately a jury issue. The claim is only record based if by that Wood means he can point to some record, but it is not *this* record, the record before the Court.

As an example of the inadequacy of *this* record, the psychological evidence Wood points to was in some sense considered in federal court when Wood challenged his competency to be executed. *See Wood*, 619 F. App'x at 306 ("[T]he parties submitted a voluminous amount of documentary evidence addressing Wood's [competency-to-be-executed] claim, including . . . records from state court proceedings, which included Wood's school and medical and mental health records."). That is not true here, where Wood simply attached various documents to his state habeas application.

Moreover, Wood's assertions of "fact" about his mental capacity are belied by the finding that he was competent to be executed after a fulsome consideration of Wood's psyche. *Id.* ("[T]he district court issued an exhaustive memorandum opinion rejecting Wood's [competency-to-be-executed] claim and denying his habeas petition."). Surely, if Wood could rationally understand that that he was going to be executed for his participation in a capital murder, he could appreciate that planning to murder someone during an armed robbery is reckless indifference to human life.

Wood has simply not put in the work to demonstrate entitlement to relief. Indeed, it is not even clear the relief Wood seeks (other than to exempt *himself* from a death sentence). Case in point, Wood seemingly identifies two "classes" of individuals he would exempt from a death sentence—those who do not kill and those who do not intend to kill. Pet. Writ Cert. at 31. If it is the former, none of his briefing discussing evolving standards of decency addresses it. Rather, Wood's evolving argument focuses on thirty-five "jurisdictions . . . [that] have made legislative or judicial decisions against the use of the death penalty for non-triggermen who lack an intent to kill." *Id.* at 32. In other words, he focuses only on individuals convicted under party-liability principles, implicitly signaling that those who do not kill may still be sentenced to death. The same is true for his argument that he does not deserve the death penalty because, inter alia, he did not "active[ly] participat[e] in the robbery[,]" "did not arm himself[,]" and "did not accompany Reneau into the store." *Id.* at 34. This is because the argument focuses only on his supposed lack of intent to kill, essentially repeating his *Enmund*/*Tison* claim, meaning implicitly that there is a category of nonkillers who possess sufficient culpability to be executed. Given this,

Wood's argument regarding those who do not kill is but a few conclusory statements without substance. It is therefore inadequately briefed and should not be considered. *See CRST Van Expedited, Inc. v. EEOC*, 136 S. Ct. 1642, 1653 (2016) (declining to address a matter where there was "inadequate briefing on the issue").

If Wood is trying to exempt the latter "class"[6] of individuals from a death sentence, he still has inadequately briefed the matter. Again, his only evolving-decency briefing looks to purported legislative change. Pet. Writ Cert. at 32. But there are a whole host of factors that the Court may consider when deciding Eighth Amendment issues—legislative trend

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[6] Wood's second "class" of death penalty exempt persons—those who did not intend to kill—is only a class in the barest of senses—those who have the required level of culpability versus those who do not. But this is not a category in the way other death penalty exemptions are: commission of a nonhomicide offense, a person with intellectual disability, or a person under the age of eighteen. *See Graham v. Florida*, 560 U.S. 48, 60–61 (2010). Whether an individual had an intent to murder is a factual matter not subject to categorization like those described above—it is a subjective determination made by a trier of fact. Appellate review of these determinations is normally for sufficiency of the evidence. Indeed, *Enmund* was largely based on this type of sufficiency review. *See Enmund*, 458 U.S. at 798 ("Enmund himself did not kill or attempt to kill; and, *as construed by the Florida Supreme Court*, the record before us does not warrant a finding that Enmund had any intention of participating in or facilitating a murder." (emphasis added)). But sufficiency review of intent is significantly different than other death penalty exemptions. Stated differently, Wood's attempt to turn individuals with certain culpability into a death ineligible class is not a true categorical exemption, but rather a process-based argument. And as a process, it is barred by nonretroactivity principles as described in more detail later. *See infra* Argument II(C)(1).

rather than just raw numbers, actual sentencing practices, and the Court's independent judgment. *See, e.g.*, *Graham*, 560 U.S. at 62–75. None of that has been briefed by Wood. Thus, the matter should be considered forfeited. *See CRST Van Expedited, Inc.*, 136 S. Ct. at 1653.

In any event, and based on the sources Wood supplies, it is clear that there is no national consensus against putting Wood to death, regardless of the two classes he delineates. As to the first, those who do not kill, "there are a total of thirty-three[7] jurisdictions that, if they authorize the death penalty of non-triggermen at all, require a finding that the accused had an intent to kill." Joseph Trigilio & Tracy Casadio, *Executing Those Who Do Not Kill: A Categorical Approach to Proportional Sentencing*, 48 Am. Crim. L. Rev. 1371, 1400 (2011) [hereinafter *Executing Those Who Do Not Kill*]. This is compared with "four states that do authorize the death penalty for felony murder [which] nonetheless draw the line at triggermen." *Id*. Based on this, there is no clear legislative direction away from executing those who did not personally kill.

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[7] The numbers referenced are based on a 2011 law review article—the only real source of legislative action Wood relies upon, though he acknowledges there have been changes since its publication. Pet. Writ Cert. at 33.

As explained above, Wood intended to kill Keeran and was not a criminal participant simply caught unawares of the atrocity to be committed by his codefendant—he was the impetus behind the offense, including the plan to murder Keeran should he fail to cooperate. *See supra* Argument II(B). Because of this intent to kill, he fits comfortably within the vast majority of death penalty jurisdictions who require that a "non-triggerman . . . had an intent to kill." *Executing Those Who Do Not Kill*, *supra*, at 1400. This too fails to show objective indicia of change prohibiting Wood's execution. Thus, setting aside whether three full pages of briefing could ever establish that a change in society's standards of decency such that it overturns thirty-year-old precedent, Wood fails to prove that he could he take advantage of the new rule he seeks. A writ of certiorari should not be granted to establish a rule from which the petitioner could not benefit.

C. Wood's due process claim is without merit.

In his final claim, Wood asserts that, "[w]hen a decision authorizing state action negatively impact[s] an individual's liberty or life interests [and] is predicated upon a prediction of future behavior, due process generally requires that it be periodically reassessed." Pet. Writ Cert. at

37. Ergo, Wood claims, because his death sentence is founded in part on the jury's finding of future dangerousness, and because "Texas has successfully incarcerated" him for a period in "which no criminal acts of violence have been committed by him," Texas must "obtain a new jury verdict . . . before it may execute him." *Id.* at 39–40. No rule stands for sua sponte reassessment of sentence, no rule should stand for such a proposition, and any such rule would be inapplicable to Wood.

1. Nonretroactivity principles bar relief.

Habeas is generally not an appropriate avenue for the recognition of new constitutional rules. *Teague v. Lane*, 489 U.S. 288, 310 (1989) (plurality opinion). Thus, for the most part, new constitutional rules do not apply to convictions final before the new rule was announced. *Id.* This facilitates federal- and state-court comity by "validat[ing] reasonable, good faith interpretations of existing precedents made by state courts even though they are shown to be contrary to later decisions." *Butler v. McKeller*, 494 U.S. 407, 414 (1990). The *Teague* inquiry consists of three steps:

> First, the date on which the defendant's conviction became final is determined. Next, the habeas court considers whether a state court considering [the defendant's] claim at the time his conviction became final would have felt compelled by

> existing precedent to conclude that the rule [he] seeks was required by the Constitution. If not, then the rule is new. If the rule is determined to be new, the final step in the *Teague* analysis requires the court to determine whether the rule nonetheless falls within one of the two narrow exceptions to the *Teague* doctrine. The first, limited exception is for new rules forbidding criminal punishment of certain primary conduct [and] rules prohibiting a certain category of punishment for a class of defendants because of their status or offense. The second, even more circumscribed, exception permits retroactive application of watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. Whatever the precise scope of this [second] exception, it is clearly meant to apply only to a small core of rules requiring observance of those procedures that . . . are implicit in the concept of ordered liberty.

O'Dell v. Netherland, 521 U.S. 151, 156–57 (1997) (alterations in original) (citations omitted) (internal quotation marks omitted). Applying *Teague*, it is clear that relief must be denied.

Wood's conviction became final on August 26, 2000, "when [the] time for filing a petition for certiorari expired." *Lambrix v. Singletary*, 520 U.S. 518, 527 (1997). The question then is whether the relief sought by Wood constitutes a new constitutional rule. It undoubtedly does.

Wood claims that, should a sentence be in part based upon a finding of future dangerousness, a resentencing must occur at some point. *See* Pet. Writ Cert. at 37–40. He can point to no holding of this or any other court to clearly establish such a rule. The rule he is therefore proposing

is new. *See Teague*, 489 U.S. at 301 ("[A] case announces a new rule if the result was not dictated by precedent existing at the time the defendant's conviction became final."). The inquiry next turns on whether the rule Wood proposes is substantive or a watershed rule of criminal procedure. It is neither.

Wood's rule is not substantive—it does not "prohibit the imposition of capital punishment on a particular class of persons." *Saffle v. Parks*, 494 U.S. 484, 495 (1990). Indeed, Wood concedes the point. *See* Pet. Writ Cert. at 35 ("Although this claim does not implicate categorical ineligibility under the Eighth Amendment . . . ."). Regardless, the rule proposed is clearly procedural—it regulates how states must handle sentences based on findings of future danger. *See Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) ("[R]ules that regulate only the manner of determining the defendant's culpability are procedural."). As such, *Teague*'s non-retroactivity bar applies. *See id.* at 352 n.4 (noting that rules exempting a class of persons from a particular punishment are not really exceptions to *Teague*, but "more accurately characterized as substantive rules not subject to the bar").

Nor is Wood's proffered rule a watershed one. To so qualify, "[f]irst, the rule must be necessary to prevent 'an impermissibly large risk' of an inaccurate conviction[,]" and, "[s]econd, the rule 'must alter our understanding of the bedrock elements essential to the fairness of a proceeding.'" *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (quoting *Schriro*, 542 U.S. at 356) (internal quotation marks omitted). Wood's rule "simply lacks the 'primacy' and 'centrality'" necessary to qualify as a watershed rule. *Id.* at 421. It is not "implicit in the concept of ordered liberty," *O'Dell*, 521 U.S. at 157, but instead calls upon a second jury to do the same thing as the first—determine whether an individual constitutes a future danger—at some unspecified time, in some unspecified way. A rule simply requiring reanalysis of an unchallenged procedure and with unclear boundaries can hardly be understood as "bedrock." Because Wood seeks creation of a new rule and fails to prove an exemption from or exception to *Teague*, he cannot garner the relief he seeks.

2. Setting aside retroactivity, the claim is meritless.

The consideration of future danger in a capital sentencing scheme is constitutional. *Jurek v. Texas*, 428 U.S. 262, 275 (1976) (plurality

opinion). Indeed, the consideration of future danger is a fundamental tenet of the American criminal justice system, regardless of sentence. *See id*. ("The task that a Texas jury must perform in answering the statutory question [of future danger] is thus basically no different from the task performed countless times each day throughout the American system of criminal justice."); *see also Barefoot v. Estelle*, 463 U.S. 880, 898 (1983) ("Acceptance of petitioner's position that expert testimony about future dangerousness is far too unreliable to be admissible would immediately call into question those other contexts in which predictions of future behavior are constantly made."), *superseded on other grounds by* 28 U.S.C. § 2253(c)(2). Despite forty years of review of Texas's capital sentencing scheme, the Court has never struck down its use of future danger. And more broadly, in that same forty years, the Court has not struck down any sentencing scheme solely because it considered future danger, as they all do to various degrees. Yet, Wood's position is that the Court has simply overlooked the constitutional error that occurs "constantly," and *Barefoot*, 463 U.S. at 898, "countless times each day," *Jurek*, 428 U.S. at 275, when sentencers predict future danger. The Court

has not, and that is because no constitutional error flows from the practice.

Indeed, the Court would have to break significant, unprecedented ground to adopt Wood's view of due process. Due process does not mandate a direct appeal. *Evitts v. Lucey*, 469 U.S. 387, 393 (1985). Nor does it mandate collateral review. *United States v. MacCollom*, 426 U.S. 317, 323 (1976) (plurality opinion). Despite this, Wood now believes that due process requires a second trial when the first has withstood direct and collateral attack simply because time has passed. "But such a result is scarcely logical; petitioner's claim is not that some error was made in imposing a capital sentence upon him, but that" time has passed since his sentence. *Herrera v. Collins*, 506 U.S. 390, 405 (1993). What Wood truly seeks is a constitutional right to a new trial, unburdened by time constraints. However, "[t]he Constitution itself, of course, makes no mention of new trials." *Id.* at 408. And "[i]n light of the historical availability of new trial, [the Court's] amendments to [Federal] Rule [of Criminal Procedure] 33, and the contemporary practice in the States, [the Court] cannot say that Texas'[s] refusal to entertain petitioner's newly discovered evidence eight years after his conviction transgresses a

principle of fundamental fairness 'rooted in the traditions and conscience of our people.'" *Id.* at 411 (quoting *Patterson v. New York*, 432 U.S. 197, 202 (1977)). There is no more justification for Wood's retrial than there was for Herrera's, and the result should be the same—denial of relief.

Even if there was no retroactivity problem and sure footing in the Constitution for Woods's resentencing claim, it would be futile. The State would still be able to present a punishment case significant enough to withstand Wood's claim of false evidence:

> In addition to the facts of the offense . . . the State presented other evidence at punishment to establish [Wood's] future dangerousness. The jury heard that [Wood] not only participated in a prior gas station robbery with Reneau, but he also discussed the possibility of committed more crimes with Reneau while they were in jail awaiting trial for the instant offense. Witnesses testified that [Wood] resisted jailers after committing a disciplinary infraction. [Wood] cursed at the jailers, threated to kill them and to file a complaint against them, and hit one of them in the stomach. The jury also saw a letter [Wood] wrote to Reneau, in which he drew a picture of a grim reaper and bragged about filing a complaint against the jailers.

Ex parte Wood, 2018 WL 6076407, at *2; *see id.* at *3 (Newell, J., concurring) ("The State presented significant evidence on the future dangerousness issue independent of Dr. Grigson's testimony[, including evidence that] . . . [Wood] had instigated the robbery at issue . . . [and

Wood] had laughed when watching the surveillance videotape of the clerk being murdered."). Moreover, Wood has not been non-violent while on death row. *Ex parte Wood*, 2018 WL 6076407, at *3 n.2 (Newell, J., concurring) ("[T]he State has provided prison disciplinary records in its response to [Wood's] habeas application which show that [Wood] threatened to inflict physical harm on prison guards on more than one occasion while on death row."). And even if he was, the evidence must be placed into context—"[Wood] has been in a highly confined atmosphere of a death row prison cell; lack of violence in that environment is not necessarily indicative of a lack of violence in free society or in the less structured general prison population[.]" *Ex parte Pondexter*, No. WR-39,706-03, 2009 WL 10688459, at *2 (Tex. Crim. App. Mar. 2, 2009) (Cochran, J., concurring). That is to say, the evidence that exists today[8] still shows Wood to be a future danger and a new proceeding to re-determine that is make work. A state court judgment should not be treated so lightly and certiorari review should be denied.

[8] Upon information and belief, since the state-court record was finalized, Wood has committed additional disciplinary infractions on death row, including threatening to assault a guard and destroying state-owned property.

CONCLUSION

Wood fails to show that this Court possesses jurisdiction over the matters for which he seeks review, or that there are otherwise compelling grounds to issue a writ of certiorari. Consequently, Wood's petition should be denied.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

ADRIENNE MCFARLAND
Deputy Attorney General
For Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

MATTHEW OTTOWAY
Assistant Attorney General
State Bar No. 24047707
Counsel of Record

Post Office Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 936-1400
matthew.ottoway@oag.texas.gov

Attorneys for Respondent