THIS IS A CAPITAL CASE

No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

JOHN HENRY RAMIREZ, *Petitioner*,

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVIDION,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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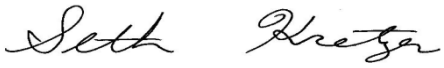
CERTIFICATE OF COMPLIANCE

John Henry Ramirez, *Petitioner*,
v.
Lorie Davis, *Respondent*.

As required by Supreme Court Rule 33.1(h), I certify the petition of a writ of certiorari contains 5080 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2019.



Seth Kretzer

QUESTIONS PRESENTED

Whether Petitioner is entitled to relief from judgement where he files a motion in a timely fashion and provides the district court with extraordinary circumstances to justify an exception to finality?

LIST OF PARTIES

1. Petitioner: John Henry Ramirez, Polunsky Unit, 3872 FM 350 South, Livingston, TX 77351. For the Petitioner: Eric J. Allen, Law Office of Eric J. Allen, LTD. 4200 Regent Street, Suite 200, Columbus, Ohio 43219; Seth Kretzer, Kretzer Firm, 440 Louisiana, Suite 1440, Houston, TX 77002.
2. Respondent: Lorie Davis, Director of Texas Department of Corrections. For the Respondent: Jennifer Morris, Assistant Attorney General of Texas, 300 W. 15th Street, Austin, TX 78701.

List of past litigation

Direct Appeal

1. Trial- Petitioner was tried in the Nueces County District Court in Case number CR04003453-C

2. Direct Appeal: The direct appeal in state court was heard by the Texas Court of Criminal Appeals, case number AP76-100

State Collateral review

1. 11.071 Petition: The first application for state collateral review under R. 11.071 was filed on April 19, 2011. This was filed under the trial court case number. The court made findings and conclusions on January 10, 2012

2. 11.071 review by TCCA: Review by the Texas Court of Criminal Appeals finished and a denial was entered on December 20, 2012.

Federal review

1. Initial application pursuant to 28 U.S.C.A 2254: The petition was filed in the Southern District of Texas on October 10 ,2013. The petition was given case 12-CV-410. The District court denied relief on June 10, 2015 .

2. Appeal to the Fifth Circuit Court of Appeals: An appeal was taken to the Fifth Circuit Court of Appeals. It was given case number 15-70020. The court denied a request for a certificate of appealability on February 4, 2016.

3. Motion for a stay of execution: New counsel requested and was granted a stay of execution in the District Court.

    a. *Appeal of stay of execution*

An appeal was sought by respondent to challenge the stay of execution and given case number 17-70005. This challenge was rebuked.

4. Rule 60 litigation: A motion to set aside the judgement was filed by Petitioner on August 20, 2018. This was denied by the District Court on January 3, 2019.

5. Fifth Circuit Court of Appeals: Appeal was sought to the Fifth Circuit Court of Appeals and given case number 19-70004. A certificate of appealability was denied on June 26, 2014.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner John Henry Ramirez respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit appears as Appendix A to this petition. The court's opinion is published at *Ramirez v. Davis*, 2019 U.S. App. LEXIS 19109 (5th Cir. 2019), and was decided on June 26, 2019.

JURISDICTION

The Fifth Circuit Court of Appeals issued its decision on June 26, 2019. A copy is attached as Appendix A. Mr. Ramirez invokes this Court's jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense *VI Amend. Fed Const.*

STATEMENT OF THE FACTS

Petitioner John Henry Ramirez, hereinafter Mr. Ramirez, stabbed a man repeatedly, killing him. He was indicted by the Nuces County grand jury for aggravated murder with a capital specification. During the mitigation phase of the trial, his defense team put on the first witness. It was clear to the Mr. Ramirez that the defense counsel was not prepared, and that further testimony would not serve any purpose. He expressed a desire to waive mitigation. The trial judge asked only five questions to determine if he understood he was giving up any chance to save his life. He was sentenced to death.

Michael Gross was appointed pursuant to Texas state law to represent the Mr. Ramirez in his state habeas proceedings. He filed a petition in the Nueces County clerk's office in June 18, 2010. On January 9, 2012, the state habeas court entered findings of fact and conclusions of law and recommended that the Texas Court of Criminal Appeals deny habeas relief. Based on the lower court's

recommendation and its own review of the record, the Court of Criminal Appeals denied relief in an unpublished decision. *Ex parte Ramirez*, No. WR–72,735–03, 2012 WL 4834115 (Tex.Crim.App.2012). Saliently, on March 20, 2012, this court decided *Martinez v Ryan*, 563 U.S. 1032, 131 S. Ct. 2960 (2011), but the Court of Criminal Appeals did not rule for 9 months after this point in time.

On October 15, 2012, Mr. Gross requested that he be appointed to represent Mr. Ramirez in his federal habeas proceedings. On May 28, 2013, this court decided *Trevino v Thaler*. 569 U.S. 413. On October 13, 2013, Mr. Gross filed the petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. At this point, he is presumed to be aware of the holdings in *Martinez* and *Trevino*. Nevertheless, Mr. Gross did not inform the district court. He did not seek non-conflicted counsel. In fact, Mr. Gross continued his conflicted representation, seeking appointment in the Fifth Circuit to appeal the district court decision. He also filed a petition in this court for review.

Only in 2017, (after ***no*** clemency petition was filed) did new counsel request to intervene and ask for a stay of execution. The district court stayed the execution and gave the Mr. Ramirez new, unconflicted counsel. Counsel subsequently filed a motion for relief from judgment on August 20, 2018.

STATEMENT OF THE CASE

Ramirez was indicted for capital murder, convicted, and sentenced to death. (T - 273). The Texas Court of Criminal Appeals affirmed on direct appeal. *Ramirez v. State*, No. AP-76,100 (Tex. Crim. App., March 16, 2011). A state writ was filed, a

hearing was held, and the TCCA denied relief. *Ex parte Ramirez*, No. WR-72,735-03 (Tex. Crim. App., October 10, 2012). A federal writ was timely filed, and the district court denied relief and a certificate of appealability. *Ramirez v. Stephens*, No. 2-12-CV-410 (S.D. Tex., June 10, 2015).

Ramirez filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. That court denied Mr. Ramirez's request for a certificate of appealability on February 4, 2016. Mr. Ramirez requested a writ of certiorari from the this Court on May 4, 2016. It denied this request on October 3, 2016. The State set an execution date on February 2, 2017.

On January 27, 2017, Ramirez moved to substitute counsel and stay the execution date. The district court granted Mr. Ramirez's motion on January 31, 2017. Mr. Ramirez requested counsel and was given a briefing schedule on February 12, 2018. On July 3 , 2018, Mr. Ramirez requested another extension of time to file a Rule 60(b) motion. On August 20, 2018, Mr. Ramirez filed a motion for relief from judgment in the United States District Court.

The District Court denied this motion on January 3, 2019. Ramirez timely filed a notice of appeal to the Fifth Circuit. The Fifth Circuit denied the request on June 26, 2019. Mr. Ramirez requested and was granted an extension to file a petition for a writ of certiorari no later than October 24, 2019. This petition meets that deadline.

SUMMARY OF THE ARGUMENT

This Court held in *Gonzalez v Crosby* that,

> When no "claim" is presented, there is no basis for contending that the Rule 60(b) motion should be treated like a habeas corpus application. If neither the motion itself nor the federal judgment from which it seeks relief substantively addresses federal grounds for setting aside the movant's state conviction, allowing the motion to proceed as denominated creates no inconsistency with the habeas statute or rules.

Gonzalez v Crosby, 545 U.S. 524, 534 (2005).

Here, no new claim is presented, and Ramirez only attacks the integrity of the federal court proceedings. The district court below should not have treated this pleading as a successor and denied relief.

In this case, state-habeas counsel committed a clear fraud on the District Court. Mr. Gross was appointed pursuant to Texas state law to represent the Mr. Ramirez in his state habeas proceedings. He filed a petition in the Nueces County clerk's office in June 18, 2010. This application was denied by the trial court following a hearing. On March 20, 2012, this court decided *Martinez v Ryan*, 566 U.S. 1 (2012). The holding was clear that petitioners in state collateral proceedings can excuse procedural default by making a showing of ineffective assistance on the part of their state habeas counsel. On December 20, 2012, the Texas Court of Criminal Appeals denied Ramirez's application for habeas relief.

Only in 2017, after Mr. Gross filed no clemency petition on Mr. Ramirez's behalf, did new counsel request to substitute and asked for a stay of execution. The court stayed the execution and gave the Mr. Ramirez new, unconflicted counsel. The parties agreed to and the court set a briefing schedule for a motion for relief for

judgment to be was filed. The court nevertheless found that Mr. Ramirez had, despite being given extensions by the court, waited too long to raise his claims. The court also found that this motion raised a substantive claim and was not, therefore, a true motion for relief from judgment under Rule 60(b).

This court should grant certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit. Ramirez's motion was timely, did not raise an attack on his state court conviction, and sought review of procedural issue with the district court proceedings.

STANDARD OF REVIEW

This Court has held that a litigant seeking a certificate of appealabilty must demonstrate that a procedural ruling barring relief is itself debatable among jurists of reason; otherwise, the appeal would not "deserve encouragement to proceed further." *Slack v. McDaniel,* 529 U. S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U. S. 880, 893, n. 4 (1983)).

The Rule 60(b)(6) holding Ramirez challenges is reviewed for abuse of discretion. *See* 11 C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* §2857 (3d ed. 2012).

REASON FOR GRANTING THE PETITION

A. RAMIREZ'S MOTION WAS TIMELY.

The Circuit court held that "reasonable jurists could disagree as it relates to the timeliness" of the motion for relief from judgment. *Ramirez v Davis,* 2019 U.S. App. LEXIS 19109, *12 (2019).

On February 10, 2018, the parties filed a joint motion to extend the deadlines to file a supplemental brief. R. 70, Joint motion to extend deadlines. The parties agreed to a briefing schedule, which the court adopted. R. 71, Order granting motion to extend deadlines. On July 3, 2018, a second unopposed motion to extend the deadline to file the supplemental brief was filed. R. 72, Motion to extend deadlines. The court granted the motion. R. 73, Order on motion to extend. The motion was filed timely on August 20, 2018. R. 74, Motion to alter judgement. This motion was timely because the court gave the litigant permission to delay the filing.

B. EXTRAORDINARY CIRCUMSTANCES EXIST

a. *Rule 60 (b) is an extraordinary remedy*

Relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Gonzalez,* 545 U.S. at 535. Determining whether such circumstances are present may include consideration of a wide range of factors, including "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863-64 (1988). There are extraordinary circumstances in this case.

b. *Petitioner's counsel detrimented him*

i. *Criminal defendants are entitled to non-conflicted counsel*

This Court has held that "[p]rejudice is presumed when a criminal defense counsel labors under an actual conflict of interest. 'Conflict of interest' means a division of loyalties that affected counsel's performance. An 'actual conflict,' for Sixth Amendment purposes, is a conflict of interest that adversely affects counsel's

performance." *Mickens v. Taylor*, 535 U.S. 162 (2002) In this case counsel labored under such a conflict. When that conflict is discovered, counsel must step aside. Counsel could not "reasonably be expected to make such an argument, which" would have threatened his "professional reputation and livelihood." Christeson v. Roper, 135 S. Ct. 891, 894 (2015).

A finding by a court that he provided ineffective assistance could result in his not being allowed to serve as lead trial counsel in any more capital cases, lead appellate counsel in the direct appeal of any more capital cases, or as state habeas counsel in any more capital cases. See Tex. Code Crim. Proc. art. 26.052(d)(2)(C), (d)(3)(C). By concealing this conflict, he has caused irreparable harm to Mr. Ramirez. This conflict was not revealed to Mr. Ramirez at any time.

ii. Mr. Gross was aware of Martinez.

Martinez v. Ryan, 566 U.S. 1 (2012). was decided on March 20, 2012 by this court. *Trevino v. Thaler*, 569 U.S. 413 (2013), was decided on May 28, 2013.

It is clear that Mr. Gross is aware of the holdings of *Martinez* and *Trevino*. Article 26.502 setting the standards for death penalty counsel requires each attorney complete at *least* ten hours of Continuing Legal Education related to death penalty litigation. In the months and years following these mandatory CLE programs contained much fodder regarding *Martinez* and *Trevino*. It would be impossible that Gross did not know about these two cases.

iii. Abandonment

This Court held in *Maples* that, "under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him." *Maples v Thomas,* 535 U.S. 162 (2012).

Counsel failed to inform Mr. Ramirez of the holdings in *Martinez* and *Trevino.* He then filed no clemency petition and did nothing when an execution date was set. Mr. Ramirez was without counsel until the District Court appointed Mr. Kretzer. [1]

c. District Court review does not excuse conflict.

Here, new counsel has been appointed, and the claims litigated. What has occurred in this case is that the District Court stepped in to review Mr. Ramirez's conflict/abandonment claim. It granted the motion to stay and appoint conflict-free counsel. The District Court then allowed Mr. Ramirez to file a motion for relief from judgment. At tis core, the State contends that any stain on this proceeding is removed. Ramirez believes that it has not. The "whole purpose" of Rule 60(b) "is to make an exception to finality." *Gonzalez v Crosby ,* 545 U. S., at 529, 125 S. Ct. 2641, 162 L. Ed. 2d 480. The District and Circuit review failed grasp the overall effect the conflict of interest had on the federal proceedings. Counsel failed to raise a *Wiggins* claim in the state collateral review proceedings and failed to allow counsel without a conflict to step in and raise the ineffective assistance of counsel claim.

[1] See also In re Paredes, 587 Fed. Appx. 805; Battaglia v Stephens, 824 F.3d 470

i. *Timeliness*

The District Court found that Mr. Ramirez's motion is untimely. Both the court and opposing counsel agreed to extensions of time to file this motion. The motion was filed within that time period. The Circuit Court determined that a reasonable judge could disagree on the timeliness of the filing. Its reliance on *Paredes* is misplaced as there were no *agreed* extensions of time in that case. Pursuant to Rule 60(b)(6), a motion is timely if it is made within a reasonable amount of time. What qualifies as a reasonable time depends on the facts of each case. *In re Int'l Fibercom, Inc.*, 503 F.3d 933, 945 (9th Cir. 2007).

a. *In re Paredes , 587 Fed. Appx. 805* (5th Cir. 2014)

In *Paredes*, this same attorney, Michael Gross, sought a waiver of an ineffective assistance of counsel claim. Such a waiver was never sought in Mr. Ramirez's case.

b. *In re Int'l Fibercom, Inc.*, 503 F.3d 933

Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933 (9th Cir. 2007) dealt with long periods of time between judgment and the filing of a motion for relief from judgment. In that case, there was a two-year delay between the judgment and the motion being filed. The Ninth Circuit focused on when the fact was discovered and how quickly the motion was filed. Other courts have found longer periods of time between the judgment and the motion. *See, e.g.*,*United States v Holtzman*, 762 F.2d 720, 725 (holding that a five-year delay was not unreasonable); *Washington v. Penwell*, 700 F.2d 570, 572-73 (9th Cir. 1983) (holding that a four-year

delay was not unreasonable); *Clarke v. Burkle*, 570 F.2d 824, 831-32 (8th Cir. 1978) (holding that a six-year delay was not unreasonable).

ii. *Successive habeas petitions*

It must be remembered that Ramirez did not make a request for leave to file a successor petition. This is because what was filed is not a successor petition. It is a motion for relief from judgment under Rule 60(b).

28 U.S.C. § 2244 states, "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C 2244 B (3) (a).

d. *Mr. Ramirez's waiver of a mitigation hearing was not valid.*

The Fifth Circuit determined "[a]s the state court, the district court, and this court have all previously found, Ramirez's knowing and intelligent decision to cut short his mitigation defense renders irrelevant the quality of trial counsel's mitigation investigation." R. *Order denying certificate of appealability, 16.*

Unless Mr. Ramirez knew of the most significant mitigation evidence available to him, he could not have made a knowing and intelligent waiver of his constitutional rights. In *Battenfield v. Gibson*, 236 F.3d 1215, 1229-33 (10th Cir. 2001) a court held a defendant's waiver invalid where there was "no indication [counsel] explained . . . what specific mitigation evidence was available"); *Coleman v. Mitchell*, 268 F.3d 417, 447-48 (6th Cir. 2001); *see generally Iowa v Tovar,* 541 U.S. 77, 88.

A short discussion of *Battenfield* is appropriate here. The Tenth circuit held:

> hook's failure to investigate clearly affected his ability to competently advise Battenfield regarding the meaning of mitigation evidence and the availability of possible mitigation strategies. Shook testified that, prior to trial, he had "numerous conversations [with Battenfield] about the possibility of having a second stage." Evidentiary Hearing Tr., Vol. II at 115. Whatever those conversations may have entailed, there is no indication Shook ever explained the general meaning of mitigation evidence to Battenfield or what specific mitigation evidence was available. Shook acknowledged he never advised Battenfield that mitigation evidence might include evidence about Battenfield's substance abuse problems. At best, the evidence indicates that at [*1230] some point during the trial proceedings, Shook discussed with Battenfield his plan to present Battenfield's parents as second-stage witnesses and his strategy to have Battenfield's parents beg for Battenfield's [**42] life. In an affidavit submitted in connection with his application for post-conviction relief, Battenfield indicated that Shook never explained to him "the importance of mitigation or . . . what mitigation actually was." Battenfield Aff. P 2.

Battenfield v Gibson, 236 F.3d 1215,1229-1230 (10th Cir. 2001).

There is no indication from the waiver hearing that counsel explained what mitigation available and what evidence was he could present.

The Court:	And this is of your own free will.
The Defendant:	That's correct, your honor.
The Court:	No one is forcing you to do this?
The Defendant:	No sir.
The Court:	No one is influencing you in any way to do this?
The Defendant:	No sir.
The Court:	Did you think about this long and hard?
The Defendant:	Oh yeah I've thought about this since the even occurred, you know.
The Court:	Okay.

The Defendant: I knew what was coming so I made my decision a long time ago.

The Court: Okay. All right. All right why don't you have a seat, Mr. Ramirez.

R. 31, Return of the writ.

A mitigation professional who met with Mr. Ramirez for a total of five hours testified that Mr. Ramirez knew what he was doing when waiving a mitigation case. Martinez testified that Mr. Ramirez was competent to waive a mitigation hearing. *Id.* The Fifth Circuit can raise this "waiver" as a roadblock to relief only if the findings of the state court are valid.

In the context of federal habeas review, "deference does not imply abandonment or abdication of judicial review." *Miller-El v. Cockrell,* 537 U.S. 322, 340 (2003). The above passage between the court and the defendant is the sum total of the waiver discussion in this case. This is not enough. There is no discussion that Mr. Ramirez knows all the mitigation found by the attorneys. It is clear that like Battenfiled, he was acting "quite upset and, in my opinion, pretty irrational at that point in time." *Battenfiled at 1230.*

e. *The underlying Wiggins claim has merit.*

1. *The Defaulted IATC Claim*

The defaulted IATC claim is this: "Trial counsel failed to uncover clearly mitigating evidence." Gross's deficient performance in state habeas is manifest: He

never raised a claim that trial counsel failed to investigate mitigation evidence adequately. The state court found:

> The Court of Criminal Appeals adopted that findings without alteration. *Ex parte Ramirez*, 2012 Tex. Crim. App. Unpub. LEXIS 1080 (Tex. Crim. App. 2012) (unpublished). Instead, Gross presented an IATC claim with six subparts. The only subpart that actually included extra-record evidence that Gross had to investigate was one claim that trial counsel failed to present some mitigating evidence. Gross presented limited affidavits from only some of Mr. Ramirez's family to support his argument that Mr. Ramirez satisfied *Strickland* prejudice, but these affidavits were from witnesses available at trial. None of the affidavits were from people outside Mr. Ramirez's family.

The Texas Court of Criminal Appeals' finding of fact that Gross never presented an IATC claim for failing to investigate mitigation evidence "shall be presumed to be correct" because it was "adjudicated on the merits in State court proceedings." See 28 U.S.C. § 2254(d), (e)(1). The federal court must show deference to that specific finding: that Mr. Gross did not present a *Wiggins* claims.

2. *Deficient Performance by Ramirez's Trial Counsel*

Trial counsel must reasonably investigate to find mitigation evidence. *Wiggins v. Smith*, 539 U.S. 510 (2003). This Court is clear that effective assistance requires counsel to conduct a reasonable "investigation into the prosecution's case and into various defense strategies," because lack of pretrial preparation puts at risk the defendant's right to "an ample opportunity to meet the case of the prosecution." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). Failure to do so is "objectively unreasonable." *Rolan v. Vaughn*, 445 F.3d 671, 682 (3d Cir. 2006).

At the time of Mr. Ramirez's trial, his attorneys' obligations were governed by the ABA Guidelines for the Appointment and Performance of Counsel in Death

Penalty Cases 2003 (the "Guidelines") and the ABA Standards for Criminal Justice (3d Ed. 1993) (the "Standards"). "Those Guidelines applied the clear requirements for investigation set forth in the earlier Standards to death penalty cases and imposed . . . similarly forceful directive[s]." *Rompilla v. Beard*, 545 U.S. 374, 387 n.7 (2005) (referring to 1989 Standards). Under the Guidelines, counsel has an obligation to conduct at every stage a "thorough and independent investigation ( ) relating to the issues of both guilt and penalty." Guidelines 10.7(A). Similarly, the Standards imposed an affirmative obligation "to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case." Standards 4-4.1. Most significantly, "[t]he duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty." *Ibid.*

Once trial counsel completes the necessary pretrial investigation, he must then formulate a defense theory "that will be effective in connection with both guilt and penalty . . . ." Guideline 10.10.1 (2003); *accord* Guideline 11.7.1 (1989). Clearly established federal law dictates that defense counsel must conduct a reasonable investigation or, at a minimum, to make a reasonable decision that makes specific investigation unnecessary. *Strickland v Washington* , 466 U.S. at 691; *accord Sonnier v. Quarterman*, 476 F.3d 349, 358 (5th Cir. 2007). Trial counsel may not limit the scope of their investigation unless it determined that further investigation would be "counterproductive or fruitless." *Lewis v. Dretke*, 355 F.3d 364, 367 (5th Cir. 2003); *accord Smith v. Dretke*, 422 F.3d 269, 280 (5th Cir. 2005).

Here, neither trial counsel nor Mr. Gross reasonably investigated Mr. Ramirez's mental state and traumatic history. Had they done so, they would have uncovered a terrible combination of serious mental illness and childhood trauma as displayed in the BBC documentary. This evidence, placed in proper context by expert medical professionals, would have resulted in a homicide conviction that was less than capital and, even if convicted of capital murder, a life sentence.

3. *Pablo Castro's son, Aaron Castro, Would Have Asked the Jury to Impose A Life Sentence Had He Known That Ramirez Had A Son.*

This Court's Memorandum Opinion was clear: "Ramirez has not identified any witness other than family members who could provide testimony exceeding trial counsel's opening argument." Doc. No. 34, p. 45.

But this statement is not true, in the sense that Mr. Gross could have developed evidence to gainsay it, and this evidence would have easily been available to trial counsel. The BBC produced a video in 2017 in which they interviewed the victim's family.

At 3:35, Aaron Castro says, "I would not want that hate cycle to continue" because he would not support the death penalty be imposed on Ramirez because he now has an infant son. This interview occurred after trial. This would be powerful evidence to present to a jury.

The use of defense-initiated mitigation has been a wonderful tool within the past few years.

4. *Mitigation Evidence of Mr. Ramirez's Horrific Childhood Trauma*

The BBC documentary also presents shocking testimony from Ramirez's mother, Priscilla Martinez, about the violence she endured during Ramirez's childhood. A boyfriend stabbed he in front of Mr. Ramirez. This extreme violence witnessed by Mr. Ramirez would be powerful in front of the jury.

Moreover, since the trial counsel only met with Priscilla Martinez once, it appears that they never ascertained this mitigating information from her. *See* Dkt #7, 30. It is unclear that they would be able to present the information to Mr. Ramirez so that he could make an informed waiver.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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Court-Appointed Attorneys for Petitioner Ramirez

CERTIFICATE OF SERVICE

I hereby swear and affirm that on the 24th day of October 2019, a copy of the foregoing was sent to Jennifer Morris, Assistant Attorney General via electronic mail. .

Seth Kretzer

Seth Kretzer