Case No. 21-8046

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH MARTIN DANKS,

Petitioner,

vs.

RONALD BROOMFIELD,
Warden of California State Prison at San Quentin,

Respondent.

On Petition for Writ of Certiorari to
the Court of Appeal for the State of California

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Joseph Martin Danks petitions this Court to enforce the Eighth Amendment's prohibition against the execution of a seriously mentally ill inmate whose homicidal behavior was the direct and foreseeable result of the State's Eighth Amendment violation in denying him minimally adequate mental health care. Respondent's Brief in Opposition (BIO) erroneously asserts that a state court "procedural default" deprives this Court of jurisdiction to address this important issue, grossly mischaracterizes the Court's holding in *Brown v. Plata*, 563 U.S. 493 (2011), and alternately concedes or ignores the material facts that establish this constitutional violation. Respondent's arguments should not dissuade this Court from granting the petition for writ of certiorari.

ARGUMENT

I. THIS COURT HAS JURISDICTION TO ADDRESS MR. DANKS'S CLAIM

The procedural rule upon which respondent erroneously relies is limited to the circumstances permitting California state courts to take a second look at habeas corpus claims after they have been raised in a timely, initial petition and denied on the merits. *See In re Miller*, 17 Cal. 2d 734, 735 (1941). Under this rule, the state court has authority to *re*consider the merits of previously submitted claims when they are further supported by new facts or intervening changes in law that substantially affect the rights of the petitioner. *Id.* If the state court concludes that a subsequent presentation of claims is not supported adequately by new facts or new law, its decision merely signals the lack of any reason to revisit its earlier merits denial of the same

claims. *In re Martin*, 44 Cal. 3d 1, 27 & n.3 (1987). The denial of the "successive" claims on this ground does not affect the earlier merits denial of the same claims and does not pose any bar to federal court review of such claims.

Respondent conflates the forgoing situation with the denial of untimely, "successive" petitions that raise only wholly new claims for the first time. In those instances, unless the petitioner can justify or excuse the failure to present the claims earlier, they are subject to a procedural bar, which may preclude federal court review. *See Martinez v. Ryan*, 566 U.S. 1, 9 (2012); *In re Clark*, 5 Cal. 4th 750, 774-75 (1993).

The constitutional violation presented to this Court was raised before the state court in two separate habeas corpus petitions. As relevant here, the state court denied the claims in the first petition on the merits without reference to any procedural bar. Following this first round of state post-conviction proceedings, the second petition raised the claims again as fortified by subsequent changes in the facts and decisional authority from this Court in *Plata*. More specifically, it was only after the state court denied Mr. Danks's first petition that state prison psychiatrists then acknowledged, as respondent concedes, "that there was a 'direct connection' between [Mr. Danks's] 'mental illness and his threatening and aggressive statements and behaviors' *at that time*." BIO at 14 (citing Pet. App. at a23). The State's psychiatrist further confirmed, at that time, that Mr. Danks had suffered from the diagnosed mental illness since his "adolescence," *i.e.*, long before the date of the capital offense. Pet. App. at a23; *Danks v. Martel*, 2011 WL 4905712, at *6.

In granting Mr. Danks a stay to exhaust this new fact under this Court's authority in *Rhines v. Weber*, 544 U.S. 269, 276 (2005), the district court observed that the state expert's belated acknowledgement was "quite different from the position taken by the

State of California at Danks' trial, on appeal, and on state habeas." *Danks v. Martel*, 2011 WL 4905712, at *6.

The district court also found that the exhaustion stay was supported by this Court's intervening decision in *Plata*, "which concludes that the medical and mental health care provided to California inmates fell below standards of decency that inheres in the Eighth Amendment," during "the period of Danks' confinement" at the time of the capital offense. *Id.* at *2.

Although then, as now, the State sought to distance the holding in *Plata* from Mr. Danks, the district court found such attempts to be "disingenuous." *Id.* at *6.

Despite the state court's dismissal of these intervening developments as being insufficient to warrant reconsideration of Mr. Danks's claims, it explicitly agreed that the new facts and authority could not have been presented earlier because they arose only after the initial habeas corpus proceedings. Pet. App. at a21, a28.

Thus, Mr. Danks's resubmission of his claims was neither untimely nor the basis for any other "procedural default" affecting the earlier merits denial of his substantive claims. As respondent acknowledges, those claims were "'initially presented to the California Supreme Court as part of the 440-page petition for writ of habeas corpus' filed in December 2003 and denied in September 2010." BIO at 11 (citing Pet. App at a28); *see also Danks v. Martel*, 2011 WL 4905712, at *7 ("[T]he augmented claims are the same as the claims in the original state petition.").

Moreover, even if the state court's decision declining to reconsider Mr. Danks's claims constituted some sort of retrospective "bar" to the initial claims, which it did not, the decision did not rest "on a state law ground that is independent of the federal question." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Rather, it necessarily

"appears to rest primarily on federal law, or to be interwoven with the federal law." *Id.* at 735 (citation and internal quotation marks omitted). A state law ground is so interwoven if "the State has made application of the procedural bar depend on an antecedent ruling on federal law, that is, on the determination of whether federal constitutional error has been committed." *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985).

Here, the state court's ruling hinged, in part, on its impression that *Plata* did not find California's medical and psychiatric care of inmates to fall below Eighth Amendment standards. *See*, *e.g.*, Pet. App. at a19. Thus, in addition to being a clearly erroneous reading of *Plata*, as discussed *post*, the state court's attempt to distinguish *Plata* also constituted "an antecedent ruling on federal law" that intertwined federal law with the application of the procedural rule. *Ake*, 470 U.S. at 75.

II. THE EIGHTH AMENDMENT PRECLUDES THE EXECUTION OF MR. DANKS

Respondent does not offer any meaningful factual or legal basis to dispute that the Eighth Amendment precludes the execution of an inmate whose homicidal behavior was the direct, foreseeable, and avoidable result of the State's unconstitutional failure to provide minimal mental health treatment required by the Eighth Amendment.

The Eighth Amendment forbids the use of "cruel and unusual punishments" against convicted offenders. U.S. Const. amend. VIII; *see also Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008); *Roper v. Simmons*, 543 U.S. 551, 560 (2005). This Court has further made clear that capital punishment is "excessive" whenever "it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes." *Kennedy*, 554 U.S. at 441 (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 183, 187 (1976)). "With respect to

retribution . . . the severity of the appropriate punishment necessarily depends on the culpability of the offender." *Atkins v. Virginia*, 536 U.S. 304, 319 (2002). When the death penalty is imposed on "one whose culpability or blameworthiness is diminished" – whether by immaturity or by diminished mental capabilities – retribution is not served. *Simmons*, 543 U.S. at 571; *Atkins*, 536 U.S. at 319 ("If the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution."); *see also Hall v. Florida*, 572 U.S. 701, 709 (2014) ("The diminished capacity of the intellectually disabled lessens moral culpability and hence the retributive value of the punishment.").

With respect to deterrence, this Court has held that the same cognitive and behavioral impairments – "for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses" – not only make these offenders less morally culpable but also "make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based on that information." *Atkins*, 536 U.S. at 320; *see also Simmons*, 543 U.S. at 571-72 (finding that the same characteristics that render juvenile offenders less culpable also signify juveniles are less susceptible to deterrence – "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent" (citation omitted)). These individuals are, "by reason of their condition, likely unable to make the calculated judgments that are the premise for the deterrence rationale." *Hall*, 572 U.S. at 709.

Based on these principles, it is clear that Mr. Danks's characteristics and circumstances of his charged behaviors place him

outside the "narrow category" of offenders "whose extreme culpability makes them 'the most deserving of execution.'" *Simmons*, 543 U.S. at 568 (quoting *Atkins*, 536 U.S. at 319). No Eighth Amendment standard of deterrence, retribution, or culpability is satisfied by executing a seriously mentally ill person whose homicidal behavior is itself the product of an Eighth Amendment violation arising from the State's failure to provide necessary psychiatric care. Because the death penalty, when applied to Mr. Danks, cannot measurably contribute to the penological goals of retribution or deterrence, "it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment." *Enmund v. Florida*, 458 U.S. 782, 798 (1982) (quoting *Coker v. Georgia*, 433 U.S. 584, 592 (1977)).

Respondent either ignores or actually concedes that the record shows that after Mr. Danks's arrest for six homicides, he was hospitalized for mental incompetency, and state psychiatrists conducted what was essentially a controlled experiment demonstrating that in the absence of psychotropic medication, Mr. Danks's mental illness produced uncontrollable acts of interpersonal violence. Treatment with appropriate psychotropic medication enabled him to control his behavior and avoid such acts. *See* 2003 Pet. at 94-95; 2003 Pet. Ex. 207 at ¶¶ 43-47. Nevertheless, after Mr. Danks was convicted and sentenced for the six homicides, he was imprisoned in August 1990 and deprived of the necessary medication. When he predictably engaged in another homicidal act, he was convicted and sentenced to death for capital murder.

Respondent argues that the State did not violate the Eighth Amendment at the time of Mr. Danks's imprisonment in 1990 because it had "treated [Petitioner's] mental illness for years before he committed his capital crime, including by sending him to a state

hospital for nine months shortly before he murdered his cellmate." BIO at 17. In fact, the earlier course of treatment during the *pre-trial* litigation of Mr. Danks's non-capital case demonstrates exactly the opposite. By the time Mr. Danks was sentenced to prison for the non-capital homicides, the State was well aware of his need for psychotropic medication and the foreseeable consequences of withholding it. The Eighth Amendment violation arises from the fact that such "treatment" was nevertheless discontinued "shortly before" Mr. Danks's homicidal acts.

At the time he killed his cellmate, Mr. Danks had been decompensating for several months as the benefits of his last doses of psychotropic medication left his system, and his decompensation was utterly predictable. *See* 2003 Pet. at 97-101; 2003 Pet. Ex. 207 at ¶ 50. His extensive psychiatric records from the period before his incarceration at California Correction Institution (CCI), including those from his long, pre-trial confinement at Atascadero State Hospital, already showed that whenever he stopped receiving appropriate medication for symptoms of his psychosis, Mr. Danks's mental state unraveled, and he soon became assaultive. *See* 2003 Pet. at 94-95; 2003 Pet. Ex. 207 at ¶¶ 43-47. As Dr. Pablo Stewart explained:

> Results of clinical trials [of] neuroleptic therapy at Atascadero State Hospital medically indicated that Mr. Danks's mental illnesses caused significant psychiatric decompensation and serious assaultive tendencies within approximately 10 weeks of ceasing intramuscular administration of long-acting medications. After his return to the Los Angeles County Jail, Mr. Danks last received neuroleptic medication orally in early May 1990. The continuing clinical benefits of these medications would not have been as long-lived as those of the neuroleptics that were administered intramuscularly at Atascadero.

> . . . His course of clinical decline at Atascadero also made it reliably predictive that leaving his illnesses unmedicated after mid-May 1990 would lead to assaultive behaviors by the date of his cellmate's death in Tehachapi State Prison on September 20, 1990.

2003 Pet. Ex. 207 at ¶ 50.

Respondent's contention that testimony from the State's psychiatrist recognizing the link between Mr. Danks's mental illness and violent behaviors in 2011 does not establish a similar connection in 1990 is also contrary to the record. According to the State's psychiatric expert's testimony in 2011, in support of a judicial order to medicate Mr. Danks against his will to control his violent behaviors, the underlying illness had existed since at least Mr. Danks's adolescence, and the behavioral connection was documented and ongoing from at least 1990 to 2011. *See* 2011 Pet. Ex. 1; Ex. 4 at 14-15, 24-25. As the district court observed in granting the exhaustion stay:

> CDCR psychiatric expert Dr. Burton stated: 1) Danks has suffered from a serious psychotic illness since adolescence, 2) his mental illness is directly connected to his aggressive behaviors, and 3) anti-psychotic medication is the most medically appropriate means of treating Danks' illness and protecting the safety of others.

Danks v. Martel, 2011 WL 4905712, at *6.

III. THE STATE COURT ERRONEOUSLY DISMISSED THE SIGNIFICANCE OF THIS COURT'S *PLATA* HOLDING AS WARRANTING RECONSIDERATION OF WHETHER THE STATE VIOLATED PETITIONER'S EIGHTH AMENDMENT RIGHTS

Respondent acknowledges that the state court disregarded the significance of this Court's decision in *Plata* on two erroneous grounds. First, the state court ruled:

> that the *Plata* decision did not "conclude[] that the medical and mental health care provided to California inmates fell below standards of decency that inheres in the Eighth Amendment." [citing Pet. App. at a19]. Instead, the Court "merely affirmed [d]istrict [c]ourt decisions that found that the reduction of prisoners is an appropriate remedy to reduce prison overcrowding and improve the delivery of medical and mental health care to California inmates."

BIO at 5-6.

The state court's reading of *Plata* (which respondent endorses) is diametrically opposed to the plain language of this Court's actual decision:

> The medical and mental health care provided by California's prisons falls below the standard of decency that inheres in the Eighth Amendment. This extensive and ongoing constitutional violation requires a remedy, and a remedy will not be achieved without a reduction in overcrowding. The relief ordered by the three-judge court is required by the Constitution and was authorized by Congress in the PLRA. The State shall implement the order without further delay.

Plata, 563 U.S. at 545. Thus, this Court's approval of a *remedy* was predicated on its unmistakable finding that the state was in violation of the Eight Amendment.

Second, respondent relies on the state court's reasoning that *Plata* added no new support to Mr. Danks's claim because the district court in *Coleman v. Wilson*, 912 F. Supp. 1282, 1316 (E.D. Cal. 1995), had "found 'overwhelming evidence of the systemic failure to deliver necessary care to mentally ill inmates' in California prisons" some "eight years before Danks filed his first habeas petition in 2003." BIO at 6 (citing *Plata*, 563 U.S. at 506). *Plata*, however, explicitly relied on and affirmed the findings in *Coleman*, which, as noted by the district

court in Mr. Danks's case, applied to the conditions during "the period of Danks' confinement" in state prison at the time of the capital offense. *Danks v. Martel*, 2011 WL 4905712, at *2. Indeed, respondent implicitly concedes as much. Although *Coleman*'s findings were made "eight years before Danks filed his first habeas petition in 2003," they were issued in 1995, in the context of litigation challenging conditions at the time of Mr. Danks's incarceration in 1990. *See* BIO at 2 ("Danks was transferred to the California Correctional Institution on August 23, 1990") and 6 (citing *Plata*, 563 U.S. at 506).

Thus, as the district court found, respondent's attempt to treat *Coleman* "as independent of *Brown v. Plata* is disingenuous." *Danks v. Martel*, 2011 WL 4905712, at *6.

Consistent with *Johnson v. United States*, 544 U.S. 295 (2005), Mr. Danks was entitled to have the California state appellate courts give full effect to the significance of that crucial new fact when assessing the significance of this Court's holding in *Plata*.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: August 31, 2022

Respectfully submitted,

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