No. 22A683

IN THE

Supreme Court of the United States

WESLEY LYNN RUIZ,
Petitioner,
v.

STATE OF TEXAS
Respondent.

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

RESPONDENT'S OPPOSITION TO APPLICATION FOR STAY

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JOSH RENO
Deputy Attorney General
For Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

TOMEE M. HEINING
Deputy Chief, Criminal Appeals
Counsel of Record

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

REPONSE IN OPPOSITION TO APPLICATION FOR STAY

Petitioner Wesley Lynn Ruiz is scheduled to be **executed after 6:00 p.m. on February 1, 2023**. Ruiz was convicted and sentenced to death for the 2007 capital murder of Dallas Police Corporal Mark Nix. Ruiz unsuccessfully appealed his conviction and sentence in state and federal court. On January 24, 2023, eight days before his scheduled execution date, Ruiz filed a subsequent habeas corpus application in the state court—his fourth state habeas application—alleging that two members of his jury harbored anti-Hispanic bias toward him, rendering his death sentence impermissibly tainted by racial bias, in violation of *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017); and *Buck v. Davis*, 580 U.S. 100 (2017). The Texas Court of Criminal Appeals (CCA) dismissed his subsequent application pursuant to Texas Code of Criminal Procedure Article 11.071 § 5 "as an abuse of the writ without reviewing the merits of the claim raised." *Ex parte Ruiz,* No. WR-78,129-04, Order (Tex. Crim. App. Jan. 30, 2023) (per curium). The court also denied a stay of execution.

Ruiz now seeks certiorari review of the denial of his subsequent habeas application by the CCA and concurrently files the instant application for stay of his execution pending the outcome of his petition for writ of certiorari. However, as argued in the concurrently filed brief in opposition, Ruiz is unable

to present any special or important reason for certiorari review because he fails to demonstrate a violation of any federal constitutional right. Therefore, the Court should deny his petition for certiorari review and deny this application for stay of execution.

STANDARD OF REVIEW

Federal precedent does "not for a moment countenance 'last-minute' claims relied on to forestall an execution." *Nance v Ward*, 142 S. Ct. 2214, 2225 (2022). A stay of execution "is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough,* 547 U.S. 573, 584 (2006) (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). "It is well-established that petitioners on death row must show a "reasonable probability" that the underlying issue is "sufficiently meritorious" to warrant a stay and that failure to grant the stay would result in "irreparable harm." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), superseded on other grounds by 28 U.S.C. § 2253(c)(2).

To demonstrate an entitlement to a stay, a petitioner must demonstrate more than "the absence of frivolity" or "good faith" on the part of petitioner. *Id.* at 892–93. Rather, the petitioner must make a substantial showing of the denial of a federal right. *Id.* In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but "the severity

of the penalty does not in itself suffice." *Id.* at 893. The State's "powerful and legitimate interest in punishing the guilty," as well as its interest in finality, must also be considered, especially in a case such as this where the State and victims have for years borne the "significant costs of federal habeas review." *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State and the victims of crime have an important interest in the timely enforcement of a sentence).

Thus, in deciding whether to grant a stay of execution, the Court must consider four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)); *see also Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991). None of these factors favor Ruiz's request.

ARGUMENT

I. Ruiz is Unlikely to Succeed on the Merits.

First, as demonstrated in the State's brief in opposition to Ruiz's petition for writ of certiorari, Ruiz's petition is without merit. He points to no compelling factual or legal issues warranting further review. The CCA's

dismissal of his subsequent application as an abuse of the writ pursuant to Texas Code of Criminal Procedure, Article 11.071 § 5, without considering the merits of the underlying claim, provided an adequate and independent state law ground sufficient to deprive this Court of jurisdiction to consider the federal claim. *See Lambrix v. Singletary,* 520 U.S. 518, 523 (1997). Furthermore, the underlying claim itself is meritless. Therefore, Ruiz's petition is unlikely to succeed.

II. Ruiz Will Not be Substantially Injured.

Second, Ruiz will not be substantially injured. In a capital case, while a court may properly consider the nature of the penalty in deciding whether to grant a stay, "the severity of the penalty does not in itself suffice." *Barefoot*, 463 U.S. at 893.

III. A Stay Will Substantially Injure Other Parties, and the Public's Interest Lies in Seeing Sentence Carried Out.

The State, the victims, and the public have a strong interest in seeing Ruiz's sentence carried out. *See Hill*, 547 U.S. at 584. The public's interest lies in executing sentences duly assessed, and for which years of judicial review have failed to find reversible error. *Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice.") (emphasis in original). The State and crime victims have a "powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)

(citation omitted). And "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a [death] sentence." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019) (quotation omitted); *Nelson v. Campbell*, 541 U.S. 637, 650 (2004) ("a State retains a significant interest in meting out a sentence of death in a timely fashion"); *Gomez v. U.S. Dist. Court*, 503 U.S. 653, 654 (1992) (per curiam) ("[e]quity must take into consideration the State's strong interest in proceeding with its judgment").

Once postconviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id*. The State should be allowed to enforce its "criminal judgments without undue interference from the federal courts." *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Here, the public's interest lies in executing a sentence duly assessed, particularly where years of judicial review have found no reversible error. Ruiz has already passed through state and federal collateral review. The public's interest is not advanced by postponing Ruiz's execution any further, and the State opposes further delay. *Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay *is* an interest of justice."). Corporal Nix's family has waited for justice for sixteen years. The Court should not further

delay this execution to review a claim that could have been raised years before, and that fails to allege any violation of Ruiz's constitutional rights. His dilatoriness in bringing this claim should not be rewarded. *Hill*, 547 U.S. 585. ("The federal courts can and should protect States from dilatory or speculative suits[.]")

CONCLUSION

For the foregoing reasons, Ruiz's petition for a writ of certiorari and application for stay of execution should be denied.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

JOSH RENO
Deputy Attorney General
for Criminal Justice

EDWARD L. MARSHALL
Chief, Criminal Appeals Division

Tomee Heining

*TOMEE M. HEINING

*Attorney in charge

Deputy Chief, Criminal Appeals Division
Texas Bar No. 24007052
Office of the Attorney General
Criminal Appeals Division

P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

tomee.heining@oag.texas.gov

Telephone: (512) 936-1600
Telecopier: (512) 320-8132