**No. 23–5597**

IN THE

# Supreme Court of the United States

RODOLFO ALVAREZ MEDRANO,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

## BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI


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## CAPITAL CASE

## QUESTIONS PRESENTED

Medrano filed a subsequent habeas application in the Texas Court of Criminal Appeals (CCA) seeking relief from his capital murder conviction pursuant to Texas Code of Criminal Procedure Article 11.071 § (5)(a)(1)–(5)(a)(3). Article 11.071 § (5)(a)(2) provides, in part, that the CCA may grant relief if an applicant files a subsequent application containing "sufficient specific facts establishing that…by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." In his application, Medrano argued that his Fifth and Fourteenth Amendment rights to an attorney and to remain silent were violated by the introduction of his statement obtained when law enforcement conducted an interview after he invoked his right to counsel and failed to scrupulously honor his invocation of his right to remain silent. The CCA concluded that Medrano failed to satisfy the requirements of article 11.071 § 5(a) and dismissed Medrano's "subsequent application as an abuse of the writ without considering the merits." *See Ex parte Medrano*, No. WR-78,123-02, 2023 WL 3494840 (Tex. Crim. App. May 17, 2023). The following questions are presented.

1. Whether law enforcement officers properly honored Medrano's Fifth and Fourteenth Amendment rights under *Miranda v. Arizona*. 384 U.S. 436 (1966).

2. Whether this Court should refuse to revisit the long-held determination that Texas Code of Criminal Procedure Article 11.071, § 5(a)(2) is an adequate and independent state ground precluding federal merits review of claims disposed of on that basis in state court.

## LIST OF ALL PROCEEDINGS

*The State of Texas v. Medrano*, No. CR-0942-03-F (332nd Dist. Ct., Hidalgo County, Texas 2005)

*Medrano v. State,* No. AP-73,320, 2008 WL 5050076 (Tex. Crim. App. June Nov. 26, 2008) (not designated for publication)

*Ex parte Medrano*, 532 S.W.3d 395 (Tex. Crim. App. 2017).

*Medrano v. Dir., TDCJ-CID*, No. 17-CV-00069 (S.D. Tex.)

*Ex parte Medrano*, No. WR-78,123-02, 2023 WL 3494840 (Tex. Crim. App. May 17, 2023) (per curiam) (not designated for publication)

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**BRIEF IN OPPOSITION**
**TO PETITION FOR WRIT OF CERTIORARI**

In a Texas state court, Rodolfo Medrano was convicted of capital murder for intentionally and knowingly causing the deaths of six persons. Medrano now petitions this Court for a writ of certiorari from the CCA's dismissal of his subsequent application for writ of habeas corpus. However, because the CCA disposed of Medrano's claims using an independent and adequate state procedural rule without considering their merits, this Court lacks jurisdiction to review Medrano's claims. Furthermore, Medrano is unable to present any special or important reason for certiorari review of his *Miranda* claim because he fails to demonstrate a violation of any federal constitutional right. Certiorari review should therefore be denied.

## STATEMENT OF THE CASE

### I. Facts of the Crime

The CCA summarized the relevant evidence presented during guilt-innocence in its opinion on direct appeal:

> The evidence at the guilt phase showed that Rosie Gutierrez lived with her sons, Ray Hidalgo and Jerry Eugene Hidalgo, at 2915 East Monte Cristo Road in Edinburg. There were two houses on the property, hereinafter referred to as the "west-side house" and the "east-side house." Rosie testified that she and her sons played dominoes in the kitchen of the west-side house on the evening of Saturday, January 4, 2003. At about 12:20 a.m., Ray went to the east-side house with his friend, Juan Delgado, Jr. Shortly thereafter, Rosie and Jerry went into the living room, where she watched television and Jerry talked on the phone with a friend.
>
> She heard loud noises that sounded like fireworks and then heard a loud banging on her door. Four or five men "barged into the house" wearing jackets with the word "Police" on them. All but one of the men were wearing ski masks. The unmasked man used a telephone cord to

tie her up, and a masked man with a big gun demanded money, gold, drugs, and jewelry. Jerry responded that they did not have anything. The masked man hit Jerry repeatedly with his gun, ordered that he be tied up in the kitchen with electrical cords, and yanked off a chain that Jerry was wearing. "The man" took off one of Jerry's tennis shoes, asked if anyone wanted it, then dropped it. He then said, "Let's go," and the intruders left. He came back into the house and ransacked the living room, left, came back inside again, fatally shot Jerry, and left again. After he left the last time, Rosie untied herself and called 9-1-1.

Shortly after 1:00 a.m., police were dispatched to the scene in reference to "a pseudo cop robbery." They found Jerry's body lying on the floor in the kitchen of the west-side house. He had sustained gunshot wounds to his back. His hands and legs were bound with extension cords, and he had a tattoo that indicated he was a member of the Texas Chicano Brothers gang. Police also found spent 7.62x39mm caliber casings on the floor.

In the living room of the west-side house, drawers were on the floor, and tables were turned over. A mattress had been left standing upright in one of the bedrooms. Edinburg police officer Ramiro Ruiz testified that it looked like someone had gone through the residence looking for something.

Police found the body of Juan Delgado, III, lying face down in the grass outside the east-side house. There was a live 9-mm round in the grass near his body. Inside the east-side house, police found the bodies of Juan Delgado, Jr. and Jimmy Almendarez in the front room and the bodies of Ray and Ruben Castillo in another room. All had sustained fatal gunshot wounds.

Ballistics evidence in the east-side house included spent 7.62x39mm caliber casings and live 7.62x39mm caliber and 9mm rounds. The house had been ransacked, and there was broken sheet rock in one of the rooms. Some of the victims' pants pockets had been pulled out.

An area behind the houses was covered with tall grass and concrete rubble. In this area, police found a "beanie cap" that belonged to one of the co-conspirators, a cell phone and charger that belonged to Ruben Castillo, and some letters and photographs that belonged to Rosie, Jerry, and Ray.

A car parked at the scene belonged to Luis Villa. Police found Villa at a motel in Edinburg on January 7. Villa reported that he was present at the time of the murders and that he had escaped the east-side house by jumping out a window. He was not charged in connection with the offense.

On January 13, police received an anonymous tip that led them to investigate Guadalupe Bocanegra, a member of the Tri-City Bombers gang. Guadalupe, who was not present at the scene of the murders, gave police information that led them to more suspects. Guadalupe's brother Marcial Bocanegra ("Marshall") was arrested on January 15, followed by [Medrano] ("Kreeper"), Humberto Garza ("Gallo"), Robert Gene Garza ("Bones"), and Juan Cordova ("Juanon") on January 24. Later, the police arrested Juan Ramirez ("Ram"), Jorge Espinoza Martinez ("Choche"), Robert Cantu ("Robbie"), Salvador Solis ("Little Sal"), Reymundo Sauceda ("Kito"), and Jeffrey Juarez ("Dragon").

David Valdez, an identification technician with the Edinburg Police Department, testified about the search of [Medrano]'s residence and truck. [Medrano] lived in a second-story apartment and his in-laws lived in the main house on the property. Items that were seized from inside [Medrano]'s apartment included books about guns and police radio frequencies, a walkie talkie, a scanner, money inside a video case, other money wrapped in rubber bands, and [Medrano]'s laptop computer and wallet. [Medrano]'s wallet contained lists of names and numbers that Officer Valdez opined "might[refer] to the commissary fund for certain inmates." It also contained a list of police-scanner frequency codes for Edinburg and the surrounding cities. Inside the residence of [Medrano]'s in-laws, police found a computer tower that contained a loaded gun and more lists of names and numbers similar to the ones in [Medrano]'s wallet. Inside [Medrano]'s pickup truck, police found money in an envelope addressed to the Texas Department of Criminal Justice (TDCJ) Inmate Trust Fund, more money in the center console, deposit slips and money orders for the TDCJ Inmate Trust Fund, and four walkie talkies in a black bag inside the truck toolbox.

A forensic examiner at the Department of Public Safety Crime Laboratory (DPS crime lab) in Austin searched various computer items found at [Medrano]'s residence for evidence of gang activity or homicide. After performing a keyword search on multiple hard drives, CDs, and diskettes, he recovered a letter and "to do list" that contained gang nicknames. The letter was apparently written by [Medrano] to a jail inmate and the "to do list" apparently referred to getting a list of gang members who were in the same section at the county jail.

Miguel Angel Tinajero, [Medrano]'s childhood friend, testified that [Medrano] came to his house sometime after the murders and asked him "to hold something for him." [Medrano] gave him a rectangular case and left. Tinajero looked inside the case and saw that it contained two or three rifles. The next day, Tinajero put the case in the trunk of a car at his father's residence near Elsa. When he opened the trunk, he saw that other weapons had already been placed there. Tinajero testified that [Medrano] knew where the keys to the vehicle were kept. Police searched the trunk of the vehicle and found ammunition, several firearms, and two-gun cases. Latent prints on both gun cases matched [Medrano]'s fingerprints. One of the firearms found in the trunk, a burgundy SKS, had a blood stain on its muzzle that was consistent with the DNA profile of victim Juan Delgado, Jr.

One of the gun cases (state's Exhibit 103) contained three guns: a black SKS Norinco 7.62x39mm rifle (state's Exhibit 107); a second black SKS Norinco 7.62x39mm rifle (state's Exhibit 108); and, a green SKS Norinco 7.62x39mm rifle (state's Exhibit 109). A forensic firearms and toolmarks examiner at the DPS crime lab in Austin analyzed the ballistics evidence. He determined that State's Exhibit 108 had fired a bullet recovered from the body of Ruben Castillo, four bullets recovered from the body of Jerry Hidalgo, and many of the other bullets, casings, and bullet fragments found at the scene. He further determined that State's Exhibit 107 had fired a bullet casing that was found in the east-side house.

On January 25, [Medrano] gave an audio-taped statement to Detective Reyes Ramirez of the Edinburg Police Department. [Medrano] admitted that he was member of the Tri-City Bombers ("Bombitas"). He stated that he and Juanon were sergeants in the gang and that Gallo was a captain. He stated that Gallo called him on a Saturday and said that he needed some weapons. [Medrano] was to transport the guns to Juanon's house.

> I got a call saying that they needed the weapons. I told him I needed somebody to pick them up because me and my wife were going to go out and I already had made plans. And he said he would send somebody over . . . and it got later. It was about 8:00 and nobody got there, so I told him I could take them to Juanon's house. I took them to Juanon's house and just dropped them off there in one of . . . their bedrooms.

After he dropped off the weapons, [Medrano] called Gallo and reported that the weapons were already at Juanon's house and that he was on his way to McAllen. [Medrano] went out with his wife that night, returning home about 12:30 a.m., and they stayed up late watching movies. The next morning, another gang member called him.

> Joe Lee Gonzales [called] asking me if I had heard what had happened. I told him I didn't. So he tells me that–never mind, that we would talk about it later. And that's when I knew something bad had happened.

That evening, [Medrano] saw the news, and "I knew what happened, you know, that they had killed six guys." [Medrano] said that he thought that they were just going to steal some marijuana, "some pounds." When Detective Ramirez asked him how many pounds, he said he thought it was about 500. He added, "When they first called me, they asked me if I wanted to go and I told them no because, I mean, I've never done something like that. I don't do that, you know."

[Medrano] further stated that about 2:00 p.m. on Sunday, Juanon called him and said that he did not want the guns at his house anymore. [Medrano] and his wife were in Harlingen at the mall, so he sent his friend Gilbert Gonzalez to retrieve the guns. Gilbert Gonzalez dropped off the guns on [Medrano]'s porch. When [Medrano] returned home at about 7:00 or 8:00 p.m., he cleaned the guns, although "they weren't even dirty" because "they probably had already cleaned them." He said there were three rifles, that they were SKS 7.62x39mms, and that two of them were black and one was green. [Medrano] explained that he had bought the guns at a gun show in early 2000 for about $300 each; he acknowledged that the sale was done under the table and that he had not registered the weapons.

[Medrano] stated that he kept the weapons until police arrested Marcial Bocanegra and "everything came out in the news." [Medrano] then called Tinajero and ordered him to come over to his house and pick up the three guns in the case. [Medrano] told Tinajero to destroy the guns if [Medrano] was ever arrested.

[Medrano] explained that "[s]ome girl named Melissa . . . started everything." She had gone to the house on Monte Cristo, had seen a large amount of marijuana, and told a man named Robert. Melissa and Robert then told Choche. Detective Ramirez asked [Medrano] who had given the order to go ahead and steal the marijuana. [Medrano] replied, "Gallo." [Medrano] explained that Gallo gets orders from Jeffrey Juarez,

a "major" in the gang who lives in Sugarland, but that Gallo would not necessarily have had to get permission from Juarez to give an order. [Medrano] said that Bones was a "shooter," that Gallo was driving around with Juanon, that he thought Choche was in another vehicle, and that others at the scene included Ricardo, Marcial Bocanegra, Kito, Perro, Sal, and Juan Ramirez. Detective Ramirez questioned him further.

> Q. That was a rip off, right? In other words, they got the information . . . from Melissa and Robert and they got together and they decided to go and hit these guys and rip them off of their drugs, right?
>
> A. Yeah.
>
> Q. That's how it's supposed to have happened?
>
> A. That's how it was supposed to happen.
>
> Q. Nobody was supposed to have gotten shot. Okay. But something went wrong and people started shooting, right?
>
> A. Yes, sir.

When Detective Ramirez asked [Medrano] who would profit from this endeavor, [Medrano] said, "I guess everybody involved was going to get something." He explained that they generally put a percentage into the treasury and that he was the treasurer.

Detective Ramirez asked [Medrano] what went wrong, and [Medrano] said the Bombitas had found letters indicating the victims could be members of the Texas Chicano Brothers ("Chicanos"), enemies of the Bombitas, so they decided to kill them. He thought that the co-conspirators later burned the letters or threw them away.

Detective Ramirez also asked [Medrano] what he knew about the "shootings in Donna." [Medrano] said, "It was a hit gone bad." [Medrano] explained that Carlos Rodriguez, a jailed "lieutenant" in the Tri-City Bombers, had ordered a hit on a bar owner in Donna because she was the main witness in an attempted-murder case against him. Rodriguez ordered the hit from the county jail. Bones, Snoop, and Ricardo carried it out, but they "were all messed up" and killed the waitresses "by mistake." [Medrano] stated, "We were all upset because [Carlos

> Rodriguez] just jumped the gun, you know, without even consulting with Gallo." He explained that "everything gets messed up" when there is no chain of command.
>
> Detective Robert Alvarez of the Edinburg Police Department testified that the Tri-City Bombers and the Texas Chicano Brothers were rival gangs. He confirmed that [Medrano] and the co- conspirators were Bombitas and that victims Ray and Jerry Eugene Hidalgo were Chicanos. He testified that the two gangs had a "green light," which is a standing order to "represent" the gang every time they see each other. He explained that the green light gives gang members authority, without asking permission, to "do whatever is necessary" to represent their gang, including murder. He stated that this particular green light has existed for years and that anyone in the gang would be aware of any green light against any other gang.

*Medrano v. State*, 2008 WL 5050076, *1–5.

## II. Evidence Relating to Punishment

Again, the CCA summarized the relevant evidence in its opinion on direct appeal:

> At the punishment phase, the state introduced [Medrano]'s statement to Investigator Juan Sifuentes of the Hidalgo County Sheriff's Department, in which [Medrano] explained his gang involvement and his knowledge of the Donna shootings in more detail. [Medrano] explained that he had become friends with gang members in high school and that he officially became an active member of the Bombitas in 1999. He explained that active membership involved staying in constant contact with members who are in prison as well as members who are not in prison, attending mandatory meetings, and obeying every order handed down by the higher-ranking members. He stated that Carlos Rodriguez (Roach) was arrested for shooting a man who was related to a rival gang member named Coco, at Garcia's Bar. The rival gang responded by shooting at Roach's house, and Roach retaliated in the same fashion when he was out on bond. Roach told [Medrano] beforehand that he was going to "take care of business," and [Medrano] understood that to mean that Roach was going to shoot them.
>
> [Medrano] explained that Roach turned himself in after retaliating against the rival gang. While Roach was in the Hidalgo County Jail awaiting trial, he ordered the Bombitas to kill Coco and "a

female witness," but [Medrano] explained, "We saw no reason to kill these people if Roach was going to plead out." Roach then acted on his own to have the bar owner killed, enlisting the help of Bones, Snoop, Ricardo, Lupio, and Chito. [Medrano] stated that Bones, Snoop, and Ricardo followed the wrong car home and killed the wrong people. Ricardo wanted to call the killings off because it was the wrong car, but Bones and Snoop said that they were true members and that the job was going to be done one way or another.

[Medrano] stated that he called Lupio after the Donna shootings and asked him about the weapons. Lupio told him that [Medrano]'s weapons were used in the shootings, but that they "were in good hands," and that he would return them to [Medrano] as soon as possible. [Medrano] stated that two or three weeks passed and Lupio failed to return the weapons, so he went and got them. He picked up a Tec-9 from "Smiley's" apartment in McAllen and picked up two SKS rifles later because they were in Mission, Texas.

[Medrano] explained, "Roach did not follow the chain of command and no one knew that these killings were going to be carried out." [Medrano] stated that he got his "sergeant stripes" at a mandatory gang meeting in September 2002 at which "it was mentioned that the killings in Donna had been carried out and that there were no links to us." Humberto Garza (El Gallito) told everyone that "this job was for Roach."

Investigator Sifuentes testified that some of [Medrano]'s weapons, which included the guns used in the Donna killings and other guns and ammunition, were later recovered from the residence of [Medrano]'s grandmother.

There was testimony from another witness concerning a dispute with a neighbor that escalated into a physical altercation with a teenage boy. The State then rested its punishment case in chief.

*Id.* at *5–6.

## III. Conviction and Postconviction Proceedings

On August 27, 2005, Medrano was found guilty of capital murder and sentenced to death. 1 CR[1] 306–08. The conviction and sentence were affirmed on appeal. *Medrano v. State*, No. AP-75,320, 2008 WL 5050076 (Tex. Crim. App. November 26, 2008) (unpublished). Medrano filed a state application for writ of habeas corpus, and based on the court's own review, the CCA denied habeas relief. *Ex parte Medrano*, 532 S.W.3d 395 (Tex. Crim. App. February 8, 2017).

Medrano filed his federal petition for writ of habeas corpus on February 7, 2018, followed by an amended petition on January 14, 2019. *Medrano v. Lumpkin*, No. 7:17-cv-00069 (S.D. Tex.) (ECF 15, 19). Respondent, the Director of the Texas Department of Criminal Justice (TDCJ), answered Medrano's petition on April 29, 2019. *Medrano v. Lumpkin,* ECF 30. On March 13, 2020, the federal district court entered an order staying the federal case to allow Medrano to file a subsequent application for writ of habeas corpus in Texas state courts. *Medrano v. Lumpkin,* ECF 45.

Back in Texas state court, Medrano filed a subsequent application for writ of habeas corpus raising two issues. SHCR-02[2] at 5. First, Medrano alleged that law enforcement officers violated his Fifth and Fourteenth Amendment Rights by failing to scrupulously honor his right to remain silent. SHCR-02 at 31. Second, Medrano

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[1] "CR" refers to the clerk's record filed in the trial court in Hildago County, Texas, cause number CR-0942-03-F, preceded by the volume number and followed by the page number.

[2] "SHCR-02" refers to the clerk's record in the second state habeas proceedings, CCA No. WR-78,123-02.

argued that the admission of false testimony of Officer Robert Alvarez violated his Fourteenth Amendment Right to Due Process. SHCR-02 at 64. The CCA reviewed Medrano's application and concluded that Medrano's application did not meet the requirements of Texas Code of Criminal Procedure Article 11.071 § 5(a). Petition Appendix A (App. A) at 2; *Ex parte Medrano*, WR-78,123-02, 2023 WL 3494840, at *1 (Tex. Crim. App. May 17, 2023). Therefore, the court "dismiss[ed] the subsequent application as an abuse of the writ without considering the merits." *Id.*

Medrano now seeks certiorari review of the CCA's decision. In his petition, Medrano complains that law enforcement officers violated his Fifth and Fourteenth Amendment Rights by failing to scrupulously honor his right to remain silent. Petition for Writ of Certiorari (Pet.) at 26, 32. But, as shown below, Medrano's claims merit no relief.

**REASONS FOR DENYING THE WRIT**

The questions that Medrano presents for review are unworthy of the Court's attention. Supreme Court Rule 10 provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for "compelling reasons." Where a petitioner asserts only factual errors or that a properly stated rule of law was misapplied, certiorari review is "rarely granted." *Id*.

Here, Medrano advances no compelling reason to review his case, and none exists. Indeed, the crux of Medrano's complaint stems from the lower court's application of Texas Code of Criminal Procedure Article 11.071. To that end, this Court lacks jurisdiction to hear it.

Furthermore, the State's interest in finality outweighs Medrano's interest in the retroactive application of any new rule of constitutional law. *Teague v. Lane*, 489 U.S. 288, 309–10 (1989) (plurality opinion). Although Medrano's claims are not raised in a federal habeas petition, a grant of certiorari review in this Court would have the same impact upon the finality of Medrano's conviction and sentence. Thus, the Court is bound to consider the issues raised only in light of clearly established constitutional principles dictated by precedent as of August 27, 2005. *Penry v. Lynaugh*, 492 U.S. 302, 314 (1989). With this in mind, it is clear that Medrano's petition presents no important questions of law to justify this Court's exercise of its certiorari jurisdiction.

## ARGUMENT

### I. The Court Lacks Jurisdiction Over This Claim That Was Disposed Using an Independent and Adequate State Procedural Law.

#### A. Law

This Court has explained that it "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment" because "[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal[.]" *Lambrix v. Singletary,* 520 U.S. 518, 523 (1997); *see also Sochor v. Florida,* 504 U.S. 527, 533–34 (1992); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983); *Herb v. Pitcairn,* 324 U.S. 117, 125–26 (1945). The "independent" and "adequate" requirements are satisfied where the court "clearly and expressly" indicates that its dismissal rests upon state grounds that bar relief, and that bar is strictly or regularly followed by state courts and applied to the majority of similar

claims. *Finley v. Johnson*, 243 F.3d 215, 218 (5th Cir. 2001) (citing *Amos v. Scott*, 61 F.3d 333, 338–39 (5th Cir. 1995)); *see also Johnson v. Mississippi,* 486 U.S. 578, 587 (1981).

"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*, 578 U.S. 488, 496 (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 subsequent 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). Under article 11.071 § 5(a), the applicant bears the burden of providing "sufficient specific facts establishing" one of these "exceptional circumstances." *Id.*

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). 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

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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).

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).

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. Lamps Plus, Inc. v. Varela,* 587 U.S. —, 139 S. Ct. 1407, 1414-15 (2019); *Expressions Hair Design v. Schneiderman,* 581 U.S. 37, 45 (2017) (noting that this Court generally defers to a court of appeals's interpretation of their respective states' laws); *De Buono v. NYSA-ILA Medical & Clinical Servs. Fund*, 520 U.S. 806, 810 n.5 (1997) (noting "settled

practice of according respect to the courts of appeals' greater familiarity with issues of state law").

The CCA has strictly and regularly applied 11.071 § 5(a), and dismissal of a successive habeas application upon such grounds constitutes an adequate and independent state procedural bar. *See, e.g., Moore v. Texas*, 122 S. Ct. 2350, 2352–53 (2002) (Scalia, J., dissenting) ("There is no question that this procedural bar is an adequate state ground; it is firmly established and has been regularly followed by Texas courts since at least 1994."); *see also Balentine v. Thaler,* 626 F.3d 842, 856–57 (5th Cir. 2010) ("We have previously held that the [CCA] regularly enforces the Section 5(a) requirements.").

**B. Application**

Medrano argues in his petition for writ of certiorari that this Court can reach the merits of his federal constitutional claims because the decision below did not rest on independent and adequate state law procedural rule. Petition at 32–38.

In state court, Medrano bore the burden of proving an exception to the abuse-of-the-writ bar. *See* Tex. Code Crim. Proc. art. 11.071 § (5)(a). Medrano's subsequent state habeas application argued two grounds for relief. SHCR-02 at 31-135. As relevant to the present proceeding, Medrano argued the claim satisfied the unavailability exception of Article 11.071 § 5(a)(1) and (2). SHCR-02 at 31-48.

The CCA's decision in this case did not explicitly state which provision of subsection 5 Medrano failed to satisfy. However, the CCA did find that Medrano's application did not satisfy "the requirements of Article 11.071 § 5(a)." *Ex parte*

*Medrano*, 2023 WL 3494840 at *1. Therefore, it dismissed "the application as an abuse of the writ without reviewing the merits of the claims raised." *Id.* This finding is sufficient to preclude this Court's jurisdiction.

In his petition for certiorari review, Medrano admits that article 11.071 § 5(a) is an independent state ground, but nevertheless argues that, in this case as well as in at least one other CCA subsequent writ case decided this year, it is not adequate because it is not strictly or regularly followed. Petition at 33. But he is wrong, and the CCA's dismissal on a state law ground strips the Court of jurisdiction.

Citing to two cases from this Court, Medrano points out that state procedural rules that are not "strictly and regularly followed" are not adequate to foreclose federal review of a constitutional claim.[4] Petition at 32–33 (citing *Johnson v. Mississippi*, 486 U.S. 578, 587 (1988) (quoting *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964)); *Hathorn v. Lovorn*, 457 U.S. 255, 262–63 (1982)).

Medrano argues that this case is similar to *Cruz v. Arizona*, 598 U.S. 17 (2023). Petition at 33. Quoting *Cruz*, Medrano states that the application of an "otherwise generally sound rule" may lead to a finding that the state procedural rule is inadequate to bar federal review. Petition at 33 (citing *Lee v. Kemna*, 534 U.S. 362, 376 (2002)). Medrano argues that a state's novel use of a procedural rule cannot be used to prevent defendants, having relied on previous interpretations, from having

[4] Medrano points out that whether a state procedural rule is adequate to foreclose federal review is in fact a federal question of law. Petition at 32–33 (citing *Johnson v. Mississippi,* 486 U.S. 578, 587 (1988); *Henry v. Mississippi*, 379 U.S. 443, 447 (1965)).

their federal claims reviewed by a federal court. Petition at 33 (quoting *NAACP v. Alabama ex. Rel. Patterson*, 357 U.S. 449, 457 (1958)).

Medrano further claims that his case is not the only one in which the CCA improperly applied 11.071 §5(a) recently. Petition at 35 (citing *Ex parte Brown*, No. WR-26,178-04, 2023 WL 2387836 (Tex. Crim. App. Mar. 7, 2023)). In support of his argument, Medrano tries to re-argue a petition for certiorari that this Court has already refused.[5] Petition at 35–37; *cf. Brown v. Texas*, 143 S. Ct. 1016 (Mar. 9, 2023). According to Medrano, the state courts in both *Brown* and *Cruz* reached "unforeseeable and unsupported" conclusions on state procedural law. Petition at 35.

Medrano misunderstands the CCA's holdings on the proper application of Art. 11.071 § (5). All of the Texas state cases Medrano cites, including *Brown*, relate to claims of intellectual disability in subsequent applications for habeas corpus.[6] Petition at 36, 36 n.82. However, the CCA treats intellectual disability claims in a slightly different manner than other claims raised in subsequent habeas applications. This is clearly explained in CCA and Fifth Circuit precedent. *See Ex parte Woods*, 296 S.W.3d 587, 605-606, 613 (Tex. Crim. App. 2009); *Ex parte Blue*, 230 S.W.3d at 163; *Ex parte Campbell*, 226 S.W.3d 418, 422 (Tex. Crim. App. 2007); *Rocha,* 626 F.3d at 838–39 ("the CCA reaches the merits of an *Atkins* claim when it determines that the *Atkins* claim is prima facie without merit and dismisses the claim for failure to satisfy

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[5] While arguing that the CCA made the same error in *Brown*, Medrano cites to numerous other decisions by the CCA applying 11.071 § (5)(a) to claims raised in subsequent applications pursuant to intellectual disability claims under "*Moore*." Petition at 36 n.82.

[6] Additionally, in *Brown*, the State conceded that this Court had jurisdiction over the *Atkins* claim and that *Cruz* was irrelevant to the case. *See* Respondent's Brief in Opposition to a Petition for Writ of Certiorari, No. 22-6964, (U.S. Mar. 9, 2023)

§ 5(a)(1)"). Therefore, the CCA's treatment of intellectual disability claims in subsequent habeas applications is not relevant to the application of Article 11.071 § (5)(a) to Medrano's case.

Medrano's petition argues that he satisfied the rule contained in Art. 11.071 § (5)(a)(2) that permits subsequent claims when the applicant demonstrates "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." Petition at 33. Medrano argues that, unlike the Arizona Supreme Court's decision in *Cruz*, the CCA failed to explain the application of the abuse of the writ rule to his case. Petition at 36–37. However, there is no requirement that the CCA must issue a reasoned opinion when it determines that an application is an abuse of the writ.

Nonetheless, Medrano claims that the CCA's application of Article 11.071 § 5(a) was "unforeseeable and unsupported." Petition at 34. However, the CCA's determination that Medrano did not satisfy the requirements of Article 11.071 § 5 did not amount to a "departure" from pre-existing law, as anticipated in *Cruz*, 2023 WL 2144416, at *7. There is nothing novel about the CCA's application of the Texas Code of Criminal Procedure to Medrano's case.

Medrano implies that the CCA's application of Texas statutory procedural rules to his case was merely an attempt to disguise the court's efforts to prevent federal review of his claim. Petition at 37. According to Medrano, because the CCA regularly issues general dismissals in subsequent state habeas cases, one can assume that there are more convictions that the CCA has known were obtained by violating

a defendant's federal constitutional rights. Petition at 37–38. Medrano argues that only this Court's intervention will prevent the CCA from continuing to condone "blatant constitutional violations." Petition at 38.

Medrano's highhanded rhetoric is a clear attempt to distract from the fact that, even if there was jurisdiction, there is no compelling reason for this Court to exercise its discretion and grant his petition. There is no question that there are no conflicts in the lower courts on the issues raised in Medrano's petition. *See* Supreme Court Rule 10(a–b). Similarly, Medrano does not raise a question of federal law that has yet to be decided by this Court. *See* Supreme Court Rule 10(c). Instead, Medrano presents the Court with the very type of error where review is rarely granted—"misapplication of a properly stated rule of law." Supreme Court Rule 10.

Medrano argued that his claim was authorized under § 5(a)(1) and (2) but it was subject to dismissal on an adequate and independent state law ground—availability. Tex. Code Crim. Proc. art. 11.071 § 5(a)(1). Medrano's claim is based on facts that were known to him before trial commenced. Medrano makes the argument in a footnote that "some—though not all—of the supporting evidence was unavailable at the time Mr. Medrano's first application was filed." Petition at 34 n.80. However, Medrano's subsequent state application did not identify any of this claim's supporting evidence as being unavailable and his petition to this Court fails to do so as well. Regardless, the claim is based on declarations from Medrano, his then-wife, and her family. There is no question that the facts were available to him at the time of trial.

Furthermore, to be entitled to have his claim reviewed on the merits under § 5(a)(2), Medrano had to make a threshold, prima facie showing of innocence by a preponderance of the evidence. *Ex parte Reed,* 271 S.W.3d 698, 733-34 (Tex. Crim. App. 2008). Medrano argues he satisfied § 5(a)(2) because, but for the improperly admitted statement, no rational juror would have found him guilty beyond a reasonable doubt. Petition at 34-35. However, Medrano ignores the fact that "[t]o determine whether an applicant has satisfied the burden, [the CCA] must make a holistic evaluation of all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial." *Ex parte Reed,* 271 S.W.3d at 734 (internal quotation omitted). Therefore, the CCA was required to include the confession in its analysis of § 5(a)(2). As such, there was no doubt that Medrano could not meet his burden to obtain a merits review of his claim.

Medrano did not satisfy the requirements of 11.071 § 5(a)(2), because the facts included in his subsequent state habeas application failed demonstrate that Medrano is innocent of the crime. To be entitled to have his claim reviewed on the merits, Medrano had to make a threshold, prima facie showing of innocence by a preponderance of the evidence. *Ex parte Reed,*

Most importantly, Medrano presents the Court with nothing more than a question about the application of a state procedural rule. His valiant attempt to re-frame the issue utterly fails. Therefore, this Court lacks jurisdiction to hear this case.

## II. Medrano's Rights were Not Violated and There is No Deliberate Evasion of this Court's Fifth Amendment Holdings.

Medrano argues that this Court should grant his petition because Hidalgo County police regularly violate the Fifth and Fourteenth Amendment rights of defendants and the CCA has refused to address the issue. Petition at 21. However, there is no evidence that police in Hidalgo County deliberately evade the requirements of Fifth Amendment jurisprudence. Nor was this case a "readily available procedural vehicle" for the CCA to address any such alleged practice of behavior because Medrano's rights were not violated.

Medrano claims that his rights were violated in three ways. First, he argues that the police improperly interrogated him after he invoked his right to counsel by "sen[ding] his wife to convey an inducement to confess." Petition at 21–30. Second, Medrano alleges that, by using his wife to make false promises, the police "failed to scrupulously honor his invocation of the right to remain silent." Petition at 21–24, 30. Third, Medrano complains that his waiver of his *Miranda* rights was involuntary because he was tricked and cajoled into speaking to officers. Petition at 21–24, 32. Medrano's arguments are meritless.

### A. Law enforcement did not interrogate Medrano in the absence of counsel by permitting him to speak to his wife.

Medrano claims that officers falsely promised his wife that if he told the police what he knew then he would be permitted to go home. Petition at 24–30. He then argues that law enforcement violated his constitutional rights by improperly using his wife to re-initiate interrogation after he invoked his right to counsel. Petition at

24–30. Medrano argues that this continued interrogation resulted in Medrano's audio recorded statement being taken in violation of *Miranda* and *Edwards*. Petition at 22.

### *1. Medrano's conversations with his wife did not constitute "interrogation."*

Medrano uses many different words to describe the fact that his and his wife's requests to talk were granted. He says that officers "provided the opportunity for" Juana to convey their promises, "created an opportunity"; "orchestrated" the conversation; and "arranged a second opportunity for his wife to repeat both the lie and her pleas." Petition at 28, 29, 30, 31. Ultimately, Medrano characterizes allowing him to speak to his wife as a "series of deceptive, manipulative actions." Petition at 31–32. However, had the police refused to allow Medrano to have any contact with his family, the police would have faced allegations that the refusal was improper coercion.

Although not addressed on the merits on the claim in Medrano's subsequent state habeas application, on direct appeal, Medrano raised an *Edwards* claim, which was denied by the CCA. *Medrano v. State,* 2008 WL 5050076 at *19–22.

> At the beginning of the audio-taped statement, Ramirez asked [Medrano] if he had been read his constitutional rights when he was arrested the previous day, and [Medrano] replied that he had. Ramirez asked, "You stated to the officers that you wanted an attorney?" [Medrano] replied, "No, sir." Ramirez asked him if he needed an attorney "right now." [Medrano] again replied, "No, sir." Ramirez then read [Medrano] his rights as required by Article 38.22 and, and also recited the following waiver:
>
> > I have read this statement of my rights (this statement of my rights has been read to me) and I understand what my rights are. I am willing to discuss subjects presented and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or

> threats have been made to me and no pressure or coercion of any kind has been used against me.
>
> [Medrano] signed the statutory rights form and a waiver stating that he understood his rights, that he wanted to waive them, and that he wanted to discuss the homicides on Monte Cristo Road. [Medrano] also answered questions about extraneous matters including the shootings in Donna, another robbery and murder "at a trailer park," and whether or not there was a "hit" on an FBI agent. When Ramirez asked [Medrano] about how he had been treated by police thus far, [Medrano] acknowledged that he had not been treated badly and that he was comfortable with the investigation.
>
> Defense counsel argued at the conclusion of the suppression hearing that [Medrano]'s statement was inadmissible because it was involuntary and had been taken in violation of [Medrano]'s right to counsel. The trial court denied the motion to suppress.
>
> At trial, Ramirez testified that he was checking the cell blocks on January 24 when [Medrano] said he wanted to talk to Ramirez and that he wanted to cooperate with the investigation. Ramirez told [Medrano] that he could not talk to [Medrano] because he had already told investigators that he wanted an attorney. Ramirez testified that he didn't really think [Medrano] was serious about cooperating, so he told him, "Look, if you want to cooperate without an attorney, tell me where the weapons are." [Medrano] told him where the weapons were.
>
> The next day, [Medrano] still wanted to cooperate and asked to talk to Ramirez, so he was taken to Ramirez's office. After Ramirez read [Medrano] the statutory warnings, [Medrano] signed a written waiver of his rights and agreed to give a statement. When the state introduced State's Exhibit 306, a compact disk containing the redacted version of [Medrano]'s audio-taped statement, defense counsel addressed the court.

The first alleged conversation took place only after Juana asked to talk her husband.[7] The officer's response, according to Juana, was "let me see what I can do."

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[7] Medrano does not allege that the police action was a *Massiah* violation. The reason for this is clear: Juana was not acting as an agent for the State when she talked to Medrano. However, for the conversation with Juana to constitute interrogation, she would have to function as an agent of the State. Questioning by third parties not related to law enforcement has never been held to be interrogation under *Miranda*.

*Id*. Law enforcement did not convey a promise to Juana and then send her in specifically to convey that promise.

Medrano asserts that this case is similar to the situation this Court faced in *Rhode Island v. Innis.* [8] Petition at 22, 24–25. Under *Innis*, the first question is whether the defendant was being directly addressed. Petition at 25; *Innis*, 440 U.S. at 302. Second, the length of the conversation must be examined. Petition at 26; *Innis,* 440 U.S. at 303. Third, a court should determine if the officers were aware that the defendant would be "peculiarly susceptible to the appeal to his conscience." Petition at 26; *Innis,* 440 U.S. at 302.

Medrano argues that a comparison of the facts in *Innis* to those in his case is "dispositive." He claims that unlike *Innis* where the conversation merely took place in his presence, his wife "spoke directly to him." Petition at 25–26. Next, he argues that the discussion with his wife, lasting "as much as five minutes," was lengthier than that in *Innis*. Petition at 26. Finally, Medrano claims that, while the officers in *Innis* did not know that the defendant was "peculiarly susceptible" to the topic of conversation, the police in his case "should have known" that he would be susceptible to the false promises conveyed to him. Petition at 26.

Medrano states that the officers should have known that he would be particularly susceptible to the promises that were conveyed to him because they were appeals to his self-interest. Petition at 26 (citing *United States v. Gomez*, 927 F.2d 1530, 1538 (11th Cir. 1991)). Second, he states that because he had a family, law

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8 440 U.S. 291 (1980).

enforcement should have been aware that he was particularly susceptible "to pleas from his wife to do whatever was necessary to come home to them." Petition at 26 (citing *Spano v. New York*, 360 U.S. 315, 323 (1959)).

However, *Innis* is not helpful to Medrano. Medrano ignores the most important factual differences between Innis and his case. In *Innis*, the inculpatory evidence was adduced *during* the interaction sponsored by law enforcement. Here, any action on the part of the police occurred at least one day prior to the challenged statement. Rather, the situation here is like that presented to this Court in *Arizona v. Mauro*. 481 U.S. 520, 523–24 (1987).

In *Mauro*, this Court noted that, while *Miranda* envisaged interrogation to be confined to that initiated by law enforcement, *Innis* "questioned practices includ[ing] … a variety of 'psychological ploys.'" *Id.* at 526. *Innis* held that such psychological ploys, "coupled with the 'interrogation environment,' was likely to 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination.'" *Id.* The protections established in *Miranda* are only effectual if they extend to the "functional equivalent" of official interrogation. *Innis,* 440 U.S. at 300–01. This Court acknowledged that officers cannot be held responsible for the "unforeseeable results" of police actions. *Id.* at 302. Therefore, interrogation under *Miranda* only includes speech or behavior that the police should have known would likely elicit a statement against the defendant's interest, an incriminating response. *Id.*

The only independent action allegedly taken by law enforcement here was making the challenged statement to Juana. The contact between Medrano and his wife was permitted due to their requests. There is no indication that law enforcement told Juana that she should speak to Medrano. Nor has there been any allegation that officers suggested to Medrano that he should call his wife. However, Medrano attempts to argue that the officers' grant of those requests is the equivalent of actions "on the part of the police" because the officers "created" the opportunity to have the conversations. Petition at 28–29. This argument is illogical and would lead to absurd results. Because defendants in custody cannot make telephone calls or meet with individuals outside the facility without the permission and assistance of officers, the classification of all such conversations could be deemed as interrogation should the defendant later confess.

Medrano argues that the use of Juana to convey false promises does not insulate the officers' activities from constitutional scrutiny. Petition at 28. Medrano cites to two decisions by this Court that purportedly support his contention. Petition at 28; *Evans v. Newton*, 382 U.S. 296, 299 (1966); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 177–78 (1972).

Medrano also cites to two state cases, one from the CCA and one from New Mexico, that held that in certain situations a defendant's statements made while communicating with a third-party may be inadmissible. Petition at 28; *McCrory v. State*, 643 S.W.2d 725, 734 (Tex. Crim. App. 1982); *State v. Ybarra*, 804 P.2d 1053, 1054–55 (N.M. 1990). However, neither *McCrory* nor *Ybarra* advance Medrano's case.

According to Medrano, in *McCrory*, the CCA recognized that "the question is whether the suspect's statement 'resulted from' a calculated practice on the part of a state agent who was attempting to elicit [an incriminating] a response." [9]Petition at 28. However, in *McCrory*, the inculpatory statement was made in response to a direct question about guilt during a polygraph examination arranged by the police. *McCrory*, 643 S.W.2d at 129. Furthermore, in addition to the fact that the *Ybarra* case is not binding on the CCA or this Court, the case involved a defendant's inculpatory statement made to a third party in police presence. *Ybarra*, 804 P.2d at 1055-56. Neither situation has any bearing on Medrano.

Regardless, Medrano fails to demonstrate that Hidalgo County had any pattern of using family members to interrogate suspects after the suspect has invoked his constitutional rights. Petition at 20. The allegations Medrano makes as to how the statements of his co-defendants were taken are not proven. Further, even if Medrano could prove his allegations, they do not support a finding that Hidalgo County police have a calculated practice of using third parties to re-initiate interrogation in violation of the Constitution.[10]

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[9] Medrano also cites to Mississippi state court decision, *Benjamin v. State*, in support of his contention that the use of a relative to "deceive the defendant and encourage him to speak." Petition at 29-30; *Benjamin v. State*, 116 So. 3d 115 (Miss. 2013). Again, in addition to being non-binding, the facts in *Benjamin* render its holding inapplicable to the situation here. There the defendant was only fourteen years old and the person sent in to convince him to talk to police was his mother. *Id.* at 119-120. There was significant discussion between law enforcement, the defendant, and the defendant's mother about whether the defendant would be detained for the night prior to the defendant's ultimate decision to waive his right to an attorney. Medrano's reliance on Benjamin for any purpose is misplaced.

[10] Medrano alleges that his co-defendant's rights were violated by continued interrogation by officers in the same conversation after the suspect invoked his rights,

Presumably, it was the second conversation with Juana that coerced Medrano to give a statement against his Fifth Amendment rights. If this is so, Medrano asked officers to allow him to speak to Juana. Therefore, Medrano himself initiated the conversation with Juana and law enforcement merely allowed the contact.[11]

Medrano did not tell officers what he intended to discuss with Juana and there is no support for the contention that law enforcement should have known that granting his request would lead to a confession.[12] There is no evidence that law enforcement re-iterated a promise to Juana after the first alleged promise was made. *Id.* Therefore, it would be unreasonable for law enforcement to think, and a court to find, a telephone reiteration of the same vague promise would be likely to induce a confession.

Thus, the behavior of law enforcement officers in this case did not constitute an interrogation under any reasonable interpretation of the laws and facts.

### *2. The alleged interrogation did not result in Medrano making incriminating statements that were used against him.*

Assuming that Medrano was interrogated by his wife in violation of his constitutional rights, no statements Medrano made during the "interrogation" were

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threatening legal action against loved ones, or other improper police action. Petition at 18-20. He claims that R. Garza was promised a phone call and visit with his wife if he gave a statement, but Garza was allowed the contact before his statement was given. Petition at 18-19.

[11] Based on Medrano's postconviction arguments, had law enforcement refused to permit the phone call, Medrano would have argued the refusal to allow contact with his family was coercion because Juana told him that if he told the police what he knew he would be able to go home to his wife and child.

[12] Medrano's inculpatory statements were made two days after the in-person conversation with Juana and one day after the telephone conversation.

admitted at trial. Instead, the statement admitted at trial was made after Medrano re-initiated discussions with officers at least one day after the last time he spoke to his wife. Therefore, the evidence introduced at trial was not elicited during the unconstitutional "interrogation."

Medrano initiated the conversations with the police in which he made inculpatory statements. Medrano was again given his Miranda warnings prior to making that statement. Medrano acknowledged understanding of the warnings and knowingly and voluntarily waived his rights. There is no evidence that Medrano made any inculpatory statements during his conversations with his wife. Therefore, the properly *Mirandized* statement to law enforcement was not tainted by inculpatory statements made in a previous improper interrogation conducted by his wife. Even if the conversation with Medrano's wife could be considered interrogation, the State never offered statements made by Medrano during the conversation.

### B. Permitting Medrano and his wife to speak was not a violation of law enforcement's responsibility to scrupulously honor his right to remain silent.

Medrano argues that allowing him to speak to his wife constituted the re-initiation of interrogation in violation of *Miranda* and *Edwards*. Petition at 22, 30–32. Medrano's petition states that "*Miranda* also protects a suspect's assertion of the right to remain silent; this 'right to cut off questioning' has been recognized as the most important safeguard erected by that seminal decision. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975)." Petition at 22, 30–32.

However, as previously explained, Medrano's wife did not interrogate him as established by *Miranda*. Nor did law enforcement initiate a conversation with Medrano after he invoked his *Miranda* rights. As such, the *Mosley* factors are not relevant to Medrano's claim that officers did not respect his right to remain silent. This argument is blatantly meritless.

### C. Medrano's waiver of his right to counsel was voluntary because he was not tricked or cajoled into waiving his rights.

Finally, Medrano argues that he did not voluntarily waive his right to counsel under *Miranda* because his waiver was obtained through trickery. Petition at 32.

In addition to the argument that the conversations with Juana were the functional equivalent of interrogation, Medrano argues that his waiver was not knowing and voluntary because the false promises conveyed by his wife tricked him into waiving his rights. Petition at 32. However, Medrano fails to provide any proof of his allegation.

The analysis of the voluntariness of a suspect's waiver of his Miranda rights has two prongs. "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412 421 (1986). Second, the suspect must have a complete understanding of the rights being waived and the consequences of that waiver. *Id.* Courts must examine the "totality of the circumstances surrounding the interrogation" to determine whether the suspect's choice was uncoerced and made with "the requisite level of comprehension." *Id.*

Here, although Medrano claims that officers made statements with the intent that they be relayed to Medrano, there is no evidence that any law enforcement officer promised or threatened Medrano in order to obtain a statement. Medrano demonstrated his understanding of his rights by invoking them when officers first attempted to take a statement. Subsequently, Medrano initiated contact twice with investigators after his request for counsel. The statement that was admitted at trial was not taken until Medrano made his second request to speak to investigators. Medrano does not argue that he did not initiate contact with law enforcement prior to the statement that was used against him.

A significant amount of time elapsed from the time Medrano spoke to his wife over the phone and when he gave his statement. Finally, in the statement, Medrano never refers to, or even alludes to any understanding between himself and law enforcement, or even mentions a hope of leniency by providing a statement.

Furthermore, the statement Medrano claims was conveyed to him was too vague to constitute a promise in exchange for a confession. Medrano merely claims that his wife was told that he could go home to his wife and son if he told officers what he knew. Petition at 6. There is no indication what officers believed Medrano knew or what they expected to hear in exchange for their offer. There were no specifics as to when and for how long Medrano would be able to "go home." There is no indication that such a vague promise conveyed through a third party had any effect on Medrano's decision to waive his rights and give a statement to law enforcement. He fails to meet his burden of proof on this issue and his claim is meritless.

### D. Medrano's claims are barred by the nonretroactivity principles established in *Teague v. Lane*.

Medrano cites to no rule of constitutional law that establishes that conversations between a prisoner and a loved one, either in person or by telephone, constitute interrogation under *Miranda*. More specifically, this Court has never held a properly *Mirandized* statement made hours, or days, after such an "interrogation" unconstitutional.

Medrano may not obtain relief based on rules of constitutional law that have yet to be announced, or that were announced after his conviction became final. *Teague v. Lane,* 489 U.S. 288, 309—10 (1989). A new rule for *Teague* is established when a grant of relief that was not dictated by precedent existing at the time the defendant's conviction became final is announced. *Goeke v. Branch,* 514 U.S. 115, 118 (1995).

Although there are exceptions to *Teague's* retroactivity limitation, none of them are applicable here. The first exception to *Teague's* retroactivity limitation is for rules that would place primary conduct beyond the government's power to proscribe or a class of persons beyond its power to punish in certain ways. *See Graham v. Collins*, 506 U.S. 461, 477 (1993). The second *Teague* exception is reserved for bedrock rules of criminal procedure that are necessary to ensure a fundamentally fair trial. *Id.* In order to receive relief on this claim, Medrano is asking this Court to extend all law relating to *Miranda* and interrogations past any current reasonable interpretation of existing precedent and create a new right. *Teague* prohibits just this practice. *Caspari v. Bohlen,* 510 U.S. 383, 389 (1994).

## CONCLUSION

As demonstrated above, the CCA correctly denied Medrano's subsequent state habeas application. For the reasons set forth above, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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