No. 23-5597

IN THE

Supreme Court of the United States

RODOLFO MEDRANO,

Petitioner,

v.

STATE OF TEXAS,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

REPLY BRIEF FOR THE PETITIONER

Sheri Lynn Johnson*
Cornell University
216 Myron Taylor Hall
Ithaca, New York 14853
607-227-1304
slj8@cornell.edu
* Attorney for Applicant in Federal Habeas Corpus Proceedings

James William Marcus**
Capital Punishment Clinic
University of Texas School of Law
727 E. Dean Keeton Street
Austin, Texas 78705
512-232-1475
512-232-9197 (fax)
jmarcus@law.utexas.edu
**Counsel of Record

CAPITAL CASE

QUESTION PRESENTED

Upon his arrest, Petitioner asserted both his right to counsel and his right to silence, but those assertions were thwarted by a police officer who first told Petitioner's wife that the police knew he was not present when the murders were committed *and that he would be allowed to go home to her and their baby if he told them what he knew*, then created two opportunities for her to use that false assurance to persuade Petitioner to speak. Petitioner's resulting statement admitted his gang membership and described both his knowledge of the gang's planned marijuana robbery and his own role in supplying guns for that robbery, a robbery that morphed into an unexpected and fatal confrontation between two gangs while Petitioner was in his own home. Petitioner's statement was the only significant evidence implicating him in the robbery-gone-bad and without it, he could not have been prosecuted for capital murder. Texas Code of Criminal Procedure 11.071(5)(a)(2) provides for authorization of a subsequent petition when "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." *Id*. at §5(a)(2). Despite the lack of any evidence beyond Petitioner's confession that could have sustained his conviction, the Texas Court of Criminal Appeals, without explanation, determined that Petitioner's subsequent petition "failed to satisfy the requirements of Article 11.071, § 5(a),"and dismissed his application "as an abuse of the writ without considering the merits of the claims."

I. Whether under all the circumstances, including an officer's knowing and deliberate deployment of Petitioner's wife to elicit statements from Petitioner while he was in custody, the falsity of the information the officer gave her to convey to the petitioner, the strength of the incentive he proffered to induce the Petitioner to speak, and the fact that similar tactics were deliberately employed to obtain confessions Petitioner's co-defendants, introduction of the resulting statement Petitioner's Fifth and Fourteenth Amendment rights under *Miranda v. Arizona,* 384 U.S. 436 (1966).

II. Whether the Texas Court of Criminal Appeals' determination that the Petitioner's subsequent petition failed to satisfy the requirements of Article 11.071, § 5(a)(2) was an adequate and independent state ground precluding merits review of his claim where that provision authorizes a subsequent petition when "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" and the confession whose constitutionality Petitioner is challenging was the only significant evidence linking him to the capital murder with which he was charged.

PARTIES TO THE PROCEEDINGS BELOW

All parties appear on the cover page in the case caption.

LIST OF RELATED CASES

State court

Texas v. Rodolfo Medrano, No. CR-0942-03-F, 332nd District Court, Hidalgo County, Texas (Aug. 27, 2005)

Medrano v. State, No. AP-75,320, 2008 WL 5050076 (Tex. Crim. App. Nov. 26, 2008)

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

Federal Court

Medrano v. Lumpkin, No. 17-cv-00069 (S.D. Tex.)

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REPLY BRIEF FOR THE PETITIONER

The Petition for Certiorari argues that when a police officer lied to Petitioner's wife, telling her that if Petitioner only told them what he knew, he could go home to his family, then provided her the opportunity convey this lie to her husband, standing behind her while she did so, this constituted interrogation within the meaning of *Miranda*, failed to scrupulously honor the invocation of his right to remain silent, and invalidated any purported subsequent waiver of his rights. Respondent fails to address this argument instead swinging at a strawman foreclosed by a prior decision of this Court, inapposite in this case, and never asserted in the Petition. The Texas Court of Criminal Appeals' ("TCCA") refusal to authorize this claim is unexplained, and as the Petition argues, cannot be reconciled with the language of the statutory provision for authorization of subsequent state habeas applications and therefore cannot provide an adequate and independent state ground for refusal to consider the merits of this constitutional violation. Respondent correctly notes that on several occasions the Fifth Circuit has previously found the Texas statutory provisions regarding subsequent petitions to be an adequate and independent state ground for denying merits review but errs in maintaining that such findings insulate later arbitrary applications of procedural bars, such as the one applied in this case, and in other recent Texas cases. Respondent also fails to explain how any independent state ground bars review of the claim raised in this case.

A. A police officer's promise that if Petitioner spoke to police, he would escape criminal liability, conveyed to Petitioner through his wife after Petitioner asserted his *Miranda* rights to counsel and silence, violated his Fifth Amendment rights.

Respondent's Statement of the Case makes no mention at all of the facts underlying Petitioner's claim that his Fifth Amendment rights were violated, and succeeds in establishing only the tenuous nature of Petitioner's connection to the murders with which he was charged: he did not plan or agree to the killings, which were not anticipated by anyone, he was not present at or near the crime scene, and his role was limited to supplying guns for what was supposed to be an easy marijuana robbery. Ironically, however, though Respondent does not try to connect the facts cited in its Statement of the Case to Petitioner's Fifth Amendment claim, they *are* relevant, for they explain why Petitioner would believe the lie fed to him by the police through his wife.

The Brief in Opposition argues at length that a police officer providing a defendant with the opportunity to speak to his wife does not constitute interrogation.[1]

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[1] Relatedly, the BIO asserts that because "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*," Brief in Opposition at 32, his claim is barred by *Teague v. Lane*, 489 U.S. 288 (1989). Petitioner does not disagree that such a claim would be *Teague*-barred, but that is not the claim he is making. His claim depends on *Rhode Island v. Innis*, 446 U.S. 291 (1980), and is reinforced by *Arizona v. Mauro*, 481 U.S. 250 (1987), both decided long before Petitioner's trial, and therefore is not *Teague*-barred.

Respondent also implausibly asserts that "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." Petitioner is aware of no legal basis for a fear that a refusal to allow Petitioner to speak with his family on the day of his arrest would

True, as *Arizona v. Mauro*, 481 U.S. 250 (1987), plainly established more than three decades ago. But Petitioner cited *Mauro* in his petition for certiorari, distinguishing it, and the distinction is both crucial and one that Respondent declines to address. *Mauro* explicitly relies on two facts: that there was no evidence that the police decision to let the Mauro's wife speak to him (upon her insistence) was a "psychological ploy" and that there was no evidence that they sent her in with any purpose of eliciting incriminating statements. Here, however, both the power of the psychological ploy and the police purpose of eliciting an incriminating statement are evident.

Respondent has not disputed the critical facts: that before providing Petitioner's wife with the opportunity to speak to her husband, Officer Ruiz told her that if Petitioner just told them what he knew, he could go home to her and their baby. That was a lie. Officer Ruiz undoubtedly knew what Petitioner and his wife did not: that supplying guns for a robbery that resulted in death could support a murder charge. He also had to know that a promise to a defendant that he could "go home" if he told them what he knew was a powerful incentive to speak; plainly, providing the opportunity for Petitioner's wife to communicate that promise to him was a

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have been deemed coercion. In many jurisdictions, it is the ordinary practice. Moreover, the Mauro Court in addressing whether permitting a wife to speak to her husband after arrest and determined that it was not, in no way suggested that such a refusal would be impermissible.

The BIO further digresses to discuss a baseless *Miranda* claim raised by ineffective trial counsel, properly rejected by the trial court, one that did not provide evidence of, or even allege, the promises made by Officer Ruiz to Petitioner through his wife; it is irrelevant here.

psychological ploy, and one designed to elicit incriminating statements. It is beyond dispute that if Ruiz himself had told Petitioner the same lie, that would have constituted "interrogation," which was impermissible because Petitioner had invoked his right to counsel; that Ruiz would have failed to "scrupulously honor" the invocation of Petitioner's right to remain silent; and that such a lie would have rendered any purported subsequent waiver invalid. Moreover, Ruiz came very close to telling Petitioner the lie himself, or at least gave the appearance of his endorsement: he stood behind Petitioner's wife as she repeated the lie and made and made her plea that Petitioner talk to the police. That Ruiz used Petitioner's wife as an unwitting agent cannot immunize his behavior from Fifth Amendment constraints.

Moreover, contrary to Respondent's contention, that the police ploy was not immediately successful is irrelevant. Petitioner had time to think about what his wife had said. When he asked to speak with her again, the police facilitated that further opportunity for her to press the police falsehoods on him, not just by letting him make a call, but by giving him information he did not have but needed in order to reach her. Respondent's complaint that police may have had other motives than circumventing Petitioner's assertion of his Fifth Amendment rights has no place at this stage of the proceedings. Had the state court authorized a hearing on Petitioner's claim,

Respondent would have had every opportunity to present any evidence of other motivations, though it seems very unlikely that such evidence would be credible.[2]

Incredibly, Respondent asserts that Petitioner "fails to demonstrate that Hidalgo County had any pattern of using family members to interrogate suspects after the suspect has invoked his constitutional rights." Brief in Opposition at 22. How can this assertion be reconciled with the fact that Petitioner in fact did proffer evidence of just such a pattern? Petitioner offered evidence that four co-defendants had similar experiences and supplemented that evidence with a declaration of then-police officer Robert Alvarez describing the practice of using family members for the purpose of eliciting statements. According to Respondent, the reconciliation is that "[t]he allegations Medrano makes as to how the statements of his co-defendants were taken are not proven." Apparently, what Respondent means by "fails to demonstrate" is that because the state court did not grant Petitioner a hearing on his claim, his factual allegations must be presumed to be unsupported. This is incorrect. Petitioner has proffered evidence of a pattern, evidence that Respondent has not, at least thus far, impeached or even affirmatively claimed is false. This evidence not only provides further support for Petitioner's claim that the police should have known that using a family member to convey a lie was reasonably likely to produce an incriminating response but renders the constitutional wrong in this case not an isolated one, thereby warranting a grant of certiorari.

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[2] Respondent also claims that other facts are ambiguous, such as what "go home" meant. Petitioner thinks the meaning is clear, but Respondent would, of course, have been free to present evidence of other intentions had the claim been authorized.

B. That Texas statutory limitations on subsequent petitions have in the past been regularly applied does not relieve Texas of its continuing obligation to employ those barriers to the assertion of federal constitutional claims in a regular manner, consistent with the governing statute.

Texas Code of Criminal Procedure Article 11.071 § (5)(a) provides three grounds for authorizing a successive state habeas petition, including the one relied upon by Petitioner: 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." *Id.* at § 5(a)(2).[3] The Texas Court of Criminal Appeals ("TCCA"), without explanation, stated that Mr. Medrano's subsequent petition "failed to satisfy the requirements of Article 11.071, § 5(a)," and dismissed it "as an abuse of the writ without considering the merits of the claims." The Respondent contends that Petitioner failed to meet those requirements and then, incorrectly, that the Fifth Circuit's decision in *Hughes v. Quarterman*, 530 F.3d 336 (5th Cir. 2008), establishes that an adequate and independent state ground insulates the TCCA's decision from merits review by this Court. The first contention is factually incorrect; the second

[3] Petitioner's state court application cited an additional ground for authorization, factual unavailability at the time of the filing of the first habeas application. Texas Code of Criminal Procedure Article 11.071 § (5)(a)(1). As the Petition noted, some, but not all of the evidence supporting Petitioner's Fifth Amendment claim was unavailable at the time he filed his first application. Respondent argues at some length that the claim was available at the time of Petitioner's first application. Whether or not partial unavailability is sufficient to meet the requirements of § (5)(a)(1) is unclear, and Petitioner has made no argument in this Petition that it is. Rather, he has only argued that refusing authorization is not an adequate and independent state ground for denying merits review because the claim plainly meets the requirements of § (5)(a)(2). Since the statute only requires meeting one of the grounds for authorization, whether partial unavailability is sufficient to ground authorization under § (5)(a)(1) is irrelevant, and the entire discussion a red herring.

both misconstrues the nature of the adequate and independent state ground doctrine and ignores more recent Fifth Circuit precedent.

As the Petition set forth, there was no significant evidence beyond Mr. Medrano's confession that implicated him in the felony murder of which he was convicted. Respondent cites none. Instead, Respondent quotes *Ex parte Reed*, 271 S.W. 3d 698, 734 (2008), for the proposition 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." Brief in Opposition at 20. That is correct, but Respondent continues with the novel and erroneous contention that, "[t]herefore, the CCA was required to include the confession in its analysis of § 5(a)(2)." *Id*. However, absolutely nothing in *Reed* addresses or sanctions the consideration of unconstitutionally admitted evidence at issue. The constitutional violation in *Reed* did not involve the unconstitutional admission of a confession, or for that matter, the unconstitutional admission of evidence of any kind. *Reed* involved a *Brady* violation, and in that context, evaluating "all the evidence, old and new" comported with the language of § (5)(a)(2). But when the constitutional violation is the improper admission of evidence, it defies logic — or any rational reading of the provision — to include the unconstitutionally admitted evidence at issue in the determination of whether the applicant has met his burden. To read the statute to include unconstitutionally admitted evidence in the assessment of whether the applicant has met his burden would inevitably doom every claim based

on such a constitutional violation. Equally important, such a reading cannot be squared with the plain language of the provision, which requires that the applicant prove by a preponderance of the evidence that "*but for* a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." (emphasis added). If the violation at stake is the unconstitutional admission of evidence, then "absent that violation" means removing the unconstitutionally admitted evidence at issue from the calculation of guilt.

Respondent cites the Fifth Circuit's decision in *Hughes v. Quarterman*, 530 F.3d 336 (5th Cir. 2008), for the broad proposition that "since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and . . . an independent and adequate state ground." Brief in Opposition at 14. But reliance on *Hughes* to establish that review of this case is barred by an adequate and independent state ground is misplaced for at least three reasons. First, the claim at stake in *Hughes* was that the jury instructions at the punishment phase of his trial did not give the jury a means for considering and giving full effect to the mitigating evidence that he presented; nothing in it that suggests that Hughes was relying on §5(a)(2), and therefore nothing suggests that the Fifth Circuit was determining whether §5(a)(2) had been consistently applied. Thus, whether denial of the claim Hughes raised was supported by an adequate and independent state ground is of no obvious relevance. Second, relying on *Hughes* inexcusably ignores the Fifth Circuit's subsequent decision in *Rocha v. Thaler*, 626 F.3d 815 (5th Cir. 2010), which stated: "It is true that prior to [*Ex parte*] *Campbell*, our decisions had assumed that a

dismissal under § 5(a)(1) always rested on an independent and adequate state-law ground. That assumption cannot survive *Campbell*." *Rocha*, at 833–35.[4] The Fifth Circuit further explained that the holding in *Hughes* was based narrowly "on the fact that the factual and legal bases for the claim were available when Hughes filed his first state habeas application," *id*. at 835–36, thus making it plain both that *Hughes* decided nothing about §5(a)(2), and that what it had decided about §5(a)(1) no longer was true.

And third, perhaps most importantly, Respondent errs in his conception of the adequate and independent state ground doctrine. Even a finding that §5(a)(2) had been consistently applied would not immunize the TCCA if it stopped applying that ground regularly, or arbitrarily used it to defeat review of a federal claim. "[A]n unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question." *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964); *Cruz v. Arizona*, 598 U.S. 17, 26 (2023). "[N]ovelty in procedural requirements cannot be permitted to thwart review. . . by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights," *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457 (1958), a principle this Court has applied for over

[4] The Fifth Circuit has not changed its view of § 5(a)(1) dismissals since it decided *Rocha*; several cases have found that a § 5(a)(1) dismissal was not based on an adequate and independent state ground. *See, e.g., In re Davila*, 888 F.3d 179, 188–89 (5th Cir. 2018) (dismissal of subsequent habeas application under § 5(a)(1) not based on independent and adequate state ground); *Ruiz v. Quarterman*, 504 F.3d 523, 527–28 (5th Cir. 2007) (same); *Busby v. Davis*, 925 F.3d 699, 706–10 (5th Cir. 2019) (same).

a century, *see, e.g., Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 165 (1917) (holding that a state ground was adequate where it was not "without fair support, or so unfounded as to be essentially arbitrary, or merely a device to prevent a review of the other [federal] ground of the judgment"), and has continued to reaffirm. *See Walker v. Martin*, 562 U.S. 307, 320 (2011) ("A state ground, no doubt, may be found inadequate when 'discretion has been exercised to impose novel and unforeseeable requirements without fair or substantial support in prior state law'" (quoting 16B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4026, p. 386 (2d ed. 1996) (Wright & Miller))).

Anticipating that Respondent might contend that only error correction is at stake, the Petition pointed to another recent case where the TCCA refused to authorize further proceedings on a subsequent state habeas application despite clear grounds for doing so, one that bore a substantial resemblance to *Cruz v. Arizona*. Like *Cruz*, *Ex parte Brown*, No. WR-26,178-04, 2023 WL 2387836 (Tex. Crim. App. Mar. 7, 2023), involved "an unforeseeable and unsupported state-court decision on a question of state procedure," *Cruz*, 598 U.S. at 26, and the TCCA's refusal was particularly egregious given *Brown*'s close resemblance to *Cruz*. Respondent contends that in citing the TCCA's unjustifiable application of §5(a) in *Brown*, "Medrano tries to re-argue a petition for certiorari that this Court has already refused." Brief in Opposition at 17. This contention misunderstands the import of the denial of a petition for certiorari, which does not constitute a decision on the merits of any of the contentions in the petition. That this Court denied certiorari in *Brown* therefore does

not support an inference that this Court deemed §5(a) was an adequate and independent state ground barring federal review in that case, let alone support for the proposition that the TCCA regularly applied §5(a) in this case.

Rather, the fact that two recent cases involve an arbitrary application of a procedural barrier is a better argument for certworthiness than is one. Moreover, since this Petition was filed, the petition for certiorari in *Broadnax v. Texas*, No. 23-248, set forth another instance of the TCCA proffering an inadequate state procedural bar — one that Respondent likewise erroneously claimed was foreclosed by *Hughes v. Quarterman*, again failing to acknowledge more recent Fifth Circuit cases. *See Broadnax v Texas*, No. 23-248 Reply to Brief in Opposition at 3-4. Broadnax, like Brown and Medrano, argues for the importance of this Court's review of the TCCA's application of procedural rules. Absent the Court's intervention, the Texas court can continue to flout this Court's constitutional rulings and then "thwart review. . . by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights," *NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 457.

Finally, Respondent argues that the TCCA applies different standards to intellectual disability claims than it does to other claims. While it is true that intellectual disability claims generally would be authorized under §5(a)(3), and Petitioner as asserting that §5(a)(2) requires authorization of his Fifth Amendment claim, the statements he quotes from intellectual disability cases describe the standard for authorization of such claims, but do not state or imply that the standard

for authorization of a claim under §5(a)(2) is harsher. Regardless of how the Fifth Circuit describes the TCCA's application of §5(a)(3), the TCCA must regularly and consistently apply all of the provisions applicable to subsequent writs. It has not done so in this case, and has not done so in other recent cases, and review by this Court is therefore warranted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

/s/James Marcus
Counsel of Record
Member, Supreme Court Bar

James William Marcus
Capital Punishment Clinic
University of Texas School of Law
727 E. Dean Keeton Street
Austin, Texas 78705
512-232-1475
512-232-9197 (fax)
jmarcus@law.utexas.edu

Sheri Lynn Johnson
Cornell University
216 Myron Taylor Hall
Ithaca, New York 14853
607-227-1304
slj8@cornell.edu

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