Nos. 24A1077 & 24-7157
CAPITAL CASE

IN THE
Supreme Court of the United States

BENJAMIN RITCHIE,

Petitioner,

v.

INDIANA,

Respondent.

On Petition for a Writ of Certiorari
to the Indiana Supreme Court

OPPOSITION TO APPLICATION FOR STAY OF EXECUTION AND PETITION FOR WRIT OF CERTIORARI

Office of the
Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-0709
James.Barta@atg.in.gov

THEODORE E. ROKITA
Attorney General
JAMES A. BARTA
Solicitor General
Counsel of Record
TYLER BANKS
Supervising Deputy
Attorney General

Counsel for the State of Indiana

EXECUTION SCHEDULED FOR Midnight to Sunrise, May 20, 2025

CAPITAL CASE

QUESTIONS PRESENTED

In 2000, Benjamin Ritchie murdered Beech Grove Police Officer William Toney. A jury sentenced him to death in 2002. State post-conviction review concluded in 2008, and federal habeas review ended in 2017. On September 27, 2024, the State moved the Indiana Supreme Court to set an execution date for Ritchie. In response, his counsel sought permission to pursue a second round of post-conviction review in state court. The Indiana Supreme Court denied his request because he had failed to persuade a majority that there was a reasonable possibility that he was entitled to relief. A concurring opinion explained that, under state law, Ritchie was required to raise his claim during earlier stages of state litigation and that he lacked sufficient justification under state law for failing to do so. The questions presented are:

1. Whether an independent and adequate state-law ground bars review.

2. Whether *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013)—which address the circumstances under which *federal* courts may excuse a procedural default in *federal* proceedings as an equitable matter—required the Indiana Supreme Court to excuse Ritchie's procedural default.

3. Whether Ritchie's stay request should be denied.

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INTRODUCTION

Benjamin Ritchie, who was convicted in 2002 of murdering a police officer, is scheduled to be executed between midnight (Central time) and sunrise on May 20, 2025. His request for a stay of execution and certiorari petition should be denied.

This Court does not have jurisdiction to grant Ritchie's petition, which seeks review of an Indiana Supreme Court order setting an execution date and denying Ritchie leave to file a successive post-conviction petition in state court. That state-court decision rests upon an independent and adequate state-law ground: Ritchie failed to meet the standard for filing a successive petition for post-conviction relief under Indiana Post-Conviction Rule 1(12). As the concurring justices explained, Ritchie was not entitled to file a successive petition for post-conviction relief because he failed to raise his claim in earlier state proceedings despite having the evidence available to him. And Ritchie did not provide a sufficient state-law justification for excusing his delay in presenting his underlying claim to the state courts. The Indiana Supreme Court's explicit reliance on state law precludes this Court's review.

But even if this Court had jurisdiction over this case, certiorari and a stay are unwarranted. Ritchie argues that the "Indiana Supreme Court rejected" this Court's decisions in *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013), when the Indiana Supreme Court declined to authorize a successive petition for post-conviction relief. But the equitable rule that this Court announced in *Martinez* and *Trevino* to govern federal proceedings does not apply to state courts. And even if it did, Ritchie would not be entitled to relief. As the concurring Indiana

Supreme Court justices explained, Ritchie failed to show that his trial counsel was ineffective under *Strickland* and that any deficiency caused him prejudice. So, any alleged error in the state court's post-conviction procedure or the standard by which Indiana evaluates post-conviction counsel's performance is harmless.

This Court should also deny the last-minute stay request. Ritchie murdered a police officer in 2000, was sentenced to death in 2002, and completed all state review (including post-conviction) in 2007. His federal habeas review concluded in 2017. Ritchie did nothing to challenge his underlying convictions or sentence for the next seven years. Instead, he waited to raise his latest *Strickland* claim until after the State sought to set his execution date in September 2024. Rewarding Ritchie's delay and granting a stay would prejudice the State and disserve the public, which has waited over two decades for a lawful state-court judgment to be carried out. The motion to stay and the request for certiorari review should be denied.

STATEMENT OF THE CASE

I. Richie's Crime, Trial, and Direct Appeal (2000–2005)

A. More than 24 years ago, Ritchie and two others stole a van from a gas station. *Ritchie v. State*, 809 N.E.2d 258, 261 (Ind. 2004), *reh'g denied* (2004), *cert. denied*, 546 U.S. 828 (2005) (*Ritchie I*). The van was reported stolen, and, a few hours later, an officer found the stolen van in traffic and initiated a pursuit. *Id.* The van stopped in the yard of a residence, and Ritchie and the others fled the vehicle and ran in opposite directions. *Id.* Officer Toney pursued Ritchie on foot. *Id.* During the pursuit, Ritchie turned and fired four shots, one of which struck Officer Toney in the

chest above his bulletproof vest. *Id*. Officer Toney died at the scene. *Id*.

The State charged Ritchie with several crimes, including murder. *Ritchie I*, 809 N.E.2d at 261. It sought the death penalty based on two aggravating circumstances: 1) Ritchie murdered a law enforcement officer acting in the course of his duty and, 2) at the time he committed the murder, Ritchie was on probation for residential burglary, a felony offense. *Id.*

The state court appointed two attorneys to represent Ritchie. D. Ct. Dkt. 69-11 at 136, 212.[1] To develop the defense's case, defense counsel hired a mitigation investigator, another investigator, a ballistics expert, and a clinical neuropsychologist. D. Ct. Dkt. 69-11 at 149–51, 222; D. Ct. Dkt. 69-8 at 420. Defense counsel also sought neuropsychological experts to investigate the possibility of organic brain damage. D. Ct. Dkt. 69-11 at 226.

A jury trial commenced on August 5, 2002, and the jury found Ritchie guilty of Officer Toney's murder. *Ritchie I*, 809 N.E.2d at 261.

B. The defense called 12 witnesses during the penalty phase to present mitigation testimony on numerous topics, including Ritchie's prenatal exposure to alcohol and other drugs. D. Ct. Dkt. 69-8 at 235, 251, 316, 332, 375, 394, 420; D. Ct. Dkt. 69-9 at 140, 157, 179, 197, 235. Ritchie's mother, Marion Martin, discussed drinking alcohol and using drugs while she was pregnant with Ritchie:

Q. When you were pregnant with Ben did you continue to drink?

[1] "D. Ct. Dkt." citations are to docket entries in *Ritchie v. Neal*, No. 1:08-cv-503-RLY-MJD (S.D. Ind.), and the page number included in the citation is the PDF page number. Respondent has filed the state-court record in that cause number.

A. Yes.

Q. Did you continue to use drugs that were not prescribed for you?

A. Yes.

Q. How would you characterize your use of alcohol and your use of drugs during the pregnancy you had with Ben as compared to the pregnancy you had with [Ritchie's two older brothers]?

A. I probably didn't drink as much with the other two boys.

Q. You probably didn't drink as much with the two other boys?

A. Yeah.

Q. So you were drinking more with Ben?

A. Yes.

Q. When Ben was inside of you?

A. Yes.

Q. And what were you liking to drink during that pregnancy, Mrs. Martin?

A. Well I would take it easy and just drink beer.

Q. You were drinking beer then?

A. (Witness nods head)

Q. But drinking more beer than you'd drank when you were pregnant with the other two boys?

A. Yes.

D. Ct. Dkt. 69-8 at 282–83.

Martin's ex-husband also testified about the drinking. He confirmed that Martin drank more while pregnant with Ritchie than she had when she was pregnant

with Ritchie's older brothers. D. Ct. Dkt. 69-8 at 343–45, 368–69. And Ritchie's adoptive mother testified that she saw Martin drink alcohol "[v]ery often" while pregnant with Ritchie: "I—everyday that I would see her she would be pretty well drunk—and I would tell her don't, stop it but it didn't do any good." D. Ct. Dkt. 69-9 at 238.

To explain how this prenatal substance abuse affected Ritchie, the defense called Dr. Michael Gelbort, a clinical neuropsychologist who had evaluated Ritchie. D. Ct. Dkt. 69-8 at 420. The "question in this case" to him was whether "there was something wrong with this young man's mind in terms of cognition or thinking skills." *Id.* at 434. To answer that question, he administered a battery of neuropsychological tests including the Wechsler Adult Intelligence Scale III, lateral-dominance test, strength-of-grip test, a sensory-perceptual examination, a category test, trail-making tests, an aphasia screening, the Wechsler Memory Scale III, and the Minnesota Multiphasic Personality Inventory II. *Id.* at 456, 463–64, 468, 472, 475, 481. He concluded that Ritchie suffered from a cognitive disorder not otherwise specified. *Id.* at 498. And he explained to the jury that his diagnosis was partially, if not primarily, based on "problems [that] date back to probably when he was in utero—in his mom's tummy and she was doing substances—that was probably the beginning." D. Ct. Dkt. 69-9 at 1.

At the end of Dr. Gelbort's testimony, he discussed Martin's substance abuse during pregnancy:

> Q. In your work testing and evaluating [Ritchie] did any of the problems or the disorder or the difficulties that you observed were they consistent with the dangers that arise from the prenatal ingestion by a mother of alcohol, tobacco or drugs?

A. Yeah.

Q. In what regard?

A. Well as I said, you know, I deal with the fetal alcohol effect and syndrome in terms of evaluating cognitive functioning in people who are affected by it. The typical pattern that you see in terms of cognition is development of learning disabilities or attention deficient or attention deficit hyperactivity or other types of minimal brain dsyfunction [sic].

Q. And did you find that Ben Ritchie had those things?

A. He's got the cognitive disorder and it comes up in terms of a higher level processing which is an intentional deficit—yeah.

D. Ct. Dkt. 69-9 at 132–33.

Ultimately, the jury found that the aggravating circumstances outweighed the mitigating circumstances and recommended a death sentence, which the trial court imposed. *Ritchie I*, 809 N.E.2d at 261; *see* Ind. Code § 35-50-2-9(e).

C. Ritchie appealed and raised 10 claims. *Ritchie I*, 809 N.E.2d at 261–71. The Indiana Supreme Court rejected all of those claims, affirmed his convictions and sentence, and later denied a petition for rehearing. *Id.* This Court declined to grant certiorari. *Ritchie v. Indiana*, 546 U.S. 828 (2005).

II. State Post-Conviction Review (2005–2008)

Ritchie then filed a petition for state post-conviction relief and presented a total of 37 claims, many of which challenged trial counsel's performance. D. Ct. Dkt. 69-14 at 166–79; D. Ct. Dkt. 69-15 at 2–8. Most relevant here, Ritchie claimed that his trial counsel performed deficiently in failing to properly investigate and prepare for the penalty phase of his trial and for failing to use "appropriate expert witnesses"

to explain his "unique and deprived environment and family circumstances." D. Ct. Dkt. 69-14 at 166–79; D. Ct. Dkt. 69-15 at 2–8.

Joseph Cleary and Brent Westerfeld represented Ritchie as his post-conviction counsel. D. Ct. Dkt. 69-14 at 147, 153. They filed 10 requests for production from non-parties. D. Ct. Dkt. 69-14 at 183–85, 192–93, 197–98, 202–03, 207–16, 233–34. In a motion for an extension of time, they represented that they had obtained "[t]housands of pages of records" and estimated there were "over a hundred possible mitigation witnesses," of which they had interviewed 60. D. Ct. Dkt. 69-14 at 237, 240. And in a response to the State's interrogatories, they listed 59 potential witnesses of which 12 were expert witnesses. D. Ct. Dkt. 69-15 at 45–50.

At a four-day hearing on Ritchie's petition, his counsel called 30 witnesses. D. Ct. Dkt. 69-11 at 2, 32, 70, 78, 83, 91, 99, 107, 136, 212, 241; D. Ct. Dkt. 69-12 at 31, 55, 124, 173, 190, 203, 229, 243; D. Ct. Dkt. 69-13 at 23, 36, 81, 133, 140, 212, 219, 224, 229, 237, 243. The witnesses included a developmental psychologist, a forensic social worker, a professional engineer specializing in firearms and ballistics, a physicist/engineer specializing in accident reconstruction, a psychotherapist, a child and adolescent psychiatrist, two school psychologists, a clinical and forensic psychologist, a *Strickland* expert, and Dr. Gelbort. D. Ct. Dkt. 69-11 at 241; D. Ct. Dkt. 69-12 at 32, 56, 125, 173, 204, 229, 244; D. Ct. Dkt. 69-13 at 37, 81, 141–51. They also called a litany of lay witnesses including many of Ritchie's elementary and middle school teachers, school principals, a police officer, two of Ritchie's ex-girlfriends, one of those ex-girlfriends' mothers, and the mother of one of Ritchie's childhood friends. D. Ct.

Dkt. 69-11 at 2, 41, 71–72, 78, 83, 91, 101; D. Ct. Dkt. 69-12 at 191; D. Ct. Dkt. 69-13 at 23–24, 133, 212, 220, 225–26, 230, 238, 244–45.

After hearing all of this evidence, the state post-conviction court denied relief in a 66-page order. D. Ct. Dkt. 69-15 at 182–247. Then, on a motion to correct error, Richie's attorneys Westerfeld and Cleary raised a new *Brady* claim, which was also denied. D. Ct. Dkt. 69-16 at 2–7, 47–48. The Indiana Supreme Court unanimously affirmed the denial of post-conviction relief in November 2007. *Ritchie v. State*, 875 N.E.2d 706, 712 (Ind. 2007), *reh'g denied* (2008) (*Ritchie II*).

III. Federal Habeas Proceedings (2008–2017)

In July 2008, by counsel, Ritchie filed a petition for a writ of habeas corpus in federal court. D. Ct. Dkt. 11. In it, he raised approximately 11 claims of ineffective assistance of trial counsel, some of which were challenging the Indiana Supreme Court's adjudication of his claims and others raising new issues brought for the first time in any court. D. Ct. Dkt. 11. The district court denied his petition in May 2014 and refused to grant a certificate of appealability. D. Ct. Dkt. 32. The Seventh Circuit also denied a certificate of appealability. *Ritchie v. Neal*, No. 15-1925, ECF No. 10 (7th Cir. 2016), *reh'g denied* (2016), *cert. denied*, 581 U.S. 920 (2017).

IV. Setting of an Execution Date and Subsequent Litigation (September 2024–Present)

A. The State of Indiana was unable to obtain the necessary drugs to perform executions immediately after Ritchie's post-conviction review concluded. *See* Press Release, Office of the Indiana Attorney General (Sept. 27, 2024), https://events.in.gov/event/attorney-general-todd-rokita-seeks-execution-date-for-

convicted-killer-of-beech-grove-cop?utm_campaign=widget&utm_medium=widget&utm_source=State+of+Indiana. Once it obtained the drugs, the State resumed executions, and on September 27, 2024, asked the Indiana Supreme Court to set an execution date for Ritchie. Pet. App. A002. In response, Ritchie petitioned the state court for successive post-conviction relief and raised four claims. His principal claim was that his counsel was ineffective for failing to inform the sentencing jury that Ritchie allegedly had partial Fetal Alcohol Spectrum Disorder (FASD)—a condition caused by alcohol consumption during pregnancy[2]—even though counsel did present extensive evidence of Ritchie's mother's prenatal substance abuse and its effects. Pet. App. A002, A016, A111–A132.

B. Following full briefing, on April 15, 2025, the Indiana Supreme Court denied Ritchie's request to pursue successive post-conviction relief and ordered him to be executed on May 20, 2025, "before the hour of sunrise." Pet. App. A001–A003. Applying Indiana Post-Conviction Rule 1(12), an equally divided court concluded that Ritchie had failed to meet his burden to prove that there was a "reasonable possibility" that he was entitled to relief on his successive claims. Pet. App. A002.

Justice Slaughter, joined by Justice Molter, concurred in the denial of leave to file a successive petition for post-conviction relief. Justice Slaughter explained that Ritchie did not have a "reasonably possibility" of succeeding on his claim that his

[2] FASD is an "umbrella term used to denote the presence of significant damage cause by prenatal consumption of alcohol." Pet. App. A016. Partial Fetal Alcohol Syndrome, or pFAS, is included under the FASD umbrella and is defined as "an individual demonstrating some, but not all of the facial features and/or growth deficiencies seen in the diagnosis of Fetal Alcohol Syndrome (FAS)." Pet. App. A017.

original trial counsel was ineffective because Ritchie could have raised that claim on direct appeal or during post-conviction relief and a successive petition for post-conviction relief cannot raise a claim that could have been raised earlier. Pet. App. A004–A005. Justice Slaughter rejected the argument that Ritchie's procedural default should be excused because his post-conviction counsel was allegedly ineffective, explaining that Ritchie did not meet the "high bar" for showing ineffective assistance of post-conviction counsel under state law. Pet. App. A005.

Justice Slaughter rejected Ritchie's invitation to replace Indiana's standard for evaluating post-conviction counsel's effectiveness with the standard for assessing trial counsel's ineffectiveness under *Strickland v. Washington*, 466 U.S. 668 (1984). Pet. App. A005. Even if *Strickland* applied, however, Justice Slaughter observed that Richie's claim would fail. Ritchie had failed to show that "he would be entitled to relief under *Strickland*." Pet. App. A005. Justice Slaughter noted that the American Bar Association guidelines, which stated that trial counsel should consider whether a defendant suffered from FASD, were not issued until 2003—after Ritchie had been tried, convicted, and sentenced. Pet. App. A006. So, as Justice Slaughter reasoned, "Ritchie's trial counsel can hardly be charged with deficient performance during sentencing for failing to anticipate a guideline adopted later." Pet. App. A006. After all, "[o]f the many skills and experiences required of death-penalty counsel, prescience is not among them." Pet. App. A006–A007.

Justice Slaughter also recognized that Ritchie's trial counsel "**did** present evidence to the jury of [Ritchie's] mother's alcohol abuse and of his resulting cognitive

impairment." Pet. App. A007 (emphasis in original). This evidence included his mother's testimony and testimony from Dr. Gelbort, who told the jury that Ritchie has "'the cognitive disorder' associated with 'fetal alcohol effect and syndrome.'" Pet. App. A007. Justice Slaughter also concluded that Ritchie had failed to show prejudice. The jury had "already heard considerable evidence during the penalty phase about his mother's substance abuse as well as expert testimony that her substance abuse during pregnancy contributed to Ritchie's cognitive limits" and that those limits were consistent with FASD. Pet. App. A007. So presenting additional evidence on the topic did not amount to a reasonable possibility that Ritchie could show the jury would have been swayed away from imposing the death sentence. Pet. App. A008.

Ritchie petitioned for rehearing on April 22, 2025, and on April 23, 2025, moved for oral argument and a stay of execution. Pet. App. A014. After briefing, the Indiana Supreme Court denied these requests on April 30, 2025, and noted that it had considered all of the evidence submitted by Ritchie, which were four expert reports, when it denied his petition for rehearing. Pet. App. A014. Ritchie petitioned for certiorari on May 7, 2025.

C. Additionally, on May 7, 2025, Ritchie moved for relief from his habeas corpus judgment in the U.S. District Court of Southern Indiana, Indianapolis Division, under Federal Rule of Civil Procedure 60(b)(6). D. Ct. Dkt. 64. He contemporaneously moved for an emergency stay of execution; that litigation is pending. D. Ct. Dkt. 65. In that litigation, Ritchie alleges that his prior habeas counsel had a conflict of interest that was created when this Court issued the decisions in *Martinez v. Ryan*,

566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013), because his prior habeas counsel was also his state post-conviction counsel. D. Ct. Dkt. 64.

REASONS TO DENY CERTIORARI AND A STAY OF EXECUTION

This Court should deny Ritchie's last-minute request for a stay and certiorari. The Indiana Supreme Court's decision to deny Ritchie successive post-conviction review rests upon an independent and adequate state law ground, which provides a sufficient reason to deny review. But even if this Court could entertain the petition, the petition does not identify any conflict over an issue of federal law. This Court's decisions establishing equitable rules for *federal* habeas proceedings do not apply to *state* post-conviction proceedings. And even if they did, Ritchie has not shown how that would change the outcome in his case. The Court should not delay the State's ability to impose a lawful sentence that it has waited over two decades to carry out.

I. An Adequate and Independent State-Law Ground Bars Review

Ritchie's petition and stay request should be denied because the Indiana Supreme Court's decision rests upon an independent and adequate state-law ground. This Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Michigan v. Long*, 463 U.S. 1032, 1041–42 (1983). That rule rests in part on "jurisdictional concern[s]." *Id.* at 1042. It also advances interests in "comity, finality, and federalism." *Davila v. Davis*, 582 U.S. 521, 528 (2017); *see also Wilson v. Corcoran*, 562 U.S. 1, 5 (2010) (stating that "it is only noncompliance with *federal* law that renders a State's criminal judgment susceptible to collateral attack in the federal courts") (emphasis in original); *Wainwright v. Goode*, 464 U.S. 78, 83–

84 (1983) ("It is axiomatic that federal courts may intervene in the state judicial process only to correct wrongs of a constitutional dimension.").

The Indiana Supreme Court's denial of Ritchie's petition for successive post-conviction review rests on an independent and adequate state-law ground: He failed to show a reasonable possibility of relief as required under Indiana Post-Conviction Rule 1(12). Pet. App. A001–A002, A004–A006. Under that rule, a petitioner must show there is a "reasonable possibility" that he will be entitled to relief on his successive claims. Pet. App. A002. But Ritchie failed to "persuade[] a majority of the Court that there is a reasonable possibility he is entitled to relief." Pet. App. A002. In his concurring opinion, Justice Slaughter reiterated that "Ritchie does not meet our standard for filing a successive petition" under Indiana Post-Conviction Rule 1(12)(b). Pet. App. A006. This explicit reliance on state law precludes federal review. *See Long*, 463 U.S. at 1041 ("If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.").

The reasoning for the denial also rested on state law. As Justice Slaughter explained, state "[p]ost-conviction proceedings are not a second try at relief." Pet. App. A004. A litigant cannot raise a claim in a successive state petition for post-conviction relief that he could have raised earlier. Pet. App. A004–A005; *see Woods v. State*, 863 N.E.2d 301, 307 (Ind. 2007) (citing *Daniels v. State*, 741 N.E.2d 1177, 1184–87 (Ind. 2001)) ("Our case law is clearly established that an issue known and available but not raised in an earlier proceeding, is procedurally defaulted as a basis

for relief in subsequent proceedings."). But Ritchie did not raise his claim at sentencing, on direct review, or in his first petition for post-conviction relief, even though "[e]vidence of Ritchie's medical condition in 2000 was available to him." Pet. App. A005.

Justice Slaughter also explained that Ritchie could not overcome his procedural default under state law. Pet. App. A005. "The right to counsel in post-conviction proceedings is guaranteed by neither the Sixth Amendment of the United States Constitution nor . . . the Constitution of Indiana." *Baum v. State*, 533 N.E.2d 1200, 1201 (Ind. 1989). Thus, under state law, a petitioner seeking to file a second post-conviction petition must overcome a "high bar" to show that post-conviction counsel was ineffective. Pet. App. A005. As the entire Indiana Supreme Court "seem[ed] to agree," however, Ritchie could not overcome that bar. *Id.* That procedural default provided the Indiana Supreme Court with an independent, state-law reason to deny relief. On this ground alone, Ritchie's petition and request for a stay should be denied.

II. The Indiana Supreme Court's Fact-Bound Decision Does Not Conflict with Any Decision from This Court

Even if this Court had jurisdiction to entertain Ritchie's petition, a stay and a grant of certiorari is unwarranted. Ritchie's petition argues that the "Indiana Supreme Court rejected" this Court's decisions in *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013). Pet. 11. That is incorrect. *Martinez* and *Trevino* establish equitable standards that apply to federal courts for excusing procedural defaults *in federal court*. They do not establish a constitutional rule that state courts must follow in deciding whether to excuse noncompliance with state

procedures. Regardless, as the concurring justices explained, Ritchie does not meet the standard for excusing a default under federal law.

A. *Martinez* and *Trevino* do not apply to state courts

Martinez and *Trevino* concern how federal courts should evaluate claims in *federal* habeas proceedings brought under 28 U.S.C. § 2254. As Congress made clear in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas review of state-court convictions does not, and cannot, serve as "a substitute for ordinary error correction through appeal." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (citing *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011)). That is because the writ of habeas corpus is an "extraordinary remedy" guarding against only the most "extreme malfunctions in the state criminal justice systems." *Harrington*, 562 U.S. at 102. Both Congress and this Court therefore "have set out strict rules requiring prisoners to raise all of their federal claims in state court before seeking federal relief." *Id.*

"A federal habeas court generally may consider a state prisoner's federal claim only if he has first presented that claim to the state court in accordance with state procedures." *Shinn*, 596 U.S. at 377. "When the prisoner has failed to do so, and the state court would dismiss the claim on that basis, the claim is 'procedurally defaulted.'" *Id.* "To overcome procedural default, the prisoner must demonstrate 'cause' to excuse the procedural defect and 'actual prejudice'" from the denial of federal review. *Id.* These rules are "designed to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism." *Martinez*, 566 U.S. at 9; *see Shinn*, 596 U.S. at 378 (noting

"the significant harm to the States that results from the failure of federal courts to respect" state procedural rules).

Ordinarily, this Court will not excuse a procedural default on the ground that a state prisoner's attorney rendered ineffective assistance during state post-conviction proceedings. *See Coleman v. Thompson*, 501 U.S. 722, 752–53 (1991). This is because there is "no constitutional right to an attorney in state post-conviction proceedings" and "the attorney is the petitioner's agent," which means the prisoner bears the risk that his agent might act negligently. *Id.* at 752. But in *Martinez*, this Court crafted a narrow "equitable" exception to that general rule. *Martinez*, 566 U.S. at 13–14. This Court "explained that ineffective assistance of postconviction counsel is 'cause' to forgive procedural default of an ineffective-assistance-of-trial-counsel claim, but only if the State required the prisoner to raise that claim for the first time during state postconviction proceedings." *Shinn*, 596 U.S. at 371. It, however, did not announce a constitutional rule. *See id.* at 384–85.

Trevino refined the equitable exception established in *Martinez*. In that case, the Court addressed whether *Martinez*'s holding applies where a state procedural rule "does not on its face *require* a defendant initially to raise an ineffective-assistance-of-trial-counsel claim in a state collateral review proceeding," but the actual operation of the state system makes "it 'virtually impossible' for an ineffective assistance claim to be presented on direct review.'" *Trevino*, 569 U.S. at 417. The Court held "that it does." *Id.* Once again, however, the Court did not announce a

constitutional rule. *Trevino* "merely clarified" the breadth of *Martinez*'s "highly circumscribed, equitable exception" in federal habeas proceedings. *Davila*, 582 U.S. at 521.

As this Court has made abundantly clear, *Martinez* and *Trevino* establish an equitable rule that governs how federal courts should evaluate procedural defaults during federal habeas proceedings. Nothing in those decisions requires state courts to apply the same principles in state post-conviction proceedings. That dooms Ritchie's petition and stay motion. His argument that the Indiana Supreme Court "rejected" *Martinez* and *Trevino* presumes that those decisions established a constitutional rule that applies to state-court proceedings. Pet. 11; *see* Pet. 12–13. They did not. Indeed, in *Martinez*, this Court explicitly stated that "state collateral cases on direct review from state courts are unaffected by the ruling in this case." 566 U.S. at 16. Thus there is no conflict between this Court's decisions in *Martinez* and *Trevino* and the Indiana Supreme Court's decision in this case.

Nor does Ritchie identify any basis for establishing a new constitutional rule. He does not ask this Court to revisit its decisions holding that prisoners do not have a Sixth Amendment right to counsel in post-conviction proceedings. *Garza v. Idaho*, 586 U.S. 232, 245–46 (2019) (citing *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987)). He also does not grapple with the significant federalism and practical consequences of imposing a constitutional requirement on state-collateral review proceedings. As this Court has recognized, a constitutional ruling along the lines of what Ritchie wants would require States to appoint counsel in initial-review collateral

proceedings, would require every State to impose the same system of appointing counsel for post-conviction review, and "would require a reversal in all state collateral cases on direct review from state courts if the States' system of appointing counsel did not conform to the constitutional rule." *Martinez*, 566 U.S. at 16. There is no merit to Ritchie's claim that the Indiana Supreme Court "rejected" this Court's decisions.

B. Even under Ritchie's own theory, any error was harmless

In any event, this case is an exceptionally poor candidate for review because Ritchie cannot show that his trial and post-conviction counsel were in fact ineffective.

Ritchie's underlying federal claim is that his trial counsel was ineffective under *Strickland* for failing to present evidence that Ritchie was affected by his mother's drinking. Pet. 7–9. But as Justice Slaughter explained,

> Ritchie's counsel **did** present evidence to the jury of his mother's alcohol abuse and of his resulting cognitive impairment. His mother testified during the penalty phase that she abused drugs and alcohol throughout her pregnancy with him. The jury also heard from Michael Gelbort, Ph.D., a neuropsychologist, who testified for Ritchie during the penalty phase that his mother's substance abuse while pregnant with him probably contributed to his cognitive limits. Dr. Gelbort even testified that Ritchie has "the cognitive disorder" associated with "fetal alcohol effect and syndrome."

Pet. App. A007 (emphasis in original). That provides grounds for holding that Ritchie's trial counsel and post-conviction counsel were not ineffective. Pet. App. 007.

Even if counsel were ineffective, Ritchie would have to establish prejudice. Ritchie did not. As Justice Slaughter explained, "the jury already heard considerable evidence during the penalty phase about [Ritchie's] mother's substance abuse as well as expert testimony that her substance abuse during pregnancy contributed to

Ritchie's cognitive limits, which were 'consistent with' FASD." Pet. App. A007. The concurring justices also questioned whether the jury would have responded favorably to additional evidence of Ritchie's impairment. Those justices recognized that it was "at least plausible, on this record, that Ritchie's jury would have found him undeterrable and held it against him" as opposed to finding it mitigating. Pet. App. A008. Ritchie's petition does not engage with that reasoning.

This Court should deny his petition for a writ of certiorari.

III. The Motion for a Stay Should Be Denied

This Court should deny the motion to stay as well. "Last-minute stays should be the extreme exception, not the norm." *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). Stays are an "intrusion into the ordinary processes of administration and judicial review." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quoting *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). The issuance of a stay is not "a matter of right" but an equitable remedy, and courts considering a stay "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)). To be granted a stay, Ritchie must make "a strong showing that he is likely to succeed on the merits," that he will be "irreparably injured absent a stay," that the issuance of the stay will not "substantially injure the other parties interested in the proceeding," and that granting a stay is in "the public interest." *Nken*, 556 U.S. at 434. Ritchie has failed to prove

that this Court should grant a last-minute stay of his execution. His claims lack merit for the reasons above, and the equities tilt decisively against him.

A. Ritchie's delay cuts against a stay

"[L]ast-minute claims arising from long-known facts" can justify "denying equitable relief." *Ramirez v. Collier*, 595 U.S. 411, 434 (2022) (citing *Gomez v. U.S. Dist. Court for Northern Dist. of Cal.*, 503 U.S. 653, 654 (1992) (per curiam)). That "well-worn principle of equity" holds true even "in capital cases." *Id.* And it is fully applicable here. Ritchie cannot show that he will be irreparably injured absent a stay of execution. As this Court has held, the State inflicts no harm, let alone irreparable harm, when it carries out a lawful and just sentence. To the contrary, punishing the guilty is the fulfillment of the public's "moral judgment." *Calderon*, 523 U.S. at 556.

Moreover, unexcused delay can invalidate an allegation of irreparable harm and Ritchie unreasonably delayed in this case. He sought to present a claim that his trial counsel was ineffective for failing to investigate and present evidence of FASD to the sentencing jury. Pet. App. A119–A121. As Justice Slaughter recognized in his concurring opinion, the evidence of that condition was known and available as early as 2000. Pet. App. A005. But Ritchie did not properly raise that claim during state and federal post-conviction review, and even after he completed all standard rounds of state and federal review in 2017, he did nothing to challenge his convictions or sentence until the State sought to set an execution date in September 2024.

Even if one were inclined to excuse part of Ritchie's quarter-of-a-century delay due to the State's temporary inability to obtain the drugs necessary for executions,

the petition is still late. As of June 26, 2024, Ritchie was on notice that the State was resuming executions, but he still waited several months to file his petition for successive post-conviction review. Pet. App. A111. And now in a separate proceeding, Ritchie is attempting to further delay his execution. He has filed a baseless Rule 60(b)(6) motion to reopen the decade-old denial of his habeas petition. *See* Docket, *Ritchie v. Neal*, No. 1:08-cv-503-RLY-MJD (S.D. Ind.). This is precisely the kind of "'last-minute' claim relied on to forestall an execution" that this Court does "not for a moment countenance." *Nance v. Ward*, 597 U.S. 159, 174 (2022); *see Bucklew*, 587 U.S. at 150 ("Last-minute stays should be the extreme exception, not the norm, and … 'an applicant's attempt at manipulation,' 'may be grounds for denial of a stay.'"); *Hill*, 547 U.S. at 584 ("A court considering a stay must also apply a strong equitable presumption against the grant of stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring a stay."); *Gomez*, 503 U.S. at 654 ("A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief."). This Court should "police carefully against attempts … to interpose unjustified delay." *Bucklew*, 587 U.S. at 150. And Ritchie's request is nothing but a plea for unjustified delay.

B. A stay will injure third parties and is against the public interest

"Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Bucklew*, 587 U.S. at 149. This Court has repeatedly recognized that "equity must be sensitive to the State's strong interest in enforcing its criminal judgment without undue interferences from the federal courts." *Hill*,

547 U.S. at 584. Delaying Ritchie's execution at this late stage would undermine the powerful interest—shared by the State, the public, and the victim's family—in the timely enforcement of his sentence. *See id.* Ritchie murdered Officer Toney in 2000. A quarter-century wait is long enough for a lawful sentence to be carried out. "Only with real finality" can we "move forward knowing the moral judgment will be carried out." *Calderon*, 523 U.S. at 556. "To unsettle these expectations," especially at the eleventh hour, "is to inflict a profound injury to … the State and the victims of crime alike." *Id.* A stay should be denied.

CONCLUSION

This Court should deny Ritchie's motion to stay and petition for a writ of certiorari.

Respectfully submitted,

THEODORE E. ROKITA
Attorney General
JAMES A. BARTA
Solicitor General
Counsel of Record
TYLER BANKS
Deputy Attorney General
Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-0709
James.Barta@atg.in.gov

Counsel for State of Indiana

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