Nos. 24-7474 & 24A1261

IN THE
Supreme Court of the United States

RICHARD GERALD JORDAN,
Petitioner,

v.

THE STATE OF MISSISSIPPI,
Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR STAY OF EXECUTION

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EXECUTION SCHEDULED WEDNESDAY, JUNE 25, 2025, AT 7:00 P.M. EDT

CAPITAL CASE
QUESTION PRESENTED

In 1976, petitioner Richard Gerald Jordan executed a young mother after kidnapping her to extort money from her husband. A jury convicted him of capital murder, and, after his conviction and/or sentence were vacated on now-irrelevant technical grounds, he was sentenced to death for the last time nearly three decades ago. After countless rounds of litigation where petitioner has pressed increasingly frivolous claims, the Mississippi Supreme Court determined that petitioner has "exhausted all state and federal remedies for purposes of setting an execution date" and set petitioner's execution for this coming Wednesday, June 25, 2025.

In a last-ditch petition for state post-conviction relief—his *fifth*—petitioner recycled a claim that his death sentence violates the Constitution's Ex Post Facto Clause—a claim that the Mississippi Supreme Court denied *in 1978* and that also was rejected in federal habeas proceedings more than four decades ago.

As with petitioner's fourth petition for state post-conviction relief—which is the subject of another pending petition for certiorari (No. 24-959)—the Mississippi Supreme Court rejected petitioner's fifth post-conviction petition as procedurally barred on state-law timeliness, successiveness, and res judicata grounds.

The question presented is whether this Court should review the Mississippi Supreme Court's rejection of petitioner's fifth post-conviction petition, when that decision rests on at least two adequate and independent state-law grounds and, in any event, the petition raises only (meritless) state-law issues, does not satisfy any traditional certiorari criteria, and reflects a baseless, last-minute attempt to forestall petitioner's lawful punishment.

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The Mississippi Supreme Court's opinion denying petitioner's fifth petition for post-conviction relief (Petition Appendix (App.) 1a-2a) is not reported. That court's order denying petitioner's motion for rehearing the denial of that petition (App.3a) also is not reported. The Mississippi Supreme Court's decision previously rejecting petitioner's ex post facto claim is reported at 365 So. 2d 1198.

JURISDICTION

The Mississippi Supreme Court entered judgment on May 1, 2025, and denied rehearing on June 12, 2025. App.1a, 3a. The petition for certiorari was filed on June 20, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

STATEMENT

Further background on petitioner's case is also set out in the State's brief in opposition to petitioner's other currently pending petition for certiorari, which concerns the Mississippi Supreme Court's October 1, 2025, denial of petitioner's fourth petition for post-conviction relief. *See* Brief In Opposition, *Jordan v. Mississippi*, No. 24-959 (May 7, 2025) (May BIO). That petition concerns petitioner's unrelated (and also procedurally barred) claim that his sentencing proceedings in 1998 violated his due-process rights under *Ake v. Oklahoma*, 470 U.S. 68 (1985).

1. Nearly fifty years ago, petitioner murdered Edwina Marter after kidnapping her to extort money from her husband. A jury convicted petitioner of capital murder and sentenced him to death. After petitioner's conviction and/or sentence were vacated on now-irrelevant technical grounds three times, he was sentenced to death for a fourth and final time in 1998. That sentence was affirmed on direct appeal, and

this Court denied certiorari. Over the following decades, the Mississippi Supreme Court rejected numerous state post-conviction challenges to petitioner's conviction and/or sentence, and federal courts denied him habeas relief.

The present petition for certiorari arises from the Mississippi Supreme Court's denial of petitioner's fifth petition for post-conviction relief. App.1a-2a.

2. In 1976, petitioner kidnapped Edwina Marter from her home in Gulfport, Mississippi. *Jordan v. Epps*, 740 F. Supp. 2d 802, 808 (S.D. Miss. 2010). Petitioner had previously discovered that Mrs. Marter's husband was a commercial loan officer at a national bank. Petitioner tracked down the Marters' home and waited outside until Mrs. Marter was alone with her 3-year-old son. Petitioner impersonated a utility worker to trick Mrs. Marter into letting him inside. He kidnapped Mrs. Marter at gunpoint, forced her to leave her son, and made her drive to a remote area. He then executed her by shooting her in the back of the head. *Ibid.*

Even though he had already killed Mrs. Marter, petitioner told her husband that she was still alive and demanded money to let her go. 740 F. Supp. 2d at 808. When petitioner retrieved the ransom from an agreed-upon location, officers tried to arrest him. He initially escaped but was later arrested at a roadblock. Petitioner confessed to killing Mrs. Marter and led police to her body. He also told police where he disposed of the murder weapon and where he hid the ransom money. *Ibid.*

3. Petitioner was tried as to his guilt or sentence (or both) four times. In the 1970s, 80s, and 90s, his capital-murder conviction and/or death sentence were vacated on procedural grounds three times. In 1998, a jury sentenced him to death for the fourth and final time. That sentence is set to be carried out on June 25, 2025.

a. Petitioner's first trial was held in 1976. The jury convicted petitioner of capital murder and, under then-existing state law, he was automatically sentenced to death. 740 F. Supp. 2d at 810. After trial, however, the Mississippi Supreme Court recognized in *Jackson v. State*, 337 So. 2d 1242 (Miss. 1976), that mandatory death sentences are unconstitutional. And so the court construed the State's capital-murder statute to allow for a death sentence only after bifurcated trial proceedings "designed to prevent the risk that the death penalty would be inflicted in an arbitrary and capricious or freakish manner." *Id.* at 1251.

Following that decision, the trial court in petitioner's case ordered a new trial. 740 F. Supp. 2d at 810.

b. In 1977, petitioner was retried in bifurcated proceedings. 740 F. Supp. 2d at 810. The jury convicted petitioner of capital murder and sentenced him to death under the procedure adopted in *Jackson*. *Id.* at 810-11. (Also in 1977, the Mississippi Legislature enacted a new capital-punishment statute that codified that procedure. *See* Miss. Code Ann. § 99-19-101 (1977)).

The Mississippi Supreme Court affirmed petitioner's conviction and sentence on direct appeal. *Jordan v. State*, 365 So. 2d 1198 (Miss. 1978). Relevant here, the state supreme court rejected petitioner's claim that "retrospective application" of the bifurcated-trial procedure in his 1977 retrial "violate[d] the constitutional prohibition of Ex post facto laws." 365 So. 2d at 1204. The court explained that it had "already" "decided" that such claims were meritless. *Ibid.* In a pair of then-recent decisions, the court had held that the bifurcated-trial procedure adopted in *Jackson* "affect[ed] procedure and not substance and on the whole [was] ameliorative." *Bell v. State*, 353

So.2d 1141, 1143 (Miss. 1978); *see Irving v. State*, 361 So.2d 1360, 1368 (Miss. 1978). And so, consistent with precedent from this Court—including *Dobbert v. Florida*, 432 U.S. 282 (1977)—use of the bifurcated-trial procedure in petitioner's case involved "no ex post facto violation." *Bell*, 353 So.2d at 1143; *see* 365 So. 2d at 1204. This Court subsequently denied certiorari. *Jordan v. Mississippi,* 444 U.S. 885 (1979) (Mem.).

Petitioner then sought federal habeas relief. A federal district court denied relief, and the Fifth Circuit upheld petitioner's conviction but ordered a new sentencing trial due to an improper sentencing instruction. *See Jordan v. Watkins*, 681 F.2d 1067, 1082-83 (5th Cir. 1982). Relevant here, the Fifth Circuit—like the Mississippi Supreme Court on direct appeal—also rejected petitioner's claim that "the application of the [bifurcated-trial] procedures" set out in *Jackson* "to a crime committed prior to [that] decision violated the ex post facto clause of the United States Constitution." *Id.* at 1079. The Fifth Circuit said that petitioner's "ex post facto argument" was "indistinguishable from that rejected by" this Court "in *Dobbert*." *Ibid.* As explained by the Fifth Circuit, *Dobbert* "held that changes in Florida's capital sentencing statute similar to those resulting from the Mississippi [Supreme Court's] *Jackson* decision were procedural and ameliorative and thus not ex post facto as applied to a crime committed before" the modified sentencing scheme was adopted. *Ibid.* The Fifth Circuit also held that the same conclusion would apply "with respect to the 1977 Mississippi legislation" that codified the bifurcated-trial procedure for capital punishment in the State. *Ibid.*

c. Following the Fifth Circuit's decision ordering a new sentencing trial, a jury in 1983 again resentenced petitioner to death. 740 F. Supp. 2d at 811-12. After the

Mississippi Supreme Court affirmed, this Court vacated petitioner's sentence and remanded for further consideration in light of *Skipper v. South Carolina*, 476 U.S. 1 (1986), which held that evidence that a capital defendant may not pose a danger if incarcerated must be considered when raised in mitigation. 740 F. Supp. 2d at 812, 834; *see Jordan v. Mississippi*, 476 U.S. 1101 (1986).

Before the trial court held another resentencing trial, petitioner sought relief from his conviction in state and federal courts based on a claim that the trial court improperly admitted a post-arrest statement. 740 F. Supp. 2d at 812. The district court denied petitioner's habeas petition as successive, but the Fifth Circuit granted a certificate of probable cause for an appeal. *Ibid.*

While that appeal was pending, petitioner accepted a plea bargain for a life sentence without parole in exchange for agreeing not to collaterally attack that sentence. 740 F. Supp. 2d at 812. The Mississippi Supreme Court then invalidated a similar plea agreement in *Lanier v. State*, 635 So. 2d 813 (Miss. 1994), because a life-without-parole sentence was not permitted under state law for non-habitual offenders. So petitioner asked the supreme court to reduce his sentence to life imprisonment. 740 F. Supp. 2d at 813. The court vacated petitioner's sentence but ruled that the State could again seek the death penalty at resentencing. *Ibid.*

d. Petitioner's fourth and final sentencing trial was held in 1998. Before sentencing, petitioner moved the trial court to appoint a mental-health expert "to determine if there [were] possible mitigating factors that could be used as evidence on [his] behalf at his sentencing hearing." 740 F. Supp. 2d at 863. Specifically, petitioner wanted a "psychiatric examination" to "determine whether he suffered

from post-traumatic stress syndrome" from serving in Vietnam. *Id.* at 813. The trial court appointed a psychiatrist (Dr. Henry A. Maggio) to conduct an examination of petitioner and ordered that the prosecution was entitled to a copy of any report. *Id.* at 814, 853-54. Dr. Maggio's examination and report is the subject of petitioner's other pending petition for certiorari, which claims that petitioner's due-process right to a sufficiently independent mental-health expert was violated in the 1998 sentencing proceedings. *See* Petition for a Writ of Certiorari, *Jordan v. Mississippi*, No. 24-959 (Mar. 3, 2025) (March Pet.). For the reasons set forth in the State's brief in opposition in that case, that claim is procedurally barred and meritless. *See* May BIO at 24-32.

Ultimately, the jury (for a fourth and final time) sentenced petitioner to death. 740 F. Supp. 2d at 816.

4. The Mississippi Supreme Court subsequently rejected petitioner's direct appeal from his 1998 sentencing, as well as a petition for post-conviction relief raising claims that are not relevant here. *Jordan v. State*, 786 So. 2d 987 (Miss. 2001) (direct appeal); *Jordan v. State*, 912 So. 2d 800 (Miss. 2005) (state post-conviction relief). And federal courts denied petitioner's requests for federal habeas relief. *Jordan v. Epps*, 740 F. Supp. 2d 802 (S.D. Miss. 2010) (denying federal habeas relief); *Jordan v. Epps*, 756 F.3d 395 (5th Cir. 2014) (per curiam) (same); *Jordan v. Fisher*, 576 U.S. 1071 (2015) (denying certiorari).

5. After petitioner's federal habeas claims failed, he filed additional successive state post-conviction petitions to forestall his execution. In the late 2010s, the Mississippi Supreme Court rejected petitioner's second and third petitions for post-conviction relief, which also raised (meritless) claims that are not relevant here.

Jordan v. State, 224 So. 3d 1252 (Miss. 2017), *cert. denied* 585 U.S. 1039 (2018); *Jordan v. State*, 266 So. 3d 986 (Miss. 2018).

In December 2022, petitioner filed a fourth petition for post-conviction relief, which (as previewed above) claimed that his "due process rights" under *Ake v. Oklahoma* were "violated" when he allegedly was denied access to a sufficiently independent mental-health expert at his 1998 sentencing. *See* May BIO.

On October 1, 2024, the Mississippi Supreme Court held unanimously that petitioner's *Ake*/due-process claim was barred under the Mississippi Uniform Post-Conviction Collateral Relief Act's one-year time bar (Miss. Code Ann. § 99-39-5(2)); successive-writ bar (Miss. Code Ann. § 99-39-27(9)); and res judicata bar (Miss. Code Ann. § 99-39-21(3)). May BIO 12. And the court rejected petitioner's argument that his claim was excepted from those statutory bars based on an "intervening decision" exception. *Ibid*. The supreme court thus rejected petitioner's *Ake*/due-process claim as procedurally barred and denied relief. *Ibid.*

(Subsequently, on March 3, 2025, petitioner filed a petition for certiorari with this Court on the *Ake*/due-process claim. *See* March Pet. On June 3, that petition was distributed for this Court's June 18 conference. It remains pending.)

6. Most relevant here, on November 13, 2024, petitioner filed his fifth petition for post-conviction relief in state court. *See* App.4a. That petition resurrected the ex post facto claim that the Mississippi Supreme Court and federal habeas courts rejected more than 40 years ago. Petitioner claimed that the Mississippi Supreme Court's January 2023 and January 2024 decisions in *Howell v. State*, 358 So. 3d 613 (Miss. 2023), and *Ronk v. State*, 391 So. 3d 785 (Miss. 2024), had "transformed" state

law and "impacted" (among other things) how "the [Mississippi Supreme] Court evaluates *ex post facto* prohibitions." App.6a, 7a. And petitioner claimed that *Howell* and *Ronk* constituted intervening decisions that excepted his fifth petition from the UPCCRA's procedural bars. App.45a-46a.

On the merits, petitioner argued that although the sentencing statute in place when he committed capital murder provided for a sentence of death, that statute was "unconstitutional and thus void." App.11a. As a result, "[t]he only constitutional option for murder," petitioner claimed, "was life imprisonment." *Ibid.* So under petitioner's theory, his resentencing in 1998—under an amended version of the capital-murder sentencing statute that included a sentence of death—resulted in an ex post facto violation because the amended statute provided a "worse and more onerous" punishment than life imprisonment. App.12a.

On May 1, 2025, the Mississippi Supreme Court ruled 9-1 that petitioner's ex post facto claim was procedurally barred under the UPCCRA's one-year time bar (Miss. Code Ann. § 99-39-5(2)); successive-writ bar (Miss. Code Ann. § 99-39-27(9)); and res judicata bar (Miss. Code Ann. § 99-39-21(3)). App.1a. And the court rejected petitioner's argument that *Howell* and *Ronk* qualified as intervening decisions under the UPCCRA's "intervening decision" exception to those bars. *Ibid; see* Miss. Code Ann. §§ 99-39-5(2)(a)(i), 99-39-27(9). The court thus denied petitioner's fifth petition for post-conviction relief.

Also on May 1, 2025, the Mississippi Supreme Court set petitioner's execution for Wednesday, June 25, 2025, at 7:00 pm EDT. En Banc Order, *Jordan v. State*, No. 1998-DP-00901-SCT (Miss. May 1, 2025). In that order, the court stressed that

petitioner had "exhausted all state and federal remedies for purposes of setting an execution date." *Id.* at 1.

On May 15, 2025, petitioner filed a motion for rehearing of the denial of his fifth post-conviction petition. Motion For Rehearing As To Denial Of Post-Conviction Relief, *Jordan v. State*, No. 2024-DR-01272-SCT (Miss. May 15, 2025). The Mississippi Supreme Court denied the motion on June 12, 2025. App.3a. Then, on June 20, 2025, petitioner filed the petition for certiorari at issue here, along with an emergency stay application.

REASONS FOR DENYING THE PETITION AND STAY APPLICATION

Petitioner asks this Court to decide whether the Mississippi Supreme Court "r[a]n afoul of due process" when it denied a "state court forum" to adjudicate his claim that his "death sentence violates the *Ex Post Facto* Clause." Pet. ii.

For one thing, the Mississippi Supreme Court did not deny a forum for adjudicating petitioner's ex post facto claim. That very court considered and rejected petitioner's ex post facto claim almost fifty years ago. *Jordan,* 365 So. 2d at 1204. Even so, the Mississippi Supreme Court properly applied (at least) the State's bars on untimely and successive post-conviction petitions to reject petitioner's fifth petition for post-conviction relief, and so this Court lacks jurisdiction to review the decision below. In any event, petitioner's recycled ex post facto claim presents only (meritless) state-law issues, does not satisfy any traditional certiorari criteria, and reflects a baseless, last-minute attempt to forestall petitioner's lawful punishment. The petition and accompanying emergency stay application should be denied.

I. This Court Lacks Jurisdiction To Review The Decision Below.

As with petitioner's other pending petition for certiorari (*see* May BIO 14-24), this Court lacks jurisdiction to review the Mississippi Supreme Court's denial of petitioner's ex post facto claim because that denial rests on adequate and independent state-law grounds.

A. This Court "will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). "This rule applies whether the state law ground is substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). And where, as here, this Court is asked to directly review a state-court judgment, "the independent and adequate state ground doctrine is jurisdictional." *Ibid.*

That rule bars this Court's review. The Mississippi Supreme Court's resolution of petitioner's ex post facto claim rests on at least two adequate and independent "state law ground[s]." *Coleman*, 501 U.S. at 729. *First*, as that court ruled, petitioner's claim is barred by the Mississippi Uniform Post-Conviction Collateral Relief Act's one-year limitations period. App.1a (citing Miss. Code Ann. § 99-39-5). (The supreme court cited subsection 99-39-5(5) in its order, but the correct subsection is 99-39-5(2).) Under that statute, "filings" seeking "post-conviction relief in capital cases" must be made "within one (1) year after conviction." Miss. Code Ann. § 99-39-5(2)(b). Petitioner's conviction became final in 2001, yet he failed to file his fifth petition for post-conviction relief until 2024—well beyond the one-year limitations period. *Second*, as the supreme court independently ruled, petitioner's ex post facto claim is barred by the UPCCRA's successive-writ prohibition. App.1a (citing Miss. Code Ann.

§ 99-39-27(9)). Under that statute, "[t]he dismissal or denial" of a prior "application" for post-conviction relief "is a final judgment and shall be a bar to a second or successive application." Miss. Code Ann. § 99-39-27(9). The supreme court denied petitioner's first four petitions for post-conviction relief. *Jordan v. State*, 912 So. 2d 800 (Miss. 2005); *Jordan v. State*, 224 So. 3d 1252 (Miss. 2017); *Jordan v. State*, 266 So. 3d 986 (Miss. 2018); *Jordan v. State*, 396 So. 3d 1157 (Miss. 2024). So his fifth petition for post-conviction relief is successive and barred. State law thus required that the court deny all the claims asserted in his successive petition. Miss. Code Ann. § 99-39-27(5).

Those state-law grounds are "independent of" federal law and "adequate to support the judgment" below. *Coleman*, 501 U.S. at 729. Start with independence. A state-law ground is "independent of federal law" if its resolution does not "depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002) (per curiam). The UPCCRA's time and successive-writ bars satisfy that standard because both apply without regard for federal law. Because the decision below was not "entirely dependent on" federal law, did not "rest[ ] primarily on" federal law, and was not even "influenced by" federal law, it is "independent of federal law." *Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016). Now take adequacy. A state-law ground is "adequate to foreclose review" of a "federal claim" when the ground is "firmly established and regularly followed." *Lee v. Kemna*, 534 U.S. 362, 376 (2002). Mississippi's time and successive-writ bars satisfy that standard. Longstanding precedent holds that those time and successive-writ bars are firmly established and regularly followed. *E.g.*, *Moawad v. Anderson*, 143 F. 3d 942, 947 (5th Cir. 1998)

(finding the UPCCRA's successive-writ bar is an "adequate state procedural rule"); *Lott v. Hargett*, 80 F. 3d 161, 164-65 (5th Cir. 1996) (finding UPCCRA's time and successive-writ bars "adequate" to support a judgment because they are "consistently or regularly applied"); *Sones v. Hargett*, 61 F. 3d 410, 417-18 (5th Cir. 1995) (holding that the Mississippi Supreme Court "regularly" and "consistently" applies the UPCCRA's time bar). Because this Court's "only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights," *Herb*, 324 U.S. at 125-26, and because the Mississippi Supreme Court's decision denying petitioner's post-conviction-relief motion was based on state-law rules that are independent of federal law and are consistently followed, this Court lacks jurisdiction and should deny review on that basis alone.

B. Before the Mississippi Supreme Court, petitioner argued that that court's decisions in *Howell v. State*, 358 So. 3d 613 (Miss. 2023), and *Ronk v. State*, 391 So. 3d 785 (Miss. 2024), qualified as "intervening decision[s]" that allowed him to invoke an exception to the UPCCRA's time and successive-writ bars. *See* App.6a, 45a-48a; Miss. Code Ann. § 99-39-5(2)(a)(i) (allowing untimely petitions when "the petitioner can demonstrate" that "there has been an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction or sentence"); *id.* § 99-39-27(9) (same for successive petitions).

The Mississippi Supreme Court correctly rejected that argument. App.1a. An "intervening decision" under the UPCCRA is one that "create[s] new intervening rules, rights, or claims that did not exist at the time of the prisoner's conviction."

Jordan, 396 So. 3d at 1159 (quoting *Patterson v. State*, 594 So. 2d 606, 608 (Miss. 1992)). Neither *Howell* nor *Ronk* meet that definition as neither creates a new rule, right, or claim. Instead, those cases held only that "judicially crafted" exceptions cannot be applied to the UPCCRA's time and successive writ bars. *Howell*, 358 So. 3d at 615 (overruling cases holding that courts "can apply the judicially crafted fundamental rights exception" to the UPCCRA's statute of limitations); *Ronk*, 391 So. 3d at 794 (abrogating judicially crafted "ineffective assistance of post-conviction counsel" exception to the UPCCRA's time and successive writ bars). Far from creating a new rule or right, *Howell* and *Ronk* simply reinforced what the UPCCRA has always provided—untimely and successive post-conviction relief petitions are barred unless they meet a *statutory* exception. And the Mississippi Supreme Court's holding here that *Howell* and *Ronk* do not meet the "intervening decision" exception to the UPCCRA's time and successive writ bars is consistent with that court's precedent. *Manning v. State,* No. 2023-DR-01076-SCT, 2024 WL 4235459 (Miss. Sept. 16, 2024) (holding that *Howell* and *Ronk* are not "intervening decisions" that allow a capital petitioner to relitigate a claim the supreme court already rejected in a prior petition).

C. Petitioner argues that the application of the UPCCRA's time and successive-writ bars in his case was "arbitrary" and "unforeseeabl[e]." Pet. 11; *see* Pet.10-13, 13-15. He is wrong.

As explained above, the UPCCRA's time and successive-writ bars are firmly established and consistently and regularly applied to prohibit review of untimely or successive claims. And those bars were on the books for years before petitioner filed the fifth petition for post-conviction relief at issue here. *E.g.*, 2000 Miss. Laws Ch.

569 (H.B. 1228); 1995 Miss. Laws Ch. 566 (H.B. 541). So petitioner cannot claim that he was not "fairly ... apprised" of their "existence." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457 (1958) (cited at Pet. 11-13). Nor can he have "justifi[ably] reli[ed]" on any exception to those bars in filing his untimely and successive motion. *Contra* Pet. 12 (quoting *Patterson*, 357 U.S. at 457).

The cases that petitioner relies on do not help him. None involved a longstanding and plainly legitimate statutory scheme like the UPCCRA, which treats similarly situated petitioners (and similar types of claims) alike. *See Patterson*, 357 U.S. at 457-58 (no adequate state ground where "nothing" in state law "suggest[ed] that mandamus [was] the exclusive remedy for reviewing [certain state] court orders") (emphasis omitted); *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964) ("state-court decision on a question of state procedure" was "unforeseeable and unsupported"); *Johnson v. Mississippi*, 486 U.S. 578, 587 (1988) (claimed procedural bar was "contrary" to "the weight of [state] law"); *Osborne v. Ohio,* 495 U.S. 103, 124-25 (1990) ("no perceivable state interest" in requiring defendant to repeat a "patently futile objection" to preserve review of a valid federal claim); *Douglas v. Alabama,* 380 U.S. 415, 421-22 (1965) (same); *James v. Kentucky,* 466 U.S. 341, 348-49 (1984) (purported "distinction" between "admonitions and instructions" in jury communications "not strictly adhered to," "firmly established," or "regulatory followed"); *Davis v. Wechsler,* 263 U.S. 22, 24-25 (1923) (party's "plain[ ] indicat[ion]" and "lawful insistence" on position that served as basis of a federal claim not "evaded" by an "attempt[ed]" "distinction" in "local practice" that lacked a meaningful basis); *Haywood v. Drown*, 556 U.S. 729, 739-42 (2009) (no adequate state-law ground based

on jurisdiction's disfavor for "particular type[s]" of federal claims brought by a "particular class of plaintiffs"); *Hathorn v. Lovorn*, 457 U.S. 255, 262-63 (1982) (state procedural rule not "consistently relie[d] upon" by the State or "appl[ied] evenhandedly to all similar claims").

D. Petitioner claims that, by denying his fifth petition for post-conviction relief on state-law procedural grounds, the Mississippi Supreme Court has "arbitrarily shut the door" on his federal ex post facto claim. Pet. 13 (formatting omitted); *see* Pet. 13-15. Putting aside that that court itself has addressed that claim on the merits, petitioner's criticisms of that court's decision here raise only pure issues of state law that this Court cannot review.

This Court lacks the "power" to resolve state-law issues that do not implicate "federal rights." *Herb,* 324 U.S. at 125, 126. In resolving petitioner's claim, the state supreme court determined that its decisions in *Howell* and *Ronk* did not qualify as "intervening[ ]decision[s]" under a state-law exception to the UPCCRA's time and successive-writ bars. App.1a. That decision does not implicate any federal issue. The UPCCRA is a state statute that governs state post-conviction proceedings. As this Court has explained, States "have no obligation" to allow proceedings for post-conviction relief at all. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987). Mississippi has decided to provide a limited forum for state post-conviction relief in some circumstances. The Mississippi Supreme Court here did not arbitrarily deny petitioner access to that forum; rather, it rejected petitioner's claim based on longstanding and consistently applied time and successive-writ bars. App.1a.

Petitioner's claim that the Mississippi Supreme Court has improperly "shut the door" on review of federal claims rings hollow. Litigants like petitioner *can* seek review of federal constitutional claims in state post-conviction proceedings (including ex post facto claims). They simply must comply with the state-law procedures that govern those proceedings—including the UPCCRA's time and successive-writ bars—in order to do so. *See Coleman v. Thompson,* 501 U.S. 722, 750 (1991).

II. Petitioner's Ex Post Facto Claim Does Not Warrant Further Review.

Jurisdictional problems aside, the Mississippi Supreme Court correctly decided—nearly five decades ago—that application of Mississippi's modified capital-murder sentencing scheme in petitioner's case does not violate the Ex Post Facto Clause. *Jordan*, 365 So. 2d at 1204. This Court denied certiorari review of that decision (*Jordan v. Mississippi,* 444 U.S. 885 (1979) (Mem.)) and it should do so again here. Regardless of any purported change in how "*the Mississippi court's*" view "*state law*" following *Howell* and *Ronk*, Pet. 14 (emphases added), the Mississippi Supreme Court's rejection of petitioner's *federal* ex post facto claim was and is correct under this Court's precedent. Further review is unwarranted.

At the time of petitioner's crimes, Mississippi law provided only one available sentence for capital murder: Death. "Every person who shall be convicted of capital murder shall be sentenced by the court to death." Miss. Code Ann. § 97-3-21 (1974); *see* Pet. 3. Petitioner's sentence under that mandatory sentencing scheme was deemed unconstitutional. He was initially retried and resentenced to death in 1977 under the (constitutional) bifurcated-trial procedure adopted by the Mississippi Supreme Court in *Jackson v. State*, 337 So. 2d 1242 (Miss. 1976). And he was later

resentenced to death again in 1983 and (finally) in 1998 under the revised sentencing scheme adopted by the Mississippi Legislature that codified *Jackson* and provided life and death sentencing options. *See Jordan,* 740 F. Supp. 2d at 810-16.

In challenging his 1977 sentence, petitioner argued—much like he does here—that application of the modified sentencing scheme in his case violated the Ex Post Facto Clause because it was adopted after he committed his heinous crimes. *Jordan,* 365 So. 2d at 1204. The Mississippi Supreme Court rejected that claim based on its then-recent prior decisions, which in turn relied on this Court's decision in *Dobbert v. Florida*, 432 U.S. 282 (1977). Those decisions recognized that Mississippi defendants (like petitioner here) who committed capital murder at a time when the relevant sentencing statute "mandated the death penalty" but were sentenced under the sentencing scheme in place after *Jackson* were not subject to an ex post facto violation because those defendants "benefited" from a modified sentencing scheme that included a lesser sentencing option for life imprisonment. *Bell v. State*, 353 So.2d 1141, 1143-44 (Miss.1978); *see Irving v. State*, 361 So.2d 1360 (Miss.1978). The "changes in the law were procedural, and on the whole ameliorative," and so "there was no ex post facto violation." *Bell*, 353 So.2d at 1143. The Mississippi Supreme Court applied that same logic in rejecting petitioner's ex post facto claim here. *See Jordan*, 365 So. 2d at 1204.

The Mississippi Supreme Court's decision was consistent (and remains consistent) with this Court's ex post facto precedents. Take *Dobbert*. In that case, the applicable sentencing statute in Florida at the time the defendant murdered his victims "provided that a person convicted of a capital felony was to be punished by

death unless the verdict included a recommendation of mercy by a majority of the jury." 432 U.S. at 288. The statute, which was deemed "inconsistent with *Furman* [*v. Georgia,* 408 U.S. 238 (1972)]," was then amended before the defendant's trial. *Ibid.* As in Mississippi, Florida's amended sentencing scheme provided for a bifurcated sentencing proceeding in which the jury could consider aggravating and mitigating evidence. *Id.* at 288-92. Like petitioner here, the defendant in *Dobbert* raised an ex post facto challenge to his sentencing under the modified regime. He argued (again like petitioner here) that "there was no 'valid' death penalty in effect" when he committed murder, and so his death sentence imposed under the amended sentencing statute violated the Ex Post Facto Clause. *Id.* at 297. This Court rejected that "sophistic argument" as "mock[ing] the substance of the Ex Post Facto Clause." *Ibid.* The Court explained that the amended statute "simply altered the methods employed in determining whether the death penalty was to be imposed" and did not "change ... the quantum of punishment attached to the crime." *Id.* at 293-94. "It is axiomatic," this Court explained, "that for a law to be ex post facto it must be more onerous than the prior law." *Id.* at 294. That the sentencing statute in effect when the defendant committed capital murder "did not withstand constitutional attack" did not change the fact that the statute "provided fair warning" that Florida would seek to impose the death penalty for those convicted of first-degree murder. *Id.* at 297-98.

Such is the case here. The capital murder sentencing statute in place when petitioner murdered Mrs. Marter put petitioner on notice that he was subject to the death penalty if convicted of capital murder. It "clearly indicated" Mississippi's "view of the severity of murder and of the degree of punishment which the legislature

wished to impose upon murderers." *Dobbert*, 432 U.S. at 297. And the modified sentencing scheme under which petitioner was resentenced did not authorize a more onerous punishment than that authorized by the invalidated sentencing statute. In fact, it offered petitioner the potential *benefit* of a *lesser* sentencing option: life imprisonment instead of death.

The Mississippi Supreme Court's dicta in *Howell* and *Ronk*—cases that do not address Mississippi's capital-murder sentencing scheme or ex post facto violations—is entirely irrelevant to this analysis. Those cases establish only that the state judiciary cannot amend the UPCCRA by creating exceptions to its statutory bars. However those cases may "impact[ ]" "*the Mississippi court's*" view of "*state law*," Pet. 14 (emphases added), they do not change the fundamental reasons why petitioner fails to present any viable *federal* ex post facto claim here.

What's more, while petitioner represents that his sentence should be reduced to life imprisonment (*e.g.*, Pet. 3, 23), if his theory were credited, it is unclear how he could be sentenced at all. The only punishment that the applicable sentencing statute at the time of his crimes allowed for "capital murder" was "death." Pet. 3 (quoting Miss. Code Ann. § 97-3-21 (1974)). As petitioner observes, that same statute allowed for "imprisonment for life" for "murder" (*ibid.*)—but petitioner was not convicted of "murder." He was convicted of "capital murder." *Cf.* Pet. 2 (referring to different "classification[s]" of "murder"). So sentencing him to life imprisonment would (under petitioner's view) seem to create ex post facto problems of its own. Such absurdities further demonstrate that petitioner's theory has no basis in logic or precedent and should be rejected out of hand.

III. Petitioner's Last-Minute Stay Application Should Be Denied.

As the State explained in its opposition to petitioner's other pending emergency stay application (*see* Response In Opposition To Emergency Application For Stay Of Execution, *Jordan v. Mississippi*, No. 24A1143 (May 23, 2025)), "[l]ast-minute stays should be the extreme exception, not the norm[.]" *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019). This Court's well-settled precedent recognizes that "a stay of execution is an equitable remedy. It is not available as a matter of right." *Hill v. McDonough*, 547 U.S. 573, 584 (2006); *see also In re Blodgett*, 502 U.S. 236, 239-240 (1992) (per curiam); *Delo v. Stokes*, 495 U.S. 320, 323 (1990) (Kennedy, J., concurring). This Court considers the following factors in assessing whether a stay of execution is warranted: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009). The "party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion." *Id.* at 433-34.

The first two factors are the most critical. *Id.* at 434. If an "applicant satisfies the first two factors, the traditional inquiry calls for assessing the harm to the opposing party and weighing the public interest." *Id.* at 435. The third and fourth factors "merge when the [State] is the opposing party" and "courts must be mindful that the [State's] role as the respondent in every … proceeding does not make the public interest in each individual one negligible." *Ibid.* Because the State and the victims of the crimes "have an important interest in the timely enforcement of a

sentence," this Court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 584. To that end, "[a] court considering a stay must also apply 'a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time to allow consideration of the merits without requiring entry of a stay.'" *Ibid.* (quoting *Nelson v. Campbell*, 541 U.S. 637, 650 (2004)). "The federal courts can and should protect states from dilatory or speculative suits." *Id.* at 585.

A. Petitioner Cannot Show Likely Success On The Merits.

As set forth above, the petition for certiorari at issue here raises a claim that is procedurally barred and meritless, does not present any federal-law issue, and does not satisfy any traditional certiorari criteria. So petitioner cannot show any likely merits success.

B. Petitioner Cannot Show Irreparable Injury.

Petitioner also cannot show that he will likely be "irreparably injured absent a stay." *Nken*, 556 U.S. at 434. His guilt is not in question—petitioner no doubt committed the crime that sent him to death row. Petitioner was sentenced to death for the fourth and final time by a Mississippi jury in 1998. 740 F. Supp. 2d at 816. Three decades of litigation have not demonstrated constitutional errors at that sentencing, in his state post-conviction proceedings, or in the method of his execution. The Mississippi Supreme Court has upheld his conviction and sentence six times, and lower federal courts have denied him habeas relief. This Court has denied certiorari review at every turn. The claims presented in his latest petition for certiorari do nothing to undermine those prior determinations. Petitioner has received the process

he was due, his punishment is just, and his execution will be constitutional. In short, petitioner has identified no irreparable harm that is not a direct consequence of the valid, constitutional, and long-final death sentence the jury imposed in 1998 for his brutal murder of Edwina Marter. Any "irreparable injury" will be because his lawful death sentence was finally carried out—not because this Court denies a stay.

C. The Equities Favor The State.

Finally, the equities clearly favor the State. As noted above, "[b]oth the State and the victims of crimes have an important interest in the timely enforcement of a sentence." *Hill*, 547 U.S. at 584. "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998). "To unsettle these expectations is to inflict a profound injury to the 'powerful and legitimate interest in punishing the guilty.'" *Ibid.* (quoting *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O'Connor, J., concurring)). According to this Court, "[t]here is always a public interest in prompt" enforcement of the law absent a showing of its unconstitutionality. *Nken*, 556 U.S. at 436. "[T]he State is entitled to an assurance of finality." *Calderon*, 523 U.S. at 556; *see also Martel v. Clair*, 565 U.S. 648, 662 (2012) ("Protecting against abusive delay is an interest of justice.").

Petitioner psychologically tortured Mrs. Marter before executing her. He kidnapped her at gunpoint from her home, in front of her 3-year-old son. *Jordan v. Epps*, 740 F. Supp. 2d 802, 808 (S.D. Miss. 2010). He forced her—at gunpoint—to leave her toddler home alone and took her to a remote area. *Ibid.* There, petitioner executed Mrs. Marter with a bullet to the back of the head. *Ibid.* Petitioner then acted like Mrs. Marter was still alive while he promised her husband that she would be

safely returned if he paid a ransom. *Ibid.* Pressing yet another weak claim that this Court has no jurisdiction to consider does not justify delaying petitioner's execution and justice for Mrs. Marter and her family any longer.

CONCLUSION

The petition for a writ of certiorari and the emergency stay application should be denied.

Respectfully submitted.

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