CASE NO. _____ (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

WESLEY RUIZ,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to
The Texas Court of Criminal Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

CAPITAL CASE

In *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017), this Court held that when a juror "relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule [under a state rule of evidence] give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." *Id.* at 225.

In *Buck v. Davis*, 580 U.S. 100 (2017), this Court held that discrimination is "especially pernicious in the administration of justice," *id.* at 124, and recognized that false notions equating race or ethnicity with future dangerousness are a "particularly noxious strain of racial prejudice," *id.* at 121.

In light of *Peña-Rodriguez* and *Buck*, Wesley Ruiz, a Hispanic man, sought to introduce juror statements employing well-established stereotypes of Hispanic men—referring to Mr. Ruiz as an "animal" and a "mad dog"—and describing an increased in the number of Hispanics in the community as making the community "worse" and more violent. These racial stereotypes and animus influenced the jury's decision—not "to convict," as in *Peña-Rodriguez*—but regarding whether Mr. Ruiz would be dangerous in the future, and therefore deserved the death sentence.

The state court rejected Mr. Ruiz's claim without addressing the evidence that the death sentence resulted from racial animus. The question presented is:

Does *Peña-Rodriguez* apply to Petitioner's evidence that at least one juror relied on anti-Hispanic racial stereotypes and animus to find that he was a future danger and sentence him to death?

RELATED PROCEEDINGS

State v. Ruiz, No. F07-50318-M (Dallas Cty. Dist. Ct. July 11, 2008)

Ruiz v. State, No. AP-75,968, 2011 WL 1168414 (Tex. Crim. App. Mar. 2, 2011)

Ruiz v. Texas, No. 11-5242, 132 S. Ct. 402 (U.S.S.C. Oct. 11, 2011)

Ex Parte Ruiz, No. WR-78,129-01, WR-78,129-02, 2012 WL 4450820 (Tex. Crim. App. Sept. 26, 2012)

Ruiz v. Texas, No. 12-7970, 133 S. Ct. 1725 (U.S.S.C. Apr. 1, 2013)

Ex Parte Ruiz, No. WR-78,129-03 (Tex. Crim. App. Nov. 19, 2014)

Ruiz v. Davis, No. 3:12-CV-5112-N, 2018 WL 6591687 (N.D. Tex. Dec. 14, 2018)

Ruiz v. Davis, No. 19-70003, 819 F. App'x 238 (5th Cir. July 7, 2020)

Ruiz v. Lumpkin, No. 21-5048, 142 S. Ct. 354 (U.S.S.C. Oct. 12, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Wesley Ruiz respectfully requests that a writ of certiorari issue to review the Texas Court of Criminal Appeals' dismissal of Mr. Ruiz's application for a writ of habeas corpus.

OPINIONS BELOW

The January 30, 2023, order of the Texas Court of Criminal Appeals (hereinafter "CCA") is unpublished and appears in the Appendix at App. 1.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The judgment of the CCA was entered on January 30, 2023. App. 1.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the U.S. Constitution provides, in part: "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."

The Fourteenth Amendment to the U.S. Constitution provides, in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

INTRODUCTION

In the court below, Petitioner presented evidence that jurors relied on "overtly racist" and "blatant anti-Hispanic stereotypes" in appraising his future

dangerousness and in deciding to sentence him to death. Because the jurors viewed Mr. Ruiz as a "subhuman" and expressed hostility to the very presence of Hispanics in their community, Mr. Ruiz was deprived of the basic Sixth Amendment guarantee that the body making the solemn life-or-death decision be impartial. Because the jurors "relied on racial stereotypes or animus," *Peña-Rodriguez*, 580 U.S. at 225, and on a "particularly noxious strain of racial prejudice," *Buck*, 580 U.S. at 121, in determining whether Mr. Ruiz was a future danger, his death sentence is tainted.

The Texas courts refused even to consider Mr. Ruiz's evidence of racial stereotypes and animus. This Court should grant certiorari to decide whether *Peña-Rodriguez*'s holding applies to capital sentencing proceedings and to ensure that death sentences are not levied as a result of racial bias.

STATEMENT OF THE CASE

A. Trial, Direct Appeal, and Initial State Habeas Proceedings.

Mr. Ruiz was convicted and sentenced to death for the shooting of Dallas police officer Mark Nix. The evidence showed that Officer Nix attempted to stop Mr. Ruiz in his vehicle. After a chase that was joined by other police vehicles, Mr. Ruiz lost control of his car and crashed. Police cars surrounded the vehicle, blocking any path to escape. Officer Nix exited his vehicle, ran to Mr. Ruiz's car, and struck the car window with his police baton. Mr. Ruiz fired one shot that struck and killed Officer Nix.

There were two ways that the jury could have chosen not to impose a death sentence: by finding that Mr. Ruiz was not a future danger, which automatically would have resulted in a sentence of life imprisonment without parole (LWOP), or by finding that mitigating evidence warranted LWOP rather than death. Tex. Code Crim. P., Art. 37.071. The State argued that "Wesley Ruiz is going to commit criminal acts of violence that would constitute a criminal threat of whatever society he is in and that doesn't say prison society, folks." ROA.5176. The "only way" the jury could "guarantee and protect everybody down there at that prison system for as long as [Ruiz] is alive is to put him there on death row like [the State's future dangerousness expert] A.P. Merillat told you." *Id.* It further argued that if he "escapes" that he "will be back here on the streets" so the jury should remember "how he feels about guards" and "how he feels about you." ROA.5176. The jury accepted these arguments and sentenced Mr. Ruiz to death.

The CCA affirmed Mr. Ruiz's conviction and death sentence. *Ruiz v. State*, No. AP-75,968, 2011 WL 1168414, at *9 (Tex. Crim. App. Mar. 2, 2011). Mr. Ruiz then sought habeas corpus relief in the state court, which was also denied. *Ex Parte Ruiz*, No. WR-78,129-01, WR-78,129-02, 2012 WL 4450820 (Tex. Crim. App. Sept. 26, 2012).

B. Federal Habeas Proceedings.

On September 23, 2013, Mr. Ruiz filed his petition for writ of habeas corpus raising, inter alia, a claim that the State presented false testimony from its future dangerousness expert, A.P. Merillat. Merillat falsely told the jury that, unless

sentenced to death, Ruiz would have "numerous opportunities" to commit violent crimes against prison medical staff, teachers, and guards, as well as "venders that come in and service the Coke machines," *id.* at 5028. He claimed, unless Mr. Ruiz were sentenced to death, he could obtain the least restrictive level of prison housing that Texas provided. *Id.*[1] Because this issue had not been raised in state court, the federal court stayed the habeas proceedings so that Mr. Ruiz could exhaust the claim in state court. The CCA dismissed Mr. Ruiz's successive petition as untimely. *Ex Parte Ruiz*, No. WR-78,129-03 (Tex. Crim. App. Nov. 19, 2014). Federal habeas proceedings resumed, and relief and a certificate of appealability (COA) were denied on all claims. *Ruiz v. Davis*, No. 3:12-CV-5112-N, 2018 WL 6591687, (N.D. Tex. Dec. 14, 2018). The Fifth Circuit denied a COA as well. *Ruiz v. Davis*, 819 F. App'x 238, 242 (5th Cir. 2020). This Court denied certiorari. *Ruiz v. Lumpkin*, 142 S. Ct. 354 (2021).

C. Proceedings After this Court's Decisions in *Peña-Rodriguez* and *Buck*.

On February 22, 2017, this Court decided *Buck v. Davis*, 580 U.S. 100 (2017). The Court noted that discrimination is "especially pernicious in the administration of justice," *id.* at 124, and recognized that false notions equating race or ethnicity

[1] In truth, under the TDCJ plan, LWOP prisoners are never classified to a custody less restrictive than G-3. Accordingly, the Texas courts have granted relief in other cases based on Merillat's false testimony. *See Estrada v. State*, 313 S.W.3d 274, 287 (Tex. Crim. App. 2010); *Velez v. State*, No. AP-76,051, 2012 WL 2130890, at *32 (Tex. Crim. App. June 13, 2012).

with future dangerousness are a "particularly noxious strain of racial prejudice," *id.* at 121.

On March 6, 2017, this Court decided *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017). The Court held that traditional rules forbidding impeachment of jury verdicts must give way where a juror clearly "relied on racial stereotypes or animus" in reaching his or her verdict. *Id.* at 225. *Peña-Rodriguez* made clear that "racial bias in the justice system must be addressed," even in the face of such "no impeachment" rules. *Id.* Prior to *Peña-Rodriguez*, such statements from jurors were inadmissible under Texas Rule of Evidence 606(b)(1).

On July 27, 2022, the State obtained a warrant for execution against Mr. Ruiz. On August 12, 2022, Jury Foreman J.G. signed an affidavit stating Mr. Ruiz was "like an animal. He was a mad dog." App. 2 at 3 (Decl. of J.G.). He also described Mr. Ruiz as a "thug & punk." *Id.* at 4. He explained that the Hispanic persons in attendance at trial were "obviously" supporters of Mr. Ruiz and "gang members." He admitted the jury was "scared" of Hispanics in the audience whom they believed to be gang members. *Id.* He also described an incident driving on the highway where he felt threatened by a man who had drove behind him on the road for no reason other than this man was a "Mexican" driving a "flashy car." *Id.* J.G. shared his racially based belief that Mr. Ruiz was a "mad dog" and an "animal" with another juror, explaining that there was a juror "who did not want to give Mr. Ruiz the death penalty," but that he was able to persuade her to vote for death because Mr. Ruiz "could be dangerous." *Id.* at 2-3.

On August 11, 2022, Juror B.P signed an affidavit stating that her Oak Cliff neighborhood had "changed" over the years as a result of "integration." She noted Mr. Ruiz was from "West Dallas, which was even worse than Oak Cliff," associating the "demographic change[]" with rising crime. App. 3 at 1 (Decl. of Juror B.P.). Further, her sister had been kidnapped, raped, and tortured by a man she "believed [to be] Hispanic and was involved in a business to smuggle in illegal aliens into the country," and similar to Mr. Ruiz, "was apprehended after a high speed chase and fired at officers." *Id.* at 1-2. Harboring these stereotypes rendered her particularly vulnerable to Merillat's false testimony. She explained, "I remember the state's expert A.P. Merillat testified about how Wes would be classified. I thought Wes could escape if he was sentenced to life without parole. Had I known the actual classification rules, I might have changed my mind." *Id.*

Linguistic anthropologist Dr. Christina Leza, Ph.D., analyzed the jurors' statements and concluded:

> There is no question that Foreman J.G.'s declaration reflects racial stereotypes, bias, and negative racial attitudes regarding Hispanic men that would feature in any decision requiring an appraisal of Mr. Ruiz's risk for committing violence, as well as the decision to sentence Mr. Ruiz to death.

Dr. Christina Leza, Ph.D., *Expert Evaluation of Racial Bias in Wesley Ruiz Capital Trial, Juror Declarations* (Jan. 12, 2023), App. 4 at 5. B.P.'s declaration "convey[s] racial views that shaped her perception of Ruiz" and "contains overt anti-Hispanic attitudes." *Id.* at 7.

On January 24, 2023, in light of *Peña-Rodriguez*, *Buck*, and the recent juror disclosures, Mr. Ruiz filed a successive application for a writ of habeas corpus in Texas state court raising a claim that these jurors unconstitutionally relied on anti-Hispanic racial stereotypes and animus to sentence him to death, and that this claim had "not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed [his] previous application[s]." Tex. Code Crim. P., Art. 11.071, § 5(a)(1). Mr. Ruiz argued that this claim was both factually and legally unavailable when he filed his prior state habeas applications because, prior to *Peña-Rodriguez*, Rule 606(b) of the Texas Rules of Evidence barred receiving evidence of a juror's statement on matters concerning jury deliberations, "the effect of anything on that juror's or another juror's vote," or "any juror's mental processes" about the verdict, with no exception for racial bias. On January 30, 2023, the CCA dismissed Mr. Ruiz's application as an abuse of the writ in a summary order, stating that "Applicant has failed to show that he satisfies the requirements of Article 11.071 § 5." App. 1 at 2.

On January 25, 2023, Mr. Ruiz filed a Motion for Relief from Judgment pursuant to FRCP 60(b)(6). He sought to reopen the judgment based on newly discovered evidence demonstrating that the State knew their future danger expert's testimony was false at Mr. Ruiz's trial. On January 27, 2023, the District Court denied the motion for failing to meet the requirements of Rule 60(b).

REASONS FOR GRANTING THE WRIT

This case violates two recent decisions from this Court declaring that racial prejudice can play no part in a jury's deliberations. First, the Court, reiterating that discrimination is "especially pernicious in the administration of justice," *Buck*, 580 U.S. at 124, described false notions equating race or ethnicity with future dangerousness as a "particularly noxious strain of racial prejudice." *Id.* at 121. Second, traditional rules forbidding impeachment of jury verdicts must give way where a juror clearly "relied on racial stereotypes or animus" in reaching his or her verdict. *Peña-Rodriguez*, 580 U.S. at, 225. Because Mr. Ruiz's death sentence was impermissibly influenced by racial bias, this case presents an appropriate vehicle for the Court to consider whether *Peña-Rodriguez*'s holding applies to capital sentencing proceedings.

I. Where Jurors Relied on Anti-Hispanic Racial Stereotypes and Animus to Sentence a Defendant to Death, *Peña-Rodriguez* and *Buck* Should Govern.

The jury foreman characterized Mr. Ruiz as an "animal" and a "mad dog," and betrayed his irrational fear of Hispanic men. The racially stereotyped beliefs of this juror, for whom Hispanic men are "mad dogs" lacking the human conscience that can restrain impulsive behavior, led to a finding of future dangerousness. Moreover, as foreman he was influential and persuaded another juror to vote for death on the strength of his racial typecasting.

Another juror candidly characterized an increasing Latino demographic in her town as rendering the neighborhood "worse," thus adopting the quintessential stereotype that those of Hispanic descent are prone to violence. Further, this juror's

sister was kidnapped, raped, and tortured by a man she believed to be Hispanic, a trauma that substantially impaired her ability to distinguish ethnicity from proneness to violence. As a result, this juror feared that, even if sentenced to life in prison, Mr. Ruiz could not be stopped from committing violent acts.

The bias revealed by these admissions mattered. Mr. Ruiz's penalty phase presented the jury with two critical issues to resolve. The first was whether there was a probability that he would "commit criminal acts of violence that constitute a continuing threat to society" (future dangerousness),[2] which was not only a prerequisite to a death sentence but was the focus of the State's case for death. Were the jury to answer "no" to this question, they were required to sentence Mr. Ruiz to life without parole (LWOP). Second, if the jury answered yes, they were then required to decide "[w]hether, taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, there is a sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment without parole rather than a death sentence be imposed." Tex. Code Crim. Proc, Art. 37.071(2)(e)(1). Each stereotype and fear that Hispanic men were more likely to act violently because of their race increased the likelihood that Mr. Ruiz would be found to be a future danger. These racial stereotypes also dehumanized Mr. Ruiz as unworthy of consideration of a life sentence, and thus

[2] Tex. Code Crim. P., Art. 37.071(2)(b)(1).

facilitated sentencing him to death. The harm of this racial bias was exacerbated by false testimony from the State's expert that, unless sentenced to death, Mr. Ruiz would have "numerous opportunities" to commit violent crimes against innocent people.

Because the new evidence demonstrates that racial animus was a substantial motivating factor in the jury's sentencing verdict, this Court should grant certiorari and decide whether *Peña-Rodriguez* applies.

A. The Juror Declarations Reveal Overt Anti-Hispanic Bias.

J.G., the foreman, characterized Mr. Ruiz as "an animal. He was a mad dog." App. 2 at 3 (Decl. of J.G.). He employed other dehumanizing terms, describing Mr. Ruiz as a "thug & punk." And his open prejudice was not limited to Mr. Ruiz. He presumed Hispanic persons in attendance to "obviously" be "gang members," and explained that other jurors shared his view and were thus "scared" of Hispanics in the audience. *Id.* at 4. He also described an incident on a highway where he felt threatened by a man for no reason other than this man was a "Mexican" driving a "flashy car." *Id.* J.G. relied on his racial animus in persuading the jury to sentence Mr. Ruiz to death, explaining that there was a juror "who did not want to give Mr. Ruiz the death penalty," but that he was able to persuade her (despite her tears) to vote for death because Mr. Ruiz "could be dangerous." *Id.* at 2-3.

Juror B.P. was more subtle but no less firm in her reliance on improper stereotypes. She lamented that her neighborhood had "changed" as a result of "integration," and noted that Mr. Ruiz was from "West Dallas, which was even

worse than" her own neighborhood demographically. App. 3 at 1 (Decl. of Juror B.P.). Harboring these stereotypes rendered her particularly vulnerable to Merillat's false testimony. She explained, "I remember the state's expert A.P. Merillat testified about how Wes would be classified. I thought Wes could escape if he was sentenced to life without parole. Had I known the actual classification rules, I might have changed my mind." *Id.*

These declarations were reviewed by an expert in the field of linguistic anthropology, Christina Leza, Ph.D. Dr. Leza explains the origins and persistence of Hispanic male stereotypes:

> In the case of Hispanic men, researchers have found that anti-Hispanic bias is strongly correlated with a history of Hispanic dehumanization in this country, a desire for Hispanics to be punished by the State, and a history of hostility to Hispanics' presence in this country. One deeply ingrained anti-Hispanic stereotype is that they are animalistic, or subhuman. Since at least the 1930s, Hispanics have been commonly depicted as savage and bloodthirsty. For example, in the 1950s, Hispanics were commonly described by print media as infiltrating the United States in "swarms," moving in "wolf packs," and reproducing like "dogs." And as recently as the 1990s, a close examination of Los Angeles Times articles written between 1993 and 1994 revealed that "animals" was the dominant expression that characterized Hispanics. Researchers found only two examples of a L.A. Times writer referring to someone other than a Hispanic immigrant as an animal, both about Black boxer Mike Tyson.

App. 4 at 5 (footnotes omitted).

> Regarding Foreman J.G.'s statements, Dr. Leza opines:
>
> There is no question that Foreman J.G.'s declaration reflects racial stereotypes, bias, and negative racial attitudes regarding Hispanic men that would feature in any decision requiring an appraisal of Mr. Ruiz's risk for committing violence, as well as the decision to sentence Mr. Ruiz to death. Specifically, on page 3 of his declaration, Foreman J.G. notes

> that he believed that "Mr. Ruiz behaved like an animal. He was a mad dog." These are blatant anti-Hispanic stereotypes and are overtly racist.

Id. at 6.

She notes that his statements "also reveal[] his and other jurors' fearful perceptions of gang members in the courtroom and directly references his fear of an unidentifiable Mexican driver related to these perceptions." *Id.* at 6. She explains:

> His statements overtly stereotype Hispanic men as violent and dangerous. These statements also reveal how Hispanic racial bias can influence Foreman J.G.'s appraisal of the facts: a flashy car (e.g., a red Corvette) that is driven by someone who is non-Hispanic (that is, Foreman J.G.), is not suspicious to him, but when it is driven by a "Mexican guy," it holds prominence in his mind as a reason that he felt scared.

Id. Further, J.G.'s status as foreman indicated he held a "leadership role," and his statement revealed he successfully persuaded another juror to vote for death. *Id.* at 6-7. "His status was significant because it illustrates how Foreman J.G.'s personal bias against Hispanic men influenced others on the jury." *Id.* at 7.

Regarding B.P., Dr. Leza noted the "violent life events that personally affected her family before she served as a juror in Mr. Ruiz's trial." *Id.* at 7. She also cited B.P.'s stereotyped discussion of neighborhood demographics as conveying the "racial views that shaped her perception of Ruiz." *Id.* In such stereotypes, rising Hispanic populations are assumed to increase the violence of a neighborhood. Researchers have found that "the relative size of the Hispanic population in a neighborhood is a significant contextual predictor of fear of crime." *Id.* (internal footnotes omitted). Dr. Leza opined that B.P.'s declaration "contains overt anti-Hispanic attitudes." *Id.*

Courts have routinely found comparable language to show racial animus. For example, in the context of employment discrimination, similar anti-Hispanic stereotypes have been acknowledged to show racial prejudice. *See Rodriguez v. Metro Electrical Contractors*, No. 18-cv-05140, 2021 WL 848839, at *1 (E.D.N.Y. 2021) (permitting employment discrimination claim to proceed where Latino employee was called a "Gato" (cat) and "Chihuahua."); *Nieves v. Acme Markets, Inc.*, 541 F. Supp. 2d 600, 603 (D. Del. 2008) (rejecting summary judgment in discrimination lawsuit where Latino employee was referred to as "Chihuahua."). Likewise, in the context of employment discrimination against Black employees, "courts have repeatedly found that intentionally comparing African Americans to apes is highly offensive such that it contributes to a hostile work environment." *Henry v. Corpcar Servs. Houston, Ltd.*, 625 F. App'x. 607, 612 (5th Cir. 2015) (sustaining verdict and damages). "'Given the history of racial stereotypes against African–Americans and the prevalent one of African–Americans as animals or monkeys, it is a reasonable—perhaps even an obvious—conclusion that'" the use of monkey imagery is intended as a "'racial insult'" where no benign explanation for the imagery appears." *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1297 (11th Cir. 2012) (quoting *United States v. Jones*, 159 F.3d 969, 977 (6th Cir.1998)) (reversing summary judgment).

The use of animal imagery and other derogatory terms to describe Mr. Ruiz and the association of Hispanic ethnicity with proclivity for violence are clear

expressions of racial animus, and they plainly influenced the jurors' sentencing deliberations here.

B. In Sentencing Mr. Ruiz to Death Based on Anti-Hispanic Bias, the Jury Violated Mr. Ruiz's Sixth Amendment Rights.

Until *Peña-Rodriguez*, statements from these jurors about racial animus were inadmissible under Texas law. Texas Rule of Evidence 606 provides:

> During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

Tex. R. Evid. 606(b)(1). *Peña-Rodriguez* made clear that "racial bias in the justice system must be addressed," even in the face of such "no impeachment" rules. 580 U.S. at 225.

But neither the Texas courts nor this Court have yet considered whether *Peña-Rodriguez* specifically applies in capital sentencing proceedings. Instead, *Peña-Rodriguez* outlawed such racial animus when relied upon "to convict a criminal defendant." *Id.* There, two jurors came forward to state that a third juror, during deliberations, "had expressed anti-Hispanic bias toward [a] petition and [the] petitioner's alibi witness." *Id.* at 212. The Court held:

> where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Id. at 225.

The two jurors' statements here are likewise clear expressions of racial animus, thus the same harm is present here as in *Peña-Rodriguez* and *Buck*. As explained by Dr. Leza, "There is no question that Foreman J.G.'s declaration reflects racial stereotypes, bias, and negative racial attitudes regarding Hispanic men." His statements "overtly stereotype Hispanic men as violent and dangerous." App. 4 at 6. And regarding the second juror, "[w]hite juror B.P.'s declaration also contains overt anti-Hispanic attitudes" that applied to Mr. Ruiz. *Id.* at 7.

Indeed, even less overt statements fit within *Peña-Rodriguez* if the "juror's statement indicates that racial bias played a role in the juror's vote." *Harden v. Hillman*, 993 F.3d 465, 484 (6th Cir. 2021). In *Harden*, the jury believed the Black defendant was a "crack head" and an "alcoholic," referred to his Black lawyer and defense team as the "Cosby Show," and made other drug-related references to the defendant. *Id.* at 482. Although the statements did not explicitly mention race, the stereotype that Black men were drug users led the jury to reject the defendant's testimony. *Id.* at 484. *See also State v. Spates*, 953 N.W.2d 372, 2020 WL 6156739, at *8 (Iowa Ct. App. 2020) (juror's race-based assumptions drew a connection to verdict-determining facts, where juror said that Black people are in gangs, are used to doing drive-by shootings, and are raised in a way where "it's o.k. to kill people").

There is a clear nexus between the two jurors' stereotypes and racial attitudes and their decision-making during deliberations. Dr. Leza's analysis is illustrative of the point:

> [I]t is highly probable that racial bias significantly influenced the jury's decision to sentence Mr. Ruiz to death. Characterizing Mr. Ruiz as an

> "animal" and as a "mad dog" was both blatantly racist and a classic example of the dehumanization that justifies intergroup violence. After reducing Mr. Ruiz to a dangerous, wild animal, the jury logically concluded that it needed to put him down. Thus, it is likely that their overt racial bias directly led to their decision to execute Mr. Ruiz.

App. 4 at 9.

Race was "a significant motivating factor" in the jury's decisions to find that Mr. Ruiz was likely to commit violence in prison, and to sentence him to death, even if the jury did not rely on such animus "to convict" Mr. Ruiz. But because such a capital sentencing decision is even more weighty than the conviction at issue in *Peña-Rodriguez*, and because a defendant's constitutional rights are at their height crucial in capital cases, *California v. Ramos*, 463 U.S. 992, 998-99 (1983), *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), this Court should consider whether, and ultimately decide that, "the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider" evidence that one or more jurors "relied on racial stereotypes or animus to" sentence a defendant to death.

II. The CCA's Ruling Does Not Preclude this Court's Review of the Merits of Petitioner's Claim.

In his successive state habeas application, Mr. Ruiz presented factual allegations establishing a prima facie Sixth Amendment violation: that his death "sentence must be vacated because newly obtained declarations from jurors establish that the jury's verdict 'relied on racial stereotypes or animus,' *Peña-Rodriguez*, 580 U.S. at 225, and introduced a 'particularly noxious strain of racial prejudice,' *Buck*, 580 U.S. at 121, into the jury's determination of whether Mr. Ruiz

was a future danger." App. Writ of Habeas Corpus, at 1, *Ex Parte Ruiz*, No. WR-78,129-04 (Tex. Crim. App. Jan. 24, 2023).

The CCA's dismissal of that claim was based on a procedural ruling (abuse of the writ). That ruling does not bar this Court's review of the merits because it is not an adequate and independent default ruling.

A state court procedural default ruling precludes this Court's review, but only if the default ruling is both adequate and independent of federal law. *Coleman v. Thompson*, 501 U.S. 722, 735 (1991). While adequacy has a number of components, one is particularly relevant here: a state court default ruling is not adequate if the petitioner did not actually violate the rule in question. *See Cone v. Bell*, 556 U.S. 449, 466 (2009) (no default where state court default ruling "rested on a false premise"); *Lee v. Kemna*, 534 U.S. 362, 366-67, 385 (2002) (no default where petitioner "substantially complied" with applicable rule). As to independence, a state law ground is not independent of federal law if "there is strong indication . . . that the federal constitution as judicially construed controlled the decision below." *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) (quoting *Minnesota v. National Tea Co.*, 309 U.S. 551, 556 (1940)). If the ruling on the state court ground is even "influenced by" a question of federal law, it is not independent. *See Foster v. Chatman*, 578 U.S. 488, 499 n.4 (2016) (citation omitted).

Here, the CCA ruled that Mr Ruiz had "failed to show that he satisfies the requirements of Article 11.071 § 5," App. 1 at 2, but did not specify in what respect Mr. Ruiz had failed to satisfy the statute. This is significant because the CCA has

interpreted Article 11.071, § 5(a)(1), the requirements of which Mr. Ruiz alleged he satisfied, as containing two separate prongs: (1) a "merits" prong requiring a *prima facie* showing of "a federal constitutional claim that requires relief from the conviction or sentence"; and (2) an "unavailability" prong requiring a showing that the factual or legal basis of the federal claim was unavailable at the time the initial application was filed. *Ex Parte Campbell,* 226 S.W.3d 418, 421 (Tex. Crim. App. 2007); *accord Ex Parte Staley,* 160 S.W.3d 56, 66 (Tex. Crim. App. 2005) (*per curiam*). An application does not satisfy § 5(a)(1) if it fails to satisfy *either* the merits prong or the unavailability prong. *Campbell,* 226 S.W.3d at 421.

Because the CCA did not indicate which prong Mr. Ruiz had failed to satisfy, it could have relied on either or both. But as shown below, Mr. Ruiz clearly did satisfy the unavailability prong, so a ruling that he had failed to do so would be inadequate to bar this Court's review of the merits. And the "merits" prong of § 5(a)(1) is intertwined with the merits of Mr. Ruiz's claim, so a ruling based on that prong is not independent of federal law.

Under Texas law, the unavailability prong requires a showing that the "factual or legal basis for the claim was unavailable on the date the applicant filed the previous application." Article 11.071, § 5(a)(1). Section 5(d) defines legal unavailability of a claim as follows:

> [The] legal basis of a claim is unavailable on or before a date described by Subsection (a)(1) if the legal basis was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date.

Id., § 5(d).

Under those provisions, Mr. Ruiz's claim was legally unavailable at the time he filed his most recent prior application, i.e., September 23, 2013. Prior to *Peña-Rodriguez*, a claim that jurors sentenced a defendant to death based on racial bias would have been barred in Texas by the operation of Texas Rule of Evidence 606(b)(1). That Rule barred receiving evidence of a juror's statement on matters concerning jury deliberations, "the effect of anything on that juror's or another juror's vote," or "any juror's mental processes" about the verdict, with no exception for racial bias. *Id.*; *see also* Tex. R. Civ. Pro. 327(b) (same).

In *Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 371 (Tex. 2000), the Texas Supreme Court rejected an argument that Rules 327(b) and 606(b) deprived a litigant of a constitutional right to a fair trial because of a juror's bias against product liability suits. The court held that evidence of juror "bias must come from a source other than a fellow juror's testimony about deliberations." *Id.* Juror testimony was thus limited to "issues of juror misconduct, communications to the jury, and erroneous answers on voir dire, provided such testimony does not require delving into deliberations." *Id.*

As of September 23, 2013, Mr. Ruiz's claim was not recognized by and could not have been reasonably formulated from any final decision of the United States Supreme Court, any federal appeals court, or any Texas state appellate court. Accordingly, there is no question that at the relevant times the claim presented here was legally unavailable under Texas law. As such, if the CCA denied the writ

based on the "unavailability" prong of § 5(a)(1), it did so although Mr. Ruiz had not violated the procedural default rule, and its ruling was therefore inadequate to bar this Court's review of the merits of the claim.

If, however, the state court denied the writ based on a failure by Mr. Ruiz to satisfy the merits prong of § 5(a)(1), its decision was not based on an independent state ground. The merits prong involves review of whether the applicant has made a prima facie showing of a federal constitutional violation. *See* § 5(a)(1); *Campbell,* 226 S.W.3d at 422-25 (denying claim as abuse of writ based on lack of merit of claim); *Ex parte Cruz-Garcia*, No. WR-85,051-3, 2017 WL 4947132 at *2 (Tex. Crim. App. Nov. 1, 2017) (denying claim as abuse of writ based on failure to show materiality); *Ex parte Reed*, No. WR-50,961-07, 2017 WL 2138127 at *1 (Tex. Crim. App. May 17, 2017) (denying claim as abuse of writ based on failure to make prima facie showing on federal claims).

The Fifth Circuit has frequently recognized that such review, purportedly for purposes of deciding whether there was an abuse of the writ, is not independent of federal law. *See, e.g., Rivera v. Quarterman,* 505 F.3d 349, 359 (5th Cir. 2007) (resolution of antecedent federal question was implicit in CCA's evaluation of "sufficient specific facts" for Section 5(a) review for intellectual disability claim and decision that the claim "does not make a prima facie showing- and is, therefore, an abuse of the writ- is not an independent state law ground"); *accord Busby v. Davis*, 925 F.3d 699, 706-07 (5th Cir. 2019).

At best, the CCA did not make clear whether it relied on state or federal law in dismissing Mr. Ruiz's application. *See (Rolando) Ruiz v. Quarterman*, 504 F.3d 523, 528 (5th Cir. 2007) ("The boilerplate dismissal by the CCA of an application for abuse of the writ is itself uncertain on this point, being unclear whether the CCA decision was based on the first element, a state-law question, or on the second element, a question of federal constitutional law.") (emphasis added). As such, its decision is not independent of federal law. Indeed, it is entirely possible that the CCA denied relief based on the assumption that *Peña-Rodriguez* applies only to guilt/innocence decisions, not to capital sentencing. That is, of course, the question that Mr. Ruiz asks this Court to decide.

On its face, it appears that the CCA dismissed Mr. Ruiz's application because it determined that his factual allegations did not make a *prima facie* showing of a "violation of a federal constitutional right that requires relief from his conviction or sentence." *Campbell*, 226 S.W.3d at 421. At the very least, it fairly appears that the dismissal is interwoven with the CCA's consideration of the merits of Mr. Ruiz's underlying claims. Because neither of the possible grounds for the CCA's decision applied an adequate and independent procedural default rule, there is no bar to this Court's consideration of the merits of the claim.

CONCLUSION

For these reasons, this Court should grant this petition for a writ of certiorari and place this case on its merits docket.

Respectfully submitted,

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