No. _____

IN THE

Supreme Court of the United States

RODOLFO MEDRANO,

Petitioner,

v.

STATE OF TEXAS,

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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

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

CAPITAL CASE

QUESTION PRESENTED

Upon his arrest, Petitioner asserted both his right to counsel and his right to silence, but those assertions were thwarted by a police officer who first told Petitioner's wife that the police knew he was not present when the murders were committed *and that he would be allowed to go home to her and their baby if he told them what he knew*, then created two opportunities for her to use that false assurance to persuade Petitioner to speak. Petitioner's resulting statement admitted his gang membership and described both his knowledge of the gang's planned marijuana robbery and his own role in supplying guns for that robbery, a robbery that morphed into an unexpected and fatal confrontation between two gangs while Petitioner was in his own home. Petitioner's statement was the only significant evidence implicating him in the robbery-gone-bad and without it, he could not have been prosecuted for capital murder. Texas Code of Criminal Procedure 11.071(5)(a)(2) provides for authorization of a subsequent petition when "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." *Id*. at §5(a)(2). Despite the lack of any evidence beyond Petitioner's confession that could have sustained his conviction, the Texas Court of Criminal Appeals, without explanation, determined that Petitioner's subsequent petition "failed to satisfy the requirements of Article 11.071, § 5(a),"and dismissed his application "as an abuse of the writ without considering the merits of the claims."

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

II. Whether the Texas Court of Criminal Appeals' determination that the Petitioner's subsequent petition failed to satisfy the requirements of Article 11.071, § 5(a)(2) was an adequate and independent state ground precluding merits review of his claim where that provision authorizes a subsequent petition when "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt" and the confession whose constitutionality Petitioner is challenging was the only significant evidence linking him to the capital murder with which he was charged.

PARTIES TO THE PROCEEDINGS BELOW

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

LIST OF RELATED CASES

State court

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

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

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

Federal Court

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

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PETITION FOR A WRIT OF CERTIORARI

Rodolfo Medrano petitions this Court for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals in this case.

OPINIONS BELOW

The May 17, 2023, unpublished opinion of the Texas Court of Criminal Appeals ("TCCA") is attached as an appendix.

STATEMENT OF JURISDICTION

The Texas Court of Criminal Appeals entered its judgment on May 17, 2023. An extension of time to file this petition was granted on August 11, 2023, in Application No. 23A118, extending the time to file to September 14, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution, which provides: "No person shall be . . . compelled in any criminal case to be a witness against himself."

This case also involves Tex. Crim Proc. Code § 11.071 § 5(a), which states, in relevant parts, as follows:

> "If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient specific facts establishing that:
>
> (1) the current claims and issues have 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 the previous application;

(2) by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt[.]"

STATEMENT OF THE CASE

Rodolfo Medrano never planned, intended, or agreed to kill anyone, and was not present when others committed the murders of which he would later be convicted. He did, however, supply guns to fellow gang members for them to use in a marijuana robbery, and he was convicted of capital murder and sentenced to death because a shootout during that robbery killed members of a rival gang who were unexpectedly present at the scene. Only one significant piece of evidence inculpated Mr. Medrano in the murders: his own custodial statement, which admitted his gang membership and that he had knowingly supplied guns for use in the marijuana robbery.

It is undisputed that Mr. Medrano asserted his right to counsel, but interrogation did not "cease until an attorney [was] present," as required by *Miranda v. Arizona*, 384 U.S. 436, 474 (1966). Instead, with no prior initiation on Mr. Medrano's part, his assertion was circumvented by a police officer who told Mr. Medrano's wife Juana that the police knew Mr. Medrano was not present when the murders were committed *and that he would be allowed to return home to her and their son if he told them what he knew*. The officer then twice arranged for Juana Medrano to speak with her husband to convey that message and persuade him to speak. Under all the circumstances—where an officer deliberately deployed Mrs. Medrano to elicit statements from her husband, gave her false information to share

with him, and offered a powerful incentive for him to speak, and where other officers deliberately used similar tactics to extract confessions from Mr. Medrano's co-defendants—this constituted interrogation within the meaning of, and forbidden by, *Miranda*. This unconstitutionally obtained statement was the only significant evidence linking Mr. Medrano to the robbery, and therefore the murders. Without it, he could not have been convicted.

Texas Code of Criminal Procedure Article 11.071 § (5)(a) provides three grounds for authorizing a successive state habeas petition, including that "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." *Id*. at § 5(a)(2). Despite the lack of any significant evidence beyond his confession, the Texas Court of Criminal Appeals ("TCCA"), without explanation, stated that Mr. Medrano's subsequent petition "failed to satisfy the requirements of Article 11.071, § 5(a)," and dismissed it "as an abuse of the writ without considering the merits of the claims." Appendix.

A. Offense and arrest.

Mr. Medrano married Juana Garces when he was twenty years old, and two years later, they had a son. Despite having come from an impoverished family, Mr. Medrano earned an associate degree and was steadily employed in a legitimate job. As an adolescent, however, Mr. Medrano had been friends with a group of boys who eventually joined the Tri-City Bombers gang,[1] and Mr. Medrano did not disavow

[1] Tr. Vol. 47 at 47–48.

them after he became a family man. Because Mr. Medrano was smart, had no criminal record, and legally owned several guns, the Tri-City Bombers designated him their "treasurer" and "weapons provider."[2]

Focusing on his life as a husband and working father, Mr. Medrano attended mandatory gang meetings but took no part in robberies or other criminal activities.[3] On occasion, he loaned his own guns to fellow gang members, and once, four months before the capital murders at issue here, other gang members used Mr. Medrano's guns—without his foreknowledge—in a deadly crime.[4]

When a captain of the Tri-City Bombers asked to borrow Mr. Medrano's guns for a robbery of a large quantity of marijuana, Mr. Medrano complied. But when invited to come along on the robbery, Mr. Medrano "told them no because . . . [he had] never done something like that," adding, "I don't do that, you know."[5] Instead, Mr. Medrano and his wife went out, picked up a movie, and watched it at home.

Meanwhile, the marijuana robbery unexpectedly turned into a chaotic shootout. Arriving at the house they intended to rob, the would-be robbers confronted members of a rival gang. The Tri-City Bombers crushed their surprised and

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[2] Tr. Vol. 43 at 83; Tr. Vol. 47 at 51.

[3] Tr. Vol. 43 at 63–64.

[4] Tr. Vol. 47 at 51-52. An incarcerated gang member, operating outside the Tri-City Bombers' chain of command, issued a rogue order placing a "hit" on a witness; however, the hit did not go off as planned and four women—none of them the targeted witness—were killed. Tr. Vol. 43 at 87. Mr. Medrano knew nothing of the planned rogue hit until after the fact. Tr. Vol. 47 at 52.

[5] Tr. Vol 43 at 63–64.

outnumbered rivals, killing six of them. Mr. Medrano realized something had gone terribly wrong with the robbery only when he saw a news report about the murders.[6]

Several weeks later at 6:30 a.m., police burst into the home where Mr. Medrano lived with his then-wife Juana and their baby boy. The three were in bed when police grabbed Mr. Medrano, handcuffed him, and put him into a police vehicle to be transported to the Edinburg Police Department.[7] The police also manhandled other family members who were present, including Juana's mother and three sisters, who were thrown to the floor and handcuffed.[8] The police transported Mr. Medrano to the station at 7:30 a.m., and shortly thereafter transported his wife, her mother, and three sisters, all still in handcuffs, to the same location. The police told Paula Garces, Maribel Garces, and Guadalupe Garces that they were coming voluntarily, but they remained in handcuffs the entire time and never were told why they were being detained.[9]

Mr. Medrano was booked at 7:42 a.m. and then taken into a cell-block area, where he initially refused to talk to the police.[10] Immediately after he was booked, Texas Rangers attempted to question Mr. Medrano and obtain a signed waiver of

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[6] *Id*. at 63.

[7] *See* Aff. Juana Garces Medrano Ex. 30a, at 1; Aff. Juana Garces Medrano Ex. 30b, at 1; Decl. Monica Garces Ex. 3, ¶ 3; Decl. Maribel Garces Ex. 2, ¶¶ 3–7.

[8] *See* Aff. Juana Garces Medrano Ex. 30a, at 1–2; Aff. Juana Garces Medrano Ex. 30b, at 1–2; *see also* Decl. Monica Garces Ex. 3, ¶¶ 5–9; Decl. Maribel Garces Ex. 2, ¶¶ 5–7.

[9] Decl. Maribel Garces Ex. 2, ¶¶ 7–9; Decl. Guadalupe Garces Ex. 1, ¶¶ 8–11; *see* Decl. Paula Garces Ex. 4, ¶¶ 8–9.

[10] *See* Tr. Vol. 15, at 22.

rights.[11] Mr. Medrano both requested an attorney from Ranger Rolando Castaneda and refused to speak with law enforcement.[12] He was then put into a holding cell.

Mr. Medrano's family members were interrogated one-by-one.[13] Officer Edgar Ruiz spoke to Juana Medrano at 9:00 a.m. He asked her about the night of January 6, and she explained that Mr. Medrano had been with her the entire night: they went to dinner, bought some movies, and went home.[14] After obtaining from Mrs. Medrano a written statement describing the guns that were kept in the family home, police told her that they needed to know what her husband knew. Ruiz told her that "[w]e already know that he was not at the crime scene" and "[l]ook he can go home with you and Dominik [their baby], he just needs to tell us what he knows, about what happened that night."[15] Mrs. Medrano then asked, "he is going to come home with me[?]" and Officer Ruiz responded, "[Y]es."[16]

Mr. Medrano's wife, her mother, and her sisters were brought to wait in a lunchroom.[17] Officer Ruiz then retrieved Mrs. Medrano and allowed her to speak

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[11] Decl. Rodolfo Medrano Ex. 34, Decl. Rodolfo Medrano Ex. 34, at 1; Rep. Tex. Ranger Rolando Castaneda, ¶ 1.28.

[12] *Id*. ("On same date, this writer [Castaneda] and Ranger Collins interviewed Medrano, who after being advised of his Constitutional Rights requested an attorney and refused to be interviewed.").

[13] *See* Decl. Monica Garces Ex. 3, ¶ 11–12; Decl. Maribel Garces Ex. 2, ¶ 10; Decl. Guadalupe Garces Ex. 1, ¶ 12; Decl. Paula Garces Ex. 4, ¶¶ 10–11.

[14] Aff. Juana Garces Medrano Ex. 30a, at 2; Aff. Juana Garces Medrano Ex. 30b, at 2.

[15] *Id*.

[16] *Id*.

[17] Aff. Juana Garces Medrano Ex. 30a, at 2; Aff. Juana Garces Medrano Ex. 30b, at 2.

with her husband.[18] Officer Ruiz told Mr. Medrano, who had been taken to a small room, that he would be allowed to speak to his wife for a few minutes, but could not touch her.[19] Mr. Medrano could see his wife in the small room as Officer Ruiz stood in the doorway.[20] His wife cried and pleaded with him to tell the police what he knew.[21] She begged him, "please Rudy tell them what they want to know, he said you can come home with us" and "[t]hey just need you to tell them what you know about all this."[22] The couple spoke for about five minutes, with Ruiz standing in the doorway behind Mrs. Medrano the entire time.[23] Mr. Medrano was then returned to a holding cell while police transported his wife and her family to her uncle and aunt's house.[24]

That night, police assisted Mr. Medrano in calling and speaking to his wife. Officers told him that she was at her aunt and uncle's house, which they knew because they had taken her there, and gave Mr. Medrano the phone number.[25] On the phone, Juana again pleaded with Mr. Medrano to tell the police what he knew

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[18] *Id.*

[19] Decl. Rodolfo Medrano Ex. 34, at 1.

[20] *Id.*

[21] Aff. Juana Garces Medrano Ex. 30a, at 2; Aff. Juana Garces Medrano Ex. 30b, at 2.

[22] *Id.* at 1–2.

[23] Decl. Rodolfo Medrano Ex. 34, at 1, 2.

[24] *Id.*; Aff. Juana Garces Medrano Ex. 30a, at 3 Aff. Juana Garces Medrano Ex. 30b, at 3.

[25] Aff. Juana Garces Medrano Ex. 30a, at 3; Aff. Juana Garces Medrano Ex. 30b, at 3.

about the crime because the police knew he was not present and because, if he told them, they would then allow him to go home with her.[26] Mr. Medrano decided to tell the officers what he knew.

Mr. Medrano approached Officer Reyes Ramirez when Ramirez was checking the cell blocks where Mr. Medrano was being held.[27] According to Ramirez, Mr. Medrano "said he wanted to talk to me. He wanted to cooperate with the investigation."[28] Ramirez testified that he did not think Mr. Medrano was "serious," telling him, "Look, if you want to cooperate without an attorney, tell me where the weapons are."[29] Mr. Medrano then told Ramirez where to find the guns, and officers retrieved them.[30] The next day, Mr. Medrano was brought into an interrogation room and again asked to sign a waiver; he did so, and then gave Ramirez a full statement.[31]

At Mr. Medrano's arraignment, he once again asked for an attorney.[32] Later that day, Investigator Juan Sifuentes interviewed Mr. Medrano about his knowledge of the earlier crime committed by rogue gang members, "the Donna murders."[33] Sifuentes asked Mr. Medrano to sign a waiver, which he did, and then gave a full

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[26] *Id.*

[27] Tr. Vol. 43 at 41.

[28] *Id.*

[29] *Id.* at 42.

[30] *Id.* at 43.

[31] Tr. Vol. 43 at 43–44.

[32] Tr. Vol. 16 at 36.

[33] Tr. Vol. 16 at 33.

statement about the unrelated murders and the gang to which he belonged, the Tri-City Bombers.[34]

B. Trial and appeal.

Mr. Medrano informed trial counsel about the events leading to his statement: how the police had used his wife Juana to urge him to confess, assuring him that the police had promised to let him go home if he told them what he knew, and that Officer Edgar Ruiz was present, standing in the doorway, when Juana relayed this promise.[35] Nonetheless, nothing in the record reflects that trial counsel ever called or attempted to speak to any of the Edinburg police officers, spoke to Juana Medrano about the promises made to her, or made any other attempt to corroborate Mr. Medrano's account of the inducement offered to him through his wife. Trial counsel did move to suppress Mr. Medrano's statement as involuntary, but solely on the basis that Mr. Medrano had been without sleep for more than two days when he made it, and produced no evidence to support that claim.[36]

The suppression hearing testimony of the State's witnesses established the general sequence of events, but none of the witnesses testified to what transpired in the time between Mr. Medrano's arrest and his first statement. The State called police officer Reyes and sheriff's investigator Sífuentes, each of whom recorded one of

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[34] Tr. Vol. 16 at 34, 46–55. The "Donna murders" are the homicides described in n.4, *supra*.

[35] Decl. Rodolfo Medrano Ex. 34, at 1.

[36] Tr. Vol. 15–16.

Mr. Medrano's statements.[37] Ramirez reported that the day Mr. Medrano was arrested he refused to speak to Texas Rangers and requested an attorney, but then the next morning asked to speak to him, at which time Mr. Medrano waived his rights.[38] Ramirez then recorded Mr. Medrano's statement regarding his involvement in the planned robbery.[39] Sífuentes, who questioned Mr. Medrano about the previous murder by the rogue gang member and generally about the Tri-City Bombers, reported that Mr. Medrano waived his rights on the day he was arraigned, and that he, Sífuentes, then took Mr. Medrano's statement.[40] Edgar Ruiz—the officer who deployed Mr. Medrano's wife to induce him to submit to questioning—did not testify. Defense counsel called no witnesses, and the court denied the motion.[41]

At the guilt/innocence phase of trial, the State was required to prove the fact of the murders, that the murders were committed either by Mr. Medrano himself or by someone else for whose conduct Mr. Medrano was legally responsible, and that Mr. Medrano should have anticipated those murders when he loaned his guns to another gang member to use in a robbery. Rosie Gutierrez testified to the events that occurred during the marijuana robbery, describing how members of the Tri-City Bombers broke into her home and how two of her sons and four other men were killed

[37] *See* Tr. Vol. 15 at 18 (Ramirez), Tr. Vol. 16 at 31 (Sifuentes).

[38] Tr. Vol. 15 at 22; *id.* at 19-20; *id.* at 20-21.

[39] Tr. Vol. 15 at 25–26, 32–69.

[40] Tr. Vol. 16 at 41–43.

[41] *Id.* at 78, 84.

in the ensuing violence; her testimony did not implicate Mr. Medrano.[42] The State introduced evidence recovered from Mr. Medrano's residence generally connecting him to the Tri-City Bombers, as well as Mr. Medrano's guns, to which he had directed the police.[43] Although the guns belonging to Mr. Medrano were among those fired at the scene of the marijuana robbery, the State's ballistics expert testified that the bullets recovered from three of the victims' bodies could not have been fired from any of Mr. Medrano's firearms, and that he could not determine whether the bullets that killed the other victims were fired from any of Mr. Medrano's guns.[44] Thus, no evidence established that any weapon linked to Mr. Medrano was used to injure or kill any of the victims.

Officer Ramirez described taking Mr. Medrano's statement, and then read it to the jury. In that statement, Mr. Medrano admitted belonging to the Tri-City Bombers; stated that, at Humberto Garza's request, he had loaned his guns to Juan Cordova for use in the marijuana robbery; described his own activities at home on the night of the crime; and expressed his shock upon learning of the murders from the news.

The State presented no evidence to contradict Mr. Medrano's account of his limited role in the crime. The prosecution called its star witness, purported gang

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[42] Tr. Vol. 42 at 13–25.

[43] Tr. Vol. 41 at 152–53.

[44] Tr. Vol. 41 at 153-54. One of these guns had a microscopic blood transfer stain on the muzzle, and the DNA profile of the blood stain was consistent with one of the victims. Tr. Vol. 41 at 109, but inconsistent with the spatter that would occur had the gun been used to shoot the victim at close range. *Id*. at 104.

expert Robert Alvarez, in an attempt to supply some proof that Mr. Medrano should have anticipated the victims' deaths.[45] Alvarez—who later, in response to an indictment charging him with eight felonies related to abuse of his office, pled guilty, and was decertified as a police officer[46]—testified that Mr. Medrano should have anticipated the robbery would end in murder because a so-called "green light" existed between the Tri-City Bombers and the Texas Chicano Brotherhood. According to Alvarez, every member of the Tri-City Bombers would have had a duty to "represent the gang" by attacking any Texas Chicano Brother he might encounter; such an attack could range from a fistfight, to stabbing, to murder.[47] Moreover, Alvarez testified that someone like Mr. Medrano, a "sergeant" who handled money and provided weapons, would occupy a "high rank" and position of trust, such that he would have known about the "green light" between the rival gangs.[48] As Mr. Medrano's federal habeas counsel would later uncover, this purported gang expert entirely fabricated his qualifications, and grossly exaggerated both Mr. Medrano's role in the gang, and the likely consequences of any such "green light" between gangs. First Amended Petition for a Writ of Habeas Corpus, filed 01/14/2019 at 52-90. Mr. Medrano was convicted of capital murder.[49]

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[45] Tr. Vol. 44 at 48.

[46] *See* Jared Taylor, *Former Edinburg cop takes probation in corruption case,* THE MCALLEN MONITOR (Aug. 5, 2011).

[47] Tr. Vol. 44 at 127–29.

[48] Id. at 116, 126, 132, 130-33.

[49] Tr. Vol. 46 at 56.

At punishment, the State argued that Mr. Medrano's knowledge of the prior gang-related murders (the "Donna murders") showed his lack of remorse and proved that he actually anticipated the loss of life that occurred in the charged capital offense, as required for the imposition of a death sentence. Investigator Sífuentes testified about the "Donna murders" and Mr. Medrano's statement to Sífuentes about that crime, which admitted that without knowing they planned to kill anyone, he had provided the perpetrators with guns. The State presented no evidence that Mr. Medrano knew that the gang members who had committed the unauthorized prior murders would be present at the marijuana robbery, but again relied on purported expert Alvarez's testimony, this time to meet the higher burden of showing Mr. Medrano actually anticipated the loss of life during the latter offense.

Mr. Medrano was sentenced to death, and the TCCA affirmed his conviction and sentence on direct review. *Medrano v. State*, No. AP-75,320, 2008 WL 5050076 (Tex. Crim. App. Nov. 26, 2008).[50]

C. Initial state postconviction proceedings.

In 2013, Mr. Medrano sought state postconviction relief; this application alleged that trial counsel was ineffective for failing to argue that Mr. Medrano's confession was involuntary under the Fourteenth Amendment because it was induced

[50] On appeal, Mr. Medrano, still represented by trial counsel, asserted that his custodial statement had been admitted in violation of his Fifth Amendment rights because Officer Ramirez had initiated contact with Mr. Medrano after he had invoked his *Miranda* rights. *Medrano*, 2008 WL 5050076, at *113–14. The CCA rejected the argument as unsupported by facts or law, *id.* at *61, which was accurate given that none of the facts that make out the *Miranda* claim Mr. Medrano raises here were before that court.

by promises. However, that application neither asserted the factually-related (and legally stronger) *Miranda* claim, nor provided any support for the involuntariness claim beyond affidavits from Mr. Medrano and his now-ex-wife, Juana Garces. Lead trial counsel Hector Villarreal having died, the State proffered the affidavit of second chair Rene Flores, who did not "recall ever being aware" that Ms. Garces had been told that if Mr. Medrano cooperated, he would be allowed to go home.[51] Flores further stated that had defense counsel been aware of that information, they would have presented it at the suppression hearing.[52] The trial court credited Flores' affidavit, and without holding an evidentiary hearing, denied relief.

In a brief opinion, the TCCA "based upon [its] own review of the record" affirmed the denial of relief. *Ex parte Medrano*, 532 S.W.3d 395, 395 (Tex. Crim. App. 2017). Four judges dissented, objecting that the trial court should have held an evidentiary hearing to resolve disputed issues, including the voluntariness issue. *Id*. at 395–98 (Alcala, J., dissenting); *id.* at 398–400 (Richardson, J., dissenting) (an evidentiary hearing was warranted, in part because many of the lower court's findings lacked support in the record).

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[51] Aff. O. Rene Flores Ex. 35, at 14. The same team, Mr. Villarreal and Mr. Flores, were previously found ineffective in a capital case. *Ex parte Velez*, No. WR–79,360–01, 2013 WL 5765084, (Tex. Crim. App. 2013). In the *Velez* case, tried several years after Mr. Medrano's case, Villareal and Flores failed to investigate the State's case, failed to present evidence in support of the defense they argued, and failed to challenge the State's expert witnesses' opinions. *Id*.

[52] Aff. O. Rene Flores Ex. 35. at. 15.

D. Federal habeas proceedings and the state subsequent application.

Mr. Medrano, represented by pro bono counsel, filed a federal habeas petition which included both the voluntariness claim pled in state habeas, and the related *Miranda* claim that is the subject of this petition, as well as an allegation that the State had presented false evidence in violation of due process. In support of both the voluntariness claim and the *Miranda* claim, Mr. Medrano provided corroboration for the Medranos' accounts of the inducements offered by Officer Ruiz. Juana Garces' account of her then-husband's arrest was confirmed by statements from her mother and sisters.[53] More importantly, her sister and mother were present when Juana Garces spoke by phone with Mr. Medrano later that day at their aunt and uncle's house. Monica Garces remembered the call, though not what was said,[54] while Paula Garces also "heard Juana keep telling Rudy to say what happened and what they wanted to hear because they were going to let him out."[55]

Equally critical to the credibility of Mr. Medrano's *Miranda* claim was evidence of the interrogations of his co-defendants. That evidence shows that using a family member to induce a defendant to speak to the police after the defendant had invoked his *Miranda* rights—to circumvent the constitutional bar against police re-initiation of interrogation[56]—was not an isolated instance of misconduct, but part of a pattern

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[53] *See* Decl. Monica Garces Ex. 3; Decl. Maribel Garces Ex. 2; Decl. Paula Garces Ex. 4; Decl. Guadalupe Garces Ex. 1.

[54] Decl. Monica Garces Ex. 3, ¶ 14.

[55] Decl. Paula Garces Ex. 4, ¶ 13.

[56] *See Edwards v. Arizona*, 451 U.S. 477 (1981).

and practice in the Edinburg Police Department. Four co-defendants had similar experiences, and the declaration of then-police officer Robert Alvarez (the State's purported expert witness at Mr. Medrano's trial) is further evidence of the same pattern of misconduct.

Jorge Martinez, Mr. Medrano's co-defendant, was induced to make a statement through pressure put on his wife; the Edinburg Police threatened to arrest his wife and make her take the stand.[57] Martinez did not want to give a statement, but he also did not want the police to arrest his then-pregnant wife and have her spend the night in jail.[58] "Officers Robert Alvarez and Edgar Ruiz gave me their word that if I signed the statement they had typed, my wife would not step foot in jail. I signed the statement, making only minor changes, to prevent my wife from being taken to jail."[59]

Another co-defendant, Humberto Garza, moved to suppress his statement before trial.[60] Humberto Garza did not give a statement until the morning after his arrest, but Detective Ochoa claimed that as he was checking the cell areas, Garza motioned to him that he wanted to talk.[61] However, as Garza's mother Lydia testified, when he was arrested the police called her and created a conditional opportunity for her son to speak to her:

> A. An officer called, and he put Beto [Humberto] on the phone. And Beto said, they'll let you come if I talk. …

[57] Decl. Jorge Martinez Ex. 6.

[58] *Id.* ¶ 4.

[59] *Id.*

[60] Tr. Humberto Garza Ex. 32, Vol. 12.

[61] Id. at 2-4.

> That if he cooperated with them, they would let us go there in person to see him at the jail.
>
> Q. BY MR. R. MARTINEZ: So you are saying that they made a condition for your appearance or your meeting with your son? Your son had to cooperate before they would let you talk to him? Is that what you are saying that the officer told you?
>
> A. Yes.[62]

Then the police used his mother to relay a promise to Garza to encourage him to talk.

She described her experience at the Edinburg Police Station:

> We got there. I told them who we were. They let us in this room where Beto was at, and there was an officer sitting there . . . I don't know [the officer's name]. Well, we got there and Beto was crying and we just—I mean, it is—was overwhelming. We were just overwhelmed . . .
>
> Q. Okay. Did—what did they tell you, the officer?
>
> A. Well, he was in there, and I would just embrace my son and told him everything was going to be fine. *And there was an officer that walked—and he did this several times. He walked to the doorway, opened the door, and said, ma'am, tell him to talk to or he is going to get this (indicating).*
>
> MR. R. MARTINEZ: Let the record reflect that my client is making a point to her vein, as if to simulate an injection.
>
> Q. BY MR. R. MARTINEZ: Is that a proper description of what you just demonstrated?
>
> A. Yes. Yes. And he didn't do it only once. He did it, I would say, a good three times. He came by the door.[63]

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[62] *Id.* at 29.

[63] *Id.* at 30–32 (emphasis added).

Garza's mother could not recall whether this officer was Reyes Ramirez or Edgar Ruiz, but was certain he came to the door.[64] When asked if the officer addressed her son, Ms. Garza responded that the officer "looked at Beto directly. You know, he looked at us."[65]

Co-defendants Marcial Bocanegra and Jorge Martinez were similarly pressured. Bocanegra's account reflects enormous coercion—and a similar method of applying that coercion:

> The police brought the mother of my children and her sister to the station. They scared the mother of my children and told her that they were going to take her children and arrest her. They took me into a small room and brought the mother of my children into the room with me. They stood outside the open door as she spoke to me. She told me about what the police had told her about taking our children and arresting her. She was crying.[66]

Eventually, Bocanegra confessed, and then pled guilty in exchange for a thirty-five-year sentence.

Robert Garza, another Tri-City Bomber, was treated in a similar fashion by the Edinburg police during their investigation. When the police arrested Robert Garza, they arrested his wife as well.[67] She was naked at the time.[68] Robert Garza

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[64] *Id.* at 32.

[65] *Id.* at 33. The court did not find this claim persuasive in Humberto Garza's suppression hearing, however that court was not presented with the evidence of the other similar claims brought by co-defendants or the partially corroborating statements of Juana Garces's sisters.

[66] Decl. Marcial Bocanegra Ex. 5, ¶ 4.

[67] Decl. Jorge Martinez Ex. 6, ¶ 8.

[68] *Id.*

testified at his suppression hearing, stating that the police promised that he would be allowed to phone and visit his wife if he gave a statement.[69] Once the police allowed Robert Garza to see his wife, he signed the statement.[70]

Mr. Medrano's co-defendant Juan Cordova also unambiguously asked for an attorney.[71] The police put Cordova into a holding cell for a while, then brought him back out for more questioning.[72] Cordova was never provided with an attorney and never signed a waiver; he took a plea deal for his part of the marijuana robbery/murder and is serving 25 years.[73]

Thus, these declarations establish that police investigating this case used analogous tactics to procure confessions from Mr. Medrano's codefendants. Moreover, two of these defendants—Robert Garza and Humberto Garza—made these similar claims almost two decades ago; they could not have been manufactured to help Mr. Medrano. Nor is it a reasonable inference that the co-defendants conspired at the time of trial to tell similar stories; had that been the case, they surely would have used the similar stories to bolster each other's credibility. Instead, because neither co-defendant made any reference to the other in litigating their confession claims,

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[69] Tr. Robert Garza Ex. 33, Vol. 6 at 41. *Id.*

[70] *Id.* at 42-43. Robert Garza argued that these promises rendered his confession involuntary, but the trial court rejected his claim. However, that court had no information regarding the practices of the police in the other co-defendants' cases.

[71] Decl. Juan Cordova Ex. 7.

[72] *Id.* ¶ 6.

[73] *Id.* ¶ 6, ¶ 8.

each record was devoid of evidence that could have shown a pattern of police misconduct.

Finally, in a declaration obtained by Mr. Medrano's federal habeas counsel, former police officer Robert Alvarez[74] corroborated the police officers' pattern of interrogation-misconduct-via-relatives—and made it plain that these methods were routine in the Edinburg Police Department. Alvarez stated that he witnessed how the Texas Rangers were interrogating Mr. Medrano's co-defendants, specifically Marcial Bocanegra, "for about six or seven hours at a time and would keep interrogating them even after they had requested an attorney."[75] He stated that the Edinburg Police Department would use a different "procedure" from that of the Texas Rangers:

> [We at the Edinburg Police Department] used tactics that we were taught were within the bounds of the law. We could not fabricate evidence, but we could use other means to get suspects to confess. For example, if police officers arrested a suspect for drug possession in his aunt's home, they would tell him "we know your aunt is the owner of the house so we will arrest your aunt since she owns the house, unless you talk to us and tell us the truth." The officers would know that the aunt had nothing to do with the drugs or the crime, but they could still legally arrest her since the drugs were in her house and so it was legal to use this as leverage to get the defendant to confess about the crime. *This was all still done within the bounds of the law*[.][76]

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[74] Alvarez was indicted, pled guilty, and lost his job as a police officer. Email from Jared Taylor (Oct. 8, 2022, 16:22 ET) Ex. 36, at 1–2. He is now deceased. *See Roberto Alvarez Obituary*, THE MONITOR (Dec. 22, 2020), https://www.legacy.com/us/obituaries/themonitor/name/roberto-alvarez-obituary?id=7891069. He had given similar affirmations in an affidavit in support of one of Mr. Medrano's co-defendants, Juan Ramirez. Aff. Robert Alvarez Ex. 29.

[75] Decl. Robert Alvarez Ex. 25, ¶¶ 4–5.

[76] *Id.* ¶ 7.

Alvarez also corroborates the Edinburg Police Department's practice of "making contact" with suspects during security checks on their holding cells:

> If a suspect asked for a lawyer, we were taught that we had to stop questioning them. When suspects asked to remain silent, it was different. They couldn't be forced to speak, but we could continue to talk to them. Sometimes I would just keep talking and tell them about what we already knew. And sometimes we would stop the interrogation and after a small break, we would check back on them and talk to them again during the security checks we did every thirty minutes.[77]

Mr. Medrano's motion for a stay to pursue his state court remedies was granted. He promptly filed a subsequent habeas application in state court, to which the State did not respond. On May 17, 2023, the TCCA dismissed this application "as an abuse of the writ [and] without considering the merits of the claims," stating that it "failed to satisfy the requirements of [Tex. Code Crim. Proc.] Article 11.071, § 5(a)." Appendix A.

REASONS FOR GRANTING THE WRIT

I. Summary reversal is appropriate because the record establishes that police in Hidalgo County, Texas are deliberately evading this Court's Fifth Amendment holdings, and the TCCA refused to address those practices despite having a readily available procedural vehicle for doing so.

Under *Miranda v. Arizona,* a suspect must be warned prior to a custodial interrogation of his rights to remain silent and to an attorney, warnings that protect a suspect's privilege against compelled self-incrimination. 384 U.S. 436, 467–68

[77] *Id.* ¶ 6.

(1966). When a suspect asserts his desire to speak to an attorney, *Miranda* imposes particularly strong safeguards:

> *If the [warned] individual states that he wants an attorney, the interrogation must cease until an attorney is present*. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.

Miranda, 384 U.S. at 473–74 (emphasis added); *see also Edwards v. Arizona*, 451 U.S. 447 (1981). After a suspect invokes his right to counsel, "a valid waiver of that right" can only be shown when "the accused himself initiates further communication, exchanges, or conversation with the police." *Edwards*, 451 U.S. at 484. Absent such initiation, police may not interrogate the suspect further. *Id*.

"Interrogation" under *Miranda* includes all "words or actions" by the police that they "should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). An "incriminating response" means "any response whether inculpatory or exculpatory that the prosecution may seek to introduce at trial." *Id*. at n.5. The test is an objective one but the intent of the police is nonetheless relevant because any practice "designed to elicit an incriminating response" is likely also one "which the police should have known was reasonably likely to have that effect." *Id*. at 301 n.7.

Miranda also protects a suspect's assertion of the right to remain silent; this "right to cut off questioning" has been recognized as the most important safeguard erected by that seminal decision. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975). Accordingly, under *Miranda* "the admissibility of statements obtained after the

person in custody has decided to remain silent depends … on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* (citing *Miranda*, 384 U.S. at 474). When the police failed to "scrupulously honor" a suspect's right to terminate an interrogation, any resulting confession must be suppressed. *Id.* Whether subsequent questioning "scrupulously honor[s]" the suspect's invocation of his right to remain silent must be determined on a case-by-case basis, looking at all the relevant facts. *See Mosley*, 423 U.S. at 103.

A suspect may waive his *Miranda* rights but must do so "knowingly and voluntarily." *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). Determining whether a waiver was knowing and voluntary requires a two-part inquiry into the "totality of the circumstances surrounding the interrogation." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The first question is whether the waiver was "the product of a free and deliberate choice rather than intimidation, coercion, or deception," and the second, whether the waiver was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* The state carries the heavy burden of proving the suspect understood the rights and that the waiver was knowing and intelligent. *Tague v. Louisiana*, 444 U.S. 469, 471 (1980). Any evidence that the suspect was "threatened, tricked, or cajoled" into surrendering his rights will vitiate a claimed waiver. *Miranda*, 384 U.S. at 476.

Here, there can be no doubt that under this Court's precedents, Mr. Medrano made no knowing waiver, but was instead interrogated despite having invoked his rights to counsel and to remain silent.

Mr. Medrano was in custody at the time he made statements; he was under arrest and detained at the jail. There is no dispute that he invoked both his right to an attorney and his right to silence. *Cf. Innis*, 446 U.S. at 298 (noting, before turning to the issue whether statements by the police in Innis' presence constituted interrogation, the parties' agreement that Innis was in custody, had received *Miranda* warnings, and had invoked his right to counsel). Thus, if the ploy using Mr. Medrano's wife constituted interrogation within the meaning of *Miranda*, then interrogation did not *"cease until an attorney* [was] present" and the introduction of Mr. Medrano's statement at trial violated the Fifth and Fourteenth Amendments. Moreover, if the deception used by police failed to "scrupulously honor" Mr. Medrano's invocation of his right to remain silent, this violated the same constitutional guarantees.

A. Using Mr. Medrano's Wife to Convey an Inducement to Confess Constituted Interrogation.

Not only express questions, but their "functional equivalent," constitute interrogation within the meaning of *Miranda*. *Innis*, 446 U.S. at 301. "That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* This definition "focuses primarily upon the perceptions of the suspect, rather than the intent of the police." *Id.* But in this case, unlike *Innis*, the actions on the part of police were both reasonably likely to elicit an incriminating response and calculated to do so.

When Edgar Ruiz told Juana Medrano that the police knew her husband had not been present during the murders, and that if he told the police what he knew, he would be free to go home to her and their baby, and then stood behind her while Ms. Medrano repeated those promises to Mr. Medrano, it was reasonable for Mr. Medrano to believe that Ruiz had given those assurances. And when police allowed Mr. Medrano to call his wife—indeed, even gave him the phone number necessary to do so—and she repeated Ruiz's promises, then begged him for a second time to tell the police what he knew, those actions were reasonably likely to elicit an incriminating response from Mr. Medrano. And they did.

While a detached lawyer familiar with the law of felony murder might well have doubted that Mr. Medrano would be released upon telling the police what he knew, a frightened layperson ignorant of the law, faced with a crying wife and missing his baby son, might well do so. Mr. Medrano needed the detachment and expertise of a lawyer. Indeed, recognizing his own incompetence, he had invoked his right to counsel, but Officer Edgar Ruiz circumvented that invocation.

Had the TCCA compared this case with *Innis*, the comparison should have been dispositive. The *Innis* Court pointed to several facts that diminished the likelihood of an incriminating response, none of which are present here. First, the detectives in *Innis* were not addressing the defendant, but talking among themselves. *Id*. at 302 ("[Their] conversation was, at least in form, nothing more than a dialogue between the two officers to which no response from the respondent was invited."). In contrast, Mr. Medrano's wife, repeating Officer Ruiz's promises, spoke directly to him.

Second, this is not a situation where "the entire conversation appears to have consisted of no more than a few off hand remarks." *Id*. at 303. Instead, Mr. Medrano spoke to his wife for as much as five minutes, during which she importuned him to give a statement; she later repeated that plea over the phone. Third, nothing in the record in *Innis* "suggest[ed] that the officers were aware that [Innis] was peculiarly susceptible to an appeal to his conscience concerning the safety of handicapped children." *Id*. at 302. But for two reasons, Officer Ruiz should have known that Mr. Medrano was susceptible to the inducement conveyed to him. First, unlike an appeal to conscience, which might affect some defendants but not others, appeals to self-interest would likely affect any suspect. *See United States v. Gomez*, 927 F.2d 1530, 1538 (11th Cir. 1991) (finding that statements made to a suspect about possible sentencing and the benefits of cooperation were reasonably likely to elicit an incriminating response, and therefore constituted interrogation). And second, Ruiz had reason to know that Mr. Medrano, who had a wife and baby, would be particularly susceptible to pleas from his wife to do whatever was necessary to come home to them.[78] *See Spano v. New York*, 360 U.S. 315, 323 (1959) (noting that the "bond of friendship" led Spano to yield to an inducement fed to him by his false friend, an

[78] In *Innis* the Court also commented, "Nor is there anything in the record to suggest that the police knew that the respondent was unusually disoriented or upset at the time of his arrest." *Id* at 302–03. While the record in this case does not reflect that Mr. Medrano was *displaying* symptoms of disorientation or disturbance, he was roused from his bed at 6:30 in the morning and beseeched by his crying wife. A reasonable police officer would know that these events are not conducive to calm consideration of the options.

inducement that the officers investigating the case believed would overcome Spano's reluctance to speak).

Moreover, the *Innis* Court acknowledged that while the test is subjective, "where a police practice is designed to elicit an incriminating response from the accused, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect." *Id*. at 301 n.7. Here, unlike in *Innis*, where the officers wished to protect vulnerable children, the *only* intelligible purpose behind Ruiz's actions was to pressure Mr. Medrano to confess. That this was his purpose is cemented by his use of very similar techniques with not one, but *five* of Mr. Medrano's co-defendants.

Finally, in concluding that interrogation encompasses not only express questioning but its functional equivalent, the *Innis* Court noted a handful of classic interrogation techniques *Miranda* recognized as posing the same dangers as express questioning. Included in that list were "the use of psychological ploys, such as to 'posi[t]' 'the guilt of the subject,'" and to "minimize the moral seriousness of the offense." *Id*. at 299 (quoting *Miranda*, 384 U.S. at 450). Here, it is plain that Ruiz minimized the moral seriousness of *Mr. Medrano's* offense (in contrast to the moral seriousness of the murders committed by his fellow gang members) by emphasizing that the police knew he was not present, or involved in the murders in any way; telling his wife (who then told him) that they would let him go home if he told them what he knew further strongly implied that the offense was—at least relatively speaking—of lesser moral seriousness.

It makes no difference that Officer Ruiz used Mr. Medrano's wife to convey his message to Mr. Medrano rather than speaking to him directly. The government cannot evade constitutional limitations by using a private individual as its agent, as this Court's Equal Protection jurisprudence has long made plain: "Conduct that is formally 'private' may become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." *Evans v. Newton*, 382 U.S. 296, 299 (1966); *see also, Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 177–78 (1972) ("There can be no doubt that the label 'private club' can be and has been used to evade both regulations of state and local liquor authorities, and statutes requiring places of public accommodation to serve all persons without regard to race, color, religion, or national origin.") Likewise, when someone other than a police officer communicates with the defendant, the question is whether the suspect's statement "'resulted from' a calculated practice" on the part of a state agent who was attempting to elicit such a response, as the TCCA itself has recognized. *McCrory v. State*, 643 S.W.2d 725, 734 (Tex. Crim. App. 1982) (citing *Innis* 446 U.S. at 301). Thus, where a suspect was treated at a hospital after a stabbing, and a nurse questioned him about the incident during treatment *with a police officer present*, the elicited statements were suppressed as the product of custodial interrogation. *State v. Ybarra*, 804 P.2d 1053, 1054–55 (N.M. 1990).

Because Ruiz told Mr. Medrano's wife that he could go home if he told police what he knew, and then—twice—created an opportunity for her to convey that

information to Petitioner, this is unlike *Arizona v. Mauro,* 481 U.S. 520 (1987). After Mauro asked for a lawyer, and interrogation ceased, the suspect's wife asked to see him, and the police allowed them to meet in the presence of an officer. *Id.* at 523. The details of this encounter, as found by the trial court, are important:

> The police counseled [Mrs. Mauro] not to [speak with her husband], but she was adamant about that. They finally yielded to her insistent demands. The Police Station lacked a secure interview room. The police justifiably appeared [*sic*] for Mrs. Mauro's ... safety, and they were also concerned about security, both in terms of whether Mr. and Mrs. Mauro might cook up a lie or swap statements with each other that shouldn't have been allowed, and whether some escape attempt might have been made, or whether there might have been an attempt to smuggle in a weapon. They really had no idea what to expect along those lines." In light of these justifications, the trial court found "that this procedure was not a ruse, nor a subterfuge by the police. They did not create this situation [*i.e.,* allowing the meeting] as an indirect means of avoiding the dictates of Miranda.

Id. at 523–24. This Court held that these actions did not constitute interrogation because "[t]here is no evidence that the officers sent Mrs. Mauro in to see her husband for the purpose of eliciting incriminating statements[,] [but instead] tried to discourage her from talking to her husband, but finally 'yielded to her insistent demands.'" *Id.* at 528. In contrast, Officer Ruiz both gave Mr. Medrano's wife information he wanted her to convey to Mr. Medrano and twice provided the opportunity for her to convey it. In *Mauro*, the conversation between Mauro and his wife did not in fact result in an admission; it was only because his statements were *coherent*, and Mauro ended up claiming insanity at trial, that his statements were useful to the State. *Id.* at 520. Here, again in contrast to *Mauro*, the conversation

police orchestrated between Mr. Medrano and his wife produced exactly what they hoped it would: Mr. Medrano's statement, which incriminated him. *See Benjamin v. State*, 116 So. 3d 115 (Miss. 2013) (distinguishing *Mauro* and finding that where the police intentionally used a relative to deceive the defendant and encourage him to speak, they had interrogated the defendant within the meaning of *Miranda*).[79]

B. Using Mr. Medrano's Wife to Convey an Inducement Failed to Scrupulously Honor His Invocation of the Right to Remain Silent.

In addition to invoking his right to counsel, Mr. Medrano invoked his right to remain silent. Because the most important safeguard under *Miranda* was a suspect's "right to cut off questioning," *Mosley*, 423 U.S. at 104, "the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* (citing *Miranda*, 384 U.S. at 474). Determining whether the right to silence has been "scrupulously honored" requires considering all of the relevant facts. *Id*. at 103–04.

Applying the *Mosley* factors, it is plain that Mr. Medrano's right to remain silent was not scrupulously honored. Only the first *Mosley* factor weighs in favor of the police; Mr. Medrano was properly warned under *Miranda* that he was not obligated to answer questions. However, the rest of the *Mosley* factors weigh heavily against the police. First, the time period between Mr. Medrano's invocation of his

[79] "By encouraging Benjamin's belief that, by talking to the police, he could avoid a night in jail, and by allowing Benjamin's mother to speak with him after instructing her on how Benjamin could reinitiate questioning, the police used psychological ploys and compelling influences to elicit Benjamin's statement." *Benjamin*, 116 So. 3d at 123.

rights and his interrogation (i.e., the conveying, through his wife, of an inducement to confess) was very short, *compare United States v. Hernandez*, 574 F.2d 1362, 1368–70 (5th Cir. 1978) (holding that officers did not scrupulously honor the suspect's rights where questioning resumed 30 to 45 minutes after the suspect's invocation) *with West v. Johnson*, 92 F.3d 1385, 1403 (5th Cir. 1996) (holding that officers did scrupulously honor the suspect's rights where questioning resumed thirteen hours after invocation). Second, Officer Ruiz did not remind Mr. Medrano of his *Miranda* rights after bringing his wife in to see him. Third, Mr. Medrano's subsequent interrogation was not restricted to a different crime, but was an attempt to get him to speak about the very crime for which he had been arrested and about which he had invoked his right to remain silent. Another relevant factor is whether the suspect was "coerced, threatened, or promised anything for talking with officers," *Maestas v. States*, 987 S.W.2d 59, 64 (Tex. Crim. App. 1999), which Mr. Medrano certainly was.

Last, and perhaps most critically, the police could hardly be said to have "scrupulously honor[ed]" Mr. Medrano's invocation of his right to remain silent when they lied to his wife, promising her that Mr. Medrano would be allowed to go home if he gave them a statement. Officer Ruiz told her this lie expecting that she would pass it on to Mr. Medrano and hoping she would urge him to make a statement. His first attempt was immediately only partially successful; Mr. Medrano's wife did repeat the lie and urge him to tell them what he knew, but Mr. Medrano did not immediately do so, and again refused to speak to them. So, police arranged a second opportunity for his wife to repeat both the lie and her pleas. This series of deceptive,

manipulative actions in no way "scrupulously honor[ed]" Mr. Medrano's invocation of his right to remain silent.

C. No valid waiver was obtained.

Because any evidence that the suspect was "threatened, tricked, or cajoled into a waiver" will demonstrate that the defendant did not voluntarily waive his rights, *Miranda*, 384 U.S. at 476, and Mr. Medrano was, as described above, both tricked and cajoled into a waiver, his "waiver" was not knowing and voluntary. *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

Under this Court's precedents, the merits of this claim as pleaded are plain. Given the extent of the corroborating evidence of the pleaded facts, the TCCA's dismissal of the claim without remanding for factfinding could be justified only if some procedural rule barred authorizing such factfinding—but as set forth below, no adequate and independent state-law ground barred review of the merits of Mr. Medrano's *Miranda* claim.

II. No Adequate and Independent State Ground Bars Review of the Merits of This Claim.

This Court will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is both "independent" of the merits of the federal claim and an "adequate" basis for the court's decision." *Harris v. Reed*, 489 U.S. 255, 260 (1989); *see also Herb v. Pitcairn*, 324 U.S. 117 (1945) (stating that the prohibition on reviewing judgments of state courts that rest on "adequate and independent state grounds" rests in part on limits to this Court's jurisdiction). The question of when and how defaults in complying with state

procedural rules can preclude this Court from considering a federal question is itself a federal question. *Johnson v. Mississippi*, 486 U.S. 578, 587(1988); *Henry v. Mississippi,* 379 U.S. 443, 447 [(1965).

The TCCA's refusal to allow further proceedings on Mr. Medrano's Fifth Amendment claim plainly rested on an "independent" state ground because the opinion states, albeit cursorily, that he "failed to satisfy the requirements of [Tex. Code Crim. Proc.] Article 11.071, § 5(a)" and dismissed the application "as an abuse of the writ without considering the merits of the claims." App. 2. As in *Cruz v. Arizona*, 598 U.S. 17, (2023), the question therefore is whether the cited state procedural ground is adequate. As in *Cruz*, in *Medrano* and as in at least one other TCCA subsequent writ case decided this year, it is not.

A state procedural ground is not 'adequate' unless the procedural rule is 'strictly or regularly followed.'" *Johnson v. Mississippi,* 486 U.S. 578, 587 (1988) (quoting *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964)); *Hathorn v. Lovorn,* 457 U.S. 255, 262–263 (1982). Typically, a violation of a state procedural rule that is "firmly established and regularly followed" constitutes a state ground "adequate" to foreclose merits review of a federal claim. In rare circumstances, however, a state court may apply an otherwise generally sound rule in a way that "renders [it] inadequate to stop consideration of a federal question." *Cruz*, at *5; *Lee v. Kemna*, 534 U.S. 362, 376 (2002). "Because "novelty in procedural requirements cannot be permitted to thwart review. . . by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights," *NAACP v.*

Alabama ex rel. Patterson, 357 U.S. 449, 457 (1958), "an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question." *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964); *Cruz* at *6.

Here, comparing the plain language of the statute with the evidence presented to the jury compels the conclusion that the procedural bar that purportedly grounds the TCCA's dismissal of Mr. Medrano's application is "unforeseeable and unsupported." Tex. Code Crim. Proc. art. 11.071, § 5(a) provides three grounds for authorizing a successive petition, the one pertinent here being that "by a preponderance of the evidence, but for a violation of the United States Constitution no rational juror could have found the applicant guilty beyond a reasonable doubt." *Id*. at §5(a)(2).[80] It was undisputed that Mr. Medrano was far from the scene of the robbery/murders, and absent his confession, no evidence even came close to establishing his liability as a party. Extrinsic evidence linked him to guns that were present at the murders, but—without Mr. Medrano's statement—no evidence showed that he even knew about the planned marijuana robbery, much less

[80] Mr. Medrano also made the closely related argument that the claim should have been authorized to proceed under art. 11.071, § 5(a)(3) because by clear and convincing evidence, no rational juror would have found him to have actually anticipated the murders that occurred in the course of the planned marijuana robbery. This ground was satisfied for the same reason that authorization under § 5(a)(2) was warranted: Without Mr. Medrano's confession, the State had no case against him. His application further asserted that this claim should be authorized to proceed under art. 11.071, § (5)(a)(1) because its factual basis was not available at the time Mr. Medrano filed his first state habeas application, an assertion that is less plainly correct; some—though not all—of the supporting evidence was unavailable at the time Mr. Medrano's first application was filed.

anticipated (or should have anticipated) that murders would transpire at the scene. Even the testimony of purported gang expert Robert Alvarez—which, as it turned out, was false[81]—did not link Mr. Medrano to the robbery. Thus, because no rational juror could have convicted Mr. Medrano of capital murder absent his confession, and because introducing that confession violated the Fifth and Fourteenth Amendments, authorization manifestly was warranted under § 5(a)(2). Consequently, no valid, regularly applied independent state ground bars review of the federal question.

In at least one other case this year, the TCCA refused to authorize further proceedings on a subsequent state habeas application despite clear grounds for doing so. Like *Cruz*, *Ex Parte Brown*, No. WR-26,178-04, 2023 WL 2387836 (Tex. Crim. App. Mar. 7, 2023), involved "an unforeseeable and unsupported state-court decision on a question of state procedure." *Cruz* at *2, and the TCCA's refusal was particularly egregious given *Brown's* close resemblance to *Cruz*. Both cases involve a statute that permits successive petitions where the claim raised is based on new law. Both involved a decision from this Court overturning a decision of the very same state court that then insisted that no new law had thereby been created.

After the Arizona Supreme Court repeatedly held that Arizona's sentencing and parole scheme did not trigger application of *Simmons v. South Carolina,* 512 U.S. 154 (1994), this Court summarily rejected that view in *Lynch v. Arizona*, 578 U.S. 613, 615 (2016) (*per curiam*) (holding that that it was fundamental error to conclude

[81]Subsequent Application for a Writ of Habeas Corpus, filed October10, 2022, at 48-92.

that *Simmons* "did not apply" in Arizona). Likewise, after the TCCA repeatedly supplanted the clinical consensus on the definition of intellectual disability with its "*Briseno* factors," this Court intervened, first in *Moore v. Texas*, 581 U.S. 1 (2017) (*Moore I*), and later in *Moore v. Texas*, 139 S. Ct. 666 (2019) (*Moore II*). And finally, the Arizona Supreme Court denied merits review of Cruz's claim after holding that *Lynch* was "not a significant change in the law," *Cruz* at *5, and the TCCA dismissed Brown's subsequent application with the notation that he had failed to "satisf[y] the requirements of Article 11.071 § 5," *Brown*, 2023 WL 2387836. In *Brown*, as in *Cruz*, no matter what the state court's words, "It is hard to imagine a clearer break from the past." *Id.* at *6. [82]

True, both Medrano's case and Brown's differ from *Cruz* in one respect; in *Cruz*, this Court criticized the Arizona Court's explanation of why the statutory provision for proceeding on a subsequent application was not met. Such criticism is possible

[82] Moreover, that the purported "abuse of the writ" bar applied in *Brown* is not regularly applied is further established by the TCCA's numerous decisions holding that *Moore I* represents a new legal basis under art. 11.071, § 5(a). *See, e.g.*, *Ex parte Butler*, No. WR-41,121-03, 2019 WL 4464270 at *2 (Tex. Crim. App. Sept. 18, 2019) (finding § 5(a)(1) satisfied "in light of *Moore I* and *Moore II*"); *Ex parte Gutierrez*, No. WR-70,152-03, 2019 WL 4318678, at *1 (Tex. Crim. App. Sept. 11, 2019) (same); "*Ex parte Milam*, No. WR-79,322-02, 2019 WL 190209, at *1 (Tex. Crim. App. Jan. 14, 2019) (finding based on recent " changes in the law pertaining to the issue of intellectual disability" that Milam had satisfied § 5(a)(1)); *Ex parte Guevara*, No. WR-63,926-03, 2018 WL 2717041, at *1 (Tex. Crim. App. June 6, 2018) (finding § 5(a)(1) satisfied in light of *Moore I*); *Ex parte Williams*, No. WR–71,296–03, 2018 WL 2717039, *1 (Tex. Crim. App. June 5, 2018) (same); *see also Ex parte Davis*, No. WR-40,339-09, 2020 WL 1557291, at *3 (Tex. Crim. App. Apr. 1, 2020) (acknowledging that although Davis failed to show he was entitled to proceed further on his new claim, the TCCA had "previously found *Moore I* to constitute a new legal basis under Article 11.071, § 5."). No basis for treating Brown's claim differently was apparent, and none was ever articulated by the TCCA.

neither in this case, nor in *Brown*, but only because the TCCA in neither case offered any explanation whatsoever for its refusal to authorize further proceedings. Nor can any be gleaned from the State's prior pleadings, because at no prior point in the litigation of this claim (i.e., in response to this subsequent state application or in the federal habeas action that preceded it) has the State disputed Mr. Medrano's assertion that absent the admission of his confession, he literally could not have been convicted of capital murder. Likewise, the State never disputed in *Brown* that Mr. Brown's ID claim was authorized under § 5(a)(1), though it did at substantial length contest the merits of that claim.

Under all these circumstances, the purported procedural bar the TCCA invoked to justify dismissing Mr. Medrano's Fifth Amendment claim, like the one cited by the Arizona Supreme Court in *Cruz*, must be deemed inadequate to deny federal review of Mr. Medrano's *Miranda* claim. It is so "without fair support [and] so unfounded as to be essentially arbitrary," raising the question whether it is "merely a device to prevent a review of the other [federal] ground of the judgment." *Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 165, (1917). Given the TCCA's practice of dismissing subsequent applications as "abuse[s] of the writ" without ever explaining why the statutory conditions have not been met, a comprehensive list of other cases in which it has denied relief on inadequate, purportedly procedural grounds is difficult to compile. But given the TCCA's recalcitrance in *Brown* to apply this Court's ruling in *Cruz*, despite its close parallel history, and the utter absence of any articulable basis for its purported determination

that Mr. Medrano has failed to establish that absent the *Miranda* violation, he could not have been convicted, it is likely that there are more. And it is likely that absent intervention by this Court, the TCCA will persist in imposing pretextual bars that operate to frustrate the vindication of federal rights.

Given the inadequacy of TCCA's purported procedural barrier to consideration of the merits of Mr. Medrano's Fifth Amendment claim, and given the plain merits of that claim under this Court's precedents, summary reversal is warranted. This Court should grant certiorari to make plain to state courts that they ignore blatant constitutional violations at their peril, and that they cannot hide behind pretextual procedural grounds for denying relief.

CONCLUSION

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

Respectfully submitted,

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

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

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

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