Nos. 24-7030 & 24A1005

IN THE
Supreme Court of the United States

MOISES SANDOVAL MENDOZA,
Petitioner,
v.

STATE OF TEXAS,
Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI AND OPPOSITION TO APPLICATION FOR STAY OF EXECUTION

(EXECUTION SCHEDULED FOR APRIL 23, 2025)

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CAPITAL CASE

QUESTIONS PRESENTED

1. This Court has held for nearly forty years that there is no constitutional right to state-postconviction counsel. Should this Court upend forty years of precedent to hold that such a constitutional right exists?

2. Should this Court stay an execution two decades after the capital offense so that a petitioner can litigate in state court a claim that a federal court has already found meritless?

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

In 2005, Petitioner Moises Mendoza was convicted by a Texas jury for the 2004 capital murder of Rachelle Tolleson during the course of either a burglary, kidnapping, or aggravated sexual assault. The trial court sentenced him to death. Mendoza's execution is scheduled for April 23, 2025. He now seeks a writ of certiorari and a stay of execution.

Specifically, Mendoza comes to this court with a procedurally barred ineffective-assistance-of-trial-counsel (IATC) claim, which relates to but one of his several violent acts that was presented to the jury at punishment. He argues that his initial state-habeas counsel was ineffective for failing to present this IATC claim in his initial state-habeas proceedings—thus rendering the claim procedurally barred in a subsequent state application. And he seeks a new constitutional rule of law, enshrining the constitutional right to counsel on state-habeas review, so that he can obtain state merits review of his underlying IATC claim.

Upon further review, however, Mendoza's reasons for granting certiorari crumble. ***First***, this Court lacks jurisdiction in this case, because the state-court ruling below rested on an independent and adequate state-court ground. ***Second***, Mendoza's new rule is barred under this Court's principles of

nonretroactivity. ***Third***, this matter has already been settled by this Court, which has held time and time again that there exists no constitutional right to counsel during postconviction proceedings. And ***fourth***, the federal district court *did review Mendoza's IATC claim on the merits* during federal habeas proceedings, and it denied the claim as meritless. For these reasons, Mendoza's petition and application for a stay of execution should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime and Aggravating Evidence

The facts of the crime are largely undisputed. Mendoza murdered Rachelle Tolleson in the course of one of three separate felony offenses:

> [Mendoza] took Tolleson from her home, leaving behind a five-month-old baby without care or protection. [Mendoza] choked Tolleson to unconsciousness "for no reason," sexually assaulted her, then choked her again with the intention of killing her, and finally stabbed her to make certain she was dead. [Mendoza] left Tolleson's body in a field until he feared authorities would find it and link the murder to him. He moved the body to a desolate area and, while attempting to burn it, he chatted on his cell phone with friends.

Mendoza v. State, No. AP-75,213, 2008 WL 4803471, at *5 (Tex. Crim. App. Nov. 5, 2008).[1]

[1] Mendoza admitted to killing Tolleson but bizarrely downplayed other parts of the crime. He claimed that she left her five-month-old daughter alone at home to voluntarily leave and get cigarettes with him. *Mendoza*, 2008 WL 4803471, at *4. But investigating officers found a three-quarter-full pack of cigarettes in Tolleson's home and noted signs of a struggle in Tolleson's bedroom. *Id.* They also noted that it was "extremely uncharacteristic for Tolleson to be far from her five-month-old daughter,

The State's case-in-chief at punishment showed that Mendoza's brutal murder of Tolleson wasn't some aberration. He had a long and sordid history of violence, especially against women:

> Two of [Mendoza's] high school teachers testified that appellant had been smart, but unmanageable. [Mendoza] was disrespectful to female teachers, lost control, and became very angry at times. [Mendoza's] neighbors testified that they had witnessed [Mendoza] physically attack his mother and sister. [Mendoza] had also stolen money from his brother.
>
> The jury also heard of [Mendoza's] often violent and callous behavior. When Robert Ramirez confronted [Mendoza] about having put a pill in a girl's drink at a party, [Mendoza] pulled a knife on Ramirez and threatened to stab him in the stomach. At another party, [Mendoza] sexually assaulted fourteen-year-old Laura Decker twice, once while a friend videotaped the encounter. [Mendoza] later laughed as the footage of him assaulting Decker was shown at a party. When Sarah Benedict repeatedly asked [Mendoza] for a cigarette while the two sat next to each other at another party, he responded by nearly choking her to unconsciousness. He stopped only when two young men pulled him away from Sarah. The jury heard of how [Mendoza] intentionally threw a boy down onto a trampoline and "stomped" on the boy's mouth without any sign of remorse. When two young women disagreed with [Mendoza] about a camping tent, he threatened to cut their throats with a rusty saw.
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> The State also presented evidence from the complainants from two different aggravated robbery offenses. Melissa Chavez and Nhat Vu testified that [Mendoza] had pulled a gun on them and stolen their cars and belongings. Chavez testified that

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yet the child had been left alone with the outer door of the house wide open." *Id.* Mendoza also admitted to choking Tolleson "to unconsciousness before having intercourse with her" but nevertheless maintained that "the sexual intercourse was consensual." *Id.* And after the sexual intercourse, he choked and stabbed her again until "he believed she was dead." *Id.* Mendoza's absurd claim of consent hardly warrants a response.

> [Mendoza] attempted to force her into the trunk of the car, and Vu testified that [Mendoza] had driven away taking Vu's friend, Lian Trinh, with him. Officer Scott Kermes of the Plano Police Department testified that [Mendoza] was issued a criminal trespass warning after police responded to a disturbance call regarding threats being made and that a machete was found in [Mendoza's] vehicle. While [Mendoza] was being supervised by the Dallas County probation department and was on electronic monitoring, [Mendoza] cut the monitor from his ankle and stopped reporting to the probation officer.
>
> Finally, the jury heard how [Mendoza] behaved while awaiting trial in the Collin County Jail. [Mendoza] created weapons and refused to take his medication as prescribed. During his recreation time, [Mendoza] subverted the jail's security doors and attacked another prisoner.

Id. at *5–6.

II. Procedural History and Presentation of Mendoza's Officer-Hinton-IATC Claim

A. Mendoza's habeas proceedings and the appointment of conflict-free counsel

In 2005, Mendoza was convicted and sentenced to death for the murder of Tolleson. *Mendoza*, 2008 WL 4803471, at *1. He submitted a state-habeas application, which the Texas Court of Criminal Appeals (CCA) dismissed in 2009. *Ex parte Mendoza*, WR-70,211-01, 2009 WL 1617814, at *1 (Tex. Crim. App. June 10, 2009). Mendoza then filed a federal habeas petition in federal district court under 28 U.S.C. § 2254. The district court dismissed Mendoza's petition in 2012. *Mendoza v. Thaler*, No. 5:09cv86, 2012 WL 12817023, at *5 (E.D. Tex. Sep. 28, 2012).

Earlier that year, this Court held that a federal petitioner could show cause to proceed on a defaulted IATC claim by showing that his state-habeas counsel was deficient. *Martinez v. Ryan*, 566 U.S. 1, 9 (2012). A year later, this Court held that this new rule applied to Texas petitioners. *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). Mendoza, however, was represented in federal proceedings by the same attorney who represented him in state-habeas proceedings. *Mendoza v. Stephens*, 783, F.3d 203, 204–05 (5th Cir. 2015) (per curiam) (Owen, J., concurring). Mendoza contended that his counsel would be conflicted in investigating defaulted IATC claims under *Martinez*, which would involve her own allegedly deficient performance in state-habeas proceedings. *Id*. at 205. The Fifth Circuit accordingly remanded the case back to the district court for the appointment of supplemental conflict-free counsel. *Id*. at 203–04.

B. Federal habeas counsel investigates Mendoza's assault of inmate Melvin Jonson.

Mendoza's newly appointed supplemental counsel went to work investigating new claims. Of note here, he investigated Mendoza's attack on another state-jail inmate (Melvin Johnson). That attack was described at the punishment phase of trial by Officer Robert Hinton, a detention officer with the Collin County Sheriff's Department:

> Officer Hinton testified that he was working as a detention officer in the Collin County detention facility on September 22, 2004. [Reporter's Record] 24:220–21. He observed Mendoza go into a segregated recreation yard by himself. *Id*. at 229. He then observed

> that the other inmate, Mr. Johnson, was released from his cell to finish mopping and sweeping the dayroom on the segregation side. *Id.* at 230. Officer Hinton testified that he observed Mendoza re-enter the housing unit, walk up the stairs towards Mr. Johnson, and "a fist fight broke out." *Id.* Officer Hinton testified that Mendoza "approached in an aggressive fashion, and that Mr. Johnson "took a defensive posture and was blocking the swings and returning them, too." *Id.* at 230–31. Mendoza was disciplined as a result of the incident. *Id.* at 233.

Mendoza v. Director, Civ. No. 5:09-cv-00086-RWS, 2019 WL 13027265, at *11 (E.D. Tex. Nov. 14, 2019).

Mendoza interviewed Melvin Johnson and obtained an affidavit in which Johnson claimed that he—not Mendoza—was the aggressor in the fight described by Hinton:

> My name in Melvin Jermaine Johnson, I am presently [a]n inmate in the Wynne Unit in the Texas Department of Corrections. In 2004, I was incarcerated in the Collin County Jail where I came into contact with Moises Mendoza.
>
> Moises Mendoza was not very well liked by other inmates and the guards. Mr. Mendoza would continually use racial slurs and had a bad attitude. Due to the nature of Mr. Mendoza's offense he was confined to what is called the SHU, the special housing unit. On one occasion, due to a disciplinary problem, I was placed in the SHU also. While confined in the SHU inmates were allowed one hour a day to recreate. Mr. Mendoza would recreate by himself. As Mr. Mendoza was heading toward the rec yard, my cell[ ] was rolled. What this means is for some reason, my cell door was opened. This can only happen by a guard opening the door. As soon as the door opened, I figured what the guards wanted and I exited my cell and started a fight with Mr. Mendoza. I was definitely the aggressor. Mr. Mendoza was defending himself, but wasn't fighting back. After a short period of time, guards arrived and broke the fight up. That night I received an extra tray of food which I figured was a bonus for my actions in fighting Mr. Mendoza.

> Although, no one ever spoke to me about this incident, I am sure that the guards had planned this situation. I was told that there was trial testimony that Mr. Mendoza was in the rec yard when I was allowed to exit my cell to finish mopping the floor in the day room and Mr. Mendoza attacked me, this testimony is patently false. I have never been contacted until recently by anyone in regards to the facts of this situation, but had I been so contacted, I would have testified at trial as to what really happened on that occasion which is what I have stated in this affidavit.

Id.

Mendoza presented Johnson's affidavit to support new claims that (1) Officer Hinton testified falsely at trial and (2) trial counsel were ineffective for failing to investigate and present Johnson's version of events. *Id.* at *12. The federal district court held that Mendoza could not show materiality under *Napue v. Illinois*, 360 U.S. 264 (1959) or prejudice under *Strickland v. Washington*, 466 U.S. 667, 695 (1984).

Mendoza appealed the denial of his IATC claim predicated on Hinton's testimony. *Sandoval Mendoza v. Lumpkin*, 81 F.4th 461, 468 (2023). The Fifth Circuit affirmed the judgment of the district court.[2] *Id.* at 483. Mendoza

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[2] The Fifth Circuit held that, after this Court's opinion in *Shinn v. Martinez Ramirez*, 596 U.S. 366 (2022), the Johnson affidavit could not be considered under 28 U.S.C. § 2254(e)(2). *Mendoza*, 81 F.4th at 482. Because he could no longer obtain federal review of the Johnson affidavit after *Martinez Ramirez*, Mendoza sought a remand so that he could go back to state court and exhaust his IATC Officer Hinton Claim in the state court. *Id.* The Fifth Circuit rejected the request, finding that Texas precedent procedurally barred the claim from being raised in a subsequent state-habeas application. *Id.*

petitioned for writ of certiorari, and, on October 7, 2024, this Court denied Mendoza's petition. *Mendoza v. Lumpkin*, 145 S. Ct. 138 (2024).[3]

C. After federal-habeas proceedings, Mendoza raises the Officer Hinton Claims in a subsequent state-habeas application.

In November 2024, the trial court set Mendoza for execution on April 23, 2025. Despite obtaining Johnson's affidavit in 2016, Mendoza waited until April 2, 2025—three weeks before his execution date—to submit Johnson's version of events to the CCA in a subsequent state-habeas application. App. 102a. Only this time, Mendoza submitted a *second* affidavit from Johnson, this one even more detailed than his 2016 version. App. 103a–107a. Mendoza submitted the affidavit to the CCA raising the same claims he raised in federal district court eight years prior: that Officer Hinton testified falsely in violation of Mendoza's due process rights and that trial counsel were ineffective for failing to uncover Johnson's testimony.[4] App. 12a–70a. The CCA dismissed the application as an abuse of the writ, without considering the merits of the claims. App. 1a–2a (online citation found at *Ex parte Mendoza*, WR-70,211-02,

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[3] Mendoza's 2024 petition for writ of certiorari off initial federal habeas proceedings did not involve the Officer Hinton claims.

[4] Mendoza never requested a stay of federal proceedings in the district court to go back and exhaust these claims. And the Fifth Circuit rejected his request to go back to exhaust the IATC version of the claim. *See supra* n.2. Thus, the 2025 state-habeas application was the first time the CCA was presented with these claims.

2025 WL 1117170, at *1 (Tex. Crim. App. Apr. 15, 2025)). Mendoza's current petition for certiorari followed.

REASONS FOR DENYING THE WRIT

I. This Court Lacks Jurisdiction Because the State Court's Judgment Rested on an Independent and Adequate State-Court Ground.

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment '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.'" *Foster v. Chatman*, 578 U.S. 488, 497 (2016) (quoting *Harris v. Reed*, 489 U.S. 255, 260 (1989)); *Coleman v. Thompson*, 501 U.S. 722, 729 (1991) ("In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional."). The state law ground barring federal review may be "substantive or procedural." *Id*.

To be adequate, a state law ground must be "'firmly established and regularly followed.'" *Lee v. Kemna*, 534 U.S. 362, 376 (2002) (quoting *James v. Kentucky*, 466 U.S. 341, 348 (1984)). Discretion does not deprive a state law ground of its adequacy for a "discretionary rule can be 'firmly established' and 'regularly followed' even if the appropriate exercise of discretion may permit consideration of a federal claim in some cases but not others." *Beard v. Kindler*, 558 U.S. 53, 60–61 (2009). Ultimately, situations where a state law ground is found inadequate are but a "small category of cases." *Kemna*, 534 U.S. at 381.

A state law ground is "independent of federal law [when it] do[es] not depend upon a federal constitutional ruling on the merits." *Stewart v. Smith*, 536 U.S. 856, 860 (2002). Where a state court's decision does not "fairly appear to rest primarily on federal law, or to be interwoven with the federal law[,]" there is no presumption that the state court ground rested on a consideration of federal law. *Coleman*, 501 U.S. at 735. Where there is no "clear indication that a state court rested its decision on federal law, a federal court's task will not be difficult." *Id*. at 739–40.

Texas, like Congress, has imposed significant restrictions on second-in-time habeas applications through its abuse-of-the-writ statute. *Compare* Tex. Code Crim. Proc. art. 11.071 § 5, *with* 28 U.S.C. § 2244(b). Under that statute, a Texas court may not reach the merits of a claim in a subsequent application "*except* in exceptional circumstances." *Ex parte Kerr*, 64 S.W.3d 414, 418 (Tex. Crim. App. 2002) (quotation omitted). The applicant bears the burden of providing "sufficient specific facts establishing" one of the exceptions:

- First, an applicant can prove either factual or legal unavailability of a claim. Tex. Code Crim. Proc. art. 11.071 § 5(a)(1). A claim is legally unavailable when its legal basis "was not recognized by or could not have been reasonably formulated from a final decision of the [this Court], a court of appeals of the United States, or a court of appellate jurisdiction of this state[,]" *Id.* § 5(d), and factually unavailable when its factual basis "was not ascertainable through the exercise of reasonable diligence[.]" *Id*. § 5(e).

- Second, an applicant can prove that "but for a violation of the United States Constitution no rational juror could have found the applicant

guilty beyond a reasonable doubt." *Id.* § 5(a)(2). This requires an applicant to "make a threshold, prima facie showing of innocence by a preponderance of the evidence." *Ex parte Reed*, 271 S.W.3d 698, 733 (Tex. Crim. App. 2008) (citation omitted);

- Third, an applicant can prove that, "by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the [S]tate's favor one or more of the special issues." Tex. Code Crim. Proc. art. 11.071 § 5(a)(3). This subsection "more or less, [codifies] the doctrine found in *Sawyer v. Whitley*, [505 U.S. 333 (1992)]." *Ex parte Blue*, 230 S.W.3d 151, 160 (Tex. Crim. App. 2007).

The CCA examined Mendoza's IATC claims, held that Mendoza "has failed to show that he satisfied the requirements of Article 11.071 § 5[,]" and "dismiss[ed] the application as an abuse of the writ without reviewing the merits of the claims raised." App. 2a.

This dismissal rests on an independent and adequate state-law ground. It is independent of federal law, as there is no "clear indication" that the CCA resolved the merits of Mendoza's IATC claim in dismissing it as an abuse of the writ. Quite the opposite, the CCA was explicit that it was not reviewing the merits of the claims and was dismissing the claims under a state procedural rule. *Id.* And "[t]here is no question that [the § 5] bar is an adequate state ground; it is firmly established and has been regularly followed by Texas courts since at least 1994." *Moore v. Texas,* 122 S. Ct. 2350, 2353 (2002) (mem.) (Scalia, J., dissenting); *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008) ("This court has held that, since 1994, the Texas abuse of the writ doctrine has been consistently applied as a procedural bar, and that it is an

independent and adequate state ground for the purpose of imposing a procedural bar.").

As the CCA's dismissal of Mendoza's claims under the abuse-of-the-writ bar rested on an independent and adequate state-law ground, this Court lacks jurisdiction to hear the merits of those claims here.

II. Mendoza's New Rule Is Barred under Nonretroactivity Principles Set Forth by This Court.

Even aside from jurisdiction, Mendoza's proposed new rule is barred by this Court's nonretroactivity principles as set out in *Teague v. Lane*, 489 U.S. 288, 310 (1989). Under *Teague*, a new rule of criminal procedure "does not apply retroactively to overturn final convictions on federal *collateral* review." *Edwards v. Vannoy*, 593 U.S. 255, 262 (2021) (citing *Teague*, 489 U.S. at 310). Where the new rule is procedural, no exception exists to the nonretroactivity bar. *Edwards*, 593 U.S. at 272.

Here, Mendoza is plainly seeking a new rule of criminal procedure: the procedural right to effective state-postconviction counsel. *See Teague*, 489 U.S. at 301 ("[A] case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final."); *see also Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) ("[R]ules that regulate only the manner of determining the defendant's culpability are procedural."). Thus, Mendoza is bound by the rule of law that existed at the time of his trial.

III. Mendoza's Arguments for Granting Certiorari Are Unpersuasive.

Mendoza now, as many petitioners have done in the past, asks this Court to impose a new rule: That there exists a right to effective counsel in state-postconviction proceedings for the purpose of IATC claims. As he must, Mendoza concedes such a right does not exist. Pet. at 2. This Court has held as much time and time again. *Martinez Ramirez*, 596 U.S. at 386 ("[W]e have repeatedly reaffirmed that there is no constitutional right to counsel in state postconviction proceedings.") (citing *Davila v. Davis*, 582 U.S. 521, 524 (2017)).

In asking this Court to about-face forty years of precedent, Mendoza attempts to shoehorn his request into this Court's considerations governing review on writ of certiorari. Sup. Ct. R. 10. He argues (1) that the CCA's application of the abuse-of-the-writ bar conflicts with this Court's precedents and (2) that, given this Court's recent opinion in *Martinez Ramirez*, the CCA's denial of his petition concerns "an important question of federal law that has not been, but should be, settled by this Court[.]" Pet. at 13–20, 21–22.

Neither argument is persuasive.

A. The CCA's abuse-of-the-writ bar does not conflict with this Court's precedents.

In *Ex parte Graves*, 70 S.W.3d 103 (Tex. Crim. App. 2002), the CCA recognized that "neither the United States Supreme Court nor this Court has ever held that a habeas petitioner has a federal or state constitutional right to

counsel in a habeas proceeding." *Id*. at 113. Thus, the CCA held that a claim that initial-habeas counsel was ineffective during initial habeas proceedings could not "form the basis of a subsequent writ" under Texas statute. *Id*. at 117. Mendoza now claims that *Graves* is incompatible with this Court's precedents. Pet. at 13.

First, it should be noted that Mendoza is not appealing *Graves* but is rather appealing the CCA's procedural dismissal of his IATC claim—which makes no mention of *Graves*. App. 1a–2a. To be sure, the State moved to dismiss by citing *Graves*. App. 121a–122a. But the CCA made no such mention of that case in its dismissal, App. 1a–2a, and in fact *denied* the State's motion to dismiss.[5] All that can be gleaned from the CCA's decision is that the CCA believed that the Hinton claim was previously available. Therefore, the issue Mendoza seeks review of was not "passed upon" by the CCA. *See Clark v. Arizona*, 548 U.S. 735, 765 (2006) ("But because a due process challenge to such a restriction of observation evidence was, by our measure, neither pressed nor passed upon in the Arizona Court of Appeals, we do not consider it.").

Assuming for the sake of argument that the CCA did rely on *Graves* in issuing its opinion, Mendoza's argument still fails. To justify his argument, Mendoza cobbles together this Court's precedent involving the right to effective

[5] Notice of the denial of the State's motion to dismiss can be found here: https://search.txcourts.gov/Case.aspx?cn=WR-70,211-02&coa=coscca.

counsel on direct appeal. Pet. at 13–15 (citing *Douglas v. California*, 372 U.S. 353 (1963), *Evitts v. Lucey*, 469 U.S. 387 (1985), and *Halbert v. Michigan*, 545 U.S. 605, 611 (2005)). Mendoza then homes in on this Court's logic in *Martinez* and *Trevino*. In those cases, this Court noted that some states—whether explicitly or implicitly—forced defendants to raise IATC claims in collateral proceedings. *See Martinez*, 566 U.S. at 4–5 ("The State of Arizona does not permit a convicted person alleging ineffective assistance of trial counsel to raise that claim on direct review."); *Trevino*, 569 U.S. at 429 (holding that Texas, as a practical matter, does not afford a meaningful opportunity to raise an IATC claim on direct appeal). And in doing so, this Court reasoned that this turned collateral proceedings into a de facto direct appeal proceeding concerning such IATC claims. *See Martinez*, 566 U.S. at 11 ("Where, as here, the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim.").

From there, Mendoza infers, the same constitutional rights to counsel afforded on direct appeal should be afforded to state prisoners asserting an IATC claim on collateral review. Pet. at 15 ("It follows *a fortiori* from these cases that criminal defendants have a right to an effective attorney in state habeas proceedings where those proceedings represent the defendant's first

opportunity to assert a claim of trial error."), 17 ("in Texas . . . [s]tate habeas . . . is a criminal defendant's *first* chance to raise such a [IATC] claim.").

The obvious problem with Mendoza's argument is that this Court addressed the very "collateral review is the first chance to raise an IATC claim" scenario in both *Martinez* and *Trevino* and still eschewed Mendoza's proposed constitutional rule in favor of a "narrow" equitable exception that would only apply in federal habeas proceedings. *Martinez*, 566 U.S. at 9. In a jarring bit of revisionist history, Mendoza cites to these cases to suggest that they *support* the constitutional rule he envisions. If they did, the rule would already exist. But it does not.

Finally, Mendoza suggests that the CCA's ruling is incorrect under this Court's precedent because this Court's ruling in *Martinez Ramirez*, coupled with *Graves*, means no forum is available to hear a defaulted IATC claim relying on extra-record evidence. Pet. at 19. But surely the correctness of the CCA's ruling in *Graves* doesn't ebb and flow with this Court's interpretation of federal statute. *See United States v. Rahimi*, 602 U.S. 680, 715 (2024) (Kavanaugh, J., concurring) ("The first and most important rule in constitutional interpretation is to heed the text—that is, the actual words of the Constitution—and to interpret that text according to its ordinary meaning as originally understood.").

Rather, the proper remedy for the inequity Mendoza suggests is an *equitable* exception. *See Martinez*, 566 U.S. at 9. And if legislative enactments impede the fulfillment of the equitable exception, the remedy lies in legislative change, not distortion of constitutional text. *See Martinez Ramirez*, 596 U.S. at 385 (holding that this Court has "no power to redefine when a prisoner 'has failed to develop the factual basis of a claim in State court proceedings'" under federal statute). The CCA is similarly limited in its power, as, unlike this Court's procedural default doctrine, Texas's abuse-of-the-writ bar is statutory; thus, the CCA is powerless to create an equitable carve out to the statutory bar. *See Ex parte McCarthy*, WR-50,360-04, 2013 WL 3283148, at *5 (Tex. Crim. App. June 24, 2013) (Cochran, J., concurring) ("Unlike the United States Supreme Court, we cannot create 'equitable' exceptions to our habeas statutes. We must follow current statutory law.").

Mendoza's attempt to distort history is unavailing. He might believe himself on the wrong side of *Martinez Ramirez*, but that is a matter for Congress to consider. Disparaging the CCA's jurisprudence—which remains in lock step with this Court's precedent—rings hollow.

B. Mendoza does not point to an "important question of federal law that has not been, but should be, settled by this Court[.]"

Mendoza posits that whether there exists a constitutional right to state-postconviction counsel is an important federal question in light of this Court's

opinion in *Martinez Ramirez*. Pet. at 20–21. *Martinez Ramirez* held that, where state-postconviction counsel fails to develop the state-court record, the failure is imputed to the federal petitioner, barring the evidence under 28 U.S.C. § 2254(e)(2). *Martinez Ramirez*, 596 U.S. at 391. Thus, Mendoza laments, when state-postconviction counsel ineffectively fails to present an IATC claim on state-collateral review that relies on outside-the-record evidence, no court will hear the merits of the claim. Pet. at 20. Mendoza's proposed remedy to this alleged issue is to constitutionalize the right to state-postconviction counsel. *Id*.

While this Court considers the importance of questions when considering granting certiorari, it also considers whether the question has already been settled. *See* Sup. Ct. R. 10(c) (considering whether a state court has decided an important question of federal law that *has not been*, but should be, settled by this Court") (emphasis added)). As this Court made abundantly clear in *Martinez Ramirez*, the matter is settled. 596 U.S. at 386 ("Since [*Martinez v. Ryan*], we have repeatedly reaffirmed that there is no constitutional right to counsel in state postconviction proceedings." (citing *Davila*, 582 U.S. at 529)).

Moreover, this Court looks to whether a question of federal law "should be" settled by this Court. Here, Mendoza points to no split in authority on this issue or question that needs clarification. Instead, Mendoza proposes a rule that, far from settling a "most troublesome question," *Linkletter v. Walker*, 381

U.S. 618, 620 (1985), would create more confusion, plunge this Court into the constitutional management of state collateral proceedings, and upend the often-espoused considerations of "finality, comity, and the orderly administration of justice[.]" *Martinez Ramirez*, 596 U.S. at 379 (citing *Dretke v. Haley*, 541 U.S. 386, 388 (2004)).

A look to *Martinez* underscores how radical a departure from the norm Mendoza's new rule would be. This Court was "unusually explicit about the narrowness" of the *Martinez* decision. *Trevino*, 569 U.S. at 432 (Roberts, C.J., dissenting); *see also Davila*, 582 U.S. at 530 (*Martinez* exception is narrow, limited, and highly circumscribed). And that narrowness was for good reason. "The fact that the exception was clearly delineated ensured that the *Coleman* [procedural default] rule would remain administrable." *Trevino*, 569 U.S. at 432 (Roberts, C.J., dissenting). *Martinez*, in only creating an equitable exception to the procedural default doctrine in *federal court*, imposed no procedural obligation on state courts. Rather, it respected and accepted a state-court procedural bar as defaulting an IATC claim but provided an avenue to adjudicate the merits of that IATC claim in federal court. *Martinez*, 566 U.S. at 15–16. This Court emphasized this limited scope as one that "ought not to put a significant strain on state resources." *Id.* at 15. This Court also went into detail describing the radical change that would come with granting a constitutional right to counsel in postconviction proceedings:

> This is but one of the differences between a constitutional ruling and the equitable ruling of this case. A constitutional ruling would provide defendants a freestanding constitutional claim to raise; it would require the appointment of counsel in initial-review collateral proceedings; it would impose the same system of appointing counsel in every State; and it would require a reversal in all state collateral cases on direct review from state courts if the States' system of appointing counsel did not conform to the constitutional rule.

Id.

Thus, it is not hard to see why this Court opted for a narrow equitable exception in *Martinez*. Typically, "infirmities in state habeas proceedings do not constitute grounds for relief in federal court." *Rudd v. Johnson*, 256 F.3d 317, 319 (5th Cir. 2001) (quoting *Trevino v. Johnson*, 168 F.3d 173, 180 (5th Cir. 1999)). That would no longer be the case though if Mendoza had his way. If Mendoza's proposed rule were created, states would ostensibly be *forced* to consider on the merits claims that were previously available in initial habeas proceedings, notwithstanding whatever abuse-of-the-writ bars the state legislatures might have erected. *See, e.g.,* Tex. Code Crim. Proc. art. 11.071 § 5. And then states would have to defend against those claims *again* in federal proceedings. That's not exactly the efficient scenario this Court envisioned in *Martinez*. *See* 566 U.S. at 15–16 (reasoning that equitable exception "ought not to put a significant strain on state resources" because the state can simply challenge the claim as insubstantial in federal court).

Mendoza argues that, absent his proposed rule, some petitioners will not have their defaulted IATC claims heard by any court. But this Court should not apply a butcher's knife where a scalpel is needed. It is for Congress to draw the balance between the federal judiciary's vindication of federal rights and the public's interest in the "finality" of criminal convictions. *See Martinez Ramirez*, 496 U.S. at 391. But as it is now, the law is settled. This Court should not unsettle it.

IV. This Claim Is Meritless and Has Already Been Rejected on the Merits by the Federal District Court.

Mendoza's main theme is that, under *Martinez Ramirez*, some defaulted IATC claims will go unreviewed by any court: "In practice, Texas's conclusion that there is no right to effective assistance of habeas counsel means many defendants, like Mendoza here, will never have an opportunity to vindicate their Sixth Amendment right to counsel." Pet. at 13. But that isn't the case here, where Mendoza has had his defaulted IATC claim reviewed—and rejected—by a federal court.

A. Mendoza's IATC claim has been reviewed on the merits by a court, and the court found it was meritless and insubstantial.

After *Martinez* and its application to Texas cases in *Trevino*, the Fifth Circuit remanded Mendoza's federal habeas case to the district court so that supplemental counsel could probe any procedurally defaulted IATC claims

Mendoza's initial federal counsel might have missed. *Mendoza*, 783 F.3d at 204–05. Mendoza was then permitted to amend his petition to add new claims, including the Officer Hinton claim he raises here. *Mendoza*, 2019 WL 13027265, at *4. As he does here, he presented an affidavit from Johnson claiming that Mendoza was not the aggressor in the jailhouse fight between Mendoza and Johnson. *Id*. And he argued that Johnson's testimony could have been used to show he would not be a future danger under Texas statute.[6] *Id*. Under *Martinez*, Mendoza claimed cause to overcome the default because his state-habeas counsel was ineffective for failing to investigate and raise the claim. *Id*.

As *Martinez Ramirez* would not come down for three years, the district court did not find the Melvin Johnson affidavit barred under § 2254(e)(2). It therefore adjudicated the claim on the merits. The district court assumed deficient performance for the sake of argument but denied the claim on the merits because Mendoza could not meet *Strickland*'s prejudice requirement. *Mendoza*, 2019 WL 13027265, at *13; *see also Strickland*, 466 U.S. at 694–95. The court thoroughly went through the violent and aggravating evidence presented at punishment that was independent of Officer Hinton's testimony:

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[6] Before a trial court may sentence a defendant to death, Texas requires that the jury find that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Tex. Code Crim. Proc. art. 37.071 § 2(b)(1).

> Even setting aside Officer Hinton's testimony, the jury heard substantial evidence regarding Mendoza's future dangerousness. In addition to the details of the crime of which Mendoza was convicted—an attempted burglary, kidnapping, sexual assault and murder—the jury heard evidence of Mendoza's childhood delinquency, including violence against teachers; Mendoza's violence against his family; additional acts of violence, and in particular violence against women, including threats to kill, robberies, attempted kidnappings and sexual assault; that Mendoza cut off his electronic monitoring anklet while released from Dallas County jail on bond; that Mendoza violated prison regulations, including making multiple homemade shanks; and Mendoza's violence against detention officers.

Mendoza, 2019 WL 13027265, at *13.

As he does now, Mendoza exaggerated the import of Officer Hinton's testimony by pointing out that the State mentioned it in closing argument. *Id.* at *14. But the district court rejected that argument as well:

> Although [Mendoza] correctly notes that the State referenced the alleged assault in the closing, the prosecutor briefly mentioned the assault only after laying out Mendoza's lengthy violent and criminal history in extensive detail. Moreover, the alleged assault was discussed as one in a series of Mendoza's prison violations, which included the creation of homemade shanks and an assault on detention officers.

Mendoza, 2019 WL 13027265, at *14.[7] The Court also noted the double-edged nature of Johnson's affidavit, as he "stated that Mendoza was not well-liked by

[7] Mendoza again exaggerates the importance of Officer Hinton's testimony here. He points out that the jury sent a note asking about "Mendoza's 'criminal acts while in jail' including the 'assault on another inmate.'" Pet. at 30. But the jury note asked for the "dates" on which Mendoza committed *several* infractions related to his dangerous behavior in jail, including his assault of Johnson, but also including his

either guards or inmates, he 'continually' used racial slurs, and he had a bad attitude." *Id*.

The district court accordingly held that Mendoza "cannot demonstrate that the failure to object to the testimony or call Mr. Johnson was prejudicial, as required to demonstrate ineffective assistance of counsel." *Id*. It further held that it need not examine whether state habeas counsel was ineffective because state habeas counsel is not ineffective for failing to bring meritless claims. *Id*. And while the Fifth Circuit found the Johnson affidavit barred under *Martinez Ramirez* and § 2254(e)(2), it seemingly adopted the district court's analysis in finding that the claim was "plainly meritless" under *Rhines v. Weber*, 544 U.S. 269 (2005). *Sandoval Mendoza*, 81 F.4th at 482.

B. Mendoza has already obtained the equitable remedy created by *Martinez*: review by at least one court of his defaulted IATC claim.

Mendoza is likely to claim that the district court's review was not meaningful because, after *Martinez Ramirez* came out midstream of his

"assault on officer in Colin County jail" and the "comb and tin" he had fashioned into weapons. App. 79a. The jury was likely not impressed with Mendoza fashioning homemade "shanks" given the rap lyrics found in his cell, in which he wrote, "I'm coming to get ya. Gank ya. Shank ya. Tie ya up in back and rearrange ya," and "give me a screwdriver so I can dig in your temple. Bust your face with a crowbar like I'm popping a pimple." App. 99a.

appeal, the Fifth Circuit did not review the merits of his underlying claim.[8] But as *Coleman* makes clear, one reviewing court is enough.

In *Coleman*, this Court crystallized the procedural default doctrine for federal claims that were raised in federal court, but procedurally barred in state court. *Coleman*, 501 U.S. at 729–30. Accordingly, this Court held that a petitioner must show "cause" to overcome the procedural default in federal court, and that "cause" must be something "external" to the petitioner. *Id.* *Coleman* made clear that, because under *Pennsylvania v. Finley*, 481 U.S. 551 (1987), there is no constitutional right to counsel in state-postconviction proceedings, attorney error would be imputed to a petitioner and not suffice as "cause" to overcome a procedural default. *Id.* at 752.

This Court noted, however, that some exception to that rule could exist "where state collateral review is the first place a prisoner can present a challenge to his conviction." *Id.* at 755. In *Coleman*, the state trial court reviewed Coleman's claims on collateral review, and it was only the *appeal* of those claims—to the state appellate court—that was defaulted due to attorney

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[8] Even if Mendoza is permitted to adjudicate his claim on the merits in state court, the Fifth Circuit will never hear his claim because he is forever barred from raising this claim again in federal habeas proceedings. *See* 28 U.S.C. § 2244(b)(1). Therefore, Mendoza is just asking for a second bite at the apple in state court. Nothing in *Martinez* can be read to require the state court to undergo the same merits review that the federal district court already conducted.

error. *Id.* Because Coleman was able to present a "challenge to his conviction" on state collateral review, and because "one court ha[d] addressed Coleman's claims: the state habeas trial court[,]" this Court declined to review whether such an exception to the general rule in *Finley* existed. *Id.* This Court was obviously concerned with a scenario in which no court would address a claim; because that wasn't the case, this Court declined to take up the issue in *Coleman*.

That equitable concern arose twenty years later in *Martinez*. Unlike *Coleman*, *Martinez* addressed a situation in which state-postconviction counsel's failure to present an IATC claim in a state-collateral proceeding deprived the prisoner of review of his claim in any state court. 566 U.S. at 15. In that case, this Court adopted an exception to *Coleman* that applies when IATC claims could only be brought on collateral review—thus making collateral proceedings the first time a prisoner can present a challenge to his conviction predicated on trial counsel's ineffectiveness. *Id.* at 13–15. In that situation, if state-postconviction counsel is ineffective for failing to raise a substantial IATC in state court, the ineffectiveness serves as cause under *Coleman*.

But this Court premised its holding in *Martinez* heavily on the equitable concern that, absent the created exception to *Coleman*, no court would review the merits of the underlying IATC claims. This Court distinguished *Coleman*,

reasoning that the "alleged failure of counsel in *Coleman* was on appeal from an initial-review collateral proceeding, and in that proceeding the prisoner's claims had been addressed by the state habeas trial court." *Id.* at 10 (citing *Coleman*, 501 U.S. at 755). This Court therefore found that "[w[hen an attorney errs in initial-review collateral proceedings, it is likely that no state court at any level will hear the prisoners claim . . . And if counsel's errors in an initial-review collateral proceeding do not establish cause to excuse the procedural default in a federal-habeas proceeding, no court will review the prisoner's claims." *Id.* This Court then made clear that the equitable rule in *Martinez* was not concerned with attorney error in appellate-collateral proceedings (such as the one in *Coleman*), because "the claim will have been addressed by one court, whether it be the trial court, the appellate court on direct review, or the trial court in an initial-review collateral proceeding." *Id.*

Thus, in *Coleman*, this Court was satisfied that only the state trial court had reviewed the defaulted claim, and did not deem it necessary to create an equitable rule for further appellate review. And *Martinez* made clear it was not concerned with the fact that a defaulted claim might be reviewed in the trial court but not double checked by an appellate court. *Martinez*, 566 U.S. at 11. In receiving merits review of his claim in federal district court, Mendoza has received everything the equitable rule in *Martinez* sought to protect. *See*

Davila, 582 U.S. at 532 (noting that merely having a ruling on an objection would constitute sufficient review by a court).

V. Mendoza's Stay of Execution Should Be Denied.

A prisoner may seek a stay of execution pending consideration of a petition for writ of certiorari. *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), *superseded on other grounds by* 28 U.S.C. § 2253(c)(2). The petitioner must show the underlying issue is "sufficiently meritorious" to warrant a stay and that failure to grant the stay would result in "irreparable harm." *Id.* In particular, the petitioner must show a reasonable probability that "four members of the Court would consider the underlying issue sufficiently meritorious for the grant of certiorari" and "there must be a significant possibility of reversal of the lower court's decision." *Id.* Moreover, in determining whether a movant has made such a showing, a reviewing court "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill v. McDonough*, 547 U.S. 573, 584 (2006).

Thus, in deciding whether to grant a stay of execution, this Court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4)

where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987))."Last-minute stays should be the extreme exception, not the norm[.]" *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019).

As explained above, Mendoza's petition is unlikely to be granted, and this Court is unlikely to reverse the CCA's judgment for several reasons: (1) this Court lacks jurisdiction; (2) Mendoza's proposed rule is barred under nonretroactivity principles; (3) Mendoza fails to present an unsettled federal question; and (4) Mendoza's claim is ultimately meritless. And Mendoza fails to show irreparable harm because his entire argument is predicated on the harm of no court reviewing his IATC claim. Pet. at 13. As mentioned above, his claim *was* reviewed and denied by the federal district court.

Finally, given the extreme delay in this two-decade-old case, the public interest weighs heavily against a stay. The State and crime victims have a "powerful and legitimate interest in punishing the guilty." *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (citation omitted). And "[b]oth the State and the victims of crime have an important interest in the timely enforcement of a [death] sentence." *Bucklew*, 587 U.S. at 149 (quotation omitted). Once post-conviction proceedings "have run their course . . . finality acquires an added moral dimension." *Calderon*, 523 U.S. at 556. "Only with an assurance of real

finality can the State execute its moral judgment in a case" and "the victims of crime move forward knowing the moral judgment will be carried out." *Id*.

It's also worth noting that "capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death." *Rhines*, 544 U.S. at 277–78. Mendoza claims he "returned promptly to state court" after federal proceedings ended. Application for Stay at 4. That's simply not the case. Mendoza had this claim ready to present in state court as soon as his federal proceedings ended in October 2024. He has no excuse for waiting until April 2, 2025, three weeks before his execution, to present it to the CCA. Such timing smacks of dilatory tactics. "The proper response to this maneuvering is to deny meritless requests expeditiously." *Price v. Dunn*, 139 S. Ct. 1533, 1540 (2019) (Thomas, J., concurring in denial of certiorari).

Mendoza has litigated his case for two decades and has been afforded multiple batches of court appointed and pro bono lawyers representing him at trial, state-habeas proceedings, and federal proceedings. His present claim is specious as it revolves around one of several violent acts he committed, including the brutal capital murder of Rachelle Tolleson. One federal court has already found as much, denying the claim on the merits. Staying this execution two decades later so that Mendoza can pursue the same specious and already rejected claim in state court the very kind of "serial relitigation" that

"undermines the finality that 'is essential to both the retributive and deterrent functions of criminal law.'" *Martinez Ramirez*, 596 U.S. at 391 (quoting *Calderon*, 523 U.S. at 555). This Court should not do so.

CONCLUSION

For all these reasons, Mendoza's petition for a writ of certiorari and motion to stay his execution should be denied.

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