

IN THE  
**Supreme Court of the United States**

---

CEDRIC RICKS,  
*Petitioner,*

v.

ERIC GUERRERO, DIRECTOR,  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,  
CORRECTIONAL INSTITUTIONS DIVISION,  
*Respondent.*

---

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit

---

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A  
WRIT OF CERTIORARI**

---

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

JOSH RENO  
Deputy Attorney General  
For Criminal Justice

TOMEE M. HEINING  
Chief  
Criminal Appeals Division

RACHEL GARTMAN  
Assistant Attorney General  
*Counsel of Record*

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
(512) 936-1400  
Rachel.Gartman@oag.texas.gov

---

*Counsel for Respondent*

## **CAPITAL CASE**

### **QUESTIONS PRESENTED**

After Petitioner testified at the punishment phase of his trial, he walked from the witness stand to counsel table, allowing the jury to see his shackles. Petitioner's counsel did not object, nor did his appellate counsel raise his shackling claim on direct appeal. When he raised this claim for the first time in his state habeas application, the state court procedurally barred it because it could have been raised on direct appeal. The federal district court denied Petitioner's shackling claim on the merits. The United States Court of Appeals for the Fifth Circuit denied a certificate of appealability (COA) based on the procedural bar imposed by the state court. One judge on the Fifth Circuit panel dissented.

1. Where a district court denies a claim on the merits instead of a procedural bar apparent from the record, must the circuit court also ignore the procedural bar in deciding whether to grant a COA?
2. May a court of appeals panel deny a COA over one judge's dissent?

## LIST OF PROCEEDINGS

*Texas v. Ricks*, No. 1361004R (371st Judicial Dist. Ct., Tarrant County, Tex.)  
(convicted and sentenced to death May 16, 2014)

*Ricks v. Texas*, No. AP-77,040, 2017 WL 4401589 (Tex. Crim. App. Oct. 4, 2017)  
(affirming conviction and death sentence) (cert. denied)

*Ex parte Ricks*, No. WR-85,278-01, 2020 WL 6777958 (Tex. Crim. App. Nov. 18,  
2020) (denying state habeas application)

*Ricks v. Lumpkin*, No. 4:20-cv-1299, 2023 WL 8125338 (N.D. Tex. Nov. 22,  
2023) (denying federal habeas petition)

*Ricks v. Lumpkin*, No. 23-70008, 120 F.4th 1287 (5th Cir. 2024) (denying a  
certificate of appealability)

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES.....	iv
BRIEF IN OPPOSITION.....	1
STATEMENT OF JURISDICTION.....	2
STATEMENT OF THE CASE .....	2
I. Facts of the Crime.....	2
II. Facts Pertaining to Punishment.....	5
III. Course of Proceedings.....	8
REASONS FOR DENYING THE WRIT .....	8
I. The Court Should Deny Review Because a Circuit Court May—and Should—Deny a COA Where a Procedural Bar Renders Merits Review Pointless. ....	10
A. Ricks presents no compelling reason to grant certiorari review. ....	10
B. There is no compelling reason for the Court to grant certiorari review where the district court’s denial of the underlying claim was undebatable in the Fifth Circuit. ....	16
II. This Court Should Deny Review Because This Case Presents a Poor Vehicle to Address the Circuit Split on Dissenting COA Panelists.....	17
CONCLUSION.....	18

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Amos v. Scott</i> , 61 F.3d 333 (5th Cir. 1995) .....	15
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983) .....	13
<i>Buck v. Davis</i> , 580 U.S. 1006 (2017) .....	9
<i>Ex parte Gardner</i> , 959 S.W.2d 189 (Tex. Crim. App. 1996) .....	13
<i>Gonzalez v. Thaler</i> , 565 U.S. 134 (2012) .....	14
<i>Harper v. Lumpkin</i> , 64 F.4th 684 (5th Cir. 2023) .....	13
<i>Melton v. Sec’y, Fla. Dep’t of Corr.</i> , 778 F.3d 1234 (11th Cir. 2015) .....	17
<i>Miller v. Sec’y, Florida Dept. of Corr.</i> , 2022 WL 1692946 (11th Cir. May 10, 2022) .....	15
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003) .....	9
<i>Reed v. Stephens</i> , 739 F.3d 753 (5th Cir. 2014) .....	16
<i>Ricks v. Lumpkin</i> , 120 F.4th 1287 (5th Cir. Nov. 4, 2024) .....	8
<i>Ricks v. Texas</i> , 2017 WL 4401589 (Tex. Crim. App. 2017) .....	5
<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022) .....	14, 15
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000) .....	Passim
<i>Szuchon v. Lehman</i> , 273 F.3d 299 (3d Cir. 2001) .....	15
<i>Thomas v. United States</i> , 328 F.3d 305 (7th Cir. 2003) .....	17
<i>United States v. Castro</i> , 30 F.4th 240 (5th Cir. 2022) .....	14
<i>United States v. Ellis</i> , 779 F. App’x 570 (10th Cir. 2019) .....	17
<i>United States v. Springer</i> , 875 F.3d 968 (10th Cir. 2017) .....	15
<i>Wellborn v. Berghuis</i> , 2018 U.S. App. LEXIS 22931 (6th Cir. Aug. 16, 2018) .....	17
<i>Williams v. Kelley</i> , 858 F.3d 464 (8th Cir. 2017) .....	17
<b>Statutes</b>	
28 U.S.C. § 1254(1) .....	2
28 U.S.C. § 2253 (c)(1)(A) .....	9
28 U.S.C. § 2253 (c)(2) .....	9
28 U.S.C. § 2254 .....	1

## BRIEF IN OPPOSITION

Petitioner Cedric Ricks was properly convicted and sentenced to death for the capital murder of Roxann Sanchez and her eight-year-old son, [A.F.]. Ricks argues that the Fifth Circuit Court of Appeals erred in denying his motion for COA by relying solely on the state court's application of an adequate and independent state procedural bar to his shackling claim, where the federal district court looked past his procedural default—which was apparent from the record—and denied relief on the merits. This Court's case law does not support this viewpoint that the Fifth Circuit was required to ignore the procedural default. Rather, it encourages the swift resolution of claims, including on procedural grounds where present. The Fifth Circuit's decision to respect the state court's procedural bar and deny a COA for an ultimately meritless appeal aligns with AEDPA's<sup>1</sup> goals of promoting efficiency, finality, comity, and federalism.

For this same reason, the Court should not use this case to resolve whether a circuit panel may deny COA over one judge's dissent. Because the underlying claim itself is both procedurally defaulted and meritless, the Court's intervention now would only cause further delay of resolution on a

---

<sup>1</sup> Antiterrorism and Effective Death Penalty Act; 28 U.S.C. § 2254.

futile claim. No compelling reason exists for this Court to grant certiorari review on these issues, and should be denied.

## **STATEMENT OF JURISDICTION**

The Court has jurisdiction under 28 U.S.C. § 1254(1).

## **STATEMENT OF THE CASE**

### **I. Facts of the Crime**

The Texas Court of Criminal Appeals (CCA) accurately summarized the facts of the crime as follows:

The evidence at trial showed that [Ricks] and Roxann Sanchez lived together at the Colonial Village Apartments in Bedford, Texas. [Ricks] and Sanchez had a child together, nine-month-old [I.R.]. Sanchez's two sons from a previous marriage also lived with them: eight-year-old [A.F] and twelve-year-old [M.F.].

Shortly after 7:00 p.m. on May 1, 2013, Sanchez and her three sons arrived home from the grocery store. Sanchez carried [I.R.] and some of the groceries upstairs to their third-floor apartment, leaving some of the groceries in the car. [A.F.], [M.F.], and [I.R.] went to their bedroom to play while Sanchez cooked dinner.

Between 7:10 and 7:20 p.m., a neighbor heard [Ricks] yelling expletives and stating something to the effect of, "Don't have me fucking come down here and waste my mother-fucking time on this bullshit." [Ricks] had stopped yelling once the neighbor passed [Ricks] and Sanchez on the stairwell. Sanchez, who was carrying two bags of groceries, appeared distraught.

While the boys remained in their bedroom, [Ricks] and Sanchez began arguing in the apartment. When the yelling turned into screaming, [A.F.] and [M.F.] ran to the living room. [Ricks] and Sanchez were hitting each other, and [Ricks] pushed Sanchez to the floor. [A.F.] and [M.F.] tried to get between them to break up the fight, but [Ricks] pushed [M.F.] down and continued hitting

Sanchez with his fists. [Ricks] then got a knife from a kitchen drawer and stabbed Sanchez multiple times while she tried to protect herself. [M.F.] ran to his bedroom closet and tried to call the police, but [Ricks] followed him and pulled the closet door open. [M.F.] dropped the phone, and in an effort to protect himself, grabbed the knife that [Ricks] was holding, but the knife cut his hand.

[Ricks] chased [M.F.] back into the living room. [A.F.] was standing next to the couch with blood on his face and asking [M.F.] to get help. [Ricks] pushed [M.F.] to the ground, held his head down, and stabbed him multiple times in the back of his neck. [Ricks] then pushed [A.F.] to the ground next to [M.F.] and [Ricks] stabbed [A.F.] while [M.F.] watched. [Ricks] stopped stabbing [A.F.] after [A.F.] made a “gargling noise.” When [M.F.] tried to get up, [Ricks] got on top of him and began stabbing him again. [Ricks] finally stopped stabbing [M.F.] after [M.F.] played dead by imitating the gargling noise [A.F.] had made.

[Ricks] then put the knife in the kitchen and washed his hands before going to the master bedroom and taking a shower. [Ricks] made a telephone call, packed his clothes, placed [I.R.] in his crib, and eventually left the apartment. Although [M.F.] was bleeding badly, he remained still because he was afraid that [Ricks] would stab him again if he got up. [M.F.] stayed on the floor until he was confident that [Ricks] would not return. When [M.F.] finally got up and looked out the window, his mother’s car was gone.

After leaving the apartment, [Ricks] called his cousin, Tamara Butts, who lived with her parents in Mansfield, Texas. He told Butts that he “did something bad” and asked to speak to her father, Joseph Sanders. [Ricks] told Sanders that he “messed up” and that he “killed [Sanchez] and the boys.” [Ricks] asked Sanders to get [I.R.] from the Bedford apartment. When [Ricks] spoke with Butts again, he told her that he killed Sanchez, [A.F.], and [M.F.] and that his hands were injured and cut. [Ricks] refused to tell Butts how he killed them or where he was. He insisted that Butts go to the Bedford apartment to get [I.R.]. When Butts urged [Ricks] to turn himself in, [Ricks] stated that he would die before he went to jail.



After [Ricks] hung up, Butts called 911 and then headed with her parents to the Bedford apartment to get [I.R.]. As they drove to Bedford, the police called and asked them to go to the police station instead. At the station, Butts and Sanders told the police about their telephone conversations with [Ricks]. Butts gave the police [Ricks'] cellular telephone number, and she continued to text [Ricks] in an attempt to help the officers locate him.

Meanwhile, in response to Butts' 911 call, Bedford Police officers Clayton Baxley, Brian Meaders, Brett Bowen, Noel Scott, and Crowell<sup>2</sup> were dispatched to [Ricks'] apartment at 8:42 p.m. on a welfare check. Baxley arrived first and heard a baby screaming inside the apartment, but he was instructed over his radio not to enter until a back-up officer arrived at the scene. During this time, [M.F.] called 911 from inside the apartment and told the operator that his "mom's boyfriend killed [his] mom and [his] other brother," that he stabbed them, and that he "took [Sanchez's] car" and left. The 911 operator relayed this information to Baxley at the scene while she talked to [M.F.]. [M.F.] was unable to open the apartment door for Baxley due to the injuries to his hands, but he gave the operator permission for Baxley to open the door. When Baxley opened the door, he found [M.F.] covered in blood from head to toe. Baxley called to [M.F.] to exit the apartment. When [M.F.] came through the door, Baxley saw that the back of [M.F.'s] head, neck, and shoulders were severely lacerated and that he was bleeding profusely. [M.F.] was unable to sit down because he was in shock.

When Meaders arrived at the scene, he and Baxley entered the apartment to make a quick sweep for additional victims or suspects and to locate the baby. There was blood on the linoleum tile just inside the doorway. Sanchez's and [A.F.'s] bodies were lying on the floor in copious amounts of blood. The officers found [I.R.] crying in a crib in the back bedroom. Having determined the apartment was safe, they left [I.R.] there because he appeared uninjured and they were more concerned about getting medical attention for [M.F.].

---

<sup>2</sup> The reporter's record does not include Officer Crowell's first name. [Footnote in original under different number.]

Meaders and Baxley cared for [M.F.] until the paramedics and other officers arrived. Due to the severity of [M.F.'s] injuries, he was flown by helicopter to Cook Children's Medical Center. He later recovered physically from his injuries. [I.R.] was also taken to Cook Children's Medical Center as a precautionary measure, but was found to be unharmed.

Autopsies were conducted on Sanchez and [A.F.]. Sanchez had suffered an instantly fatal stab wound to her neck that transected her upper cervical spinal column at the brain stem, and a potentially fatal stab wound to her neck that transected her right carotid artery. She had suffered multiple other stab wounds and defensive wounds, and there was evidence of blunt force injuries and manual strangulation. Her cause of death was "stab wounds of the neck, blunt force injuries of the head, and asphyxia as a combination." [A.F.] had suffered several potentially fatal stab wounds: a head wound penetrated [A.F.'s] skull into the temporal lobe of his brain; a neck wound injured his external jugular vein and part of his carotid artery, and penetrated his larynx; and a second head wound penetrated the left side of his nose down through the cartilage of his septum into the oral cavity toward the base of his tongue and the back of his throat. [A.F.] had suffered numerous other non-fatal stab wounds and various contusions. His cause of death was "[s]tab wound[s] to the head and neck."

*Ricks v. Texas*, No. AP-77,040, 2017 WL 4401589, at \*1–3 (Tex. Crim. App. 2017).

## **II. Facts Pertaining to Punishment**

Several women testified to Ricks' history of violence with them. Tina Brown dated Ricks when they were in high school. ROA.7780.<sup>3</sup> James Cooper,

---

<sup>3</sup> "ROA" refers to the Fifth Circuit's record on appeal followed by the relevant page numbers.

head of security at the school, said on one occasion he drove Ricks home because he received a suspension. ROA.7374–82. As Cooper re-entered the school, Ricks was forcibly removing his girlfriend from the building. ROA.7379–80, 7805. Cooper stopped and handcuffed Ricks. ROA.7380–82. Ricks confirmed he was arrested a couple of times for incidents involving Brown. ROA.8196–97.

Tashana Singleton was Ricks's ex-wife. ROA.7469. On an occasion in April 1998, Ricks punched Singleton in the jaw because she wanted to end the relationship. ROA.7468. Singleton testified regarding other incidents over several years in which Ricks choked her, punched her (breaking a tooth on one occasion), kicked her, threatened her with a knife, and threatened to kill her. ROA.7469–77, 7491–92.

Ricks and Singleton divorced, ROA.7475–76, and Singleton obtained protective orders against Ricks, but he constantly violated them. ROA.7476–77, 7495. During one child-custody exchange, Singleton had her father, Calvin Thompson, accompany her. ROA.7479. This upset Ricks, and he threatened to kill her and Thompson. ROA.7480–81, 7518. Singleton changed the custody-exchange location to the police station. ROA.7482.

During an exchange at the police station in 2004, Ricks choked Singleton and beat her in the face and head until she was unconscious. ROA.7483–87, 7501–06. A passer-by yelled at Ricks to stop, but he continued to beat

Singleton, appearing to hold Singleton up by the throat. ROA.7501–06. Police officers came to assist, but Ricks continued hitting Singleton while they tried to pull him away. ROA.7506–07.

Tamara Partridge began a relationship with Ricks in June 2004. ROA.7389. After about a year, Ricks began to hurt her. ROA.7398. On one occasion, he “smacked” her across the face. ROA.7398–99. On another, Ricks broke her phone, held her against the wall, and choked her. ROA.7400–01. She ended the relationship in 2008 because she could no longer endure his abuse. ROA.7405.

Jennifer Clark met Ricks in late 2008, and they lived together for about fifteen months. ROA.7318–20, 7327. During one fight, Clark threw a candle at Ricks for saying mean things to her. ROA.7340. Clark picked up the phone to call the police when Ricks refused to leave, but Ricks threatened to kill her. ROA.7340.

In November 2012, Ricks and Sanchez had an argument that “turned physical.” ROA.8164–67, 8205–07. Ricks choked Sanchez to the point of unconsciousness and beat her head on the bathroom floor. ROA.7180, 8166–67, 8206–07; *see* ROA.7222–28. Sanchez obtained an emergency protective order against Ricks, which Ricks admitted violating. ROA.7145–46, 8171, 8200, 8678–81.

### **III. Course of Proceedings**

Ricks was convicted and sentenced to death for capital murder. ROA.9495, 9533–34, 9542–45. The CCA affirmed Ricks’ conviction. ROA.9961–99, 10003. Ricks filed a state application for a writ of habeas corpus, which the CCA denied on the trial court’s findings and conclusions and on its own review. ROA.10021–193, 11910–78 (State’s proposed findings), 12078 (order adopting State’s proposed findings), 12091–94.

Ricks also filed an amended federal habeas petition, ROA.399–525, which the district court denied, ROA.1344–73, along with his motion to alter or amend judgment, ROA.1374–79, 1393–99. The Fifth Circuit Court of Appeals denied Ricks’ motion for a COA. *Ricks v. Lumpkin*, 120 F.4th 1287 (5th Cir. Nov. 4, 2024); Petitioner’s Appendix A. Ricks then filed in this Court a petition for a writ of certiorari. The instant Brief in Opposition follows.

### **REASONS FOR DENYING THE WRIT**

The questions that Ricks presents for review are unworthy of the Court’s attention. Supreme Court Rule 10 provides that review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for “compelling reasons.” Where a petitioner asserts only factual errors or that a properly stated rule of law was misapplied, certiorari review is “rarely granted.” *Id.*

Furthermore, there is no automatic entitlement to appeal in federal habeas corpus. *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003). Ricks must obtain a COA as a jurisdictional prerequisite to obtaining appellate review by the Fifth Circuit. 28 U.S.C. § 2253 (c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The COA statute requires the circuit court to make only a “threshold inquiry into whether the circuit court may entertain the appeal,” and permits issuance of a COA only where petitioner “has made a substantial showing of the denial of a constitutional right.” *Miller-El*, 537 U.S. at 336 (citing *Slack*, 529 U.S. at 482–83; 28 U.S.C. § 2253 (c)(2)); *see also Buck v. Davis*, 580 U.S. 100, 115–16 (2017).

This standard “includes showing that reasonable jurists could debate (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack*, 529 U.S. at 484 (internal quotation marks and citation omitted). When the district court rejects a claim on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. And when the district court denies a habeas petition on procedural grounds, a COA should issue when the petitioner shows that reasonable jurists would debate whether the petition states a valid claim of the

denial of a constitutional right *and* whether the district court was correct in its procedural ruling. *Id.* at 484–85.

Here, Ricks’ petition presents no compelling reasons, important questions of law, or genuine conflicts among the circuit courts to justify this Court’s exercise of its certiorari jurisdiction. The Fifth Circuit violated no constitutional authority in denying COA on the state court’s application of a procedural bar that is strictly and regularly applied, without also addressing the district court’s denial of relief on the merits. Ricks’ petition should be denied.

**I. The Court Should Deny Review Because a Circuit Court May—and Should—Deny a COA Where a Procedural Bar Renders Merits Review Pointless.**

**A. Ricks presents no compelling reason to grant certiorari review.**

Ricks bases his argument on an over-simplified reading of *Slack* that would contravene the gatekeeping function of the COA stage by unnecessarily forcing a doomed appeal. In *Slack*, this Court explained that when a district court rejects a claim on the merits, a petitioner seeking a COA must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 483–84. When a district court denies a claim on procedural grounds, it continued, a petitioner must show, “at least, that jurists of reason would find it debatable whether the

petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 484.

Ricks now relies on this language to contend that “a reviewing court’s sole task is to assess how the federal district court disposes of a federal claim[,]” not assess whether the petition could or should have been denied for other reasons. Pet. Cert. 8. In other words, Ricks argues that where a district court ignores a fatal procedural flaw, a court of appeals must ignore it also. Neither *Slack* nor any other precedent of this Court requires such a windfall to procedurally deficient petitions; to hold otherwise would pointlessly compromise the gatekeeping function of COAs and contravene AEDPA’s goals of efficiency and finality.

Ricks argues, “Nowhere does *Slack* suggest—and this Court has never held—that circuit courts should disregard entirely the district court’s disposition of a claim and instead assess ‘whether there exist other independent grounds on which the district court could have denied’ a claim.” Pet. Cert. 8 (quoting Pet. App’x A at 006 (Higginson, J., concurring in part, dissenting in part)). However, *Slack* did, in fact, encourage courts to dispose of



claims on procedural rather than constitutional grounds if procedural grounds are “also present”:

[A] court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments. The recognition that the “Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of,” allows and encourages the court to first resolve procedural issues. The *Ashwander* rule should inform the court’s discretion in this regard.

*Slack*, 529 U.S. at 485 (citation omitted).

The issue in *Slack* was whether a COA could ever be granted when the district court denied the petition based on procedural grounds. *Id.* at 483. This Court answered that it could and provided a framework, but that framework did not grant petitioners the windfall of not having to justify the merits the district court had not addressed—no, the petitioner must show debatability as to both merits and procedure where both are present. *See id.* at 484–85. It follows that the Court did not intend to create a loophole through which procedural grounds apparent from the record are shielded from consideration from the circuit court if the district court failed to (or chose not to) consider them. *Slack*’s thrust was to require that both merits and procedural grounds must be debatable where either could support a denial. This is underscored by the above block quote from *Slack* and its encouragement to courts to resolve

procedural issues rather than merits issues where they are apparent from the record.

The logic of this approach is underscored by another important phrasing of the COA standard: that the claim be “adequate to deserve encouragement to proceed further.” *Id.* at 484 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). Ricks’ shackling claim does not deserve encouragement to proceed further because, even if this Court reversed and directed the Fifth Circuit to issue a COA, his subsequent appeal would be doomed to fail because of his procedural default. Ricks raised this claim in his state habeas application, but the state court concluded it should have been raised on direct appeal and declined to address the merits. ROA.11957, 12093. The CCA has repeatedly applied that bar, *see Ex parte Gardner*, 959 S.W.2d 189, 198–199 (Tex. Crim. App. 1996), and the Fifth Circuit has recognized it as adequate to bar federal review, *Harper v. Lumpkin*, 64 F.4th 684, 693–94 (5th Cir. 2023). Therefore, correctly and consistently with its precedent, the Fifth Circuit found Ricks’s shackling claim to be procedurally defaulted and declined to issue a COA. Pet. App’x A at 003–004. In doing so, it noted, “[W]e are aware of no legal basis for granting a COA on a claim that is destined to fail due to procedural default.” *Id.* at 004. Indeed, a claim that is destined to fail cannot deserve encouragement to proceed further.

In the same vein, requiring circuit courts to issue a COA in circumstances like Ricks’ would undermine the purposes of COA, AEDPA, and the procedural default doctrine. The entire purpose of COA as a stage in litigation is to filter out futile habeas appeals like Ricks’. *See Gonzalez v. Thaler*, 565 U.S. 134, 135 (2012) (COA serves a “gatekeeping function.”). One of AEDPA’s primary goals is to eliminate delays in the federal habeas review process. *See United States v. Castro*, 30 F.4th 240, 243 (5th Cir. 2022). Siding with Ricks here would undermine both of these because the end result can be nothing but a failed appeal, pointless delay, and wasted resources.

“Together, exhaustion and procedural default promote federal-state comity. Exhaustion affords States an initial opportunity to pass upon and correct alleged violations of prisoners’ federal rights, and procedural default protects against the significant harm to the States that results from the failure of federal courts to respect state procedural rules.” *Shinn v. Ramirez*, 596 U.S. 366, 378–79 (2022) (citations and quotation marks omitted). “Out of respect for finality, comity, and the orderly administration of justice, federal courts may excuse procedural default only if a prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law.” *Id.* (citations and internal quotation marks omitted). Ricks does not attempt to show cause and prejudice to overcome the default; instead, he hopes to evade application of the doctrine for one more step in the process by claiming the

Fifth Circuit cannot consider it yet.<sup>4</sup> But, whether now or later, Ricks cannot avoid the CCA's explicit procedural bar of his defaulted claim.

Finally, this Court should decline to exercise its discretion to hear this case because Ricks presents no compelling reason for it to do so. *See* Supreme Court Rule 10; Pet. Cert. 7–10. He identifies no circuit split, nor does any exist. Indeed, other circuits agree with the lower court that a COA may be denied on grounds other than those relied upon by the district court. *See, e.g., Miller v. Sec'y, Florida Dept. of Corr.*, 2022 WL 1692946, at \*1 (11th Cir. May 10, 2022) (the COA standard does not ask “whether the specific reasoning of the district court was infallible”); *United States v. Springer*, 875 F.3d 968, 981 (10th Cir. 2017) (“Accordingly, we may deny a COA if there is a plain procedural bar to habeas relief, even though the district court did not rely on that bar.” (citation omitted)); *Szuchon v. Lehman*, 273 F.3d 299, 318 n.8 (3d Cir. 2001) (“[W]e can deny a [COA] on any ground with support in the record.”). The rule he requests has never been stated by this court, and since that rule is to force circuit courts to ignore fatal flaws at the COA stage, it could only serve to pointlessly prolong Ricks' case and others like it. The district court did Ricks a kindness by looking

---

<sup>4</sup> Ricks also argues that the procedural bar imposed by the state court was not “adequate” because he was able to find one case where the CCA considered a similarly situated shackling claim. Pet. Cert. 10. However, even if the CCA occasionally excuses a bar, a bar may still be “regularly” followed despite the state court's act of grace. *Amos v. Scott*, 61 F.3d 333, 341 (5th Cir. 1995).

past his procedural default and addressing his claim on the merits, but that in no way entitles him to extract the same mercy from higher courts or further postpone the consequences of his failure to follow state procedure.

**B. There is no compelling reason for the Court to grant certiorari review where the district court's denial of the underlying claim was undebatable in the Fifth Circuit.**

Ricks alleged that his right to due process was violated by his shackling without justification, the jury's brief view of his leg shackles when he exited the witness stand, and the State's brief closing-argument reference to his shackles—in response to argument of the defense. But reasonable jurists would not debate the district court's rejection of this claim on the merits.

The district court denied Ricks' claim, finding, as the state court did, that the exposure of his shackles was Ricks' fault. ROA.1356–57, 1396–97, 11958; *see* Pet. App'x B at 013–014. The court also found the exposure harmless. ROA.1357; Pet. App'x B at 014. Indeed, the shackles were obscured by a curtain placed around counsel table and exposure, if any, was the result of Ricks' volitional conduct. ROA.11952–55. More importantly, Ricks cannot show the potential of a brief exposure to the jurors of the shackles influenced the jury's punishment verdict in light of his excessively disturbing history of violently abusing his female partners and the gruesome double murder of Sanchez and her young son. Thus, procedural default aside, Ricks fails to justify a COA because the district court's merits ruling was indisputable. *Reed v. Stephens*,

739 F.3d 753, 774 (5th Cir. 2014) (denying a COA even where district court’s procedural ruling was debatable if not wrong). Therefore, the Court should deny Ricks’ petition.

## **II. This Court Should Deny Review Because This Case Presents a Poor Vehicle to Address the Circuit Split on Dissenting COA Panelists.**

The futility of Ricks’ appeal and the lack of circuit split on the *Slack* issue should also dissuade this Court from using this case to address the circuit split Ricks hopes to exploit. A small circuit split does exist: the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits form a consensus that a panel may deny a COA over a judge’s dissent, *see, e.g.*, Pet. App’x A at 004; *Wellborn v. Berghuis*, 2018 U.S. App. LEXIS 22931, at \*1–2 (6th Cir. Aug. 16, 2018); *Williams v. Kelley*, 858 F.3d 464, 475 (8th Cir. 2017); *United States v. Ellis*, 779 F. App’x 570, 572 (10th Cir. 2019) *Melton v. Sec’y, Fla. Dep’t of Corr.*, 778 F.3d 1234, 1235, 1237 (11th Cir. 2015), while the Seventh Circuit has held the opposite, *see Thomas v. United States*, 328 F.3d 305, 309 (7th Cir. 2003).<sup>5</sup> However, this case makes a poor vehicle for this Court to address the issue.

Judge Higginson, the judge who would have issued Ricks a COA, based his willingness to issue it on his willingness to ignore—for now—to the procedural default that will ultimately defeat merits review, if granted. *See*

---

<sup>5</sup> Ricks’s citations to the Third, Fourth, and Ninth Circuits invoked only local rules, not circuit authority. *See* Pet. Cert. 10–11.

Pet. App'x A at 006. Judge Higginson chided his colleagues, “We are not tasked with assessing, in the first instance and on the limited briefing before us, whether there exist independent grounds on which the district court could have denied Ricks’s claim, as a basis for us to deny a COA.” But no circuit split accompanies Judge Higginson’s sticking point. If the Court were to review Ricks’ case, it would have to either address the unripe question of whether *Slack* forces circuit courts to turn a blind eye to glaring procedural problems at the COA stage or allow Judge Higginson’s minority interpretation (that it does) to force the Fifth Circuit to ignore the procedural default and proceed to a pointless appeal in this case. Indeed, as found by both the CCA and the Fifth Circuit, the claim is procedurally barred and meritless as found by both the state trial court and the district court. The Court need not resolve this split where the resolution will only result in denial of relief and unnecessary delay.

### **CONCLUSION**

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

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

JOSH RENO  
Deputy Attorney General

For Criminal Justice

TOMEE M. HEINING  
Chief, Criminal Appeals Division

/s/ Rachel Gartman  
RACHEL GARTMAN  
Assistant Attorney General  
Criminal Appeals Division  
*Counsel of Record*

P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 936-1400  
rachel.gartman@oag.texas.gov

*Counsel for Respondent*