

No. 25-6689
IN THE
Supreme Court of the United States

JOHN BEJARANO,

Petitioner,

v.

JEREMY BEAN, WARDEN,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(Capital Case)

Whether, as this Court explained in *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011), courts are to “affirmatively entertain the range of possible” justifications for counsel’s decisions when applying the objective test for deficient performance under *Strickland v. Washington*, 466 U.S. 668 (1984), so long as the possible justification is not contradicted by the record.

Whether the Ninth Circuit erred in determining that Petitioner John Bejarano failed to establish a reasonable likelihood that the jury would have imposed a sentence other than death when considering all the admissible evidence on aggravation and mitigation.

LIST OF PARTIES

Petitioner John Bejarano is an inmate at High Desert State Prison.

Respondent Jeremy Bean is the warden of High Desert State Prison.

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INTRODUCTION

This petition seeks review of a question this Court has already answered and otherwise seeks error correction on the Ninth Circuit’s case-specific inquiry into prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). This Court has already explained that a court must “affirmatively entertain the range of possible reasons [Bejarano’s] counsel may have had for proceeding as they did” when considering *Strickland*’s standard for deficient performance. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011). The objective standard this Court set out four decades ago in *Strickland* focuses on whether “every reasonable lawyer would have made a different decision,” not whether counsel’s subjective mindset reflects a reasonable strategic decision. *Dunn v. Reeves*, 594 U.S. 731, 740 (2021); *Harrington v. Richter*, 532 U.S. 86, 110 (2011).

True, this Court has counterbalanced that point with a limiting principle: the Court cannot ascribe a strategic objective to counsel’s performance that is contradicted by counsel’s actions. *Richter*, 532 U.S. at 109. But it is the contrast between those discrete principles upon which Bejarano appears to stake his claim that there is a split worthy of this Court’s consideration.

As a result, there is no split that requires resolution by this Court. Bejarano is citing cases that exemplify how materially different facts can trigger the nuances of how this Court has instructed lower courts to apply *Strickland*’s deferential, objective test on deficient performance. But if there is really a split, it is the result of lower courts applying this Court’s *Strickland* standard incorrectly. But here, the Ninth

Circuit got the standard right. It identified strategic justifications for counsel's actions when the record would support them. And when the record did not provide a basis to make that determination, the Ninth Circuit assumed that counsel lacked such a justification and moved on to assessing the question of prejudice.

That leaves the second question: an artfully phrased request for error correction on the fact-bound question of *Strickland* prejudice. But there are no errors to correct here. So there is no reason to grant review.

That said, two significant procedural hurdles that support alternative grounds for affirmance also stand in the way of this Court reaching the questions Bejarano presents for review. First, the Ninth Circuit (correctly) determined that 28 U.S.C. § 2254(e)(2) barred Bejarano's request for an evidentiary hearing. And that determination also supports the conclusion that much of the evidence Bejarano presented through his defaulted second state habeas petition was not developed under State procedural rules, making that evidence inadmissible under 28 U.S.C. § 2254(e)(2) too. Second, a trilogy of opinions from this Court addressing adequacy of procedural bars—*Johnson v. Lee*, 578 U.S. 605 (2016), *Walker v. Martin*, 562 U.S. 307 (2011), *Beard v. Kindler*, 558 U.S. 53 (2009)—undermine the Circuit precedent the lower courts relied upon to hold that Nevada's second or successive petition bar, codified at Nev. Rev. Stat. 34.810, was an inadequate procedural. In other words, this Court should treat Bejarano's claim as subject to procedural default.

Finally, as detailed below, there is no reason for this Court to wait to see whether the Ninth Circuit will take the extraordinary step of allowing Bejarano to file a successive petition for rehearing.

STATEMENT OF THE CASE

1. In March 1987, John Bejarano shot Roland Wright, a Reno cab driver, “twice in the head execution style.” App. 0005. No one witnessed the murder, “but .22-caliber casings were later recovered from the cab.” App. 0005.

2. Within days of the murder, police arrested Bejarano “for prowling and carrying a concealed weapon” when police officers observed “Bejarano looking into parked cars in an area known for vehicle break-ins” and discovered that Bejarano was carrying a concealed knife during a pat-down search. App. 0005-0006.

3. In the meantime, police had also “recovered a stolen rental car in downtown Reno.” App. 0005. “Inside the car, they found .22-caliber ammunition matching the casings found in Wright’s cab, a sawed-off rifle butt, a hacksaw blade, and a firecracker.” App. 0005. “The police also lifted a fingerprint from the car that matched Bejarano’s prints.” App. 0005.

4. The day before his arrest, Bejarano had also been discovered unconscious in a Reno casino. App. 0005. As security escorted him off the property, he suggested “that he needed to get his gun because he was wanted for murder” and made “gestures to mime a person being shot in the head.” App. 0005. Shortly after that incident, security guards assisted police with preparation of “a composite sketch of Bejarano.” App. 0005.

5. When police placed Bejarano under arrest, he had no identification and provided an alias. App. 0006. “But the officers realized he bore a likeness to the composite sketch.” App. 0006. And a more thorough search of him at the police station turned up “the keys to the stolen rental car, a key to a hotel, and firecrackers of a similar make and type as that found in the rental car.” App. 0006.

6. An inmate housed with Bejarano, Robert Kindell, also “claimed that Bejarano admitted shooting Wright twice with a sawed-off .22-caliber rifle.” App. 0006. Kindell claimed that Bejarano provided detailed information about the shooting, “laughed like he enjoyed it,” indicated that he killed Wright to steal \$250, and hid the gun. App. 0006. A second inmate, who was also present, “corroborated Kindell’s testimony.” App. 0006.

7. Police did find the murder weapon. App. 0006. “It matched the sawed-off butt of the gun found in the stolen rental car that trial evidence tied to Bejarano.” App. 0006.

8. A jury convicted Bejarano of first-degree murder with use of a deadly weapon, robbery with use of a deadly weapon, possession of a sawed-off rifle, possession of a stolen vehicle, and felon in possession of a firearm. App. 0007; 1-ER-11-12.¹

During the penalty phase, trial counsel presented some of Bejarano’s juvenile records from California, his honorable discharge from the Marines, and Bejarano’s

¹ This brief at times cites to the Excerpts of Record from the Ninth Circuit, which the volumes of which this Court can find at Dkt 10 of the Ninth Circuit’s record in this matter.

GED test result, and Bejarano provided a statement. App. 0008; 1-ER-25. Bejarano told the jury during the penalty phase of the trial that, “[T]hey had better ‘pray to God I don’t get out,’ and that there were other crimes, which they didn’t know about, for which he could be executed ‘five times.’” App. 0004, 0008.

After the penalty hearing, the jury found six aggravating circumstances and imposed a death sentence for the murder. App. 0009; 1-ER-11.² And after rejecting the grounds Bejarano raised on direct appeal, the Nevada Supreme Court dismissed the appeal. App. 0009.

9. Bejarano filed his initial post-conviction petition in state court in February of 1989. App. 0009; 21-ER-5792. The petition included a claim that “The failure to present any mitigating evidence except the records from Fresno, California indicating a deprived childhood constituted ineffective assistance of counsel.” 21-ER-5799.

The state court conducted an evidentiary hearing on this issue. App. 0009; 7-ER-1771-1872; 8-ER-1873-1892. Bejarano presented two mental health experts: a clinical psychologist (Dr. Nielsen) and a psychiatrist (Dr. Howle). 7-ER-1772.

10. In his report, Dr. Nielsen discussed Bejarano’s troubled family history but, “[o]ther than status offenses,” he noted only a single arrest for a criminal offense prior to age 18. 6-ER-1387. Dr. Nielsen also discussed Bejarano’s time in the Job Corps and his abbreviated stint in the Marine Corps. 6-ER-1384. Bejarano apparently

² The Nevada Supreme Court later vacated two of those aggravating circumstances under *McConnell v. State*, 102 P.3d 606, 620-625 (Nev. 2004). App. 0056; 1-ER-86-87. But other aggravators remained in place, and the state court maintained the death sentence through a harmless error determination. App. 56-60; 1-ER-105-08.

had to restart the application process “due to irregularities in his original records.” 6-ER-1384. Dr. Nielsen further explained that, while in Idaho, Bejarano “was arrested for aggravated assault” and served eighteen months in the Idaho State Penitentiary. 6-ER-1384. Dr. Nielsen described a second prison sentence for aggravated assault, which occurred shortly after Bejarano’s release on his first offense. 6-ER-1384. And Dr. Nielsen noted that Bejarano obtained his GED during this second stint in prison. 6-ER-1384.

Dr. Nielsen noted in his report that, after Bejarano’s second prison sentence in 1984, Bejarano met friends in Idaho who helped him with employment, housing, and emotional support. 6-ER-1385. Bejarano apparently stayed out of trouble for a period of time. But then Dr. Nielsen reported a romantic relationship, involving substance abuse and arguments, resulting in violence. 6-ER-1385. One incident resulted in Bejarano attacking a police officer and kicking out the window of a police vehicle. 6-ER-1385. And that led to Bejarano’s migration to Nevada during the pendency of criminal proceedings in Idaho in 1986. 6-ER-1385.

Dr. Nielsen further detailed Bejarano’s history of alcohol and drug abuse. 6-ER-1385. Psychological testing revealed an IQ in the below average range (82), but no evidence of organic impairment. 6-ER-1386. Dr. Nielsen diagnosed Bejarano with antisocial personality disorder, with Bejarano “likely to undercontrol impulses,” “capable of aggression with high intensity,” and “selfdramatizing, somewhat histrionic, and very provocative.” 6-ER-1386. Dr. Nielsen also found Bejarano

“resentful, irritable, argumentative, and given to forceful comments, assertions, and accusations,” as well as presenting “a strong quality of entitlement.” 6-ER-1386.

In court, Dr. Nielsen testified that antisocial personality disorder includes “relatively poor conscious development, very poor impulse control, difficulty relating to other people, difficulty forming relationships or bonds with others,” “disregard for the values or rights of others,” “a high degree of egocentric and self-centered attitude,” and “an attitude that toward right and wrong that the rules apply differently to other people from the way they might apply to me.” 7-ER-1782-83. Dr. Nielsen testified that Bejarano chooses to act tough and not express sorrow. 7-ER-1789-90.

11. Dr. Howle’s report corroborated Dr. Nielson’s report regarding Bejarano’s childhood and substance abuse. 8-ER-1895-96. He conducted no formal testing of Bejarano. 7-ER-1799. But he found that Bejarano possessed elements of “moderate to severe personality disorder with features of paranoid personality, antisocial personality and narcissistic personality.” 7-ER-1801. Dr. Howell testified that Bejarano knew right from wrong and understood “what he’s doing when he’s doing it.” 7-ER-1802

12. Initial trial counsel Robert Wieland represented Bejarano for approximately six months. 7-ER-1812-13. Larry Wishart, “an extremely experienced defense attorney dealing with homicide cases,” joined Wieland on the case. 7-ER-1820-21.

Wieland testified that developing mitigating evidence involved reconstructing Bejarano’s background. 7-ER-1818. He uncovered Bejarano’s prior prison sentences,

evidence that his parents were deceased, and tracked down institutions where Bejarano lived. 7-ER-1818. Wieland tracked down a female, an individual named Ben Wenke, information from juvenile institutions, and Bejarano's juvenile probation office, Vonnie Franks.³ 7-ER-1818. He and co-counsel engaged the services of a psychologist as a potential witness. 7-ER-1818. Wieland described that "this was an ongoing effort to try to find and locate these individuals who either would or could or were willing to come forward and testify on [Bejarano's] behalf." 7-ER-1819. Wieland felt Bejarano's background of growing up in foster homes was mitigating but could not recall other mitigating evidence. 7-ER-1819. The defense strategy was to save Bejarano's life. 7-ER-1821.

13. Michael Specchio, the attorney who took the case over from Wieland and represented Bejarano at trial, said that he advised Bejarano not to testify. 7-ER-1825, 1832, 1840. And Bejarano initially agreed. 7-ER-1833, 1851. But against counsel's advice, Bejarano changed his mind and chose to testify about five minutes before he took the stand during the guilt phase of the trial. 7-ER-1833.

Counsel and Bejarano later agreed upon Bejarano testifying during the penalty phase of the trial, and counsel spent time trying to prepare Bejarano to testify. 7-ER-1852-1853. Specchio said he spent a couple hours with Bejarano, trying to work on preparation. 7-ER-1853. And it was his intention to have Bejarano ingratiate himself to the jury and plead for his life by indicating the manner and approach he thought Bejarano would have to take. 7-ER-1837. Or as Bejarano put it, "Beg, plead for my

³ At times, she is referred to as Bonnie Franks, but the correct spelling of her first name is Vonnie.

life, that type of thing.” 7-ER-1866. But Bejarano disagreed with Specchio’s proposed tactics and refused to tell Specchio what he would say to the jury. 7-ER-1853-54. Bejarano’s position was “He was going to tell them what he was going to do. He didn’t want me to know.” 7-ER-1854.

14. Specchio also discussed his investigation into mitigating evidence. Specchio said, “What we did was try to locate somebody somewhere that could say something nice about John Bejarano, and I was not successful in doing that.” 7-ER-1834. Specchio thought that family members would be the best source of mitigation testimony. 7-ER-1834. Bejarano told Specchio that his father had died and he did not know the whereabouts of his sister or brother. 7-ER-1834.

Specchio’s investigator nevertheless determined that Bejarano’s father was still alive and living in a rest home in California. 7-ER-1834, 1846. And he located Bejarano’s siblings too. 7-ER-1834, 1846. Specchio arranged a meeting between a sibling and Bejarano in Reno, but the sibling quit communicating with counsel afterwards. 7-ER-1835-1836. The defense also located a priest Bejarano mentioned from one of the group homes Bejarano lived in as a child, but the person did not know Bejarano. 7-ER-1835.

Specchio testified that the defense attempted to locate Ben Wenke at Bejarano’s request. 7-ER-1835. But the defense had difficulty locating Wenke, and despite finding him in St. Louis at one point, they “lost him.” 7-ER-1835. He also

contacted a “woman in Idaho,”⁴ but he gave no specifics about that contact. 7-ER-1835.

Bejarano also gave Specchio the name of a probation officer, Vonnie Franks, saying she would be a favorable witness, but Specchio’s investigation indicated the contrary. 7-ER-1835-1836, 1849-1850. Specchio stated “She gave me some information that was, I guess damaging is putting it mildly.” 7-ER-1849. He explained to Bejarano that calling her as a witness would do more harm than good. 7-ER-1850. And although Bejarano was initially insistent upon calling her, he eventually accepted trial counsel’s position that she would not be a good witness. 7-ER-1850.

Specchio stated that the information from the Hanna Boys Center was old and that other than the records placed into evidence, his decision to not present in-depth information was tactical. 7-ER-1855. Specchio also testified that he reviewed the reports from the mental health experts hired by Wieland. 7-ER-1839-40. Specchio felt that Bejarano was competent, adding that Bejarano did not trust anybody, so obtaining Bejarano’s trust and cooperation was difficult if not impossible. 7-ER-1841-43. Bejarano could not recall the murder; and had a selective memory and ability to relate events from both before and after the murder. 7-ER-1843.

Beyond the records the defense submitted, Specchio tried to find evidence to match the statutory mitigating factors or other evidence that could be submitted in mitigation, but he indicated that he and the investigator, who had been working the

⁴ Although the record is unclear, the Warden presumes this is a reference to Virginia Greathouse.

case starting with Wieland, could not find additional evidence that favored Bejarano. 6-ER-1459; 7-ER-1846-47, 1854-1855.

15. Bejarano acknowledged efforts by both Weiland and Specchio to find evidence in mitigation. 7-ER-1861, 1863. When asked about whether he intended to express remorse to the jury, he said, “I couldn’t be sorry to that jury,” later adding, “How am I supposed to shed tears, for what?” 7-ER-1866, 1868.

16. The district court denied the claim that trial counsel was ineffective investigating and presenting mitigating evidence for the penalty phase. App. 0009; 1-ER-141. The Nevada Supreme Court affirmed, finding that counsel made a tactical decision not to present evidence of Bejarano’s personality disorders and low intelligence. App. 0009; 1-ER-140. And the court specifically noted that presentation of “evidence of [Bejarano’s] anti-social personality may have inflamed the jury even more.” 1-ER-140.

17. After the denial of his first state petition, Bejarano filed a federal petition. App. 0009. The federal court appointed counsel and allowed limited discovery, which led to Bejarano amending his petition and filing a motion for stay. App. 0009. The district court denied the motion for stay and dismissed the petition. App. 0009-0010.

18. Bejarano filed a second state habeas petition in December of 1992. App. 00010; 21-ER-5876; 22-ER-5880. The state court procedurally barred all claims except the claim that first post-conviction counsel was ineffective for failing “to expose the alleged ineffectiveness of [Bejarano’s] prior counsel’s representation.” App. 0010;

1-ER-135-136. The district court rejected that claim, finding the allegations “hypothetical and speculative.” App. 0010; 1-ER-136. And the Nevada Supreme Court affirmed on appeal. App. 0010; 1-ER-121.

19. Bejarano then returned to federal court and filed his second federal petition in 1998, which is the operative petition that started this case. App. 0010. Five years passed before Bejarano amended his petition, and the federal district court stayed the case to allow Bejarano to exhaust his state remedies. App. 0010.

20. Bejarano filed a third state habeas petition in 2003. App. 0010. The state district court dismissed the petition as untimely under Nev. Rev. Stat. 34.726. App. 0010; 12-ER-3084-3086. On appeal, the Nevada Supreme Court excused the default for a single claim and invalidated two of the aggravating circumstances before it determined that submission of the invalid aggravating circumstances was harmless. App. 0010-0011; 1-ER-86-108.

21. Bejarano returned to federal court and amended his federal petition in May of 2007. App. 0011. Bejarano asserted that his trial counsel was ineffective in investigating and presenting mitigation evidence at the penalty phase of the trial. 1-ER-23. Although Respondents moved to dismiss this claim as procedurally defaulted, the district court denied that motion based on Ninth Circuit precedent holding that the relevant procedural bar—Nev. Rev. Stat. 34.810—is inadequate. 1-ER-47.

Despite conducting a de novo review of the claim, the district court denied relief, ultimately determining that Bejarano failed to demonstrate actual prejudice. 1-ER-33-38. The district court categorized the evidence Bejarano argued that counsel

should have presented in three classes: “(1) juvenile records, (2) his mental health background, and (3) information from acquaintances, relatives, and other people who knew him.” 1-ER-27. The court then summarized this evidence, starting with the “juvenile records,” which included records of Bejarano’s convictions for violent crimes he committed in Idaho as a young adult. 1-ER-27-29. And the court addressed his mental health background, including reports from Drs. Howle, Nielsen, and Etcoff. 1-ER-29-31. And it addressed various witnesses from Bejarano’s past, including Virginia Greathouse and Ben Wenke. 1-ER-32-33.

After discussing the evidence, the district court determined that a majority of the “factual allegations about available mitigation evidence were not developed in his state court proceedings,” and that 28 U.S.C. § 2254(e)(2) barred both an evidentiary hearing and consideration of Bejarano’s evidence. 1-ER-34. But the court noted a few exceptions of things that had been made part of trial record, including some of the juvenile records and reports from Drs. Howle and Nielsen. 1-ER-34 n.11.

The district court ultimately side-stepped the admissibility issue. It remained convinced that even if it considered the totality of Bejarano’s evidence, Bejarano had not established actual prejudice. 1-ER-33-38. As a result, the court determined that it did not need to consider deficient performance because even if the court assumed that counsel’s performance was deficient, Bejarano’s claim would still fail based on the absence of prejudice. 1-ER-33, 38.

As the Court explained, “Bejarano still falls short of establishing that he suffered prejudice of the type contemplated by *Strickland*.” 1-ER-34. Although

recognizing that Bejarano “was disadvantaged” resulting from his time in foster care and juvenile facilities, the court determined that it paled in comparison with the “nightmarish’ life histories of the petitioners” in cases where this Court has granted relief like *Rompilla v. Beard*, 545 U.S. 374 (2005), *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Williams v. Taylor*, 529 U.S. 362 (2000). 1-ER-34-35.

The court determined that the mental health evidence could have been mitigating, “but not more than marginally so,” contrasting the diagnosis that Bejarano had personality disorder with antisocial features with “more serious disorders such as organic brain damage” that have greater mitigating weight. 1-ER-35. And the Court noted that any benefit from presenting that evidence would likely be “offset by the opinions of Howle and Nielsen that the condition was probably not curable.” 1-ER-35.

The court also determined that testimonial evidence from Franks, Wenke, and Greathouse may have added to the evidence in mitigation. 1-ER-35-36. The other witnesses Bejarano proposed would have been unhelpful. 1-ER-36. When considering the totality of Frank’s potential testimony, the court thought that “on balance . . . she would have been able to provide sympathetic background information about his childhood and adolescence,” despite recognizing that her declaration included information that corroborated trial counsel’s concerns about putting her on the stand. 1-ER-36. The court also recognized the potential for Wenke and Greathouse to provide evidence about the period of stability Bejarano experienced in Idaho, but it noted that Greathouse would like face questions about her knowledge of Bejarano’s March 1986

arrest for “battery, resisting an officer, battery on a law enforcement officer, and malicious injury to property.” 1-ER-28-29, 36.

But then the court considered the aggravating evidence “[o]n the other side of the scale.” 1-ER-36. “[T]he aggravating circumstances against Bejarano were numerous and weighty,” even without the factors the Nevada Supreme Court invalidated under its rule from *McConnell*. 1-ER-36. The court determined the remaining factors “established his proclivity for violence, his disregard for human life, and his insusceptibility to rehabilitation,” adding that “the evidence and testimony admitted at his trial also showed him to be an angry and vindictive person completely uninhibited in his actions by morals or a conscience.” 1-ER-36-37.

The district court concluded, the additional mitigating evidence “would barely have altered the sentencing profile” heard by the jury, but “not to the extent that there is a reasonable probability that [a] juror would have opted against the death penalty.” 1-ER-37. And presentation of the mental health evidence would not have been “particularly compelling and could have even been damaging to the extent that it could have established that Bejarano’s antisocial behavior was not likely to be corrected.” 1-ER-37. The court granted a Certificate of Appelability on claim Two(A) and on whether the court erred in denying the request for an evidentiary hearing. 1-ER-42.

Finally, the Court rejected Bejarano’s claim that he would not have testified “but for counsel’s failure to adequately prepare a mitigation case.” 1-ER-37. The court found that claim speculative, noting that Bejarano testified during the guilt phase

against counsel's advice and recognizing "it is not clear that Specchio could have prevented Bejarano from testifying in the penalty phase even if he tried to do so." 1-ER-38. Meanwhile, the court agreed that trial counsel's closing argument "was lackluster and, perhaps, too brief under the circumstances." 1-ER-38. But the court nevertheless concluded that "the aggravating circumstances and evidence against Bejarano far outweighed the evidence in mitigation." 1-ER-38.

22. After the case ping-ponged between the Ninth Circuit and district court a few times, the Ninth Circuit affirmed the district court's decision on appeal. App. 0011-0012, 67. The court first reviewed and rejected Bejarano's arguments that he was entitled to an evidentiary hearing to present new evidence, concluding that he failed to satisfy the exceptions in 28 U.S.C. §2254(e)(2). App 0015. The court determined that Bejarano failed to exercise diligence in developing the record during his first state petition because Bejarano admitted that the evidence was readily available for trial counsel to present during the sentencing phase. App 0018. The court determined that the failure to develop the record is attributable to Bejarano. App 0019.

The court next considered and rejected Bejarano's IAC claim for trial counsel's failure to investigate and present mitigating evidence during the penalty phase, which is the subject of the underlying petition. App 21. The court acknowledged that Bejarano presented a variation of this claim in his first state habeas petition, which the Nevada Supreme Court denied on the merits, and a variation in his second state habeas petition, which the Nevada Supreme Court treated as defaulted under Nev.

Rev. Stat. § 34.810. As a result, the court recognized that the part of Claim Two(A) presented in the first state habeas “is subject to review AEDPA review,” but the claim from the second state habeas petition would be reviewed de novo because the Ninth Circuit agreed that Nev. Rev. Stat. § 34.810 was inadequate under Ninth Circuit precedent. App. 0021.

The court determined that the Nevada Supreme Court’s rejection of the IAC claim raised during his first petition was not objectively unreasonable, considering whether the failure to present mental health evidence or additional juvenile records was deficient or prejudiced Bejarano. App. 0023-0025. The court noted its own prior decisions that “have repeatedly noted the potential pitfalls of presenting a jury with evidence that a defendant suffers from [antisocial personality disorder], especially if the diagnosis is unaccompanied by evidence of an organic brain injury or other major mental health diagnosis,” and Supreme Court precedent making similar points. App. 0024. The court also noted the absence of prejudice. App. 0024-0025.

As the district court did, the Ninth Circuit then reviewed de novo whether Bejarano’s counsel performed deficiently or was prejudiced by the failure to present: (1) additional juvenile records; (2) testimony from various witnesses; and (3) additional mental health evidence. App 0026. At the outset, the Court started its analysis noting its assumption “that Bejarano’s trial counsel performed deficiently at times,” but noted that it—like the district court had—concluded that Bejarano failed to establish prejudice. App. 0026.

First, the court discussed the “juvenile records.” Because counsel had presented some of the “child welfare records,” the court turned to this Court’s opinion in *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003), and *Strickland*, for the proposition that counsel’s decisions to address “some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect.” App. 0026. The court then noted that the evidence Bejarano identified “would have been cumulative of evidence already admitted and would not have made a meaningful impact.” App. 0026-0027.

The court also identified evidence raised for the first time in federal court “showed that Bejarano may have suffered from neurological impairment at a young age.” App. 0027. But that evidence contrasted with evidence from the mental health experts Bejarano relied on in the first state habeas petition. App. 0027. And, in any event, this evidence was not reasonably known to trial counsel, which undermines any assertion that counsel was “deficient for failing to discover it.” App. 0027.

But just as the district court did, the Ninth Circuit ultimately determined that omission of this evidence did not prejudice Bejarano. The Court explained that the evidence could have proved harmful, noting that the evidence would have shown that Bejarano was “angry and withdrawn from a young age—violent, emotionless, remorseless, and prone to violent assault and theft.” App. 0027. And the Court also explained challenges that evidence of Bejarano’s early substance abuse could create, suggesting that he “was simply ‘beyond rehabilitation.’ *Pinholster*, 563 U.S. at 201.” App. 0027. Finally, the Court recognized that “the welfare records described Bejarano

as a ‘volcano’ who would lash out in anger and hurt himself or someone else,” before noting that it has “[n]o doubt this evidence would have strengthened the prosecution’s portrayal of Bejarano as a remorseless killer and likely harmed the mitigation effort more than it helped.” App. 0027-0028.

Second, the court addressed Bejarano’s claim about counsel’s failure to call various character witnesses—Franks, Greathouse, and Wenke in particular. The court recognized that counsel had legitimate strategic reasons for not calling Franks. Although Franks may have been able to provide some mitigating information about Bejarano’s past, that would have come with countervailing negative information, including acknowledging her fears that Bejarano “‘might do something’ like murder,” which is evidenced by her initial response to an inquiry about Bejarano: “‘Who did he kill?’” App. 0029-0030.

The Court then addressed other witnesses that would have been unhelpful before addressing Greathouse and Wenke. App. 0030-0033. After noting the likelihood that Greathouse and Wenke could have provided helpful testimony, the court explained that the record was “unclear” about trial counsel’s “tactical concerns” that caused him not to call Greathouse or Wenke. App. 0035. But the Court then said, [e]ven assuming the decision not to call them was deficient, however this failure was not prejudicial.” App. 0035.

Addressing the issue of prejudice, the Court noted that Greathouse and Wenke would have been subject to cross-examination based on their knowledge of Bejarano’s prior criminal offenses. And because of the likely cross-examination, “it would be

wrong to overestimate the value of their testimony,” especially because knowledge of that background was likely to dovetail with the aggravating factors the prosecutor presented. App. 0035. And the Ninth Circuit—as with the federal district court—was unconvinced that Bejarano would have declined to testify if counsel had called favorable character witnesses. App. 0035-0036.

Finally, the court addressed the mental health evidence. First, the court addressed the neuropsychological evaluation Dr. Lewis Etcoff conducted in 1992, noting its unavailability to trial counsel. App. 0036. The court explained that counsel could not have been ineffective for failing to use a non-existent report; “[t]he question is instead whether trial counsel was ineffective for failing to hire an expert to conduct a neuropsychological exam.” App. 0036. And the Court determined “trial counsel did not perform deficiently,” after explaining the actions Bejarano’s attorneys in consulting with Kenneth Clark and William Thornton on competency and Dr. Charles Dickson on possible development of mitigating evidence, “including about Bejarano’s mental health.” App. 0037. And the Court also explained the vulnerabilities in Dr. Etcoff’s diagnosis and challenges he would have faced based given that “no prior psychologist or psychiatrist in Bejarano’s childhood or adulthood had reached the same diagnostic conclusions.” App. 0037. Finally the Court noted Dr. Etcoff’s conclusions about Bejarano’s dangerousness when intoxicated. App. 0037.

Second, the court more thoroughly addressed counsel’s consultation with Dr. Dickson, and counsel’s decision not to rely on Dr. Dickson. After recounting the extremely negative information counsel obtained through consultation with Dr.

Dickson, who left his meetings with Bejarano “considering Bejarano ‘the most amoral, horrible individual they [had] ever encountered in 25 years’ of practice, “counsel asked Dr. Dickson not to prepare a written report and did not call him to testify.” App. 0038-0039.

23. After the panel affirmed, Bejarano sought panel and en banc rehearing, but the Circuit denied Bejarano’s requests. App. 0077.

REASONS FOR DENYING THE PETITION

I. This Court’s decisions already answer Bejarano’s first question presented, and a plain reading of the Ninth Circuit’s opinion does not implicate the supposed split of authority Bejarano presses here.

This Court has already answered the first question presented. And in any event, the facts of this case do not squarely present the issue for consideration.

A. This Court already answered Bejarano’s first question presented in its many cases that apply the *objective* test this Court established in *Strickland*.

This Court has already squarely answered Bejarano’s first question. In *Pinholster*, this Court explained that the Ninth Circuit “misapplied *Strickland*” before instructing that “[t]he Court of Appeals was required not simply to ‘give [the] attorneys the benefits of the doubt,’ but to affirmatively entertain the range of possible ‘reasons Pinholster’s counsel may have had for proceeding as they did.’” *Pinholster*, 563 U.S. at 196 (quoting *Pinholster v. Ayers*, 590 F.3d 651, 692 (9th Cir. 2009) (Kozinski, C.J. dissenting)) (brackets in original and internal citation omitted). This is so because *Strickland* imposes a test that “calls for an inquiry into the

objective reasonableness of counsel's performance, not counsel's subjective state of mind." *Id.* (quoting *Richter*, 562 U.S. at 110).

But the Court has also said that courts should not identify a “*post hoc* rationalization’ for counsel’s decisionmaking that contradicts the available evidence of counsel’s actions.” *Richter*, 562 U.S. at 109 (quoting *Wiggins*, 539 U.S. at 536-27). In *Wiggins*, the state court identified a possible strategy for counsel’s decisions, but the U.S. Supreme Court determined that the record contradicted the state court’s analysis because the record showed that counsel did what the state court suggested trial counsel was trying to avoid. 539 U.S. at 526.

These related but contrasting points reflect nuance to how *Strickland*’s objective standard applies. Courts are to entertain whether counsel’s actions can be explained by any possible reasonable trial strategy. But courts are not to imply the existence of a strategic justification that is inconsistent with counsel’s actions.

Thus, the split that Bejarano purports to identify is a product of courts addressing nuances of how to apply *Strickland*’s objective standard to materially different facts in different cases and different. The relevant standard does not focus on trial counsel’s subjective reasoning. The petitioner must show “that *every* reasonable lawyer would have made a different decision.” *Reeves*, 594 U.S. at 740. So the *Strickland* test does not focus on trial counsel’s reasoning for the decision; the relevant question focuses on whether any reasonable lawyer could have made the same choice for valid strategic reasons. Circuit courts that decline to engage in that analysis are applying the standard incorrectly.

Similarly, however, the standard does not allow a court to attribute a particular trial strategy to counsel's performance, when the record shows that counsel's actions conflict with such a strategy. So a court that attributes a particular trial strategy to counsel's performance that does not align with the evidence of counsel's conduct are also applying the wrong test.

B. The Ninth Circuit faithfully applied this Court's precedents applying *Strickland*.

The Ninth Circuit got the test right here, so there is no need to review this case. There are three categories of mitigation evidence that Bejarano focuses on to address trial counsel's alleged deficiency. And breaking them down to consider the Ninth Circuit's analysis for each category of evidence shows that the analysis here is consistent with this Court's decisions applying *Strickland*.

First is the "juvenile" records. In addressing those records, the Ninth Circuit followed this Court's lead from *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (per curiam). In *Gentry*, this Court said, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect." 540 U.S. at 8. Bejarano challenges the Ninth Circuit's analysis by cherry picking a few records to support a point the federal district court made about the reality that the counsel excluded some records that might have painted a marginally more sympathetic picture of Bejarano's childhood, including evidence of potential physical abuse at the hands of an intoxicated father. Pet. at 27-28.

But what Bejarano omits from his discussion is the district court seemed to include Bejarano's criminal records from early adulthood when considering counsel's performance regarding the presentation of "juvenile" records. 1-ER-27-29. And those records are significant when considering psychological records Bejarano cites from his childhood to suggest that Bejarano, although angry as a child, was not violent. Pet. at 27-28 (citing 14-ER-3606, 3609). Bejarano's childhood records compared him to a "volcano," noting the potential for an explosive eruption. *See, e.g.*, 14-ER-3606 ("There is a latent explosiveness indicated which could erupt at any time the pressure becomes too heavy."); 14-ER-3609 ("Staff feel that underneath John's façade of passivity boils a latent volcano and want to reach down carefully, disturb it and thereby transform this energy into more positive action.").

The combination of comparing Bejarano to a volcano and his sharp turn into violent behavior throughout his transition from adolescence to adulthood would have handed the prosecutor a prime opportunity to emphasize Bejarano's dangerousness. So, although the records from his youth reflect that he had not *yet* acted out violently, it would not be long before Bejarano's inability to process his anger would reach a tipping point and turn into violence. As a result, the prosecutor would have been able to easily spin those records against Bejarano to show that this pent-up anger, which he struggled to express as a child, eventually found a release through the violence he unleashed as he transitioned into early adulthood.

So the Court did not conjure up theoretical explanations for counsel decisions for counsel's decisions that are *contradicted* by the record when it suggested there

were valid strategic justifications to support exclusion of various records Bejarano now says trial counsel should have used. But even accepting that Bejarano’s cherry picking from the record shows that counsel might have picked a few additional records that would have been good to share with the jury, Bejarano has not shown that counsel’s performance dropped below an objective standard of reasonableness within the meaning of *Strickland*’s deficient performance prong.⁵

Next is potential testimony of Wenke and Greathouse.⁶ The Court acknowledged that the record did not provide a clear strategic basis for not calling those two witnesses. App. 0035. And it recognized that both witnesses likely would have been able to provide Bejarano with helpful testimony. App. 0035. But the Court then explained that even assuming counsel was deficient for not calling these witnesses, there was no prejudice. App. 0035.

So the Ninth Circuit again did not improperly conjure up its own strategic theories to explain away counsel’s failure to call Wenke and Greathouse that are *contradicted* by the record. Instead, the court *assumed deficient performance* and moved on to prejudice. App. 0035. And it was only when addressing prejudice that the panel discussed vulnerability of Wenke and Greathouse as character witnesses when considering likely topics of cross-examination. App. 0035. The panel did not, as

⁵ In any event, the Ninth Circuit applied a “belt and suspenders” approach by noting its conclusion that even if counsel’s decisions about which records from Bejarano’s past to share with the jury were objectively unreasonable, none of the omitted records were strong enough to establish actual prejudice. App. 0028.

⁶ Bejarano does not appear to challenge the Ninth Circuit’s determination that counsel had legitimate strategic reasons for not calling other witnesses like Vonnie Franks.

Bejarano seems to suggest, indicate that the potential for cross-examination of those witnesses provided a strategic basis not to call them as witnesses at all. *Compare* Pet. at 17; *with* App. 0035.

Finally, Bejarano addresses the issue of his mental health. There, once again, the Ninth Circuit relied upon its own decisions and decisions of this Court to explain that trial counsel had an obvious strategic reason for not wanting to open the door to a presentation on Bejarano's mental health given the diagnosis of antisocial personality disorder. App. 0024, 37-39.⁷

Bejarano suggests that there can be no strategic basis to support counsel's decision not to present mental health evidence "because counsel failed to conduct the baseline investigative steps of . . . consulting with an expert." Pet. at 17. But Bejarano's factual assertions as true, he fails to explain why it would have been unreasonable for his trial attorney (Specchio) to have relied upon the work done by his initial attorneys (Wieland and Wishart) to have Bejarano's competence evaluated and consult with Dr. Dickson about the potential to develop mitigation evidence. Dr. Clark diagnosed antisocial personality disorder when evaluating Bejarano pre-trial, which by itself would have provided a powerful strategic reason to avoid Bejarano's mental health issues and avoid opening the door to admission of damaging evidence

⁷ Also notable, to the extent Bejarano presented this issue in his first state habeas, the Nevada Supreme Court rejected it and explained that presenting evidence of Bejarano's antisocial personality disorder was likely to inflame the jury. 1-ER-140. That ruling is entitled to deference under AEDPA and is reasonable. App. 0024.

on cross-examination or through rebuttal witnesses. 15-ER-3975. And Bejarano does not dispute that Specchio reviewed Dr. Clark's report. 7-ER-1840.

And Bejarano attacks Specchio's testimony suggesting "an expert told him Bejarano was 'the most amoral, horrible individual.'" Pet. at 11 (citing 16-ER-4445). But nowhere within his petition does Bejarano challenge the Ninth Circuit's indication that Dr. Dickson made such a statement. App. 0038. Bejarano just asserts that Dr. Dickson was "certain" he did not talk to Specchio about Bejarano, but Dr. Dickson readily admitted that he consulted with Wieland and Wishart. 18-ER-4902. No case Bejarano cites suggests that Specchio needed to retrace each step Wieland and Wishart had already taken. And no case Bejarano cites suggests that counsel perhaps misremembering hearing what Dr. Dickson said from prior counsel, rather than directly from Dr. Dickson, would not demand a finding of deficient performance.

Thus, once again, the Ninth Circuit did not conjure up its own strategic explanations for counsel's conduct that are *contradicted* by the record. The points the Ninth Circuit relied upon are consistent with the evidence in the record. And reasonable attorneys in trial counsel's position could have elected to avoid the mental health issues because, just as the Nevada Supreme Court recognized, presenting evidence of antisocial personality disorder was likely to reinforce any view the jury would develop that Bejarano was dangerous and carrying on without remorse for what he had done. 1-ER-140.

* * *

II. Bejarano second question presented is a fanciful request for error correction on *Strickland* prejudice that does not require review on this record.

Bejarano's second question presented is just a fanciful way to articulate a request to have this Court second-guess the Ninth Circuit's analysis on *Strickland* prejudice. But even Judge Wardlaw, who wrote separately to express her disagreement with the panel's analysis on deficient performance, agreed that Bejarano had failed to show prejudice. App. 0076 ("I agree with the majority's conclusion that the failure to call these character witnesses did not ultimately prejudice Bejarano.").

Ironically, however, Judge Wardlaw's opinion emphasizes that this is not a good case for this Court to address any supposed split of authority on deficient performance because she would still deny relief for lack of prejudice. App. 0076. This Court has recognized time and again that a petitioner must satisfy both prongs of the *Strickland* inquiry, and a court may skip the deficient performance inquiry and deny relief based solely on the absence of prejudice. *See, e.g., Smith v. Robbins*, 528 U.S. 259, 286 n.14 (2000) (noting that performance "need not be addressed first" and quoting *Strickland* for the proposition that a court can skip the performance inquiry "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of prejudice").

And there is no reason for this Court to grant review just to revisit the Circuit's prejudice inquiry. A few handpicked records that Bejarano focuses on from his childhood might have marginally helped him in presenting a mitigation case the jury by suggesting he was periodically abused by his father. But other records he relies on

to suggest he was not violent as a child would have just teed up an argument for the prosecutor that it did not take long for Bejarano's pent-up anger and frustration to boil to the surface and come out in the form of extreme acts of violence for which Bejarano was incapable of showing any remorse. And that point would have only been exacerbated the situation, rather than aiding Bejarano, especially if it was combined with evidence of Bejarano's antisocial personality disorder.

Testimony from Greathouse and Wenke was also unlikely to shift the balance. Although both witnesses might have been able to provide some positive testimony about brief periods of stability for Bejarano, the Ninth Circuit was right to be skeptical of the weight a jury would have given that testimony, especially considering points about Bejarano's background that those witnesses would have been forced to answer to on cross-examination. One point in particular that Bejarano takes issue with is the Ninth Circuit's addressing a prior conviction stemming from an "assault on a woman," asserting that "no such charges exist." Pet. at 29. But the Court was referring to the Idaho incident Dr. Nielsen referenced that led to charges regarding Bejarano hitting a police officer before later kicking out the window a police vehicle. 6-ER-1385. Although Bejarano had apparently told Greathouse some details from that incident, she was not aware that Bejarano instigated the incident by pushing a woman. 15-ER-4041.

Finally, Bejarano's theory that he would have insisted on not testifying during the penalty hearing is unsupported. The federal district court and all three members of the Ninth Circuit panel, including Judge Wardlaw in her concurring opinion, found

Bejarano’s insistence that he would not have testified if counsel had made a better mitigation presentation speculative or belied by his own conduct. App. 0035, 0076; 1-ER-37. And the record supports that conclusion. Bejarano insisted on testifying during the guilt phase against counsel’s advice. 1-ER-38; 7-ER-1833. And it is apparent from the record that Bejarano wanted to give the jury his thoughts. 7-ER-1853-54. Yet he refused to tell counsel his plan for the penalty hearing, likely because he knew that if trial counsel had a sense of what he planned to do, counsel would try to stop him. 7-ER-1853-54. Moreover, even without Bejarano’s penalty phase testimony, the aggravating evidence from this case remained too strong for Bejarano to show the likelihood of a different outcome.

* * *

All the judges from the lower courts—Judge Wardlaw included—were right to identify the absence of prejudice here. As the district court noted, this case is not in the same class as cases like *Rompilla*, *Wiggins*, and *Williams*. 1-ER-34-35. Instead, even with the Ninth Circuit assuming deficient performance of counsel in some respects, the evidence Bejarano has sought to add to the mitigating side of the scale lacks the weight necessary to support the conclusion that there is a reasonable probability that the jury would have returned a sentence other than death when considering the strength of the aggravating evidence in this case. *See, e.g., Thornell v. Jones*, 602 U.S. 154, 158 (2024) (reversing when “the Ninth Circuit all but ignored the strong aggravating circumstances in this case”).

* * *

III. There are at least two procedural barriers that present alternative grounds for affirmance that make this case a poor vehicle to review the questions presented.

Even if this Court were inclined to review the questions Bejarano presents in his petition, there are additional procedural hurdles that Bejarano would need to address and overcome before this Court can reach the questions presented. First, much of his argument is based on evidence that the lower courts recognized to be inadmissible under 28 U.S.C. § 2254(e)(2) but considered anyway. Second, the authority the Ninth Circuit relied on when it said that Nev. Rev. Stat. 34.810 was an inadequate procedural bar at the time of Bejarano's second state habeas petition cannot be reconciled with this Court's intervening decisions rejecting the view that discretionary procedural bars are not *per se* inadequate.

A. Bejarano relies heavily on evidence that the lower courts should have excluded from the analysis under 28 U.S.C. § 2254(e)(2).

The Ninth Circuit affirmed the district court's denial of an evidentiary hearing after, relying on 28 U.S.C. § 2254(e)(2). App. 0015-0021. But as the Ninth Circuit has correctly recognized, 28 U.S.C. § 2254(e)(2) bars consideration of evidence presented through a petition that is dismissed as defaulted in state court. App. 0019 n.3 (citing *McLaughlin v. Oliver*, 95 F.4th 1239, 1249-50 (9th Cir. 2024)). The district court and the Ninth Circuit appeared to recognize that implication here but ultimately went on to consider the inadmissible evidence because, even when considering all the evidence, the lower courts remained convinced that Bejarano's claim would still fail. App. 0019; 1-ER-34.

Bejarano continues to rely on evidence that should be inadmissible under 28 U.S.C. § 2254(e)(2). This creates a difficult issue that the Court would need to resolve before reaching either of Bejarano's questions presented. The lower courts ultimately avoided the issue by denying relief. But before this Court could resolve either question presented in Bejarano's favor, it would need to address what evidence is or is not barred by 28 U.S.C. § 2254(e)(2). And inadmissibility of any evidence Bejarano needs to prevail would provide an alternative ground for affirmance.

B. The lower courts are wrong about the supposed inadequacy of Nev. Rev. Stat. 34.810, implicating adequate and independent state law grounds for denial of relief.

Bejarano argues that his case is a good vehicle to address the issue because the lower courts treated Nevada's successive petition bar as inadequate, leading to a de novo review of his claim. Pet. at 24. But that tees up a dispute about adequacy of Nev. Rev. Stat. 34.810.

The lower courts relied upon *Sechrest v. Ignacio*, 549 F.3d 789 (9th Cir. 2008), and *Valerio v. Crawford*, 306 F.3d 742, 778 (9th Cir. 2002) (en banc), to assert that Nev. Rev. Stat. 34.810 is not an adequate state procedural rule. App. at 0021; 1-ER-47. But the Ninth Circuit based its decision in *Valerio* upon statements the Nevada Supreme Court had made in the 1980s and 1990s about its discretion to set aside a procedural default and consider a constitutional claim in a capital case at any time. *Valerio*, 306 F.3d at 778. This, the Ninth Circuit said, rendered the bar inadequate without assessing how the Nevada Supreme Court—if ever—had exercised that discretion. *Id.*

Since then, however, this Court has expressly held that a procedural bar is not inadequate just because it is discretionary. *See, e.g., Walker*, 562 U.S. at 320 (2011); *see also Johnson*, 578 U.S. at 610-11; *Kindler*, 558 U.S. at 61. So the sole reason the Ninth Circuit has given for treating Nev. Rev. Stat. 34.810 as inadequate is, according to this Court, incorrect. *Compare id.; with* 306 F.3d at 778.⁸ And that means Bejarano’s claim should be subject to procedural default, which provides this Court with another potential alternative ground to affirm without resolving Bejarano’s questions presented.

IV. There is no need for this Court to hold this petition pending the Ninth Circuit’s resolution of Bejarano’s extraordinary request to file a successive petition for rehearing.

There is no need to hold this petition. First, Bejarano misrepresents the arguments that were made when seeking rehearing of the decision in *Hogan v. Bean*, 140 F.4th 1001 (9th Cir. 2025). Warden Bean broke down the inaccuracies in Bejarano’s position when opposing Bejarano’s motion seeking leave to file the successive petition for rehearing in the Ninth Circuit.⁹ But to summarize here, Bejarano is wrong that the *Hogan* petition asserted that a second state habeas petition is procedurally proper vehicle for raising ineffective assistance of counsel claims that could have been raised in a prior petition. And the argument made in

⁸ The district court in Nevada has signaled its agreement with this view. *McConnell v. Reubart*, No. 3:10-cv-00021-GMN-CSD, 2022 WL 2918700, *12 (D. Nev. July 24, 2022) (“*Valerio and Sechrest* have been called into question by *Beard* and *Walker*.”).

⁹ The Opposition can be found at Dkt. 171.

Hogan is entirely reconcilable with the conclusion here that Nevada law required Bejarano to present all available claims in his first state habeas petition.

In any event, the Ninth Circuit denied the petition seeking rehearing in *Hogan*, yesterday. Order, *Hogan v. Bean*, No. 18-99004, Dkt. 99 (April 30, 2026) (hereinafter “Dkt. 99”).¹⁰ The panel majority—Senior Judges Berzon and Bybee—issued a statement on the denial of en banc rehearing emphasizing Nevada’s “bar on successive petitions that requires dismissal if the grounds for the petition could have been raised ‘in a prior petition for writ of habeas corpus or postconviction relief.’” Dkt. 99 at 6. And that point squarely undermines Bejarano’s efforts to seek rehearing in this case.

Finally, regardless of what the Ninth Circuit does with Bejarano’s extraordinary request to file a successive petition, this petition does not present a viable basis for this Court to grant review. For that reason, this Court need not wait to see if the Ninth Circuit grants or denies Bejarano’s request. This Court can, and should, deny this petition now.

* * *

¹⁰ Available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2026/04/30/18-99004.pdf>.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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